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Rethinking Jails, Reframing Public Defense: Making the Case for the System-Wide Benefits of Effective Defenders

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National Legal Aid & Defender Association, 2016.

This toolkit was created with support from the John D. and Catherine T. MacArthur Foundation as part of the Safety and Justice Challenge, which seeks to reduce over-incarceration by changing the way America thinks about and uses jails.

Rethinking Jails, Reframing Public Defense: **Meeting the Challenge**

In contradiction with its core values of liberty and equal justice, America incarcerates almost a quarter of the world's prisoners. Local jails have quietly become one of the greatest drivers of this problem. They hold approximately 650,000 people, roughly two thirds of whom have never been convicted of a crime. People in jail are disproportionately people of color and economically disadvantaged, and though many pose no danger to public safety or flight risk, they face prolonged loss of liberty in addition to devastating life-altering consequences. The Safety and Justice Challenge is a \$100 million initial investment by the John D. and Catherine T. MacArthur Foundation (MacArthur) to reduce over-incarceration and address racial disparities by changing the way America thinks about and uses jails.

Public defenders play a critical role in preventing unnecessary, unjust and expensive incarceration.

MacArthur selected the National Legal Aid & Defender Association (NLADA) as a strategic ally to provide support and assistance to defenders in the Challenge and to encourage others in the field to become involved jail reform efforts. The Safety and Justice Challenge embraces a systemic approach to reform that recognizes that the criminal justice system is an ecosystem, in which the components are inextricably intertwined. The effectiveness of each impacts the others and can affect the pace or quality of reform efforts. NLADA has created this communications toolkit to help defenders articulate what effective public defense systems uniquely offer to pretrial reform. To learn more about the S + J Challenge, please visit www.safetyandjusticechallenge.org



Rethinking Jails, Reframing Public Defense: Making the Case

Public defenders engaged in pretrial reform share many objectives with other justice system stakeholders, and by explaining these areas of common purpose, advocates can make a more effective case for the right to counsel. The following concepts are the core values shared by all participants in the Safety and Justice Challenge, and this toolkit offers guidance on how to demonstrate the integral role of public defense within each:

- **Safety**
- **Fairness**
- **Cost-Effectiveness**
- **Trust**

This section provides suggested messages related to each of these concepts, with sample data points that support them. To enhance the effectiveness of your argument, consider substituting these data points with evidence from your own jurisdiction.



Rethinking Jails, Reframing Public Defense: Making the Case: Safety

Far too often, it is a person's ability to pay, not their risk to public safety or risk of fleeing the jurisdiction before trial, which determines whether they remain in jail before their trial. As a result, many low-risk people are unnecessarily held in jail. Even a few days in jail increases their chances of being arrested for a new offense in the short and long term.

Public defenders prevent people from unnecessarily entering a cycle of criminal justice system involvement

Defenders ensure that low-risk clients are scored correctly in the risk assessment process and are not subject to unnecessary incarceration. Simply by reducing unnecessary jail time, defenders help their clients avoid the impact that jail has on future recidivism.



In a nationwide poll, 72% of Americans said that risk to public safety should be the main factor in determining release for people awaiting trial, not their ability to pay bail or other fees.¹



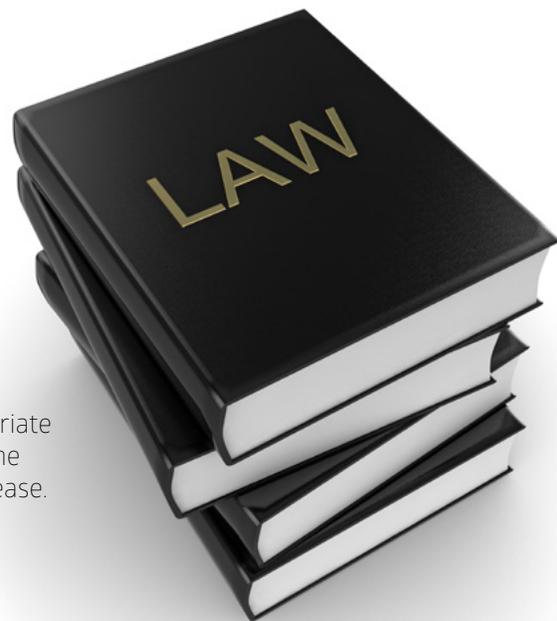
After 2 to 3 days in jail, low-risk people are almost 40% more likely to be arrested again before trial.²

Rethinking Jails, Reframing Public Defense: Making the Case: Safety

Sometimes people break the law simply because they do not understand what the law requires, or perceive its enforcement as arbitrary or unequal.

Public defenders increase clients' willingness and ability to comply with court orders and to obey the law when they are released from custody or supervision

By giving clients a meaningful voice in their case by explaining to them how the system works and what to expect, and by advocating for fair and appropriate treatment, defenders improve the client's perception and understanding of the criminal justice process and their likelihood of following any conditions of release.



When litigants perceive the court process to be fair, they are more likely to comply with court orders and follow the law in the future—regardless of whether they “win” or “lose” their case.³

In one study, people represented by lawyers, more often than those without lawyers, felt that they were treated more fairly by judges and that they had an influence in their hearings. Moreover, nearly 9 in 10 of represented people were willing to comply with their bail decision, as compared to two-thirds of unrepresented defendants.⁴

Rethinking Jails, Reframing Public Defense: Making the Case: Fairness

Three out of 5 people in jail are awaiting trial, and are presumed innocent. Many individuals are being held because they cannot afford to pay the amount of money set for their release.

Public defenders help courts to make bail decisions that are more informed and fairer to low-income people

People who cannot afford even relatively small bail amounts are the same people who cannot afford to hire lawyers and depend on public defenders. Defenders advocate for bail amounts that are more reasonable for their clients to pay, so that they too can be released before trial.



Between 1996 and 2014, the number of convicted people in jails remained nearly the same, while the number of unconvicted people has risen 60%.⁵



In one study, people represented by counsel at bail hearings were over 4 times as likely to have their bail amounts reduced, and 2.5 times more likely to be released.⁶

Rethinking Jails, Reframing Public Defense: Making the Case: Fairness

Because cash bail has a disproportionate impact on low-income people, it also has a disproportionate impact on groups that are disproportionately economically disadvantaged. Even where money is not the main factor in decisions about jail, implicit bias against certain groups and lack of alternative solutions can drive people into jails who do not belong there.

Public defenders make decisions about bail fairer to people of color

By making bail amounts more reasonable, defenders help reduce economically-driven racial disparities. Defenders also counteract bias by providing information to judges that helps them to see their clients as human beings.

Public defenders make decisions about bail fairer to people with a mental illness or a substance use disorder

The attorney-client privilege fosters trust and often defenders are the first to learn that an individual has a mental illness or substance use disorder. Defenders work with clients to identify issues that drive them into the criminal justice system, and to create plans for addressing these issues in a productive way.



A 2010 study found that when black men had their bail set at the same amounts as white men and black or white women, they were detained at higher rates because they were less able to pay.⁷



Roughly 17 % of people in jail have a serious mental illness, with as many 80 % of those suffering from co-occurring substance use disorders.⁸

Rethinking Jails, Reframing Public Defense: Making the Case: Cost-Effectiveness

Jails are expensive, and the cost is borne by local taxpayers. When jails house people who do not belong there, local governments waste money. Jail time also causes people to lose their jobs and negatively impacts other factors that promote economic stability and independence. These direct costs are compounded by future spending on law enforcement and courts necessitated by the increased recidivism associated with inappropriate pretrial detention.

Public defenders reduce wasteful government spending on jails

Public defenders help courts make more accurate decisions about who should be in jail and who can be safely released so that the number of jail beds can be reduced and public funds can be spent more strategically.



Safety and Justice Challenge site Pima County, Arizona, estimates that it will save \$2.7 million a year if it reaches its goal of reducing its jail population by 20%.⁹

Rethinking Jails, Reframing Public Defense: Making the Case: Trust

The misuse of jails is national in scope, but solutions will need to be tailored to local realities. Directly impacted communities must be part of developing local solutions, because they know exactly what resources are needed to keep local people out of jail and connected to needed services.

Public defenders are in a unique position to assist in building community trust in the criminal justice system

Public defenders are the most significant and visible check on abuses of power in the criminal justice system. Through their relationships of trust with clients, defenders often possess a deep understanding of the underlying issues that contribute to clients' contact with the justice system, and how these can be resolved effectively. Defenders can share the concerns of the community with other stakeholders.

Effective public defense is an integral component to public confidence in the fairness and integrity of the criminal justice system. The public views access to counsel as critical to fair and effective criminal justice systems.



In a study by the courts, spending more money on public defenders was the third ranked answer when the public was asked about how public funds that support the courts should be utilized.

Notes

- ¹ RTI International and Zogby Analytics (2016) *Memorandum Re: Public Opinion Poll Findings on Jails and Local Justice Systems*, New York: Zogby Analytics (Available at: <http://www.safetyandjusticechallenge.org/resources/>)
- ² Laura and John Arnold Foundation (2013) *Pretrial Criminal Justice Research*
- ³ T. R. Tyler (1990) *Why People Obey the Law*, New Haven, CT: Yale University Press
- ⁴ Colbert, D., Paternoster, R., and Bushway, S. (2002) *Do Attorneys Really Matter? The Legal and Empirical Case for the Right to Counsel at Bail*, *Cardozo Law Review*
- ⁵ Bureau of Justice Statistics. 1996-2014. *Jail Inmates at Midyear Series*, Department of Justice
- ⁶ Colbert, D., Paternoster, R., and Bushway, S. (2002) *Do Attorneys Really Matter? The Legal and Empirical Case for the Right to Counsel at Bail*, *Cardozo Law Review*
- ⁷ Subramanian, R. et al. (2015) *Incarceration's Front Door: The Misuse of Jails in America*, New York: Vera Institute of Justice (Available at: <http://www.safetyandjusticechallenge.org/resources/>)
- ⁸ Steadman, H., Morrissey, J., and Parker, T., (2015) *When Political Will Is Not Enough: Jails, Communities and Persons with Mental Health Disorders*, New York: Brennan Center for Justice (Available at: <http://www.safetyandjusticechallenge.org/resources/>)
- ⁹ Henrichson, C., Rinaldi, J., Delaney, R., (2015) *The Price of Jails: Measuring the Taxpayer Cost of Local Incarceration*, New York: Vera Institute of Justice (Available at: <http://www.safetyandjusticechallenge.org/resources/>)

Rethinking Jails, Reframing Public Defense: Delivering the Message

Long gone are the days of calling your local newspaper to get turnaround coverage of what you may deem an important case or issue in your community. Your local newspaper, radio and TV broadcast journalists now compete with social media outlets and bloggers. Worry not. Traditional news sources are still in a healthy competition with new media and you CAN get your issue the attention it deserves.

Strategies for traditional media:

- Follow the work of several reporters to see what they write regularly about;
- Offer reporters tips on stories they may be interested in – even if it doesn't involve you; it'll pay off in the long run;
- Be ready to provide media outlets contact information of those directly impacted to offer a human face to your issue;
- Read the news regularly for issues affecting your work, and be ready to respond by writing a 200-word letter to the editor to gain traction on one of your issues;
- Make sure the issue you are pitching is timely/relevant. Calendar built-in opportunities to pitch your issue (MLK observance; Black History Month, Youth Justice Awareness Month; Human Rights Day, etc.);
- Create a go-to list of partners/allies that share your goals that can echo your message as an additional news source;
- Don't forget to pitch ethnic media outlets and consider translating press releases, email or other communications into Spanish when applicable (Local Black, Latino and LGBTQ press);
- Invite a reporter to your office or to court so they get a real view of your daily responsibilities. Consider hosting a media-only open house.

Rethinking Jails, Reframing Public Defense: Delivering the Message

With the influence of social media, your message can go farther than anticipated. (And you don't need a communications staff to do much of this. Communication student interns may be able to help!)

Strategies for new media:

- Follow like-minded individuals, organizations, bloggers;
- Follow traditional and untraditional media outlets (The Nation magazine; Grits for Breakfast blog; local ethnic newspaper(s));
- Mention, or “tag,” partners, organizations and media outlets in your social media posts to get more attention;
- Aim for more “blue than black” when Tweeting (use tags, hashtags and links in your Twitter posts);
- Make use of existing hashtags created by organizations, individuals that share your perspective to further your message;
- If you can't successfully pitch a news story, consider writing a heartfelt opinion editorial or article and post it online on public site (i.e. Medium.com, personal or organizational blog);
- If possible, use graphics, images, photographs to illustrate your message to further interest people;
- Post twice daily on your social media networks. Use social media scheduling software so you can set it, and forget it (i.e. Hootsuite, Buffer, Everypost, etc.).

Rethinking Jails, Reframing Public Defense: Engaging the Community

Authentic engagement with the community empowers public defenders to be better advocates inside and outside of the courtroom. Community partnerships help build client trust in the public defender office and the overall system. At the same time, community engagement helps public defenders fully understand client needs and should be a guiding force behind their work.

First ask yourself how you **define “community”** and how you can be more inclusive of, for example, crime victims, healthcare providers, and conservative groups. **Meet one-on-one with leaders** of these groups to begin building relationships and identifying shared priorities.

Start the public conversation by listening: public defenders can **host listening sessions** in partnership with local community-based organizations. These sessions can help you understand the concerns and needs in order to be an effective policy advocate in shaping new programs and solutions. They are also a forum to ask community members how to best reach and engage them. **Use online platforms** – like email, social media, and your website – to listen to new and different voices in your community.

Once you have a sense of your community’s strengths and its needs, **provide empowerment training**. Public defenders can host know-your-rights trainings to educate the community on their rights within the criminal justice system, and share information on community-based resources. Public defenders can also **serve as valuable technical advisors** on community-driven initiatives, offering an insider perspective on the criminal justice process (and politics) in order to strengthen the role and influence of community-based partners.

As with any project, be prepared to **evaluate and adapt** your understanding of a problem and your approach to addressing it. And, of course, **message your successes!** Do not, however, feel that your press outreach should wait until you have a big announcement: **publicize your progress** and, especially, **promote community partners** and detail their contributions to your joint efforts.

Core Site Defenders:

Charleston County Public Defender

Charleston County, SC

Harris County Public Defender's Office

Harris County, TX

Lucas County Public Defender

Lucas County, OH

Wisconsin Office of the State Public Defender

Milwaukee County, WI

Orleans Public Defender Office

New Orleans, LA

Defender Association of Philadelphia

Philadelphia, PA

Pima County Department of Public Defense Services

Pima County, AZ

St. Louis County Public Defender

St. Louis County, MO

Spokane County Public Defender

Spokane County, WA

Connecticut Division of Public Defender Services

State of Connecticut

Partner Site Defenders:

Ada County Public Defender

Ada County, ID

Cook County Public Defender

Cook County, IL

Los Angeles County Public Defender

Los Angeles Alternative Public Defender

Los Angeles County, CA

Mecklenburg County Public Defender

Mecklenburg County, NC

Colorado State Public Defender

Mesa County, CO

Metropolitan Public Defenders

Multnomah County, OR

New York County Defender Services

Neighborhood Defender Service of Harlem

The Bronx Defenders

Brooklyn Defender Services

Queens Law Associates

Legal Aid Society of New York

New York, NY

Palm Beach County Public Defender

Palm Beach County, FL

Pennington County Public Defender's Office

Pennington County, SD

Shelby County Public Defender

Shelby County, TN