

July 14, 2021

Senator Dick Durbin, Chairman
Senator Chuck Grassley, Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Grassley:

We write to support President Biden's efforts to increase professional diversity in our federal courts by nominating highly qualified current and former public defenders and criminal defense lawyers, and to express our concern about some senators' responses.

President Biden has recognized that public defenders and criminal defense lawyers have been systematically under-represented among federal judges. According to the Cato Institute, there are [four times as many former prosecutors as defense attorneys](#) on our federal bench. Last year, a Center for American Progress study showed that [only three circuit judges](#) had spent the majority of their careers as public defenders. Against this stark disparity, President Biden's judicial nominations are a critical first step toward restoring balance and legitimacy to a federal bench that does not reflect the diversity of the legal profession.

However, based on the rhetoric and questions of some Judiciary Committee members, it appears that public defenders are being singled out for extra criticism compared to lawyers with backgrounds as former prosecutors or corporate lawyers.

Ranking Member Grassley has [expressed](#) "concerns that nominees whose careers are so defined only by criminal-defense may not be up to the task of serving as a generalist judge," while Senator Cotton has quizzed public defenders on civil procedure. In contrast, the Senate has confirmed lawyers who have spent their careers as prosecutors or working exclusively on civil litigation on a bipartisan basis and without questioning the breadth of their legal experience.

We reject any suggestion that public defenders and criminal defense lawyers are any less well-prepared for the bench than lawyers from prosecutor and civil practice backgrounds. Lawyers from varied legal backgrounds become judges and apply their legal training to matters outside their primary area of practice. Senators are wrong to imply that public defenders and criminal defense lawyers will be any less up to this task. In fact, the work that public defenders do to zealously represent their clients with relatively limited resources will prepare them well to rapidly learn new areas of law as judges.

In some cases, members of this Committee also have questioned the ability of public defenders to serve as fair-minded judges. For example, Senator Cruz has [said](#) these nominees will "naturally side with the criminal defendants" and will be "judges who will release more criminal defendants, who will impose shorter jail sentences." Of course, these same senators routinely confirm former prosecutors and corporate lawyers without raising concerns that they will be biased in favor of the government or their former clients, respectively.

While this Committee has acted in a bipartisan fashion to begin to undo some of the worst excesses of the era of mass incarceration, some members continue to fall back on the same rhetoric that came into fashion during that period—seeming to single out public defense work as uniquely compromising.

These attacks have it precisely backwards; criminal defense is mandated by the Bill of Rights, and, in fact, representing people accused of crimes is the epitome of defending the Constitution and the rule of law without regard to personal beliefs—one of the most important skills a judge can bring to the bench. Even when it isn't easy or their clients are unpopular, criminal defense lawyers stand for the rule of law. This is one reason many former prosecutors have joined in support of President Biden's nominees.

Criticism of the experience and fair-mindedness of public defenders and criminal defense lawyers is especially disconcerting because we believe the federal judiciary would in fact be better served with more balance. Public defenders and defense attorneys are underrepresented compared to former prosecutors and corporate lawyers across our federal judiciary. Improving professional diversity on the bench is important for protecting the legitimacy of the court system, improving judicial decision making, and encouraging talented young lawyers to consider public interest careers. We hope senators who share our concerns will vigorously defend the legitimacy of public defense experience as a qualification for the federal bench.

Sincerely,

- Black Public Defender Association
- Center on the Administration of Criminal Law, NYU School of Law
- Civil Rights Corps
- Demand Justice
- Fair and Just Prosecution
- FAMM
- Federal Public & Community Defenders
- Gideon's Promise
- Institute to End Mass Incarceration
- National Association of Criminal Defense Lawyers
- National Association of Public Defense
- National Juvenile Defender Center
- National Legal Aid & Defender Association
- Roderick & Solange MacArthur Justice Center
- The Sentencing Project

State/Local Organizations

- Alabama Criminal Defense Lawyers Association
- American Civil Liberties Union of Washington State
- Amistad Law Project
- Arizona Capital Representation Project
- Atlantic Center for Capital Representation

- BPI (Business and Professional People for the Public Interest)
- Civil Justice Clinic, Quinnipiac University School of Law
- Colorado Criminal Defense Bar Association
- Criminal & Juvenile Justice and Racial Justice Clinics, University of San Francisco School of Law
- Criminal Justice Reform Clinic, Lewis & Clark Law School
- Federal Criminal Justice Clinic, University of Chicago Law School
- George C. Cochran Innocence Project, University of Mississippi School of Law
- Georgia Association of Criminal Defense Lawyers
- Justice 360
- Justice Forward Virginia
- Kentucky Association of Criminal Defense Lawyers
- Louisiana Parole Project
- Maine Association of Criminal Defense Lawyers
- Maryland Criminal Defense Attorneys' Association
- Maryland Office of the Public Defender
- Neighborhood Defender Service
- New Mexico Criminal Defense Attorney Association
- New Mexico Prison & Jail Project
- Office of Chief Public Defender (Connecticut)
- Office of the Alternate Defense Counsel (Colorado)
- Ohio Justice & Policy Center
- Oklahoma Criminal Defense Lawyers Association
- Oregon Criminal Defense Lawyers Association
- Oregon Justice Resource Center
- Pennsylvania Association of Criminal Defense Lawyers
- Phillips Black, Inc.
- Rhode Island Association of Criminal Defense Attorneys
- Salt Lake Legal Defender Association
- Texas Civil Rights Project
- The Bronx Defenders
- The Legal Aid Society
- The Second Look Project
- Uptown People's Law Center
- Utah Defense Attorneys for Balanced Justice
- Vermonters for Criminal Justice Reform
- Washington Association of Criminal Defense Lawyers
- Washington Defender Association
- Wisconsin Association of Criminal Defense Lawyers