

**“The Best Defense is No Offense”:  
Preventing Crime through Effective Public Defense**

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## ***I. Introduction***

The staunch and dedicated commitment of public defenders to the protection of due process rights of defendants has often put them in the same camp as the ACLU – a group that was once denounced by an Attorney General of the United States as a “lobby” for criminals.<sup>1</sup> This charge unfairly taints public defenders and assigned counsel making it harder for them to get a public hearing for the important values that they represent. It erroneously implies that public defenders have aligned themselves with the criminal element of our society; further, that they care more about excusing crimes and keeping criminals free than they do about the welfare of victims and law-abiding citizens. It suggests that they are *opposed to* rather than *aligned with* community interests in producing a just and secure society.

Such claims are particularly damaging because in order to be effective, public defender systems have to rely on more than their constitutional mandate; they have to be able to secure political and financial support in the court of public opinion to survive and achieve their goals.<sup>2</sup> Given that public defenders depend on public support, those who lead public defender agencies must assert strong *external* as well as *internal* leadership in defining and articulating the public defender’s role.<sup>3</sup> To do otherwise permits others to distort the public defender mission, limit their authority, undermine their effectiveness, and vastly undervalue the contributions that public defenders make to the overall quality of social life.

More specifically, those who lead public defender offices must convince the public that the offices they lead are producing results valued by citizens. That is why the charge that they are “pro-criminal,” and act to increase crime is so damaging. If public defenders are perceived as “pro-criminal,” and if the operations of public defender agencies increase rather than reduce society's vulnerability to crime, why should the public spend its money to support these activities?

Traditionally, in arguing for the “public value” of their agencies, public defenders have not spoken to the crime issue. They have, instead, emphasized the contribution public defenders make to the broad ideals of liberty and freedom on one hand, and justice and fairness on the other. The argument has been (and still is)

that we all have a stake in living in a society that offers a high degree of personal freedom, and strong protections against arbitrary state action. We believe that our interest in protecting such values extends to those situations when the state, purportedly acting for the wider society, confronts citizens who have been accused of criminal conduct. Indeed, we think that these values are particularly important in such situations. We believe that to protect liberty, ensure justice, and guard against unfair state action in confronting criminal conduct, the machinery of "due process" is the best means available to ensure a just result.

In this conception, we invest money in public defenders not because they have some desired effect on levels of crime, but to ensure that we protect liberty and ensure justice. Our idea of liberty includes the idea that the state should be restrained in its efforts to control our lives, and should bear a heavy burden of proof when it seeks to restrict a citizen's liberty. Our conception of justice includes not only the idea that those who commit crimes should be called to account for them, but also that individuals accused of crimes ought to be able to gain representation in courts to ensure that they are not unjustly convicted of crimes they did not commit. Our ideas of fairness include the idea that this fundamental constitutional right to representation ought not be limited only to those who have the financial means to hire an attorney. It is only when these conditions are met that we can be sure that the state, acting through police, prosecutors, courts, and correctional agencies are doing justice rather than injustice.

Focus group discussions across the nation reveal that members of the public support these broad ideas of liberty and justice.<sup>4</sup> They also support the role of public defenders in realizing these ideals in the day-to-day operations of the nation's criminal justice system.<sup>5</sup> The difficulty, however, is that as attractive as these ideals are, and as important as public defenders are in realizing them, the contemporary political context seems to assign these concerns for liberty, justice, fairness, and due process a less prominent place than instrumental concerns about controlling crime.

Our current political discourse emphasizes the over-riding importance of reducing crime. This goal seems more important than other practical goals such as saving public money. In the dialogue it even appears more important than pursuing principled goals such as protecting civil liberties. In the rush to lengthen

sentences, build more prisons, and adopt more aggressive investigative and policing methods, there has been a surprising willingness to squander not only our public funds, but also our personal liberty to accomplish the goal of reducing crime. Even worse, public dialogue about crime has been altered from a discourse that views justice as the important end of the criminal justice system, to one that emphasizes reduced crime as the paramount goal. In that dialogue, crime is narrowly defined to omit much governmental misfeasance and malfeasance, and therefore to allow injustice in the mistaken belief that this will reduce crime. In this climate, the arguments that support wider authority and more generous funding for public defender offices on the basis of concerns for liberty and justice, or even the more narrow idea of protecting basic constitutional rights, are eclipsed by the practical question of whether the activities of public defenders are increasing or reducing the crime rate.

Many of the efforts to reduce crime (at any cost in terms of both liberty and public funds) have had a negative effect on the quality of representation provided by public defenders and on the amount of resources available to ensure quality representation for large numbers of accused persons who occupy lower-middle and lower economic classes. Justice for all requires competent legal counsel. For most public defenders and assigned counsel, however, the basic commitment of providing a zealous defense to those who cannot afford counsel is too often no longer a reality, and possibilities for reclaiming the support needed to make it a reality are becoming increasingly unattainable.

The fact that the public discourse about crime has focused increasingly on reducing crime rather than assuring justice forces public defenders to think about how they want to position themselves on the crime issue. Put rather bluntly, to what extent are public defenders content to have themselves described as a "pro-crime"? Of course, to most public defenders, the claim that they are "pro-crime" seems preposterous. They know they are no more in favor of crime than any other citizen. As a result, they tend to dismiss the claim as mere political rhetoric and refuse to answer it. Yet, public defenders must acknowledge that one of their essential goals is to provide a zealous defense of the liberty interests of their clients. To the extent they

succeed, they preserve liberty for their clients. That feels like a success to them – the realization of their *raison d’etre*.

To some citizens, however, these “successes” look more like self-inflicted wounds. Cast in a pejorative light, the success of public defenders in protecting the liberty interests of the clients may be or is portrayed as nothing more than “putting criminals back on the street,” or “spinning the revolving door of justice.” To the extent that the public believes that crime can be effectively controlled by deterrence achieved via threats, and by incapacitation, and that the zealous defense provided by publicly financed public defenders “gets guilty defendants off on technicalities” and prevents these mechanisms from working well, public defenders could be seen as obstacles to effective crime control. Indeed, this may explain why public defenders have been reluctant to report on their success in protecting the liberty interests of their clients. They know that what they view as professional success might well be viewed by some portions of the public as a self-defeating effort that results in greater expenditures likely to result in more crime rather than less.

Given that powerful elements of the public might actually believe that public defenders act to increase or cause rather than reduce crime in the society, it might well be important for public defenders to take a public position on crime. Should they state clearly that they, too, are against crime? Or, would such pronouncements merely fan the flames of public hysteria about crime and criminal offenders?

Beneath the *political* question of how public defenders should position themselves on the crime issue is a much more important question: namely, to what extent public defenders could take actions which would actually work to reduce crime as well as to ensure justice. As importantly, if there are things that public defenders could do to reduce crime, should they embrace those activities as important new ancillary missions for their organizations?

Obviously, preventing or controlling crime cannot and should not be the most important function of a public defender office or system of assigned counsel. That place must be reserved for the all-important goal of assuring liberty and justice for individual indigent defendants by providing the zealous defense mandated by the constitution and legal ethics. Yet, it is interesting to consider whether the activities associated with

representing individual indigent defendants in court, or advocating for their interests as a class either in the courts or in the political process, could be leveraged for "crime-reducing" as well as "liberty protecting" and "justice-enhancing" effects.

The purpose of this paper is to explore the idea that public defenders are in a good position to achieve the instrumental goal of preventing crimes as well as the principled and more traditional goal of providing a zealous defense of their clients. If public defenders do, in fact, have important opportunities to prevent and control crime, then exploiting such opportunities can produce important benefits both for the wider society, and public defenders as well as their clients. On one hand, society will have a new tool to use in achieving the important goal of controlling crime. On the other hand, public defenders will be able to align themselves with some important public aspirations, increase their legitimacy and support among those who now pay their bills, and deliver improved services to their clients. For these reasons it is worth looking hard for ways in which public defenders can join the effort to prevent and control crime as well as ensure justice.

## ***II. Preventing Crime and Violence Among Citizens***

An idea circulating among innovative public defenders is how public defense programs can reduce crime and violence using the powers of the public defender office to promote these goals both generally in society, and in the particular ways that the defenders respond to individual cases. Bennett Brummer, the Miami-Dade public defender has led the way in this idea by creating an Anti-Violence Initiative (AVI) under the auspices of his office.<sup>6</sup> As he describes it:

The Anti-Violence Initiative . . . consists of defender-community collaborations designed to help juvenile and adult offenders lead law-abiding lives, increase government accountability, improve public safety, and reduce the number of victims. This defender approach is innovative because it is

pro-active and expands the public defender role beyond the courtroom into working with the community to develop long-term systemic solutions to crime and its root causes.

Brummer states that “the objectives of the AVI are to promote:

- Case disposition that will benefit clients and their families rather than simply processing clients through the juvenile and criminal justice systems;
- Creation of sentencing alternatives to incarceration that would, because of their effectiveness, be attractive to judges and prosecutors;
- Legal and programmatic changes that will improve prevention and treatment of criminal conduct and thus, public safety;
- Research to increase understanding of the positive and negative personal and environmental factors at the root of most violent and criminal conduct and how these factors are at play in the lives of clients; and
- Criminal justice system and community awareness of sound and cost-effective crime prevention methods and responses to criminal conduct.”<sup>7</sup>

This list of objectives reflects that AVI works when there is an interplay between internal and external components. Internally, the public defender dedicates resources to addressing the social and medical needs of his clients – hiring social workers to assist his lawyers. Externally, the office establishes partnerships with universities, agencies and organizations, treatment providers, and the faith community to facilitate research, awareness, and systemic change.

Brummer emphasizes that the AVI is directed not only to clients within the context of a case but also directed at problems outside direct case representation. These defenders explore, for example, how systemic characteristics make it hard for public defenders to access specific resources needed to provide quality representation.<sup>8</sup> As a result of this broadened systemic approach, the AVI has catapulted Brummer’s office to

a position of leadership in the area of crime prevention. To help understand the opportunity that Brummer is developing, it is worth looking in detail three aspects of the program: the internal/operational part of the program that is closely linked to the handling of individual cases; the internal/operational part of the program that seeks to engage those intimately connected to offenders with crime prevention efforts; and the external/advocacy part of the program that focuses on representing both the client and broader society's interests in prevention programs for crime control.

### **A. Preventing Crime Through More Effective, Whole-Client Representation**

In the ordinary practice of public defenders, the public defenders are supposed to be responsive to their clients' wishes, and the ordinary assumption is that the wish of the client will be to maximize his liberty. It naturally turns out, then, that most public defenders think of their work as being devoted to maximizing the liberty interests of their clients. And that is what they most comfortably do.

Some offices, however, have begun to recognize that this comfortable model is not necessarily a complete view of what occurs.<sup>9</sup> Nor is it necessarily the best idea of what could usefully happen in an attorney-client relationship. For one thing, it is not necessarily true nor good for an attorney to do nothing more than represent the client's interests as the client sees them. Of course, when a client is clear on what he or she wants, it is vitally important that the attorney act as a zealous agent for those purposes.

But there is often a period in which a client is struggling to figure out what he wants given the situation in which he finds himself. In this period, defense attorneys provide important information, advice, and even counseling. They help the clients face up to the reality of the charges against them, and make them aware of likely future scenarios in the handling of the case. They may discuss and agree on tactics in defending the case. Sometimes the conversation goes beyond the case at hand and the best tactics for defending it. It goes to how the client feels about his situation; what he needs to do not only to minimize restraints on his own freedom in the short term, but also how to manage his relationships with those who

matter to him or are depending on him in some way. This can be spouses, siblings, parents, children, friends, and neighbors -- even victims. He may also be focused on the question of how to avoid future entanglement in the system, and may be interested in alternative dispositions not only for the liberty-enhancing features, but also for the potential impact that different dispositions could have on the way he lives his life. Some clients, upon reflection, often prefer less liberty, and more drug treatment, job training, or schooling, than more immediate liberty as a result of the disposition of their cases.

These moments between client and lawyer might be seen as important crime prevention opportunities. That should not be their dominant focus, of course. The public defender is there primarily to ensure that his client's rights and liberty interests are defended, not to help the wider community accomplish its crime control objectives. But there seem to be at least two interesting crime prevention opportunities that would fall well within the ethos and ethical guidelines that guide the behavior of public defenders.

One important role for a public defender might be to help his client leave his family in as good shape as possible in the unhappy case that he goes off to jail. It may be particularly important to ensure that dependent spouses or children are cared for. A review of deaths of children in Washington, D.C. discovered that some of these deaths occurred shortly after a mother or father went to jail, and the children found themselves exposed to the anger and fear of an ill-suited caretaker suddenly left in charge of them.<sup>10</sup> A second more obvious and well-developed role would be for public defenders to engage in an active, vigorous search for a "client specific disposition;"<sup>11</sup> that is, a particular regimen, or placement, or form of supervision that could satisfy the court's need for some degree of punishment and control, but do so in a way that allowed the defendant to remain relatively free to continue to meet his responsibilities to his family, and/or to receive services that could promote his rehabilitation. Once again, this would be a valuable activity in each individual case. But it would also be valuable to keep a record of the cases in which alternative dispositions would have been acceptable and beneficial, but could not be arranged due to insufficient capacity of one kind or another. That tally could then be presented to correctional, human service agencies, or directly to defender funding sources for consideration in their annual budgeting activities.

While some public defenders may think that such activities detract from more traditional ideas about effective representation, Bennett Brummer holds the contrary position:

By expanding our role and changing the nature of the dialogue about representing the interests of indigent criminal defendants, and not simply defending constitutional principles (or what the shortsighted denigrate as legal technicalities), we become more effective advocates for these professional principles. Taking moral positions in a broader context, we break stereotypes and make it more difficult to dismiss us. We gain a real opportunity to educate people from other disciplines and the general public, legitimizing the defense function and increasing community understanding and support for it.<sup>12</sup>

## **B. Preventing Crimes By Using Dispositions to Strengthen Non-governmental Social Control**

Beyond searching for more effective dispositions that can shape the rehabilitation of individual offenders, public defenders might be able to help prevent crime by strengthening family or neighborhood capacities to exercise informal social control. Most dispositions in criminal cases ostensibly require someone to take responsibility for supervising the defendant, and seeing to it that the defendant both lives up to his obligations and takes advantage of the services supplied under the court ordered disposition. This is usually the judge or the probation officer.

In the new era of "privatization" and enthusiasm for community-based organizations, however, one can imagine assigning responsibility for the supervision of offenders not in the court or probation office, but in private individuals or community organizations created for that purpose. One could imagine that, in the course of working with a client's family to make sure that they are settled, and in searching for a client specific disposition, the public defender might find some person -- a father, a brother, an uncle, an employer -- or organization willing to step forward and take responsibility for supervising the conduct of the offender.

Alternatively, one could imagine a defender office regularly referring clients to a trustworthy organization that would be willing to "go to bat" for the accused. That group might well be some kind of faith-based group animated by its religious commitments to care for those whom society has rejected.<sup>13</sup>

Those who accepted the responsibility for offenders, could, in turn, become a potent force within the community that stands for the basic principles of lawful living, and respect for the lives and property of others. Indeed, it is important to keep in mind that to the extent that we think the criminal justice system as a whole reduces crime by influencing citizens' ideas of what is right and wrong as well as by threatening them with punishment; and to the extent that we think the criminal justice system has this principled authority at least partly as a result of the perceived quality of the justice it dispenses; then we might think that public defender offices help to produce that effect by giving the system the qualities of legitimacy that make it influential.<sup>14</sup>

### **C. Preventing Crime Through External Advocacy Activities**

Strategically, bringing a preventive focus to individual cases presents one of the best ways to demonstrate the crime preventive value that public defenders can provide to society as a whole. It increases the likelihood that the work of public defenders will be valued and appreciated by the community it serves because clients (and those near and dear to them) will come to see that their lawyers truly care about them. As Bennett Brummer observes: "Many in our community believe the costs of our current criminal justice mentality are too high, in human, fiscal, and liberty terms. They hunger for a cost-effective, humane approach to public safety that warrants their confidence."<sup>15</sup> And just as individual members of the public – whether clients, relatives, or others – value defenders who work toward the improvement of her clients' lives, so will elected representatives and policy decision-makers.

Once defenders accept that much of what they do, and much of what their clients care about, can appropriately be described as crime prevention, they must confidently make their case to decision-makers in these terms. Brummer again: “This stance [that public defenders should seek to prevent and reduce crime] is consistent with defender interests in promoting constitutional and civil liberties.”<sup>16</sup> Such an approach allows defenders to build alliances that are much more persuasive than ones focused on protection of individual rights alone. Service providers struggling with the same clients around the same social and economic issues will see defenders who strive to help their clients become law-abiding citizens as allies, and will support them in policy conflicts. Similarly, decision-makers responsible for defender funding can also gain greater appreciation for such defender work, either independently of their constituencies, or because of them.

### ***III. Building the Capacity of Public Defenders to Prevent Crime***

Assuming for a moment that it would be both politically and substantively valuable for public defenders to align themselves with the goal of preventing crime, and to organize themselves to accomplish this purpose, what would public defenders have to do to realize these opportunities? We see three challenges: 1) getting past the “laugh test” both outside and inside the office; 2) changing practices within the office; and 3) building a capacity for external representation and support for crime prevention approaches.

#### **A. Getting Past the “Laugh Test” both Outside and Inside the Office.**

It’s difficult to imagine anyone not laughing, or raising an eyebrow, when told that public defenders work to prevent crime. If defenders zealously fight to get their clients “off,” and thus, back on the streets, then how are they preventing crime? After all, aren’t most defendants guilty of something? Even public

defenders themselves might well be inclined to see such a claim as purely a political ploy – a cynical move that is designed to expand their constituency and hide rather than reveal what it is that they do to and for society.

Yet, public opinion polls show that more Americans favor treatment and other rehabilitation programs over incarceration for non-violent offenses.<sup>17</sup> Most people know or have heard that an overwhelming percentage of defendants have substance abuse and mental health problems. With individual clients, public defenders and assigned counsel are in a unique position to identify the problem, counsel the client, and advocate for treatment services. Unlike other criminal justice system players (prosecutors, police, judges), public defenders have an ethical obligation to explore legal and non-legal options for defendants. They may also have developed a personal relationship with their clients that allows them to be influential with them. Finally, because public defenders represent so many defendants, they are in a good position to identify gaps in services, ineffective treatment programs, and other barriers to better outcomes. Through such methods, it does seem plausible that public defenders could help to prevent crime as well as ensure justice.

In Miami, Bennet Brummer has found that the public was more receptive than his own office to the message that public defenders can help reduce crime.<sup>18</sup> Public defenders are likely to be skeptical of that message because they 1) do not have sufficient resources to perform their primary defense function; 2) fear that zealous advocacy will be compromised with a more paternalistic/maternalistic model; 3) do not want to be held accountable to a standard of reducing crime or recidivism because of the inherent conflict of interest that would exist if they have to choose between “selling” clients on participating in treatment or risking not meeting crime reduction goals; and, 4) are by training skeptical of anything that sounds too good to be true.

It is a tough sell internally because public defenders have had extensive, gut wrenching experience with: 1) being saddled with additional responsibilities without corresponding funds; 2) finding that they are disadvantaged relative to police and prosecutors in competing for public funds; 3) feeling the hostility they and their clients face in the increasingly harsh sentences that are meted out; 4) seeing the difficulties that other criminal justice agencies who have committed themselves to achieving crime reduction benefits have faced in

achieving these goals; and 5) knowing that public defender budgets are particularly likely to be slashed if they commit to preventing crime and then fail to do so. In short, to public defenders, the embrace of these goals and activities seems like a burdensome and risky move. For defenders happily to accept an expanded mission that includes crime prevention as an ancillary goal, they have to see the money upfront.

## **B. Changing Practices Within the Office**

Beyond this issue of self-perception and role definition among public defenders, however, in order for a public defender to achieve a broader crime prevention role, it is necessary that new competencies be added to the public defender office. First, a public defender leader has to be prepared to devote a greater portion of its resources to non-lawyer staff, such as social workers, investigators, paralegals, community education workers, and so on. For public defense leaders this is a challenge. Many have limited resources while others do not want to risk moving too far from the traditional mission of the public defense program as defined by statute, contract or oversight board. It can be done incrementally though. The more innovative defender programs try to improve client representation while helping reduce recidivism risks among their clients (and some make the link to saving taxpayer dollars over the long run). Resourceful defender programs have reported that tapping into the skills of non-lawyers working inside their offices (either as community volunteers or paid staff) to address client problems directly while a criminal case is pending can provide more time for lawyers to prepare cases and expand their legal strategies in preparing for trial, plea negotiations or a sentencing hearing. Thus, a lawyer's traditional role is not diminished but strengthened by providing representation in the criminal case.

When public defense statutory mandates are narrow or resources tight, resourceful defender leaders seek-out community member volunteers to assist their defense lawyers in addressing underlying problems a client faces such as housing, childcare, or mental health issues. For example, James D. Hennings, Executive Director of the Metropolitan Public Defender Services, Inc. in Portland, Oregon, reports that they have had much success over the years, improved client representation, and forged positive community relations

through their volunteer Legal Assistants and Outreach Coordinators program. These volunteers – from an array of professional backgrounds including nuns, bartenders, and homemakers – not only advocate on behalf of individuals, but are valuable liaisons with the community in different venues.<sup>19</sup> More traditional defenders often claim that “the community” is hostile to public defenders and would not volunteer nor support expansion of defender services. To the contrary, there are inspired defender leaders who contact a variety of community members (they look beyond the usual suspects who say they represent the whole “community”) and have found strong public support for their local public defenders and want to see balanced justice regardless of wealth or status.<sup>20</sup> The academic community is another source of volunteers, interns and potential staff. Mary Hoban, Chief Social Worker in Connecticut Division of the Public Defender Services, began many years ago as the one social work intern inside the Connecticut Public Defender office. The key was that a public defender established one contact at their local social work school. Ms. Hoban suggests that other public defense managers interested in hiring social work interns or full-time staff begin by establishing contact with one faculty member at a local university that offers social work courses.<sup>21</sup> Others have contacted a school of anthropology. Social work graduate students interested in forensic social work are excellent candidates for public defender internships. Innovative defender leaders educate students and faculty about the value of public defense work and opportunities for social workers and others to assist in problem-solving for clients. With a social worker on staff, public defender leaders can use this staff member to find volunteer interns and eventually write grants, funding proposals or engage in legislative outreach to expand the state or county public defense mandate so they can hire more social workers on staff. Proof that this approach works is that now the Connecticut Public Defender has forty social workers on staff to cover thirty-nine field offices throughout Connecticut.<sup>22</sup>

Such work requires a re-conceptualization of the role of the attorney in a defender office and his or her relations to other staff. The familiar debate about lawyers not being social workers is not only about the substance of the work that they do and the kinds of training that are required, but also about issues of power, status and funding in the office. Lawyers are trained in litigation skills that focus almost exclusively on trial

advocacy, although some law schools are now broadening their educational efforts to support a wider set of capabilities. The discomfort in being a social worker is in part borne of the lack of training and skills in this discipline.

The first and most important challenge within the office is to help public defenders develop an appreciation of the value of a broader definition of their role. The romantic view of public defenders is that they are advocates who ensure that the prosecution is held to its burden of proof by testing the adequacy of the evidence at trial. For some defenders, this limited idea represents the limit of their personal commitment. Most defenders, however, want more than this. They want to do more for their clients whom they see as fellow human beings trying to make their way in the world, not simply as clients to be represented in legal proceedings. They want these clients to not return through the revolving door. They want them to live with, support, and care for their loved ones. In most matters, a defender's ethical responsibility to provide zealous advocacy includes efforts to convince the court to make individualized determinations regarding the clients with the goal of minimizing the harm imposed on them and their families. This vision of the role of the public defender is not inconsistent with the traditional role; it is simply broader. And it calls out to those public defenders who want to serve their clients and society as effectively and as decently as possible. Indeed, public defenders and assigned counsel serve and protect society in other ways beyond than reducing recidivism through problem-solving for individual clients.

#### ***IV. Preventing State Crimes Against Citizens***

The most direct contribution that public defenders make to the prevention of crime is the role they play in preventing crimes committed by the state against its own citizens. Of course, most public discussions of "crime" do not pay much attention to *state* crimes. They focus on crimes committed by one citizen against another: a husband who beats his wife, a robber who mugs a woman for her handbag, or a drug addict who burglarizes a house to get money for his next fix. In dealing with these kinds of crime, the state is cast in the

role of protecting both the particular interests of the victim and the broader social interest in promoting justice against the offender who attacked the victim. The state is seen as the guardian against crime rather than the perpetrator. Yet, it is easy to forget that the state and its agents can act as “muggers,” and end up victimizing rather than protecting citizens. In its own initial zeal to protect citizens from one another, state agents can end up committing crimes against the state’s citizens.

## **A. Substantive and Procedural State Crimes**

In a perfect world, of course, the justice system would operate in ways that ensured that liberty was protected, fairness observed, and only the guilty were locked away. But that is not the reality. The reality is that the system makes mistakes, either through negligence or through deliberate actions. When mistakes are made, a terrible injustice is done. The state, supposed to be the guarantor of liberty and justice, becomes the primary threat to these important values.

The worst of these cases are truly awful and easily understood by citizens as crimes. These are the cases in which state agents deliberately “frame” citizens for crimes that they know the individuals did not commit – and patterns of corruption are often cyclical.<sup>23</sup> They could do this to get money, to seek revenge, or to hide their own misdeeds. Public defenders know that more often than not it is their poor and powerless clients who are most likely to be taken advantage of by state agents. But when this can be shown to have occurred, nearly everyone agrees that a serious crime with system-eroding implications has been committed. And it is often public defenders charged with the responsibility for defending citizens in such cases, who are best situated to help society as a whole detect these crimes. They do so by taking the stories of their clients seriously.

These cases, fortunately, seem to be somewhat rare. More common, however, are cases where state agents believe that a person is guilty, but do not have enough evidence to convict the offender, and then manufacture the evidence they need to show guilt in a criminal proceeding. Such actions can be seen as

wrong in two quite different ways. On one hand, such actions are wrong because the state hasn't played fairly in prosecuting the alleged offender. Since the accused has rights, and those rights have been abused, and the state did so deliberately, a significant crime has been committed by the state against the individual defendant. On the other hand, such actions could be seen as particularly egregious if they caused the imprisonment of a person who was factually innocent rather than one who actually committed an offense, but the state lacked sufficient evidence to prove guilt beyond a reasonable doubt. In the one instance, the state is guilty of a procedural crime. In the other, it is guilty of a substantive crime as well.

Many would not want to accept the distinction between procedural justice on one hand and substantive justice on the other. In this view, substantive justice can never be reliably produced. The only thing we can be responsible for is procedural justice. Moreover, we should pursue procedural justice because that is the most reliable way of achieving substantive justice. To others, however, this distinction is important. They want to preserve the idea that there is something real about guilt or innocence, and that the purpose of criminal procedures is simultaneously to protect the rights of those who are accused, and to actually find and punish those who are guilty.

Commonly, some think of those on the left of the political spectrum as being more interested and committed to procedural than substantive justice; they view the exclusionary rule as an important mechanism for protecting liberty that should be maintained even when it causes evidence probative of guilt to be excluded from trial.<sup>24</sup> It is the political right that says that such practices exact too high a price to the cause of substantive justice. But the recent use of DNA evidence to reverse capital cases has seemed to revive interest in the idea of substantive justice.<sup>25</sup> In these cases, what is dramatic is the demonstration that a substantive injustice is being done, regardless of the quality of the procedural justice that produced it. The fact that our procedures could lead to the conviction and execution of innocent people reminds us once again that that state can be a negligent murderer even when it is trying hard not to be, and encourages us to provide even more procedural safeguards to minimize the chance of the state committing these terrible crimes.

## **B. Organizing to Control State Crimes**

The idea that public defenders could be important in reducing *state* crime requires little change in the philosophy of indigent defense systems. That is part of what public defenders think they are there to do in responding to the charges against their clients. In order for them to get credit with the public for reducing crimes through these efforts, however, they have to reinforce convincingly the idea that the state, too, could be a mugger. Of course, anyone who has felt the power of the state mounted against them in some kind of criminal or civil action can appreciate the idea that substantial power is being deployed against them. Moreover, suspicion of state power is deeply rooted in our political culture. So, the seeds of public interest in controlling state crimes are sowed in our social life.

It is here that the practices of public defender offices might usefully be re-considered. It is one thing for an individual public defender to discover and show that his client was the victim of a state crime. It would be quite another for him to win a civil case against the state, and force the state to pay money to compensate the victim for its offense. And it is still another to add up the number of times that clients seem to have been victimized by the state, to publicize that aggregate fact, to look for potentially important patterns of state misconduct in the aggregate patterns of state offenses, and to initiate proceedings against the particular agencies or practices that seem to be producing the offenses. Each of these steps represents an escalation in the public defender's efforts to keep the issue of state crime before citizens as an important public concern.

In the end, it is important to recognize that relatively few institutionalized opportunities exist for society to monitor the way in which the state is using its authority and spending our collectively owned freedom. It is easy to keep track of how the state is using public funds. It is much harder to keep track of how the state is using public authority. Constitutionally and institutionally, public defenders are fairly unique in that they are well positioned to protect the accused from the injustices perpetrated by dishonest cops. They can use that position for two quite different purposes: first, to prevent misuse in individual cases; second, to alert the society as a whole and marshal or facilitate action against the larger forces that are encouraging misuses of state authority. In effect, public defenders could become the auditors of the use of state authority.

Society is best assured that the justice system will honestly and reliably sort things out and accurately determine innocence or degrees of guilt when public defenders operate as vigilant justice system auditors, entrusted with commensurate authority and responsibility to execute the monitoring mission.

Developing and using this position to control state crimes seems to be what Public Defender Michael Judge had in mind as he responded to a scandal involving the CRASH unit of the Rampart Division of the Los Angeles Police Department. The scandal began with the discovery that members of the CRASH unit of the Rampart Division of the Los Angeles Police Department had engaged in a systematic practice of intimidating, assaulting, and threatening residents of the Rampart area. Some of the victims of this police misconduct were gang members or persons with past criminal records, others were not. All of them were viewed as powerless and unworthy of respect by this unit of police officers who dominated Rampart community members, whether law-abiding or not. By any account, such behavior constitutes important crimes that society should be seeking to control and prevent.

What is important to understand, however, is that while the problem was located in the police department, and while there were supposed to be safeguards other than the public defender's office to deal with these problems, the justice and political system as a whole malfunctioned in this case in a way that allowed state crimes to be perpetrated systematically on a large scale. It not only failed to prevent the crimes against citizens in the first place; it also failed to respond promptly and control the problem once it occurred.

The difficulty with responding effectively and controlling state crimes against citizens starts with the problem that citizens who are wronged by bully cops, especially agents assigned to so-called elite units, are too often hampered in seeking justice by statutes, case law, and decisions of trial judges and appellate justices who have been unduly influenced by the prevailing "tough on crime" rhetoric. Increasingly, political and legal power has been consolidated in the hands of police and prosecutors, creating a considerable imbalance in the American justice system – an imbalance that increases not only the likelihood that the state will commit crimes against its own citizens, but also that the system will not respond effectively to such crimes.

A ready solution is elusive because the police possess both the incentives and the capability to prevent their victims from effectively reporting their victimization. It is noteworthy that the board of inquiry conducted by the LAPD found an exceptional number of “recantations” of citizen complaints in which residents of the Rampart division would return after several days to withdraw complaints about officer misconduct. Sometimes these unscrupulous cops framed citizens to cover up their own misconduct. Some manufactured evidence against complainants to justify their own actions by perjuring themselves, or by falsely alleging the existence of reliable “snitch” tips. Still other times, they retaliated against those who complain by effecting unjustifiable forfeitures of money or property or taking other kinds of revenge. Some of these actions were intended to send a message that the police “rule” the local community and hold power that cannot be resisted through traditional means. The overall effect was to intimidate citizens from filing complainants against the police.

Despite the best intentions of police management (including internal affairs) and oversight by prosecutors, it is unlikely that their combined efforts alone will be fully effective in detecting, punishing, and deterring police misconduct. The strong code of silence that exists among police officers means that officers will not report on one another. The symbiotic relationship between police administrators on one hand and rank and file officers on the others, means that police managers will often look the other way rather than work hard to ferret out misconduct. The fact that prosecutors have to rely upon and work with the police means that they, too, will be motivated to preserve positive relationships with individual officers and police departments as a whole rather than aggressively investigate the police.

As a result of this general institutional breakdown, the Los Angeles County Public Defender created the Public Integrity Assurance Section (PIAS) to interdict official crime. It did so through three different mechanisms. First, it sought to identify those cases in which wrongful convictions had occurred, and get them overturned. Second, the office established an agenda of sensible mainstream reform measures for monitoring the police, and provided a training curriculum for the deputy public defenders to reduce the likelihood of such outrages in the future.

Third, and most aggressively, the office began to create a database comprising evidence of misconduct and disciplinary actions taken against individual police officers. In principle, the evidence necessary to create such a database should be readily available from police and prosecutors who are duty-bound by the Brady case to supply exculpatory evidence in individual cases, including information about police misconduct. In practice, however, local police departments and prosecutors rarely fully comply with the supposed self-executing duty imposed by the Supreme Court case of *Brady v. Maryland*<sup>26</sup> mandating disclosure of all exculpatory evidence. Too often when the defense secures a discovery order from the court, requiring disclosure of an officer's history of misconduct, the police obtain a protective order that unreasonably restricts defender use of such information obtained through the formal discovery mechanism.

Despite the difficulties, the office has now assembled considerable evidence of malfeasance and misfeasance perpetrated by more than 100 police officers in Los Angeles County. The sources include public records such as proceedings of the police Board of Rights disciplinary hearings, civil indexes and other court records of judgments against the police, newspaper articles and other media reports, records of criminal prosecutions of police officers, and records of cases presented for criminal filings against officers that have been rejected for filing by the District Attorney. In addition to these public databases, the Los Angeles County Public Defender relies on written reports of follow-up interviews by public defender investigators of witnesses named in such records.

The Public Defender database also includes information from police department records that are provided pursuant to the formal discovery process. Of course, all such information is subject to protective orders. In all cases it is mandatory that such records ordered discovered or disclosed may not be used for any purpose other than a court proceeding pursuant to applicable law. Such a protective order permits sharing of evidence of prior police misconduct among attorneys in the Public Defender's office for use in court proceedings pursuant to applicable law.

A much more restrictive protective order may also be issued upon a motion by an officer or the government agency possessing the records, establishing a good cause showing of necessity to protect the

officer or agency from unnecessary annoyance, embarrassment or oppression. Upon such a showing the court may make any order which justice requires.

One reason the pervasive pattern of misconduct by Los Angeles Police Officers was not discovered earlier by the Public Defender is that judges routinely issued the highly restrictive protective orders without a contested hearing. On their face, some of these troublesome orders prohibited defenders from entering such information into a database or sharing it with colleagues. Hence, other Deputy Public Defenders having cases with the same officer in which the identical allegations of misconduct were made by additional clients, were unaware of information already disclosed in earlier cases.

To remedy the unsatisfactory situation in the event such a highly restrictive protective order is issued, information is entered in the database recording only that in a particular named case a discovery request was made and there were a specified number of hits regarding a named officer, and that a restrictive protective order was issued. No additional details are stored in order to avoid a violation of the protective order. Of course, if the protective order prohibits any entry the information is not captured. A protocol has been promulgated by Public Defender Michael P. Judge directing that such overly restrictive protective orders should be vigorously contested, but if imposed then scrupulously honored.<sup>27</sup> Use of this database is triggered if an individual client advises the deputy public defenders that an officer planted evidence, is fabricating a story, or used excessive force and it appears the case has been filed to cover-up the misconduct. If such an allegation is made, an investigation is conducted to see if evidence tending to corroborate the client's account exists. One source of verification is the public defender database. The database is used to locate relevant, admissible evidence supporting a defense claim in litigation.

The effect of PIAS activities, such as the roll out of the database and identification of additional multiple repositories of relevant admissible evidence and the provision of training re discovery, is that an extraordinary increase in discovery and investigation by defenders has occurred. Judges have found that the police custodians of records were misleading them by falsely declaring they had *personally* searched *all* repositories of records when in fact they had actually done neither. Most judges no longer routinely impose

the highly restrictive orders. The District Attorney has also begun turning over some of the *Brady* information to the defense. A joint agency collaborative involving judges, police, the Sheriff, prosecutors and defenders has been initiated to design a more reliable system for supplying crucial information to which the defense is entitled.<sup>28</sup>

A bilateral agreement, establishing a process whereby defenders will supply information to be considered by the Sheriff's Department for retraining, for potential imposition of discipline, and possibly even for triggering criminal investigations of Deputy Sheriffs is close to being implemented.<sup>29</sup> Artificial limits of five years on production of police records of misconduct via formal discovery are being challenged in the Appellate Courts after a favorable ruling for the defense in the trial court.<sup>30</sup> There exists no such limit for any other witness in a criminal case in California. Likewise, the propriety of protective orders is an issue being litigated.<sup>31</sup>

The views of the Public Defender and his deputies have been broadcast to the general public through television, radio, Internet interviews, Op-Ed pieces, letters to the editor and presentations at general public and professional forums. The Public Defender will present his recommendations for reform to an independent panel of the Los Angeles County Bar under a mandate to examine the performance of the L.A. County justice system.

Following Rampart, corrupt officers and those tempted towards corruption face an environment today that is much more vigilant. Today, police witnesses are more likely to be held to the same standards as all other witnesses; however, there may be trouble brewing. A State Senator concerned about privacy in general, in this age of private databases containing information gleaned and aggregated from public records, has been joined by a police union in San Diego that is concerned about information relating to police officers being assembled in a database. Film at 11.

It must be emphasized that concealing evidence of misconduct does not benefit the good cops; it only protects the bad ones. By vigorously discharging their watchdog role public defenders help cull the corrupt cops out, allowing the many good ones to enjoy the respect to which they are fully entitled. Consequently,

improper convictions are avoided, public faith in the system is restored and the defenders are comfortable continuing the practice of recommending that persons suspected of crime surrender rather than evade warrants possibly risking injury in a an arrest situation. The defender’s job is to help clients trust that the legal system will treat them fairly and to work hard for each client, which will promote balanced justice.

In these ways, public defenders can play an important role in preventing an egregious kind of crime – crimes committed by the state against citizens. Indeed, the Los Angeles Chief of Police himself recognized this important role. In what initially seemed a surprising act, the Los Angeles Chief of Police blamed the Public Defender for failing to detect, deter, and prevent the police misconduct, which had sullied his Police Department’s reputation and led to many wrongful convictions. Upon reflection, however, the Public Defender concluded that he did, indeed, have some responsibility for controlling official misconduct, and is now moving expeditiously to live up to the responsibilities that the Police Chief conceded to him.<sup>32</sup>

## ***V. Building a Capacity for Crime Prevention Advocacy***

To exploit fully the public defenders’ capacity to prevent crime, it is also necessary that public defenders go beyond their operational roles in handling individual cases; they must develop a capacity to represent their views forcefully in public, legislative, and justice planning – which includes delinquency, dependency and criminal justice forums. The most important step in building this capacity is for those who lead public defender offices to recognize that this external, policy advocacy is one of their most important functions, and to develop the time and effort that is required both to develop their skills in this activity, and to do it. As Michael Judge has observed: “Public Defenders must assert strong leadership in defining and articulating the nature of the defender role in the justice system and society at large. To do otherwise permits outsiders to distort our mission, circumscribe our authority, limit our effectiveness, and vastly undervalue us.”<sup>33</sup>

In addition to this, however, Public Defender Offices must develop capacities both for effective media relationships, and effective policy research. They must be able to craft and communicate a message that aligns with the public's desire to prevent crime, and that shows the ways in which their offices can contribute to this important goal. They have to provide both the persuasive stories and anecdotes that helps the public see their potential for reducing crime, as well as provide the statistics and empirical evidence that shows the impact can be large and systematic. One powerful example of such an approach is offered by The Bronx Defender's recent publication that takes the form of an actual case folder.<sup>34</sup> This device allows citizens who are otherwise unfamiliar with the work of a public defender to see the concrete issues they face, and the opportunities they have to make a difference in the world.

Just as it is hard for public defenders to accept the idea that they must change the way the office operates in individual cases, it is also difficult for them to accept the idea that they must engage in political and policy advocacy. They would much prefer to confine their advocacy to the courtroom, not the court of public opinion. Yet, the reality of a democratic system is that the people and their elected representatives make important decisions about how public funds and public authority will be spent. It is not just the Supreme Court that gets to decide the form that public defense will take. And it is not just the dedicated lawyers that are drawn to this task. It is also the elected chief executives of cities and states, and those who are elected to represent the people in city councils and state legislatures who get to decide on the form that public defense will take. And they might well be interested not only in what public defenders can do to protect liberty and assure justice, but also what they can do to prevent and control crime.

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<sup>1</sup> Edward Walsh, "Meese's Viewpoint On ACLU Efforts Called His Own," Washington Post, A13 (May 15, 1981).

<sup>2</sup> The conventional goals include the following: 1) to ensure the government meets its burden of proof for each case; 2) to exonerate the innocent; 3) to assure that those who are erroneously charged with more serious misconduct (i.e., over-charged) are held accountable only to the extent of their actual culpability, and 4) to secure just and effective sentencing results. Although these goals remain in place, this paper examines and argues in favor of adding an additional, less-obvious goal: effective public defender systems can reduce and prevent crime.

<sup>3</sup> See Kim Taylor-Thompson, "Effective Assistance: Reconceiving the Role of the Chief Public Defender," 2 J. Inst. Stud. Leg. Ethics 199 (1999).

<sup>4</sup> See Focus Group Study by Belden Russonello & Stewart, *The Price of Justice: Money, Fairness and the Right to Counsel*, sponsored by NLADA and the Open Society Institute. The report describes the results from a national

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investigation of public opinions about due process and the role of lawyers who represent indigent criminal defendants.

<sup>5</sup> *Id.*

<sup>6</sup> Bennett H. Brummer, *Community Partnerships, Holistic Advocacy through a 'Public Defender Anti-Violence Initiative,'* Vol 3, No. 2 *Indigent Defense* at 1 ( May/June 1993)( a publication of the National Legal Aid and Defender Association) (hereinafter, Brummer, *Community Partnerships*).

<sup>7</sup> *Id.* at 14-15.

<sup>8</sup> Brummer explains that with traditional sentencing approaches in adult and juvenile courts the lawyer and social worker only focused on the client's specific issue , "[b]ut our advocacy quickly rose to the macro level, driven by our lawyers' and social workers' conclusion that there were substantial gaps in the continuum of service and that many of the existing programs were ineffective or even counter-productive." Brummer, *Community Partnerships, supra* note 11 at 1. Miami public defender leaders continue to support broader systemic reform efforts that are consistent with restorative justice and public health models. *Id.*

<sup>9</sup> *E. g.*, Cait Clarke, "Problem-Solving Defenders in the Community: Expanding the Conceptual and Institutional Boundaries of Providing Counsel to the Poor," 14 *Georgetown J. Legal Ethics* 401 (2001) (describing several public defense offices that are grounded in maximizing clients' liberty interests and also recognize that a broader vision of the public defense role is a more complete view of providing counsel. Wrap-around services and team-based representation with lawyer and non-lawyers is sometimes called "whole client representation" or "holistic advocacy").

<sup>10</sup> Mark H. Moore, Jeffrey A. Roth, Patricia Kelly, *Responding to Violence in Cornet City: The Problem-Solving Exercise*, pp. 132-133 Washington, D.C. NIJ, September, 1994.

<sup>11</sup> *See, e.g.*, Susan Wardell, Gary Guichard, Stephanie Cline, *Alternatives to Incarceration: The Team Approach to Plea Negotiation and Sentencing* (November 2001) (paper presented at the National Legal Aid and Defender Association Annual Meeting, Nov. 8, 2001 at a panel entitled, "Problem-Solving Sentencing: A Holistic Approach to Client Representation.") [paper available through the Fulton County Conflict Defender, Inc. 133 Carnegie Way, #300 Atlanta, GA 30303] *See also* The Sentencing Project briefing paper *Components of an Effective Alternative Sentencing Program*, (among the components is "client specific planning; paper available at <http://www.sentencingproject.org/brief/pub1000.pdf>)

<sup>12</sup> Brummer, *Community Partnerships, supra* note 11, at 13.

<sup>13</sup> *See* David Cole, "Faith Succeeds Where Pris on Fails," *N.Y. Times*, A21 (Jan 31, 2001). Ann Costello, "Volunteer Group Works to Lift Spirits Inside Sing Sing," *N.Y. Times*, 11 (Aug 6, 1995)

<sup>14</sup> Mark Moore, 1997 speech at the National Institute of Justice, Washington D.C. entitled "Legitimation of Criminal Justice Policies and Practices". Tom R. Tyler, *Why People Obey the Law* (Yale Univ. Press 1990).

<sup>15</sup> Brummer, *Community Partnerships, supra* note 11, at 13.

<sup>16</sup> *Id.*

<sup>17</sup> *See* The Sentencing Project, Briefing Sheet "Crime, Punishment and Public Opinion: A summary of Recent Studies and Their Implications for Sentencing Policy 1-4, see footnotes 11-17 (discussing National Opinion Surveys finding public support for rehabilitation). Also available at <http://www.sentencingproject.org/brief/pub1005.pdf>

<sup>18</sup> In describing the potential pitfalls of the Miami PDs crime-fighting program, Brummer wrote: "Establishing an AVI requires imagination and advocacy in a broader forum than many defenders are accustomed to functioning in. The rules of procedure are less clear than lawyers may be comfortable with." Bennett H. Brummer, *Community Partnerships, Holistic Advocacy through a 'Public Defender Anti-Violence Initiative,'* vol. 3, no. 2 *Indigent Defense* at 12 (May/June 1993).

<sup>19</sup> Clarke, "Problem-Solving Defenders" *supra*, note 9, at 430-31.

<sup>20</sup> Several innovative defender offices that have forged highly supportive community links include: The Bronx Defenders in NY; The Neighborhood Defender Service of Harlem in NY; The Community Law Office in Knoxville, TN; The Georgia Justice Project in Atlanta, GA; The Dade County Public Defenders Office in Miami, FL; Office of the Public Defender in Albemarle County and Charlottesville, VA; and, The Defender Association of Seattle-King County, WA..

<sup>21</sup> Mary Hoban, Chief Social Worker, Connecticut Public Defenders Office, discussing social workers as staff members in public defense or assigned counsel programs, at the Executive Session on Public Defense, May 3-5, 2001, Kennedy School of Government, Harvard University Cambridge, MA.

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<sup>22</sup> See “The Annual Report 2001 of the Chief Public Defender,” Gerard A. Smyth, Chief Public Defender, at p. 2 (Jan. 1, 2002).

<sup>23</sup> E.g., “For the past hundred years, New York City has experienced a twenty-year cycle of corruption, scandal, reform, backslide, and fresh scandal in the New York City Police Department. The Lexow Committee of 1894, The Curran Committee of 1913, the Seabury Committee of 1930, the Harry Gross investigation of 1950, and the Knapp Commission of 1971 have each served as critical signposts of a regular and repetitive cycle of police corruption within the New York City Police Department (NYPD). The creation of the Mollen Commission, [another] independent inquiry into police corruption, marks only the latest chapter in this historical pattern.” Hon. Harold Baer, Jr. & Joseph P. Armao, *The Mollen Commission Report: An Overview*, 40 N.Y.L. Sch. L. Rev. 73 (1995) (footnotes omitted).

<sup>24</sup> See e.g. Some conservatives argue in favor of preserving the rule albeit for different reasons such as viewing the exclusionary rule as the only effective method that the judiciary has to preserve the integrity of its warrant-issuing authority. Timothy Lynch, “In Defense of the Exclusionary Rule,” 23 *Harvard J.L. & Pub. Policy* 711(2000)(Lynch is the Director of the Cato Institute’s Project on Criminal Justice) The exclusionary rule was first introduced in federal criminal cases in United States v. Weeks, 232 U.S. 383 (1914) and then forty-seven years later the Supreme Court applied the exclusionary rule to the states through the due process clause of the fourteenth amendment in Mapp v. Ohio, 367 U.S. 643 (1961).

<sup>25</sup> E.g., Peter J. Neufeld, “Have You No Sense of Decency?” 84 *J. Crim. L. & Criminology* 189 (1993)(discussing the practical problems when science and law collide in court and the substantive injustices when prosecutors are embrace DNA evidence to convict, but hypocritically reject the use of DNA testing to prove innocence). Barry Scheck, Peter Neufeld, Jim Dwyer, Actual Innocence. Five Days to Execution and Other Dispatches from the Wrongly Convicted (Doubleday, 2000).

<sup>26</sup> Brady v. Maryland, 373 U.S. 83 (1963)(mandating that government actors have ongoing affirmative duties to disclose any evidence in possession that is favorable to the accused and is material to either the issue of guilt or punishment.)

<sup>27</sup> Correspondence from Michael Judge to Cait Clarke, Program in Criminal Justice Policy and Management, John F. Kennedy School of Government, letter dated September 27, 2001.

<sup>28</sup> Numerous writs of *habeas corpus* have been filed by public defenders on behalf of people who appear to have been wrongfully convicted and many dubious convictions have been set aside. A number of open cases pending trial have been dismissed due to proven deficits in credibility of certain officers. Tainted identifications caused by misconduct of police investigators have been discerned by defenders and such cases have been dismissed.

<sup>29</sup> *Id.* A similar arrangement with the Los Angeles Police Department was negotiated but has yet to realize its full potential.

<sup>30</sup> Alford v. Superior Court, 89 Cal App. 4<sup>th</sup> 356 (2001).

<sup>31</sup> City of Los Angeles v. Superior Court, 84 Cal. 4<sup>th</sup> 767 (2001) (Brandon).

<sup>32</sup> Correspondence from Michael Judge to Cait Clarke, Program in Criminal Justice Policy and Management, John F. Kennedy School of Government, letter dated September 27, 2001.

<sup>33</sup> Correspondence from Michael Judge to Cait Clarke, Program in Criminal Justice Policy and Management, John F. Kennedy School of Government, letter dated September 27, 2001.

<sup>34</sup> See *The Bronx Defenders, Beyond the Courthouse* (2000). This publication, which resembles an actual case file (a 14 ½ by 8 ½ manila folder with a lawyer’s handwritten notes on the cover) describes the vision and structure of the Bronx Defenders practice groups. Each client is represented by these small groups consisting of lawyers, social workers, investigators, and support staff. (publication available at the Bronx Defenders, NY; text by Rebecca Stead, design by Pamela Hovland).