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The Public Defender

Charles Mishkin

THE PUBLIC DEFENDER[1]

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The Committee on Public Defender, a subcommittee of the Committee on Defense of Prisoners, presents herewith a report summarizing the work and investigation carried on by it for almost five years. The Committee was originally created in 1926, since which time it has had the same Chairman, with several changes in personnel of its associate members. It has heretofore submitted three reports which appeared in The Chicago Bar Association Record as follows:

Volume 12, Page 190—(January, 1929).
Volume 13, Page 96—(January, 1930).
Volume 14, Page 5—(December, 1930).

The Committee's investigation may be outlined as follows:

1. An extensive correspondence was carried on. Letters were written to individuals, officials and organizations throughout the world, who were in any way identified with the subject of Public Defender. In particular, letters were sent to every public defender in this country, to every judge, public prosecutor and bar association in jurisdictions where the office of public defender exists. By means of this correspondence voluminous data of much value were obtained.

2. A year ago the chairman made a special trip to the East to see how the public defenders function in the State of Connecticut, to study conditions prevailing in New York, and to examine source materials in the Library of Congress at Washington on the origin of public defenders. The information gathered on this trip is summarized in our second report published as mentioned in January, 1930.

3. A careful study was made of conditions incident to the administration of criminal justice in Cook County, particularly as applied to indigent persons. A questionnaire and several letters were written to all Cook County judges to ascertain their opinion, first as to whether

[1]This article is reprinted from the February-March, 1931, number of The Chicago Bar Association Record (Volume 14, page 98).

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The personnel of the sub-committee is as follows in addition to Mr. Mishkin: Frank E. Cantwell, Helen M. Cirese, Rocco De Stefano, John C. Melaniphy, J. J. Viterna.

the system heretofore existing was satisfactory, and second as to whether public defenders would be desirable for Cook County. The replies to this questionnaire are summarized in our third report published in December, 1930.

4. Considerable literature on the subject has been examined—reports, books, magazine articles, etc.

5. The statutes of the states where the office of public defender exists have been carefully studied, and cases arising under such statutes have been examined.

6. As a result of all the information thus obtained, the Committee drafted a bill to create public defenders in Illinois. This draft was prepared in the light of the experience of other states with the office, and with special reference to conditions as they exist in Illinois.

The Right of an Indigent Accused to Have Counsel Appointed for Him

The passion for justice has been an all-compelling motive throughout the history of man, from the time the prophets in ancient Israel constantly thundered for it, down through the centuries to the Magna Charta, which guaranteed: "To none will we sell, to none will we deny, or delay, right or justice."

Modern jurisprudence rests upon the fundamental principle that the individual shall be guaranteed certain civil rights by the governing power. Such guarantee, however, is meaningless unless safeguarded by the right to have a speedy public trial and to be represented in such trial by competent counsel.

The right to be represented by counsel, however, was not an absolute one. "Under the ancient common law, persons accused of treason or felony were not permitted to defend, under the plea of not guilty, by counsel. The practice was not to permit counsel to be heard on questions of fact, but the court would assign counsel to be heard on questions of law arising on or after the trial. In such cases the prisoner proposed the point, and if the court supposed it would bear discussion, it assigned him counsel to argue it. (2 Hawkins' Pleas of the Crown, chap. 39, sec. 4, p. 555; 1 Chitty on Crim. Law, 407.) Thus it appears that at the common law the court exercised the power of assigning counsel to argue legal questions, and it seems counsel could only appear for that purpose after being assigned by the court." *Johnson* et al., v. *Whiteside County,* 110 Ill. 22, 23.

The right of the accused to be represented by counsel, however, was made absolute in the Constitution of the United States and of

the several states. The sixth amendment to the Federal Constitution provides: "In all criminal prosecutions the accused shall enjoy the right . . . to have the assistance of counsel for his defense."

In Illinois, the Constitution of 1818, article VIII, section 9, provided: "That in all criminal prosecutions the accused hath a right to be heard by himself and counsel. . . ."

The Constitution of 1848, article XIII, section 9, makes exactly the same provision, but the Constitution of 1870, article II, section 9, changes this provision as follows: "In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel."

In the case of *Vise* et al., v. *The County of Hamilton,* 19 Ill. 78, decided in 1857, the court said (p. 79): "In criminal prosecutions, the accused has the right to be heard, and to defend by himself and counsel, and such is the benignity of our institutions, that, lest the innocent suffer for want of proper defense, the court, in case of inability of the accused to obtain counsel, will appoint counsel for him, and may compel the counsel, as an officer of the court, subject to its authority, to defend the accused against unjust conviction. . . . The plaintiffs but performed an official duty, for which no compensation is provided."

The Criminal Code, enacted in 1874, division XIII, section 2 (Cahill's Rev. Stat., 1929, par. 754) provided: "Every person charged with crime shall be allowed counsel, and when he shall state upon oath that he is unable to procure counsel, the court shall assign him competent counsel, who shall conduct his defense. . . ."

The case of *Johnson* et al., v. *Whiteside County,* supra, decided in 1884, held that an attorney thus appointed by the court to defend one accused of crime is not entitled to recover of the county any compensation for his services.

This section of the criminal code was amended in 1929 to provide that if counsel is appointed by the court to defend an indigent defendant in a capital case, such counsel shall receive a certain fee for such services. (Cahill's Rev. Stat., 1929, par. 754 and 754[1]).

So much for the general right of the indigent accused to be represented by counsel.

The Inefficacy of the Assigned Counsel System

Theoretically when a poor man is accused of crime he is entitled to have competent counsel appointed for him to the end that he have

a fair and impartial trial of the charges made against him. To what extent, however, is this right actually enforced in practice?

As far back as 1912, The Chicago Bar Association began to give official attention to this problem. We quote from the Annual Report of that year (Ann. Repts. Vol. 2, Page 9):

"Defense of Poor Persons Accused of Crime.

"A careful examination of conditions during this year has revealed what has always been believed to be true that the conditions in the county jail and at the felony courts in regard to the defense of poor persons accused of crime are intolerable. Cases are solicited by unconscionable shysters, whose *modus operandi* seems to be to discover how much the prisoner and his friends can raise, take all there is in sight, and then render no real service. The judges of the Criminal Court have endeavored from time to time to ameliorate these conditions, and spasmodic efforts have been made to appoint men of prominence and character at the bar to defend those who have been unable to secure competent counsel. . . . A special committee is now being organized to devise a systematic plan for the discharge of this professional duty."

Thus the Committee on Defense of Indigent Persons Accused of Crime was created eighteen years ago, and persistently since that time it has undertaken to increase the efficacy of the assigned counsel system, first, by preparing and making available a list of competent and public-spirited attorneys willing to represent indigent prisoners; second, by lending to such attorneys all practical cooperation; and in general, with the cooperation of the proper officials, by ameliorating the conditions at the county jail. In addition to this, during the past few years, through the instrumentality of a joint board, consisting of representatives of the Committee on Defense of Prisoners of The Chicago Bar Association, Northwestern University School of Law, and the Legal Aid Bureau of the United Charities, made possible by the Raymond Foundation, a helpful cooperation is effected between such institutions to the end that those members of The Chicago Bar Association, who have volunteered to represent indigent prisoners, may be enabled to render more effective services in their behalf.

Despite this invaluable and indispensable service rendered by The Chicago Bar Association's Committee in Defense of Prisoners, the system of assigned counsel, while immeasurably better than it was theretofore, is nevertheless still very unsatisfactory. The causes of this condition are twofold:

A. The limited use made by the criminal court judges of the

list of volunteer attorneys thus submitted by The Chicago Bar Association. A survey of the records of the Criminal Court from July 1, 1929, the date the statute providing for compensation to assigned counsel in capital cases became effective, to April 30, 1930, indicates that during such ten months' period, counsel were appointed by the respective judges to represent indigent defendants in 1255 non-capital cases, and in 126 of these cases were appointments made of attorneys on The Chicago Bar Association list; and counsel were appointed in 70 capital cases, in 6 of which were appointments made of attorneys on The Chicago Bar Association list. Thus about 10 per cent of the appointments were given to volunteer attorneys on The Chicago Bar Association list; the other 90 per cent going to attorneys not on such list, 19 of whom each received 15 or more appointments.

B. The defects inherent in the system of assigned counsel.

The replies to the questionnaire already referred to which was sent to all the judges of the Circuit and Superior Courts of Cook County and the Municipal Court of Chicago (reported in 14 C. B. A. Record 5) disclosed that an overwhelming majority of the judges consider the system of assigned counsel wholly unsatisfactory. Their reasons may be summarized as follows:

1. Many of the attorneys who seek assignment of indigent cases are young and inexperienced and are therefore unable adequately to protect the interests of such indigents.

2. Many of the attorneys who seek such assignment unfortunately are of the undesirable type who accept such cases only for the possible fee they can extract from the defendant or his relatives. With this in mind, instead of seeking a prompt trial, they continue the case and drag it out as much as possible, thus congesting the criminal court calendar with numerous old cases that should have been disposed of. If they find that no fee can be gotten they will frequently lose interest in the case and either persuade the defendant to plead guilty when in fact the defendant should plead not guilty, or they will make only a perfunctory defense. On the other hand, if they succeed in getting the fee, only too often they will connive with the defendant and fabricate an unethical defense.

3. As a result of the conditions outlined in the preceding paragraph, many desirable attorneys avoid assignment of such cases, considering it disreputable to engage in the criminal branch of law practice; and the atmosphere of the trial of criminal cases in only too many instances hardly tends to teach respect for the law.

It is not only in Illinois, however, that this condition with respect to the system of assigned counsel exists, but on the contrary, it prevails practically everywhere. It has received the attention of prominent jurists and numerous bar associations and civic organizations.

The late Chief Justice Taft decried the inequalities that exist between the rich man and the poor in obtaining justice in litigation. Chief Justice Hughes, in an address delivered in 1920 before the American Bar Association, said: "In our great cities the time-honored practice of assigning counsel is not in good repute." The Joint Committee for the study of Legal Aid of the Association of the Bar of the City of New York and the Welfare Counsel of New York City in cooperation with the New York County Lawyers' Association in 1928 reported in part as follows:

"The assignment system has, indeed, largely failed and is a sore spot that should receive attention. . . . The result of the assignment system has been and is highly unsatisfactory to justice for the poor. . . ."

The same subject is now being investigated by the Institute of Law of Johns Hopkins University, by the National Economic League, and numerous other organizations.

It must be clear from the foregoing that a problem does exist in the administration of criminal justice as to indigents accused of crime. What can be done to solve the problem?

Suggested Remedies

A number of plans have been devised for improving the situation. One method was to enact legislation to provide compensation to attorneys accepting assignment of indigent cases; as witness the 1929 amendment of the Criminal Code already mentioned. Some thirty-three states allow compensation, and of these twenty-three allow compensation only in capital cases. The compensation, however, ordinarily is wholly inadequate. Furthermore, in very few states is provision made for investigation, traveling expenses, witness fees, etc., all of which are necessary to prepare an adequate defense. And finally the fact that the criticism directed against the inefficacy of the assigned counsel system exists despite these numerous statutes to provide compensation indicates that they have failed to improve the situation.

Another method to improve the assigned counsel system that is being tried in a number of cities is the Volunteer Defenders Committee. These committees operate much in the same manner as our

Joint Board, already discussed, but with the distinction that the attorneys who actually handle the assigned cases spend their entire time in such work and are paid a salary for such services. Such committees have been organized in New York, Boston, Philadelphia, St. Louis and elsewhere. The chairman of the sub-committee went to New York a year ago to study the operation of the Volunteer Defenders Committee, and submitted a report on that subject already referred to (13 C. B. A. Record 96).

Such committees render very valuable services, but do not handle all assigned cases, first due to lack of funds, and second due to the frequent tendency of the judges to assign cases to their friends, instead of to such committees, efficient though they are. In principle, however, there is even a more fundamental reason for the inadequacy of the volunteer defenders committee idea. If the State guarantees competent counsel to the indigent prisoner, the enforcement of that guaranty is not an act of charity, but an act of justice, and therefore should not be left to private agencies or philanthropic institutions but should be assumed directly by the State. This point of view logically leads to the demand for a Public Defender.

From the foregoing it becomes obvious that the existing and projected agencies for ameliorating the lot of the indigent accused of crime are wholly inadequate, and insufficient satisfactorily to solve the problem, thus resulting in a widespread agitation for the establishment of the public defender.

The Public Defender Idea

It is axiomatic that one of the primary duties of the government is to administer justice. Rich and poor should be on an equal plane when before the bar of justice; but in practice are they equal? The rich man has his corps of brilliant attorneys and sufficient funds to employ investigators to discover witnesses, gather evidence, and prepare an adequate defense on his behalf. The poor man, on the other hand, is helpless, without funds, often not understanding what the proceedings are all about, and is forced to rely for his protection upon an attorney who has been assigned to represent him without compensation. Honest and well meaning though the attorney may be, he is handicapped by the lack of funds to conduct an investigation to ascertain the facts, and often without experience in criminal matters, and thus handicapped he is forced to contend against the unlimited power and resources and prestige possessed by the public prosecutor's office. Truly this is a spectacle of the State bringing all

its power and wealth to bear against a weak and powerless accused, who may be in fact innocent of the charge brought against him.

Is it the function of the State, once an indigent has been charged with a crime, to set all its vast machinery into motion against this individual, with a view to finding him guilty of committing the crime whether he did actually commit the offense or not? Or is it rather the duty of the State to make an impartial search for the truth? The State should be just as diligent in attempting to prove the man innocent as it is in attempting to prove him guilty. Still, it maintains the powerful offices of public prosecutor to represent the prosecution, and leaves the indigent accused to present his defense as best he may. This unfair state of affairs has, however, existed for centuries and thereby has acquired the sanction of precedence, so that the public conscience is almost dulled to its unfairness. The truth is obvious that if it is the primary function of the State to seek the truth in a criminal prosecution, then that function is not fully performed unless side by side with the office of public prosecutor to prosecute the charges there exists also, as an arm of the State, the office of public defender to defend against the charges. This in brief is the basis for the public defender idea.

Public Defender in Other Countries

The institution of public defenders dates back five centuries in Spain, and the office still exists there. Some of the other countries that have public defenders are Hungary, Norway, and Argentina. In the last named country, there are fourteen provinces, each with its own legislature, and the majority of them, in conformity with the Federal law of 1886, provide for a public defender, who is a public officer paid from public funds, to represent the indigent and absentees. To cite a typical statute which applies to Buenos Aires, Law No 1893, Organization of the Courts of the Capital of the Republic, Title IX, DEFENDERS OF INDIGENT AND ABSENTEES, Articles 140 to 143 inclusive, provide that the official defense will be made in the Capital of the Republic by one Defender of Indigent and Absentees in the Supreme Court, and by seven Defenders of Indigents and Absentees before Justices of the Peace, and in all Courts of Appeal, in all criminal, civil, commercial and correctional cases. These defenders are appointed and subject to removal by the Supreme Court and Courts of Appeals. Few complaints have been recorded against the public defenders, and the office is wholly successful and produces satisfactory results.

There has been considerable interest manifested in England in the matter of the defense of indigent defendants accused of crime. The Poor Prisoners' Defense Act was enacted there, which allows a fee of three guineas to counsel appointed to represent an indigent accused. The compensation being inadequate, there is a strongly developed opinion in England which favors the establishment of a public defender. The great English barrister, Sir Edward Marshall Hall, who defended the accused in many a *cause célèbre* until his death in 1927, and his biographer, Edward Majoribanks, M. P., both "railed against the hopeless inadequacy of the Poor Prisoners' Defense Act" and "wished to see a Public Defender appointed with suitable funds and organization," and one of his experiences is described as a "bitter commentary on the present machinery for the defense of poor prisoners, and a strong argument for the institution of the office of a Public Defender." (Majoribanks, "For the Defense," pp. 24, 160, 318.)

The subject of Public Defenders has also received attention in Canada. The Committee has maintained a correspondence with the Chief Justices of the Supreme Court of the various provinces in Canada, and their letters indicate that when an accused is unable to employ counsel, the judge will appoint one for him, and in the more important of such cases, the assigned counsel is paid a fee by the Attorney General's Department. The practice is ordinarily satisfactory, yet some of the Canadian officials have shown an interest in the matter of public defenders with a view to establishing the office there.

The Public Defender in the United States

The public defender movement in this country started less than two decades ago, and the office of public defender now exists by law in California, Connecticut, Minnesota and Nebraska, and in addition there are a number of other places where the office has existed and proved successful, such as Portland, Oregon, and Columbus, Cincinnati and Dayton, Ohio, and Indianapolis, Indiana. Considerable attention has been given the subject by bar associations and civic organizations, and the institution of public defenders has been endorsed by Dean Wigmore, the late Chief Justice Taft, and other outstanding authorities. As pointed out in a previous report (13 C. B. A. Record 96) in New York there has been for years a widespread demand for a public defender, and a bill is now pending there to create such office; and the establishment of a public defender has been

recommended by a committee of the New York State Bar Association (N. Y. State Bar Association Report, Vol. LIII, [1930], page 388).

The Public Defender in California

The first office of Public Defender in the United States was created in Los Angeles County on January 6, 1914, under a provision of its charter. A year later the office was extended to the City of Los Angeles by a city ordinance. So successful did both offices prove to be that in 1923 a statute was adopted which made the office of Public Defender applicable to other counties and under this statute the office was created in the city and county of San Francisco. The present statute in force (Hillyer's Consolidated Supplemental Annotated Statutes 1921 to 1925, Part 2, Chapter 291-A, page 3519, sections 1 to 6 inclusive) provides for the election of a public defender to defend all persons not financially able to employ counsel and who are charged with the commission of any contempt, misdemeanor, felony or other offense. The Committee has collected considerable data and information relating to the public defender in California considered in a preceding report (12 C. B. A. Record 190). Interesting statistics are set out in the aforesaid report and will not be repeated here, but they clearly indicate that the office of public defender in California is completely successful and beneficial from all points of view; he has given the defendant a more adequate defense, and at the same time, by eliminating unnecessary trials, by abstaining from dilatory and procrastinating tactics, he has greatly shortened the time consumed in the trial of cases and thereby has saved the state vast sums of money in jury fees and conserved the time of the judge, court officials, witnesses, etc.

The first public defender in the United States was Walton J. Wood, appointed public defender for Los Angeles County when that office was first created and who held such office for seven years when he was elected judge of the superior court, whereupon William G. Aggeler was appointed to succeed him, and the latter then held the office of public defender for seven years until he in turn was likewise elevated to the Bench.

The voluminous correspondence carried on by the Committee with numerous officials in California indicates that the operation of the office of public defender in that state meets with the unanimous approval of the Bench and Bar and the general public.

The Public Defender in Connecticut

The chairman of the Committee visited Connecticut a year ago to observe the functioning of the public defenders there; and his observations are reported in 13 C. B. A. Record 96. The office was created by statute in 1917 (Conn. General Statutes, 1918, chap. 340, sec. 6629), and the Act was amended in 1921, to provide for the annual appointment of a public defender in each county to defend in certain courts any indigent accused of crime, and the public defender may represent such accused at the preliminary hearing. There is now a public defender in each of the eight counties, with the exception of New Haven County, which, by a 1923 amendment, has two. While in Connecticut, inquiries were made of state's attorneys, judges, bar associations, and others to obtain their several opinions respecting the office of public defender, and the universal reaction was that the office is admirably successful. The temptation is great to include in this report all these expressions of opinion, but we shall quote but two or three.

George W. Wheeler, Chief Justice of the Supreme Court of Errors of the State of Connecticut said: "I strongly approve the present system. Before going on the Supreme Court of Errors in 1910, I had had an experience as a trial judge of 17 years in our Superior Court . . . so that I was familiar with the old method through long continued use. . . . Our judges approve of the public defender as a notable improvement upon the former method. . . . Accused are better advised as to their rights. . . . There is a manifest saving of the time of the court and of the moneys of the state."

Allyn L. Brown, judge of Superior Court, New London County, said: "I am entirely satisfied that a substantial improvement in criminal procedure was made by the adoption of this statute. . . . The system is not only an economy to the state, but also makes for more substantial justice to the accused."

Isaac Wolfe, judge of Superior Court of New Haven County, said: "The institution of the office of public defender in this state has worked to the advantage of both the accused and of the state. The case of the accused who is unable to hire counsel of his own is thoroughly investigated by this official, and if he has a defense, it is usually presented to the state's attorney, with the result that not infrequently the state's attorney does not present the case to the court, for the reason that he is satisfied with the defense the accused has presented. . . . I am satisfied that no judge of the Superior

Court would for a moment think of going back to the old system, so admirably has the present system of public defenders worked."

Even the state's attorneys there practically all commended the office as being very beneficial not only to the accused, but to the state as well. We take the liberty of quoting from our earlier report: "Concluding from direct personal observations in Connecticut and data received, the functioning of the office of public defender in Connecticut is wholly satisfactory. It has not been a means of coddling the habitual criminal, neither has it had the effect of balking the legitimate duties of the state's attorney, nor has it hampered the machinery of the criminal courts, but on the contrary, it is a gre step forward in the administration of criminal justice, and Connecticut seems to be proud of its success."

The Public Defender in Minnesota

The office of public defender was first created in Minnesota 1917 (Laws of Minnesota, 1917, ch. 496) applicable to counties with a population of over 300,000 which limited the office to Hennepin County, in which the City of Minneapolis is situated. In 1925 the Act was amended, so as to extend the office of public defender to Ramsey County, in which St. Paul is situated. The present statute (Mason's Minnesota Statutes of 1927, Ch. 94, Sections 9557-9964 inclusive) provides for the appointment of a public defender in counties having a population of 240,000 or more to defend all indigent persons accused of felonies or gross misdemeanors. The general sentiment in Minnesota regards the operation of the office as wholly successful. We quote from a letter written by Grier M. Orr, Judge of the District Court, St. Paul:

"It is the general opinion of the judges of this district that the system has not only proven practicable but has the approval of all of the judges that it has been successful. The former system of appointing attorneys for the defense of penurious defendants was more expensive than the present method which operates with less inconvenience to the court and with fully as great protection to the defendants."

The Public Defender in Nebraska

The office was created by statute in 1913 which was amended several times, and the statute now in force (Compiled Statutes of Nebraska, 1922, chapter 29, sections 10105-10106) provides for the election of a public defender in counties of 100,000 population or more to defend all indigent persons charged with any offense which

is capital or punishable by imprisonment in the penitentiary. The office is operated in Douglas County, in which the city of Omaha is situated. While the statute makes the office applicable only to felonies, in practice the judges have at times called on the public defender to act in certain types of misdemeanor cases. Among the advantages pointed out in connection with the office of public defender in Omaha are that it comes nearer to giving the accused a true equality before the law, also that even if the defendant files a plea of guilty, an unjust sentence is prevented by the public defender acquainting the court with the extenuating circumstances, and in practice the prosecuting attorney's office and the public defender's office do not work at cross purposes as opponents of the plan sometimes suggest they might. Concluding from the information gathered by the Committee the office of public defender in Nebraska is considered wholly sucessful and is held in high repute by all elements of the community.

The Public Defender in Illinois

Shortly after the Committee's report was published, in January, 1929 (12 C. B. A. 190), several thousand copies of the report were reprinted and given wide distribution. The report was sent to all the judges of the Circuit and Superior Courts of Cook County and the Municipal Court of Chicago, together with a questionnaire to draw their attention to the matter of the administration of criminal justice as applied to indigent persons. Their replies to the questionnaire indicated that a decided majority of the judges felt, first, that the present system is chaotic and wholly unsatisfactory, and second, that the introduction of the public defender would effect an improvement and finally all the judges with the exception of one or two, recommended that the office of public defender be made an appointive one, rather than an elective one. Several methods of appointment were suggested; a number suggested appointment by the various judges in conjunction with the Board of Managers or an appropriate committee of The Chicago Bar Association.

This questionnaire to the judges was followed by further letters and by the two later reports of the Committee already referred to. This continued attention directed to the problem has enabled the matter to be brought to a head for practical action. Several months ago, on the recommendation of the Judicial Advisory Council, the Board of County Commissioners made an appropriation for the temporary establishment of the office of Public Defender of Cook County, and since October 1, 1930, a public defender for Cook County has

functioned with several assistants and clerical help. The judges of the criminal court have been closely watching the experiment, and their replies to an inquiry sent to them by the Committee indicate that the experiment is wholly successful. The following extracts from their letters are typical of their attitude:

Judge John P. McGoorty, Chief Justice, Criminal Court of Cook County: "The system of public defender is a most gratifying success. He has no interest to serve other than giving to his client a proper and adequate defense with due regard for public interest. The public defender and his associates have the full confidence of the judges of the criminal court. They make speedy and thorough preparation and are promptly ready for trial. It would be unthinkable to revert to the former system."

Judge Philip J. Finnegan, Circuit Court: "Promptness in the disposition of cases, few continuances, saving of time to the court, state and witnesses, fewer jury trials, and I am sure a great saving of money to the county, are a few of the good features of the work that I have observed. Now that such good results have been obtained since the office was organized in this county, I feel that we cannot very well get along without it."

Judge E. I. Frankhauser, Superior Court: "I endorse very strongly the work of the public defender, and this is based on my experience in my court."

Judge Joseph Sabath, Superior Court: "I trust that the bill to create the office of public defender will be passed by the legislature when presented, as I personally feel that having had the valuable services of the public defender we cannot now very well dispense with the same."

Judge Peter H. Schwaba, Superior Court: "I have found the public defender a great help and it appears to me that it will be an office indispensable in the practice of criminal law in the city of Chicago and the county of Cook. . . . From my observation of what has happened in my court room, I can highly recommend that the public defender be a stable office for the criminal court."

Arguments Against Public Defender

The Committee's first report touched on some of the objections that have been levelled against the public defender. One of the principal arguments made against the public defender is that it is a manifestation of undue sympathy for the criminal. Those making this argument, however, forget that every man is entitled to a fair trial,

innocent or guilty; that there should not be one law for the innocent and another for the guilty. Furthermore, experience has shown what should be obvious to anyone giving thought to the matter, that it is not the gangster or habitual criminal who would rely on the services of the public defender—he would not trust him, as the public defender would not be a party to a possibly dishonest defense. It is only the casual offender, poor and often innocent, accidentally enmeshed in the law and not knowing his rights, who is the usual client of the public defender.

Another argument often made is that the defendant accused of crime already has sufficient safeguards thrown about him—the presumption of innocence, the right to jury trial, requirement of proof beyond reasonable doubt, that no judge will permit a man to be punished unless he believes him guilty, and that no state's attorney will prosecute a man unless he believes him guilty. But judges and prosecutors are human and therefore likely to err; and the belief of the judge or state's attorney in the guilt or innocence of the accused should not be substituted for a fair trial by jury. Furthermore, while no judge or state's attorney would permit an innocent man to be convicted, in the legitimate desire to make a record both judges and state's attorneys can and sometimes do become overzealous, causing reversals in the court of review on the ground that the defendant has not had a fair and impartial trial.

In the case of *People* v. *Rongetti,* 331 Ill. 581, the upper court found several reversible errors committed in the trial court, including a highly prejudicial cross examination by the court, and the case was therefore reversed and remanded. The court said (page 596):

"One of the first purposes of orderly administration of the law is that a defendant, whether guilty or innocent, shall be accorded a fair trial. The fact that the judge may consider the accused to be guilty in no wise lessens his duty to see that he has a fair trial. The prosecutor is not the plaintiff's attorney. He is a public officer charged with the administration of the law, and it is as much his duty to see that a fair trial be given to the defendant as it is the duty of the court. There is not one law for an innocent man and another for a guilty man. The man, however guilty of the crime charged, is entitled to be convicted according to law."

As this case was decided in October 1928, and before the adoption of the Act allowing compensation to assigned counsel in capital cases, the defendant, despite the reversible errors, would have been unable to resort to an appeal, if he had been indigent.

In *O'Donnell* v. *People*, 110 Ill. App. 250, the upper court criticized the trial judge for making improper remarks, and reversed the case for improper conduct of the state's attorney. The court said (page 282), "In other jurisdictions as well as our own, courts of review have criticized severely the language of the public prosecutor in criminal trials similar to that used in this case and held the same to be ground of reversal."

And the court also said (page 284), "The position of the state's attorney being semi-judicial, and it being his duty to be fair and just in his conduct of trials, both to the state and the accused, he has no right to bring before the jury under the guise of argument, anything not shown by the evidence in the case, nor to indulge in personal abuse of a defendant or witness. . . . If he does this, its only tendency is to bias and prejudice not only the jury but the trial court, and to produce unjust and vicious results—even to bring just condemnation upon the court that permits it."

Another argument often made against the office of public defender is that it creates another expensive office which means added taxes to the already overburdened taxpayer. However, the best answer to this argument is that the office of public defender, by expediting the trial and disposition of cases, and by eliminating unnecessary trials and waiving jury trials where that can legitimately be done—all of which is the experience with the office of public defender wherever established, and even found to be true in the short time that the public defender has existed in Cook County—effects a tremendous annual saving of money to the county, far in excess of the expense of maintaining the office of public defender.

Advantages of the Public Defender

From the reports received by the Committee from the various communities that have a public defender, and from the observation of our own Cook County judges, the advantages of creating a public defender may be summarized as follows:

1. If the defendant has no case, he is honestly advised to plead guilty, thus avoiding unnecessary trials.

2. If the defendant has a good case, he is given an adequate defense—not a perfunctory one—thereby truly safeguarding his interests.

3. Juries are often waived.

4. Cases are promptly tried when reached on the calendar—not continued time after time, thereby helping to solve the problem of congested criminal court calendars.

5. Cases are tried more expertly because of the skill of the defenders; and the time of the court, of the jury, of the witnesses, of the court attaches and others is not wasted by needlessly protracted trials.

6. By virtue of the foregoing, vast economies are effected in the administration of criminal justice.

7. The trial judges tend to rely upon the opinion of the public defenders in imposing a just sentence or in suspending sentence.

8. Chicanery and unethical practices are eliminated, and the atmosphere of the trial of criminal cases is elevated, and thereby respect for the law is enhanced.

9. There are less chances for a miscarriage of justice against a poor and perhaps illiterate defendant who might otherwise be sent to prison because of not knowing what it is all about.

Conclusion

The Committee, as a result of its some five years of investigation and consideration of the subject, reaches the following conclusions:

1. The assigned counsel system of representing indigent defendants has not been a success due to defects inherent in the system itself, and despite the well-meaning efforts of judges, bar associations and civic organizations.

2. The office of public defender is sound in theory, and workable and successful in practice; and the success of the office of public defender is due in great measure to the high caliber of men selected for the office.

3. With proper safeguards to keep it out of politics and to promote its efficient operation, the office of public defender should be established by law in the County of Cook and made applicable to other counties in Illinois at their election.