

Interpretive and Interpersonal Challenges of Digital Evidence for Public Defenders

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Abstract

This study uses an ethnography of a large public defender office in the U.S. to argue that the rise of digital evidence is a communication phenomenon that brings new evidentiary interpretation and interpersonal challenges for public defenders and their low socioeconomic status clients. The study's theoretical framework draws on communication privacy management theory, context collapse, sensemaking, and sensegiving. Findings holistically show that public defenders now have to engage in collaborative interpretive work with clients to unpack the meaning and context of digital evidence. Content penned by young clients and communications related to domestic violence cases are especially challenging to interpret. Findings also show that access to highly personal data is a double-edged sword for attorney-client interactions in that it can cause feelings of discomfort for attorneys while also holding the potential to humanize clients.

Keywords: Digital evidence, communication privacy management, context collapse, sensemaking, sensegiving, attorney-client interactions

Introduction

Smartphones and personal computers have become an integral part of how people manage their personal, social, and professional relationships, leading to an 'always-on society,' where individuals are tethered to their devices and connected at all times (Nguyen, 2021). This state of constant connectivity means that individuals leave behind extensive digital footprints that can be stored, recovered, and analyzed after-the-fact and out-of-context by various third parties (boyd, 2010), including the U.S. government (Levison-Waldman et al., 2022). Law enforcement and the courts have recognized that technology-mediated communication records function like archives of people's lives, and as such, hold a wealth of valuable information for criminal justice operations. The International Association of Chiefs of Police (IACP) (2019) notes that social media is a useful investigative tool for locating information about missing persons and wanted suspects or even photos and videos of a crime posted online by an eyewitness. In the courts, evidence from smartphones, social media applications, and other digital platforms feature in about 90% of all criminal cases (Geddes, 2021), including homicides, fraud, gang

violence, and sex crimes (Miller, 2022).

Although the rise of digital evidence offers important investigative and case-processing advantages (IACP, 2019; Miller, 2020), this shift, which has been described as a ‘digital turn’ in the criminal justice system (Lane, 2018; Ramirez, 2022), also brings numerous challenges, such as an increased workload for the attorneys who analyze digital evidence (Goodison et al., 2015). For those charged with a crime, the digital turn also means having one’s personal communication records exposed to judicial actors in ways that break personal expectations of privacy and data ownership, leading to privacy turbulence (Petronio 2002; Petronio & Child, 2020) and context collapse (Davis & Jurgenson, 2014; Marwick & boyd, 2010).

To fully grasp how the digital turn and its privacy implications have shaped the criminal justice system, it is imperative to look at how it has affected the most vulnerable in the U.S. court systems: public defenders and the low socioeconomic status (SES) defendants they represent. Over 80% of those charged with a crime cannot afford to hire a private attorney and rely on court-appointed public defenders for representation (Backus & Marcus, 2006). Public defenders are overworked public servants who work with little financial and technological resources and carry excessive workloads (Wice, 2005). This is in sharp contrast to prosecutors and large private practices who typically have well-equipped digital forensics laboratories to assist with the challenges of the digital turn (Ramirez, 2022). The limited research published on public defenders and digital evidence suggests that they are still learning how to navigate the data deluge, privacy concerns, and evidentiary challenges of the digital turn (Lane et al., 2023; Ramirez, 2022; Wexler, 2021). More research is needed to understand how the rise of digital evidence has changed public defenders’ day-to-day work practices and attorney-client dynamics.

This paper uses an ethnographic study of one of the largest public defender offices on the east coast of the U.S., and the theoretical frameworks of communication privacy management, context collapse, sensemaking, and sensegiving to argue that the rise of digital evidence is a communication phenomenon that brings new interpretive and interpersonal challenges for public defenders and their low SES clients. To illustrate this, I first examine how digital evidence changed case handling practices for public defenders. I show that attorneys learned to manage their clients’ perceived privacy violations by engaging in exhaustive collaborative sensemaking to piece together actions, events, and personal attributes based on clients’ digital traces. Second, I examine how the context collapse associated with the digital turn shaped attorney-client interactions in mixed ways, causing feelings of discomfort for attorneys who are exposed to highly personal information while also holding the potential to humanize clients in the eyes of attorneys who now see a different side of their lives.

Literature Review

Communication Privacy Management

To examine the digital turn’s impact on public defenders and their clients, it is important to review how people manage privacy in other contexts. Every day, whether interacting with others in person or through technology, people make decisions about how much information to share as well as when, and with whom to

share it. Petronio (2002) introduced communication privacy management (CPM) theory as a framework for understanding how people make decisions about disclosing or protecting private information. CPM theory consists of three main elements: privacy ownership, privacy control, and privacy turbulence (Petronio, 2002, 2013; Petronio & Child, 2020).

Privacy Ownership

The first element of CPM, privacy ownership, stipulates that people own their private information and have the right to either grant or deny others access to that information. When someone is granted access, they become information co-owners. How long co-owners maintain the privacy status of the information shared with them varies based on their sense of personal obligation towards the original owner (Petronio, 2013). Ramirez and Lane (2019), for example, found that the privacy expectations a romantic couple established during their relationship lasted only as long as the couple was happy, and no longer applied once the relationship turned violent and the victim sought help from law enforcement. According to McNealy and Mullis (2019), it is common for groups to develop strategies to control collectively owned information. In a study of an online gossip forum, forum members agreed to watermark any original photos or videos so the group could track any outside interference of co-ownership, such as competitor gossip sites stealing and posting their content (McNealy & Mullis, 2019).

Privacy Control

The second element of CPM, privacy control, states that people control the flow of their private information through privacy rules which are developed based on both stable criteria tied to socialization and culture and event-specific catalysts that trigger sudden rule changes (Petronio, 2013). For example, Scarduzio et al. (2021) found that people who experienced workplace online harassment adopted new privacy rules in response to the incident and made their supervisors co-owners of the harassment information in order to stop the harassment and its accompanying feelings of discomfort, fear, and awkwardness. In the context of social media, studies found that various motivations may drive users to adapt their privacy rules and disclose information despite potential privacy risks. For example, Waters and Ackerman (2011) found that information sharing, keeping up with trends, and showing off were some of the main motivations of disclosure on Facebook.

Privacy Turbulence

The last element of CPM, privacy turbulence, addresses the fact that privacy management systems can be disrupted or fail, which leads to loss of privacy and attempts to reclaim ownership of lost privacy (Petronio, 2002, 2013). Because people want to avoid privacy disruptions, many engage in preemptive and after-the-fact strategies to control the flow of their private information. For instance, Heyman et al. (2014) found that Facebook users try to avoid privacy turbulence by utilizing system settings to limit their social media audience. Strategic ambiguity or 'vague-bookings' in Facebook posts is another way users preemptively engage in privacy management. By choosing to disclose less information or using unclear

expressions, users make it more difficult for potential stalkers or lurkers to disrupt their online privacy (Child & Starcher, 2016). If privacy loss has already occurred, people may engage in after-the-fact strategies to reclaim ownership of the information. A common after-the-fact strategy to reclaim information ownership is deleting social media posts after they have been viewed to prevent further disruption (Child et al., 2011).

Context Collapse

In the digital turn, public defenders handle extensive case files while those charged with a crime see their personal information shared with judicial actors in unexpected ways. To make sense of these disruptions, it is important to look at another concept in addition to CPM theory: Context collapse. Context collapse refers to the flattening of multiple audiences into one (Marwick & boyd, 2010). Having “people, information, and norms from one context seep into the bounds of another” can have problematic consequences, including loss of privacy as formerly separate audiences become merged (Davis & Jurgenson, 2014, p. 477).

To explicate different types of privacy loss in the face of context collapse, Davis and Jurgenson (2014) distinguish two forms of context collapse: context collusions and context collisions. Context collusion is the process whereby people intentionally collapse audiences into one, such as when they decide to add individuals from different spheres of their life as friends on social media. In this scenario, individuals are in a position of control since they have the choice to either grant or deny access to their social media network. Context collision, on the other hand, describes instances where different audiences “unintentionally and unexpectedly” crash into one another (Davis & Jurgenson, 2014, p. 480). Here, contexts come together “without any effort on the part of the actor, and sometimes, unbeknownst to the actor” (Davis & Jurgenson, 2014, p. 481). Context collisions are characterized by a lack of control and an inability to manage how one’s information or audiences come together.

Sensemaking and Sensegiving

In the digital turn, people’s personal communications (e.g., messages between romantic partners) are re-examined within the context of a case. The concepts of sensemaking (Weick et al., 2005) and sensegiving (Gioia & Chittipeddi, 1991) provide valuable insights into this new interpretive challenge. Weick et al. (2005) define sensemaking as a process of organizing, a way of rationalizing what people are doing and why they are doing it. In other words, sensemaking is about materializing meanings and is inherently “an issue of language, talk, and communication” (Weick et al., 2005, p. 409). When people experience disruptions, they look for answers and try to formulate a story that helps explain what happened. This effort of sensemaking is often a collaborative one (Bietti et al., 2018). It can be compared to a conversational activity where multiple individuals contribute to the production of a story or explanation.

The process of sensemaking helps individuals channel human action towards a specific goal, such as resuming normalcy or changing a situation for the better (Weick et al., 2005). This is where sensegiving becomes useful. Sensegiving refers to the attempt to communicate one’s vision or interpretation to others with the

goal of influencing their own sensemaking or interpretation (Gioia & Chittipeddi, 1991). During the process of sensegiving, the person in charge (e.g., a CEO or, in the context of this study, an attorney) articulates and advocates for their preferred interpretive scheme in front of stakeholders. This process is reminiscent of the practice of legal storytelling (Ramirez, 2022), where attorneys engage in nuanced storytelling about the complex life circumstances of their clients (e.g., history of drug use) to provide context for an offense and try to secure better case outcomes.

Attorney-Client Relationships in the Public Defender Context

To understand the interpretive and interpersonal challenges of the digital turn it is imperative to review public defenders' general working conditions. Mistrust, fear, and doubt are feelings that have long characterized the relationship between public defenders and their clients (Clair, 2020). In addition to carrying heavy caseloads, public defenders often have to contend with clients who are distrustful and uncooperative. There is a general perception among defendants that public defenders easily give up on cases, and that they consider their clients as little more than another case file on their desk (Clair, 2020; Wice, 2005). Research shows that low SES defendants are concerned about the loyalties of an attorney for whom they are not directly paying (Davis, 2007), with some studies showing that only 20% of public defender clients feel their attorneys are on their side (Weiss, 2005). A common worry is that public defenders may be working with the prosecution to bring cases to a close quickly by arranging disadvantageous plea bargains, simply to reduce caseloads. Although concerning, most of these fears are based on false public perceptions. Research shows no discernable differences in case outcomes (e.g., length of prison sentence) between individuals represented by public defenders compared to those who hired a private attorney (Wice, 2005).

Study Context and Research Questions

Public defenders carry heavy caseloads, lack financial and technological resources, and often have to work with clients who are distrustful of their qualifications and intentions (Davis, 2007; Wice, 2005). As if these circumstances weren't challenging enough, in the digital turn, public defenders have to analyze extensive volumes of digital evidence and navigate privacy violations all the while trying to maintain positive relationships with their low SES clients. Drawing on the theoretical frameworks of CPM, context collapse, sensemaking, and sensegiving, I developed the following research questions to guide my research:

RQ1: How has the digital turn shaped public defenders' work practices, especially as it relates to the analysis and sensemaking of digital evidence?

RQ2: How have the privacy turbulence and context collapse associated with the digital turn shaped the relationship between public defenders and their clients?

Methodology

Site of study

Between August 2017 and September 2018, I conducted an ethnographic study of the Northeastern Defender Association (NDA) (pseudonym) to examine how

the digital turn affected public defenders' work practices and attorney-client interactions. I was able to gain access to this fieldsite thanks to networking connections and research on a past project about the role of digital evidence in the criminal justice system. The NDA was an appealing fieldsite for several reasons. First, it is one of the largest public defender offices on the east coast, handling over 100,000 legal matters per year. Attorneys at the NDA represent people who do not have the financial means to hire a private attorney and most of their clients are low SES minority populations. Second, the NDA had recently established an in-house digital forensics laboratory, a special unit designed to support attorneys' growing need for assistance with the recovery and preservation of digital evidence. All of this made the NDA an attractive fieldsite to study the impacts of the digital turn on public defenders and their clients.

Data collection

My fieldwork at the NDA consisted of a combination of in-person observations, interviews with public defenders, and direct observations of trials and hearings open to the public. Typically, I went into the NDA office once a week, with most days dedicated to in-person observations of how attorneys interacted with digital forensics laboratory staff on matters of digital evidence. In my 13 months of fieldwork, I conducted 25 full-day observations in the digital forensics laboratory, interviewed 22 NDA attorneys, and followed two cases into the courtroom via week-long trial observations. My in-person observations were overt, meaning I openly took handwritten notes in a plain notebook in front of attorneys and staff members and regularly checked in with them about what I observed (Emerson et al., 1995). After each fieldsite visit, I turned my raw fieldnotes into longer, detailed typed fieldnotes for a total of 157 double-spaced pages of typed notes.

I recruited attorneys for interviews using a combination of purposeful and snowball sampling methods (Tracy, 2013). With the help of the staff attorney of the digital forensics laboratory, I first contacted public defenders who had recently come through the lab about participating in an interview. Then, after interviewing these attorneys, I asked them to recommend colleagues who worked with digital evidence as potential interviewees. The final interview sample consisted of 15 women and 7 men; participants ranged in age from 30 to 56 ($M=40$). Fourteen participants identified as White, 4 as White/Jewish, 2 as Asian American, and 2 as Latinx. Interviews lasted 52 minutes on average and were conducted either in person or over the phone. Participants were compensated with a \$50 Visa gift card. All interviews were audio recorded and professionally transcribed by a transcription service specializing in legal transcription, resulting in 320 double-spaced pages of interview data.

Data Analysis

I analyzed my fieldnotes and interview transcripts using an iterative analysis method. When researchers use this approach, their analysis "alternates between emic, or emergent, readings of the data and an etic use of existing models, explanations, and theories" (Tracy, 2013, p.184). I coded my data in two distinct phases: initial coding and focused coding. In the first round of coding, I printed out, and repeatedly re-read my data to identify preliminary, descriptive themes. For in-

stance, this is where I realized that content penned by young clients and content surrounding domestic violence cases comprised some of the most challenging digital evidence. This is also the stage where I regrouped case-related notes into individual folders to easily follow each case's timeline and case facts (Tracy, 2013).

In the second coding phase, I kept relevant communication theories and literature about public defenders in mind and revised my preliminary themes into mutually exclusive themes. I also organized case-specific stories and illustrative quotes in an Excel sheet to quickly locate cases based on the type of crime (e.g., domestic violence) and other reoccurring themes (e.g., discomfort and explicit pictures). Lastly, to protect the identity of the NDA's attorneys and clients, I changed all real names to pseudonyms and left out any case details that could reveal personal identifiers.

Findings

RQ1: Changing Work Practices and New Interpretive Challenges

The first research question asked how the digital turn shaped the work practices of public defenders. Attorneys noted that analyzing digital evidence was overwhelming, not just because of the sheer volume of data, but because understanding the meaning and context of digital evidence often required extensive interpretive work. My findings show that the two most challenging types of digital evidence were content penned by young clients and communications from domestic violence (DV) cases.

Digital Evidence and Youthful Offenders

Public defenders explained that when they examined young clients' communications, they could review time stamps and look up the names of correspondents to get a sense of when and with whom their clients had been in communication, but they did not always understand the meaning or context of communications steeped in youthful cultural and lexical practices. To effectively analyze the evidence, public defenders needed client-provided contextual information to fill understanding gaps. The result of this process was a collaborative sensemaking effort, where attorneys and clients worked together to tease out nuances around meaning and context.

Cecilia (34, Jewish/White), reflected on the challenges of working with youthful offenders and digital evidence, saying, "With teenagers, half the time I have no idea what they are writing [...] it feels like every time I get somebody under the age of 25, they're using a new app I've never heard of in my life." When I asked Cecilia about her work process, she explained that she does some independent evaluation, noting that, "Urban dictionary has been a surprisingly helpful tool" for deciphering slang and cultural words unfamiliar to her, but that it was common for her to work one-on-one with clients to contextualize digital evidence. Cecilia always tried to view information from the point of view of the jury who might ultimately evaluate the evidence. She gave me an example:

Let's say we're talking about a bunch of 18-year-olds who are making jokes about beating someone up, but they're using weird 18-year-old slang that is really a joke. The District Attorney tells me these sound like violent teenagers. The question then becomes who's my jury? [...] Hopefully I'm going to get a bunch of

people with teenage kids who hear them talk like this all the time or at least get people young enough to have used similar slang recently.

Having such a jury, however, was rare. Cecilia explained that in a recent grand jury, out of the 23 individuals in the room, 20 were older white people who likely would not have recognized this type of cultural slang as a joke. This is why Cecilia made it a habit to sit down with clients and make sure she fully understood each piece of digital evidence; she wanted to be in a strong position to effectively present the evidence to any type of jury.

Cecilia was not the only public defender who faced interpretive challenges. When I asked Linda (33, White), how digital evidence had shaped her work, she said, "I don't have a great knack for it. It's time-consuming and it's foreign to me, and no one teaches you in law school about sorting through digital evidence or thinking of creative ways to use it or fight it." For Linda, a core challenge of working with digital evidence, especially pictures and posts from youthful offenders, was that social media content is not an accurate reflection of who people are offline. She explained that young people often exaggerate things on social media or post about violence and crimes just to get attention:

What people post is not always an accurate reflection of what's really going on. We often see people in our cases post photos of drugs, and the prosecutor will say that this shows they're involved in the drug trade. [That might be] the case or maybe they just googled a picture of all this weed and then posted it for some other reason.

In such instances, Linda worked with her clients to contextualize the evidence and explain why there was a picture of marijuana if the person was not involved with drugs.

Another attorney, Mark (50, White), recollected one instance in which he desperately turned to his client for help in deciphering the language of various Facebook posts. Mark's client was a young Black man charged in a shooting incident, and the prosecution was planning to use social media evidence against him. Mark described their collaborative analysis effort as a type of translation:

I was going to Rikers with 100s of pages and working through it [...]. What did you mean here? What'd you do here? And sometimes it's like he's like an ambassador – an emissary from a completely different world explaining forms and different rights and different phrases and slogans and slang.

Mark needed to know the meaning behind his young client's interactions to understand how the prosecution might use the evidence against them in court. He explained, "I wouldn't feel comfortable going to trial and not knowing what's in a phone extraction [...]. We put photos, we put texts, we put our entire life on phones." The digital turn shaped Marc's work habits by forcing a new type of preparedness that required engaging in extensive collaborative analysis with his client and reviewing high-volume evidence files.

Digital Evidence and Domestic Violence

DV cases, because of the long and complex communication history between the victim and the defendant, also brought interpretive challenges for public defenders. Beth (40, Asian American), an attorney who handled a lot of DV cases, explained that in DV cases it is common to find information that appears contra-

dictory or confusing on the surface, but makes sense once the full context of the story is uncovered. She shared an example of a client who was recently arrested for violating a no-contact order, "The judge had issued an order of protection. [The client] was supposed to stay away from the victim. No contact at all, [...] no social media, no text messages." When she reviewed the communication records between her client and the victim, Beth noticed that the victim had repeatedly contacted the client and that the woman's language did not suggest she was fearful of Beth's client. On the contrary, it appeared the victim was trying to rekindle the relationship. To get a better sense of the circumstances around the no-contact violation, Beth met with her client. She learned that he had briefly resumed a relationship with the victim but that they quickly separated again, which led to the victim calling the police. Breaking the no-contact order was bad for Beth's client. However, thanks to Beth's strong understanding of the circumstances surrounding the violation, and the presence of friendly conversations between her client and the victim, she was able to negotiate a more lenient sentence for her client.

Sybil (45, White/Jewish), engaged in similar collaborative efforts with her DV clients. She too, recently had a case where a client was arrested for violating an order of protection. Reflecting on the case, Sybil said her client had "a long period of stability and great updates and mental health stability," but that when he posted a photo on Instagram of himself getting the tattoo of his ex-girlfriend's name altered, "everything fell apart for him." The ex-girlfriend contacted him about the tattoo removal and "they were in and out of communication at different points," which led to the current arrest. Like Beth, Sybil sat down with her client to get a better sense of the context of the communications. Here she learned that the ex-girlfriend had threatened her client repeatedly, saying, "I'm gonna call the police if you don't do X, Y, and Z," and had been holding the no-contact violation over his head. Sybil also learned about the importance of the tattoo removal and why her client posted the picture online. She said, "changing that tattoo [was] a major life event. [...] It was a moving-on-picture for him. [It was] taking back part of his body from her, literally." Thanks to this additional information, Sybil was able to provide context for the violation and negotiate a better plea deal for her client.

During my fieldwork, Stephanie (38, Asian American) discussed one of her most challenging DV cases, where her client had assaulted his girlfriend and then threatened to take away their child. When it was time to review the details of the case, including the couple's communication records, Stephanie's client was uncooperative. He was distant and reluctant. Stephanie sensed he did not feel comfortable confiding in her about his violent behavior towards his ex-girlfriend. She pulled out printed copies of the communications and nudged him. "I needed more from him. [I needed] to get a better sense of where this fit within the broader picture of what was going on with their relationship at that point," she explained. The text messages and social media posts were the digital traces of her client's interactions with his girlfriend, but a lot more had transpired between the two than could be deduced from these pieces of evidence alone.

Convincing her client to be forthcoming turned out to be an exercise in trust-building and interpersonal communication skills. Eventually, Stephanie succeeded in getting her client to talk about the context of the assault, but she recognized that these disclosures were difficult as he wasn't proud of his actions.

Yet, having these conversations was crucial to filling contextual gaps and helping Stephanie make sense of her client's actions. Without this additional information, she would not have been able to tease out the nuances of the couple's relationship and argue for leniency on her client's behalf.

RQ2: Shifting Interpersonal Dynamics

The second research question asked how the digital turn shaped the relationship between public defenders and their low SES clients. Findings show that access to highly personal data is a double-edged sword. On the one hand, exposure to personal data can lead to feelings of discomfort and put a strain on attorney-client interactions. On the other hand, seeing personal photos and private communications can humanize clients in the eyes of attorneys and lead to more amicable interactions.

Context Collapse and Discomfort

Approximately one-third of the attorneys I interviewed expressed feeling uneasy about the highly personal nature of digital evidence. For some, this discomfort was tied to the excessive amount of information they were granted access to, such as all the data on a person's phone, for others, the discomfort was connected to the type of content, like explicit photos of their clients. Cecilia (34, Jewish/White) compared the act of looking at the details of a phone extraction report to voyeurism, "You could piece together somebody's entire life minute-to-minute once you have their phone [...] It feels like a real intrusion on somebody's privacy." Cecilia, and many other attorneys I spoke with, felt that the inclusion of non-case relevant personal information as part of large-scale evidence files was an unnecessary intrusion into the lives of defendants.

Another attorney, Linda (33, White), explained that out of concern for everyone's privacy, she only skimmed over content that was unlikely to have any bearing on the case, "The communication an individual has with their mom, unless it's criminal in any way and related to the case, I'd rather not be a part of it and not have it be part of my relationship with my client." Doing so was a way for Linda to maintain professional boundaries and stay focused on the facts of the case.

Of all the personal content attorneys were exposed to, explicit nude pictures and videos were the most problematic. Three female attorneys described sexual content as the main thing they wished they did not have to see as part of their work. Linda said, "We get cases where a lot of images of a client's genitals are turned over to us, and you're like, 'dude, they're from the DA, and I had to look through them.'" Although she found such pictures uncomfortable, Linda knew how to brush them aside to avoid attorney-client tensions. Not all attorneys, however, were able to distance themselves so easily. Reflecting on the challenge of dealing with sexually explicit content, Erin (33, White), said the following about a client:

He's a really nice kid, but I've literally seen him having anal sex [...]. It certainly impacts my view of him that I know he cheats on his girlfriend all the time. Does it matter? Not really. I'm not his teacher or his friend, I'm his lawyer, but yeah, I think it does [matter].

Seeing such personal photos and videos made attorney-client conversations awkward and strained because there were things Erin could simply not disassociate from her client. She was aware that she was moralizing and judging her client and had to actively work towards looking past such evidence during their meetings.

Context Collapse and the Potential to Humanize

During my fieldwork, I also observed that seeing personal details about a client's life could have the opposite effect and bring public defenders and their clients closer. Heather, like Linda, Ann, and Erin, worked on cases where she was exposed to explicit images. When I interviewed her, she had recently wrapped up a case where her client, who was involved in the BDSM community, had been part of consensual sex parties that included sexual practices like asphyxiation and bondage. Working on that case required going through a lot of explicit material. "That was my first sex case [...] beyond like a butt grab on the subway," Heather said. She explained that this case taught her how to deal with discomfort and how to maintain professional boundaries. Surprisingly, in the end, even though the content she examined had been unsettling, she felt it brought her closer to her client. "He knew what I was getting access to," she said, "I think in a lot of ways, it made for a trusting relationship where he knew that I had everything under control." In fact, Heather's professionalism and kindness had struck her client so much that when he was arrested again a month later on different charges, Heather was the first person he called from prison.

Jack, an attorney who specialized in child custody cases, noted that thanks to the presence of digital evidence, he now saw facets of his clients' lives he never saw before, such as happy pictures of his clients with friends and family. As a public defender whose work involved guiding young, struggling fathers through the challenges of custody visitation, seeing social media posts helped him see another side to his clients:

The social media posts will have pictures of your client with a child. [...] You're sort of always hearing about this child, but you don't know what they look like because they don't come into court, and you don't really know what your client's relationship is like with them, so sometimes it's interesting to see pictures of them with their children. [...] You get definitely more of a window into your client that way.

Child custody cases include other evidence, such as reports from case supervisors, but Jack noted that in recent years, his clients increasingly volunteered their own social media posts to document that they were involved in their children's lives. Jack also noted that seeing this personal, more human side of clients' lives motivated his work as a defense attorney:

I tend to think I'm a zealous advocate regardless of whether I see a picture of my client with their child but certainly it humanizes [them], and I think it's powerful to see your client being affectionate with their child; it definitely makes it more personal.

For Jack, the presence of digital evidence was an opportunity to look beyond the immediate details of the case and see his clients as loving, caring fathers. Thanks to this added layer of closeness, Jack was also able to humanize his clients in the eyes of other judicial actors as he advocated on their behalf in the courts.

Discussion

From Privacy Turbulence to Sensemaking and Sensegiving

Findings on public defenders' changing work practices show that the digital turn brought an array of new evidentiary interpretation challenges, especially for content penned by young people and communications related to DV cases. From my ethnographic observations and interviews with attorneys, it became apparent that the process by which defendants' communication records enter the criminal justice system is an instance of privacy turbulence, a disruption to defendants' ownership and control of their personal information (Petronio, 2002). When attorneys acquired digital evidence from their clients' smartphones or social media accounts, they soon realized they were not the intended audience of that content. Many public defenders, such as Cecilia and Linda, openly admitted that they were unfamiliar with the slang and online cultural norms of their clients' social media content.

However, what is most interesting about privacy turbulence (Petronio & Child, 2020) in this context, is *how* the public defenders responded to the privacy violations their clients experienced. Throughout the findings for RQ1, the public defenders of the NDA worked relentlessly to help their clients overcome any feelings of discomfort or anger at having their digital footprint exposed to judicial actors. The public defenders also tried to redraw privacy boundaries to legitimize the unexpected co-ownership of their clients' information. This was especially evident in DV cases. One of Stephanie's clients who was arrested for assaulting his girlfriend was initially uncooperative. Stephanie sensed he was uncomfortable confiding in her about his behavior, presumably because he was ashamed of his actions, and so she worked to earn his trust and become an authorized co-owner of her client's personal information. By sitting down with clients to review digital evidence, the attorneys created a sense of having been brought willingly into the situation, thus redefining, on their own terms, the boundaries imposed on them by the criminal justice system's privacy violation.

Beyond learning to redraw privacy boundaries, public defenders also engaged in extensive interpretive endeavors and enlisted the help of their clients to properly contextualize and understand digital evidence. These collaborative efforts are a form of sensemaking (Weick et al., 2005), where attorneys and clients work together to formulate meaning and explain the how and why surrounding an offense. The sensemaking that characterizes the work practice of public defenders in the digital turn was evident in Mark's eagerness to incorporate his clients' insights during the digital evidence analysis process. While previous studies found that public defenders and their clients can have strained relationships (Clair, 2020; Davis, 2007; Weiss, 2005), the attorneys at the NDA were invested in trust-building and maintaining positive relationships with their clients. Mark, for example, did not let any cultural or lexical differences hurt his relationship with his client, nor did he let the fact that his client's private information had been exposed to judicial actors become a source of tension. Instead, Mark recognized that he needed to be educated by his young Black client in order to make sense of the social media evidence and present him with the best defense possible. He didn't rush to judgment or moralize. As he brought his client in as a cross-cultural consultant, they

worked together to assess the evidence, its meaning, and its implications in the context of the case.

When they experience privacy turbulence, individuals often try to reclaim ownership of information via after-the-fact strategies such as deleting an already shared social media post (Child et al., 2011). But for public defenders and their clients, there is no option to fully reclaim ownership of personal communication records once they enter the criminal justice system and are shared with law enforcement, prosecutors, and other judicial actors (Ramirez & Lane, 2019; Ramirez, 2022). Consequently, this study shows that instead of trying to reclaim ownership of the information itself, public defenders and their clients rely first on sensemaking (Weick et al., 2005) to understand the digital evidence itself and then turn to sensegiving (Gioia & Chittipeddi, 1991) to control how the evidence is interpreted and presented in the criminal justice system.

This use of sensemaking and sensegiving was well-illustrated in Cecilia's example about the 18-year-olds who used cultural slang to joke about beating someone up. Cecilia engaged in a sensemaking process to figure out the meaning of her client's words and properly contextualize them within her client's cultural lexicon. Then she turned to sensegiving and developed a compelling narrative that explains the evidence to a jury unfamiliar with teenagers' lexical expressions. By going from sensemaking to sensegiving, Cecilia took actionable steps towards "providing a viable interpretation of a new reality" with the goal of influencing stakeholders (in this instance, jury members) to adopt her narrative as their own (Gioia & Chittipeddi, 1991, p. 443). By engaging in sensegiving, the public defenders of the NDA were able to control how digital evidence, and in turn, narratives about their clients' identities and actions, were understood in a changing criminal justice landscape.

Overall, findings show that public defenders worked hard to be recognized as legitimate information co-owners of their clients' digital evidence. They engaged in sensemaking efforts, where they jointly unpacked the meaning of certain pieces of evidence with their clients, because they wanted to have the best chance at a positive case outcome (e.g., a more lenient sentence). Given that research shows the court system is often biased against poor people and people of color (Ramirez, 2022), public defenders' sensemaking and sensegiving work was crucial to ensuring low SES defendants received fair representation in the digital turn.

Context Collapse: Shifting Interpersonal Dynamics

Findings on the digital turn's impact on attorney-client dynamics show that access to personal information has the potential to either put a strain on or strengthen the relationship between public defenders and their low SES clients. CPM theory notes that when there is a breakdown in how people manage their privacy, disruption ensues (Petronio, 2002; Childs & Petronio, 2022). I noted earlier that the public defenders of the NDA worked hard to renegotiate co-ownership of case-relevant information. However, when confronted with highly personal details about their clients that were extraneous to the case (e.g., explicit pictures or videos), many attorneys made no such attempt. Instead, their feelings of discomfort at becoming unwilling co-owners of personal information pushed them to define new privacy

rules and maintain strict professional boundaries. This finding suggests that the privacy turbulence that accompanies the digital turn yields different responses from attorneys based on whether or not a piece of digital evidence is relevant to the case itself.

The process by which public defenders found themselves reluctant co-owners of personal information is an example of context collision (Davis & Jurgenson, 2014), in that it is an unintentional collapsing of contexts that happens without any voluntary effort on the part of defendants but also without the explicit intention of the public defenders. The catalyst for this context collision was the criminal justice system itself and its growing reliance on digital evidence across all types of criminal cases (Miller 2020; Ramirez, 2022). That the public defenders were unwilling actors to clients' privacy turbulence was clear by the reactions of attorneys like Linda and Ann who were very forthcoming about the fact that they would rather not have access to personal communication records unrelated to the case. In fact, Linda repeatedly stated that she worked hard to maintain professional boundaries and protect herself and her clients from the digital turn's unwanted privacy violations. Here, attorneys engaged in a different type of sensemaking in that they reconsidered what pieces of digital evidence held meaning in the context of the case and which ones were simply an intrusion into clients' lives.

Although my findings show that privacy violations from the digital turn can put a strain on attorney-client dynamics, there are also benefits to the presence of personal, non-case relevant data for the relationship between public defenders and their low SES clients. This suggests that, when examining attorney responses to the privacy turbulence brought on by the digital turn, it is important to consider the nature of the evidence (e.g., family photo versus explicit content) in addition to its evidentiary value.

In the U.S., public defenders are notoriously overworked and have to handle multiple cases simultaneously (Clair, 2020; Weiss, 2005). Their work conditions do not give them many opportunities to get to know their clients on an individual level. However, the experiences of Heather and Jack suggest that digital evidence can intervene in the current system by humanizing clients in the eyes of public defenders, thus providing an upside to the context collapse that characterizes the digital turn (Davis & Jurgenson, 2014; Ramirez, 2022). Thanks to the collapsing of clients' personal lives onto the criminal justice system, public defenders now have access to personal details about their clients' lives, including family photos, that allow them to get to know a different side of their clients. These experiences can enrich attorney-client dynamics and strengthen the trust between attorneys and their low SES clients. This is crucial to creating better attorney-client relationships and overcoming the false public belief that defendants are nothing more than a simple case number in the criminal justice system.

Conclusion

Drawing on the theoretical frameworks of CPM, context collapse, sensemaking, and sensegiving this paper used an ethnographic study of a large public defender office to argue that the digital turn in the criminal justice system is a communication phenomenon that brings new evidentiary interpretation and interpersonal challenges for public defenders and their clients. Findings show that,

in the digital turn, public defenders now have to manage their clients' perceived privacy violations and engage in collaborative sensemaking to fully understand and contextualize digital evidence. Findings also show that the digital turn can cause feelings of discomfort for attorneys who are exposed to highly personal information, such as explicit pictures and videos, but that the digital can also humanize clients through the introduction of personal family photos which show a rarely seen side of clients' lives.

This study makes important contributions to CPM theory by positioning privacy turbulence (Petronio 2002, 2013; Petronio & Child, 2022) as a catalyst for goal-oriented sensemaking and sensegiving (Gioia & Chittipeddi, 1991; Weick, 2005). Rather than give up in the face of privacy loss, the public defenders of the NDA and their clients engaged in collective sensemaking and sensegiving to reclaim narrative ownership of clients' personal information. By doing so, public defenders were in a better position to control how digital evidence, and in turn, narratives about their clients' identities and actions were understood in the digital turn. This speaks to the importance of seeing privacy turbulence not merely as an endpoint of privacy violation, but as a starting point for actionable sensemaking and sensegiving (Gioia & Chittipeddi, 1991; Weick, 2005). Findings also extend current understandings of context collapse, especially context collision, by suggesting that the unintentional clashing of different spheres (Davis & Jurgenson, 2014), instead of leading to negative feelings of betrayal and privacy violation, can in fact humanize individuals through new insights into their personal lives.

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