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THE PUBLIC DEFENDER IN THE MUNICIPAL COURT OF COLUMBUS

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The establishment of a public defender as an integral part of our machinery of justice is based primarily on the proposition that it is as much the function of the state to shield the innocent as to convict the guilty and secondly, on the proposition that the "presumption of innocence" requires the state to defend as well as to prosecute accused persons.

To ascertain the truth being the purpose of a criminal investigation, it is contended that the conduct of a criminal trial necessitates the production of all the pertinent law and facts. The accused and accuser should have the same opportunity and resources as far as possible to present their respective contentions. The trial should be an impartial search for the truth and never an unequal contest between the people on the one hand represented by an able, experienced prosecutor familiar with all the "ropes," and the individual defendant, relying upon such legal advice as he may be able to secure.

The right of the accused in criminal cases to representation by counsel has long been properly regarded as a fundamental personal right and there are many pronouncements in our state constitutions to this effect. To make these constitutional guarantees effective, statutory elaboration became necessary. In general, three distinct methods are provided for by law, for the protection of indigent defendants: (1) Unpaid assigned counsel; (b) Paid assigned counsel; (c) A regular public defender's office.

In 48 states assignment of counsel for indigent defendants is provided for in capital cases. In 35 states assignment of counsel is provided for in felony cases. In 28 states provision is made for assignment of counsel in misdemeanor cases. The assigned counsel plan has not been completely satisfactory.²

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²A careful study of this matter as a part of a more general investigation of the whole problem of legal aid work in the United States was made for the United States Bureau of Labor Statistics and the conclusion was that: "In general we may say that the assigned counsel works in capital cases. The dramatic situation and the attendant publicity are sufficient to insure the lawyer's best efforts and in capital cases the lawyer receives consideration for his work. As to felony cases the efficiency of the plan is doubtful. In misdemeanor cases it appears that counsel are seldom assigned in actual practice." P. 46. Bulletin

Due partially to this fact, but perhaps even more so to a changing concept of the proper function of the state in administering criminal cases, there has appeared in recent years in this country a movement for the creation of a public office which shall have charge of the representation of all persons accused of crime who are unable themselves to employ counsel. The idea is an old one. A somewhat similar plan existed in Spain in the fifteenth century and today the laws of England, France, Germany, Belgium, Denmark, Norway, Hungary, Argentina and Mexico provide for the same plan in one form or another.³

In this country an early attempt in this direction was made in Los Angeles, California.⁴ In 1913, the charter of Los Angeles County, provided for the office of "Public Defender" with jurisdiction in respect to criminal cases. In 1915 the city of Los Angeles provided for a public defender for its police court. Similar provisions were made by Portland, Oregon, for its police court, and by Omaha for its superior court. In Minnesota an act was passed in 1917 providing for a public defender in all counties with a population of three thousand. The city of Minneapolis took advantage of this act. In Connecticut a state-wide public defender act was passed in 1921. In Chicago, Memphis, Norfolk, San Francisco, Cincinnati, and Hartford, provisions for the public defender system are also in existence.

In Columbus the home rule charter adopted on May 5, 1914, provided that the city council might appoint a public defender of indigent persons charged with offenses in the municipal courts. An ordinance was passed by the city council under this provision setting up an office of this kind and from 1919 to 1926, it served those people of Columbus who were too poor to employ counsel. In 1926, the office was discontinued for one year. The discontinuance of the office was not based on any opposition to its purpose or program. It was presumably dictated by financial reasons; actually other factors determined the matter.

In 1927, the office was re-established. At this time Clayton C. Rose was appointed Public Defender by the City Council. Mr. Rose has remained in office until the present time. With a keen apprecia-

of the United States Bureau of Labor Statistics—No. 398: *Growth of Legal Aid Work in the United States*. Reginald Heber Smith, after extensive study of the matter has said, "The truth about the assignment system in criminal cases is that as a whole it has proved a dismal failure and at times it has been worse than a failure."

Justice and the Poor, 103-14.

³See pp. 9-14, Mayer C. Goldman, *The Public Defender*, New York, 1919.

⁴Pp. 81-95, Mayer C. Goldman, *The Public Defender*, New York, 1919.

tion of the possibilities of the office, Mr. Rose has entered upon his duties with understanding and ability, and has succeeded in making it a very worthwhile agency in the local administration of justice. He has succeeded in winning the support of the various social agencies and city officials who come in contact with the office.

The ordinance passed by the city council provides that the Public Defender office is created to represent those indigent persons who are accused of *crimes* in the city Police court and who are unable to employ a counsel. It also provides that the Public Defender shall, after representing indigent defendants in the Police Court, spend the remainder of his time, if he has any, in the Civil Division of the Municipal Court where he is charged with the duty of representing such persons as are unable to employ counsel. It is in this second field of work that the Public Defender of Columbus does his really valuable work.

Qualifications for the office are few. The Defender is appointed by the City Council. Although, not under Civil Service rules he appears to enjoy a certain tenure of office. This is quite necessary to a successful administration of the office. He is required to be a resident of the City of Columbus. He must also be more than twenty-one years of age and have been qualified to practice law for at least two years prior to taking office.

The creating ordinance provides that the Defender shall have the right to determine who are indigent persons and who are unable to employ counsel, but that decision shall be subject to review upon a motion to the court. A little experience in meeting people applying for legal aid gives the Defender all of the tools necessary for quickly spading out those who should not receive aid from this source. The number refused aid does not reach a very high figure, however, as may be seen from the annual report of 1928-1929, when 3,660 persons were interviewed by the Defender on the civil side and only 233 refused aid. The Columbus Defender has devised a series of pertinent questions concerning property owned, occupation, etc., which gets to the point rather quickly and eliminates the undeserving.

The office is inexpensively manned and conducted. For the year 1928, the sum of \$4,405.00 was appropriated for the maintenance and operation of the office. Out of this \$4,405.00 came the salary of the Public Defender which was \$2,700.00, and also \$1,380.00 for a Grade "C" stenographer who is employed through the Civil Service Commission. The balance went for incidental expenses, such as telephone, stationery, stamps, and other office supplies. In 1928, Mr. Rose was

assisted by a young man recently admitted to the bar who desired experience and gave his services without pay.

At the present time the office is kept quite loaded down with work. The forenoon is given over to Police Court work. No attempt is made to keep a record of this work. The very nature of the activity makes record-keeping difficult. About fifteen minutes before the court opens in the morning, that is at about 8:15 A. M., the male prisoners are taken into what is called the "bull-pen" next to the court room, where those that can, find seats sit on benches arranged around the four walls. The Defender having previously looked over the list of cases knows that there are certain of the defendants with whom he wants to talk. In a very informal way, with no privacy whatever and with eight or ten cases to attend to he gets the high spots of each case before him. In some instances he simply advises the person how to conduct himself before the court; in others he asks for a continuance of the case; in still others he appears before the court in defense.

In general he is not pushed with this type of work. He appears in court on the average, in approximately eight or ten cases a week. Mr. Rose in commenting on this side of his work said: "I have found a few cases where I felt that officers were attempting to 'railroad' a person, and I find a small amount of crime demanding my services where the crime is for other than intoxication or illegal possession."

In the afternoon the Defender appears in the Civil Division of the Municipal Court, where the bulk of his work is performed. Much of this work consists of defending in cases where persons have been sued on unjust claims or debts. Many suits are filed also, upon claims, namely, for work and labor, and board and room accounts. The Defender also files a number of trusteeships.

This might require a word of explanation. The Ohio law makes all wages above eighty per cent of the total earnings during the last thirty days, subject to garnishee proceedings. Many people for various reasons, usually lack of work, allow bills to collect. As soon as they are able to obtain work, not infrequently a garnishee proceeding is filed in the Municipal Court and their wages attached. If the individual owes six or eight or a dozen bills, in many cases three or four garnishee proceedings are filed within the same month. This causes considerable loss of time and frequently the employer discharges the employee rather than be bothered with these proceedings.

The Municipal Court of Columbus provides for a trusteeship, wherein the debtor may pay into the court twenty per cent of his average monthly salary, which is distributed pro rata among his cred-

itors. The Public Defender files large numbers of these trusteeships during the course of a year. This gives the applicant for the appointment of a trustee an opportunity to pay his debts and eliminate garnishment proceedings, saving him court costs and the possibility of losing his job.

It can be readily seen that the development of the Columbus Defender's office has been largely on the civil side. Mr. Rose is of the opinion that this development should go further and that the Defender's office should be made a real tool in this phase of the administration of justice. "There are thousands of cases," he says, "where people are wrongfully sued and have a good defense but are unable to take advantage of their rights because they are unable to employ counsel. Although the taking away of a man's liberty may constitute a gross injustice, the illegal taking of his property may work upon him and his family as great, or even a greater injustice, by taking from them money or property which is necessary for their existence. I sometimes feel that the various bar associations should give in legal aid, more consideration to civil matters than has been given in the past, and I feel through my experience in this office that I have given a greater service to the public through aid in the Civil Division than in the Criminal Division."

Figures tabulated by that office seem to bear this statement out. On February 1, 1927, the new Defender assumed office. On January 1, 1928, his annual report was submitted to the city council. In eleven months time, he interviewed 2,680 people. Of this number 1,404 were represented. This simply means that an active file was made on their case and possibly a letter or two were written concerning them. Those who received advice numbered 967. No active file is made on the case in such instances other than the information card which is filled out at the time aid is applied for, but advice is given to the party as to his legal rights or remedy. There were 361 people who were actually represented in court by filing pleadings and becoming their attorney of record. Aid was refused to 182 people because the Defender felt that they were able to employ counsel. During the same time, there were 182 additional calls from "regular clients" who came in for further information on the same matter.

With a total of 2,498 aided in one way or another, the Defender estimated the average cost per case to be approximately \$1.78. In arriving at this figure, he does not take everything into consideration, however. He has an office, for example, which costs the city something to maintain, and when the New Municipal Court Building is

completed, he will have two offices, one in the jail proper and his own central headquarters in the same building.

In 1928, the Public Defender interviewed 3,696 people; represented 1,138; advised 2,007; appeared in court for 326; refused aid to 233; and received additional calls from 282 clients. In 1929, he interviewed 3,670; represented 955; advised 2,087; appeared for 160; refused 190; and received additional calls from 448 regular clients. These figures show that indigent people of the city in need of legal aid have not failed to take advantage of the Public Defender's office.

In general, the Columbus Defender's office has had a record quite similar to the record of the Defender's office in other places. Experience with the office has been largely the same everywhere. It is certainly more economical than any other plan. Where all the cases of poor persons are centralized on one office, instead of spread around among assigned counsel, costs are reduced and efficiency results. For example, in Cleveland in 1920, assigned counsel handled 528 cases at a cost to the public of \$32,500. In Los Angeles the Public Defender in 1917 handled 522 criminal cases and in addition cared for several thousand civil cases (8,000 in 1916) at a cost to the public treasury of from \$20,000 to \$25,000.⁵

It is also true that when cases are centralized in one office, a routine is developed, the staff becomes expert, and special technique for the prompt dispatch of business is rapidly worked out. A general fund of information is also made available from which the Defender's office may study the defects in the law and its administration when the centralized system is employed. The Editors of the Cleveland Survey of Criminal Justice were greatly impressed with this fact and because of it, concluded that while the system of paid assigned counsel was quite satisfactory for many purposes, the public defender plan, because of collateral advantages, was the best plan for guaranteeing justice to poor persons.

The force of this contention may be seen from an example arising out of the operation of the Columbus Defender system. Mr. Rose is in constant touch with poor people who lend themselves readily to exploitation and consequently comes upon a good many things that need correction. He does not hesitate to call attention to these matters. He is now concerned with defects in the Ohio garnishment law.

In Ohio garnishment proceedings may be initiated for unnecessary as well as for necessities. By using the ten payment plan

⁵P. 58, Bulletin of the U. S. Bureau of Labor Statistics—No. 398: Growth of Legal Aid Work in the United States.

and "high pressure" salesmanship certain business enterprises of the city keep some of their poorer, colored patrons in a state of partial peonage by the use of the garnishment proceeding. The victim is never permitted to get out of debt. When one "sale" is almost paid for, he is sold some new article, oftentimes a piece of cheap jewelry, for which he has no use. This exploitation is greatly aided by the Ohio law on garnishment proceedings. Mr. Rose is asking for a change in that law.

Another advantage of the Defender's office comes in the shape of a saving of time. It is within the Defender's power to eliminate cases in which there is no need for trial, and by sorting out cases on the criminal side where the person is clearly not guilty. The expense of unnecessary proceedings is saved. The earlier in the case the defense may be thoroughly studied by an impartial expert, the sooner its validity will be tested. If a case has no merits, a plea of guilty may be entered. If the defense is sound, prosecution may be dropped.

The experience of Columbus up to this time would seem to indicate that the work of this office has justified the hopes of its sponsors. Its success has not been of a spectacular nature but has rather taken the form of a steady, substantial, day by day performance of a very satisfactory service to the needy of the city who get into court. Mr. W. A. Knight, President of the Legal Aid Society of Cincinnati investigated the work of the Columbus Defender's office in 1928, at the time Cincinnati was considering the adoption of a Defender for Police Court work. He was strongly impressed with the work done and considered it very successful. He found that the Prosecutor, the Court, the Clerk of the Court, the Chief of Police, and the public generally, had a very high regard for the work of the Defender's office. Mr. Knight's opinion would seem to coincide with the general opinion concerning the work of this office.