

THE PUBLIC DEFENDER IN MARIN

**“No human life can be defined by one act,
no matter how heroic or how heinous.”**

SUMMARY

The Sixth Amendment of the United States Constitution guarantees the right to counsel to those accused of a crime, but until 40 years ago that right had been limited to federal cases for the most part, and only to capital cases in state jurisdictions. Then, in 1963, in a landmark case, *Gideon v. Wainwright*, the Supreme Court ruled that the right to counsel applied to any felony accusation, state or federal. There followed a series of Supreme Court decisions that gave the accused the right to counsel in virtually every entanglement with criminal law. The office of the Public Defender owes its existence to those decisions.

The Marin Public Defender employs 28 attorneys whose job it is to defend the indigent of the county against criminal charges ranging from the smallest of misdemeanors to the capital crime of homicide. The cost to the defendant is a maximum of \$200. The Public Defender and his staff of Deputy Public Defenders are passionate in what they do, with a fervor rarely seen in most walks of life. The goal is not simply to get the best decision under the circumstances, but to begin the process of moving their clients into the law-abiding world. To that end there is even a social worker on the staff. The support staff is equally dedicated to that mission.

The Office of the Public Defender estimates that 70% of its clients abuse alcohol and/or drugs, and that another 15% come from settings in which such abuse occurs. Ten to fifteen percent have used Community Mental Health services. Many “can’t take care of themselves very well.”

Both the Office of the County Counsel and the Office of the District Attorney look on the Public Defender as a competent, even formidable opponent. The District Attorney personnel interviewed by the Grand Jury opined that they would want the Public Defenders for their lawyers if they found themselves in trouble in Marin.

The lack of space is a major problem throughout the Civic Center, but nowhere is it more critical than in the Public Defender’s offices where some records must be stored for 85 years. The tension of being “the 911 of the law business” and the cramped conditions make for a very difficult working environment. For example, those entering the justice system, many for the first time and scared, find themselves interviewed in a cubicle little bigger than a generously sized phone booth, with no privacy and in the middle of the entryway to the office itself.

The Grand Jury urges an assessment of the available space within the confines of the present department and outside of it. An analysis of the present staffing is also needed.

The Grand Jury wonders why the Public Defender is not routinely present at arraignments since the Public Defender wants to be there and the District Attorney has no objection. The Grand Jury recommends the presence of a Public Defender at arraignments.

Finally, the Grand Jury stands impressed by the dedication of all those who represent the cause of justice in the County of Marin.

BACKGROUND

This report owes its creation to two elements: first, the office of the Public Defender has never been examined by a Marin County Civil Grand Jury; and second, it was just 40 years ago, in March 1963, that the Supreme Court, in a unanimous landmark decision, reaffirmed the right to counsel, at state expense, for those accused of criminal conduct. It was that decision which gave birth to the public defender of today, paid for by a government agency and frequently functioning as a branch of that government, as is the case in the County of Marin. This anniversary seems a perfect time to take a look at the little known workings of this very important part of our justice system.

METHODOLOGY

Interviews Conducted

Twenty-six persons were interviewed over the course of the investigation. The group included officials, attorneys, and support staff from the offices of the Public Defender, the District Attorney and the County Counsel, as well as two clients of the Public Defender, two County Supervisors, officials of the Sheriff's Department and officials of the Sonoma County Public Defender's office. One interview centered on a tour of the Civic Center to determine the extent of crowding in various departments.

Websites Visited

- The Marin County Office of the Public Defender
www.co.marin.ca.us/depts/PD/main/index.cfm
- National Legal Aid & Defender Association
www.nlada.org
- Emory University
www.law.emory.edu

Courtrooms Visited

In the course of the investigation several visits were made to courtrooms in which a Deputy Public Defender was a participant in the proceedings.

Reading Sources

- California Defender (the magazine of the California Public Defenders Association).
- Report of the National Symposium on Indigent Defense, February 1999.
- Keeping Defender Workloads Manageable U.S. Department of Justice, January 2001.
- “Highlights”—a single sheet summary of the mission, functions and future of the Office of the Marin Public Defender (see Appendix A).
- “Community Justice Incorporating Restorative Justice Principles” (an article by Joseph L. Spaeth, Marin County Public Defender).
- “Gideon’s Trumpet Stilled” (an editorial in The New York Times, March 21, 2003).
- “You Think DNA Evidence Is Foolproof? Try Again” (an article in The New York Times, March 16, 2003).
- Data and other material supplied by the California Public Defenders Association.
- County of Marin Budget 2002-2003.

DISCUSSION

The Beginning

To begin at the beginning is to begin with the Sixth Amendment of the Constitution of The United States:

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of Counsel for his defence.”

It's those last ten words, "and to have the assistance of Counsel for his defence" that enable an indigent Marin County defendant to face a formidable justice system with the help of a Marin Public Defender. The fee, at most, is \$200, and that is contingent upon the person's ability to pay. There is many an attorney in private practice whose hourly rate far exceeds that.

But for many years the Sixth Amendment held sway only in federal courts, and in state courts only in capital crimes. It wasn't until 1963, in *Gideon v. Wainwright*, that the Supreme Court ruled unanimously that even in state courts persons accused of felonies must receive legal counsel if they so desired.

Then a series of Supreme Court decisions widened the scope to include juveniles and those accused of misdemeanors. Today, the defendants who enter Room 139, the Office of the Public Defender, are frequently facing driving while intoxicated charges or domestic violence accusations, that before *Gideon* would have left those folks high and dry, and at the mercy of a complex justice system.

The Supreme Court did not stop at simple representation; it added an array of requirements that provided counsel at every critical juncture in defense proceedings, and also included child dependency and neglect, as well as mental competency cases. Counsel for the indigent could no longer be satisfied by the occasional pro bono or court appointed lawyer. And so was born the Office of the Public Defender.

California and the Public Defender

Of the 58 counties of California, 23 have no office of the public defender. In those counties attorneys are under contract to serve as public defenders as needed. The smallest, like Alpine and Del Norte, have single contract attorneys, while San Mateo County, which has opted to operate only under contract, has 100 defense lawyers on call.

Public defenders in the remaining 35 counties are county employees. As of 2001 (the latest data available) the smallest of these was Lassen with three attorneys, and the largest Los Angeles with 665. Marin has 28 attorneys at present. In 2001 there were 2447 attorneys employed in the offices of California's public defenders. An additional 809 worked under contract, some in the smaller counties, and others with public defenders who called on them when conflict of interest issues dictated outside counsel, about ten percent of the time. (See Appendix B for a nationwide view of the public defender system and its uneven application.)

Beyond this most basic comparison of unadorned numbers, the Grand Jury discovered all other comparisons fall into the apples and oranges category and that administrative practices vary from office to office. Each county has its own "local legal culture" and mix of crimes. For example, at present Marin has three murder cases in the justice system,

and even that small number is a rarity. In fact, Marin has had no death penalty cases for the last seven years. Sonoma, because of its larger size and other factors, has 20 murder cases in process. (See Appendix A for the nuts and bolts of the operation of the office of the Marin Public Defender.)

The Clients

This report will confine itself, for the most part, to the Public Defender's role in criminal cases, which make up about 90% of the workload. The Grand Jury recognizes, and appreciates, the Public Defender's role in mental/disability commitments, child abuse and neglect cases, juvenile proceedings and probate code conservatorships. However, given time constraints, the Grand Jury was unable to explore fully the complex and challenging issues of even the criminal aspects of its work. What follows, therefore, concerns just criminal defendants.

A client enters the system in one of three ways: 1) he or she walks into the Public Defender's office after being cited by a law enforcement agency and asks for help; 2) the accused is referred to the Public Defender by the Court; or 3) for those in custody, a Public Defender conducts jailhouse interviews the morning after their arrests, beginning the process of criminal defense.

In Marin every potential client of the Public Defender must complete a Financial Application for Court Appointed Counsel. Unless there is an obvious red flag that indicates the applicant can perhaps afford a private attorney, the defendant will be represented by the Public Defender immediately. Ninety percent of those who apply are accepted. And some are unlikely clients; the young college student from a well-to-do Marin family facing a DUI charge can very well be a client. With no personal assets, he or she qualifies for Public Defender help.

But beneath the label "client," who are these people? Appendix A recites the unqualified facts, but here are estimates of the condition and quality of those clients, made by those who represent them, the Public Defenders themselves. Seventy percent of their clients are abusers of drugs or alcohol or both, and of the remaining 30% about half come from settings in which drugs and/or alcohol abuse play a role. (More than 50% of all criminal cases involve auto traffic, and that often means DUIs.) Ten to fifteen percent have used the services of Community Mental Health and some are mentally deficient. Is it any wonder that one long time Public Defender says that many of his clients are "people who can't take care of themselves very well" and "have slipped through the social net"?

The Defenders

Dedication. Commitment. Empathy. All good words, but not good enough to describe the intensity the Grand Jury encountered in all its meetings with Marin's Public Defenders. These are passionate people, that some describe as "bleeding hearts" and others—with a more kindly bent—"true believers." Eighteen of the 28 lawyers in the department have been there more than 15 years, and one described the work as "a

wonderful life companion.” Another declared he loved his clients, and a third said, “There has never been one I didn’t have sympathy for.” “Not one?” asked the Grand Jury. “Not one,” said she. They seemed consumed.

Each attorney has a specialty such as misdemeanors, felonies, juvenile, child custody, and the office operates as would a private law firm, with each pursuing his or her individual practice. There the similarity ends, for the public defender is the “lawyer version of 911” with an uncontrollable workload dependent entirely upon the mischief abroad that day and the skill and luck of law enforcement in catching the mischief makers. Over the course of a year some 13,000 people walk up to the counter in Room 139; that’s over 50 every working day; and most of them are in trouble. (See Appendix C.) A sense of urgency pervades the entire enterprise.

It can be a thankless job. To deal frequently with “damaged people” who think you are part of the system that is out to get them, who believe that you are not “a real lawyer” and then to face volumes of work with the feeling that “no one is listening to you” must be daunting, if not downright discouraging.

So why do they do it? What fuels the passion? Certainly not salaries, which although good, do not have the potential of private practice. Here are some answers to what keeps these men and women at it:

“My clients succeeding in a law-abiding world.”

“The little victories.”

“You have to not mind losing.”

“Letters from clients of many years ago who write ‘You made a difference.’”

And finally:

“No human life can be defined by one act, no matter how heroic or how heinous.”

The Support Staff

In addition to the attorneys, the staff consists of four investigators, two legal assistants (or paralegals), a social worker, two legal secretaries and ten others in various support roles. The Grand Jury met with several of them. They echoed that same feeling of mission, of working not just for salary, but also for a greater good. It would be naïve to assume that every staff member felt the same way, but the Grand Jury would not be very surprised if they did.

A Social Worker is not usually found in a law office. The presence of a Social Worker speaks to this Public Defender’s mission. The goal is rehabilitation –restorative justice –

not retributive justice. To the great credit of the Board of Supervisors, this position, a rarity in public defenders' offices, was approved about two years ago as a permanent staff addition. One client interviewed by the Grand Jury gave very high marks to the efforts made on his behalf, even extending to interaction with family and outside experts. Partially as a result, what could have been a multi-year incarceration ended up as months. And it was from the social worker that the Grand Jury learned that there is an office kitty (voluntarily funded) to help those clients who need food, a bus ride or whatever.

Another staffer, with years of experience in a private law firm, calls this a "barebones operation" where people "work two times harder" than in the private sector. Another says "We are all in this together," and still another, "Your heart can break here."

On Workload and Stress

The Local Legal Culture: Marin County is something of a "bubble" community surrounded by somewhat less lawful neighbors. So there is not much in the way of muggings, carjacking and other very violent crimes, certainly not homicide. What's a District Attorney to do? Well, this is Marin, with a citizenry comfortable in its sense of security and wanting to keep it that way, and so there is the "only in Marin" felony, which in other counties might be plea-bargained down to a misdemeanor and fine.

The District Attorney's office and the Public Defender's office acknowledge that "only in Marin" felonies exist and that they reflect local standards. In fact, the Grand Jury has heard that Marin is a good place for young lawyers to get trial experience, and trial jurors wonder why some cases even come to trial.

The Third Strike Law: But there is a more sobering kind of felony abroad, the third strike felony. Under the present law a third strike can result from any felony. So now shoplifting can trigger a 25-year sentence. And, because the stakes are so high in third strike cases, much more time is required in preparation and consultation with clients, and often costly outside experts are called in. The burden is one more additional stress in a stressful setting.

DNA: DNA is a powerful, neutral tool in proving guilt or innocence. But, recent experience has shown that poor testing procedures and misreadings of results can "prove" an innocent defendant guilty. To arm themselves against such carelessness, public defenders must themselves become near experts in the field.

Restorative Justice

If there is one overriding theme in the Marin Public Defender's world, it is the concept of restorative or community justice. It promotes the "repair of harm caused by crime, and

the active involvement of victims and communities in justice processes.”¹ Offenders take personal responsibility for their actions and work to repair the harm they have caused; crime victims have an active voice in the justice system; and the community becomes safer as it builds the capacity for becoming actively involved in offender accountability and crime prevention. Proposition 36, which provides alternatives to prison in some drug cases, and juvenile and adult drug courts are examples of that concept. Perhaps this enthusiastic espousal of restorative justice illustrates best the role of the Marin Public Defenders as compassionate lawyers with a strong sense of social justice.

What Others Say

It would be remiss of this Grand Jury if it were not to ask others their opinions of the work of the Public Defender, and so it did.

The Office of the District Attorney: In the Grand Jury’s interviews with the District Attorney’s staff the Marin Public Defender’s office was paid the ultimate compliment more than once: “If I were in trouble in this county, I would like to be defended by their attorneys.” They also said the Public Defender’s office knows the value of a case; they know when to pick a fight.

The Office of the County Counsel: The quotes from two members of the staff follow: “very competent” and “they know the law” and “they are realistic” and “very formidable opponents” and “much better than most private attorneys.”

The Board of Supervisors: The Grand Jury called upon a member of The Board of Supervisors and asked for an opinion of the Public Defender’s department, since the Public Defender serves at the pleasure of the Board. The Supervisor was just short of effusive in praise of the Public Defender and his department. He is a “model department head.”

The Grand Jury thought it best to get a second opinion after that glowing interview. It met with another Supervisor who confirmed all that the Grand Jury had heard, and who felt the other Supervisors would echo those same sentiments.

And Now the Problems

Space: Every department in the Civic Center is crowded, but none more so than the Public Defender’s space. The law requires that some records be maintained for 85 years and the hallways, jammed with files, attest to that. As in other departments, offices are shared (and it must be admitted that the prize for the smallest, most makeshift office goes to a County Counsel employee where one wall is a blocked off main corridor door), but the intensity and stress of the work (remember, it is the lawyer

¹ Jerry D. Hill, former Marin County Chief Probation Officer, as quoted by Joseph L. Spaeth, Marin County Public Defender, in his article “Community Justice Incorporating Restorative Justice Principles” from which most of this section on restorative justice is taken.

version of 911) is greatly aggravated by the jam-packed atmosphere. One staff member likened it to living in a debris box.

Dignity was a word heard many times by the Grand Jury during this investigation. Public Defenders strive to treat their clients with the dignity that every human being craves. Yet the defendant's introduction to the Public Defender is at best discouraging and at worst degrading. The reception area is cut in half by a partition; it looks and feels makeshift. But the worst is yet to come. The other half of what was once the waiting area is now devoted to two closet size interview booths created by six-foot dividers. The front counter shares in this disgrace and also needs refurbishing. There is virtually no privacy—and certainly no dignity—attached to the experience. On one occasion Grand Jury members had to squeeze past an interview in progress to enter the department. The situation is intolerable. It should be remedied now!

The Social Worker's Office: The task of the Social Worker is a sensitive one and requires both privacy and quiet. This Social Worker has neither, since retrofitting has left the top half of one wall open to an adjoining office, hardly a setting for sharing confidential information.

Sick Days: Sick leave time off for the support staff is reported to be high. The Grand Jury has heard at least two theories: one, that the rate of sick leave time off is a statistical blip, the other, that the pressures and stresses of working in the overcrowded department cause illness and perhaps encourage the use of sick days.

Support Staff: The Grand Jury is not expert in the staffing of law offices, but the Grand Jury notes that none of the three top officials has or shares secretarial help.

Arraignments: In most California counties the Public Defender appears with the accused at the arraignment. Not in Marin. The District Attorney's office has no objection to the presence of the Public Defender at arraignment, but sees no benefit in it. Quite expectedly, the Public Defender thinks otherwise, declaring time will be saved as well as providing the defendant advice and restraint to avoid damaging statements that might be made by the client. The Public Defender could also argue for release of the accused on his or her own recognizance and thus avoid a night in jail. The present policy stands, however.

Envoi

It seems appropriate to end this Discussion with an illustration of the frustrations faced by the Marin Public Defenders with at least some of their clients. Humorous, in a bittersweet kind of way, it tells of the client who was about to leave with an office VCR tucked under his arm. "Come on! Not from us!" yelled an alert Public Defender, reclaiming the VCR. Compassion, as usual, ruled the day; no charges were filed.

FINDINGS

1. The Public Defender and his deputies are dedicated, committed and compassionate in their legal defense of the indigent accused. They are respected by their opposition as formidable opponents in justice proceedings.
2. The reactive nature of the work of the Public Defender leads to high levels of stress.
3. All departments in the Civic Center need additional space, but the Public Defender's office space is particularly crowded, in part because of the record keeping requirements of the law.
4. The front counter and initial interview rooms are totally inadequate, physically jammed and psychologically daunting.
5. The Social Worker is laboring under the unnecessary handicap of an office unsuited for the work at hand.
6. The reported high rate of support staff sick leave may be caused by the unpleasant combination of poor working conditions aggravated by unavoidable stress.
7. There is no secretary for the top three department executives.
8. The Public Defender is not present at arraignments despite potential benefits to the client.

RECOMMENDATIONS

The recommendations that follow are made with the awareness that these are difficult financial times for Marin County, as they are for all California counties. The Grand Jury believes these recommendations are important enough to warrant action now in spite of the climate of the times.

1. The front counter area should be renovated and made more efficient for the public which it serves, and for those who work there.
2. Adequate space for private initial interviews should be found immediately, either in the Public Defender's present office or somewhere else in the Civic Center. This is a bad situation.
3. The Social Worker's office should be altered to maintain privacy for clients and Social Worker. Failing that, the office should be relocated within the department or somewhere else in the Civic Center to insure this much needed privacy.

4. A thorough up and down analysis should be made of the staffing needs of the Public Defender's office. Consideration should be given to the addition of at least one secretary for the three top executives in the department.
5. The Grand Jury recommends that the Public Defender be present at arraignments.

REQUEST FOR RESPONSES

Pursuant to Penal code section 933.05, the Grand Jury requests responses as follows:

- From the Board of Supervisors to Findings 1 through 7 and Recommendations 1 through 4.
- From the Marin County District Attorney to Finding 8 and Recommendation 5.
- Although not legally required the Grand Jury also invites responses from the Marin County Public Defender to all Findings and Recommendations.

Appendix A

Appendix B

**An Editorial from
THE NEW YORK TIMES
March 21, 2003**

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Appendix C