Right to Counsel National Consortium Third Annual Meeting

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

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On November 2, 2017, criminal justice experts, practitioners, and advocates joined the Justice Programs Office (JPO) at the U.S. Department of Justice’s (DOJ) Bureau of Justice Assistance (BJA) for the third annual meeting of the Right to Counsel (R2C) National Consortium. Meeting attendees included defenders, policymakers, legislators, prosecutors, law enforcement officials, judges, corrections officials, court employees, community advocates, community members, and funders. The purpose of the meeting was to celebrate R2C consortium member successes and think collectively about how to overcome the challenges preventing the Sixth Amendment right to counsel from being meaningfully upheld. The meeting featured a keynote address from Deputy Attorney General Rod J. Rosenstein, fireside chats with a variety of stakeholders, and breakout discussion sessions. One overarching theme was woven throughout the meeting: all system actors play a role in ensuring the constitutional right to counsel.

The day commenced with opening remarks from Maha Jweied, Acting Director of the U.S. Department of Justice’s (DOJ) Office of Access to Justice. Jweied highlighted the collaborative nature of the R2C National Campaign and DOJ’s long-standing support for its mission and work. She stated that the right to counsel and effective public defense systems are critical to upholding the rule of law. Acting Assistant Attorney General Alan Hanson of the Office of Justice Programs took the stage next, reinforcing DOJ’s commitment to the right to counsel, which is essential to ensuring all other Sixth Amendment rights are upheld.

Deputy Attorney General Rosenstein then delivered keynote remarks, emphasizing that protecting the rights of the accused is critical to DOJ’s mission to seek justice and promote the rule of law. The rule of law is what keeps our criminal justice system running fairly and rationally, and the right to counsel is critical to making the system run properly. The right to counsel is not only the cornerstone of upholding the rule of law, it is fundamental to the American ideal of individual liberty. Rosenstein stated that, “commitment to the defense of the rights of the accused is a commitment to the protection of individual liberty,” and there is no greater exercise of governmental power than the power to take away liberty through incarceration. Defense attorneys are the ultimate check on this power—power that is wielded by the discretion of the prosecutor. Rosenstein stated that “justice is rooted in truth,” and to ensure this, we must have effective public defense systems. Rosenstein concluded with a call to action: “Shoring up the right to counsel is not just a task for the defense lawyer, it is a task for all of us.” He went on to say that when there is a breakdown in effective public defense systems, there is a breakdown in the rule of law. Further, “when we see a break down in the rule of law, it is more than a tough break for the defendant, it is a break down in rule of law for all of us.”

Right to Counsel National Consortium Reflection

R2C Consortium highlights were delivered by Genevieve Citrin Ray, Project Director of the Right to Counsel National Campaign and Senior Program Associate at the Justice Programs Office (JPO), a center at the School of Public Affairs at American University. Ray spoke about her involvement with the campaign since its inception in 2015 and the consortium’s growth in the past two years, now consisting of more than 75 member organizations and over 300 individual members. Ray shared her personal dedication to public defense, which was born out of the four years she spent as an investigator for The Public Defender Service for the District of Columbia. Despite being one of the best and most well-resourced public defender offices in the country, staff were pressed for time and support. Ray’s story illustrated the pervasiveness of obstacles to providing effective public defense services. Ray highlighted the work R2C consortium members engaged in over the past year, including presentations at five national conferences, quarterly webinars, monthly newsletters, a roundtable with court managers on the role they play in ensuring the right to counsel, and the release of a public opinion research report, Americans’ Views on Public Defenders and the Right to Counsel, and an accompanying message guide. The report sheds light on the widespread support for public defense service providers and funding public defense. The American public sees a clear need for defenders and recognizes the necessity of improving defense systems. The report and message guide also highlight the importance of using value-based communication tactics when creating messaging about the right to
counsel and public defense. Ray concluded with a call to action: “I encourage you to meet someone new, listen to an idea that you disagree with, put yourself in the shoes of someone in a profession most opposite yours, and most importantly, recognize the roles we all play in ensuring our Constitutional right to counsel and the importance of effective representation.”

**State and Local Accomplishments: Contra Costa, California**

A panel discussion highlighting state and local accomplishments that promoted effective public defense, the right to counsel, and unique partnerships was next on the agenda. **Captain Diane Aguinaga of the City of Antioch Police Department, Donté Blue, Deputy Director at the Contra Costa County Office of Reentry and Justice, and Ellen McDonnell, Deputy Public Defender of the Contra Costa County Office of the Public Defender** spoke about a particularly unusual collaboration in Contra Costa, California, between the Contra Costa County Office of the Public Defender and the City of Antioch Police Department. United by their shared interest in reducing failures to appear, the public defender’s office and the police department formed a unique initiative called the Early Representation program. Under this project, law enforcement officers help to connect the accused with public defenders shortly after arrest. After giving a citation, law enforcement officers provide individuals with information cards for the office of the public defender. Shortly thereafter, a public defender and an aid receive the names and contact information of the individuals who received the citation. They then reach out to inform the cited individuals about the representation available to them, remind them about their court date, and provide critical legal advice and pre-trial services when needed. As a result of this partnership, rates of failure to appear in Antioch municipal courts have dropped from 52 percent to 27 percent and failure to appear rates in Contra Costa courts decreased from 52 percent to 17 percent. Additionally, fewer bench warrants have been issued since this initiative started and court backlogs have decreased. Captain Aguinaga said that for the police department, this partnership has saved time, money, reduced repeat interactions, lowered recidivism, and increased morale. Defense attorneys appreciate the program as well, as it decreases the collateral consequences of minor arrests and prevents unnecessary guilty pleas. The panelists concluded by discussing the circumstances that made this program particularly successful. First, the implementation was simple. Second, it involved input from all stakeholders and provided them with an opportunity to unite through common goals and shared values. Finally, the project gained strength through the development of relationships between individual law enforcement officers and public defenders, which were established during in-person meetings and ride-alongs.

**State and Local Accomplishments: Tennessee**

Following the Contra Costa panel, **David Carroll, Executive Director of the Sixth Amendment Center, and Tennessee Supreme Court Chief Justice Jeffrey Bivins** discussed ongoing efforts to improve Tennessee’s public defense delivery system. After establishing a diverse Indigent Representation Task Force, consisting of representatives from the legislature, governor’s office, academia, private bar, and former judges, to tackle some of the challenges affecting public defense in the state, the Tennessee Supreme Court announced unanimous support for sweeping public defense reforms recommended in the task force’s April 2017 analytic report. The recommendations laid out by the task force include: creating an independent oversight commission; uniform trainings and certification processes; establishing an appellate division and a conflicts division at the public defender’s office; reducing the number of appointments to private counsel and increase compensation rates for private counsel; and, increasing funding for the public defense system by 20 percent. While this is a major step forward, it is now up to the legislature to implement the recommendations. Follow the Sixth Amendment Center to keep up to date on what happens!

Chief Justice Bivins and Carroll discussed the systemic challenges that prompted the task force’s investigation and why effective public defense is important for judges. Plagued with a public defender office that was overwhelmed by cases, under-compensated private appointed counsel, and post-conviction capital defense cases that require extensive resources, Tennessee’s failing public defense system could no longer be ignored by the court. Chief Justice Bivins explained judicial commitment to defense as non-partisan and necessary to uphold the Constitution. Additionally, he reminded attendees that quality criminal representation benefits not only the accused, but also the victim(s), as quality representation enhances the legitimacy of the court process.

**Fireside Chat with Law Enforcement**

After exploring state and local victories in the arena of public defense, the day transitioned to a series of four fire-
side chats, allowing for in-depth conversations with practitioners, subject matter experts, and an individual who was impacted by the criminal justice system. First, Domingo Herraiz, Director of Programs at the International Association of Chiefs of Police, moderated a fireside chat with law enforcement. To maintain public safety, law enforcement needs the trust of the community and for the community to believe in the legitimacy of the criminal justice system. Trust is fostered by upholding the rule of law and communicating all rights effectively. Public defense and public defenders are essential to promoting these values and keeping the public safe. When discussing the importance of an effective public defense delivery system, Judge George Grasso of New York, who began his career in law enforcement, stated, “the concept of having a law enforcement that respects the rule of law, is in no way inconsistent with the goal of public safety; it is essential to it.” To create such a culture of respect, Chief Jeff Swoboda, Police Chief of the Elgin Police Department, encouraged police departments to foster relationships with other criminal justice stakeholders, listen openly, and advocate for each other’s needs. In so doing, law enforcement agents increase the likelihood of each stakeholder’s success, thereby accrediting the success and fairness of the entire system. The panel concluded by highlighting the value of the right to counsel and public defenders to law enforcement; how effective public defense enhances the legitimacy of court procedures and saves time, as timely appointment of counsel can expedite investigations, fosters community trust, and decreases the rate of mistrials and wrongful convictions. Herraiz emphasized that messages matter and that all stakeholders must break out of their silos and carry system-actor-specific messages to the broader field.

Fireside Chat with Prosecutors

The second fireside chat was moderated by former public defender Seema Gajwani, Special Counsel for Juvenile Justice Reform, D.C. Office of the Attorney General. Gajwani reminded the panelists and audience that prosecutors have an obligation to preserve the reputation and integrity of the criminal justice system. Effective public defense systems that promote quality representation enhance the legitimacy of the court process. As Eric H. Sussman, First Assistant State’s Attorney in Cook County State’s Attorney’s Office, Illinois, then discussed, prosecutors are charged with upholding justice first and foremost. Their job is not simply to send people to detention facilities. Rather, upholding justice necessitates ensuring that the right to counsel is meaningfully implemented. To reach this goal, public defense delivery systems must be designed and resourced with a focus on quality representation. Adding to this, Mathias Heck Jr., Montgomery County Prosecuting Attorney, Ohio, emphasized that the prosecutor’s role is to achieve justice and to do this requires effective public defense. Matthew Redle, County and Prosecuting Attorney in Sheridan County, Wyoming, discussed the recent trend of prosecutors participating at the forefront of justice reform and innovation. Redle recommended forming cross-disciplinary criminal justice councils to evaluate current systems and devise solutions that put people first. As an example of this model, Sussman discussed how prosecutors and defense attorneys met together to determine criteria for release when galvanizing bail reform in Cooke County. All the panelists emphasized that it is the prosecutor’s responsibility to communicate broadly that a robust public defense system is central to public safety and a just criminal justice system.

Fireside Chat with Cross-Discipline System Actors

The third panel was moderated by Jack Cutrone, Senior Policy Advisor at the National Criminal Justice Association. Karhlton Moore, Executive Director of the Ohio Office of Criminal Justice Services and President of the National Criminal Justice Association, discussed the role of SAAs in the criminal justice system, emphasizing the holistic nature of their jobs. Moore encouraged his colleagues, who are charged with administering criminal justice funds, to go into the field and witness the impact of their funding decisions. A fully-funded public defense delivery system is requisite for a well-run criminal justice system. Dagny Stapleton, Deputy Director of the Nevada Association of Counties, discussed the funding difficulties counties encounter in Nevada, where 97 percent of public defense funding comes from the counties. In particular, rural counties feel the strain that public defense places on their budgets, especially when funding capital cases. In response, the Nevada Association of Counties has proposed a number of reforms over the course of several legislative sessions, including the state funding capital cases and the creation of an independent, statewide public defense commission, which the state Supreme Court convened in 2007. Deb Sahd, Special Assistant to the Secretary Pennsylvania Department of Corrections, emphasized the need for front-end reforms, as they are more effective and efficient. Sahd mentioned that effective defense counsel can ensure that individuals are not unnecessarily entering the corrections system. Professor John Rago, Assistant Professor of Law at Duquense University, acknowledged that the physical appearance of public defender offices often conveys a message and improving office space is a requisite part of the necessary change in
culture. Each panelist spoke about the role that all system actors play in ensuring the right to counsel and the importance of messaging about the right to counsel and public defense differently to each system actor. All the panelists discussed how effective defense systems increase public safety, enhance the credibility of the justice system, and result in true rehabilitation by focusing on alternatives to incarceration and alleviating the crowding in jails and prisons.

**Fireside Chat with Impacted Community Member**

The final fireside chat of the day provided a human look at the importance of effective public defense. **Senior Policy Counsel at JPO Zoë Root**, who joined JPO after her time as defense attorney at The Bronx Defenders, led a moving discussion with former client **Tracey Sewell**, emphasizing the power of effective representation and the impact it has on the individuals who receive it. Sewell was introduced to human trafficking and the sex trade by her stepfather when she was a child. She first encountered the criminal justice system at the age of 16 when she was arrested and charged with prostitution. Despite her age, she was charged her with a crime instead of the system intervening in the trafficking of a minor. She went on to be arrested and convicted many more times in her life, only to return to the hands of a trafficker following case disposition. In 2002, she was arrested on a charge related to her trafficking-induced cocaine addiction and was diverted to treatment court. This treatment court experience was the first time she had been treated like a human being within the criminal justice system, in which she was rewarded for good, healthy behavior instead of simply being punished for bad behavior. This was the first time Sewell was ever given the support necessary to contemplate an achievable plan for getting clean. After graduating from treatment court, she embarked on a positive trajectory only to be stymied by her criminal convictions more than a decade later. It was at this time that she met Root and realized the power of effective representation. With the assistance of counsel, Sewell was able to get over 30 criminal convictions vacated, or erased, from her record. While this and of itself is cause for celebration, perhaps more moving was the public apology Sewell received from the judge who decided her vacatur motion. Moved to tears herself, the judge spoke powerfully about the ways the criminal justice system had repeatedly failed Sewell. With the help of a well-resourced, well-trained attorney who had the time to devote to learning about and sharing Sewell’s story, Sewell is now unencumbered by a criminal record for the first time in decades. Sewell can pass a background check, eliminating a tool that employers had frequently used to intimidate her and allowing her to do meaningful work as a home health aide and school bus aide for developmentally disabled children. Sewell reminded the crowd that defense attorneys are the voice for the voiceless. She encouraged everyone in attendance to “do your best and get to know people,” to recognize their complex humanity, and not to simply judge people accused of crimes by what is alleged on their charging documents.

**Breakout Sessions**

For the final hours of the day, all the meeting attendees broke out into cross-discipline groups to engage in a “Bridge the Gap” exercise. The purpose of the exercise was for each participant to discuss their discipline-specific perspective on the right to counsel, where they believe that right stands today, and what they see as the solutions needed to build the ideal public defense delivery system. Participants were first asked: What is the world you want to see? How would the system work if it lived up to our core values? All the groups agreed that their vision included more funding and reasonable caseloads for public defense delivery systems. In addition, in their ideal world, participants agreed that public defense providers would have all the tools necessary for attorneys to provide effective, quality representation, including access to continual training, investigators, social workers, civil attorneys, advocates, and experts for consultation and testimony. Participants also believed that parity of resources and data capacity between defenders and prosecutors is necessary, as is a nationwide understanding of when the right to counsel attaches that promotes early, often, and automatic appointment of counsel. Participants described a world in which all criminal justice stakeholders would understand and care about their role in ensuring the right to counsel with more compassion and understanding for those accused of crimes inside and outside the courtroom.

Participants were next asked about the day-to-day realities of how court systems operate in ways that are inconsistent with what justice demands and what the right to counsel embodies. Participants expressed that currently public defenders are overwhelmed and underfunded, and the public is not
sufficiently informed about or invested in the right to counsel. While systemic inefficiencies persist, reactions to those inefficiencies result in a rush to get things done quickly rather than getting them done right. This was followed by a discussion about obstacles to ensuring right to counsel. While discussing the pressures that cause this gap between reality and the ideal, participants noted that culture, misinformation, and lack of funding stand in the way of their vision. When asked about strategies to chip away at the obstacles, many noted that a public awareness campaign like the Right to Counsel National Campaign was critical to increase understanding and develop effective solutions to the crisis in public defense. In addition, participants noted that the stories and voices of the communities most deeply affected by the crisis must be central to the conversation. Finally, participants discussed the need for quality data showing that effective public defense is both morally sound and cost-effective for taxpayers.

Conclusion

The R2C Third Annual Meeting was an inspirational day celebrating attendees’ active commitment to ensuring the constitutional right to counsel, raising awareness about deficiencies in public defense delivery systems, and brainstorming ways to overcome these challenges through both cultural and structural changes. While the BJA-funding for the Right to Counsel National Campaign will expire in 2018, Priya Sarathy-Jones, Policy Advisor at BJA, affirmed BJA’s commitment to the Sixth Amendment right to counsel, referencing the Bureau’s funding of a new initiative, Training and Technical Assistance to Support the Protection of Constitutional Rights Under the Sixth Amendment funded by BJA. To learn more visit: https://www.bja.gov/sixthamendment/.

Ensuring the constitutional right to counsel and the fair administration of justice requires the involvement of all system actors—which is precisely why the R2C National Consortium has such a diverse and multidisciplinary group of members. While all criminal justice system actors share the goal of achieving justice, this collective mission is impossible to achieve without effective public defense. To make comprehensive, sustainable change, all system actors must recognize the value of defense and take a proactive role in its preservation. Stay tuned to see where the R2C National Campaign heads next!

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Endnotes


