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BOOK REVIEW

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EQUAL JUSTICE FOR THE ACCUSED.

By a Special Committee of the Association of the Bar of the City of New York and The National Legal Aid and Defender Association: Doubleday & Company, Inc., 1959. Pp. 144. \$3.50.

The Committee on Law Reform of the Association of the Bar of the City of New York in 1954-1955 undertook an inquiry into the question of how defender systems function in meeting the problem of the defense of poor persons charged with crime. The preliminary work done made it apparent that the scope of the inquiry was beyond the capacity of a committee of busy lawyers, unassisted by a research staff, and that a national committee should be formed composed of members of the Bench, the Bar, and others concerned and interested.

This volume is the detailed report of the studies made by such a committee, formed by the Association of the Bar of the City of New York and the National Legal Aid Association (whose name was changed to "National Legal Aid and Defender Association" in the Fall of 1958). The Committee functioned with the aid of a grant from The Fund for the Republic, Inc., and was composed of eminent jurists, lawyers, public defenders, and others, and included in its membership the late John J. Parker, United States Circuit Judge, and Professor Herbert Wechsler of the Columbia University Law School. Its staff was headed by Kenneth R. Frankl, a practicing lawyer of New York, as director, and Arnold S. Trebach, Assistant Professor of the Department of Political Science, University of Tennessee, as consultant.

The well-organized report deals with the history of the representation of indigent defendants, not only from the standpoint of their own need, but also from the standpoint of the need of society, in the attainment of the goal of making justice equal and accessible for all, without a price tag on it. The right to assistance of counsel is recognized as one of the basic tenets of liberty of the individual under law, and the public conscience must be satisfied that fairness dominates the administration of justice, with its corollary that essential fairness is lacking if an accused cannot put his case effectively in court.

The report considers in detail the conclusions reached by the committee on the basis of comprehensive field reports reflecting the merits

and demerits of the assigned-counsel system, the voluntary-defender system, and public-defender system, and the more recently tried mixed private-public system. The first represents the original and traditional approach by the courts themselves, but the comparative lateness in criminal proceedings of court appointments called into existence the other approaches as efforts to increase the effectiveness of representation of indigents by affording the assistance of counsel at earlier stages, with more efficient means of investigation and preparation for trial.

Detailed recommendations are made as to the improvements needed in each of these systems, and the great stake of the Bench and the Bar in the handling of the problem is stressed, with, however, recognition of the fact that community interest in and appreciation of the problem is essential to its solution.

In South Carolina, the right to be heard by counsel is safeguarded by statute, but assignment of counsel is required on request only in capital cases. The appendix to the report indicates that at the time of the report the only other states in which mandatory assignment of counsel on request is limited to capital cases are Alabama, Delaware, Massachusetts, Mississippi, and Pennsylvania, and of these only South Carolina fails to make any provision for counsel fees or expenses of court-appointed counsel in such cases. Other States making no provision for compensation of court-appointed counsel are shown as Kentucky, Louisiana, Missouri, Tennessee and Utah. North Carolina makes no such provision where the offense charged is not a capital one.

The rights of indigents in state courts to have counsel is one of the fundamental elements of a fair trial where the charge is a capital offense. *Powell v. Alabama*, 28 U. S. 45 (1932). In non-capital cases it has been suggested that the fairness of a trial depends on whether an adequate defense without counsel was possible, *Betts v. Brady*, 316 U. S. 45 (1942); *Townsend v. Burke*, 334 U. S. 736 (1948), as the Supreme Court of South Carolina recently recognized in *State v. Hollman*, 232 S. C. 489, 102 S. E. 2d 873 (1958). In *Williams v. Kaiser*, 323 U. S. 471 (1945), the court referred to the assignment of counsel as a part of due process "at least in capital offenses," a phrase which may foreshadow the broadening of the concept to include all criminal charges at a not too distant date.

In urban areas the problem of indigent defendants appears to be more acute, and less likely to be efficiently handled, than in rural areas. It would seem timely for our urban counties to consider the institution of a system of coping with the problem, perhaps on a

mixed public-private basis (by private agencies assisted by appropriations to make possible the provision of adequate staff facilities), both to insure equal justice as a community goal and to guard against the possibility that important prosecutions may be held abortive should the conception of due process be broadened by the courts. Such a system is in keeping with our adversary approach to criminal trials, and would contribute greatly to its proper functioning, while relieving the courts and the prosecutors from the frequently difficult responsibilities imposed upon them under our present approach.

This volume will be rewarding reading for laymen and lawyers alike, and especially those who have already become actively interested in the problem. The succinct history of the development in Anglo-American law over the centuries of the right to counsel is fascinating in itself, and the reference notes furnish a wealth of thought-provoking material. The Committee's findings and recommendations will be exceptionally helpful in the consideration of the choices involved in any particular locality.

ROBERT McC. FIGG, JR.*

*Dean-Elect, School of Law, University of South Carolina, Columbia, South Carolina.