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Community Responsive Public Defense

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COMMUNITY RESPONSIVE PUBLIC DEFENSE

*Alexis Hoag-Fordjour**

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Law & Order premiered in 1990, beginning each episode with: “In the criminal justice system, the people are represented by two separate yet equally important groups. The police, who investigate the crime, and the district attorneys, who prosecute the offenders.”¹ The show’s premise—police and prosecutors pursuing and achieving justice in under an hour—its title, and those opening lines encapsulated mainstream understanding of the criminal legal system at the time. Police solved crimes, prosecutors put bad people away, and victims got justice. Good versus evil, with good prevailing. Public defenders, who represented “the bad people,” did not factor into the equation, nor did the people who lived in the communities subjected to law enforcement surveillance, use of force, and prosecution. Three decades later, that understanding has shifted, and with it, the practice of public defense, community engagement with criminal injustice, and public defenders’ engagement with communities.

* Assistant Professor, Brooklyn Law School. This Essay was prepared for the Colloquium entitled *The Legal Profession’s Response to Social Change*, hosted by the *Fordham Law Review* and co-organized by the Stein Center for Law and Ethics on October 20, 2023, at Fordham University School of Law. I thank the participants of the colloquium for their engaged and thoughtful feedback.

1. *Law & Order* (NBC television broadcast).

Working in tandem, these forces have helped shift the narrative around the criminal legal system. The belief that “people are inherently bad” gave way to an awareness that structural forces—like lack of access to basic needs, official misconduct, and racism—contributed to people being prosecuted for allegedly doing “bad things.” These changing ideas complicated the dichotomies between good and evil, offender and victim, and guilty and not guilty. As people in heavily surveilled communities became more critical of a criminal legal system that targeted low-income people, people of color, and other marginalized populations, members of these communities began to question it.² Such collective action challenging the criminal legal system has helped push and empower indigent defense providers to become more responsive to the communities they represent.

This colloquium asks us to consider how social change is influencing the legal profession and the legal profession’s response. This Essay applies these questions to organizing around criminal injustice and the response from public defenders. This Essay surfaces the work of four innovative indigent defense organizations that are engaged with and duty-bound to the communities they represent. I call this “community responsive public defense,” which is a distinct model of indigent defense whereby public defenders look to their clients and their clients’ communities to help shape advocacy, strategy, and representation.

Methodologically, this Essay relies primarily on qualitative interviews with leaders of four indigent defense organizations engaged in community responsive advocacy.³ These leaders represent different types of indigent defense organizations: Still She Rises Tulsa (SSRT), a privately funded nonprofit that offers indigent defense and related services to women who are mothers in North Tulsa;⁴ the Nashville Metropolitan Public Defender’s Office (Nashville Defenders), a publicly funded government agency that provides defense services to indigent people in Davidson County, Tennessee;⁵ the Black Public Defender Association (BPDA), a membership-based organization that seeks to improve the quality of indigent defense through maintaining a network of community-engaged Black public defenders;⁶ and the Neighborhood Defender Service of Detroit (NDS

2. *See infra* Part I.C.

3. In September and October 2023, I spoke via telephone and Zoom to Alaina Bloodworth, Executive Director, Black Public Defender Association; Martesha Johnson Moore, Chief Public Defender, Nashville Metropolitan Public Defender’s Office; Kristine Longstreet, Managing Director, Neighborhood Defender Service of Detroit; and Aisha McWeay, Executive Director, Still She Rises Tulsa.

4. STILL SHE RISES TULSA, <https://stillsherises.org> [<https://perma.cc/C3HW-B6UA>] (last visited Feb. 9, 2024).

5. NASHVILLE METRO. PUB. DEF.’S OFF., <https://publicdefender.nashville.gov> [<https://perma.cc/CY3H-EXRZ>] (last visited Feb. 9, 2024).

6. BLACK PUB. DEF. ASS’N, <http://blackdefender.org> [<https://perma.cc/D8MT-KQ9Z>] (last visited Feb. 9, 2024).

Detroit), a publicly funded nonprofit that secured a contract to deliver defense services to indigent people in Wayne County, Michigan.⁷

This Essay proceeds in three parts. Part I defines community responsive public defense. Embracing the theme of this colloquium, it situates community responsive defense within the context of increased public awareness of criminal injustice and collective action against mass incarceration. Part II surfaces the work of four public defender organizations that are engaged with and responsive to their communities. Individually and collectively, these organizations strive to combat the structural forces that result in mass criminalization. Part III explores the potential benefits of community responsive defense and identifies some of the practical limitations of community responsive models and of this Essay's methodology. This Essay concludes with a call for indigent defense providers to embrace community responsive efforts.

I. DEFINING THE TERMS

Sixty years ago, the U.S. Supreme Court recognized a constitutional right to publicly funded defense counsel for indigent people facing state criminal charges.⁸ The decision contained sweeping language about fairness, liberty, and justice.⁹ However, given the structural dysfunction within the criminal legal system, the mandate has fallen short of its goals.¹⁰ Part of the dysfunction is limited resources for defense services and high caseloads for individual defenders,¹¹ but the issue is larger than these problems. The broader issue is the rapid growth of the criminal adjudication system, which, since *Gideon v. Wainwright*,¹² has increasingly targeted and criminalized the conduct of low-income people, people of color, and other marginalized populations. When *Gideon* was decided, the system recognized only 43 percent of criminal defendants as indigent.¹³ Today, approximately 80 percent of people charged with a crime qualify as indigent,¹⁴ and the rate of

7. *Detroit*, NEIGHBORHOOD DEF. SERV., <https://neighborhooddefender.org/locations/detroit/> [https://perma.cc/ME6F-R6JG] (last visited Feb. 9, 2024).

8. See generally *Gideon v. Wainwright*, 372 U.S. 335 (1963).

9. *Id.* at 339–45.

10. See Alexandra Natapoff, *Gideon Skepticism*, 70 WASH. & LEE L. REV. 1049, 1051–54 (2013).

11. See Irene Oritseweyinmi Joe, *Systematizing Public Defender Rationing*, 93 DENV. L. REV. 389, 391–93 (2016) (describing the lack of funding and resources facing public defenders).

12. 372 U.S. 335 (1963).

13. See LEE SILVERSTEIN, DEFENSE OF THE POOR IN CRIMINAL CASES IN AMERICAN STATE COURTS: A FIELD STUDY AND REPORT 7–8 (1965).

14. See CAROLINE WOLF HARLOW, BUREAU OF JUST. STAT., DEFENSE COUNSEL IN CRIMINAL CASES 1 (2000); Richard A. Oppel Jr. & Jugal K. Patel, *One Lawyer, 194 Felony Cases, and No Time*, N.Y. TIMES (Jan. 31, 2019), <https://www.nytimes.com/interactive/2019/01/31/us/public-defender-case-loads.html> [https://perma.cc/4UN5-RPQA] (“Roughly four out of five criminal defendants are too poor to hire a lawyer and use public defenders or court-appointed lawyers.”).

incarceration for Black people relative to white is six times higher.¹⁵ Rather than champion liberty, the right to counsel has enabled states to more efficiently and precisely prosecute and incarcerate millions of marginalized people under the appearance of due process.¹⁶

Simply providing legal representation to individual defendants is not enough to slow the tide of mass criminalization nor alleviate the racial disparities that exist. To address these structural issues, public defenders' roles must be more expansive than serving individual clients. And the public—whom public defenders ostensibly represent—have been demanding more.¹⁷ A subset of public defender organizations have embraced the challenge to offer more expansive services. I call these organizations, and the defenders within them, community responsive. Alaina Bloodworth, the Executive Director of BPDA, explained, “it’s not our job to pick the issues. It’s our job to observe, and then respond.”¹⁸ This part defines community responsive public defense. It also situates this changing model of advocacy within community-based organizing efforts against injustice, which helped shift the narrative around the criminal legal system and empowered a new model of public defense.

A. *Defining the Community*

Location and unifying social characteristics—whether experientially, organizationally, or identity-based—are the primary factors that help define community. In considering the relevant community for community responsive public defense, location is a natural starting point. State criminal prosecutions typically occur in counties, and a single public defender office usually represents indigent people prosecuted within a county.¹⁹ Defender offices are often located within walking distance of the county criminal court, which is convenient for lawyers who make frequent court appearances, but less so for clients who must contend with municipal infrastructure, transportation, and perhaps expensive parking. Nashville’s Chief Public Defender, Martesha Johnson Moore, is aware of the strain that the office’s

15. See Leah Wang, *Updated Data and Charts: Incarceration Stats by Race, Ethnicity, and Gender for All 50 States and D.C.*, PRISON POL’Y INITIATIVE (Sept. 27, 2023), https://www.prisonpolicy.org/blog/2023/09/27/updated_race_data/ [https://perma.cc/PJ9R-97WR].

16. See generally Paul D. Butler, *Poor People Lose: Gideon and the Critique of Rights*, 122 YALE L.J. 2176 (2013).

17. See Jocelyn Simonson, *The Place of “The People” in Criminal Procedure*, 119 COLUM. L. REV. 249, 266–70 (2019) (describing community participation in challenging criminal law policies and procedures).

18. Zoom Interview with Alaina Bloodworth, Dir., Black Pub. Def. Ass’n (Sept. 26, 2023).

19. New York City is a notable exception. For example, New York County, where Manhattan is located, has multiple public defender offices: Legal Aid Society, New York County Defender Services, and Neighborhood Defender Service of Harlem. COUNCIL OF THE CITY OF N.Y., REPORT OF THE FINANCE DIVISION ON THE FISCAL 2021 PRELIMINARY FINANCIAL PLAN: THE LEGAL AID SOCIETY AND INDIGENT DEFENSE 1 (2020).

downtown location can place on its community partnership efforts.²⁰ The previous Chief Public Defender formed a client advisory board comprised of Nashville Defenders staff and concerned community members.²¹ However the office's location became a barrier to community participation because of the corresponding lack of affordable transportation and parking.²² As such, the current chief is exploring community-based locations.²³

Some community responsive defender offices focus on a narrower geographic area when considering community. SSRT is one such organization. Rather than a traditional publicly funded defender office, SSRT is privately funded and provides services to a subset of the population—indigent mothers facing criminal charges and related legal proceedings.²⁴ Criminal prosecutions originate from Tulsa County, where the city of Tulsa is located, but SSRT is “intentionally located in North Tulsa,” a neighborhood about six miles north of the county criminal court buildings.²⁵ North Tulsa, where most of the city's under-resourced and Black residents reside, is also where the majority of SSRT's clients live.²⁶ There, SSRT is involved in the community it serves through attendance at community events and meeting with community members. “It's a requirement for us We [also] create spaces for our clients to come to us . . . to engage in discussions and [to give] feedback around things they need.”²⁷ Similarly, the Neighborhood Defender Service Detroit (NDS Detroit) is in Brewery Park, slightly away from Wayne County's criminal court buildings.²⁸ The organization moved to this location with a larger space in May 2023 to enable increased engagement with the community.²⁹ The additional space allows clients, community members, and local nonprofits to utilize the space for their own programming.³⁰

Beyond location, community in this context is experientially based, meaning it stems from the shared experience of being subjected to criminal surveillance, prosecution, and supervision. In most jurisdictions, this often means low-income people, people of color, and people from other marginalized populations (such as immigrants, disabled people, and people

20. Zoom Interview with Martesha Johnson Moore, Chief Pub. Def., Nashville Metro. Pub. Def.'s Off. (Oct. 3, 2023).

21. *Id.*

22. *Id.*

23. *Id.*

24. Related proceedings include family court matters, housing matters, traffic warrants, court debts, and record expungements. *The Mission*, STILL SHE RISES, <https://stillsherises.org/our-mission> [<https://perma.cc/2BDM-KEA8>] (last visited Feb. 9, 2024).

25. Telephone Interview with Aisha McWeay, Exec. Dir., Still She Rises Tulsa (Sept. 21, 2023).

26. *The Issue*, STILL SHE RISES, <https://stillsherises.org/the-issue> [<https://perma.cc/P6Y8-N7QW>] (last visited Feb. 9, 2024) (describing North Tulsa as the “most under-resourced and marginalized section of Tulsa”).

27. Telephone Interview with Aisha McWeay, *supra* note 25.

28. Zoom Interview with Kristine Longstreet, Managing Dir., Neighborhood Def. Serv. Detroit (Sept. 28, 2023).

29. *Id.*

30. *Id.*

with mental illness).³¹ But in this context, direct exposure to law enforcement is not a required factor in defining community. Beyond those with direct contact with law enforcement are the families, neighbors, and friends of those who experience direct contact and who live in the same area. In this way, the community is an identifiable group of people demarcated by the intersection of location and experience with law enforcement—whether direct or indirect. Nashville’s Chief Defender described it succinctly: “We represent the people who are overpoliced.”³² The office facilitates public-facing community conversations to help inform Nashville Defenders’ advocacy efforts. The people with whom they engage “don’t want more surveillance and policing. They want community alternatives to incarcerations[,] . . . more housing for the unhoused[, and] . . . to bring the schools up.”³³ In these ways, Nashville Defenders recognizes its duty to the community beyond individual representation.

The BPDA is differently situated in that it does not provide direct representation, nor does it serve a single geographic area. It is an organization that supports a “national network of skilled Black defenders.”³⁴ Thus, BPDA’s community is defined more by organizing and by unifying social characteristics, such as identity and experience. Some of the same structural forces that result in a disproportionately high rate of Black indigent defendants³⁵ also result in the disproportionately low rate of Black lawyers.³⁶ The BPDA seeks to unite members against these common barriers with a focus on “fight[ing] against mass incarceration and other racist carceral systems.”³⁷ Members share the unifying identity of being Black public defenders who “identify with and are committed to the populations they serve.”³⁸ Instead of direct representation, BPDA pours its efforts into the “development and recruitment, retention, and support of Black public defenders.”³⁹

31. See generally Jamelia Morgan, *Disability, Policing, and Punishment: An Intersectional Approach*, 75 OKLA. L. REV. 169 (2022) (describing racist and ableist stereotypes that contribute to police violence against people of color and disabled people).

32. Zoom Interview with Martesha Johnson Moore, *supra* note 20.

33. *Id.*

34. *About Us*, BLACK PUB. DEF. ASS’N, <https://blackdefender.org/about-us/> [<https://perma.cc/J9BN-JXXQ>] (last visited Feb. 9, 2024).

35. WENDY SAWYER & PETER WAGNER, PRISON POL’Y INITIATIVE, MASS INCARCERATION: THE WHOLE PIE 29 (2023), <https://www.prisonpolicy.org/reports/pie2023.html> [<https://perma.cc/A3AB-FL8Z>] (illustrating racial disparity in correctional facilities, showing a disproportionately high rate of incarceration for Black people relative to white, Latino, and Native people).

36. AM. BAR ASS’N, ABA PROFILE OF THE LEGAL PROFESSION 33–34 (2020) (noting that 5 percent of lawyers are Black relative to making up 13.4 percent of the population in the United States).

37. *About Us*, *supra* note 34.

38. BLACK PUB. DEF. ASS’N, <https://blackdefender.org> [<https://perma.cc/CY3H-EXRZ>] (last visited Feb. 9, 2024).

39. *About Us*, *supra* note 34.

B. Responding to That Community

Community expansive public defense is a distinct model of indigent defense advocacy that involves engaging with the community; building authentic, sustainable relationships; and responding to the community's needs. Other innovative models of defense, including holistic defense,⁴⁰ participatory defense,⁴¹ and community-oriented defense,⁴² share some features. Like holistic defense, community responsive defense recognizes that defense counsel is better able to advocate for the client if they have a broader sense of who their client is within the context of the client's community.⁴³ Participatory defense, like community responsive defense, seeks to empower clients' families and communities and organize for better case outcomes.⁴⁴ Like community-oriented defense, a community responsive model engages deeply with clients' communities.⁴⁵ However, community responsive defense differs from these other models in that it begins from a place of trust, it responds to the community's articulated needs, and it transfers some of the priority-setting power to the clients and to the community.⁴⁶ The defender offices profiled in this Essay are also led by Black people who approach community engaged work from a place of cultural humility, understanding, and openness.⁴⁷

Even with a clear definition of community responsiveness, there can be uncertainty surrounding which community interests to advance. Johnson Moore, Nashville's Chief Public Defender, acknowledged that "figuring out what to prioritize is hard[, and] we can't have our hands in every single issue."⁴⁸ Building trust through consistent advocacy inside of the courtroom and presence outside of the courtroom helps.⁴⁹ Johnson Moore explained, "a lot of it is listening day to day. 'How are police responding to a particular community?' . . . I hear about issues when I do community outreach. People come and talk to me about issues their family members have experienced."⁵⁰

40. See Michael Pinard, *Broadening the Holistic Mindset: Incorporating Collateral Consequences and Reentry into Criminal Defense Lawyering*, 31 FORDHAM URB. L.J. 1067 (2004).

41. See generally Cynthia Godsoe, *Participatory Defense: Humanizing the Accused and Ceding Control to the Client*, 69 MERCER L. REV. 715 (2018).

42. See Harold R. Washington & Geraldine S. Hines, "Call My Lawyer": *Styling a Community Based Defender Program*, 8 BLACK L.J. 186, 188 (1983) (describing the Roxbury Defenders Committee in Boston, which served the predominantly Black neighborhood of Roxbury).

43. See Pinard, *supra* note 40, at 1072.

44. See Godsoe, *supra* note 41, at 719.

45. See Washington & Hines, *supra* note 42, at 187.

46. I thank Olatunde C.A. Johnson for encouraging me to more clearly define the contours of community responsive defense and to distinguish it from existing models.

47. See Alexis Hoag, *Black on Black Representation*, 96 N.Y.U. L. REV. 1493, 1532–42 (2021) (describing potential benefits of racial congruence between defense counsel and the client).

48. Zoom Interview with Martesha Johnson Moore, *supra* note 20.

49. BRYAN STEVENSON, *JUST MERCY: A STORY OF JUSTICE AND REDEMPTION* 12 (2014) (explaining that proximity to injustice makes "the question of each person's humanity more urgent and meaningful").

50. Zoom Interview with Martesha Johnson Moore, *supra* note 20.

Similarly, NDS Detroit focuses on building trusting relationships with the community before a moment of crisis arises, such as an arrest or a criminal charge. “We have a Community Intake [Program], where people can call us when they’re being investigated . . . [F]ormer clients will call us to request us.”⁵¹ Thus, rather than respond reactively, NDS Detroit can get ahead of a potential prosecution and strategize from an earlier point in the case.

Priority-setting is an inexact science, but each organization looks to their clients and the representative community to inform their efforts. Kristine Longstreet, the Managing Director of NDS Detroit, described how her office’s priority-setting “happens organically. We have a leadership group, we meet every other week. We figure out what we can do.”⁵² When the efforts are beyond the office’s individual capacity, NDS Detroit partners with other organizations who have similar interests and passions but greater bandwidth. This has led to successful partnerships with the American Civil Liberties Union of Michigan and criminal defense lawyers in private practice.⁵³

Founded in 2016, SSRT was mindful of its outsider status when establishing itself in an existing community and in setting priorities. The organization was started by the New York City-based founder of Bronx Defenders, Robin Steinberg.⁵⁴ Initially, SSRT was viewed with skepticism and hesitancy, a perception that has changed with thoughtful outreach and intentional hiring.⁵⁵ Executive Director Aisha McWeay described it as SSRT needing to “step[] back and shut up and listen.”⁵⁶ SSRT’s top “priority is always the client,” but the organization has the capacity to address more systemic issues through its impact litigation team. McWeay encourages SSRT staff to provide information about what they are witnessing in individual representation and what they are hearing from community partners, and to feed that intelligence to SSRT’s impact litigation team. “That’s what the . . . team is for.”⁵⁷

When setting priorities for the office, Johnson Moore, Nashville’s Chief Public Defender, is buoyed by the fact that Davidson County voters elected her to act on their behalf. In 2022, Johnson Moore began her second

51. Zoom Interview with Kristine Longstreet, *supra* note 28; see also Angie Jackson, *New Detroit Program Can Match Public Defenders and Clients Before Arrest*, DETROIT FREE PRESS (June 19, 2022), <https://www.freep.com/story/news/local/michigan/2020/06/19/detroit-program-match-public-defender-juneteenth/3221022001/> [<https://perma.cc/5Z6U-EMGU>].

52. Zoom Interview with Kristine Longstreet, *supra* note 28.

53. See Ross Jones, *Surge in Nonviolent Wayne Co. Gun Arrests Harms People of Color, Advocates Say*, WXYZ (Jan. 11, 2022, 10:47 AM), <https://www.wxyz.com/news/local-news/investigations/surge-in-nonviolent-wayne-co-gun-arrests-harms-people-of-color-advocates-say> [<https://perma.cc/E4SN-BPSE>] (describing NDS Detroit’s efforts, along with other advocates, to highlight the fact that law enforcement officers were targeting law-abiding Black people with gun charges despite Michigan’s open-carry laws).

54. *Our Team*, STILL SHE RISES, <https://stillsherises.org/our-team> [<https://perma.cc/K5PA-9WAS>] (last visited Feb. 9, 2024).

55. Telephone Interview with Aisha McWeay, *supra* note 25.

56. *Id.*

57. *Id.*

four-year term.⁵⁸ In 2018, she was the first Black person elected for the position.⁵⁹ Johnson Moore refers to being elected as both a “beauty and a blessing.”⁶⁰ On the one hand, the same people elect the district attorney general, the county sheriff, and criminal court judges, meaning she does not have any greater authority with which to act than any other elected official in the criminal adjudication system. On the other hand, she feels empowered to represent the perspectives of the community when challenging criminal injustice and to do so unapologetically.⁶¹

Relative to nonelected public defenders, Nashville’s Chief Public Defender is not as beholden to criminal court judges, nor does the defender need to be as deferential.⁶² In other jurisdictions, outspoken nonelected defenders run the risk of being removed from office.⁶³ As an elected official, Nashville’s Chief Public Defender carries more independence,⁶⁴ and it is that independence that enables the office to push a more community- and client-centered agenda. Yet, even with greater authority and power to challenge systemic issues, Johnson Moore acknowledged that it is “tough to balance structural and individual representation work.”⁶⁵ At the end of the day, “the core of our concerns is our client. We don’t get to decide whether we’re activists or client centered, we’re client centered.”⁶⁶

For BPDA, responding to their community means supporting Black public defenders. In doing so, BPDA’s efforts inevitably impact the very types of communities identified above: people with direct and indirect exposure to being surveilled, supervised, and prosecuted by law enforcement. Moreover, Black public defenders are not immune from having negative experiences with law enforcement just by virtue of being lawyers. Experiencing this country as both a Black person and a public defender gives BPDA members additional insight into their clients’ experiences, which is something BPDA seeks to build upon. I have described this as embodied empathy, the “unspoken familiarity” among “Black people given their shared experience with the social meanings assigned to” being Black in this country.⁶⁷ In the context of the attorney-client relationship, such racial congruence has the potential to improve trust, communication, and representation.⁶⁸

58. Zoom Interview with Martesha Johnson Moore, *supra* note 20.

59. *Martesha Johnson Moore ('08)*, UNIV. TENN. ALUMNI PROMISE AWARD, <https://alumni.utk.edu/s/1341/2/20/interior.aspx?sid=1341&gid=2&pgid=20453> [<https://perma.cc/FVN6-MR46>] (last visited Feb. 9, 2024) (noting Johnson Moore’s historic election).

60. Zoom Interview with Martesha Johnson Moore, *supra* note 20.

61. *Id.*

62. *Id.*

63. See Andrew Howard, Note, *The Public Defender: Analyzing the Impact of Electing Public Defenders*, 4 COLUM. HUM. RTS. L. REV. ONLINE 173, 183–84 (2020).

64. Zoom Interview with Martesha Johnson Moore, *supra* note 20.

65. *Id.*

66. *Id.*

67. Hoag, *supra* note 47, at 1502.

68. *Id.*

C. *Increased Community Action Addressing Injustice*

This shift in advocacy did not occur in a vacuum. It was situated within social movements challenging injustice and the racial disparities within the criminal legal system. These movements helped bolster a more nuanced approach to defense work and pushed advocates to be more responsive to their client communities. Community-based organizing was at the center of the social movements against injustice.⁶⁹ These efforts helped inform and politicize a new generation of future advocates⁷⁰—some of whom are now in leadership roles in social justice organizations, including the public defender organizations profiled in this Essay.

Significant trends and policies helped spur grassroots organizing efforts in the late 1990s. Although the prison population surge began in the early 1970s and peaked in 2009, incarceration rates in every state (except Maine) expanded dramatically during the 1990s.⁷¹ When *Law & Order* debuted at the start of the decade, it reflected mainstream understanding of criminal law policy: bad people who did bad things were irredeemable and deserving of long, harsh punishment.⁷² The 1990s witnessed a wave of harsh criminal law policies, including mandatory minimum drug laws at the state and federal levels.⁷³ During this period, twenty states passed habitual offender laws, which imposed life or life without parole sentences for crimes upon a person's third conviction.⁷⁴ Lawmakers and other actors in the justice system relied on the "superpredator" myth to inform charging and sentencing decisions for young people, primarily young people of color.⁷⁵ For example, Congress passed the Antiterrorism and Effective Death Penalty Act of 1996⁷⁶

69. See *History*, CRITICAL RESISTANCE, <https://criticalresistance.org/mission-vision/history/> [https://perma.cc/BH5K-R4A4] (last visited Feb. 9, 2024) (describing convenings that occurred in California in 1998 and in the Northeast in 1999, involving thousands of people from across the country "challenging the idea that imprisonment and policing" can solve "social, political, and economic problems").

70. See generally DERECKA PURNELL, *BECOMING ABOLITIONISTS: POLICE, PROTESTS, AND THE PURSUIT OF FREEDOM* (2021).

71. ASHLEY NELLIS, *THE SENT'G PROJECT, MASS INCARCERATION TRENDS* (2023), <https://www.sentencingproject.org/reports/mass-incarceration-trends/> [https://perma.cc/B39L-W5DE].

72. James Forman Jr., *LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA 10–11* (2017) (describing punitive policy responses to rising crime rates in the 1980s and 1990s).

73. *Id.*

74. In 1994, California, Colorado, Connecticut, Indiana, Kansas, Maryland, New Mexico, North Carolina, Virginia, Louisiana, Wisconsin, and Tennessee all passed habitual offender laws, some of which have since been repealed or modified. Michael G. Turner, Jody L. Sundt, Brandon K. Applegate & Francis T. Cullen, "*Three Strikes and You're Out*" *Legislation: A National Assessment*, 59 *FED. PROB.* 16, 18–19 (1995). Ten other states passed similar laws in 1995. *Id.*

75. See *Conn. v. Belcher*, 268 A.3d 616, 618 (Conn. 2022) (overturning Black defendant's sixty-year sentence based on "superpredator" myth, characterizing young people who engaged in impulsive, brutal crimes as incapable of rehabilitation or remorse).

76. Pub. L. No. 104-132, 110 Stat. 1214 (codified as amended in scattered sections of the U.S.C.).

(AEDPA), which was intended to speed up death penalty executions⁷⁷ but ultimately wreaked havoc for thousands of incarcerated people seeking federal review of state criminal proceedings.⁷⁸

In response to the rapidly growing rate of incarceration, particularly among Black and brown people, collective action groups began forming throughout the country.⁷⁹ These member-led organizations empowered people to organize and campaign against injustice.⁸⁰ They began to cast doubt on the effectiveness of harsh laws, violent criminal enforcement, and long sentences on reducing crime rates.⁸¹

In 1996, the Ella Baker Center for Human Rights formed in the California Bay Area, initially focusing on holding police accountable for misconduct and later growing to challenge racial injustice throughout the criminal legal system.⁸² The following year, Critical Resistance formed, also in the Bay Area.⁸³ Critical Resistance is an international movement that seeks “to end the prison industrial complex by challenging” the notion that incarcerating and surveilling people produces public safety.⁸⁴ Both organizations invite new members to join, seeking those committed to freeing and supporting people whom prisons and policing harm.⁸⁵ In 2000, VOCAL-NY was founded in New York City, later forming chapters throughout the state. Another member-based organization, VOCAL-NY focuses on issues impacting people from under-resourced communities, including the effects of the war on drugs and mass incarceration.⁸⁶ Through public education,

77. Cf. Z. Payvand Ahdout, *Direct Collateral Review*, 121 COLUM. L. REV. 159, 169–73 (2021).

78. See *id.* at 163 (recognizing that “AEDPA . . . review is no longer viable in federal habeas proceedings”); Liliana Segura, *Gutting Habeas Corpus*, INTERCEPT (May 4, 2016, 1:54 PM), <https://theintercept.com/2016/05/04/the-untold-story-of-bill-clintons-other-crime-bill/> [<https://perma.cc/JZ8K-FEWW>].

79. See *Our History*, ELLA BAKER CTR. FOR HUM. RTS., <https://ellabakercenter.org/our-victories/> [<https://perma.cc/V329-LTH5>] (last visited Feb. 9, 2024); *History*, CRITICAL RESISTANCE, <https://criticalresistance.org/mission-vision/history/> [<https://perma.cc/M7YS-NKQB>] (last visited Feb. 9, 2024); *Who We Are*, VOCAL-NY, <https://www.vocal-ny.org/about-us/> [<https://perma.cc/G2Y2-GS79>] (last visited Feb. 9, 2024); *About*, INCITE!, <https://incite-national.org/history/> [<https://perma.cc/6XZR-JVTC>] (last visited Feb. 9, 2024).

80. See *Become a Member*, ELLA BAKER CTR. FOR HUM. RTS., <https://ellabakercenter.org/sign-up/> [<https://perma.cc/9284-EWV2>] (last visited Feb. 9, 2024); *Join a Chapter*, CRITICAL RESISTANCE, <https://criticalresistance.org/join-a-chapter/> [<https://perma.cc/5Z5T-SPLH>] (last visited Feb. 9, 2024).

81. See MARIAME KABA & ANDREA J. RITCHIE, *NO MORE POLICE. A CASE FOR ABOLITION* 41–58 (2022) (detailing ineffectiveness of law enforcement at stopping crime); ANGELA Y. DAVIS, *ARE PRISONS OBSOLETE?* (2003) (concluding that an increase in incarceration had “little or no effect on official crime rates”); ELLA BAKER CTR. FOR HUM. RTS., *supra* note 79; CRITICAL RESISTANCE, *supra* note 79; VOCAL-NY, *supra* note 79; ELLA BAKER CTR. FOR HUM. RTS., *supra* note 80; CRITICAL RESISTANCE, *supra* note 80.

82. See *Our History*, *supra* note 79.

83. See *History*, *supra* note 79.

84. See KABA & RITCHIE, *supra* note 81.

85. See *Become a Member*, *supra* note 80; *History*, *supra* note 80.

86. See *Who We Are*, *supra* note 79.

grassroots organizing, and direct action, these groups, and others like them,⁸⁷ helped shift public opinion about the criminal legal system.

In the subsequent decades, a series of national events politicized a new generation of organizers. In 2010, Michelle Alexander published *The New Jim Crow*, which spent nearly 250 weeks on *The New York Times* Best Seller list.⁸⁸ In it, Alexander argued that the criminal legal system reinforced America's racial caste system.⁸⁹ The following year, young people, galvanized by Troy Davis's likely innocence, watched in horror when Georgia executed him.⁹⁰ The next year, George Zimmerman shot and killed Trayvon Martin, a sixteen-year-old Black child holding a bag of Skittles.⁹¹ A Florida jury acquitted Zimmermann of murder.⁹² Published in 2014, Bryan Stevenson's *Just Mercy* became required reading in higher education.⁹³ It details a justice system that sentences innocent people to death and locks away children to die. That same year, *Serial*, a new podcast, transfixed the nation with Adnan Syed's possible innocence.⁹⁴ Meanwhile, in Ferguson, Missouri, Darren Wilson shot and killed another unarmed Black child, Michael Brown, spurring months of unrest.⁹⁵

This next generation of organizers embraced collective action, power shifting, and legal advocacy to demand, imagine, and create alternatives to policing, prosecution, and incarceration. Most were formed by Black women and operated through an explicitly Black-affirming, racial justice lens. In direct response to Trayvon Martin's murder, Black Lives Matter, a Black-centered movement focused on building local power to challenge the

87. In 2000, INCITE!: Women of Color Against Violence formed. *See About, supra* note 79. It is "a network of radical feminists of color organizing to end state violence and violence in our homes and communities." *Id.*

88. *See* Michelle Alexander, Opinion, *The Injustice of This Moment Is Not an "Aberration"*, N.Y. TIMES (Jan. 17, 2020), <https://www.nytimes.com/2020/01/17/opinion/sunday/michelle-alexander-new-jim-crow.html> [<https://perma.cc/TE8N-VHBJ>].

89. *See id.*

90. *See* Kim Severson, *Davis Is Executed in Georgia*, N.Y. TIMES (Sept. 21, 2011), <https://www.nytimes.com/2011/09/22/us/final-pleas-and-vigils-in-troy-davis-execution.html> [<https://perma.cc/N3K2-PVLQ>] (noting that worldwide supporters of Davis delivered to the state parole board more than 630,000 petitions to stay the execution and that Davis consistently proclaimed his innocence).

91. *See* Lizette Alvarez & Cara Buckley, *Zimmerman Is Acquitted in Trayvon Martin Killing*, N.Y. TIMES (July 13, 2013), <https://www.nytimes.com/2013/07/14/us/george-zimmerman-verdict-trayvon-martin.html> [<https://perma.cc/3XWR-8534>] (reporting that Trayvon Martin was carrying Skittles when he was murdered).

92. *See id.*

93. *See* Sara Ernst & Courtney Rozen, *Here's What College Freshmen Are Reading*, NPR (Nov. 22, 2018, 8:35 AM), <https://www.npr.org/2018/11/22/651094749/heres-what-college-freshmen-are-reading> [<https://perma.cc/3H5Z-LSCU>].

94. *See* Christopher Rosen, "Serial" Becomes First Podcast to Win a Peabody Award, ENT. WKLY. (Apr. 20, 2015), <https://ew.com/article/2015/04/20/serial-peabody-awards/> [<https://perma.cc/EDZ9-T6VB>] (noting that the podcast "captured the nation's attention").

95. *See* Gene Demby, *The Butterfly Effects of Ferguson*, NPR: CODE SWITCH (Aug. 11, 2016, 3:00 PM), <https://www.npr.org/sections/codeswitch/2016/08/11/489494015/the-butterfly-effects-of-ferguson> [<https://perma.cc/Q4ST-7FUP>] (describing the impact of Michael Brown's murder by a police officer in Ferguson and the resulting mass demonstrations).

oppression of Black people, formed in 2013.⁹⁶ Two years later, Law for Black Lives and BlackRoots Alliance formed.⁹⁷ Law for Black Lives is a national network of “lawyers and legal workers committed to transforming the law and building the power of organizing.”⁹⁸ Based in Chicago, BlackRoots Alliance is centered on building power among Black people and communities to advance Black liberation.⁹⁹

The following year, a group of formerly incarcerated women in Tennessee founded Free Hearts.¹⁰⁰ The organization provides support, education, and advocacy for justice-impacted families organizing against incarceration.¹⁰¹ Its goal is to remove policing, incarceration, and the family regulation system from families seeking a healthy, safe, and restored existence.¹⁰² In 2018, the Detroit Justice Center formed.¹⁰³ It operates with a three-pronged approach of (1) defense, (2) offense, and (3) dreaming “to serve individual clients, build power, and catalyze systemic solutions.”¹⁰⁴ With the public’s increased awareness of injustice and empowered communities challenging injustice, some public defender offices began to change their operating models.

II. COMMUNITY RESPONSIVENESS IN ACTION

The individuals who lead the four community responsive defender organizations profiled in this Essay witnessed this shifting public perception around the criminal legal system. The social movements described above were part of their political awareness.¹⁰⁵ Although the organizations are separate from their respective individual leaders,¹⁰⁶ these four leaders have helped shape and sustain each organization’s community responsiveness. They are also critical in recruiting, hiring, retaining, and promoting staff who

96. See *Herstory*, BLACK LIVES MATTER, <https://blacklivesmatter.com/herstory/> [https://perma.cc/GRZ9-6MJK] (last visited Feb. 9, 2024).

97. See *supra* notes 81.

98. See *What We Do: Our Work*, LAW FOR BLACK LIVES, <http://www.law4blacklives.org/our-work-1> [https://perma.cc/KDZ4-V6EN] (last visited Feb. 9, 2024).

99. See *About*, BLACKROOTS ALL., <https://www.blackrootsalliance.org/about> [https://perma.cc/PA8C-D2PP] (last visited Feb. 9, 2024).

100. See *About Us*, FREE HEARTS, <https://freeheartsorg.com/about/> [https://perma.cc/M8GJ-8PXS] (last visited Feb. 9, 2024).

101. See *id.*

102. See *id.*

103. DETROIT JUST. CTR., <https://detroitjustice.org> [https://perma.cc/8FXL-2ZDN] (last visited Feb. 9, 2024); *DJC Bids Farewell to Amanda Alexander*, DETROIT JUST. CTR. (July 10, 2023), <https://detroitjustice.org/djc-bids-farewell-to-amanda-alexander/> [https://perma.cc/JG N9-S8RX].

104. See *id.* (describing three-pronged approach of “defense, offense, and dreaming—to serve individual clients, build power, and catalyze systemic solutions”).

105. Except for Longstreet, each graduated from law school after the year 2000. Zoom Interview with Alaina Bloodworth, *supra* note 18; Zoom Interview with Martesha Johnson Moore, *supra* note 20; Zoom Interview with Kristine Longstreet, *supra* note 28; Telephone Interview with Aisha McWeay, *supra* note 25.

106. Notably, none of the current leaders founded the organizations they lead nor were they the first in their respective roles.

are committed to building relationships with the communities that they represent.

In analyzing the organizations and considering how to replicate their work, it is instructive to explore some of the similar attributes among these leaders. All four leaders graduated from historically Black institutions,¹⁰⁷ which make up only 3 percent of colleges and law schools but have a longstanding tradition of graduating visionary leaders. And all are Black women. Although not a monolith, Black women are situated at the intersection of various types of oppression, including sexism and racism.¹⁰⁸ They recognize the urgency of liberation and have been at the forefront of the fight for civil rights and social justice organizing since enslavement.¹⁰⁹ This part surfaces some of the initiatives and efforts of the four dynamic defender organizations that are responsive to their communities. Through mission-driven staffing, advocacy outside of the courtroom, and nontraditional funding, these organizations are successfully challenging the structural forces that contribute to the mass criminalization of their communities.

A. Mindful, Mission-Driven Staffing

Many public defenders view their work as a calling. Longstreet described public defense work as having the “highest and best purpose.”¹¹⁰ Indigent defense requires a commitment to fighting injustice, preserving people’s dignity, and zealous advocacy. Although that was certainly true of the leaders with whom I spoke, they also mentioned that they valued hiring people with the ability to work with the community.¹¹¹ Longstreet added that she also sought defenders who reflected the Black communities that NDS

107. Longstreet is a Hampton University graduate; McWeay graduated from Clark Atlanta University; Johnson Moore is a graduate of Tennessee State University; and Bloodworth obtained her college and law degree from Southern University. Zoom Interview with Alaina Bloodworth, *supra* note 18; Zoom Interview with Martesha Johnson Moore, *supra* note 20; Zoom Interview with Kristine Longstreet, *supra* note 28; Telephone Interview with Aisha McWeay, *supra* note 25. Although not interviewed for this Essay, the two immediate past and first leaders of NDS Detroit and BPDA, Chantá Parker and April Frazier Camara, respectively, are also graduates of historically Black institutions—Parker from Spelman College and Frazier Camara from Tennessee State University and Howard Law School. Chantá Parker, ESSIE JUST. GRP., <https://essiejusticegroup.org/team/chanta-parker-secretary/> [<https://perma.cc/BBN2-8AWX>] (last visited Feb. 9, 2024); April Frazier Camara, NAT’L LEGAL AID & DEF. ASS’N, <https://www.nlada.org/april-frazier-camara> [<https://perma.cc/6YZB-YBJE>] (last visited Feb. 9, 2024).

108. See generally Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139.

109. See Keisha N. Blain, *The Black Women Who Paved the Way for This Moment*, ATLANTIC (June 9, 2020), <https://www.theatlantic.com/ideas/archive/2020/06/pioneering-black-women-who-paved-way-moment/612838/> [<https://perma.cc/QH2B-DL6Z>].

110. Zoom Interview with Kristine Longstreet, *supra* note 28.

111. Zoom Interview with Alaina Bloodworth, *supra* note 18; Zoom Interview with Martesha Johnson Moore, *supra* note 20; Zoom Interview with Kristine Longstreet, *supra* note 28; Telephone Interview with Aisha McWeay, *supra* note 25.

Detroit represents: “There’s a certain amount of trust that you get when you look like the client.”¹¹²

As for SSRT, McWeay described the type of staff members who are drawn to working at the organization. Given its “niche” model of public defense and its location in Tulsa, SSRT attracts people who are already drawn to social justice and movement lawyering. Staff members tend to be “deeply invested” in the history of Tulsa and knowledgeable about the Greenwood race massacre.¹¹³ They have an awareness that the massacre created the conditions that resulted in their clients’ involvement in carceral systems. By joining SSRT, staff members perceive themselves “to be part of a larger movement,” McWeay explained.¹¹⁴ It is something she embraces.¹¹⁵ McWeay also encourages her colleagues to engage in causes external to SSRT that they are passionate about—such as Black Lives Matter organizing, housing matters, and local government—and she is flexible about their in-office work to enable their participation.¹¹⁶

In addition to mission-driven staffing, some of those organizations focused on identifying the next generation of community responsive defenders. In 2022, BPDA started the Community Engagement Fellowship, a twelve-week paid summer internship that pairs public defender offices with college and graduate students from historically Black institutions committed to “racial equity and community defense work.”¹¹⁷ BPDA has placed interns in Baltimore to help public defender clients navigate community-based services to enable pretrial release; in Cleveland to help with an expungement program; and in New Orleans to help engage clients outside of the courthouse and bring services directly into under-served neighborhoods, like New Orleans East.¹¹⁸ BPDA partnered with seven defender offices in 2022 and five in 2023.¹¹⁹ A critical element of the fellowship is that each participating defender office must conceive of a meaningful community-engaged project for the incoming fellow, “so [that] they [a]ren’t just paper pushers.”¹²⁰ The secondary goal of the fellowship is to create a pipeline of graduates from historically Black institutions interested in multiple facets of public defense work.

To help diversify the new attorney hires, Nashville Defenders has shifted its focus to diversifying summer interns. Without the ability to pay interns

112. Zoom Interview with Kristine Longstreet, *supra* note 28.

113. See Yuliya Parshina-Kottas, Anjali Singhvi, Audra D.S. Burch, Troy Griggs, Mika Gröndahl, Lingdong Huang, Tim Wallace, Jeremy White & Josh Williams, *What the Tulsa Race Massacre Destroyed*, N.Y. TIMES (May 24, 2021), <https://www.nytimes.com/interactive/2021/05/24/us/tulsa-race-massacre.html> [<https://perma.cc/9A6J-Q8E3>].

114. Telephone Interview with Aisha McWeay, *supra* note 25.

115. *Id.*

116. *Id.*

117. See *BPDA Fellowship Programs*, BLACK PUB. DEF. ASS’N, <https://blackdefender.org/community-engagement-fellowship/> [<https://perma.cc/74D5-PNF5>] (last visited Feb. 9, 2024).

118. Brochure, Black Pub. Def. Ass’n, BPDA Community Engagement Fellowship, Host Site Projects (2022) (on file with author).

119. Brochure, Black Pub. Def. Ass’n, BPDA Community Engagement Fellowship, Host Site Projects (2023) (on file with author).

120. Zoom Interview with Alaina Bloodworth, *supra* note 18.

directly, the organization is partnering with outside agencies and other funding sources that can help compensate interns who might not otherwise have access to funding. One of these partners is BPDA's Community Engagement Fellowship. In 2022, a BPDA Fellow helped the organization implement Defend Nashville, a program to improve both connections with the most justice-impacted communities in Nashville and engagement with the clients.¹²¹

Since being elected, Johnson Moore has made several strategic hiring and policy decisions to help build the capacity of Nashville Defenders and to create better quality of life for the employees.¹²² To achieve this end, she has increased the size of Nashville Defenders' staff from ninety-three to 110 positions.¹²³ It has helped alleviate the strain that attorneys experienced in General Sessions Court, which handles preliminary hearings in felony cases and some misdemeanor trials.¹²⁴ Johnson Moore created an internal pipeline for leadership, which provides existing staff with the opportunity to receive mentorship as they take on supervisory roles.¹²⁵ To that end, she created the roles of Assistant Deputy Public Defender (in addition to the existing Deputy Public Defender) and added team leaders in the various criminal courts.¹²⁶ Johnson Moore recategorized and trained legal assistants to become paralegals, enabling them to receive higher salaries.¹²⁷ She also added a communications team member, a training director, a data position, a human resources department (which did not previously exist), and a Spanish-speaking paralegal.¹²⁸

NDS Detroit has many "bright, passionate people" who "want to challenge the system."¹²⁹ The key is ensuring that people do not burn out. Like Nashville Defenders, NDS Detroit employs a staff member to track client demographic data, arrests, charges, and other pertinent information. "The data leads us to a problem."¹³⁰ This proved instrumental when the office mounted a challenge against discriminatory arrests for carrying a concealed weapon. The data revealed that law enforcement appeared to be targeting Black men from certain neighborhoods.¹³¹ As detailed more fully below,

121. See Brochure, Black Pub. Def. Ass'n, *supra* note 119 (noting that the 37208 zip code in Nashville has the highest percentage of incarcerated people in the nation).

122. See Zoom Interview with Martesha Johnson Moore, *supra* note 20.

123. See *id.*

124. See *id.*

125. See *id.*

126. See *id.*

127. See *id.*

128. See *id.*

129. Zoom Interview with Kristine Longstreet, *supra* note 28.

130. *Id.*

131. Brandon Michael Chew, *Increase in Non-violent Gun Arrests in Detroit Show DPD's Racial Disparity, Experts Say*, MEDIUM (Feb. 9, 2022), <https://medium.com/@brandonmichaelchew/increase-in-non-violent-gun-arrests-in-detroit-show-dpds-racial-disparity-experts-say-af1b5394c434> [<https://perma.cc/8MHX-NF3P>] (noting that arrests for carrying a concealed weapon had increased fourfold and that 97 percent of those charged were Black people).

NDS Detroit was able to mount a successful campaign challenging the arrests and charges.

B. Advocacy Outside of the Courtroom

A key element of community responsive public defense work is community engagement outside of the courtroom. Each of the four organizations spend substantial resources on efforts outside of courtroom advocacy. One of NDS's founding principles in 1990 was to embed its offices in the communities in which its clients reside.¹³² The organization created a culture whereby staff are "active member[s] of these communities, establishing meaningful relationships with clients and their families," and it "host[s] frequent education and outreach events to support its neighbors and participate in local events."¹³³ Similarly, one of SSRT's four operating pillars is to work "closely with members of the North Tulsa community to foster deep and ongoing relationships and to combat entrenched injustices facing this community."¹³⁴ Part of Nashville Defenders' mission statement is to "stand with our clients and the community in working to create a more just, fair and compassionate legal system."¹³⁵ Although BPDA does not deliver direct services, it seeks membership among "Black public defenders who identify with and come from the communities most disproportionately impacted by the criminal legal system."¹³⁶ With a focus on meaningful and sustained connections with communities, community responsive defense organizations are able to advance innovative efforts outside of the courtroom to help shrink the carceral system.

BPDA's 2023 report, *Reimagining Public Safety: Community Listening Sessions with Black Communities and Public Defenders*, is the culmination of a yearlong project that demonstrates BPDA's responsiveness to one community in particular, Black Chicagoans.¹³⁷ The project reflects BPDA's efforts to work with Black defenders to center the voices of people who are impacted by policing and incarceration when imagining what public safety could look like.¹³⁸ This contrasted with dominant narratives around public safety, which law enforcement typically supplied.¹³⁹ BPDA is uniquely positioned to shift this narrative. In building collaborative relationships among Black public defenders, Black organizers, and Black residents of

132. *About*, NEIGHBORHOOD DEF. SERV OF HARLEM, <https://neighborhooddefender.org/about/> [https://perma.cc/5V84-D5EN] (last visited Feb. 9, 2024).

133. *Id.*

134. STILL SHE RISES TULSA, *supra* note 4.

135. *About Us: Our Mission*, NASHVILLE DEFS., <https://publicdefender.nashville.gov/about-us/aboutus/> [https://perma.cc/PR7J-GGWR] (last visited Feb. 9, 2024).

136. *About Us*, BLACK PUB. DEF. ASS'N, <https://blackdefender.org/about-us/> [https://perma.cc/82P4-LQ2S] (last visited Feb. 9, 2024).

137. *See* BLACK PUB. DEF. ASS'N, REIMAGINING PUBLIC SAFETY: COMMUNITY LISTENING SESSIONS WITH BLACK COMMUNITIES AND PUBLIC DEFENDERS 5 (2023), <https://blackdefender.org/wp-content/uploads/2023/11/Reimagining-Public-Safety-report.pdf> [https://perma.cc/63VH-2U6X].

138. *See id.* at 4.

139. *See id.* at 14.

Chicago, the project was able to frame Black Chicagoans as experts on improving safety in their own communities.¹⁴⁰ It is a project that BPDA hopes to replicate with Black defenders and existing Black organizing efforts in other communities.¹⁴¹

Nashville Defenders' extensive community work exposes the organization to systemic issues that could support structural challenges. Since the start of the COVID-19 pandemic and Nashville's recent population and economic boom, Johnson Moore observed that "the [city's] growth . . . is leaving poor people behind."¹⁴² That awareness led Nashville Defenders to prioritize efforts that would have an immediate impact on the communities that they represent.¹⁴³ For example, the office holds expungement clinics to help people with criminal records secure employment.¹⁴⁴ It also joined a coalition to challenge the city's automated license plate reader program, a program that led to a disproportionately high number of arrests of people from under-resourced and over-policed neighborhoods.¹⁴⁵ Notably, Nashville Defenders' charter prevents the organization from engaging in impact litigation.¹⁴⁶ Despite this constraint, the office has successfully partnered with community-based organizations to advance issues like bail reform, challenging the sex offender registry, and shrinking the disparities in representation between Nashville Defenders' clients and appointed counsel clients.¹⁴⁷

Through representation and communication with their clients, SSRT observed several troubling systemic issues. Principal among them were delays in setting bail that prolonged the time before a client appeared before a judge or had an opportunity to meet with their lawyer, the lack of notice before law enforcement issued warrants to people for failure to pay certain court fines and fees, and the Department of Safety & Homeland Security's process for the suspension of driver licenses.¹⁴⁸

In partnership with external organizations, SSRT has helped mount challenges on multiple fronts on each of these issues. In challenging the Tulsa County's money bail system, SSRT elevated the experiences of their

140. *See id.* at 4.

141. *See id.* at 57.

142. Zoom Interview with Martesha Johnson Moore, *supra* note 20.

143. *See id.*

144. *See id.*

145. *See* Eli Motycka, *Divided Council Approves Full Implementation of License Plate Readers*, NASHVILLE SCENE (Aug. 16, 2023), https://www.nashvillescene.com/news/pithinthe-wind/divided-council-approves-full-implementation-of-license-plate-readers/article_8ccb5ad6-3c68-11ee-95ec-afbc6dc05aa3.html [<https://perma.cc/SGV5-4SXE>] (noting that Chief Public Defender Martesha Johnson was part of a coalition that challenged the license plate reader program).

146. NASHVILLE, TENN., CODE § 2.16.010 (2024); Julius Chambers, *Thurgood Marshall's Legacy*, 44 STAN. L. REV. 1249, 1250 (1992) (describing the NAACP Legal Defense Fund's litigation strategy whereby it filed individual test cases that could produce widespread redress as the emergence of impact litigation).

147. *See* Zoom Interview with Martesha Johnson Moore, *supra* note 20.

148. Telephone Interview with Aisha McWeay, *supra* note 25.

clients to support litigation that Civil Rights Corps filed in 2018.¹⁴⁹ The litigation highlighted the fact that “Tulsa County’s pretrial detention rate is 83 percent higher than the national average.”¹⁵⁰ The result of the successful litigation is that people facing charges are seen by the court within twenty-four hours instead of languishing in pretrial detention for five to six days.¹⁵¹ As part of a coalition, SSRT helped pass a new law that will provide people facing court fines and fees a hearing whereby “a judge will determine their ability to pay and will be able to waive all or part of the costs that are beyond the defendant’s ability to pay.”¹⁵² In partnership with the National Center for Law and Economic Justice, SSRT is helping to challenge Oklahoma’s coercive practice of suspending driver licenses when people fail to pay tickets or carry debt related to court fees.¹⁵³ The organization is sharing its clients’ experiences in conversations with lawmakers and collecting data.¹⁵⁴

Opening in 2019, NDS Detroit was thrust into community organizing amid the pandemic and mass demonstrations following the murder of George Floyd.¹⁵⁵ Without hesitation, the office formed a coalition with other community groups to organize a march challenging systemic racism and police misconduct, given the central importance of those issues to their community.¹⁵⁶ Local reporting detailed NDS Detroit’s involvement at the subsequent rally.¹⁵⁷ The organization participated in a press conference, “Detroit Will Breathe,” to further amplify these issues and to stand with their community.¹⁵⁸ These initial efforts helped establish NDS Detroit as a

149. See *Tulsa County, OK: Bail*, C.R. CORPS, <https://civilrightscorps.org/case/tulsa-county-ok-bail/> [<https://perma.cc/2EDF-3AZ7>] (last visited Feb. 9, 2024).

150. *Id.*

151. Telephone Interview with Aisha McWeay, *supra* note 25.

152. Steve Lewis, *HB 2259 Will Revolutionize Processing and Collecting of Court Financial Obligations Owed by Defendants*, OKLA. POL’Y INST.: CAPITAL UPDATE (June 5, 2023), <https://okpolicy.org/hb-2259-will-revolutionize-processing-and-collecting-of-court-financial-obligations-owed-by-defendants-capitol-update/> [<https://perma.cc/3GEU-CP7V>].

153. See Telephone Interview with Aisha McWeay, *supra* note 25; see also Andrea Eger, *Day 3: Reform Advocates Want Oklahoma to Halt Driver’s License Suspension as an Incentive to Pay Tickets, Court Debt*, TULSA WORLD (Dec. 1, 2019), https://tulsaworld.com/news/local/crime-and-courts/day-3-reform-advocates-want-oklahoma-to-halt-drivers-license-suspension-as-an-incentive-to/article_4f68394d-f784-5454-9f76-6fd18518e996.html [<https://perma.cc/3Q47-WJEH>].

154. See Eger, *supra* note 153.

155. Oraland Brand-Williams, *Wayne County Makes Deal for New Public Defender Office*, DETROIT NEWS (June 13, 2019), <https://www.detroitnews.com/story/news/local/wayne-county/2019/06/13/wayne-county-makes-deal-new-public-defender-office/1444162001/> [<https://perma.cc/QJQ8-KPN5>].

156. Zoom Interview with Kristine Longstreet, *supra* note 28.

157. See Ariana Taylor, Cal Abbo & Mark Hicks, *Detroit Public Defenders March for Justice System Changes*, DETROIT NEWS (June 8, 2020), <https://www.detroitnews.com/story/news/local/detroit-city/2020/06/08/detroit-public-defenders-march-justice-system-changes/5318792002/> [<https://perma.cc/D4YE-SHWC>].

158. See *Detroit Will Breathe, Press Conference: Report on #DPDStopandFrisk Policing and Prosecutions*, FACEBOOK (Jan. 12, 2022), <https://www.facebook.com/detroitwillbreathe/videos/1116853375739442/> (last visited Feb. 9, 2024).

meaningful partner with the community on issues impacting its clients.¹⁵⁹ As such, the organization was well positioned to challenge discriminatory arrests for carrying concealed weapons.¹⁶⁰ Its data found that approximately 70 percent of the people arrested “legally owned their guns and were instead accused of improperly storing their guns while driving.”¹⁶¹ In partnership with allies, NDS Detroit successfully convinced prosecutors in such cases to either dismiss the charges or plead down the charges to a misdemeanor instead of a felony.¹⁶²

C. Funding Source Makes a Difference

Public defender offices are notoriously under-resourced relative to the number of cases assigned to each defender and considering the funding allocated to prosecutors.¹⁶³ Legal scholars have repeatedly referred to the lack of funding as a “crisis.”¹⁶⁴ One commonality among the community responsive organizations profiled in this Essay is that each has access to somewhat nontraditional funding sources that enables them to spend time, resources, and personnel on building relationships and responding to their respective communities. The BPDA stands apart as an organization that does not provide direct representation; it is a membership-based organization.¹⁶⁵ Structurally, BPDA is a section of the National Legal Aid and Defender Association (NLADA), a national nonprofit providing training and assistance to indigent defense members.¹⁶⁶ The BPDA’s funding comes from NLADA, member dues, donations, and grants.¹⁶⁷ For example, the Reimagining Public Safety project was supported, in part, by grants from the Joyce

159. Cf. *See New Data Show Dramatic Increase in Arrests and Prosecutions of Black People for Carrying a Concealed Weapon*, NEIGHBORHOOD DEF. SERV., <https://neighborhooddefender.org/blog/new-data-show-dramatic-increase-in-arrests-and-prosecutions-of-black-people-for-carrying-a-concealed-weapon/> [https://perma.cc/R3PG-8MNV] (last visited Feb. 9, 2024); Miriam Marini, *Racial Disparity in Nonviolent Gun Arrests Leads Advocates to Call for Dropping Charges*, DETROIT FREE PRESS (Jan. 12, 2022, 6:41 PM), <https://www.freep.com/story/news/local/michigan/wayne/2022/01/12/nonviolent-gun-arrests-racial-disparity/9188473002/> [https://perma.cc/RWN9-ANWA].

160. *See New Data Show Dramatic Increase in Arrests and Prosecutions of Black People for Carrying a Concealed Weapon*, *supra* note 159.

161. *See* Miriam Marini, *supra* note 159.

162. Zoom Interview with Kristine Longstreet, *supra* note 28.

163. *See* Irene Oritseweyinmi Joe, *Structuring the Public Defender*, 106 IOWA L. REV. 113, 138–53 (2020) (describing funding and caseload concerns).

164. *See, e.g.*, RICHARD KLEIN & ROBERT L. SPANGENBERG, *INDIGENT DEFENSE CRISIS* (1993); Mary Sue Backus & Paul Marcus, *The Right to Counsel in Criminal Cases: Still a National Crisis?*, 86 WM. & MARY L. REV. 1564 (2018).

165. BLACK PUB. DEF. ASS’N, <http://blackdefender.org> [https://perma.cc/D8MT-KQ9Z] (last visited Feb. 9, 2024).

166. *Id.*

167. Zoom Interview with Alaina Bloodworth, *supra* note 18.

Foundation and the Center for Justice Research.¹⁶⁸ Other projects have received funding from the Open Society Foundations.¹⁶⁹

SSRT is also an exception. To ensure operational freedom to fulfill its mission of serving mothers facing criminal and related charges, SSRT does not receive any state funding.¹⁷⁰ The organization supplements the work of the Tulsa County Public Defender's Office, the local state-funded indigent office.¹⁷¹ Like many underfunded indigent defense offices, Tulsa County lawyers work under crushing caseloads, with felony attorneys handling over 200 cases and misdemeanor attorneys averaging about 550 cases.¹⁷² The American Bar Association recommends that to enable competent representation, public defenders handle no more than 150 felonies or 400 misdemeanor cases.¹⁷³ McWeay explained that throughout Oklahoma, state and local governments "woefully underfund" basic public services, such as healthcare, education, and criminal justice, and that private philanthropy provides critical support.¹⁷⁴ SSRT benefits from such philanthropy, receiving the bulk of its funding from a single local family foundation.¹⁷⁵

Perhaps the most traditionally structured of the four organizations, Nashville Defenders receives funding from the state and local government.¹⁷⁶ Although Tennessee chronically underfunds indigent defense,¹⁷⁷ Davidson County, where the office is located, offers critical support, providing 80 percent of the office's funding.¹⁷⁸ Johnson Moore explained that "the city leaders are great about advocating for funding,"¹⁷⁹ especially relative to other urban defenders, such as the Shelby County Public

168. See BLACK PUB. DEF. ASS'N, *supra* note 137, at 2 (acknowledging financial support).

169. See BLACK PUB. DEF. ASS'N, *DISRUPTING CARCERAL SYSTEMS* 4 (2019), <http://blackdefender.org/wp-content/uploads/2021/04/bpda-biden-harris-report.pdf> [https://perma.cc/5VFN-XSR7] (acknowledging financial support).

170. Telephone Interview with Aisha McWeay, *supra* note 25.

171. *Id.*

172. See Kelsy Schlotthauer, *Tulsa County Public Defenders Office in "Better Shape" than Most, Though McGirt Added to the Challenge*, TULSA WORLD (Nov. 1, 2023), https://tulsa.world.com/news/local/tulsa-county-public-defenders-office-in-better-shape-than-most-though-mcgirt-added-to-the/article_5d2f7764-ac92-11ed-864b-bf35d5bd91f6.html [https://perma.cc/82BL-M9QB]; Elizabeth Caldwell, *Report: Public Defenders in Oklahoma Work Nearly 4 Times Too Many Cases*, KWGS (Sept. 19, 2023, 12:34 PM), <https://www.publicradio.tulsa.org/local-regional/2023-09-19/report-public-defenders-in-oklahoma-work-nearly-4-times-too-many-cases> [https://perma.cc/593P-ZRWU].

173. See Emily Hamer, *Public Defenders Work 3 Times Too Many Cases, Milestone Study and New Data Shows*, ST. LOUIS POST-DISPATCH (Sept. 12, 2023), https://www.stltoday.com/news/nation-world/crime-courts/public-defenders-attorneys-dangerously-overworked/article_5a63628b-63d0-56dc-bc91-ce908820ac75.html [https://perma.cc/EL7M-YDXG].

174. Telephone Interview with Aisha McWeay, *supra* note 25.

175. *Id.*

176. See Zoom Interview with Martesha Johnson Moore, *supra* note 20.

177. See Melissa Brown, *Why Tennessee's System Appointing Lawyers for Poor Defendants Is at 'Breaking Point,'* TENNESSEAN (Sept. 25, 2023, 5:03 AM), <https://www.tennessean.com/story/news/politics/2023/09/25/tennessee-court-appointed-lawyers-system-at-breaking-point-low-fees/70891087007/> [https://perma.cc/7NRP-3V23] (reporting that Tennessee's indigent defense reimbursement rate is the lowest in the country).

178. Zoom Interview with Martesha Johnson Moore, *supra* note 20.

179. *Id.*

Defender in Memphis, which struggles with funding and staff shortages.¹⁸⁰ However, Johnson Moore is concerned that as the city continues to grow and the cost of living increases, the office will need a larger budget for employees to afford to live nearby.¹⁸¹

Somewhat differently situated is NDS Detroit, which is part of a larger New York City–based nonprofit, Neighborhood Defender Services.¹⁸² The organization also operates defender offices in Harlem, its first location, and in Texas, its most recent location.¹⁸³ Each office seeks to provide high-quality, community-based, holistic defense services to indigent clients.¹⁸⁴ In 2019, the Detroit office secured a contract with Wayne County to provide indigent defense services to clients in 25 percent of adult felony cases.¹⁸⁵ They initially received \$8 million and sought additional private funding sources.¹⁸⁶ Reports in 2022 indicated that NDS Detroit received its largest public funding amount to date, \$12.8 million from the Michigan Indigent Defense Commission, which allocates funding to each county.¹⁸⁷ Additional funding enables the organization to expand its staff and increase community engagement efforts.

III. BENEFITS AND LIMITATIONS

The benefits of community responsive defense extend beyond individual cases. This part discusses these benefits, which include building trust and credibility between indigent defense providers and the communities that they serve and helping to shrink the footprint of the carceral system. It then identifies some of the practical limitations of community responsive models.

180. See Dulce Torres Guzman, *With 21 Public Defender Vacancies in Shelby County, Chief Pleads for More Funding*, TENNESSEE LOOKOUT (May 19, 2022, 6:00 AM), <https://tennesseelookout.com/2022/05/19/with-21-public-defender-vacancies-in-shelby-county-chief-pleads-for-more-funding/> [https://perma.cc/W5ME-VY8T]; Stephen Pimpo, *Shelby County Public Defender's Office Asking State Legislature for Nearly \$2.5 Million to Address Staffing Issues*, ABC24+ (Nov. 13, 2023, 10:59 PM), <https://www.localmemphis.com/article/news/local/shelby-county-public-defenders-office-staffing-issues-25-million/522-13b1557f-4d93-41bf-9ae0-aea6abe83e7d#> [https://perma.cc/4C8W-FTNN].

181. Zoom Interview with Martesha Johnson Moore, *supra* note 20.

182. See *About Us*, NEIGHBORHOOD DEF. SERV., <https://neighborhooddefender.org/about/> [https://perma.cc/F9C7-T7J4] (last visited Feb. 9, 2024).

183. Staff members with NDS Texas are based in San Antonio, Houston, Hays County, and other locations. *Id.*

184. See NEIGHBORHOOD DEF. SERV., <https://neighborhooddefender.org/> [https://perma.cc/95ZC-TVBE] (last visited Feb. 9, 2024).

185. See Nancy Kaffer, *Wayne County Tries to Level Playing Field for Indigent Defendants*, DETROIT FREE PRESS (Nov. 16, 2019, 8:00 AM), <https://www.freep.com/story/opinion/columnists/nancy-kaffer/2019/11/16/wayne-county-courts-indigent-defendants-sixth-amendment-center/4183547002/> [https://perma.cc/8PSB-JSAX].

186. See Emma Keith, *Wayne County Ups Legal Resources with New Public Defender Office*, DETROIT FREE PRESS (June 13, 2019, 5:59 PM), <https://www.freep.com/story/news/local/michigan/detroit/2019/06/13/wayne-county-public-defender-office/1442554001/> [https://perma.cc/8P6F-B4LU].

187. See Dave Herndon, *Wayne County Indigent Defense Service Department Gets \$38.7 Million Grant*, PRESS & GUIDE (June 25, 2022, 1:23 PM), <https://www.pressandguide.com/2022/06/25/wayne-county-indigent-defense-service-department-gets-38-7-million-grant/> [https://perma.cc/9UJW-CC4N].

A. Benefits of Community Responsiveness

Effective representation requires more than a lawyer standing next to the accused.¹⁸⁸ The organizations profiled in this Essay offer services above and beyond what is constitutionally required, and the benefits go beyond positive outcomes in individual cases. Community responsive representation builds credibility and trust between indigent defense providers and the communities that they serve, which can have a positive ripple effect in other areas and help shrink the footprint of the carceral system. Given the focus on relationship-building and cultivating skills outside of courtroom advocacy, such defense work may also help stave off defender burnout.

Community responsive defense can help build trust. Trust is an integral factor in criminal defense advocacy. As Justice William J. Brennan Jr. explained: “[C]rucial decisions . . . can best be made, and counsel’s duties most effectively discharged, if the attorney and the defendant have a relationship characterized by trust”¹⁸⁹ At NDS Detroit, Longstreet encourages her staff members to establish connections with clients;¹⁹⁰ connecting with clients and their communities is at the center of NDS’s ethos.¹⁹¹ Sociology Professor Matthew Clair, who studied how identity-based factors, like race and class, can impact the attorney-client relationship,¹⁹² found that a trusting relationship is central to effective representation.¹⁹³ Given that indigent defendants cannot choose their lawyers and that a lack of choice can create distrust, it is vital for the success of the relationship that appointed counsel build trust.¹⁹⁴

Most importantly, community responsive defense can help shrink the carceral system. NDS Detroit began representing clients in the fall of 2019, and by the summer of 2020, they began the Community Intake Program.¹⁹⁵ The program invites people to seek help from the office before an arrest and/or before the prosecution files charges.¹⁹⁶ Such early intervention enables the lawyer and client to gather critical information in support of the defense, to potentially interview witnesses, and to secure evidence.¹⁹⁷ It can also prevent a coercive interrogation and, depending on the case, allow for a volitional surrender to law enforcement.¹⁹⁸ All of these features can have a

188. See *Strickland v. Washington*, 466 U.S. 668, 685–86 (1984) (explaining that “a person who happens to be a lawyer . . . at trial alongside the accused . . . is not enough” and identifying the standard for constitutionally effective representation).

189. *Morris v. Slappy*, 461 U.S. 1, 21 (1983) (Brennan, J. concurring).

190. Zoom Interview with Kristine Longstreet, *supra* note 28.

191. *Id.*

192. See MATTHEW CLAIR, *PRIVILEGE AND PUNISHMENT: HOW RACE AND CLASS MATTER IN CRIMINAL COURT* (2020).

193. See *id.* at 76 (explaining that lawyer-client relationships “require trust if they are to function to the benefit of clients.”).

194. See Hoag, *supra* note 47, at 1532.

195. See Jackson, *supra* note 51.

196. *Id.*

197. See *supra* note 51.

198. Kim Taylor-Thompson, *Tuning Up Gideon’s Trumpet*, 71 *FORDHAM L. REV.* 1461, 1501–02 (2003).

massive impact on the charges filed, whether a prosecutor decides to proceed to trial, whether the client is even convicted, and on a sentencing decision.¹⁹⁹ The success of the Community Intake Program hinges on whether NDS Detroit builds sufficient trust with the community whereby they feel comfortable approaching the organizations at such an early stage in the process.²⁰⁰

B. Practical Limitations

This Essay has already alluded to some of the practical limitations of community responsive public defense. Principal among them is access to additional funding streams. Building meaningful and sustainable relationships with the community requires time, effort, and personnel, all of which require funding beyond what is usually allocated to provide basic indigent defense services. Nashville Defenders, the most traditional of the four profiled organizations, benefits from robust funding from the local government,²⁰¹ money that is unavailable to their state counterparts in other jurisdictions.²⁰² Even with that additional funding, BPDA's Community Engagement Fellowship supplements some of Nashville Defender's community-building work with short-term summer interns, a less than ideal structure for building lasting relationships.²⁰³

Another concern is the potential for tension between individual representation and more structural reform. Johnson Moore explained that there are times when she must "put aside some of the hurt because my client wants me to focus on a certain issue."²⁰⁴ Further, there are times when mounting a structural challenge is not possible. Public defenders "have a role to play, we are not legislators, we are not judges . . . we have to focus on doing our role well."²⁰⁵ It can be very frustrating watching some terrible law, or some" other harm occur, and not have the ability to challenge it.²⁰⁶

The methodology in profiling these four organizations is another potential limitation, perhaps truncating a fuller analysis of community responsive public defense. The leaders of each organization were my primary sources in exploring their organizations, which can result in bias or a lack of criticality. To mitigate those risks, this Essay sought external news reporting and other sources to corroborate information that the leaders provided. A sample size of four represents only a small segment of indigent defense service providers and further research would benefit from profiling a larger number of organizations.

199. *Id.*

200. Zoom Interview with Kristine Longstreet, *supra* note 28.

201. *See supra* note 5.

202. Zoom Interview with Martesha Johnson Moore, *supra* note 20.

203. *See supra* notes 117–20.

204. Zoom call with Martesha Johnson Moore, *supra* note 20.

205. *Id.*

206. *Id.*

CONCLUSION

Public defenders bear witness to the impact of surveillance, racial subordination, and the criminalization of poverty daily. With such proximity comes a responsibility to challenge the structural forces facing people from under-resourced communities. That responsibility extends to partnering with the community, the very people who experience the brunt of criminal law enforcement and who are best situated to help formulate solutions. Public defenders can leverage their legal knowledge, access to information, and privilege in partnership with community members who have expertise in law enforcement surveillance and supervision. Community responsive defenders have a duty to listen, to share in setting an agenda for advocacy, and to serve as stewards for their clients' stories. Together, community responsive defenders and communities can help combat the issues that contribute to defendants' involvement in the criminal legal system. All indigent defense providers have a duty to work with and on behalf of the communities in which they are situated. These efforts are not ancillary to individual client representation, but rather, integral to effective advocacy and critical to shrinking the carceral system and its impact on marginalized people.