

My name is Justus Kandoll, WSBA 45515, I am writing this letter on my own behalf reflecting the current Public Defense Crisis. The views in this letter are my own and do not necessarily represent the firm where I work.

The 6th amendment guarantees the accused the right to counsel. Gideon v Wainwright extended the right of counsel to the accused in State court. Implicit in this right is the right to effective and competent counsel. In 1963, The Warren court created a mandate not simply a suggestion. In 2024 we are failing to fulfill the mandate created by the Warren Court and Gideon due to lack of funding and manageable case load limits. The requests made by public defenders across the State are an attempt to fulfill the mandate declared in Gideon to provide effective representation. Delaying the decision or ignoring their concerns will only serve to drive away qualified counsel in a time when we need them more than ever.

There is strong push back from the opposition. Implementing the changes proposed by OPD and Rand will be unpopular, and it will be expensive. But it is necessary to fulfill the mandate from 1963. Ignoring the issue because of costs is absurd. Imagine delaying medical treatment because of concerns over costs. The results would be disastrous and possibly fatal. The same can be said about putting off reform to caseload standards in an overburdened system.

There is no secret formula to give every defendant the competent counsel that they are entitled to under the Constitution. If you want enough competent attorneys to be attracted to the profession to represent the indigent clients, you have to compensate them for their time, provide them with necessary resources like investigators, support staff and social workers and give them manageable case-loads so they can effectively do their job.

The State, Counties, and municipalities are accountable to their local constituents. They are not going to fund public defense at the level required fulfill the mandate unless they are forced to. We have seen this time and again whether it's Western State Hospital (Trueblood), or education (McLeary) or public defense (Wilbur). Especially in a time when their constituents demand more law enforcement. The public doesn't want the burglar, or the dui suspect to be well represented. The public wants them to be held accountable and they want it done cheaply and quickly.

Those without political power have nowhere to turn for protection except the judiciary like this Court. There is little incentive for the political process to protect unpopular minorities, such as racial, political minorities, or Criminal defendants. This is why the Court's decision on this issue is so important to protect the Constitution and the Mandate created in

Gideon. It is this Court's duty to intervene and guarantee this fundamental right even where the government or majority of the people might wish to deny this right.

The right to Counsel is guaranteed in the Bill of Rights. At first blush these words seem to wield a lot of strength. But only if there is adherence and exercise of those rights. Justice Scalia once said Every banana republic in the world has a bill of rights. What sets the United States Constitution and Bill of Rights apart is the separation of powers between branches of government. This includes a strong judiciary that is independent from the other branches that's willing to protect the Constitution even when the decision is unpopular.

Now, I've been a criminal defense attorney for 10 years. During that 10-year period I have worked almost exclusively as a contractor for a firm that provides indigent defense. Because I work for a private firm, I do not qualify for public loan forgiveness. I did not go into public defense to make a lot of money or to get a pat on the back. Anybody who has spent time as a public defender knows the pay is low, the caseload is massive and the days are filled with losing and heartbreak. So why do people do it? Me personally, I find it rewarding to be that check on police and prosecutorial over-reach. It renews that potential to make a difference in the lives of the people we represent after successfully arguing for suppression of evidence, convincing opposing counsel to dismiss a case after a thorough investigation or securing a verdict with the sweet two word phrase, Not guilty. It was a fun job for a long time. I developed strong friendships even with opposing counsel as we battled in the trenches. However, camaraderie and the rush of making a difference can only drive a person for so long before burn out sets in under the burden of significant caseloads and time constraints.

I have worked in rural counties like mason and grays harbor and urban counties like pierce. Providing indigent defense is a unique career path. It provides court experience and a variety of cases in a short period of time. I started my career handling driving while license suspended and driving under the influence. Within 2 years I was handling felonies. I have since expanded to violent felonies including murder, arson, robbery. Indigent defense has afforded me the opportunity to hone my skill set with motions practice and trials. Negotiating with opposing counsel, working with stake holders in mental health and substance use. In addition to practicing law, I have become a quasi-social worker getting clients connected to housing and social services for my clients who are typically going through the worst moment of their lives. They are scared, upset, and they want their problem solved.

At a minimum these clients want my attention, and they want to be heard. They don't want to be rushed off the phone or scooted along the assembly line that is the criminal justice system. They want to feel heard, and they want to know their case is a priority. But under

the current system it is impossible to fulfill this promise for every client. It is impossible to give each client the time their case deserves. Each case has its own unique fact set. However, due to docket size, The Courts, prosecutors and defense attorneys look at these cases as simple or routine matters summarily disposing of them in a few minutes. To the individuals charged and their families, this is far from routine to them. This is a significant disruption to their life. Whether it is the guilt phase or the penalty phase, the defendants are entitled to effective representation. They are entitled to an independent investigation that goes beyond simply reading the police reports and accepting the State's theory as true. Simply accepting the State's theory leads to a meet em, greet em and plead em practice. The very system that was to be eliminated after *Wilbur v Mount Vernon*. It is time to revise those standards once again. It is time to give the defendants the defense attorney that they are entitled to. A defense attorney that has the time and resources to conduct an independent investigation separate from the State; to have social workers and experts for mitigation so they can have their story told at sentencing.

There is no formal training to address these issues as the attorney and it comes at a cost. The volume of cases and the added responsibilities to be a social worker without the infrastructure makes it impossible to do the job effectively. Investigators need to be appointed, and interviews of witnesses need to occur in just about every case, especially if it is a felony. Simply reading police reports is insufficient to effectively represent the client. Even when evidence of guilt is overwhelming, we have an obligation to put together a strong mitigation package that may require experts such as a forensic psychologist. All of this takes time. The current caseloads, 150 felony or 300-400 misdemeanors, is not sustainable with the idea of a 40-hour work week. That leaves about 13 hours per felony and or 5 hours per misdemeanor. This last year I tried a first-degree murder case that took at least 250 hours from start to finish over 11 months. That case was 1/8 of my (billable year), if my year was 2000 hours. I still had a full case load. During that same time, I was assigned multiple violent offenses including: 1 Arson 1st, 1 Assault 1st, 5 Burglary 1st, 2 Vehicular Homicides, 3 vehicular assaults, 16 Assault 2nd. This was in addition to my regular non-violent cases that made up the rest of my case count.

This meant I frequently worked late into evenings and weekends to stay current to make sure my cases were prepared, and I had talked to my clients to give updates on their case, or talked to the prosecutor to negotiate. During a few intervals I worked 30 hours in a 40-hour period with enough time to drive home, get a few hours of sleep, and drive back to work. This has taken a toll on my relationships at home and my friendships. I have missed parties, birthdays, funerals, retirement parties. I have worked on cases and appeared in court while on vacation. On one such occasion I appeared via zoom from outside Yellowstone near Jackson Wyoming. I scrambled to find service outside the park to cover a

criminal docket while on vacation due to staffing issues at my firm. It has taxed my physical health as well as my mental health. From 2021-2024 I regularly skipped the gym and ate fast food as I bounced from docket to docket. This resulted in me gaining 40lbs visiting my Dr. to figure out a way to get healthy. His advice, make time to exercise and cook healthy meals at home. When I told him my schedule, he advised it is not sustainable and I may need to find new work.

I am not alone in this struggle. Defenders across the State have similar experiences, and they are leaving in droves. Some have even committed suicide. We lost a member of our firm to suicide in 2021.

Many of the mid- level 5-10 year defenders I started with have left the profession. We are left with defenders nearing retirement and defenders with a few years of experience handling significant felony matters. Vacant positions remain unfilled for months if not years. We have been down 1-2 attorney positions at the firm I work for at least 2 years. We are facing a significant knowledge and experience gap with no relief in sight.

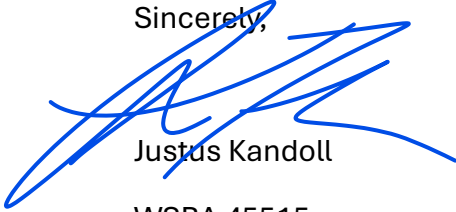
If the Court or anybody is unsure why there is a public defense crisis in Washington please take the time to review the working conditions described in a recent job posting for Whatcom County public defense on the Washington Defender Association Website.

Works primarily in a high traffic office setting. Appears in a variety of courts on a daily basis, interviews clients in the jail and hospital, investigates crime scenes, and interviews witnesses at a variety of locations. Periodically drives motor vehicle to perform duties at other sites or travel out of county. May occasionally lift and carry items weighing up to 30 pounds. May work extended hours during trials or as required. Maintains a high caseload, which can be emotionally and psychologically draining due to the nature of the crimes involved. May deal with potentially violent and or verbally abusive clients. Possibility of exposure to hostile and offensive language and or physical harm from clients. Uses appropriate safety equipment and follows established work safety policies practice and procedures.

The Public Defenders across the State are demanding action as it relates to case limits. The opposition believes in maintaining the status quo or delaying action. The reality is there will be no one left to defend the accused if the Court does not implement the necessary changes to the case limits. An overworked defense bar does not have time to conduct interviews, file motions, or go to trial. The exact tasks our clients are entitled to expect from their attorney. Instead, if there is no change, defenders myself included will continue to leave the profession and what will remain is a system that has just enough defenders to meet em, greet em and plead em, a system that this Court sought to eliminate in 2010

when Justice Chambers authored the opinion in State v A.N.J. I strongly urge This Court to adopt the necessary changes to ensure effective representation for indigent defense and prevent further departures unless this Court would like to grab a file and lend a helping hand when no one is left to defend the accused.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Justus Kandoll', with a large, stylized flourish extending from the end of the signature.

Justus Kandoll

WSBA 45515