



### **Street Law and a “Lesser” Legal Consciousness**

How would you break the news to a defendant that he is not getting a “true” defense? *No one is investigating your case. No, your word will not be believed over the word of the police that roughed you up. And, the witness that can verify your story, we won’t call them either because it won’t matter to the prosecutor.* It is like telling a man he is dying when he is already feeling the pain of death upon him. Defense attorneys often act as “ambassadors of racialized justice,” despite their expressed sympathies for defendants and their disdain for being complicit in a system that abuses their clients. After a triage process governed by the racialized rubrics of the Cook County Courts, defense attorneys find themselves applying parallel racialized frameworks to this undeserving set of clients. Rather than translating the law to their clients, defending becomes an exercise of translating the racialized rules of the court, and warning, like a threat, how the judge and prosecutors will punish them through courtroom processes. Here the attorney tells defendants about retribution for exercising rights in a way that leads them to passively submit to the rules of the courts.

In Chapter 2, we saw how due process was reduced to a ceremonial charade for the undeserving. We also examined the logics and narratives that allowed

such curtailing of due process to seem justifiable. Procedural justice was reduced to a performance without substance.<sup>5</sup> When I asked a prosecutor about whether defendants understood their rights when pleading guilty, he described a caricature of the defendant [using Ebonics]:

They probably don't understand . . . they only listen to what matters: "what you can get . . . and what I be getting." Somewhere along the line they were trying to protect their rights but yea, most of it's a waste.

While prosecutors use this characterization to justify subversions of due process in general, defense attorneys appropriate a similar narrative to describe their clients' inferior legal consciousness in the criminal justice system in order to curtail and then rationalize their diminished representation.<sup>6</sup>

"Legal consciousness" refers to the perceptions of law that are gained through daily experience, images, and encounters with legal systems. Because defense attorneys admit that the majority of their clients are regarded as "undeserving" or compatible with the mope construct, they underestimate and undermine their clients' understanding of the legal process by characterizing it as "street law"—a term that references a type of ghetto bastardization of "real" legal knowledge. These racialized conceptions shape the type of defense that defendants receive.

Consider a seasoned public defender named Kevin. I shadowed him into the lockup conference room adjacent to the court. A defendant explained to Kevin that he was in a car with three of his friends when the police pulled them over. His friends were charged with misdemeanor theft or what the defendant called "possession of stolen property," while he was charged with a felony. The defendant was describing an accurate nuance about discretion and charging. While his friends were charged with misdemeanors, he was hit with a felony for what seemed to be the same act.

From my experience in the courts, I thought this defendant brought up an insightful observation and apparent paradox about the criminal justice system and wanted insight from his attorney. I had asked a similar question of my supervising public defender. How could four defendants in the same car be charged differently? She responded by explaining one of the rules of shading: pin the crime on the easiest target . . . the one with the worst criminal record.

In this context, I found the defendant questioning the system to be astute, and certainly asking an appropriate question of his legal counsel. However, Kevin, his public defender, had a different impression of his client's knowledge

of the law—especially given the defendant’s use of the term “possession of stolen property.”

Kevin: Actually, I don’t think that is a real charge. I would have to look it up to be certain, but I hear defendants using the term all the time.

NVC: Where do you think they got that idea? Of possession of stolen property?

Kevin: I bet from TV.

NVC: Overall, it seems like a lot of defendants know the law . . . they know to ask for a 402 conference. What is your impression of your clients’ understanding of the law?

Kevin: Sometimes [they understand]. But it is “street” law. They understand it on a street-level . . . they understand what a case is worth and what you can get for it.

Kevin’s definition is remarkably similar to the prosecutor’s quip about what defendants understand about due process and the law; as the prosecutor mocked, defendants only understand “what you can get . . . and what I be getting.” While Kevin left out the Ebonics, his explanation was built on the same racialized rubrics and caricatures of defendants as the equivalent of children. Kevin minimized his clients’ legal consciousness or lived experience of the law as “street law.” In the same way that the term “ghetto” is used by whites to locate and demean the cultural features of black and Latino’ lives, “street law” is a term that undermines the depth and complexity of understanding the law by defendants, the majority of whom were people of color. While the white attorneys learn law in law schools, defendants are seen to have learned the law from television and from exposure to the “streets”—a logic that assumes a criminal history or a moral proximity to other “street people.”

As Kevin continued to discuss the construction of the defendant’s legal consciousness, he elaborated on this idea of learning the law on the streets. As we will see, some defense attorneys berate defendants for talking with other criminally accused defendants. They claim that these defendants are getting legal advice from “criminals” and view this effort as a result of being “bored” or having “nothing else to do” in jail. Rarely do they consider the defendants’ justified distrust of the system and perhaps the distrust of their attorneys as true advocates of their interests.<sup>7</sup>

Kevin: They all talk in the jail. They have nothing else to do. The big thing is to go to the law library. It’s a real prestige thing. They get to go once a week and if they want to go more than that, they need special permission.

Within the mope construct, defendants' educating themselves in the law library is viewed as a charade or a game rather than a concerted effort to advocate on one's own behalf; it is analogous to a small child pretending to read. Defendants find themselves in a racialized trap with their own advocates. They are judged for knowing "street law," but when they try to engage as educated equals with the attorneys (by going to the law library, for instance), they are stigmatized or seen as posturing for status within the jail and among "criminals."

The assumption that defendants did not understand the proceedings created a communication barrier between defense attorneys and their clients, a barrier that resulted in defense attorneys not understanding the client's request or ignoring it entirely. In another case, Kevin was representing a defendant named Tyrell, who was charged with theft. Kevin did not start the meeting by talking about the case, questioning the defendant about the police report or other relevant details. Instead, he began by asking the defendant how he wanted to end or resolve the case.

Kevin: You going to trial on this? Or bargain it? Do you know what you are going to do? If you want to go to trial, you can. It's your right.

Tyrell responded by starting from the beginning and reviewing the facts of the case, as he experienced them, as if to take the reins of his defense. As Tyrell explained, he purchased groceries at a Jewel<sup>8</sup> and then went to see his friend who worked as a butcher at another Jewel location. Kevin asked: "What's his name?" The defendant paused and said, "We call him 'Preacher.'" Kevin asked, "What congregation?" Tyrell snapped as though the question was irrelevant, "No congregation. We just call him dat." Kevin stopped writing and the pen slowed in his hand at the mention of a witness with a neighborhood nickname.

Many times defendants had witnesses to their offense or arrest, witnesses named Pookie, Duchess, or Tio, to name a few. These were not their birth names or the names on their identification cards, but they were neighborhood names that identified people, denoting a belonging to the community, and often signaling the qualities or traits of that person. "Tio," for instance, was a term of respect and reverence for an elder, a trusted figure who earned respect—even if he was not your actual uncle. In a sense, he was "everyone's" *tio* (or uncle) in La Villita.

I knew about these nicknames because I earned one in my old neighborhood. When the police broke up a party and started throwing glass beer bottles around the floor to scare everyone, two close friends said, "Get 'Ivy League' out

the back.” This name spoke to my stature in the community as the one kid who, in their eyes, had a future to lose. It was a name of reverence and respect for the local girl who was getting out. While Northwestern University was not in the Ivy League, the name was not an error. The inaccuracies were intended to mock me and keep me humble. But certainly the name anointed me with respect and denoted to others (especially men) that I should be protected and not pursued.

I stayed silent as I realized that Kevin, the public defender, was missing the details of the case. He was dismissing Preacher as a mope, rather than seeing him as a witness. Beyond that, Preacher’s name denoted a type of earned credibility in the community—features that may have made him a reliable witness *if* the public defender could have seen him as a witness. Certainly “Preacher” was a name bestowed on a person with stature and wisdom, someone who was assumed to be on moral high ground among his peers.

Once Kevin stopped writing, the conference ended. It was clear to me that he was not going to call this witness unless Tyrell called the Preacher by a name deemed credible within the court community, presumably a white name that would not be mocked. I leaned over to see Kevin’s notes and I saw nothing written there about the existence of a witness. Like the court record that was selectively turned on and off, Tyrell did not have any record of the competency of his attorney and his effort on his case.

With Kevin leaning back in the chair as though he was waiting to leave the lockup, Tyrell persisted with his story, trying to highlight the circumstances of his arrest. Tyrell admitted to having a Jewel bag of steaks in his hand, but did not think to keep his receipt when he entered the other Jewel. Without a receipt, he was stopped at the exit by the store security guard. Preacher tried to verify that his friend did not steal the steaks. He used his employment as a butcher as a way to verify his allegiance to the store. Regardless of their attempt, Tyrell was charged with a felony.

The defendant insisted on his innocence and vented about the absurdity that allegedly stealing steaks would leave him with a felony charge. After the long story of the defendant’s innocence, Kevin responded with a single six-word question that summarized how he viewed the case:

Kevin: So, you want to plea this?

The question hung in the air as though the attorney had not heard the defendant’s narrative of his innocence.

Defendant: No, I want a conference.

At first it appeared that the defendant did not understand what a plea bargain was. However, this is another example of how attorneys' preconceived notions of defendants as mopes cloud their ability to identify and respond to their clients' requests. In the same way the public defender dismissed a potentially viable (even credible) witness for having a name that sounded like a mope's name, the public defender was missing the subtlety between *pleading guilty* and *requesting a conference*.

A "conference" (also called a 402) is really the first step in pleading guilty. The conference puts an "offer" on the table and allows the defendant to hear the possible sentence that could be imposed. It is like asking for the price before purchasing an item in a store. A defendant can then decide, theoretically, whether to accept or reject the plea. Without a conference, a defendant cannot make an informed decision. The defendant was picking up on the nuance of the law that came from his perspective as a defendant—the recipient of the deal.

Kevin, conversely, was pushing for a plea—meaning a plea of guilty in exchange for a lesser charge. The defendant wanted a conference—where the judge would tell the defendant (through his attorney) the sentence he could expect. In the defendant's view, it was not about pleading and admitting guilt. It was about doing the cost-benefit analysis, which is something like this: *If I plead (even though I am not guilty), then I will get a particular sentence. What is my innocence worth?*

He wanted to know the practical consequences of his options—testing the waters before he made any move. The defendant's view was about minimizing his jail time—not about admitting or acknowledging guilt. It was about submitting to the ceremonial charade while maintaining your personal innocence.

This exchange between Tyrell and his public defender demonstrates how the mope construct informs and clouds the criminal defense, disrupting how the defense attorneys hear the requests of their clients. As a result, defense attorneys disengage in the case, ignore crucial evidence or witnesses, or misunderstand the instructions of the clients. Because the mope construct assumes a type of racialized ignorance, the blame for these representation missteps is placed back on the shoulders of the defendants themselves.