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## Dynamics of the Courtroom Workgroup

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DYNAMICS OF THE COURTROOM WORKGROUP

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HONORS PROJECT

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### Abstract

The roles and responsibilities of the various members included in the courtroom workgroup were evaluated in determining the prevalence of ordinary injustices. The dynamics among such members were found to be the basis under which lax adversarialism, and ultimately injustice within the criminal justice system, dominates. Prosecutorial discretion and inadequate public defense systems were observed to compromise justice on several occasions.

*Keywords:* courtroom, workgroup, criminal justice system, injustice, judge

### Courtroom Workgroup Interactions and Injustices

In America, the criminal justice system is categorized as an adversarial system. Within the criminal justice system are the organizations known as the courts, in which the courtroom work is performed as a group activity (Bach, 2009). As courtroom work is performed collectively, the existence of the courtroom workgroup emerges. The norms of the collective workgroup govern the daily operations of courts, ultimately trumping the adversarial nature under which the system was designed. While each individual has specialized functions to carry out, incentives and shared goals motivate the way in which the individual members perform their job duties. Such incentives and shared goals serve as motivation to maintain a cooperative courtroom workgroup. In doing so, however, members of the courtroom workgroup may lose sight of the court's ultimate goal, the goal of justice. "Workgroup members develop relationships that are cemented by exchanges of inducements as well as by the shared goals" (Eisenstein & Jacob, 1977. p. 10). As workgroup members further operate in a shared task environment, they are provided with resources and are imposed by common constraints regarding their actions (Eisenstein & Jacob, 1977).

Judges, prosecuting attorneys and defense attorneys make up the main players of courtroom workgroups, however, courtroom clerks, jurors, witnesses, police officers and bailiffs can also be considered to be members of the group. The way in which these players interact has a direct effect on the outcome of criminal cases, as their ongoing relationships determine acceptable job performance. Whereas collegiality and collaboration are often considered predictors of success for many communal ventures, such supposed keys to success are instead the cause of failure within the criminal justice system. "When professional alliances trump adversarialism, ordinary injustice predominates" (Bach, 2009, p. 6). Ordinary injustice prevails

under the condition of lax adversarialism, which allows for the slipping of both cases and defendants through the criminal justice system unchecked. (Bach, 2009). Studying the courtroom workgroup and the injustices that ordinarily occur within the criminal justice system is of importance due to the lack of research regarding such phenomenon. Bach (2009) recommends future research to shed light onto the problems within the adversarial criminal justice system that are often unnoticed. One suggested method for future studies relies on the importance of average citizens sitting in and observing court, without getting distracted by the orderliness in which the proceedings take place. Data collected from courtroom observations need to focus on two distinct interest areas. Attention should be given to the amount of discretion given to legal professionals, as well as the amount of time it takes for the assignment of court-appointed defense (Bach, 2009).

### **Literature Review**

One of the main issues behind the condition of lax adversarialism has roots in the significant discretion given to prosecutors. As prosecutors are often claimed as the most powerful officials in the criminal justice system, their routine decisions have a significant impact and often impose the most severe consequences on case outcomes. Often times such discretion is conflicted by a prosecutor's goal to pursue justice, which results in the misuse of prosecutorial discretion to either obtain a conviction or dismiss cases where conviction is not deemed likely (Davis, 2008). Prosecutors are also significantly bound by maintaining a cooperative working atmosphere. Research conducted by Gertz (1980) shows how the relationship between the prosecutor and public defender affects the outcome of a case. Extreme sentences were found to likely to be the result of a poor relationship between the two courtroom workgroup members.

Furthermore, a cooperative court relationship between the prosecutor and public defender was also related to a greater likelihood that charges would be dropped and a lighter sentence imposed (Gertz, 1980).

Haynes, Ruback and Cusick (2010) examined the effect of similarity, proximity, and stability of courtroom workgroups on sentencing decisions. They found that workgroup similarities in race, gender, political party, age, college, and law school significantly affected the rates of incarceration. The courtroom workgroups with the highest level of gender similarity had odds of incarceration that were 33% lower than the odds of incarceration found in workgroups with the lowest level of gender similarity. They identified that greater proximity within the workgroup was associated with lower rates of incarceration and a greater likelihood of fines, which suggests that a trade-off between incarceration and economic sanctions is most likely to occur if the judge and defense counsel are located close to one another. The use of fines at sentencing was also significantly affected by proximity, stability, and similarity. The most stable workgroups were less likely to impose fines, whereas similarity in college education was associated with higher rates of fine imposition (Haynes et al., 2010).

Hartley, Miller, and Spohn (2010) found that the type of attorney was not a significant predictor of whether the decisions to release the defendant or to reduce charges. Champion (1989), however, yielded significantly different results. Champion (1989) found discrepancies between the outcomes with private attorneys versus public defenders. Only 11.3% of the studied cases defended by public defenders were dropped, while 48% of the cases defended by private attorneys were dropped. 87.7% of public defender cases were convicted as a result of plea-bargaining, in comparison to 36% of private attorney cases (Champion, 1989). Similar to the results of the study conducted by Champion (1989) were the findings of a study by Williams

(2013) evaluating the effectiveness of public defenders in comparison to private attorneys in four counties located in Florida. The study found defendants that had been represented by public defenders to be less likely than those represented by private attorneys to have their cases dismissed, even after controlling for outside factors such as the number of charges against the defendant and the seriousness of the offense in question. Furthermore, defendants represented by public defenders were less likely to be released on bail. Williams (2013) also found that in comparison to those with privately retained attorneys, indigent defendants represented by court appointed public defenders were convicted more often. The discrepancies in the literature, along with Bach's (2009) recommendations, helped to build the foundation for my study.

### **Methods**

Given the complexity of power and relationships within the courtroom workgroup, the central question guiding the present study is: How do the members' interactions affect the adversarial nature of the criminal justice system and the prevalence of injustice? A phenomenological study devoted to identifying patterns among the courtroom workgroup is best suited to examine this issue because there is a lack of research dedicated to the exploration of ordinary injustices. I will examine the issue using a qualitative approach, in which data will be collected in natural settings and inductive data analysis will be used to establish both patterns and themes.

The phenomenon that has guided my research is the injustices that occur within the criminal justice system. I examined and evaluated the circumstances in which these injustices occur. Using the phenomenological approach the goal of my research was to unveil everyday patterns within the criminal justice system. Phenomenological studies aim to illuminate, or give

meaning, to a particular phenomenon. As phenomenological studies often incorporate multiple data sources, I decided to gather information through both observations and an additional source. Making use of more than one data source, also known as triangulation, will further address the validity of my study. My observations are to be conducted over a three-month time span at the Wood County Common Pleas Court.

### **Data Collection**

To collect data, I will be studying the overall dynamics of the courtroom workgroup, both in the individual tasks and the shared goals of the main players. This includes observing the interactions among the workgroup members, and also identifying patterns and themes that result from such interactions. I will be focusing on the interactions between members of the courtroom workgroup and the patterns of injustice that result, while simultaneously taking field notes. As I am interning in the prosecutor's office at the Wood County Common Pleas Court during the time in which my observations will be conducted, I will be able to do so during my hour long lunch breaks on the three days of each week in which criminal proceedings are held: Mondays, Tuesdays, and Fridays. I will furthermore use Wednesdays and Thursdays to review and type up my field notes, while simultaneously looking for patterns within my observations. In addition to the observations I conduct, I will gather information from the Clerk of Courts about the number of cases that were taken to trial at the Wood County Common Pleas Court in the previous year.

### **Data Analysis Strategy**

The data will be analyzed using the three phenomenological data analysis steps of bracketing, horizontalization, and developing clusters of meanings. Bracketing is the first step in

data analysis. I will set aside my prior experiences in order to best understand the experiences of the participants being studied. While analyzing data using the bracketing method, I will be removing any information in my field notes that I may have obtained through my job duties as an intern, rather than strictly through my observations. The second step, horizontalization, will be used to give equal value to every significant occurrence of injustices in the courtroom. By doing so, I will give equal weight to all of the information I obtained through my observations, which will ultimately set my data up for the third data analysis step, developing clusters of meanings. In order to develop clusters of meanings, I will group my findings into themes or meaning units. The findings of the study will be used to describe the universal essence of the injustices that occur within the criminal justice system (Creswell, 2007).

## **Results**

Several key themes emerged after observing the courtroom workgroup, and analyzing the data using the three data analysis steps. The findings of my study fit into four distinct categories: prosecutorial discretion, the relationship between the prosecutor and defense counsel, private attorneys versus public defenders, and judicial discretion. I have further included a category for findings that do not fit into any of the above-mentioned categories.

### **Prosecutorial discretion**

While observing court proceedings, I witnessed prosecutorial discretion come into play on three occasions, two of which revolved around setting bond. First, the assistant prosecutor recommended to the judge that a particular defendant be released on his own recognizance in addition to electronic home monitoring, in concurrence with the recommendation made by the

public defender. Within a matter of minutes, however, the prosecuting attorney revoked his compliance with the public defender and instead suggested a \$50,000 bond along with an electronic home monitoring system. I also observed prosecutorial discretion as two defendants appeared in court for probation violation hearings due to failing a drug screening. While the public defender suggested each defendant be released on her own recognizance, the assistant prosecutor assigned to the first case recommended a \$25,000 bond, and the assistant prosecutor assigned to the second case suggested a lesser bond of \$20,000.

The third act of discretion by the prosecuting attorney involved case dismissal. While waiting for court to begin one morning, I overheard a conversation between two police officers and the assistant prosecuting attorney. The three individuals were discussing a drug case in which the assistant prosecutor had decided against presenting the case to the grand jury.

### **Relationship between prosecutor and defense counsel**

In observing the interactions between the prosecuting attorneys and public defenders, the relationship between the two was often one of a cooperative workgroup. All but one of the public defenders observed seemed to have not only a working relationship with the prosecuting attorney, but also a working relationship with the rest of the staff working in the prosecutor's office. Although the majority of the interactions that took place between the prosecuting attorney and the public defender were that of a cooperative workgroup, I did observe a bond hearing in which the relationship was uncooperative.

I observed two different cases that were taken to trial. The defendant in the first trial observed was being represented by a public defender, while the defendant in the second trial had retained private counsel. The relationship between the assistant prosecutor and defense counsel

was observed to have an effect on the court proceedings as a whole. I observed the trial in which the defendant was represented by a public defender to carry on in a steady manner. The opposite was observed during the second trial, however, with the defendant being represented by a private attorney. Instead of the proceedings carrying out fluently, the overall course of the trial was abrupt.

### **Private attorneys versus public defenders**

When evaluating private counsel versus public defenders I focused my attention towards three major factors: relationship with the defendant, knowledge of the case, and readiness. Private counsel was observed to be superior to public defenders in all three regards. Private attorneys entered the courtroom knowing exactly whom they were representing on every occasion observed, and also appeared to have a relationship with their client's family on four different occasions. Contrary to such were public defenders, as they oftentimes entered the courtroom reading off names from a list to identify the individuals they were representing. I observed public defenders to introduce themselves to and meet with a defendant just minutes before court was scheduled to begin. I observed one public defender to ask for three of his clients to be recalled, as he was not up date on the case. When he did take the stand, approximately one half hour later, he still appeared to be unprepared, as he was scrambling through his notes and leaned over to view the assistant prosecutor's notes on one of the cases. One of the three defendants being represented by this public defender was unaware of the terms of his plea agreement, as he was not informed of the stipulation regarding which bank he was required to open a checking and savings account with.

On one specific occasion there was only one public defender present and he filled in for two other public defenders. The present public defender appeared to be overwhelmed as he was attempting to make time to meet with each individual before his or her case was presented to the judge.

I overheard a conversation between one public defender and the court constable regarding the public defender's strange behavior in the courtroom the previous day. The court constable asked how he was feeling as he had zoned out for a lengthy period of time and did not stand upon the judge's entry to the courtroom until the constable tapped him on the shoulder to get his attention. The public defender admitted to having a heavy caseload, which resulted in him not getting much sleep in the last two weeks.

### **Judicial discretion**

I observed judicial discretion to be most apparent in setting bond for the defendant. On 11 different occasions the assistant prosecuting attorney suggested a cash bond be put in place, while the defense attorney suggested the defendant be released on his own recognizance. On 9 of these occasions a cash bond was set, while the defendant was released on his own recognizance 3 times. On 7 occasions the defense counsel recommended a bond of a lesser amount than what was recommended by the assistant prosecuting attorney. Of these 7 occurrences, the judge only sided with the defense twice. On one occasion, the defense attorney recommended a bond amendment for his client to be released on his own recognizance; the assistant prosecuting attorney assigned to the case was not in favor of such recommendation. The judge did grant the release on his own recognizance bond amendment, but also put into place the stipulation of electronic home monitoring.

The judge also holds discretionary power regarding sentencing impositions. On one occasion I observed both the assistant prosecutor, as well as the defense attorney, recommend a defendant to be sentenced to community control. The judge, however, expressed this recommendation to be too lenient and instead sentenced the individual to 9 months incarceration on the first charge, 2 years of incarceration on the second, and another 9 months on the third charge to be served concurrently. I observed a defense attorney suggest his client be permitted to continue community control with the stipulation that said individual would actively look for employment. In this case, the judge did not honor the recommendation and instead imposed 45 days for the defendant to serve in the justice center with the termination of community control.

### **Other Findings**

One of the most significant issues I observed during my study was that court proceedings rarely began at their scheduled time. On one occasion, court proceedings began 35 minutes beyond the scheduled time. On two occasions court did not begin until 40 minutes past the time scheduled. I further observed start times that were 15 minutes, 25 minutes, and even 1 hour and 10 minutes beyond the scheduled time. I also observed court on a day in which the microphones in the courtroom were not working. While observing trial, I overheard snide remarks being made about the privately retained defense attorney on the part of the prosecutor's office staff members. In 2013, only 9 of the years' 668 were taken to a trial by jury (Clerk of Courts, personal communication, April 17, 2013)

### **Discussion and Conclusions**

I found the prosecutor to be privileged with the power of discretion. In regards to the prosecutor retracting his suggestion that a defendant be release on his own recognizance, the prosecutor did so only after observing the reaction of the victim's family in the courtroom. After noticing that the family was visibly upset, including three individual family members in tears, the prosecuting attorney exhibited his power of discretion by significantly increasing his bond recommendation.

The prosecutor's discretionary power came into play in the cases against two defendants who stood before the judge as a result of failing a drug test, ultimately in violation with the terms of each individual's probation. Both defendants in such occurrence were female, appeared to be in their mid to late twenties, and were being represented by the same public defender. Additionally, neither defendant had previously violated the terms of their probation. The only evident difference between the cases was that a different assistant prosecutor had been assigned to each case, yet there was a difference in the amount of \$5,000 between the prosecutor's suggestion for bond in the first case and the amount suggested by the other prosecutor in the second case. It is possible that there were outside factors behind such recommendations, but it is likely that prosecutorial discretion was exercised.

The findings showed that prosecutors have discretionary power over whether or not to present a case to the grand jury, as I overheard the assistant prosecutor explain to law enforcement officials that she decided not to present a particular case to the grand jury due to the lack of substantial evidence. The assistant prosecutor stated that photographs associated with the offense would most likely not have been sufficient enough for an indictment, and definitely not sufficient enough for the defendant to be found guilty at trial. Prosecutors are given the power to

decide which cases will be pursued, and do so with the ability to convict in mind. While prosecutorial discretion can be argued to be beneficial by disposing of weak cases that may burden defendants and the court, the courts were established to promote justice, rather than seek conviction. The criminal justice system is undermined by prosecutorial discretion when the main goal is to convict. Dismissing weak cases not only allows possibly guilty individuals to freely engage in further criminal behavior, but also denies victims the opportunity for justice. By exercising prosecutorial discretion, and weeding out the cases in which a conviction is likely, prosecutors are setting the foundation under which lax adversarialism occurs.

The relationship between the prosecutor and defense counsel directly affected the outcome of cases presented before the judge. A cooperative courtroom workgroup was observed in all but one occurrence in which a public defender was present. I deemed the workgroup to be of cooperative nature, as the public defenders knew the individuals by name, and also knew personal information regarding the prosecuting attorneys and support staff. I overheard one public defender asking the prosecuting attorney questions regarding his family, and at another time I overheard the public defender talk to the prosecutor about dinner plans for the evening. I observed one public defender to sit in the lobby of the prosecutor's office before heading to the courtroom for arraignments and he conversed with the receptionist about the previous day's trial.

The individuals that were part of the cooperative workgroup were involved with court proceedings that occurred swiftly and smoothly. This is especially true when comparing the jury trial in which the defendant was represented by a public defender to the jury trial in which the defendant retained private counsel. The public defender appeared knowledgeable as to how trials were conducted in the particular courtroom, as well as confident in the state having provided all potential evidence to the defense in a timely fashion through the discovery process.

The opposite occurred under the circumstance of an uncooperative, unfamiliar workgroup, in which a private attorney was representing the defendant.

I deemed such to be an uncooperative workgroup as I overheard several members of the prosecutor's office staff make snide remarks regarding the private attorney's appearance and demeanor. Within the first hour of proceedings, the private attorney asked to approach the bench on three different occasions. He further claimed that the state did not provide the potential evidence with ample time for him to examine it, thus attempting to object the admission of multiple pieces of evidence. In addition, he attempted to object to two of the state's witnesses being considered expert witnesses. As the judge continuously overruled his objections, the private attorney was outwardly frustrated and began mumbling under his breath. The findings ultimately showed that a cooperative courtroom workgroup makes for a steady advancing of court proceedings, and a cooperative workgroup more often occurs when a public defender is representing a defendant, as the public defenders interact with the other members of the courtroom on a regular basis. Courtroom proceedings occurring at a steady pace was not found to be advantageous to the defendant.

Although public defenders were often members of the ideal cooperative workgroup, clients being represented by such court appointed public defenders appeared to be under more stress in the courtroom than those being represented by privately retained counsel. Not only were public defenders unaware of who they would be representing until they were introduced to their clients in the courtroom, they also were not always able to meet with their clients before being called before the judge. After one defendant was called to present, she exclaimed, "But I haven't even talked to him yet." It was evident that she was upset by this, and stood before the judge unaware of what would be happening. As the public defender was not able to meet with

all clients beforehand, this placed indigent defendants at a disadvantage, as they were unable to talk to their attorney about their case from their own point of view. Without such meetings, indigent defendants were blindsided by the recommendations made by the public defender on their behalf, and on one occasion, unaware of the terms of their plea agreement.

It is most likely that an overwhelming caseload was to blame for the lack of time to meet with the defendants, in addition to public defenders standing in place of other public defenders from the same office. When the latter was observed, one defendant expressed anguish over being uninformed regarding the absence of his attorney. In comparison with the clients of private attorneys, who were observed to have a relationship with the individual representing them, indigent defendants experience unnecessary additional stress on their day in court. The additional stress experienced by indigent defendants is likely the result of inadequate representation. The current public criminal defense system is characterized by the lack of funding and resources needed to provide adequate representation for their clients. Under the current system, indigent defendants are placed at a disadvantage and are denied an equal opportunity for justice under the adversarial criminal justice system.

The findings highlighted the existence of judicial discretion. Although both the prosecuting attorney and defense counsel offer recommendations for bond, it is ultimately the decision of the judge to set bond. It was observed that on many occasions either the prosecuting attorney or defense attorney would recommend a reasonable cash bond be set in place, yet no amounts were offered by the recommending individual. In such case, it is solely up to the discretion of the judge to decide what constitutes a reasonable amount.

Court proceedings beginning significantly late on six different occasions and slightly late on many other dates observed directly affect the defendants and any individuals that have

accompanied them to the courtroom. While they are required to be in the courtroom at a scheduled time, it is common for the defendants to not stand before the judge until much after such time, which results in disrupting their plans outside of the courtroom. One defendant was brought to court by his father and was scheduled for a probation violation to appear before the judge at 1:00pm, yet it was 1:50pm and court had not even began for that afternoon. The father expressed distress to the court constable as he was his son's only ride home from court, but had another obligation to pick up his wife from work at 3:00pm. I heard a defendant express concern that she would not be out of court in time to pick her daughter up from school due to the court proceedings running later than scheduled.

Although 668 cases were presented before the judge at the Wood County Common Pleas Court in the year 2013, only 9 cases were taken to trial. That means that a little over 1% of the years defendants exercised their right to a jury trial. It is likely that this number is so low due to the prevalence of plea-bargaining that occurs in today's criminal justice system. Plea-bargaining occurs when the prosecutor and defense work out an agreement foregoing a criminal trial. Plea-bargaining is coercive by nature. Not only does it speed up the criminal process, but it often entails the defendant pleading guilty to a lesser charge with a more lenient sentence than if they were convicted at trial of a more serious charge. The time it takes to pursue a criminal trial may conflict with a defendant's work and family responsibilities. Taking a case to trial is also risky as the defendant is subject to the maximum sentence upon conviction. Resulting from convenience and fear, defendants may feel a plea agreement to be their best option, even if they did not the commit the crime in question.

Plea-bargaining is also a controversial practice for all defense attorneys, especially public defenders. Public defenders are conflicted with the dual goals of representing their client to the

best of their ability and maintaining a cooperative relationship with the prosecutor. When public defenders pressure their clients to accept plea bargains, they are allowing professional alliances to trump adversarialism. While plea-bargaining may be beneficial in some cases, the prevalence of such practice is one way in which ordinary injustices occur in the criminal justice system.

I found that the courtroom workgroup dynamics set the foundation for the condition of lax adversarialism, under which ordinary injustice prevails. Misuse of prosecutorial discretion allows for cases and defendants to slip through the cracks unchecked. Public defenders face excessive caseloads without appropriate funding and resources, which places their clients at a disadvantage as they struggle to provide adequate representation to each of their clients. Public defenders also feel pressure to maintain a cooperative workgroup relationship, ultimately compromising justice for indigent defendants. Judicial discretion and the difference between public and private attorneys are likely to contribute to the prevalence of lax adversarialism, and further research should be conducted to evaluate such.

### **Strengths and Limitations**

By conducting a phenomenological study, I was able to conduct my observations under less structured conditions, which allowed me to record data without pre-determined expectations. The lack of pre-determined expectations was beneficial in observing all aspects of the everyday courtroom occurrences. Phenomenology also suggests the use of multiple data sources to address validity. As a means of doing so I not only conducted court observations, but also obtained information from the Clerk of Courts. The data analysis steps of bracketing, horizontalization, and developing clusters of meaning were beneficial to making sense of the collected data and developing themes among such observations.

The main limitation of this study was the three-month time constraint, as a longer period of time is necessary in order to grasp a deeper understanding of the interactions among members of the courtroom workgroup and their implications on the outcome of criminal cases. Resulting from such limited time, I was not able to conduct any interviews as a data collection method. A third method of data collection would have added to not only the validity of my study, but also to its' quality. As I had initially hoped to evaluate how the proximity, stability, and similarity of the courtroom workgroup affected the outcome of court cases, I was unable to do so without conducting interviews of the courtroom workgroup members regarding personal information, including, but not limited to, one's age, academic background, and work experience. I was furthermore unable to interview defendants regarding their experience in the criminal justice system. Doing so may have led to a better understanding of the quality of private counsel versus public defenders.

Furthermore, as an intern in the prosecutor's office, it was difficult to balance my time between working and observing court, which ultimately led to me giving up my lunch break to conduct my courtroom observations. Thus, my observations could only be conducted for approximately one hour each time. My being an intern in the prosecutor's office led to another limitation of this study, as I had knowledge of the cases being presented to the court that the general public would not ordinarily have. For many of the cases I observed, I had worked on either the pre-discovery or the discovery, and it was difficult at times to serve as an outside observer, as I had already known inside information regarding the case.

### **Future Research**

As there is little previous research regarding the ordinary injustices that occur on a daily basis in the courtroom, it is imperative that future research be dedicated towards uncovering the

reasons as to why such injustices occur. It would be beneficial to study the indigent criminal defense system in particular, with a specific focus on inadequate funding and excessive caseloads that may lead to public defenders cutting corners and ultimately undermining justice for their clients. Courtroom observations should also be conducted across a longer period of time than available during this study. By observing court for a longer period of time, more in-depth findings could shed light on the ways in which members of the courtroom workgroup set the foundation for injustice to prevail.

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