

from pages 56-60, in NOT GUILTY by Judge Jerome Frank and Barbara Frank, 1957.

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A heavy-set man with glasses, calling himself Joseph Gilbert, bought an electric razor costing fifteen dollars. Gilbert asked if he might pay by check. Rost, deciding that Gilbert had an honest face, was happy to oblige. The check, written for thirty-five dollars, was drawn on the Manufacturers Trust Company of New York and signed by W. C. Reigel, president of the Reigel Hosiery Corporation, where Gilbert said he worked. To identify himself, Gilbert showed Rose an Ohio driver's license and a Social Security card, each bearing his name and signature.

After he had endorsed the check, and while the druggist was making change, Gilbert recalled that he had once been a pharmacist. Rost, to be polite, asked when and in what cir-

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Ten days later the Manufacturers Trust returned Gilbert's check to the Blissfield bank. The accompanying message read that no Reigel Hosiery Corporation existed. Rost had cashed a worthless check.

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On February 2, 1939, Lamoyne, accompanied by two officers from the Michigan State Police and with a warrant for Snodgrass's arrest, identified him as the forger.

Snodgrass, appalled, protested his ignorance of the crime. He said that, on the afternoon of January 10, when Scherline Rost received the worthless check, he had been in Toledo, twenty-five miles away, calling on potential customers. But the jury did not believe him later at his trial, nor did the police believe him now.

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A few days later the police received a letter from the Burns Detective Agency, hired by the American Bankers Association to assist the prosecution. The letter advised them that the agency's experts believed the handwriting on the forged documents was not the handwriting of the accused. Nevertheless, the trial opened on May 16, four months after Snodgrass's arrest. He had spent those months in jail.

The state called Scherline Rost as its first witness. He described the transaction in his pharmacy on January 10, swearing that Snodgrass was the man who gave him the worthless check. Lamoyne, corroborating this testimony, added, "There is not the slightest question or doubt in my mind." Snodgrass, the first defense witness, testified that he was innocent of the crime, or of any other forgery. On January 10, he said, he had spent a large part of the afternoon at the offices of Toledo Towing Company, where he had gone to collect a bill. He had left there about four, and had then visited the Toledo Auto Dealer's Shop. His business day completed, he had gone home.

The only other defense witness, Mrs. Marcella Timson, credit manager of the Toledo Towing Company, testified that Snodgrass had been in her office on the afternoon of January 10, where he had stayed until sometime after three. That testimony closed the case for the defense. For some reason (which has not been disclosed) Snodgrass's lawyer did not have a handwriting expert testify.

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by JUDGE JEROME FRANK
and BARBARA FRANK
in association with
HAROLD M. HOFFMAN

ABOUT THE AUTHORS

The late Jerome Frank was a judge of the U.S. Circuit Court of Appeals. He was a man who received hundreds of letters from men in prison asking his help.

Previous to NOT GUILTY, Judge Frank found time to write four other probing, articulate books which reflected his personal brilliance as a jurist.

Barbara Frank, his daughter, early acquired her father's intense interest in people. She is always ready to engage in any work dedicated to the alleviation of human suffering.

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ment that will clinch the defense. Or suppose, to prove his innocence, that an accused man needs the testimony of an expert—a handwriting expert, a ballistics expert, or an expert accountant. To procure the testimony of any such expert witness is expensive—it may cost \$1000 or \$5000—and the man about to go to trial may not have the wherewithal. Without such testimony his lawyer, no matter how brilliant, cannot prove his innocence. The lawyer resembles a great painter with no canvas, a master surgeon with no surgical instruments.

As we shall later explain, in this country the government, unlike the government in every other civilized country, does not advise the accused before trial of the evidence it intends to use against him. But even if it did, no such pre-trial "discovery" would help to supply the sort of defense evidence we have just described. Seldom does the government have in its possession a missing letter crucial to the defense or know where a missing alibi witness can be found.

The point is that a defendant's right to assistance by counsel is worthless unless it signifies assistance by a lawyer capable of conducting a competent defense. Every experienced trial lawyer knows that careful preparation for a trial is indispensable, and such preparation includes investigation that will equip the lawyer with all reasonably procurable evidence favorable to his client. The right to the assistance of counsel, therefore, becomes an empty right if the defense counsel is unable to investigate in order to obtain evidence indispensable to an effective defense. Which means—what? It means that poverty will often deprive an innocent man of that right. Absent the evidence he cannot pay to get, the accused, in such a case, might as well have no lawyer. He may go to his death in the electric chair, or to twenty years in prison, for mere want of money.

The prosecutor, on the other hand, is usually supplied with ample funds. For him government investigators will scour the world, if necessary, to find a missing witness or document that will aid the prosecution. Usually he can amply afford to hire all the experts he needs. In such circumstances the odds may be all against the poor man, unaided by investigators and experts. How can we say, with a straight face, that such a man has a fair trial? The truth is that, because of poverty, he may receive a shockingly unfair trial.

Edwin Borchard (in his book *Convicting the Innocent*, published in 1932) reports the case of Edward Kimball, tried