

Public Defender's Conundrum: Signaling Professionalism and Quality in the Absence of Price*

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TABLE OF CONTENTS

I.	INTRODUCTION	526
II.	CRIMINAL DEFENDANTS AND LAWYER SATISFACTION BY LAWYER TYPE.....	528
A.	<i>Criminal Defendant Perceptions of Public Defenders as Service Providers</i>	529
1.	<i>Trust</i>	529
2.	<i>Advancement and Relationship with the "Enemy"</i>	530
3.	<i>Lack of Quid Pro Quo</i>	530

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B.	<i>Defendant Perception of Court Appointed Counsel as Service Providers</i>	532
C.	<i>Criminal Defendant Perceptions of Privately Retained Lawyers as Service Providers</i>	534
D.	<i>Research Issues</i>	535
E.	<i>Methodology</i>	536
F.	<i>Questionnaire</i>	536
G.	<i>Sample</i>	536
H.	<i>Demographics</i>	537
I.	<i>Factor Analysis</i>	538
J.	<i>Hypothesis Testing</i>	539
III.	PERCEPTION OF SATISFACTION BY LAWYER TYPE: IS PERCEPTION REALITY?	542
IV.	CREATING AN IMPROVED RELATIONSHIP BETWEEN PUBLIC DEFENDERS AND THEIR CLIENTS	544
A.	<i>Education</i>	545
B.	<i>Judge's Behavior</i>	545
C.	<i>Public Defender's Behavior</i>	546
D.	<i>Public Defender's Accomplishments</i>	548
E.	<i>Future Research Issues</i>	549
V.	CONCLUSION	550

I. INTRODUCTION

The American judiciary is an essential component of the nation's legal system. As such, in their role of settling disputes and creating legal interpretations and precedents, the courts embody American values, history, and culture. Yet, in recent years some legal observers have detected among the American people a degree of dissatisfaction with the court system.¹

1. NAT'L CTR. FOR STATE COURTS & HEARST CORP., *HOW THE PUBLIC VIEWS THE STATE COURTS: A 1999 NATIONAL SURVEY* (1999) [hereinafter *HEARST REPORT*]. This study refers to three earlier empirical studies—1977, 1983, and 1998. The 1977 report commissioned by the National Center for State Courts entitled “State Courts: A Blueprint for the Future,” was “notable for its gloomy picture of the courts’ standing with the American public, the finding that the public was poorly informed about the courts, and its conclusion that ‘those having knowledge and experience with the courts voiced the greatest dissatisfaction and criticism.’” *Id.* at 9. The 1983 report funded by the Hearst Foundation, entitled “The American Public, the Media and the Judicial System: A National Survey of Public Awareness and Personal Experience,” found that “Americans were largely ignorant about the legal system, that jury service was experienced by only a small proportion of the population and that public opinion about the courts was strongly influenced by the mass media.” *Id.* The 1998 report sponsored by the American Bar Association, titled “Perceptions of the U.S. Justice System,” found that relative to former surveys there have been “improvements to the public image of the courts, a vastly increased extent of public involvement with the courts and a positive

This development has created the need for more empirical information about how the court system is perceived. If the American people lose confidence in the court system, its role in protecting legal rights and creating meaningful and effective public policy could be greatly undermined. As Patrick A. Bennack, Jr., President and CEO of the Hearst Corporation, noted when comparing the state courts with other institutions: "But the courts—that's something different. Here, trust is essential. Here, knowledge is essential. Here, society and institution come together in ways that really define who we would like to think we are as a society—fair, open and protective of the rights of every individual."²

An integral task of the court system is the just resolution of criminal cases. It is particularly important to establish a bond of trust between lawyers, as competent and ethical service providers, and their clients, as consumers who feel they are being served professionally and fairly. Without such a bond the criminal justice system cannot function properly and efficiently. This vital relationship is thus an area that warrants scrutiny.

A number of studies have recently attempted to gauge the public's perceptions of the court system.³ Other studies have sought to discover how criminal defendants perceive aspects of the criminal justice system, including their perception of lawyers.⁴ This Essay, the result of an

relationship between such involvement and confidence in and satisfaction with the courts." *Id.* The American Bar Association is also considering the foregoing findings with others "to develop a national strategy to be pursued for several years in every state to strengthen public confidence in the justice system." Philip S. Anderson, *Learning to Educate the Public*, A.B.A. J., July 1999, at 6, 6; see also James Podgers, *Confidence Game: Bench, Bar Leaders Ponder Strategies to Raise Public Trust in the Courts*, A.B.A. J., July 1999, at 86, 86.

2. HEARST REPORT, *supra* note 1, at 2.

3. *Id.* at 1.

4. See, e.g., JONATHAN D. CASPER, AMERICAN CRIMINAL JUSTICE: THE DEFENDANT'S PERSPECTIVE (1972) [hereinafter CASPER, AMERICAN CRIMINAL JUSTICE]; JONATHAN D. CASPER, CRIMINAL COURTS: THE DEFENDANT'S PERSPECTIVE (1978) [hereinafter CASPER, CRIMINAL COURTS]; Geoffrey P. Alpert & Donald A. Hicks, *Prisoners' Attitudes Toward Components of the Legal and Judicial Systems*, 14 CRIMINOLOGY 461 (1977); Burton M. Atkins & Emily W. Boyle, *Prisoner Satisfaction with Defense Counsel*, 12 CRIM. L. BULL. 427 (1976); Jonathan D. Casper, *Did You Have a Lawyer When You Went to Court? No, I Had a Public Defender*, 1 YALE REV. L. & SOC. ACTION 4 (1971); Roy B. Flemming, *Client Games: Defense Attorney Perspectives on Their Relations with Criminal Clients*, 1986 AM. B. FOUND. RES. J. 253; Stewart O'Brien et al., *The Criminal Lawyer: The Defendant's Perspective*, 5 AM. J. CRIM. L. 283 (1977); Glen Wilkerson, *Public Defenders as Their Clients See Them*, 1 AM. J. CRIM. L. 141 (1972); see also *When You Need a Lawyer*, CONSUMER REP., Feb. 1996, at 34 (discussing a poll conducted of readers and their perceptions of lawyers as service providers, and noting

extensive empirical study in the state of Nevada, attempts to ascertain factors among criminal defendants that may predict how they perceive a level of quality and satisfaction with their lawyers as service providers, as well as policy proposals for improving the perceptions of public defenders.

In Part II, this Essay confirms, in line with previous research from other locales, that criminal defendants in Nevada who are represented by privately retained lawyers are the most satisfied with their legal representation. Conversely, defendants who are represented by public defenders are the least satisfied. To prove the foregoing, the results of a statistical analysis of a survey given to former criminal defendants, now inmates in the state's prisons, are presented with a subsequent discussion of the outcomes.

In Part III, we present research which indicates that public defenders are likely to be perceived unfairly and inaccurately by criminal defendants. However, a discussion of the literature reveals that public defenders are generally as effective and as competent as privately retained lawyers.

In Part IV, the Essay discusses factors that may signal quality to legal consumers that could improve the relationship between public defenders and their clients. Moreover, it proposes that a greatly improved professional environment can be created between public defenders and their clients, which should bolster the perception of the quality of public defenders as service providers, even in the absence of traditional consumer signals such as price. Adopting these policies will have important public policy implications. In particular, with greater trust and confidence convicted criminals may decide not to mount expensive appeals based on the argument that they were represented by incompetent counsel.⁵ That alone will help alleviate some of the pressure presently imposed on the legal system.

II. CRIMINAL DEFENDANTS AND LAWYER SATISFACTION BY LAWYER TYPE

Criminal defendants' perception of the quality of their lawyer as influenced by the type of lawyer representing them, has been the subject of a number of articles.⁶ Generally these studies indicate that criminal defendants view public defenders with the lowest level of satisfaction,

that criminal lawyers were perceived second to last in terms of satisfaction, with divorce lawyers ranking last).

5. David E. Rovella, *Unclogging Gideon's Trumpet*, NAT'L L.J., Jan. 10, 2000, at A1 ("By failing to fund the defense at trial, say Messrs. Voth and McDuff, the state [of Mississippi] is costing counties more money in later appeals based in part on ineffective-assistance claims.").

6. See, e.g., sources cited *supra* note 4.

while court appointed lawyers are viewed somewhat more positively and the highest level of satisfaction among criminal defendants lies with the privately retained attorney.⁷

Professor Jonathan Casper conducted the seminal study of how criminal defendants perceive the quality and level of satisfaction by attorney type.⁸ In research conducted in Connecticut in the early 1970s involving seventy-one criminal defendants, Casper found that when asked whether their attorney was "on [their] side" only 20.4% of those with public defenders answered "yes." Yet those with privately retained attorneys were unanimous in their affirmative response to this question. Moreover, a convincing 70% of those with legal assistance lawyers, defined as those who also were paid by the county but were not public defenders, felt their lawyer was "on [their] side."⁹ Casper found, after carefully interviewing these defendants, that a number of reasons, discussed below, were consistently submitted for distinguishing among the different kinds of lawyers that typically represent criminal defendants.

A. Criminal Defendant Perceptions of Public Defenders as Service Providers

1. Trust

The defendants in Casper's study frequently cited a lack of trust for public defenders (PDs). In Casper's opinion, the PD's position as a state employee contributed above all other factors to the mistrust.¹⁰ Some felt, for example, that if PDs receive money from the same source as the prosecutor, in this case the state or county, they must logically have common interests.¹¹

7. See sources cited *supra* note 4.

8. CASPER, AMERICAN CRIMINAL JUSTICE, *supra* note 4.

9. *Id.* at 105.

10. *Id.* at 110. In Nevada, there is a state public defender who supervises deputy public defenders in the various counties of the state. NEV. REV. STAT. ANN. 180.010-110 (Michie 2001). In addition, counties which exceed 100,000 (Clark and Washoe counties) have the authority to create county public defender offices. NEV. REV. STAT. ANN. 260.010-080 (Michie 1995).

11. One particularly strong statement concerning the relationship between a criminal defense lawyer and his client was made by Abraham S. Blumberg, who dubbed this relationship a "confidence game" since the "success of the system is premised upon the ability of the defense counsel to perform the role of double agent, to obtain the client's confidence, and to convince him that his interests will best be served if he plea bargains with the prosecutor." Atkins & Boyle, *supra* note 4, at 428 n.3 (citing Abraham S. Blumberg, *The Practice of Law as a Confidence Game: Organizational Cooptation of*

2. Advancement and Relationship with the "Enemy"

A second factor that emerged was the belief that PDs are mainly motivated by a desire to become prosecutors and eventually judges. Therefore they are perceived to be using their posts as PDs to help the prosecutors get "more convictions," facilitating their move to what are perceived as better paying and more prestigious jobs.¹² Moreover, as Casper pointed out, the defendants viewed the PDs as part of an overall "social system" in which the PD "lives" with the prosecutors and judges.¹³ Thus, the defendant's relationship with the PD is seen as being simply transient while the PD's relationship with the authorities is permanent.¹⁴

3. Lack of Quid Pro Quo

The defendants also consistently cited the "importance of money and of financial transactions."¹⁵ Casper felt that because of the defendants' "general socialization into a market economy,"¹⁶ they perceived that the "[free] merchandise which they were provided by the state was inferior to that available on the open market."¹⁷ Conversely, by "paying an attorney, [the criminal defendant] can make sure that [the attorney] is [his]."¹⁸ PDs, on the other hand, have "no financial incentive for fighting hard for [their] clients," according to these defendants.¹⁹

Casper subsequently directed a study of defendant perceptions in 1975. Drawing on a sample of 812 interviews in three cities, Phoenix, Detroit and Baltimore,²⁰ Casper found similar outcomes to his previous studies.²¹ He reiterated that a defendant's distrust of PDs is often "beyond the control of the public defender, for it is the product of defendant norms and values, the institutional position of the public defender, and the past experiences of the defendant."²²

a Profession, 1 LAW & SOC'Y REV. 15, 24 (1967)).

12. CASPER, AMERICAN CRIMINAL JUSTICE, *supra* note 4, at 105. This argument, at least in Clark County, Nevada, would not be the case, although the perception might still exist. In discussions with Clark County PDs it was disclosed that PDs and county prosecutors are, in fact, paid about the same and the PDs claim that they don't view their positions as stepping stones to become prosecutors, although some PDs have become prosecutors. Interview with Gary Lieberman, Linda Bell, Howard Brooks, and Charles Cano, Clark County Public Defenders, in Las Vegas, Nev. (Jan. 13, 2000).

13. CASPER, AMERICAN CRIMINAL JUSTICE, *supra* note 4, at 103.

14. *Id.*

15. *Id.* at 112.

16. *Id.*

17. *Id.* at 113.

18. *Id.* at 112.

19. *Id.* at 110.

20. CASPER, CRIMINAL COURTS, *supra* note 4, at 13.

21. *Id.* at 24.

22. *Id.*

After Casper's work, other researchers discovered similar results. O'Brien, Pheterson, Wright, and Hostica, (O'Brien et al.) in a study in Western New York involving fifty-five inmates, found that retained counsel were perceived the highest when the defendants were asked to apply certain "lawyering values" such as "research," "investigates," and "talks up in court."²³ Assigned counsel scored in the middle and PDs were last.²⁴

In order to understand why the defendants perceived these lawyers differently, O'Brien et al. attempted to identify attitudes toward lawyers through a factor analysis.²⁵ The strongest factor that emerged was the defendants' concern with their relationship with their lawyer.²⁶

The second strongest factor in O'Brien et al.'s study, much as Casper found, was the issue of there being no monetary transaction between lawyer and client. These defendants also felt that with no money being exchanged, their lawyer (in this case a PD) would not be as interested in the case. The third and weaker factor of the three related to the "attorney's interest and attempts to gain knowledge about the client and his case."²⁷

O'Brien et al. concluded that the first and third factors simply do not relate to the second variable concerning money. As they pointed out, a "defendant's view of 'good' legal services even if received may not mean satisfaction with actual representation."²⁸ Rather, as Casper likewise discovered, the "defendant believes his attorney would have performed better if paid more."²⁹

Atkins and Boyle conducted a third study concerning criminal defendants' satisfaction with legal counsel in South Carolina.³⁰ Atkins and Boyle

23. O'Brien et al., *supra* note 4, at 291, 301 tbl.3.

24. *Id.* at 301 tbl.3. However, the defendants in this study did rate the PDs higher than other lawyers in their ability to "rap with" the client, possibly due to their younger ages. *Id.* at 302-03.

25. *Id.* at 303.

26. *Id.* at 304.

27. *Id.* Variables that loaded onto this factor, such as how much the attorney investigated the facts and researched the law, were also variables of which the defendants had the least personal knowledge. This factor reinforced O'Brien et al.'s contention that unpaid lawyers, such as PDs, are negatively perceived due to cultural reasons, not the experience of the inmates. *Id.* at 305.

28. *Id.* at 305.

29. *Id.* O'Brien et al. also observed that the variables that the defendants considered *most* important were also those of which the defendants had the *least* knowledge. These variables included, among others, "research of the case," "pull with authorities," and "knowledge of the law." *Id.* at 307.

30. Atkins & Boyle, *supra* note 4, at 427. In this study two institutions were

focused on objective exchange behavior, such as the number of interviews the defendant had with his or her lawyer, whether the defendant received a preliminary hearing, whether the defendant was released on bail, whether the defendant received advice on his or her plea, the type of plea, and the sentence received. These criteria were then related to the type of lawyer the defendant had: classified as retained, assigned, or PD.³¹

Their rather surprising result was that the inmates were more than twice as likely to be satisfied with the services of the PD.³² Still, the inmates' responses did not suggest a positive perception about being represented by a PDs. Rather their responses indicated that clients represented by PDs were more satisfied because of positive outcomes created by the efforts of the PD. The most important of these was the PDs' ability to minimize the client's sentence and lessen the length of time to resolve the case.³³

O'Brien et al. criticized Atkins and Boyle's study, however, arguing that they only reported objective, factual information from the inmates that resulted in these more satisfactory results. In effect, O'Brien et al. contended that, Atkins and Boyle's conclusions were inferred more by the authors than actually solicited from the respondents.³⁴ Moreover, Atkins and Boyle admitted that there was still inmate mistrust of PDs even though the inmates acknowledged that, in some cases, PDs performed well in such functions as "minimizing the prison sentences their clients receive."³⁵ Thus, Atkins and Boyle's results may reinforce O'Brien et al.'s contention that defendant "dissatisfaction stems not from what the public defender does but who the public defender is."³⁶ In light of the foregoing discussion, we specifically hypothesize that:

H₁: There is a difference in the perception of the quality of lawyers based on whether the inmate used a public defender.

B. Defendant Perception of Court Appointed Counsel as Service Providers

As discussed above, Casper found that legal assistance lawyers³⁷ (those

selected and from them "a stratified random sample was drawn, with each member of the 1,436 prison population assigned to sampling cells." *Id.* at 431.

31. *Id.* at 432-33.

32. *Id.* at 437. It should be noted, however, that nearly all the participants in the sample expressed dissatisfaction with their counsel regardless of the type of lawyer who represented them. *Id.*

33. *Id.* at 437, 445.

34. O'Brien et al., *supra* note 4, at 289.

35. Atkins & Boyle, *supra* note 4, at 449.

36. O'Brien et al., *supra* note 4, at 309.

37. In Casper's study, legal assistance lawyers worked for New Haven Legal Assistance, an organization supported by state and federal funds. These lawyers handled

who are not privately retained and are not PDs) were perceived less negatively than PDs, although not as positively as privately retained lawyers. Similarly, O'Brien et al. encountered the same result when they compared what they referred to as assigned counsel, with PDs and privately retained attorneys.³⁸

Casper maintained that legal assistance lawyers, who share some characteristics with what this study refers to as court appointed lawyers, were perceived more positively than PDs for several reasons. One is that these lawyers, unlike the PDs, were chosen instead of being imposed upon the defendants.³⁹ Other defendants felt that these lawyers were "more interested in them, fought harder for them, [and] were more often on their side."⁴⁰

Still, in Casper's study not all defendants perceived legal assistance lawyers positively. The fact that these lawyers are also free made many of the defendants feel "somewhat suspicious of the lawyer's concern and doubtful whether he is his lawyer's partner or equal."⁴¹ In Casper's view, the perception of court appointed lawyers is hampered, much like that of PDs, because "[t]he marketplace ethic leads defendants to believe that what is free simply *cannot* be so good as what you must pay for."⁴²

both civil and criminal matters for indigents at no cost to the clients. See CASPER, AMERICAN CRIMINAL JUSTICE, *supra* note 4, at 118-19.

38. See O'Brien et al., *supra* note 4, at 301 tbl.3. O'Brien et al. classified assigned counsel as those drawn from a list administered by the Erie County Bar Association's Aid to the Indigent Program. *Id.* at 299 n.33. These lawyers had many specialties ranging from real estate to criminal law. *Id.* Atkins & Boyle did not find court appointed lawyers to be a factor, finding them to be "rapidly disappearing" and their interaction with criminal defendants to be "episodic." Atkins & Boyle, *supra* note 4, at 434.

39. Nevada Statute 180.050 provides in pertinent part: "The state public defender may contract with attorneys licensed to practice law in the State of Nevada and with county public defenders to provide services required by this chapter if it is impracticable for him or his deputies to provide such services for any reason." NEV. REV. STAT. ANN. 180.050 (Michie 2001). In Nevada, court appointed lawyers are selected from the local bar and are paid a flat fee. Court appointed attorneys may earn more if the case becomes more complicated and the court approves. Interview with Judge Jack Lehmann, 8th Judicial District Court, in Las Vegas, Nev. (Jan. 5, 2000). In addition, Nevada Statute 260.060, which governs county public defenders, allows that

[f]or cause, the magistrate or district court judge may, on its own motion or upon motion of the public defender or the indigent person, appoint and compensate out of county funds an attorney other than, or in addition to, the public defender to represent such indigent person at any stage of the proceedings or on appeal in accordance with the laws of this state

NEV. REV. STAT. ANN. 260.060 (Michie 1995).

40. CASPER, AMERICAN CRIMINAL JUSTICE, *supra* note 4, at 120.

41. *Id.* at 122.

42. *Id.* at 122-23.

O'Brien et al.'s finding of why assigned counsel rated in the middle of the three, was instructive for several reasons. One was that the assigned counsel conveyed a "better image" to the defendants in terms of their age; they were seen as being older, wiser, more experienced, and better dressed, all of which may signal an appearance of success.⁴³ In O'Brien et al.'s study, these lawyers did not work full time for a legal assistance program, unlike those in Casper's study, but rather were selected from a list administered by the county's bar association. Yet this minor difference apparently had little or no bearing on the defendants' perceptions of quality.

The assigned counsel in O'Brien et al.'s study served their clients in a manner similar to those in the state in which our study was conducted.⁴⁴ The findings regarding the positive influence of age and appearance on perceptions of a lawyer's quality thus might be applicable among the state's criminal defendants. Likewise, since the state's appointed counsel also do not charge defendants for their services, they might, as Casper found, also be viewed negatively by the defendants. Accordingly, the perceptions of the court appointed lawyers will likely not be as favorable as the defendants' perception of the privately retained lawyers. Thus, we hypothesize that:

H₂: There is a difference in the perception of the quality of lawyers based on whether the inmate used a court appointed lawyer.

C. Criminal Defendant Perceptions of Privately Retained Lawyers as Service Providers

The Casper study indicated that privately retained attorneys are viewed more positively for most of the same reasons that PDs are perceived negatively.⁴⁵ Private attorneys are chosen and paid for by the defendant, therefore they are "yours."⁴⁶ And because they are yours, they can be trusted more and are not part of the social system, in which defendants feel the PD is caught.

O'Brien et al.'s research likewise found that private lawyers were rated higher than PDs and appointed counsel. For example, private lawyers were

43. O'Brien et al., *supra* note 4, at 302.

44. Like O'Brien et al.'s study, Nevada court appointed attorneys are selected from the local bar and paid a flat fee. *See supra* note 39. As O'Brien et al. point out, the "[a]ssigned counsel are private attorneys drawn from a list administered by the Erie County Bar Association's Aid to the Indigent Program. . . . The attorneys are paid at a rate of \$10 an hour for out of court work and \$15 an hour for in court work." O'Brien et al., *supra* note 4, at 299 n.33.

45. *See supra* notes 6–19 and accompanying text.

46. CASPER, AMERICAN CRIMINAL JUSTICE, *supra* note 4, at 112.

clearly viewed as superior in their knowledge of criminal law and in their attentiveness to the criminal proceedings. Moreover, they were seen as specialists in criminal law, with "extensive experience, contacts and skills."⁴⁷ Private lawyers were also viewed as being more responsible than the other two types because they are paid, were perceived as devoting more time to their clients, and were not under the same time pressures as PDs.⁴⁸ Hence, we hypothesize that:

H₃ : There is a difference in the perception of the quality of lawyers based on whether the inmate used a private attorney.

D. Research Issues

In this study we were generally interested in gaining insight into various legal system constructs.⁴⁹ Our primary interests were in Nevada state prison inmates' (those who have had contact with the criminal justice system at its fullest) perceptions of quality and satisfaction with regard to various segments of the judicial system.⁵⁰

47. O'Brien et al., *supra* note 4, at 300.

48. *Id.* These findings should be contrasted with an interview of a judge in Clark County, Nevada. In his opinion, there is very little if any difference between privately retained lawyers and PDs in terms of the quality of their work. The exception is a few extraordinary private attorneys who are well-known in the county, often because of the notoriety of their clients and their clients' crimes, and who consequently are very expensive to retain. Interview with Judge Jack Lehmann, *supra* note 39. In fact, Judge Lehmann observed that some privately retained lawyers are not as good as PDs, although he acknowledged that the very best criminal lawyers are highly paid private attorneys. *Id.* Jonathan Casper refers to "low-level 'courthouse' criminal lawyers [who] hang around courthouses offering their services to poor defendants for relatively low fees. These attorneys are generally highly exploitative—turning over cases quickly to generate their fees." CASPER, AMERICAN CRIMINAL JUSTICE, *supra* note 4, at 115.

49. A construct measures a characteristic, in this case criminal defendants' level of satisfaction with lawyers as service providers. See, e.g., NARESH K. MALHOTRA ET AL., MARKETING RESEARCH: AN APPLIED ORIENTATION 302 (1996).

50. Other constructs we considered for examination were complaint behavior and perception of bias within the criminal justice system. These constructs, involving among other things, perceptions of judges, juries, and prosecutors, have been and will continue to be the subject of analysis. Robert J. Aalberts et al., *Do Race and Gender Influence Criminal Defendants' Satisfaction with Their Lawyers' Services? An Empirical Study of Nevada Inmates*, NEV. L.J. (forthcoming 2002). The authors, using the same database as the study herein, found that women and Hispanics were significantly more satisfied than men and other racial and ethnic groups in the quality of their lawyers. *Id.*

E. Methodology

Initially we contacted the Nevada State Department of Prisons seeking approval for a census study of inmates at all state prisons.⁵¹ Included in the request were the purpose of the study and an initial draft of the survey instrument. The Nevada Department of Prisons Social and Behavior Committee of the Institutional Review Board subsequently approved both the study and the questionnaire. The Human Subjects Committee at the University of Nevada, Las Vegas also approved the study.

F. Questionnaire

Our research team wrote questions to measure the constructs of satisfaction (at all levels of the judicial system), quality, bias within the system, and complaint behavior. We also drafted demographic questions so various groups of inmates could be compared. Then our team pretested the survey instrument at one of the state's prisons. Thirty-six volunteer inmates participated in the pretest. The thirty-six inmates reflected the general population of the prison. There was diversity among inmates in terms of race, age, and crimes. The sample groups' crimes ranged from drug offenses to white-collar crimes to murder.

The pretest lasted over four hours, during which time our team asked the inmates to complete the survey instrument. Following completion, we discussed with the inmates each of the questions in detail, both for content and for style. Consequently, many questions were added to the survey and many were removed. Our team rewrote nearly every question to reflect the language and understanding of the inmate population.

G. Sample

Our research team conducted the census of state prisoners in 1997. There were nineteen prisons at that time in the state. Of those nineteen prisons, two held female prisoners and the rest held males. Our team distributed a total of 8188 surveys via the interprison distribution system. We counted the surveys and attached appropriate, personalized letters of instructions.⁵² Then, from a central location, our team delivered the surveys to the appropriate prisons for distribution to inmates. We used the reverse process for the return of completed

51. A census is the complete enumeration of the elements of a population; in this study it was all the inmates in all the prisons in Nevada. A sample, on the other hand, is a subgroup of the population selected in a study. See MALHOTRA ET AL., *supra* note 49, at 359.

52. The team made both English and Spanish versions of the survey available.

surveys to our research team. A small percentage of surveys were directly returned via mail.

Instructions were clearly stated for the individuals at each prison who were responsible for distributing and collecting surveys to and from the prisoners. Each inmate had one night to complete the survey. The survey packet included an envelope for them to place the completed survey in and then seal. The instructions directed them to return the completed survey in the sealed envelope to the guard the next morning.

Of the 8188 surveys the team distributed, 1867 surveys were complete and useable for the study. This represents a credible 22.8% response rate.⁵³ Due to cost and time limitations there were no follow-up letters or incentives given to increase the response rate. Indeed, normal methods for increasing response rates, such as monetary incentives, premiums and rewards, "foot-in-the-door" techniques, and follow-up letters would be difficult, if not impossible, to use with this kind of sample.⁵⁴ For example, initially we stated that a pencil would be provided to each inmate but due to security reasons even that small token was not allowed. We entered the completed and returned surveys into an SPSS⁵⁵ database for further analysis.⁵⁶

H. Demographics

Means and frequencies were used in order to clean the data for each of the questions. Means were examined to see if they were in the correct range of expected values. Frequency analysis was also used as a way of finding incorrect data entries. For example, if the number "66" appeared in the data where only values of one to seven should appear, this would obviously be in error and would be eliminated. All data entry errors were corrected.

53. Our research team felt the response rate which yielded the large number of usable surveys for analyses was very good considering the unique group being questioned. In the pretest a number of inmates expressed concern and even paranoia about filling out the surveys despite the guarantees of anonymity.

54. See MALHOTRA ET AL., *supra* note 49, at 210, for discussion of methods for increasing response rates.

55. SPSS Inc. offers data mining technology for predictive analytics. *About SPSS Inc.*, SPSS, at <http://www.spss.com/corpinfo/> (last visited Apr. 30, 2002).

56. For a discussion of the efficacy of SPSS applied to an Analysis of Variance (ANOVA), see MALHOTRA ET AL., *supra* note 49, at 568.

I. Factor Analysis

We ran a factor analysis on SPSS for data reduction and construct development. An initial scree test indicated ten factors.⁵⁷ There were ten eigenvalues greater than one on the initial unrotated orthogonal factor analysis.⁵⁸ Orthogonal analysis was run with VARIMAX rotation to determine the best factor solution.⁵⁹ Based on theory and factor loadings, we determined a six factor orthogonal solution to be the best fit.⁶⁰ Table 1 below reveals the factor loadings (and the seven variables which loaded on to this factor) for the construct for this study, “Lawyer Satisfaction.” The other constructs will not be discussed here but will be reported in future studies.

TABLE 1
FACTOR LOADINGS FOR THE CONSTRUCT “LAWYER SATISFACTION”

QUESTION	FACTOR SCORES
My lawyer was interested in my case.	.721
My lawyer did everything possible to win.	.829
I could not have asked my lawyer to do more for me.	.708
I am satisfied with my lawyer.	.869
My lawyer was the best lawyer for me.	.828
I would use my lawyer again if I need one in the future.	.856
I would recommend my lawyer to others.	.855

57. A scree test is a method for extracting factors. MALHOTRA ET AL., *supra* note 49, at 652. A factor is an underlying dimension that aids in explaining common variance between variables. Factor analysis, unlike ANOVA, does not establish a dependent variable and predictor or independent variables, but instead examines a whole set of interdependent relationships. *See id.* at 645; *infra* note 63 and accompanying text. Factors are sometimes termed “latent variables” which, in turn, can “load” on to the identified factors. In this study, seven variables loaded on to the factor. *See* Table 1 *infra* for the factor loadings and the seven variables for the construct labeled lawyer satisfaction.

58. An eigenvalue represents the total variance explained by each factor. MALHOTRA ET AL., *supra* note 49, at 534.

59. The VARIMAX procedure is the commonly used method for rotating the factors in an orthogonal rotation, in which the axes are at right angles. The orthogonal rotation identifies the number of variables with high loadings and thus helps in interpreting the factors. *Id.* at 540–41.

60. A factor loading results in simple correlations between the variables and the factors. *Id.* at 534.

The Pearson correlation coefficient between the seven variables in the construct "lawyer satisfaction" are all significant with p values equal to .000 and an $\alpha = .01$.⁶¹ The Pearson correlation coefficients range from .868 to .460. Reliability of the construct was measured using coefficient alpha from SPSS. The coefficient alpha = .9309. Since the factor loadings are all above .5 and the correlations between variables are all significant and the reliability of the construct is above .7, we determined that it was possible to sum the variables and create a new construct we labeled "lawyer satisfaction."⁶² This new variable will be used to test our hypotheses.

J. Hypothesis Testing

We completed our hypothesis testing by running Analysis of Variance (ANOVA) on SPSS.⁶³ Hypothesis number one was tested by considering whether the inmates used a "public defender" as the categorical variable and the construct "Lawyer Satisfaction" as the dependent variable. The results are provided in Table 2.

TABLE 2
ANOVA
LAWYER SATISFACTION WITH PUBLIC DEFENDER

	SUM OF SQUARES	DF	MEAN SQUARE	F	SIGNIFICANCE
BETWEEN GROUPS	64.033	1	64.033	17.865	.000
WITHIN GROUPS	5641.735	1574	3.584		
TOTAL	5705.768	1575			

61. The Pearson correlation coefficient (also called the product moment correlation) measures the strength of association between two metric variables (interval or ratio scaled). *Id.* at 469.

62. Generally a coefficient alpha value of 0.6 or less suggests an unsatisfactory internal consistency reliability of a set of items in a construct. *Id.* at 265. Our study arrived at a coefficient alpha of .9309 indicating a strong internal consistency reliability. This result signifies a high degree of repeatability of how the sample might respond to the questions in the survey.

63. ANOVA is a test of the means of two or more populations. MALHOTRA ET AL., *supra* note 49, at 443.

The specific hypothesis being tested is as follows:

$$H_0: \mu_1 = \mu_2$$
$$H_a: \mu_1 \neq \mu_2$$

At an $\alpha = .05$ level of significance and a p value of .000⁶⁴ the null hypothesis is rejected.⁶⁵ There is a statistically significant difference between the use or non-use of a public defender and the way the inmates perceive lawyer satisfaction. The mean for lawyer satisfaction for those inmates who used a public defender was 2.31 on an interval scale of one to seven. The mean score for those inmates who did not use a public defender was 2.78. Those inmates who did not use a public defender were more satisfied with their lawyers than those that did. H_1 is supported.

Hypothesis number two was tested by examining whether the inmate used a "court appointed attorney" as the categorical variable and the construct "Lawyer Satisfaction" as the dependent variable. The results are provided in Table 3.

64. A significance level of alpha of .05 or lower is generally considered safe in making statistical inferences. This means that the probability is less than .05 that this relationship could have occurred by chance. See MALHOTRA ET AL., *supra* note 49, at 512. If the p value (sometimes referred to as the observed level of significance) is smaller than the significance level (in this case the p value = .000 which is smaller than .05) then, as in this case, we can reject the null hypothesis. MARK L. BERENSON & DAVID M. LEVINE, *STATISTICS FOR BUSINESS AND ECONOMICS* 368 (1993).

65. A null hypothesis is used to determine whether a true statistical difference exists between two group means. The null hypothesis is that all means are equal. Therefore, if a null hypothesis is not rejected there is no true difference between the two groups and so therefore no explanatory relationship. See ALVIN C. BURNS & RONALD F. BUSH, *MARKETING RESEARCH* 469 (1995). Mark Berenson and David Levine analogize a null hypothesis to the American legal system. See BERENSON & LEVINE, *supra* note 64, at 361. They compare it to the principle that an accused criminal is presumed innocent until proven guilty. Thus, in statistical analysis, it is assumed the average of the means is not different (presumed innocent) unless evidence demonstrates that the average of the means has changed. If the average of the means changes and it is proven to be statistically significant, then the null hypothesis is rebutted and the alternative hypothesis is proven.

TABLE 3
ANOVA
LAWYER SATISFACTION WITH COURT APPOINTED ATTORNEY

	SUM OF SQUARES	DF	MEAN SQUARE	F	SIGNIFICANCE
BETWEEN GROUPS	15.580	1	15.580	4.355	.037
WITHIN GROUPS	5719.962	1599	3.577		
TOTAL	5735.542	1600			

The specific hypothesis being tested is as follows:

$$H_0: \mu_1 = \mu_2$$

$$H_a: \mu_1 \neq \mu_2$$

At an $\alpha = .05$ level of significance and a p value of .037 the null hypothesis is again rejected.⁶⁶ There is a statistically significant difference between the use or nonuse of a court appointed attorney and the way they perceive lawyer satisfaction. The mean for lawyer satisfaction for those inmates who used a court appointed attorney was 2.37 on an interval scale of one to seven. The mean score for those inmates who did not use a court appointed attorney was 2.57. Thus, those inmates who did not use a court appointed attorney were more satisfied with their lawyers than those who did. H_2 is supported.

Hypothesis number three was tested by using whether the inmate used a "private attorney" as the categorical variable and the construct "Lawyer Satisfaction" as the dependent variable. The results are provided in Table 4.

66. See *supra* notes 64–65 and accompanying text.

TABLE 4
ANOVA
LAWYER SATISFACTION WITH PRIVATE ATTORNEY

	SUM OF SQUARES	DF	MEAN SQUARE	F	SIGNIFICANCE
BETWEEN GROUPS	154.694	1	154.694	43.832	.000
WITHIN GROUPS	5597.456	1586	3.529		
TOTAL	5752.150	1587			

The specific hypothesis being tested is as follows:

$$H_0: \mu_1 = \mu_2$$

$$H_a: \mu_1 \neq \mu_2$$

At an $\alpha = .05$ level of significance and a p value of .000 the null hypothesis is rejected.⁶⁷ There is a statistically significant difference between the use or non-use of a private attorney and the way they perceive lawyer satisfaction. The mean for lawyer satisfaction for those inmates who used a private attorney was 3.01 on an interval scale of one to seven. The mean score for those inmates who did not use a private attorney was 2.26. Those inmates who used a private attorney were more satisfied with their lawyers than those who did not. H_3 is supported.

III. PERCEPTION OF SATISFACTION BY LAWYER TYPE: IS PERCEPTION REALITY?

The above discussion suggests that lawyer type may help explain how criminal defendants perceive the quality and therefore the level of satisfaction they may have with their lawyer. Yet, various studies indicate that the type of lawyer a criminal defendant retains does not generally have a statistically measurable effect on the outcome of the defendant's case. One early study in Arkansas, for instance, involving cases in the six largest cities and three smaller towns in that state, yielded no clear evidence that a difference exists.⁶⁸ Another study a year later in Los Angeles County

67. See *supra* notes 64–65 and accompanying text.

68. Morton Gitelman, *The Relative Performance of Appointed and Retained Counsel in Arkansas Felony Cases—An Empirical Study*, 24 ARK. L. REV. 442, 450 (1971).

found that, despite the problems of dealing in a high volume urban defender office "[public] defender clients do about as well in the sentencing process as the clients who can afford retained counsel."⁶⁹

A third study, using a nationwide sample of state grand larceny cases, found a more mixed result.⁷⁰ The author, Stuart Nagel, observed that having a private attorney instead of one who was assigned by the court was more beneficial for "being released on bail and receiving a suspended sentence or probation if found guilty."⁷¹ However, a private attorney was also more likely "to consume more time while the defendant is in jail pending trial, and is more likely to have clients who receive longer prison terms if the defendant is imprisoned."⁷² Nagel also contended that a PD, as opposed to a court appointed lawyer, can represent his client at an earlier stage, can process the case more quickly, and is better at bargaining for a reduced charge and lesser sentence.⁷³

Atkins and Boyle's research yielded mixed results. On the one hand their research indicated that PDs were best at minimizing sentences, but that private lawyers, among other things, had more frequent contact with their clients.⁷⁴

Data in a 1986 study by Roy Flemming in Illinois, Michigan, and Pennsylvania also suggested that clients, whether they were public (represented by a PD) or private, were treated similarly by their attorneys.⁷⁵ Factors that emerged as being most important were whether preliminary hearings were held, the mean number of motions made per case, and whether they had a bench or jury trial.⁷⁶

Another commentator, Paul Wice, who observed PDs working in criminal courts, also argued that PDs were effective advocates. His study indicated that PDs are able to establish important relationships with

69. Marlene W. Lehtinen & Gerald W. Smith, *The Relative Effectiveness of Public Defenders and Private Attorneys: A Comparison*, 32 NLADA BRIEFCASE 13, 13 (1974).

70. Stuart S. Nagel, *Effects of Alternative Types of Counsel on Criminal Procedure Treatment*, 48 IND. L.J. 404 (1973).

71. *Id.* at 424.

72. *Id.*

73. *Id.* at 425.

74. Atkins & Boyle, *supra* note 4, at 449. The irony of this response is that the PD's ability to effectively negotiate a plea bargain which often results in minimizing sentences is looked at with disdain by the client who feels that this is part of what Abraham Blumberg dubbed a "confidence game." *Id.* at 428 n.3 (citing Blumberg, *supra* note 11, at 24).

75. Flemming, *supra* note 4, at 266.

76. *Id.* at 266-67.

prosecutors and judges which enables them to greatly benefit their clients.⁷⁷

The above indicates that the perception that PDs are not effective lawyers is not only erroneous, but may be counterproductive. This may warrant changes in public policy. In the following section, a number of commentators, as well as the authors offer thoughts for creating better perceptions of the services given by PDs. Our hope is that these ideas may create policies for improving the relationship between PDs and their clients.

IV. CREATING AN IMPROVED RELATIONSHIP BETWEEN PUBLIC DEFENDERS AND THEIR CLIENTS

Public defenders come to their indigent clients without a price. And as long as the landmark case of *Gideon v. Wainwright* stands as precedent, this strongly embedded constitutional right will not change.⁷⁸ Yet research indicates that price, as well as advertising, brand, and store reputation, consistently signals quality to the consumer.⁷⁹ Still, it is obvious that none of these can be exercised by PDs as cues to how valuable their services actually are, at least to the extent that they are employed by consumers in the private sector. As the research above indicates, however, price is one cue that, due to its absence, greatly diminishes the PD's ability to curry trust with his consumer—the criminal defendant.⁸⁰ Thus, despite their demonstrable competence, PDs engage their clients shorn of their sharpest edge—their legitimacy as effective and trusted lawyers. This, in turn, impairs the lines of communication essential to a proper defense and therefore weakens a major segment of our essential legal system.

The survey of former criminal defendants, interviews with PDs, and the review of studies discussed above lead to a number of recommendations that will help resolve the problem this Essay has framed. The accused must perceive value in the absence of price and other normal signals of quality, before a proper attorney-client relationship can develop. The

77. See generally PAUL B. WICE, *CHAOS IN THE COURTHOUSE: THE INNER WORKINGS OF THE URBAN CRIMINAL COURTS* (1985) (discussing in detail the day-to-day happenings in a typical city court).

78. 372 U.S. 335 (1963).

79. See, e.g., Benson P. Shapiro, *Price Reliance: Existence and Sources*, 10 J. MARKETING RES. 286, 287 (1973); see also Jaishankar Ganesh et al., *Understanding the Customer Base of Service Providers: An Examination of the Differences Between Switchers and Stayers*, 64 J. MARKETING 65, 84–85 (2000); Kent B. Monroe & Albert J. Della Bitta, *Models for Pricing Decisions*, 15 J. MARKETING RES. 413, 417 (1978); Richard L. Oliver & Wayne S. DeSarbo, *Response Determinants in Satisfaction Judgments*, 14 J. CONSUMER RES. 495, 495–97 (1988); Gerard J. Tellis, *Beyond the Many Faces of Price: An Integration of Pricing Strategies*, 50 J. MARKETING 146, 153 (1986).

80. See *supra* text accompanying notes 15–19.

following sections discuss these policy proposals in an effort to create a better environment for PDs and their current and prospective clients.

A. Education

O'Brien et al. felt the general public needs to be better educated about the criminal justice system in general and the role of PDs in particular. This, they suggested, could be accomplished through such venues as school classes, clubs, civic organizations, and churches, so that members of the public do not "prejudge their attorneys."⁸¹ For example, according to O'Brien et al., many people, including criminal defendants, expect "Perry Mason theatrics in the courtroom."⁸² However, they contended, the "representation a citizen should legitimately expect involves much meticulous and less than fascinating hard work that is seldom visible to the client."⁸³

In line with O'Brien et al.'s commentary, our discussions with Clark County, Nevada (the state's largest county, in which Las Vegas is located) PDs yielded a similar sentiment. One PD we conferred with maintained that private attorneys, because they must sell themselves to the defendant and to his family, give these parties what they expect. This will often take the form of a passionate display of histrionics and other such posturing in the courtroom. This kind of behavior is not necessary. For example, in preliminary proceedings judges are simply not impressed or influenced by such displays.⁸⁴ PDs, on the other hand, do not feel compelled to feed these expectations and therefore may be perceived by their clients as being less effective and engaged.⁸⁵ As a means of neutralizing this perception, it might be productive to explain to the defendants and their families that such cues do not necessarily equate with quality work as a criminal lawyer. Educating clients on lawyer behavior may thus be quite helpful.

B. Judge's Behavior

For defendants to perceive value from their PDs will require, in part, some conscientious effort by trial judges. Defendants must see judges as conducting the court's business with competent advocates representing the

81. O'Brien, *supra* note 4, at 310–11.

82. *Id.* at 311.

83. *Id.*

84. Interview with Howard Brooks, Clark County Public Defender, in Las Vegas, Nev. (Jan. 13, 2000).

85. *Id.*

interests of *both* the prosecutor and the defendant. An illustrative example of how a judge's behavior may affect a perception of quality was revealed in our conversations with state PDs. One PD remarked that private attorneys are given preferential treatment in court by judges who appear to value those attorneys' time more.⁸⁶ This includes calling the private lawyers' cases first. Some of these attorneys may also contribute money to a judge's campaign, which according to at least one of the PDs, is a possible reason for this special treatment.⁸⁷ Moreover, some defendants, according to these PDs, are aware of or at least perceive that private attorneys possess this advantage.⁸⁸ To mitigate this, judges should not relegate PDs to arguing their motions last, simply because the privately paid lawyers may assert that their time is more valuable than that of the government paid lawyer.

Similarly, a PD we interviewed remarked that judges will sometimes treat them as interchangeable. For example, if a defendant's original PD cannot make it for a hearing, another PD will be asked to appear for her.⁸⁹

Clearly, individual PDs, and not just the defender's office, must be addressed and treated as indispensable and not interchangeable professionals representing the accused. PDs must be treated equally in the order of the court's business and the PD's time must be valued. In the current system, a very negative perception of PDs and the system in general is created in the minds of criminal defendants.⁹⁰ Policies, on the other hand, which diminish or eliminate these practices will likely signal that PDs dispense quality work and are competent service providers. Similarly, much like the treatment judges should confer on PDs, the prosecutors should be willing to demonstrate professionalism in addressing both the PD and the defendant.

C. Public Defender's Behavior

In line with our previous discussion, Flemming asserted that PDs are perceived as lacking legitimacy as lawyers, which creates a disadvantage from the very beginning of the relationship.⁹¹ Yet private lawyers,

86. Interview with Linda Bell, Clark County Public Defender, in Las Vegas, Nev. (Jan. 13, 2000).

87. *Id.* Judges accepting campaign contributions is also one of the most important reasons why state judges and the system in general is negatively perceived by the public. See HEARST REPORT, *supra* note 1, at 40–41.

88. Interview with Linda Bell, *supra* note 86. Bell's opinion is echoed in the HEARST REPORT, *supra* note 1, at 40–41. In that report 81% of the respondents agreed that "judges' decisions are influenced by political considerations and judges' decisions are influenced by the necessity of raising campaign funds." *Id.* at 40.

89. Interview with Linda Bell, *supra* note 86.

90. *Id.*

91. See Flemming, *supra* note 4, at 273.

Flemming argued, gain immediate professional legitimacy for, among other factors, the exchange of their services for a fee or retainer.⁹² To overcome this obstacle, he proposed that PDs give their clients "time, frank assessments of their situations, and the impression they can be trusted, and if the clients respond by listening and offering to cooperate, the attorneys' authority takes root in the nascent relationship."⁹³

Moreover, Flemming contended that some lawyers, including PDs, may use a headstrong style that "provoke[s] a client's anger, reawaken[s] suspicions, and undermine[s] an attorney's tentative authority."⁹⁴ Thus, to establish a better relationship and therefore legitimacy in the client's eyes, he argued that a more "advising" approach should be used with public clients, a positive quality typically attributed to successful privately retained lawyers.⁹⁵ This approach, he continued, establishes a "feeling of participation that counteracts client apprehensions about being railroaded by an attorney,"⁹⁶ as well as positions "the burden for decisions on their clients' shoulders . . . and forestall[s] later complaints about their performance."⁹⁷

Another commentator, Glen Wilkinson, has put forward a number of ideas on PD behavior, which he felt may counter the criminal defendant's negative opinions of PDs.⁹⁸ Most of his suggestions dealt with altering perceptions. He suggested PDs, for example, must appear to be more engaged in their cases by having a better visitation policy with their clients and taking notes during these visitations.⁹⁹ Wilkerson also warned PDs about appearing too "chummy" with prosecutors and judges since defendants are "virtually paranoid" about these relationships.¹⁰⁰ This follows Casper's finding about perceptions of the culture of PDs and prosecutors in court.¹⁰¹

92. See *id.* at 263, 273.

93. *Id.* at 263. The ability to spend a lot of time with criminal defendants is often made more difficult by the circumstances of imprisonment. For example, one attorney stated that just getting through all the security checks to see a client can take up a great deal of her time. Interview with Gloria Navarro, Attorney at Law, in Las Vegas, Nev. (Jan. 14, 2000).

94. Flemming, *supra* note 4, at 265.

95. *Id.* at 263.

96. *Id.* at 266.

97. *Id.*

98. Wilkerson, *supra* note 4, 151-53.

99. *Id.* at 151-52.

100. *Id.* at 152-53.

101. As Casper points out, "the court system is itself a *social system*. The public defender "lives" with prosecutors and judges. He deals with them week in and week out, talking with them about cases, bargaining, perhaps socializing." CASPER, AMERICAN

O'Brien et al. also found that court appointed lawyers selected from the county bar were better perceived for, among other things, how they were dressed and their apparent experience. Such factors might instill in the client more confidence in the lawyer's abilities.¹⁰² Of course, professionalism as a communicator of quality must also be evident in individual PDs. Obvious indicators of value, such as professionally suitable grooming and dress, are self-evident, but there are more subtle messages in demeanor and action.

Public defenders should not appear rushed. Even given their heavy case loads, PDs must make a determined effort to budget time and not only listen carefully, but make a conscience appearance of listening, and of course, take notes when their clients speak. They should allay the commonly held fear of an imminent plea bargain by demonstrating a sound knowledge of the law and the criminal justice system, a quality most PDs already possess. And just as the judge must do, the PD must also impress upon the client that he or she is not represented by an office, but by a trained professional or specific team of defenders.

Just as PDs should avoid the appearance of a chummy relationship with prosecutors, they should insist on a professional relationship with their clients. This might mean avoiding first name familiarity with the client, avoiding jailhouse argot, and not tolerating profanity in conversations.

D. Public Defender's Accomplishments

PDs might also impart to their client their professionalism and quality by presenting their clients with a resume enumerating their education, years of experience as a PD, and other accomplishments. Providing this information should subtly communicate that they are defenders by choice, trained and often paid as well as prosecutors and other governmental professionals, and entitled to equal respect by the court and by the defendant.

PDs, being intelligent professionals, may find that some of the foregoing suggestions can be supplemented, revised or rejected. Still, the overall basic professional analog is demonstrated by physicians, who are invariably pictured in white coats and ties, with stethoscopes around their necks, referring to each other respectfully as "doctor." An observer simply connects the dots to see a picture of an intelligent, highly trained

CRIMINAL JUSTICE, *supra* note 4, at 103. This point of view, however, might be contrasted with an interview with a Clark County PD who felt that the close relationship that PDs have with prosecutors help them get better deals for their clients, perhaps even better than what a privately retained lawyer may be able to get. Interview with Linda Bell, *supra* note 86.

102. O'Brien et al., *supra* note 4, at 302.

professional—a picture that is a communicator of value. But PDs will have to do this without the props.

We submit that these proposals have merit as signals of quality to the consumer of criminal legal services. But, as mentioned, some of them require more resources than are likely to be forthcoming. As one ACLU (American Civil Liberties Union) lawyer recently remarked, “public defenders really don’t have any viable political constituency.”¹⁰³ Moreover, O’Brien et al. contended that “[i]ncreasing expenditures on public defenders, decreasing their case load, forcing fewer pleas, etc. will not have maximal impact on defendants’ dissatisfaction with court appointed lawyers, since the dissatisfaction stems not from what the public defender does but who the public defender is.”¹⁰⁴

In the end, promoting policies which might signal that PDs are quality service providers may never completely remove the stigma of simply being a PD—an employee of the very state which is now aggressively trying to imprison his or her client. Still, it might help in diminishing the negative perceptions and therefore hopefully decrease appeals based on lawyer incompetence. We suggest that these policy proposals, many of which have little or no cost to the taxpayer, may be worthy of implementation for the overall good of the judicial system.

E. Future Research Issues

This study reinforces some of the previous research regarding the views of criminal defendants and their satisfaction with lawyers as service providers. Central to these results is the negative, yet likely erroneous perceptions of PDs as failed service providers. Additional research with current and former criminal defendants in how this perception can be altered may help the system work more efficiently and economically. The practical effect of such research could demonstrate that a criminal defendant not only feels a deep cynicism of the court system, but that this dissatisfaction results in a higher probability of an appeal of the conviction based on ineffective assistance from counsel. The ensuing appeals may end up costing the government more in the long run than providing what is perceived as adequate counsel.¹⁰⁵ Thus, another possible avenue of future

103. See Rovella, *supra* note 5, at A1.

104. O’Brien et al., *supra* note 4, at 309.

105. See Rovella, *supra* note 5, at A9 (“By failing to fund the defense at trial, say Messrs. Voth and McDuff, the state [of Mississippi] is costing counties more money in later appeals based in part on ineffective-assistance claims.”).

research may involve an economic analysis of the cost of implementing some or all of these proposals versus the cost savings that may accrue from fewer appeals by disgruntled convicts.

V. CONCLUSION

Understanding the perceptions of the “consumers” of criminal justice is of crucial importance if the criminal justice system and the courts in general are to operate fairly and efficiently. As Casper stated concerning a criminal defendant: “[w]hen the government intervenes in his life, it is, literally, his life that is involved. Hence, any evaluation of our system, any attempt to describe it or change it, must take his views and perspective into account.”¹⁰⁶

Edmund Cahn, another observer of the criminal justice system, suggested that: “[o]nly when we . . . adopt a consumer perspective are we able to perceive the practical significance of our institutions, laws, and public transactions in terms of their impacts on the lives and homely experiences of human beings.”¹⁰⁷

This study attempts to gauge the perceptions of criminal defendants as consumers of their most important service provider, their lawyers. The results demonstrate that perceptions are generally quite negative and uneven, according to lawyer type. Even though all the criminal defendants found themselves in a very negative environment, those who had private attorneys felt significantly better about the quality and satisfaction of their lawyers. An arsenal of evidence tells us this is unwarranted; good public policy calls for steps to reverse this subjective valuation.

106. CASPER, *AMERICAN CRIMINAL JUSTICE*, *supra* note 4, at 3.

107. EDMOND CAHN, *THE PREDICAMENT OF DEMOCRATIC MAN* 30 (1961).