

I believe public defenders in leadership jobs get some great opportunities to advocate for changes in the justice system that would serve client communities. So often criminal justice policy discussions are dominated by people whose political agenda is to polarize society into “all you good normal voters” versus “criminals.” As a result, for example, we don’t get a public health approach to drug abuse, we get a “War on Drugs.”

Since 1990 I have tried, like many other public defenders, to use my job as the Minnesota state public defender to speak up about alternatives that give more value to the individuals, families, and communities that are touched by the justice system. As materials for our COD Network Conference I am sending some examples of pieces I have written to try to get this message across. Although I feel a little shy about putting 13 pages of this work out there all at once—and some of it is personal—I think concrete examples are better than talking about justice reform messaging in the abstract.

Unlike trial work, in this kind of advocacy it is hard to tell if you are winning! Or even if you are taking on the issues that most need to be taken on. My method is, if I read something in the paper that makes me mad, and I’m still mad the next day, I write a response. See what you think. I would be glad to hear any of your views about how any of us defenders, including me, could be more effective in this work. And if you write about justice policy issues I would like to read what you write.



- 1) Court interpreters—published in Winona Daily News, February 2008.
- 2) “Where ‘broken windows’ falls apart”—Minneapolis Star-Tribune, 2007.
- 3) “More Hope for People...”---Stillwater Prison Mirror, 2005.
- 4) “Cultural Competency for Drug Court Coordinators”—training program 2006.
- 5) “Public safety” and re-entry—St Paul Pioneer Press, 2008.
- 6) “TV Court”—Minnesota Lawyer, 2006.
- 7) “Happy Birthday, Miranda”—Minnesota Lawyer, 2005.
- 8) “Racial Profiling Hurts”—Minneapolis Star-Tribune, 2006.

February 12, 2008

Mr. Darrell Ehrlick, Editor
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RE: Court Interpreters

To the Editor:

I am proud that Minnesota is committed to providing court interpreters for people who do not speak English, and for deaf people who use American Sign Language.

First, it is about fairness. Imagine if you were accused of a crime in a country where you did not speak the language—how would you answer the charges? You can't hold people accountable for their actions, if they don't understand what's going on. Or, suppose you were robbed while you were on vacation, and the authorities told you, "sorry, if you need help, you will have to learn Norwegian?" Much of the interpreter cost for the courts goes to helping crime victims and witnesses tell their stories. The Supreme Court committee that reported on this issue in 1993 said that interpreters were "fundamental" to due process of law.

Secondly, how do we want to deal with people from other countries who work and raise their families here? My great-grandmother only spoke German. If she ever had to go to court—which could have happened; during Prohibition she made wine for everyone on her block—she would have needed an interpreter. She didn't learn English. But her kids did, and they became teachers and farmers and business people, contributing a whole lot to the small town where they lived. In the long run, the cost of court interpreters is very small compared to the value of a strong, diverse community where each person can participate.

Sincerely,

John Stuart, Minnesota State Public Defender

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John Stuart: Where 'broken windows' falls apart

Instead of increasing arrests, do something constructive with those being arrested now.

John Stuart

The Star Tribune was mistaken, in its lead editorial on the Rev. Martin Luther King's birthday, to ask for "more arrests" to reduce "livability crimes" in Minneapolis.

Did you know that there are so many arrests now that the Hennepin County District Court dismisses 25,000 misdemeanors a year, mostly for lack of any proof that the suspect did anything wrong?

Did you know that youth of color are arrested for low-level crime accusations at a rate 10 times that of white youth?

Do you remember the recent Council on Crime and Justice study showing that in Minneapolis 44 percent of all African-American men ages 18 to 30 are arrested every year?

The Star Tribune wants more arrests for "broken windows." Makes sense, *if* the police catch someone breaking a window. But suppose people are arrested for standing near a building that has a broken window? Or for possibly thinking about breaking a window? These are the 25,000 dismissed cases, the "lurkers" and "baggy-pants loiterers" that the newspaper wants to be busted more often.

What about the costs of this type of policing? First there is the cost of officers going off patrol to drive someone to jail for "loitering" in baggy pants. Then, the jail is full. This is the *new* jail, that has only been in service about five years. Then there are the courts, which need more staffing all around to do the work of dismissing 25,000 "cases."

There are indirect costs, too. Being jailed for baggy pants does not breed respect for the system. People who have this experience aren't inclined to cooperate when the police need help on a serious case. And people who get arrested for standing around get arrest records, which lead to trouble getting jobs, which leads to ... more standing around.

So, more arrests isn't the answer. We need something constructive to do with the people who are getting arrested now. Putting each of them in jail for two or three days a couple of times a year doesn't seem to be solving the problem. Instead:

- How about, for people who did commit a crime, assigning them to probation officers with reasonable caseloads? The officers need to be engaged with these

young guys, helping them get jobs, treatment, GEDs. For a worker juggling 150 to 200 active files, that's impossible.

- How about *more* restorative justice programs like the Central City Neighborhood Partnership? They have been successful around Stevens Square and the U -- why not the rest of the city? The idea is to hold people accountable in a way that builds connection to the community -- unlike a night in jail.
- How about building on the drug court model, which, in Hennepin Count and around the country has reduced repeat crime through regular face-to-face contact between the offender and the District Court judge?

Finally, in the spirit of honoring King, let's recognize that the way to reduce "livability crime" is to have resources available for poor people who want to increase the livability of their own lives: housing, schools that aren't overcrowded, decent chemical-dependency and mental health services, more attention to early childhood programs, and job opportunities. In the long run, more resources and more respect will do more for us than more arrests and jails.

John Stuart, Minneapolis, is a state public defender.

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More Hope for People with Drug, Alcohol, AND Criminal Court Problems

by John Stuart, State Public Defender

Folks in other states imagine everybody in Minnesota is in treatment. The joke is, we are the "land of 10,000 treatment centers." It's not true. We are actually near the bottom of the 50 states, in dollars devoted to chemical dependency treatment, especially since the big government budget crisis 3 years ago. The state has cut back drastically on c.d. treatment for the working poor, and many county-funded programs are struggling.

We have about 15 drug courts operating in Minnesota, way more than 5 years ago, but not many compared with over 100 drug courts in Missouri, 23 in Louisiana, even 20 in Maine—a state which hardly has any people living in it. That's too bad, because a good drug court can make a lot of difference: for instance, there's one in Mankato now with 19 clients in it, and 12 of them would be in state prison if not for drug court. Instead, they are maintaining sobriety—with the help of weekly supervision by a district court judge—working, going to school, and living with their families.

A report that came out in February from the Minnesota Supreme Court Chemical Dependency Task Force shows what we need to be doing that we aren't doing now, and holds out great hope that the situation will improve dramatically over the next few years. Here's a short review of what's in that report and what should happen next.

First, alcohol and other drugs—we talk this way because alcohol IS a drug, even though it's legal, and because we know lots and lots of people are in jail and prison because of things they did when they were drinking alcohol—are the main force behind the huge increase in imprisonment in Minnesota. In 1999 there were 472 methamphetamine cases in the state, just to name a drug we have all heard about. In 2004, 5 years later, there were 3,948 meth cases. The DOC says 90% of the people in prison here now, came in with either chemical abuse or addiction problems.

My own unscientific study is just to remember that over half the time I'd ask my clients in jail, "what's this case about?" they would come back with, "well, I was in this bar...".

The Task Force Report makes it clear that we need the courts to adopt strategies to use treatment to keep people whose main problem is alcohol and other drug use, out of prison; and we need resources for the DOC to provide more treatment beds IN the institutions, and more aftercare for people when they get out.

Many obstacles must be overcome to get this done. Funding for c.d. assessment, treatment, and aftercare is crucial, but, so is the need for planning services that work. We know there are cultural components to successful treatment. One of my first public defender successes and failures was when I got my repeat-DUI client into treatment, and he couldn't stand being the only person of color in with people he said were all white, elderly businessmen! We know there are big differences in what works best for women

and men. We know about 40% of people with felony drug cases in Minneapolis also have mental health issues, that need to be taken care of at the same time. We know there are big differences between rural and urban areas, in terms of what kinds of drugs, what kinds of treatment programs, jobs, housing and transportation. We have a mix of community corrections and state corrections systems counties, with their own financing and training and supervision. We have some criminal justice professionals, in all fields, who, because they are human beings, really don't like change much. We still have a lot of citizens who believe that if somebody broke the law, they belong behind bars, and that's that—even if keeping the person locked up costs 5 times as much treatment, and makes his problems get worse. So, the problem needs funding, but it also needs thought and planning.

The Report says we should take on these challenges and change the approach to people in court whose main problem is alcohol and other drugs. Some of the things we do now—this is my own personal comment—waste people's lives and taxpayers' dollars.

We should—and the Supreme Court went to the Legislature this year for \$750,000 to do the planning—plan “problem-solving approaches” to the AOD issues that bring people to court. This is not just 87 drug courts for the 87 counties. Other approaches might be DUI “staggered sentencing,” where people have a chance to earn their way free from big chunks of the sentence. They might be juvenile drug courts and “recovery schools” where all the kids are sober (unlike the high school I went to!) They might be “family substance abuse courts” where families who have both parenting and AOD issues would work together. They might be restorative justice programs, bringing more of a community commitment to someone's recovery. They might be “re-entry drug courts” to help people getting out of the institutions, get back on their feet.

Along the way, people in Minnesota need to learn that methamphetamine addiction is treatable, and the treatment is just as successful as treatment for addiction to alcohol or cocaine. Meth addiction is a long-term illness that people can deal with the same way people can deal with diabetes or high blood pressure.

The Minnesota Supreme Court and the Judicial Council are committed to moving ahead with problem-solving approaches for people who come to court with AOD issues. The Legislature helped out this year by extending the operation of the early release program for non-violent drug offenders, for two more years—it won't be shutting down next summer.

I'll be working on these developments with one main idea: what would most help public defender clients with alcohol and drug issues? If you have ideas about this, please write to me:

John Stuart, State Public Defender
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INTRO:

--thank you for making decision to work in drug courts
--most positive development in court system in Minnesota in last 30 years
--people in trouble due to an addiction, will have a chance to have a life
--worked in trial courts here every day in 1980's, had to beg and grovel
 and get all the planets lined up, to get ONE person into treatment
--thanks to your work, "problem solving" will become the first way of
 thinking about addicted people in court

--I believe War on Drugs was a bad idea, treated our own people as the
 enemy. Your work in Drug Court is the peace treaty after the war.
 Your work is the Marshall Plan, for communities most hurt by drugs
 and most hurt by the War on Drugs.

--As you know Drug Courts face some tough challenges:

- the idea of "war" on drug offenders is still around
- money is short, in state and local government
- treatment resources are uneven, to say the least, around Minnesota

I believe the BIGGEST challenge is the job of developing drug court
workers as the leadership for cultural competency in the justice system.
It is EASY to write a report that says, "the Drug Court must take cultural
factors into account." But, who's going to help people actually DO that?
You, I hope. That's why I'm here today, to encourage you to be the leaders
in cultural competency.

For a few minutes I want to speak directly to people here who come from
my own culture. I'm European –American, or to be brief, white. My dad's
family was from Scotland, my mom's family came from Germany. It's
easy for me not to think about cultural competency. When I applied for my
job, I was interviewed by 6 people, all 6 were European-Americans. My
previous 2 jobs, same thing. People who sold me my house and my car, and
gave me the loans, same thing. I work in courthouses around the state—
most of the judges and lawyers and clerks I see, European-American. If
there's a lunchroom in the courthouse, I can find something for lunch that is
what I grew up eating: cheeseburger, club sandwich, clam chowder on Fri.

So, I don't really have to become culturally competent, the way an African-American or Hispanic or Native or Asian person does. Pretty easy in Minnesota to take European-American for granted, feel that it is just what's normal, it's in the air we breathe.

I did have one big life experience where I had to try to become culturally competent. When I was 21, for reasons connected to the Vietnam war, I got a job teaching English in an all-male, all African-American school in North Philadelphia—Malcolm X High School.

The “English” part was easy—I knew all about English. What I did NOT know was, who Malcolm X was, what his life was about, why he would be important to the people in the community where the high school was, and how I, Mr. European-American, could teach the kids who lived in that community. On a knowledge level, and on a feeling level both, I had to learn about a different culture and learn how to value it, or my work would fail. I couldn't just pretend that all the students at Malcolm X High School had come from backgrounds just like me. Couldn't just say, “I'm just a nice color-blind guy from nowhere in particular, just like you students.” Reality wouldn't allow that.

I believe Drug Courts in Minnesota can't afford to say, “we're just nice color-blind folks” either. Here's why:

- all the NIDA studies say, drug use among European-Americans and African-Americans is about equal
- African-Americans are about 12-15% of the US population
- BUT, until lately, African-Americans have been over 40% of the drug arrests.

In Minnesota, 2003, Council on Crime & Justice studied over 200,000 traffic stops by 65 different police departments all over the state. Got a summary to give you. Stopping and searching of drivers of color was over double the stopping and searching of white drivers. (white drivers had more drugs!) There are many shocking stories about this—met a woman whose bi-racial son, lives in Dakota County, was stopped 65 times last year. License plate light ticket, one time. But, that's not my point.

My point is, the courts are at the bottom of a funnel. Folks who get arrested, are poured into the top. People of color will be poured in at maybe 2-3 times their representation in the population. Where I live, 44% of the Black men age 18-30 are arrested and booked every year.

SO—here's the challenge to Drug Courts. People are watching how these work. Let's say, I'm making up numbers, 5 years from now, 70% of the Drug Court participants succeed. That's good, I'd say the Drug Court is a huge blessing to our state.

But suppose that 70% is 82% of the white participants, and 50% of the participants of color, that's not so good.

I've been on the Supreme Court Racial Fairness task Force now for 15 years. I have been to many, many hearings about race and culture and the courts. I have heard many European-American people in power in the justice system say they try to treat everybody alike. That's a good aspiration, but today I have to say, it's not good enough. I believe the challenge is, to try to treat people as who they really are. That's the challenge of trying to become culturally competent. I hope we can do that. I especially hope that people in the job of Drug Court Coordinator can lead us in that direction. If you do, I believe the Drug Courts will succeed for everybody—this will be the greatest achievement in the justice system in Minnesota in our lifetimes.

Thanks again for jumping into this work.



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January 15, 2008

Editor, Pioneer Press
345 Cedar Street
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To the Editor:

We appreciate Representative Michael Paymar's leadership in thinking about the strategies that help reduce crime in the long run. Too often we think of "public safety" as being served only by putting someone behind bars. Sometimes that is what has to be done. But, as he points out, 95% of people who go to prison, also come back out.

"Public safety" issues raised by the several thousand ex-offenders released each year include, will this person be allowed to have a job? Will he or she be able to get a place to live? If there are questions about chemical dependency treatment or mental health services, does Minnesota have the answers? If not, we know what to expect: repeat offenders, more victims, more court proceedings, more jail. As public defenders we say, let's break the cycle.

Yes, those who "do the crime" have to "do the time." But then what? It is in our interest as well as in their interest to give people who have paid the price for breaking the law, a chance to get back on their feet, to become productive, to lead a normal life. Rep. Paymar deserves credit for steering the criminal justice discussion in this direction.

Sincerely,

Laura Budd
Chair, State Board of Public Defense

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September 6, 2006

To the Editor, Minnesota Lawyer

Dear Editor:

Right now the Judicial Council and the Criminal Procedure Rules Committee are considering a proposed new ITV Protocol for criminal cases. The proposal, available on the courts' website, would make some big changes.

First, the requirement which has been in place since the Supreme Court Closed Circuit Television Task Force Report (1991), that parties consent to the use of ITV, would be abolished. Second, the scope of ITV use, at the courts' direction, would expand to cover almost all misdemeanor proceedings. I don't know that many people are aware of this proposal, which came out of the Judicial Council rather suddenly, after having been tabled for five and a half years.

Chief public defenders oppose these changes in their present form. We think the replacement of "live court" by "TV court" exacerbates existing gaps between the poor and the middle class as participants in the justice system, a problem which in Minnesota is inextricably connected to racial disparity. We prefer the judicial philosophy represented by drug courts, which have succeeded through creating more face-to-face contact between our clients and the judges, not less.

We would like to see a broader discussion before these changes are implemented; however, the Supreme Court hopes to have a plan in place by October 20.

Sincerely,

John Stuart

Happy Birthday, Miranda—and many happy returns!

by John Stuart, State Public Defender

Maneste
Carve 2005

Back in the old days, the bad old days, I had a friend whose brother was a Chicago cop. We heard the story of what his precinct did when they got their first copying machine: they lifted up the rubber flap over the glass and taped on a piece of cardboard that said “LIE” in big letters. The copier was now a lie detector. Questioning a suspect, they would have him put a hand on it—“hold the other one up in the air”—and if they didn’t like the answer, press the button. The machine would make a decision and then shoot out a sheet of paper to show the culprit.

Yes, 40 years ago America needed Miranda. Chief Justice Warren wrote that the decision was meant to go “...to the roots of our concepts of American criminal jurisprudence: the restraints society must observe consistent with the Federal Constitution in prosecuting individuals for crime.” It was a case that seemed to re-balance the interests of public safety and the individual. I was in college then, and when I read about it in the paper it looked terrific. And, of course, there was a lot of furor about how we might as well just tear down the jails, they wouldn’t be needed, Miranda would handcuff the police, the streets would be full of hoodlums.

Most police chiefs today say Miranda has worked out well for law enforcement. To read a suspect the warnings gives a focus to the interrogation, like saying grace before dinner. When a confession case goes to trial—this is the voice of experience speaking—here’s what Miranda does for the prosecution:

PROSECUTOR: And, did you advise Mr. Jones of his Constitutional rights?

DETECTIVE: Yes, I did. I read him the Miranda card I always carry with me. (reads.)

(Judge and jurors all nod appreciatively.)

You couldn’t buy a better frame to show off the next piece of evidence, what he said.

But I’m glad we have Miranda. It sets a tone. It reminds us that people in America who are suspected of crimes, do have rights. Periodically we forget that. We come up with a notion of law enforcement being war, as in the expression, “War on Drugs.” In war, of course, the people we are fighting against are not some of “us,” they are “them,” the enemy, so, when we catch some of “them,” we don’t need to worry too much about their rights. Think dogs, electric wires, sleep deprivation, water-boarding. This kind of thinking is bad enough internationally, but when a war mentality develops in domestic law enforcement, people forget what kind of a country we are trying to have here. A decision like Miranda brings us back to our best selves, reminds us that the people who live here are not the enemy, they are just people, maybe people in a bad situation, maybe

people who have done a bad thing, but all “us” just the same. It’s a good thing that our police always carry the Miranda card. Happy birthday, Miranda!

The point of celebrating a birthday, though, is to look ahead. What could the courts think about now, if they were following Chief Justice Warren’s leadership to impose “restraints society must observe...in prosecuting individuals for crime”? Here are three ways the courts could use the Constitution to help our country in years to come.

1. Stop racial profiling. Assuming we are willing to keep on tolerating pretext arrests, as the present U.S. Supreme Court does—this is where they stop your car in hope of searching it, with an explanation like “your license plate is dirty”—the courts should not admit evidence from pretext arrest stops done on a racial basis. I’m not talking about Alabama here, either; this is a huge problem in Minnesota, as voluminous scholarly studies by the Council on Crime and Justice have amply demonstrated.

2. Improve expectations of privacy. Katz v. United States (1967) says you can’t be searched in situations where you have a “reasonable expectation of privacy.” The problem is, we are being taught that virtually no expectation of privacy is “reasonable” any more. Your library books? No. Movie rentals? No. Credit card use? No. Phone records? No. The courts have a responsibility to protect America against an acquiescent majority, by telling an intrusive government when it goes too far.

3. Require honest eyewitness identification procedures. United States v. Wade (1967) explains that “improper suggestion” to witnesses accounts for more “miscarriages of justice” than all other factors combined. Thirty-nine years later, we haven’t fixed this, as we see when the papers show innocent people being released from prison after serving 15, 18, 22 years. But, we know how to do it, as the trials of “sequential” and “double blind” lineup techniques make clear. Some of these line-up reforms have succeeded here in Minneapolis, sponsored by the Hennepin County Attorney’s Office. Good for them! Now let’s have a court step up and say, this is how it has to be.

These would be three great birthday presents to honor the spirit of Miranda, gifts which would give us all a renewal of faith in courts’ ability to balance the legitimate demands of law enforcement with the Constitutional rights of individuals in America.

Star-Tribune
6/17/06

KERSTEN'S CRIME ANALYSIS

Racial profiling hurts

It would be a shock to a lot of our clients to hear that Minneapolis police are shy about arresting African-Americans because they might be blamed for "racial profiling." A recent study by the Council on Crime and Justice shows that 44 percent of African-American men between the ages of 18 and 30 are arrested every year.

In fact, racial profiling is not a good law enforcement strategy. A review of 200,000 traffic stops across the entire state showed that, contrary to stereotypes, white drivers had more illegal drugs and weapons than drivers of color. Besides the inefficiency, racial profiling drags down law enforcement by hurting cooperation between police and the community, cooperation which is so badly needed.

It's sad to see Katherine Kersten and her source (column, June 15) claiming that less concern about racial profiling would help the crime situation. They're completely wrong.

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