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Attorney-Client Communication in Public Defense: A Qualitative Examination

Janet Moore

University of Cincinnati College of Law, janet.moore@uc.edu

Vicki L. Plano Clark

University of Cincinnati - Main Campus, planocvi@ucmail.uc.edu

Lori A. Foote

University of Cincinnati - Main Campus, lori.foote@uc.edu

Jacinda K. Dariotis

University of Cincinnati - Main Campus, dariotja@ucmail.uc.edu

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Attorney-Client Communication in Public Defense: A Qualitative Examination

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Keywords:	public defense, communication, client perspectives, qualitative research, procedural justice theory
Abstract:	<p>This article presents a qualitative research approach to exploring attorney-client communication in an urban public defense system. The study drew upon procedural justice theory [PJT], which emphasizes relationships between satisfaction with system procedures and compliance with system demands. Interpretive analysis of interview data from 22 public defense clients revealed four major themes. PJT accounted well for three themes of communication time, type, and content, highlighting relationships between prompt, iterative, complete communication and client satisfaction. The fourth theme involved clients exercising agency, often due to dissatisfaction with attorney communication. This theme was better accommodated by legal consciousness theory, which emphasizes that diverse experiences with law include manipulation and opposition alongside compliance. Implications for policy and research are discussed.</p>

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Attorney-Client Communication in Public Defense: A Qualitative Examination

Abstract

This article presents a qualitative research approach to exploring attorney-client communication in an urban public defense system. The study drew upon procedural justice theory [PJT], which emphasizes relationships between satisfaction with system procedures and compliance with system demands. Interpretive analysis of interview data from 22 public defense clients revealed four major themes. PJT accounted well for three themes of communication time, type, and content, highlighting relationships between prompt, iterative, complete communication and client satisfaction. The fourth theme involved clients exercising agency, often due to dissatisfaction with attorney communication. This theme was better accommodated by legal consciousness theory, which emphasizes that diverse experiences with law include manipulation and opposition alongside compliance. Implications for policy and research are discussed.

Keywords: public defense, communication, client perspectives, qualitative research, procedural justice theory, legal consciousness theory

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Attorney-Client Communication in Public Defense: A Qualitative Examination

Attorney-client communication is a major concern for public defenders and clients alike, but there is a dearth of research focused specifically on this topic (Moore et al., 2018). This knowledge gap is problematic. Attorney-client communication is a critical component of legal representation (ABA, 2004; Missouri v. Frye, 2012). A turn toward client-centered and holistic practices has encouraged attorneys to involve clients more actively in their representation and to attend more fully to client needs (Brooks et al., 2010; Heaton et al., 2018). These developments have increased the importance of understanding communication as an aspect of attorney education, performance evaluation, and workload-resource policies (Barton et al., 2006; Carmichael et al., 2015; Cochran et al., 2014; Felstiner, 1997).

Moreover, a distinctive set of problems undermines attorney-client communication in public defense. Government-paid attorneys have long been seen as lacking the resources, commitment, and independence of privately retained counsel (Casper, 1971; Campbell, et al. 2015). This stereotype is not baseless; public defense is minimally regulated and often underfunded (Nat'l Right to Counsel Comm., 2009). Institutional and workload pressures encourage public defenders to triage cases and obtain quick guilty pleas with little client communication, heightening risks that extralegal factors such as race will influence representation (Cunningham, 1992; Richardson & Goff, 2013; Troccoli, 2007). Courts exacerbate mistrust by appointing public defense counsel instead of granting the limited right to choose counsel enjoyed by people who hire lawyers (Moore, 2018). These problems leave public defenders "shorn of their sharpest edge—their legitimacy as effective and trusted lawyers," which "impairs the lines of communication essential to a proper defense" (Aalberts et al., 2002, p. 544).

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Despite reform efforts, these problems are recalcitrant and embedded within other crises involving poverty, austerity in social service funding, and overincarceration (Blumberg, 1967; Gonzalez Van Cleve, 2016; Gottschalk, 2015). Thus, they share characteristics of “wicked problems” in public health and environmental science for which transdisciplinary research seeks new theoretical frameworks and concrete solutions (Brown et al., 2010; Lang, 2012). Further, public defense research needs exploratory studies to refine conceptual definitions, promote theory development, and improve related tools and measures (Moore & Davies, 2017).

Our research team responded by combining expertise in research methodologies, education, public health, and criminal law and procedure to conduct exploratory research on attorney-client communication in public defense. Our research purpose was to increase understanding of client experiences and perceptions regarding communication with their public defense lawyers. We adopted an interpretive qualitative approach (Braun & Clarke, 2006). Data from 22 public defense clients revealed new complexities in client experiences with attorney-client communication that include the exercise of personal agency, often due to dissatisfaction with the communication. Legal consciousness theory (Silbey, 2005) complemented procedural justice theory (Campbell et al., 2015) in accounting for these complexities. The results of this study have implications for research, theory, policy, and practice related to public defense, and call for increased attention to the potential role of client agency in efforts to improve attorney training, performance evaluation, workload-resource ratios, and outcomes at the case and system level.

Literature Review

Across legal practice specialties, clients are dissatisfied with attorney-client communication and place a higher value on attorney communication skills than lawyers do

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(Felstiner, 1997; Schemenauer, 2007). Although law has lagged behind medicine in researching professional communication (Cunningham & McElhinney, 1995), Barton et al. (2006) report a “basic consensus” that lawyers can improve communication by avoiding tendencies to interrupt, reframe client narratives, omit information about the law, and dominate case control. Other research highlights the use of body language, voice modulation, jargon avoidance or translation, face-saving techniques, strategic silence, and sequencing to facilitate client understanding and develop trust (Aaron, 2012; Cochran et al., 2014).

Despite these advances, there is little research focused specifically on attorney-client communication in public defense (Moore et al., 2018). Several factors contribute to this knowledge gap. Research funding has prioritized other topics (Moore & Davies, 2017). People who need public defense are hard to reach unless they are incarcerated, but incarceration may bias participants against defense counsel (Campbell et al., 2015). Direct observation is an important supplement to self-reports, but injecting researchers into defendant-defender communication raises concerns about Hawthorne effects along with legal and ethical risks to a vulnerable population (Moore et al., 2018).

Given these obstacles, it may be unsurprising that what appears to be the first study specifically designed to examine attorney-client communication in public defense (Cunningham & McElhinney, 1995) also seems never to have published any results. Some studies discuss the topic tangentially to other goals, such as understanding courtroom workgroup or defense agency cultures (Blumberg, 1967; Sudnow 1965) or comparing government-paid and private defense (Atkins & Boyle, 1976). Much of this research is 30 to 50 years old and predates significant developments that include technological innovations in communication and advances in

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3 sociolegal theory and methods. Nevertheless, certain themes have remained constant over the
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5 decades.

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8 For example, observation research has repeatedly documented the institutional cooptation
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10 of public defenders as collaborative members of a courtroom workgroup who sort clients quickly
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12 into case types and process guilty pleas with little attorney-client communication (Blumberg,
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14 1967; Gonzalez Van Cleve, 2016; Sudnow, 1965). Defendant interviews also have consistently
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16 revealed perceptions that public defenders are aligned with the state and engage poorly in
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18 attorney-client communication (Campbell et al., 2015; Casper, 1971, 1972). Some early studies
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20 attribute such results to degraded expectations of criminal legal systems and of government-paid
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22 lawyers in a market economy, and posit that such views are so ingrained as to prevent better-
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24 resourced public defense from altering them (Blumberg, 1967; Casper, 1971, 1972).

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28 Prisoner interviews by Atkins and Boyle (1976) revealed greater satisfaction with public
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30 defenders than with private counsel, and indicated that sentence length is more salient to
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32 satisfaction than the promptness, frequency, or content of attorney-client communication.
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34 O'Brien et al. (1977) critiqued Atkins and Boyle for presupposing the salience of these factors
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36 and instead asked prisoners to identify and rank criteria for evaluating defense attorney
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38 performance. The performance criteria comprised nine performance dimensions with a total of
39
40 21 subsidiary attorney attributes. Of the nine dimensions identified, communication ranked
41
42 second, just behind perception of the lawyers' efforts on the case. The ability to communicate
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44 comprised attributes of ability to explain the case, honesty, and being understandable. The third-
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46 ranked dimension, personal concern, also related to communication; it comprised attributes of
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3 understanding the client's personal problems, being interested in and able to talk to the client,
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5 and contacting the client outside of the courtroom.¹
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8 Theoretical frameworks for the early studies varied. Casper's defendant interviews
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10 connected factors that later became central to procedural justice theory (PJT) (Casper, 1971,
11
12 1972; Casper et al., 1988). PJT posits that satisfaction with fair treatment, including
13
14 opportunities to have a voice in the proceedings, enhances perceptions of system legitimacy and
15
16 compliance with system demands (Casper, et al., 1988). PJT's strong influence on justice system
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18 research is widely acknowledged (Johnson et al., 2015; Silbey 2005, pp. 337-338). In the field
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20 of defendant-defender communication, prisoner interviews and surveys by Boccaccini and
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22 Brodsky (2001, 2002) and Boccaccini et al. (2002, 2004) showed that defendants prioritize
23
24 attorney skills in client relations, specifically: sharing information, caring, honesty, listening to
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26 defendant suggestions, and spending time with defendants before going to court. These studies
27
28 also explored relationships among communication, defendant participation, trust, satisfaction,
29
30 and defendant cooperation with counsel. They indicate that attorney receptivity to defendant
31
32 input encourages defendant participation and mutual trust, and that attorney training improved
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34 defense counsel's appreciation for the importance of communication skills to effective
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36 representation.
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42 Three recent studies also cited PJT in analyzing client satisfaction with defense
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44 representation (Campbell et al., 2015; Raaijmakers et al., 2015; Sandys & Pruss, 2017). These
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46 studies built on the work of Boccaccini and colleagues (Boccaccini & Brodsky, 2001, 2002;
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51 ¹ Remaining dimensions and attributes were: I. Lawyer's Appearance (neatness, promptness); II. Legal Ability
52 (know-how, courtroom manner); III. Who Pays the Lawyer (no attributes); IV. Lawyer's Reason for Being Involved
53 in the Case (cares about justice, for the money, wants to build reputation); VI. Lawyer's Relationship with the
54 Authorities (ability to pull strings, cooperates with authorities); and VIII. Lawyer's Involvement in Cop-Outs (no
55 attributes specified; "Cop-Outs" is a synonym for guilty pleas) (O'Brien et al., 1977, Table 1).
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3 Boccaccini et al., 2002, 2004) and revealed that a majority of participants expressed satisfaction
4 with aspects of defender performance involving communication. Raaijmakers et al. (2015)
5 conducted interviews and surveys with Dutch prisoners three weeks after the first lawyer-client
6 contact, and found procedural fairness (opportunity to be heard, being treated with respect) was
7 closely related to satisfaction, but that timing and frequency of communication was not. The
8 remaining two studies focused specifically on client satisfaction with public defense. Campbell
9 et al. (2015) connected satisfaction to public defenders asking clients for their opinions, making
10 them feel that they are listened to, and telling them all possible consequences of the case.
11 Sandys and Pruss (2017) found correlations between satisfaction and additional aspects of
12 communication: whether the lawyer said confusing things; treated clients with respect;
13 interrupted; explained what would happen next in the case and what the lawyer would do; and
14 followed through by doing what was predicted.
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31 Although PJT has had a strong influence in the field, a separate line of studies applied
32 ethnographic approaches to analyze legal discourse and examine how power operates in real-life,
33 everyday attorney-client communication. Cunningham (1992) analyzed his interactions with M.
34 Dujon Johnson, a client of the public defense clinic that Cunningham supervised. Cunningham
35 learned that, by silencing Johnson's attempts to participate in the case, he had failed to account
36 fully for the role of race and ignored evidence of innocence that might have prevented Johnson's
37 conviction. Cunningham (1992) offered this ethnographic analysis of his own practices to show
38 "how powerful the forces of such client subordination can be despite a lawyer's conscious intent
39 and efforts" (p. 1299). White (1992) noted the potential of such research to develop a "theoretic
40 of practice" and help lawyers be "less disruptive of our clients' efforts to empower themselves"
41 (pp. 1502-1503).
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3 Similar themes of disruption and empowerment emerged in Ewick and Silbey's (1998)
4 approach to legal consciousness theory (LCT). This approach seeks to explain why people defer
5 to legal systems despite obvious gaps between what laws say and how they operate in the real
6 world. Examples include promises of equal treatment that instead "systematically reproduce[]
7 inequality" (Silbey, 2005, p. 323). LCT explains how such broken promises can become so
8 accepted as to escape notice, while at the same time remaining subject to change through
9 strategies that involve deference as well as manipulation and opposition (Silbey, 2005, pp. 323,
10 332-35).
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21 In the context of these different approaches to examining defendant-defender
22 communication, several studies have discussed strategies for improvement. Wilkerson (1972)
23 proposed requiring public defenders to document contacts with jailed clients at least once every
24 six weeks. Boccaccini and Brodsky (2001) recommended training on points similar to those
25 highlighted by Barton et al. (2006) (e.g., not interrupting). In the public defense context, Sandys
26 and Pruss (2017) noted that systematically measuring client satisfaction could help clients hold
27 attorneys accountable for their performance, and pointed researchers and practitioners to
28 communication assessment tools tested in other fields as resources for strengthening attorney
29 training and performance evaluation.
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42 Results of a focus group ($n=7$ participants) conducted by Campbell et al. (2015) raise
43 questions about the potential efficacy of such strategies. These data revealed levels of detail and
44 intensity in client dissatisfaction with attorney-client communication that lend complexity to the
45 reports of satisfaction in the survey data. Some of these qualitative data reflected long-standing
46 problems such as clients feeling erased from the process by last-minute instructions to plead
47 guilty with no prior communication (Casper, 1971). Even training tailored to the challenges of
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3 public defense may not address such problems without improvements in attorney workload-
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5 resource ratios and reform of institutional cultures (Gould & Leon, 2018). Assuming that a few
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7 minutes in a noisy courtroom hallway or jail pod allows much communication to occur, time and
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9 workload pressures likely promote attorney behaviors that the literature discourages, such as
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11 interrupting, reframing client narratives, omitting information about the law, and dominating
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13 case control (Barton et al., 2006).
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17 The detail and intensity revealed in Campbell et al.'s (2015) qualitative data also raise
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19 questions about the role and meaning of satisfaction as a metric in public defense research.
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21 Those questions may have implications for PJT as an explanatory framework. Analysis of these
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23 questions may benefit from literature that is not reflected in the PJT-informed studies discussed
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25 above. Silbey (2005) questioned whether PJT's focus on procedural fairness and compliance
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27 reflects prevailing cultural norms imported by the researchers, undervalues dissatisfaction and
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29 opposition, and fails to engage issues of unequal power. Other studies note opportunities to
30
31 refine understanding of core PJT concepts and their interrelationship (Johnson et al., 2015;
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33 Tankebe, 2013). Research is also shedding new light on PJT's efficacy for promoting reform of
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35 institutional culture (Worden & MacLean, 2018).
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40 Taken as a whole, the sparse literature involving attorney-client communication in public
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42 defense indicates a need to refine conceptual definitions and theoretical explanations through
43
44 empirical investigation aimed at supporting sustainable reform (Felstiner, 1997). The literature
45
46 also demonstrates the value of qualitative research on client perceptions for advancing
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48 knowledge in its own right while also providing an empirical basis for, and supplement to,
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50 quantitative research. Our study builds on prior work by presenting what appears to be the first
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3 results of exploratory qualitative research focused specifically on attorney-client communication
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5 in public defense.
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7 8 **Methods** 9

10 This exploratory research employs an interpretive qualitative approach (Braun & Clarke,
11 2006; Pogrebin, 2003; Ponterotto, 2005) to understand the lived experiences of participants, gain
12 insights into attorney-client communication in public defense, and offer an opportunity for the
13 field to listen to and learn from an often-unheard population. The study took place in an urban
14 setting in the Midwestern United States, and was planned in partnership with the local public
15 defense agency. All study procedures were approved by the University of Cincinnati
16 Institutional Review Board and partner agencies.
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26 **Recruitment** 27

28 During our six-month recruitment period, inclusion criteria required participants to: (a) be
29 18 years of age or older; (b) face high-level misdemeanor or low-level felony charges, or reside
30 in the community after incarceration for such charges; (c) have, or previously have been
31 assigned, a government-paid defense attorney to handle such charges; (d) be unincarcerated (i.e.,
32 free to come and go within the community); and (e) be able to speak and understand English.
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40 We used three recruitment sites: the public defender office; an expungement clinic run by
41 the same office; and a local reentry agency. The goal for using different sites was to work with
42 community partners and to include individuals with a variety of prior experiences with public
43 defense. We used two recruitment strategies at these sites: flyers and in-person recruitment. We
44 left flyers at the reception desk of each site that provided basic information about the study (i.e.,
45 who could participate, study topic, time commitment, incentive, and location) and invited
46 potential participants to call, email, or text the research team to set up a time to participate.
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Members of the research team also conducted on-site recruitment by sitting in the waiting areas and telling individuals about the study. In-person recruitment took place on a regular schedule of three-hour shifts occurring two to three days per week over the six-month period. The majority of shifts occurred at the public defender office because more potential participants were typically present. All participants were recruited in person by team members on site and they opted to participate immediately because of their availability. A total of 22 eligible individuals participated, with 14 recruited at the public defender office, four at the expungement clinic, and four at the reentry office.

Participants

The 22 participants in this study were unincarcerated adults dealing with high-level misdemeanor and/or low-level felony charges or convictions with the aid of public defense in a single-jurisdiction setting. As illustrated in Table 1, participants ranged in age from 20 to 54 ($M=38.1$ years; $SD=10.33$). The sample included a majority of males ($n=14$; 63.6%) and African Americans ($n=12$; 54.5%). Participants varied in terms of educational attainment, ranging from some high school education ($n=5$, 22.7%) to college graduates ($n=4$, 18.2%). The majority of participants indicated that their most recent case was a misdemeanor charge ($n=17$; 77.3%) and that they had experienced one or more prior charges ($n=13$; 59.1%). Differences across the three settings (as summarized in Table 1) reflect expected differences in the clientele who make use of the different offices. For example, the expungement clinic was only offered to individuals who had experienced a single prior charge.

[INSERT TABLE 1 ABOUT HERE]

Data Collection

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3 Consenting and data collection occurred in conference rooms at the sites to ensure the
4 safety of research team members and participants as well as to minimize the burden of
5 participation by using a location convenient for participants. The conference rooms were
6 separated from agency staff observation to protect participant privacy and minimize any impact
7 the location might have on participation. Guided by principles of community-based participatory
8 defense (Moore et al., 2015), we planned to conduct group interviews as a means to encourage
9 additional conversation among participants. Anticipating that recruitment could be a challenge,
10 we also allowed for the possibility of single-participant interviews. Because few eligible
11 participants were available on any given day, in the end we conducted 14 single-participant
12 interviews and three group interviews. Two group interviews included two participants and one
13 included four participants. All interviews used the same protocol, and participants in the group
14 interviews reacted to one another's' comments in addition to providing responses to the
15 interviewers' questions. The interviews were audio recorded with participant consent.
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33 We developed the interview protocol by drawing on prior research in the field (Campbell
34 et al., 2015) and with the aim of informing efforts by our partner public defense agency to
35 improve attorney-client communication. The interview protocol started with an icebreaker about
36 communication in general and then covered topics about communication with an attorney.
37
38 Major questions were: (1) What are some things that make it [easy/hard] to communicate with
39 other people? (2) What are different ways that your lawyer communicates with you? (3) How
40 satisfied are you with the way your lawyer communicated with you? (4) Does communication
41 with your lawyer matter? Why or why not? (5) Think of a time when you had [good/poor]
42 communication with your lawyer. What makes communication [work well/go badly]? (6) How
43 could your attorney improve communication? (7) How can public defenders improve
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3 communication? Each question included follow-up probes to promote in-depth discussion of
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5 participant perspectives (e.g., Why do you think this?).
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8 At the end of the interview, participants were asked to complete a 16-item survey used in
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10 prior research with public defense clients (Campbell et al., 2015). Items included demographic
11
12 characteristics (4 items), current case and previous charges (2 items), and client satisfaction and
13
14 attorney communication-related behaviors (10 items). Items were rated on a five-point Likert
15
16 scale from strongly agree to strongly disagree. The survey was included to provide supplemental
17
18 and complementary data related to experiences and perspectives discussed during the interviews.
19
20 It also served as a prompt to help provoke final participant reflections. After completion of the
21
22 survey, the interviewer asked a final question inviting participants to share anything else they
23
24 wished the researchers to know about attorney-client communication, including reactions to the
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26 survey items.
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31 The second and fourth authors and several research assistants with backgrounds in social
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33 science research and/or law conducted the data collection in teams. All research assistants
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35 involved in data collection completed training sessions led by the first, second, and fourth
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37 authors. In most instances, the interview team included one person with a background in social
38
39 science research and one with a background in law. Interviews ranged from 15 to 50 minutes in
40
41 length. Snacks and light refreshments were provided. Each participant also received a \$25 gift
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43 card to a local store as an incentive. After each session, interviewers recorded their impressions
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45 and experiences through written memoranda, which were regularly reviewed and discussed by
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47 the entire research team.
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50 51 **Data Analysis**

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3 The 22 participants were interviewed individually or in small groups, generating a total of
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5 17 audio recordings. Each interview was transcribed verbatim. Several steps were taken to
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7 ensure that researchers respected boundaries protected by attorney-client confidentiality rules
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9 and evidentiary privileges. First, the research team was trained on the importance of respecting
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11 those boundaries and related legal and ethical rules. The training included role-play based on
12
13 hypothetical scenarios; law students and the principal investigator (a law professor and former
14
15 capital defense attorney) coached team members trained in social science on strategies for
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17 recognizing and redirecting inappropriate discussion that might occur during an interview.
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19 Second, the consenting process included instructions that participants should not share case-
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21 related details or the content of attorney-client communications, and that researchers would
22
23 redirect such discussion to general observations about communicating with government-paid
24
25 defense lawyer. Finally, the team used a triple-layer process to redact any potentially identifying
26
27 or case-related information from the data. This process included serial review by the
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29 transcriptionist (a team member trained in social science), a law student member of the research
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31 team, and the principal investigator. All survey responses were entered into SPSS for descriptive
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33 analysis.
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40 The four authors conducted the iterative analytic coding process for generating themes
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42 from the interview data (Braun and Clarke, 2006). The coding process, led by the research
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44 methodologist (second author), began with a series of meetings to develop an initial coding
45
46 scheme. In preparation for each meeting, each person read one or two transcripts and shared in
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48 writing her individually conceived emerging ideas and tentative codes with the rest of the group.
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50 Initial code lists ranged from 12-30 codes. During the meetings the team discussed points of
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52 overlap in the codes and any differing ideas and generated a group code list to be examined in
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3 light of additional data. After five rounds of these meetings, few new codes were emerging with
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5 the introduction of new transcripts and the 48 emergent codes began coalescing into six larger
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7 categories.
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10 At this point, the second and third authors were tasked with coding the transcripts using
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12 MAXQDA (VERBI GmbH, www.maxqda.com), a qualitative software program that facilitates
13
14 an interpretive analytic process. The initial categories and codes, with definitions outlined by the
15
16 full group, were entered into the software and all transcripts were uploaded for coding. This
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18 dyad team worked in tandem to code the first several interviews, working collaboratively to
19
20 negotiate the meaning of each of the codes, including renaming and redefining codes in the
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22 software as needed, while continuing to apply the coding scheme to more transcripts, one at a
23
24 time using an analytic process of constant comparison. Thus, instead of applying the tentative
25
26 coding scheme reliably, the coding scheme continued to be refined from the emerging meanings
27
28 in the data (Smagorinsky, 2008). The analysts recorded reflective memos in the shared interview
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30 analysis file throughout the process to document their interpretations and track how the codes
31
32 were refined and grouped into larger ideas. Once the coding scheme became more settled, the
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34 dyad continued this process asynchronously, using the software capabilities to share coded
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36 transcripts and reflective memos with each other for review and to continue to probe meanings
37
38 within the data. This continued until all transcripts were coded.
39
40
41
42
43

44 As this coding proceeded, the full group continued to meet, with the dyad providing
45
46 conceptual updates of the categories, codes within the categories, and exemplar quotes from the
47
48 transcripts in written and tabular formats for full group consideration. The team's
49
50 interdisciplinary expertise brought unique perspectives to the coding process, allowing further
51
52 clarification of codes as team member reactions and questions were incorporated into the
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2
3 ongoing analysis. The aim of this iterative process was to account as fully as possible for
4
5 themes, codes, and exemplary quotations in the data. The analysis resulted in the identification
6
7 of four major themes, with each comprising two or three subthemes. Strategies contributing to
8
9 the validity of findings include triangulation of researchers' interpretations, maintaining an audit
10
11 trail of our thinking and work that documented how interpretations were derived from the data,
12
13 seeking and discussing disconfirming evidence, researcher reflexivity throughout data collection
14
15 and analysis, and peer debriefing (Creswell & Miller, 2000; Lincoln & Guba, 1985).
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18

19 Results

20 Overview

21
22 The 22 participants in this study emphasized the importance of communicating with their
23
24 attorneys. As Josey² summed up: "if your public defender isn't communicating with you, you
25
26 feel like you don't have a chance to have your story told." They also expressed general
27
28 satisfaction with attorney-client communication as reflected within the qualitative and
29
30 quantitative data. As Miles put it, "I'm usually pretty much satisfied," and Cole stated, "I can't
31
32 speak for all public defenders, but the ones that I've had, I had good ones." Table 2 illustrates
33
34 similar sentiments of overall satisfaction as indicated by the levels of agreement to individual
35
36 survey items and overall scale mean ($M=3.5$, $SD=1.3$ on the 5-point Likert scale).
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41

42 [INSERT TABLE 2 ABOUT HERE]
43

44 Underneath these general impressions, however, participant interview transcripts revealed
45
46 high levels of complexity and diversity in participants' reported experiences and perceptions
47
48 regarding communication with public defenders. One participant expressly referenced diversity
49
50 as factor to consider regarding the amount of time needed to communicate about a case:
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55 ² Pseudonyms used throughout to maintain participant confidentiality.
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ATTORNEY-CLIENT COMMUNICATION IN PUBLIC DEFENSE

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3 “Everybody’s got a different opinion. Every case is different ... you can’t say ‘well an hour with
4 you or five minutes.’ Each case is gonna be different due to the complexity of your case, you
5 know, the charges you may have.” Our analysis of this diversity found within the more detailed
6 accounts resulted in four major thematic categories about communication with public defenders.
7 Each theme comprised subtopics, as illustrated in Table 3. The first three themes involved the
8 time, type, and content of defendant-defender communication. The theme of *time* included the
9 point in the process when communication occurred as well as communication duration and
10 frequency. Communication *type* encompassed the mode and accessibility of communication.
11 *Content* related to information sharing, having a voice in the process, and empathy. The fourth
12 theme involved defendants exercising *agency* in response to dissatisfaction with communication.
13 This theme involved choice of counsel, managing communication, and system-level
14 interventions. We describe these four themes in the sections that follow using participant quotes
15 as evidence.

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33 [INSERT TABLE 3 ABOUT HERE]

34 35 **Time: When, How Long, and How Frequent**

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37 The temporal aspects of communication were of paramount importance to the
38 participants. This theme appeared in data from all interviewees. Miles summarized this theme
39 succinctly: “Sometimes communication level is limited to a degree depending on the time.” Two
40 subtopics arose frequently and were articulated strongly: *when communication occurred*—
41 specifically, how far in advance of the court date—and *duration of communication*. Some of
42 these findings are consistent with prior research, but the sample uncovered more detail and
43 variation in reported experiences and perceptions. The third subtopic—*frequency of*

1
2
3 *communication*—also sheds new light on the nature of defendant communication with
4
5 government-paid attorneys.
6

7
8 **When communication occurred.** Several participants related the quality of
9
10 communication with their attorneys to the point of time in the process that communication
11
12 occurred. Some reported having one or more meetings with their attorneys days or weeks before
13
14 the court date. These meetings provided time to share case details, to process what was said, and
15
16 to consider options. Brendon described one lawyer as “pretty good” because he “came to see me
17
18 when he said he was gonna see me. . . . [and] said, ‘I’ll come and see you, we’ll talk about this.
19
20 See what options we have. And you can think about it and come to a decision before going to
21
22 court.’ That’s a lot more relief than having to make that snap decision.”
23
24
25

26
27 However, Brendon also echoed several participants in describing a conversation with
28
29 another public defender that occurred for the first time on the day of court; several participants
30
31 described these contacts as occurring only after arriving in the courtroom. Derrick identified this
32
33 practice as one of his “biggest problems” with attorney-client communication:
34

35 I’ve had public defenders a few times, and I’ve never had one actually come to
36
37 the jail to visit me the day before or the week before. It’s always been that
38
39 morning. You know, court’s at 9:30, he comes at 9:00 . . . you just get a quick
40
41 huddle and they’re gone, and you go back and you wait till they call your name to
42
43 come out.
44
45

46
47 Another aspect of communication timing was the length of any delay in communication.
48
49 As Josey explained, “having some kind of response within a timely fashion is my biggest thing
50
51 as far as good communication goes with my public defender.” Participants described timely
52
53 responses as meeting the attorney on the same day of receiving a citation, or receiving an
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3 attorney's call "within 12 hours" of contacting the attorney's office. Counterexamples of poor
4 timing included lawyers taking several days to talk with research participants, and participants
5 waiting many weeks in jail before seeing the attorney for the first time in court. Nina also
6 described the demands placed on her own time. She found it "a pain in the ass" to make multiple
7 trips to the attorney's office for a single five-minute visit.
8
9

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13
14 **Duration of communication.** The amount of time spent in attorney-client
15 communication was important to many participants. A few described positive experiences.
16
17 Brendon explained that "our visits weren't short, we'd get like 20-25 minute visits discussing the
18 case." Quinlynn also noted, "I felt like I had more than enough time." In contrast, many
19 participants reported that they did not have sufficient time to communicate and wanted what
20 Miles called "quality time," which would allow a "decent conversation about the situation that
21 has to be dealt with." This problem was described as "the little 10-minute window" or "about
22 two or three minutes," and was cited as a common experience by several participants. As Lamar
23 explained, "I probably talked to my public defender for like maybe three minutes and that was it
24 ... ain't no time at all for us to actually sit down and talk." Derrick was "not satisfied" with the
25 "five minutes" lawyers spent with him, both because it was "not enough time to talk about any
26 case" and it told him they were not spending enough time on his cases overall. Isaiah described
27 meeting his lawyer for the first time in court and feeling "railroaded, 'cus I never had the time to
28 study my case with the attorney ... [a]nd let him represent me fairly. Made me go to court right
29 then and there the same day that I'm meeting him. That was unfair to me."
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49 Several participants emphasized that short communication times lead to feeling rushed,
50 which hinders communication and their decision-making abilities. Miles differentiated "good
51 attorneys" from "bad attorneys" accordingly. He explained, "When I say bad, I don't mean bad
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3 by the way that they handle their client's case. I mean bad by . . . sometimes the attorney will
4
5 rush, rush, and leave." Nina described the difficulties this creates: "you talk to them for three
6
7 minutes ... you can't even in your brain get it all out fast enough to tell him anything for them to
8
9 go fight for you."

12 **Frequency of communication.** Another important subtopic of communication timing
13
14 was frequency. Several participants discussed the importance of reinforcing information over
15
16 time. Poor communication was described as a "onetime shot," while better communication was
17
18 "regular," "consistent," and "steady." As Gwyneth explained, "I would prefer someone to
19
20 consistently ... be on me with it, versus not at all." Cole agreed that "good communication"
21
22 involves "just keeping in contact ... between the phone call, an email, and the letter."
23
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25

26 **Type: Mode and Accessibility**

27
28 The second major theme involved the type of communication. In response to the prompt
29
30 focused on this detail, participants described a variety of *communication modes* including oral
31
32 and written formats. Related topics included *accessibility* of both the particular modes and of
33
34 attorney communication more generally.
35
36

37
38 **Communication modes.** Participants expressed openness to using different
39
40 communication modes with their attorneys, including face-to-face conversations, phone calls,
41
42 emails, text messages, and letters. They noted that particular modes, however, were sometimes
43
44 better suited to particular communication goals. Gwyneth stated that when communication
45
46 involved sharing information that was not necessarily "straightforward" or factual, she preferred
47
48 conversation in person or by phone. She explained that she "would want to have a conversation,
49
50 'cus I could misinterpret the letter versus if you're talking to me I could ask you immediately ...
51
52 in a letter I have to guess what that means." Several participants mentioned that face-to-face
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3 conversation allowed them to assess their attorney's "eye contact" (Keasia) or "attentive[ness]"
4
5 (Jaevon), both seen as part of good communication. Quality in-person communication was
6
7 "personal" (Fayth) and not in a noisy hallway (Nina). Jaevon described phone calls as "the most
8
9 convenient form of communication." He sought conversation "to discuss any questions ... or
10
11 concerns" that arose, while Harold said that he called his attorney "for advice."
12
13

14
15 Written communication was viewed as especially helpful as a reinforcement or reminder.
16
17 Cole stated that a letter "was like a follow-up ... that's nice to have that letter come in the mail.
18
19 ... I forget things sometimes so then to have that follow up and that reminder, that's better."
20
21 Texting was seen as convenient, but less helpful than a letter since there is no concrete artifact to
22
23 aid in remembering an important date or detail. Cole suggested that using various modes was
24
25 helpful in opening up two-way conversation: "there's three ways [phone call, email, letter] of
26
27 communicating with your client, and then the same way it goes for the client. They have your
28
29 phone number, your email address, and they got that letter so they can't say there's no
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31 communication between both parties."
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35 **Accessibility.** Participants expressed concerns about barriers to communication,
36
37 including competing demands for attorney time. Brandon understood that defenders "got a busy
38
39 schedule 'cus ... you not the only one that they representing," but also felt that defenders have a
40
41 duty to make time for clients: "I know your schedule is busy but if you representing me then I
42
43 must be somewhere in your schedule." Participants also reported specific barriers to accessing
44
45 face-to-face conversation with their lawyers, including difficulty securing appointments. Nico
46
47 saw the problem as distinctive to public defense: "you're not paying them nothing. So they're not
48
49 trying to spend an hour for a meeting; even if you make an appointment to meet them at their
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51 office, you're lucky if you can get that appointment." Some participants went to attorney offices
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ATTORNEY-CLIENT COMMUNICATION IN PUBLIC DEFENSE

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3 without appointments and waited, hoping to communicate with their lawyers about their cases.
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5 Transportation issues raised another barrier to accessing face-to-face communication with
6
7 counsel. Nina had a car accident on the way to meet with her lawyer. Since “the car was
8
9 disabled” she “could not make it to the attorney.” Isaiah shared that he “didn’t have no bus fare
10
11 to get home” after meeting with his attorney.
12
13

14
15 Although phone conversations were accessible for some participants, they created
16
17 barriers for others. Miles could not call his lawyer when he “was moving around because [he]
18
19 was homeless.” Brendon explained the difficulty of phoning attorneys from jail: “[they] tell you
20
21 to call from over there and 98% of the time you can’t call them ... all the people in there, they
22
23 gotta make collect calls, and they office don’t take collect calls ... So it’s like, how am I
24
25 supposed to call you if I’m incarcerated?” Other participants could call, but had to leave voice
26
27 messages when attorneys did not answer and waited a “few days” to get a response or never
28
29 received a return call. To work around these issues, Derrick used his understanding of the court
30
31 schedule to time his calls: “I know in the mornings they’re usually in court so I always tried to
32
33 wait till the afternoons.” Cole emailed instead, “cus a lot of times, they probably have a smart
34
35 phone and they get an email instant versus ... going back to the office and checking voicemail.”
36
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40
41 Although the ability to speak and understand English was a criterion for inclusion in this
42
43 study, several participants noted that language complexity raised barriers to communication.
44
45 Nelson put the problem bluntly: “One thing I want to say about the communication, take the
46
47 language I use, the type of words that I use, well public defenders, they don’t understand that. I
48
49 ain’t go to school for that, I don’t understand that.” Miles described seeing other people confront
50
51 this problem:
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3 they try to communicate but they don't have the understanding of what actually is
4 being said. ... they just say 'yes' or 'no' or they shake their head yes or no, or go
5
6 along with it, 'Okay.' But a lot of them can't read, that makes it harder for the
7
8 public defender to communicate to them ... they may not be educated enough to
9
10 understand what that attorney is saying.
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13

14 **Content: Information, Voice, and Empathy**

15
16 Alongside the themes of timing and type of communication was the third theme of
17 communication content. This theme included three subtopics. *Information sharing* describes
18 participant views of the substance of the communication and how that substance was conveyed.
19
20 *Client voice* captures the extent to which participants felt able to express their ideas. *Empathy* is
21 a complex concept, defined here as a cognitive-affective process through which participants take
22 another's perspective (for more detail see Cuff, et al., 2014).
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31 **Information sharing.** Participants emphasized the importance of sharing information
32 about the case and how it will unfold. Key points included the timeline of court proceedings,
33 what was going to happen in court, all of the possible consequences, and plea options. Josey
34 compared the attorney to a guide: "They have to be your navigator through it, they have to, 'cus
35 otherwise you'll be lost ... options should be laid out before your court date so that way, you
36 know what to expect, [and the attorney] can be prepared for the moment."
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45 Other comments revealed participants' desire to feel they were "on the same page" as
46 their attorneys. Quinlynn described a positive experience of information sharing: "he broke it
47 down to me and told me what was what and told me what was to be expected and what to look
48 forward to." Participants wanted essential case-related information presented in a "direct" and
49 "straightforward" manner, without the attorney "beating around the bush." Josey appreciated
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ATTORNEY-CLIENT COMMUNICATION IN PUBLIC DEFENSE

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3 that her attorney was “precise and accurate with his information.” In contrast, Penelope
4
5 described an experience with poor communication when “the attorney did not tell me everything
6
7 that could’ve happened,” and Jaevon described a similar experience as “the worst, walking in the
8
9 court, not knowing anything.”
10
11

12
13 Several participants wanted details beyond basic case information. Some wanted to
14
15 understand the attorney’s approach to the case. Cole explained, “I like to know a little bit more
16
17 about my attorney. . . how he handles things, how he does things in the court room.” Participants
18
19 recognized that their lawyers had important expertise, and described good communication as
20
21 actively sharing how that expertise was being applied in their cases. For example, Isaiah
22
23 discussed the value of hearing “expert opinion” about “what the judge is looking for” and “a
24
25 better way of proving my innocence.” Others valued the public defenders’ expertise regarding
26
27 critical case details; as Josey explained, her public defender “actually caught the code was off . . .
28
29 so just being able to pay attention to detail and catch things like that makes me feel relief as his
30
31 client.”
32
33

34
35 Other participants discussed how good communication involves conveying how attorneys
36
37 are working to help them. Examples included discussing conversations attorneys had with
38
39 prosecutors and judges, contacting the client when questions arose, and sharing results of
40
41 investigations. Isaiah stated, “you could tell he was working on the case because if he read
42
43 something that didn’t seem right, he would call me and ask . . . it seemed like he was really
44
45 trying. It was homework. He was doing an investigation himself.” Poor experiences involved
46
47 attorneys not being prepared and not knowing case details and facts, including what the charge
48
49 was. Antonio admonished his public defender when saying, “Be more knowing of the case.”
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ATTORNEY-CLIENT COMMUNICATION IN PUBLIC DEFENSE

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3 **Voice.** Although most participants emphasized what they wanted their attorneys to
4
5 communicate to them, a few also discussed the importance of clients sharing information with
6
7 their attorneys. Fayth argued that good communication goes both ways: “That way I know
8
9 what’s going on, he knows what’s going on, I mean, if neither one of them, if I or her never says
10
11 anything, then nobody knows what’s going on.” Cole recommended that clients be “upfront and
12
13 honest,” noting that: “If you don’t tell your attorney everything [about the case], you don’t have
14
15 the good communication; it kind of makes things harder.” Miles noted that in addition to case
16
17 details, it was important to share personal information as well: “Sometimes we go in depth about
18
19 my background or a lot of different problems that I may be having ... Trying to give the public
20
21 defender an idea as far as what my present situation may be like, what I’m dealing with.”
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26 Some participants discussed how asking questions helped them have a voice in the
27
28 process. Eric described how he “got right to the questions that I had to ask” when he met with
29
30 his attorney. Although he knew the questions he had, he reflected on the fact that other clients
31
32 may not know what questions to ask. He recommended that the attorney be “the first to initiate
33
34 the conversation” by asking ““What do you need to know today? What would you like to share?
35
36 What would you like to understand better for coming here?”” In contrast, Nariah described how
37
38 off-putting she found her public defender’s opening question to her: “I had one public defender
39
40 come up to me and say, ‘So what do you want to do here with these [charges]?’ ... [and she
41
42 thought] ‘I want them gone! What are you gonna do, how are we gonna get them to go away?
43
44 Why you asking me? I don’t know!’” When Nina heard this story during a group interview, she
45
46 agreed, “That’s a stupid question.”
47
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49
50

51 Participants felt their perspective was important regarding case facts and strategy, and it
52
53 was perceived as poor communication when that perspective was not shared. Eric’s attorney
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3 “never once asked for [his] opinion.” Brendon suggested questions for his attorney to ask of the
4 witness but “He wasn’t interested.” Nelson expressed his frustration more strongly: “[let] us
5 plea out how we want to plea out! If I say I want to plea out not guilty, don’t tell me to go in
6 there and plead no contest.” In contrast, some attorneys not only sought clients’ perspectives and
7 strategy suggestions, but created a sense of possibility beyond what the client could conceive and
8 communicate. Isaiah described the critical role of communication in feeling empowered to fight:

9
10 [the attorney’s] communication was everything... He’s saying, ‘If you fight it, I
11 think I can beat it.’ I’ve never had an attorney tell me that before, you know. To
12 not take the plea. ‘Cus they were offering me a misdemeanor would be less time
13 instead of the felony. He was like, ‘No man, I think I can beat this.’ ... He made
14 me feel confident. He made you, you know ... watching the movies and you see
15 that lawyer over there. That’s how he made you feel. He made me want to just
16 risk it all.

17
18 **Empathy.** A third aspect of communication content is whether empathy was present and
19 enabled clients and attorneys to forge a connection. As occurred in Campbell et al. (2015), a few
20 participants expressed empathy for the personal and institutional challenges that public defenders
21 face. Brendon said: “They come in here and be stressed about what’s going on in they life,
22 whatever it is, which I understand stuff like that happens, you know.” Derrick acknowledged
23 that clients may not recognize the stress their lawyers are under because “they don’t think how
24 busy they are.”

25
26 More often, however, participants emphasized the importance of attorneys showing
27 empathy and caring for clients as a component of good communication. For example, Lamar
28 described his public defender as “really concerned” about his case. Quentin related how much it
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ATTORNEY-CLIENT COMMUNICATION IN PUBLIC DEFENSE

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3 meant to have his lawyer reassure him that “there was nothing to worry about and everything
4 was gonna go through with a breeze.” Modest acts sufficed, as illustrated in Fayth’s statement:
5
6 “a letter is impersonal ... but if they call you and tell you, well this is what’s gonna happen, or I
7
8 will be calling you back ... it shows a person that they care.” She went on to describe strong
9
10
11
12 communication:

13
14 I don’t know how to explain it. ... I’m from the country where everybody talks,
15
16 you know, to each other. You know your neighbors, you know the people down
17
18 the road... And so it’s sort of like a family in some sense, so you want your
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20 attorney to treat you somewhat like family. He knows that you care, and that you
21
22 care about him, and he cares about you and your case.
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26 While demonstrations of care need not be extravagant, they should be convincing. As
27
28 Josey stated, “I want them to actually care about your case and ... about the details instead of
29
30 just blowing through it as another case that they got on their docket or whatever. ... or at least
31
32 present themselves like they care about your case. If they don’t, that’s their issue but make me
33
34 think that you care about it.” Harold offered additional detail on the importance of creating a
35
36 sense of caring, reasoning that if lawyers “can present themselves with like they really wanting
37
38 to help, I think people will open up more to them and they will have a better communication
39
40 level and relationship with each other.”
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44 Participants also suggested that attorneys should show an empathetic “read” of clients by
45
46 responding to individualized client needs. Eric stated that attorneys “should try to listen to the
47
48 client a little bit more and see where they’re coming from and try to put themselves in your
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50 shoes.” Miles said attorneys should “try to communicate with them [clients] on their level ...
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53 sometimes you have to break things down in plain English so the client may be able to
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3 understand.” Josey urged public defenders to remember that they “are serving the community”
4
5 and “to keep their sense of public service” in their work.
6
7

8 Several participants expressed how making a connection with their attorneys produced a
9
10 smoother communication process. They used phrases such as “me and my lawyer saw eye to eye
11
12 on things” (Cole) or “basically just, we clicked” (Omar) to convey the ease of their interactions.
13
14 Other participants described a sense of being treated humanely or not. Humane treatment
15
16 involved being seen as an individual and as a person during communication. Often this involved
17
18 simple gestures, such as asking “How are you doing today?” (Fayth) or making eye contact
19
20 (Keasia). Brendon described poor communication as feeling that “you [the attorney] a cow
21
22 herder and I’m the cow. I’m gonna get you through this system as quick as I can before I move
23
24 to the next one.” Dehumanization may also involve seeing the person as their charge or criminal
25
26 history. Harold shared that attorneys may not even know the client’s name: “a lot them don’t
27
28 have a relationship with [their clients] ’cus they have a lot, so it’s kind of hard for them to
29
30 remember and kind of be like, ‘Oh, you were the murder trial. Or the kidnapper?’ You don’t
31
32 want them to come in like that.” Similarly, Isaiah was encouraged to make a plea deal though he
33
34 felt “you [the attorney] don’t even know the nature of the case, you haven’t even asked me what
35
36 happened or you automatically want me to plead out to it. And his excuse was, the judge is
37
38 gonna look at the history[.]” Thus, participants experienced attorneys as failing to see them as
39
40 part of a larger story, and as failing to present that narrative in court.
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46 47 **Agency**

48
49 The theme of agency emerged from participant accounts of their responses to
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51 dissatisfaction over attorney-client communication. These responses involved three spheres:
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53 counsel choice; managing communication; and system interventions. The responses varied
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3 widely. Some participants described themselves as subjects of decision-making and action by
4
5 others. A few described their roles in terms of deference or cooperation despite communication
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7 problems. Others expressed a sense of resignation or perceptions that intervention would be
8
9 futile. Several explained their strategies for maximizing limited opportunities to communicate,
10
11 while still others intervened by firing uncommunicative counsel.
12
13

14
15 **Choice of counsel.** Several participants described assignment of counsel as a matter
16
17 outside of their control. Cole stated, “I’ve always had good turnouts ... I guess that’s just luck of
18
19 the draw with public defenders.” Nico described attorney assignments as a gamble: “This guy
20
21 ... might jump through a hoop for you. And this guy here might never return your call. Now
22
23 they’re both through a public defender’s office, so you’re in there rolling the dice. [Don’t] let
24
25 me get Joe, Let me get Bob.’ Boom. ‘Oh shit, I got Joe!’” Nina agreed, stating “you just get
26
27 whoever they give you, you know.”
28
29

30
31 A few participants revealed that they demanded a new lawyer when assigned counsel did
32
33 not communicate with them. Brendon described meeting his attorney for the first time in court,
34
35 being handed a card and told to call the attorney after the proceeding, and responding by
36
37 insisting on a different lawyer or the opportunity to proceed *pro se*. He described his response in
38
39 some detail:
40
41

42 It’s like, ‘You haven’t even heard my side of the story or nothing. You just, this
43
44 what you want to do.’ Which just kinda make me like, ‘Okay, I don’t want to deal
45
46 with you because all you’ve heard is what they said and you tryna make me make
47
48 a snap decision off of what they said. You not even asking me my opinion, what
49
50 happened, getting my side of the story.’ I told him then, ‘I don’t want this public
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52 defender, I’d rather just defend myself. ... if I feel like I really didn’t do it, I’m
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3 innocent, how you gonna have me come here and be like ‘well they said 18
4 months, what do you want to do?’ Like, ‘I don’t want to take that, I didn’t do
5 nothing, like you haven’t even been in to see me!’ So that’s a real bad side. Like I
6 said, I know they busy. I feel like if you that busy, then don’t take on so many
7 cases, like I don’t know how they system work or how they get paid or how many
8 cases or whatever, I have no idea. But to me, it just seems like you taking on more
9 than you can handle and if that’s the case then why even do it? You not being no
10 help to nobody. ... if I ever got in trouble and they gave me an option, no. I don’t
11 want him ... No, he ain’t for me. No. I’ll go in here and ask for a continuance
12 because I want another public defender.
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26 Lamar described taking similar action when lack of communication led to conflict over case
27 strategy:
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31 And I know one of my public defenders, he wanted me to do something that I
32 didn’t want to do and like I told him, ‘That’s not what I asked you to say. I asked
33 you to say this, not that.’ And I had to fire him right there in the court house ... If
34 I would’ve known what he had planned, and if I wasn’t okay with it, then I
35 would’ve told him like, ‘Nah, I’m not okay with that. We need to find another
36 solution,’ but because I was locked up, wasn’t out on bond, I had no way of
37 communicating with him. And when I did go to court, and he just sprung that on
38 me, and it was like, ‘No, I don’t want to do that, you’re fired.’
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49 Other participants responded differently to such problems. Nina reported being unable to
50 understand her lawyer, perhaps in part because they were of different ethnic backgrounds: “I
51 never met nobody, I just had a court date, dude walked up to me with some (Chinese man) ... I
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3 couldn't understand nothing he said. We went in, and came out, and I had probation. Like, I
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5 don't know what happened, I don't know what he said, it was ridiculous." Miles also stated that
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7 "there's been times where I haven't been able to understand those options, but I go ahead and
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9 agree with what it is that my attorney intends to do, so I was trying to make his assistance to me
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11 as effective as he could, as effective as he can, as his client." Miles reported an even more basic
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13 problem: being in jail for 49 days and unable to call his lawyer because "I didn't know how to
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15 operate the telephones that good. And so I couldn't do anything but just wait." The lawyer never
16
17 spoke to Miles until they met in court.
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21 **Managing communication.** Other participants described working within the system to
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23 improve communication with their assigned lawyers. Eric explained that he took control of the
24
25 first encounter:
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28 I got right to the questions I had to ask ... I kind of went in there and took charge
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30 because it's mainly about me, it's not his problem that I'm here, it's my problem
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32 that I'm here ... I wanted to know what he knew and how he was gonna help me.
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34 So like I wanted to pick his brain ... you're gonna get in trouble if you don't ask
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36 the right questions and don't know the right things to say[.]
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40 In a similar vein, Harold commented that his attorney "better use our time efficiently"
41
42 because of the short time available. Harold intentionally refrained from personal talk, such as
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44 asking his attorney about family, so that "the little five minutes we get" could be focused
45
46 exclusively on the case. He also prepared notes ahead of time so he could communicate all his
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48 case details in writing to his attorney in the short time available. Nico used a similar approach to
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50 squeeze himself into the communication process. When he shared this strategy with other
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52 members of the group interview, they saw it as a valuable way to make the system work better:
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3 So I've had so many, and this is going way back, so many negative experiences
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5 due to lack of communication. And I've gotten to the point to where I write
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7 everything down on a piece of paper and give them a whole bunch of notes, that
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9 way 3 minutes before court, "Here. ... Read this."

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12 Nina responded, "That's smart," and Nariah exclaimed, "Oh, good idea! ... Never
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14 thought about that. ... I'm gonna do that[.]"

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16 **System interventions.** A number of participants described public defense in ways that
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18 echoed structural problems described in the earliest literature. Nelson reported his experience
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20 that cases with public defense representation were over before they started: "You go in there
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22 with a public defender, you getting some time. Flat out. ... you gonna basically get all your time.
23
24 Or if not all your time ... you might as well get all of it." Nico described appeals in similar
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26 terms: "And your only recourse at that point is to file an appeal under ineffective counsel ...
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28 'Hey this guy didn't do this, that, and the other. He should've called this witness and he didn't.'
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30 So you've got that right to appeal now, but ... by the time you appeal, you've done your time
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32 and you're leaving anyway." Nico also described being left without recourse when his
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34 government-paid lawyer offered a better outcome in exchange for a \$500 fee, which Nico
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36 viewed as "blackmail." When another group interview participant asked, "Can they do that?"
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38 Nico responded, "No, but they do it anyway. What are they gonna say if I go in there and say
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40 'Hey man, this guy just asked me such and such.' And then who am I gonna tell 'cus I'll be in
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42 prison? ... I'm done with it, go lay down."

43
44 Other participants offered a different perspective by describing participation in this
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46 research as a way to push for productive change. When the interviewer thanked Brendon for
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48 participating, he responded, "Oh yes. I kind of want to, like, 'I'm going down there and I'm
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3 telling them about this.” He thought the project would “help build a stronger bridge” between
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5 defenders and clients. Another participant advised researchers to expand the project by working
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7 with different age groups, and with incarcerated as well as unincarcerated people, to avoid
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9 “limiting the amount of information that you could gather from your study.” Yet another asked,
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11 “will there be something done about” the issues reported, “Or at least try? Because after speaking
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13 with a few friends, I’m not the only one who goes through this.”
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17 Several participants also offered specific recommendations for improving attorney-
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19 communication in public defense. Nico said: “I think that you should be like, by law, allotted a
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21 minimal amount of time with your attorney. Not three minutes, to be like you’re allotted ten
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23 minutes to talk to this guy prior to your appearance in court.” Derrick argued that regular contact
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25 should be both mandated and documented, particularly when clients are incarcerated:
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27

28 I think they should go to the jail more. There should be a sign-in sheet for every
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30 attorney. Meaning if you got this guy’s case, you have to sign in saying at the
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32 justice center and in your office, whether it’s on the computer or the time and
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34 date, stamped in, saying I went to see this person, at least this many times before
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36 my court date.
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40 Isaiah indicated that systematic problems require a systematic solution: “I know each attorney
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42 down here has a case load, so I wish that ... the actual public defender’s office wouldn’t assign
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44 so many to one attorney because it was hard for him to get back to me.” Nico summarized his
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46 position by proposing that lawyers adopt a principle of treating all clients well, even in the
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48 context of public defense. He explained, “You know, like a doctor’s got the Hippocratic Oath or
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50 whatever. He’s not supposed to hurt nobody. And lawyer’s got confidentiality, but he should
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52 have something similar to the Hippocratic Oath.”
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Discussion

Our qualitative thematic results shed new light on the experiences, perceptions, and priorities of people who need public defense representation while corroborating some findings from prior studies. This research also offers new insights into the role and meaning of client satisfaction as a measure for public defense research and into the application of theory, including procedural justice theory (PJT), within this research field.

Table 4 summarizes how the themes and subtopics identified in our analysis compare to past research that examined aspects of attorney-client communication. The four most common points of intersection across studies include defendant concerns regarding the point in the process when communication occurs (promptly and not in the few moments before plea entry) and the content of communication (information sharing, voice, and empathy). As prior research has discussed, PJT accounts well for the relationship of these process-oriented factors to defendant satisfaction. New themes, or themes that appear more rarely in prior research, include the importance of communication frequency, accessibility of different communication modes, and defendants' exercise of personal agency. Again, PJT accounts well for themes of communication time and type by highlighting the importance of iterative and readily accessible communication to satisfaction.

[INSERT TABLE 4 ABOUT HERE]

Consistent with recent survey-based studies of public defense (Campbell et al., 2015; Sandys & Pruss, 2017), a majority of participants in this research expressed satisfaction both with public defender performance generally and with most measures involving communication. Our results, however, underscore the complexity that underlies the concept of satisfaction. Majority expressions of satisfaction may reflect the tendency of satisfaction surveys to elicit

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3 positive response bias. Moreover, as Casper (1971) noted, research needs to distinguish between
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5 satisfaction and resignation. Our results show that people who need public defense continue to
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7 experience the longstanding gap observed between the promise offered by the law on the books
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9 and the reality of the same law in practice. At their worst, public defenders are still experienced
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11 by some clients as conduits of prosecutors' last-minute plea offers. These degraded expectations
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13 and aspirations, and the implications for the utility of client satisfaction as a measure in public
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15 defense research, may best be illustrated by one participant's reform proposal: that public
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17 defenders should be required by law to talk to their clients for a minimum of ten minutes before
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19 court.
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24 We also found the theme of agency to be an outlier when attempting to account for it
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26 through PJT constructs. Legal consciousness theory (LCT) offered a better fit by predicting
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28 diverse experiences with law that include manipulation and opposition alongside selective
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30 compliance (Ewick & Silbey, 1998; Silbey, 2005). For example, some participants in this
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32 research worked within existing constraints by writing notes, directing topics of discussion, and
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34 sharing these insights with one another in order to maximize the limited attorney time and
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36 attention they expected to receive. Others viewed participation in the research itself as an
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38 opportunity to reshape experiences with law at a systemic level. Firing appointed counsel in
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40 response to lack of communication disrupts efficient case processing by the courtroom work
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42 group. The same act might be interpreted as an exercise of a nascent right to choose counsel.
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44 These data complement PJT-informed insights by revealing a range of responses to the austerity-
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46 driven institution of public defense. Those responses reflect what Silbey (2005) describes as
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48 hegemony—a "givenness" that leaves systemic and structural characteristics unnoticed and
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50 uncontestable—as well as resistance and pressure for change.
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Limitations

This study has several limitations. These self-reported data are not supplemented by direct observation of attorney-client communication or other documentation of behavior. Recruitment time and location were limited and transferability of the results to other contexts should be undertaken with caution. As is true of most studies, voluntarism may implicate response bias. Our interview prompts, designed in part to generate data useful to the public defense agency, asked directly about satisfaction, procedural details on communication type, and attorney conduct. Different information might have emerged on those topics if we had used different interview prompts. Despite these limitations, we believe the findings presented here offer important new insights to the field of research on public defense.

Implications

Our exploratory qualitative research sought to expand knowledge of defendant experiences and perceptions with attorney-client communication in public defense. Our results also offer insight into the development and application of theory in a relatively young research field. More specifically, we view the development of theory in this field as intertwined with the iterative refinement of conceptual definitions, evaluation measures, and related policies. Our results indicate that procedural justice and legal consciousness theories offer potentially complementary frameworks for analysis as well as potentially fruitful points of tension. This complementarity and tension is illustrated in two general areas that invite further research.

The first area of needed research aims at generating measures and tools to improve attorney training and performance evaluation, with the further goal of improving communication, investigation, advocacy, and case outcomes (Sandys & Pruss, 2015). Our results raise questions about the extent to which the growing emphasis on client counseling skills in legal and

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3 professional education and turns toward client-centered, collaborative, or holistic representation
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5 have affected, and can effect, the quality of attorney-client communication in public defense.
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7 Research should examine the degree to which such efforts operationalize the consensus among
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9 researchers on strategies for improving attorney-client communication and, if not, the role of
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11 resource deficits in impeding such efforts. Related questions include whether existing tools and
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13 measures for evaluating communication translate well into the public defense context, and
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15 whether it is feasible for research to supplement qualitative and survey data with direct
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17 observation or other documentation of participant behavior.
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22 At the same time, our results revealing exercises of participant agency invite further
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24 investigation into whether and how public defense clients can exert pressure to improve attorney-
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26 client communication and related training, as well as whether that pressure can help to correct
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28 imbalanced attorney workload-resource ratios (Labriola et al., 2015; Luchansky, 2010),
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30 institutional cultures (Eldred, 2012), and longer-term system outcomes (Davies, Lopes, & Clark,
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32 2019). Ideally, such investigations would apply community-partnered research methods
33
34 (Coughlin et al., 2017; Houh & Kalsem, 2015) to examine factors that lead public defense clients
35
36 to demand more and better communication with their government-paid lawyers. Research should
37
38 also assess the efficacy of community organizing, including the sharing of information about
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40 defendant rights and attorney duties, in promoting improved practices and outcomes (MacArthur,
41
42 2018, <https://www.macfound.org/fellows/1014/>; Moore et al., 2015). Through such efforts,
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44 research can refine the role and definition of client satisfaction in public defense as a
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46 contribution to theory development and the field's utility for practice and policy formation.
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For Peer Review

ATTORNEY-CLIENT COMMUNICATION IN PUBLIC DEFENSE

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Table 1

Self-Reported Participant Characteristics by Recruitment Site

	Public Defender Office (N=14)	Expungement Clinic (N=4)	Reentry Office (N=4)	Total (N=22)
	<i>n</i>	<i>n</i>	<i>n</i>	<i>n (%)</i>
<i>Demographics</i>				
<i>Age Groups</i>				
20-29	4	1	1	6 (27.3)
30-39	5	1	0	6 (27.3)
40-49	3	2	2	7 (31.8)
50-54	2	0	1	3 (13.6)
<i>Biological Sex</i>				
Male	8	2	4	14 (63.6)
Female	6	2	0	8 (36.4)
<i>Race</i>				
African American/ Black	7	3	2	12 (54.5)
Caucasian/ White	6	0	2	8 (36.4)
Other	1	1	0	2 (9.1)
<i>Highest Educational Attainment</i>				
Some High School	4	1	0	5 (22.7)
High School Graduate	3	1	1	5 (22.7)
Some College / Trade School	4	1	3	8 (36.4)
College Graduate	3	1	0	4 (18.2)
<i>Carceral Involvement</i>				
<i>Most Recent Case</i>				
Felony	3	1	1	5 (22.7)
Misdemeanor	11	3	3	17 (77.3)
<i>Previous Experience with Being Charged</i>				
First case/charge	4	4	1	9 (40.9)
One prior charge	3	0	0	3 (13.6)
Two or more prior charges	7	0	3	10 (45.5)

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Table 2

Quantitative Results for Survey Items

	Number of responses (<i>n</i>)	Agree (%)	Neutral (%)	Disagree (%)
Overall, I am satisfied with the way my attorney handled my case.	22	63.6	27.3	9.1
My attorney told me about everything that could happen.	22	68.2	13.6	18.2
Every time my attorney met with me, we focused on my case.	21	66.7	19.0	14.3
My attorney explained what the consequences were for each possible outcome of my case.	21	61.9	19.0	19.0
My attorney listened carefully to what I said.	22	59.1	18.2	22.7
My attorney investigated my case.	21	52.4	14.3	33.3
My attorney always used our meeting time efficiently.	21	47.6	19.0	33.3
My attorney asked for my opinion on issues regarding my case.	21	47.6	19.0	33.3
My attorney wanted to know all of the details of my case.	22	45.5	22.7	31.8
My attorney looked into the prosecutor's evidence.	21	42.9	42.9	14.3

Note: Scale items from Campbell et al. (2015); results collapsed from 5 to 3 Likert scale categories as done by Campbell et al. (2015)

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Table 3

Summary of the Major Themes and Subtopics about Attorney-Client Communication

Theme	Subtopics
Time	point in process duration frequency
Type	mode accessibility
Content	information sharing voice empathy
Agency	counsel choice managing communications system interventions

Table 4

Comparing the Methods (Sample Size) and Communication Topics of the Current Study with Prior Research

	Moore et al. (current study)	Sandys & Pruss (2017)	Campbell et al. (2015)	Raaijmakers, et al. (2015)	Boccaccini & colleagues (2001, 2002, 2004)	O'Brien et al. (1977)	Atkins & Boyle (1976)	Casper (1971, 1978)
	interviews (22); survey (22)	survey (120)	survey (156); focus group (7)	interviews (1909); surveys (1909)	interviews (250); surveys (406)	interviews (49); ranking (81)	structured interviews (193)	interviews (72 [1971], 812 [1978])
Time								
point in process	✓		✓		✓	✓	✓	✓
duration	✓		✓					✓
frequency	✓						✓	
Type								
mode	✓							
accessibility	✓							
Content								
information sharing	✓	✓	✓		✓	✓	✓	✓
voice	✓	✓	✓	✓	✓			✓
empathy	✓	✓		✓	✓	✓		
Agency								
counsel choice	✓			✓				✓
managing communications	✓							
system interventions	✓							