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Editorial

EDITORIAL

THE PUBLIC DEFENDER'S WORK IN COOK COUNTY

The report of the Public Defender of Cook County, Illinois, Benjamin C. Bachrach, made after three and one-half years of meritorious service, shows that this office has handled 8,696 indictments at a cost of approximately ten dollars per indictment. In view of the small cost of this work this statement alone deserves comment and, coming at a time when the American Bar Association is interesting itself with a drive upon the "lawyer criminal," it is thought that a discussion of this new administrative agency is very appropriate.

The office of the Public Defender saves time, saves money, and promotes the *proper* administration of justice.

The office saves time. Before the County Commissioners of Cook County followed the recommendation of the Judicial Advisory Council of Cook County and the Chicago Bar Association in creating the office of Public Defender, the chief obstacle to a proper administration of the criminal law was the difficulty in handling indictments of persons who were unable to secure money for their defense. Of course, it was the duty of the court to see that the prisoner had counsel but most prisoners were reluctant to use the services of young or incompetent assigned attorneys. As a result friends and relatives of accused persons often made the effort to secure experienced counsel and the court usually granted continuances to make this possible. Though most of these efforts were finally unsuccessful, many contracted for the services of attorneys with arrangements made to pay the fees in installments. Attorneys hired upon this plan naturally felt that when their services were rendered they would receive nothing thereafter, so they generally sought to have the case continued as long as possible. Quite often similar delays resulted where counsel were assigned and an effort was made to secure contributions to funds required for an adequate defense. One can easily imagine the situation of the twelve judges of the Criminal Court, desiring to speed up the trial of cases but forced to devote much of their time to granting continuances either because the defendant had no lawyer, or if he had one, the lawyer had not been paid or was not ready to proceed. Quite often two or more attorneys had to be appointed because of the failure of the first attorney to appear for trial when he was convinced that

there was no possibility to get more money from the prisoner or his relatives. Occasionally the repeated delays resulted in the discharge of prisoners because of the fact that under the law they were entitled to a trial within four months of their commitment. Efforts were made from time to time by the Legal Aid Bureau and the Bar Association to alleviate the situation of indigent defendants by inducing experienced and able members to volunteer to take criminal cases without pay. Without meaning any criticism it may be stated that this "welfare work" simply did not succeed. Successful practitioners could not spare the time and their interest could not be sustained without extraordinary effort. It is unnecessary here to repeat the results of unnecessary delays of criminal trials in contributing to the miscarriage of justice and in disgusting the public.[1] Suffice it to say that the defense of poor persons was one of the chief causes of congestion of the criminal court docket.

And, now, what do we find? Since the Public Defender system was installed only seven judges were required to take care of the business of the Criminal Court of Cook County and during much of the past three and one-half years only five judges were needed. Moreover, the Court manages to try all cases within a very short time after commitment instead of keeping prisoners for months in jail awaiting trial. Of course, this improvement is not all due to the Public Defender, nor would he be inclined to claim an undue share of credit. The State's Attorney has contributed to this end by vigorously contesting unnecessary delay, the judges have cooperated by stricter rulings upon motions, and the Supreme Court decision in the case of *People* v. *Fisher*[2] allowed defendants to waive the jury in felony cases and be tried by the court. Without attempting to allocate credit it may be safely stated that the assignments of the cases of indigent defendants to the office of the Public Defender has speeded up the administration of criminal justice in a notable way.

The office saves money. When the idea of creating the office of Public Defender was first presented an argument was used in opposition which was based upon the idea that there would be created just another expensive public office which would add taxes to the already overburdened taxpayers. But wherever the Public Defender has been established this argument has been proved fallacious. "By expediting the trial and disposition of cases, and by eliminating un-

[1]See Cain "Delay in the Administration of Justice," 7 Notre Dame Lawyer 290 (March, 1932).

[2](1930) 340 Ill. 250, 172 N. E. 723, 22 J. Crim. L. 113.

necessary trials and waiving jury trials where that can legitimately be done" a tremendous saving is effected "far in excess of the expense of maintaining the office of Public Defender."[3]

It is not possible to figure accurately the savings resulting from the work of the Public Defender. It is interesting to note that the appropriation bill for 1933 allotted only $20,127 to cover all the wages of the Public Defender, his assistants and clerical help. The jury vouchers for the year 1929, the year before the office was created, amounted to $242,407, which sum was reduced more than one-half immediately after the office began to operate. Of course, due to the possibility of waiver of jury trial in felony cases and a general economy program, it may be that considerable savings would have resulted had there been no Public Defender but on the other hand when the Public Defender does participate in a jury trial much less time is wasted in qualifying jurors than in other jury cases. After making a most conservative estimate and giving due allowance to other factors, it seems safe to say that the office *has paid for itself five times over.*

In fact, the total cost of the office in the past three and one-half years has been only $78,500 and in only one of its activities it has saved the County $65,400 in fees chargeable to the County under sections 730 and 730a of the Criminal Code which provide for compensation for counsel where the indigent defendants are charged with capital offenses. Moreover, in the general speeding up of the trial of cases by requesting immediate trial where defense counsel probably would attempt to win by delay, in releasing criminal court judges to civil cases, and in preventing useless appeals, there is an intangible saving to the taxpayers not easy to estimate, but present nevertheless.

The office promotes the proper administration of justice. Due to the fact that the Public Defender does not resort to delays and the usual tricks of the trade of the lawyer criminal it may be inferred that there is some danger that the Public Defender may not have its clients' interests at heart as would private counsel.[4] And, on the other hand, there is always criticism by some who feel that the creation of the office is a manifestation of undue sympathy for the criminal. The answer, in Cook County at least, is that an able and honest lawyer devoting his experience and skill to the work is able *to strike a balance* which effectually answers both inferences. No undue sympathy is being shown—gangsters and prominent criminals

[3]Mishkin, "The Public Defender," 22 J. Crim. L. 488, 504 (November, 1931).
[4]The Cook County Public Defender, since the first day he began to operate, has never presented a petition for change of venue!

rarely resort to the help of the Public Defender but prefer lawyers of their own class. And it is true that many indigent defendants do deserve public sympathy and those worthy of this public care may obtain it. Moreover, there is no denying the fact that the Public Defender guards the rights of his clients. While the Public Defender does not believe it his duty to aid guilty persons beyond insuring them a fair trial according to the law, and certainly he never condones perjury to win a case, nevertheless, where there is a strong denial of guilt by the defendant, the Public Defender does all that may be expected of any able lawyer in marshalling witnesses, research in the law, and vigorous presentation of the case in court. As stated in the words of Henry P. Chandler:[5]

> "Today we have a Public Defender whose ability is so generally acknowledged that lawyers who have specialized in criminal practice complain that he is hurting their business and that even clients who can afford to pay for counsel much prefer to have the Public Defender if they can."[6]

By fairness and honesty the Public Defender has done so much to promote the administration of *justice* that it is indeed true that his arguments and his pleas are accepted where the efforts of criminal lawyers of bad reputation may be ineffective. And, so long as the office remains in competent hands, so much the better. A community is indeed blessed which has a public spirited prosecutor and a public spirited defender. In the past the administration of criminal justice was too much a sporting contest. The prosecutor often forgot that he was not a persecutor—that he should not attempt to convict the innocent. The defendant's attorney went too far in the opposite direction. He forgot that as an officer of court his duty was to see that justice was done—not to win cases for persons whom he knew to

[5]"What the Bar Does Today," Address to the Association of American Law Schools, Dec. 28, 1933. 7 American Law School Review 1017, 1020.

[6]This seems to be the only fair criticism of the work of the Cook County Public Defender. He is such a capable lawyer that people who are perfectly able to hire their own attorneys often try to secure his services free. Naturally the bar is opposed to this practice and it is only fair to state that the Public Defender also is opposed to it and uses every means to ascertain whether or not the defendant is indigent. The responsibility, however, rests in the judge at arraignment where each prisoner is asked whether or not he can afford private counsel and if he declares he cannot his case is turned over to the Public Defender *by assignment.* It should be added that a surprisingly large number of cases are handled by the Public Defender in which the lawyers employed by defendants *fail to appear* usually because the fees promised by defendants or their friends are not paid. Small attention need be paid to complaints from practicing criminal lawyers so long as an investigation is made of the prisoner's finances before counsel assignment.

be guilty. Public criticism of the administration of the criminal law has been directed toward these two extremes—the use of the "third degree" and brutality in prosecution on the one hand, and upon the other, the use of technicalities, perjury, and trickery by the defense. The expansion of the office of Public Defender seems to be the way to restore the proper balance to the prosecution of persons charged with crimes.

The office of Public Defender exists by law in California, Connecticut, Minnesota, Nebraska, and Illinois, and undoubtedly other states soon will provide for this public work in the near future. If the experience of Cook County, Illinois, be a criterion of the usefulness of this device, it should be extended as soon as possible to all states and to all criminal courts. The solution of the problem of the "lawyer criminal" may ultimately be found in the abolition of private defense as far as may be possible constitutionally in much the same way that private prosecution has given way to public prosecution.[7]

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[7]For an answer to the criticism that it is inconsistent and illogical for the State to both prosecute and defend an accused person see the statement by Mayer C. Goldman of New York City which appeared in the April, 1934, issue of the American Bar Association Journal, Vol. 20, pp. 252-3. He points out the fact that the obligation of the State both to prosecute and defend is sanctioned by historical precedent in many other countries.