Right to Counsel National Consortium Holds Inaugural Meeting

National, State, and Local Policymakers
Discuss Ways to Protect Sixth Amendment Rights

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In its continued effort to support the Department of Justice’s Right to Counsel Initiative, the Bureau of Justice Assistance (BJA), in collaboration with the Right to Counsel (R2C) National Campaign Steering Committee, has convened a consortium of national, state, and local criminal justice stakeholders and policymakers. The goal of this initiative is to raise awareness about the important issues relevant to providing effective public defense services, spearhead a national conversation, and identify systemic approaches — involving both criminal justice and non-criminal justice stakeholders — to ensure that the right to counsel is universally provided as declared in the Sixth Amendment of the Constitution.

The consortium will promote its strategic vision and associated steps to effectively implement them with policymakers and criminal justice stakeholders at the national, state, and local levels. The Right to Counsel National Campaign, which officially launched at the inaugural meeting on November 10, 2015, will utilize a multi-faceted strategy that extends beyond policymakers to the public to identify the issues that meaningfully impact the ability to carry out the right to counsel and to identify possible solutions that provide the public defender community with the necessary tools to effectively fulfill this obligation.

Meeting participants included officials from the Department of Justice and representatives of various stakeholder groups, including defense attorneys, prosecutors, judges, court personnel, advocates and nonprofit groups, and community organizers. The meeting took place at the Office of Justice Programs and began with a welcome from BJA Director Denise O’Donnell and former BJA Senior Policy Advisor Kim Ball. As part of her welcoming remarks, O’Donnell commended the vast diversity of disciplines in the room, each having their own reason for interest in, and contribution to, public defense, stating “we have gathered to continue the momentum to bring the conversation about the right to counsel to the agenda.” She reaffirmed the need for a cross disciplinary consortium such as this in achieving “Gideon’s promise.”

During the opening remarks, Ball applauded the consortium members on their ability to coordinate and leverage resources from one another. She stressed the importance of public defense as a vital partner in the criminal justice system and as part of the solution to criminal justice reform. Further, she added that fairness and human dignity are key components of reform and are embodied in the R2C National Campaign. In closing, she noted that challenges and solutions presented by the R2C National Consortium may not apply to all jurisdictions and that the solutions will be unique to each system.

The meeting focused on values, challenges, strategies, and action planning, and followed a framework that not only demonstrated the importance of the Sixth Amendment right to counsel but also provided an opportunity for participants to hear from panelists of various disciplines. Prior to the panel discussions, a short video that delved into the importance of skilled counsel developed by the National Association of Criminal Defense Lawyers (NACDL) was shown, providing a notable transition to the first panel on values. The video and other meeting materials are available on the R2C National Campaign website: www.rtcnationalcampaign.org.

Following provides a brief meeting overview:

Shared Values

During the first panel, Shared Values, panelists discussed the importance of skilled counsel through personal anecdotes and values pertaining to the constitutional right to counsel. The law enforcement perspective shared values of confidence in the system and stressed having an attorney who essentially acts as a lifeline and is able to delve deeper into hidden needs such as disability or mental illness. At the Albert Cobarrubias Justice Project, the phrase “time served into time saved” is often used to underscore what can happen when community members partner with public defenders. This is where “right to counsel doesn’t exist on paper, but in relationship between defendant and counsel,” said Raj Jayadev, Founder of Albert Cobarrubias Justice Project. Community engagement and equality in representation play key roles in effectively exercising the right to counsel.

Constitutional rights, liberty, and pragmatism are just some of the core values that resonated with Judge Robert Lasnik as he addressed the R2C National Consortium. In December 2013, Judge Lasnik issued a landmark decision in Wilbur v. City of Mount Vernon in which he “found that the system is broken to such an extent that "the indi-
Constitutional rights, liberty, and pragmatism are just some of the core values that resonated with Judge Robert Lasnik as he addressed the R2C National Consortium. In December 2013, Judge Lasnik issued a landmark decision in *Wilbur v. City of Mount Vernon* in which he “found that the system is broken to such an extent that “the individual defendant is not represented in any meaningful way, and actual innocence could conceivably go unnoticed and unchampioned.” During his remarks at the inaugural meeting, he stressed the importance of looking at the history of the rights of states versus the nation to uncover problems; this deep-rooted fight helps to explain why it took 200 years to reach *Gideon* and, equally important, why the constitutional right to counsel is still not fully realized more than half a century later. He also said that sometimes there is a need for an injunction from a federal judge to inspire others “to step up and do what needs to be done to protect the right to counsel.”

The final panelist, Luisa Taveras from the Open Society Foundations (OSF), provided a funder’s perspective and spoke to fairness and inclusion of everyone at the table. Themes and ideas of procedural fairness, trust, voice, neutrality and respect were brought up by several meeting participants. Judge Brian MacKenzie from the American Judges Association said during audience comments that applying procedural fairness across the board will get better outcomes in the court.

**Challenges**

Jon Mosher of Sixth Amendment Center moderated the *Immediate Challenges to the Right to Counsel* panel. In his introduction, he spoke of ethical blindness that occurs when a defendant who cannot afford an attorney is not provided adequate public defense. There are alternatives to incarceration a defendant may be better suited for and that save taxpayer money by not filling prisons, but an indigent defendant cannot get that offer without adequate public defense. The challenges presented by the panelists ranged from judicial interference and independence of defense function, to system fragmentation and transparency.

When asked about some of his challenges in Michigan, Judge Thomas Boyd spoke of judicial interference and independence of the defense function, giving the example of Michigan’s flat fee contract system, which is a county-funded system. He also spoke to the importance of counsel at all stages of the justice system, including pretrial.

Chief Justice James Hardesty began with background on the fragmented public defense delivery system in Nevada, with no standards of practice, leading up to a 2008 Nevada Supreme Court decision. At the time, the public defense office served four counties, with numerous challenges such as conflict of counsel, fees for counsel, in-camera affidavits (a violation of attorney-client privilege), competency concerns, and release from jail which most times was a result of a guilty plea. The supreme court decision forced Nevada to create a new defense system, establishing detailed practices and standards. Nevada studied caseloads and established limitations, implemented mandatory training, developed statewide data collection methods, recognized differences between rural and urban communities with respect to funding and availability of competent counsel, and identified problems with contract counsel – all completed as a result of the state supreme court decision. Chief Justice Hardesty placed the burden of improving public defense systems on the courts, stating that the courts must be proactive in determining the qualification of lawyers. He also pointed out a need for collaborative approaches and for the court to take on the leadership role. Chief Justice Hardesty said that “by appointing counsel we are clearing out our jails...you can’t afford not to do this.” When asked from the audience “who (then) funds public defense, state or county?” Chief Justice Hardesty responded, “The state has ultimate responsibility.”

The importance of advocacy groups was brought up by Senator Rodney Ellis of Texas. He also stressed the importance of transparency in the system being vital to the R2C mission. Media and press can play a role in ensuring transparency. “The more we know about a problem, the more we can generate solutions to the problem,” said Senator Ellis in explaining the role of media. He also mentioned litigation and transparency being the key to bail reform and pretrial release. Risk assessment at pretrial is a tool that needs to be available. Given all this, each local system needs to meet their local needs and each solution may look different based on local needs.

The Department of Justice’s commitment to improve public defense delivery systems throughout the nation was reiterated by Assistant Attorney General Karol Mason and Principal Deputy Assistant Attorney General Vanita Gupta during luncheon remarks. Mason applauded the National Consortium for increasing the level of understanding of what is at stake when talking about indigent defense and said to count on having Department of Justice as a resource for the consortium. Gupta pointed out that the failure to deliver true meaningful right to counsel is a failure of every single part of the criminal justice system. She presented numerous benefits for supporting effective right to counsel and reasons why ineffective counsel is detrimental to our criminal justice system, since denying Sixth Amend-
ment rights drains resources and diminishes public safety. She also stressed the fundamental idea of fairness in our legal system and that part of our national identity is anchored in the Sixth Amendment right to counsel, which is also part of due process required for every defendant. Aside from the, fundamental “rights” argument for the right to counsel, she also provided systemic reasons; for example, longer pretrial detention is correlated with higher recidivism, and two-thirds of jail stays are awaiting trial, arguing for the defendant’s right to due process. She closed with an empowering message to the national consortium to “resolve to protect the fairness and impartiality of our justice system” and by doing so, truly delivering America’s promise of equal justice for all.

Andrew Stanner, former Senior Counsel, Office for Access to Justice, Department of Justice, provided remarks on that office’s role and commitment towards the R2C Initiative. He spoke of public defense providers doing essential and heroic work with inadequate resources. Stanner emphasized the need to increase access to counsel in first appearance, bringing in unfamiliar allies, and re-conceptualizing public defense delivery systems so funding and priorities reflect this commitment to justice.

**Strategies and Solutions**

During the Strategies for Addressing Challenges session, Jo-Ann Wallace, President and CEO of the National Legal Aid and Defender Association (NLADA), facilitated a panel which provided a host of solutions to public defense delivery system challenges with an understanding that solutions presented were not one-size-fits-all. Every jurisdiction struggling with a particular challenge should examine their situation and determine a solution that’s best for them, and their solutions may look very different from what’s presented in this session. Throughout the solutions presented, the theme was collaboration and finding common ground.

Judge Elisabeth Earle, Presiding Judge for the County Court at Law Seven, Travis County in Texas, and private attorney Gerry Morris from Texas provided examples of managed assigned counsel systems. In doing so, they stressed the importance of implementing a public defense delivery system that would effectively meet ABA’s Ten Principles. Morris described his office’s process in handling indigent defense cases and listed the key components they apply, such as an extensive application process, monitoring attorneys in court, and strictly imposing caseload limits. None of this would have been accomplished without communication and collaboration between criminal justice stakeholders in their jurisdiction.

Senator Gerald Malloy from South Carolina spoke of his contribution as a member of a legislative body in integrating South Carolina’s public defense system. South Carolina established a unified statewide public defense system, with an indigent defense commission comprised of experts who are paid on the same scale as prosecutors. Senator Malloy stressed the importance of bi-partisan support in improving their state’s indigent defense. Representative Michael Pitts from South Carolina echoed Senator Malloy’s sentiments on the important role that the public defender plays in ensuring justice and that the defendant understands his/her rights. Representative Pitts spoke of his personal experiences, and emphasized fairness and the value that comes from the notion of innocent until proven guilty.

Sheriff Susan Pamerleau from Bexar County, Texas reported on her experience in co-chairing an executive committee to guide the Bexar County Smart Justice Initiative of the Meadows Mental Health Policy Institute. A key goal of the initiative is to reduce the number of people with mental illness in county jails in Texas by identifying and diverting as many as safely possible to community treatment. As a result of this initiative, the county created a Public Defender Office, where defense lawyers specializing in mental health will be representing persons with mental illness at the magistration process to advocate for pretrial release from the jail and placement into community treatment. Sheriff Pamerleau described the collaboration between the county district attorney and the public defender office as focusing on reallocating existing resources for the treatment and supervision of arrestees with mentally illness.

In addressing some of the challenges, Norman Reimer, Executive Director of NACDL, urged reform through litigation and rulemaking. This requires not only involving criminal justice sectors but also engaging the community and educating the public on the true nature of their right to counsel, as well as utilizing media in such outreach efforts. It also entails reaching out to the rest of the justice profession – the mainstream bar and not just those in criminal defense. During the Action Planning Session, the meeting participants split up into small groups across disciplines. Each group discussion consisted of reviewing the challenges presented and brainstorming on additional challenges. This allowed everyone to draw from their jurisdiction’s experiences and/or challenges. Each group also brainstormed solutions and action items associated
with each solution. Towards the end of the session, individuals in each group were encouraged to discuss one step/action item that they will address. The report-out was facilitated by Cait Clarke, Chief, Defender Services, Administrative Office of the U.S. Courts, and was done by discipline, i.e. law enforcement and sheriffs, prosecution, legislators, funders, community organizers/advocates, judiciary, and public defense. Although not discussed in the small groups, during the report-out a number of steps that could be taken by the federal government were mentioned, including promulgating models and funding to support programs that meet model standards. The action items that emerged demonstrate the importance of the right to counsel and its priority among meeting participants.

The meeting concluded with final remarks from Ball, during which she thanked everyone for their time and participation. She expressed delight with everyone’s enthusiasm during the action planning session and encouraged everyone to keep the momentum going. She encouraged R2C National Consortium members to continue to update each other on related activities via email and to participate in quarterly webinars. An annual in-person meeting is also being planned for fall of 2016, which will mark one year of R2C consortium activities. Ball also urged the group to promote the R2C National Campaign on social media and to actively stay involved in our collective mission of a fair and equitable criminal justice system, which requires representation by skilled defense counsel with adequate resources at every stage of the criminal process.

**Endnotes**


4Full remarks are available online at the Department of Justice website, http://www.justice.gov/opa/speech/principal-deputy-assistant-attorney-general-vanita-gupta-delivers-remarks-inaugural

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### Recommended Action-Items from R2C National Consortium Inaugural Meeting

- Law enforcement working with the public defense offices to promote public awareness that ensuring the provision of effective public defense services is essential to ensuring the integrity of the criminal justice process.
- Prosecution assisting in developing criminal justice councils with judges and lawyers as equal partners to ensure adequate funding for public defense.
- Legislators being informed on the importance of ensuring the right to counsel, committing to hosting conversations focusing on the importance of effective public defense services, and changing the culture generally to reinforce the major role state and county officials play in guaranteeing that this right is effectively carried out.
- Funders to provide resources to ensure effective defense representation at first appearance, continuing through vertical representation throughout the adjudication process.
- Community Organizers/Advocates making a commitment to focus on R2C media messaging and assisting in effective community outreach regarding the judicial process and the role which defense plays in it.
- Judiciary working to promote a coordinated approach to ensuring effective and well-resourced defense services at all phases of the adjudication process.
- Public defense providers working to change the culture of public defense offices to promote their role as key stakeholders in the justice system and educating other criminal justice stakeholders and state and local government officials on the important function they perform.

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