

Acing the Public Defender Interview

by Deb Ellis

“Counseling Students to Prepare for Public Defender Careers,” which appeared in the May 2009 *NALP Bulletin*, addressed preparing for public defender careers. This continuation focuses on how to succeed in the hiring process. For more comprehensive information, including a list of the offices that regularly hire entry-level attorneys, see NYU’s *Public Defender Handbook*, available on www.pslawnet.org.

The Entry-level Hiring Process

Many public defender offices hire “classes” each year, so their hiring is fairly regularized. Some offices begin a hiring process in the fall for a class in the following fall; others wait until the spring to begin hiring. For example, offices in New York hire before the bar because law graduates in New York can practice so long as they take the first bar exam after their graduation. In other states, such as California or Maryland, offices do not make offers until after applicants have passed the bar, but they may hire 3Ls into “law clerk” positions pending bar exam results.

Most offices have a multi-stage hiring process, usually an initial screening interview followed by two or more subsequent interviews with panels of attorneys. Because public defenders are given so much responsibility, employers may ask the applicant to perform a simulated client interview, arraignment, cross-examination, opening statement, or summation. For example, the employer may play the role of a client and ask an applicant to conduct an initial client interview before an arraignment. Below are tips for handling some of these possible simulations.

Screening Interview

To prepare for the initial interview, students should research the office to find out about its size, organization, and philosophy. They should also talk with an attorney there or, better yet, “shadow” an attorney for a few hours to gain an insider’s perspective. It is helpful for career offices to maintain alumni lists to share with students for this purpose.

Typical questions asked in the screening interview include:

- Why do you want to be a public defender?
- Why do you want to work here? (It is very important to show why you are interested in a specific office.)
- Tell me about a difficult experience you had in clinic (or other work setting) and how you overcame it. What would you do differently in the future?
- What was your favorite client’s name? (Hint: do not reveal as doing so would violate confidentiality.)
- What would make you a good trial advocate?
- How would you relate to clients who look very different from you?
- How would you go about building a trusting relationship with a client?
- Is there any type of crime you would have trouble defending, like child molestation or rape?

Hypothetical Questions

Either the first or subsequent interviews may also involve “hypos.” One recurring theme in hypos is the tension between the duty of zealous representation of your client and other ethical duties as a lawyer. The *NYU Public Defender Handbook* gives examples of hypos that may be asked.

Simulation Tips: Client Interviews

A simulated interview gives students the opportunity to demonstrate that they can connect and communicate with an intoxicated, belligerent, mentally ill, or juvenile client. The client might be a little evasive in giving up facts. Students should begin by introducing themselves and breaking the ice.

Here are additional tips to share with students:

- Describe confidentiality and your role as the attorney.
- Ask questions going to bail, the incident, and the arrest, unless you are instructed that for the purposes of the hypothetical you don’t have to ask about bail. Ask about community ties.
- Explain the charges to the client and the process of arraignment.
- Be careful not to use jargon or difficult words.

Simulation Tips: Jury Opening

- The opening statement is not an argument. Technically, it is the opportunity to tell the jury what you expect the evidence will/won’t show. Use it as an opportunity to tell the story from the client’s perspective.
- Consider opening with a theme, or a “grabber.”

- Keep the focus on the prosecutor’s burden and the fact that s/he cannot meet it, and do not tacitly shift the burden to the defense. The defense does not have to prove innocence. Don’t promise to.
- Focus on the prosecutor’s lack of evidence.
- Only refer to facts that you KNOW will come out at trial.
- Be VERY careful about making any promises about *anything* you intend to prove. A client’s alibi defense is not forfeited if it is not promised in the opening. But if it is promised and the alibi falls apart during the trial, the defense may be hurt.

Simulation Tips: Jury Summation

- Think through reasonable doubt. Emphasize that the prosecutor did not meet his/her burden and state all of the reasonable doubts that remain.
- Be clear about the theory of defense, e.g., misidentification, “what happened,” justification, etc. Hybrid defenses tend not to work with juries. (Example: he wasn’t there, but even if he was, it was self defense, but even if it wasn’t, the witness is making the whole thing up.)
- Consider whether to lead with defense witnesses or prosecutor’s witnesses and how to talk about defense witnesses without adopting the burden of proof. Don’t inadvertently shift the burden of proof to defense.
- If the defendant didn’t testify, don’t inadvertently draw attention to that.
- If going second (in all states but New York), rebut prosecution points at the beginning.
- If possible, use metaphor or analogies, or both. For more information about how to

do this, see Anthony Amsterdam and Randy Hertz, *An Analysis of Closing Arguments to a Jury*, 37 N.Y.L. Sch. L. Rev. 55 (1992) (available in Hein Online and Lexis).

Conclusion

Finally, students should be reminded to communicate their **passion and enthusiasm** for being a public defender. It is a wonderful calling, and they will find much satisfaction.

Deb Ellis is Assistant Dean for Public Interest Law in the Public Interest Law Center at NYU School of Law. This article was submitted on behalf of the NALP Public Service Section.