

## **Statement from Public Defense Advocates Calling for Commitment to the Right to Counsel in Guam and Across All US States and Territories**

**Washington, DC (March 8, 2023)** – We are on the eve of the 60<sup>th</sup> anniversary of the Supreme Court’s decision in *Gideon v. Wainwright* – a reminder that a government that seeks to arrest, prosecute, and jail its citizens has a constitutional imperative to provide a defense counterpart to bring balance to the system and prevent miscarriages of justice. This anniversary should remind us all of the critical importance of public defense as a social and racial justice imperative. Yet this fundamental constitutional right is being undermined in every corner of the country, including in the US territory of Guam.

[In a recent letter](#), Guam Attorney General Douglas Moylan argued against proposed legislation to ensure pay parity for public defenders and expressed contempt for the criminal defense profession and due process for the accused. Although political proceedings in Guam may seem irrelevant to most Americans in the continental United States, these comments underscore the challenges we face breathing life into the promise of the right to counsel.

As national organizations, we frequently weigh in to highlight the need for basic respect, parity of resources, caseload controls, and adequate compensation to maintain a healthy and functional defense, and a just legal system. However, we write today not simply to lend our support for our colleagues in Guam, but to express outrage that a fellow member of the Bar would resort to fear mongering and hyperbole.

Attorney General Moylan’s letter undermines public and political trust in our justice system and disavows the constitutional tenets that guide our profession. Those accused of crimes are innocent until proven guilty and every person is entitled to a defense. The Attorney General’s disrespect for the critical role defense attorneys play in our adversarial system shows a fundamental misunderstanding of these bedrock principles at best, and a complete disregard at worst.

Justice is best served when skilled, resourced, and equal adversaries meet on a level playing field. The AG seeks to stack the odds, by degrading the institutions that serve as a check on government power and prosecutorial misconduct. A critical feature of our legal system is that we do not entrust all the power to institutions of government. Rather, we empower individuals to have the means to stand up to our government, to criticize its flaws, and to prevent its abuses. The suggestion that defense attorneys already receive sufficient pay and that it is only prosecutors who are “deserving” of a higher salary is an anathema to our system of justice.

While pay parity was the topic of debate, the AG’s remarks demonstrate deep-seated misconceptions about our role as defenders. Defenders stand up to prevent miscarriages of justice that come from overzealous policing. We stand strong in the face of government efforts to run roughshod over fundamental rights. We help give voice and value to those society seeks to marginalize, and we speak up for the humanity of those who society seeks to demonize. It is the work of defenders that protects the rights of every person, whether they can afford to retain private counsel or not. As the U.S. Supreme Court has recognized, “[t]here can be no equal justice where the kind of trial a man gets depends on the amount of money he has.”

These are reasons to support, celebrate, and strengthen them, not degrade them and diminish their resources.

While AG Moylan is not the first to espouse such sentiments about the rights of those accused of crimes, this rhetoric is especially troubling when it comes from a government's lead prosecutor. Mutual trust and respect are foundational for the functioning of our legal system. The people entrust prosecutors with substantial powers, many of which operate out of the sight of the court, the defense, and the community, relying heavily upon the prosecutor's commitment to a fair process. When those in power abuse this trust, devastating consequences follow. A [study by the National Registry of Exonerations](#) found that police and prosecutors withheld critical evidence of innocence in about half of the cases that were later overturned.

The greater danger to public safety is not public defense lawyers, but loss of trust in our legal institutions. When people see their government seeking to gain advantages and leverage power at the expense of the average citizen, they lose confidence that the outcomes of our courts of law will be fair, accurate, and just. If we wish to truly protect our communities, our hard-fought freedoms, and our Constitutional values, then we must stand tall in support of all of our justice institution – including public defense.

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