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Public Defenders

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PUBLIC DEFENDERS

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SUPPORTING THE PUBLIC DEFENDER PLAN

Although equality of justice has long been an ideal of the American system of jurisprudence, it is manifestly impossible of realization. This impossibility stems from the fact that persons with abundant economic means are always better able than their less fortunate fellow-citizens to hire outstanding legal counsel. The difference between a mediocre and a distinguished lawyer often spells the difference between defeat and victory in a legal proceeding.

Legal aid, whether furnished by private organizations or by public bodies, provides a means for mitigating the actual inequity of our legal system and for guaranteeing at least a modicum of professional legal assistance to completely bankrupt persons. Such assistance is an important help to poor persons involved in both civil and criminal cases. We are here concerned exclusively with the latter type of legal process, and only with publicly-supported legal aid. From this point forward, wherever "legal aid" is mentioned, what is intended is the type of aid which is extended by governmental agencies, and not that which is furnished by private organizations, such as legal aid societies.

Apparently, every state in the Union now provides for some form of legal aid for impoverished persons charged before its courts with having committed a crime. In eight states, however, counsel may be assigned to assist such persons only in cases involving capital offenses. Moreover, of the remaining states, only eighteen have mandatory assignment of counsel in cases with indigents as defendants. In the other states, counsel may be assigned in such cases only at the discretion of the court or if the defendant specifically requests that an assignment be made.[1]

As far as federal criminal cases are concerned, the Sixth Amendment guarantees to an accused the assistance of counsel for his defense. This right to counsel in federal cases is so well established that the Supreme Court of the United States has ruled that the Sixth Amendment has the effect of withholding, in all criminal cases, a

[1] See: EMERY A. BROWNELL, LEGAL AID IN THE UNITED STATES (Rochester: The Lawyers Co-Operative Publishing Company, 1951), p. 124.

For more recent data on statutory provisions for legal aid, see: WILLIAM M. BENNEY, THE RIGHT OF COUNSEL IN AMERICAN COURTS. University of Mich. Press, 1955, pages 84–87 and 138.

federal court's power to deprive a defendant of his life, liberty, or property unless he has had the assistance of counsel during the trial.[2]

In almost all states, and in the federal courts, legal aid for criminal indigent defendants takes the form of assigned counsel. In such a system, lawyers are assigned by a court on an *ad hoc* basis to defend persons who cannot afford private counsel. Ordinarily, these assignments are made arbitrarily by the court before which the trial will be held. Often they are made from lists containing the names of lawyers who have indicated their willingness to serve in cases involving indigent persons. Such lists are sometimes prepared by the local bar association and submitted to the court which is to make the assignments.

About half of the states compensate those lawyers who are assigned to defend the indigent in criminal proceedings. This compensation is fixed either by statute or by the trial court. In many states, however, the compensation paid to assigned counsel falls far below what may be considered reasonable lawyers' fees.[3]

Assigned counsel in the federal courts serve completely without compensation. Legislation has been introduced in every recent Congress calling for a system of fees to be established for the payment of such counsel or, alternately, for the creation of a system of salaried full-time counsel. Although these bills have had the solid support of many distinguished persons and organizations, both public and private they have thus far failed of enactment.[4]

Some states have taken a very serious view of the problem of legal aid and have gone so far as to provide for public defenders, or to authorize their local governments to provide for them. These are lawyers who are made public officials, either by election or by appointment, and are given the responsibility of regularly defending all persons charged criminally who cannot afford to hire private lawyers. Public defenders are paid a fixed salary, and the expenses of the offices which they maintain for the purpose of defending indigent criminals are budgeted as a regular governmental expenditure. In some areas, being a public defender is regarded as a full-time job; elsewhere, he is permitted to continue to engage in private practice.

Public defenders were employed in certain European countries centuries before they made their appearance in the United States. In 1913, Los Angeles County authorized the creation of a public defender office, becoming thereby the first governmental unit in the United States to do so. Since that date, numerous state and local governments have followed the lead of Los Angeles County. A recent review reports that the number of public defenders functioning in American cities and counties

[2] Johnson v. Zerbst, 304 U.S. 458, 463 (1938). The defendant may, of course, waive this constitutional right, but any such waiver must be competent and intelligent, and must never lightly be presumed by the court. See: Glasser v. United States, 315 U.S. 60, 70 (1942).

[3] BROWNELL, *op. cit.*, p. 125.

[4] Attorney-General Brownell has indicated that he will continue to press Congress to enact a bill providing for compensation for counsel appointed in federal criminal cases involving indigent persons, or to provide for full-time public defenders. He himself favors the latter method for those federal districts containing large cities. See: *Representation of Indigent Defendants in Federal Criminal Cases*, Hearing Before Subcommittee No. 4 of the Committee on the Judiciary, House of Representatives, February 17, 1954, p. 23.

has grown to thirty-eight.[5] Public defender and private defender offices serve only 1.2 percent of the counties of the United States, but 13.7 percent of the American population.[6] Included among the governments which maintain a public defender office are those of Cook County (Chicago), Los Angeles City, Los Angeles County, Marion County (Indianapolis), St. Louis, San Francisco, and other metropolitan centers. Philadelphia and New York City are served by private voluntary defender organizations. The State of Connecticut has, since 1917, maintained a public defender office in each of its nine judicial districts. Connecticut and Rhode Island, where there is one public defender with jurisdiction throughout the state, have thus established the public defender system on a state-wide basis. They are the only states in the Union that have carried the institution to such an extent.[7]

Supporters of the public defender plan argue that the system of assigned counsel leaves much to be desired as a means of furnishing effective legal aid. One of the most cogent criticisms is that the assignments in cases involving indigent criminal defendants frequently go to immature and inexperienced lawyers, many of whom rely upon such assignments for a significant portion of their total practice. Established lawyers are reluctant to make themselves available for assignments by courts in such cases, since the fees which may be earned by pleading them are quite small, and in some cases totally non-existent. The result is that an indigent defendant's case is apt to suffer considerably. Even when the young lawyer assigned to handle the defense for an indigent person in a criminal case is competent and conscientious, he may not be able to afford the time and the incidental expenses involved in protracted and complicated criminal proceedings.

Critics of the assigned counsel system also point out other grave defects, any of which may operate to defeat substantial justice for the criminal defendant without means. These defects include, among others, the following highly questionable practices: attempts by counsel to extort additional money from the accused or his family and friends; persuading the accused to plead guilty in order to save counsel time and effort; and wasting the public's time and money by winning repeated continuances so that a defendant's case will not come to trial until counsel has been able to get more money from the defendant's friends and family.[8]

Another defect of the assigned counsel system, one which has nothing to do with the honesty or the conscientiousness of the counsel, is that which results from the

[5] As of 1951. Of this number, thirty-one were publicly supported and seven were privately supported (four by legal aid offices and three by independent organizations). EMERY A. BROWNELL, *Availability of Low Cost Legal Services*, ANNALS 287: 123 (May, 1953).

[6] BROWNELL, LEGAL AID IN THE UNITED STATES, p. 137.

[7] The State of Indiana maintains a public defender for indigents in penal institutions who assert unlawful imprisonment after the time for an appeal has expired; New Jersey has authorized the appointment of public defenders to represent the interests of the public in public utility rate cases.

[8] For an analysis of the inadequacies of the assigned counsel system, see: MAYER C. GOLDMAN, THE PUBLIC DEFENDER (New York: G. P. Putnam's Sons, 1917), Chapter II; CHARLES MISHKIN, *The Public Defender*, JOUR. OF CRIM. LAW, CRIMINOL., AND POL. SCI., 23: 493 (November, 1931); and PHILIP J. FINNEGAN, *The Work of the Public Defender of Cook County*, *ibid.*, 26: 711–712 (January, 1936).

fact that the criminal practice of law is no longer held in such high regard as formerly by the legal profession; in fact, most practitioners of the law studiously avoid it. As a result, the indigent criminal defendant ordinarily must rely for his defense upon a lawyer who has had little or no experience in criminal practice. Facing this lawyer is the district or prosecuting attorney, who may be regarded as a specialist in the practice of criminal law.[9]

Still another weakness of the assigned counsel plan is that too frequently the statutes provide for counsel's entrance into a criminal case at a comparatively late date in the proceedings. Very often, counsel does not appear until just before the trial. By this time, the defendant may have done some things, such as sign confessions and depositions, which may substantially harm his case. On this point, a survey of legal aid in the United States found that: "The distressing truth is that in the average criminal case in this country a defendant without means does not have the benefit of counsel until most of the consequential steps have been taken."[10]

One of the most outspoken critics of the assigned counsel system was Senator Arthur Capper, of Kansas, who attempted to introduce the public defender plan into the federal courts. In a radio speech in 1940, he roundly indicted the assigned counsel method of furnishing legal aid, when he said:

> The system is fundamentally wrong as it is practiced. It is unfair to the counsel. It is costly to society. I say it is not giving the accused a fair trial. Under our Constitution and theory of law, the accused is entitled to a fair trial—that means he should have competent counsel. He is entitled to every facility and resource to produce the law and the facts bearing upon the question of his guilt or innocence.
>
> The first offender who does not get adequate counsel is sent to jail. He is on the road to becoming a hardened criminal. When this happens, the accused is not the only sufferer; society pays in the future for this neglect to provide adequate legal protection to the person brought to trial, if he becomes an habitual criminal, which too often happens.[11]

Even stronger language was used in the survey entitled *Legal Aid in the United States*. Emery A. Brownell, the author, there compares the systems of assigned counsel and public defender. He comes to two conclusions. First, the United States can no longer afford to permit thousands of its citizens without means to be prosecuted in criminal cases without adequate legal representation. Secondly, ". . . the long and wistful attempt to meet so large a need by the volunteer assistance of individual lawyers is a complete and abject failure."[12]

Proponents of the public defender system insist that its adoption obviates all the difficulties and defects encountered in the assigned counsel system. Defense of criminal defendants without means becomes regularized to a high degree and responsibility for conducting such defense becomes clearly fixed. In these ways, more effec-

[9] BROWNELL, LEGAL AID IN THE UNITED STATES, p. 138. See also: MARTIN V. CALLAGY, *Legal Aid and Public Defender Services in Crime Control*, BULWARKS AGAINST CRIME (1948 Yearbook of the National Probation and Parole Association), p. 218.

[10] BROWNELL, LEGAL AID IN THE UNITED STATES, p. 141.

[11] ARTHUR CAPPER, *Justice For Rich and Poor Alike—We Need Public Defenders*, Radio Speech on Station WIBW, March 31, 1940, reported in VITAL SPEECHES OF THE DAY, 6: 405 (April 15, 1940).

[12] Page 144.

tive legal aid for indigents is realized. Mayer C. Goldman, a New York lawyer, was for years the most ardent supporter of the public defender plan. He saw numerous advantages which would accrue to the American judicial system were his ideas put into practice. The public defender plan would, in his view, end all the excesses of the assigned counsel system and would accomplish other desirable objectives as well. In general, instituting public defenders would, according to Mr. Goldman, produce the following results: 1) better protection and preservation of the rights of defendants in criminal cases, 2) more able and more honest presentations of these cases, 3) fewer unscrupulous and perjured defenses, 4) treatment of rich and poor on an equal basis during criminal trials, 5) more expeditious establishment of the truth in criminal cases, 6) end of the practice by bad lawyers of delaying trials in order to mulct fees from the friends and relatives of the accused, 7) quicker disposition of criminal cases, 8) fewer pleas of guilty prompted by lawyers who do not want to spend much time on cases involving small fees, and 9) raising the tone of the criminal bench and bar.[13]

Besides Mr. Goldman, the public defender system has had a host of supporters. A considerable body of literature on this subject exists, most of it favoring a wider adoption of the plan.[14]

Fallacies of the Opposition

On the other hand, opposition to the public defender plan has been quite spirited. Many of the persons who are opposed to the institution of public defenders disagree with all the contentions made by Mr. Goldman and others who favor such a system for furnishing legal aid. In the pages to follow, these arguments are presented and then analyzed.

1. The argument is made that the interests of criminal defendants in the United States are amply protected by the elaborate safeguards which are part of our legal system. Having public defenders does not improve on this system of protection, but may even undermine it, by giving guilty persons yet another legal weapon with which to defeat justice. So runs the argument.

This contention loses sight of several important points. In the first place, it is at serious odds with an idea which is accepted as a major premise of American legal theory, that is, that it is better for numerous guilty persons to escape unpunished than it is for one innocent person to be penalized unjustly. Consonant with this theory, greater rather than less protection of legal rights seems to be called for.

Secondly, many of the safeguards for criminal defendants, such as appeals to higher courts, necessitate considerable expenditures of money, and are thus avail-

[13] Mr. Goldman's chief work on this subject is a small volume, entitled The Public Defender (New York: G. P. Putnam's Sons, 1917).

[14] For an early bibliography of literature on public defenders, see: A. Mabel Barrow, *Public Defender: A Bibliography*, Jour. of Crim. Law and Criminol., 14: 556–572 (February, 1924). See also: Reginald H. Smith and John S. Bradway, Growth of Legal Aid Work in the United States (Washington: United States Government Printing Office, 1936), pp. 212–223. It was in a preface to this work that William Howard Taft, ex-President and Chief Justice of the United States, wrote: "I think we shall have to come and ought to come to the creation in every criminal court of the office of public defender, and that he should be paid out of the treasury of the county or the state."

able only to persons of economic means. Moreover, these safeguards involve steps which require at all stages the presence and supervision of an attorney, and are not ordinarily steps which may be taken by a private citizen. Public defenders therefore provide a means whereby a defendant's rights may be protected in reality and not just in theory.

Finally, the argument seems to be directed against legal aid generally rather than simply against public defenders. Proponents of the assigned counsel system obviously believe in the efficacy of legal aid provided by the State—or at least supervised by it. Once it is granted that indigent criminal defendants are entitled to have such legal aid, the question then becomes simply what is the most effective method by which the aid may be extended to them. Because of the defects of the assigned counsel system, some of which were set forth above, public defenders seem to be the more effective method.

2. Related to the first argument is the contention that public defenders are superfluous because all that they can possibly do is now being effectively done by prosecuting attorneys (district attorneys). Prosecutors are duty bound to drop proceedings against persons whom they discover to be innocent and in general are to be as zealous in ferreting out the truth in a criminal case as they are in prosecuting defendants.

This argument seems to fly in the face of the facts. So many successful political careers have been built upon a beginning as prosecuting attorney that too frequently the prosecutor forgets the "other" side of his duties. A man's success as a prosecuting attorney is too often measured by the number of convictions of criminal defendants which he has been able to secure. If too many indicted persons "slip through his fingers" and manage to win their cases, and thus avoid punishment, he may actually be considered by some persons as having been derelict in his duty.

Clearly, there is nothing wrong with having prosecuting attorneys who attend to their task of prosecution with great care and vigor. However, prosecution of suspected criminals is only one side of the American system of criminal jurisprudence. The other side is equally important: the full protection of defendants in criminal cases until their guilt is established beyond a reasonable doubt. If prosecuting attorneys are going to concentrate their energies almost exclusively on prosecution and on the various jobs incident thereto, then there is more than ample justification for having a public official whose primary job will be the defense of those who cannot afford private counsel.

3. Another related argument is that prosecuting attorneys owe a clear duty to the public. Their responsibility is to protect society from those of its members, the criminal element, who are insistent upon infringing legal rules and indulging in antisocial behavior. However, public defenders owe no duty to the public, but rather to enemies of the public, i.e., criminals. This loyalty makes for an extremely ludicrous situation, in view of the fact that these public defenders are supported by the same public purse which pays for the prosecutors.

This argument also is based upon a fallacious assumption of what the American legal system is designed to do in the realm of criminal law. As stated above, both sides of our legal system must be considered, conviction of the guilty as well as protection of the innocent. It is simply not true that every indicted defendant is an

enemy of society. If it were true, there would be no need for court trials to determine guilt or innocence. It would suffice to institute grand jury or other indictment proceedings, and the mere indictment, if obtained, would then establish the guilt of the defendant.

So long as we continue to have court process for the purpose of determining whether a defendant is guilty or innocent, we need to have mechanisms of legal defense. If the defendant cannot afford to engage counsel privately, some provision for his defense must be made by the state. In the interests of justice and equity, this defense must be of such quality as to give the defendant at least some chance of winning his case in court. As pointed out earlier, public defenders seem to go further than assigned counsel in meeting the requirements of effective legal aid in criminal cases.

4. Rather closely connected with the previous contention is the one which claims that the public defender system creates confusion and disrespect for the criminal courts by presenting the ridiculous picture of two different State officials grappling with each other in full view of the public. Far from raising the tone of these courts, as supporters of the public defender plan claim, this actually lowers their tone and tends to bring them into ridicule and disrepute.

Again, this point seems to be based upon an imperfect understanding of American legal philosophy. If it is the State's duty to prosecute and to punish proven criminals, it is equally the State's duty to protect and to uphold the rights of all criminal defendants until the burden of proof against them has been successfully established. Where these defendants are impoverished or bankrupt, some provision for legal assistance in their cases must be made. If such a situation appears ridiculous, then the opposite picture must be imagined: a case in which a poor person is being prosecuted in a criminal proceeding, with no one to defend him or his interests. Such a picture would be at complete variance with the underlying spirit of our system of jurisprudence.

In addition, this argument may also be applied in those states where assigned counsel are compensated with public monies for their efforts on behalf of criminal indigent defendants. When an assigned counsel is defending a person in a criminal case, and is being paid for it, he stands in approximately the same relationship with the defendant, the court, and the State as does a public defender.

5. It is argued that innocent defendants in criminal cases are prone to look upon the State as an oppressor, and therefore be reluctant to avail themselves of the service of the public defender who may, after all, be regarded as a representative or minion of the State.

Two points need to be made in connection with this contention. First, regardless of how oppressive a defendant without means may think the government is, when it comes to a choice between government-provided counsel and no counsel at all, he is likely to choose the former.

Secondly, and more important, by making effective legal aid available to the indigent criminal defendant, the State indicates clearly that its primary purpose is not to oppress nor to prosecute for the mere sake of prosecution. Rather, it serves notice that its role is to act as an impartial arbiter, simply supplying the machinery to

facilitate the discovery of the truth. Such machinery includes courts, juries, and prosecutors, as well as defense attorneys, where necessary. A State which provides for the effective defense and protection of indicted persons as well as for their prosecution can hardly be considered oppressive.

6. Critics of the public defender system insist that it operates to defeat an important right of the criminal defendant, the right to have counsel of his own choosing. All indigent criminal defendants are forced to employ the public defender to conduct their defense or they will have no defense at all.

This objection is somewhat unrealistic. It would be impossible for the State to give a bankrupt defendant the same choice of counsel that a person with means has. Legal aid is designed to reduce some of the inequities caused by an unequal distribution of income; it is not designed absolutely to equalize all defendants. It is specious to argue that because a person cannot choose exactly the counsel he wants, he must be forced to rely upon inadequate or ineffective counsel.

Furthermore, the argument presented here may be applied with equal force to the assigned counsel system as it operates in most states. The usual assignment of counsel in most states is made by a court, and defendants ordinarily have no choice as to who shall defend them.

Finally, in some places where public defenders are employed, there is a certain amount of choice given to the defendant. In Cook County, for example, when a criminal defendant without means for some reason wishes counsel other than the regular public defender, the court will appoint a lawyer from a list prepared and submitted by the local bar association.

Thus far, all the arguments which have been presented against the public defender system may actually be applied with more or less equal force against the assigned counsel system. These arguments seem to be directed not so much at public defenders specifically as at the whole notion of publicly-supported legal aid. The following objections are aimed at the public defender plan exclusively.

7. It is claimed that indigent criminal defendants get adequate protection under the assigned counsel system because the lists of lawyers from which assignments are made contain the names of many outstanding lawyers. Hence, there is no necessity for public defenders.

It cannot be denied that many excellent lawyers make themselves available for assignments in cases involving persons too poor to hire private counsel. These lawyers serve ably and conscientiously with little or no compensation. In fact, some lawyers believe it to be one of their duties as officers of the court to undertake to defend indigent criminal defendants, even when there is no prospect of compensation in the case.

However, as seen earlier, in the majority of cases with indigent defendants the assignments go not to experienced and distinguished lawyers but rather to young and inexperienced ones. For every lawyer with a large practice who accepts an assignment in a case involving an indigent defendant, there are many who consciously strive to avoid such assignments. Younger lawyers, on the other hand, frequently welcome such assignments because of the income which may be involved in them, as well as for the experience and the publicity which these cases may bring. While

it is desirable that young lawyers gain experience as quickly as possible, gambling with a defendant's liberty—and in some cases with his life—is hardly a proper device for accomplishing that result.

This aspect of the assigned counsel system has been a recognized defect for a long period of time. Forty years ago, an editorial writer noted that the lists from which assignments to defend indigent persons are made contain a high proportion of lawyers "... who hang around the jail and the police courts and wring a more or less precarious and more or less honest existence from the misfortunes of the smaller class of thieves. This type may spend more time scaring clients into raising money than in conducting the defense."[15] Modern students of law and government have found this situation to be one which still prevails largely today.[16] The only alternative is to have an official charged with the responsibility of regularly conducting the defense for indigent persons appearing as criminal defendants. Such an official is the public defender.

8. The public defender system is said to be a pet project of the "reformers," or persons moved by "utopian" or "idealistic" or "unrealistic" ideas. It is said to reflect exaggerated and undue concern by these persons over a very small group of individuals, that is to say, those who may unjustly have been charged with criminal activity. Coupled with this complaint is the intimation that the public defender system cannot work effectively in practice, despite the fond hopes of the "utopian reformers."

Perhaps the best way to analyze this criticism is to quote at some length from an editorial in which the objection mentioned above was made. The writer of the editorial first criticizes the supporters of the public defender plan for painting a picture of a man torn from his family and sent to jail, and then goes on to say:

> But while the picture is a moving one, it is well to inquire into whether it is a true one before we adopt a measure so drastic—and so expensive—as that now proposed. For no such powerful appeal is presented by the case of some cowardly brute or unprincipled thief who is put away for a few months or years in a modern prison having most of the conveniences of a family hotel where he is subjected to no real hardship—so long as he obeys the rules—save being deprived temporarily of an opportunity to repeat his crimes.[17]

The quotation reflects such a complete lack of sympathy with the problems of defendants charged with crime and presents views so completely at variance with modern concepts of criminology that the competence of the writer to criticize in these matters is placed seriously in question.

Turning to the objection itself, an examination of the names of those persons who have, over the past half-century, warmly endorsed the public defender plan would soon disabuse one of the notion that only "reformers" have supported it. For example, during hearings in 1954 on a bill to establish public defenders in the federal

[15] *Public Defenders*, NATIONAL CORPORATION REPORTER, 50: 346 (April 1, 1915).

[16] See, for example, MARTIN V. CALLAGY, *Legal Aid in Criminal Cases*, JOUR. OF CRIM. LAW, CRIMINOL., AND POL. SCI., 42: 606–607 (January–February, 1950). One of the conclusions reached by Mr. Callagy is "... that *there is no adequate country-wide legal representation for poor persons accused of crime.*" *Ibid.*, p. 594.

[17] *The Public Defender Fallacy*, BENCH AND BAR, 10(n.s.): 51 (June, 1915).

courts, it was revealed that supporters of such legislation included the American Bar Association, the Judicial Conference of the United States, numerous federal judges, and many other distinguished persons, both public and private.

As far as working out in practice is concerned, the number of governmental units which employ public defenders continues to grow steadily. The opinions of lawyers and judges in those areas where public defenders are being used indicate satisfaction with the institution and the absence of a desire to return to the system of assigned counsel. In November, 1914, an article entitled "The Knell of the Public Defender" appeared in a leading legal journal, predicting an early demise of this proposal of "sentimental reformers" and "amiable but misguided persons."[18] The experience of the past four decades amply demonstrate the continuing vitality of the public defender movement and the acceptance of the system in practice.

9. Critics of the public defender system claim that it is very costly to operate. A committee of the New York County Lawyer's Association which investigated the question of public defenders some years ago expressed the belief that the expenditures required would be as great as that of the district attorney's office. It is felt that such a large expenditure of public money cannot be justified in terms of the service which the public defender may be called upon to perform.

This criticism has no basis in fact. For example, the State of Connecticut, which maintains public defender offices in every judicial district in the state, expended in 1953–1954 the sum of $34,669.91 for the support of its public defenders. This sum was less than those expended on official stenographers, coroners, probation officers, and sheriffs, and was less than one-sixth of the amount spent on state's attorneys (prosecuting attorneys).[19] It is estimated that 600 cases a year are handled by the state's nine public defenders. This means that it costs the State of Connecticut an average of about $60.00 to insure that in every case an indigent person charged with a crime shall have an effective defense.

10. It is contended that political considerations may enter into the question of the selection of the defender, especially where that official is popularly elected. Likewise, where the defender is appointed by a court, he may tend to become subservient to that court and reluctant to do things which may displease it, although these actions may be in the best interests of the defendant.

This objection seems to be a valid one, provided that it is confined to those areas where the public defender is either elected popularly or is chosen by a single judge. Many governmental units which make use of public defender offices, however, have established them on a merit basis, making it difficult, it not impossible, for political considerations to be important. Other jurisdictions have provided different means for the selection of their public defenders, also designed to keep politics and court connections out of the picture.

[18] BENCH AND BAR, 9(n.s.): 287.

[19] The figures for all the categories mentioned are as follows: official stenographers: $140,869.40; coroners: $135,804.94; probation officers: $40,408.19; sheriffs: $49,149.94; state's attorneys: $222,651.62. See: State of Connecticut, Judicial Department, Report of Executive Secretary, 1953–1954, Table V.

In the cities of Long Beach and Los Angeles, for example, the public defenders are chosen by the City Council on the basis of competitive examinations, and, upon appointment, receive civil service tenure. In Connecticut, the state's nine public defenders are chosen for one-year terms by all the Superior Court judges sitting *en banc*, while Superior Court trials are conducted by these judges sitting individually. Where devices such as these are used to make the appointments of the public defenders, politics are kept at a minimum and the appointed defenders owe no duty to any particular court, but only to the public and to the indigent criminal defendants.

11. Finally, the contention is made that exactly in the way that some prosecutors may overzealously prosecute all criminal defendants—including those who may be innocent—public defenders may be too zealous about protecting the rights of those persons known to them to be guilty. A public defender may feel that his reputation as a good lawyer depends upon freeing as many persons as possible, regardless of their actual guilt or innocence. Assigned counsel are interested only in the particular cases to which they are assigned, while public defenders develop an interest in all criminal cases involving indigent persons, since conducting such cases is their regular responsibility. Such a general interest, it is felt, may be antithetical to the public interest.

This is a difficult argument to evaluate. When it appears to a public defender that the defendant in a particular criminal case is guilty, he is supposed to persuade the defendant to permit him to enter such a plea. Frequently, he is able to convince the defendant to allow such a plea, by pointing out that judges are prone to inflict lighter sentences in cases where guilty pleas have been made. However, if a defendant of this sort insists on the plea of innocence, the public defender must enter that plea and then do his best to win the case or to win for the defendant as moderate a punishment as is possible. This is precisely what a private lawyer would do, were the defendant able to afford one. Thus, in cases where a public defender enters a plea of innocence while believing the defandant is guilty, he may truly be said to be protecting the guilty.

In connection with this argument, it should be pointed out that assigned counsel frequently persuade criminal defendants to plead guilty, so that counsel may be spared the time and expense involved in a long court trial. Private lawyers are reluctant to expend much time and trouble on cases where the reward is small; therefore, it may be advantageous to counsel to dispose of such cases as expeditiously as possible, even if such a disposal may not be in the best interests of the defendant. This is one of the defects of the assigned counsel system, as set forth above. A full-time salaried public defender, on the other hand, has no need of disposing of such cases quickly, since he does not need to rush through his indigents' cases in order to be able to devote his attention to his more lucrative private practice—if he has such practice. Thus, when a public defender enters a plea of guilty, it may be assumed that he has become genuinely convinced of the guilt of the defendant and has been able to persuade him to plead guilty. Persons who favor the adoption of the public defender plan point out that the State frequently recaptures the costs

of the defender's office in the savings which accrue to it by virtue of the fact that numerous criminal defendants plead guilty and in this way spare the State the expense of a long trial.[20]

CONCLUSION

It will be seen that almost all of the arguments adduced for the purpose of demonstrating the weaknesses of the public defender system either are based on faulty assumptions or simply do not coincide with the facts. It is not without good reason that most modern students of government, penology, and sociology, advocate abandonment of the assigned counsel system and wider establishment of public defenders as the principal means for supplying publicly-supported legal aid to indigent persons accused of crime. The past few decades has seen slow but steady progress in the spread of the employment of public defenders. Support for the public defender movement by leaders in the academic world and in public affairs presage the continued growth of the movement and augur well for the success of the system in the future.

[20] In 1915, the Public Defender of Los Angeles County released figures showing that whereas criminal cases involving private counsel lasted 1.626 days on the average, cases in which the Public Defender was employed averaged only 1.017 days. These figures are confined to Los Angeles County. THE RECORDER (San Francisco), November 10, 1915, reprinted in JOUR. OF CRIM. LAW AND CRIMINOL., 7: 232 (July, 1916).