

THE PEOPLE'S COURT OF GERMANY: IS THE AMERICAN
CRIMINAL JUSTICE SYSTEM AS DIFFERENT AS WE THINK?*Kelli-Ann Dreisbach**

I. INTRODUCTION

Nazi Germany illustrated how both the law and lawyers can actually at times be subordinate to those with political power.¹ The twelve-year Nazi regime in Germany starting in 1933 and ending in 1945 brought some interesting changes to the constitutional civil rights the people of Germany once held.² Under Adolf Hitler's power, agencies of the Nazi party, the German state, and the armed forces were allowed to operate outside of the law.³ Hitler set the only boundaries they were required to operate within, consisting only of acting in a way necessary to achieve the ideological goals of the Nazi regime while maintaining the misrepresentation and fabrication of adhering to legal norms.⁴ To ensure the "adherence" to legal norms, Hitler set up a special court called the People's Court of Germany.⁵ The court was essentially a formality for any outsiders looking in. Although the defendants received appointed legal representation, they only received the physical presence of an individual; most times they did not receive fervent representation because their counsel spoke few words.⁶ Although many individuals today may think the United States justice system substantially deviates from that of Nazi Germany, with regard to receiving court-appointed counsel, the two systems are actually quite parallel.

The focus of this Article will be to demonstrate the resemblance of court-appointed counsel in both the criminal justice system under the direction of Adolf Hitler in Nazi Germany and the criminal justice system the United States has in place today. Initially, the rights that an

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¹ Matthew Lippman, *Law, Lawyers, and Legality in the Third Reich: The Perversion of Principle and Professionalism*, 11 TEMP. INT'L & COMP. L.J. 199, 199 (1997).

² *Holocaust Encyclopedia: Third Reich*, UNITED STATES HOLOCAUST MEMORIAL MUSEUM, <https://www.ushmm.org/wlc/en/article.php?ModuleId=10007331> (last visited February 6, 2017).

³ *See id.*

⁴ *See id.*

⁵ *A Camera Gets Inside the Berlin People's Court*, LIFE, Feb. 13, 1939, at 28.

⁶ *Id.*

accused has in the United States and the issues we face in our criminal justice system today are outlined. Then, the People's Court and some of the major issues it presented to defendants brought before it are discussed. Lastly, a comparison is made and it is shown that although the defendants in our system receive legal representation, it may not be that much more effective than the legal representation the defendants received when brought in front of the People's Court of Germany.

II. SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL

A. *Determining Effective Assistance*

The Sixth Amendment of the United States Constitution provides the rights an accused has when facing criminal prosecution.⁷ The Supreme Court case *Gideon v. Wainwright* established that defendants in state court proceedings, not just in federal court proceedings, have the right to representation by counsel.⁸ Among those rights given to the accused, the effective assistance of counsel for his defense is something that has been, and continues to be, controversial. In *Strickland v. Washington*, the Supreme Court established a two-prong test to determine whether a convicted defendant's claim that counsel's assistance was so defective as to require a reversal of a conviction or death sentence.⁹ The first prong of the test demands the defendant show counsel's performance was deficient.¹⁰ To prove deficient performance, the defendant must prove that counsel made errors so serious as to jeopardize the rights given to him under the Sixth Amendment.¹¹ The second prong provides that the defendant must show that the deficient performance by counsel prejudiced the defense as to

⁷ U.S. CONST. amend. VI.

⁸ See *Grosjean v. Am. Press Co.*, 297 U.S. 233, 243–44 (1936) (citing *Powell v. Alabama*, 287 U.S. 45, 65, 68 (1932) (holding that certain fundamental rights that are safeguarded by the first eight amendments against federal action also safeguard against state action under the Due Process Clause of the Fourteenth Amendment; among those fundamental rights is the right of an accused facing criminal prosecution to assistance of counsel).

⁹ 466 U.S. 668, 687 (1984).

¹⁰ *Id.*

¹¹ *Id.*

deprive the defendant of a fair trial.¹² The defendant must prove both prongs to sustain the reversal of a conviction or death sentence.¹³

Effective assistance of counsel is a controversial issue because the accused is placing all trust in counsel to advocate for him and obtain the best outcome available for him. And although the Supreme Court in *Gideon v. Wainwright* mandated that states provide all defendants accused of serious crimes the right to counsel, it did not specify how those services were to be provided.¹⁴ So, although the *Strickland* test is in place to ensure the assistance is not deficient, oftentimes defendants are unfamiliar with the basics of the criminal justice system, so they place all faith in the attorney appointed to them by the court not knowing whether the individual standing next to them in the court is acting in their best interests or if their presence is just simply a formality requirement.

B. Number of Defendants

One of the major problems our criminal justice system faces today is the overwhelming number of defendants in our system and the underwhelming number of public defenders available to assist them.¹⁵ Although our system has in a place a means for providing representation to those who cannot afford private counsel, there are many problems that arise to give the effect that presence of counsel is not an indication of effectiveness of counsel.¹⁶

The Bureau of Justice Statistics conducted a special report on defense counsel in criminal cases.¹⁷ The report indicated that in both federal and state courts, the conviction rates for criminal defendants were virtually the same for those represented by publicly-financed attorneys and those represented by private attorneys.¹⁸ Findings of guilt were not determined by the type of attorney present.¹⁹ However, interestingly enough, the type of attorney did have an effect on the kind

¹² *Id.*

¹³ *Id.*

¹⁴ CAROLINE WOLF HARLOW, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, NCJ 179023, DEFENSE COUNSEL IN CRIMINAL CASES at 4–5 (2000).

¹⁵ Peter A. Joy & Kevin C. McMunigal, *Does the Lawyer Make a Difference? Public Defender v. Appointed Counsel*, 27 CRIM. JUST. 46 (2012).

¹⁶ *Id.*

¹⁷ HARLOW, *supra* note 14.

¹⁸ *Id.* at 1.

¹⁹ *Id.*

of sentence received.²⁰ The study indicated that a higher percentage of defendants with publicly-appointed counsel, as opposed to the defendants with private attorneys, received sentences of incarceration.²¹ This poses an attention-grabbing question—is the effectiveness of counsel determined by pay? Or, does the caseload and number of defendants that each attorney is responsible for determine the effectiveness?

Also worth noting from this special report is the frequency of communication with counsel for inmates in prison.²² Inmates in prison with court-appointed lawyers spoke to their attorneys less frequently than did those inmates with private lawyers.²³ Consequently, inmates with public counsel were less likely to proceed to trial than those that hired private attorneys.²⁴ This is a clear demonstration of how defendants in our system truly trust those legal representatives standing at their side in the courtroom, whether appointed or hired.²⁵ The interesting question posed here is as follows—does public counsel making these decisions truly fear the outcome of a trial? Or, are they just simply moving their cases through the system as quickly and efficiently as possible?

III. HITLER'S SPECIAL COURT – THE PEOPLE'S COURT

The People's Court of Germany was a special court established in 1934.²⁶ One of the goals in the creation of the People's Court was to ensure justice was given to Nazi enemies without having to worry much about legal formalities.²⁷ Adolf Hitler himself selectively chose the

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 8.

²³ Harlow, *supra* note 14.

²⁴ *Id.*

²⁵ *See id.*

²⁶ *A Camera Gets Inside the Berlin People's Court*, *supra* note 5, at 28.

²⁷ *Id.*; Adolf Hitler knew that in order to maintain his power, he would need a reliable judicial ally. Matthew Lippman, *The White Rose: Judges and Justice in the Third Reich*, 15 CONN. J. INT'L L. 95, 105 (2000).

judges of the People's Court, only allowing two out of every five chosen to have had any training or experience in the legal field.²⁸ This resulted in an outstanding amount of military officers and Nazi Party officials presiding over the court and the defendants brought before it.²⁹

The purpose of the criminal law under Hitler's reign was to protect the state against the citizen, rather than to safeguard the citizen from any improprieties of the German state.³⁰ The punishments handed out were intended to deter criminal conduct and eliminate any and all persons that posed a threat to the state and Nazi ideologies.³¹

²⁸ *Id.*; The People's Court sat in senates of five members; six senates were established. Two members of each senate were from the judiciary and the other three members were typically party loyalists. Judges were appointed for five year terms, and an additional "Special Senate" was instituted to retry cases in which the chief public prosecutor concluded that an inadequate punishment had been imposed. Lippman, *supra* note 1, at 252 (1997).

²⁹ *A Camera Gets Inside the Berlin People's Court*, *supra* note 5, at at 28-29.

³⁰ Lippman, *supra* note 1, at 274.

³¹ *Id.*

A. Counsel Appointed to Defendants

Defendants brought before the People's Court were not allowed to choose their own legal counsel.³² Interestingly enough, there wasn't even a provision for mandatory legal representation in criminal cases.³³ Instead, the Court carefully chose the defense counsel appointed to represent those accused of crimes against Nazi ideologies.³⁴ This was based on the complexity of the factual and legal issues, as well as the individual's ability to defend himself.³⁵ Only certain lawyers were allowed to practice before the People's Court.³⁶ Under the eyes of Hitler, those lawyers had to pass his test indicating their political reliability, which was often based on their allegiance to Nazi ideology.³⁷ The defense counsel was allowed to make a brief plea on behalf of the accused, but otherwise took little to no part in the trial.³⁸ In many instances, defendants were denied the opportunity for their counsel to introduce evidence, to confront witnesses against the defendant, or to introduce witnesses on the defendant's behalf.³⁹ Dr. Fritz Rehn, who at one time was President of the People's Court, once stated, "there is no need of factual evidence. The guilt or innocence of a man is to be determined by whether or not he is dangerous to the existence of the State."⁴⁰

B. Alleged Crimes and Predetermined Guilt

To say the function of the People's Court was irrational is an understatement. The absurdity went as far as the trials having been kept

³² *The Nazi Party: The "People's Court"*, THE JEWISH VIRTUAL LIBRARY, <http://www.jewishvirtuallibrary.org/the-ldquo-people-rsquo-s-court-rdquo> (last visited January 29, 2016).

³³ Lippman, *supra* note 1, at 122.

³⁴ *A Camera Gets Inside the Berlin People's Court*, *supra* note 5, at 28.

³⁵ Lippman, *supra* note 1, at 122.

³⁶ FRANZ NEUMANN, HERBERT MARCUSE & OTTO KIRCHHEIMER, SECRET REPORTS ON NAZI GERMANY: THE FRANKFURT SCHOOL CONTRIBUTION TO THE WAR EFFORT 323-24 (Raffaele Laudani ed., Princeton University Press 2013).

³⁷ Roland Freisler, a man who once served as head of the People's Court, stated that experience within the Nazi movement was central to the admission in the legal profession. A candidate's ideological purity was evaluated based on his familiarity with the life of Adolf Hitler as well as the development and ideology of the Nazi Party. Lippman, *supra* note 1, at 218.

³⁸ NEUMANN ET AL, *supra* note 36.

³⁹ Lippman, *supra* note 1, at 268.

⁴⁰ *A Camera Gets Inside the Berlin People's Court*, *supra* note 5, at 28

a secret.⁴¹ At times, the defendants and their counsel did not even know the crimes charged against them until the day of trial.⁴² In 1942, Roland Freisler was appointed as President of the Court.⁴³ With Freisler's appointment came the final dissipation of any sort of legitimate legal proceeding.⁴⁴ In the trials that Freisler presided over, the question of guilt was already predetermined, and the only question was how monstrous of crimes he could charge against the defendants brought before him.⁴⁵ In fact, between 1942 and 1944, approximately forty percent of defendants brought before the Court received death sentences.⁴⁶ Overall, a defense lawyer was deemed more of an assistant to the State, as opposed to an advocate and representative for the defendant.⁴⁷

The People's Court tried political offenses, which were offenses against Nazi ideologies.⁴⁸ The Court was a central component in the imposition of the Nazi legal code.⁴⁹ The Vice President of the Court made a declaration that the Court was to be guided by politics rather than by law.⁵⁰ In the words of the senior prosecutor, the Court's objective was not to dispense impartial justice, "but to annihilate the enemies of National Socialism."⁵¹ The offenses that could be charged

⁴¹ *Id.* The Night and Fog Decree imposed the death penalty in cases of criminal acts committed by non-German civilians directed against the Reich. These acts were to be prosecuted in areas where the death penalty could be expeditiously carried out, or the accused were to be stealthily transported to Germany for prosecution. The entire process was done in secret; the location and the status of the accused were concealed. Lippman, *supra* note 1, at 267-68.

⁴² *A Camera Gets Inside the Berlin People's Court*, *supra* note 5, at 29. In a case where two teenagers were accused of starting a relatively harmless fire, the prosecutor appointed a defense attorney that received only two hours time for preparation for trial. The trial lasted between thirty and sixty minutes; the teenagers were sentenced to death, and their executions took place just four days later. Lippman, *supra* note 2, at 296.

⁴³ *The Nazi Party: The "People's Court"*, *supra* note 32.

⁴⁴ *Id.*

⁴⁵ ELLIS WASHINGTON, *THE PROGRESSIVE REVOLUTION: HISTORY OF LIBERAL FASCISM THROUGH THE AGES, VOLUME V 49* (Hamilton Books 2016).

⁴⁶ In 1940, 53 of 1,091 defendants were sentenced to death. And in 1941, 102 of 1,237 defendants received death sentences. But in 1942, the death toll skyrocketed; 1,192 of the 2,572 defendants brought before the Court were sentenced to death. The following year, 2,097 of the 4,379 defendants were sentenced to death. Lippman *supra* note 1, at 253.

⁴⁷ NEUMANN ET AL, *supra* note 36.

⁴⁸ *A Camera Gets Inside the Berlin People's Court*, *supra* note 5, at 28.

⁴⁹ Lippman, *supra* note 1, at 252.

⁵⁰ *Id.*

⁵¹ *Id.*

against any one person were so broad they could be nearly anything, including baseless insinuations, unfounded accusations, or the general catch-all criminal charge of being an “enemy of the Reich”.⁵² What is fascinating is that not all the defendants accused of being an “enemy of the Reich” were actual enemies; some received charges and convictions just based on the perception that they could be, or might be, holding thoughts contrary to Nazi ideology.⁵³

C. Speedy Trials

Legal procedures before the People’s Court were often conducted rapidly in order to speed up the outcome of cases.⁵⁴ In fact, in 1942, Hitler issued a decree that procedures in penal matters were to be “simplified” and “expedited” by eliminating any and all “dispensable measures.”⁵⁵ Judges were advised to limit their discussion and debate during deliberations, based on the fearfulness that decisions in cases would be decided upon and rendered on an intellectual basis rather than an ideological basis.⁵⁶

IV. PEOPLE’S COURT MEETS U.S. COURTS

Although we have come a long way, and are a far cry from the injustices of the People’s Court, is it possible our system today still presents some problems similar to those that defendants in Germany once faced. As previously mentioned, defendants in the People’s Court often met the counsel that was to advocate on their behalf the day of their trial.⁵⁷ That issue is similar to, and still present, in the criminal justice system in the United States today. Our defendants, not always, but often for the first time, meet their counsel on the day of trial, or a few days prior. Our defendants reluctantly trust the system to present them with knowledgeable counsel who will zealously advocate on their behalf and in their best interests. It may seem as though defendants are

⁵² *A Camera Gets Inside the Berlin People’s Court*, *supra* note 5, at 28-29.

⁵³ *Id.*; Dutch pianist Karlrobert Kreiten was sentenced to death for being an enemy of the Reich after accusing Hitler of being “brutal, sick, and insane” and predicting that Germany would lose the war in the course of a private conversation at the home of his mother’s friend. Lippman, *supra* note 1, at 255.

⁵⁴ Lippman, *supra* note 1 at 122.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Camera Gets Inside the Berlin People’s Court*, *supra* note 5, at 29.

rolling the dice by representing themselves without the presence of counsel. However, more often than not, it is the same thing with the presence of counsel; they are just trusting that this court appointed advocate will assist them in making a safe bet.

A study looking at Philadelphia murder cases from 1994 to 2005 showed that the identity of a lawyer had a dramatic impact on conviction rates and sentences.⁵⁸ The results of the study indicated that extremely low pay rates for appointed counsel, as opposed to a public defender, have detrimental impacts on the client's best interest.⁵⁹ The low pay rates often fail to attract qualified lawyers, discourage adequate preparation and create an incentive for appointed lawyers to take on more cases than they could otherwise handle.⁶⁰ This also has an effect on the lawyer's decision to take the case to trial, even if it is not in the defendant's best interest.⁶¹ The public defenders in this study, by stark contrast, received better salaries and had a more adequately managed caseload.⁶² This highlights the proposition posed in this article – the injustices defendants face in our criminal justice system today are all too similar to the injustices encountered by the defendants brought before the People's Court. Although counsel is speaking on the client's behalf, how effective are they actually?

Further, although our legal system today is founded upon the idea of “innocent until proven guilty,” principles of law dictate that a defendant charged with a crime may at trial be convicted of a lesser crime that is included within the offense charged against them by the prosecution.⁶³ In a way, this mimics the previously discussed way Freisler approached charging defendants: how much of a crime could be brought against the defendant? However, the United States criminal justice system today uses lesser included offenses to provide notice to defendants that the crimes alleged against them may not be the only thing prosecuted at trial.⁶⁴ This also serves as a way to compare the two systems when it comes to the speediness of trials. As mentioned previously, Hitler was concerned with expediting trials; our system also

⁵⁸ Joy & McMunigal *supra* note 15.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ For example, manslaughter is a lesser crime that a defendant may receive under a charge for murder. Michael H. Hoffheimer, *The Rise and Fall of Lesser Included Offenses*, 36 *RUTGERS L. J.* 351, 354 (2005).

⁶⁴ *Id.*

uses lesser included offenses as a way to offer prosecutors some flexibility in charging offenses without suffering unnecessary delay.⁶⁵

V. CONCLUSION

Although the defendants in our criminal justice system today do not encounter the extremes that defendants coming before the People's Court in Nazi Germany once did, there are still some significant similarities between the two systems. The most important similarity involves the presence of counsel at trial. As previously discussed, both systems allow the presence of counsel, but neither require it. Also in both systems, the Court appoints the counsel defendants receive. Even though the Court in the United States not only provides, but even encourages defense counsel to put on and confront witnesses as well as present evidence on their client's behalf, that does not mean counsel is doing so in the most effective way for their client's interests. While there are no easy fixes for these problems, an awareness and comparison with a court that encountered similar issues in the past can start a dialogue about fair and just representation and may even elucidate future solutions.

⁶⁵ *Id.*