

# A PUBLIC DEFENDER FOR THE PHILIPPINES

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While many of the legislatures in the United States are considering the problem of the creation of the office of public defender, it may not be amiss to point out the special need for such an official in the Philippine Islands. Some of the reasons for the establishment of this office apply particularly to the American cities but others apply with much force to the populous districts in which court is held in the Islands.

When I was named to be public defender of Los Angeles County, the first public defender in the United States, I looked back with satisfaction to the experience I had gained as a sort of a public defender in the Philippines where I had defended *de officio* a great many persons accused of crime. In so doing I was, to some extent at least, doing the work which I have now taken up as a public official. Indeed, it may be that the Civil Service Commission in passing on the qualifications of the applicants, took into account my experience in this line in the Philippines, especially in view of the fact that many of the accused in our local courts are indigent Mexicans. My experience in defending a great many persons in the capacity of assigned counsel in the Islands and my experience in defending a large number in California as a public official put me in position to make comparison between the results of the two systems.

Most of my work in the Philippines was in the city of Cebú. I believe that about half of the cases I handled were those in which I was appointed by the court to defend persons who were not able to compensate me and I think that was the experience of most of the lawyers who were practicing in Cebú. One day one of the judges appointed me to defend a number of persons accused of crime. I told him that I did not see how I could do justice to them all in view of my other work. He replied that it would only be necessary for me to be in court and that they would all try to see that justice was done. The judge was trying to do the best he could and no criticism could possibly be directed towards him in the matter. In the conduct of the cases we all did try to do the thing the judge had suggested—to handle the cases fairly and to bring about justice, but in the very nature of things it was impossible to thoroughly prepare the cases for trial and in such manner as to bring out the whole truth. Indeed, if I had devoted all of my time to properly preparing for the trials in which I was appointed to serve *de officio* I would not have had any time left whatever in which I could have prepared the cases of the clients who were compensating me for my services. The necessary result was that in most cases the lawyers of my city did nothing more than to appear in court at the trials of the defendants whose defense was assigned to them by order of the court. This was manifestly unfair to the accused as well as to the attorneys who, even under this system, devoted a considerable part of their time to the rendition of services for which they had a right to expect compensation.

Many days were consumed by the attorneys in preparing cases in which the defendants had ability to pay fees. While we were working on cases in our offices,

thoroughly preparing the defense for the wealthy, we were merely going to court "to be present" in cases in which we were not compensated. Surely, under such a system the poor man was not having the same chance before the law that was accorded to the wealthy. If it was necessary and proper to work diligently for the defense of the accused man of means it was in like measure necessary to put forth the same effort in behalf of the less fortunate. I am speaking in terms of the past years. It has now been ten years since I practiced in the Philippine Islands but I know that customs in matters of this kind would not be apt to change in this period.

In one case I was appointed by the court to defend a woman charged with murder. She admitted killing another woman and gave as her only reason that she had been called a witch. From the prisoner's appearance and the circumstances of the act it appeared to me that she was insane. I at once asked the court to appoint a physician to examine her and report on her mentality. The judge informed me that this had been done on the request of the fiscal and that the expert had declared her sane. I told the court that I was still in doubt and asked to have others appointed. This was done with the result that upon the testimony of one of the doctors appointed at my request the woman was acquitted. While the circumstances of this particular case might indicate that the defendant was properly represented it will readily be seen that there was great danger of a miscarriage of justice. Indeed, even in the case just mentioned the two physicians appointed at the request of the attorney for the defense reported the woman sane. It was only upon cross-examination of one of the physicians, together with some of the facts in evidence, that the court concluded the woman was insane.

Often cases occur in which the defendants themselves do not know whether they are guilty, whether the acts they have committed constitute a penal offense or whether they were legally justified, in consideration of all the circumstances in the commission of the acts. I remember of one case in which a man was accused of murder. He promptly told me that he was guilty and was ready to plead guilty and take his punishment. Upon looking into all the circumstances thoroughly it became evident that he slew only in self-defense. The court took this view and found him not guilty. This furnishes another example of the danger of sending men to prison who do not belong there, unless the greatest care is exercised. We do not know how many innocent men are in the penitentiaries. No prosecuting attorney will admit that he has convicted innocent defendants and no judge will admit that he has sentenced prisoners who were not guilty. In the very nature of things these officials do not know the true state of facts in many cases. It is clear that if they knew of the innocence of the prisoners, sentence would not be imposed. We must necessarily be left in considerable darkness as to the exact number of miscarriages of justice. It will be readily agreed, however, that the greatest care should be taken to see that there are no miscarriages of justice and that only those who are clearly guilty are sentenced.

It is impossible for the prosecuting officer to represent both sides. The law makes it his duty to prosecute, not to defend. The government and the public require that he do his duty and that he act as prosecutor. He can not thoroughly inform himself of the evidence on behalf of the accused and represent his interest in court as it should be represented. A diligent and capable defender should be provided for every man accused of crime no matter how lowly or impecunious his situation. Regardless of the entire fairness and intelligence of the fiscal the full truth of a criminal case can not be brought out and the rights of the defendant entirely protected without the assistance of counsel for the defense who is as diligent and capable as the prosecutor. I hold this opinion bearing in mind that the prosecuting attorneys of Cebú during my residence there were all men exceptionally fair and efficient. I look back with a great deal of pleasure and respect to the work of the prosecuting attorneys of Cebú, Miguel Logarta, Mariano Cúí, Sergio Osmeña, Gavino Sepúlveda and Andrés Borromeo.

It may be interesting to note the comparison of results obtained in handling prisoners in Los Angeles under the system formerly used and that now employed. The public defender's office was established in January, 1914. Figures have been compiled showing the results of cases handled during the calendar year 1913 by attorneys appointed by the court and those handled in the calendar year 1914 by the public defender. Verdicts of not guilty or disagreements resulted in twenty per cent of the trials conducted by assigned attorneys, while similar verdicts were obtained in thirty and four-tenths per cent of the trials conducted by the public defender. During the year 1914 the attorneys in private practice obtained practically the same results as the public defender. This is the result which was to be expected. It demonstrates that under the old system the attorneys were not diligently preparing the cases in which they were appointed. As soon as an official was provided whose duty it was to diligently represent the accused the proportion of acquittals at once arose until the mark set by the paid attorneys in private practice was reached.

In many cases we have found that there were mitigating circumstances which should be presented to the judge to enable him to properly pass judgment even though the defendants were guilty. It is not infrequent that the facts show that the defendants stole to provide necessities of life. Clearly in such cases the penalty should not be enforced with all the rigor that is applied to more wilful and heinous crimes. It has been one of the functions of the public defender's office to present many circumstances to the court which made it possible for the judge to render appropriate judgment.

The work of the public defender in Los Angeles has been so successful that the office is being adopted in other parts of the country. A number of other cities throughout the United States have created the office and bills are now pending in a number of legislatures providing for such an official. A number of judges were adverse to the creation of the office at first but without exception they have endorsed the move-

ment after seeing its practical operation. In Los Angeles the office was at first given authority in felony cases only. After two years of experience in felony cases the work of the office was extended by the city council to include the defense of the poor in misdemeanor cases in the police courts.

It has been said that the administration of justice is the most sacred duty of government, yet people during all time have been forced to struggle to obtain justice in its most simple form. The government is interested in the protection of the innocent just as much as in the punishment of the guilty. Vast sums are spent annually in the prosecution of the accused and a liberal allowance should be made to protect those who may be wrongfully charged. It is not the duty of the public defender to thwart justice or to circumvent the work of the public prosecutor. It is the duty of both officials to work together and with the court with the sole purpose in view of bringing out the facts and of doing absolute and impartial justice. When the government provides only a prosecutor and fails to provide a means of defense it can not be maintained that the defendant comes into court on an equal footing with his adversary.