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**The Juris Master: A Proposal for Reducing Excessive
Public Defender Caseloads**

By
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An Honors Thesis Submitted in Partial Fulfillment of the
Requirements for the Degree Bachelor of Arts

Department of Philosophy

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1 Introduction

According to the 6th Amendment of the U.S. Constitution, every citizen is entitled to a fair and speedy trial. While this constitutional right presides over all criminal law proceedings, the U.S. did not fully apply it to the realm of public defense until the landmark Supreme Court Case *Gideon v. Wainwright*. As is, the state of public defense in America is quite dire as defenders are plagued with excessive caseloads, limited resources, and unrealistic expectations for performance. The ones that suffer the most from this situation are the defendants that are assigned public defenders as they are unable to afford private attorneys. In an attempt to alleviate some of the strain on public defenders and provide more options for indigent defendants, I propose an idea of allowing someone with a lesser degree than a Juris Doctor the ability to practice law in certain scenarios. To arrive to my recommendation, I will first examine the 6th Amendment as it serves as the foundation of our modern public defense system. After that, I will give special consideration to the Supreme Court case *Gideon v. Wainwright* in how it serves as the precedent for enforcement of the 6th Amendment in criminal law. Next, I will discuss relevant principles and ethics codes that weigh in on the current state of public defense programs that attempt to adhere to the standards set by the 6th Amendment and *Gideon*. Following that, I will give an evaluation of the current state of public defender caseloads and how they affect client outcomes. To continue, I will discuss how states and public defender offices have responded to excessive caseloads and scarce resources. Finally, I will propose a partial solution, involving the introduction of a “Juris Master” degree. In introducing this proposal, I will argue that it would not only be effective in reducing public defender caseloads but would also resonate with the goals and ethics of public defense.

2 The Significance of *Gideon v. Wainwright*

As we will be relying on the 6th Amendment for much of this chapter, I have placed it below:

Sixth Amendment – In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

This Amendment is layered in terms of the principles it works to uphold, which are speediness, publicness and impartiality, guaranteed knowledge, and the assistance of counsel. I will address each of these principles in turn.

The principle of speediness can be traced back to ancient legal maxim “Justice delayed is justice denied,” meaning that the prolongment of justice is a form of injustice itself (Sourdin and Burstyn 2016). We see applications of this thought in the Magna Carta, a charter of rights that was agreed to by King John of England in 1215 and served as Europe’s first constitution (Cornell Law School 2020). This connection is significant in that the Magna Carta set the basis for English common law which has since evolved into American law. The language we see in paragraph 40 of the Magna Carta says, “To no-one will we sell or deny or delay right or justice” (British Library 2014). Essentially, the preceding document of all American law requires that justice is dispensed in a timely manner.

The elements of publicness and impartiality find their roots in the practice of due process, the requirement that legal proceedings take place according to predetermined sets of rules, ethics, and jurisprudence (Britannica Staff 2023). Publicness works to ensure transparency in the legal process and impartiality works to ensure all people enjoy fairness under the law. Referencing the Magna Carta again, paragraph 39 reads, “No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land” (British Library 2014). This passage shows how the foundation of the 6th Amendment was one that advocated for the judgement of peers before punishment could be exacted on anybody. This is continued by the fact that juries are composed of a defendant’s peers as the justice system should operate akin to American democracy in that it is run by the people and for the people.

The final elements of guaranteed knowledge and the assistance of counsel work to put defendants on equal ground with the government. By sharing all available knowledge and ensuring the help of a legal professional, defendants ought to be properly equipped to plead their case and resist a tyrannical system of law where the government holds an unfair advantage (Britannica Staff 2023).

Together, these different layers work to provide a criminal justice system based off longstanding principles of fairness for common people when opposing the government, a concept that lay starkly in the minds of the Founding Fathers as they had recently overthrown British colonial rule.

While the 6th Amendment gives us the procedures that govern criminal courts, we must establish a thorough understanding of *Gideon v. Wainwright* to understand the philosophical thought behind the American public defense system as this case largely set the precedent for its current conception. Before this case, the 6th Amendment, the right to a fair and speedy trial, was not interpreted to give concessions towards the actual representation that a criminal defendant received. For instance, the state was under no obligation to provide an attorney for criminal defendants who could not afford one. This particular situation is what brought about this Supreme Court case. In 1961, the state of Florida charged Clarence Gideon with entering a poolroom with the intent to commit a misdemeanor. Gideon requested the state provide a lawyer to represent him because he could not afford one himself, but his request was denied. After representing himself in the trial, he was convicted and sentenced to five years in prison. Upon the Supreme Court examining this case, the Court found

that a state must provide a defendant “the guiding hand of counsel at every step in the proceedings against him” before imprisonment is justified (Freedman 2005). While there were public defenders before *Gideon*, these defenders were under no obligation to treat each case with an adversarial lens. In other words, these early legal aid societies and public defender offices did not have to try to prove their client’s innocence or even attempt to mitigate the consequences awaiting them by the justice system. These early defenders essentially served to expedite the criminal justice process with an overwhelming percentage of plea deals and outright refusals to take many cases to trial (Freedman 2005, Taylor-Thomson 1996). *Gideon* is so important because it establishes the legal and ethical requirements of counsel for our adversarial system of law.

An adversarial system of law is a system where legal disputes are resolved by presenting conflicting views of fact and law to supposed unbiased and impartial arbiters who then decide the outcome of said disputes (Freedman 1998). For U.S. criminal law, our conflicting sides are the defendant and the plaintiff, and the arbiter is either a judge in the case of bench trials or a jury for jury trials (Cornell Law 2023). Our adversarial system connects to *Gideon* by the Supreme Court’s assertion that “though [the accused] be not guilty, he faces the danger of conviction because he does not know how to establish his innocence” (Freedman 2005). In other words, in our adversarial system, a right to counsel is required to ensure the proper representation of defendants as they are thought to be largely unequipped to defend themselves in the court of law. This also connects to the 6th Amendment with its guarantee that “the accused shall enjoy the right [...] to be informed of the nature and cause of the accusation [...] and to have the Assistance of Counsel for his defence” (Constitution.Congress.gov Staff 2022). If this right is not fulfilled, then there is no way to ensure that defendants will indeed receive a fair and speedy trial as counsel is responsible for adequately presenting a case and filing the necessary legal motions to proceed. With these connections and asserted rights for all defendants, we now understand the reasoning and foundations of a right to counsel in criminal trials.

Looking specifically at the public defense system, this 6th Amendment right to counsel guarantees the right to those who cannot afford their own attorney. This illuminates the spirit of the 6th Amendment as one that values representation for all; this value is so much so that the government places the burden of providing counsel on itself when the defendant is unable to. Even as the government is accusing someone of a crime, it takes on the duty of ensuring the accusation is valid so that nobody is unjustly deprived of their liberty. The significance of this is that it showcases a moral argument behind the judicial system in that money ought not be a determining factor whether a defendant deserves representation. Although there is variance in the outcomes between defendants using public and private attorneys, this public defense practice ensures that all people receive competent representation. These discrepancies in outcome are consistent with the spirit of the 6th Amendment and the idea of America as a whole in that it implies equality of opportunity above all else. Equality of opportunity in this sense is understood to be an equal chance to be proven innocent as any other defendant; there is no difference in available motions to file or rules governing guilt dependent on whom one’s attorney is. This equality touches on the fairness and equality that that 6th Amendment is aimed at, the same

fairness that underlies the requirement for impartial juries and the assistance of counsel. Although not explicitly stated, this equality of opportunity is implied in working for defendants of all classes to stand on equal ground with one another and the prosecution. Regardless of the money or influence a defendant holds, a defendant will be subject to the same legal process as everybody else because it would be categorically unfair for certain defendants to be held to different standards. An analogy can be drawn by imagining a college examination. It is perfectly fair for students to receive different grades as long as they received the same tests and were given the same resources to take it. This concept is important to note because relevant legal codes focus on attorneys providing competent legal assistance that is heavily tied to the legal process (ABA 2020). Focusing on competence works to narrow our focus on the fairness of one's representation in the legal process instead of the actual result for each defendant. For that reason, unfavorable outcomes for public defense clients are acceptable as long as the clients received representation consistent with the accepted professional standards that I will now introduce.

3 Mandated Principles and Ethics for Public Defense

The Model Rules of Professional Conduct (MRPC) is a code published by the American Bar Association (ABA) that acts as a reference point for legal representation and an ethical manifesto for all American lawyers. With affirmation by the U.S. Supreme Court, the MRPC is considered a strong indicator of the prevailing professional norms of the legal profession. Attorney transgression upon these rules can result in consequences such as ordered restitution, probation, suspension, or even disbarment in some cases. Our issue of excessive caseloads routinely puts public defenders in jeopardy of transgressing upon multiple MRPC rules (Brink 2018). This is particularly apparent when we look at Client-Lawyer Relationship Rules 1.1, 1.3, and 1.4 (see Appendix). Rule 1.1, Competence, works to ensure attorneys have the legal knowledge and skill to adequately guide a client through the legal process. Rule 1.3, Diligence, mandates lawyers to be diligent and prompt in representing their clients as both are necessary to properly present a case; once again, justice delayed is justice denied. Rule 1.4, Communications, centers around an attorney's duty to keep a client fully abreast of their legal situation and options, consulting with clients to understand their priorities, and the promptness expected with these communications. These rules work together to ensure attorneys do their part in ensuring all clients receive competent representation. Although these rules apply for all lawyers rather than just those involved in criminal law, we still see how these rules work toward 6th Amendment themes such as clients being entitled to the full knowledge of legal proceedings and counsel providing adequate representation for clients. The lift of Competence and Diligence is one that ensures that attorneys provide necessary assistance to clients. Without assurance that these lawyers have both the proper knowledge and ability to utilize said knowledge in a diligent manner that is prompt and thorough, we can never be certain a client has received a fair opportunity

in the court of law. Similarly, an attorney that does not maintain proper communications with her client deprives the client of full information regarding the nature and cause of her case. Without full transparency, the full understanding of a case is shrouded from a client, negating them the transparency promised by the 6th Amendment.

Time constraints, inexperience, and an over-encumbrance of cases all lead to transgressions of these cornerstone rules (Baxter 2012). Competence, Diligence, and Communication are so important because they directly translate to outcomes for clients and attorneys' disciplinary actions. An example is public defender Karl Hinkebein who had his legal license suspended before being reduced to 1-year probation for violating Rules 1.3 and 1.4. Due to a period of illness coupled with a caseload well above accepted guidelines, Hinkebein failed to timely file post-conviction motions in 6 cases. When asked why he would take so many cases when he clearly could not perform his duties competently, he expressed how he believed he would be fired if he refused to take any assignments (Brink 2018). This is not uncommon for public defenders as they are constantly stuck between a rock and a hard place in breaking the MRPC by taking cases when they are overwhelmed or refusing a case and risking termination.

Two other rules pertaining to our issue of excessive caseloads are MRPC Rules 1.7 and 1.16 (see Appendix). Rule 1.7 establishes that no client should be prioritized over another because all deserve equal, competent representation. Rule 1.16 progresses this idea by prohibiting an attorney from taking more cases if doing so would cause a decline of time and attention to any existing clients. Essentially, if taking another case would require an attorney to neglect someone they are already representing, then it is the attorney's responsibility to decline representation of the new case. In the same vein, if an attorney is representing too many clients under their current caseload, it is her responsibility to terminate her representation as failing to do so would result in providing incompetent representation causing a transgression of Rules 1.1, 1.3, and the 6th Amendment (Brink 2018, ABA 2020).

Another set of codes put forth by the ABA is the Ten Principles of a Public Defense Delivery System. These Principles are positioned as a practical guide for policymakers, attorneys, government officials, and all other entities involved in improving and maintaining public defense (ABA 2002). Unlike the MRPC, these Principles only serve as additional suggestions for a well-guided public defense system rather than being statutory requirements for attorneys. The three Principles of our biggest concern are numbers 4, 5, and 6. In order, these Principles read, "4.) Defense counsel is provided sufficient time and a confidential space within which to meet with the client. 5.) Defense counsel's workload is controlled to permit the rendering of quality representation. 6.) Defense counsel's ability, training, and experience match the complexity of the case." Building on the rules referenced from the MRPC, these Principles significantly emphasize competent representation regarding the attorney's time, workload, and ability. I highlight these to show that public defenders are ideally expected to exhibit more specific standards of conduct than private attorneys as public defenders are in a unique position as their caseloads are decided for them, they are not paid by their clients, and

all of their cases are criminal cases. Again, these Principles are suggestions without the ability to serve as a basis for reprimands. Still, these ideal Principles put forth by the ABA show special consideration for indigent clients as the 6th Amendment guarantees assistance for all; these attorneys are tasked with ensuring their rights and legal fairness. Fulfilling this task can be difficult in practice due to the significant discrepancies in resources and proceedings seen in public defense versus other areas of law. Still, it is paramount to understand these expectations when evaluating the effectiveness of what public defenders do when faced with questions of representation following excessive caseloads.

4 The Current State of Public Defender Caseloads and How it Affects Client Outcomes

Public defense offices have been and currently are underfunded, understaffed, and over-assigned (Baxter 2012, Farole & Langton 2010, Gottlieb & Arnold 2021). Beyond the stress this puts on the attorneys, these circumstances severely hinder client outcomes (Gottlieb & Arnold 2021). This is especially concerning when considering how public defense is essential to the US criminal justice system. Without a proper public defense system, indigent defendants are neglected of their 6th Amendment right to competent representation. Indigent, legally, is defined as being impoverished and unable to afford the basic necessities of life; in the American legal system, these indigent defendants are the only ones entitled to public defense legal assistance according to *Gideon v. Wainwright* (Wex Definitions Team 2022). It is crucial to examine these caseloads and their outcomes to fully understand the implications of over-encumbrance on the lives of the most vulnerable going through our justice system.

The National Advisory Commission on Criminal Justice Standards and Goals (NAC) is a good starting point to understand the state of current public defender caseloads. In 1973, the NAC set standards through six reports to be followed by state and local criminal justice agencies to best reduce and prevent crime (NLADA 2022). In Chapter 13, entitled “The Defense,” we see expected standards for public defense services. Pertaining to public defense caseloads, Standard 13.12 states, “The caseload of a public defender office should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; Mental Health Act cases per attorney per year: not more than 200; and appeals per attorney per year: not more than 25.” While these standards are nearly 50 years old and there has been discourse around their applicability, both the American Council of Chief Defenders and the American Bar Association Standing Committee on Legal Aid and Indigent Defense both acknowledge that the NAC standards should not be exceeded under any circumstance (Farole & Langton 2010). These standards touch back to the 6th Amendment with the idea that it is highly unlikely that any attorney can provide competent representation if they are overworked beyond these suggested limits. The more a public defender is overworked, the more likely it is that they will be forced to

compromise essential steps of the legal process and neglect their indigent defendants. This neglect is a direct transgression to the rights of criminal defendants and the aim of our justice system that all people deserve a fair opportunity through the law.

Utilizing the Bureau of Justice Statistics' 2007 Census of Public Defender Offices (CPDO), it was discovered that, nationally, public defenders were each assigned, on average, around 370 cases a year. If we assume the attorneys can work 1800 hours a year, they devote, on average, around 5 to 6 hours per case (Farole & Langton 2010). These 5 to 6 hours are for all pre-trial activities, investigations, research, motion filings, court time, client contacts, and everything else needed to forward a case. Needless to say, this is a tiny window to do so many activities that affect the freedom of countless indigent clients. Even with these minimal hours given to each case, only 24% of state-based public defender programs and 27% of county-based offices had enough defenders to resolve all their assigned cases without breaking the NAC caseload standard (Farole & Langton 2010). An especially damning example is the Kentucky public defender program in 2007, as they employed 314 litigating attorneys but still would have required another 322 attorneys to meet the NAC caseload standard (Farole & Langton 2010). These woes continue when looking at the support staff at these public defender offices. While county-based public defender offices handle around 75% of public defense cases, only 60% of them employ investigators (Farole & Langton 2010, Gottlieb & Arnold 2021). A lack of dedicated investigators puts more stress on the attorneys and forces attorneys to divide their limited time even more in an attempt to provide a solid defense for clients.

These excessive caseloads become less surprising when we consider how underfunded our public defense system is. When the US experiences economic decline, state treasuries take quite the blow and leave public institutions, namely, public defense, with tighter budgets resulting in fewer attorney and support staff hires. This lack of staff, coupled with the increased crime that accompanies economic decline, exacerbates public defense problems because more clients come in as fewer attorneys and support staff members are employed (Baxter 2012). Due to so much work placed on these attorneys, there is constant turnover in almost all public defender offices. More turnover results in more expenses for the State in the form of training and giving benefits to the attorneys that fill these vacant positions. In the same vein, this constant turnover greatly hinders the level of experience that public defenders have (Baxter 2012). This results in a large number of inexperienced attorneys taking on overwhelming amounts of cases where they have no prior working experience.

This lack of funding also affects state prosecutor offices which, in turn, ultimately harms criminal defendants (Gershowitz & Killinger 2011). Less funding and case overload causes these prosecutor offices to give less time to individual cases and often results in longer delays for dismissals, fewer disclosures of exculpatory evidence, and more guilty pleas by presumably innocent defendants. More cases mean less time per case, which equals prosecutors spending a considerably low amount of time figuring out who is innocent, causing blanket, non-individualized prosecutions. This is a situation where nobody wins in that defendants

are waiting longer for justice, defendants are more likely to accept plea deals regardless of the strength of their cases, victims get largely ignored because there is no time to spare on them, and the groundwork is laid for poor criminal justice reforms as a reactionary step to these issues (Gershowitz & Killinger 2011). While it is debatable whether the prosecutor's offices are acting in accordance with their ethical standards in their response to excessive caseloads and lack of funding, it is not debatable that defendants feel these effects in the worst ways possible.

Explicitly looking at the relationship between high public defender caseloads and defendant outcomes illustrates how damaging the effects of these caseloads are. Definitively, felony defendants in counties with higher caseloads are more likely to be detained pre-trial; conversely, felony defendants in smaller caseload counties receive shorter incarceration sentences (Gottlieb & Arnold 2021). These discrepancies make sense considering lighter caseloads mean attorneys can give more time to each case – this means attorneys can provide a more thorough defense, attorneys and support staff can gather higher quality investigative information, and arguments are prepared more effectively (Gottlieb & Arnold 2021). Higher caseloads also mean less time for attorneys and defendants to form any type of relationship. This incredibly intimate experience, someone fighting for your freedom, devolves into a transactional procedure where the defendant feels like a victim of the system and the attorney feels they have failed to do their job properly. For instance, it is common for overloaded public defenders not to return phone calls and be unable to visit their clients in jail, which results in clients being hostile to their defenders or requesting different representation, slowing the process even more (Mounts 1982). While the defendants' outcomes themselves cannot tell us whether the representation was competent, a scarcity of time to complete essential judicial activities does tell us whether representation was competent. In turn, this neglect of procedures is what shows us incompetency and unfairness to defendants.

4.1 Henry Campbell

These statistics become more real when we consider the personal stories of indigent defendants suffering due to excessive caseloads. For instance, in March of 2013, then 18, Louisiana resident Henry Campbell was charged with rape and was one of the unlucky folks to be caught in a legal limbo where he was on a waitlist for public counsel due to a backlog of cases. He was passed from public defender to public defender as cases piled up and resources shrunk. After the New Orleans Public Defenders Office announced a refusal to take on cases, a private attorney offered to take Campbell's case for free, where Campbell was ultimately found innocent of any crime in 2017. (Rothman 2016, Sledge 2017). Sadly, cases such as Campbell's are not uncommon. This is unsurprising when we consider that New Orleans Public Defender's Office comprises around 50 lawyers but takes on 20,000 to 21,000 cases each year.

4.2 Jared Blackshear

Another example a defendant being unjustly punished due to excessive caseloads is Missouri resident Jared Blackshear in 2010. He applied for a public defender from the Christian County Office when the office declared it was “of limited availability” due to a streak of being overburdened with cases (Baxter 2012). Disregarding this declaration, a trial judge exercised his authority to assign a public defender, to which the public defender filed suit to reject the judge’s ruling. While this suit played out, Blackshear was left in jail for around seven months without speaking to an attorney, any staff working on investigating his case, or any pretrial motions being filed on his behalf. Ironically, the nearly seven months he was held without representation was longer than how long he would have served if he would have pled guilty to his robbery charge as he originally planned (Baxter 2012). Although the Missouri Supreme Court ultimately decided that the trial court overextended its authority by appointing public defenders, the damage was already done to Blackshear.

4.3 John Dixon

An alarmingly recent example is Oregon resident John Dixon. Dixon was alleged of pushing a police officer during a protest in 2020 and was compelled to attend his arraignment where he would be formally charged and have the chance to assert his intention of plea. Unfortunately for Dixon, the Multnomah County public defender office was so understaffed on attorneys that nobody could represent him during his arraignment. With no attorney to represent him, Dixon was ordered to return to court 30 days later in the hopes that an attorney would be available to assist him in entering a plea. Again, there was no attorney available for Dixon, so he was ordered to return again in for a third arraignment in another 30 days. The arraignment is a necessary legal procedure that must occur before a case can be resolved, so Dixon is in a limbo of waiting to even be charged until a public defender is available to represent him. This is an immense burden for him as he has had to take off work, put his life on hold, and have the constant angst of the law floating above him. Being left without an attorney is not unique to him as 600 other Multnomah County residents have been charged with crimes but have not been appointed an attorney. In addition to this, there are around 1300 Oregon defendants stuck in this indefinite holding pattern suffering from the public defender shortage. None of this is surprising when we consider that Oregon has about 600 full-time court-appointed attorneys who have historically been tasked with handling around 75,000 adult criminal cases each year (Sparling 2022).

Engaging with these statistics and personal stories brings questions regarding fairness and equality to our conversation. If indigent defendants are subject to worse judicial processing and procedures simply due to their inability to pay for private counsel, is our justice system properly upholding the 6th Amendment? Similarly, if public defenders have excessive caseloads, are they breaking their ethical vows by taking on more cases? These two questions present an ethical paradox for attorneys: defendants are constitutionally entitled to legal

representation, so public defenders should represent them. However, representing these clients deprives them of competent representation due to a lack of funding and excessive caseloads. These questions and paradoxes then bring us to examining how states and public defenders have attempted to address these issues.

5 How States and Public Defenders Have Responded to Excessive Caseloads

Considering the poor outcomes resulting from public defenders being buried under excessive caseloads, attorneys in different states have taken measures to combat their number of cases. Another element that forces the hand of these public defenders is that it is categorically unethical for them to represent any client they are incompetent to take on according to the aforementioned Model Rules of Professional Conduct and the right of competent representation promised by the 6th Amendment (ABA 2020). Although there is variance in how public defense offices try to mitigate these caseloads and their outcomes, there have been multiple occasions where the public defenders or the indigent defendants will sue the prosecuting state (Hanlon 2018, Weiss 2016, Domonoske 2016, Gross 2017). To better understand how these lawsuits are fought and their outcomes, we will explore various cases from Louisiana, New Mexico, Missouri, New York, and Florida to see how they responded to their circumstances, and what knowledge can be gleaned from them.

5.1 Louisiana

One example of a public defense response to these excessive caseloads comes from the New Orleans Public Defender's Office in 2016. Due to an overload of cases, the office refused to accept any more serious felony charges. This refusal to accept more cases resulted in new indigent defendants in legal limbo as they were placed on a waitlist to receive legal representation. This legal limbo is a position where these defendants have been accused of a crime, yet nobody is actively working to resolve their cases. This is an infringement of the 6th Amendment because this refusal caused a barrier to a speedy trial for any new defendants (Gross 2017). This situation then prompted the American Civil Liberties Union (ACLU) to file a federal lawsuit alleging the new defendants "have no access to an attorney for critical pretrial functions that would ordinarily be performed by defense counsel, such as conducting a preliminary examination to challenge their arrests and bail conditions; investigating the allegations; filing motions to preserve potentially exculpatory evidence; or negotiating with the prosecution." The heart of the issue is that the office did not (and still today, does not) have the resources to take on more cases while providing competent representation. When asked why the office refused these cases and his attitude toward the ACLU lawsuit, Chief Public Defender for New Orleans Derwyn Bunton claimed that it presented a great opportunity for reform (Cornish 2016). Bunton claimed that the office's responsibility is to provide competent legal representation to all the cases assigned to them and providing anything less would be a violation of the Constitution. This presents both a moral and ethical dilemma for the office in that these

defendants and their families are left without representation, but taking on these additional cases would be an ethical violation. Upon this ACLU lawsuit reaching a federal judge in Baton Rouge, the case was ultimately dismissed on the grounds that the judiciary had no power to allocate funds on behalf of the legislature (Daley 2017). In other words, the case was not heard because the judge felt the decision was unable to be implemented by the court.

5.2 New Mexico

Like New Orleans, New Mexico's chief public defender, Bennett Baur, began refusing cases due to an overload of cases in his office. For this refusal, five cases in total, a Lea County judge imposed a fine of \$5,000 (\$1,000 for each case), although the sanction would be lifted if the office accepted the cases (Weiss 2016). In addition to refusing to take on these cases, Baur's office had also requested to withdraw from over 200 cases in the same county. In response to the refusals and withdrawal requests, the District Attorney for Lea County, Dianna Luce, requested the New Mexico Supreme Court to mandate the public defense office accept the cases and provide representation. Luce's argument centered around the idea that the public defense office has a statutory duty to represent these clients. Still, Baur countered that it was his duty to provide "effective and constitutional representation," which was impossible due to the excessive caseloads (Weiss 2016). In the end, the New Mexico Supreme Court decided to deny a petition to limit or reduce caseloads for public defenders in the state (Lee 2017). With the denial, Baur reaffirmed his commitment to refusing cases and bringing up the issue at the district level until a positive result was reached for the public defenders and indigent clients. While his and his office's fight has been called admirable, the defendants who were refused representation were stranded on waitlists for a lawyer.

5.3 Missouri

Missouri's public defense reaction to excessive caseloads is interesting in that the Missouri Supreme Court has suggested the usage of an untraditional judicial triage. In Missouri, the Public Defender Commission can refuse cases after exceeding a caseload maximum for at least three consecutive calendar months (Gross 2017). While this is a convenient rule that has been upheld in the past, there is a caveat that a trial judge has authority over the public defender's caseload rather than the public defender itself. Regarding triage, the Missouri Supreme Court suggested that public defenders only be appointed to the most severe offenses with no bail offered. In addition, the Court supported the idea of public defenders, judges, prosecutors, and local bar associations cooperating to reduce excessive caseloads. While these suggestions show creativity in solving the issue, they still leave many indigent defendants with long waits and sometimes indefinite waits as they are refused representation. While Missouri public defenders have a right to case refusal, the state does not have a set system to provide a solution for the defendants who are refused representation (Gross 2017). This practice

of triage can also be labeled as questionable under the lens of our adversarial legal system that is supposed to provide zealous advocacy on behalf of defendants.

The situation in Missouri is so dire its public defender's office has resorted to other unconventional tactics, such as attempting to assign a case to Missouri's then Governor, Jay Nixon (Domonoske 2016). After multiple petitions for budget increases and subsequent denials from Governor Nixon, Missouri's Chief Public Defender, Michael Barrett, attempted to assign a case to Nixon. Barrett did this because Missouri public defenders have the authority to delegate cases to "any member of the state bar of Missouri." While the assignment was denied, as Barrett only has the authority to delegate rather than forcibly appoint, it showcased the desperation that Missouri public defenders have faced (and are still facing) due to budget restrictions and excessive caseloads. This desperation makes sense, though, considering that Missouri "public defenders were spending an average of 27.3 hours less than deemed sufficient to provide reasonably effective counsel in various cases" (Domonoske 2016).

5.4 New York

A public defender overwhelmed by an excessive caseload may not be able to provide competent representation for a new client but may fear what happens if she turns down the case. On the one hand, turning down the client opens the opportunity for another public defender in the office or a non-public defender court-appointed lawyer, such as a privately contracted attorney, to take over in place of a overwhelmed public defender. The issue, though, is that if one public defender is overwhelmed, it is very likely that many in the office are overwhelmed (Baxter 2012). In an attempt to quell this overflow, New York has experimented with contracting court-appointed private attorneys to take on public defense cases when offices are too overwhelmed to accept any more. This is a practice where the State will give a certain number of public defender clients to a private attorney at a fixed rate for each case taken. The problem is that these court-appointed private attorneys typically provide incompetent representation for clients. NYU Law School's Center for Research in Crime and Justice found that New York court-appointed attorneys reported no time recording for interviewing and counseling the client in 75% of homicide cases or in 82% of other felony cases and no time recorded for investigations in 72.8% of homicide cases or 87.8% of other felonies (Freedman 2005). Each of these percentages represent the utter neglect of essential procedures expected of any competent attorney. With these practices, an overwhelmed public defender must choose between adding another case to her stacked pile, sending a client to a court-appointed attorney who very well could provide even less competent representation, or leaving a client without a lawyer.

5.4 Florida

Like other offices, the Miami-Dade Public Defender (PD-11) began declining certain types of indigent defendants due to a fear of being unable to provide competent representation. PD-11 petitioned a Circuit Court judge to allow the office to refuse appointments to all new non-capital felony cases. In a partial victory, Circuit Judge Stanford Blake allowed PD-11 to decline all third-degree felonies but mandated that the office still have to accept all first- and second-degree felonies. The state then appealed this decision before it could go into effect and asked the Florida Supreme Court to provide a resolution, which the Court declined due to a lack of jurisdiction. When the case returned to its original district court, the court determined that trial courts would decide whether public defenders were competent on a case-by-case basis rather than allowing for a blanket decree of inability to accept cases. A new standard arose stating, “Only after a defender proves prejudice or conflict, separate from excessive caseload, may that attorney withdraw from a particular case” (McAlister 2010). This standard of proving prejudice was discovered to be quite difficult during the same year, considering a court of appeals reversed the decision of a lower court that found only a single case had the grounds for case refusal on this basis. Standards so stringent and individualized cause bigger and bigger build-ups of cases which then cause even more work to resolve. An already underfunded and overworked public defender’s office then must spend time and money to argue for resources as their potential clients suffer.

Across the board, these instances of case refusal or litigation against the state arise from underfunded and understaffed public defender offices doubting their ability to provide ethical, competent representation. Once again, none of this is a surprise when we see facts such as Florida’s state judiciary’s budget consists of only seven-tenths of one percent of the state’s \$66 billion budget. At the same time, court spending is still reduced by tens of millions (McAlister 2010). A potential resolution that gets implemented is the hiring of private attorneys to take cases from overloaded public defense offices. Sadly, this solution is not a positive solution for anybody. For instance, in Florida, limits for compensating assigned counsel in criminal cases fall below the minimum wage (Gross 2017). This disincentivizes private attorneys to take these cases and, for those who still choose to take them, gives little incentive for them to do a sound job (Freedman 2005). Public defenders will continue to try different tactics to reduce their caseloads with no set path to victory, although their successes will always be doubtful.

6 The Juris Master Proposal

Evident by the examples in the previous section and the countless other examples that I did not touch on, our current public defense system is broken and unreliable for fulfilling the 6th Amendment – defendants indefinitely sit on waitlists, receive incompetent representation, and are themselves victims of the system. The budgeting issues, lack of attorneys to take on cases, and failures by individual states experimenting with potential solutions are all problems that prevent indigent defendants from realizing their right to fairness in criminal

prosecutions. This is due to these problems potentially prohibiting each promise guaranteed by the 6th Amendment. Insufficient budgets prevent competent representation as attorneys are spread so thin they cannot devote the necessary time or resources to fully represent defendants. The public defender shortage delays justice, if it ever comes, to the increasing number of defendants on waitlists. These facts coupled with the failures of individual state initiatives emphasize the point that we must have a broad, general solution if we ever hope our public defense system to function properly. Here, I seek to do just that; the rest of this paper will be dedicated to providing my suggestion to help reduce caseloads and then evaluating whether that solution is ethically sound. I will use this section to explain my proposal in broad strokes before turning, in the next section, to consider whether it is in keeping with the spirit of the 6th Amendment. I will spend some time addressing possible logistical problems with my suggestion, but I am more concerned with the theoretical and ethical implications of my idea.

In order to combat excessive public defender caseloads, I suggest allowing people with a lesser degree than Juris Doctors (JDs) the ability to practice law across the United States in certain situations. Looking at how misdemeanors, minor criminal offenses punishable by no more than one year in jail or prison, make up around 80% of American criminal dockets, allowing an individual with just enough training to handle misdemeanors could provide an option to alleviate some of the tremendous backlog plaguing the public defense system (Madeo 2022). Imagine if a lesser degree than a JD specially trained for traffic cases could take traffic-related misdemeanors off public defenders' caseloads. The defendants would receive counsel much faster, and public defenders would have a lower caseload and therefore be able to dedicate more time to other cases. From here on, I will refer to this theoretical lesser degree as a Juris Master (JM). Of course, this proposal has major concerns as these JMs would still be fighting for the freedom of others. The biggest concerns I see are how we could ensure these JMs are giving competent representation and a broader ethical question of whether it is fair to assign a JM to an indigent client.

To flesh out the idea a bit more, let us look at the traditional JD track. Sometime after completing an undergraduate degree, law students participate in a structured 1L year where they take required courses such as Civil Procedure, Constitutional Law, Contracts, etc. (Weller 2021). Beyond these required courses and possible distribution requirements depending on the law school, law students have complete freedom to choose what they want to study. While this freedom allows them to focus on specific areas of the law, many classes they take will likely have nothing to do with their scope of practice. In recognizing some of the unnecessary components of law school curriculum, my proposal of JMs will only require the strictly necessary components of law school curriculum and classes on a specific area of law. Akin to a student receiving a Master's degree in Business Administration (MBA), a student could receive a Juris Master's degree in Traffic Law. A basic legal and ethical foundation coupled with a focused study of a single area of law could be sufficient to endow someone with the knowledge needed to handle cases in that area. To ensure competency, these JMs would be required to take some form of bar exam and ethics exam just like their JD counterparts.

My vision of a JM certification test takes inspiration from California's First-Year Law Students' Examination (FYLSX) or "baby bar." Per the California BAR Association, "Law students completing their first year of law study in a Juris Doctor degree program at a State Bar-unaccredited registered law school, or through the Law Office Study Program, and those without two years of college work attending a California-accredited or an American Bar Association (ABA)-accredited law school must take the First-Year Law Students' Exam after completing their first year of law study" (California Bar 2022). The baby bar offers an untraditional pathway to becoming an attorney for those at unaccredited law schools and people studying law through an apprenticeship. The traditional Uniform Bar Exam covers Contracts and Sales, Constitutional Law, Criminal Law and Procedure, Civil Procedure, Evidence, Real Property, and Torts (JD Advising 2022). In contrast, the baby bar only covers Contracts, Criminal Law, and Torts (California Bar 2022). Although passing the baby bar is not enough for someone to practice law in California, the idea of it is of interest: there are measures to test career readiness for non-JD students. With an expansion of area-specific subject testing, it seems plausible for this concept of a condensed bar exam to be a tool to test the preparedness of JMs.

In addition to a baby bar, I would suggest that JMs are also required to pass the Multistate Professional Responsibility Exam (MPRE). The MPRE is an exam used to measure participants' understanding of established standards regarding the professional conduct of lawyers (NCBE 2023). The exam contains questions regarding conflicts of interest, judicial conduct, and regulation of the legal profession among other subject matters (Barbri Staff 2022). Aside from Wisconsin and Puerto Rico, all American legal jurisdictions require a passing score on the exam or the completion of a professional responsibility law school course in some cases. If a JM were to pass both a baby bar exam and the same MPRE required of almost all attorneys, they ought to be endowed with the legal knowledge and professional standards knowledge necessary to provide competent representation to clients.

A helpful analogy to consider here is a nurse practitioner prescribing a patient medicine instead of a medical doctor. Both of these medical professionals have their respective degrees, a Master of Science in Nursing (MSN) or Doctor of Nursing Practice (DNP) for nurse practitioners and a Doctor of Medicine (MD) for medical doctors. After completing their degrees, each must also pass a standardized state test before they are licensed to practice (AAMC 2020, Regis College 2020). In some scenarios, these professionals have the same power to prescribe medicines. There is some variance across the U.S., but, in 26 states, including Washington D.C., nurse practitioners can diagnose conditions, treat patients, and write prescriptions just like doctors (NurseJournal Staff 2022). So, although nurse practitioners can become fully licensed in 6-7 years, they can perform some of the same duties as doctors that cannot be fully licensed for 10-15 years. Of course, there are duties that doctors can do that nurse practitioners cannot, such as performing surgeries (Reese 2022). This relationship is similar to my proposal in that both JMs and JDs would have to acquire some form of post-graduate education coupled with a state certification exam while having common duties with one another. The

similarities would persist in that JMs would be restricted to handling misdemeanors such as petty theft or traffic offenses, whereas JDs would be able to handle those cases as well as more serious felony cases.

7 JMs and Fairness

There is a substantial amount of heavy logistical lifting for this proposal to work, but we can still ethically evaluate it in its theoretical state. As public defense is grounded in the 6th Amendment, it makes the most sense to evaluate this proposal on the Amendment's guarantees of fairness.

To best evaluate fairness, we must consider how JMs would provide competent representation for defendants. As discussed earlier in this paper, competent representation is determined by several factors, including Competence, Diligence, and Communication (ABA 2020). The area that would require the most work to prove JMs are as capable as their JD counterparts would be Competence, as "Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation" (ABA 2020). Suppose an expanded baby bar exam was approved. In that case, the exam could be a rigorous enough test of legal knowledge, especially considering the JM would be concerned with only one area of law. While the JM may lack the knowledge to cover some cases as there can be intersectionality, for instance, someone committing a traffic infraction while also possessing a small amount of a controlled substance, JMs ought to have enough legal knowledge to handle the one-track cases properly. This baby bar completion coupled with a successful MPRE exam would lead one to believe that a JM would have the necessary knowledge to ensure competence in their job. In terms of ensuring Diligence and Communication, I do not see a reason why a JD would be any more consistent than a JM when it comes to giving the proper attention and thought to each case. As long as these conditions are met, the element of fairness would be present for an indigent defendant.

Expanding beyond fairness in a regulatory sense, JMs would be capable of ensuring fairness in a philosophical sense as well. If obtaining a JD ensured that an attorney understood the law and the profession's standards, I would concede that my proposal is not worthwhile to pursue. But, as exams testing aptitude are required in addition to a JD, it cannot be said that a JD alone is sufficient to prove competency to practice law. To continue, if the bar exam and MREP are the final steps to becoming a licensed attorney and test the knowledge that one learns in law school, why is a JD a requirement at all? If the public defense system and our legal system in general are to be rooted in fairness, the system's primary concern ought to be that defendants receive competent representation rather than the certification held by an attorney. A parallel here can be drawn by looking at the informational technology (IT) field. According to the U.S. Bureau of Labor Statistics, about 25% of IT workers do not hold a bachelor's degree or higher (CompTIA Workforce and Learning Trends 2022). This is significant because many IT employers are more concerned that their workers can perform their

jobs rather than what formal certifications they have. Similarly, JMs representing clients in no way violates the guarantee of fairness in a criminal trial as long as the JMs provide competent representation in line with relevant codes. The idea of a Juris Master is purely within the spirit of the *Gideon* decision as it works to ensure fairness in that every defendant receives this “guiding hand of counsel” in an individual, adversarial manner, therefore guaranteeing the individual rights of criminal defendants.

JMs ensuring timeliness is straightforward in that more people being able to take on cases would then decrease individual caseloads and help decongest the criminal justice system resulting in fewer defendants being placed on waitlists for public defenders and faster turnaround of procedures. Two large deterrents of potential law school students is the time it takes to complete a JD and the cost of obtaining it. Shortening the time and cost to be able to practice would motivate many more people to attend law school. This is a very apparent benefit when considering previously cited cases such as Oregon’s public defender shortage. When defendants are forced to wait for justice, they then become victims of the system and have been denied their right to a speedy trial. Whether or not the defendant is guilty is irrelevant to the timetable they deserve for going through the legal system. This is because all people in criminal prosecutions deserve this right as stated in the 6th Amendment.

Similarly, JMs upholding the impartiality and publicness demands of the 6th Amendment is straightforward in that they would simply follow the same due process demands that JDs follow. In this requirement, JMs and JDs would show no difference in functionality.

Another benefit of the institution of the JM is the potential diversification of the legal field. Currently, the average price to obtain a JD is over \$200,000, so the legal profession has long been barred with a monetary barrier to entry that has blocked out many minorities and economically disadvantaged folks (Hanson 2022). With a field largely dominated by people that either already have the financial backing to take on such an endeavor or the ability to incur this debt, it is no wonder that indigent defendants get the shortest end of the stick when going through the criminal justice system; if so few lawyers can relate the struggles of these defendants, few attorneys will ever truly understand how dire these circumstances are. Even beyond criminal law, diversity in law firms provides economic benefits for both firms and for minorities. Diversity in firms better reflects society as a whole which, in turn, enables firms to better serve their clients. For instance, firms with higher numbers of minorities in leaderships positions were shown to be around 35% more likely to have higher returns than national medians (Carrington Legal 2021). In 2017, Black and Hispanic people each made up only 5% of all active attorneys despite making up 13.3% and 17.8% of the U.S. population respectively. These large discrepancies in representation leave many voices and perspectives out of the legal sphere, voices and perspectives that could assist clients.

Although the motivation behind my proposal of a JM is primarily concerned with assisting the public defense system, it could cause the benefit of legal services at large decreasing in price. The average cost of hiring a criminal defense attorney sits around \$8000 (Canterbury Law Group 2023). Even if defendants have too high

of an income to be appointed a public defender, many of them cannot take on these expensive legal fees. The introduction of more legal professionals that can handle cases would presumably cause defense attorneys to lower the price of their services due to more options being available to clients. This then provides more jobs to JMs and support staff while also providing more legal support to all people. Increased options for justice would increase the accessibility of justice and work for all people to enjoy more fairness when going through the criminal justice system, something crucial to the 6th Amendment.

8 Conclusion

Admittedly, quite a few logistical questions arise when considering this proposal. A few would be whether law schools would agree to offer these Juris Master's degrees, how would an additional pathway into the legal profession affect the legal market, and who would be in charge of creating the expanded baby bar exam? These questions are valid, and none of them have an obvious answer at this point. I also acknowledge that this proposal alone would not be enough to solve our current public defense crisis as it does not resolve the massive funding and budgeting issues felt by public defender offices across the country. Even with this being the case, I do believe the institution of a measure like a JM could be part of a multi-faceted approach to addressing the problem by providing more people capable of taking on public defense cases. That said, it is important to evaluate whether something should be done before concerning oneself with how it will be done. Considering the crisis of excessive public defender caseloads, this proposal can cause long-term change and support the neediest and most sacred parts of our legal system. In addition to providing aid to public defenders, the JM proposal could help diversify the legal profession and give more options for people seeking legal services. A degree requiring only one year of law school would drastically decrease legal expenses while also working to bring about more fairness to the defendants that cannot afford private counsel.

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Appendix

Client-Lawyer Relationship Rules 1.1, 1.3, 1.4, 1.7, and 1.16

Rule 1.1 – Competence: A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.3 – Diligence: A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.4 – Communications:

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client’s informed consent, as defined in Rule 1.0©, is required by these Rules;
- (2) reasonably consult with the client about the means by which the client’s objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and

- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 1.7 – Conflict of Interest: Current Clients:

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
 - (1) the representation of one client will be directly adverse to another client; or
 - (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
- (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
 - (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
 - (2) the representation is not prohibited by law;
 - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
 - (4) each affected client gives informed consent, confirmed in writing

Rule 1.16 – Declining or Terminating Representation

- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
 - (1) the representation will result in violation of the rules of professional conduct or other law;
 - (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
 - (3) the lawyer is discharged.
- (b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:
 - (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
 - (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

- (3) the client has used the lawyer's services to perpetrate a crime or fraud;
- (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
- (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
- (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
- (7) other good cause for withdrawal exists.

Paragraphs 39 and 40 of the Magna Carta

(39) No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land.

(40) To no one will we sell, to no one deny or delay right or justice.