

THE CALIFORNIA PUBLIC DEFENDER:

Its Origins, Evolution and Decline

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“It is still the duty of the State and of the court, its instrument, quite as much to protect the innocent as to punish the guilty. Honest administration of justice is the end sought . . .”¹

— Clara Shortridge Foltz, 1897

INTRODUCTION

As California approaches the centennial of the birth of the first Public Defender office in the state and the nation, it is perhaps appropriate to reflect upon the reasons for establishing an institutional Public Defender as part of government and make an appraisal of the institution’s current

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¹ Clara Shortridge Foltz, *Public Defenders*, 31 AM. L. REV. 393, 395 (1897) [Foltz, *Public Defenders*].

health in California today. The concept of the Public Defender, considered radical at the time of its inception, was initially the brainchild of Clara Shortridge Foltz. A champion of women's rights and the first woman admitted to practice law in California, she spearheaded a national movement to create an elected office known as the Public Defender. The County of Los Angeles became the first government to establish a Public Defender office, which began providing representation in both criminal and certain civil cases in 1914. What would Clara Foltz think of the Public Defender system as it has evolved in California today? How does our present system differ from what she envisioned?

Sadly, while the road has been marked with many successes, and fortified by U.S. Supreme Court decisions establishing the right to the effective assistance of counsel under the Sixth Amendment, if Clara Foltz were to return today she would find a criminal justice system that has broken faith with one of its fundamental underlying premises: the presumption of innocence. Instead, as a consequence of local funding and control over indigent defense services, many counties have chosen to operate under a presumption of guilt, resulting in a system where processing the "presumed guilty" as cheaply as possible has been made a higher priority than investigating the possibility of their innocence.

This should not be surprising. Members of a county board of supervisors, many of whom are not lawyers, can easily be persuaded by political pressures arising from the competition for scarce tax dollars to provide only minimal resources for the defense of those who are accused of crime. That translates into just enough funding to facilitate the plea bargaining regime upon which the entire system relies, as no county has the resources to have trials in all cases. This may seem logical because many defendants are in fact guilty. But the system is based upon a false premise. It is assumed that those who are providing defense representation will somehow be able to distinguish between the many who are guilty and the few who are innocent. It also further assumes that the indigent defense system will be able to provide an effective defense for the innocent by managing to triage the limited resources available. This cannot be done, however, if the system does not ensure adequate defense investigation into the possibility of innocence in the first place. Yet recent empirical research conducted for the California Commission on the Fair Administration of Justice has