

The Price of Justice:
Money, Fairness and the
Right to Counsel

Analysis of Focus Groups
on Indigent Defense

conducted for
the Open Society Institute and
the National Legal Aid and Defender Association

by
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Introduction

The adversarial nature of our justice system relies on the assurance that everyone who is accused of a crime is entitled to representation in court. Therefore, defendants who cannot afford an attorney are provided one at no cost. This traditional element of due process is of vital importance in maintaining fairness in the criminal justice system.

Today, however, the system of providing counsel through public defenders and court-appointed lawyers is in a weakened state. Public defenders and court-appointed lawyers are operating within dwindling budgets and resources. Public defenders find themselves not only needing to defend their clients against criminal charges, but also the value of their own role in due process.

In this context, the Open Society Institute (OSI) and the National Legal Aid and Defender Association (NLADA) asked Belden Russonello & Stewart (BRS) to investigate public opinions about due process and the role of lawyers who represent indigent criminal defendants. The project's goal is to begin to assemble the elements of a national message for educating the public about the importance of indigent defense in the criminal justice system. The long-term goal is to build greater public commitment to provide sufficient resources for public defenders and court-appointed lawyers.

With this in mind, BRS designed a set of eight focus groups to identify key issues that would resonate with the public concerning indigent defense. The research focuses on the values and attitudes that underlie Americans' opinions toward providing lawyers for poor people accused of crimes.

The inquiry uncovers public attitudes on a number of related topics:

- Is the right to an attorney in a criminal matter a fundamental Constitutional right that should be provided to all?
- How important is it for our country and our communities to financially support legal help for low-income people accused of a crime?
- What constitutes the right to “competent counsel?”
- What do people think of lawyers who represent poor defendants?
- Should lawyers for poor defendants have access to the same level of resources as prosecutors?

BRS conducted a total of eight focus groups in four locations across the country between May 30 and June 13, 2000. The groups were held in St. Louis, Dallas, Baltimore, and San Jose.

All participants in the groups were voters, regular news readers, and active in their communities. That is, they have written a letter to an editor, attended a town meeting, visited a public official, or engaged in some other community activity around an issue. These criteria were used because we believe when communicating on a social issue it is more effective to focus initially on those segments of the population that are involved and paying attention to issues generally, since they are more likely to influence others.

Each focus group represented a mix of ages, education levels, marital status, political party identification, ideology and income levels above \$30,000 a year. The groups were separated by race and ethnicity to promote candid discussions.

A table on the following page outlines the key demographic characteristics of the focus group participants.

A basic discussion guide was developed by BRS, with advice and help from Jo-Ann Wallace of NLADA and an advisory panel of public defenders and other legal leaders. Although the basic outline of inquiry remained consistent across all the groups, the guide was altered slightly in each location to include specific references to local issues. For example, the groups in Dallas included an extensive discussion of court-appointed counsel because of the prevalence of court-appointed counsel in Texas.

The groups were moderated by BRS partner John Russonello, except for the African-American group in Baltimore, which was moderated by Donita Buffalo of Buffalo Market Research.

Composition of participants

	St. Louis	Dallas	Baltimore	San Jose
Male	8	6	8	8
Female	8	10	9	8
White	16	8	8	16
Hispanic	--	8	--	--
Black	--	--	9	--
25-35	5	6	5	5
36-54	9	8	10	6
55+	2	3	2	5
\$30k – \$50k	3	6	11	4
\$50k – \$74k	9	7	2	6
\$75k+	4	4	4	6
<HS/HS Grad	--	2	3	--
Some College	1	6	8	6
Tech/Voc. College	--	1	1	1
College Grad	9	6	3	8
Grad Degree	6	1	2	1
Democrat	6	4	10	7
Republican	3	5	2	2
Independent	7	7	5	7
Very Conservative	--	2	2	1
Somewhat Cons.	3	5	7	3
Middle of Road	9	5	5	5
Somewhat Liberal	4	4	2	7
Very Liberal	--	--	1	--

This report begins with an executive summary and conclusions, followed by detailed findings. This analysis contains a section on public opinion on indigent defense, and our findings on values and attitudes that underlie decisions about public defender programs. Next, we explore the range of opinions toward public defenders. While we uncover some barriers to action, we also discover some ways to overcome those barriers, including reactions to messages about why it is important to financially support public defender programs.

In using this analysis, readers should keep in mind that focus groups are qualitative research and are not intended to quantify public attitudes on issues. Our purpose is to look closely at attitude formation and to discover the range of opinions and beliefs on the topics at hand; the different ways in which people react to specific pieces of information; how they evaluate information; and the judgments that people reach based on that information.

Executive Summary and Conclusions

...why should the prosecution be allowed to spend all their money to prosecute and the defense be given a warm body and a legal pad. – *Caucasian Man, San Jose*

Recent media coverage of the death penalty, racial profiling by the police, and the legacy of the O.J. Simpson trial have created a public atmosphere that is primed for a message concerning the need to increase resources for indigent defense.

In the summer of 2000, BRS conducted eight focus groups to begin to uncover Americans' opinions of indigent defense. Our objective was to aid in the development of communications that will demonstrate the need to strengthen the institution of indigent defense. The focus group research found voters holding a strong appreciation for the right to counsel as the bedrock of American due process. They do not speak of a right to counsel as some vague and irrelevant legal notion, but rather as a crucial point in our Constitution that ensures criminal justice for all Americans. These attitudes are rooted in a deep belief in the value of fairness. Currently, many believe this value is violated by the criminal justice system – a system they criticize for its unequal treatment of people of different economic means.

These voters express support for a strong system of indigent defense. However, this support is tempered by their negative opinions of the criminally accused and a lack of desire to *increase* funding to a system they see as already flawed.

The task ahead is to build upon the public's desire for fairness in the criminal justice by educating Americans about the need to make a strong and well-resourced indigent defense a reality.

Key Points

The following is a summary of key points that emerged from the discussions. They are followed by conclusions on how to build support for increasing resources for indigent defense.

Opinions of the criminal justice system and right to counsel

1. Voters in the discussion groups recognize the current imbalances in the criminal justice system. Participants point out disparities of treatment between rich and poor due mainly to different levels of legal representation. They express a great deal of concern over this perceived lack of fairness in the system.
2. Almost all the voters in the discussions support the right to counsel as guaranteed in the Constitution. Most view the right to counsel as an integral part of due process.

Voters offer several reasons why they believe it is essential that society provide lawyers to low-income defendants:

- Fairness dictates that everyone has the basic tools to defend himself or herself.
 - The desire to prevent innocent people from being convicted.
 - A desire to live in a fair and just society, with a legal system that has integrity.
 - The belief that society must have rules and the right to counsel reinforces that we have rules of due process.
3. To most of these voters, the right to counsel means the right to a competent, experienced lawyer who has the necessary resources to defend the accused. These resources include: expert witnesses, investigators, labs, and DNA testing.
 4. While most of these voters espouse the principle of presumed innocence, they also acknowledge that when they see or hear about a person arrested for a crime they assume guilt rather than innocence. This assumption of guilt by the public is a barrier communications will need to address.

Ensuring fairness in the criminal justice system

5. The value of fairness runs deep in America. The lack of resources for indigent defense and the disparity between defenders and prosecutors are seen as violations of that value and the fundamental right to due process.
6. A system of public defenders or court-appointed lawyers is considered critical to ensuring fairness in the criminal justice system.
7. Messages to convey the need for indigent defense are persuasive to the voters in the groups when they offer a simple appeal to fairness. These messages are:
 - *The quality of justice a person receives should not be determined by how much money a person has.*
 - *Public defenders are needed to prevent innocent people from going to jail.*
 - *The right to counsel is a fundamental Constitutional right that is necessary for a fair and reliable determination of guilt or innocence.*

A fourth message, appealing to the value of self-preservation, was also very popular in the groups – *the idea that some day you or someone you know may need a public defender.*

8. Messages that suggest public defenders should help fix social problems by making their clients productive members of society and that the criminal justice system relies on public defenders are less appealing to many of these voters. Most do not want to see an expanded role for public defenders. Rather, these voters believe public defenders should focus on criminal justice not social work.

Improving the system

9. Many of the voters in the focus groups are moved by information that documents disparities of resources between public defenders and prosecutors. Many believe that public defenders and prosecutors should have the same resources.

10. Many of these voters support national standards for allocating resources and establishing maximum workloads for defenders and prosecutors as a way to ensure fairness in the system. Most participants in the focus groups would like to see these standards administered by state or local governments.

11. Even though the voters express a strong desire to ensure fairness in the system, they worry about the fiscal and criminal justice implications of giving public defenders a “blank check.” Many do not want to pay more for increased resources, and others are concerned that providing too many resources may result in longer trials, stalling tactics by defenders, and less punishment of the guilty.

These voters want defenders to have about the same level of resources as do the prosecutors, in order to ensure fairness. But, most believe this can be accomplished by shifting resources from prosecutors to defenders and having judges set limits on the resources defenders have available to them.

Conclusions

The focus group discussions lead us to make several assumptions about the elements of a national message to educate the public about the importance of indigent defense in the criminal justice system and to build greater public commitment to providing resources for public defenders and court-appointed lawyers.

1. Consistently focus on the value of fairness and equal justice for all Americans. Talk about the right to counsel and how that right is currently violated because of a lack of resources and heavy caseloads.
2. The value of fairness is most effectively invoked through examples of economic inequalities. However, messages may also speak to protecting the innocent and ensuring a fair society to illustrate the need for indigent defense.
3. Because the view of many voters is that those arrested for crimes are “probably” guilty, communications need to remind the public that defendants have only been “accused” and have not been proven guilty.
4. Describe the unfairness of resources and caseloads of public defenders compared to prosecutors across states and systems to make it clear that these disparities have serious consequences for people and our sense of justice.
5. When describing the need for indigent defense resources, it is less compelling to talk about dollars and cents, and more relevant to describe what the money will buy – expert witnesses, DNA tests, etc.
6. Communicate about the talent and dedication of public defenders. The goal should be to build up the image of lawyers representing low-income people. As Americans hear more and more about the unfairness in the criminal justice system, the shortcomings of our system of indigent defense are becoming more apparent. Information about failures of the system will ratchet up concern, but at the same time we cannot move forward without defining public defenders as capable professionals who can deliver for their clients.

Detailed Findings

A. The context of indigent defense

1. *Americans hold low opinions of the criminal justice system*

Communications on indigent defense will be heard in the context of the public's concern about crime and its views of the criminal justice system. Therefore, before examining opinions toward indigent defense, it is useful to review some of the opinion data on crime and the justice system – the public's concerns about crime, how well the public believes the system works, and perceptions of its failings.

Both qualitative and quantitative research conducted by BRS over the past few years for OSI, the ACLU, and the Youth Law Center find that the American public is continually worried about crime and is less than satisfied with the criminal justice system.

While the public is beginning to believe that crime is down, perceptions lag somewhat behind reality. The percentage of Americans who think crime is increasing dropped from 74% in 1994 to 53% in 1996, to 38% last year¹. In focus groups, we hear the refrain that "crime generally is probably down," but violent crime and crimes by juveniles are on the rise. Crime, therefore, continues to be a central concern of the American public.

In the discussions, some of the voters acknowledge the sensationalization of crime by the media and believe that their views of crime may be exaggerated by what they see on television. However, this recognition of the media's role in shaping their views does not dampen voters' concerns about crime, especially concerns over violent crime.

¹Belden Russonello & Stewart for the Youth Law Center: April 1999 and CBS News and *New York Times*: January 1996 and 1994

I hear that the crime rate is going down but the nature of the crime is getting worse. – *Caucasian Man, Dallas*

I would say [crime is] down except for heinous crimes seem to be on the rise. – *Caucasian Woman, San Jose*

Because you're hearing more about... You had the drive by shootings and you know that was such a big deal in the news for so long that the nature of the crime... it's being inflicted on children now and there is more group crime... going in and taking-everybody-with-you type crime. But I think your average stabbings and shootings, those are probably the same ... I think those types of crimes are down. – *Caucasian Woman, Dallas*

The first part of every TV news broadcast seems to be whatever awful thing happened. Even though they say the statistics say it's down. – *Caucasian Woman, San Jose*

I think that the crime rate has been going down but what crime there is it seems like it is sensationalized much more, the media, we have 24 hour constant non-stop news coverage. Seems like what crime there is, is really in your face. I think that overall stats say it is going down. – *Caucasian Woman, St. Louis*

Underlying much of the concern about crime is a general lack of confidence in the criminal justice system. Many Americans believe the system is too slow, too lenient, and too uncertain in its punishment.

Our national surveys show:

- Nearly half of Americans (46%) rate criminal justice system poor or very poor. Only two in ten (17%) say excellent or good, and over a third (36%) say fair.
- Seven in ten (71%) say convicted criminals are not punished enough.
- Another seven in ten (69%) do not believe criminals sentenced to life imprisonment without parole actually remain in prison.²

In the focus groups on indigent defense, participants elucidate these survey findings. They expressed little faith in the criminal justice system because they believe it is too lenient and serves as a revolving door with no rehabilitation for people who commit crimes. In particular, these voters point to the use of plea bargains and parole as examples of how the system is not working to punish criminals or to protect society.

I think the DA's try and make bargains more than go for convictions. – *Caucasian Man, San Jose*

I said that [criminals] are treated too lenient. Something just happened in the news. One of the rap stars, they dropped the charges of drug possession and made him serve a small amount of time for some other smaller charges. I think that generally...they tend to plea bargain a lot just to get convictions. – *Caucasian Man, San Jose*

As we will discuss, however, many of these voters also believe justice is not being administered fairly and express concern for those *accused* of crimes, especially low-income defendants.

Therefore, while these voters want to see swifter and more certain punishment for criminals, they also want the system to be fair and just. These opinions of the criminal justice system are key in understanding attitudes toward indigent defense and in developing effective communications.

² Belden Russonello & Stewart for the ACLU: June 1998

2. *Mixed views on the accused*

Most of these voters want to safeguard against prosecuting the innocent. They struggle, however, with how to accomplish this task and, at the same time, ensure that the guilty are punished. For example, while they deplore specific examples of unfairness that make the news, they themselves are likely to believe a person who is arrested is probably guilty. Many of the voters think an arrested person is probably guilty because the police are required to amass a great deal of evidence in order to make the arrest.

Innocent until proven guilty is a legal concept and it's sometimes difficult to accept. Common sense tells you the person did it. There is evidence the person did it, but the legal principle is innocent until proven guilty. That's hard to live with sometimes because that is a tough standard, but that is the standard. That's the principle we operate by... – *Caucasian Man, Dallas*

Well in my mind when I watch TV and I see someone led to the courtroom in handcuffs whether they've been convicted or not, in my mind I'm thinking they did it. – *Caucasian Man, Dallas*

I don't know but what about all the people that are really guilty and because they do have these wonderful counsels who can talk them out of things, they get back out on the street again. We're talking about rights for the criminals but what about the rights for the people who are out there that are being hurt by the criminals that are getting out again? – *Caucasian Woman, Baltimore*

Well in my opinion if the prosecution has enough evidence to convict the person. They have blood samples that say this person was at the crime or whatever they have and they have enough evidence to take it to trial. If we know that they are guilty we shouldn't have the whole 6-month trial to begin with. I mean if they have enough evidence, present the evidence, we know he is guilty, put him in jail. Why have this month long trial and waste more money flying in evidence or whatever we have to do to help this defendant prove his innocence when we already have proof that they are guilty. – *Caucasian Man, Dallas*

I'm not exactly sure how it all works. As far as I'm concerned, the way I view it is that they're guilty. That's just how they're going to be viewed. Maybe the criminal justice system treats them fairly but I can bet you any amount of money that a lot of cops and a lot of other people that are out there on the beat think that those people did it. Unless they're proven innocent, they're going to be considered guilty. – *Caucasian Woman, Baltimore*

3. *Perceived lack of fairness in the system*

Americans do *not* need convincing that low-income people accused of crimes receive unequal justice. The public believes that there are inequalities in the justice system that center on access to quality counsel. Focus group participants cite the O.J. Simpson trial and current reports about the faulty administration of the death penalty as examples of how money and the lack of money for counsel result in injustice.

When voters in our most recent focus groups think about how we treat people who are accused of crimes, they immediately raise several issues:

- First and foremost is the feeling of unequal justice for rich and poor, directly related to a person's ability to hire a lawyer.
- Second, they feel that the news media convicts people with images and the presumption of guilt that accompanies those images.
- Finally, voters in our discussions express the view that minorities are treated worse than whites – a view offered mostly but not exclusively by black and Hispanic participants.

Regardless of race or ethnicity, these voters agree on one thing above all else – the criminal justice system treats people differently based on economic class. Voters raise this opinion spontaneously in all the discussions of criminal justice.

Economic inequality

I guess you've got to put it in categories. If you've got money you [are] treated probably pretty well. If you're poor then you're screwed. – *Caucasian Man, San Jose*

[How a person is treated in the criminal justice system] depends [on] who they are, how much money they have, who is their attorney, who they can buy as their attorney to get them off. – *Caucasian Woman, St. Louis*

I think we would like to believe that [people accused of crimes] are treated fairly, according to the Constitution. However, when we see a lot of high profile cases, it definitely appears that money and influence can have definite influences on the outcome. – *Caucasian Man, St. Louis*

And of course the more money you have it seems like the better representation you have. – *Caucasian Woman, San Jose*

Media's role

I do think if the media gets a hold of it, you are guilty and, you know, there is a burden on you to prove yourself innocent because sometimes these people just look so guilty and so obvious that they are guilty and I think when the media gets a hold of that, you tend to go along with that. – *Caucasian Woman, San Jose*

On the television, I think if you listen to their voice inflection, if they have a way of making it... sit up and listen because they are not reporting it as news, they are making it sensational. They are putting a perspective that they want us to perceive, not reporting. – *Caucasian Woman, San Jose*

The media has just gone a bit too far with constantly repeating and repeating and drilling things into your head so that you have come to a conclusion about a criminal before they have even been tried. – *Black Woman, Baltimore*

Racial and ethnic bias

I think that African Americans are more likely to be stopped on the highway, and more likely to be a victim of police harassment...They stereotype us all the time. They think that if you are young and have a BMW or a Lexus then you are a drug dealer. They put some type of stigma on us as black people. We are more likely to get it than Caucasians. – *Black Woman, Baltimore*

It depends on who you are and where you are. It's probably ethnically related in certain parts of the country. Minorities in certain parts of the country get much harsher treatment. – *Caucasian Man, San Jose*

If you have a language barrier to begin with and you have two detectives or someone like that are Anglo, and you have a language barrier. Your English is good but their English is better...that does not make people guilty. But to other people it makes them not that innocent. And if you think close to booking and we have someone who fits the profile, who could have done the crime and they close it and move on. If a few people that are innocent get put away, so be it. They'll actually do it. And they use those figures to come back and say our crime rate is going down, we're putting bad people away. I think it's organized, orchestrated, conscious decisions that they make. – *Hispanic Man, Dallas*

Helping to frame these views of unequal treatment is the legacy of the O.J. Simpson trial. In many focus groups on crime, we hear that if you have money, you can get away with murder and the example most often used is the O.J. Simpson trial.

It is a shame. I think you point out that economics plays a big part of our judicial system and, again, pretty much the O.J. trial brought it to light in my eyes as far as money will buy you a trial. I think it is a fact of life out there now. – *Caucasian Woman, St. Louis*

Well, and I think we are viewing it from two different ends and maybe this is my perception – I am sorry I keep going back to this O.J. Simpson trial, I keep thinking that – if you have that much money you can buy your way, you can buy a verdict. – *Caucasian Woman, St. Louis*

I think it is unfair to the people who can't afford it. O.J. Simpson can afford super-lawyers, but the average guy on the street can't. – *Caucasian Man, St. Louis*

Similarly, as Americans learn more and more about the unfairness in the administration of the death penalty, the shortcomings of indigent defense become more apparent. Many participants in the discussion groups raise the unfairness of how the death penalty is administered in Illinois and Texas to illustrate how the criminal justice system is flawed and biased against the poor.

In the short term, this information can raise the urgency to stop gross cases of unfairness, whether it is allowing judges to appoint lawyers who offer no real defense of their clients or placing a ridiculously low limit on the amount of resources that can be spent for indigent defense. However, the information can also do damage by reinforcing the image of public defenders as less than professional and as undesirable counsel. Under these circumstances, Americans may not have enough confidence to do more than the minimum and may be more willing to reduce the funding to indigent defense.

The recent developments in Illinois and Texas also send a signal to people that police and prosecutors sometimes make mistakes and that maybe not everyone accused of a crime is guilty. However, there still remains a current of opinion in every focus group that someone who is arrested is probably guilty because the police are required to amass a great deal of evidence in order to make the arrest.

As noted earlier, this assumption of guilt is one of the biggest obstacles facing communications on indigent defense.

I just keep thinking of that case in Texas where ... the defender was sleeping through the trial. I just don't understand why people didn't get outraged... How can that be allowed? – *Caucasian Woman, San Jose*

On CNN today they talked about how out of 100 cases that they studied, 61 of them were overturned because of faults in the case. 61 appeals from things like your attorney was intoxicated to just that he was incompetent. And this is somebody's life that you are talking about. – *Black Man, Baltimore*

And then when they came out with the DNA evidence, that shook up the legal system big time because with DNA they went back and they saved five people from serving jail time or from not being killed because there was a flaw. – *Black Man, Baltimore*

Well in the paper recently there's been a lot, I think there have been eight people from the state of Texas who have been released from death row because of DNA evidence... that is scary to think when they were prosecuted there was overwhelming evidence to convince the jury to convict. – *Caucasian Woman, Dallas*

B. Right to counsel

1. Right to counsel is the bedrock of due process

When asked to name the rights a person arrested of a crime has in the U.S., voters in the groups usually mention first “right to an attorney,” followed by right to remain silent, to speedy trial by jury, against self-incrimination, and right to know the accusations or charges.

Voters in our groups consider the right to an attorney a fundamental part of due process in our country.

The voters offer several reasons why they believe it is essential that society provide lawyers for poor people accused of crimes:

- Fairness dictates that everyone be given the basic tools to defend him or herself. Because the system has so many rules and customs of law, a basic requirement needs to be that everyone has an attorney to navigate them. As one participant stated, “we need to level the playing field.”
- Legal defense will hopefully prevent innocent people from being convicted.
- A desire for a fair and just society. Some voters express the opinion that Americans will have more faith in the justice system if we take steps to ensure reliable determination of guilt or innocence.
- Society must have rules and indigent defense reinforces that we have rules of due process.

When asked what would happen if the right to counsel was eradicated, voters offer both good and bad results. On the one hand, they believe we would have speedier trials and fewer lawyers. But, we would also have no sense of fairness, more prosecutors breaking the rules, less satisfaction that our system is fair, and more abuse of power by government. Consequently, in the minds of these voters, the negatives of doing away with right to counsel far outweigh any potential benefits.

Fairness

Our courts are adversarial so you got to have another side. That's the whole thing. You have to present your best case and they present their best case and a jury gets to decide which case is better in a nutshell. So if you don't have an attorney then it's going to be unfair to you. You're going to be at an unfair advantage if the district attorney is presenting a case. – *Caucasian Man, San Jose*

I think you should have an attorney all the way through the process...Like I said you won't get fair treatment all the way through there. Somebody there on your behalf make sure you get treated fairly. – *Caucasian Man, San Jose*

To level the playing field. Because not everybody is eloquent or is able to speak for themselves. – *Caucasian Woman, San Jose*

I think if I served on a jury that convicted someone if that person hadn't had access to a legal specialist, an attorney, that would weigh very heavily. To think that I was a part of that. I'd want to know that that person no matter what their income level had the opportunity to have a good representative, so that when I sat there in the jury box I got all the info that I should have. – *Caucasian Woman, Dallas*

... I think if you do not have representation for the accused in no way can you call it fair. Well plus, just in case they are guilty you want it to be legal and fair so it sticks and they don't walk. – *Caucasian Woman, Dallas*

Protecting the innocent

A person should have a right to an attorney especially if they are innocent, and they themselves know that they are innocent. They are faced with somebody who is bringing charges against them that can further disrupt their freedom, their right to make a living, or their right to even go home. A person, no matter what their circumstances, you need a mouthpiece -- someone who is familiar with the law to come to your aid as quickly as possible... – *Black Man, Baltimore*

Based on that I think that more people could already end up being the scapegoat, not that they already aren't. They could become the scapegoat for a lot more crimes. You want to make sure you're finding the right person and having justice. – *Caucasian Woman, Baltimore*

A fair and just society

If there is not a fair trial, we have to have respect for the courts. We have to respect the decisions of the courts and it wouldn't be fair if we [didn't have] representation... – *Caucasian Man, San Jose*

We're kind of protecting the law that's there that's keeping society together. 'Cause we have to respect that law and that law is being applied equally to all classes of people. – *Caucasian Man, San Jose*

I think as our society is set up I would say yeah it makes us feel better, because if he is accused and he is convicted, then we say, we did our part, I mean he had a defender. It clears our conscience as a human being. It all blends with this is equal type thing. – *Caucasian Woman, San Jose*

It is also giving the rights to our kids. It is an explanation of our culture. We have got this woman standing there with a scale, for goodness sakes; you would like to think that we have a culture of fairness and fair play and innocence. – *Caucasian Woman, St. Louis*

Societal rules

...We have laws and [without them] it would be anarchy wouldn't it? You thought you were getting a raw deal...[If] we saw just the poor guys getting convicted and all the rich dudes skating, you think there would be some type of anarchy? – *Caucasian Man, San Jose*

Because if a certain group of people of low income feels that they are not getting the same treatment as say a richer people or higher income people. Then of course the lower income people will take sides and rebel against the society or become hateful against authority and you can't have that... A revolution was spawned like that. – *Caucasian Man, San Jose*

2. *Defining the right to counsel: an experienced, well-equipped defense*

The voters in our discussions generally define the “right to counsel,” as an accused person’s entitlement to “competent” legal representation.

These voters define competent counsel as a lawyer who has:

- previously defended similar types of criminal cases;
- a reasonable caseload so that the he or she can spend the time necessary to prepare a defense; and
- the necessary resources to put on a defense.

Voters in St. Louis would also include an accused’s right to request or choose their own attorney from a pool when talking about the right to counsel.

It is very important to the voters in the groups that a right to counsel mean your lawyer should have access to the same resources – expert witnesses, investigators, labs, DNA tests and analysis – that prosecutors have to make a case.

I am [not] saying that I will get the best in the field. I am not going to send you to a gun fight with a water gun or a sling shot...if you need a criminal lawyer then you should get a criminal lawyer. That comes with being qualified in that area. – *Black Man, Baltimore*

I don't think that you can give someone counsel, or give someone a lawyer, and then not give them the tools required to perform their job. – *Caucasian Woman, St. Louis*

It's sort of like a doctor. You can't say, "Okay, we're going to give health care to the poor but not give them any needles or lab tests." You have to give them the tools to work and do the job. – *Caucasian Woman, Baltimore*

It should be an attorney that’s not overworked. That doesn’t have a real heavy caseload. Maybe have a couple paralegals that help him out. – *Hispanic Woman, Dallas*

You see I think that it means somebody with more than just a law degree. I think a law degree is the minimal requirement, but in order to establish effective counsel you need somebody who is going to develop an effective strategy for you. Whatever your case might be. – *Caucasian Woman, St. Louis*

Well if we're going to spend the money to even have the trial we should do it right. We're not 100% sure the guy's guilty, then we should make sure to do everything possible to prove that he is guilty or innocent. It's like building half a house. You want to build the whole thing. – *Caucasian Man, San Jose*

The only way for the DA to convict someone is to build the evidence against them so they have the resources to go out and collect the information and build a case. So in order for someone to fairly defend themselves they must present counter evidence to the case. And have the resources to do that. – *Caucasian Man, San Jose*

Yes I think they should have the right to an expert witness. All that the defense requires to be able to present its case. If it can't present every aspect of the case that is pertinent then it is not a fair trial. Because the state has access to everything that it wants to present. – *Caucasian Man, Dallas*

C. Impressions of public defenders and the system of indigent defense

1. Who are public defenders? Young, inexperienced, overworked

Thanks in large part to television dramas, public defenders are not an obscure group. Many Americans in our focus groups see them as young, inexperienced, and overworked, with fewer resources than they need. Sometimes, they are seen as dedicated and bright, but sometimes as less skilled or unable to handle a job in a successful private law firm. Public defender work is considered by some as an internship before entering a large firm.

According to these voters, the typical cases handled by public defenders mainly include drug cases but can run the gamut from vandalism to murder. Most of the voters in the groups perceive public defender clients as young, male, and uneducated.

My perception of the public defender is that they're green, right out of college, don't have any experience. It's how you get experience. – *Caucasian Woman, San Jose*

I am picturing a lot of folders and disheveled. I am not saying that the people are incompetent. I just picture a lot of work for them. – *Caucasian Woman, St. Louis*

It is like starting on fries and working your way to management. That is the way that I look at it. – *Caucasian Man, Baltimore*

If you're a public defender it's probably because you're not that good or you would be making the big bucks with the big firms and making the top dollars. – *Caucasian Woman, San Jose*

I have come across two public defenders that I can think of and they are both extremely passionate. I don't consider them overly experienced. They are basically fresh out of college. But they speak and they go with such a passion, they are like bulldogs. – *Caucasian Woman, St. Louis*

But don't you wonder, don't they make that choice to go into that line because they are good hearted and they want to help. Or do they go into it because no big firm dangled a big carrot? I mean that's kind of what I thought. – *Caucasian Woman, San Jose*

It varies. You can get a very good capable, qualified, excellent, court-appointed attorney. You could get one of the top defense attorneys to come in and be court-appointed to your case.... To me it's just a crapshoot. The attorneys that are in the pool for court-appointed attorneys are some very good defense attorneys. They do that basically because it is free marketing on their part. They come out on the courthouse steps and say I took this case for free, pro bono. I'm using my resources, my money. – *Hispanic Man, Dallas*

I think it's probably a stepping-stone in the process of being an attorney in most places. – *Caucasian Man, Baltimore*

I know that one of my friends just graduated from law school and she wants to be a public defender. She wants to help and she's very bright. It just depends. I think public defenders have a bad rap. I've never dealt with one. – *Caucasian Woman, Baltimore*

I have a good friend who is a public defender and it has a lot to do with him having a heart and wanting to make sure that less fortunate people do get a fair trial. – *Black Man, Baltimore*

2. *Some familiarity with the role of public defenders and court-appointed lawyers*

The focus group participants were relatively informed about the role that public defenders play in the justice system. Most believe defenders work as government employees, just as prosecutors do, and are assigned by judges to cases. Some in the groups, mostly in San Jose, believe that the decisions about appointment are not made by judges but by a rotation or some other system.

The Texans generally knew that their state has a system of mostly court-appointed attorneys, rather than public defenders. Most Texans in the focus groups endorse judicial appointment of lawyers. They reason that judges must know best the needs of the court, and that in small counties, where there is little crime government can save money by using court-appointed lawyers rather than paying full-time public defenders.

Coming from someplace other than Dallas I saw where the judge knew his area...He knows what is happening in his jurisdiction. He can appoint his council and knows what's going to happen. Now sure enough this business of corruption does exist but in a smaller poorer county, where this judge is having to come up with someone to defend this person, I think it's probably the best system available to them instead of having someone on the payroll constantly as a public defender who may or may not have but one case a year. So the judge then if you have this public defender in the county, can you justify having that person? Or is it better to have this judge say ok we've got five attorneys. He may live... 200 miles away from this guy but he's in our county so he's going to defend this person. And that's ok; he's the best they got. – *Caucasian Woman, Dallas*

Most of the focus group participants do not believe that public defenders should advocate on behalf of their clients, outside of the criminal process. They believe the public defender has enough to do in representing his or her client and should not be responsible for counseling clients or making sure they receive drug treatment or other forms of counseling.

The Caucasian women in San Jose and African Americans in Baltimore differed from other groups on this issue. These voters support an expanded role for public defenders in order to reduce the number of repeat offenders.

I think you're going to overload the public defenders if part of their package is to provide that and to provide that type of counseling or direction. I'm sure they have enough to do. – *Caucasian Woman, Baltimore*

I think the public defender's responsibility is really legal. If you want to have somebody working with these other problems you need somebody in social services or something like that, and try to work out problems there. – *Caucasian Man, St. Louis*

3. Information about the extent of disparity of resources raises concerns

Most of the focus group participants do not believe public defenders or court-appointed attorneys have the same level of wages, resources, or workloads as prosecutors. However, many do not expect large disparities between prosecutors and public defenders in terms of resources and workloads.

When these voters hear information about the real disparities that exist, they are alarmed and saddened, and some are angered. The statements read in the groups include:

- ***In general, lawyers who defend low-income people are only paid token amounts for their work and are routinely denied necessary expert and investigative assistance.***
- ***In Virginia, if a person is charged with a crime for which the penalty could be no more than 20 years in jail the maximum fee that a court-appointed lawyer can get to defend the person is \$265. If the sentence can be over 20 yrs – such as for rape or first-degree murder – the maximum fee paid to a court-appointed lawyer is \$845. For misdemeanor \$132. No matter how many hours of work the case might require.***
- ***Nationally, prosecutors' budgets are seven times that of public defenders.***
- ***In some Texas counties recently it was learned that judges were setting the fees for assigned counsel at \$250 if the case ended in a plea bargain, and \$100 if the case went to trial. [Only read in Texas groups.]***

For these voters, the above information reinforces their belief and concern in the economic inequality in our justice system.

The participants are most troubled by the lack of parity of *resources and caseloads* between defenders and prosecutors. Parity of wages is somewhat less important to participants because there is no agreement on how much is appropriate for either defenders or prosecutors to earn. While there is disagreement over the amount of money that should be spent on resources, participants share common views about the types of resources that should be available to both sides. These include investigators, DNA tests, and expert witnesses.

Some of the voters express concern about the conviction of innocent people and the expense of putting them in prison needlessly because of the gross inequalities in resources.

A few voters in the groups, especially in St. Louis and Dallas, find the disparities justified because they believe the burden of proof is on the prosecution, and therefore, the prosecutor needs more resources. However, this is a minority view expressed by a handful of voters.

...why should the prosecution be allowed to spend all their money to prosecute and the defense be given a warm body and a legal pad? – *Caucasian Man, San Jose*

Frankly I think that is horrible. I think that the same... I feel the same way about doctors who get paid more money by the insurance company if they run certain tests. I think that is horribly unethical. And I think it is built into hurt the low-income people if that is the way it really is. \$250 to plea-bargain, \$100 for a trial. – *Caucasian Woman, Dallas*

But [public defenders] get paid by the state too right? I mean it's state vs. state. That doesn't seem fair to me at all. – *Caucasian Woman, Dallas*

Looking at this discrepancy for me, it's amazing somebody [is] found innocent. – *Hispanic Man, Dallas*

That is probably why most cases come up guilty because they spend seven times as much money to prosecute these people as they do to defend these people. – *Black Man, Baltimore*

Considering what it's going to cost to put them in prison per year, it would be better to make sure they really belong there. – *Caucasian Woman, San Jose*

The other side is that you are spending so much money here to defend them but if you don't put enough money here to defend them and they end up in jail, how much money are we spending to support them in jail for the rest of their life. – *Caucasian Woman, St. Louis*

So, if we put more money here to defend the ones that are really innocent and they don't end up in jail, then we are not spending the money on the back end of supporting them for the rest of their life when they really are innocent but they didn't get the right defense here and then they end up in jail. We spend a heck of a lot more than \$850 dollars on them when they are in jail for the rest of their life. – *Caucasian Woman, St. Louis*

That's what galls me, sure, it's a dollar discrepancy. I mean if the prosecution is able to have \$7 and the defense can only spend \$1, you're looking at pennies on the dollar. I mean it's apples and oranges; it's not even in the same ballpark. An example, take for example my defense attorney cannot find a translator to translate for me is like one that cannot speak the language that well. So I'm stuck there trying to communicate and the translator says I charge \$55 an hour. I don't have the money. I'll see you when you get out. And it happens. There are court-appointed translators, you know this is the fact, it's the same... – *Hispanic Man, Dallas*

Who has the burden of proof on them? The state, correct?... They have a little more work and importance placed on their side of the table... They have the burden of proof so they of course are going to spend more money to prove with all the tests and pay for all those things. – *Caucasian Woman, Baltimore*

I think the prosecutor has to prove that a person is guilty. The public defender does not have to prove that the person is innocent. There is a big difference. It sounds like it is the other side of the coin, but it's not. – *Caucasian Man, St. Louis*

D. Improving the system

1. Some support for national standards

Participants in the discussions feel so strongly about the need for equal resources and caseloads that many are willing to set national standards regarding minimum resources and maximum caseloads. Many reason that the right to counsel and due process are national guarantees, and therefore, resources and caseloads should follow national guidelines. After receiving information about resource disparities, these voters arrive at the view that some of the problems in the criminal justice system are due to states and local jurisdictions having different, inconsistent, and sometimes inadequate guidelines.

For example, even in Texas, where attitudes toward the federal government tend to be more hostile, many of the voters in the discussions come to believe standards should be national and enforced by the states. The Texans entered the groups placing their faith in local judges as the arbiters of the quality of local defense counsel. However, listening to information about resource disparity and the Texas practices, many participants came to distrust judges to decide the standards for each jurisdiction. Some participants believe that judges are on the side of prosecutors, while others see judges beholden to lawyers for campaign contributions.

Across the groups, some participants feel that state or local governments should set the standards because they know best the limitation of what is needed from one county to the next. Some participants believe unless the decisions are local, a lot of money will be wasted on forcing small counties to maintain high public defender resources that are not needed.

Most group participants resolve this “small county” problem by saying that standards defining the elements of right to counsel should be national in scope, but decisions about how these standards are implemented should be left to state or local governments.

I mean we regulate the airlines, like pilots, where pilots can only fly so much, truck drivers can only drive so much. Should also have regulations or regulate how much public defenders, how much sleep they get. – *Caucasian Man, San Jose*

Sure. It's national I think. If you're going to have it in one place, you should have it in another. Because that is where our criminal justice system is going down right now. Everybody up here agrees that if you have money you going to get the best lawyer of course. But if you have the same amount or at least a parallel of a good lawyer and a pretty good lawyer you're at least going to have a better sense or feeling that you're being represented better. – *Hispanic Man, Dallas*

If it gets too varied between adjoining states and a criminal says, "Well, this place is tougher, I'm going to go commit my crimes over here, over in Virginia. Or I'm going to come up to Baltimore City and do it because they've got a much weaker system that I can play the game with." – *Caucasian Man, Baltimore*

I think it ought to be national. It doesn't matter what state you do it in, it's like what's the difference if I do it here or if I do it in Texas where they're probably going to execute me if I get caught. It should be straight across the board. The same crime in the United States ought to be the same punishment. They could make it so simple. – *Caucasian Woman, San Jose*

Because if you let the state decide they may do something a little different and their competence may be different from what we think competent. They have a guide to go by there is going to be no doubt about the competent criminal law. – *Caucasian Man, San Jose*

I totally think that everybody should get the same competent attorney, the same fair trial no matter where you live in the state of Texas. Especially if it is state funded. – *Caucasian Woman, Dallas*

In my opinion if the funds were there I would want every county to be the same, not having different counties doing different things. Because if I get accused of a crime in Dallas I'm going to get an attorney. If I get accused of a crime, if I was just driving 35 and I'm in Denton County, it may be different. I may not need an attorney or the same rights I had as I was in Dallas County. I think just because you're five miles away from where you were before doesn't mean you shouldn't get different... – *Caucasian Man, Dallas*

Isn't that one of those things that the federal pushes back to the state, but the state has control. Like the schools and things I guess that you don't think about but I mean it really, it really causes a difference in fairness, depending on which part of the country. – *Caucasian Woman, St. Louis*

2. *Limiting indigent defense resources*

In the course of the focus group discussions, many voters move to take a position supporting more resources for indigent defense. However, at several stages, participants made it clear that they do not support open-ended budgets for public defenders and court-appointed lawyers. These voters want limits, for both fiscal and criminal justice reasons.

Even though most of the voters endorse national standards and parity of resources, they do not want to pay to increase indigent defense funding. Rather, they are quick to suggest taking away resources from prosecutors in order to level the playing field.

I still think if there is a lot of difference between the prosecutor and the defender that they should reallocate some of these resources instead of just saying, "Well, more money will fix it." – *Caucasian Woman, St. Louis*

You know you could up that triple and it may not be enough then either. Is it ever enough? I don't know.... And you want to go to work and have half your salary taken away so low-income people can have more money than they have to be defended. – *Caucasian Woman, St. Louis*

In a perfect world it would be equal. But I'm not sure I want to live in a perfect world that would make my property taxes go up. – *Caucasian Woman, Dallas*

I think we should but knowing society, criminal justice society has a mentality of guilty. They don't want to have their taxes raised to defend what they perceive to be the guilty. – *Hispanic Man, Dallas*

These voters also want restrictions on the resources available for a defense in the interest of criminal justice. Some of these voters fear that requesting expert witnesses or forensic tests may be used as a stalling tactic. While these voters are concerned about fairness in the system they are equally if not more concerned about ensuring punishment and public safety. Consequently, they do not want to put into place anything that may give the guilty the ability to stall or escape punishment.

Most of the voters agree that the resources available for a defense should be comprehensive and enable competent representation. Some suggest that the judge set a budget or limit on the resources employed by both sides in a case. Hispanic voters in Dallas expressed the most concern about the need to limit resources.

I think they should get resources within reason as determined by the judge based on the known facts. Otherwise they are out there chasing every wild hare that comes into their realm. – *Caucasian Man, San Jose*

I think if it's justified. If someone is just sitting there trying to drag it out and they keep throwing out these leads and say go check this out, *etc.* Once you find a couple that didn't pan out then you shouldn't investigate any more. – *Caucasian Man, Dallas*

These voters care about ensuring fairness in the justice system, and they perceive that providing competent counsel to indigent defendants is important to fairness. However, since the issue is currently not yet an urgent concern, it so far does not compel them to open their pocketbooks.

I think in the big picture we have local priorities, and what do we consider the most important right now. And the issue of the legal system, since most of us don't have any contact with it, other than being called for jury duty occasionally, if ever, we tend to think, "It doesn't really affect me. There are other things that affect me directly." This is more of a service that we will never have to use. So as far as funding priorities go, we don't think we are going to use it that often, even though we believe in justice and everything else, we get into what is important to me. – *Caucasian Man, St. Louis*

I'm really torn about that. Yes I want someone to have a fair trial. But I'm not out committing crimes so I don't care. – *Caucasian Man, San Jose*

E. Communications to build support for indigent defense

1. Messages focus on fairness

When considering messages about why we should devote resources to defend poor people accused of crimes, the ones that offer a simple appeal to fairness are very persuasive to these voters. Of the six messages tested, three were particularly persuasive to these voters as reasons for supporting increasing funding for indigent defense. Each of the messages invokes the value of fairness but in different ways – economic equity, protecting the innocent, and ensuring a fair society. The messages were:

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

Public defenders are critical to the fairness of the criminal justice system to prevent innocent people from going to jail.

The right to counsel is one of the most fundamental Constitutional rights. An attorney is needed to protect an individual's rights and to present the evidence necessary for a fair and reliable determination of guilt or innocence.

A fourth message, appealing to the value of self-preservation – *the idea that some day you or someone you know may need a public defender* – was also very popular in the groups but slightly less so than the messages that spoke directly to the issue of fairness.

It's idealistic because of the way we think about it. Because the rich do have the edge. I don't think this is true but I would like to think that it could be. – *Caucasian Woman, Dallas*

Reading the sentence about how the right to counsel is one of the most fundamental constitutional rights, that makes me realize, that is my right. – *Black Woman, Baltimore*

Sometimes somebody is accused of something and may not be able to defend themselves because maybe the evidence, they can't present the evidence themselves, you know. In a manner, they may be completely innocent. An attorney would be able to present it for them in a fair and reliable manner like it says here. – *Caucasian Woman, San Jose*

I don't like making mistakes. Even though we know we have historically made mistakes and innocent people have been found guilty, on the other hand, we are afraid, as a society, we don't want to say, "Well, let's just do away with the whole system together. Everybody is innocent." We want to have some means of determining which end of the scale you end up on. Hopefully it is going to be reliable. Fairness is one thing, reliability takes it one step further. – *Caucasian Man, St. Louis*

Well actually, like I said the last sentence is worded stronger. "Critical to the fairness and to prevent innocent people from going to jail." Because that's what we've been talking about here for an hour and a half. Are innocent people going to jail because not enough money is spent to defend them? -- *Caucasian Man, Dallas*

I keep thinking too for the grace of God could it be me or a member of our family. That somehow, someday it could be them. That something happens. – *Caucasian Woman, San Jose*

If it was me, personally, or someone I knew, it would really terrify me if I couldn't afford counsel, and if one was not going to be provided for you, it seems to me that there would be judge, jury, and executioner. You wouldn't have a chance. It wouldn't be fair whatsoever. – *Caucasian Man, St. Louis*

Messages that voters in the groups found less compelling suggest bigger roles for public defenders than simply competently defending an individual. Voters reacted coolly to the following messages:

Public defenders work to help their clients become productive members of society by helping them get the drug treatment or counseling they need.

The criminal justice system cannot function without public defenders. Public defenders provide a check on the other parts of the justice system – police, prosecutors, and others. Without them, we would not have a check on police brutality or be able to protect the innocent from wrongful conviction.

Not only do many of the voters find these statements untrue, they think it may be too much to expect from public defenders. In the minds of the voters, a public defender's motivation is justice for the individual defendant, not compassion or the social good.

The focus group participants are also less enthusiastic toward a message that suggests the system of justice cannot function without public defenders. While many feel the system would be hurt in some ways, they think it is hyperbole to say it would not function without public defenders, especially since these voters do not believe the system as it stands now is doing a very good job.

Some voters resisted the idea that public defenders should act as a check on the power of police and prosecutors. Many believe police and prosecutors abuse the system and that without the public defenders, a low-income person accused of a crime is left more vulnerable to potential abuses. They believe, however, that the primary job of public defender is defending the accused, not crusading against the police.

That's a good question because the lawyer is not a health provider. He is there just to make sure that the justice system does not take advantage of everybody, taking away your rights and violating your rights. – *Hispanic Man, Dallas*

I think you're going to overload the public defenders if part of their package is to provide that and to provide that type of counseling or direction. I'm sure they have enough to do. – *Caucasian Man, Baltimore*

Well it was ok until it got down to public defenders are critical to the fairness of the criminal justice system. Because they don't really represent the accused as adequately as what a paid attorney does, so it's not like persuasive to me. Because I don't see how they are going to, I mean if they're not giving it their all and not spending as much effort into it as well as the financial aspect they're not necessarily going to prevent an innocent person from going to jail. So it's not as persuasive to me. – *Hispanic Woman, Dallas*

But I don't think that the public defenders will ever have enough income to provide a check and balance on the police. I don't think that's where it's going to come from. And that's the part that just goes right down hill for me. I don't think they have the power to do that. They are not effective. – *Caucasian Woman, Dallas*

They should have the ability to be able to do that, generally your public defender is going to be overworked. They are not going to have the time or the... you know, they are going to be underpaid, they are not going to want to take that extra step to make sure that the prosecutor doesn't necessarily do something that is out of line. – *Hispanic Woman, Dallas*

I don't think that's the purpose of the public defender. I think we have civil groups that do check on these other things. That wouldn't persuade me that that's why we need them. – *Caucasian Woman, San Jose*

2. A range of messengers

The range of possible persuasive messengers on indigent defense mentioned by participants in the groups includes judges, public defenders, prosecutors, law school professors, and those who have been defended by a public defender or court-appointed lawyer.

I would listen to a judge's editorial about the -- yeah because we elected them. – *Caucasian Woman, St. Louis*

I am thinking of a public defender himself, to describe the importance that they do. – *Black Woman, Baltimore*

I would want a roundtable discussion with a couple judges, a couple public defenders, a couple of prosecutors, a couple of police officers. Just have a little bit of everybody. – *Caucasian Man, Dallas*

I think a good person would be someone who had a public defender, and was represented by one, and who could share the experience. – *Black Woman, Baltimore*