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THE WORK OF THE PUBLIC DEFENDER OF COOK COUNTY*

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Prior to October 1, 1930, the administration of criminal justice in Cook County was beset with grave problems. The situation was as follows:

1. The dockets of the various judges sitting in the Criminal Court were crowded.

2. It was impossible to dispose of cases promptly. To illustrate: On a given day before a given judge, there would be ten cases upon his trial call. Suppose the first one was ready for trial; the jury would be called into the box and counsel on both sides would in turn question the jury touching their qualifications to serve. Just as soon as it became apparent that the case could not be finished on the same day, the judge would announce that all cases, other than the one on trial, would be continued until the next day.

3. Jury trials occupied a long time. Often more time was required to qualify a jury than it took to hear the evidence and the arguments in the case. In certain extreme cases six to eight weeks were occupied in selecting a jury.

4. It frequently occurred that witnesses subpoenaed in the cases following the case for which the jury was qualified, after wasting perhaps half a day, would be compelled to return again on some future occasion.

5. The expense encountered in the operation of the criminal trials by the use of juries, was great. This was frequently commented upon in the newspapers. The actual cost to Cook County of paying jurors for services, board and lodging was nearly half a million dollars a year.

6. Since it would have required some forty judges to try all cases by jury, a system developed of bargaining with defendants, offering them lesser penalties than the cases justified in return for pleas of guilty.

*This article was written by the Hon. Philip J. Finnegan when he was Chief Justice of the Criminal Court of Cook County. The figures showing the activities of the office, since the article was written, were supplied from the records of the Public Defender's office.

[1]Chief Justice of the Criminal Court of Cook County, Illinois.

In January, 1929, by action of the Cook County Commissioners, later confirmed by statutory enactment, the Judicial Advisory Council of Cook County actively undertook the practical correction of defects in the administration of criminal justice.

The members of the Council were the late Honorable Frederic R. De Young, one of the Justices of the Supreme Court of the State of Illinois; the Honorable Denis E. Sullivan and Harry M. Fisher, Judges respectively of the Superior and Circuit Courts of Cook County; the Honorable John J. Healy, a former State's Attorney of Cook County, and the Honorable Amos W. Miller, both distinguished lawyers practicing at the Cook County Bar. Mr. Robert W. Millar, Professor of Law at Northwestern University is the Consultant of the Council.

The members of this Council were not concerned with starting commissions to investigate causes of crimes and ascertaining remedies therefor, but being of mature intelligence and having had long experience in the administration of law and particularly of criminal justice, they investigated anew the administration of criminal justice in Cook County with a view towards eliminating serious defects in the system which in many instances seemed to make the administration of law farcical, both from the point of view of the People of the State of Illinois and from the point of view of impoverished defendants, unable to employ counsel for their defense.

Space will not permit any extended discussion of all of the really substantial corrections brought about by the Judicial Advisory Council of Cook County. Probably the greatest good accomplished was the action taken upon the initiative of this council which brought about reconsideration by the Supreme Court of the State of Illinois of the right of a defendant in a felony case to waive a jury. Prior to the last decision by the Supreme Court, it was held by that Court in four different cases that the right to trial by a jury in a felony case was a constitutional right which could not be waived. The decision by the Supreme Court after an exhaustive reconsideration of that question, established the rule that a jury *could be waived* by a person charged with a felony.

Unfortunates Without Money or Influence Entangled in the Machinery of Criminal Justice

The public generally has never been much excited about the misfortunes of the poor if they became entangled with the criminal law. Whether or not they secured a fair trial, were convicted or

found innocent, was too often a matter of supreme indifference.

Judges and lawyers moved by the misfortunes of indigent prisoners, have from time to time sought to alleviate the situation of that unfortunate class by having the Bar Associations do what amounted to welfare work among that class; for example, to induce lawyers experienced in the practice of criminal law to take on a few cases from time to time without pay and thereby give some relief.

It was this group, the prisoners themselves, those prisoners who could not afford to employ lawyers to defend them and who invariably waited in jail many weeks or even months before their cases came to trial, that excited the attention of the Judicial Advisory Council of Cook County. It was the plight of this group that caused the Council to develop the idea of the office of the Public Defender which became a reality shortly before the first of October, 1930.

Defense of Indigent Prisoners Under the Old System.

In order to understand the situation an indigent prisoner finds himself in, let us quickly review the steps leading up to an arraignment. When a person is indicted by a grand jury, a written indictment is brought into a courtroom by the members of the grand jury in a body. Usually a large number of indictments are returned in this manner at one time. The amount of bail required to each case where the offense is bailable is written on the indictment. Capiases (warrants) are issued for the arrest of the persons indicted. Those who can, give bail and usually have funds to employ their own lawyer. Those who cannot are imprisoned in the County Jail. Many of them have no funds for a lawyer. The law requires, however, that they be furnished counsel. The practice had been for the Judge to ask the defendant if he had a lawyer or was able to obtain one. If the defendant answered that he had no funds, then the Judge appointed a lawyer to represent and defend him. In most cases, a young inexperienced lawyer, recently graduated from law school, was appointed.

Thus the requirements of the Constitution, that defendants charged with criminal offenses are entitled to be represented by counsel, were satisfied; but satisfied often unhappily at the expense of the unfortunates. The reports of the Illinois Supreme Court in death cases contain many forceful comments on the inadequate defense presented by inexperienced counsel appointed for the defendant.

One thing some of these lawyers seemed to know instantly, and that was how to obtain money for their services. The lawyer quickly

learned from his client the name and address of his relatives, at once visited them and arranged for the payment to him of a fee. Sometimes he obtained the whole fee in cash, but in most cases he would make an arrangement with these relatives to pay him in installments. This promise to pay had far-reaching effects upon the fate of the prisoner sitting in jail. To illustrate:

If the parents or other relatives of the poor prisoner were willing to obligate themselves to pay fifty dollars to the young advocate, at the rate of five dollars a week, it was almost certain that the case would not be tried for ten weeks, or until the last five dollars was paid. The important thing in the mind of that young lawyer was to prevent its coming to trial before all the money was paid, because he feared that if the case were tried earlier he might lack a balance of his fee. This delay in most cases meant that from time to time during the ten weeks the case would be upon the trial call before some judge and witnesses compelled to attend to give their testimony. The witnesses might be quite numerous and would be none too happy about being taken away from their work, and possibly losing a day's pay. When the case would be called for trial, the lawyer upon one pretext or another, would obtain continuance and thereafter another continuance, sometimes as many as fifteen or more. This practice was not uncommon. Moreover, when the case finally did come to trial, the young lawyer, eager to gain experience and to acquire a reputation for shrewdness and to make a showing to the relatives of his client was not adverse to using every legal or quasi legal resource at his command in order to win a favorable verdict, no matter how manifestly hopeless the cause might have looked from the very beginning to a seasoned attorney.

The Effects of Such a System.

Obviously this wasted the time of the judges and was at least partly responsible for the crowded state of the dockets. It necessitated the return of witnesses again and again for the trial of one case, thereby creating in them an hostile attitude towards the administration of justice, and in most cases causing them to lose their respect for the law. Last and worst of all, the system needlessly lengthened the prisoner's stay in jail, although he might be innocent.

The Public Defender of Cook County Is Appointed.

The Judicial Advisory Council concluded that the situation resulting from the decision of the Supreme Court, to the effect that a

jury might be waived in cases of persons charged with a felony, was now ripe for the appointment of a Public Defender. Under the former practice when no jury could be waived, the Public Defender staff would have had to be so large, that the cost of maintaining it would have been too burdensome to the County.

Shortly before the 1st of October, 1930, acting upon the recommendation of the Judicial Advisory Council, the Honorable John P. McGoorty, Chief Justice of the Criminal Court, appointed Benjamin C. Bachrach, Public Defender of Cook County. The staff includes a stenographer and four assistants, the more experienced of whom equal the best lawyers who practice criminal law in Cook County.

How the Public Defender Gets His Clients.

On four days of each week the prisoners in the County Jail who have been indicted are brought into a courtroom where an arraignment takes place. The judge asks each prisoner if he is guilty or not, and if he has or can obtain counsel. If the prisoner answers that he cannot afford a lawyer, the Public Defender is appointed to defend him.

On afternoons following arraignment and usually on Saturdays, the staff of the Public Defender's office visits these new clients (prisoners in the county jail). Upon forms especially prepared for the purpose is recorded the gist of the interview between the attorney and his client. If a prisoner says that he is not guilty of the offense, and states that he has witnesses who will corroborate his story, he is requested to give their names, and facilities are provided whereby they are compelled to appear when the case is tried and are given the opportunity of testifying for the prisoner.

A considerable number of cases handled by the Public Defender's office, however, are those in which lawyers employed by the prisoners fail to appear to defend their clients when the trials are called. In most instances this sort of thing occurs where fees promised to the lawyers by the family or friends of prisoners fail to be paid, or are only partially paid. It has been the uniform practice of the Public Defender in such cases to request of the court an immediate trial if the witnesses are present. And if the defendant's rights can be fully guarded and all proper evidence in his favor can be duly introduced, the case is then tried and settled at the same session of the court. The Judges of the Criminal Court, anxious to minimize the inconvenience to witnesses of repeatedly coming to court to testify in cases that in the past have been repeatedly con-

tinued, have gladly encouraged the Public Defender's office in promptly disposing of the cases.

There are now ten judges sitting in the Criminal Court of Cook County who hear nothing but criminal cases. Every day upon the calls of these judges are one or more cases in which the Public Defender is defending the prisoner. Thus an important duty of the office has been to devise a technique by which this large number of cases can be handled quickly, intelligently and efficiently.

At the beginning of the December Term, A. D. 1933, of the Criminal Court of Cook County, I became Chief Justice of the Court and noted the remarkable change that had been wrought in the administration of justice in Cook County. This was due to the fine cooperative spirit of all the judges then assigned, an able militant State's Attorney and a Public Defender always ready for trial.

Instead of the congestion in the transaction of business that was more or less in evidence in the cases of most indigent persons, I observed that in these cases, either the Public Defender or an assistant would be the attorney for such person, and ready to proceed to trial at once.

The Office Promotes the Proper Administration of Justice.

On this subject I quote from an editorial by Professor Newman F. Baker of the Northwestern University School of Law:[2]

"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 his clients' interests at heart as would private counsel.[3] 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 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 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,

[2]This Journal XXV, 1, May-June, 1934.

[3]The Cook County Public Defender, since the first day he began to operate, has never presented a petition for change of venue!

research in the law, and vigorous presentation of the case in court. As stated in the words of Henry P. Chandler:

> "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."

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 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."

A RECORD OF WORK DONE BY THE PUBLIC DEFENDER FROM OCTOBER 1, 1930 TO NOVEMBER 1, 1935

Number of cases disposed of	9,617
Pleas of guilty	3,420
Jury trials	834
Verdicts of guilty	522
Verdicts of not guilty	314
Court trials (contested)	2,290
Findings of guilty	1,245
Findings of not guilty	1,045
Jury waived (no contest)	1,134
Number of defendants sentenced to:	
Penitentiary	3,766
House of Correction	1.308
County Jail	194
Women's Reformatory (Dwight, Ill.)	26
State Farm	12
State Hospitals (Insanity cases)	102
Charges in cases disposed of:	
Assault	432
Burglary	2,002

Confidence Game	309
Homicide	373
Larceny and embezzlement	386
Larceny (auto)	1,294
Robbery (plain)	771
Robbery (armed)	2,957
Sex offenses	398
Miscellaneous	750
Death Penalties	12

A Substantial Saving to the Tax Payers

It is difficult to estimate accurately the various savings to the tax payer brought about by the office of the Public Defender. Generally speaking, they have been effected as follows:

1. By holding down the number of jury trials.
2. By always being prepared and ready to proceed with trials, thereby avoiding numerous continuances.
3. By shortening trials (a) by speedily selecting juries; and (b) by stipulating necessary facts to avoid continuances.
4. By advising defendants when the case is hopelessly against them to plead guilty and thereby save the time of the court.
5. By eliminating in capital cases fees of $250.00 provided by law for each indigent defendant.

Saving by Dispensing With Jury Trials Where Possible.

During the period of the operation of the Public Defender system from October 1, 1930, to November 1, 1935, the number of jury trials in which the Public Defender or his assistants appeared was 834. The number of court trials 2,290. These figures indicate that a little more than a fourth of the trials were jury trials.

The Clerk of the Criminal Court estimated the amounts of money paid to jurors in the Criminal Court for a period of fifteen months just preceding October 1, 1930, and also added the amounts of money paid to jurors, as shown by the jury vouchers, for a similar period immediately succeeding October 1, 1930, showing that the amount of money paid for the latter period was over $300,000.00 less than for the period before October 1, 1930. During the fifteen months following October 1, 1930, of the jury trials that took place, the Public Defender's office participated in less than one-fourth.

The Public Defender's Office Very Seldom Requests a Continuance.

By always being ready for trial a prompt disposition of the Public Defender's cases is assured. Throughout the three years and

nine months of the operation of the Public Defender's office, there has not been any congestion in the cases tried by the Public Defender. The office has kept substantially within thirty days of the grand jury.

Speeding Trials.

For many years it was often necessary to continue murder cases because of the absence of the coroner's physician who, in the performance of his duty, was engaged elsewhere. In murder cases it is necessary, under the law, to prove the cause of the death of the person alleged to be murdered. In very rare instances does the Public Defender require the State to make this proof. In substantially all of the cases the Public Defender or his assistant, stipulates the cause of death as shown by the sworn affidavit of the coroner's physician. In cases of larceny of an automobile, or burglary, in most of the cases where the owner of the stolen car fails to appear, or the owner of the house burglarized fails to appear, where it is sought to prove by the State only that a crime was committed, the Public Defender, to avoid a continuance, stipulates to the facts contained in the statement made by the prosecuting witness in each of such cases. Thus, the remaining witnesses are not obliged to leave the court to return at a later date, but the trial is disposed of at once.

Not Much Time Is Spent in the Selection of Juries.

In any case where the Public Defender or his assistant defends all the defendants, the jury is selected speedily. If from the examination by the State's Attorney the Public Defender does not deem the juror suitable, he excuses him without spending any time in asking him questions. This method saves a great deal of time.

In Hopeless Cases the Public Defender Advises His Client to Plead Guilty.

The Public Defender, having no pecuniary motive to spend days in a case where the evidence of guilt is overwhelming, earnestly tries to persuade his client to plead guilty and, where possible, secure for him some consideration in the way of a penalty for saving the county the expense of a long trial.

Saving of $250.00 in Each Case of Indigent Defendants in Capital Cases.

Under Sections 730 and 730a of the Criminal Code, in capital cases indigent defendants must be provided with counsel and the

county is obliged to pay not exceeding $250.00 in each case. Since the Public Defender's office began operating on October 1, 1930, all of such cases have been tried by the Public Defender and up to November 1, 1935, 373. Thus $93,250.00 was saved.

The total amount of money appropriated for the operation of the Public Defender's office from October 1, 1930, to December 1, 1935, was $110,000.00. Deducting the $93,250.00 hereinabove mentioned, there is a balance of $16,750.00.

The number of cases disposed of by the Public Defender's office up to November 1, 1935, was 9,617 cases. Thus omitting all of the indefinite or vague savings impossible to calculate accurately the net cost to the county for legal services by the Public Defender in 9,617 cases, is $1.74 per case.

I firmly believe, however, that a conservative estimate of the total savings by the Public Defender's office to Cook County up to November 1, 1935, is greatly in excess of $600,000.00.