

Michigan Law Review

Volume 86 | Issue 6

1988

The Public Defender

Robert R. Kimball

University of Michigan Law School

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Criminal Law Commons](#), [Law and Society Commons](#), [Legal Profession Commons](#), and the [Social Welfare Law Commons](#)

Recommended Citation

Robert R. Kimball, *The Public Defender*, 86 MICH. L. REV. 1336 (1988).

Available at: <https://repository.law.umich.edu/mlr/vol86/iss6/29>

This Review is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

THE PUBLIC DEFENDER. By *Lisa J. McIntyre*. Chicago: University of Chicago Press. 1987. Pp. xiv, 199. \$24.95.

In *The Public Defender*, Lisa J. McIntyre¹ provides us with a sociological theory that explains the public defender's role in society and the way public defenders are able to defend their clients effectively. Using the Cook County Public Defender's Office as a focus, McIntyre "develops a model of how the institution — and the individuals who practice law as public defenders — cope with doing work that is, arguably, antisocial" (p. 1). Her thesis, which she developed after three months of work with Cook County's public defenders, is that the public defender's office was created and is maintained in order to legitimize the criminal justice system in the eyes of society (pp. 51-52).

McIntyre's argument begins in part 1 of the book with a look at the political, social, and economic forces that brought about the constitutional right to an attorney. She follows this with an examination of the circumstances that led to the creation of the public defender in Cook County. Although the creation of this office in Chicago preceded the national movement to provide free legal assistance to indigents, similar forces were responsible, as McIntyre's narrative on the corrupt and colorful history of Chicago demonstrates (pp. 30-44). In

1. Assistant Professor of Sociology, Washington State University.

part 2, the perspective narrows from the broad, societal picture to an analysis of the public defender's office itself. McIntyre shows how the structure of the organization serves the needs of its incumbents and promotes their legitimacy as autonomous actors in the courts. Finally, in part 3, McIntyre's focus narrows further to consider how the public defenders as individuals function in the system.

The concept of the public defender as a legitimizing force is introduced in part 1. Corruption was king in Chicago: money or political clout was all one needed to stay out of jail. It was a city in which gangsters like Al Capone openly defied authority.² The public became increasingly disillusioned with the courts' inability to convict the worst criminals. The courts seemed more inclined to convict the small-time, indigent defendants who lacked political clout (pp. 32-39). Eventually, Chicago society's disapproval of its criminal justice system led to the creation of the public defender's office. Although this preceded *Gideon v Wainwright*³ by many years, the people of Chicago were motivated by similar concerns for the rights of the poor in a corrupt system. The people did not approve of the justice handed down by the courts. Thus, McIntyre states that "[t]he public defender's role was created by the courts to strengthen the perception that justice was being done" (p. 52). The public defender would legitimate the rulings of the courts in the eyes of society.

This legitimacy concept, once introduced, provides the foundation upon which McIntyre's analysis rests. For example, she argues that since the public defender was created to satisfy the public's desire for justice, the courts must allow public defenders to represent their clients effectively if the courts are to retain their legitimacy.⁴ From this it follows that the courts' need for legitimacy is an important force in allowing public defenders to be effective advocates, even though they are employed by the government (pp. 45-61). McIntyre supports her conclusion that the public defender is free from improper influence by citing studies indicating that public defenders' and private attorneys' clients fare equally well in court (pp. 46-48). Throughout the book, as

2. For example, when Capone was accused of involvement in the murder of a prosecutor, he denied it, saying, "I paid [that prosecutor]. . . . I paid him plenty and I got what I was paying for." P. 37.

3. 372 U.S. 335 (1963). In *Gideon*, the Court held that an indigent's sixth amendment right to counsel in felony trials applies to the states through the fourteenth amendment.

4. Pp. 53-61. On this point McIntyre strongly disagrees with authors who describe public defenders as mere "bureaucratic functionaries" of the courts, serving only to expedite the defendants' convictions. Some of the works she cites with disapproval in this regard are: A. LEVIN, *URBAN POLITICS AND THE CRIMINAL COURTS* (1977); C. SILBERMAN, *CRIMINAL VIOLENCE, CRIMINAL JUSTICE* (1978); Blumberg, *The Practice of Law as a Confidence Game: Organizational Cooptation of a Profession*, 1 *LAW & SOC. REV.* 15 (1967); and Sudnow, *Normal Crimes: Sociological Features of the Penal Code in the Public Defender's Office*, 12 *SOC. PROBS.* 255 (1968). Pp. 45-48.

in this example, McIntyre's conclusions and analyses are based on this premise that the public defender legitimizes the courts.

Given the studies showing the effectiveness of the public defender, some explanation must be made for the "stigma of ineptitude" that plagues public defenders. This stigma is particularly anomalous if the public defender is a legitimizing force that helps the courts do justice. McIntyre offers several possible answers (pp. 62-70). One theory is that although society applauds those who voluntarily help the poor, it is suspicious of public defenders because of the perception that lawyers only become public defenders when they are unable to make it in the private sector (p. 64). Another theory is that public defenders do not have enough time to defend their clients properly (p. 63). McIntyre herself supports the theory that the stigma has resulted from the public defender's office's own failure to step into the limelight and take credit for its lawyers' successes. The public defender's office has not negotiated its own legitimacy with society. She argues that this is to the public defender's advantage because society would not respond favorably to repeated stories of accused "criminals" going free (p. 69). Thus, the public defender must walk a fine line between legitimizing the courts through effective advocacy and avoiding the public's wrath when effective advocacy leads to acquittal for defendants who may be guilty. "The public defender is thus subject to tremendous cross-pressures . . ." (p. 72).

In part 2 and part 3, McIntyre's focus shifts to the structure of the public defender's office and its lawyers' motivations. McIntyre examines the methods used by the public defender to deal with these cross-pressures. She claims that the typical lack of structure and hierarchy in the office promotes the autonomy and professionalism of its lawyers.⁵ The lack of supervision makes it easier for the public defenders to conduct their cases free of potentially improper influence from superiors (p. 118). At the same time, the lack of hierarchy creates an atmosphere in which each attorney is treated as an equal. Within the office, there is a presumption of competence that offsets the stigma of ineptitude. The respect which they receive within the office allows the public defenders to feel and act like "real lawyers" in spite of society's refusal to recognize them as such. In fact, McIntyre says this intra-office respect is "the public defender's biggest reward for service" (p. 117).

The motivation behind the individual public defender's performance meshes well with McIntyre's theory of legitimacy. She tells us

5. Pp. 102-11. This lack of structure is revealed in many of the attorneys' statements to McIntyre. For example, when McIntyre asked an attorney in the public defender's office, "What determines pay raises?", he responded, "Ouiji board, isn't it? I have no idea how they do it." P. 108. On the lack of supervision, one attorney said, "There is a supervisory structure, but mainly . . . there is nobody looking over your shoulder, no one evaluating, no one correcting you, no one giving you feedback on what you do." P. 105.

that the driving force behind many public defenders is the desire to win and to "prove themselves competent lawyers" (pp. 148-66, 173). This compelling desire to win and earn the respect of their colleagues helps the public defender remain free from improper governmental influence and provides one more reason why public defenders may perform as well as private attorneys. It also dispels the myth of public defenders as mere "bureaucratic functionaries" of the courts. Public defenders care about winning for their clients, too; as one public defender said in describing a colleague's reaction to losing, "[H]e practically weeps when he loses, not for himself, but for his client" (p. 150 n. 2).

McIntyre goes on to probe the moral questions faced by public defenders as criminal defense lawyers. Most of them justify their work as a means of protecting the constitutional rights of the accused and keeping the criminal justice system honest. The public defenders want to force the state to prove all of its cases beyond a reasonable doubt (pp. 145-50). The discussion in part 3 is filled with extensive quotations and dialogue from the public defenders themselves. This allows the reader to see the public defenders' world through their eyes. For example, one attorney said, "When I was [working] in the state's attorney's office, I would have cops walking up to me as I was preparing a case and I would say, 'Officer, tell me what happened.' And they would say, 'Well, how do *you* want it to have happened?'" (p. 145; emphasis in original). McIntyre's use of quotations like this not only illuminates the motivations of the public defender, but brings to life the people she describes in the book.

The division of this book into three parts, with numerous subheadings in each part, makes it very easy reading. McIntyre's arguments are presented in a clear and logical order with a minimum of social science jargon. At the same time, the book provides more than dry theoretical argument, completely divorced from the real world. McIntyre's use throughout the book of public defenders' statements, along with her first hand observations, brings life to her analysis. One gets a feel for the atmosphere in the public defender's office, and for the personalities of its attorneys.

There are a few problems with the information upon which McIntyre bases her conclusions, some of which the author herself notes. The biggest problem is her reliance on data collected exclusively from the Cook County Public Defender's Office. By using only the Cook County office as a source, she may have precluded the generalization of her theory to other public defender's offices. For example, she presents no evidence as to whether other public defenders exhibit the same lack of structure found in Cook County. This is an important part of her argument insofar as it is this lack of structure that serves to

support the individual attorneys' autonomy, which in turn serves to legitimize the courts.

In addition, some of McIntyre's conclusions about Cook County follow from small pieces of anecdotal evidence.⁶ She also provides no evidence on whether other public defenders keep a low profile, the factor she believes is responsible for the "stigma of ineptitude." While recognizing these shortcomings in her research, she argues that since public defenders face similar problems and operate under the same "laws requiring that even [the guilty] be defended, . . . the solutions to problems that have been articulated in Cook County are likely shared by other defender services" (p. 6).

In spite of these small problems, McIntyre presents an excellent picture of public defending in Cook County while developing a plausible sociological theory for the existence of public defenders. At the very least, she has proposed a theory that provides empirical researchers with a framework for further inquiry. She does this all in an interesting and accessible way, vindicating the public defenders' claim to being "real lawyers" in the process.

— *Robert R. Kimball*

6. McIntyre concludes that the courts do not have control over the public defenders they appoint, but she cites only one example of a case in which the judge was unable to force the public defender to do his bidding. Pp. 57-60.