

# A SOCIAL MEDIA TOOLKIT

For Organizing and Advocacy to End  
Mass Criminalization and Incarceration



# INTRODUCTION

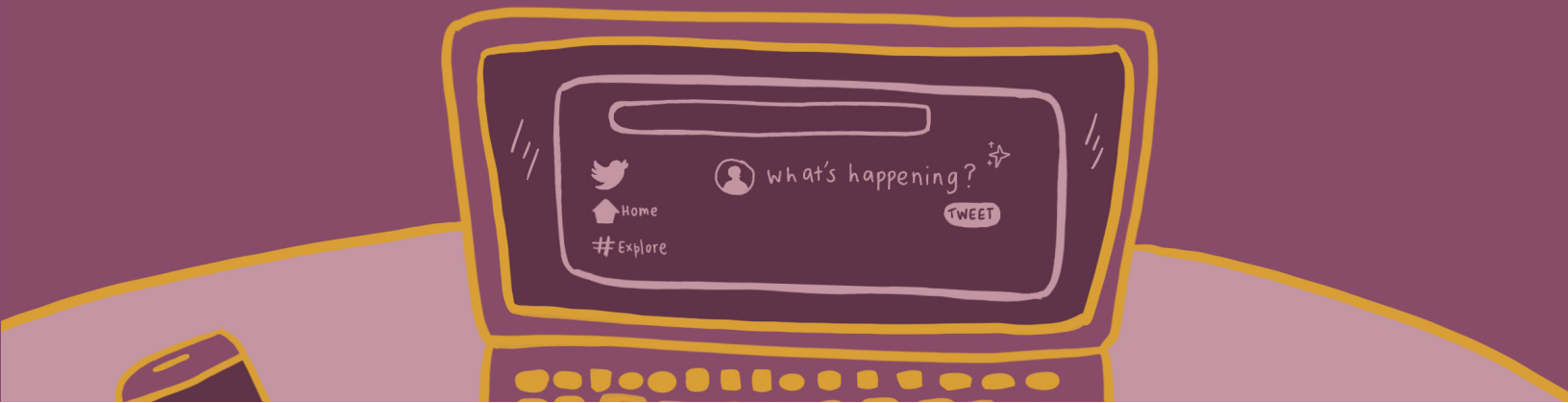
Storytelling is a major force that can move people to demand social and political change, and social media can be a powerful and effective tool for leveraging storytelling and shifting public narratives. For this reason, in recent years, an influx of people - public defenders, court watching groups, and individual advocates - have taken to social media to expose the injustices they witness or experience in courtrooms.

**However, storytelling is not a tactic that is inherently or always good; depending on why and how you share stories from court, you run the risk of perpetuating narratives that reinforce, rather than work to dismantle, the criminal punishment system. You also run the risk of inflicting further harm on the people impacted by that system.**

The COVID-19 crisis has raised urgent challenges around how to use storytelling as a

mechanism to end mass criminalization and incarceration and, of critical importance in this moment, to push for mass release. The dangers of COVID-19 are particularly stark in the criminal punishment system — which, by its nature, makes social distancing impossible and allows for rampant transmission of the infection. Experts around the world have called for decarceration as the most effective way to prevent transmission.

Accordingly, lawyers and organizers around the country are seeking the urgent release of those caged in carceral facilities, and simultaneously grappling with the closures of courts and in-person hearings. Many courtrooms that have not shut down are operating by phone or video, to which the public often lack access. In-person visits at jails and prisons have largely stopped. Public defenders have even less access than before to meet, advise and hear from the people they are defending.



In the urgency of this moment, where quick action is necessary to protect the lives of millions of people, the desire to share stories that will quickly and easily grab attention and empathy is more prevalent. But it is more important now than ever to be vigilant about how and why we tell stories or use social media.

**The pandemic is forcing widespread conversations about who we incarcerate and why, and so we must not fall into the traps of highlighting the stories of people who “deserve” to get out because the only reason for their incarceration is money bail, or because they have been charged or convicted of “nonviolent” offenses.**

As we explain in this guide, these types of distinctions uphold the logic of the criminal punishment system, instead of dismantling it.

This guide is intended for organizers and advocates working to end mass criminalization and incarceration, who are trying to do that through structural systems change, and who have decided that storytelling and narrative shift through social media is part of that work. We offer guidelines for using social media to share stories of injustice in order to build power and to bring about changes that lessen the size, scope, and reach of the criminal punishment system.

This document is specific to organizers and advocates who are using social media to broadly critique the criminal punishment system, including through the use of storytelling about individual cases or people.<sup>1</sup> Many of the guidelines are not applicable to coordinated campaigns around a specific case or organizing in support of an individual; in those circumstances, a person’s story is generally being uplifted, typically by their family or community, for specific strategic reasons and with their informed consent.

<sup>1</sup> This guide does not, and does not intend to, reflect legal or ethical advice or guidance. It is offered for general informational purposes only. No attorney or other person should act or refrain from acting with respect to any legal or ethical matter on the basis of information in this document without first seeking legal or ethical advice from counsel in the relevant jurisdiction. Use of, and access to, this document or its contents does not create an attorney-client relationship between the reader or user and its authors.

# CORE GUIDELINES

## **GUIDELINE 1** Focus on the Systemic, Not the Individual

When we are engaging with individuals in our daily advocacy — as organizers, public defenders, or in any other role — the individual injustice is what we see first and most starkly. Testimonies describing how real people are affected by the criminal system are a powerful basis from which to hopefully shift narrative, culture, and perhaps even policies. But systemic injustice is what we seek to address with our advocacy, so it's important to be strategic: we always want to tie an individual story to that larger systemic injustice.

Generating empathy for an individual's plight can help support that particular person — but if the story is only focused on that individual situation, it could detract attention from systemic issues, and reinforce a message that this individual deserves better — and that others don't. Individualistic storytelling also encourages us, even if subconsciously, to selectively elevate certain people or stories that are easily cast as “more deserving” of relief from an oppressive system, such as people who are “innocent,” or who are primarily being criminalized for their poverty, or who went on to get jobs, educations or to overcome addiction after being incarcerated.

It is especially important to be vigilant about not making these distinctions during the COVID-19 pandemic as advocates push government officials to #FreeThemAll and to do much more than just release only the “non-violent” or “innocent.” Elevating only particular, more “palatable” stories reinforces the idea that some people don't deserve dignity and support, and undermines the larger goal of changing the entire system.

### **Check yourself before tweeting**

- ✓ Does the story address or expose the reality of systemic issues? Or does it just focus on an individual person's circumstance?
- ✓ If the story does address a systemic issue, does it do so in a way that only directs attention to an individual? For example, does the story fixate on decisions made by the person facing charges instead of the processes or structures of the system that cause harm?
- ✓ Does the story reinforce notions of certain people being deserving at the expense of others who are cast as undeserving?

## GUIDELINE 2 Avoid System-Legitimizing Language

Because the larger goal is to challenge the oppressive structures of our criminal legal system, we must be careful not to adopt its language or perpetuate its logic. When describing what happens in courtrooms, with charging decisions, court processes, and punishments, it's important to be mindful of word choices.

For example, using the words “violent” or “non-violent” to describe conduct and charges endorses the legal system’s criminalizing, problematic, and simplistic categorization of a complex range of human behaviors. It also reinforces a problematic binary that is used to justify the caging of anyone who falls within the “violent” category, a category of charges that is often overly inclusive when applied to racialized and criminalized people.

Other examples are using the terms “low-level” or “serious” to describe charges or “dangerous” to describe people or conduct. And, when speaking of those who have alleged or suffered harm, another example is the use of the word “closure” to describe their experience of the criminal punishment system. Using language like this legitimizes misleading narratives about the people ensnared in the criminal system, and about the system itself, and can actually be counterproductive.

We see the implications of this language in the COVID-19 crisis, where courts and government officials are making release decisions not based on individual or public health concerns, but based on whether people have been charged or convicted of something “violent.”

### Check yourself before tweeting

- ✓ Does any aspect of the information you are sharing legitimize the criminal punishment system?
- ✓ Does any aspect of the information you are sharing support expansion of the criminal punishment system?
- ✓ What are the narratives that this information validates or reinforces? Are they liberatory or punitive? How do they fit into the larger purpose of this storytelling?
- ✓ Does this storytelling reinforce or dismantle harmful dualities such as violent/nonviolent or deserving/undeserving?

## GUIDELINE 3

## Privacy is Essential to Dignity

We should all be able to choose what to share or not share about our lives; a hallmark of the criminal punishment system is that it strips people of this basic dignity by sharing personal information in open court. Advocates should be a line of defense against this affront. While advocates may choose, after appropriate discussions and considerations, to share information about others' lives, this should only be done in a way that honors their consent, privacy and dignity. And in the context of the pandemic, advocates should be particularly careful about privacy. Just because so many of the court and legal discussions right now revolve around private health information does not mean that advocates should follow suit in their social media sharing. Additionally, highlighting the particularly serious health conditions of certain people can create a harmful medical binary with categories of “deserving” and “undeserving,” which will make it much harder to successfully advocate for those without such health conditions.

This “medically vulnerable” focus is thus often counterproductive to larger abolitionist goals. It can sometimes make sense for family members or organizers to share personal stories and experiences when incarcerated people have specifically requested that. Especially during this pandemic, as COVID-19 spreads within carceral facilities and access to communication is diminished, incarcerated people are often going to tremendous lengths — and taking tremendous risks — to share their experiences with their families and advocates, and explicitly requesting that their stories be shared with the larger world. The people tasked with sharing these stories must, where appropriate, take the necessary steps to anonymize them so that the people incarcerated will not face retaliation for speaking out, and they must only share stories in a manner consistent with the desires and dignity of the person. Lifting up experiences and demands from the inside can be a powerful act of solidarity that ensures that the people who are most impacted are having their voices heard.

### Check yourself before tweeting

✓ If you are tweeting about a person who has been arrested or is facing charges, do they know you are doing so? Have you discussed the tweet's content with them, and given them a chance to change or veto it? Have you discussed it with their attorney, in case sharing their information might negatively impact their case?

» If not, are you using information that could be easily linked to this person, such as name, description (such as their age, race, or gender), or even location or date of court hearing? Have you considered all of the ways someone could be identified, even if you don't reveal their name?

✓ What might the consequences be for the person facing charges if police, prosecutors or the judge found your social media post? What if their friends, families or employers found it? Or if the media used it? If someone has given you permission to share their story, provide them — and their attorney — with the opportunity to reflect and weigh in on the potential implications before moving forward.

## GUIDELINE 4 Consider the Role of the Narrator

Advocates and organizers should always be aware of their role in relation to those they are working with and for; this becomes especially true when storytelling is the tactic. If the goal is to meaningfully change culture and to lessen the harm caused by the system to those it harms, de-centering the narrator can be a very important strategy.

You may have thought about the role of the observer’s “gaze” in storytelling, and how certain power dynamics can manifest in a “gaze” that privileges the narrator’s experience over the subject’s. This is as real an issue in social media as well as in other storytelling. Consider your role in the tweet or post you want to make, and then actively remove yourself from it where it distracts from or is not useful to the goal.

In the context of the pandemic, this guideline is particularly important because of the inherently privileged position of many of those who are Tweeting right now, compared to those who are incarcerated — including having the ability to self-isolate and socially distance. The rate at which the private health information, arrest histories, charges, and other information about the people who might be released is being used to make life-and-death decisions. Understanding your role and power in connection to the information you are sharing is imperative.



The “gaze” signifies a power relationship in which the observed are defined in relation only to a privileged observer’s own norms, values, and preferences. It serves as the foundation and justification for hegemonic power. The term often refers to specific power relations, such as the “[white gaze](#),” the “[colonial gaze](#),” and the “male gaze.”

## Check yourself before tweeting

- ✓ Are you featured in the tweet and, if so, how does your placement in the tweet advance the larger goals?
- ✓ Are you centering your own experiences or values? If so, how does this operate vis a vis the subject of your post? Do you occupy a relative position of privilege and power beyond that inherent in being an observer? And if so, how does this impact your role as narrator? Does your post objectify or “other” the person whom you are writing about?
- ✓ Are you filtering the subject’s experiences through a particular cultural lens? Would they recognize or embrace the way you describe them? Are you using words that are clinical, exoticizing, or “other”ing)?
- ✓ Is your social media use coming from a personal feeling of injustice or is it connected to specific strategic goals?
- ✓ Can you share the story from an organization’s account, rather than a personal one? Sharing from a personal account can center the observer in an unnecessary way.

While naming, articulating, and processing your feelings is important for anyone proximate to trauma and oppression, those activities are distinct from strategic storytelling, and should be carefully separated as such.



## GUIDELINE 5 Use Storytelling to Build Power

There is a long history of featuring the poverty and trauma of vulnerable people in storytelling in order to build the profiles, funding, audience — and power — of nonprofit advocates and journalists. In the 1980s, images and stories of starving children in Ethiopia were used to bolster the fundraising of advocates from the Global North; this widespread approach, which came to be known as “poverty porn,” is similar to the “trauma porn” that circulated during the 2000s.

Trauma porn generally refers to images of Black and Brown bodies, often the victims of police violence, being depicted in media in ways that do not advance meaningful awareness and change, but rather exploits individual trauma and is often circulated for an audience that has systemic privilege. Employing such a gaze, which is steeped in power imbalance and personal pain, can be deeply counterproductive to dismantling systemic inequality. Trauma porn recirculates pain for Black and Brown people and perpetuates the power dynamics manifested in the gaze itself: in the ability to observe and report on other people’s pain, suffering, or — as is especially the case in this moment of global pandemic — serious illness or medical needs.

We build power through sharing stories that build solidarity and mobilize people to join the fight to end mass criminalization and incarceration. We can engage our audience’s values and emotions without relying on stories that further exploitation and reify power dynamics which uphold the criminal punishment system. In storytelling, we want to break down these power dynamics; we want to build power, not take it away.

### Check yourself before tweeting

- ✓ What is the existing organizing or advocacy ecosystem in which you exist? Who is already building power to tackle the criminal punishment system? How will your contribution on social media interact or intersect with this organizing ecosystem?
- ✓ Does the story you are sharing bolster your own power or privilege(s)?
- ✓ Does it reinforce the oppression of people you are choosing to share about?
- ✓ Does the story you are sharing focus on individual trauma?
- ✓ Is the story reductive? Does it treat the subject as a whole person with agency, or define them by their role as a victim of oppression and the criminal system?
- ✓ Will your social media posting mobilize people, particularly the people most affected by the criminal punishment system, for ongoing struggle? If so, how? And if not, why are you posting it?

# SPECIAL CONSIDERATIONS

## for Public Defenders

Among the many observers and advocates who want to use social media as a tool for change, public defenders\* have a unique role. Their professional and ethical obligations to their clients —or to the bar— can limit what information they may share. This guide does not provide legal or ethical advice, and any lawyer considering posting about cases to social media should, at minimum, refer to their own jurisdiction’s professional rules of conduct and seek ethics and legal advice for specific guidance and questions. But there are general concerns that are important to consider. A [February 2020 piece by Nicole Smith Futrell in The Champion](#) reviews some of these concerns in detail. Here is an overview of the most central ones:

*\*We use public defenders here, but these considerations also apply to other criminal defense and immigration attorneys.*

### GUIDELINE 1 Protecting Confidential Information

[Rule 1.6 of the ABA Model Rules of Professional Conduct](#) lays out the fundamental ethical principle of confidentiality, which is different than the attorney-client privilege. The [attorney-client privilege](#) is relatively narrow, applying in the face of a legal demand for communications, such as from a judge or in a discovery request. The obligation to keep client information confidential is much broader. Lawyers are generally (subject to individual jurisdiction rules) prohibited from sharing information relating to the representation of a client unless the client has given informed consent, or the disclosure falls into an exception, including being impliedly authorized. This means that, generally, sharing information that includes a client’s identity and can be tied to the client is often prohibited unless there is informed consent. But it can also be much broader than that -- Model Rule 1.6 prohibits the sharing of any information relating to the representation of a client, regardless of its source or its tie to the client’s identity. It’s important to note that “information relating to the representation of a client,” whatever its source, is not necessarily actual statements of a client or facts or evidence from the case. [It could mean](#) the client’s identity or could also mean information contained in a public document or court order. [This rule also generally applies](#) to disclosures by a lawyer that do not in themselves reveal protected information but contain enough information to reasonably lead to the discovery of such information by a third person.

## GUIDELINE 2 Defining Informed Consent

[Rule 1.0 of the ABA Model Rules of Professional Conduct](#) lays out a clear model definition of informed consent:

*The agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.*

As Nicole Smith Futrell points out in her article, the reality of obtaining informed consent can be very complicated given the inherent trust, power, and privilege issues present in a public defender's attorney-client relationship. Indeed, truly obtaining informed consent may be impossible when a person's liberty is at stake, when the relationship is with an attorney, and given the oppressive nature of the system in which that relationship exists.

This can be a very challenging requirement under the circumstances, and one that should be considered carefully in each instance, prior to publicly sharing information.

### EXAMPLE

As a result of the COVID-19 crisis, many incarcerated people have become named plaintiffs in lawsuits seeking their release. The affidavits or declarations of these people — publicly filed documents, presumably obtained after seeking and obtaining consent to their use — may contain deeply personal medical and health information.

What does it mean to have checked certain boxes and received "consent" in this context? What does it mean to obtain consent from someone who is incarcerated in a potentially infected vault during a global pandemic and who may be desperate to be released -- when the attorney holds the potential path to release? And what does it mean to then use these documents in social media, whether or not you have "consent?"

These are all questions that should be examined carefully before posting.

## GUIDELINE 3 Be Aware of Creating Conflicts of Interest

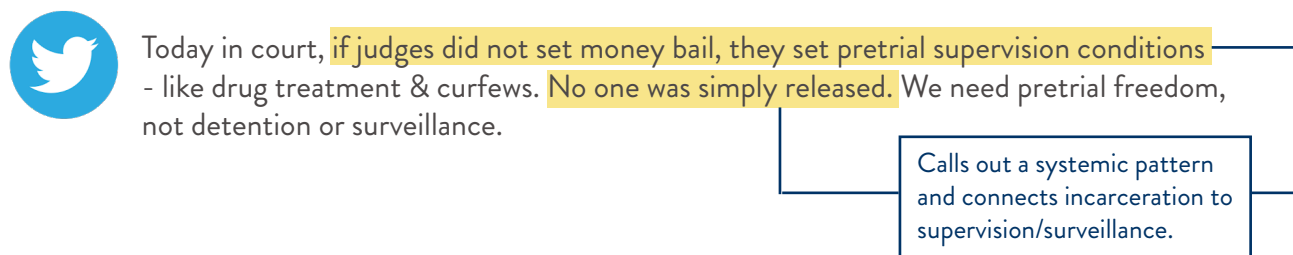
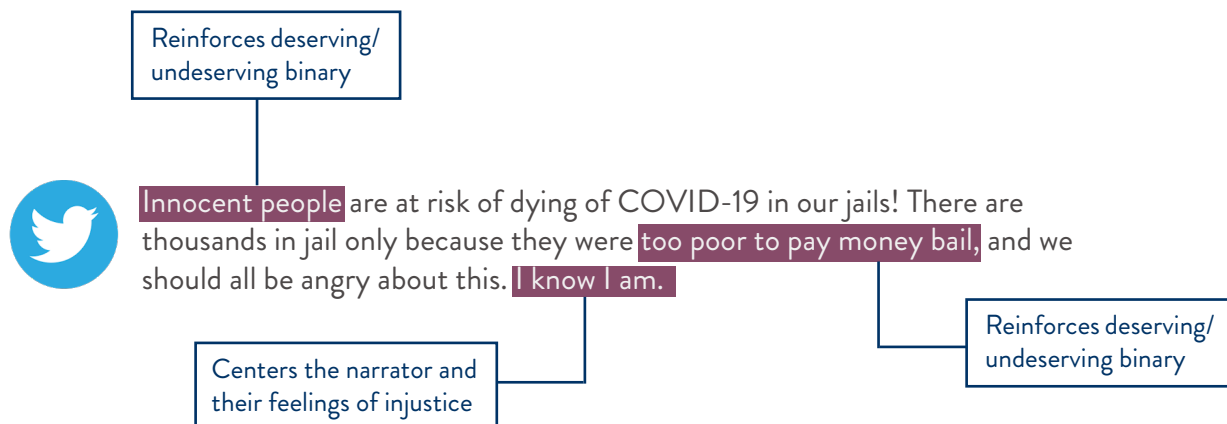
Public defenders and other lawyers who represent multiple clients should consider that objecting to a particular issue on social media may be adverse to an interest of a client, inadvertently creating an actual or perceived conflict. Indeed, such statements may [create a positional conflict](#). Lawyers also risk creating personal conflict between themselves and their client. As Smith Futrell points out, "many defenders may find themselves gaining recognition and professional opportunities because of their social media commentary on social justice issues. A personal interest that materially limits representation can take shape in ways that might not be immediately apparent."

# TURNING PRINCIPLE INTO PRACTICE:

## *Operationalizing the Guidelines*

To help visualize what it might look like to put these principles into practice, we have included example tweets, some of which are in alignment with the guidelines, and others which are not.

Key: **Purple highlights** indicate some of the words or phrases that may be problematic. Words or phrases **highlighted in yellow** are in alignment with the guidelines.





System-reinforcing language

Reinforces deserving/undeserving binary

In court this morning: defendant charged with non-violent, low-level offense. Not dangerous. Not a flight risk. No real history of arrests. Bail set at \$5,000. He - a man living in poverty - will be detained because he cannot pay.

Reveals private information



I've represented people who have sat in jail for years awaiting trial because they couldn't pay a certain amount of money. It is almost impossible to have a fair chance at fighting your case without pretrial freedom. We must #EndMoneyBail AND #EndPretrialDetention

Highlights a systemic problem which requires a systemic solution.



Centers narrator

I got a text from a previous client today, effusively thanking me & letting me know that 1 year after I helped get them into a diversion drug treatment program, they are clean & sober. This is what makes a thankless job worthwhile.

Reinforces deserving/undeserving binary

Reveals private information



Narrator's position is referenced to highlight a systemic pattern, not to center their experience

A pattern of cases are discussed, not an individual person. No risk of violating privacy or individualizing a systemic problem

When you see the same patterns of injustice day in and day out, you realize that the criminal punishment system is not broken, but designed as a tool of white supremacy and oppression.

Highlights the larger systemic injustice and gets at root causes



I represented 5 ppl today in court. Without revealing their identities, I can say that 2 had mental health issues, 2 had substance abuse issues, and all were poor. All good people. They have families. They are trying. They were released today because of bail reform, as they deserved to be, and I look forward to sharing their success stories.

Reveals private information

Reinforces deserving/undeserving binary



So many people in jail who did not even commit crimes. “Technical” probation violations. Missed appointments. Dead batteries in an ankle monitor. And we are letting them get sick and die. For nothing - they did nothing wrong. Travesty.

Reinforces deserving/  
undeserving binary



DA is prosecuting a man for not practicing social distancing. Judge set bail & this person is going to jail, where social distancing is physically impossible. The hypocrisy is appalling. #FreeThemAll4PublicHealth

Calls attention to the actions of  
power holders in the system and how  
they are perpetuating injustice.



It is horrifying to see courtrooms full of Black and Brown and poor and disabled folx in handcuffs, while most, if not all, the ppl in power are white. It makes me so angry. I go home and I just want to cry.

Trauma porn and potentially privileged gaze

Centers narrator and narrator's personal feelings of injustice



Today in court: new client. Young Black woman. Pregnant. Handcuffed. In tears. Unaffordable bail amount set. I argued to the judge that pretrial detention will serve no purpose. Her family was crying in the audience. He didn't listen. She looked back as she was taken away to the jail, mouthed "thank you for trying."

Reveals private information; violates privacy; privileged gaze; reinforces deserving/undeserving binary

Trauma porn

Centers narrator



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If you have questions, or would like to share about how  
you used this toolkit in your work, please email us at

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