

Opinion No. [29-23]

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BY: M. A. OTERO, JR., Attorney General

TO: Hon. George W. Wichersham, Chairman, National Commission on Law Observance & Enforcement, Washington, D. C.

CRIMINAL PROSECUTIONS -- The Law's Delay.

OPINION

I am just in receipt of your letter of October 16 giving a synopsis of the work which your Commission is undertaking, and asking for a word from me on the general subject.

Under date of August 28, 1929, I wrote a letter to Honorable R. C. Dillon, Governor of New Mexico, setting forth some of my views on the general subject of law enforcement, and hence I will set forth my said observations here. They are as follows, on the question of crime causes:

1. "The Law's delay," which is brought about through the thousand-and-one technicalities of the old common law; insanity pleas; continuances; instructions to juries which are declared to be erroneous by appellate courts, but which are unintelligible to the juries in any event. All of these things simply provide loop-holes for criminals.
2. The abominable and downright unpatriotic attitude towards law and its relation to justice which is unfortunately being taken by a great many so-called criminal lawyers throughout the country. Instead of getting at the **facts** in any given case, their idea is to be-cloud the issue and keep the truth from coming out, -- all for the purpose of defeating justice and freeing a felon whom they must know is not only guilty, but richly deserving of the gallows or the penitentiary. In other words, their idea is **to win their case, by any means**, so long as they win, regardless of how much society in general may be harmed or endangered by the release of their "innocent" client. These practices are carried on deliberately and often without recompense, save the "kick" which these lawyers apparently get out of defeating the law which was primarily intended for the protection of themselves and their families, as well as for the protection of the public at large.
3. Above all is the lack of interest in law enforcement which is being taken by the public at large. I do not refer to the disgusting spectacle of the maudlin sentimentality and sympathy which the public so often has for "the poor, downtrodden criminal who has been so brutally hounded by the merciless police;" nor to the anti-capital punishment sentimentalists who hold up their hands in holy horror at the one really effective protection for the conscientious officer of the law. I refer rather to the wide-spread apathy of the public on the question of law enforcement in general, and the very impractical methods pursued by those who would really like to see the laws enforced.

On the foregoing, I would suggest the following remedies:

1. Enact proper legislation, and pass constitutional amendments where necessary which will completely abrogate **all** of the so-called legal technicalities behind which the felon is so frequently hidden by the criminal lawyer.
2. Disbar and imprison criminal lawyers who "frame" defenses and tamper with juries.
3. Educate the public to the importance of taking an intelligent and practical interest in the affairs of their government, especially in seeing to it that the laws are obeyed.

With further reference to the attitude of a certain class of lawyers throughout the country, will say that my great regret is that they do not appear to follow the perfectly marvelous example set by Judge Lewis in his defense of the assassin of President McKinley. If criminal prosecutions could be conducted with the fairness to both the State and the accused, as was done in the trial of Czolgosz, we should have little to worry about, but the present day attitude of, I might say, the average criminal lawyer seems to bend as far as possible in the opposite direction.