



RIGHT TO COUNSEL

**ENGAGING KEY SYSTEM ACTORS IN SUPPORT OF
THE RIGHT TO COUNSEL**

**A REPORT FROM
ROUNDTABLE DISCUSSIONS AND INTERVIEWS
AMONG CRIMINAL JUSTICE PROFESSIONALS
CONDUCTED FOR THE RIGHT TO COUNSEL NATIONAL CAMPAIGN**

March 2019

INTRODUCTION

The Right to Counsel (R2C) National Campaign is a public awareness initiative that uses value-based communications to inform policymakers, criminal justice system actors, and the public about the importance of carrying out the right to counsel as guaranteed by the Sixth Amendment. Since the majority of people charged in criminal cases in the United States are represented by public defenders or public defense service providers, fulfilling the right to counsel is generally tied to the quality of public defense representation.

The goals of this campaign include communicating the ways in which this right is not being realized and the roles all system actors, from law enforcement officers to prosecutors to judges and court managers, can play in ensuring that the constitutional right to counsel is upheld.

To enhance its capacity to communicate effectively, the R2C National Campaign asked Belden Russonello Strategists, an opinion research and strategic communication firm, to conduct a public opinion survey, the results of which were released in March 2017, and to conduct roundtables and interviews with criminal justice professionals. The following report summarizes the roundtables held with law enforcement officers, representatives from state administering agencies (SAAs), county officials, prosecutors, and court administrators—as well as a roundtable and a series of individual interviews with judges. The discussions were held between October 2016 and June 2018. This report uses conclusions from those discussions and interviews to make specific strategic communications recommendations for R2C.

During the discussions and interviews, participants from across the United States responded to questions about their perceptions of the effectiveness of public defense systems in their own jurisdictions delivering the constitutional right to counsel, the most pressing challenges, and possible solutions to improving public defense, and what role they can personally play in advancing improvements.

Participants also responded to one and two sentence campaign messages developed in prior phases of research for R2C. Appendix A contains a series of message statements upon which participants provided feedback.

In this report when we use the term “public defense,” we are referring to all public defense delivery systems, including public defender offices, contract attorneys, panel attorneys, and court-appointed attorneys. It is important to remember that the findings reported here are qualitative in nature and each discussion involved a small number of representatives from the six respective professions. Thus, the findings of all the research participants taken together offer the most valuable communications guidance.

KEY FINDINGS

Across all groups we heard a number of recurring themes when discussing the characteristics of public defense providers.

- All groups agree that inadequate public defense stems from caseloads that are too heavy and resources that are too scarce. They maintain that the main issue is lack of funding.
- The system actors view public defense providers as mostly well trained and hardworking but often inexperienced as trial lawyers.
- Many say they would feel comfortable being represented by a public defender for a minor offense but not for a more serious crime.

These views correspond fairly well with the opinions of the public, as reported in the national public opinion survey report [*Americans' Views on Public Defenders and the Right to Counsel*](#) (Belden Russonello Strategists, March 2017).

Other attitudes expressed in some of the system actor groups differ from those of the public.

- Whereas the public broadly endorses the idea of creating national standards for quality and resources for all public defense providers, the system actors with whom we spoke hold a variety of views. The prosecutors, law enforcement personnel, and court administrators react negatively to the idea of national standards, fearing a loss of local control. While agreeing that standards need to be suitable to local circumstances, most SAA representatives, county officials, and judges say standards would be useful as guidelines but not requirements.
- While the public is motivated by statistics and examples demonstrating problems with the current workings of public defense—such as the length of time some people wait in jail before getting a hearing or being assigned a public defense provider, and the short amount of time a public defense provider can give to each client—the prosecutors, law enforcement personnel, and court administrators reject this type of messaging because they view it as a negative portrayal of the professionals in their jurisdictions. However, the use of such information is embraced by the judges, county officials, and SAA representatives, who see these examples as helpful to make the case for more funding for public defense.

Across all the discussions, we found a great deal of consistency in terms of the values that underlie the need to support public defense.

- Most of the system actors are motivated by a desire to make the criminal justice system fairer, more efficient, and less dependent on incarceration.
- All the system actors in this research revere the right to counsel as a constitutional right.

STRATEGIC COMMUNICATIONS RECOMMENDATIONS FROM THE RESEARCH

The central challenge for the R2C National Campaign is how to enlist system actors as active, strong advocates for improved public defense. Our discussions and interviews suggest a number of useful openings.

1. Mobilize judges, county officials, and SAA representatives to lead.

The judges, county officials, and representatives of SAAs are the system actors most likely to embrace an active role in improving public defense. The judges, in particular, are well situated to champion public defense as part of a larger effort to make the criminal justice system fairer and more efficient. Campaign efforts that begin with **energizing judges and SAA representatives to carry the message to legislators** will help to interest other system actors in becoming active. Many who are now reluctant to step forward may be more willing to participate knowing that judges, in particular, are leading the way.

2. Communicate that fixing public defense is about fixing the criminal justice system and reducing overincarceration.

Putting the needs of public defense in the **context of overall criminal justice reform**, including the efforts to combat overincarceration and advance alternatives to incarceration, increases its saliency among the system actor groups that are most likely to become active—specifically judges, county officials, and SAA representatives. Placing the call for more resources for public defense in the context of **making the entire criminal justice system fairer and less likely to send people to jail or prison** increases its importance with many system actors, who see firsthand how the quality of public defense has an impact on the speed and quality of justice and ultimately the number of people incarcerated.

3. Root the message in the Constitution, fairness, and efficiency.

A core message that resonated across all stakeholder groups stresses **the values of fairness and equal justice and the fact that public defense is a constitutional right**. It should also tie improved public defense to the overall **efficiency** of the criminal justice system.

4. Focus on the faults in the system, not the individuals.

Remind system actors that the failings of public defense are the fault of the system, rather than individual defenders. While most system actors perceive public defenders positively, it is important to remind them that they can improve public defense without criticizing or tarnishing the image of hard working defenders.

5. Use numbers carefully when describing the problem.

We heard nearly universal agreement that public defenders are overburdened with too many cases and lacking sufficient resources to adequately represent their clients. However, some system actors are reluctant to highlight these problems either for fear that it will project negatively on the system and/or because they do not believe the specifics are true in their jurisdictions. On the other hand, statistics can be quite persuasive for certain system actors. Like the public, some of the system actors, such as judges and county and state officials, do find specific numerical examples to be compelling parts of messages. Thus, when communicating across communities, we **recommend describing the magnitude of the problem broadly, such as “clients waiting weeks and sometimes months in jail to see a public defender,” rather than citing specific statistics from one jurisdiction that may not be representative of all.**

6. Recognize that funding is key.

The system actors easily identified what they believe are the elements that go into good public defense systems, such as adequate compensation, investigators, and time with their clients. The problem as they see it is simply getting these needs funded. They realize funding these resources is essentially a political decision. Therefore, **building support among local constituent and professional groups will be important in convincing local and state legislative bodies to increase funding.**

7. Describe standards as a goal.

The system actors in this research have a mixed reaction to proposing national standards for resources for and qualifications of public defenders. The objection by some to the concept of national standards focuses on fear of lost local control of the public defender system. Other system actors see more value in having a recognized set of recommended—not mandated—guidelines or aspirational standards as they advocate for more funding. Given the popularity of standards with the public, such **"recommended standards" would enhance the campaign.**

CORE MESSAGES

For the most part, the messages to use to engage the various system actors are essentially the same, and it will be useful to adopt an overarching message that will speak to any of the stakeholder groups. Differences among the groups—that may lead to tweaks in the messages—are described in the sections about each group below but are not great enough to merit separate messages.

Compelling messages need to express **three elements**: (1) the values at play; (2) the threat to upholding the values; and (3) the steps necessary to solve the problem. Our recommended overarching message for engaging system actors is the following:

Core message for all the stakeholder groups

(Value) In America, every person accused of a crime has a constitutional right to have access to and representation by a competent lawyer.

(Problem) This fundamental right is threatened when public defenders have too few resources and too many cases to adequately represent their clients.

(Solution and value) Providing more support for public defense will help our courts to run more efficiently and improve the quality of justice—and that will benefit every American.

(Solution) Providing competent legal representation is necessary to prevent innocent people from going to jail and will help reduce overincarceration.

Supporting messages

(Problem) A lack of funding in many places has resulted in people accused of minor crimes waiting in jail weeks or months to have a lawyer assigned to them and a hearing held.

(Solution and values) More resources for public defense will make our criminal justice system fairer, more efficient, and less costly by reducing the number of people who have their lives ruined by going to jail.

Communications Dos and Don'ts

Do

Do introduce the campaign for public defense as an effort to guarantee a constitutional right and to make the criminal justice system fairer and more efficient.

Do assert that better public defense will save money for the criminal justice system.

Do connect the message about protecting the innocent with the larger effort to reduce overincarceration.

Do describe the human cost of inadequate public defense, such as clients waiting weeks or months in jail because of a lack of public defenders.

Do call for recommended basic national standards for what constitutes an adequate public defense delivery system.

Do make judges among your first recruits, as they can most credibly carry the message of public defense as a key element of achieving a fairer, more efficient criminal justice system.

Do reference the big picture needs for adequate financing, such as attorney compensation, investigation, and caseload reduction.

Do use statistics that apply to the local environment.

Do point out discrepancies in resources for prosecutors vs. public defenders.

Do say “ensure” the constitutional right.

Do Not

Do not make the message about public defense by itself.

Do not rely on an appeal to fairness alone.

Do not focus only on protecting the innocent without mentioning overincarceration.

Do not call for national standards without making it clear that they are recommended guides to be considered by each jurisdiction, not mandates.

Do not assume judges will be too busy or too apolitical to take on this effort.

Do not use specific statistics about wait times, *etc.*, unless they apply to the local situation.

Do not say “restore” the constitutional right.

DISCUSSION SUMMARIES

ROUNDTABLE #1: COURT ADMINISTRATORS, ARLINGTON, VIRGINIA, JULY 9, 2017

1. Views of public defenders and the system

The seven court administrators present at the roundtable spoke positively about public defenders, describing them as dedicated or even “passionate” about their work. We heard almost no criticisms of individual public defenders. However, the administrators would not feel confident if they had to rely on public defenders to defend them personally in a criminal trial. Their lack of confidence mostly stems from the system, though, and not individual public defenders. Rather than criticizing public defenders’ abilities, the administrators blame the high caseloads that public defenders must bear, which take a toll on the quality of defense they provide.

2. Needs and challenges

The biggest challenge that court administrators see for public defenders is the overall lack of resources for public defense. They say this is a “real problem” for dispensing equal justice in their court jurisdictions. When they were asked if they think their public defense system is in “crisis” they demur, yet they clearly see improvements in public defense as a priority. As they are focused on their own jurisdictions, these court administrators do not know how to compare themselves to others around the country.

3. Solutions

The administrators all believe that the most important improvement in public defense in their courts would be more funding for a wide range of needs. With no clear priority, they cite a number of needs: hiring more lawyers to reduce caseloads, expert consultants, interpreters, investigators, office space, desks, and support staff, and technical help to provide better access to information for clients.

They depart from the general public in their clear lack of enthusiasm for national standards on public defense. These administrators want to keep all decisions about public defense local.

4. Their role in improving public defense

The court administrators believe that improving public defense will actually slow down the wheels of justice in their courts because attorneys will have more time to make their cases. Nevertheless, they would endorse this improvement because it would advance the quality of justice in their courts. As one court administrator said, “Our cases might take longer, but we would have less [sic] people in jail, which is how we are judged.”

These court administrators believe improving public defense should be one of their top priorities because it is essential to providing justice to the accused, but they do not see much of a role that they themselves can play in making this happen. Responsibility for improving public defense lies primarily with the judges in their courts, in their view.

5. Messages

The administrators' primary motivation for improving public defense is that it is a **constitutional right** that is not being fully met. The messages that resonate the most with them are those that emphasize core values of **fairness and justice** and **preventing innocent people from going to jail**.

They become palpably uncomfortable with a message that describes the problems in the system of public defense, such as citing "caseloads so high that a public defender can devote only a couple of hours to each case," and "people accused of minor crimes waiting in jail as long as six months to have a lawyer assigned to them and a hearing held." They worry about sending a message that presents a negative impression of criminal justice in their jurisdictions.

The reaction of court administrators differs sharply from the public, which our research has shown responds with a greater sense of urgency upon learning of shortcomings in public defense.

In summary

Court administrators support messages about **justice, fairness, and protecting the innocent**, rooted in the **Constitution**. They resist descriptions that suggest the right to counsel is being denied in their jurisdictions.

ROUNDTABLE #2: PROSECUTORS, WASHINGTON, DC, DECEMBER 12, 2017

1. Views of public defenders and the system

The group of 10 state prosecutors and senior staff in prosecutors' offices view public defenders as mostly competent and dedicated but less experienced than private criminal defense attorneys. While these prosecutors say that not all public defenders are excellent, they themselves would feel comfortable being represented by a public defender for most minor crimes. They are less confident about public defenders taking on very serious cases, such as murder, because they think most public defenders do not stay in their jobs long enough to get the experience needed for these cases.

2. Needs and challenges

The perceptions of the need for improvements in public defense vary widely among the prosecutors and senior staff members present. A few believe their public defense systems are in acute distress and greatly in need of more public defenders to reduce caseloads, while others acknowledge short-comings but generally voice satisfaction with public defense in their jurisdictions. The prosecutors and staffers all agree that public defenders' pay is too low and their resources often less than adequate for needs, such as hiring expert witnesses. As one county prosecutor told us, "All the problems come back to money. Public defenders make less money, and they have a serious cap on how much they can spend on investigators." The prosecutors and staffers see these needs as important to the effective representation of clients.

3. Solutions

The group members as a whole believe they have a much higher opinion of public defenders than the public does. The prosecutors and staffers all agree public defenders in general "are better than their brand," and that this negative perception dampens state legislative support for improvements. They see little hope of state legislatures adding resources for public defense and believe improvements will only be accomplished through the courts. They say that the public defenders' branding problem with the public makes it easy for state governments to ignore requests for increased funding.

In contemplating how to make the public defense system stronger, most of these prosecutors and staffers believe that their own jurisdictions already have decent public defense systems. Most feel they do not need nor want national standards on caseloads or on qualifications of public defenders. Most would be amenable to *state* standards, but they do not see them as necessary to improve the quality of public defense in their jurisdictions.

4. Their role in improving public defense

These prosecutors and senior staff members believe they have a responsibility to work with public defenders to create a more effective, more efficient, and fairer criminal justice system.

However, their own vocal support outside the court for a strong public defense system is stifled by their feeling that prosecutors should not be seen by the public as trying to help public defenders as they are supposed to be adversaries. Thus, they say their open support for public defenders would undermine the public's trust in both sides of the court. In their opinion, this means that any public campaign to improve public defense that involves prosecutors has to be communicated in broad strokes about improving justice rather than focusing solely on public defenders.

5. Messages

The prosecutors and staff members think the strongest messages to achieve improvements in public defense should be tied to outcomes that serve the values of **fairness and justice**, the responsibility they feel to their community to have a more **efficient** system, and the fact that the right to counsel is part of the **Constitution**.

They say that better public defense will result in fewer instances of incarcerating people who do not need to be in jail. They express a strong belief that having a better public defense system is not only necessary to make the criminal justice system more effective and efficient but that we also need it to make the system fairer. Some say it is necessary to make improvements to public defense delivery systems for fairness, "because it is the right thing to do," whereas others say, "we want good convictions that will stand up."

They are less drawn to messages that rely on descriptions of the denial of right to counsel across the country, such as lengthy waits for accused people to be assigned a lawyer. Their response to these messages comes from their belief that in their jurisdictions, people are not unjustly held in jails for months without assignment of counsel.

On language, they are most enthusiastic about the two values statements in the comprehensive message we presented (See Appendix A):

In America, every person accused of a crime should have access to a competent lawyer. It is a right written into our Constitution and is basic to our belief in fairness and equal justice.

The quality of justice a person receives should not be determined by how much money a person has.

The prosecutors are uncomfortable reading that improving public defense will "restore" a constitutional right because they do not think the right has gone away. They suggest replacing "restore" with the word "ensure." This recommendation was repeated in our groups with law enforcement and state administering agency personnel.

In summary

The prosecutors and staffers in the group are drawn to a message that highlights the **constitutional requirement** of the right to counsel, combined with statements about **fairness, justice**, and making the criminal justice system more **efficient**. They are less enthusiastic about descriptions of the problems with public defense or its necessity to protect the innocent.

ROUNDTABLE #3: LAW ENFORCEMENT, WASHINGTON, DC, DECEMBER 12, 2017**1. Views of public defenders and the system**

The nine members of the law enforcement community who met with us hold mixed views on the effectiveness of public defenders, ranging from excellent to poor. The negative perceptions are chiefly about public defense systems and not defenders themselves. Specific criticisms of the system include that public defenders have too many cases to handle at one time and too few resources for such needs as hiring investigators or understanding and analyzing forensics.

In addition to their criticisms of the system, the law enforcement professionals believe that public defenders' low pay means young, less experienced lawyers work as public defenders for a short time, using the job as a stepping stone to the private bar.

The law enforcement participants demur when asked about national needs, saying they can speak only about their own jurisdictions. They do not have a view on the quality of public defenders nationwide, but they believe the public defenders in large cities have more resources and probably do a better job than those in rural areas.

2. Needs and challenges

The law enforcement professionals see the problems with public defense as part of a "broken" criminal justice system. They say the criminal justice system as a whole is not providing fair and impartial justice for all because it is biased against people of lesser means, leading to too many incarcerated people.

They hope that an improved system of public defense would be fairer and less expensive as it would result in fewer people who are wrongly incarcerated.

3. Their role in improving public defense

The law enforcement personnel also feel that a flawed public defense system contributes to a lack of public trust in the criminal justice system, including trust in law enforcement. As one participant said, "We are part of the same system." Thus, they believe law enforcement has a stake in striving toward a system in which public defenders have the resources to represent clients effectively. As one member told us, "The police should be part of the solution" to improve public defense.

On the other hand, the law enforcement professionals express unwillingness to support such an effort visibly or publicly because it could be seen as taking a side in the adversarial system of public defender vs. the prosecutor. For example, while they endorse an effort to obtain more public defense funding at the local level, they are unsure about their own role in getting this done. They worry about getting too involved in an issue they think is more pertinent to

prosecutors and public defenders, and this moves many to place a relatively low priority on public defense improvements as a function for themselves.

4. Solutions

Most of the law enforcement participants are reluctant to embrace national standards for the quality of public defense that clients receive, because they do not want a national entity to dictate local policies. They prefer “general guidelines” or a listing of “best practices.”

5. Messages

The law enforcement members are more likely to be convinced to advocate for more resources for public defenders by message statements that highlight the **constitutional requirement** of public defense, **preventing innocent people from going to jail**, and making the **criminal justice system fairer and more efficient**.

Another effective message in the law enforcement group cites people waiting in jail for six months because of a lack of public defenders. Yet this group is unenthusiastic about a message about overly burdensome caseloads. This is curious since most law enforcement participants expressed the view earlier that they believe public defenders are overburdened. It appears that they agree with this statement of the problem (overburdened public defenders). However, it is their interest in seeing the system work fairly, efficiently, and constitutionally that motivates them, rather than a concern for the day-to-day experiences of public defenders.

With regard to language, when the law enforcement members read the comprehensive message we presented (See Appendix A), they are most enthusiastic about the **values** statement and the statement that focuses on **fairness** and the **Constitution**.

They prefer saying that improving public defense will “ensure” rather than “restore” a constitutional right. Several would rather that the statement asserting that better public defense will lead to fewer ruined lives apply to all people rather than only to young people.

In summary

Law enforcement officials are most enthusiastic about a message that combines adherence to the **Constitution** and **preventing innocent people from going to prison**. They also see improved public defense as contributing to a **more efficient criminal justice system** and have some interest in hearing about examples of problems in the system.

ROUNDTABLE #4: STATE ADMINISTRATING AGENCY PERSONNEL, CHARLESTON, SOUTH CAROLINA, DECEMBER 13, 2017

1. Views of public defenders and the system

The six representatives from SAAs across the country who came together in Charleston hold a generally positive view of public defenders; however, they have mixed views on public defenders' effectiveness.

2. Needs and challenges

The SAA personnel believe the quality of representation provided by public defenders is harmed because the public defenders in their states are "considerably underfunded." They worry that the huge caseloads of public defenders significantly impact the quality of their representation and that public defenders have far fewer resources compared to prosecutors. As one SAA participant commented, "Prosecutors get eight hours per case while public defenders get 45 minutes per case." All of the participants in the Charleston group saw this as unfair.

They blame the inadequate funding on a lack of political will by the people in government, noting that public defense and social services are the first items cut in state and county budgets when funding is tight.

3. Solutions

The representatives from SAAs believe the system prioritizes speed over justice. They say that the courts, as they currently exist, dispose of cases quickly but perhaps not always fairly. They voiced a number of prescriptions for improvements of public defense, all of which required higher funding levels and reach beyond the issues of caseload and investigative resources. Their ideas ranged from "streamlining the arraignment process" to spending more on social workers to help public defense clients, in addition to hiring more public defenders to reduce caseloads.

When asked about their views on whether to create national standards for the quality of public defenders and caseload caps, they expressed mixed opinions. Some SAA administrators believe standards would lead to improved quality of public defense, but others balk at national standards that would dictate what must be done in their own jurisdictions, even though they agree with the goal of providing defenders with more time and resources to spend on each case.

4. Their role in improving public defense

Unlike many of the participants in other discussion groups, most of the SAA administrators felt that improving the public defense system is a high priority for them. They see many benefits: *e.g.*, improved public defense will make the courts fairer and more efficient in the long run and

would result in safer communities as fewer young people would be subjected to the prison system making them more of a danger when they return to society.

The SAA administrators, however, are highly skeptical about whether there is enough support among the public and policymakers to spend more resources on public defense. They suggest one way to start to build political support for public defenders is to include public defenders on the commissions that make criminal justice funding decisions.

The SAA administrators take it as a personal challenge to build greater support for public defense among the public and their states' elected public officials, and some say the best chance for building that support is to make public defense part of the movement for alternatives to incarceration. They say this will have broader public appeal than simply asking for more funds for public defenders. These administrators want to make the argument to budget-conscious voters and elected officials that better public defense would result in fewer people being incarcerated, saving money in the long run.

5. Messages

The SAA administrators do not need to be motivated to believe in the importance of a sound public defense system or in the challenges faced by public defenders. Instead, effective messaging for this group should instill hope that they can convince politicians and the public that increasing funding for public defense is in everybody's interest because it creates a **fairer** and **less costly** criminal justice system. This suggests including a message component asserting that in order **to reduce overincarceration, save money** in the long run, and **protect innocent people from prison**, we must include adequate funding for public defense.

When presented with messages in support of increased funding for public defenders, the SAA administrators are drawn most to those that focus on **upholding the Constitution**, making the system **fairer** for all, and **protecting the innocent** from imprisonment. Several are particularly enthusiastic about the message explaining that a young person's life can be ruined because of a conviction for a minor offense.

With regard to language, some would replace the term "standards" with "best practices" so as not to sound overly prescriptive. Some also prefer the term "ensure" rather than "restore" the constitutional right to counsel.

In summary

The SAA representatives seek a practical message that places public defense in the context of **improving the criminal justice system overall, reducing overincarceration, and lowering taxpayer expenses**. At the same time, they embrace a message that stresses making the criminal justice system **fairer for all, not putting innocent people in prison**, and upholding the **Constitution**. They are specifically sensitive to the idea that wrongful convictions can ruin lives.

ROUNDTABLE #5: COUNTY PUBLIC OFFICIALS ON-LINE, APRIL 18, 2018

1. Views of public defenders and the system

The online discussion held among six county public officials from across the country revealed generally positive assessments of public defenders. These county officials see public defenders as "professional but overworked." These county officials mention the systemic problem of high public defender caseloads, but they are less critical of the system than other system actors interviewed.

2. Needs and challenges

The county officials hold mixed views about how well their own jurisdictions are doing in providing quality public defense. Most think the systems in which they work are doing a satisfactory but not stellar job. One lamented that in her county, it takes too long to process a case, so a person sits in jail for several days; other county officials think their systems are working efficiently.

The lack of funding is the key issue for public defenders, according to these county officials. They say more funds are needed to hire more staff and to provide higher pay to public defenders. They see the lack of funding for public defense not as a stand-alone issue but rather as part of the larger challenge of building political support for more resources for the courts and the criminal justice system.

3. Solutions

The county officials, more than any other stakeholder group in this research, speak of the needs of public defenders as one piece of the larger necessity to improve criminal justice in the United States, specifically as part of the movement to reduce the number of people incarcerated. A number of the county officials said they consider specialty courts and other reforms that provide alternatives to jail as key components of improving public defense. Also, some believe that by diverting people from criminal justice involvement, we will need fewer public defenders. Their desire for more alternatives to incarceration is shared by other system actors.

Unlike many of the other system actors, this group is not opposed to national standards for public defense, but they do not think standards will make a difference. Some of the county officials believe national standards for caseloads and other aspects of public defense already exist but are not being met. As one official said, "We have standards, but we are not meeting them. We cannot afford to meet them." Thus again, the solution is not lack standards but lack of the resources to meet the standards.

4. Their role in improving public defense

Another way in which these participants diverge from other system actors in this research is that all the county officials see themselves as having an active role in improving public defense—largely because they have some responsibility for funding it. They say they are working with police, criminal justice coordinating councils, and others at the local level constantly to assess and address needs and challenges.

5. Messages

The county officials believe that the right to counsel is a matter of **fairness** and a right guaranteed by the **Constitution**. Messages that adhere to these values would be the most effective in reaching out to the county officials.

In addition, messages that speak to the consequences of the lack of funding for public defense, such as long wait times to see a lawyer and inadequate representation because of unreasonable caseloads for public defenders, would also appeal to these officials, as long as they did not cite specific days waiting in jail or hours spent on each case. Officials quibbled over the numbers but found the essential messages persuasive.

In summary

Communicating with county officials should use a message that appeals to their sense of **justice** and **fairness**, reminds individuals of the **constitutional right to counsel**, of the importance of **avoiding wrongful convictions**, and the need to **reduce the number of people incarcerated**.

ROUNDTABLE #6: DISCUSSION (October 24, 2016) AND INTERVIEWS (May 16 to Jun 18, 2018) WITH JUDGES

1. Views of public defenders and the system

This project began in 2016 with a roundtable discussion with 12 judges and was continued through individual interviews with five of these judges in 2018 using self-administered questionnaires and three telephone follow-up interviews.

The judges generally feel that their jurisdictions are doing a fairly good job upholding the right to counsel. One told us his system is doing an excellent job. They describe public defenders as mostly experienced, dedicated, and qualified to provide adequate representation for their clients, but they think the system can be improved by giving public defenders more time and resources to prepare each case.

Several of the judges place the improvement of public defense within the context of overall improvement of the criminal justice system. Their main objectives are to make the system fairer and more efficient and to incarcerate fewer people.

2. Needs and challenges

Most of the judges acknowledge that public defenders suffer from a lack of resources, and they enumerate that their range of needs includes investigators, social workers, mental health workers, paralegals, and expert witnesses. These needs all point to a lack of sufficient funding. One judge stated, "More than 90 percent of the people who come into my court need a public defender or a court-assigned attorney." This judge laments that prosecutors get a lot more resources and training than public defenders. The judges view the issue as political, referencing a lack of political will on the part of legislators to increase budgets for public defense.

3. Solutions

The judges mostly agree that overcoming the reluctance of policymakers to add funding for public defense would solve many of the problems with public defense.

They also voice strong support for solving the problem of over-incarceration. Several mention their work to help implement programs that are alternatives to prison, especially for offenses that involve drugs, specifically responding to the opioid epidemic, domestic violence, and mental health.

These judges generally like the idea of having national standards for the qualifications for public defenders and the resources devoted to public defense. They think standards would bolster professionalism and cause some jurisdictions to devote more resources to public defense. Some noted that citing standards could be useful when seeking more funding for public defense from policymakers. But like other groups, they also express the need for flexibility to allow each

jurisdiction to interpret the standards. One judge expressed the common view, "They sound good, but you will have jurisdictional questions. . . Each jurisdiction is different."

4. Their role in improving public defense

These judges want to play an active role in the improvement of public defense. They feel that judges are the best spokespeople for advocating for public defense because they are responsible for making the whole criminal justice system run well. They consider a lack of adequate counsel as an injustice to the entire justice system. As one judge said, "We need a justice system that works for everybody."

5. Messages

The judges react favorably to every message presented to them: those emphasizing **fairness, protecting the innocent from unjust incarceration, the Constitution, and equal justice**. Most even endorse messages critical of courts that overburden public defenders with too many cases and allow people to languish in jails because of a lack of public defenders.

However, their strongest recommendation for a message that that they would take to the public and lawmakers to win support for spending more money on public defense would have the components of **practicality** (*Quality public defense will save money in the long run because governments will not have to pay for so many people in jail*); **fairness** (*Everyone benefits from making the system fairer, and you never know when you or someone you care about will be in a situation where you need a good public defender*); and **responsibility** (*Right now, there are human tragedies caused by the lack of high quality public defense. We have a duty to fix this*).

In summary

The judges acknowledge their **responsibility** for helping direct a public defense system that runs well. They embrace messages grounded in **fairness, equal justice**, and respect for the **Constitution** and which also stress the **practical**, cost-saving benefits of having quality public defense.

APPENDIX A

Message statements presented in the roundtables

HAND OUT ONE

These are some statements other people have made about why we should spend more on public defense. Please indicate how closely each one represents your own view. Use a scale of one to 10, with **10 meaning you find it a very convincing reason** and **one meaning it is not all convincing** as a reason to spend more on public defense where you work. Write down a number for each statement.

- The quality of justice a person receives should not be determined by how much money that person has.

- Providing competent legal representation is necessary to prevent innocent people from going to jail.

- Guaranteeing that every person accused of a crime has the right to a lawyer is a fundamental American right that is written into our Constitution.

- Fairness requires that all accused persons have access to competent legal attorney to represent them.

- A lack of funding in many places has resulted in people accused of minor crimes waiting in jail as long as six months to have a lawyer assigned to them and a hearing held.

- Today in many states the public defenders are very overburdened, sometimes with caseloads so high that a public defender can devote only a couple of hours to each case.

HAND OUT TWO: COMPREHENSIVE MESSAGE

In America, every person accused of a crime should have access to a competent lawyer. It is a right written into our Constitution and is basic to our belief in fairness and equal justice.

Today this constitutional right is being denied in many states where people sit in jail for six months waiting for the court to assign them an attorney, and where public defenders are overburdened with caseloads that can range from 500 to 900 cases per year. The quality of justice a person receives should not be determined by how much money a person has.

We should insist on national standards to ensure that public defenders and court-appointed attorneys have the time and resources necessary to do their jobs. Improving public defense will restore a constitutional right and lead to fewer young people having their lives ruined because they are convicted of minor offenses.



Opinion Research
Strategic Communication

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