Defenders must address underlying causes of criminality


Over the course of my long career as a public defender I have come to realize that many of the underlying causes of criminal behavior disorders, developmental disability, homelessness, and abuse and trauma. Clients in the justice system are often undiagnosed, untreated and unassisted as they attempt to navigate social and medical services. Immigration problems and English proficiency may further complicate matters.

There are approximately 33,000 mentally ill adult prisoners in California state prisons - close to 30 percent of the total prison population. A 2005 final report prepared for the Chief Probation Officers of California and the California Mental Health Directors Association estimated that 50 to 75 percent of youth in juvenile detention facilities have diagnosable mental health disorders.

Today, with the passage of recent legislation, public defenders and other defense counsel must not only prepare and litigate the legal aspects of cases in the courtroom, they must also be prepared to address the underlying causes of criminal behavior. Competent defense representation therefore includes addressing adult re-entry eligibility and suitability criteria, as well as cultivating extensive knowledge of mitigation evidence and community resources to address rehabilitation.

Assembly Bill 109 (realignment), for example, has shifted more mentally ill individuals to the county level, where resources to address rehabilitation are limited. Similarly, with the passage of Proposition 36 (reforming the state’s three-strikes law), defense counsel must prepare hundreds of qualifying cases for review in local superior courts. Furthermore, in the juvenile system, a more expansive, holistic role for defense counsel in delinquency cases is contemplated under Rule of Court 5.663 (responsibilities of children’s counsel in delinquency proceedings).

In this shifting landscape, public defender offices must thoughtfully develop strategies that facilitate efficient, effective and culturally competent delivery of legal services, while exercising sound fiscal judgment.

Moreover, offices need to develop in-house specialists, such as psychiatric social workers and resource attorneys who specialize in mental health and educational advocacy. These multi-disciplinary teams would employ more holistic, cost-effective legal strategies to ensure clients receive the treatment and services to which they are entitled.

California Supreme Court
State high court to evaluate judge’s decades-old handling of death penalty case
The state Supreme Court could become a hot seat Tuesday for a Los Angeles judge, who is accused of failing to adequately represent his client as a capital defense lawyer.

U.S. Supreme Court
Precedent allowing juror testimony to be tested at high court
On Monday, the U.S. high court granted certiorari in a case in which a litigant’s right to a fair trial collides with the law’s policy favoring the secrecy of jury deliberations. By Michael J. Raphael

Government
Judicial branch audit will go forward, union claims
The California Court Reporters Association told members Monday that it had been informed that a proposed audit of the Administrative Office of the Courts will proceed.

Mergers & Acquisitions
Dealmakers
A roundup of recent merger and acquisition and financing activity and the lawyers involved.

Law Practice
Longtime Warner Bros. GC Shulman to ramp up neutral work
John A. Schulman will bring 25 years of in-house perspective and industry expertise to Alternative Resolution Centers, or ARC, where he will serve as the firm’s newest neutral.

Crowell grows West Coast energy practice
Crowell & Moring LLP has grabbed the general counsel for two state energy regulators and will bring them on as partners in its San Francisco office.

Litigation
Sprint accused of overcharging government $21M in bid to comply with wiretap requests
The lawsuit brought by U.S. Attorney Melinda Haag’s office claims Sprint Communications Inc. embedded hidden costs into its bills for providing information to the government from 2007 to 2010.

Criminal
Deputy public defender pleads guilty to fraud
Audrey Owens, who spent the last 12 years in the Riverside County public defender’s office, entered the guilty plea in front of U.S. District Judge Virginia A. Phillips.
entitled under state and federal laws. They would also closely collaborate with mental health departments, probation departments, school districts and the courts, among others, to help clients navigate the often byzantine bureaucracy of the justice system. It is also important for offices to promote continuing education, training, cross-training and professional development, so that all attorneys and staff understand and share a common, unified vision. High quality, culturally competent customer service at all levels must be a priority training issue.

Best practice models created on these cornerstones will produce measurable outcomes that demonstrate cost savings and efficiencies in the workplace and mitigate risk management issues, while facilitating effective legal representation. The net benefit of these practices will be less reliance on unnecessary and costly detention as the primary means to address adult criminal and juvenile delinquent behaviors that often have their origins in longstanding but treatable mental illness.

In addition to more cost-effective practices, public defender offices should emphasize the importance of collaboration with partners in both the public and private sectors, consistent with their ethical duty to effectively represent clients. Areas of possible common ground include collaborative courts such as adult and juvenile drug courts, veterans’ courts, women’s re-entry courts, and the STAR (Succeeding Through Achievement and Resilience) Court in Los Angeles, which addresses the needs of youth charged with prostitution who are themselves victims of human sex trafficking.

Finally, and just as importantly, public defender offices must strongly advocate for fair and consistent funding and resources. Particularly in the juvenile arena, where there is a greater emphasis on rehabilitation, hope and redemption, public defenders play a critical role. They regularly advocate in and out of the courtroom for appropriate treatment and services for children, who are wards of both the juvenile dependency and delinquency systems and often themselves victims of abuse. Public defenders and other defense counsel also work closely with stakeholders to link children back to schools and to necessary resources in the community.

Public defenders give voice to a silent and often ostracized cross-section of youth and adults in the justice system who are afflicted with mental health disorders that include manifestations of suicidality and clinical depression and whose personal histories often reveal severe levels of post-traumatic stress disorder. Accordingly, public defenders and other defense counsel often advocate for proven, cost-effective treatment options and services, and facilitate linkages in the community to address these public health afflictions.

In carrying out their constitutional mandate, public defenders and other defense counsel work to break clients’ previously unaddressed cycles of psychosocial dysfunction, seek to repair their broken lives, and stem the prohibitively costly and unacceptable progression of youth - disproportionately youth of color - to the adult prison pipeline. By logic, reason and conscience then, public defender offices need more funding, resources and recognition at the national, state and local levels.

A well-funded legal defense system is an essential component of a fair and balanced justice system, not only because of its constitutional moorings, but also because it demonstrates society’s deep and abiding respect and allegiance to a system of justice given birth by our nation’s forefathers, in which the scales of justice are equally balanced.

Parenthetically, in these times of limited budget resources, public defender offices should also support efforts that promote fair and consistent funding for all stakeholders, including the courts. With full, fair and sustained funding for all stakeholders, access to justice, public safety, fiscal accountability and public confidence in the justice system are best served.


Litigation
Federal Circuit revives patent suit against Apple
Sherman Oaks-based Ancora Technologies Inc. saw its patent infringement claims against technology giant Apple Inc. revived following a decision by the U.S. Court of Appeals for the Federal Circuit.

Corporate
Jones Day, Goodwin advise on Five9’s $115M IPO
San Ramon-based customer call center software developer Five9 Inc. tapped Jones Day to help guide the company through its planned $115 million initial public offering. Goodwin Procter LLP is advising the offering’s underwriting syndicate.

U.S. Court of Appeals for the 9th Circuit
9th Circuit publishes trademark abandonment decision
Workers at an insurance company acquired by Wells Fargo & Co. likely misstepped when started a competing company with the same name, a 9th U.S. Circuit Court of Appeals panel held on Monday in a newly published opinion.

Criminal
Bad facts meet the Fourth Amendment in hard case
In the wake of the U.S. high court’s ruling in Fernandez v. California, many are writing the Fourth Amendment’s obituary. By Jacqueline Goodman

Defenders must address underlying causes of criminality
The realities of today mean that public defender offices must adopt innovative strategies while exercising sound fiscal judgment. By Winston A. Peters

Product Liability
GM’s delayed recall a moral failure
General Motors recently issued a recall of 778,000 vehicles; two weeks later it upped that to 842,000. But when did GM know? By Jonathan Michaels

Entertainment & Sports
YouTube takedown ruling clouds film ownership
The 9th Circuit’s recent decision in the ‘Innocence of Muslims’ case could turn film ownership on its head. By Mark Litwak

Securities
High court focus on securities class actions
The U.S. Supreme Court recently granted review in a securities case; is set to hear arguments in another; and has just issued an opinion in a third. By Mark R.S. Foster

Judicial Profile
Barry P. Goode
Superior Court Judge Contra Costa County (Martinez)

Energy Law
Drought adds twist to fracking debate
While critics have long argued that fracking risks contaminating groundwater, they are hoping the drought will bring attention to how much water fracking consumes and sway more people to their side.