The Lackadaisical Defender: management of stigmatized professional life

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ABSTRACT

The Lackadaisical Defender: moving towards respecting the multiplicity of public defender identification and identity

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The public defender is often represented as incompetent and overburdened, working in collusion with the government to over-incarcerate, and as morally bankrupt because of who they defend. Despite being lawyers, and thus professionals, who we would think would enjoy a level of prestige and high esteem, they are stigmatized because of their professions. There is not an abundance of literature of public defenders, and that which exists does not give much attention to the autonomy of public defenders and the meaningful qualitative analysis that is possible. I describe the stigmatization of public defenders and possible management techniques for these representations. I discuss how these representations are managed by analysis of interviews conducted with current assistant public defenders. The importance of paying more respect to the management required of public defenders is argued well by sociologist Lisa J. McIntyre, whose theory I use as a starting point; public defenders legitimize the judicial system and to achieve this, their legitimization of them through deeper representation is imperative.
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First, giving honor and glory to God who is the supreme authority in my life.

Second, thank you mama.

Third, I would like to acknowledge the process that got me here. When I first set out to find a research focus I was pulled in a multitude of directions, each of which had some connection to my identity, my goals, and my perception of self. There were many questions that I had about myself, about the world in response to myself, and the work that I want to complete as I matriculate to the next phase of my education, professional development, and future career. I also wanted to incorporate the many ideas I had about reconstructing dominate narratives through my studies in critical legal studies, black feminist thought, critical race theory, feminist legal theory, among others. A common thread among all of my ideas had been law, the ‘Other’, mass incarceration, and the like. Needless to say, there was so much going on that many of the concepts, though already existing in the field of study to some much more than others, would not be meaningfully investigated by me despite my hope to give a more insightful study of their varying intersections. My current thesis is the love child of certain aspects of all the ideas I hoped to incorporate into a study. It is informed by future career of public defense, by my lifelong mission of combating the negative narratives that attempt to consume black women, by my desire to posit alternative ways of knowing and multi-dimensional identities, by my hope to understand the sociological method more intimately.

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# TABLE OF CONTENTS

Abstract .......................................................................................................................... 2  
Acknowledgements ....................................................................................................... 3  
Introduction .................................................................................................................. 5  
Project outline -13 | Methodology -16  

Stigma and management .................................................................................................. 20  
Prestige -20 | Stigma -24 | Management -32  

Analysis ......................................................................................................................... 35  
Conclusion ..................................................................................................................... 48  
Appendix A ..................................................................................................................... 53  
Appendix B ..................................................................................................................... 54  
References ..................................................................................................................... 58  
Endnotes ......................................................................................................................... 61
INTRODUCTION

Chapter Preview

Research question ... 5
History ... 5
Consequences of Gideon ... 10
Paradox of public defense... 12
Project outline ...13
Methodology ...16

Research Question

Public defenders maintain a peculiar position with the United States criminal justice system. They are in many ways necessary to the procedural justice standards that our system and Constitution put forth, but their position is simultaneously widely contested for many different, and often contradictory, reasons. The research question investigated in this project is how public defenders manage stigmatization amidst the prestige afforded to them because they are lawyers. The puzzle that this research question begins to present flows from the history of the public defender and how the way they are viewed has changed along as they’re roles have evolved.

History

The initiative to provide legal services to low income defendants began long before the ruling of Supreme Court of the United States (SCOTUS) in Gideon v. Wainwright (1964). Dedicated representation for the poor began as a subtly. Legal scholar William M. Beaney notes that indigent defense has its origins in the courts
institution of the right of criminal and civil defendants to represent themselves in legal matters, or have dedicated counsel or "a friend" (1955: 41). He argues that colonial American law modeled itself after the law of the country from which it sought formal independence, noting that English common law from 1695 slowly enacted statutes that permitted and mandated the appointment of counsel for criminal defendants (1955:34). The charters of colonial America— and soon after, the state constitutions with the exception of Rhode Island – began to stipulate to the permissibility of legal representation, first, exclusively in civil disputes and misdemeanors, and later, in than felony proceedings. Even where this formal rule was absent, procedurally early state court processes capitulated to English common law. This meant that after 1776, new states such as Virginia, Georgia and North Carolina allowed the accused to retain counsel, and eventually they exercised state-derived power to mandate the appointment of counsel.

The motivation for requiring counsel be appointed, regardless of ability to pay, was the fact that defending oneself against substantial charges is daunting given the complexity of the judicial process. Because of this, an advocate who is capable of navigating the courts is imperative in high stakes litigation. Often cited to relay this sentiment is the opinion espoused by Supreme Court Justice George Sutherland in *Powell v. Alabama* (1932):

"The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without a proper charge, and convicted on incompetent evidence, or evidence irrelevant to the issues or otherwise inadmissible. He lacks both skill and
knowledge adequately to prepare his defense although he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.”

Though this decision was the first to confer the right to counsel in capital cases regardless of finances, the above characterization was also used to support the need for representation at all. In the early days of the judicial system, whether you could afford an attorney or not, you were guaranteed the right to secure one.

The ideas that a) you had a right to have a lawyer, and b) that you had a right to have one appointed when you could not pay, had to come together to get the decision in Powell, and eventually Gideon. However, it was a controversial idea that judges could compel attorneys to represent clients sans compensation. The first substantive conception of the public defender did not come about until the 17th century when California’s first female lawyer, Clara Foltz drafted and published a series of articles that condemned the United States judicial system for not providing counsel regardless of ability to pay. Foltz condemned every actor in the judicial system, from judge to prosecutor, for their complicity in allowing what she considered abuse.¹ During the 1893 Chicago World Fair, Foltz gave a speech that set forth a formal conception a public defender’s office that would alleviate the deficiencies in the criminal justice system (Babcock 2006; 2012).

The first public defender’s office began decades before either Powell or Gideon in 1913 in Los Angeles, California. Other cities and whole states followed suit, including Columbus in Ohio, Connecticut, and Memphis, to name a few. This all preceded a formal right to counsel regardless of ability to pay.
These offices were initially seen as a way to unburden the judicial system. Lisa J. McIntyre entertains the idea that public defenders offices were created in the interest of 'judicial economy', meaning that the sanitization of the judicial process via the creation of public defenders would lead not only to reduced costs and calamity within the courts, but also increased justice for indigent defendants (1987: 50). Though McIntyre ultimately sees legitimacy of the judicial process rather than judicial economy, as the true result of public defense, the role of public defense was at least initially relegated to an economizing position. Kim Taylor-Thompson notes that originally proponents of public defense thought that the new organizations would, “centralize criminal defense and [improve] the efficiency of the criminal justice system,” because they’d, “help reduce court calendar congestion, handle heavy caseloads, and promote greater respect for the court system by improving court efficiency” (Barak 1975, Smith 1921, Taylor-Thompson 1995).

Rather than provide this relief to the system, the public defender systems seems to have placed further burdens on the system which have in turn spoiled the esteem of public defenders. For public defenders, contempt is strewn when they do their jobs poorly and even more when they do their jobs well.

The 'judicial economy' benefit analysis has become less applicable as the number of defender's offices – and by extension, the 'philosophies of defending'—increased exponentially after Gideon v. Wainwright, a case which forced the implementation a large-scale legal aid system.

In the early hours of June 3, 1961 in Panama City, Florida, a local billiards spot, the Bay Harbor Pool Room, was burglarized. Damage was done to the property—a
window was smashed to pieces, presumably to gain access, and various items were taken, including a cigarette dispenser and jukebox were ransacked for cash and beer and wine were missing from the bar. An eyewitness claimed to have seen a man, identified later as Clarence Earl Gideon, leaving the scene around the time of the burglary. Gideon, a drifter, was found a couple of blocks away by police with a few coins in his pocket and a near empty bottle of wine. On the word of this witness only, Gideon was arrested and charged with breaking and entering and petty larceny.

During his trial, Gideon argued that pursuant to the text of the Sixth Amendment to the U.S. Constitution, which states that, “in all criminal prosecutions, the accused shall enjoy the right to.....have the Assistance of Counsel for his [sic] defence,” he should be provided an attorney despite his inability to pay. The judge did not agree; in fact, given the state’s right to determine when counsel was guaranteed and Florida’s denial of that right, at least as far as the facts in this case were concerned, Gideon did not have a right to counsel. One hour after beginning deliberations, Clarence E. Gideon was found guilty of petty larceny—a felony—and sentenced to a term of five years imprisonment. While incarcerated, Gideon looked further into the Sixth Amendment and what it said about a defendants’ right to counsel. His first attempt was to convince the courts that the Constitution mandated a right to counsel that could not be denied by the states, Gideon filed a habeus corpus—a motion claiming that his imprisonment was illegal—but the request was denied. However, a subsequent petition to SCOTUS was picked up by the court.

On March 18, 1963, SCOTUS, headed by Chief Justice Earl Warren, unanimously decided that the constitution did confer the right to legal representation
regardless of ability to pay. Previous invocations of a right to have counsel (if you wanted and could afford it) found in the Sixth amendment were extended under the Fourteenth amendment’s Equal Protection clause to include indigent defendants. The reasoning behind this framing of the legal question was that, given the necessity of counsel in criminal court proceedings, they were not only permissible, but required, and the duty to provide them in the event that the defendant couldn’t afford one belonged to the states where it had previously only applied the federal government.  

**Consequences of Gideon**

This bound the states to develop entirely new state-funded agencies with attorneys prepared to represent indigent criminal defendants on a government salary. While there were already many voluntary defender offices, much still had to be done to bring the rest of the country up to speed. This was, first, a blow to the efficiency that public defender organizations originally set out to bring to the criminal justice system. The increases in the need for public defenders, for resources to equip them with, for funding for salaries and all the associated costs of creating a state or local agency with limited help from the federal government, undermined the economic argument that was initially used to justify the first voluntary defenders before *Gideon*.

A secondary consequence of this is suggested by Taylor-Thompson and conceptualized by Barbara Babcock, which argues that this increase of the defender population and subsequent regeneration of the role of defenders, contributed to a substantial splitting of court interests and defender interests. The adversarial tension between the state and the defender was fanned by what Babcock charges as the “professional isolation” of the public defender. This, as Babcock describes it,
dissonance between defenders and those whom they work for and with, as well as a wedge being driven between defenders and the court system they were incorporated to operate within (1999:118).

With these developments, the existence of defenders became volatile and their identity always in need of internal and external reconciliation. The history of public defenders demonstrates the fall from grace (or in the very least, fall from indifference) experienced by public defenders to their current public, professional and social status.

Even further, that status is low and the perceptions of defenders is largely negative. In the limited academic discourse that specifically and substantively focuses on public defenders, legal scholars and sociologist’s alike attempt to explain how public defense has failed to meet the aims of underlying Gideon. Whereas the logic of Gideon suggested that public defense was to insure the “fundamental fairness” in jury trials, the reality of public defense empirically suggests that those requiring public defenders were not getting a fair shake by the court. This is where opinion becomes divided. On the one hand, scholars argue that the interruption of fair and just judicial procedure is a fact of the overburdened criminal justice system as a whole. Others blame public defenders specifically by calling out their deficiencies as litigators and illegitimacy as colluders with criminals, among other things.

In Gregory Barak’s article, “In Defense of the Rich: The emergence of the public defender,” it is argued that the establishment of the public defender organizations by the decision in Gideon was not conferred in order to level the playing field between defendants who could afford their own representation and those who could not, but rather it was a strategic move by the courts to play the field on both sides of the
adversarial system. He contends that given the fact that public defenders, judges and prosecutors derive their funding and salaries from the same place, there is evidence of being appendages in the same body which is set on the incarceration of the poor (1975).

Countless other theories claim that the criminal justice system as an institution suffers from structural and governmental deficiencies that are transferred to public defense and this is the cause of many of the problems within the public defender system. For example, the overloaded case docket of public defenders is argued to significantly limit their ability to appropriate the necessary and due attention to each client (Blumberg 1967;1979, Giovanni 2015, Lawrence 2015, Sudnow 1965).

In other cases, public defenders as both a professional group and as individual actors, are indicted for their harm to the ideals of judicial process that are implicit and explicit within the Constitution. The notion that a lack of skill is inherent to public defenders or that they are contaminated by the assumed criminality of their clientele is proposed as a natural representation of public defense (Casper 1971; McIntyre 1987).

**Paradox of public defense**

Even more sociologically interesting is the fact that all of these notions of public defenders exist while there is a simultaneous and contradictory prestige relegated to the lawyering profession. This history of public defenders highlights the social, political and economic moments that shape the ascribed identity of public defenders, but the reverence of the legal profession flies in the face of this representation. Lawyers, who require institutional credentialing and specialized knowledge are viewed—as professions traditionally are—as belonging to prestigious field. Public defenders, though lawyers,
don’t seem to derive the same benefits from association with their profession as other niches of lawyers might. This may be because the admiration enjoyed by lawyers is superficial; while they are revered for the requirements of their work, they can simultaneously be treated with disdain for other features of their duties. However, it seems that if redemption is at all possible in light of association with the legal profession, public defenders miss the boat.

Project Outline

The discussion of how public defenders are positively or negatively represented by those external to the public defense—or in the very least, by those who are treating public defense as an object to be studied—are ignoring the asserted identity of public defenders. Prevailing representations of public defense, whether they pander to a) the ‘public defenders are bad because the system is bad argument’ or b) the ‘public defenders are by nature illegitimate’ argument, ignore the autonomy of public defenders. McIntyre says of chief public defenders (though applicable more generally to public defenders) that, the asserted identity of public defenders is ignored because of, “the assumptions that the chief public defender has not control over the work of his office, and that because of their subordination to the judges, public defense lawyers cannot function as ‘real defense counsel’” (1987:61). The assumed lack of choice in the way the handle cases or how they choose to interact with clients, is the very reason that their legitimacy is questioned and their identity spoiled.

This must be rejected; public defenders are not just cogs in a criminal justice system, subject to the will the state or other actors in the judicial system, such as judges and prosecutors. The work that they do is just that, done by them. To more aptly
represent public defenders, we must fully acknowledge and appreciate their control over their actions, for better or worse. While McIntyre’s piece, even 30+ years later, is at the forefront of analysis of the stigmatization of public defenders, her analysis doesn’t substantively address methods of management of external ascription of public defender representation. My research extends McIntyre’s initial work, adding the element of considering the paradox of stigmatized representation of public defenders and legal prestige. My project does not claim to empirically or substantively refute representation, but rather discuss different ways in which stigma may be managed by public defenders. Further, this is not an exhaustive list of those ways.

Chapter 2

In the next chapter, I will provide a contextualization of prestige and stigma as it pertains to public defenders. First, I will briefly discuss the prestige of lawyers. Next, I will provide a definition of what Stigma is, as conceptualized by Irving Goffman.

After that, I will outline specific stigmatized representations of public defenders that my data will eventual address in terms of management. The three main representations are: 1) Public defender are incompetent, 2) Public defenders are overburdened, and 3) Public defenders are in collusion with the state. These representations are most often, though not exclusively, ascribed by individuals external to public defenders, such as, attorneys in different practice areas, clients and the non-public defender public.

The next half of chapter 2 looks at the management tactics available to stigmatized public defenders. This section also focuses on the added layer of stigma management that public defenders uniquely have to navigate, namely, the existence of
their profession at the low end of a typically prestigious profession. Goffman, in addition
to providing the framework for delineating social identities which are ascribed versus
those that are asserted by the individual, describes three ways of managing stigma: 1)
setting oneself apart from the stigma, 2) rejecting the stigma altogether, and 3) trying to
manage one’s representation by compensating for it or attempting to assimilate to a
different and accepted ‘status quo’ (Goffman 1963). In addition to using these three
methods, I describe a fourth prospect that turns the stigmatized attribute on its head in
an inversion of morals (Lamont 1992; Willie-LeBreton 2003). By this, I suggest that
public defenders take what is contested about their work and valorize it, effectively
recasting the stigmatized property as a marker of superiority over their interlocutors.

The necessity to manage stigma, in the case of public defenders, I argue, is
apparent in the crucial role they play in the judicial system. When public defenders’
identities are spoiled, the risk is that their adversaries, their clients, the judges whose
courts they appear in, etc. don’t see them as legitimate. Mcintyre argues that
legitimizing public defenders is imperative because they legitimize the criminal justice
system.

Chapter 3

The third and final substantive chapter applies the theories of management to
interviews I conducted of five public defenders practicing at a large public defender’s
office in a large metropolitan city. This structurally different from many of the other
public defender organizations is similar regions and with similar populations. The
consequence of this is that the constraints on the employees at this office are different
from other defender organizations. While there is variation from office to office based on
the region the office is located, the size of it its jurisdiction and the structure of the local
government, the difference in funding sources makes for substantial difference between
the office where I studied was based and other offices in similarly situated areas. This is
important to recognize for two reasons; first, it highlights meaningful variations that are
often ignored in the scholarship, and second, these variations suggest that the
scholarship on public defenders is overlooking an important variable of analysis. The
structure of a defender organization renders such a difference between offices, that the
experiences from office to office is almost totally different. In ascribing representations
to public defenders and their work, difference in funding source is not taken into
consideration, just as region, size of jurisdiction and other features of the particular
office is not taken into consideration. This leads to broad generalizations whose
applicability must be contested.

This chapter parallels the third chapter by outlining the same three points—public
defenders are incompetent, public defenders are over-burdened, and public defenders
are in collusion with the state—and then going on to use data from my interviews to
show how public defenders may manage this stigma.

**Methodology**

For this research I conducted five semi-structured interviews with current public
defenders. The only qualification that I specified was to be a public defender. I didn’t
take age, race, gender or any other variable into consideration. Of my five interviewees
only two of them were still participating in trials. This seemed to be cut along age lines.
The longer an attorney had been with the office and/or the older that they were, the
more likely it was for them to have moved from active litigation to the appeals department.

I chose to use interviews because they were the main tool used in other investigations of public defender representations, such as in Lisa J. McIntyre’s *Repute* and in Michael Scott Weiss’ book, *Public Defenders: Pragmatic and Political Motivations to Represent the Indigent* (2004). Before settling on interviews as the most effective way of getting at my research question, I conducted participant observations at a local criminal court, which proved to obscure any meaningful data. I speculate that this is because of the general secrecy that surrounds legal matters. The places where actors in the legal system—judges, lawyers and their clients, probation officers, clerks, bailiffs and prosecutors—come into contact with one another and where they do their work—courtrooms, jailhouses and law offices—are some of the most heavily secured places in our society. These places are physically locked away and surveyed such as is the case with prison system—where inmates, considered a vulnerable population, are overwhelmingly excluded from research opportunities for their protection—or the courtroom, where the same individuals are excluded from research under pseudo-legalese as I came to experience while observing in a Municipal courtroom. Being denied the opportunity to take notes effectively render ‘open-access’ a fantasy.

The paucity of literature on public defenders may have something to do also with confidential cloud that surrounds lawyers of all types. Attorney-client confidentiality, which privileges communications between practitioners and participants in the criminal justice system is the most far reaching privileges in that it applies across all jurisdictions. However, this is no surprise when we look at other privileged areas within our society—
physician/patient, priest/parishioner, etc.—which are similarly fortified and similarly limited in the sociological literature.

In terms of the interviews that I eventually settled on, it is additionally important that I note that both a) my method of securing interviewees, and b) the miniscule number of interviews I conducted, especially in the context of the office’s population, impacted my ability to discuss with any certainty public defenders management of their representation. Initially, my method included internet searches of email addresses of lawyers and emails to whoever I found. Eventually, evolved to using referrals from prior interviewee’s to secure participants. Also, many of the questions I asked required those who I interviewed to reflect on events and work done many years prior. The risk here is that interviewees sanitize their reflections or generally forget all of the details.

The questions were meant to go chronologically. I attempted to structure the interview in terms of pre-law school experiences, law school experiences, and a post law school experience. In terms of pre-law school experience, I was interested in undergraduate work and whether or not law school and public defense were yet on their radar. This conversation also includes discussions of any jobs, internships or careers held prior to deciding on law school. For experiences during law school, I inquired about the public interest scene and their course of study, as well as job and internship experiences. When asking about the tone toward public interest at all of these different points, I focused in on how they talked about public defense as well as how they described how others talked about public defense and their response to those conversations.
The 'after law school' section of the interviews included a much wider net. We discussed other legal experiences and jobs and their reasoning for going into and switching from different positions that they held in addition to where they are currently. This conversation also included extensive dissection of their work life as a public defender; what they had to do in the course of their work, how they did it, how they and others talked about it, and how their work or method differed from others (if applicable), to name a few.

The third chapter, the analysis chapter, includes quotations from the taped interviews that I conducted, with random pseudonyms included for each individual. Some of the quotes are redacted, locations changed and names excluded to protect the identity of my interviewees because of the previously mentioned privilege that attorney's enjoy, but also must respect. It is something that they must be cognizant of at all times, so much so that their work life and personal life is heavily compartmentalized—a fact that many nodded to as a tool of management. Given the existence of the legal limitation to which my interviewees are bound, I wanted to be cognizant and respectful of my interviewee’s careers when selecting material to relay in my analysis though I recognize that many of the responses are already self-sanitized. Information that may have been withheld may very well have been useful to my research. While there is nothing I can do about this, I have used what I consider to be the best expression of their words to develop an analysis of public defender stigma management. The appendix includes a list of interview questions (Appendix A) and a profile of each lawyer using a pseudonym (Appendix B.)
In the introduction, I suggested that following *Gideon v. Wainwright* created a demand for the institutionalization of public defenders that put a strain on local and state governments, and in turn, kicked the contempt held for the attorneys into overdrive. Where public defenders were once tolerated as a necessary component of the adversary system and in the process of conviction of criminals, they are increasingly viewed defunct. In this chapter, I will discuss the representations of public defenders on three fronts: public defenders are incompetent, public defenders are over-burdened and public defenders are in collusion with the state. To get to this discussion, I will first
ground these representations by defining prestige and how it works is my theoretical framework, and by defining stigma and how it works in my theoretical framework. Finally, the latter part of this chapter will discuss four methods of management as imagined by Irving Goffman, Michele Lamont and Sarah Willie-LeBreton.

**Prestige**

Professions, by their very nature, are prestigious because of their higher educational demands and status (Abbott 1988, Collins 1979, Freidson 1984; 1986; 2001, Dunkerley 1975; Elman et al. 2005). The legal profession is no exception, it is a highly regarded profession. However, Laumann and Heinz note that there is an obvious difference between prestige levels of different legal professions that may be a result of the increased specialization in the field (1977:157). They note a mass exodus from court work, to more specialized forms of law, like intellectual property and tax law. These other fields, not so coincidentally, are more lucrative and require even more specific knowledge. Additionally, external to the field, the increased regulation of business by the government precipitated a need for more attorneys outside of traditional practice areas.

In the case of public defenders, they are lowly regarded on the prestige totem pole, even among their legal peers. Laumann also provides a possible explanation for why the low status representations of public defenders are reiterated by the legal community to which they belong – a population that would seemingly be less likely to carry negative opinions of public defense work. He notes that legal practice areas are insulated from each other and as a result, don't understand each other. In this way, defenders may also be insulated from the constant contestation of their work. In fact,
perceived levels of prestige create fragmented communication and insulation, thereby, "[restricting] the diffusion of information across specialty lines (Laumann 1977:156, Lamont 1992). This explanation sounds similar to McIntyre’s theory of insulation, described in the introduction. There and here, the legal and judicial systems would benefit from a ‘reaching across the aisles’.

Still, the question of how to definitively account for prestige within professions—and more specific to my concerns here, within the legal profession—remains open. A definitive answer will not be resolved here for the simple fact that prestige is a large conceptual framework within itself, and applying a piece of it to the legal profession has many places from which to begin. I suspect that this may even include a discussion of the difference between a profession and a job or occupation, in order to truly carve out a picture of prestige. Even in literature where prestige is theorized, its analysis is never complete nor definitive.

Many studies that address prestige within the workplace, at least briefly, mention the National Opinion Research Center’s (NORC) classification of professions. This is a rudimentary ranking system that places hundreds of occupations on a scale based on educational attainment, income, leisure and other requirements. The drawback of this system is that it ignores, as Laumann argues, the differentiation between professional communities. Just as the legal community is fragmented, so is the educational community—a college professor and primary school teaching aide are highly differentiated (Laumann 1977:160). Laumann and Heinz suggest that ranking professional communities assumes one definition of prestige that only allows analysis to be sliced along group lines.
Traditional definitions of prestige, like that offered by sociologists John H. Goldthorpe and K. Hope, defines prestige as, “a particular form of social power and advantage that is of a symbolic rather than of an economic or political character, and which gives rise to structured relationships of deference, acceptance and derogation.” This is close to the traditional description of professions, and thus, gives insight into why professionals are overwhelmingly prestigious (1974:162).

Laumann and Heinz’s study hypothesizes five characteristics in the legal profession that should be expected to be imputed with prestige: the intellectual requirements of the specialty; the rapidity of change, meaning how flexible the attorney must be to changing laws and the like; the amount of pro bono work that the attorney has the opportunity to do; the reputation of ethical conduct; and the degree of liberty that they are able to take in the course of their work (1977:175). In the data produced by these considerations, criminal defense was found to rank number twenty-three out of thirty legal professions in level of prestige – two spots below criminal prosecution.

The categories used in this study are obviously not a specific as they could be – there are just too many kinds of lawyers and too much overlap in the descriptions given of different fields to account for them all—and as a result criminal defense is broken down only by whether it is defensive or prosecutorial in nature. However, a bigger issue can be taken with how we grasp markers of prestige, and the level of variation in descriptions of legal practice areas based on who you ask. These confounding features make this an impossibly big question to answer here. However, what can be done is a noting of the variation in the legal profession. This understanding can be useful to figuring out how public defender’s roles may be legitimated (or seen as more
prestigious) in the future by their legal peers, and eventually, hopefully, by those external to the legal community.

The take away from this discussion of prestige is straight forward. One, law is typically regarded as a prestigious field to enter. Two, even though public defenders partake in the legal profession, they are not as prestigious as some other areas of practice. Three, one hypothesis for why this may be is because of the bureaucratization of public defense and the seeming lack of agency that public defenders have in how to do their work. As a result, a paradoxical circumstance forms, one which my research seeks to investigate the management of, where stigma and prestige is operating within the same professional body. In the next section, I will go into more detail about how stigma operates and provide explications of specific stigmatized representations of public defenders.

**Stigma**

The definition of stigma at the forefront of sociological theory is offered by Irving Goffman, who frames stigma as a “deeply discrediting attribute” whose undesirability is dependent on the social situation and relationships surrounding the afflicted individual. It is the normative expectations set forth by others that ultimately help “spoil” an individual’s social identity because of its deviance (Goffman 1963). He notes that this attribute can be derived from personal characteristics, which is most often the case, but can also be structural and related to one’s occupation.
The theory which follows characterizes these attributes as either asserted or ascribed, meaning that someone external to the defender is making an identification or characterization of them and their work, or the defender is claiming a certain attribute or identity. This is similar to the difference Goffman offers between social identity and personal identity. Identification means being able to grasp at "socially informing symbols," whereas identity is grounded in the presentation made by the defender (Goffman 1963:60-61). 'Overworked' may be presented socially as an informing attribute of a public defender, which can have a number of relationships to the asserted identity of the larger public defense community. Management of the asserted versus the ascribed is also theorized by Goffman, which I will explore later in the chapter.

He also notes the susceptibility of negative identification, or stigmatization, to follow from socially constructed identifications. From questioning their competence and their status as 'real lawyers' to challenging their intentions, these images serve to spoil the professional identification of public defenders by society as well as influence the professional identity formation of public defenders.

Investigations into the intersection of stigma and work are generally conducted in two manners: studies look at how a stigmatized individual navigates their work or they look at work that is itself considered low brow, or "dirty work." These two things are not necessarily mutually exclusive, jobs can originally be considered neutral only to get their negative label once a certain group is shown to overwhelmingly occupy that kind of work (Dubois 1899:136). Also, individuals can become stigmatized because of the tasks entailed in their positions, such as is the case with heavily stigmatized professions like prostitution or domestic service.
“Yes it is dirty work, but someone must do it,” (Babcock 1983:177.) Everett Hughes coins the term “dirty work” in 1962 to describe work that is stigmatized because of its “physical, social or moral character,” (Butler et al. 2012; Drew and Mills 2007; Hughes 1962). While this may be applicable to the case of public defenders, their stigmatization is complicated by a number of factors and carried out in a number of ways by many groups within its social sphere.

One: Public defenders are incompetent and/or over-burdened.

Are public defenders real lawyers?
Absolutely!

-LA County Public Defender Office, FAQs

This a question taken from the main webpage of the Los Angeles County’s public defender office within the frequently asked questions section. It is being presented as a question that is often field by the offices practitioners, with an emphatic response that follow. The inclusion of this question on the main webpage is indicative of the ‘image problem’ that public defenders face. There are many ways in which the incompetence of defenders is suggested. For example the economy of public defense is often linked to the ascribed incompetence of public defenders. The economic argument for defender incompetence claims that poor work performance is generated from a lack of incentive given their low pay to do anything above the bare minimum, in some cases, advising their clients to cop to a plea deal to expedite the judicial process and manage their heavy caseloads (Giovanni and Patel 2013). If unwillingness to provide thorough and staunch representation is not the culprit, scholars suppose that defenders are more likely to be fresh out of college and lack training. Similarly, since they are unskilled, they are unable to procure employment in other areas of law (Lawrence 2015, Hoffman et al.
However, this image of incompetence persists across the entire public defense field, even to well-established attorneys.

After a vacancy opened up on the Supreme Court following the passing of its Chief Justice, Antonin Scalia, one of President Barack Obama’s rumored nominees was Judge Jane Kelly out of the Eighth Circuit, who had served a larger part of her career in public defense, particularly as a public defender. This is not a particularly unusual practice are for justices to come from. Two current Justices, Sonia Sotomayor and Samuel Alito, both have backgrounds in public law, but as prosecutors. This difference may account for the push back that Kelly uniquely faced. The scrutiny from the right has been characterized as an association of public defense work with liberal politics and indicative of Kelly’s potentially left-leaning jurisprudence, but it has also presented a more nuanced interrogation of her credentials and competency by members of Congress. They blatantly questioning her morals, as if public defense is tainted, a point that I will address in Three.

Condemnation of Kelly for doing her job as an attorney and as government appointed official plays into the theory that defenders are stigmatized not only for doing ‘poor’ jobs, but also for simply doing their jobs, adding to complicated ascribed-identity-politics that defenders must play. The public gaze exacerbates this challenge, and acts a medium to re-instantiate the same representations over and over again to the point that they are used, in the case of Judge Jane Kelly, as talking points, and in other instances, as comedic fodder.
In every cop drama, once the hero cop bags the bad guy he begins on cue, ‘You have a right to an attorney. If you can’t afford an attorney, one will be appointed to you....’ or as Chris Rock in Lethal Weapon 4 concludes, the ‘dumbest lawyer’ available. This boils down to the lack of serious attention that is given to public defenders and how quickly they can be written off. However, the external identification of defenders is broad. Media and print culture is the place that more frequently portrays the sympathetic public defender or the bum lawyer, there is typically no in-between. Many films and shows present public defenders as idealist bleeding hearts who try to overcome the odds that are undoubtedly stacked against them.

One such film that makes a similar valorization attempt is the documentary Gideon’s Army, which looks into the lives of three public defenders. Travis Williams, Brandy Alexander and June Hardwick are trying cases within the overburdened New Orleans criminal justice system. These are true accounts and those which enter our minds first when we think of public defenders, because of their prevalence in media. However, many fail to realize that these connected images of the downtrodden defender are not the only accounts. Not only are they not the only accounts, the narratives that public defenders themselves assert may be vastly different and varied. A number of considerations are necessary. This is because no two criminal justice systems are created equally, what is true in one part of the world with one funding structure (defenders offices can be funded by the state – which is often more stressed—or they can be county founded) may not be true elsewhere. We must also consider different population sizes and demographics, different surrounding economies, to name a few,
that very based on office. Even if the situations are comparable, each defenders offices is essentially its own law firm, and such institutions are bound to have great variation.

The redemptive effect of painting of public defenders as ‘victim’ of their circumstance, comes at the expense of denying their autonomy. A denial, which I have previously suggested, delegitimizes and strips the prestige of public defenders away. I acknowledge that representing public defenders as overworked, underpaid, and/or unskilled, within the context of the larger picture – a dysfunctional criminal justice systems—is an attractive method (Giovanni and Patel 2013, McIntyre 1987). The fear, however, is that real sociological analysis will only take political and economic facts of public defense to be totally explanatory of public defense, whereas public defense is also very much ordered by its social interactions and circumstances. For example, use of the average number of pleas deals in a jurisdiction won’t necessarily explain an offices structure or interaction with its surrounding community. In the particular office that my interviews come from, analysis of the funding available won’t be as socially relevant as it would be in a differently structured office a few miles down the road.

Two: Public defenders are in collusion with the state.

_He just playing a middle game. You know, you’re the Public Defender, now you, you don’t care what happens to me, really ... you don’t know me and I don’t know you ... this is your job, that’s all ... so, you’re gonna go up there and say a little bit, you know, make it look like you’re tryin’ to help me, but actually you don’t give a damn._

-Defendant, (Casper 1971:3)

_The DA (district attorney) has the PD (public defender) under the gun. If the DA objects, the PD just sits there._

-Defendant, (Wilkerson 1972:144)

_With a private attorney, you talk over strategy. With a PD, the client has nothing to say._
The first quote above is taken directly from the mouth of a client of a public defender. This particular individual was charged with a felony and agreed to participate in research by Jonathan D. Casper, then-assistant professor of Political Science at Yale University. This research sought to investigate the attitudes of defendants with respect to the criminal justice system and its actors. The entirety of the article is littered with similar remarks by clients of public defenders, they relay evaluations of their attorney in particular, and in some cases, of public defenders in general. The following two statements from the same research, contain a similar sentiment to the first: the public defender in their case was in some way defunct and this may overwhelmingly be linked to their collusion with the state.

Skepticism from clients is suggested to originate in the economics of public defense. Both a) no opportunity (or requirement, depending on who is framing the issue) to pay for services rendered, and b) no choice in the selection of a public defender, delegitimizes, in the minds of some, the status of public defenders. Drawing paychecks from the government, whom is seeking to penalize their clients, is one strike against public defenders. Clients inability to compensate their attorney can additionally garner feelings of ‘You get what you pay for’.

Interviews of men convicted of felonies who had a public defenders as counsel, showed that they desired to pay for their counsel even though by the very fact of being appointed a public defender, they were not required to. This, however, wasn’t always portrayed in the research as an interest in feeling agency within a transaction of
services. Rather, interviewees seemed to desire a quid pro quo arrangement, where, in addition to a government salary, the client would provide supplementary compensation for access to a better defense. This, by their approximation, would motivate defenders to suspend their incompetence, tap into special or off-the-books resources and/or bribe the court or provide a kickback depending on the outcome of the case (Casper 1971; Lawrence 2015).

This latter point is not so different from the discussion in the next section, namely that public defenders are often morally bankrupt. I posit this using two lines of reasoning. First, similar to what was echoed in this section, since public defenders work so closely with and are similarly compensated as judges and prosecutors, they are morally auspicious. Second, the nature of their work—defending poor people—they must have lax or non-existent morals.

**Three: Public defenders are morally bankrupt.**

The history of public defenders, which suggests an evolution in their role, is contested by accounts which question the motivation of institutionalizing criminal defense. By this I mean, that the initial motivations that are laid out in the introduction—those which purport first, economizing the judicial system, and then later, protecting those too poor to secure counsel—are themselves questioned. Instead, two ideas are floated. First, scholars like Gregory Barak, paint the incorporation of public defender organizations as wholly lacking moral integrity, paralleling the claims of collusion that clients sometimes express. Second, other scholars skewer defenders because of their
clients and work, as was suggested in the first section. Both of these will be discussed in turn below.

The former dictates an inability to have faith in the separation of public defenders and their adversaries given the common funding sources and proximity. The fear is that public defenders who are constantly practicing in the same courts against the same district attorneys with the same judges, will on the one hand, feel that a duty of their continued employment is to maintain the peace. This maintenance is supposed to contain folding to a pressure to accept a plea deal, collusion and a number of other unsavory and unethical behaviors (McIntyre 1987, Silberman 1978, Wice 1983, Barack 1975, Mitchell 2005).

Some jurisdictions delegate hiring and firing of defenders to the judges that will eventually preside over their cases. In Johnson County in central Indiana, the local government was hit with a lawsuit at the end of 2015 that challenges the practice of allowing judges to staff the local public defender’s office. Scholars are uneasy with the apparent conflation of duty that runs rampant in criminal justice. Paul Wice argues that it is, “frightening to realize that the very same institution that is attempting to convict the defendant is also paying the salaries of men who are theoretically doing their utmost to refute these charges and win an acquittal,” (Wice 1983:4).

Defenders also field the question, ‘How can you defend those people?’ Underlying this question is an assumption about the criminality of indigent clients – specifically that poverty is without question synonymous to guilt. Babcock notes two
additional notions; first, that some view a lawyer defending a guilty person as contradictory, as if lawyers are exclusively for innocent defendants, and second, that there are moral issues with the very act of defense work (Babcock 1983:177).

**Management**

The point that I am attempting to resonate is that no matter what action public defenders take in their work, it has a twofold interpretation in terms of work identity; ascribed or asserted. Management of these two interpretations, which is inevitable at some point or another, is conceptualized here by Goffman. He highlights three ways stigmatized individuals manage their spoiled identities; they argue that they are the exception to the behavior which is stigmatized, they accept the stigma, but attempt to compensate for it, or they reject the characterization all together (Goffman 1963).

Additionally, I offer a fourth management strategy as expressed by Sarah Willie-LeBreton and Michele Lamont. Essentially, a stigmatized individual may recast a discredited trait, embrace it and invert its value, thereby viewing it as a positive (or possibly, a superior) attribute. The latter can even go as far as discrediting those who don’t possess this newly cast attribute (Lamont 1992; Willie-LeBreton 2003).

Assuming that the first three methods are fairly straightforward, the work of Lamont and Willie-LeBreton combined, provide an interesting management model. In acknowledging the possibility of flat out rejection, I also wanted to include a framework that went beyond rejection, noting that two things are still true; stigmatization and internalization are nuanced, much of it can lie beneath the surface of our identities, asserted or otherwise, and for that reason we don’t realize that we are managing and
reconciling even representations that we reject (Bourdieu 1990). Sarah Willie LeBreton's book suggests that racialized individuals can capitulate to certain racial representations at different times, using them to their benefit. Lamont, similarly, notes that we self-valorize by reclaiming representations and asserting high value where there was previously low ascribed value.

One unique management technique that was mentioned many times throughout my research of the literature, is an appeal to professional responsibility. This seemed to be the main (and only one that I could find expressed in the study of defenders) way to challenge many of the representations of public defender. For this reason, I felt it necessary to dedicate some time to parsing it out and figuring out to which of the four aforementioned strategies to attach it to. Ultimately, I find it most similar to an inversion of morals as suggested by Lamont. On this view, citing professional responsibility as a superseding quality to superficial concerns of how public defense looks externally, is an attractive management technique.

Along those lines of being able to manage one's work responsibility while leaving conscious intact, Charles Curtis suggests that we treat lawyering as a craft or as a game (Curtis 1951:22). Pushing this thesis further, performance does not have to be viewed as a way to manage spoiled identity, but rather a recasting of what the role of the public defender entails. This means that we view performance as a requirement, rather than a management technique. It is the job, rather than a way to cope with doing the job and doing the job well. Trial litigation has a process that must be followed to ensure legitimacy in the legal profession in general, and among public defenders.
specifically. Rather than an individual self-regulatory performance, as Goffman suggests, lawyers generally must go through certain interactions with judges, other attorneys, court staff, and their clients to achieve some judicial result. This is ultimately a fact of professions and not only lawyering (Goffman 1959). Treating public defense as a craft is merely a coping mechanism, but it is a definitive function of public defenders, and more accurately represented as business as usual for litigating defenders.

ANALYSIS

Chapter Preview

Introduction ... 35
One: Public defenders are incompetent ... 36
Two: Public defenders are in collusion with the state ... 40
Three: Public defenders are morally bankrupt ... 44

Introduction

For the respondents who have been public defenders for more than one decade already, it seemed increasingly difficult for them to recall instances being
stigmatized or misrepresented by people with which they came in contact. At some points, especially for appeals attorney Bobby Hanlon, there was complete denial of being personally negatively represented. At other times, there was a clear acknowledgement. Charles Gavan, at one point, explicitly and without prompt, draws my attention to “the common characterization of public defenders as nationally underpaid,” which he rejects because it falsely, “conveys the impression that the lawyers that work in a public defender’s office couldn’t get a job anywhere else.” For this reason, I had to dig deeper into what was being said to find what the under-the-surface response was to defender representations, and to figure out whether they were implicitly acknowledging these representations even if they were explicit in rejecting them.

My data analysis parallels the previous literature review chapter in terms of the three representations that my research highlights. I provide insight into the representations in turn by using the public defenders own statements, and then briefly analyzing which of the four management techniques are being used in that particular instance and how they are being implemented. I would not go so far as to say that my characterizations are definitive and clear cut, rather, I would submit that there are multiple strategies used at multiple levels, and they are used in combination with each other.

One: Public defenders are incompetent and/or overburdened.

Public defenders being represented as incompetent and overburdened is not without foundation. Even in interviewing five public defenders, they acknowledge the difficulties of their job, which may externally read as incompetency when not handled to outsider expectations. However, definitive notions of good, bad, best, and
worst are only defined in terms attorney’s personal expectations and surely can’t be
defined based on outsider’s ascribed expectations.

Ever defender that I interviewed acknowledges that the resource that they
are most lacking is always time. When asked if he lacked enough resources, Bobby
Hanlon, an attorney who has been a public defender for three decades, responded:
“Resources no, I have always felt I have the appropriate resources except the
resource of time. There is just not enough time to do everything in a day.” Katy
Green, who is also in appeals, but took up law as a second career, and the head of
their division, Charles Gavan, agreed that time is a precious commodity, but pointed
out that this is the nature of criminal defense work. Katy, who worked in real estate
and private criminal defense before becoming a public defender, noted:

“The law is just extremely complicated. It’s fast changing. It’s really fast-moving and you
have to — in order to be a good criminal lawyer, you better damn will keep up with what’s
happening. I think it’s probably the fastest moving area of the law, or one of the faster
moving areas of the law. It’s also extremely complex and it doesn’t always, especially
nowadays, it doesn’t fall in your favor. It’s an uphill battle.”

Though Katy only cops to one case where lack of time actually affected
her preparedness, Charles recalls the frequent large volume of cases that he had to
learn in a span of only 24 hours. Ultimately, lack of time is a part of the job that
simply must be dealt with, whatever that requires for the particular defender. To
memorize more than a dozen cases for court the next day, Charles explained that
the key was to quickly get to the key facts. The best way to do this was to pay
attention to notes left in the file by prior attorneys — a place where the vertical
defense structure of the office came in handy (having multiple lawyers through the
many preliminary steps, until trial preparation is deemed necessary, at which point
one attorney is permanently assigned).
Resources other than time, those which must be provided by the office, weren’t expressed as being as fleeting as time. When asked about resources, Sabrina acknowledged the pressure to economize, or cases where she didn’t always have all that she wanted. She says:

“...whenever we have to pay people to be expert witnesses it’s tough, because you really need to be able to say, like you really got to be able to go to your boss and say like this is going to help the case and this is how. And it’s hard to know if that’s true or not. And expert witnesses are really expensive, most people you would use expert witnesses or willing to talk to you about their case and even give you sort of an opinion about what they would say but once you decide them like I want them to testify in court it’s really, really expensive. And so you kind of often times have to make a call about like is it worth spending all this... like what are they going to add to my case. And is it worth spending all this money for them to add you know this little thing or this huge thing. And we can always get approval when it’s like going to be a make or break the case situation. It’s more those times when it’s like okay, well it would be really nice to have somebody who we can you know present to a jury and say this person is an expert in whatever even if what they are going to say doesn’t add all that much.”

This goes to say that there can be constriction in resources, but they are not critical to the defense. If they were, they would be provided. Charles attributes some of the constriction to the inherent bias that the city council – who funds the defender office and the district attorney’s office – holds against public defense generally. In terms of pay, defender and prosecutor salaries are typically supposed to, though it is not a requirement, be on par with each other. This pay “parody”, as Charles describes it, is often not a reality because of the attached “political process,” that favors the prosecution. All of the defenders, however, claim to be relatively well paid. Katy quips, “At the public defender, you don’t make a lot of money but at least you get a pay check.” This is in comparison to private criminal defense attorneys and private court appointed attorneys who have to “hustle” and “do other things,” to be financially profitable. This is not required to, in the least, live comfortably as a public defender. This comparison acts as a way to exempt public defenders from the
narrative that they are underpaid, and thus, unmotivated or underpaid and unable to focus on their jobs.

They all pushed back on the idea that public defenders lacked the experience or training necessary to do their jobs. In fact, each defender class in this office goes through, “an awful lot of training,” as Katy characterized it. Even with extensive and recurring trainings, there are still areas in which they can improve. For those issues, additional experiences are sought. Sabrina recalls an instance where she sought out additional cases, because the only way to truly learn how to do your job as a public defender is by doing. This is because public defense is largely performative. Diane points this fact of the trade out, and goes on to cite it as a prevailing reason she choose public criminal defense over pushing paper at a big law firm like her peers. Similarly, Katy notes that “experience” is at the core of “professional development,” as a public defender.

Sabrina goes as far as denying defender incompetence by citing the frequency with which other defense attorneys call upon her and her peers because of their knowledge of certain case law, their familiarity and constant proximate to the judges and prosecutors on the case, and because of their skill in litigation from having large caseloads. She notes: “Because I'm there all the time and they know that like I'm going to know, I'm going to be the fastest way to get the answer to that and know the right thing to do.” Though these external criminal defense attorneys call on public defenders for assistance, they almost always revert to “public defender bashing,” as Katy describes it, to secure more clients for themselves.
Similarly, the nature of the public defender organization—many attorneys working in close proximity with each other, in the same court rooms, on the same kinds of cases—allows for internal collaboration. Diane says that it’s nice to work in an office like hers (Katy describes it as a “family”) because they are, “constantly asking each other’s opinions and what do you think about this, what do you think about.” The convenience of being able to, “ask [her] next door neighbor over here an evidence question because he’s really good in evidence [sic],” is not necessarily paralleled in private criminal defense work where you may spend a significant amount of time alone.

Finally, the idea that, “lawyers that work in a public defender’s office couldn’t get a job anywhere else,” is not an applicable blanket claim and, is for the most part, rejected. Bobby, for example, claims to have known he wanted to be a public defender “from about 8th grade on,” because of an experience in his childhood where he was “stupid” and allowed to confuse to a crime that he committed under the false pretenses of an authority figure. He, like Charles, Katy and Diane, grew up in and around the sixties when there was a lot of state sanctioned oppression. These social justice oriented roots carried through to careers for these four attorneys, and even for the youngest attorney, Sabrina, who cited a “left leaning progressive” ideology that she picked up in college. These commitments have the tone of valorizing the position of public defenders, or inverting the value of the work that they do; because they do work on this social behalf, they are in fact, morally dignified and conscious professionals.
To recap, in terms of being over burdened because of a lack of resources, my interviewees manage this representation in two ways. First, some acknowledge that time is really the only resource that they have been in need of and deal with this through their own stick-to-it-ness. This means that they create shortcuts in their work that are quick, yet reliable so that they still provide the best defense. Second, if they do acknowledge they are strapped for resources, they pinpoint the source as being located within their funders, whom they accuse of being biased against the kind of work that they do (or, in the very least, as Charles describes it—being “prosecutor minded” or politically tough on crime.) Regardless of the source of the strain, they accept that their resources are limited and compensate with their own diligence.

Experience is gotten by doing, and most difficulty with the job at the outset can be explained by the complex nature of criminal defense. Defenders, however, are constantly compensating by participating in extensive training, refusing work for which they are not qualified, collaborating with other attorneys in their office, and seeking out extra litigation opportunities. However, the more abusive claims, such as the notion that public defenders are only in their field because it is the only job they can secure, they plainly reject. Ultimately, criminal defense in general, and public defense in particular, is a large, ever-changing field. By this fact, public defenders are always reorienting and getting better, there is no escaping this. Sabrina contends that, “the second you decide that you are as good as you need to be, and that you can’t learn anything new or that you can’t improve on something, is probably the time that you shouldn’t be a PD anymore.”

Two: Public defenders are in collusion with the state.
Collusion with the state is challenged on two main fronts; first, the state is typically working against public defenders, and second, public defenders are actively attempting to discredit the state. The cooperation that *does* happen between judges, public defenders and prosecutors is necessary in that they have to maintain a working relationship in the interest of future cases.

The attorneys that I interviewed are adamant in their advocacy of their clients and are sympathetic to frustration and negative feelings (see Casper) that may arrive from the process. On this Katy sympathizes:

> “I totally understand when my clients are and their families are upset because I am also upset. I do not like the way our justice system works. I think it’s horribly racially biased. It’s biased against poor people. It’s not a fair system by a stretch. I do not believe in incarcerating people for incredible amounts of time that people get. I hate it. That’s why I continue to do this work. [Laughs] I try to understand when they get upset at me because I’m the easy target.”

Despite the frustration, clients are always getting what a public defenders professional opinion dictates.

There are times when defenders must act in ways that are counter to what the client may want. Sabrina admits to one instance of not making an unnecessary, yet routine, reassurance visit to a particularly aggressive client. Similarly, when clients won’t accept a suggested defense strategy, defenders often enlist the help of their client’s family. Often, the family is able to help their loved one accept the suggested plan because it is truly what is best for them given the facts, even if it is not the most favorable course of action.

Besides being accused of not working in the best interest of the client, collusion with the state can have to do with intentionally working as an arm piece of
the entity which is bringing charges against their clients. However, the disdain that the state exhibits for public defenders, is the first challenge to this representation offered by the attorneys that I interviewed. As previously asserted, the authoritative powers are increasingly “prosecutorial minded.” This is rooted in general disdain for the work that they associate with public defenders, such as, representing “those people,” or the assumed guilty parties. Additionally, Katy points to the need for politicians to appear to not be “soft on crime or [ not appear to be] letting somebody out of jail that gets into trouble and hurts other people.” She goes on to note that as a public defender, every day, “you’re up against judges who are commonwealth oriented,” meaning that they’re, “ not sympathetic to your clients for the most part and don’t necessarily even care about what the law says.” She concludes, in the face of a ‘collusion with the state’ representation, that, “it’s extremely difficult that you’re up against all those forces - the police and the prosecutors. They will do and say anything in order to get conviction.”

The other part of rejection of this representation is an acknowledgement of how hard public defenders fight against the unchecked power of prosecutors, judges and police officers. The appeals division, which Katy, Charles and Bobby work in, is an entire department dedicated not only to carrying on with client cases for whom their decision was unsatisfactory and/or unjust, it can also be seen as a huge check on the power of judges and the prosecution to make claims using the law.

Bobby, in his tenure at this public defender organization, very diligently fought to reopen old cases that may have had instances of police corruption affect
their outcome. He worked for over four years to reopen more than one hundred cases of this kind, implicating state corruption. Additionally, he challenged, exhaustively, the laws and particular judge rulings that allowed for juveniles to be incarcerated for life or given the death penalty. He went as far as challenging, federally, these laws which he saw as unconstitutional and an egregious exercise of authoritative power from the state.

There used to be a different relationship between public defenders and prosecutors. Presently, there very much is a partial recognition of the need for defenders and prosecutors to cooperate with each other because of the number of cases they will have to try in the same courts and against one another. There was an even better understanding and appreciation of one another, according to Charles, before the victim’s rights movement and new leadership in the district attorney’s office recast prosecutors as “the victim’s lawyer.”

Before this “religiosity on the part of prosecutors,” that promotes an attitude akin to “we believe in our complainant and I don’t care what you say I will not see any other position than the position of course by the testimony by my client or the police officers are always right or my job is to be an advocate for my witnesses and I don’t care what your witnesses say [sic],” defenders and prosecutors were able to “congratulate” each other even during a loss. They collectively, “let bygones be bygones,” and were able to have honest conversations about what was the most just outcome of the case without partisan bias.
Now, there are clear lines between prosecutors and public defenders. Their roles are prescribe, and thus, very different from each other. For Diane, she recognizes the divergent responsibilities of public defenders and prosecutors:

"I'll look at a District Attorney and say that, you have different ethical responsibilities than you do. I can pin this on someone else. I have that right to do that and if I can convince a jury that that's what happened, so be it. It's up to them to prove our clients are guilty, it's not up to me to prove that they're innocent even though often times we're in that position."

This explicitly claims a distinctiveness between public defender and prosecutors.

To sum up, the public defenders that I interviewed overwhelmingly rejected the notion that there is nefarious collusion between the state and themselves. In fact, much of the work that they do is expressly counter to state goals and duties. Further, as far as their clients are concerned, public defenders provide the best advocacy that they see fit, even if their clients or their client's families can't understand—an occurrence which they are generally sympathetic to. While their "counterparts," as characterized by Sabrina, may cut corners in collusion with police officers and witnesses, my interviewees claimed exemption from this representation and plainly reject many of its premises.

**Three: Public defenders are morally bankrupt.**

Sabrina most explicitly called out the people who assumed that her clients were guilty by the fact of being her clients, and who hinted at a personal disdain for her morals given her willingness to be a public defender and to represent these 'obviously criminal' clients regardless of the circumstances. She recalls a conversation with a "pretty conservative" high school friend, who she describes a being a "product of their environment:"
Whenever the Boston bombing happened and the defendant in that case is represented by public defender. We had a very like heated conversation about - you know because his intention was like not to plead guilty. And how they were going to represent him to the very best of their ability. And like Eric was just like, "aren't there ever - like there have to be some cases where you just like "no I don't want to represent you or I can't stand you. " and like, he got the like you're legally and ethically obligated to do it but the idea of like trying, still trying as hard as you can and giving actual zealous representation was just beyond him. Like he there are just times - he believes there are just times where you just shouldn't have to do that, and I don't."

The problem is that, "there's all those people out there who would rather just put people in jail, throw away the key, who, don't really care about how they got there or what the answers are to solving the problems," according to Katy. This has everything to do with the same facts—that, "people are not inclined and judges are not inclined and appellate courts are not inclined to find in favor of defendants. The general population is not in, [sic] it doesn't have all that much sympathy for criminals - what they consider criminals." This category includes, "poor people," non-violent offenders, and most often, minorities. Katy goes on to acknowledge that, "it's not a fair system by a stretch." But that this is precisely why she is compelled to continue to do this work. That, and the fact that, as she puts it: "I understand the constitution," meaning that she understands that people are entitled to a defense whether or not they technically did it," are the two main reasons public defenders find no moral qualms with doing their jobs.

They first separate inherent guilt from their clients, either logically or legally: "...nobody is guilty until they are proven guilty beyond a reasonable doubt by a judge or jury or they plead guilty. Until that point, they are not technically
guilty under the law." Then the assert a professional and constitution responsibility that trumps superficial (and deeply socialized) moral discomfort.

Being explicit about role and professional responsibility is key. Diane is clear in what she sees the task of the public defender as being:

"It's not my job is not to decide if somebody's guilty or innocent. My job is to look at the evidence and hear what the client has to say and put it together and give them their options and the, um, likelihood of what those options will have for them.

The attorneys' tendency to use their role and their constitutionally bound duties to explain the baselessness or misguidedness of accusations aimed toward their morality, suggests that public defenders are revaluing 'why they do what they do'. They are inverting the connotation of both a) not being concerned with the guilt or innocence of a client, and b) not letting either of those possibilities change the staunch defense that they provide. This inversion valorizes their asserted principles of fairness into admirable and decent qualities, unlike how they are cast by external observers of their profession.

At every turn, the defenders claim moral reasons and principles of fairness as their motivation for doing public defense work. This includes framing their work in terms of social justice movements, as previously mentioned, as well as, citing the oppressive and unfair political and social structure that they witnessed growing up during the sixties. Bobby recalls a time when he was tricked into confessing to a childhood transgression –making faces on the school bus—based on a false statement by an authority figure. Similarly, Katy, Diane, and Sabrina were fed up with the things happening to people who were already so marginalized –who were already “the underdog” as Katy describes them— in a
legal system that they were not able to navigate themselves, that viewed them negatively, and that was stacked against them from the onset.

I feel compelled to, at least tangentially, mention that this inversion of morals may be aided by the isolation/fragmentation theory posited by Barbara Babcock and Laumann (see page 10 and page 21). Because public defenders are often only around other public defense actors, in a bubble, and they work at the top of the ladder in a public defender organization consisting of themselves, and all lower ranking actors, such as social workers, clerks, administrative workers and investigators, they have a sense of importance that is inflated daily.

To sum up, the attorneys that I interviewed, reject the notion that their work indicates moral bankrupt. They mostly reject how that representation is arrived at, namely, the assumptions about indigent clients. Even further, they turn the attributes which are stigmatized, around into markers of moral superiority and value and valorization. The very basis of what they do is in the interest of fairness and decency and they use that original ascribed representation in showing how untenable of a position it is – if we truly care about the constitution, then we must care about the work that public defenders do, it is necessary.
Conclusion

This thesis asked the question, how do public defenders, with all the prestige that should be afforded to them given their status as professionals and specifically, as lawyers, manage the stigma imparted on them because of the kind of lawyers they are? Overwhelming, it seems to be the case that they reject a lot of the representations of themselves as not being truly representative. At times, total and categorical rejection was appropriate, at others, a recasting and explanation of a representation was in order.

In the analysis chapter, I focused mainly on three of the four management responses outlined in the second chapter: how they acknowledge and compensate for a representation, how they flat out reject a representation (though this is most rare) and how they, often times, recast a representation and valorize it. The final method of management – claiming an exemption – was present that it overwhelmingly characterizes my entire project. Underlying each interview was the belief that, even if these representations are true, they don’t apply to me. Diane, Charles and Bobby had challenges recalling any representations of public defenders. This could be because they are claiming an exemption for themselves, they are sanitizing their histories, or given the length of their times as attorney’s and lack of contact with people outside of the public interest bubble, they legitimately don’t recall ever been misrepresented. That last point seems less likely in the cases of Charles and Bobby, both of whom spoke at length about the specifics of decades old cases. Lack of contact with those outside of public interest, is also questionable in both of their cases given their frequent attendance at legal conferences and continuing education events. Given this
triangulation, I would suggest that claiming an exemption seems more likely than not the case.

All of the attorneys talked about their work in ways that suggested that they dealt with some of the superficial markers of incompetence. However, they more so acknowledged the difficulties that other jurisdictions may face—even more than themselves—given the unique funding and institutional structure of the office at which I interviewed. Being overburdened, may be true of the criminal justice system and specifically, the public defense sector, but highlighting the financial and population strain that circumscribes the work of public defenders is only one part of the puzzle. These facts must be triangulated with our attitudes towards criminal justice, just as attorney Sabrina Bryant suggests. We can provide more financial support to public defense, but we may also find that we must address the attitudes that escalate our rates of incarceration and that condemn the legitimate work done by public defenders.

Collusion with the state is more aptly represented, in most cases, as necessary collaboration and is rejected as being as nefarious or criminal as described by some scholars, such as, Gregory Barak. Rather, as our relationship to and attitude towards criminality has changed, so has how public defenders must defend and how district attorneys must prosecute. Obscured in these changes over time, is the former collaboration towards a common goal – just and proximate remediation. Charles Gavan makes clear that the animosity amongst attorneys is not natural, has not always been the case and is counter-productive in many ways. Collusion is even more unlikely, given this animosity that lies beneath the surface. The attorneys in this study, expressed
much condemnation of government actors, especially police officers and district attorneys, given the red tape both require them to navigate to simply do their jobs.

Immorality on the part of public defenders is overwhelmingly rejected by claiming that 'I am just doing my job as mandated by the constitution' and this claim is further internalized by each of the attorney's belief that what they are doing is helping the worst off in society by helping them navigate a systemically unfair process.

Key in each of the three representations that I researched, is respecting the agency of public defenders to provide complicated representations of themselves. This is not to suggest that sociologically, we can't triangulate and generalize – I have done just this in my own project—but rather suggest that our source of information should not be solely rooted in quantitative analysis of number of pleas or positive outcomes (essentially anything with no or no further jail time i.e. acquittal, probation, time served, etc.)

There must be a response to these images, because otherwise, the legitimacy of public defenders would be challenged. If this happens, we will be obscured from their important role in the judicial system. In my research, there were quite a few duties of public defenders that my ignorance obscured me from, namely, the existence of an appeals division which is retroactively, yet consistently, working on cases that did not have outcomes that clients wanted to accept. Regardless of the success or failure of this particular division, we aren't attune to the fact that it exists.

**Looking forward**

There are a couple of ways that my research could have been much more diverse, and extended on the conclusions that I do attempt to draw. I've mentioned briefly in my
methodology section in the introduction the difficulty of using participant observation to collect data about how public defenders do and manage their work. While this method may be useful in getting a superficial and procedural grasp of what it is that public defenders do, I believe the difficulty that I had in simply taking notes points to the way in with the criminal justice system is being kept from us. Courts are open, yet many information seeking actions will get you booted from a courtroom. Prisons are made up of people with connections to the outside world, but bureaucracy makes it increasingly difficult to maintain those connections.\textsuperscript{5}

The cloud of secrecy, as I have called it, surround courthouses, prisons, attorneys and other institutions of the justice system make me wonder if I got the full story and whether it is able to be gotten. While I stress the need for qualitative analysis, it must be done in \textit{tandem} with the quantitative.

Another way that this project can be improved upon in the future is by including race, gender, and age as variables for consideration. This will allow us to get at who is drawn to public defense, which may or may not provide more insight into why public defense is represented in the way that it is. The place where I can already obviously see this as a convening factor, is in the case of the third representation: Public defenders are morally corrupt. Rather than looking at who is drawn to it, we can investigate who disproportionally requires the use of public defenders – accused minorities. The criminality associated with poor minorities is mapped onto their need for legal defense. It is assumed that public defender clientele is guilty, \textit{they} must be, and agreeing to represent them in the court of law is not viewed as it is –a constitutional guarantee the same as the right to bear arms, or ‘freedom’ of religion—but rather, as a transgression
of common decency. Looking at public defense this way, may give us a better idea of why public defenders are delegitimized.

Similarly, attention to the race and gender of public defenders may provide even more management details about public defense. For example, as minority and/or female defender, to be in a stigmatized profession, surely would create feelings of double and triple jeopardy. By this I mean, one must do a job which they are criticized for doing while also being conscious of a) notions that their race is the reason they want to, or are able to do said job, and/or b) their gender causes them to be overly-sympathetic to criminals. This, of course, at this point is conjecture for what future research may uncover and in no way a substantive identification of what may be the case.

Finally, the variable that I found to most affect my data was, though I did not control for it, was age. Older attorneys were more likely to have moved on from direct litigation and thus, direct contact with their adversaries. They still conversed with clients, but not regularly, given the slow and uncertain nature of appeals. I may not have collected enough data for my conclusions, given the overwhelming amount of appeals attorneys.

Moving forward, there is a lot of work to be done to understand public defenders qualitatively as well as quantitatively. The utility of this understanding is that we can begin to have a better understanding of what the criminal justice system needs to work more effectively.
Appendix A – Interview Questions

- What is a public defender?
- What is your educational background?
- When did you decide to go to law school?
- When did you decide to become a public defender?
- What did you consider when deciding to become a public defender?
- When you decided, how did others react?

In law school

- What areas of law were others interested in going into mostly?
  - Where did they end up?
  - Do you keep in touch?
- What were your expectations of public defense in law school and how did they compare to now?
  - How did you envision your career even if you had not yet decided on public defense?
- What activities did you do in your educational career as far as extracurricular, training, internships, and other jobs that may or may not be related to law or public defense?
  - Did these have an impact on your decision to go into public defense or how you think about public defense work?
- How did you get to this position specifically?

Duties

- What do you see as the main functions of your job in particular?
  - When in court, what do you expect to happen, how do you expect to be treated, what is the typical interaction within a court room if such a thing as 'typical' exists; provide an example.
- Can you walk me through the life of a case?
- How do you define a successful case? Are there expectations of you from authority figures and how do you think they define success e.g. are their benchmarks or reviews of your work?
- Are your reasons for entering public defense still relevant to you?
- What are the best parts of your job? The worst?
- What do you see as your role in the criminal justice system?
  - Are there points at which you think your role changes?
- How important is it to be professional and do things a certain way?
- How often do you have to think about ethical issues?
- Do you talk to others about your work? Under what circumstances: at work events, at legal conferences, strangers in the coffee line?
  - How do you describe what you do to them?

- How do you think the public sees your role as a public defender? Colleagues in public defense? Your family? Your friends in other fields? Other attorneys?
  - Can you give me an example of the last time that came across?
Appendix B – Defender Profiles

(Names have been changed to protect attorney's identities)

Table 1.

<table>
<thead>
<tr>
<th>Attorney</th>
<th>Years as attorney</th>
<th>Years as public defender</th>
<th>Current Division, years at office</th>
<th>First Career?</th>
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<td>36</td>
<td>36</td>
<td>Appeals, 33</td>
<td>Yes</td>
</tr>
<tr>
<td>Charles Gavan</td>
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<td>40+</td>
<td>Appeals, 40+</td>
<td>Yes</td>
</tr>
<tr>
<td>Katy Green</td>
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<td>16</td>
<td>Appeals,16</td>
<td>No</td>
</tr>
<tr>
<td>Sabrina Bryant</td>
<td>4</td>
<td>4</td>
<td>Major Crime,4</td>
<td>Yes</td>
</tr>
<tr>
<td>Diane Nichols</td>
<td>30</td>
<td>30</td>
<td>Homicide,15</td>
<td>No</td>
</tr>
</tbody>
</table>

Bobby Hanlon

I secured an interview with Bobby through a colleague in his office. On the day that I met to interview him, he presented as very calm and in control of his demeanor at all times. The sense that I got was that he was used to be interviewed and presenting himself in a professional and in control manner. He is a white man in his early to mid-sixties. He graduate from an ivory tower law school on the east coast in the seventies and went on to work as public defender in a large metropolitan area in the Midwest, before moving to his current employer.

When asked about his decision to pursue a career in law school, Bobby was adamant that he had knew early on that he wanted to go not only it law, but specifically into public defense.

He has a long history as a public defender. In the Midwest, he was also an appeals attorney. Once at this office, he did trials, then appeals, and later he moved on to death penalty cases. Now, he returned to appeals. For a significant amount of his
career at this office, he worked on overturning convictions secured using corrupt police practices.

In terms of training, Bobby remembers the extensive training that he went through before being allowed to try cases and the subsequent training. Now, as a senior attorney, he runs many of these trainings for the new defender class. He also speaks at a number of conferences about corrupt police practices and public defense strategies.

**Charles Galvan**

Charles has had the longest career at this office, it is the only place he has worked, and he has worked his way up to a high ranking position. Like Sabrina, when he was not set on a career in law, thinking instead that he’d be a social worker. Charles is a white man in his mid to late sixties, who grew up in a small town on the east coast. His family was middle class.

In the seventies, Charles actively participated in peace demonstrations that inspired him to think about the relationship between the government and the people which they govern. Wanting to experience a big city, and having recently been accepted to a law school in a major metropolitan area, he packed his things and moved to attend law school.

Though he has not been inside a courtroom for 15 to 20 years, Charles is the most eager to recall his history as a public defender, a first, according to him. Up until now, he has not told his own story in any synthesized or chronological way. He begins the interview, though, by giving me a thorough background on this history of his office, before moving on to talk about how he ended up going into law.

**Katy Green**

Like Diane, law was not Katy’s first career. Additionally, public defense was not Katy’s first career path as an attorney. Before going back to law school, Katy was a designer. Because her husband was an attorney, she decided to give a legal career a try. Many of her friends were attorneys so she figured she could be as well. Her mother fully supported her decision as she was an active activist when her daughter was considering a career in law, also in the interest of fighting for the “underdog” (like herself.) Her first job as an attorney was working in real estate, which she disliked because of the big money involved and she eventually went into private defense for a little over a decade.

Though she expresses her choice to go into law was because it seemed “interesting” and she was tired of working with “stupid and narrow-minded” people, she expressed an interest in helping “the underdog.” Still, unlike the other attorneys,
perhaps with the exception of Charles, Katy recalls having “fell into the work” as a public defender. Also unlike the other attorneys, Katy has worked as a lawyer in something other than defense work, this being the only time she questioned her choice to take up the law.

Katy and Sabrina are the only two attorneys who admitted to strong emotional responses to the work that they do; Katy told me about her recurring nightmares and Sabrina told me about frequent instances of weeping that must be compartmentalized in order to continue to do their jobs. Both cited, at length, the necessity of their work regardless of how difficult, emotionally taxing, or morally ambiguous it may be at times.

**Sabrina Bryant**

The youngest of the attorneys, Sabrina has been out of law school less than five years and practicing at the public defender organization for the same length of time. She has quickly made her way up the litigation food chain to handling major crimes cases.

Originally, Sabrina wished to be a social worker, but decided lawyering was a better way to actively help children facing social service inquiries. She went to a university near her rural hometown and then to a law school a few hours away, known to be deeply connected to the public interest scene in the city where it is located.

Her parents and friends did not well receive her decision to go in public defense, though her father’s legal trouble and incarceration during her childhood is part of what prompted her to look to the law. Often, when she has conversation with what she describes as her “conservative” mother and father and high school friends, they don’t take her work seriously, at one point saying that erotic dancing would have been an easier career choice to accept.

Unlike Bobby and Diane, who were both a bit more cautious and refined in their responses, Sabrina frequently launched into long passionate speeches when answering my questions. It was particularly interesting when she attempted to save face while explaining a time when she felt that she didn’t do all that could do because it was in the best interest of her own mental stability, given the perceived nastiness of a particular client.

Even more than her peers, Sabrina expressed to me the hope that people can better understand public defenders and stressed the importance of bringing the humanity of her clients to light regardless of their crime or whether they are innocent or guilty.

Sabrina has a heavy case load. At her current position in major crimes, she handles cases individually, unlike when she was a new attorney. As a new attorney,
fresh out of the training bull pen, you handle preliminary hearings and the first steps of litigation. This means that in the beginnings of most cases, there will be a different attorney at each level. Charles notes that there is much collaboration and communication that comes with this structure. Sabrina, once she gets the case, will continue on as the sole attorney for the duration thereafter.

At the end of our conversation, Sabrina went on for a couple of minutes about the necessity of re-evaluating the criminal justice system and how we treated non-violent offenders. She was insistent that talking to public defenders, getting things out in the media, and making documentaries would be key to changing perceptions on crime and the criminal justice system.

Diane Nichols

Diane is a shorter white woman, who was a bit short in her responses to me. This came off as not having much to say based on the questions that I asked, rather than an unwillingness to share. She is from the west coast and originally worked with a youth program, until additional education that she was unwilling to secure became necessary. Diane also worked as a parole officer for a time, before realizing she was on the wrong side of the issues and going back to law school after already being in her thirties.

Her age affected her law school career in that she did not connect much with her younger peers, nor did she feel negative representations on campus as Sabrina describes, because she was so tuned in on doing her work and preparing for a legal career.

After graduating, she applied for civil right jobs but found there were scarely openings, so she pursed a career in public defense. She was clear that this was preferable to a big law firm, because she did not want to wait five years, like some of her peers, to get from behind a desk and try a case. Something that she most enjoyed in clinics in law school was the performance required as a trial attorney; she wanted to duplicate that as a public defender.

She worked in another jurisdiction as a public defender before coming to her current office. It was different from where she is now, in that there were only 13 attorneys in that office and they pretty much handled any case that came across their desk. She thinks the vertical representation at her current office is a better method of advocacy.

Her average case, one that actually makes it to trial, will take about two years in a total to go through. This in mostly because of the difficulty associated with getting on a judges calendar for trial. During this time, as each other attorney noted, there are endless motions to be filed, hearings to prepare for, evidence to be investigated by in-
house investigators, and strategies to be discussed with clients—who are the final authority on defense—and with other attorneys in the office.

Diane intends to work a couple of more years before retiring. She is satisfied with her career and expresses that she would not have gone into another line of work if she had to choose again.
References


Dubois. 1899. The Philadelphia Negro.


Endnotes


2. Powell v. Alabama (1932)

3. 372 U.S. 335 at 339.

4. A number of films and television shows and novels exist depicting different kinds of defenders, including. The Public Defender (1931), Better Call Saul, Conviction (2010), To Kill a Mockingbird, Body Heat (1981) Motion for Continuance (play), Presumed Guilty (2008), Gideon’s Army (2013), Raising the Bar, Trials of Rosie O’Neil and Benched.

5. By this, I mean that incarcerated men and women are hampered in maintaining outside contact. From personal experience, prisons are hours away from where inmates originate, making it nearly impossible for visits; phone calls are incredibly expensive for family members to accept; and, members of an incarcerated persons family that also have records, are prohibited from visiting.