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# Public Defense in Baltimore

ARE BALTIMORE'S POOR  
RECEIVING ADEQUATE  
CRIMINAL DEFENSE?

by Leonard A. Sipes, Jr.

Since July 1, 1971, the Maryland Annotated Code has provided for the Maryland Office of Public Defenders. The job of this state agency is to represent those charged with a criminal offense who cannot afford to retain an attorney, including juveniles as well as mental patients in state hospitals. The Public Defender has a staff of sixty-eight attorneys and thirty investigators under the direction of Alan Hamilton Murrell; offices are located around the state with the headquarters at the Equitable Building in Baltimore.

The idea of public defense came to light in the early 1930's when the United States Supreme Court ruled that a lawyer must be provided to those who

cannot afford one in major felony cases. This action was the result of the famous *Scotsboro* cases when seven poor blacks were charged with raping a white woman in Alabama. The original trial was conducted in such an unfair manner that the court felt that the only way people in similar circumstances could obtain a fair trial was to appoint, at public expense, a lawyer to represent those in need. Today as a result of *Argersinger v. Hamilin*, 407 U.S. 25 (1972), the Supreme Court has decreed that a public defender be appointed to represent indigents in all criminal cases involving the possibility of at least a three month prison sentence or a fine of more than \$500.00.

Therefore, it can now be assumed that the poor are receiving adequate legal assistance. In cities across the country this is just not the case. Nationally, charges of inadequate public defense arise from those who claim that because the poor lack political influence, they are receiving aid from overworked and underpaid staff lawyers who often care little about the plight of those they represent. It would be reasonable to ask if the same is happening here.

To this question, Deputy Public Defender Alfred J. O'Ferrall assured us that it is not. In an interview Mr. O'Ferrall stated that criticism of the public defender projects across the nation has been intense, but little of this wrath has been directed at his office because of its success rate. "First, one-third of all our clients are found not guilty, and second,

eighty-one per cent of those charged with a crime never, for various legal reasons, see the inside of a jail." Mr. O'Ferrall is openly proud of his staff, which he feels is composed of dedicated and highly trained people.

He further explained that the job in itself is a thankless one: those defendants who are set free rarely return to express their appreciation and those convicted and sent to jail will generally complain of an inadequate defense. Defending a man charged with rape, murder or any

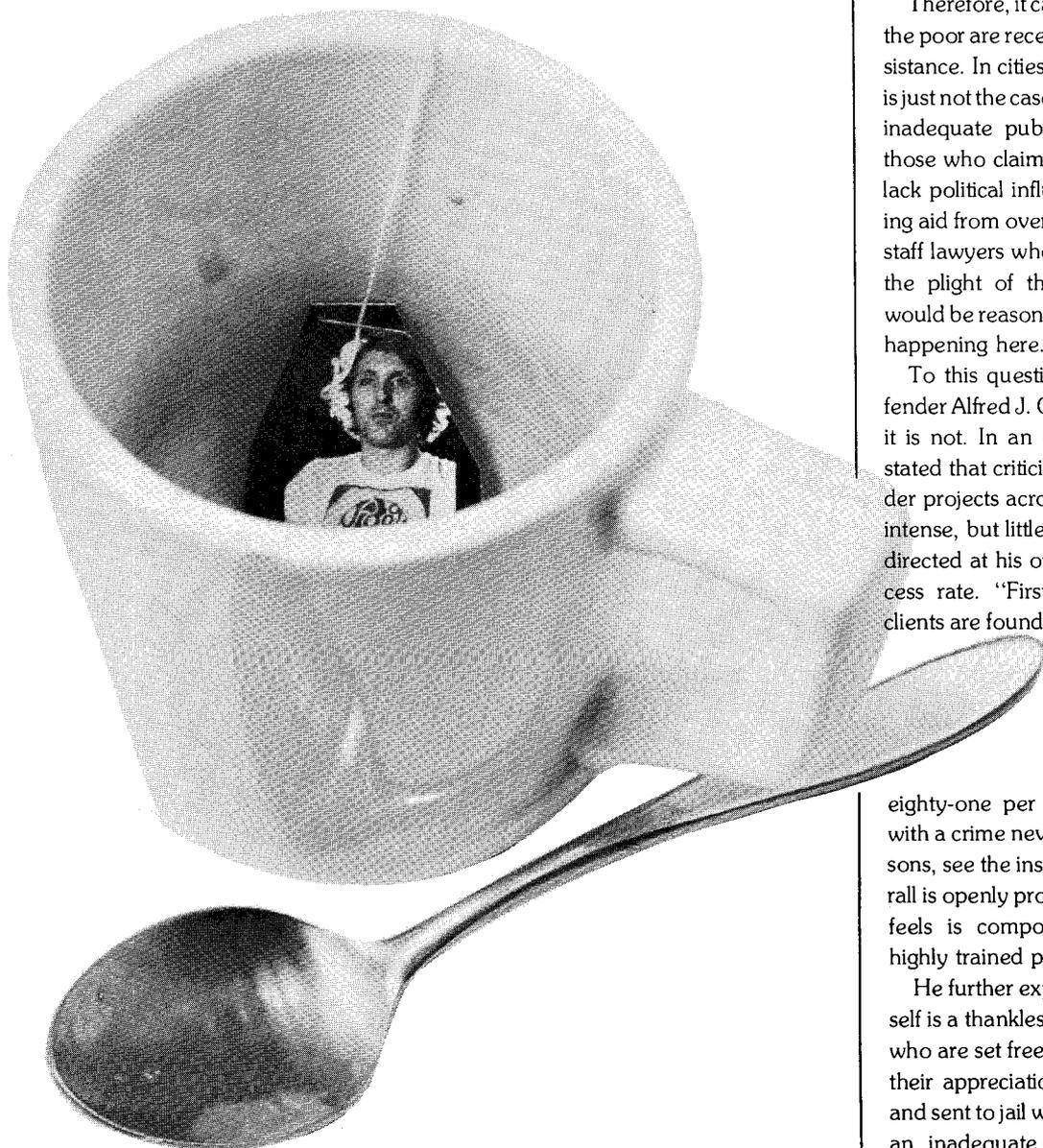


photo by Chris Michael

other violent crime does not make your staff the most popular in town.

Mr. O'Ferrall also acknowledged that there are those who find his office unnecessary and his success rate annoying; they resent public money being used to defend one charged with a major and often violent crime. To explain this he turned to an analogy used by Mr. Chief Justice Burger. Mr. Burger states that justice is like a three-legged milking stool which consists of the courts, the prosecution, and the defense. When one leg, e.g., the defense, is inadequate or "shorter" than the other two, the system collapses. Adequate public defense is therefore a necessary and integral part of our criminal justice system.

The American Civil Liberties Union also contributes a valuable service in protecting constitutional rights. In his opinion of public defenders, John Roemer, the local director, stated that they do a "good job of representation and in fact might be one of the better offices in the country." He feels that the leadership, high quality of attorneys, large full-time staff and excellent record of cooperation between the Public Defender and the State's Attorney produces a feeling of confidence in public representation.

Echoing this theme of cooperation and mutual trust is Baltimore City's State's Attorney William Swisher. Considering that the two agencies are on opposite sides of a case, Mr. Swisher's praise for this agency and its leadership is significant.

Probably the most vocal critics of the entire criminal justice system, with the possible exception of inmates, are the police officers on the street. Officers from the central and northern districts all expressed the feeling that staff attorneys of the Public Defender's office are honest, professional people who have treated them fairly. This is quite a reflection considering the hostility that often surfaces in the daily contacts between police and defense counsel.

A reserved confidence is expressed by agents from the federally-funded Y-3 High Impact Criminal Rehabilitation Program and the state supported Maryland Rehabilitation Center. The Y-3 program deals exclusive with the re-

habilitation of repeat offenders, while the Maryland Rehabilitation Center operates primarily with the vocational rehabilitation of the handicapped, although it does help some convicted of crime who are in need of vocational training. Both agencies work with many clients who have been represented by public defenders. They believe that the office generally does a proper job of representation. However, they raised questions as to the quality of defense when the crimes did not fall into the major felony category, which is the majority of a public defender's caseload. The attorney's personal lack of enthusiasm for these minor cases was the reason for their complaints.

Scott Sowell, the former editor of "Boneyard", the newspaper of the Baltimore City Jail, in a letter to this writer, bitterly complained that "the legal services here amount to a farce." Mr. Sowell stated that the attitude of the average public defender amounts to: "If you go to trial, you will be found guilty, so let's see what kind of plea we can get." Mr. Sowell further described the public defender system as a trap that leads the accused into a continuous cycle from which he has little chance of escape, with excessive plea-bargaining as the main tool. Under the oft-criticized practice of plea-bargaining, the defendant accepts a guilty plea in return for a lesser or suspended sentence; this often occurs when a case against the defendant is weak or where the courts and prisons are already overburdened. The result is that defendants are discouraged from pleading not guilty and can suffer from not having the evidence examined by a judge or a jury.

To the charges presented by Mr. Sowell, Deputy Public Defender O'Ferrall insisted that no client is forced into a plea-bargaining situation. Mr. O'Ferrall's statement is backed by State's Attorney Swisher and Mr. Roemer of the American Civil Liberties Union. Both men believe that the practice of plea-bargaining is not abused by public defenders. However, Mr. Roemer readily pointed out that the practice can be easily abused and probably is abused in parts of the country. He acknowledged that the Supreme Court has sanctioned the practice and that the legal system would collapse

without it. However, he warned that plea-bargaining can get out of hand and ruin any conception of the word "justice".

Edward L. Fortune is an inmate of the Baltimore City Jail and a former client of the Public Defender's office. He feels that he was treated fairly and was not forced into a plea-bargaining situation. But, Mr. Fortune joined Willie Johnson, Assistant to the Director of C.A.S.H. (Confined Addicts Seeking Help), and many other inmates, in establishing what they believe to be the major problem with public defenders. As stated by Mr. Johnson: "The problem is that the attorneys find it too easy to believe that the defendant is guilty of the charge." Mr. Johnson indicated that there is no real trust established between attorney and client and that the accused must often play a game to convince counsel that he is not just a number, but a human being who should be treated as such. At the same time, Mr. Johnson stated that the old conception of "Have you got a lawyer?" "Naw, I've got a public defender" has faded away. The undoubted increased professionalism of public defenders is the reason.

The record of the Public Defender does seem to be in their favor. While facing the same major problems of all criminal justice agencies, they receive praise from rival departments concerning their leadership and staff qualifications. Their record of defense is a good one and most inmates agreed that once in the courtroom, their attorneys performed well. The question of whether public defenders adequately create the requisite trust relationship with their clients rests on the idea that all accused persons are innocent until proven guilty. If this thought cannot be taken seriously by a public defense agency, then it is indeed a sad reflection on both our society and on public defenders.

Mr. O'Ferrall agreed: "If we have slipped into a machine-like agency and have lost a certain portion of human quality in our dealings with our clients, then this office is in serious trouble. However, for an agency created in 1971, the Public Defender's Office appears to have an excellent record and many enthusiastic supporters.