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Public Defenders as Their Clients See Them

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This article examines what the public defender's client thinks of his lawyer. It then suggests ways to improve attorney-client relations.

The data was obtained during a ten-week study of the office of the public defender in Denver, Colorado.^a During the study period, each felony client was assigned to a specific defender who followed his case through final disposition. The office subsequently replaced this "man-to-man" defense with a partial "zone" defense in which certain defenders take permanent stations in certain courts and handle all preliminary hearings coming through their courts.¹

Forty of the Denver public defender's clients agreed to interviews with the writer.^b The data obtained is subject to important limitations. First, the sample does not represent the spectrum of public defender clients. The interview procedure used eliminated all defender

a. During 1969, the Denver office appeared in about 3300 cases, or about 70 percent of all the city's criminal cases. (Statistics were obtained from the Denver public defender's annual reports.) Half these cases involved felonies; the rest were misdemeanor prosecutions and juvenile delinquency proceedings. The office also represented clients at lineups, probation proceedings, certain restoration of competency proceedings involving mental patients, and a substantial number of appeals. During the period of the study (June-August 1970), the office employed eighteen attorneys, including ten "felony deputies." Five investigators and five clerical employees formed the supporting staff. Each felony deputy carried a constant caseload of fifty to seventy-five cases. As soon as a current case was closed, a new one was assigned.

b. During the study period, the Inmate Council of the Denver County Jail, a group which discussed grievances with the jail staff, invited the state public defender to attend one of its weekly sessions. The writer attended

clients who could make bail, most misdemeanor clients, and all clients who were acquitted or whose charges were dismissed. Secondly, the sample of interviewees (except for the last sixteen) was not randomly selected. Yet, the findings do give some indication of how the indigent criminal client perceives his attorney.

I. Client Criticisms

As one might expect, complaints and criticisms of individual defenders and the office flowed freely once the clients began to speak their minds.

According to the interviews, the most widely shared grievance among defender clients is that defenders do not visit or contact them often enough. Said one, "The public defender is not competent. They don't come out to the jail. How can they know what I want to do?" From another prisoner: "My PD said if anything came up, to send him a kite. I sent him seven or eight kites. I have never heard from him." A closely related comment came from another client: "The PD needs to make his presence felt. He needs to do a lot more than just talk to you during a court recess." Still another observed: "The defendant in jail needs some feeling of confidence

and asked the council to refer to him inmates who wished to comment on the Denver public defender office. Obviously the twenty-four resulting interviews (of the forty total) do not constitute a random sample because the inmates viewed the interviews as a type of grievance procedure.

The other sixteen interviewees were selected differently. Prisoners represented by the public defender signed lists circulated through the jail. Names were then picked at random from the lists. Thus each of the forty interviewees either was charged with a felony and could not make bail, or had been convicted of a felony and was awaiting transfer to the penitentiary.

Of the forty clients, half were white, one-quarter black, and the remaining one-quarter Mexican-American. Median age ranged from 26.5 years for the white clients to 27 for the blacks to 28 for the Mexican-Americans.

because he feels so helpless all locked up."

The interviews also revealed widespread skepticism and cynicism about the effectiveness of the defender's office in general. This feeling is reflected in such a comment as, "It's a farce for you to think that you have representation by legal counsel just because the public defender's name is by your name on the docket." A second doubter asserted, "The public defender is not supposed to beat cases, but just go through the motions. I think the pressure is on the PD not to beat cases." Said another, "I have never heard of the PD winning a case."

Other barbs were thrown at individual defenders. "My PD is a real passive individual," was a typical comment. "I picked up a newspaper and saw that the PD investigator assigned to my case was in jail himself," another client reported. If that lessened confidence in the defender, so must have the experience of another prisoner: "I smelled liquor on my PD's breath when I went in yesterday for a preliminary hearing."

Several clients mentioned the defenders' staggering caseloads. One admitted, "I don't have any confidence in the PD because they are overloaded. The defender has to brief himself about two or three minutes before a plea is made or at a hearing." From another client: "The PD should not take a capital case because it takes more time than he can give it." One observed, "The PD carries a stack of cases into court." Yet, one defendant realistically conceded, "Contact with private attorneys is also a problem, from what I have heard."

Real or imagined pressure to plead guilty is a frequent complaint of defender clients. "I have no confidence in the public defender because they are not personal. They pressure you to cop out," a prisoner protested. Said another, "Although the PD gives the client the alternative, it always seems that the PD is telling the client what to do." A third client related, "My PD said that if

I get a misdemeanor [on a charge of narcotics possession], I ought to take it and run. I think I could beat it with any attorney but a public defender. The first thing that comes to the PD's mind is to cop out." Still another client agreed, "The PD is a bad thing. They are afraid of the judge. If you don't watch out, he will suggest a cop out at the last minute."

Some clients voiced suspicion that the public defender and the district attorney are not actually adversaries, but rather secretly or openly cooperate with each other.² As one interviewee put it: "The PD came back from joking with the DA and then offered me a deal for second degree murder." Similarly, "The PD and the DA have a lot in common. They still get paid no matter what happens to us." Another said, "I think that everything I tell the PD goes straight to the DA." A variation on this theme is that the defender will not stand up to the prosecutor: "The PD let the DA back out of a deal on waiver of preliminary hearing. I waived it only as part of the deal to get my girlfriend a misdemeanor." And along the same lines: "The DA has the PD under the gun. If the DA objects, the PD just sits there."

In addition to objecting that defenders sometimes do not stand up to prosecutors, clients also complained that defenders are reluctant to try to stop judges from abusing defendants. "The PD lets the judge get away with anything. When I wanted to plead insanity, the judge said, 'Oh, goddammit.' The PD just stayed silent. Then the judge told the PD, 'I don't care what you want.'" Another client remarked, "Judges have no regard for the public defender." In slightly different words, another prisoner agreed exactly: "The judges don't respect or listen to the PD."

Disagreement between defender and client over trial strategy or other procedure is another major source of

friction. "With a private attorney, you talk over strategy. With a PD, the client has nothing to say," was a typical grievance. Another: "I wanted to make bond. The PD said a bond motion would be useless, but I wanted to hear it from the judge." Some of the trouble might stem from the defender's reluctance to communicate. "Whether wrong in my requests for motions, or stupid or idiotic, the public defender should at least reveal to the client why his request is harmful or useless," one thoughtful client suggested.

One surprise is that 37.5 percent of the sixteen randomly selected interviewees thought specific defenders were performing adequately.^c Said one, "I've got nothing to bitch about. My PD has been shooting square with me. He's working for my benefit. He told me we wouldn't even consider a deal unless the charge was lowered a whole lot." Another defendant admitted, "I think my PD is a pretty good lawyer. He's not phony like the rest of them." Sampling errors, however, preclude meaningful inferences from this group of interviews. More accurate studies will be necessary to determine whether such a high level of satisfaction with public defenders does indeed exist.^d

In summary, clients' complaints vary widely, from insufficient contact between client and defender and a lack of confidence in the defender to the defenders' lack of spine and excessive readiness to enter a guilty plea for the client. Defenders were asked to respond to the complaints gathered in the interviews.

c. One interviewee, 45, was a burglary defendant with six previous convictions on his record. He said he had no criticism of his representation by the public defender — except for one thing. He had been in jail three weeks, and had not yet even seen a defender.

d. One study suggests a contrary finding. Casper, *Did You Have a Lawyer When You Went to Court? No. I Had a Public Defender*, 1 *Yale Rev. L. & Soc. Action* 4 (1971).

II. The Public Defenders Respond.

Public defenders' reactions to the clients' criticisms ranged from outright rejection to partial agreement.

Defenders who rejected the criticisms charged that clients were simply using the defender's office as a whipping boy for the entire system. The complaints, they said, stem from the clients' listening to "jailhouse lawyers." Protested one defender, "We get them good deals, probably as good as anyone could get them."

To the complaint of infrequent visits to jailed clients, defenders answered that jail visits usually are unimportant. What the client often wants when he sends for the defender is someone to talk to, someone to hold his hand. The defenders' caseload demands that they move on rather than spend time in jail visits.

In answer to the charge that defenders won't "fight" the judge, the attorneys reply that if they did fight the judge the client would suffer mightily — especially in sentencing where the judge has nearly absolute discretion.

Many — perhaps the majority — of the defenders agree that some of the clients' complaints are valid. While conceding that often an individual's case may be slighted, these lawyers generally consider their office's services adequate in comparison with private counsel.

The group's morale, nevertheless, seems low. Facing an expanding caseload and inadequate financing, these attorneys fear that what is now, in their view, an infrequent aberration will in time become the dominant characteristic of the office — inadequate, sloppy, and hurried representation. Already defenders have become preoccupied with paperwork because of an insufficient secretarial staff. The Denver office's critically important investigative section is generally considered useless and untrustworthy, except for one highly competent person.

Finally, several attorneys in the office confided that some practices of one or two of their colleagues were inadequate under any standard of professional conduct.

III. An Evaluation and Some Suggestions

Client expectations do not seem unrealistic when compared with a recent discussion on the attorney-client relationship in the *ABA Standards: The Prosecution Function and the Defense Function*.³ The very heart of its argument applies to Denver defender clients' expectations.

The report points out that the finest criminal lawyers testified that repeated interviews frequently were required to establish an adequate working relationship with an accused client. The standards continue:

If this is the experience of seasoned criminal defense lawyers whose clients often are sophisticated men who selected them because of their confidence in their abilities, clearly the lawyer who does not have these advantages must be prepared to devote special efforts to insure that this necessary relationship develops.⁴

Furthermore, establishing this trust is all but impossible unless the client is kept reasonably informed of the progress of the case.⁵ The public defender should expect that this client

will respond less readily, and it will ordinarily take considerable time and patience to establish a workable relationship. The lawyer cannot expect a good relationship to spring into

being at once. Several conferences, or many, may elapse before the accused is willing to put his trust and confidence in the lawyer.⁶

Given these standards, the expectations of the Denver defender clients seem eminently reasonable, and even highly charitable toward the defender system.

Since the defender lacks the ordinary client-control sanctions of a private attorney, the defender necessarily must strive harder to persuade the client that the attorney is pursuing the client's best interests. Since the defender's time limitation precludes being overly deliberate with each individual client, he must adopt other strategies.

A. The "Hard Sell"

One defender, who seems to receive relatively infrequent criticisms from clients, has adopted a routine approach to initial client interviews. He believes it necessary to make an initially strong impression on the client. The essence of the approach is a "salesman pitch."

My name is M. You may have heard my name mentioned around the jail. I am a lawyer, a public defender. (At this point, the defender gives the client a business card of the defender's office with his name on it.) Before we start I want to tell you a little about myself. I am a criminal law specialist. I've been through a lot of trials and won a lot of them. I am a winner and not a loser. I want you to know that I fight like hell to win for my clients. I hate to lose. I don't care if you killed your grandmother, I'm going to fight for you if that's what you want me to do.

I don't work for the DA. I don't work for the judge or the cops. I don't like the system.⁷

You probably heard a lot about deals around here. Well, I don't make deals. I won't sell you down the river. I don't cop anybody out. If the DA offers you a deal, I'll pass it along to you. But it's your deal.

You control this case. This is your file. You can read anything in here; there's no secrets. You make the decisions about copping out.

Anything you tell me is kept in confidence, because I can be disbarred if I tell anybody what you have told me in confidence. This is known as the attorney-client privilege and nobody can make me talk about what we talk about.

One more thing. I can't help you unless you play it straight with me. I don't care what you might have done, but I have got to know all the facts. If you try to con me, you have not got a chance.

Any questions? Then let me get some background information on you.

The attorney then asks some general questions and eventually shows the defendant a copy of the information. After covering the facts the defender ends the interview by saying:

If anything comes up that you [the client] need to know about, I will contact you or come to see you. But I'm not going to come out here and hold your hand. Understand? You follow me?

There are a lot of things that I can do without talking to you. We have a preliminary

hearing in a couple of weeks; I'll see you then.

If I don't see you at the hearing, I got hung up in another court. I might not be there, but that does not mean that I am not working on your case. I will have told the other defender all about your case. When it comes down to trial, where it really counts, I'll be there. Understand?

The defender makes a strong impression on the client and may well begin to gain his trust. This approach diminishes attorney-client tensions and forestalls the complaint of several interviewees that their attorneys did not even take notes — much less “sell themselves” to the clients.

The client is assured that, despite what he may have heard about “deals,” only he will make the deals. This approach soothes a raw nerve in a jail where every inmate fears betrayal by a lawyer. At the same time the defender attacks the system, he warns the client not to expect him to be coming to the jail every week.

In short, this attorney claims to be a fighter for his clients. What gives this approach credibility is that the lawyer *is* a fighter; there never will be any “fixed” trials as far as he is concerned.

B. Using the Preliminary Hearing for Client Control

One ingenious way to persuade the client to accept the defender's view of the case utilizes the preliminary hearing. The hearing requires the prosecution to show probable cause that the defendant charged committed the crime alleged in the information. Defense attorneys often waive the hearing to avoid preserving prosecution testimony that might be useful if a key state witness became unavailable.

Some clients interviewed complained that their public defenders listened to their story and seemed to believe

the client's version as against the police version, but still suggested pleading guilty in exchange for a reduced charge. These clients believed they could offset the alleged police perjury or that the key prosecution witness could not or would not identify them in court. The defender frequently must persuade the client that the prosecution's evidence will indeed be strong. The sobering effect of hearing the testimony at the preliminary hearing may swing the client to the defender's viewpoint.

C. Other Suggestions

1. The defender office chief should closely supervise the trial ratios of all attorneys. In the Denver public defender's office, the worst attorney as far as bargaining is concerned was also the one who went to trial least often.

2. The office should institute a visitation policy. A recording system would permit the office supervisor to ensure conformance to the established policy. In no case should a client go longer than six weeks without receiving some communication from his attorney. This is especially true for those who cannot make bail and are jailed pending trial.

3. As this study plainly shows, the client desires his defender to take notes during interviews. In the client's view, when the defender takes notes, he shows his interest in the case. Accurate and readable notes, moreover, are essential if the case is transferred from one attorney to another.

4. When the public defender wins a big case, he should, with all good conscience, make this fact known to county jail inmates. The city newspaper may not carry any story on the case. If not, a short squib might be inserted in the jail newsletter. Such an effort might rebut the oft repeated statement: “I never heard of the PD winning a case.”

5. The defender should never make promises, express or implied, that he cannot or will not keep. Such insincerity can seriously damage an office's reputation.

6. The public defender should always try to treat the client with respect. A court without suitable facilities for private conferences, however, makes this difficult.

7. Whenever the defender plea bargains, he should demand that his client have time to ponder the offered "deal." I observed several cases in which the district attorney offered a misdemeanor in a felony prosecution immediately before a hearing. If the client refused to waive the hearing immediately, the deal was called off. This option puts the defendant-client under considerable stress. The defender must demand, formally or informally, that the district attorney give the client some time to think. If the district attorney will not cooperate, the defender should consider using some of his administrative leverage. For example, the defender's office could exert considerable pressure on the district attorney by simply reducing the number of guilty pleas and demanding more jury trials.

8. The office should hire a law student to assist defenders with paperwork at the jail during peak visitation periods. This student also could act as an ombudsman for the clients. He could translate the inarticulate client's questions into legal terms so the defender could answer them precisely without having to interview the client.

9. The office should establish a policy to deal with friction between client and defender. The policy would attempt to solve the problem without causing the attorney to lose face. At the same time, the client would be protected against the "silent treatment" — being left in jail and forgotten.

10. Defenders should always remember that clients are virtually paranoid about friendly relations between

the public defender and the prosecutor or judge. The defender should not be chummy with the district attorney, at least not where clients can see them.

11. Bond reduction motions are important to indigents who see those with more wealth (and often more guilt) walking the streets while they sit in jail. The public defender should recognize that bond motions, no matter how perfunctory they seem to him, are highly significant to the client.

12. Clients should be clearly informed what motions will require their presence in court, and which ones may be heard without their presence.

13. If the defender's client simply will not confide in him, or if some irreconcilable conflict in strategy arises, the defender should ask the court to appoint another attorney "for cause." A judge could refuse such a motion only with great difficulty if the defender deposed that he could not possibly represent the client adequately.

14. Within any eighteen-month period, each attorney should be given a break of several weeks to a month with no caseload duties. This period would provide a change of pace, not a vacation.

NOTES—

1. The terms "man-to-man" and "zone" are suggested in Comment, Client Service in a Defender Organization: The Philadelphia Experience, 117 U. Pa. L. Rev. 448, 450-51 (1969).

2. See Comment, In Search of the Adversary System — The Cooperative Practices of Private Criminal Defense Attorneys, 50 Texas L. Rev. 60 (1971).

3. American Bar Association, Standards Relating to the Prosecution Function and the Defense Function (Tent. Draft March 1970).

4. *Id.* at 198.

5. *Id.* at 222.

6. *Id.* at 198.

7. *Contra*, Platt, In Defense of Youth, A Case of the Public Defender in Juvenile Court, 43 Ind. L.J. 619, 635 (1968) (PD never criticizes the system before a client).

APPENDIX

TABLE I

Clients' Comments	Non-Random Group (% of 24)	Random Group (% of 16)	Total (% of 40)	Attorney ^a Mentioned
Generalized Mistrust of the Defender System or of Particular Public Defender	15 (62.5%)	3 (18.8%)	18 (45.0%)	A-5 complaints B-4 complaints C-4 complaints D-2 complaints E-1 complaint
Public Defender Put Pressures on Client to Plead Guilty	8 (33.3%)	2 (12.5%)	10 (25.0%)	B-1 complaint D-2 complaints E-1 complaint
Public Defender Did Not Visit the Client Frequently Enough	13 (54.2%)	8 (50.0%)	21 (52.6%)	A-6 complaints B-4 complaints C-4 complaints
Client Had Specific Disagreement With Public Defender Over Strategy	2 (8.3%)	1 (6.2%)	3 (7.5%)	C-1 complaint D-1 complaint E-1 complaint
Client Thought Public Defender Gave Incorrect Legal Advice	1 (4.2%)	0	1 (2.5%)	D-1 complaint
Public Defender Permitted Judge to Abuse or Mistreat Client	3 (12.5%)	0	3 (7.5%)	A-1 complaint B-2 complaints
Public Defender Played "Favorites" Among His Clients	1 (4.2%)	0	1 (2.5%)	
Clients Were Indifferent or Noncommittal to Their Defender Attorney	0	2 (12.5%)	2 (5.0%)	
Client Had No Complaint or Was Satisfied with Representation Received	0	6 (37.5%)	6 (15.0%)	D-2 compliments E-2 compliments

a. Although the interviewed clients referred to individual defenders by names, these codes are used to protect the defenders' identities. Those coded A and B are the attorneys referred to by their colleagues as inadequate (Part II supra).

Total Number of Attorney Complaints

A - 11 complaints
B - 9 complaints
C - 9 complaints
D - 6 complaints
E - 3 complaints

TABLE II

Offense	Percentage of the Sample
Possession of Marijuana	22.5%
Burglary	20.0%
Aggravated Robbery	15.0%

Out of 40 clients interviewed, 13 different offenses were presented. Of the remaining 10 offenses after excluding the 3 in the table, no type represented more than 4% of the sample.

TABLE III

Fourteen random clients were asked about interviews with the public defender.^a

First, "Do you feel that you discussed your case thoroughly with the public defender?"

Response	Number	Percentage
Yes	11	78.5
No	3	22.5
Total	14	100.0

Second, "When, if at all, did the public defender mention the possibility that you should plead guilty?"

Response	Number	Percentage
In first interview	4	29.0
At preliminary hearing	3	21.0
PD did not mention "deal" in at least two interviews	3	21.0
At second interview	1	7.1
At third interview	1	7.1
At fourth interview	1	7.1
Defendant brought "deal" up	1	7.1
Total	14	100.0

a. Fifteen random clients were asked, "Did the public defender tell you that you had a right to go to trial if you wanted to?" Thirteen (87%) answered yes; two (13%) said no.