

Communicating Justice: The Role of Public Defenders

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ABSTRACT

Public defenders are often the last line of defense for individuals marginalized by economic, racial, and social inequalities. This paper critically examines the multifaceted role of public defenders within the U.S. criminal justice system, historically and contemporarily, highlighting the institutional challenges, ethical dilemmas, and structural injustices they confront. It argues that public defense is not merely a legal obligation but a vital communicative practice that shapes public understanding of justice. Drawing on historical context, legal theory, case studies, and examples of best practices, this work explores how public defenders navigate underfunded, overburdened systems while attempting to uphold constitutional guarantees. The analysis also considers communication strategies, training needs, and policy recommendations necessary to enhance public defense systems. Ultimately, this paper calls for a reimagining of public defense, not just as legal representation, but as a democratic mechanism to educate, empower, and reform.

Keywords: Public Defenders, Criminal Justice Reform, Legal Ethics, Indigent Defense, Structural Inequality, Access to Justice, Legal Communication.

INTRODUCTION

More than ever, the criminal justice system is recognized as built on the framework of social, economic, and political justice. It is understood that this system is dynamic, reflecting the constant struggles of different perspectives, resources, and opportunities. It is likewise understood that, compared to most houses, the U.S. criminal courts are notoriously not designed for the educated or the rich, who are often the individuals with the skills and resources to build language to access justice better. Those at the other end of the spectrum—often poor, black, brown, and immigrant—are viewed suspiciously. Making justice public, in practical terms, means changing its organizational structure and collaborative practices. This is one such attempt, an exploration of public defense's knowledge base, challenges, opportunities, best practices, ways to organize, and case studies of other organizations that have built educational campaigns and collaborative practices around public interest law. It is an ongoing effort to document the wisdom encoded in already available instruments—who uses what to educate whom—and to provide as many examples as possible. At the same time, it is a call for public defenders to embrace this effort: to share how you have educated others, to devise collaborative structures and practices, and to assess their strengths and weaknesses. Finally, it is a call for academics to embrace this effort as a field of study, for graduate students to devote their “systems thinking” capabilities to documenting how the public would benefit from education about competent, accountable, and wholly-independent public defense, and for educators to provide knowledge-management opportunities for this effort to continue [1, 2].

Historical Context of Public Defense

In discussions of the United States public defender system, two competing visions often arise regarding their roles. Some view public defenders as zealous advocates focused on providing the best defense, while others see them as public servants aiding the efficient handling of criminal cases. Over time, one vision gained prominence, shaping the contemporary understanding of public defenders. Analyzing how California's adversarial view emerged in newly formed public defender offices reveals why the notion of

public service is underappreciated and vulnerable to challenge. In the two decades surrounding California's 1919 law, a new generation of trial judges influenced the political landscape, coinciding with factors like population growth and social reform. Significant differences exist, too, such as California adopting a salaried judiciary in 1875, while Illinois only made this transition in 1913. In media portrayals, state public defenders often receive less dramatic treatment than prosecutors, as their experiences are less conducive to retelling. Nevertheless, cases like the "Two-gun" schoolteacher and the "Black-gloved rapist" illustrate how California's public defenders evolved beyond the role of kind public servants, choosing not to advise officers to avoid arrests based on questionable warrants [3, 4].

The Role of Public Defenders

The public defender's work provides one of the clearest examples of how professional legal praxis operates under the most restrictively informal rules of evidence shared among lawyers, judges, and court administrators. The Department of Police has "849" officers, while the Courts of Justice have "848." The responsibilities of each group have converge and diverged over the years, but ultimately the two groups have shared concern for legality and hence occupation of the same physical space. In Los Angeles, both groups are housed under the dome of the Courthouse, with the Prosecutor, Judge, Sheriff Deputy, Clerk, and Public Defender sharing chambers on the same floor. The even atmosphere in this space is entirely conservative, toxic to a progressive sense of justice. The public defenders must tend strictly to parochial duties as disinterested participants in the judicial process, rendering legal service, whatever the cost to individual clients. Professional association with police and prosecution is rewarded with favor upon one another and scorn for offense. Complaints of police misconduct are ignored as nuisances, and those that justify trials are deemed criminal contempt. Prosecutors are understood to be "doing their job" in seeking to keep juveniles from losing their virginity, or in exploring the public defender's criminal record on appeal of a misdemeanor. Prosecutors receive brief publicity for the success of public defenders on big cases, and moral high ground when the latter air exotic examples of dereliction. There are, nevertheless, fundamental limits to shared concern for job legality. Actions that diverge from the intention of prosecutors as a count in contempt, or the idea of public treatment to its most egregious extension, will denigrate the reputation of any outside group, or systematically experience ridicule. Interdisciplinary engagement thrives at the fringe, where boundaries are tenuous. Outside public venues, rare instances of rebuking police for needless manhandling, of showing empathy for defendants, and bringing rollback of administrative bureaucracy, will be fossilized promptly into legend. Embedded purely in professionally imbibed forms of regulation are means of deriding fellow actors, making for the most fertile grounds for norms to flourish [5, 6].

Responsibilities And Duties

The primary duty of a public defender is to provide competent legal counsel. This includes understanding a defendant's background and circumstances, conducting investigations, reviewing documents, participating in discovery, preparing motions, evaluating jury instructions, and engaging in trial negotiations. They must offer a full range of services, aiming to mitigate sentences and seek relief in appeals and post-conviction matters. Public defenders must keep defendants informed about case developments and provide necessary support, including psychological counseling. They must be cautious regarding conflicts of interest and manage disclosures properly. Ideally, public defenders should maintain office space in courthouses and may require specialized units for certain tasks. To prevent premature case closures and ineffective resource use, systems for tracking open cases and supervising caseloads should be established. Efforts to enhance the accessibility of public defender resources are essential, including measures to prevent denial of access by police and prosecutors. Public defenders should focus on developing support services and should engage in ongoing discussions to refine and improve public defender services [7, 8].

Ethical Considerations

Criminal defense attorneys have unique ethical obligations that often take precedence over other duties. In *United States v. McLaughlin*, Chief Justice Alexander Cockburn emphasized that advocates should act as warriors, not assassins. This reflects the ethical stance of American criminal defense attorneys, who sometimes face conflicts between their duties to clients and other ethical responsibilities. Judge McLaughlin deemed Cutler's actions unethical, which blurred the lines between criminal defense attorneys and other lawyers, as well as the differing obligations of prosecutors. Justice White noted that the need to avoid convicting the innocent allows defense counsel to challenge the State, even undermining truthful witnesses. Judge McLaughlin's view on ethical advocacy is contentious. Judge Kozinski's "well

within the rules” standard questioned the constraints on prosecutorial tactics, while McLaughlin’s approach risks limiting the defense’s zealous representation. Based on my experience, it is rare for clients to have directly conflicting interests in the scenarios that create such conflicts. The claim about structural conflicts presents an inaccurate danger. More subtle ethical issues in the prosecutor’s office can have greater implications. Furthermore, the legal culture in a jurisdiction can shape prosecutorial behavior, leading to a more adversarial atmosphere where prosecutors may not be perturbed by a defense attorney’s zealous advocacy [9, 10].

Challenges Faced by Public Defenders

The public defender system aims to provide strong advocacy for unpopular clients but often struggles due to overwhelming conditions. Since Justice Blackmun recognized the crisis in indigent defense, the situation has deteriorated. This failure undermines the constitutional promise of equality. Public defenders are admired for their dedication, but work under severely constrained, often demeaning conditions. They frequently go above and beyond their roles, facing significant stress that impacts their mental and physical well-being. The emotional burden of defending clients weighs heavily on them, raising concerns about losing their moral integrity. In response, public defense organizations created the National Association for Public Defense (NAPD) in 2014 to enhance public defense quality, particularly addressing issues like debtors’ prisons. Programs providing access to investigators and continuing education have been established, along with innovative community representation initiatives such as Law for Black Lives and the Bronx Defenders. Interest is growing among public defenders to reform the socio-political landscape of policing and prosecution. However, problems like increasing caseloads hinder effective defense, complicating efforts for justice. It remains unclear how genuine change can occur if the public defense community conducts campaigns or merely acts as facilitators of external demands. Their role in advocating against systemic injustices may come at the cost of their ethical obligations [11, 12].

Impact of Public Defense on the Justice System

Public defenders impact local criminal justice systems through various roles, such as appointing counsel during arraignments, handling bail issues, negotiating charges, and preparing for trial. Their work is often conducted under tight timelines with limited evidence, employing localized strategies tailored to specific judges and communities. They operate in the languages of the communities they serve, shaping the texture of justice intimately. Public defense reveals how political communities may be misaligned with broader concepts of polity, presenting nuanced challenges to unfamiliar participants within the justice system. Their efforts seek to influence judicial perceptions of individual and collective behaviors, reinterpreting daily experiences through dramatic portrayals that can range from poetic to violent. By merging abstract notions of justice with tangible realities, public defenders turn the cultural concept of “conflict” into legal “indictments.” They facilitate understanding or expose incomprehensibility, prompting the disclosure of investigatory materials and the nuances of complex circumstances. Their work underscores justice as a locally relevant phenomenon, where emotion, choice, and social context matter greatly. Public defenders respond to demands for precision with nuanced representations that reflect the scarcity of assessments in human contexts. They translate culturally specific events into gestures and descriptions that may bewilder outside audiences. These accounts feature confrontational exchanges and misinterpretations, akin to simplistic dialogues among children, highlighting the disconnect in behavioral understandings across different contexts [13, 14].

Communication Strategies for Public Defenders

Public defender work design must meticulously address critical aspects such as time management and the establishment of long-term strategies. The common challenge of high workloads frequently leads to a troubling situation where immediate performance takes precedence over the pursuit of systemic solutions. This urgent focus results in ineffective communication regarding failures that affect both clients and the community. Such an approach invariably fosters fire-fighting strategies that prioritize short-term fixes, ultimately sacrificing sustainable outcomes that benefit all stakeholders involved. Moreover, how communication occurs surrounding risk-averse choices, the creation of safety zones, and the implementation of equitable strategies often falls into the trap of scapegoating clients. This detracts from the necessary efforts to cultivate a positive understanding of the public attorney’s work and the broader intent of pursuing long-term goals for the benefit of justice. In light of these challenges, public defense systems must operate under the auspices of independent commissions. These bodies should exist free from direct political influence to uphold their integrity and effectiveness. Ensuring diverse leadership is imperative, particularly the inclusion of individuals possessing substantial criminal defense experience.

The independence of these bodies from the judiciary cannot be overstated. Consequently, performance evaluations should rest on proper assessments conducted specifically by defense organizations rather than being subjected to the influence of the courts. Moreover, the need for increased funding for public defense cannot be overlooked; it is crucial for the system's overall health and functionality. This financial support should be rooted in data-driven workload studies that take into account the funding allocated to prosecutorial offices. Legislators bear the responsibility of thoroughly analyzing budget discrepancies that exist between defense and prosecution. They must take tangible actions to support equitable compensation for both prosecution and defense as determined by the realities of their respective caseloads. Furthermore, state legislatures must ensure the provision of stable and dedicated funding for indigent defense. This support must be shielded from reliance on revenues generated from fines or fees, which can jeopardize the stability and integrity of the public defense system over time [15, 16].

Training and Resources for Public Defenders

The right to counsel is a crucial civil liberty in liberal democracies, aimed at ensuring fair trials for the guilty. However, public defenders often face issues such as inadequate funding, overwhelming caseloads, and poor training, resulting in many defendants, even innocent ones, not receiving fair trials. Many opt for guilty pleas to avoid the risks of trials with ineffective counsel, leading to severe consequences like jail time, loss of family connections, job opportunities, voting rights, and social stigma. To avoid such injustices, public defenders must have adequate training and resources. Sufficient funding is essential for effective public defense and the preservation of democratic values. Funding should be informed by data-driven case-weighting studies to determine necessary resources for effective representation, considering expenses for both prosecution and law enforcement. Reliable funding sources are important to minimize the need for negotiations over budget amounts, and defenders should have access to comprehensive defense services and non-attorney resources. There should be pay parity between prosecutors and public defenders, with reasonable compensation for assigned counsel. Each public-defense system must have a dedicated training director to develop mandatory programs for new attorneys, focusing on skills to provide competent representation, including the use of experts and technology. This foundational training should be paired with ongoing quality in-service training and mentorship from experienced defense attorneys. The need for robust training systems requires oversight from a statewide agency or a training director separate from public-defense operations [17, 18].

Case Studies

The lengthy journey of abolishing the death penalty in Michigan hinges on two key moments: the "Panic of 1837" and the revelation of systemic injustices, both seen as relics of barbarism and violence. This struggle embodies a clash between Justinian's perspective on false accusations and Melville's belief that it's better for guilty individuals to escape than for innocents to suffer. Examining life and death sentences in America today sheds light on historical legal practices. Presently, supporters and opponents of capital punishment persist. A recent Canadian survey shows opinions divided on this issue, with support varying greatly. Media reports highlight gruesome murders and swift justice, prompting reflections on the death penalty's potential revival in case of clear-cut crimes. My engagement with racial disparities in criminal justice began in 1999, focusing on Wisconsin's statistical data. Analyzing this data showed that Wisconsin's racial imprisonment disparity significantly exceeded the national average, particularly in Dane County. My research efforts included a presentation that caught the attention of a state senator. The project expanded into various tracks, emphasizing that essential change agents include those facing charges, their families, and community members. This section provides practical tools for stakeholders to better understand their rights and the attorneys' duties. Utilizing these tools empowers them to support legal counsel in meeting ethical obligations, enhancing communication through rights-information and feedback procedures [19, 20].

Future of Public Defense

To state the obvious: public defenders are facing a crisis. As harsh as the current reality is, it's utterly predictable and a deferential criticism of public defense is obsolete. Therefore, outrage has bloomed fiercely, but in ways that were both utterly predictable and a little disappointing, especially for what it portends about what's next. The freshly minted outrage has been taken in quite different directions. The typical critiques focus on increasing funding, whether by increasing fees, filing court costs, raising taxes, or tapping unprecedented federal stimulus funding. Additional comments are bittersweet considerations of the "lack of demand," whereby there are far fewer new hires than the political fringe would suggest. Indeed, some advocates are crowing about this captivity and reduction of criminal defense to simply a

funding request. Co-option is a time-honored narrative; it allows the status quo to prevail while pretending systematic change is underway. Others — predominantly from the civil representation side or from corralled activist intellectuals — are more concerned about cutting free of the conventionality of criminal representation entirely. Rightly or wrongly, in the current political mood, supporters of team criminal defense have decided to fight fire with fire. Skeptical of everyone's motives on both sides, an alternative narrative is needed. After all, no organization is better equipped than public defenders to unspool nearly 60 years of furious defenses of purported rights. For most of those 60 years, mainstream public defense has been providing self-serving, performative defenses followed by tawdry, piecemeal proposals for its institutionalization. In tandem with the rationalization of consequences, expectations for the independence of criminal representation have been lowered commensurately. These expectations are now so low that criminal representation is being co-opted into the crusade to save public higher education — something that seems only marginally more plausible than the belief that law could be something other than a social negative [21, 22].

CONCLUSION

Public defenders serve as indispensable agents in the pursuit of justice, often operating at the intersection of law, poverty, race, and systemic inequity. While charged with the constitutional duty of ensuring fair representation, their role extends far beyond the courtroom. They are educators, communicators, advocates, and social reformers embedded in a system frequently hostile to the very values they are meant to uphold. Despite crushing caseloads, limited resources, and institutional indifference, public defenders work to give voice to the voiceless and challenge the status quo of legal inequality. This paper has underscored the historical evolution of public defense, its structural constraints, and the ethical challenges faced by practitioners. It has highlighted the need for independent oversight, equitable funding, robust training, and cross-sector collaboration. Equally important, it has emphasized the communicative power of public defense—how it helps communities understand their rights, dismantles harmful narratives, and fosters trust in the justice system. To truly fulfill the promise of justice, public defense must be recognized not merely as a function of law but as a pillar of democracy. Public defenders must be equipped, supported, and empowered to do their work effectively. Their efforts must be documented, studied, and uplifted as models of resistance and reform. Ultimately, transforming public defense is not just about improving legal outcomes; it is about reimagining justice as a public, participatory, and communicative endeavor.

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