



PUBLIC DEFENDERS: JUSTICE SYSTEMS FIRST RESPONDERS FOR PEOPLE OPEN LETTER TO AMERICA

May 7, 2020

The pandemic caused by Covid-19 is having an impact on every part of our lives. Most Americans are staying at home and focusing on trying to stay safe. However, some have been called to a different life. These people we recognize as heroes: nurses, doctors, EMT's, police officers, social workers, grocery clerks, postal workers and others whose professions have required them to stay at work, despite the risk of personal harm.

There is a group of people who have been left out of this conversation who are deserving of our recognition. Tens of thousands of public defenders and other public defense professionals daily deliver the promise of rights enumerated the Constitution, a function that has grown all the more critical in these dark times. As courts have closed their doors, access to justice for low-income people facing criminal charges has been severely curtailed. Jurisdictions across the country have limited the ability to challenge pre-trial detention, litigate evidentiary issues, or conduct trials. Rather than scale back our own efforts, public defenders have stepped up, put ourselves at risk in crowded courtrooms, unsafe jails, and public spaces to ensure that low-income people's rights are not cast aside and their legal needs ignored.

Immediately after the beginning of this pandemic, public defenders worked to identify the most vulnerable people in our jails and prisons, people who will die if they remain incarcerated. We filed emergency motions on our clients' behalf resulting in the release of and saving the lives of thousands of incarcerated people. This advocacy has also saved the lives of jail personnel and reduced the risk of mass spread among prisoners. Public defenders also fought to protect due process rights, ensuring that low-income people could still access the courts for essential matters, connected clients with resources, counseling, and online programming to help them meet their most pressing needs and stay in compliance with court mandates, and worked tirelessly to resolve cases when in their clients' interest thus helping more people secure their freedom and reducing the growing backlog of cases. Likewise, we continue to work with concerned family members to keep them apprised of their loved one's case or release status when the courts are slow or difficult to access. The duty of the public defenders to our clients does not stop for Covid-19 or anything else.

There is now the specter of enormous budget cuts that threaten the right to counsel. Every jurisdiction in the country will be grappling with insufficient resources for critical social services. Already: in Louisiana, defenders are being furloughed because the public defense system has run out of money. In Virginia, 59 needed new

positions have been taken away along with a freeze on discretionary spending. In Georgia, the Governor has announced cuts of 14% for next year. In New Mexico, 15-20% budget reductions are being threatened. Ohio faces 20% reductions this year. In most states, the reality of significant budget reductions in state and local government funding draws closer every day.

Now is not the time to reduce funding for public defense. Public defenders are appointed to represent poor people. The relationship between poverty and contact with the criminal justice system is well-documented and well-accepted. At the same time that an economic depression will reduce government revenues, the resources needed for public defense will likely increase as millions of people become unemployed and are thrown into poverty. Public defenders already suffer under crushing and unethical workloads. We have no control over workload, or ability to resist new cases created by the policies of police and prosecution. People arrested by the police and charged by prosecutors have a constitutional right to counsel, which the state must provide if they cannot afford to procure it for themselves. As a result of the economic fallout of Covid-19, people who formerly would have been able to hire counsel will now seek the services of a public defender. Now is no time to reduce the resources needed to defend a burgeoning number of people needing counsel. Further, public defender offices typically lag far behind their criminal justice partners when it comes to technology (both software and qualified staff). Public defender offices will need support to adapt to changes in creating client relationships, performing investigations in the field, participating in proceedings, and maintaining staff contact during quarantine. These upgrades will cost money and without them public defender offices will not be able to ethically or effectively provide defense services.

Providing adequate funding for public defense is also a smart investment. Public defenders have been at the forefront of systemic reforms that use tax dollars wisely and implement data-driven policies. Public defenders have led the movement for bail reform, for less draconian sentences, and for a smaller parole and probation system. By securing the release of vulnerable people while at the same time advocating for these reforms, public defenders are saving governments millions of dollars in unnecessary jail, prison, and supervision costs.

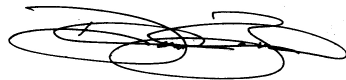
Instead of cutting funding to these essential workers, today presents an opportunity to do even more to address our bloated and ineffective system of mass-incarceration. We can radically limit arrests and prosecutions to actual public safety threats, drastically reduce the number of people held in pre-trial detention, and significantly reduce the use of probation and parole to supervise people who don't need supervision. Mass incarceration developed in part because of our nation's failure to fund adequately the public defense function. We will not be able to reduce mass incarceration and the significant harm being done to families and communities if resources are now taken away.

Most importantly, public defenders must be funded sufficiently to protect the constitutional rights of the accused. In a nation dedicated to the rule of law, our court system, including prosecutors and public defenders, are equally essential to protect our communities and deliver the promise of justice for all.

The National Association for Public Defense (NAPD), an association of over 22,000 public defenders and public defense professionals, calls upon the nation to recognize the immense contribution of public defenders, particularly during this time of crisis.

Until there is a massive restructuring of the criminal justice system and a significant reduction in national incarceration rates, NAPD demands that funding for public defense services remain at least at its present level, that anticipated increases in public defender workload be closely monitored, and that public defender offices have access to funds required to adapt to new justice system operation. NAPD believes that the imminent economic reality will require reducing our massive criminal justice system. We believe that can – and must – be done safely. We look forward to participating as a partner in the process to create new criminal justice policies that reflect commitments to fairness, justice, public safety and community health.

Sincerely,



Derwyn Bunton, Chair
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