

Taking Public Defense to the Streets



Raising Voices

A Series by the Community Justice Institute

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The Brennan Center for Justice at NYU School of Law unites thinkers and advocates in pursuit of a vision of inclusive and effective democracy. Our mission is to develop and implement an innovative, nonpartisan agenda of scholarship, public education and legal action that promotes equality and human dignity while safeguarding fundamental freedom. The Center operates programs in the areas of Democracy, Poverty, and Criminal Justice.

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BRENNAN CENTER FOR JUSTICE

AT NYU SCHOOL OF LAW

161 Avenue of the Americas,

12th Floor

New York, NY 10013

212-998-6730

www.brennancenter.org

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Preface

Raising Voices is a series produced by the Community Justice Institute at the Brennan Center for Justice at NYU School of Law. The series is aimed at those seeking to make the criminal justice system more responsive to the needs of low-income communities and communities of color. By serving as a resource center for community groups, activists and justice reformers, the Community Justice Institute works to elevate the voices and experiences of those most directly affected by the criminal justice system—but least likely to have a role in shaping it. Our goal is to make the criminal justice system more just, informed, and effective, and to promote sensible approaches to public safety in all communities, regardless of their racial composition or economic condition.

Taking Public Defense to the Streets—the debut monograph in the **Raising Voices** series—explores the concept of community-oriented defense as a philosophy and a practice. For too long, defenders have felt the need to divorce themselves from their clients' communities. But this monograph urges defenders to break through their isolation to build relationships with client communities, and explains why they should do it. Future monographs in this series will discuss a variety of topics—like how to conduct community meetings, forge community-defender partnerships around issues of racial disparity in the criminal justice system, evaluate the success of partnership activities, and take collaborative action on the legislative front.

Picture this: you are a defender in an office facing massive budget cuts. Your organization has barely been getting by with the existing budget. You don't have enough time to devote to your current cases, and you imagine things will only get worse after the ax falls. Now picture this: a colleague in your office suggests that you attend a meeting with a group of activist parents in your area seeking guidance on how to prevent police from harassing their kids. Your first thought is: "There is no way I can go. I have to work on that suppression motion due next week."

This monograph explains why you should put the motion aside for a couple of hours and go to that meeting. In fact, your office's survival may be linked to developing community connections like these that can support it when it is most vulnerable.

Community-Oriented Defense: The Concept

Defenders often define their roles principally as individual lawyers fighting on behalf of individual clients. While this role must figure centrally in the work of defenders, it is not the only dimension of the practice. This is not meant either to undervalue the importance of individual representation or to underestimate its inherent challenges. Representing a client well demands a passionate dedication to the client's goals, a depth of perception about the reactions and biases of a variety of audiences, and an undaunted ingenuity in the face of often overwhelming odds. But the legal, social and political arena in which defenders function has changed dramatically in recent years. Now more than ever, defenders' practice must continue to adapt to remain effective. A growing number of defender offices have taken on this challenge. They have begun to embrace more community-oriented forms of advocacy that push the defender's skills beyond both the courtroom and the individual case.

What does it mean to incorporate community-oriented activities into a defender’s practice? Community-oriented defense means reaching out and building ties with the people, activists, support groups, and service providers in your clients’ communities. It does not mean subordinating or sacrificing the goals of those clients. Instead, consulting and collaborating with communities can help defenders begin to rethink not only the problems their clients encounter, but what strategies—both familiar and unfamiliar—they as lawyers might pursue. Community-oriented defense means recognizing assets and allies where defenders may not have seen them in the past—in the communities from which clients come. And it means creatively engaging those connections whether defenders are investigating the facts of a case, trying to help secure housing for a client, or building support to repeal the latest draconian

Connecting through Outreach

Project Legal Eagle, a community based branch office of First Defense Legal Aid in Chicago, seeks to establish strong community ties in order to better serve the particularized needs of the Englewood community. In an effort to better understand the individualized needs of the Englewood community, an FDLA staff attorney gives presentations at high schools and attends meetings with community, political, and religious leaders. A local organizer works with FDLA on Project Legal Eagle as a community liaison, spreading information about legal services to the youth community and advising FDLA as it cultivates community relationships.

law. Community-oriented defense can take a variety of forms and can serve a defense function, a “holistic” or “client-centered” function, or a policy advocacy/ systemic reform function. Most importantly, community-oriented defense enables defenders to engage in advocacy on behalf of all of their clients, which leads to better outcomes in individual cases. It also positions defender organizations to withstand attacks and to wield power in hostile political environments.

Defense Functions.

Contacts with people in a client's neighborhood can help defenders win their cases and can help organizations develop clout. First, defenders who know the people and the environment in an area report they are better able to investigate and develop the facts in their cases, which helps them at trial and during plea discussions. Second, the more community members know about a defender or his organization, the greater the chances those members will come forward to offer assistance in individual cases when defenders need it. Third, contacts—like the schoolteacher or employer willing to vouch for a client—can also assist in securing favorable dispositions for clients. On a broader level, a defender's contact with his or her client's community can both increase the understanding of the defender's role in the system and help humanize the client—an education process that can inform the thinking of potential jurors.

Holistic or Client-Centered Advocacy.

Some defenders use community contacts to address a client's non-criminal needs—like housing, healthcare, employment, child custody, and education. This approach, often referred to as “holistic” or “client-centered” advocacy, relies heavily on community contacts. Defenders recognize the value of knowing the resources and support systems in place in their client's community in order to help the client secure them.

Josh Dohan, director of the Youth Advocacy Project in Roxbury, Massachusetts, explains his office's philosophy this way:

Like all defenders, we advocate for a positive legal outcome in each individual case; a crucial part of that advocacy is directed toward assuring long-term life success. It is particularly clear in the case of children that a positive legal outcome is inextricably linked to a positive life outcome. If we were to focus entirely on the legal aspect of the case, unaddressed risk factors at home and in the school could easily doom the child to a life of chronic court involvement. How do we get the kids the help they need, whether it's temporary alternative housing, educational assistance, mental health counseling, or substance abuse programs? We go to the communities. That's where the services are.

Policy Advocacy/Systemic Reform.

Still others build on community-oriented defense to engage in policy advocacy – joining forces with community members and activists to reform laws and policies that, at best, ignore, or at worst, affirmatively harm low-income communities and communities of color. For example, a defender organization and grassroots group might work together to gather data on racial profiling and then jointly present their findings to a legislator. Later they might use the data in a legal argument aimed at excluding evidence that was the product of a suspect stop, or in an op-ed piece demanding police accountability.

Connecting with Families

In Phoenix, Arizona, the Maricopa County Public Defender (MCPD) participates in the Booker T. Washington Headstart Program, assisting with their Family Literacy Project. Ninety percent of the families involved in the program live at or below the poverty level. The Family Literacy Project is focused on teaching parents how to make reading with their children an integral part of their families, and helping preschool children develop a love for books, as well as the skills needed to read and write well when they enter elementary school. MCPD provides resources and speakers for a monthly "Family Literacy Day." They have distributed free books to the children and their families, and have spoken on topics like fire safety, tobacco awareness and stress management.

Judge Crystal Gaines, now an Atlanta traffic court judge, was once the Chief Public Defender in Atlanta, Georgia. Judge Gaines explains:

As part of our work at the public defender's office, we created a database of our clients and their families. We keep in touch with them after the legal resolution of their cases, building relationships with them and often encouraging them to write letters and send postcards to state legislators. We encourage our clients and their families to voice their concerns about the criminal justice system to legislators because our clients and their families are these legislators' constituents. And, typically, they share our concerns with the criminal justice system and they help us push our political agenda forward.

While Atlanta's Office of the Public Defender designates one staff attorney to be a liaison to the state legislature, the office's true advocacy power derives from its ability to demonstrate an organized, active, and vocal constituency.

Why Bother Taking Public Defense to the Streets?

There are good reasons to view with concern any expansion of the defender's "to do" list. Caseloads are crushing. Resources are meager. Triage is the constant mode of operation. Why, then, should defenders take on the additional burden of community outreach? The principal reasons are to secure better outcomes for clients and to ensure that the defender office maintains the resources it needs to serve its client base.

At a minimum, being an effective advocate means zealously representing individual clients in their criminal matters. But realizing individual representation's limitations in making long-lasting change, defenders have begun to take effective advocacy further. They have chosen to address broader needs of both individual clients and a wide swath of their client population, and to work toward changing justice policies that harm their clients, all without sacrificing effective representation of clients in individual cases. Marie Osborne, Chief of the Juvenile Division in the Public Defender Office in Miami, Florida, observes that:

[Defenders] all went into this work because we wanted to do good and simply getting a not guilty verdict or busting someone on cross is not enough. It is less than good advocacy to merely defend the legal nuts and bolts of a case. We must not shirk the need to prevent violence, and we are best suited by virtue of our client relationship—particularly our sense of who comes into this system and why—to come up with positive solutions and sentences that foster socialization and keep clients from returning.

Bruce Brown, Assistant Director at the Society of Counsel Representing Accused Persons (SCRAP) in Seattle, Washington, sees working in conjunction with community partners as part of his organization's "obligation to the community as a whole as well as to the client."

He believes:

[Defenders] have an obligation to address broader issues that affect our clients' lives. With all of the budget cutbacks in recent years, there are not enough other people working on these issues. By doing community work, we – as an office and as individuals – can connect with the broader community, giving public defenders a voice in non-traditional areas.

Bruce's words reflect a steady shift in defenders' perceptions of their own roles. Over half of the defenders who responded to a Brennan Center survey sent to over 900 defenders across the country said they are currently collaborating with community residents, groups, or activists in their jurisdiction. Zealous advocacy is no longer solely defined by what happens within the confines of the courthouse. More and more, defenders are extending that advocacy outside of the courtroom and into their clients' communities.

Connecting through Outrage

The Seattle/King County Public Defender's office recently began working with an Asian-American activist as a result of a flagrant incident of racial profiling against a group of young Asian Americans. In late summer 2001, without reasonable suspicion or provocation a police officer detained the group as they were crossing the street. He questioned and frisked them, and made a series of racial slurs. Afterwards both the kids' parents and the broader Asian-American community sought legal counsel, which led to an alliance between the community and the public defender's office. As an outgrowth of this collaboration, the activist working with the defender's office eventually joined the city's Racial Profiling Citizen Taskforce charged with collecting racial profiling data and crafting policy recommendations for the city council.

The stark reality is that favorable outcomes have become harder to achieve. Strategies that once successfully advanced clients' goals have become less effective. The climate has changed. The legal landscape has become less alert to, and more tolerant of, abuses that occur in interac-

tions between individuals and police. The political environment rewards politicians who endorse tougher criminal justice policy initiatives regardless of their ultimate effectiveness. This social setting fuels a mounting fear of crime that prods some jurors toward conviction in a desperate effort to strike a blow against crime. The defender must continue bringing ingenuity and passion to the fight within the courtroom, but confining the defender's advocacy to that arena may, in the end, disserve the very clients that defenders seek to help.

Breaking through Isolation Is Key to Improving Outcomes for Clients

For better or worse, defenders often perceive themselves as outsiders in the justice system, isolated from the communities in which they operate. Public scrutiny of what defenders do has always seemed fraught with peril—perhaps now more than ever. As a result, many defenders have chosen to stay out of the limelight in individual cases and out of political discourse on criminal justice policy. But this path has led defenders to surrender the debate and discussion of crime to those who can command attention—law enforcement officials and political leaders looking to build their careers on being tough on crime. They are shaping the very laws and practices under which defenders labor and clients suffer. And often standing with these officials and leaders are real people from real neighborhoods who have compelling stories to tell.

Of course defenders and their clients have compelling stories to tell, too. They see the casualties that occur as politicians wage the latest wars on crime in low-income communities and communities of color. By breaking through isolation, defenders can serve as a megaphone for the equally powerful stories that too often go unreported—stories of systemic racism, mistreatment because of economic class, and other blatant injustice. If defenders don't join with their clients to speak out about these issues, who will? Bryan Shaha, Alternate Defense Counsel in Greeley, Colorado, puts it this way:

When defenders engage in community outreach, it creates another voice, a voice that generally the public doesn't hear. The public doesn't hear the

voices of client communities—the voices of mothers, sisters, fathers, brothers of those incarcerated. The problem is that these voices are not heard until they are the ones who become incarcerated—and then it is too late. We can't wait until criminal charges are filed against them to hear those voices.

Defenders know all too well that events outside their primary venue, the courtroom, influence what happens inside of it. Revolutionary changes in the criminal law like “Three Strikes and You’re Out” or “quality of life” campaigns have gained in popularity in part because critical and knowledgeable voices in opposition—from the communities affected by the laws and the defenders who see them applied—usually remain mute. Those who feel the impact of the system understand it in a way no one else can. They know lengthy sentences for minimal offenses do more harm than good. They know racial profiling strips individuals and communities of their faith in the system, and makes it harder for cops to do their jobs. And they know the many obstacles ex-offenders face in securing the basics of life stand in the way of community safety. Without the benefit of these crucial perspectives legislators and policy-makers, even those who want to do the right thing by defenders and their clients, will not have the knowledge they need to be effective advocates for justice.

Defenders who choose to engage in collaborative efforts with communities begin to forge alliances that at once build a constituency and gain political leverage, something Carlos J. Martinez, Chief Assistant Public Defender in Miami, Florida’s Public Defender Office, has experienced first hand.

Building strong ties with community-based organizations gives our office more leverage with legislators. For example, a bill pending in the legislature called for taking delinquency cases away from public defender offices. We mobilized community-based organizations and groups that recognize our public value and the bill has been amended to delete that provision. We succeeded because of our active participation in community and bar activities and our lobbying efforts. Legislators understand the public defender’s function, the support we enjoy in our community, and our expertise with issues beyond criminal justice.

What if a three-strikes law could be defeated *before* it is enacted? What if the next “quality of life” clean-up campaign could be crafted to do more than lock people up—instead providing employment training and treatment for addiction? Imagine what this could mean for current or future defender clients. Building strong community ties is the best chance defenders have to weigh in effectively when sweeping political measures threaten their clients.

Connecting with Motivated Parents

The Juvenile Justice Project of Louisiana (JJPL) has developed the Parents Advocacy Group as part of its strategy to develop stronger community ties. JJPL's administrative director was in constant contact with parents of juveniles being served through JJPL. As she spoke to more and more parents, she realized both a desire and a need for a support network for parents of incarcerated youth. The Parents Advocacy Group strives not only to support parents, but to also train them to advocate for their children by engaging in dialogue with judges, legislators, and the media. In this endeavor JJPL has worked closely with a community activist and parent of a formerly incarcerated youth. Together, they organized a spectacular community-awareness event known as "The Mock Jazz Funeral," an event that attracted much media and political attention. Currently, they are working on a campaign to close Louisiana's most notorious secured care facility for youth.

The budget process presents another political animal that could benefit from strong defender-community ties. What if during the next budget cycle defenders could call on community residents with whom they had collaborated to testify in support of the defender office's budget? Imagine the impact of constituents insisting on sufficient funds for the defender office to continue its work. What if caretakers of ever-shrinking fiscal pots began to see defenders as serving the public both inside and outside the courtroom? Imagine how this might influence their decision about where to direct limited public funds.

Of course media has a huge impact on the courtroom as well. Television and newspaper reports sensationalize crime and demonize clients, fueling public support for harsh charging and sentencing. Rather than portray images of the complex lives defender clients often lead—perhaps due to drug addiction or mental illness—the media offers a one-dimensional image of them as “thugs,” “bad guys,” or “criminals.” Similarly, the media rarely critiques how these harsh policies affect individuals, families, and entire communities no matter how devastating those effects are.

Connecting through Art

In Dade County, Florida, the Miami Public Defender’s office co-sponsored the exhibition of a collaborative mural at a Miami cultural center. The piece was created by a local artist whose work touches on social issues like racism, violence, and poverty as part of a project called “ArtCARE: Outreach to Juveniles in Adult Jails.”

Rather than openly fighting back when media misconstrues events in individual cases or skews the debate on broader policies, defenders generally do not come forward with what they know. Instead, they remain invisible or wage battle in the shadows. Silence in the face of attack can, at times, be prudent, particularly if open confrontation will result in greater losses. But remaining absent from public discussion can lead to inadequate funding and case overload—each of which reduces a defender’s ability to provide quality service to his clients. What if defenders chose instead to align themselves with forces that can wield genuine power in this environment?

Suppose defenders and communities worked together to educate reporters, helping them move past stereotypes to offer nuanced and accurate portrayals of the causes of crime, and the people defenders represent. Imagine what this could mean in an environment where lawmakers blame crime on “criminals” and claim harsh, lengthy sentences are the only solution.

Without community partnerships and involvement, defenders—and their offices' very survival—will remain dependent on the “good will” of politicians, budget planners, and opinion leaders who neither share their vision nor recognize their value.

Practicing Community-Oriented Defense

At its root, community-oriented defense requires a belief that the community is both a valuable resource and ally in the defender's quest for justice. If defenders accept the premise, they'll find the people and services they're looking for. It may be the local YWCA or community development corporation, a clinic that offers drug counseling, or a grass-roots coalition fighting prison expansion. The first step in practicing community-oriented defense is opening one's mind to the possibilities.

Translating the notion of community-oriented defense into practice is daunting. But it begins with small steps, like these:

1. Think creatively about community assets and allies.

Community assets and allies abound. If defender clients are homeless, allies may be local housing advocates. Since low-income clients have limited resources, welfare activists may be assets. If mental health issues plague clients, mental health professionals may join with defenders. And if one represents children, parent groups and schools may be resources. There are also hosts of others who may share a defender's sense of justice—members of neighborhood boards, churches, ministers, and civic groups. Not only might these folks share concerns about the populations for which defenders work, but as residents and taxpayers, they may share disdain for the criminal justice system's heavy reliance on expensive retribution, rather than on sensible solutions that actually increase community safety.

2. Build on existing connections to the community.

At a recent gathering of defenders and their community partners at the Brennan Center, the vast majority of the partnership efforts had

arisen out of pre-existing relationships. Some of the partners had been friends for years, others had previously worked together, and still others had previously been in an attorney-client relationship before branching out to do policy work together.

Chances are defenders already have community connections. Most people do, perhaps through religious affiliations, volunteer work, or a child's school or sports activities. As an initial step, defenders who want to connect should take stock of those contacts—both their own and their colleagues'. Once you know already existing community ties, identify *issues* of concern that you share in common. With this information in place, defenders can better spot chances to connect. When your office writes a letter condemning proposed death penalty legislation, you'll have at your fingertips the list of abolitionist ministers in your area who may like to sign on; if there is an increase in the number of clients arrested for assaults at homeless shelters, you might speak to people at the soup kitchen where your colleague volunteers once a month; and if there is a spike in the number of truancy cases ending up in criminal court, you will know local principals who may help you think through solutions to the problem.

3. Offer defender expertise.

As defenders draw on the expertise of their connections, they should offer their own legal expertise as well. Josh Dohan, who directs the Youth Advocacy Project in Roxbury, Massachusetts, explains:

We work to develop personal relationships with community organizations that offer services. We want their services for our clients and we offer them our legal services in return. For example, we try to build relationships by offering 'Know the Law' workshops to educate community members, both young and old, about their legal rights. We encourage and accept all advice calls and walk-ins. We have expanded our services from just criminal defense to include education law in response to the need in the community. We show communities that we care about them and listen to them, and they, over time, begin to work with us and aid our clients.

4. Involve colleagues.

In many ways non-attorney staff are the face of the defender practice. Receptionists and assistants field calls from clients and families. Investigators find and interview witnesses. In offices fortunate enough to have them, social workers evaluate clients and direct them to services. All staff, not just lawyers, have a part to play in extending the defender's reach. As a practical matter, involving all staff makes community orientation possible. Rather than placing outreach responsibilities on a limited number of shoulders, spreading them around increases the likelihood that these activities will actually get done.

Tapping into staff passions will also increase the odds that people will remain motivated and involved in a community effort. For example, if a staff survey reveals interest in local housing issues, the office might consider reaching out to housing activists to explore joint endeavors—like providing “know your rights” trainings for those in public housing or meeting together with local police to discuss public housing policing practices.

5. Look for additional resources to support work with client communities.

Local, state or federal funding may be available to support community endeavors. Defenders have obtained funding for their community work from the U.S. Department of Justice, a county health department, and private foundations. They have also obtained more general support from less obvious sources—like the Los Angeles Air Quality Management District and Honda, a Japanese automobile manufacturer sensitive to the need to keep government power in check.

Resources also come in the form of people—a concerned parent willing to organize other parents to oppose child abuse in a local juvenile facility, an influential activist willing to testify at a budget hearing about a defender office's value, or a former client who, thanks to the defender's ability to connect him to community-based resources, has turned his life around.

6. Be patient and listen.

Community relationships, like all relationships, take time—time to establish, and perhaps even more importantly, time to develop trust. Defenders must recognize the distrust and suspicion that may surround them, particularly from their clients and their clients' communities.

Gerry Gleeson, Chief Public Defender of San Joaquin County, California, suggests that a starting point for identifying and building relationships with potential community allies is understanding the natural skepticism that communities harbor towards defenders.

While we as defenders feel good about our competency and effectiveness, we have to realize that others are distrusting and suspicious of us. So in our office, we try to improve communication with communities by addressing individual community groups about our work and our role, by educating community members about their legal rights, by listening to community criminal justice concerns, by trying to demonstrate that we do care and that we do want to earn the client's trust and the community's confidence.

By really listening to community concerns, defenders can earn a new kind of legitimacy within the communities they serve. When John Hardiman, Public Defender of Rhode Island, held a community meeting to introduce himself and his office to the larger community, the gathering triggered an emotional response among community members. People voiced their frustrations—frustrations that often were not directed specifically at defenders but at the criminal justice system generally. John and his staff listened without reacting defensively—and by listening began to develop a level of trust with the community that has only grown since then. Now, he and his office are in the process of conducting a series of community forums to discuss an array of criminal justice topics. Because he has demonstrated his willingness to listen, meaningfully and not defensively, community groups have taken the lead in organizing and advertising these forums.

Defenders across the country are working with community resources like these:

- Schools
- Churches
- Parents
- Homeless advocacy groups
- Neighborhood empowerment groups
- Head Start programs
- Mental health advocates
- Social services agencies
- Drug and alcohol treatment facilities
- Task forces on criminal justice around issues like police accountability, racial profiling, general criminal justice reform, youth justice reform
- Bar associations
- Probation services
- Race relations councils
- Anti-truancy campaigns
- Restorative justice committees
- Re-entry programs

Source: Brennan Center for Justice "Connections to Community Survey" (2001).

How the Brennan Center can Help

The Brennan Center's *Community Justice Institute* is a resource defenders can turn to for help in establishing their relationships with community groups, service providers, and activists. We have worked with defenders and communities in these areas:

Legal research and analysis

- Filing amicus briefs in cases raising justice issues of concern to defenders and community groups
- Conducting research and analysis of discrete legal issues of concern to defenders and communities

Network building

- Convening national gatherings for those participating in defender-community partnerships
- Bringing together social justice and community activists to discuss criminal justice trends

Community outreach & education

- Administering defender and community surveys that inform our understanding of grassroots justice concerns
- Engaging in regular conversations about the system with community members, including youth

Media capacity

- Writing op-eds on issues affecting low-income communities and communities of color
- Helping defenders and communities write and place their own op-eds
- Offering media skills training

Mapping community assets and allies

- Identifying untapped resources in the communities from which defender clients come
- Strategizing how to bring new allies into community struggles for justice

Counseling on a range of issues

- Including how to host community meetings, identify funding opportunities, and build support among staff for outreach efforts.

To learn more about how your organization can tap into the Institute contact us at 212-998-6730 or visit our website at: www.brennancenter.org.

Conclusion

Community-oriented defense may be a difficult concept for defenders to wrap their minds around in theory and practice. The good news is that community-oriented defense offers a fresh option that has shown promising results. Defenders report that building community ties has made them more effective advocates for their clients—as individuals and as members of larger communities—inside and outside the courtroom. This is not to say community-oriented defense is easy. No shift in philosophy or approach ever is. But in a field in which the *status quo* in many ways fails defenders and their clients, it is time to try something new. It is time to take public defense to the streets.

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Brennan Center for Justice

at NYU School of Law

161 Avenue of the Americas, 12th Floor

New York, NY 10013

212-998-6730

www.brennancenter.org

