



**University of Virginia
School of Law
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HOW TO GET A JOB IN A PUBLIC DEFENDER'S OFFICE

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PREFACE

This manual is designed to help students decide if they would like a career as a public defender. It was also created to assist committed students in successfully landing a job at a defender's office. In preparation for writing this manual, the author conducted interviews with current and past public defenders in offices large and small. The defenders interviewed work or worked in New York, Boston, Philadelphia, Washington, D.C., Louisville, Lexington, Miami, Chicago, Seattle, Los Angeles, San Francisco, San Diego, Saipan, Charlottesville, and several smaller offices in Virginia. I wish to express my sincere gratitude to the many dedicated defenders who took the time to provide information for this manual.

About the Author

Before his tenure in the Mortimer Caplin Public Service Center at the University of Virginia School of Law from 2000-2002, Richard Armstrong, ⁸⁷ worked as a public defender with the Legal Aid Society, Criminal Defense Division, for thirteen years, the last three of which were spent as a supervisor. During that span, he participated in the hiring process including reviewing resumes, conducting interviews, and making hiring decisions.

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Introduction

Working as a public defender can be one of the most rewarding, challenging and demanding jobs in the legal profession. Every day the work is different, and every day, defenders feel that they have made a contribution to the poor of society. People drawn to the field include those who enjoy direct client contact and helping the underdog, and those who crave courtroom action and immediate responsibility. Most public defenders can expect to assume responsibility for their own caseload very soon after starting the job and many try their first cases soon within their first year after being hired.

Unlike big firm lawyers with lonely desk jobs, public defenders are in court practically every day and interact with every segment of society. Defenders also have an insider's view of the area of our government most subject to the public fascination and scrutiny. The topic of crime and the criminal justice system captivates people as demonstrated by the plethora of police dramas and "real life" crime shows on television. This insider's perspective gives defenders special insight into the workings of the system and, for those who care, provides for popular conversation at cocktail parties

But the day to day reality of the work is that public defenders exist for their clients. Their clients often represent the most downtrodden members of our society: the poor, the homeless, and the abused. Since clients come from the most underprivileged sector of society, defenders should expect to experience a strong dose of their reality. Abject poverty, homelessness, drug abuse, domestic violence and child abuse are constants in the lives of defender clients. At some time in their career, every public defender experiences some degree of depression because of their exposure to the constant misery that pervades the lives of their clients. But for most, the joy of providing each client with the best representation possible far outweighs those periods of depression.

Being a public defender exposes an attorney to a roller coaster ride of emotion: from fantastic highs when you win to deadening lows when you lose. While winning a criminal case will never actually satisfy a client's material needs, winning prevents them from losing years of their lives to incarceration, deportation or even death. Many defenders remember their first win, not because of the ego satisfaction it provided, but because of the look on the face of the client, who, perhaps for the first time, had the system work for him instead of against him.

Of course, the losses can be just as frustrating. Every defender can recount losing a trial, hearing or motion that they expected to win. With the vast majority of cases across the nation ending in plea bargains, losing one of the few cases actually litigated carries a particular sting. Oftentimes, these losses take a heavy toll on the public defender since the consequences more often than not result in a loss of liberty for the client. But again, lawyers who can learn to cope with the disheartening losses are in for a wonderful experience.

Is Being a Public Defender for You?

Students thinking about becoming a public defender should consider several questions before they begin applying. While not all defenders are the same, and not all offices operate in the same way, there are some traits common to most defenders—traits not shared by everyone in our society. Assessing your strengths

and weaknesses, as well as evaluating your motives for wanting to become a public defender, will go a long way toward helping you decide if this is the career for you. Many of these same issues are also raised in interviews for positions with defender offices so you will want to have given them some thought.

1. How do you feel about crime and criminals, or “*how could you defend those people*”?

While no one in our society likes crime, people have varying degrees of reaction to it. Some are outraged and call on judges and prosecutors to punish wrongdoers with the maximum possible sentence. Others are more willing to consider the environmental, social and economic factors in the background of the accused. Those with more lenient attitudes toward offenders often make good public defenders.

Additionally, many law students get excited about representing an innocent person, but far fewer feel the same about representing a client who is guilty. The truth is that a vast majority of clients represented by public defenders *have* done something, maybe not the exact crime charged, but some bad act. This means that defenders do represent guilty people and you should strongly consider how you would feel about representing, on a daily basis, clients who have committed a crime.

Some public defenders actually relish representing the guilty. Maneuvering around the minefields of the burden of proof and the statutory elements of the crime can be a rewarding experience. Often, prosecutors who assume they have an “airtight” case fail to consider all the alternatives and a clever defender can figure out a way to get her client acquitted. While the public may revile the criminal freed “on a technicality,” these technicalities are the bread and butter of public defense work. Moreover, in a justice system that relies so heavily on plea bargaining, helping guilty clients get the best deal possible is not “freeing” the guilty but instead keeps the system working for all who enter it by forcing better lawyering on both sides of the case.

2. How do you feel about standing up to the system?

Despite the presumption of innocence, most judges and prosecutors in the criminal justice system presume that the individuals in their courtrooms have committed the crime with which they have been charged. This creates a very difficult dynamic for a public defender, who is charged with ensuring that her client, guilty or innocent, attains a fair trial and receives the same constitutional protections afforded any other American. But in a context where guilt is regularly presumed, lawyers who insist on asserting a client’s rights are often viewed by judges or prosecutors as “difficult,” “non-collegial,” or “sticklers for detail.”¹ Many times in my thirteen years of practice as a public defender, every single person in the courtroom, from prosecutor to judge to juror, wanted to see me fail. While I got a charge out of this, other lawyers I worked with could not handle that kind of stress. Moreover, in some jurisdictions, the pressure to convince clients to plead guilty is tremendous and it takes nerve and a strong backbone to stand up and assert a client’s right to litigate his or her case.

Outside the legal system, the general public often has little or no respect for the work defenders do. While the work may provide conversation topics for cocktail parties, it is fair to say that most people you meet will think you aid and abet criminals. If you need constant reassurance from friends and family that what you are doing is right, then perhaps being a public defender is not for you. On the other hand, some lawyers delight

¹ This is especially true in smaller communities where familiarity sometimes breeds an expectation of cooperation.

in going against the tide or being an outsider. Public defender work meshes nicely with this mind set.

3. Will you like the clients? Do you like direct client contact?

The common perception of criminal defendants is the media portrayal of the animalistic murderer or rapist driven by an irresistible impulse to maim and murder. With very few exceptions, this could not be further from the truth. The vast majority of clients who walk into a public defender's office are nice, respectful people who have, whether through some fault of their own or others, wound up on the wrong side of the jail cell. The client base consists of young men and women who exercised bad judgment on a one-time only basis, individuals high on drugs or alcohol, the homeless, and victims of abuse. Except for bad luck or economic derivation, many clients are no different from anyone else in society, and many defenders genuinely like their clients.

The flip side of liking the clients is that it greatly increases the rate of burn out among career defenders. Constantly seeing the human misery endemic to the lives of most defendants takes a toll on defenders. Many report being unable to leave visions of this misery at the workplace. Home and family life then suffer. One defensive mechanism is developing a sense of humor. The ability to laugh at the sometimes foolish acts of our clients helps many attorneys survive.

While it is not so difficult to develop genuine feelings for the clients, some lawyers just do not like jobs requiring direct client contact. Going into poor neighborhoods or drug-infested areas to search for, or interview, witnesses is something not all lawyers would enjoy. While they may share the same defense-oriented leanings, these lawyers prefer jobs that are more cerebral or policy oriented. If you feel that you may fall into this category, you may want to consider working in the appeals section of a public defender's office. Appellate lawyers get to argue the cutting edge criminal law issues without having to deal with the stresses of direct client contact. Other options include the special litigation divisions of defender organizations that handle "larger" constitutional issues that arise indirectly in the course of representing indigent clients.²

4. Do you have the people skills necessary to do this job?

A common misconception is that trial lawyers are all extroverts, former class presidents with a need to be in the spotlight. Based on my experience meeting and working with public defenders over my career, this is not an accurate perception. To be a successful public defender, one need not be a showman. Relatively shy people can be excellent public defenders *as long as* that shyness does not carry over into trial work. For example, at parties, you may be afraid to speak to people you don't know, shy about interjecting your point of view into a discussion, and generally not the life of the party; however, at work, you may not be shy when speaking to clients, witnesses, prosecutors or judges. While shyness may make you nervous before each and every jury trial, once jury selection begins, shyness frequently disappears when you focus on the business of trying to win the case. This is not to say that extroverts have no place in criminal defense—William Kunstler, Jerry Spence and Leslie Abramson are prominent examples—but students who initially feel unsure about how they will do in front of a jury should not allow that insecurity to deter them from a career in which they may do

² Examples from my own experience include challenging the constitutionality of forcing accused rapists to submit to AIDS testing, and forcing convicted sex offenders to register under Megan's Law statutes.

quite well.

However, public defenders are required to forge relationships and work with people every day. A defender must be able to present his case effectively to prosecutors, judges and juries, so students who have qualms about this may want to consider different career options.

Choosing the Right Office

There are public defender offices in most large cities throughout the country and many states have developed statewide systems of defender offices. Some localities, New York City for example, have several different offices within the jurisdiction representing indigent criminal clients. Consequently, students interested in working as a public defender face a wide variety of defender offices from which to choose. While geographic preference will play a large role in the selection process, those for whom location is not definitive should consider other criteria for judging the work of particular offices. Listed below are some issues you might use to evaluate a particular office.

TRAINING

Prospective public defenders should be concerned about being appropriately trained to do the work. Some offices located in large metropolitan areas have very organized training programs that new hires must go through before being allowed to handle cases on their own. Many statewide systems also budget for attorney training, sometimes pooling the training resources in one central location where all new hires train before being assigned to the local offices. Finally, other smaller programs send their new employees to nationally-sponsored trial advocacy programs that do not focus exclusively on the procedure in the particular locality but instead teach general trial skills.

Unfortunately, some localities do not offer new hires a formal training program and defenders are trained on the job. One lawyer in a large defender system in the South reported being handed sixty cases on her first day and being told to prepare the cases for trial, with no offer of advice or training. Of course, attorneys who learn quickly, or who can learn while doing, need not be as concerned about a lack of training as those who need more formalized programs. Due to inadequate funding for many public defender offices, nonexistent or inadequate training programs are not uncommon and students should carefully evaluate an office training program before accepting an offer of employment.

Another issue to consider is whether skills workshops and continuing legal education is offered to mid-level and senior lawyers. While many offices do offer mid-level and senior training, several defenders expressed concern that their offices prepared them to begin work as a public defender but provided no continuing educational programs or training as their careers progressed. Without advanced training, many defenders fear that their trial skills will stagnate and that their professional growth will be stunted.

CASELOAD

Virtually no public defender is happy with his or her caseload. Most defenders would prefer a “boutique” practice where they are able to pick their cases and clients and take time to fully prepare every case thoroughly before litigating it. Unfortunately, this is not the nature of public defense work. Clients and cases are

assigned by the court and attorneys are expected to provide each client with a quality defense regardless of the number of cases the attorney is assigned.

While raw caseload numbers can provide some gauge in assessing the *quality* of work an attorney will be able to do for each client, variances in local procedures and plea bargaining policies make large caseloads easier to handle in some jurisdictions than others. Prospective defenders should try to discover from the front-line attorneys, *i.e., those who actually do the work*, what the caseload is actually like and how it impacts on providing quality representation to their clients.³

Another useful benchmark is to find out if the office has established set standards for representation of clients. The National Legal Aid and Defender Association publishes performance guidelines for criminal defense representation which strive to provide specific standards for all public defender offices and criminal defense attorneys.⁴ The NLADA standards can be used to evaluate a defender office. Do attorneys have adequate time to meet with their clients to explain their legal rights? Are attorneys expected to investigate every case and do they have adequate time to do so? Do attorneys have time to perform original research and writing on a regular basis? Do attorneys have enough time to adequately prepare for hearings and trials? Negative answers to some or all of these questions can be a cause for concern..

RESOURCES

Although, every defender may yearn for the Perry Mason-type ratio of one investigator and one paralegal per lawyer, this is not possible in the real world. Prospective defenders should ask about adequacy of investigative and other staff resources at any office to which they apply. Adequate investigators, research staff and secretaries mean the lawyer is able to do the type of thorough trial preparation that all defenders dream of doing.

Many defense offices supplement their paralegal and research staff with law students, and some also use college students as investigators. Do not overlook the potential benefits of these programs. Sometimes these students perform with more energy and enthusiasm than the professional staff.

INSTITUTIONAL TIME COMMITMENTS

While the hours required per day in public defender work varies, the hours generally compare quite favorably to those required of lawyers in private practice. There are no required billable hours and no competition to “make partner.” Except when on trial, defenders working in an office not swamped with a huge caseload (see above) should expect to work reasonable hours and be free most nights and weekends. The only limits to this freedom are occasional assignments to work arraignments, bail hearings or other off-hour work details.

³ Students can use the Alumni Career database to find the names of Virginia Law graduates currently employed as public defenders.

⁴ Contact the Public Service Center to view a copy. Copies may be ordered from the NLADA at www.NLADA.org.

In New York City for example, the Criminal Court arraigns defendants from 8:30 a.m. to 1:00 a.m. Sunday through Wednesday, and twenty-four hours a day the rest of the week. This means that public defenders working with the Legal Aid Society are often assigned to work off-hour shifts arraigning defendants. In addition to nights and weekends, these shifts sometimes fall on national and religious holidays. While working the overnight shift from 1:00 a.m. to 9:00 a.m. can be exciting the first few times, over the course of a career, it can become physically and mentally draining.

While shifts in other offices throughout the country may not be quite as demanding, they still limit an attorney's professional freedom and also take away from the cherished time to do proper case preparation. Some office ameliorate this somewhat by assigning relatively new hires to the most unpleasant shifts thereby freeing senior staff to do more casework.

OPPORTUNITIES FOR ADVANCEMENT WITHIN THE OFFICE

While new attorneys at most public defender offices very soon find themselves with a great deal of independence and responsibility over a misdemeanor caseload, applicants should make sure they understand how and when a particular office allows them to advance to felonies. This is important because felony cases are often the cases which draw attorneys to this work in the first place and even the most active misdemeanor practice can become stultifying after a year or two.

The philosophies on advancement differ from office to office. Some take an "attorney-centered" approach and allow the attorney to handle felonies once they have demonstrated sufficient proficiency on misdemeanors to justify the promotion. Many attorney-centered offices require a formal application process where the attorney must demonstrate sophisticated legal writing and analysis as well as trial experience in order to advance. Other offices are less formal, promoting attorneys to felony practice as soon as they have done a set number of trials—sometimes as little as one.

Other offices take an "office-needs" approach to promotion. These offices may be top-heavy with experienced felony lawyers or they may have a higher ratio of misdemeanors to felonies and therefore have little need for new felony lawyers. Attorneys who start in offices that take the office-needs approach may have to wait several years for a spot to open on the felony panel before they are promoted.

ROOM FOR PROFESSIONAL GROWTH

Related to the last topic is the issue of allowing attorneys to branch out and try new things. From time to time, attorneys in litigation may need a break from the trial routine or may want to handle appeals or special projects. Smaller public defender offices already have attorneys handling a variety of tasks within the office; for example, many attorneys in these offices already handle their own appeals. But in larger offices, the work tends to become more specialized—there are trial attorneys, appellate attorneys, prisoners' rights attorneys, juvenile rights' attorneys, mental health law attorneys, etc. Attorneys in one specialized segment of these offices do not get to try work in the other segments unless the office has a policy allowing transfers from one division to another.

THEORETICAL ISSUES: OFFICE PHILOSOPHY & STRUCTURE

Prospective attorneys should also be aware that public defenders in large offices constantly debate the theory of how best to set up defender offices or how best to improve their practice. Much of this theory, largely irrelevant to the practice in smaller offices, can greatly affect the defense philosophy of larger offices. While theory may mean little to a law student with little or no knowledge of the actual work of a public defender, applicants may want to consider office philosophy as it relates to the applicant's conception of what it means to be a criminal defense attorney.

Horizontal vs. Vertical Representation

This refers to how an office divides up the work on a criminal case. In an office that has vertical representation, one client is represented by the same attorney through all stages of litigation: from arraignment to bail hearing to motion practice to hearings to trial. An attorney in this type of office handles all phases of her client's case from start to finish.

In an office arranged horizontally, attorneys are assigned not to the client but to a stage of a case common to each client. In other words, a new attorney might be assigned to handle arraignments for the first six months of employment. Once that assignment is finished, the attorney might be assigned to handle bail hearings for another six months, followed by suppression hearings for six months, etc.

The benefit of vertical representation is that a client is given individual attention from one attorney. The client has one person responsible for his case and can go to that one attorney for advice, answers to questions, and trial strategy. One downside of vertical representation is that an attorney's development is tied to the quality of the cases of his clients. For example, a brand-new attorney may not have any "triable" cases for months, thereby limiting her courtroom experience. On the other hand, she may be thrust into a trial or a hearing before she feels ready solely because that is the course her client's case is taking. Another downside of vertical representation is that an attorney can never control his schedule. If an arraignment shift is scheduled on a weekend or holiday, the attorney must be there. If the client's case is put down for trial in the middle of a scheduled vacation, the attorney must seek a continuance or forgo the vacation.

One benefit of horizontal representation is that attorneys do not move on to another level of litigation until they have mastered all the skills from the previous level. In other words, an attorney will not begin handling suppression hearings until he has had extensive experience arguing before a judge in bail hearings. Through the daily repetition, attorneys gain an expertise in each phase of litigation. An obvious downside of a horizontal system is that a client never has one attorney formulating litigation strategy and an assembly-line system prevails where the client is simply passed from one attorney to the next without any one person taking ultimate responsibility for setting the course of the litigation.

Individual Representation vs. Team Approach

Most public defender offices are organized along traditional lawyer-client models. One attorney is assigned a client and that attorney alone directs the course of the litigation. If necessary, the attorney can call in a social worker or an investigator to help in the case, but otherwise the decisions on the case are made by the attorney and the attorney alone.

Some public defender offices are organized along a team model. Instead of being assigned one lawyer, a client is assigned a team from the office. Often the team will consist of one senior lawyer together with one or more junior attorneys, a social worker, an investigator and a paralegal. Although the senior attorney bears ultimate responsibility for the case, each member of the team takes part in the decision-making process.

The team process is thought to bring the unique perspective of each team member to bear on the case, thereby providing the client with better defense than he could receive from a single lawyer. The success of the teaming system depends largely on the leadership strength of the senior member. A good leader can integrate each member of the team into the litigation and make everyone feel integrally involved in the client's defense. On the other hand, some lawyers reported that weaker team leaders can make junior members feel like drones who are assigned background work without ever being allowed to handle the more glamorous in-court work.

Client-Centered Counseling

The conventional model of criminal defense is based on the traditional model of lawyering which emphasizes the hierarchical relationship between lawyer and client. In the traditional model, lawyers, because of superior training and experience, are in a better position to advise a client what to do, and clients are expected to quietly acquiesce to the advice of their lawyer. To the extent that clients make any decisions at all, they do so only on the recommendation of the lawyer.

Client-centered counseling represents a reaction to this traditional, hierarchical conceptualization of the attorney-client relationship. Under this system, the attorney encourages the client to take as active a role as possible in setting the course of the case, and the attorney acts primarily as a source of information and as a vehicle for carrying out the wishes of the client.

Plea bargaining is the area in which this debate has the most relevance. In the traditional model, once an attorney has determined that a client is likely to lose a case at trial, the attorney must use every ethical means at her disposal to convince the client to plead guilty. While the plea is ultimately the client's decision, the attorney certainly plays a large role in that decision. In a client-centered approach, the attorney may provide the client with his assessment of the case, but the client takes the lead in deciding whether to plead guilty and once a client asserts her right to try the case, the attorney will quickly accept that decision.⁵

Representation of a Client vs. Representation of a Criminal Defendant

Again, the traditional model of criminal defense followed in most offices is that the lawyer represents the client on his or her criminal matter and nothing else. A client may have a host of problems--homelessness, drug addiction and the like--which the lawyer may address in trying to resolve the criminal case; but the primary role of the lawyer is to handle the criminal charges with the best resolution possible.

A few offices around the country seek to broaden an attorney's role in representing the client. The attorney--or the team--represents the client in the criminal matter as well as any other areas of litigation that arise

⁵ While this may seem somewhat abstract, applicants should be prepared to answer interview questions about an attorney's role in plea bargaining. *See the section on Handling the Interview, below.*

because of the criminal matter. For example, if the client is arrested for selling drugs on the grounds of his public housing project and therefore faces eviction from public housing, the defender will represent the client in criminal court AND housing court.

Despite the apparent positives in favor of the “representation as a whole” model, one’s feelings about which system works best depends largely on your individual practice preference. Some defenders like whole representation because it allows them to work to solve the entire world of social problems encountered by their clients. The traditional model confined only to the criminal case makes these lawyers feel like they are objectifying their clients and not viewing them as human beings with a wealth of issues. On the other hand, defenders of the traditional model argue that specialization benefits the clients and point to the high burnout rate when lawyers begin to act like social workers for their clients.

SALARY

No one who decides to become a public defender expects to get rich doing it. That being said, everyone cares about how their salary will dictate their lifestyle. Defender offices handle the salary and benefits issue differently. Some give merit-based raises solely dependent on performance; others, especially the unionized offices, have a set scale where lawyers get a guaranteed raise each year; others depend on their city or state funders to set yearly their salary.

Whatever the pay scale, many defender offices offer generous benefits packages to compensate for the relatively lower rate of pay. Applicants should keep this in mind when comparing packages. Several weeks of vacation per year, liberal maternity and paternity leaves, shorter hours, and comprehensive health plans are meant to make up for the lack of high pay.

OFFICE REPUTATION

While most committed public defenders believe that they will never quit this type of work, the fact is that turnover is common in this and all public sector positions. Since an applicant cannot know what the future will bring, an office’s reputation should be an important consideration in deciding where to apply and where to work.⁶ The important consideration here is the reputation among the legal community, judges, prosecutors, and private practitioners. Is the office respected within the court system? Does it have a reputation for hard work and zealous advocacy? Do their adversaries think they do a good job? Where do attorneys who leave the office go? All of these questions should be considered when making a decision on where to apply.

Developing a Public Defender Resume

In general, public defenders are looking for candidates that have two basic attributes: the ability to project themselves to a jury and a commitment to indigent clients. Different offices may emphasize one attribute over the other, but all of the public defenders interviewed for this manual stated that they sought candidates possessing these two traits. Consequently, students considering becoming a public defender should work on

⁶ Please note that I am not talking about the reputation of public defenders in general.

developing experience that demonstrates trial ability as well as care and concern for the poor.

Since most law students will not have any actual trial experience, students should focus on activities that demonstrate their ability to speak to the public, handle and explain complicated issues, and think on their feet. Working in clinics, taking courses in trial advocacy, and participating in moot court are traditional means of demonstrating experience with oral advocacy. Clinics and trial advocacy courses, and to a lesser degree, moot court, have become so traditional that many public defenders actually question the commitment of students who do not have them on their resume. Thus, applicants who did not participate in these programs should be prepared to explain why.

The fact that these traditional methods of demonstrating public advocacy have become tests for judging commitment to the work should not deter students from emphasizing other experiences which show the same skills. Since most public defenders will teach you how to try a case, they are not as concerned with your knowledge of trial procedure as they are with your ability to “sell” yourself in front of a group of people. Political organizing and campaigning can be very valuable experiences—especially if the work involved public speaking or debate. Advocacy in administrative hearings, school disciplinary proceedings or employment hearings is another way of showing an ability to work on your feet. Students at the University of Virginia have an excellent opportunity to gain experience through proceedings in the Honor System and the Judiciary System. Law students can volunteer to prosecute or defend students charged with honor or judiciary offenses. These trials provide an excellent opportunity to perform as a trial lawyer and can provide an employer with real insight into a student’s commitment to being a trial lawyer.

Since trial work occupies only part of the work of a public defender, offices try to screen for attorneys who will work well with the clients. As stated above, the clientele in most defender offices consists of indigent people accused of committing a crime. Depending on the jurisdiction, the indigent clientele can include people of color, recent immigrants, and non-English speakers. Employers look for attorneys who have had some experience interacting with the client base. Thus, the public defender in San Diego, for instance, places greater stock in attorneys who speak Spanish and have dealt with the problems of illegal immigrants than does a defender in rural Kentucky. Likewise, the Los Angeles County public defender, with its diverse client base consisting of whites, African-Americans, Latinos, and recent immigrants from Asia, places a greater emphasis on attorneys with cross-cultural experience than does the office serving a more homogenous population in Winchester, Virginia.

But whatever the client base, applicants who have had some preparation interacting with poor people will have an advantage over those who do not. Again, clinics provide valuable opportunities to demonstrate your commitment to an employer. Even stronger are pro bono experiences that provide direct client contact such as working with battered women, doing intake for Legal Aid, or working with migrant farm workers. These experiences, valuable in and of themselves, also provide an opportunity for assessing your own ability and willingness to interact with these types of clients on a daily basis.

Handling the Public Defender Interview

Because public defenders try difficult cases under difficult circumstances, interviews are often conducted in a fashion designed to test the ability of the applicant to function under pressure. Interviews can run the gamut from traditional question and answer to hypothetical questions to role playing. While there are a

variety of formats and questions, they are all designed to test the applicant on three things: ability as an oral advocate, commitment to indigent clients, and willingness to stand up for what one thinks is right. Thus, prior to the interview, students should list and practice recounting experiences that demonstrate the above traits. This type of preparation will allow the applicant to be prepared to quickly enumerate the ways in which her qualifications match the employer's needs.

The "Why" Question

One question that everyone should be prepared to answer articulately is the "why" question:

- "Why are you here?"
- "Why do you want to be a public defender?"
- "Given society's distaste for crime and criminals, why would you choose this as a career?"
- "Given the large number of applicants for this position, why should we choose you?"
- "How would you feel representing a guilty person?"

Notice how each question is different but each calls for essentially the same information, namely, what is your commitment to being a public defender. Sometimes the interviewer pulls something from the applicant's resume to ask the same basic information:

- "I see that you worked with battered women while in law school, how would you feel about representing clients who batter women?"
- "You interned with (took a clinic with) the commonwealth attorney in law school, why do you want to be a public defender and not a prosecutor?"
- "As a graduate of Dartmouth and UVA, what about you should make us feel that you can relate to our largely poor, often drug-addicted, client base?"

Applicants should be prepared to answer this question in all its variations. Appropriate answers can range from the Constitutional:

- "Everyone deserves a defense"
- "I believe that even those who commit the most heinous offenses deserve the protections given all Americans"
- "I want to hold the government to its burden of proof"

to the anti-hero:

- "I enjoy being the underdog"
- "I believe that individuals have a duty to stand up to overreaching government"
- "I think the system is unfair to the poor/people of color and I want to fight to make it fairer."

But the best answer to the "why" question is one that derives from the applicant's personal experience:

- "Although I was raised in a privileged background, my work with migrant farm workers in law

school has made me aware of the difficulties the poor face in this country and I want to fight for them on the front lines of the criminal justice system.”

- “Growing up in a racially segregated community in the deep South, I saw firsthand the disparate way the criminal justice system treated blacks and whites. I decided then and there that I would go to law school to fight to change that.”
- “My work in trial advocacy showed me that my true abilities lie in trial work and criminal defense is the one area of litigation that is meaningful to me.”

Hypotheticals

Interviewers will frequently present applicants with hypothetical situations designed to test the applicant’s instincts, judgment, and ability to think quickly. Often these situations will test an applicant’s willingness to work for the guilty client. For example, one defender asks a question like this:

“You represent John Jones charged with beating his wife. Jones admits to you that he did in fact beat his wife but stresses that an investigation into his wife’s personal background will reveal facts about her, drug addiction, neglect of her children, and petty theft, that will devastate her credibility and result in Jones’ acquittal. He also tells you in an offhand remark that he would beat her again if he had the chance. The interviewer then asks you how you would proceed.”

An appropriate answer to this type of question is simply that the client is entitled to zealous representation within ethical bounds, so that of course, you would work to destroy the woman’s credibility and seek an acquittal.

Other hypotheticals may include situations asking you whether and how you would stand up to a judge who was exhibiting bias against your client; your willingness or unwillingness to convince a client with a bad case to take a plea; and your willingness to investigate a client’s alibi even if you personally had doubts about its veracity. In answering these questions, remember to briefly acknowledge your ethical obligations. While very few of the questions are designed to test your knowledge of the Code of Professional Responsibility, offices do want to be certain that they do not hire unethical attorneys who would embarrass them or tarnish the reputation to the office.

Role Playing

In addition to hypotheticals, defender interviews often include role-playing exercises and mock court proceedings. Applicants will be presented with a set of facts and then be asked to interview the client, prepare a bail application or a summation. Some offices give the exercise to the applicant sometime in advance of the interview; other offices present the exercise during the interview.

While the exercises may appear to be a test of the candidate’s knowledge of criminal law or procedure, more often than not a candidate’s knowledge is not the issue. What the exercise is designed to expose is the candidate’s ability to think quickly, speak clearly, and relate to indigent clients. In situations where the applicant is unsure of the relevant law underlying a particular exercise, it is perfectly okay to say so, “I’m not sure what the criteria is for setting bail in New York, so I am going to do my bail application based on the federal standard.” But even if you are unsure of the law, you should nonetheless try to do your best on the exercise. Candidates who enthusiastically participate in the exercise gain points for flexibility and quick thinking.

Some tips on handling the role playing:

–if you are meeting your “client” for the first time:

- be sure to shake his/her hand;
- be respectful and polite;
- clearly explain who you are and what your role is;
- frequently check with the client to see if they understand what you are saying;
- allow the client time to ask questions without allowing the client to take the interview completely off-track.

–if you are asked to make an application to the “judge”:

- stand up (if it seems appropriate);
- be respectful but not obsequious;
- speak clearly and explicitly outline your argument and what relief you are seeking;
- if the judge interrupts you or asks you questions designed to frustrate you or throw you off track, be respectful but firm—often the interviewer is trying to see if you are intimidated by authority.

–if you are asked to cross examine a “witness”:

- remember to ask questions in a leading manner;
- carefully review the paperwork you are given—often there are glaring mistakes which the interviewer expects you to focus on;
- do not ask the ultimate question (“Officer, isn’t it true you are lying to frame my client”)—the “witness” will be waiting to burn you if you do.

–if you are given something to prepare in advance like a summation or an opening statement, try to memorize at least the opening paragraph. Being able to make eye contact and flow easily through your introduction will greatly impress the interviewers.

The Panel Interview

If you are called for a second, or subsequent, interview, many offices use a panel format. This will consist of the applicant sitting in front of a panel of attorneys (and sometimes paralegal, investigators, or other non-attorney staff) and fielding questions. Once again, this is designed to test your ability to think quickly, speak effectively, and handle pressure.

One difficulty with the panel interview is staying focused while being hit with questions from all corners. Often, panelists will deliberately ask a question off the topic before you have had an adequate opportunity to fully answer the previous question. Respond by saying that you will deal with the new topic as soon as you have finished responding to the preceding question. You should then quickly wrap up your answer to the previous question and then answer the new question. Remaining calm, on topic and respectful is key to handling this type of interview. Additionally, remember to make eye contact with the entire panel, not just the

person who asked the question. And if there are non-lawyers on the panel, be very careful not to act disrespectfully to them or respond dismissively to their questions—panelists are evaluating you on your ability to interact all types of people.

Another key to a successful panel interview is to remain calm in the face of negative comments or facial expressions from some panelists. Often, these panels will have a designated “bad guy” who will challenge your answers or take you on in some way to see how you handle tough judges or tough questioning. Sometimes a panelist may just be a difficult person who does not reflect the feelings of the other panelists. In either case, do not be discouraged if you encounter a person like this. Do not allow yourself to be drawn into an argument. As long as you stand by your beliefs and are not dissuaded by the naysayer, you will gain points with the other panelists.

The Candidate’s Questions

Virtually any of the sections listed in “Choosing the Right Office for You” are appropriate areas to explore when you are given an opportunity to ask questions. Training and supervision are important areas to raise. Related topics include how quickly lawyers assume their own caseload and how the office evaluates the performance of its attorneys. Candidates who have carefully researched the office and who know its structure and philosophy are at an advantage since interviewers will be impressed with questions tailored to account for an office’s particular style.

Conclusion

During orientation on my first day on the job with the Legal Aid Society in New York City, one of the supervisors gave me some of the best advice that I ever received about being a public defender. He said,

You are beginning one of the most important jobs that an attorney can get out of law school. In a few short months, you all will hold within your hands the keys to freedom or jail for hundreds of poor people in this city. And you’re going to be responsible for what happens to them. Every decision you make can have a profound effect on their present and their future. You may not always know what exactly to do on every case but if you remember to always work for your clients the same as you would if you were an associate in a law firm and they were paying you to represent them, you can bet that you will always do right by them.

In a nutshell, that might be the key to deciding if being a public defender is right for you. If you are ready to dedicate yourself to seeing that the poor and the underprivileged receive the same constitutional guarantees that the rich and the privileged receive, then being a public defender is for you. Good luck.