Institutional or Private Counsel: A Judge's View of the Public Defender System

Leon Thomas David

Follow this and additional works at: https://scholarship.law.umn.edu/mlr
Part of the Law Commons

Recommended Citation
https://scholarship.law.umn.edu/mlr/1809

This Article is brought to you for free and open access by the University of Minnesota Law School. It has been accepted for inclusion in Minnesota Law Review collection by an authorized administrator of the Scholarship Repository. For more information, please contact lenzx009@umn.edu.
Institutional or Private Counsel: A Judge’s View of the Public Defender System

Leon Thomas David *

This judicial assize of the public defender system might begin and end with the expression of the California Supreme Court in People v. Adamson:¹

This Court can take judicial notice, too, that it would be difficult to find in California any lawyers more experienced or better qualified in defending criminal cases than the Public Defender of Los Angeles County.

Unfortunately, however, saying does not always make it so—even in our profession.

The base point in evaluating the public defender system is the postulate that due process requires that a defendant have competent counsel for his defense.² There is little need to elaborate upon this point; if a prominent or rich man and an obscure or poor man are entitled to receive justice by the same measuring rod, the obscure or poor defendant should have as able legal assistance as the notorious defendant or the malefactor of means.³ The real question, of course, is how we are to reach this laudable goal.

Certainly our choice is not between collective responsibility and individual conscience; that decision is far behind us. In contemporary penal processes law and sociology are entwined, if not identical. The issue is not whether society shall address itself to the defense of indigents, but what social means shall be applied to that task. Can we provide adequate representation for indigent defendants by utilizing assigned counsel rather than public defenders or voluntary defender associations? In the modern recrudescence of the mediaeval—in the rebirth of group action instead of individual responsibility, of group status instead of individual status, of collective insurance rather than individual risk, of a group conscious-

*Judge of the Superior Court, State of California, Los Angeles County.

1. 34 Cal. 2d 320, 333, 210 P.2d 13, 19 (1949).
3. See BROWNELL, LEGAL AID IN THE UNITED STATES 60-65 (1951).
ness which often dwarfs our Americanism—may we expect that employers, labor groups, religious sects, commercial organizations, and insurance groups will take over the protection of the legal relations of their members? Unless lawyers establish effective agencies under their own control for securing civil and criminal justice for the ordinary man or the indigent, the commonalty will not heed the remonstrances of the lawyer. They will set up new boards, commissions, or other agencies to adjust their affairs, despite him. Indeed, some see in the public defender system the existence of such a trend.4

This Article presents judicial impressions of the operation of a public defender system which defends indigents accused of crime. Of necessity, these impressions are directly related to the operations of the city and county defender offices in Los Angeles County because it is this system which has been under observation. Yet I think that what is lacking in my perspective may be supplied by the excellence of my model; the Los Angeles public defender offices are unquestionably the oldest, largest and best-staffed of their kind in the United States.

In Los Angeles County, its birthplace, the public defender system has operated in both the Superior Court and the courts of inferior jurisdiction for almost half a century.5 In performance, it has justified the hopes and expectations of its lawyer-founders, of the courts, and of the public. As others have noted, its success has encouraged the appointment of public defenders in other jurisdictions.6 Every county in California is now authorized to set up the office of public defender, and many have done so.7 Those

7. CAL GOV'T CODE § 27700. Los Angeles County and others have established the office by charter provisions, adopted under CAL. CONST. art. XI, § 7½. There are public defenders in the city and county of San Francisco, Los Angeles, Butte, Humboldt, Placer, Yolo, Imperial, Inyo, Merced, Stanislaus, Riverside, Alameda, Sacramento, Marin, Orange, Sonoma, San Joaquin, Siskiyou, Sutter and Tulare counties. Except in Illinois, where there are public defenders in 31 counties, the number of counties in which public defenders operate is not great: Connecticut, 9; Florida, 2; Indiana, a state public defender and 2; Minnesota, 2; Nebraska, 1; Ohio, 1; New York, 1; Oklahoma, 2; Rhode Island, 1; and Tennessee, 1. In some states, for example New York, there are voluntary defender organizations.

The Los Angeles County Bar Association provides a panel of voluntary defenders, as a project of the Junior Barristers, for the United States District Court for California, Southern District.
in Alameda County and in the city and county of San Francisco have achieved considerable repute. Similarly, the city public defenders of Los Angeles and of Long Beach have, for many years, provided effective defense for indigents in the municipal courts of those cities.  

Since 1955, in California counties without a public defender, counsel assigned by a trial court to defend an indigent defendant may be allowed a reasonable attorney's fee and necessary expenses from public funds. There is no way to know whether the adoption of such a provision in 1913 would have made a public defender unnecessary, or whether it would have delayed the public defender movement. However, it is feasible to explore the question of whether a system of assigned counsel could be as effective as the public defender system is in Los Angeles County today, 1961, and it is primarily to this question that this Article is addressed.

In arraigning an accused, the judge advises him of the right to counsel and undertakes to see that counsel is provided if the accused indicates that he is unable to secure counsel. If the accused desires to procure counsel by himself he must be afforded a reasonable time to do so, but "the court cannot in every instance await the convenience of some attorney before it can function. Reduced to its lowest terms, this would allow a popular attorney to have the courts mark time to suit his convenience."  

The defendant without means will often ask that he be given time to secure his own counsel; he may also request that the court assign Jerry Geisler or Grant Cooper, or some other lawyer whose publicized successes in criminal defense have inspired his confidence, to serve him—without charge, of course. These requests will be forwarded, but it is obvious that the volume of such requests alone must defeat any general plan to make such able men general public defenders.

A person who can pay for the exclusive services of counsel, in-

---

8. BROWNELL, op. cit. supra note 3, at 127; Los Angeles, Cal., Ord. 54691 (1915), as amended by Ord. 75,366 and salary standardization ordinances to date.

9. CAL PEN. CODE § 987a. For similar provisions in other states, see ASS'N OF BAR, CITY OF N.Y., EQUAL JUSTICE FOR THE ACCUSED, op. cit. supra note 5, at 98–111.


11. [But] of course defendant's right to counsel does not include the right to postpone the trial of a case indefinitely and reject the services of the public defender while defendant, at his leisure, attempts to find counsel who will serve without charge and of whom defendant approve[s]. People v. Adamson, 32 Cal. 2d 325, 333, 210 P.2d 12, 19 (1948).

When counsel is assigned by the court, the defendant is entitled to time within which to prepare an adequate defense. In re Newbern, 52 Cal. 2d 786, 790, 350 P.2d 116, 119 (1960).
vestigators, and technicians may be thought to have a better chance in criminal defense than the indigent who is defended by a public or private agency. But the indigent defendant is not apt to be before the court on complicated charges of corporate fraud or tax evasion where the corpus delicti is intricate. Therefore, the defense provided by a public or private agency may be as effective, or better, than that provided by private counsel. On the other hand, if there are missing witnesses or experts to secure, the possession of funds is a great advantage. No doubt a Chessman without funds could not have stayed his just end by exhausting every angle of due process in our dual judicial system.

However, the usual criminal case involves only a few facts, a few witnesses, and a limited locale. Consequently, the adequacy of defense narrows to the competence of the attorney for the defense. Is he skilled in his assessment and management of the law and the facts on behalf of his client? How persuasive is he before a jury? What experience has he in the tactics and techniques of the criminal law, and in the employment of the constitutional and legal hurdles which have to be cleared by the prosecution before there can be a conviction? What is the comparative rating of a public defender in this regard?

As a defendant is arraigned, he has a right to call upon the court to procure counsel if he is unable to employ an attorney. Just how is the judge to determine whether the prisoner is unable to employ counsel? If a defendant is able to post bail, he then is able to move about freely in an effort to find someone to take his case; but if neither the defendant nor anyone on his behalf can post bail, how is he to succeed in finding an attorney—by telephone calls from the jail?

The judge ordinarily has no investigatory facilities to verify the indigency of the prisoner. If the defendant cannot post bail and says he has neither money nor friends who will assist him, the judge may have to let the matter rest. But what lawyer will he assign to the case?

In my early years of practice, I have seen the judge scan the courtroom and summon to the indigent's defense the first young

---

12. The criminal statistics show the following classes of felonies charged, in order of their frequency: burglary; possession, sale or use of narcotics; aggravated assault; forgery and issuance of bad checks; robbery; auto theft. Homicide is at the bottom of the list. See CALIFORNIA DEP'T OF JUSTICE REP., CRIME IN CALIFORNIA 31 (1959).

13. CAL. PEN. CODE § 987 (1956):

If the defendant appears for arraignment without counsel, he must be informed by the court that it is his right to have counsel before being arraigned, and must be asked if he desires the aid of counsel. If he desires and is unable to employ counsel, the court must assign counsel to defend him.
lawyer whom he recognized that morning. I have seen another reach for a list of names he kept under the corner of his blotter; the names were those of young lawyers who had requested that they be assigned for the experience. Since a lawyer is bound by tradition, by canons of ethics, and by law never to reject the cause of the defenseless or oppressed from any consideration personal to himself, it is accepted law that the court may appoint counsel from the ranks. By tradition, however, such appointments fall to the newer members of the bar although courts have assigned eminent counsel in unusual circumstances.

Over the country, lawyers recount their assignment to the defense as an epic of their apprenticeship. The reminiscence almost always ends with the stock punch line: "I got experience, but my client got jail."

As a tyro filing papers in a police court, my arrival one day coincided with the arraignment of a madam, brought in by the weekend dragnet. Advised of her constitutional rights, she asked the court to appoint counsel. The judge did—me. As I haltingly advanced to her side, she took one look, then said: "Judge, are you referring that ______ to me as counsel, or as a customer?" This engulfed the courtroom in laughter and confused me. Perhaps an initial aversion to the assigned counsel system was born.

In my first five years of practice the sheepherder's rape case to which I was assigned did not go too badly. He was out of jail in six months. Nor did the defense of the penniless ticket scalpers raise questions relative to the competence of their counsel, either in their eyes or my own. There was a fee of a sort; someone had to take care of their auto while they spent a month in jail, and counsel had none of his own.

But one day a fruit picker was arraigned for murder, without friends or funds—or the inamorata stolen by the man whom the defendant blasted with buckshot "like a blackbird" from the top of an orchard ladder. My conscience reminded me that I had no

14. This canon of ethics has been incorporated into the Cal. Bus. & Prof. Code, § 6068(h). See Rowe v. Yuba County, 17 Cal. 61 (1860).

Counsel appointed by the court may be required to continue the defense, even though desiring to withdraw. People v. McCracken, 39 Cal. 2d 336, 246 P.2d 913 (1952). This is true even if upon withdrawal the public defender would have been appointed and would, with the resources of his office, have been able to employ independent experts.

15. See Ass'n of Bar, City of N.Y., Equal Justice for the Accused, op. cit. supra note 5, at 48, 63, 65, 121 nn.11 & 12, 122 n.20.

16. Where compensation can be paid, there may be less reluctance on the part of some judges to call upon the leaders of the criminal bar to serve. There may also be a corresponding urge to let some newly fledged practitioner earn a fee. Many states make provision for the payment of assigned counsel in criminal cases. See Ass'n of Bar, City of N.Y., Equal Justice for the Accused, op. cit. supra note 5, at 98–111.
training for this task. How to defend a man who had a defense, but who was elated with vengeance and was intent on celebrating it with his own private necktie party in San Quentin, was not one of the topics in Mikell's *Casebook on Criminal Law*. Fortunately, I was relieved as counsel before I became an accomplice in his demise. Over and over again, the convicted contend upon appeal that they are victims of the incompetence of their assigned counsel.17

Private counsel usually are not versed in the legitimate approaches and procedures which may be used to request and secure a reduction of the charge made against the defendant. Furthermore, while public prosecutors have the assistance of peace officers and, perhaps, of their own investigatory staff in the preparation of a case, any counsel who defends a criminal case is faced with the problem of investigation. If he is skilled and knows whom he will be faced with in court, he may be able to make excellent use of the witnesses produced by the prosecutor. But the problem of getting the proof together always exists. The question sometimes is asked whether the indigent defendant represented by a public defender can hope to have his case prepared as well as if it were handled by a leading member of the criminal bar. The answer, I think, is yes. In addition, the private practitioner is relatively unacquainted with the system under which probation is often granted to defendants found guilty. The first offender has a good chance for probation; even recidivists—sometimes unfortunately—are granted another chance through the device of probation. Thus, it is a serious problem that private counsel are often inept at how to request probation and how to supplement the probation officer's investigation.

Most public offenses in California are prosecuted by informa-

17. *Cf.* People v. Ives, 17 Cal. 2d 459, 110 P.2d 408 (1941) (counsel admitted to practice for only a year was assigned to defend in a murder case; the court looked only to the adequacy of the record relative to the claim counsel had inadequately represented the defendant); People v. Lena-berry, 176 Cal. App. 2d 588, 1 Cal. Rptr. 757 (Dist. Ct. App. 1960) (defendant was properly convicted although he contended his assigned counsel did not inform him of the effect of the pleas entered for him). See also People v. Emigh, 174 Cal. App. 2d 392, 344 P.2d 851 (Dist. Ct. App. 1959).

In New Jersey, counsel are assigned from a list of attorneys, in rotation. Competence is not the criteria. See Ass'n of Bar, City of N.Y., Equal Justice for the Accused, *op. cit. supra* note 5, at 48-49; Brownell, *op. cit. supra* note 3, at 136-44, for some discussion of the weaknesses of the assigned counsel system of defending the indigent charged with crime.

Is it heresy to suggest that in many cases the assumption is that admission to the bar is quasi-conclusive on the question of competence and adequacy of the representation?

As to the duty to provide adequate representation, see Powell v. Alabama, 287 U.S. 45 (1952); Johnson v. United States, 110 F.2d 562, 563 (D.C. Cir. 1941).
tion or by complaint, rather than by indictment. In either case, the defendant is brought before the municipal court for arraignment and preliminary hearing. This hearing is devoted to the establishment of a prima facie case by the prosecution. The defense may seek dismissal without presenting any defense testimony, or it may present witnesses of its own.

This reported preliminary hearing may be very important to a defendant. Upon evaluating the record of the prima facie case made by the prosecutor, defense counsel may find it advisable to plead "not guilty" and to submit upon the transcript; or he may decide to plead guilty and submit. Hence, careful legal work at the preliminary hearing is essential, if reliance is to be placed on the transcript.

Yet it is at the preliminary hearing that many defendants come forward with private counsel. When the general practitioner appears upon the scene, he often passes the word to the court via clerk or bailiff that this is the first time he has been in a criminal court in twenty years, and he hopes the judge will not let the client suffer because of his counsel's ineptness. Too often the attorney is the old friend of the family "just doing what he can."

The volume of such work at preliminary hearings, and the few deputy public defenders assigned to it, may inspire a quaere whether the representation by the public defender is adequate. There is neither time nor manpower in the public defender's office to make much advance preparation for the preliminary hearing. A series of such hearings may proceed in a single day before a single division of a municipal court, and the deputy public defender attached to that division has to deal with all of them. One must hasten to add that this is balanced by the plight of the deputy district attorney assigned to the same court for the same hearings. He must rely upon some peace officer at his elbow to keep him one question ahead of the witness. Even if the public defender learns little or nothing from the client to whom he has just been assigned, he knows the elements of law involved and, in the words of Judge Clement D. Nye, "can keep the district attorney's case legal. The preliminary transcripts that are filed show that this function is performed admirably." It may be added that Judge Nye has read thousands of such transcripts during his service of over 20 years in the criminal court departments.


19. In 1959 there were 48,504 felony arrests in Los Angeles County. Of these, 21.3% were reduced to misdemeanor counts, and only in 17,306, or 35.7% were the cases carried into the superior court for felony trials. State of Cal. Dep't of Justice Rep., op. cit. supra note 12, at 30, 37.
While the prosecutor must convince 12 people of the guilt of a defendant beyond a reasonable doubt, the defense needs only to sow that reasonable doubt in the mind of one juror. Highly skilled lawyers sometimes artfully strive to make one juror feel so sorry for the representation the defendant has had from his counsel that the juror will vote for acquittal. With some assigned counsel this results naturally. On the other hand, where the organized bar has set up voluntary defender committees for indigent defendants, and has worked hard to make them effective, more happy results have been achieved.20

In California, there must be an effective, not a pro forma, assignment of counsel in the trial and appellate courts.21 Nevertheless, in order to secure a reversal because of inadequate representation, the trial must have been reduced thereby to "a farce or sham."22 The presumption that all persons licensed to practice are competent to handle all legal matters is refuted every day. Judges strive at times in criminal cases to protect the defendant against the ineptness or incompetency of his private counsel. It is the duty of the judge to see that justice is done, but his intervention must stop short of any appearance of advocacy.

In both trial and appellate courts a surprising number of defendants reject the assistance of court-appointed counsel and act pro se. If a defendant makes such an election, he takes the consequences of his own inadequate representation.23 For example, if a defendant brushes aside his court-appointed attorney and he conducts his own case, an adverse judgment will not be reversed because of his inexperience.24

Why is the offer of court-appointed counsel spurned? Sometimes the individual has a supreme confidence in his own powers. This egoism may be a root of his criminality. Sometimes it may be a distrust of lawyers. In this era of supersensitivity to the rights of the accused, as against those of the public, the defendant may feel that the pose of an individual pitted against the power of the state will evoke sympathy from the jury or judge.

In 1960, convictions in criminal cases were appealed pro se 68 times to the district courts of appeal in California, and three times

to the California Supreme Court. In these courts the convicted felon was assigned private counsel for his appeal in 77 cases. Before the same courts in the same period, public defenders of California counties represented appellants in 25 criminal appeals. On the other hand, very few defendants were represented on appeal by the counsel they had retained. This fact is both critical and regrettable because counsel assigned to a case at the appellate level are only present at an autopsy. It is not their fault that they seldom secure a reversal. Criminal cases are usually won or lost at the trial level, and it is there that the defendant must have adequate representation.

As a matter of public relations the bar should organize and provide adequate defender and legal aid services. In so doing it may convince the layman that the main interest of the bar is not to make business for itself, as Dickens once asserted, but rather to assure justice to all. Institutional representation of indigent persons in need of legal services is self-protection for the individual lawyer. In these days of high overhead there is a limit to the free work that he can do; there are barriers on both sides which prevent him from giving the indigent adequate help. How would they ever find their way to him without some organization? The unlawful practice of the law as well as the socialization of legal services are anathemas, and neither will come about unless lawyers fail to meet the public's needs. From the standpoint of the bar, some say it is preferable to organize and maintain voluntary defenders' organizations rather than have such services provided by any public institution or agency. However, the history of the bar's support of legal aid organizations, or of the absence of any sustained efforts to provide them, includes many articles in law journals but little action on the firing line. But it should be noted that the bar and the National Legal Aid and Defenders Association are cutting down the distance between need and effort.

No adequate organization can be established and function where its support—in money and manpower—fluctuates with the interests and objectives of the changing officers of a national, state or local bar association. To secure and maintain adequate personnel, to secure adequate funds, to capitalize on experience, and to render reasonably adequate services, the continuity of the publicly supported defender's offices is still preferable. The general lack of interest in criminal law practice by the bar is another important

---

25. Among the cases in which the public defenders served were murder (10), manslaughter (3), felony drunk driving (1), illegal possession of narcotics (4), burglary (1), possessing a weapon in a state prison (1), carrying a concealed weapon (1), illegal possession of a blackjack (1), robbery (1), and rape (1).
factor. So long as this is true, the assigned counsel system does little more than render lip-service to the ideal of equal justice under the law in criminal cases.

In addition the assigned counsel system breaks down as the case load builds up. Los Angeles County, with approximately six million residents and 71 cities, has a larger population than 42 of our 50 states. In 1959, 17,306 felonies were prosecuted in its Superior Court. In 9,094, or 52% of these cases, the defendant was represented by the public defender of Los Angeles County and his deputies. In 1959-1960, in 23 municipal courts in the county (there are 42 divisions in the Los Angeles Municipal Court district alone), some 194,114 misdemeanors, other than traffic violations, were prosecuted. The judges of these courts are also committing magistrates. With few exceptions, prosecutions in felony cases begin with the filing of a complaint or information before them. All defendants charged with a felony, whether by indictment or information, appear before these judges for preliminary hearings which must establish probable cause. Those defendants who are held to answer appear in Superior Court.

In Los Angeles County indigent defendants are not at the mercy of their counsels' ignorance or inexperience if a public defender and his deputies are assigned to their defense. The fact of the matter is that there are few men in private practice with adequate experience in criminal law and procedure to serve the 49,000 persons annually charged with felonies in this county. For example, the judges who have been sitting in the criminal departments of the Superior Court in Los Angeles County variously state that between 40 and 60 private practitioners out of the 9,000 lawyers in the county make criminal cases a specialty.

It may well be true that the basic doctrines of the criminal law do not torture the intellect. Under the protection that the law gives
the defendant, however, there is a premium upon detailed knowledge of the statutes and upon adequate experience with criminal procedure; otherwise the defense may overlook the weaknesses of the prosecution's case. This involves far more than the statutes and the case law. It frequently involves knowledge of police operating procedures; knowledge of police record systems; familiarity with the work of the local crime laboratories; and acquaintance with the local experts in such things as narcotics, ballistics, arson, forensic chemistry, handwriting, toxicology and criminal identification. This arsenal of information is available through a specialized public or voluntary defender, and a private practitioner entering a criminal case may be unfamiliar with it.

Turning to judges who have presided in the criminal courts' departments in the Superior Court of Los Angeles County for a long period of time, they uniformly assert that the cases presented by the public defenders are well prepared, and if there are any special problems in this field, they have not been evident. Time-wise, more investigatory assistance might make the public defender's office more effective. The corollary of the right to a speedy trial—enforced by dismissal of the case if it is not afforded—is that the defense must be prepared to go forward with reasonable dispatch. The indigent defendant waits for trial in jail, in default of bail, while those who can provide bail do not mind the delays caused by the sinuosities of the criminal process. Though the public defender's manpower and means for investigation and preparation are limited by the budget provided by the County Board of Supervisors (or by the City Council in the case of the city public defenders) the indigent defendant, defended by the public defender, usually is better off than he would be if he were defended by assigned counsel. Some assigned counsel dip generously into their pockets to aid a defendant; however, the tyro usually assigned is, by definition, least able to afford such personal philanthropy.

It would be too much to claim that defendants who have been convicted are always satisfied with the services rendered by the public defender. But, as a whole, and certainly in reference to

31. CAL. PEN. CODE § 1382, requires a dismissal unless the defendant is brought to trial within 60 days; People v. Jordan, 45 Cal. 2d 697, 200 P.2d 484 (1955); People v. Godlewski, 22 Cal. 2d 677, 140 P.2d 381 (1943); Hackel v. Municipal Court, 209 Cal. 780, 285 Pac. 704 (1930); Ex parte Vacca, 125 Cal. App. 2d 751, 271 P.2d 162 (Dist. Ct. App. 1954) (released on writ of habeas corpus).

32. Defendants have contended that they were not given adequate representation by the public defender, but such complaints generally have not warranted reversals, upon appeal, for want of an adequate defense. Cf. Ex parte Hough, 24 Cal. 2d 522, 150 P.2d 448 (1944); People v. Mitchell, 185 Cal. App. 2d 507, 8 Cal. Rptr. 319 (Dist. Ct. App. 1960); People v. Martinez, 145 Cal. App. 2d 361, 302 P.2d 643 (Dist. Ct. App. 1960)
the alternative of assigning counsel to the defense, his performance in Los Angeles County is regarded as exceptionally and uniformly excellent.

A competent witness on this subject is Judge John G. Barnes of the Los Angeles Superior Court. He unequivocally praises the public defenders' performance and he lauds their integrity and legal ability.

There have never been any deficiencies in their performance that more funds and personnel for the office would not cure. There never have been any finer criminal lawyers than Public Defenders Fred Vercoe and Ellery Cuff, and our Judge William B. Neeley, who formerly was County Public Defender.

Why are not their names household words, like Clarence Darrow and Earl Rogers of past generations, and Grant Cooper and Jerry Geisler in this? Fundamentally, publicity could not bring public defenders more business nor more money. The defense of one cause celebre each year is very different from being responsible for 20 defense cases a day—even though the 20 cases are tried by one's deputies. Over the country, some prosecuting attorneys who wittingly or unwittingly generate great publicity are accused of victimizing prominent or notorious defendants for their own political advantage. Although the reputation of a public prosecutor may soar on the wings of publicity engendered by the atrocities of a Chessman, or the mysteries of murder by a Scott, it is more likely to mount because of the prominence or wealth of the defendant. In contrast, the public defender seldom represents defendants with prominence and never those with money. Pretrial in the press is not a diversionary procedure which the public defender can afford to employ if he is to be effective in the courts which he serves as a career.


A defendant requesting that counsel be assigned has no absolute right to be represented by a particular attorney. See People v. Manchetti, 29 Cal. 2d 452, 175 P.2d 533 (1946). Similarly, where the public defender is assigned as counsel, the defendant has no absolute right to be represented by a particular deputy public defender. See People v. Stroble, 36 Cal. 2d 615, 226 P.2d 330 (1951), aff'd, 343 U.S. 181, rehearing denied, 343 U.S. 952 (1952).

33. He was the ace trial deputy in the district attorney's office in Los Angeles County for over 20 years. He then was elevated to the municipal court of the Los Angeles judicial district where he presided over the criminal division and later over the court. Appointed to the superior court, he was a trial judge, then the presiding judge, in its criminal branch. In countless criminal cases he opposed the county public defender and his deputies.
Judge Nye has presided for twenty years over some criminal department of the Superior Court in Los Angeles County. He testifies that:

The defense afforded the defendants by the County Public Defender and his deputies is excellent. It is far more adequate than that conducted by the average practitioner. Out of the many thousands of attorneys in Los Angeles, these men rank right up with the twenty or so whom we regard as the only criminal law specialists at the bar.

Judge Barnes concurs in this analysis:

It is hard to identify any weak spots in the performance of the public defender in Los Angeles County. There is mutual respect between the prosecutors in the District Attorney's Office and the defense attorneys in the Public Defender's Office. Each is continually a check upon the other, and hence there is a high standard of performance on the part of both.

These responses suggest another question: How do the lawyers specializing in criminal practice regard the public defender? It is Judge Nye's opinion that

the professionals in the criminal courts are glad to have the Public Defender there. If there was no Public Defender to take care of the indigent cases, much of the burden would fall upon them. But how could the court reasonably be expected to find attorneys for indigent defendants in almost 10,000 felony cases now tried by the County Public Defender each year? The criminal courts bar likes the public defender to take care of the non-pay cases.

"Are there defendants who deceive the court and the Public Defender concerning their own ability to provide counsel?" one asks.

"Certainly," Judge Nye replies, "just as there are those who dishonestly claim welfare benefits, or seek medical service at the County Hospital. It is not too great a problem, and a system of recoupment for such services might be instituted by the county if it was."

Of course, day by day in the trial of cases, a judge in the criminal departments becomes well acquainted with both the prosecutor's and public defender's deputies. When pending cases are disposed of, both are eager at all times to follow up on any helpful suggestion for improvement which may reach them from the court. Furthermore, working opposite each other in the criminal courts, the deputies of the district attorney, or the public prosecutor, and

34. The determination of financial ability is always a problem, but various criteria have been developed. See BROWNELL, op. cit. supra note 3, at 67–69 & 83–84. The CAL. GOV'T CODE § 27706 places the duty of defense upon the public defender if the person "is not financially able to employ counsel . . . ." As to recoupment, see Dorris v. Crowder, 26 Cal. App. 2d 49, 78 P.2d 1039 (Dist. Ct. App. 1938).
of the public defender, become well acquainted. They know what
to expect of each other. This continual contact may be of consid-
erable advantage in the defense of a case. In the doubtful case
where there is the possibility of reducing the charge, this rapport
between counsel may be a distinct benefit to a defendant charged
with crime. If a public defender urges reduction of the charge, a
district attorney might be more receptive than to a similar proposal
made by private counsel. Private counsel may be suspected of an
attempt to use pressure or influence. While dealing with a public
defender the prosecutor can be more objective because he realizes
that in such overtures there are no political or other overtones;
that is, the case can be dealt with on its merits.

On the other hand, external observers sometimes wonder wheth-
er this close acquaintanceship insidiously dampens ardent advocacy
on the part of the public defender. I can only say that I never have
seen any such tendency in the courtroom. The appellate cases aris-
ing out of courtroom encounters between district attorneys and
public defenders do not warrant any implication that the public
defender has not been aggressive in the trial of cases.

It is obvious from the figures previously noted that each deputy
public defender must handle a number of defense cases simultane-
ously. Observers sometimes wonder whether such mass represen-
tation, as contrasted with the representation of an individual de-
defendant by private counsel in one case, can be fully effective. Ex-
cept for the few criminal law specialists, the average practitioner
must spend a great deal of time upon his case. However, the same
preparation takes the deputy public defender much less time. What
the accused may lose from the public defender's limited time with
the case may be offset by the latter's experience. Similarly, it
should be pointed out that the opposing counsel, the deputies of
the district attorney, have exactly the same burden in presenting
the same cases. In a capital case, or one of particular importance,
to which the district attorney assigns individual counsel, the public
defender is in a position to do likewise.

In fairness I must add that I have seen young lawyers assigned
to defend criminal cases who have more than made up for their
lack of experience by their zeal in the defense of the accused. This
quality of enthusiasm, often coupled with a thorough belief in a
client's cause, is very impressive upon both court and jury. In con-
trast, it may be hard for public defenders to display equal enthusi-
asm in each of the 10,000 felony cases defended during a single
year.

It is regrettable that in some states so-called minority groups as-
sert that they are systematically denied justice. Indeed, it is a na-
tional catastrophe that in order to secure justice an individual must
appeal both to the general public and to the highest court in the
land. Los Angeles has the greatest Latin-American population of
any city in the Western Hemisphere, excepting only Mexico City.
In Los Angeles there are more colored people than in any city
north of the Mason-Dixon line, and soon there may be more than
in many southern cities. There are substantial populations of Jap-
anean and Chinese extraction. There is hardly a creed or cult that
is not represented in its religious life. Despite all this, there has
never been the slightest suggestion, to my knowledge, that any-
one in our superior criminal courts has not been able to have ade-
quate counsel on account of his race, color, creed or need. The
public defender's offices have made this possible.

But what of the public defender system in relation to trial of
misdemeanors in the municipal courts?

In the morning roundup, the defendants held in the Los Ange-
les City jail are arraigned before two criminal court divisions of the
Los Angeles Municipal Court. In this police court procedure the
misdemeanants pass in a steady stream. Sometimes 350 at a ses-
sion are arraigned, advised of their constitutional rights, and plead.
Those who wish the assistance of counsel to plead are referred
to the deputy city public defender who is stationed in the court-
room.

While presiding for the first time in this court, doubts arose in
my mind whether such hurried representation could be adequate.
But in general it seems to be. Great numbers of those held for
drunkenness, gambling, and morals offenses waive counsel and
plead guilty. Those who do not are referred to the trial divisions
in which they can secure assistance from the trial deputies of the
Los Angeles City Public Defender.

As in the Superior Court, the deputy city public defender in the
municipal court is a member of the court staff, but he has the
same status as private counsel. Sometimes his "cooperation" has
been overdone. His attempt at efficiency, by advising prisoners of
their constitutional rights by a broadcast piped throughout the jail
in advance of the court session, was successfully challenged.
Brilliant in intermittent sobriety, one defendant claimed that his
bibulous condition precluded him from hearing and understanding
the broadcast advice. A writ of habeas corpus gave him tempo-

35. The court will judicially notice that the right of accused to counsel
is very commonly waived in prosecutions for misdemeanors in justice and
36. People v. Mattson, 51 Cal. 2d 777, 336 P.2d 937 (1959); People v.
1959). This same defendant added to the law on the right to counsel. See
In re Newbern, 53 Cal. 2d 786, 350 P.2d 116 (1960).
rary freedom; however, the duty of advising the accused of his rights was restored to the court—not the city public defender.38

In the municipal court in misdemeanor cases and preliminary hearings, the performance of the Los Angeles City Public Defender is very impressive. One would be inclined to regard Mr. George Chatterton, retired city public defender, and Mr. Bernard Claske, his successor, as eminent criminal lawyers. In 1947 the Los Angeles City Public Defender's office handled 55,916 cases and the Long Beach office 592 cases.39 In 1957 the case load reported for the Los Angeles City Public Defender was 150,160 criminal cases, and for Long Beach was 604.40

While most of these never went to contested trial,41 representation of this number of defendants was a substantial achievement. As one of the three judges assigned to the appellate department of the Superior Court, the court of appeal for all the municipal courts, it was my observation over a two-year period that the city public defenders had done an excellent job in representing the defendants before the municipal court, judged by the records on appeal.

With some frequency the question of conflict of interest arises in the defense of criminal charges by the public defender. The interests of a defendant and of his codefendant may be at odds. In such cases it is necessary for the court to assign counsel to one of the defendants. In one case such an assignment occupied the efforts of an able leader of the bar for the better part of a year. Such obvious and inequitable burdens in discharging the duty of the bar as a whole led to the adoption of the statute permitting compensation to be paid to assigned counsel.42 As a result, one of the ap-
parent stumbling blocks in the use of the public defender system was removed.

The uniform achievement of the Los Angeles County Public Defenders’ organizations, and of those in California generally, has resulted in large part from the judicial climate in which they operate—a factor which may not be generally recognized in an evaluation of the system. After 50 years of struggle between Californians and the political machine which held the state in its grip, the judiciary was removed from partisan politics. The early riotous elections somehow seemed inappropriate for selection of judges. Consequently, the first step was to hold the election of judges a week after the general election—“so the boys would have time to sober up,” the wags said. Before the turn of the century, judges and county officers generally were placed on the nonpartisan ballot. In 1913, all local offices were made nonpartisan. Hence, civil service and the merit system have had a fertile climate in which to grow and gain strength.

Thus, in Los Angeles County the public defender is appointed from a civil service list by the Board of Supervisors. The district attorney is elected, but his office, with few exceptions, is a career service office; so is the office of the public defender. Furthermore, the city public defender and his staff in Los Angeles have civil service status. Consequently, the public defender system is generally insulated and flourishes apart from patronage and pressure.

Judge Louis H. Burke, presiding judge of the Superior Court in Los Angeles County, the largest trial court in the world with its 102 judges, has served in, and presided over, the criminal departments of the court. His “observations of the public defenders at work are all on the plus side.” In summary, he comments, “In respect to their performance on behalf of defendants, I would be hard pressed to offer any constructive criticisms.”

Equal justice under the law has tended to become a reality because of the operation of our California public defenders’ offices. They aid the bar. They aid public judicial administration. They have been honestly, fearlessly and efficiently administered. Let there be more of their kind throughout the land.