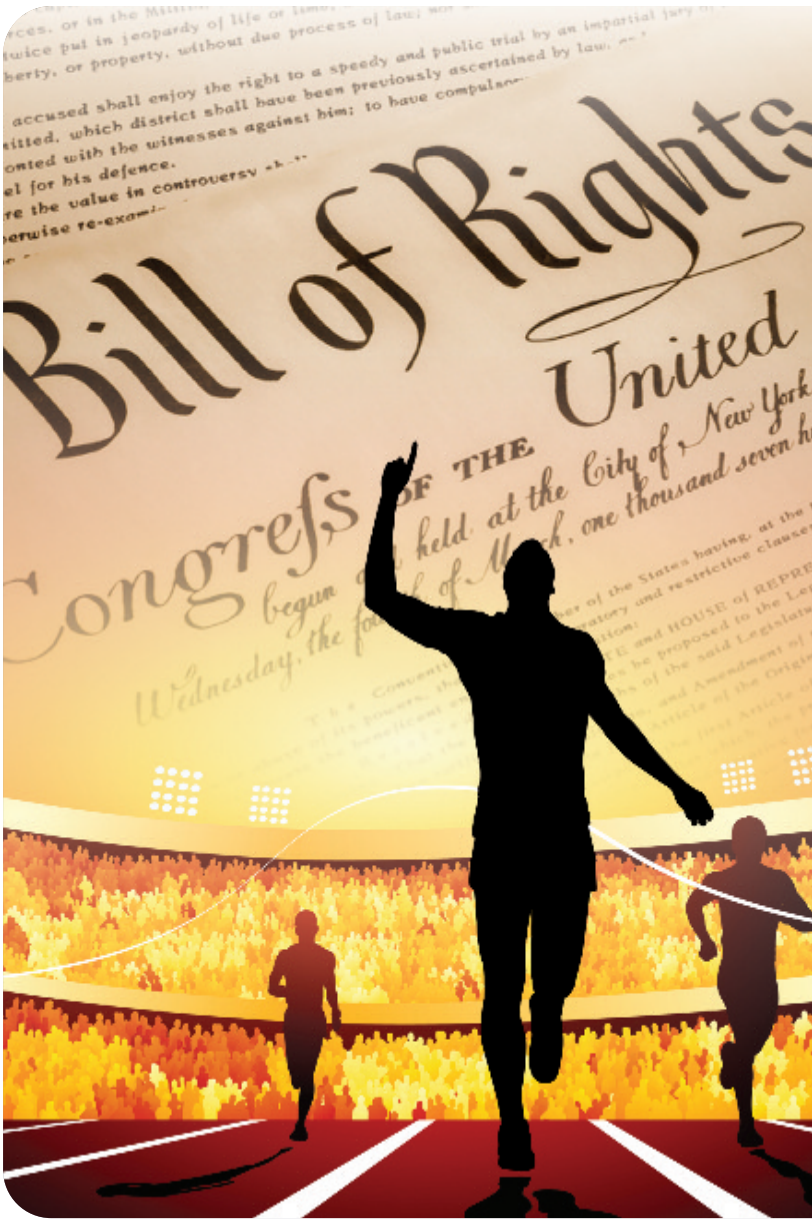
Redefining Success as a Public Defender:

A Rallying Cry for Those Most Committed to *Gideon*'s Promise

By Jonathan Rapping



Young public defenders express the following sentiments almost daily:
"What's the point?"

"I cannot make a difference."

"I'll never be the public defender my clients need me to be!"

As the 50th anniversary of the decision in *Gideon v. Wainwright* approaches, the criminal justice system is not close to fulfilling its promise. Public defenders are on the front lines of a battle for the country's very sense of justice. They are the ones most acutely aware of the nation's failure in indigent defense. Yet every day they fight on, without the resources necessary to do the job well. Often they internalize the country's failures, blaming themselves for not achieving the most basic tenets of justice for the poor and disenfranchised. As they watch injustices proliferate, they often see themselves as failures. Public defenders are far from failures; they are just so focused on a long-term ideal that they have trouble seeing the many successes they have achieved.

The Dilemma of the Conscientious Public Defender

What does it mean to be successful as a public defender? Every public defender has good days and bad, and how we distinguish between them has everything to do with how we answer this question. Eighteen years after beginning my career as a public defender, I am still redefining my view of what it means to be successful as a public defender. Of course, the conscientious public defender is focused on achieving his or her client's desired objective. But this narrow way of thinking of success may drive the most conscientious public defenders from the profession when they fail to achieve this singular goal. Thus, the answer must involve more than merely winning an acquittal,

earning a dismissal, or negotiating a great plea.

I began my career at the Public Defender Service for the District of Columbia (PDS) as a lawyer with the simplistic notion of success just described, a notion which, to be honest, nearly kept me from surviving my first year. I was five months into my new career when I was assigned to represent a 15-year-old boy who was playing with a gun when it accidentally discharged, killing his best friend. I spoke with him in his cell; it was not much of a conversation. The young man appeared almost comatose, unable to communicate, and grief-stricken over the role he played in his best friend's death. It was apparent that there was no punishment the juvenile justice system could visit upon this child that was greater than the punishment he was wielding on himself. Far from being a threat to society, he was a young man deep in the throes of remorse and sorrow. Yet he was charged with murder.

As my co-counsel and I prepared for trial, we got to know this young man well. He was smart, compassionate, and so appreciative to have us fighting for him. He desperately wanted to finish high school and go on to college, something that would be unlikely if the court committed him to Oak Hill, a juvenile detention facility where kids were more likely to be guided towards crime than higher education. He made a mistake, a costly mistake. But he grew up in an environment where guns were prevalent and easily accessible. He and his friends were curious teenagers. He never meant to hurt anyone, and would almost certainly have nothing to do with guns again. None of that seemed to matter to the prosecutor who charged him, or to the judge who handed down the conviction. The judge sentenced the teenager to Oak Hill until his 21st birthday. That boy's dreams ended at that moment. As he was led through the courtroom's back door towards the cellblock, and I walked through the front door, I felt defeated. I walked to my office, closed the door, turned out the lights, and cried. Intellectually, I knew I had done all I could for this young man, but viscerally I felt like I failed. I could not prevent what was clear to me to be a great injustice. I questioned my career choice: "This work is too hard," I told myself. "It is too hard watching terrible things happen to people you come to care about deeply." I knew this was part of the job, and I knew I could not change it. I decided to quit.

Fortunately I worked in a public defender office where I was surrounded by a community of committed, inspiring lawyers. They supported me. They helped me understand that the result would have been the same if this young man had any other lawyer, and that this young man benefitted from having a lawyer who cared, treated him as a person, and fought for him. They helped me understand that we cannot underestimate the importance of giving clients respect and a sense of their own deep humanity during the most trying time of their lives. This was my first lesson in the importance of having a community if one is to sustain himself as a public defender.

I survived the setback and continued as a public defender, but I still never dealt with "losing" very well. At that stage of my career, I equated losing with guilty verdicts. I still labeled this experience a failure. I was young. I had much to learn.

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The Epiphany

I learned the true importance of that lesson six years later when I was assigned to represent a man accused of committing a series of sexual assaults. I was provided a police report and asked to go to the jail to meet my new client. As I read the report, I learned this man was accused of picking up women and brutally raping them. The violence involved was horrific, leaving the women horribly injured, both physically and psychologically. The evidence was overwhelming. DNA, hair, and clothing fibers linked the client, the crimes, and the victims (strangers to the client) to the van that he allegedly used to pick them up. The women all identified him as the perpetrator. Although he never admitted to committing the crimes, he made a statement that placed him at the relevant scenes at the relevant times.

At this stage in my career I had represented many people accused of serious felonies, including rape and murder. I had yet to meet a client I did not deeply connect with on a human level. A quote adorning my office wall, by Sister Helen Prejean, served as a constant reminder of the humanity of every person we represent: *"The dignity of the human person means that every human being is worth more than the worst thing they've ever done."* However, as I read about the horrific nature of the assaults on perfect strangers who could have been my mother, my sister, or my wife, I wondered who could do these things. As I considered the strength of the evidence pointing to the man I was about to meet, I wondered if this would be the first client I could not connect with on a human level. When I arrived at the jail, my expectations were proven wrong.

Upon walking into the visiting room, I met a man in his early 40s. He was soft-spoken and polite. He asked how I was; he asked about his family; and he expressed concern for the women who were his accusers. He showed concern for everyone but himself. My newest client was not what I expected. I was no longer convinced by the evidence as laid out in the police report. But if he committed these crimes, he proved the message that hung on my office wall. People are complex and we cannot define them based on their worst moments.

I soon met his family: a very concerned mother, three doting sisters, a loving and supportive wife, and two little children who loved their daddy very much.

Through each of them, I came to understand my client better. As our trial date approached, we became closer. He never seemed worried about his own fate, but was very concerned about how this ordeal would impact his family. The trial lasted a couple of weeks and, as expected, the evidence was quite damning. However, the jury deliberated for several days, giving the defense team increasing hope. Then the jury reached a decision.

As we stood in the courtroom, awaiting the verdict, I was hopeful. The foreperson was asked to share the jury's findings. The foreperson did – *guilty* on all counts. The judge sentenced this man to a term of imprisonment that would guarantee he died in prison. As my client was led through the back doors and I walked through the front, I had that same feeling that I remembered from six years earlier. "This work is just too hard. It is too hard watching terrible things happen to people you come to care for." That evening I collected myself and went to see my client at the jail.

As I entered the visiting room to meet him, I looked at him and said, "I am so sorry."

He interrupted me. "Mr. Rapping, thank you."

"Thank you?" I replied. "Maybe you don't understand what happened today, but things didn't go so well."

He smiled. "No, you don't understand," he told me. He continued:

> All my life I've been in the system. I went to D.C. public schools and never had a teacher who cared about me. I was in the juvenile system and never had a lawyer care about me. I've had adult charges before and no lawyer ever fought for me. But you, your co-counsel, your investigator, and your law clerks, you all cared about me. You fought for me. You gave me the kind of representation the Constitution says I deserve. And for that, I thank you. But even more importantly, my family sat through the trial. My mother, sisters, wife, and children heard what they said I did and are convinced that the jury got it wrong. I could easily spend the rest of my life in prison as long as my family does not believe I had anything to do with these awful crimes. For that, I thank you.

I went home that night and had an epiphany. For the first time in six years I had an understanding of what it meant to be successful as a public defender with which I was comfortable. It was not simply "not guilty" verdicts, dismissals, and great plea offers. It meant being able to look in the mirror each night and know on that day I had given each and every client the representation she or he deserved.

I had spent six years in an organization surrounded by public defenders who could do this work every day. Not only were these lawyers talented and committed, but they had reasonable caseloads and the resources necessary to represent every client well. We earned a fraction of what our law school classmates were earning in the private sector. We worked long hours and dealt with the emotional stress that comes along with being a lawyer for poor people accused of crimes. But at the end of any case we could always say we did everything we could for each client. My career to date had been filled with "good days" – as measured by this more nuanced understanding of my role. I continued to hold this as the standard for public defender success for the next three years.

I became the training director for PDS and continued my career surrounded by lawyers who worked long hours, suffered emotional fatigue, watched terrible things happen to people they cared about, but still could find that each day was a "good day." Poor people in the District of Columbia could not get better representation than they received through PDS.

Then I moved to the South. Over the next few years I would be intimately involved in efforts to reform indigent defense, in Georgia following legislation to develop a statewide public defender system there, and in New Orleans helping to rebuild the public defender offices in the wake of Hurricane Katrina. During this time I worked with public defenders and represented indigent clients in states across the southeast. Unlike my experience in Washington, D.C., these systems did not hold high expectations for their public defenders. Far too often, the expectation was merely that these defenders would process huge caseloads efficiently. There was little respect for thorough investigation, case-specific motions practice, client loyalty, or the need to develop relationships with the people we represented. For the public defender who wanted to do these things, crushing caseloads and too few resources made it impossible. I came to understand that the most basic constitutional and ethical obligations were seen as inconveniences in systems that prioritized processing a high volume of cases over all else. The pressure on public defenders to conform to this practice was intense. In this world it simply was not possible for a public defender to provide every client the representation to which she or he was entitled.

Idealism Shattered

In 2004 I agreed to serve as the first training director for Georgia's new statewide public defender system, and have spent the last eight years working with public defender offices across the Southeast. It is a region with a shameful history regarding indigent defense. For many years there were well over a hundred legal lynchings annually in the South.[1] Once accused of a crime, the sentence was pronounced, without the slightest pretense of due process. While a national outcry put an end to much of this blatantly illegal practice, to keep the lynch mobs at bay the system replaced lynchings with "speedy trials that reliably produced guilty verdicts, death sentences, and rapid executions."[2]

Common were cases like the infamous Scottsboro Boys in which nine illiterate black youths, accused of rape, escaped an Alabama lynch mob only to be rushed to trial 12 days later with a lawyer appointed the morning of trial.[3] The defense conducted no investigation, called no defense witnesses and made no closing arguments. The prosecution sought death sentences against eight of the boys. Eight death sentences were handed down.

The same year the Scottsboro Boys were tried in Alabama, John Downer was accused of rape in Elberton, Ga.[4] One week after being arrested, Downer was tried. Like the Scottsboro Boys, counsel for Downer was appointed the day of trial. No continuance was requested so that the lawyers could conduct an investigation or interview their client. Trial began around 11:00 a.m. and concluded that afternoon. The jury deliberated a mere six minutes before returning a guilty verdict. Downer was sentenced to die.

The year was 1931 and defense attorneys were used as mere window dressing to further the appearance of legitimacy, allowing the public to rest easy that justice had been served. The Supreme Court attempted to end this charade when it decided *Gideon v. Wainwright* in 1963,[5] but 21 years later,

in *Strickland v. Washington*,[6] the Court set such a low bar for what constitutes effective assistance of counsel that for many indigent defendants not much has changed. Many states have taken advantage of the standard for ineffectiveness established in *Strickland* and come to view the mere provision of a warm body as sufficient to meet their Sixth Amendment obligations.

Consider the 14-year-old boy arrested in Union County, Miss., for allegedly taking $100 from an elderly woman. Despite his protestations of innocence, his lawyer never investigated his claims or even consulted with his client. Presumably concluding that the boy was guilty, and that he would lose at trial, the court-appointed lawyer advised him to plead guilty and told him that he was "looking at life" if he lost at trial. The lawyer assured the boy he would be eligible for parole in six years. The boy had spent months in jail with no meaningful access to counsel. Feeling he had no other option, he pled guilty. To add insult to injury, his lawyer's advice was wrong. Now 15, the boy was sentenced to 25 years and would not be eligible for parole until he served at least 10.[7]

Consider the countless clients of a defense attorney who held the contract to represent indigent defendants in Green County, Ga., for 14 years.[8] Although his position was only part time, and he continued to maintain a private practice, the attorney's annual appointed caseload was twice the recommended national standard. He began his public defender career as a young lawyer and quickly adapted to the expected standards of practice that prevailed in Georgia. The judges demanded that he process his cases quickly, and he obliged. In one four-year period he handled 1,493 cases, with 1,479 (more than 99 percent) resulting in pleas. Some days he would plead dozens of clients in a single court session, and he had little time to get the details necessary to negotiate on their behalf. He did not request investigative or expert services "claim[ing] not to need these resources, anyway, because most of his cases were 'pretty open and shut.'"[9] In addition he did not want to arouse public disapproval about spending the county's money. When clients complained about the limited time counsel spent talking to them, he chalked it up to "their [bottomless] need for attention," adding, "You have to draw the line somewhere."[10] He considered his high-volume, plea-bargain practice "a uniquely productive way to do business," and believed that he "achieved good results" for his clients.[11]

As shocking as these stories are, they are not isolated. They represent an embarrassingly low expectation of representation for poor people in much of the country. The lawyers who engage in this substandard practice are shaped by the systems in which they work. The judges who preside over these cases provide their tacit approval of the system. They are judges like Atlanta's Andrew Mickle who, when Georgia refused to fund its young public defender system a couple years after its birth, recommended a return to the days when indigent defense was localized and "starving" lawyers would handle a case for 50 dollars regardless of the time invested.[12] Although this policy would guarantee that no lawyer could afford to adequately represent a client, Mickle's concern was with processing people, not with justice.

Judges are often instrumental in creating this system of inadequate representation for the poor. Johnny Caldwell, for example, presided over the case of Jamie Weis in Pike County, Ga., who was charged with capital murder and appointed counsel experienced in death penalty litigation.[13] When the state did not have the funding to pay Weis' counsel for the preparation necessary to defend him, Caldwell removed his lawyers, over their objection, and appointed two local public defenders. The public defenders resisted, citing crushing caseloads that would make it impossible for them to adequately defend Weis. One had well over 200 cases already and the other more than 100 cases along with significant administrative responsibility. They further pointed out that the removed lawyers had represented Weis for over a year and they could not now recreate the attorney-client relationship. If Judge Caldwell were truly concerned with the right to counsel, these arguments would have been persuasive. He was not.

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Judges like Caldwell were common in New Orleans when I joined the management team charged with rebuilding the public defender office there after Hurricane Katrina. The scene I observed on my first courtroom visit was typical of what I observed throughout my stay there. It was chaotic. Lawyers wandered about the well of the court chatting with one another. The judge was on the bench and the prisoners were lined up in a row on the left side of the courtroom, wearing orange jumpsuits. The lawyers had no contact with the defendants and it was not clear that any of the lawyers had ever met any of the defendants.

When a case was called, one of the lawyers would speak for the accused. However, none of the men in jumpsuits would be brought to his spokesman's side and the lawyer often barely acknowledged his client. Then, the judge called a case with no lawyer. When it was clear that there was no representative for this particular man, the judge turned to the row of defendants and asked the man to stand. "Where is your lawyer?" asked the judge. "I haven't seen a lawyer since I got locked up," the man replied. "How long has that been?" asked the judge. "Seventy days," answered the man, seemingly resigned to the treatment afforded him. "Have a seat," was the judge's response as he moved on to the next case, completely unfazed by the answer.

In another instance in New Orleans, I was waiting to observe evening First Appearance Hearings when the magistrate took the bench at 6:35 p.m. There were approximately 40 arrestees whose cases needed to be heard that evening. A private attorney represented one of the defendants. The others were left to a team of two public defenders. As a professional courtesy, the judge called the private attorney's case first. After about 10 minutes of discussion, the judge granted the requested bond. Then, at 6:45, the judge turned to the public defenders in the courtroom and said, "You better talk fast because we are going to finish the rest of these by seven o'clock."

As I repeatedly witnessed judges showing such little concern for the rights of the people who rely on publicly funded lawyers, I often thought back to the first training I conducted when I moved to the South. One session focused on litigating basic

suppression motions: challenging searches and seizures, confessions, and identification on Fourth, Fifth, and Sixth Amendment grounds. The subject matter was foundational to the work of any criminal defense lawyer and there were many new public defenders present. I wanted to make sure all understood how to effectively litigate these issues. The first person to approach me after this session was a Circuit Public Defender, one of the nearly four dozen lawyers appointed to lead this new reform effort. He told me that he really enjoyed the session. He explained, however, that his lawyers could not do the things we were teaching. Confused, I assured him that they could do these things, and that the session was based entirely on federal and state principles that applied in his circuit. He then explained to me how things worked where he practices. The judges become very upset if the lawyers file motions, he explained. Because it slows down the docket, they would not allow his lawyers to litigate these issues. At the time I was dumbfounded. Over the next two years I trained and mentored young lawyers who would return from training sessions eager to demand hearings and litigate issues, only to encounter irate judges of the kind described. It was a daunting, but educational, experience for someone used to much different procedures in a well-functioning system.

It is a grueling task to spend every day pushing back against a system that harbors such low expectations for the quality of representation. It is not surprising that some lawyers enter this system full of idealism but ultimately resign themselves to the status quo. Others simply find it too difficult and leave before the pressure to conform overwhelms them. This is what happened to Marie, a young lawyer who came to Georgia in 2005 to be involved in the new reform effort.

Marie was a fiery lawyer who was part of a cohort of public defenders who was going to help transform indigent defense in Georgia. But Marie ultimately became discouraged as countless numbers of her clients fell through the cracks. In her final 13 months as a Georgia public defender, she resolved 900 cases, allowing her three hours per year to devote to each client if she worked 50-hour weeks without taking any vacation time or sick leave.[14] Given that these three hours included court time and client meetings, there was no time for her to be competent in every case. She struggled on as best she could under these conditions, until she found herself at a crossroads. Should she stay in Georgia, she saw herself becoming a desensitized lawyer resigned to processing poor people through an inhumane system. She left to become a public defender in a well-resourced system.

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My mother is an author who frequently writes about criminal justice. Marie's story reminds me of a dedication in one of my mother's books to "all the public defenders … who toil in the trenches every day, against the greatest odds, and with little financial or social reward, in the Sisyphean effort to make our government live up to the democratic rhetoric of its own Constitution."[15] Her reference to Sisyphus, the Greek mythological king condemned to endlessly push a boulder up a hill only to watch it roll back down, symbolizes the seemingly impossible task of advancing the cause of justice in the indigent defense arena. Many throw their hands up, accepting the current state of injustice. Others leave the important mission of trying to reform indigent defense in the most dysfunctional systems. But for those who remain energized and idealistic, they do move the cause of justice forward each day. This was a lesson I learned working in the South, which caused me to rethink my idea of success as a public defender. To explain what I mean, let me tell you about Janelle.

Like Marie, Janelle moved to Georgia to join the new statewide system in 2005. Despite her business suits and briefcase, as one of two African-Americans practicing in her county, it took some time before courthouse personnel stopped asking her where her lawyer was when she entered the courtroom. Undeterred, she threw herself into her new career, and quickly won over those with, and before whom, she practiced. Over time, she brought change to the courthouse. In one example, Janelle prepared a seemingly obvious release argument for her client that she had not heard made by any of the more experienced practitioners. One experienced lawyer advised her that the argument would be a waste of everyone's time. Unmoved, Janelle made her pitch to the judge against a chorus of snickers from some of the more experienced members of the bar. But the judge agreed with Janelle and released her client. Some of the lawyers who snickered subsequently adopted Janelle's argument. Janelle had acted on her duty to her client, not the corrupt ways of the existing system, and thus achieved the best outcome for the client. In the process she began to gradually change the practice in the courthouse. Even had the judge rejected her arguments, however, having the courage to challenge that system, in my newly evolving way of thinking, would have been success.

Today's Civil Rights Struggle

Given my experiences working in the South, I have come to understand something about the public defenders working in corrupt systems. That they fail to provide every client the representation they deserve does not necessarily mean they are worse lawyers than

those I practiced with at PDS. Rather, it indicates that even excellent lawyers, working in systems such as those I experienced in Georgia and Louisiana, have an impossible task. Over time, some do lose the will to continue to fight against the system. They come to accept the status quo and participate in injustice. But others, and they are heroic, never lose sight of our systems' ideals and their obligation to try to make them a reality for every client. They fight mightily every day to close the gap between those ideals and the reality of the American criminal justice system.

While there are some model public defender systems like PDS across the country, they are the exception. Most public defenders appear before judges who expect them to help process cases rather than fight for their clients. Most carry overwhelming caseloads and lack the resources necessary to do everything required of them. The most heroic public defenders find a way to maintain their ideals in the most broken systems, fighting every day to try to realize a modicum of justice for clients who otherwise would not have a chance. These lawyers are exceptional. But most are not able to maintain their values against the odds they fight each day. If we are ever to reform indigent defense in this country, we must find a way to steer the best public defenders to the systems that need them the most and provide them with training and support to help them maintain their idealism while raising the standard of representation where they work.

These experiences, and the need to train and nurture more public defenders committed to true justice, led me to create the Southern Public Defender Training Center (SPDTC). The driving goal of SPDTC is to groom a generation of public defenders in the South who will help raise the standard of representation across the region. We provide the training they need to have a strong sense of what their clients deserve. We provide mentorship and support to help reinforce these lessons when systemic pressures send the opposite message. Perhaps most importantly, we give these lawyers a community of like-minded colleagues to continually support and encourage them as they carry on the "Sisyphean effort" of rolling that seemingly immovable boulder of justice forward.

These ideas stemmed from my years at PDS. When I was a young public defender there, a group of my peers and I would meet regularly to remind ourselves of the reasons we chose this line of work. These gatherings connected us to one another, helping to build a much-needed support network, and kept us inspired as we shared and nurtured each other's idealism. It was this community to which we would turn to reassure us of the rightness of our mission when outsiders exhibited so little respect for our work and our clients.

In one such gathering a close friend, whose parents were active in the civil rights movement, told us that he chose to be a public defender because he always wanted to be a civil rights lawyer. In his mind, public defense was our generation's civil rights struggle. At the time I did not appreciate the importance and truth of this sentiment. I associated civil rights with efforts to desegregate the Woolworth's lunch counter in Greensboro, N.C., in 1960 or to register Black people to vote in Mississippi during Freedom Summer in 1964. I knew the work we were doing was important, but I did not see it as civil rights law. Now, after my experience in the South, the connection is clear and the realization that indigent defense is this generation's civil rights struggle has helped me to refine my view of what it means to be a successful public defender.

> Defenders have to be able to forgive themselves for not being able to give all clients everything they deserve while continuing to resist the pressure to see the status quo as acceptable. This is a noble and heroic task.

The lawyers I work with today, given caseloads and inadequate resources, cannot live up to the standard of success held at PDS. Despite their incredible sacrifices, they cannot make *Gideon*'s promise a reality overnight. Law students frequently ask me whether they should go to a well-resourced office that can give their clients all they deserve or join the growing community of lawyers in the South who frequently fall short. Whenever I am asked this question, I am reminded of my friend's point about the civil rights movement and a segment of a documentary I watched in which a rabbi discussed her experience with Freedom Summer.[16] She describes being with a group of summer volunteers on a college campus in Ohio training for the summer's work. The day before they were to board the bus for Mississippi, news of the disappearance of three civil rights workers made its way North. The workers were out investigating a church bombing when they failed to return. They were feared dead (fears that were confirmed later that summer). One of the civil rights workers training the volunteers told the group the frightening news. The worker explained that protection of the volunteers could not be guaranteed, and that if any of them had second thoughts about boarding the bus the next day, the trainers would understand. The future rabbi then describes a phone call to her mother later that evening. After explaining the situation, her mother urged her not to get on the bus. The young woman reminded her mother of their family members who perished in the Holocaust. She questioned whether, if more Germans had "gotten on the bus," some of her family might have survived. Given that history, she asked, how could she not go to Mississippi?

I think of that documentary when students ask whether they should forgo an opportunity to join one of the model public defender offices in the country to work in the South. In the 1960s there was important work to be done all across the country, but the front line of the civil rights movement was in places like Mississippi, Alabama, and Georgia. Ultimately, that movement was successful because of the civil rights workers in those states. Likewise, there is important work to be done in public defender offices across the country. And the lawyers working in the best public defender offices help provide a model for what all poor people accused of crimes deserve. But if we are to ever realize meaningful indigent defense reform on a national level, we will have to win the battle to bring justice to places like Mississippi, Alabama, and Georgia. I explain to these students that we need good public defenders here. Then comes the inevitable follow-up: "Can I make a difference under such challenging circumstances?" Again, I am reminded of my friend's civil rights analogy.

Changing the World Without Realizing It

Last year I read a book called *Freedom Summer* about the Summer Project in Mississippi in 1964.[17] The author chronicled that summer through the stories of the young people who spent the summer in Mississippi. Some were civil rights workers from the South. Others were college students from across the country. They signed up to change the world. They planned to register voters and educate children and adults in Freedom Schools in Black communities across the state. The task proved more difficult than they imagined. They witnessed beatings and fire bombings. Many people were too afraid to be seen speaking to them. One after another, the workers wondered if they were making any difference at all. They wondered if the Summer Project was a waste of time. The author then flashes forward to 2008. John Lewis, one of the leaders of the Summer Project and later a member of Congress, explained that had it not been for Freedom Summer, Barack Obama would not have been elected president of the United States. While in the middle of the firestorm, these young activists did not realize they were changing the world.

As I read that book, I thought of the countless calls from public defenders in Tennessee, Louisiana, Mississippi, South Carolina, and Alabama. How frequently these heroic lawyers expressed frustration that they could not provide the representation they know their clients deserve. I recalled the desperate email from a Georgia public defender, who several years later continues to raise the standard of representation in his rural county, worrying that he was losing his idealism and that he was "becoming part of the machine." These lawyers do not have the time they need to meet with all of their clients as frequently as they should. They lack the investigative resources to pursue important leads. With caseloads that can be two to three times the recommended maximum, they often have to prioritize the cases that will get the attention they deserve, leaving other clients neglected.

Like those heroes of Freedom Summer, these lawyers do not see the difference they make every day. The next generation will know a very different criminal justice system thanks to the work they do. They are changing the world.

The Epiphany Revisited: A Good Day as a Public Defender

I ultimately tell prospective public defenders that they can make a difference in places with the greatest need for reform. But they will only survive if they refine their view of success. In a handful of public defender offices, the standard I came to understand six years into my career defines a good day as a public defender. For the vast majority of public defenders, it is not possible to realize this ideal. They simply cannot give all clients the representation to which they are entitled by the Constitution. They have caseloads that are too overwhelming, insufficient resources with which to do their jobs, and they work in environments that pressure them to process cases efficiently. But that does not mean they are not successful. Every day that they do everything they can to close the gap between what clients deserve and what the system tolerates, they are successful. At times, theirs may be the only voice reminding the system of our most sacred ideals. That is when the voice is most valuable.

The last chapter of my journey as a public defender has proven transformational. It has caused me to once again redefine how I think about good and bad days for a public defender in those jurisdictions where *Gideon*'s promise remains an aspiration. It has helped me to understand that to sustain oneself in these environments, defenders have to be able to forgive themselves for not being able to give all clients everything they deserve while continuing to resist the pressure to see the status quo as acceptable. Again, this is a noble and heroic task.

Bad days will always exist. They are the ones when the defender becomes discouraged and decides to leave, or becomes complacent and begins to conform. Good days are those in which the defender can continue to raise the standard of representation, however incrementally, without losing sight of the representation clients deserve.

As more committed public defenders choose to work in places where *Gideon*'s promise remains unfulfilled and are able to embrace this standard of success, we will move towards a day when the gap between reality and our ideals is closed. Perhaps our children will see that day. When they do, they should be reminded that it was committed lawyers working to represent one client at a time, incapable of understanding the global difference they were making as they struggled, that made this day a reality.

Notes

1. Michael J. Klarman, *Powell v. Alabama*: The Supreme Court Confronts 'Legal Lynchings,' Criminal Procedure Stories 1 (Carol S. Steiker ed., 2006).
2. *Id.*
3. *Powell v. Alabama*, 287 U.S. 45 (1932).
4. This account of John Downer's case is taken from Anne Emanuel, Elbert Parr Tuttle: Chief Justice of the Civil Rights Revolution 1-7 (2011).
5. *Gideon v. Wainwright*, 372 U.S. 335 (1963).
6. *Strickland v. Washington*, 466 U.S. 668 (1984).
7. NAACP Legal Defense and Educational Fund, Inc., Assembly Line Justice, Mississippi's Indigent Defense Crisis 13 (Feb. 2003).
8. This account is taken from Amy Bach, Ordinary Injustice: How America Holds Court 12-17 (2009).
9. *Id.* at 15.
10. *Id.* at 17.
11. *Id.* at 13.
12. Andrew A. Mickle, *Is the Process Choking the PD System?*, Daily Report, Atlanta, Ga., April 11, 2008.
13. For a summary of the facts, see Appellant's Brief at http://www.schr.org/files/post/WEIS_BREIF_GaSCt_9-2-09_0.pdf.
14. *See* Marie Pierre-Py, *Public Defender System Fails Georgians and Their Lawyers*, Atlanta J.-Const., Mar. 30, 2009.
15. Elayne Rapping, Law and Justice As Seen on TV (2003).
16. The Jewish Americans, PBS Home Video (2008).
17. Bruce Watson, Freedom Summer (2010).

About the Author

Jonathan Rapping is the founder of the Southern Public Defender Training Center. He teaches criminal law and procedure and is the founding director of the Honors Program in Criminal Justice at Atlanta's John Marshall Law School. He regularly teaches and presents at public defender programs nationally.

Jonathan Rapping
Southern Public Defender Training Center
34 Peachtree St., Ste. 2460
Atlanta, GA 30303
404-525-4505
E-MAIL jrapping@bellsouth.net