



EQUITABLE DEFENSE: HOLISTIC DEFENSE FOR COURT-APPOINTED COUNSEL CASES

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Abstract

A number of studies point to disparities in criminal justice outcomes based on whether indigent defendants are represented by a public defender or a court-appointed private attorney. As more and more public defender's offices adopt holistic defense models, there is a danger that the gap in defense quality will further widen. Research on the effectiveness of holistic defense irrefutably establishes that the inclusion of social workers on defense teams results in more options for judges, less jail and prison time for defendants, and increased access to treatment. In San Francisco, the public defender's office has a long tradition of implementing highly effective defense by incorporating social workers. Meanwhile, defendants who cannot be represented by the public defender due to conflicts (in cases with co-defendants, for example) are represented by attorneys who do not have the same resources at their disposal. This position paper 1) reviews research showing differential outcomes for clients represented by court-appointed private counsel, 2) examines the literature on holistic defense, and 3) draws upon interviews with San Francisco justice system stakeholders to make the case that defendants represented by court-appointed private counsel should be afforded equal access to social workers as part of their defense teams.

Introduction

San Francisco's Public Defender's Office is a pioneer in incorporating social workers into defense teams. Referred to variably as "interdisciplinary defense," "social worker defense," or "defense-based disposition advocacy," the practice of court-appointed counsel incorporating social workers into defense team helps ensure a client's legal and social support needs are met in a more seamless manner (Steinberg, 2013). As defendants move through the various justice processes, the social worker on the defense team assesses and makes recommendations, helping to center client needs (Lee, et al., 2015). The most common model for this practice is now called "holistic defense," a term first coined by Robin Steinberg and pioneered by the Bronx Defenders (Steinberg, 2006). Steinberg and Keeney (2016) define holistic defense as, "a client-centered model of public defense that uses interdisciplinary teams of advocates to address both the underlying causes and collateral consequences of criminal justice involvement" (p. 211).

The Bronx Defenders program, which in the early 2000s began providing adult criminal defendants with team-based defense, including social workers, is often heralded as the first program of its kind. But a similar practice had already been taking place in San Francisco for about three decades. In 1979, attorneys from the Juvenile Unit of the San Francisco Public Defender's Office started presenting the courts with social worker-prepared disposition reports for juvenile defendants facing incarceration in state-level youth correctional institutions (the infamous California Youth Authority or CYA). The impact of this innovative approach was remarkable – San Francisco saw a 73% drop in its CYA commitment rate during the ensuing decade (Macallair, 1994).

To this day, the Juvenile Unit of the San Francisco Public Defender's (PD's) office continues to deliver social worker-assisted, team-based defense. The PD's Assistant Chief Attorney, Patti Lee, led the

movement to include social workers in juvenile defense teams during her 30 years as Managing Attorney over the Juvenile Unit. She attributes San Francisco's extremely low state-run juvenile detention facility referral rates in large part to these practices, which have now also been picked up in the PD's adult-serving units.

Notably, however, not all indigent defendants in San Francisco are represented by the Public Defender's office. Many defendants, particularly in juvenile court, are represented by lawyers from the Bar Association of San Francisco's Indigent Defense Administration Conflicts Counsel. While many of these attorneys rival PD office lawyers in terms of qualifications and experience, the resources at the disposal of these "conflict panel" or "Bar Association" attorneys are not comparable. A growing body of literature suggests that PD offices are often better-resourced than court-appointed private attorneys in general, resulting in consistently better outcomes for clients represented by PD offices. The difference often rests with the simple availability and access to services enjoyed by public defenders who have social workers on staff. In contrast, to avail themselves of comparable support services, a panel attorney must file motions with the court and win approval for funds to hire experts. This process is time consuming and often results in defendants being detained longer with fewer dispositional options.

As holistic defense gains increased recognition, there is an opportunity to increase equity for clients represented by court-appointed private attorneys. This position paper asserts that equipping these lawyers with an understanding for how to include social workers in a defense team, and then funding their access to experienced forensic social workers, will help to bridge the gap. [As an agency with over 38 years of experience in juvenile and criminal justice matters, including defense-based advocacy, alternative sentencing, diversion, and community-based treatment, the Center on Juvenile and Criminal Justice (CJJC) is well-positioned to provide San Francisco's Bar Association/conflict panel attorneys the team-based approach that their colleagues in the PD's office employ.]

Differences in Public Defender and Court-Appointed Attorney Outcomes

According to National Center for Juvenile Justice researchers (NCJJ, 2024), approximately 92% of youth facing juvenile court in California are represented by court-appointed counsel – 70% by a public defender and 22% by private counsel appointed and retained by the court. In San Francisco, where the PD's office will not represent co-defendants in a multi-party case, a far higher proportion of youth are represented by court-appointed private attorneys from the Bar Association of San Francisco's Indigent Defense Administration Conflicts Counsel (conflicts panel). The PD's office estimates that 43% of San Francisco's juvenile defendants are represented by conflicts panel attorneys.

Research suggests that court-appointed private counsel (referred to variably as panel attorneys, conflict panel, assigned counsel, or in San Francisco, "Bar Association attorneys") achieve less favorable outcomes for defendants as compared to PDs (Bailey, 2021; Roach, 2014). The differences are largely attributed to differential compensation structures and resources accessible to the two different types of attorneys (e.g., paralegals, investigators, and other defense team support). Some of this research is summarized below.

- A study drawing upon cases from 65 large counties across the US from 1990 to 2004 found that defendants represented by court-appointed counsel were more likely to be convicted and their sentences were 3.36 months longer, controlling for criminal history (Roach, 2014).
- Looking at 3,173 (adult) cases in Philadelphia between 1994 and 2005, Anderson and Heaton (2012) found that representation by a public defender, as compared with court-appointed counsel, reduced a client's likelihood of being found guilty by 19%, reduced the likelihood of receiving a life sentence by 62%, and reduced the length of prison sentences by 24%.

- A 2007 study of criminal cases from 51 federal districts around the country found PD-represented cases had lower conviction rates and sentence lengths. Authors suggested that the differentials may constitute a civil rights violation under Title VI of the Civil Rights Act (Iyengar, 2007).
- An analysis of cases from the 75 most populous counties in the country found that defendants represented by court-appointed private counsel from 2004 to 2006 were more likely to be convicted and imprisoned as compared with defendants represented by PDs or by privately-retained attorneys (Cohen, 2012).
- A study looking at San Francisco data showed that adult clients represented by public defenders, versus those represented by court-appointed private attorneys, were 6% less likely to be convicted, 22% less likely to receive a prison sentence, and among those who did receive a prison sentence, sentences were 10% shorter on average (Shem-Tov, 2022).

The Effectiveness of Holistic Defense

Several studies show that incorporating social workers into defense teams is an effective strategy to support better outcomes for the defendant and for court systems. The research cited here demonstrates that applying a holistic defense model can reduce the likelihood and length of incarceration, expand options for the courts, enhance client access to needed services, and improve defendant satisfaction with court procedures, all without decreasing public safety.

Holistic Defense in Adult Criminal Cases

The majority of studies consider the implementation of defense-embedded social workers in an adult criminal justice context, with a smaller number looking at juvenile court.

- New York's Neighborhood Defender Service of Harlem (NDS), a program developed by the Vera Institute of Justice, took a client-centered approach that incorporated two community workers on every defense team. An evaluation of the program, conducted in 1993, looked at 395 adult defendants receiving NDS's team-based, client-centered defense services compared against 395 similarly-situated defendants receiving conventional defense. Controlling for defendant demographics, priors, and offense severity, the study found that NDS clients were sentenced to 427 fewer days than the clients in the comparison group (Sadd & Grinc, 1993).
- A ten-year impact study of holistic defense in New York City (Bronx Defenders) reviewed a half million cases using a quasi-experimental design and found that clients receiving holistic defense had significantly higher chances of receiving a charge downgrade and avoiding a jail sentence. On average these defendants' sentences were 24% shorter than those of similarly-situated defendants receiving non-holistic defense. This study also found that holistic defense clients, while receiving less harsh criminal justice consequences, were no more likely to recidivate (Anderson, et al., 2019).
- A study of a social worker defense program implemented in Michigan found that having a social worker was beneficial to both court actors and clients. The analysis considered 61 cases and found positive effects on judicial considerations in sentencing, attorney-client relationships, defendant experiences with the court systems, and client connections to community services, as well as building court actors' knowledge of services available in their own community (Matei, et al., 2021).
- A multi-jurisdictional evaluation of indigent defense models in Minnesota, conducted by The National Center for State Courts, found that adult clients receiving holistic defense (Hennepin Holistic Defenders) received higher quality defense and experienced greater satisfaction with their representation. It also found that team-based holistic defense created efficiencies as

defense team members focus their energies on their areas of expertise. Among defendants who received a prison sentence, holistic defense clients received sentences approximately four months shorter than those with private attorneys, controlling for offense severity, criminal history, demographics, and other statutory factors. Notably, the study concludes that financial resources are a key factor in a jurisdiction's ability to ensure clients are able to access these higher-quality defense services: "[L]imited funding is the primary factor affecting [defense attorneys'] ability to more fully embrace the practice of holistic defense" (Ostrom & Bowman, 2019, p. 47).

- A study out of Santa Barbara, California found that adult clients receiving holistic defense received lower sentences (on average 50% fewer days in jail) as compared with defendants receiving traditional defense. These clients were also more likely than clients receiving conventional defense to have their charges dropped (60.7% increased likelihood). Importantly, the study established that the use of holistic defense had no negative impact on public safety (Harris, 2020).

Holistic Defense in Juvenile Cases

Studies considering juvenile defendants are fewer, but they find similar benefits.

- The first study to establish the impact of social workers in juvenile defense cases considered the aforementioned practices adopted by the Juvenile Unit of San Francisco's Public Defender's Office. The analysis compared data from 10 other California counties from 1980 to 1990. At baseline, San Francisco had the highest rate of commitments to state correctional facilities (CYA) in comparison to other counties. After 1980, when defense-based disposition case advocacy involving input from social workers had been initiated, commitment rates began to plummet. By 1990 San Francisco's commitment rate had dropped 73%, giving it the lowest rate relative to the other 10 counties, none of which had adopted the social worker-inclusive practice (Macallair, 1994).
- A 2021 evaluation of a Louisiana-based juvenile defense model considered 308 social worker-assisted cases compared with cases from a neighboring county with conventional defense. The social worker model was significantly associated with lower adjudication rates, early termination from custody, improved access to appropriate mental health treatment, better employment and educational outcomes, and decreased odds of recidivism (Phillippi, Thomas, et al., 2021).
- A study comparing outcomes among defendants in Kentucky juvenile courts found youth receiving social worker-assisted defense (n=116) were nearly three times as likely as youth receiving conventional public defender representation (n = 94) to receive alternative sentences, controlling for charge severity and prior justice system-involvement. These alternative sentences reduced youths' exposure to detention facilities while expanding their access to treatment resources tailored to meet each youth's bio-psycho-social needs (Geurin, Otis & Royse, 2013).

The specific number of public defender offices working to incorporate social workers is unknown but appears to be growing (Buchanan, 2017; Halpern, 2023). As more offices take up this practice, the inequity in defense between PD offices and panel attorneys is likely to become even starker.

San Francisco as a Case Study

Interviews with a forensic social worker with extensive experience in San Francisco's juvenile and criminal justice systems, a representative from the Bar Association of San Francisco's Indigent Defense

Administration Conflicts Counsel, and the Assistant Chief Attorney of San Francisco's PD office help contextualize the research cited above in San Francisco's justice system.

Defense Disparity

Interviews with San Francisco justice system players shed light on an indigent defense system where, both in terms of the resources available and court outcomes, defendants represented by the PD have an advantage over their panel-represented peers.

The PD's office recognizes the difference in juvenile court cases:

With the [clients served by] Bar Association [attorneys] we can see the disparity. More of those youth are removed from the home. They don't have the social work support to come up with the social history plan, to hire a psychologist. It's a more arduous process [for those attorneys to access those resources], which means the kids are going to be in custody longer...When we have a kid in custody, we jump on it so quickly, to provide that social work advocacy. So they get out. So more of the kids in custody tend to be Bar Association clients. The Bar Association youth don't have the team to do the advocacy...We have always said that there is a disparity in representation.

The forensic social worker expresses a similar sentiment, providing detail on the cumbersome nature of what conflicts panel attorneys face if they want to bring team-based resources to bear in a client's defense:

[San Francisco's juvenile] public defenders have never lost [a fitness hearing, wherein the prosecutor is petitioning for a youth's case to be moved to adult court]. The conflicts panel, when they want services for their clients like translators, social workers, an investigator, and educational advocate, a psychologist, gang expert, they have to ask the courts for money and the court has to approve, while the public defenders have investigators, social workers on the payroll. The conflicts panel clients were all getting shipped to adult court, while the PDs have never had that. The difference was more resources. It really wasn't fair.

All interviewees explained that there was a change in 2020, at which point San Francisco's conflict panel attorneys gained greater access to social worker support. The social worker explains:

[Someone] has been brought into the Bar Association of San Francisco to create a panel of social workers. There is a movement to get all the conflict panels social work support from the gate. Around the state that is also happening. People are understanding more. Forensic social work is blowing up right now.

The representative from the Bar Association conflicts counsel panel describes the difference that having a social worker as a part of a defense team can make:

The social worker making an initial diagnosis, making a treatment plan and an opinion on amenability can really change the narrative in the courtroom...Before we had social workers, lawyers were storytelling in a very chopped up way...Now with a social worker, she talks to these people and can tell a story that is cohesive. My social worker is going to get on the witness stand and talk about the history, the neighborhood, the trauma, there are no limits on the social worker's story. Whereas the doctor will tell about test A or test B. It doesn't come out and capture the heart. You can get the judge thinking about illness and disease, things that can be scary and dehumanizing, but the social worker humanizes the defendant. It's not Oppositional Defiance Disorder, it's a response to a history.

From the perspective of the Bar Association conflicts panel, the inclusion of a social worker also protects the attorney’s relationship with the court, and gives the judge a better basis for alternative sentencing:

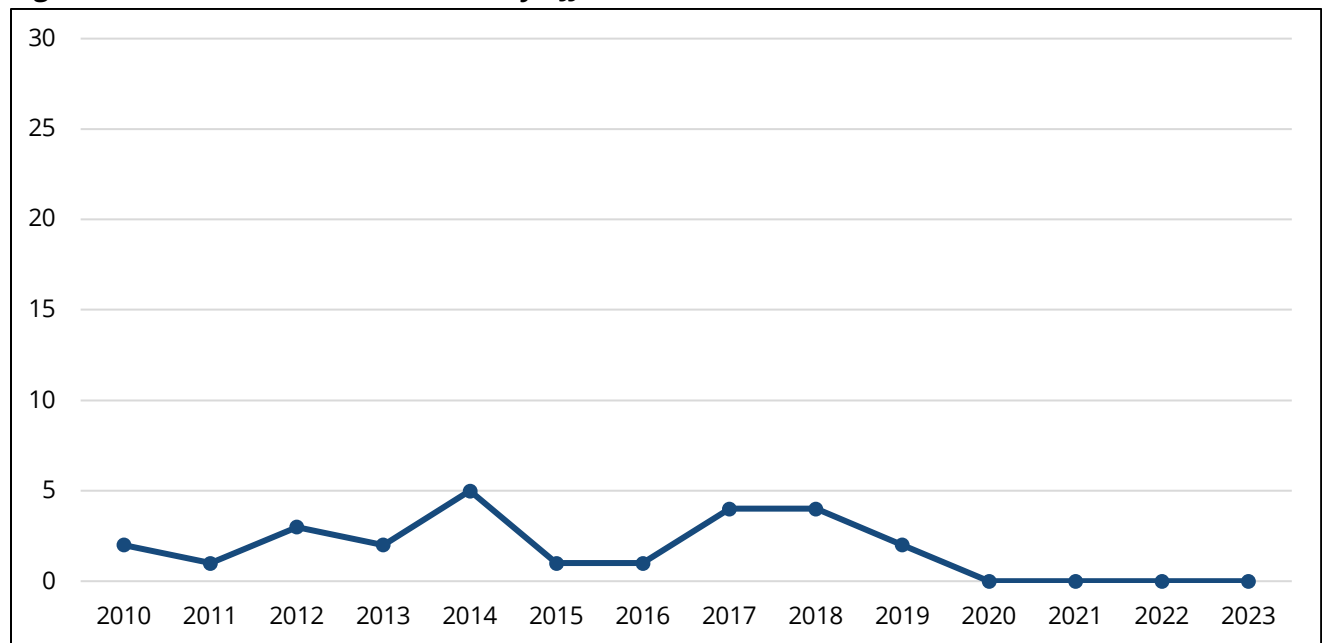
Before social workers were involved in this work we would come to the court and say, “He’s going to go to school every day, Mom is going to watch him.” If the judge took a chance and let him out and he reoffended, it would hurt the credibility of the defense team. When you bring in a social worker, not only are you making the argument but you’re supporting it in the community. The social worker is in a position to support the kid and make sure they follow through on what they told the judge they were going to do. That goes a long way. The judge sees you’re doing what you said you were going to do. It supports outcomes that way.

According to the Assistant Chief Attorney of San Francisco’s PD office, the inclusion of social workers has contributed to an exceptionally low rate of commitments to California Department of Corrections and Rehabilitation Division of Juvenile Justice (DJJ) among PD-defended youth:

I’m very proud of the fact that we were able to reduce our ranch and CYA/DJJ commitments down to zero, literally. Over the past 30 years, I would say that when we piloted social worker advocacy we have had only had 5 kids being committed to CYA/DJJ. In the past 20 years only 3.

This position is supported by research published back in 1994 which asserted that the 73% drop in state correctional commitments of San Francisco youth between 1980 and 1990 was attributable to including social workers in disposition case advocacy (Macallair, 1994). More recent data extracted from Department of Corrections and Rehabilitation Division of Juvenile Justice reports shows that San Francisco’s annual commitments to DJJ have become nonexistent in recent years.

Figure 1. Count of San Francisco County DJJ Commitments Per Year, 2011-2023



Source: SFJPD, 2024.

If the PD’s estimates are correct, then 23 of 26 DJJ commitments shown in the chart above very likely comprise primarily defendants represented by conflicts panel attorneys. Since 2020, however, when these lawyers were afforded easier access to social workers, no new commitments have been made.

Allocating Resources in Defense

Research indicates that the use of holistic defense results in shorter time to case closure, implying potential fiscal savings (Lepage, 2023; Roach, 2014). One study found that cases where holistic defense is employed close 27 days sooner than other cases (Roach, 2014). An analysis conducted by the justice advocacy organization, Partners for Justice, asserts that every dollar spent delivering their model of holistic (or “collaborative”) justice has a return on investment of “three to six dollars” by helping reduce incarceration and associated costs (Halpern, 2023; Madrigal, 2023). Multiplied by the by number of cases handled by conflict panel attorneys per year, these abbreviated case lengths could translate significant savings to the county, reduced burden on attorneys, and significantly better experiences for defendants.

The PD’s Assistant Chief Attorney clearly articulates the cost-savings argument for San Francisco:

First of all, it’s cost effective. The salary of a social worker is less than that of an attorney. The cost benefit analysis makes sense. Social workers were effective in getting kids out of custody, and a day in custody was \$200 a day. Now it’s over \$600 a day. We were able to prevent probation revocation with the help of the social workers. And granting diversion, which cuts short their justice involvement by six months. We found that the majority of kids granted diversion should never have been in the system. And they didn’t come back. So that was low-hanging fruit. When we were contesting the out-of-home placement and the court would allow them to stay in the community, you’re saving the system money for [that, too] since the city has to cover 40 to 50 percent of the cost.

Furthermore, embedding a social worker within a defense team is more likely to yield results than an approach that is housed in a probation or prosecutor’s office. Systems whose mission is to exercise control are not generally known to advance approaches that lessen their authority or center a defendant’s needs (Bloom & Farragher, 2013; Skeem, et al., 2015). Additionally, defense-embedded social workers may access and explore treatment possibilities that go beyond probation offices’ traditional approaches (Matei, et al., 2021).

Role-Specific Training & Education

While holistic defense does appear to be growing in popularity (Buchanan, 2017; Halpern, 2023), it is still a fairly rare approach. A recent survey of court officers found that just under 24% of public defenders surveyed recognized the value of having a social worker as part of the defense team, and only 19% responded that they felt social worker positions in the courtroom were “worth funding” (Smith, et al., 2023). This study suffers from a small sample size, but, nevertheless, demonstrates that there may be a need to help defense attorneys understand the value of embedding social workers in defense teams. It seems possible that the defense lawyers who expressed disinterest in putting social workers on defense teams were only familiar with the role social workers play traditionally, as community-based service providers, or even as partners within a probation department. Advocates for holistic defense, however, assert that an alliance between public defenders and social workers is fitting, as the two disciplines share some common aims. As Steinberg and Keeney write (2016), “The unique position of public defenders in the criminal justice system brings with it a responsibility to promote social justice. Public defenders’ allegiance to their clients and proximity to the operations of the criminal justice system generate an obligation to look beyond their clients’ cases and challenge systemic injustice” (p. 217). A similar sentiment is expressed by Burrell (2012): “The use of investigative, social work and expert/consultant services falls squarely within the duties required of competent counsel in all cases” (p. 362).

The role that a social worker plays in criminal and juvenile defense is rather specialized, however. Steinberg & Keeney (2016) explain the distinctive role of a social worker on a holistic defense team:

Social workers in holistic defender offices play a fundamentally different role from social workers in other social service settings and even from social workers in traditional public defender offices. Holistic defense social workers are advocates, not clinicians. They are profoundly passionate about client self-determination, social justice, and every individual's right to be treated with dignity and respect. While many social workers at holistic defender offices have significant clinical skills and may have previously worked in clinical settings, the majority of the social workers involved with holistic advocacy are also students of policy and organizing who reject the location of problems within the individual alone. (p. 213)

This same distinction is articulated by the Assistant Chief Attorney of San Francisco's PD's office, who recognizes that not all social workers will immediately embrace the particular parameters of this role:

The most important thing with our social workers is that the duty of loyalty is to the client. They are not mandated reporters. Because of that, we tell our clients and family, "you are protected by the attorney-client privilege." Ours is a relationship of trust. Some social workers have a hard time with that, they are not the social workers who will work with us.

The representative from the Bar Association of San Francisco's Indigent Defense Administration Conflicts Counsel concurs that the role of a social worker on a defense team differs substantially from their role as a conventional social worker, and warns that this can actually pose a problem:

You may develop information that is harmful. They need to understand the confidentiality rules and readjust into a different gear. Your role is not to talk openly about the youth's case. Your first duty is to ensure the youth's liberty, and rehabilitation secondly...that's not how they're trained in school.

From this attorney's perspective, training for the social worker is essential:

That's part of the challenge – defining their role and using their skillset within the boundaries of their role to support the work of the defense attorney...[The incorporation of social workers in a client's defense] makes a huge difference in terms of the outcome. But...they have to be very well trained in juvenile defense.

Of equal importance is training for the defense attorney who would include a social worker on the defense:

Without a doubt it affects the likelihood of confinement. But it's a recipe. If you have sugar in your recipe it's going to be sweet. But if you're not a good cook, it's not going to be good. You need to know how to work with social workers. I've known lawyers who have worked with social workers and not had successful outcomes.

Finally, it is worth noting that, since the juvenile unit within San Francisco's PD office has been advancing this model for decades, it is likely that a large proportion of juvenile defense attorneys, even on the conflict panel, are aware of social workers' potential roles on defense teams. The practice in San Francisco's adult court has a shorter history, however, so there may be a specific need for training, education, and resource allocation in this domain, particularly for cases involving younger adults or transitional-age youth (TAY). The forensic social worker interviewed for this position paper points out that TAY clients are a particularly important population to receive holistic defense:

In the adult system, youthfulness puts you in a higher risk category, so you get more points, which means a higher level of prison. [These are] points you have to work down. So you have young kids going into level 4 placements, and they get no programs to work down the points.

The lack of social work services for TAY clients in San Francisco's adult system remains a significant gap. Imprisonment can have a long-term, deleterious impact on young adults. Social work support services in the adult justice system have historically not been prioritized since adult sentencing practices are oriented towards punishment.

Discussion & Conclusion

The research and data reviewed above clearly show:

- 1) that there is a disparity in defendant outcomes based indigent defense type;
- 2) that this disparity is exacerbated when court-appointed private attorneys are not given the same access to social workers;
- 3) that financially, investment in social workers makes sense; and
- 4) that education and training, for both attorneys and social workers, are key.

The Center on Juvenile and Criminal Justice (CJCJ) has been collaborating with defense attorneys here for decades and is perfectly positioned to help advance more equitable representation for the large proportion of indigent defendants who are assigned to Bar Association attorneys. In adult court, CJCJ has been working with defense attorneys on sentence mitigation for 38 years, and on the juvenile side, CJCJ operates the nationally-recognized, Office of Justice Programs rated, Detention Diversion Advocacy Program (DDAP), which operates in partnership with San Francisco's Public Defender's Juvenile Unit (DeNike, 2021). Serving in this role, CJCJ can help eliminate the disparity currently experienced by defendants on the basis of which type of indigent defense they receive.

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