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THE PUBLIC DEFENDER OF COOK COUNTY

In January 1929, by action of the Cook County Commissioners, which was later confirmed by statutory enactment, the Judicial Advisory Council of Cook County, became active in a practical correction of defects in the administration of criminal justice.

The Council consists of the Honorable Frederic R. DeYoung, 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 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 crime 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, among other things, investigated anew the administration of criminal justice in Cook County with a view of 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.

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

5. The expense encountered in the operation of the criminal trials by the use of juries, was great and frequently discussed 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.

Space will not permit any extended discussion of the really substantial corrections brought about by the Judicial Advisory Council of Cook County.

Probably the greatest good accomplished and the most far-reaching was the action taken upon the initiative of this Council which brought about a 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.

What About the Great Mass of Poor Unfortunates Entangled in the Machinery of Criminal Justice Without Money and Influence?

The public generally have never been much excited concerning 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 a matter of supreme indifference to the public generally.

Judges and lawyers sensitized to the misfortunes of indigent prisoners, have from time to time sought to alleviate the situation of that unfortunate class by causing the Bar Associations to do what amounted to welfare work among that class. That is to say, 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 in such a way that that office became a reality shortly before the first of October, 1930.

Prior to the Present System, How Were Indigent Prisoners Defended?

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 in 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; those who cannot are imprisoned in the County Jail. The ones who are able to give bail usually have funds to employ a lawyer to defend them. Many of those who cannot give bail have no funds for a lawyer. The law requires, however, that they be furnished counsel.

Prior to the establishment of the office of Public Defender in Cook County, the practice had been for the judge (before whom a defendant is required to state whether or not he is guilty of the charge, this procedure being technically known as an *arraignment*)—to repeat, 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 contain quite a number of instances where the Supreme Court in death cases was compelled to comment on the fact that the defendant was not properly represented by legal counsel during his trial, the case being tried by a young lawyer appointed to defend him.

One thing some of these young lawyers seemed to know instantly, and that was how to obtain money for their services. The young 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 the relatives of his client to pay him the fee upon instalments. 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 believed that if the case were tried he would not obtain the 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 witness 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 lose a day's pay. When the case would be called for trial, the lawyer upon one pretext or another, would obtain continuances and thereafter another continuance, sometimes as many as fifteen or more. This practice of seeking to delay cases from coming to trial until the appointed lawyer's fee was paid, 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 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.

What Were the Effects of Such a System?

Obviously it 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, even if he were innocent.

The Public Defender of Cook County is Appointed

The Judicial Advisory Council in their wisdom, concluded that the situation caused by 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 Hon. John P. McGoorty, Chief Justice of the Criminal Court, appointed me Public Defender of Cook County. Quarters were assigned and we are now located on the sixth floor of the Criminal Court Building at 2600 California Avenue. The staff includes a stenographer and 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 Tuesday and Friday of each week usually the prisoners in the County Jail who have been indicted are brought into a courtroom where an arraignment takes place. This means that the judge asks each prisoner if he is guilty or not, and if he has or can obtain counsel. Upon the prisoner answering that he cannot afford a lawyer, the Public De-

fender is appointed to defend him. This means that the defense of this prisoner becomes an obligation of the Public Defender's office.

On Tuesday and Friday afternoons, and usually on Saturdays, the Assistants of the Public Defender and the Public Defender, visit those new clients (prisoners in the county jail). Upon forms especially provided 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 to the assistant who interviews him. Facilities are provided whereby the witnesses 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 and 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 of witnesses in repeatedly coming to the court to testify in cases that in the past have been constantly continued, have gladly encouraged the Public Defender's office in promptly disposing of the cases.

There are now seven 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 effectively.

Aims of the Public Defender in the Trial of Cases

From the beginning the Public Defender has made it clear that he does not believe it his duty to aid guilty persons beyond insuring them a fair trial according to law. Under no circumstances does the Public Defender permit or encourage persons to commit perjury at their trials. In cases where defendants admit to him that they are guilty and there is no defense, he carries out his duty by doing his utmost to see that the prisoners though guilty, receive no unjust punishments, and by resisting respectfully and intelligently inclinations on the part of any one to impose unnecessarily cruel or unusual punishments.

In many instances the office has discovered that some poor friendless prisoner has been wrongfully accused of crime and is merely the victim of unfortunate circumstances. Here the Public Defender and his Assistants are keenly conscious of their responsibility to society for the protection of its innocent members.

Where the guilt or innocence of a defendant is not apparent—as is often the case—and where there is vigorous denial of guilt by the defendant, the Public Defender's office presents and urges every right of the defendant on a plea of not guilty. They do this with the one aim, namely, to establish the truth of the situation so that justice may be done. The defense involves a clear delineation of the defendant's viewpoint, the marshalling of witnesses, if any, the careful examination of facts presented by the defendant and gathered by investigation, and research in the law pertaining to the particular case.

In cases where first offenders are driven to crime by hunger and want, probation is asked and fought for, where the law permits.

By repeatedly establishing a precedent of fairness and fair dealing, not only with judges and prosecutors but also with prisoners, the entire staff of the Public Defender's office expects to make its contributions to the restoration of respect for law, courts and justice.

WHAT HAS THE PUBLIC DEFENDER ACCOMPLISHED FROM OCTOBER 1, 1930, TO FEBRUARY 1, 1931?

Number of cases disposed of	597
Pleas of guilty	214
Jury Trials	32
Verdicts of guilty	15
Verdicts of not guilty	15
Court Trials	245
Findings of guilty	162
Findings of not guilty	83
Sentenced to:	
County Jail	7
House of Correction	95
Joliet	119
Pontiac	76
State Farm	1
State Hospitals	3
Women's Reformatory at Dwight, Ill.	1
Probation granted	78
Dismissed by State's Attorney upon punishment on another indictment	207

An outstanding item is the fact that out of 597 cases disposed of, there were only 32 jury trials.

It is noteworthy that out of 245 cases tried by the Court without a jury, there were 83 findings of not guilty, or about 33% of the cases.

If it be considered that 33% be found not guilty in contested cases, without the use of perjury, or unfair means of

any kind by the Public Defender or his assistants, one can easily imagine what the fate was of the great number of indigent prisoners who were not properly defended before the establishment of the office of Public Defender.

Attention is called to an enormous saving contributed to by the Public Defender and his Assistants by the waiver of a jury in a great number of justifiable cases. It is now safely estimated that for the coming year on money paid out to jurors, the saving will be more than $23,000.00 a month—nearly $250,000.00 for the year.

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