

60 Minutes’ “Defenseless”: How the System Has Become Public Defenders’ Worst Nightmare

A Conversation with Justice Programs Office’s Senior Policy Counsel, Zoë Root

By: Kelsey Murphy



Across the nation lack of funding, time, and resources prevent public defenders from adequately representing their clients. As a response, the New Orleans Public Defenders’ decided to refuse felony cases with life sentences or for crimes such as rape, robbery and murder. [In a 60 Minutes segment](#), Chief Public Defender Derwyn Bunton explained that this decision was the only option to ensure that clients are receiving quality counsel and to attempt to halt the way the broken system acts as a “conveyor belt” of sorts. It’s not only the lack of resources that are holding public defenders back. Zoë Root, Senior Policy Counsel at the [Justice Programs Office, a center at the School of](#)

[Public Affairs, American University](#), met with Kelsey Murphy to continue the conversation about the various roadblocks public defenders face daily. She talked about her time at The Bronx Defenders, a holistic public defender organization which provides more resources for both the client and defender than most offices are able. Nonetheless, Zoë said roadblocks still exist. “The South Bronx is the poorest congressional district in the country, and the courthouse itself is incredibly under resourced. If you have a criminal case in the Bronx, the punishment is often in the process. It could take 2-3 years for a case to go to trial. The case of Kalief Browder, who was incarcerated for three years without a trial after a Bronx arrest, is a particularly tragic illustration of the ways that the consequences of unfunded court systems can literally be fatal. There are huge backlogs. This makes it so that people who want to go to trial on their case end up having to wait years to do so. Even if they have made bail or are released, a lot of people don’t have the time or means to come to court for such a long period of time. Many people just end up pleading guilty, even if they have a legitimate defense, because they simply cannot afford to keep missing work or arranging for child care so that they can come back to court in the hopes that one day they might be able to fight their case.” While clients suffer from financial pressure, public defenders experience pressure from the court to get their cases through arraignments as quickly as possible, often leaving them with very little time to interview the client before seeing the judge. These demands indicate a lack of understanding of the overwhelming caseload many public defenders face each day, leading to innocent people getting sent to jail.

Public defense is a component of criminal justice that is rarely discussed on the national platform. The caseload crisis experienced by many public defender organizations has led some public defenders to resort to drastic measures, [such as Missouri PD Michael Barrett’s assignment of a case to Missouri Governor Nixon](#), in order to draw attention to the myriad of barriers they face. Bunton’s decision to refuse cases leaves several people in jail without representation, something that may seem more damaging than beneficial. However, Zoë says, it was a courageous decision that deserves the support of the entire criminal justice community. “I can’t ignore, nor do I take lightly, the fact that as a result of Bunton’s decision there are going to be people who are held in jail longer without representation. I’m sure that reality is one that haunts Mr. Bunton daily. No self-respecting public defender intentionally prolongs or contributes to their clients’ - or would-be clients’ - incarceration. It’s the antithesis of what the public defender community stands for. Had there been a less extreme alternative, I’m sure he would have taken it. And so we have to ask ourselves, how did it get to this point that this was actually the best option this office had? It is outrageous that it had to get to this point. Bunton’s decision, like many boycotts throughout history, is clearly a measure of last resort. Through this action, Bunton is taking a stand and saying that he will not be complicit with the untenable demands that are made of the public defenders in his office. It is not fair, and it is not legal.”

The increasing demands completely restrict and inhibit the work that public defenders are trying to do. On average, public defenders leave their jobs after three years, as the burnout rate is incredibly high. During the 60 Minutes segment, Anderson Cooper asked a group of New Orleans Public Defenders if they believed that an

innocent client had been sent to jail because of their lack of adequate representation – every single attorney raised their hand. “Not being able to prevent an innocent client from going to jail is every public defender’s worst nightmare. It was incredibly courageous of each of those NOLA PD’s to recognize that on national television, to rise above the blame and the fear of the negative reputation public defenders often have, and to take a stand and point out that this is not their fault, but rather the fault of the system.” The system’s failure is visually indicated when Bunton takes Anderson Cooper to the warehouse where half a million cases are kept and Bunton reveals that 90-95% of these cases ended with a guilty plea, regardless of the innocence of the client. It’s a horrifying reality, Zoë says, that innocent people are forced to plead guilty to get out of jail, and it is a disturbingly common symptom in jurisdictions where the lack of funding and resources means that public defenders are unable to provide a quality defense. It’s not just public defenders who are affected by the lack of time – attorneys and judges who could screen for issues such as addiction and mental illness, don’t have the time to do so. This prevents people from benefitting from treatment or diversion instead of jail time and contributes to the epidemic of mass incarceration. One way to help fix this epidemic plaguing the lives of millions is to increase awareness about the 6th amendment right to counsel. [“Americans’ Views on Public Defenders and The Right to Counsel”, a report conducted by Belden Russonello Strategists](#), which polled the public about what they understand about public defense, indicated that many American don’t realize that the right to counsel is a constitutional right. Zoë argues that as a nation built on the Constitution, Americans should be unilaterally horrified that every day in courthouses across the country, people are denied access to quality counsel, a clear breach of our constitutional rights.

In the “60 Minutes” clip, a turning point of Donald Gamble’s life was when he was assigned to a Sixth Amendment advisor, Paula Metzger, who was able to dedicate time to getting him released. However, there are several barriers that prevent the Sixth Amendment from being honored, as well as the ways that public defender services are administered differentiates state to state. In some jurisdictions, clients are asked to waive the right to counsel without being told the legal consequences of doing so, and in other jurisdictions clients don’t get assigned an attorney until after the first appearance when the bail determination has already been made. “The 6th Amendment promises that all people whose liberty is at stake have the right to be represented by an attorney, and if they cannot afford that attorney, one will be assigned to them. That’s where public defenders come in: Public defenders are the first line of assigned counsel defense in most jurisdictions. They are the literally the embodiment of the accused person’s constitutional rights”, explains Zoë. “Through the [Right to Counsel National Campaign](#), we are raising awareness about the myriad barriers to quality counsel that leave the Sixth Amendment unfilled for many people whose lives are most deeply impacted by the dysfunction of the criminal justice system. We are working to ensure that all the players in the system feel a personal responsibility to ensure that the Sixth Amendment right to counsel is honored. Ideally, one day when our campaign has taken effect, public defenders like Derwyn Bunton won’t have to take the drastic and difficult measure of refusing to represent clients, because every stakeholder in the New Orleans criminal system will feel personally invested in and responsible for ensuring that each client that comes through the courthouse doors not only has a lawyer, but quality counsel that has the time, means and resources to competently represent their defense.”



RIGHT TO COUNSEL

For more information about the Right to Counsel National Campaign, follow them on [Twitter](#) and [Facebook](#), using the hashtag [#right2counsel](#).