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THE PROBLEM OF COMPELLING FATHERS TO SUPPORT THEIR DEPENDENT CHILDREN

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The question of non-support of minor children, a felony in the state of Colorado and in most other states, for many years has been a perplexing and annoying problem for all district attorneys. In many places throughout the United States, district attorneys consider the matter as one of a civil nature and usually refer complainants back to private attorneys. In many jurisdictions the prosecutor, having become discouraged as a result of the expensive and almost futile attempts to extradite deserting fathers from many states, throws up his hands in disgust and refuses to do anything.

The question of deserting fathers and the huge tax bill attached thereto, has now gained such enormous proportions that schools, universities, social workers, taxpayer groups, and many others, including the Congress of the United States, are finally determined that it should have some attention.

The enormity of the problem can be ascertained by a glance at the terrific cost, in dollars, to the taxpayers being expended through Aid to Dependent Children, which is just one agency affected. A very conservative estimate of that portion of moneys expended for Aid to Dependent Children which is caused by deserting fathers is 49.5 per cent. This is the national average, and in some districts the proportion is as high as 75 per cent. Denver and Colorado are much below the national average figure. Denver's budget for Aid to Dependent Children for the year 1950 amounts to $2,250,000. Jacob Zuckerman, Director of the National Desertion Bureau, estimates that in America today there are more than 250,000 wives and 750,000 children under the age of sixteen years, who are the hapless victims of desertion. All forms of relief for these unfortunates total about $205,000,000 a year.

This office, like the offices of all other district attorneys, has been faced with this problem and has attempted to arrive at some solution. In so doing, it has been borne in mind that in addition to the huge tax bill involved, there is the certainty that many of our juvenile delinquents come from broken homes in which there are insufficient funds for the support, maintenance, and education of the children. I fully realize that my office is not a marital center, and we do not proceed on the assumption that we can mend broken homes. However, my experience has indicated that where the father is forced to support the wife and children, there is a

greater chance of the family being furnished at least some of the necessities of life. This in turn provides a greater chance for better citizenship.

PROBLEMS ARISING FROM EXTRADITION

After much "trial and error experience," this office decided upon a policy which, briefly, is as follows: When complaint is made by a deserted mother; she is required to fill out and sign a rather full questionnaire which gives us a history of the case. If the deserting father has failed to support his family for only a short period of time, or for some other reason which would make obtaining a conviction an impossibility, we do not file the criminal charge. We do, however, attempt to contact the father, explaining to him his obligation to contribute something to his family. In other words, we do not file cases unless it appears that a conviction could be obtained if a trial were to ensue. If the questionnaire discloses that the complainant has a good case, the charge is filed, and the defendant is then arrested and taken into custody. In about 90 per cent of the cases of this type the defendant has fled to some other state, and an extradition is necessary. We then are confronted with the harsh rules surrounding the extradition laws, one of which is the requirement that the defendant be personally present in the demanding state at the time the offense was committed. A fact to be noted is that in approximately 50 per cent of the cases the absconding father was not in default in his support at the time when he fled the jurisdiction of this court. That automatically puts one-half of the defendants beyond the reach of this office according to our extradition laws. However, 42 states, not including Colorado, have adopted the so-called Uniform Criminal Extradition Act which does not require the physical presence of the defendant in the demanding state at the time the offense is committed. It has been held that even though the demanding state does not have the law upon its books, it can obtain the extradition of a wanted defendant if the asylum state has the law in effect.[1] This office has used this Act, now has three requests for extradition under this statute, and can see no reason for any differential between cases of this type and others.

This law will no doubt be of great benefit to district attorneys attempting to extradite where the defendants were not physically present in the demanding state at the time of the commission of the offense, but we are still faced with the reluctance of many governors to extradite persons charged with non-support. It is fundamental that governors cannot look into the merits of the case and supposedly are limited to an examination of the extradition papers to see whether or not they are in proper form and whether a crime has been committed. However, it has been my

[1] *Ex parte* Morgan, 86 Cal. App. 217, 194 P. 2d 800 (1948).

experience that many governors do not restrict themselves to their rights and duties under the law, but through some sense of curiosity inquire into the facts. The complaining witness, not being present at the hearing, is put to a great disadvantage, as the defendant can concoct any excuse for not supporting his family that his imaginative mind might create. He sometimes tells the governor that the wife was unfaithful, that the child or children are not his, or that he requested the wife to accompany him to the asylum state. The complainant, not being present, cannot refute these claims which in almost all instances are false. The governors sometimes arbitrarily refuse to permit extradition, and of course the state has no appeal from this decision. Frequently, when extradition is ordered, the defendant may institute further court proceedings, usually in the form of habeas corpus, wherein his story is likely to deviate far from the true facts. In some such instances, the defendant convinces the court that he is an innocent person or that the proceeding is an attempt merely to collect a civil debt.

SUPERVISION WHILE ON PROBATION

When and if we finally obtain the custody of the defendant, we permit him to file a plea of *nolo contendere* under the Probation Act.[2] This plea is not tantamount to a plea of guilt in Colorado. If the court accepts the plea, the defendant is permitted to make application for probation which, if granted, contains a provision that he will pay certain sums of money toward the support of his family. This provision, after being approved by the court, then becomes one of the terms under which probation is granted, and the defendant is instructed in no uncertain terms that if he fails to support his family, his probation will be revoked and he will be sentenced to the penitentiary.

Mr. Frank Dillon, Chief of the Probation Department, handles all of these matters and supervises the collection and distribution of the money. This eliminates another one of the excuses given by the deserting father: that he had mailed payments, but had failed to receive receipts. If the defendant has a job or a position in some other state, he is given permission to go to his job or position and is made to report to the Probation Department where he lives. If he remains in Denver, he is supervised by the Denver Probation Department. Often the defendant claims that he is unable to obtain work, and in such cases Mr. Dillon requires that he appear at his office at 8:30 in the morning and again at 4:30 in the afternoon to report what efforts have been made to obtain employment. His statements are checked by the Probation Department to see if he is making a conscientious effort to get

[2] COLO. LAWS, c. 195, p. 549 (1949).

work. The timing of the defendant's appearance at Mr. Dillon's office eliminates the possibility of the defendant lying in bed or idling in taverns. If the defendant complains of being sick, he is placed in the County Jail and there examined by the jail doctor. It is surprising how effective this system has been in causing various excuses for not supporting families and children to disappear into thin air.

As a result of this plan of prosecution, the following is a record of our accomplishments, and lack of accomplishments, in the year starting September 3, 1949, and ending September 5, 1950:

Number of cases filed	149
Cases dismissed	7
Cases tried	2
Extraditions refused	11
Number of letters written where cases were not filed	110
Average monthly interviews	60
Defendants on probation	53
Probations revoked and sentences imposed	3
Average amount paid per month through Probation Department	$2,647
Average amount received from letters per month	$1,100

Proposed Solutions to the Problem

Another worth-while attempt to solve the problem is being made through the so-called Uniform Support of Dependents Act, which is in effect in eleven states, not including Colorado. Under provisions of this Act, no state which does not have the legislation on its books can receive its advantages. This Act is not of a criminal nature and operates briefly as follows: The deserted wife makes complaint to the proper court in the city of her residence concerning the failure of the father to support the children. Her statements and testimony are then transcribed and sent to the proper court at the residence of the father, who is then served with a summons to appear in the latter court. He then has the right by deposition to cross-examine the mother of the children and to tell his complete story to the court. The judge then enters an order requiring the father to make certain payments for the support of the children, and the court enforces its order through its power to punish for contempt.

Many bills have been introduced in the U. S. House of Representatives and have been referred to the Judiciary Committee of that body. Some of these bills provide that when the persons charged with the non-support of minor children travel about in interstate commerce, they shall be guilty of a federal criminal offense, and certain penalties are attached thereto. Other federal bills are civil in nature and seem to be based upon the theory behind the Uniform Support of Dependants law. They permit either an order of a state court to be made an order of the federal court,

or an original order to be entered in the federal court, and failure to comply with this order could invoke the power of the federal courts to punish for contempt. Other bills of Congress combine both the criminal and civil liability features.

The writer appeared as a witness before the Sub-Committee of the House Judiciary Committee last May, and also talked with many other senators and representatives concerning federal legislation regarding this vital subject. Every Representative and Senator he talked to agreed that federal laws were advisable, but the Department of Justice had complained about the additional burden which would be thrown upon it if the offense were made federal. Another objection raised was that the proponents of such a law were attempting to turn the federal courts into courts of domestic relations, whereas historically the problem was one of a local nature.

The Federal Government has seen fit to attempt to control the morals of the people on a national basis through the passage of the Mann Act and has given comfort and aid to car owners through the Dyer Act. If the Federal Government can lend its strength and efforts in matters of this kind, certainly it can and should lend its strength and assistance to a problem which has become national in scope and with respect to which local prosecution has been made difficult because of state lines.

It is my contention that the only plausible solution to the entire problem is federal legislation, for the following reasons: (1) the great expense entailed in extradition proceedings; (2) the harshness of the rules surrounding extradition, and the reluctancy on the part of some governors to extradite in cases of this type; (3) the natural fear of federal prosecution as compared to the fear of state prosecution; (4) the greater ability of the Federal Government to apprehend deserting fathers; (5) the fact that at least one-half of the defendants in cases of this kind do move about in foreign states; and (6) that the federal funds expended in Aid to Dependent Children as a result of absconding fathers has reached such a staggering figure that it has a great stake in the results of this type of prosecution. This view concerning federal legislation is supported by many organizations and groups including the District Attorneys' Association of Colorado.

Until such time as the Federal Congress recognizes the problem to be national in scope and assumes its responsibility, I would suggest that the next Colorado legislature pass the Uniform Criminal Extradition Act and the Uniform Support of Dependents law.