

Strategic Extra-judicial Lawyering: an exemplary case of the role performed by Public Defenders in Brazil

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- ✘ Brazilian Constitution of 1988 was expected to be a milestone for the effective implementation of the Democratic Rule of Law in the country.
 - ✘ In 1988, there was great concern in the sense that the democratic regime and that the purpose of social inclusion of the majority of the population would not be just as vague ideas but that they had mechanisms to make them effective achievements. In this sense, the issue of access to justice, especially for the poorest people, was a priority for those who had the mission to write a new Constitution in 1988.

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- ✘ In order to ensure access to justice for the poor and vulnerable people, not only was constitutionally established the right to full (integral) and free legal assistance (Article 5, section LXXIV):
 - ✘ there is (in Article 134!) also an express determination that an institution specially tasked with providing legal aid services should be created by the federal and state governments: the Public Defenders Office (Brazilian PDO).

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- ✘ In the recent past years Brazilian PDO has assumed a new profile, due to institutional and legislative reforms: beside the traditional role representing clients in “individual” cases (similar to what private practising lawyers do), the Public Defenders are strongly expected to use their expertise and constitutional prerogatives to act in protection of collective rights of their target clients (poor and vulnerable citizens in a more broad perspective).
 - ✘ This is expected to be a kind of **strategic lawyering**, centered in the true needs of the clients.

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- ✘ The legal assistance, provided by a Public Defender, includes also any kind of lawsuits against governamental decisions or - in case of omission - lawsuits to require the government to provide adequate public services guaranteed by law, and also, if needed, judicial review.
 - ✘ It includes, as well, a “proactive role” in extrajudicial area, using strategic lawyering tools in order to prevent litigation through any possible alternative dispute resolution mechanisms (the agency has, for example, the prerogative to negotiate ‘out-of-Court-settlements’, also called “Conduct Adjustment Agreement”)

THE BR-040 CASE!

- ✘ The broad spectrum of legal services provided by the PDO makes it possible to secure effective and timely support for the immediate and vital needs of its clients, be it in an individual or in a collective perspective.
- ✘ It will be presented a real case (the BR-040 case) happened in Nov. 2017, reporting the performance and the strategy of the Public Defender's Office through an "out-of-Court Agreement" that then was able to effectively met "Immediate Legal Needs" of our aimed clients: a group of families victimized by a serious disaster of, at that moment, unclarified causes

THE BR-040 CASE!

✖ <https://youtu.be/r7EKW8PJP5E>



BR-040, PETRÓPOLIS, RJ

CLIENT-CENTERED LAWYERING

- ✘ There are, among all areas of activity of the PDO, some specialized divisions (or operational units), according to the fields of priority areas of interest / considering the needs of our “typical” clients.
- ✘ The expertise and methodology developed by the PDO specialized division charged with the protection of consumers rights - the NUDECOM (Center for Consumer Protection) - to deal with major consumer accidents conflicts, **focusing on meeting immediate and vital needs of the victims of such accidents, that are our potential clients.**

CLIENT-CENTERED LAWYERING

- ✘ The NUDECOM “*modus operandi*”, developed for cases considered as “major consumer accidents”:
 - 1) on-site inspection
 - 2) Immediate collection of data
 - 3) Schedule a meeting with people with effective "decision-making power" for the case
 - 4) Mobilization of the Media
 - 5) Out-of-Court Settlement Proposal

On the morning of November 8, the Public Defenders appeared in the locality of the accident and met with representatives of the families that were gathered there exactly with the purpose to define their agenda of claims



View of the meeting held with the people with effective “decision-making-power” to discuss the “out-of-Court agreement” Proposal, in the afternoon of November 8.



The representatives of the CONCERT agreed to sign an agreement in which it assumed a number of obligations, expressly ensuring that all immediate legal needs (the clients claims) identified at the time would be met



OBLIGATIONS ASSUMED BY CONCERT

- 1) Monthly payment of a financial grant intended for the cost of housing rental expenses;
- 2) Payment of hotel accommodation and food expenses (until families find some house to be rented);
- 3) Monthly supply of a “basic food basket”;
- 4) Supply of basic furniture necessary for houses rented to temporary housing for families;
- 5) Payment of expenses for the accommodation of domestic animals (PETs);

OBLIGATIONS ASSUMED BY CONCERT

- ✘ Regarding the community elementary school, the concessionaire assumed the following obligations
 - 1) payment of expenses for the renting of a building for the provisional operation of the school;
 - 2) purchase of furniture and school supplies, according to a list drawn up by the School Board;
 - 3) responsibility to provide school transportation for students and professionals working at the school to the place that was to be rented for the provisional operation of the school.

NEW SCHOOL BUILDING, RENTED BY CONCR



Three days after the accident, on Friday, November 10th, a special hearing was held, scheduled by the judge in charge of the lawsuit that had been filed by the Municipality to seek a "traditional" solution to the problem. However, at that time, the most urgent needs/claims of our clients were already consensually defined by virtue of the agreement negotiated by the Public Defender's Office.



CONCLUSION

THE DEFENSE NEVER RESTS



✖ Thank you for your attention!

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