

Winter 1928

Public Defender in Connecticut, The

Robert G. DeForest

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

Recommended Citation

Robert G. DeForest, Public Defender in Connecticut, The, 18 Am. Inst. Crim. L. & Criminology 522 (1927-1928)

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

THE PUBLIC DEFENDER IN CONNECTICUT¹

ROBERT G. DEFOREST²

An old colored man, one of my involuntary clients, after a narrow escape from more or less penalty, in a certain case we had together in court, extended his hand to me and delivered himself thusly: "Judge," he said, "there used to be an old saying that you can't get something for nothing, but if it hadn't been for you and me working in perfect harmony, I sure was leaning to get just that same."

The proposition to put into force the Public Defender style of defending alleged criminals in Connecticut, as outlined before the committee of the General Assembly in the year of 1917, was viewed by many legislators, and in fact by many members of the bar, with some trepidation.

The plan of having one man in each County to handle all cases presented in the courts coming within the scope of the act, said cases running all the way from trespass on the railroad, to first degree murder, it was argued, would not work in the large centers where the number of cases per term, to be handled, often averaged from fifty to seventy-five in number, some petty, but many of a very serious nature indeed.

When one considers the agitation, excitement, and general air of depression often exhibited by a single attorney burdened with the duty of disposing of one solitary criminal case, and at the same time gives thought to the spectacle of one single attorney burdened with the disposition of perhaps fifty such cases, it really seemed that in this suggestion there might perhaps be found, what the French call "a situation."

A moment of thought, however, will recall to mind the fact that for years and years, our State's Attorneys have been doing just this sort of thing, and it will be remembered that the State's Attorneys must handle not only all cases in which the office of the Public Defender is concerned, but all cases on the docket.

Connecticut, therefore, consistent with its history of pioneer striving for better things in government, decided to take the leap, and

¹From the Connecticut Bar Journal, I, 4, Oct., 1927, 330-335.

²Mr. DeForest is a member of the Bridgeport bar and Public Defender for Fairfield County.

in the year 1917, the Public Defender Act became a law, and the die was cast.

Under the plan, as we now have it, there is a Public Defender in each of our eight Counties with an extra one in New Haven County, one man for Waterbury, and one man for New Haven. These men (who must be attorneys-at-law of at least five years practice and residence) are appointed by the judges of the Superior Court at their annual meeting in June, to hold office for the ensuing year. Their duties generally are to act as attorney for certain persons charged with crime, in either the Superior Court or Court of Common Pleas, or in certain cases before any court in the State, or before any committing magistrate, all in accordance with such rules as may be adopted by the judges of the Superior Court.

The persons who may be defended by the Public Defenders are all such persons, so presented for crime before any of the courts enumerated in the act and the language is as follows:

"Each such Public Defender shall act as attorney in the defense of any person charged with crime in either the Superior Court or the Court of Common Pleas, in the county for which he shall have been appointed, except New Haven County, in which the Public Defender for the New Haven District shall act as attorney in the defense of any person charged with crime in either the Superior Court or Court of Common Pleas, and the Public Defender in said county for the Waterbury District shall act as the Attorney for any person charged with crime in either the Superior Court or District Court of Waterbury, when such person shall be without funds sufficient to employ counsel for such defense."

The Public Defender may, in accordance with such rules as may be adopted by the judges of the Superior Court (act, within the County for which he is appointed, as attorney for the defense of any such accused persons, upon any preliminary hearing before any court in the State, or before any committing magistrate. Public Acts of 1917, Chapter 225; Public Acts of 1921, Page 3129; Public Acts of 1923, Page 3563.

A glance backward at the old style of procedure is illuminating. Picture a term of our Criminal Court in the old days: The judge on the bench, the enclosure provided for the special accommodation of persons charged with infraction of the law, well filled. Grouped about the sombre court room wearing an air of innocent expectancy, appear some twenty odd younger members of the bar.

On the desk before the judge is a list of names of said members of the bar.¹ The clerk arises, calls out the number of the case, and starts to read the charge. You all know how it goes. It charges that on a certain day and date, in a certain town, at about the hour, of either the day or the night season, the said John Doe, did then and there with force and arms, etc., commit the crime, we will say, for instance, of burglary.

On one occasion this sort of language brought about an absolute balk on the part of one of my clients in a burglary case. For the man refused point blank to plead guilty to the information, because, he explained in a voice which gave evidence of strong emotion, that while it was true, he certainly did on the day and date in question, enter into the man's house as stated, and did then and there did carry away the goods, wares and merchandise, of the said man being then and there situated, with intent, it is true, to adapt them to his own personal and immediate necessities, yet he insisted that he did not carry any arms, no not even side arms did he carry, nor did he use any force, for, forsooth, the owner of the premises, and his entire family slept peacefully all through the period of abstraction, and no force was used or required; in fact he stated that the use of force under such circumstances, would have been damnable evidence of unskilled labor on his part.

After the plea was made by the prospect, the judge was of course, under the old practice, obliged to assign one of the young lawyers to defend the accused, and this was true, be the charge what it may, either simple assault, or possibly assault with intent to kill, or what not. Counsel all duly assigned to the accused, a recess was called, and down into the labyrinth descended the young lawyers, flushed with the contact of their first client, and immediately they became involved in a situation that is known and described in business circles as, "in conference." Conference ended, up again they streamed into the dimly lighted court room, for disposition of the case.

In most cases, "conference," as the result of an inspirational, strenuous and heated argument between counsel and the alleged misdoer, usually resulted in a plea of guilty. For the want of that, many times, a trial must be had. A trial in which the liberty of at least one man was certainly involved: What a picture!

Yet somehow the case was gotten over, and truthfully can it be said that the conclusion of such an affair was oftentimes more of a relief to the young lawyer concerned, than to the accused, safe at last, in the realization of a long and clearly defined future.

Under the present practice, the situation is entirely different. The Public Defender makes it his business to investigate and prepare all his cases many weeks in advance of the opening day of court. He gets acquainted with his clients. Witnesses, friends and relatives are interviewed. All angles of the situation are considered. A conference at the office of the State's Attorney, and a going-over of all of the cases takes place. When court comes in, the business is well in hand.

The practice has been to extend to the office of the Public Defender all the privileges and courtesies of preparation, plea and disposition that are extended to the office of the State's Attorney. As a result of this situation, a person accused of Crime in Connecticut, who comes within the purview of the office of the Public Defender, is accorded an absolutely fair chance before the Court, for an honest and impartial consideration of his case, equal and on par in every way to that accorded any person presented before the court for consideration.

The Defender in Connecticut may have subpoenas issued for any witnesses he desires to call on behalf of the accused, he may also have the services of experts on any subject to be presented on behalf of his client, whether they be practicing physicians, experts as to blood stains, ballistic experts, experts in reference to the mental condition of the accused, experts as to the effect of poisons, the services of photographers, surveyors, or anything of that kind, which the defender needs in a proper presentation of the case of his client, all at the expense of the State.

The Act provides for an allowance for general expenses which includes expenditures made necessary in investigating the facts of the case, obtaining witnesses, interviewing friends and relatives of the accused, etc. Copies of the evidence heard at preliminary hearings of the Coroner, and daily copies of the stenographic records of the court stenographer taken from day to day, as a case proceeds in Court are also furnished to the office of Defender, at the expense of the State.

By this process a large amount of time, expense and unnecessary trouble, quibble, and delay is done away with, and a fair and reasonable conclusion and disposition arrived at, fair to the State or society, and fair to the accused.

The reaction of the persons most directly interested in the conduct of this office—the accused—has been worthy of notice. In Connecticut these unfortunate people have on many occasions registered

their complete satisfaction, with their treatment, so have the mothers, fathers, sweethearts, sisters and brothers, and I think it will be accepted as a fact that of all clients that exist, this class of people is by far the most critical, suspicious and watchful.

If for the protection of the right of his client, it becomes necessary for the Defender to take an appeal to the Supreme Court of Errors of the State, all the expenses of such an appeal are duly provided for and paid as a part of the costs to be taxed as criminal costs in the County where such action is predicated.

So it would seem that the protection extended by the State of Connecticut to any client who comes within the purview of the office of the Defender is complete.

The services of the Defender are frequently required in reference to cases of boys and sometimes girls of immature age, for it is true that for some reason or other, whereas formerly most of the alleged offenders presented before our criminal courts were men well over the age of thirty-five, at the present time, a large majority of the cases concern boys under the age of twenty-five.

In cases of minors, many times first offenders, especial care and consideration is taken. An effort is always made, where the circumstances permit, to re-adjust the minor to the requirements of decent society, and if possible handle the case so that the boy or girl is never crushed, but always encouraged to see the folly of criminal ways, so that in the future they will let all such practices severely alone.

In this sort of work, a happy combination of endeavor on the part of the presiding Judge, the State's Attorney, Defender, and Probation Officer, usually produces the desired result.

When the office of Public Defender was first created, the question at once presented itself, as to whether the Public Defender should become simply a fifth wheel in judicial progress, or an active and persistent monkey wrench to be ruthlessly hurled into the works, to prevent smooth running, or an aid to the court, in solving the at-all-times difficult problem of administering justice.

The years of practical experience and work that have ensued since the adoption of the Act of 1917, have clearly demonstrated that in Connecticut, at least, the true function of the Public Defender, is never to obstruct justice, but always to aid in every way consistent with the protection of the interests of his clients, in a true and proper administration of the same.