

Fall 1927

## Public Defender an Aid to Criminal Justice, The

Samuel Rubin

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

---

### Recommended Citation

Samuel Rubin, Public Defender an Aid to Criminal Justice, The, 18 *Am. Inst. Crim. L. & Criminology* 346 (1927-1928)

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in *Journal of Criminal Law and Criminology* by an authorized editor of Northwestern University School of Law Scholarly Commons.

# “THE PUBLIC DEFENDER AN AID TO CRIMINAL JUSTICE”

SAMUEL RUBIN<sup>1</sup>

“Men shut their eyes against a setting Sun.”—*Shakespeare*.

“When a man is going down hill every one will give him a push.”—*Scotch Proverb*.

Aristotle, the ancient Greek philosopher, was once asked: “What is justice?” To which he replied: “To give every man his own.” “To give every man his own” is one of the foundation stones of free government. To do justice to the poor and helpless, to protect them in their rights with the power of the State, is the very purpose for which the State exists. This is precisely and exactly upon the same theory as the relation between parent and child, up to the point where the child, or the citizen (in the present instance) forfeits that protection.

There is a theory of the law that persons charged with criminal offences are presumed to be innocent until proven guilty. In practice, however, as can be verified by any lawyer who tries criminal cases, the contrary is true. The very fact of being charged with a crime usually pre-supposes guilt, and the fact that the Grand Jury (in those States where there are Grand Juries) has indicted the accused is often enough to prejudice his case in the eyes of the trial jury. The truth is that the burden is upon the accused to prove his innocence, and not upon the State to prove him guilty. If the accused happens to have been convicted of a previous offence the prisoner's chances of acquittal are indeed slight.

The better element of society is now beginning to demand that fair play be given indigent defendants in criminal proceedings so that even though the accused has not a nickle to his name he will be assured an honest, adequate and full defence, in the event there is a defence, or if the accused has no defence, then advice and guidance.

## *Erroneous Convictions:*

In Mississippi several years ago the Legislature voted \$5,000 to a man named Will Purvis, a farmer, for having twice faced the gallows, but who was ultimately exonerated of the murder of Will

<sup>1</sup>Member of the Baltimore Bar.

Buckley, a witness in a white-capping case which occurred 26 years before, near Columbus, Miss. Through a miscalculation, he defeated the efforts of the authorities, and his sentence was commuted to life imprisonment in the Penitentiary. Two years later, Joe Beard another farmer, cleared Purvis in a death bed confession relating to the killing of Buckley, and Purvis was pardoned. In 1922 the Legislature of Mississippi appropriated \$5,000 as above stated to pay Purvis "for services rendered the State due to his being illegally confined."

In 1917 Rafaela Morella of New Jersey was called by the Draft Board. His wife pleaded with him not to go. While the couple were visiting Mrs. Morella's parents' house, the wife feeling the draft order was the end of everything, in her despair shot herself. Dazed, Morella caught up the pistol and shot himself also. The woman's parents, when he recovered, accused Morella of murder. Due to a strange dialect which they spoke, the interpreter misunderstood the facts, giving literal, but not accurate rendering of the testimony. This misinterpretation led the authorities to believe he admitted killing her. Morella was sentenced to life imprisonment. During his eight years imprisonment he learned English. Finally, he made his story known to attendants, and a pardon was promptly ordered.

The following case was tried before Judge Eugene O'Dunne in Baltimore, Md.:

Edward A. Kimball came from a family that had been well known in Massachusetts for over three hundred years. He was a wealthy and respected citizen of New York City, a graduate lawyer, and a former student of theology, medicine and philosophy, and without any crime record whatever. His wife being abroad for a short trip he determined to go to Philadelphia, Baltimore, Washington and Annapolis. He registered at the New Willard hotel in Washington as well as the Emerson hotel in Baltimore under his own name.

On June 10th, 1926, after his return from Annapolis, he hurriedly took a taxi-cab from the Emerson hotel to Union Station bound for his New York home. At the station he was arrested upon the unsupported evidence of a man named Michael Funicello of Brooklyn, New York, an ignorant Italian, with little knowledge of the English language, and who charged Kimball with having conspired by trickery to swindle him out of \$15,000 in the victim's rooms on the 16th floor of the Emerson hotel. He was also charged with having assaulted the Italian, with two others, in the same room.

The prisoner denied that he had ever seen the Italian before; stated that he had only \$30.00 in his pocket; gave his New York address, and said he had never been under arrest before. He explained he was interested in property amounting to \$200,000.00 a part of which he had put into a Voluntary Trust at the Bankers Trust Company of New York City. Kimball, nevertheless was arrested, photographed, finger-printed and immediately sent to the Baltimore City Jail where, being greatly mortified and his wife being away, he remained for two weeks before giving bail, which cost him \$300.00 and a deposit of \$15,000 in cash to secure the bondsman. It was later charged by his attorney (the attorney who represented him in the second proceedings) that the defendant had been subjected to the third degree while incarcerated. Although the Police Department denied this statement, it instituted an investigation and entirely absolved its members, asserting that the third degree was not being used in Baltimore. It should be stated that within two days after the charge was made the Italian had changed his story completely, stating that the assault at the Emerson was entirely untrue, but that instead Mr. Kimball with a gang of swindlers had claimed to be the president of the Baltimore Stock Exchange, and had robbed him of \$15,000.

Despite Kimball's denials and his affidavits showing he was prominently connected in New York and Massachusetts, he was brought to trial on November 10, 1926, in the Criminal Court of Baltimore City before Judge Eugene O'Dunne and a jury. A surprise witness was sprung on Kimball and his attorney by the State. This witness testified that Kimball, posing as the president of the Chicago Chamber of Commerce, had swindled him out of \$17,000. At the same time Kimball produced evidence that the moment he was alleged to be putting over the Baltimore swindle he was paying his bill at the Willard Hotel, Washington. There was nevertheless an alleged identification of a sort, and the prisoner was convicted.

It should here be explained that after Kimball's arrest and his photograph and finger-prints had been taken, his photographs were sent by the Police Department and the United State authorities throughout the country as a man taking part in a bold swindling operation. The result was that two different persons in the west who had been swindled, probably by the same gang of swindlers as operated in Baltimore, identified Kimball as one of those who had swindled them. One of these appeared at the trial in Baltimore WITHOUT ANY KNOWLEDGE IN ADVANCE BY KIMBALL OR HIS ATTORNEY, and testified that Kimball had swindled him on May 1,

1925, eighteen (18) months before, giving the details which were very similar to the details of the swindling operation in Baltimore. Kimball was not able to testify as to exactly what he was doing eighteen months previously (May 1, 1925), but he and his wife and son testified that none of them had been in Chicago since 1916. And it was on this testimony that he was largely convicted.

As the jury filed out after rendering its verdict Judge O'Dunne remarked to several of the panel. "I hope you have convicted the right man?" Questioned by the jurors, Judge O'Dunne said: "I believe this man is innocent, and that you have made a terrible mistake."

Fortunately, however, at a later date a complete alibi was established with regard to the out of town charges, conclusive documentary evidence being produced that Kimball was in New York City on May 1, 1925. This new evidence showed that Kimball was in New York City on that date, and had visited his Safe Deposit box at least once signing the register as required by the Trust Company. This established the complete innocence of Kimball.

On December 20th, 1926, the Supreme Bench of Baltimore City, with the consent of the State's Attorney's office, granted a new trial on the basis of newly discovered evidence. On January 7, 1927, Kimball was found "not guilty" of the Chicago charges by United States Commissioner Supplee, Jr. On the following day the State's Attorney for Baltimore City appeared before Judge O'Dunne of the Criminal Court and entered a plea of "not guilty confessed" to the charges in Baltimore. Judge O'Dunne apologized to Kimball for the State and said he regretted the State made no provision for restitution in such cases.

These illustrations are cited to show the need of counsel and careful investigations, and are several of a large number of similar up-to-date cases which I gathered and verified recently and which probably will be published in book form shortly in a book upon the same subject as this article. They show how easily justice may go wrong, and especially do they illustrate the need of an adequate defence in every case where there is a defence, regardless of the fact whether in the cases cited there were counsel or not.

The poor man has ever been the prey of the unscrupulous of all classes. He believes that if he is unjustly charged with an offence it will only be necessary for him to explain his case in order to be set free. He does not fully realize that to obtain the facts and present them requires lawyers and investigators. Both of these

cost money. Having no money he is left to defend himself the best he can. In Baltimore counsel are paid up to \$100.00 in assigned cases. But attorneys are only appointed in capital or very serious cases. There were twenty-five attorneys assigned in these classes of cases in Baltimore City during 1925. About 46% of persons charged with crime are not represented at all.

In Maryland a prisoner may be tried by the judge alone without a jury if he so chooses, and 93% of criminal cases are so tried. In jury cases the jury are the judges of both the law and the facts, and the judge is more in the nature of an umpire. He passes upon objections to testimony. After conviction he imposes sentence. Also he labors under the difficulty of knowing only those facts introduced in evidence, unless for some reason after conviction he desires the probation department to make an investigation. In spite of the fact that judges everywhere, for the most part are careful and considerate, nevertheless the shrewd criminal has many advantages which the indigent lacks. A clever criminal supplied with money and able counsel, obtains every safeguard which the law gives him, but the man without funds, the "in forma pauperis," must be satisfied with a meager presentation of his case. As far as the Grand Jury is concerned, it hears just enough testimony to make a prima facie case. The average time devoted by the Grand Jury to each case in Baltimore is six minutes. The State's Attorney is its legal advisor. Sometimes it disregards the advice of the State's Attorney, but this is very rare. It is more often a rubber stamp to the State's Attorney. Of course where there is a plain case of innocence there can be no difficulty. However, most cases are not plain, so that if we desire to do justice to indigent defendants we must provide the means by which the law and the facts will be adequately and honestly presented. "When litigation is too costly," said Chief Justice Olson, of the Chicago Municipal Court, "the result for many persons is a denial of justice. Such denial, or partial denial of justice, engenders social and commercial friction. The sense of helplessness thus caused incites citizens to take the law into their own hands. It causes crime and violence. It saps patriotism and destroys civic pride. It rouses class jealousies and breeds contempt for law and government."

It is for the great army of "in forma pauperis," the weak, the deformed mentally and morally, who are not given a square deal in our courts—because of poverty—for whom I would raise my voice and enter my plea for a square deal. I charge the State with defaulting in its obligations to a portion of society by guaranteeing the

equal administration of the law for rich and poor alike, and then failing in its obligations to indigent defendants. I charge the State with saying to its weak members—pay or take the consequences of your poverty.

*The Argument for a Public Defender:*

There is little doubt that everyone is in favor of an adequate and proper method of affording a defence to those charged with criminal offences, particularly to the indigent. The average citizen, however, is not familiar with the fact that the overwhelming majority of persons are unable, because of poverty, to secure adequate representation. The U. S. Labor Department Bulletin No. 398 (1926), states that there were more than twenty million wage earners and their dependents in this country in 1918 who did not earn enough to employ counsel in the event of requiring legal services.

The prisoner must have counsel, but does not know for whom to send. Being locked up prevents him from making inquiry for the kind of an attorney he desires to secure. Time is short. Possibly the trial is only a day or two hence. He has to secure witnesses, and maybe does not know their addresses. Very often witnesses are summoned and fail to appear. Mostly the witnesses are of the same forlorn class as the accused, and cannot be located. The state presents its evidence, which is often colored by the State's Witnesses. It may be pure "hearsay," rather than fact. The impression is created that the defendant is guilty. The judge (or the jury as the case may be), being there to see that no guilty person escapes, reasons he must protect the public, and therefore cannot acquit the accused under the evidence, which to the judge appears likelihood of guilt. The verdict being guilty, the legal presumption of innocence flies through the window. Who can tell but that if ALL the facts had been presented the verdict might have been an acquittal?

*Guilty Defendants:*

Even where the accused is guilty the argument in favor of a Public Defender is strong. The community ought never to deny professional aid to the destitute, and this regardless of whether the prisoner is innocent or guilty. The criminal law is not only for the benefit of the innocent but for the guilty as well, and the court cannot apply the law properly unless it is in possession of all the facts of the case, any more than a surgeon can satisfactorily operate upon a

patient by being familiar only with part of his case. Until the question at trial is finally decided, the accused is not guilty, and the fact that the indications point to guilt makes no difference at all. An accused person is innocent until the verdict is pronounced, and not until then should his guilt be definitely emphasized.

Quoting from the New York Voluntary Defender's Report: "What most of all a guilty defendant needs is a conscientious lawyer, sufficiently experienced in criminal proceedings to advise his client in such a manner as to bring out a proper presentation of his case. He may by proper advice be saved from a criminal career. Again, it often happens that the chief aim of attorneys is to get their client off at any price. Prisoners in New York Penal institutions state that the large number of second offenders in that city is due largely to the fact that they were left off too easy, through astuteness of their attorneys, the first time, and hence thought they could do the same thing the second time. It all depends upon the attorney, and his motive in taking the case. A Public Defender could have only one motive. To give the prisoner a square deal, and to do his duty toward the state whose servant he is."

*Inequality of the law:*

There can be no doubt that the administration of criminal law in this country does not work out impartially, and while it is true that in theory that every precaution is offered the accused, in practice much of this protection is omitted. That the State's officers do their best is beside the point. The fact remains the criminal machinery is in some respects antiquated—the system is imperfect—and it is the failure of the system—rather than of men—which has resulted in a denial of justice to many people all over the country. Said Chief Justice Taft in an address before the Virginia Bar Association a few years ago: "Of all the questions which are before the American people, I regard none of more importance than the improvement of the administration of justice. We must make it so that the poor man will have as nearly as possible an equal opportunity in litigation as the rich man, and under present conditions, ashamed as we may be of it, this is not the fact."

*Weakness of the present system:*

"The present system states 'Justice and the Poor'<sup>2</sup> looks too

---

<sup>2</sup>By Reginald Herber Smith, of the Boston Bar—published by the Carnegie Foundation.



much to victory for the powerful, and too little to justice for the poor. . . . The preliminary hearing before a magistrate is intended to determine only whether the accused is so palpably innocent as to be entitled to immediate release, or whether there is sufficient evidence to hold him for a further investigation and action by the Grand Jury. If there is insufficient evidence he should be released. The magistrate often hesitates to pass upon a case, and sends it to a higher court. Many times he refuses to accept the responsibility, although the object of the preliminary hearing is to pass upon the question whether there is sufficient evidence. At these hearings no counsel are assigned."

There is a demand from all sections of the country for a greater realization of justice. This is being manifested in movements constantly taking place to elevate men and women to a higher level. None of these movements, however, are more vital to society than its obligation to see that all persons, no matter how poor or how oppressed, shall have justice in the administration of the criminal law. "Paris," said Victor Hugo, "has a child, and the forest has a bird. The bird is called a sparrow, and the child is called a gamin. This gamin has grown to manhood. At birth he was forsaken by those who should have been his shield and protection. He has from childhood been protected by society. He grew up with naked feet, naked head, in rags, without knowing what to do to live. He cannot read; he does not know that he is subject to law, and that there is a Heaven above him. He has no hearth, no roof, no family, no belief, no book. . . . His intelligence never opened, for intelligence, like flowers, opens only to the light, and he is in darkness. However, he must eat to live. Society has made a brute of him, and hunger has made him a thief."

*The Idea explained:*

*Duty of the Public Defender:*

It is the duty of the Public Defender to safeguard the rights of persons accused of crime, who, on account of unfortunate circumstances or lack of adequate means are unable to defend themselves. The idea is based upon the fact that it is the duty of the State to shield the innocent as well as punish the guilty; and that it is the duty of the State to supply the means for such defence where the accused is too poor to do so. It is his duty to deal squarely with all classes of persons, and as long as the presumption of innocence

attaches the prisoner is to have ample resources and opportunity to properly present his case. To have a Public Defender means that there will be a sworn official possessing experience and integrity who will always be ready to take hold of any case where an accused indigent person is unrepresented.

The Public Defender would be ready at all times to place before the court evidence gathered by his staff. His investigation would be thorough. He would be the left hand of the court just as the State's Attorney is the court's right hand. There would be two hands instead of one. It would not be his business to obtain acquittals. Habitual criminals would steer as clear of him as of the State's Attorney's office, for the reason that he would be a State official. The Public Defender (as in Los Angeles and elsewhere) "continues his work even after guilt is established, upon the theory that it is as great a wrong to impose an excessive and unmerited sentence, as to pass a wrong verdict. It is the duty of the defender to inform the court of all the surrounding circumstances and conditions and of the past history of the prisoner's life, to ask mercy where it is deserved, and to generally assist the court in arriving at a just disposition of the case.

Public defence is simply an advanced stage of legal aid to include criminal cases. It touches legal services in all cases of poverty where the applicant is an "in forma pauperis." It is contended that as centralization works for economy, efficiency and responsibility, there should be, instead of shifting groups of attorneys (which is the appointive system, the next best arrangement), one definite official or organization charged with the duty of defending the poor. "It was the harshness . . . of the circumstances in shutting poor people out of the opportunity to appeal to courts which brought about the organization of Legal Aid Societies," says Chief Justice Taft, "without expressing a personal opinion on the subject, it seems to me that ultimately these instrumentalities will have to be made a part of the administration of justice and paid for out of the public funds. I think that we shall have to come, and ought to come, to the creation in every criminal court of the office of Public Defender, and he should be paid out of the treasury of the County or State."<sup>3</sup>

Already a dozen or more cities including Los Angeles, San Francisco and New York (Manhattan only) have defender organizations. Los Angeles and New York have the oldest organizations and are the two outstanding illustrations of the successful operation of the

---

<sup>3</sup>See preface to Bulletin No. 398, U. S. Labor Dept.

defender idea. The former is publicly supported and the latter privately. The cities of Hartford, Bridgeport and New Haven, Connecticut, have had defenders for several years, as have Minneapolis and Omaha. New London, Windham, Litchfield, Middlesex and Tolland, Connecticut, have within the last several months established defender's offices, as has Memphis, Tenn.; Columbus and Youngstown, Ohio. On Dec. 1, 1926, Chicago established a plan of its own. The Northwestern University School of law received a generous gift from Anna Louise Raymond, the income of which was to be used for the legal clinic of the law school. Through the influence of Dean John H. Wigmore and other members of the faculty of the law school a criminal court branch of the Legal Aid Bureau was established which is under the control of a joint managing committee consisting of three members, one each representing the Chicago Bar Association, the Northwestern University School of Law and the United Charities. The committee has enlisted the services of 300 members of the Bar on a Voluntary basis; the case worker is supplied by the United Charities, and the clinic is under the supervision of a member of the faculty of the law school.

It should in this connection be stated that a somewhat similar provision as the gift of Anna Louise Raymond was made in the will of the late Edward S. Harkness of New York who created an endowment of \$150,000.00 the income of which is to be applied to rendering and procuring legal aid to deserving persons who cannot afford to pay for the services of lawyers, and to bring within their reach "the blessings of equal justice in its truest and finest aspect."

In many of the State legislatures bills providing for Public Defenders have at various times been introduced. California, Connecticut, Nebraska, Minnesota, have State-wide Public Defender laws, as has also Virginia for cities over 100,000 population, but in the latter State no provision as to salary has been made, therefore there have been no defender offices established. In Connecticut the State-wide law was passed as the result of the approval of the State Bar Association and of the Chief Justice of the State,<sup>4</sup> and after its success had been demonstrated. In Connecticut the Public Defenders have equal rights with the State's Attorneys to the use of the police and detective departments.

*Two concrete pictures of the defender in operation:*

The following are two concrete cases showing the nature of the defender's work.

---

<sup>4</sup>Hon. George Wheeler, Chief Judge of the Supreme Court of Errors.

*State v. Israel*—tried by Public Defender DeForrest of Bridgeport, Conn., May 27th, 1924, and cited in U. S. Labor Department Bulletin No. 398 at Page 42, as follows:

"Israel was indicted for the murder of a priest. The murder was an atrocious one in which the assailant had shot his victim through the head with a revolver. The shooting occurred on the streets of Bridgeport about 7:45 P. M. and the murderer was seen by several people to flee rapidly from the scene of the crime and disappear. The police became very active, but for two weeks made no arrests. Harold Israel, an ex-service man, about this time was out of work and set out to walk to Norwalk. He had in his pocket a loaded revolver which he had owned for a long time. He was picked up by a policeman as a suspicious person. The police spent hours questioning him as a suspect. At first he denied the crime, but finally he signed a confession and was thereupon indicted by the grand jury.

"Mr. DeForrest, the Public Defender of Bridgeport, immediately became interested in the case because of the youth of the prisoner, his lack of friends, and the seriousness of the charge against him. Mr. DeForrest appeared at the coroner's hearing and was impressed with the mental condition and evident distress of the accused. The evidence adduced by the prosecution seemed without flaw. Witnesses identified the accused as the person whom they had seen commit the crime. The deceased had been shot by a 32 caliber revolver. The accused had such a revolver with four chambers loaded and one chamber empty. Upon being questioned the accused indicated where the missing cartridge could be found. A cartridge was found there. An engineer formerly in the ballistic department of the Remington Arms Company, after experiments, reached the conclusion that the fatal bullet had been fired through Israel's revolver.

"Yet the Public Defender was struck with the strangeness of the case and became convinced that the man was innocent. This opinion he stated in the public press and to the State's Attorney. His influence induced the State's Attorney to commence an independent investigation. The situation was remarkable because the net of evidence secured by the police and others appeared sufficient to convict the accused of first degree murder.

"The result of the investigation of the State's Attorney was first to disprove the confession. It was clearly demonstrated that the mentality of the accused was defective, and that he had completely succumbed to the stronger wills of the police. One by one the identi-

fication by various witnesses was proved to be mistaken. It was shown that Israel could not possibly have been the man whom they saw commit the murder. Finally a group of ballistic engineers made an examination and came to the conclusion that the bullet causing the death had not been fired from Israel's revolver. The technical evidence was so conclusive that the State's Attorney appeared in court and nol-prosed the case against Israel.

"When one considers the prominence of the deceased, the public clamor over his death, the demand for vengeance, the apparently flawless case against the accused, there is reason to believe that an innocent man would have paid the extreme penalty for a crime he did not commit if he had been obliged to provide and pay for his own defence. He was saved by the lawyer-like work of the defender and also, let us remember, by the cordial and thorough cooperation of the prosecuting attorney."

In connection with the Israel case it should be here stated that too much credit cannot be given Mr. Homer S. Cummings, the State's Attorney in this case. It was due to his impartiality, fairness and high public service that a nol-pros was finally entered, his reasons for so doing being given in a lengthy explanation addressed to the court and which appears in full in the *Journal of Criminal Law and Criminology* for November, 1924.

The other case is that of *Robert Hamilton*, tried in San Francisco.

Robert Hamilton was arrested in June, 1926, charged by Mrs. Isabelle Clyde with having disappeared with all her valuables after being married to her. There was a preliminary hearing before Police Magistrate Golden, and the prisoner's alleged wife and several witnesses identified him as being the man who had married her. Things looked pretty black for Hamilton. He, however, through Public Defender Eagan steadfastly maintained that at the time he was supposed to have married the woman in San Francisco he was serving with the U. S. Army in Hawaii, and that he had never seen the woman until the day she had pointed him out on the street and caused his arrest.

Young Hamilton, who had steadfastly insisted that he was not Mrs. Clyde's husband, scored a telling point when U. S. Army records were produced showing that he was 2,000 miles away on his supposed wedding day. Public Defender Eagan acting on Hamilton's statements, communicated with the Adjutant at Fort McDowell, Angel Island, and received copies of records showing that Hamilton enlisted

at Fort Lawton, Washington, on December 11, 1922; that he was sent to Hawaii, February 6, 1923, and remained in the service there until he was returned to San Francisco and discharged on June 23, 1924. This corroborated the statement made by Hamilton upon his arrest two weeks prior to the hearing. Mrs. Clyde claimed they were married in San Francisco in July, 1923, and yet the Army records showed that he was in the Islands from February throughout the entire year and six months of the next. "What recompense will I get for staying in jail all this time?" said Hamilton. "I believe I will sue for false arrest."

*Benefits of a Public Defender:*

Some of the benefits which a Public Defender would bring about are:

1. *Every indigent person charged with crime will be represented by an attorney who would be interested in the welfare of the State as well as the accused.*

2. *There would be a thorough investigation of every indigent's case BEFORE trial.* It would be the business of the investigator to trace the truthfulness of alleged testimony in order that the court may be able to give proper judgment, and thereby render justice to the poorest and most helpless.

3. *Prisoners would be properly advised.*

4. *Convictions of innocent persons will be reduced to a minimum.*

5. *The constitutional and legal safeguards guaranteed to the accused will be better protected.*

6. *Cases will be brought to trial without needless delays,* and in those communities where cases are unduly rushed to trial time for preparation in accordance with the fundamental law of the land will be insisted upon as a matter of right.

7. *The defender would present the FULL facts, and show ALL the MITIGATING circumstances.*

Former Public Defender Wood (now Judge of the Superior Court of Los Angeles), in this connection states: "An important feature of the work of the office is the presentation of all the circumstances of the offences in cases where guilt is admitted. Seldom a case is presented in which there are not mitigating circumstances. If the court is to handle cases intelligently and render proper judgment, it is necessary that complete information be furnished. This

necessitates a great deal of work which must be carefully and judiciously performed. The granting or refusal of probation depends upon the faithfulness with which the circumstances are presented to the court."

8. (a) *Pleas of guilty where the facts justify the plea will be increased;*

(b) *Pleas of guilty where the facts do not justify the plea will be decreased.*

9. *Perjury will be lessened and trials will be more honestly and ably conducted.* The Public Defender is never a party to a perjured defence.

10. *Attorneys of a low standard who make it a practice of preying upon unfortunate prisoners will largely be eliminated.*

Says the Public Defender of Los Angeles: "Our office has attempted to conduct our cases on the highest possible plane. The Attorneys in the District Attorney's office and those in the Public Defender's office are presenting their respective sides fairly, without indulging in the methods which have to some extent brought criminal practice into disrepute. Wherever possible the two offices have stipulated to ask the court to appoint expert witnesses who should represent both sides and who should be the only expert witnesses in the case. This not only saves money to the county, but results in fair opinions by disinterested witnesses. In the case of *People v. Alvarado* charged with murder, this method was pursued and the defendant declared to be insane and sent to a State institution for the insane."

"With the advent of the Public Defender lawyers of a low grade have almost entirely disappeared" says Bulletin No. 398 of the U. S. Labor Department.

11. *Guilty prisoners will not receive excessive punishment.*

12. *There will be centralization of Office force and a recognized standing of the office comparable to the prosecuting attorney.*

13. *It will be an aid to the court, and lessen the work of the court.*

14. *It would save time and expense.*

(In Cleveland the office was recommended upon the following grounds:)

a. ECONOMY. The courts of Cleveland expended in 1920 \$32,500 upon assigned counsel.

b. While the City and County of Los Angeles spent in 1917 upon the office of Public Defender (which handled 522 cases) only

between \$20,000 and \$25,000. Still Los Angeles at the same time took care of about 8,000 civil cases. It is held that this is an indication of efficiency as a result of specialization.

"I am convinced that the entire expense of maintaining the Public Defender's office, including all salaries paid, is saved the people of the county and State many times a year because of the unnecessary and useless waste of time that is prevented by the Public Defender getting defendants to plead guilty, where the attorneys appointed by the court or privately engaged would often, for the sake of the fee, either from the defendant or his friends and relatives, prolonging a fight and take up the time of the court with a long drawn out trial," says Hon. Charles S. Burnell, Judge of the Superior Court of Los Angeles.

"The presence of the defender has the effect of winnowing out at an early stage all cases except those where a trial is absolutely necessary," say the Labor Department Bulletin.

15. *Higher respect for law and order will be created:*

"Many poor persons have found that the government takes an interest in their welfare and wants to see justice done," says the Los Angeles Public Defender. "We have not asked for unnecessary delays and have not resorted to technicalities." In New York City the time saved was on an average more than half a day per case tried.

In Los Angeles and New York City the defender's office has the cooperation and support of the district attorney, and the same applies in the other communities where there are defenders. In the State of California the people were so pleased with the work of the Los Angeles Public Defender that in May, 1922, the State Legislature enacted a law empowering every county in the State to follow the lead of Los Angeles in this particular. San Francisco as a result has provided a defender both for the upper courts and the police courts.

16. *The Public Defender would be alert to correct injustice whether it be in the courtroom, by advice or by advocating necessary legal reforms.*

"The defender in criminal cases will be able to accumulate a fund of data which will cover new fields, and complement the facts gathered by the probation staffs as well as the courts themselves. All this will be invaluable in pointing the way to the betterment of our criminal procedure, and our treatment of the criminal," says the Labor Department Bulletin.



Los Angeles was the first city in the United States to provide a Public Defender in criminal cases, and on January 7, 1914, Walton J. Wood was selected for the position. About 1922, Mr. Wood was elected Judge of the Superior Court of Los Angeles. Until January, 1924, the Public Defender of Los Angeles was assisted by a deputy and five assistant Public Defenders, in addition to the clerical and investigating forces. On January 7, 1924, because of the volume of cases of indigents, two additional assistant Public Defenders were appointed. In November, 1915, a Police Court Defender was created for Los Angeles. Police Court Defenders were later established in San Francisco and Cleveland. In July, 1915, a defender for the Superior Court of Omaha was established. In New York City there was created an organization supported by private funds, under the name of The Voluntary Defender's Committee. Quoting from its Report: "The Voluntary Defender's Committee pay and direct efforts of counsel who will volunteer to take assignments to defend the accused and to represent before sentence those who have pleaded guilty. They serve on a salary basis, and receive no other compensation, and do no other work. They are equipped with an office and have the services of trained investigators, one a woman, who are selected in part for their ability to speak several of the foreign languages. The staff is the active center of a large association of volunteer workers. There are many lawyers who are ready to volunteer for work in the criminal courts under the advice and the assistance of the committee's staff. The Governor, the District Attorney and the Judges have become interested in the plan, and welcome its opportunities."

*Some facts as to how the plan works in New York City.*

The following is from a statement of Mr. Louis Fabricant, until recently Chief Counsel to the Committee:

"When we start the defence of a man, it is not always a contest to establish his innocence—it is an endeavor to establish the facts, both as to the legal charge that is pending against him, and as to the antecedents with which the man comes into court. . . . We have handled approximately 50% of all the felony cases assigned to the county of New York, and of the 50%, after the pleas of guilty, there remained, I should say, about 15% required for trial. These were the cases of men who insisted that they were innocent, and their cases were investigated by professional investigators whom

we employ, and who are regular members of the staff, and the evidence collated and presented to the jury in the regular way. . . . It would perhaps not be surprising to you to know that almost 70% of the cases that we have handled has resulted either in the first instance, or at some time later in the course of the proceedings, in the man's complete confession that he is guilty. An instance of this sort happened only recently. . . . We had almost become convinced that the prisoner was innocent, but yet there was evidence against the man that raised a question in counsel's mind. The defendant actually went on the stand, but while he was on trial, our investigation was also in process to check up some of the things he said. . . . The defendant finally testified that he had been lying in the initial testimony that he gave, that he had been inducted to lie by his fellow prisoners in the city prison, and then openly avowed his guilt on the stand, before the judge and jury. That was the result of careful investigation. It emphasizes the social aspect of the case, because in such a case the institution has been the instrumentality for the bringing out of the truth, and for starting the man on the true course of his re-habilitation."

*Public Defender or Assigned Counsel:*

"In some states the court, at the request of the prisoner, will appoint an attorney to defend him. In most states, however, there is either no compensation to the attorney, upon the ground that it is a duty; or the compensation is most inadequate, except in very serious cases such as murder. The result is an indifferent defence, which in a certain proportion of instances is worse than no defence at all. . . . The lawyers appointed in this way are often more interested in what is to be gotten out of the case than in the preparation of a proper and adequate defence. . . . Also, if attorneys are to be remunerated the expense to the state would be prohibitive. It would be greater than a Public Defender's office, without its resultant benefits. The field would probably be confined to a few criminal lawyers and there would be no investigations."<sup>5</sup>

Judge Otto A. Rosalsky, of the New York Court of General Sessions is quoted in Mayer C. Goldman's book "The Public Defender" with saying: "It is true that a great many lawyers who are assigned to defend poor persons, other than for murder in the first

<sup>5</sup>(Quoted from my report to the National Association of Legal Aid Organizations)—Phila. Filed May, 1927.

degree (in the latter cases counsel are compensated) willfully neglect the indigent committed to their care."

*As to the abuse of the office:*

To the contention that the Public Defender might be taken advantage of by people able to pay, the answer is that safeguards against abuse could be adopted. In Los Angeles the prisoner's financial ability to pay is investigated, and those able to secure bail are considered able to employ counsel. A further precaution (as in the United States Courts) of requiring an affidavit of property—a pauper's oath—might be required. Also where the case is a court appointment the court could revoke the assignment in such a way as not to prejudice the defendant. If after trial it should be ascertained that the defendant was able to pay counsel, the Public Defender could be empowered to sue for a reasonable fee, the same as for an ordinary debt, provided suit is filed within two or three years (the period of limitations) from the date of the judgment in the criminal cases. All amounts so recovered could be donated to the Public School fund or to some worthy charity.

In Los Angeles "29% of the applicants for assistance were rejected, most of them being refused for the reason that they were financially able to employ attorneys. Very few apply to our office expecting something to which they are not entitled. They are sent to us from other public offices without sufficient knowledge of the limitations of the office. In most cases there is no complaint made when they are told that the office is only for those who are without means of securing the services of attorneys in private practice. We have been very careful to examine the facts of each case in order to prevent the rendition of services to those who are not entitled to them."

*Indifference of lawyers:*

*Their professional obligations:*

The minority of lawyers realize that some changes are necessary in the administration of the criminal law, the majority, however, are indifferent and take very little interest in criminal practice. The average lawyer fails to take into consideration that no state or nation can remain stationary; that it must either progress or retrograde, and that the progress of a state depends to a large extent upon its usefulness to society, and especially in the way it fulfills its obligations

to the weak members thereof. It should be remembered that law is not self-enforcing, and only through its application in the courts does it obtain life and force. The Mexican Constitution goes much further in the protection of life and liberty than our Constitution or Bill of Rights. Yet in no country have those rights been more frequently violated. It is therefore the duty of the legal profession to strive to improve the law whenever possible, and to point out and correct its weaknesses. To this end it should fearlessly assert that all decisions in criminal cases should be morally as well as legally right, otherwise our boasted liberties will cease, and "fair play" becomes a mere figure of speech.

*Conclusion:*

In conclusion may I again urge what I have urged on a previous occasion. Will the American people give a square deal to the under-dog, the fellow whom no one cares at all about? Will organizations and individuals throughout the country respond by giving cooperation to this movement? In medicine great teaching hospitals are provided, where those unable to pay have heretofore been given the best of attention without cost. A "people's counsel" is provided for public service commissions, and the rights of the people are taken care of by counsel provided by the state in other departments of the government. The State takes care of the health of its poor. Why not defend their integrity?