

THE STRESS OF INJUSTICE:  
PUBLIC DEFENDERS AND THE FRONTLINE OF AMERICAN INEQUALITY\*

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ABSTRACT

Fairness and due process in the criminal justice system are all but unattainable without effective legal representation of indigent defendants, yet we know little about attorneys who do this critical work—public defenders. Using semi-structured interviews, this study investigated occupational stress in a sample of 87 public defenders across the United States. We show how the intense and varied chronic stressors experienced at work originate in what we define as the stress of injustice: the social and psychological demands of working in a punitive system with laws and practices that target and punish those who are the most disadvantaged. Our findings are centered around three shifts in American criminal justice that manifest in the stress of injustice: penal excess, divestment in indigent defense, and the criminalization of mental illness. Working within these structural constraints makes public defenders highly vulnerable to chronic stress and can have profound implications for their ability to safeguard the rights of poor defendants.

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## INTRODUCTION

The notion that legal representation is central to civil society and liberal democracy dates back to at least de Tocqueville (Scheingold and Sarat 2004). With the unanimous 1963 Supreme Court decision in *Gideon v. Wainwright*, the constitutional guarantee of an attorney for defendants in criminal proceedings who could not afford one was extended across the United States. Since then, the criminal justice system has witnessed an unprecedented expansion in both scope and depth (National Research Council 2014). Today, the need for legal representation of indigent defendants is massive and largely falls on the shoulders of public defenders who represent between 65 and 85 percent of defendants nationally (Pollitz Worden and Davies 2014). Despite their central and growing role in ensuring a fair system, studies that examine conditions under which indigent defense takes place remain few and far between. Most of what we know about the work of public defenders comes from journalists and former public defenders (e.g. Feige 2006; Davis 2007; Houppert 2014).

These journalistic and autobiographical accounts portray a relentless stream of caseloads, limited resources, and widespread distrust, both from the general public and their clients. In the current study, we show how these occupational stressors originate in what we define as the stress of injustice—the social and psychological demands of working in a punitive system with laws and practices that target and punish those who are the most disadvantaged. Using data from 87 semi-structured interviews with public defenders across the United States, we contribute to the sociological conceptualization of stress by turning a critical eye toward the role institutional practices play in occupational stress, and the stress process more broadly. We argue that the concept of the stress of injustice, as a form of structural stress, allows us to more accurately describe the nature of occupational stress for workers laboring at the frontlines of uniquely

American social inequality. At the heart of this inequality is the powerful and punishing presence of police, courts, and prisons.

Aside from extending the sociological understanding of occupational stress by considering the role of the legal context, why should we care about stress among public defenders? First, across professions, occupational stress has implications for workers' health and wellbeing, job satisfaction, burnout, and retention (Maslach, Schaufeli, and Leiter 2001; Abrams and Yoon 2007). Second, stress at the individual level further aggregates to have profound implications for how entire institutions are able to function. Studies among physicians, for instance, found that burnout affects quality of health care and patient safety (Hall et al. 2016; Dewa et al. 2017). Similarly, occupational stress among teachers affects student performance and wellbeing (Arens and Morin 2016; Jeon et al. 2019). Finally, public defenders have immense responsibility for protecting populations locked in a punishing system responsible for the highest incarceration rate in the world—and one that continues to pride itself as being tough on crime (Lynch 2020).

## BACKGROUND

The criminal justice system has become a major stratifying force in society by reducing the life chances of millions of individuals through political disenfranchisement, discrimination in the labor market, and poor health, among other adverse outcomes (Manza and Uggen 2006; Pager 2009; Wakefield and Uggen 2010; Wildeman and Wang 2017). The harm the system produces is shaped by American penal exceptionalism—increasingly punitive laws and practices enacted over the past fifty years that have anchored the criminal justice system at the center of social inequality (Turney and Wakefield 2019; Garland 2020). Our study shows and explains how these

changes have affected public defenders who are tasked with protecting the rights of the majority of defendants. In this section, we describe how penal excess, divestment in indigent defense, and the criminalization of mental illness collectively create the stress of injustice.

### Penal Excess

Transformations of the American criminal justice system, ushered in by ideological shifts regarding appropriate types and levels of punishment, have made it an international outlier in penalty (Whitman 2003; Garland 2020). The rehabilitative focus of early penal policies has been replaced by laws that reflect a draconian response to lawbreaking behavior and highlights deterrence, retribution and public safety (Beckett and Western 2001). Despite early investment in treatment, the “war on drugs” launched by the Nixon administration has been at the heart of the decades’ long “tough on crime” approaches. The war evolved as part of Reagans’ 1986 Anti-Drug Abuse Act that centered on, among other legislative actions, expanding mandatory minimum sentences and rolling back the social safety net. Eventually, the sentencing provisions of Clinton’s 1994 Violent Crime Control and Law Enforcement Act solidified the decades-long punitive stance. Its legislative changes ranged from the expansion of the federal death penalty and “truth in sentencing” laws to increased funding for new prisons. Together, these laws have been credited with the unprecedented and massive rise of the incarceration rate (National Research Council 2014).

American penal excess has greatly increased the need for public defenders by pushing more and more disadvantaged persons into the criminal justice system. These reforms have made public defenders’ work increasingly challenging, as they must contend daily with the effects of mass incarceration and retrenchment of social welfare (Soss, Fording, and Schram 2011). They

defend clients facing lengthy prison sentences implemented by broad and sweeping “tough on crime” regimes. These structural changes plainly “have raised the stakes and changed the dynamics of indigent defense” (Houppert 2014, pp. ix-x). Put differently, public defenders’ legal arguments carry more significance as the last line of defense against the increased punishments that now regularly accompany criminal convictions. On any given work day, a public defender may be representing clients facing life sentences, lengthy and restrictive probation sentences, exorbitant fines and fees, the loss of a driver’s license, or any number of harsh penalties spanning the continuum of penal excess.

#### Divestment in Indigent Defense

The stress of injustice is further engendered by a systemic lack of equal investment in both sides of the adversarial legal system. As punishments increased and social welfare declined, spending on police, prisons and prosecution has not matched spending for rehabilitation and indigent defense services (Clear and Frost 2014). This resource imbalance poses a fundamental problem for fair proceedings in a system that pits the state against the defendant, wherein “fairness is served if both sides are represented by lawyers who are evenly matched in areas such as available time to devote to the case, training, experience, and resources” (Lefstein and Spangenberg 2009, p. 6). Already a disenfranchised group, this lack of parity leaves the accused with the deck stacked against them. When resources are grossly imbalanced, the potential for wrongful convictions is increased through inadequate representation and increased reliance on plea bargaining. Accordingly, a lack of full investment in resources for defense and due process exposes indigent defendants to the full magnitude of penal excess.

Across the country, public defender offices are affected by the shortage of funds to hire sufficient numbers of attorneys and staff (Sudeall 2005). Examples include lawsuits the American Civil Liberties Union (ACLU) brought against public defender office in New Orleans and elsewhere for refusing to take on any new felony cases due to understaffing (Hager 2016). In 2014, a study by the New York Civil Liberties Union detailed how underfunding of indigent defense in New York created a broken system by, among other practices, denying investigators and experts to public defenders while making them easily available to district attorneys (Sehgal, Zelon, and Alexander 2014). The only national census of public defender offices carried out in 2007 found that about 370 cases were assigned annually to each public defender leaving, on average, 5-6 hours to work on a case, from investigation to trial preparation (Farole and Langton 2010). In addition, the stress of high caseloads is further compounded by low salaries—public defenders continue to be near the bottom of the salary distribution among attorneys (National Association for Law Placement 2018).

### Criminalization of Mental Illness

Finally, the stress of injustice is a product of penal and social welfare policies coalescing to simultaneously manage socially marginalized populations (Beckett and Western 2001; Soss, Fording, and Schram 2011; Natapoff 2015). This “penal modernity” implies that the justice system bears responsibility for addressing the root causes of criminal behavior that stem from social disadvantage (Garland 2020). The deinstitutionalization of mental health care coincided with shifting the treatment of mental illness to correctional institutions (Raphael and Stoll 2013; Slate, Buffington-Vollum, and Johnson 2013). County jails in Chicago, Los Angeles, and New York City have effectively become the largest mental health hospitals in the country, and today,

more mentally ill persons are in jails and prisons than in hospitals (Al-Rousan et al. 2017; Bronson and Berzofsky 2017). At the same time, more than half of incarcerated persons meet the criteria for drug dependence or abuse (Bronson et al. 2017). Punitive responses to substance abuse and mental illness coincided with the buildup of penal excess, positioning the criminal justice system as a ‘catch-all’ institution responsible for responding to a broad set of social problems beyond criminal behavior.

One way in which mental illness impacts indigent defense is by impeding communication (Chiriatti 2018). Difficulty explaining the implications of different courses of legal action places clients at risk of worse court outcomes and limits the ability of public defenders to provide effective counsel. Once in the system, these defendants are unlikely to have their medical needs met and receive adequate services (Fazel et al. 2016). As a result, people who suffer from substance use and other mental health disorders become recurring clients of public defenders, who in turn have few resources to address the underlying conditions that continue to put their clients behind bars. At the same time, public defenders regularly witness their clients’ histories of trauma and social disadvantage, which may be directly or indirectly implicated in their criminal charges, and place public defenders at risk of developing secondary trauma and compassion fatigue (Levin and Greisberg 2003).

### Public Defenders and the Stress of Injustice

In this paper, we explicate how the stress of injustice affects the work of public defenders, a critical yet understudied group of workers tasked with providing legal representation to clients accused of breaking the law who cannot afford attorneys on their own. Despite their centrality to a fair functioning of the system, sociological research on the criminal justice system has largely

failed to consider the role of public defenders as a key protection against the increasing power of the state to levy criminal charges and punishments. The macro-structural shifts that generate the stress of injustice also render the work of public defenders more essential, yet increasingly more challenging. In this section, we apply the concept of the stress of injustice to indigent defense work by elaborating on how the structural changes we described create chronic occupational stressors (in both quantity and quality) in the daily work of public defenders.

Public defenders can be described as street-level bureaucrats at the frontlines of poverty governance (Lipsky 1980; Lara-Millán 2014). In line with how Seim (2017) situates ambulance workers, lawyers for indigent defendants operate in between the protective Left hand of the state and the punitive Right hand (Bourdieu 1998; Wacquant 2009). This ambiguous position directly shapes the relationships they have with clients who oscillate between viewing the public defender as their advocate and a representative of the state, resulting in the “public pretender” trope (Moore, Yaroshefsky, and Davies 2018). Not unlike other workers at the frontlines of social inequality, public defenders must contend with both practical (e.g. court filings and appearances) and relational (e.g. courtroom workgroup dynamics) components of labor that culminate in poverty governance. The stakes are high. Public defenders work to explicitly protect the liberty of clients facing incarceration or death while simultaneously suffering from poverty and other forms of disadvantage. Even though their caretaking function may be on the rise, this is not a new phenomenon—“ [p]ublic defenders have long grappled with the non-criminal needs of their clients” (Natapoff 2015, p. 459)

In identifying the stress of injustice, we draw on contextual perspectives in sociological stress research. The sociological stress perspective has long been instrumental in guiding research on occupational stress, yet little emphasis has been placed on macro-level contexts for



explaining worker stress (Fenwick and Tausig 2007). The foundational categories in sociological stress research, such as chronic and acute stressors, are conceptually valuable to categorize the magnitude and intensity of stress, but they tend to be agnostic to the sources and levels of stress (Pearlin 1989; Thoits 2010; Carr 2014). Similarly, psychological and epidemiological perspectives in occupational stress research pay little attention to the social and political context of work, with the dominant focus squarely on micro-social processes and individual adaptation (Väänänen et al. 2012). Distinguishing and connecting the contextual and individual-level sources of stress, however, is critical for advancing and completing the social science understanding of the sources and manifestations of occupational stress.

The legal and political context of contemporary American criminal justice is fundamental to understanding the nature and magnitude of stressors experienced by public defenders and other frontline workers dealing with the consequences of inequality. Our perspective is similar to the concept of the political economy of stress described by Fenwick and Tausig (1994; 2007). In their review of occupational stress research, they claim none of the dominant occupational stress models, such as the job-demands control model, have been “concerned with the structural origins and dynamics of stressful job conditions” (Fenwick and Tausig, 2007, p. 146). We extend their conceptualization of structural stress beyond macro-economic processes, such as labor market conditions, to emphasize the inequalities and human suffering produced by laws and their effects on disadvantaged populations. Similar to political sociologists of health who show how the neoliberal restructuring of social policy and the welfare state has led to inequalities in health by exclusion of subordinated groups (Beckfield and Krieger 2009), we specifically situate the work of public defenders within an oppressive legal system, marked by penal excess, divestment in indigent defense, and the criminalization of mental illness.

## CURRENT STUDY

The aim of our study is to identify the specific ways laws, structures, and institutional practices shape the individual-level experience of occupational stress among public defenders. Our approach is decidedly social in that it centers the political and legal context as key to understanding how occupational stress is produced and experienced, standing in stark contrast to individual-level approaches connecting stress experience to person-specific demographic characteristics. In the process, we expand the sociological conceptualization of stress to consider contexts other than macro-economic conditions as responsible for creating and sustaining stressful working conditions. We also make a contribution to criminal justice research by showing how punitive laws and “tough on crime” politics infringe on the constitutional rights of indigent defendants through the limitations placed on public defenders to provide effective legal representation. To meet these goals, we have designed a qualitative study, details of which are described next.

## METHODS

### Data

Data collection took place between August 2017 and May 2018. We interviewed 87 current and former public defenders working in 17 states and the federal government (the list of states is available in the Appendix). Participants were recruited through a listserv for legal professionals and snowball sampling, and were compensated with \$50. We sampled for range (Small 2009) by including participants diverse in terms of gender, race/ethnicity, experience levels, urbanicity of jurisdiction, and case type. Interviews were carried out by four interviewers over the phone and

audio recorded. The interviews lasted on average about an hour. The recordings were transcribed verbatim. As Table 1 shows, the sample was split approximately equally between males and females. About two thirds of participants self-identified as white and about 10 percent as black and Hispanic, respectively. The average age was 40 and average tenure 10 years. Most participants represented adult clients and were salaried government employees. The median caseload was between 50 and 99 cases. Alongside quotes, we use pseudonyms and present information on participants' race and age.

Table 1 here

We note that we interviewed few public defenders in the South, where indigent defense systems are particularly strained. Given that participants in our study mainly worked in states that generally better support public defenders, our findings perhaps understate the magnitude of occupational stress, but they do not necessarily misrepresent the identification of the sources and types of stressors. Another aspect of our study with these same implications has to do with the nature of our sample common to qualitative sampling more generally. Because participants self-selected into the sample, we may not have been able to include attorneys who had little or no time to spend on an interview for an academic study.

## Analysis

We have adapted the flexible coding approach to guide the analyses of the transcripts (Deterding and Waters Forthcoming). Flexible coding is a modification of the classical grounded theory approach to qualitative analysis that reflects contemporary practices in sociology. First, we set out to learn about our data by creating index codes that generally followed the themes assessed in the interview guide, along with writing analytic memos to understand what meanings the themes

carry and how they connect with each other. The index code we used in this paper was named “stress sources” and it mainly included participants’ responses to the following questions from the interview guide: “Can you think back to a time when your work was extremely stressful?; What was the situation?; What, specifically, is the biggest source of professional stress for you?.” In the second step, using NVivo, we created analytic codes—or subcodes—within that index code that formed the basis of the present paper. These analytic codes included interactions with clients, salary and benefits, caseload size and type, court, and workplace characteristics.

Our focus was to engage with a sociological conceptualization of the structural aspects of occupational stress through the specific institutional and legal characteristics of the criminal justice system. In that sense, we engaged in abductive analysis by starting with a specific theoretical perspective in mind and analyzed ways in which our data can help refine that perspective (Timmermans and Tavory 2012; Tavory and Timmermans 2019). This focus was combined with our original interest in understanding how the broader work environment shapes the work experiences of public defenders. As we reread and analyzed the chunks of text within these codes, following the logic of abductive analysis we asked “what is this the case of?” to develop an “inference to the best explanation... our most promising guess” (Tavory and Timmermans 2019, p. 536). The stress of injustice emerged as a compelling explanation, as the sources of occupational stress that participants described could consistently be traced back to the structural elements of the criminal justice system—penal excess, divestment in indigent defense, and the criminalization of mental illness.

## FINDINGS

We present the findings organized around the three structural elements of the stress of injustice: penal excess, the disinvestment in indigent defense, and the criminalization of mental illness. Within each of these elements, we demonstrate and explain how structural forces produce occupational stress among public defenders.

### Penal Excess

The rise of the penal state has ushered in a set of interconnected chronic stressors: the weight of clients facing long, harsh sentences (even for traditionally “minor” offenses), the collateral consequences and discrimination attached to a criminal record, and an uneven adversarial system, where the state wields substantial power through prosecution. Because of the gravity of the legal consequences faced by their clients, the severity of potential punishments raises the stakes for public defenders and makes the job especially stressful. Warren described this stress as follows:

As of now, if I go to trial, they would face mandatory minimum of 10 to 15 years. That’s rough. I’m 30. Fifteen years is half of my life. I can’t imagine somebody younger than me doing 15 years of a full sentence. That would be difficult for me to live with. Like everybody else, you just find a way because you’re going to lose that case one day and you’re just going to have to deal with it. (30-year old Asian-American attorney)

The type of case also makes a difference. Even when clients are charged with a serious crime and there is convincing evidence, the consequences for the public defender may be lasting and profound:

I go through intake just crossing my fingers that I don’t pick up a forcible touching or a sex assault case. The consequences of being convicted of a sex offense are just god awful. We can think about it, we hate the little pervert, but we don’t know if the person did it or not. They’re going to have to potentially register as a sex offender for 25 years to life. That’s going to affect so much of their lives. (Ruby, 55-year old White attorney)

The collateral consequences of a criminal record are also on the minds of public defenders, even though they are not directly a part of a legal sentence. Despite more than five years of experience working in indigent defense, Libby highlighted the lingering sense of responsibility for not only the clients' legal outcomes, but also for the extralegal penalties that make the effects of mass criminalization ever more significant for social inequality:

A lot of my clients right now are having troubles getting into housing because of an old felony conviction and I'm trying to reduce that to a misdemeanor. If I think about it too much, it's like, well, if I don't win this motion then it's going to be a felony, then they're going to get kicked out of public housing, then they're going to be homeless. If you let yourself think about the consequences of the work too much, it's just overwhelming. To a certain extent, I suspend disbelief about the work that I'm doing. (29-year old Hispanic attorney)

Further, at a time when immigration enforcement is a federal priority, public defenders increasingly have to contend with the threat of their clients being deported. This is how April summed it up:

For example, if someone loses their job, or if they lose their housing, or if they enter into a removal proceeding if they're not U.S. citizens. All of these other collateral consequences, their children are taken away from them, right? I literally, for the first time in my life, had the responsibility of so many people's lives in my hands. It was really draining. I think the first year of this job, I would work seven days a week, I had no life. I would work from 7 am until 11 pm every single day. I didn't feel like I could do anything else, because if I didn't get everything done, someone's life could fall apart. (30-year old Asian-American attorney)

Losing or expecting to lose can take a toll as a chronic stressor. Losing also invites doubts about one's abilities and competence as an attorney. Despite knowing that winning is elusive in the context of the criminal justice system that favors the prosecution, it stings to think of oneself as a failure and can make the work that more challenging. This is what Ryan brought up when describing the emotional and psychological weight of losing:

The biggest source of stress for me, professionally, was just – that's loaded, right? I think that, honestly, failure. It took me a long time. Public defense is a tough job

for somebody who is a perfectionist. It's an impossible job, I think. But the most stressful thing was you don't want to lose at trial. You don't want to see a client go to prison. I think that working up to those trials, particularly where the client is unreasonable, the client is mentally ill, making decisions against their best interests. [...] the highest source of anxiety and stress was that I was not good at the idea of losing not necessarily being a reflection of my own skill. I think it's something I still struggle with, I think. That goes back to that whole balance thing, of how much should you give? But I think that maybe I'm not cut out for it. Maybe I'm just the wrong type of personality. I don't know. But I think that probably a lot of people struggle with those same ideas. I would say being perceived – this is horrible, right? – but more so than the client going to prison, the biggest source of stress is being perceived as a failure. Because you can't do something that's impossible. (34-year old White attorney)

Our results show how the structural stressors of the penal state can manifest as intense responsibilities for a clients' wellbeing—a contrast to the impersonal machinery of assembly line justice. In response to what she considers as the most significant source of work-related stress, Luciana identified the following:

Just worrying that I'm missing something or worrying about the outcomes of the case. We care so much about these people and we get to know them and their families, to not get the best outcome is just devastating. I think about my clients and what's happening to them all the time. (30-year old Hispanic attorney)

A similar point was made by Charlotte who pointed out that it is not only the defendant that relies on them, but also their family:

If you don't get the results that they desire, then somehow you have either failed them or they are going to suffer as a result. There's a lot of people, they're depending on you, they're relying on you, and they're dumping on you. You're learning about this person's entire life history, their past, their current, and their future is in your hands. Knowing that and actually feeling that and absorbing their energy and their stress is extremely powerful. (42-year old Black attorney)

Even though public defenders may get accustomed to losing or find ways to adapt, it nevertheless can take a toll, as Claire described it:

I think that for anyone who does this work, there's always going to be times when we take it home with us, and it keeps you up at night. It causes some emotional distress. Early on, I had a case that went to trial and I fought really hard and we lost, and I remember crying for a couple of hours afterward. I think there are

always going to be times when you take it home with you, when you worry, when you're waking up in the middle of the night, thinking of arguments. I think that would happen to almost everyone. I think it happens to us a lot because people's lives are at stake. I think that, yes, it does impact my life. I do work hard, I've gotten better over the years, about not letting it carry over into my personal life too much, but it still happens sometimes. (41-year old White attorney)

### Divestment in Indigent Defense

Increasingly limited resources within a constantly expanding penal system also creates structural stress, most often manifested in public defender caseloads. With the exception of some appellate and capital defense attorneys, the relentless stream of cases and the little time that the sheer volume leaves for investigation, consultation with clients, and trial preparation created significant stress for our participants. Chronic underfunding was reflected in the insufficient numbers of attorneys in the office, high office turnover, relatively low salaries, and simply making ends meet. The scarce time and resources available to devote to any one case is also reflected in public defenders being perceived by their clients as "public pretenders."

Like in an emergency room, public defenders described how high caseloads require daily triage, as they are forced to decide which cases require immediate attention and which ones can wait. At the same time, even the lowest priority cases carry severe consequences for the individual client. Juggling those pressures is constant and difficult, a point that Chloe made emphatically:

We're constantly being asked to do things that in what I feel like is an inhumane amount of time. It's just unreal. But I think you can either just cave under all the pressure, which I definitely feel like doing sometimes. Or you can just through and get all the stuff done, and be like, "I got all the stuff done," just in terms of day-to-day work. Like arraignments, it's like you go to arraignments and you have to talk to everyone in 10 minutes or less. You've never met the person before, and you have to make all these decisions and advise them and talk about what happens and stuff. I think that just creates a very almost emergency room type atmosphere in a lot of our work. (33-year old Hispanic attorney)



When asked about the most stressful part of the job, Eve pointed to the sheer volume of cases without hesitation, and highlighted how the size and scale of the criminal legal system outweighs the resources available to attorneys:

I think it's the general volume of the number of cases that we have to deal with. If I would have enough time to devote to each case, if my caseload were cut in half, I feel like maybe I would have enough time to devote to each case, and I could write every complex motion that's possible, and everything that's possible for me to do, for that client. But to some degree, the volume, the being in court three days a week, having to go to the jail one or two days a week. Even more, sometimes, depending on what's going on. Just the volume. A lot of times, we're just triaging. We're doing the best we can. [...] What fire do I put out next? (37-year old White attorney)

Facing scant resources of time and institutional support can lead to a chronic sense of personalized failure, impacting how attorneys see themselves as professionals and their ability to make a difference. Several public defenders described how difficult it is to take pride in one's achievements at work in a context of scarcity:

It's great to say everyone gets legal representation. But if you're not funding that, how does it happen? It falls on a very few people that are going to be very jaded, after a number of years. It's got to be well-funded, in order for it to be a success for people. When you're running into numbers that I was working with, you can't possibly. Like I said, I took pride in what I did. How can you do a good job, if you have to do what they're asking you to do? That takes a toll. How do you feel good about you? How do you feel like you're a competent attorney? (Donna, 48-year old Black attorney)

When our caseload was literally – when people had caseloads that were 60 or 70 above what they were supposed to be, you just have no time to do any of your work. You feel like a bad lawyer because you can't prepare for any of your cases. You start forgetting some of your clients' names because you have 140, 150 clients to remember. You start making errors in your cases. You start getting stressed about not being able to work on client's cases enough. It's a bad situation. (Elliot, 34-year old White attorney)

The death penalty and appellate attorneys had reported much smaller caseloads, yet their cases were typically more complex and time-consuming. For Bryan, the stress of the volume of cases was substituted, seemingly, by the energy and focus that such cases require:

We've had some success in stopping some of the executions. It's not like it's never possible, so that creates some tensions where we need to exhaust all efforts and exert super-human efforts on behalf of every single client. That has proven to be a very stressful, exhausting task without any kind of a – it's been fairly unrelenting, I should say. (42-year old White attorney)

Describing low morale and high turnover, public defenders also noted how limited resources also translate to low salaries, another chronic stressor. While some offices provide adequate compensation, most public defenders we talked to expressed frustration with how much they are paid, especially for the commitment, hours, and professional competence the work demands. The effects of a low salary on public defenders are both wide in their reach and deep in their scope and can lead to attrition, contributing to even more instability for the entire office:

The attorneys that work with me and got student loan payments that can't afford a car half the time, you know, they make sacrifices to do the job, they're not motivated out of money, they're motivated out of the love of the work but they make profound sacrifices to be able to do the job. [...] I don't know how you're going to rent an apartment, have a car and pay your student loans, and maintain a professional wardrobe and do all the stuff you have to do as a lawyer on that salary. And then it affects our ability to keep people, so we have a very high attrition rate because, I think in large part because the salaries just aren't competitive with other jobs, even other public interest jobs, you know. (Richard, 47-year old White attorney)

Monica, a 33 year old White attorney, described the same issue more succinctly: “Especially, you also want to feel like the job is stressful enough, it's shitty to have to also stress about whether you can pay your bills, like whether you can pay your rent, and whether you can go out to dinner with your friends.” Even for public defenders who work in offices that apparently have the resources they need, such as investigators and administrative staff, salary remains a major sticking point:

I think we're given the tools to do our job to the best of our ability and to best represent our clients. There's not one particular thing. I think our budget is always met. I guess the only thing I can think of is higher pay. We're paid less than our counterparts that are employed in the attorney general's office. I think that's a limiting factor for us each individually, but also for hiring purposes. Some people unfortunately can't take the position because it's not enough money for them to meet their needs. You can make not only more in the private sector, which is expected, but more doing the same type of legal work for the state. (Gabrielle, 40-year old White attorney)

Resource constraints and high caseloads also contributed to a widely used trope in our interviews: that of the “public pretender” stereotype that paints public defenders as ineffective and disinterested. Some attorneys have described they understand where these stereotypes might come from—poor experiences with other government services and the fact that public defenders cannot spend as much time with their clients as they would like to—but it is nevertheless a stressful aspect of the job.

I've been called a public pretender. I think some people have either had, themselves, personally poor experiences with the justice system or with an attorney or they just generally have this belief of “you get what you pay for” type of thing. People really believe that they need to have a private attorney and a private attorney is maybe a better attorney. I've been asked: When did I go to law school? When do I get to be a DA? There seems to be a perception that I am not a real attorney or a full attorney because I'm a public defender. [...] People just have this perception that if they pay for someone, then they're going to get more personalized one-on-one representation that that attorney only represents them and is going to work harder for them because they're paying them. That's really not the case. That can be frustrating. (Stephanie, 33-year old White attorney)

I think there is a perception that public defenders aren't real lawyers. They're public pretenders. They don't really care about their clients. I think there's a justified perception that we are overworked. So, I think it can be a challenge sometimes, for people to trust us, and earning that trust from our clients. (Kayla, 47-year old biracial attorney).

The “public pretender” stereotype can be stressful because it affects how much trust and confidence clients have in the attorneys that represent them. Winning over their trust and

building a productive relationship takes time and resources, both of which tend to be in low supply.

### Criminalization of Mental Illness

With limited access to psychiatric care and hospitals, disadvantaged populations are left with a high burden of untreated mental illness. People who would otherwise be cared for in a medical facility, repeatedly land in jails and prisons—and in front of public defenders. Neither of these institutions is designed to address their health-related needs. Here we describe the challenges that public defenders experience working with clients who have histories of trauma-related mental illness. With mentally ill clients, including those who have substance use problems, the basic and critical task of effective communication is hard to accomplish. Public defenders can be an effective advocate only if the client is able to understand consequences of different courses of legal action and make an informed choice between them. The emotional toll of hindered communication is further complicated by laws that prioritize punishment over treatment:

I think probably what gets to me the most is just, again, the mental health issues. Dealing with someone with such severe mental health issues, that they just don't understand what's going on. It's not stressful for me, mostly it's just because it's sad and there's just really nothing you can do about it. I have a case right now, my client called 911 saying that she was going to kill herself. Then when she did not kill herself, the DA's office charged her with initiating a false report. That creates a lot of stress for me, just because it's just so sad. Obviously, again, there are mental health issues there, but it'll be a trial case, but it's just stupid that it even has to get to that point. (Shelby, 26-year old White attorney)

People suffering from substance use disorder are also less likely to stay in touch, keep up with the required court appointments, and are often quickly charged with another offense. For Ryan, these challenges are a regular part of the job:

When you're dealing with a population that is going to be disproportionately addicts, then you're going to have a population that is disproportionately less likely to follow up and keep their appointments, and to read their discovery, and to not pick up new cases. Frequently, you would fight and you'd fight to get them out, and they would turn around, and they'd get another case the next day. You're like "Okay. Now you've violated your bond, and you've got another one. What am I going to do?" Those issues, I would say, are the big ones. (34-year old White attorney)

When asked if they found anything challenging or unexpected working with clients, Calvin, a 48-year old Black attorney, pointed out that working with mentally ill clients is more difficult than it should be because they do not have the appropriate training: "The number of people with mental health problems is staggering. I believe that most public defenders are not equipped to handle that. I always feel inadequate when it comes to handling people with mental health issues. I feel it's a shame in our society that we're criminalizing people with mental health issues."

Trauma is central to the lives of many indigent clients. For attorneys, it is also central to understanding a clients' actions and representing them effectively in court, even when the inherently public and punitive nature of the courtroom creates disincentives for discussing trauma:

The details of our cases, the backgrounds of our clients tend to be fairly horrific. Not the crime themselves, I'm not minimizing that, but I'm just saying what's called mitigation evidence, the grinding poverty, the severe abuse, the deprivation, everything that these clients for the most part uniformly experienced from childhood onward. Sometimes helping the client understand why it's important to talk about stuff that is deeply personal and deeply potentially embarrassing for not only the client but also for extended family members... Airing dirty laundry in front of family. Multi-generational laundry. Helping them understand why that, counter-intuitively, is actually a potentially helpful thing, while at the same time exposing them. Who wants to have their dirty laundry aired in the public record? Often times, you're talking about fairly significant and horrific backgrounds of abuse... physical, sexual, emotional. We're talking about clients who are severely traumatized. Working with traumatized individuals creates a set of circumstances where just being able to get them to open up

and talk about trauma they've experienced at times can be very difficult.  
(Bryan, 42-year old White attorney)

Repeatedly learning about another person's trauma comes at a price. As they frequently come in direct contact with populations devastated by social suffering (Kleinman, Das, and Lock 1997), public defenders become vulnerable to secondary trauma and compassion fatigue. Kylie explained how difficult it is to witness the loss of human life at the hands of the drug epidemic, and how these experiences can go as far as forcing public defenders to consider if they should stay on the job:

Sometimes stuff happens to our clients that is really hard on us. Whether it's listening to them talk about their life story and just the terrible lives that they've had and the terrible abuse that they've experienced. A friend of mine, really, was considering quitting for a little while because, I'm not sure if you're aware but [state redacted for anonymity] has one of the worst drug epidemics. He was really struggling because he has three clients in a row, within a six-month period, where he got them out one way or another, he got them out and then they overdosed. Whenever that happens, it is really, really hard. I recently had a client, right before I went on leave, who I had her as a juvenile, so I had her since she was 15 years old, when I was a brand-new attorney. Went through the whole juvenile system with her. She got out of the juvenile system, went into the adult system. Got her out into a program, she left the program and then she overdosed. (31-year old Hispanic attorney)

The emotional aspects of stress and experiencing secondary trauma are not necessarily something that public defenders expect when they start the job. For some it comes as a surprise.

It takes time and effort to acquire the skills to learn to, as Libby described it, "dig through that:"

I came into being a full-time public defender super grooved up and ready to go, like, "Yes, let's do this, let's fight the man all the time." Then after two and a half years, the reason why I left for a short period of time was just because I burned out really hard. I didn't have the skills at the time to protect my emotional stability and to be a functional human being outside of the office, after being exposed to trauma and horrible stories all day. All you do all day as a public defender is read police reports, where something bad happened to someone. You're talking to your client, where they've done something, or they were falsely accused, or they've done something,

they've had a horrible path. You have to dig through that. (29-year old Hispanic attorney)

Compassion fatigue may set in as a result of ongoing exposure to trauma, potentially creating structural consequences for indigent defense if such secondary trauma has implications for the quality of legal assistance public defenders are able to provide:

As much as it's important to detach and not take the work home with you, I think there's also this fear of too much detachment, like the fear of getting completely innervated through the system, which I think already happened. I already see how that can happen so easily, because you get so used to standard offers and what's normal. Whereas you're used to seeing people that are really sad and stressed. Your capacity to constantly respond with sadness and shock every time someone tells you the same story that you've heard many times before and it might totally be true. But you can definitely sense that you're less able to be as empathetic. (Chloe, 33-year old Hispanic attorney)

There are layers of secondary trauma. Whereas most of the trauma is related to clients' histories, traumatization also occurs as a result of working within a retributive and mechanical system that reduces a client to his or her alleged offense. An attorney's individual efforts to overcome the structural forces of penal excess, the divestment in indigent defense, and the criminalization of trauma-related mental illness can be painfully squashed by the state, as Chase explained to us:

I experienced the vicarious trauma of what my client was accused of doing; the actual, alleged crime. I experienced vicarious trauma of sitting with my client, and hearing about all of their traumas. I experienced a trauma when I would go and try and advocate and fight for them, and be a voice of reason, and try and change the narrative, and only have DAs push back, or say "No. Your client is going to prison." The trauma of trying to do something different, and have people see my client as a human being, and not be able to succeed in that, more often than not [...] The question was where does this person live, on the box, like the sentencing grid, based on their prior admitted conduct? And how many months in prison are they going to do? There's no room in our current system, for conversations about who my clients are, or better models, or why we got here, or what harm is going to be caused by sentencing my client to prison. There's no space for that. I felt like I was very much wrapped up in doing harm, because I couldn't do anything different. I hated that. I hated that. I couldn't do that anymore. (38 year old White attorney)

## DISCUSSION

Over the past few decades, the powerful institutions of punishment and control have been woven into American social inequality. In the present study, we examined how the stress of injustice shapes the occupational stress experienced by public defenders. In particular, we showed the implications of penal excess that creates chronic stress for attorneys who have to contend with the possibility of severe punishments for their clients and the collateral consequences of accusation and conviction. These interacting stressors are further compounded by the chronic underfunding of indigent defense systems that lead to high caseloads, low salaries, and client mistrust. Finally, we described how the client population, growing in size and scope with the criminalization of mental illness, plays into public defender stress by impeding communication with defendants and triggering secondary trauma.

Research on occupational stress among public defenders is rare, and leaves us with few studies which to compare our findings. The existing accounts suggest some of the major sources of stress raised by participants in our study have not changed significantly over the past two decades. In the only quantitative study, carried out in New York in 1994, stressors that were rated high both in terms of frequency and intensity included too much work, harsh sentences, trial preparations, and interactions with clients and prosecutors (Lynch 1997). Similarly, more recent qualitative accounts of the work of public defenders that have focused on themes other than stress suggest that mistrust directed at public defenders is common. A study of the Essex county public defender office in New Jersey highlighted interactions with clients as stressful, especially due to client distrust (Wice 2005). This lack of trust was also skillfully encapsulated



by the term “stigma of ineptitude” in an older ethnographic study of the Cook County Public Defender Office in Illinois (McIntyre 1987).

Accounts from indigent defendants and courtroom observations provide a complementary perspective to the one offered by public defenders. A recent Boston area study showed that public defenders respond to their clients’ efforts to advocate for themselves by silencing and coercion, thereby exacerbating racial inequalities and creating a foundation for client distrust (Clair Forthcoming). Similarly, an ethnographic study of the criminal court in Cook County, Illinois, depicted in rich detail the overt racist treatment of defendants of color by virtually all courtroom actors (Gonzalez Van Cleve 2016). While defense lawyers were more aware and expressed greater concern about the racially disparate treatment of indigent defendants, they too participated in the racialized practices of the courtroom by identifying only a subset of clients as deserving of zealous advocacy. These studies highlight the critical importance of client and ethnographic perspectives in understanding the work of public defenders, and the tense and ambiguous professional environment in which indigent defense takes place.

Compared to similarly situated occupations, public defenders are street-level bureaucrats who do their work simultaneously with and against the state (Lipsky 1980; Portillo and Rudes 2014). However, whereas public defenders perform a number of actions like those of other frontline workers, and enjoy both discretion and autonomy in their work, they occupy a more ambiguous role with respect to the state. Unlike police officers and case workers, for example, they represent Constitutional rights, not the penal code, and function as the adversaries of the state. This position makes them doubly disadvantaged: they enjoy little support and few resources from the state while, at the same time, are perceived by their clients as agents of the state. This makes it more challenging to overcome the public pretender stereotype, to negotiate

and contend with secondary trauma, and gain the trust that is critical for providing effective and efficient legal counsel in a punishing environment with scarce resources.

Our study extends and refines the sociological stress perspective (Thoits 2010) by elaborating on how laws and institutional practices shape occupational stress. We specifically show their implications for workers tasked with providing essential legal aid to the poor—a critical task in the era of mass incarceration. While similar approaches that highlight the structural context of work focus on the labor market (Fenwick and Tausig 1994; 2007), we focus on the criminal justice system. A comprehensive sociological conceptualization of occupational stress needs to consider ways in which American penal exceptionalism shapes the experience of work-related stress. The underinvestment in social services and overinvestment in the apparatus of social control and punishment over the past fifty years (Garland 2020) have created stressful work conditions for virtually all occupations at the frontlines of American inequality. Whereas ambulance workers and nurses, for instance, work with the physical manifestation of inequality through bodily injuries and illnesses (Burston and Tuckett 2013; Seim 2017; 2020), public defenders confront the social, legal and moral aspects of being poor and punished (Harris, Evans, and Beckett 2010; Natapoff 2015).

This study was not designed to create policy recommendations, but our findings suggest some avenues to mitigate occupational stress among public defenders. Aside from political decisions to increase funding and humanize criminal laws, potentially effective options include providing assistance with secondary trauma as soon as attorneys start the job, especially before compassion fatigue sets in, significantly impairing the ability of public defenders to provide effective counsel and contributing to burnout, attrition and turnover. Workplace interventions more generally may help reduce occupational stress among public defenders. While individual

stress-management interventions involve efforts such as personal counselling and stress-management training, collective interventions try to effect organizational change through stress audits (Cooper and Cartwright 1994). Both approaches should be a part of the conversation about how to enhance the stress-response of public defenders (Lamontagne et al. 2007). As others have suggested, however, to be most effective, learning about mental health and stress should start already in law school (Reed et al. 2016).

In the present study, we have not considered other vital aspects of occupational stress, especially its adverse effects on health. A growing literature points to high prevalence of psychological distress and substance use among attorneys, though studies have not examined public defenders specifically (Krill, Johnson, and Albert 2016). Stressful psychosocial conditions at work have also been associated with poor physical health across occupations, with research finding a heightened risk of increased blood pressure and cardiovascular problems in workplaces marked by factors including “an excessive caseload, very hard or overly fast work, and conflicting demands” (Gilbert-Ouimet et al. 2014, p. 110)—yet for most people stress also entails successful adaptation (Carr 2014). As some of our study participants described, they have learned to recognize and manage stress over time. Future research should examine this process of learning to adapt to stress and what specific resources can help facilitate that process.

In the context of the COVID19 epidemic, public defenders have to find creative ways to protect their clients because of suspended jury trials and the devastating health effect that the epidemic had on jails and prisons. A recent report quoted one defender saying that today is a time “when every sentence is a possible death sentence” (Oritseweyinmi and Miller 2020). There will also be a tremendous backlog of cases which, in the short term, may mean much higher caseloads. Perhaps a flurry of plea offers will happen as attorneys and judges will rush to reduce

the docket. The financial effects may also be devastating given the severe cuts during the 2008 recession (Houppert 2014; Aviram 2015). On the other hand, some courts are reluctant to put people in jail to await trial while persons incarcerated for low level offenses may be released early. Future research will need to address the short and long-term effects of these structural changes on indigent defense more generally and public defenders specifically.

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Table 1. Sample Descriptive Statistics (N=87)

	N	%
Gender		
Male	40	46
Female	47	54
Race		
White	61	63
Hispanic	8	9
Black	9	10
Asian	5	5.7
Biracial/Mixed/Other	4	4.6
Age ( $\bar{x}$ /SD)	39.8/11.2	
Years of experience ( $\bar{x}$ /SD)	9.6/9.3	
Representation - system		
Adult	65	76.5
Juvenile	9	10.6
Both	11	12.9
Representation - case type		
Felony	35	36.5
Misdemeanor	32	37.6
Both	9	10.6
Other	11	12.9
Employment type		
Salaried government	53	60.1
Nonprofit	25	28.7
Contract/conflict/appointed	9	10.3
Caseload		
0-9	2	2.3
10-49	19	21.8
50-99	25	28.7
100-149	19	21.8
150 or more	20	23.0

*Note:* Other caseloads include DWI, drug court, appellate, capital habeas, and domestic violence. Years of experience and caseload out of 84 cases; representation system and case type out of 84 cases.

$\bar{x}$  = mean, SD=standard deviation.

## Appendix

Table 1A: Public Defenders in Sample by State

<i>State</i>	<i>N</i>	<i>%</i>
California	1	1.1
Colorado	2	2.3
Federal System	1	1.1
Florida	2	2.3
Georgia	1	1.1
Idaho	17	19.5
Indiana	15	17.2
Kentucky	6	6.9
Massachusetts	1	1.1
Maryland	4	4.6
Michigan	4	4.6
Minnesota	1	1.1
New Hampshire	2	2.3
New York	20	23.0
Oklahoma	1	1.1
Oregon	6	6.9
Pennsylvania	1	1.1
Washington	2	2.3