Virtual Public Meeting Series: Responding to COVID-19 and the Call for Racial Justice

Session Three:
A Conversation with Leaders at the DC Superior Court, US Attorney's Office, Office of the Attorney General for the District of Columbia, and the Public Defender Service

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Background

On September 2, 2020, from 5pm – 7pm, the Criminal Justice Coordinating Council (CJCC) convened the third session in its four-part virtual public meeting series and addressed the theme "Responding to COVID-19 and the Call for Racial Justice: A Conversation with DC Superior Court, OAG, PDS, and USAO."

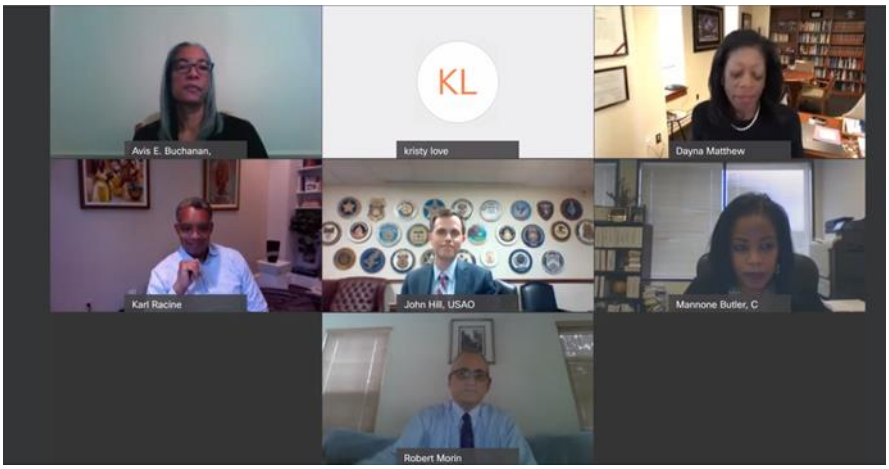
The public meeting discourse explored two questions. The first question pertained to how the pandemic affected court operations and judicial processes administered by the DC Superior Court, the Office of the Attorney General (OAG), the Public Defender Service (PDS), and the U.S. Attorney's Office (USAO), and how the agencies responded to the challenges presented. The second question related to court and agency efforts to address systemic racism and its institutional and structural manifestations.

Mannone Butler, CJCC Executive Director, set the stage by addressing the reason for convening the session and how CJCC is uniquely positioned to host this discussion due to the agency's role in facilitating collaboration and data-driven decision-making across the District's justice system agencies to address systemic issues. After sharing the rules of engagement for the virtual meeting with the approximately 76 participants, Director Butler introduced the program's moderator, Dr. Dayna Bowen Matthew, Dean and Harold H. Greene Professor of Law, George Washington University Law School.

Prior to introducing the speakers and kicking off the panel discussion, Dr. Matthew thanked CJCC for inviting her to facilitate the meeting. She commented on the timeliness of the panel discussion and applauded the agency for providing the opportunity to hear from leaders and stakeholders.

Dr. Matthew then introduced each of the panelists:

- Avis Buchanan, Director, Public Defender Service (PDS);
- John Hill, Chief, Superior Court Division, U.S. Attorney's Office (USAO);
- Robert Morin, Chief Judge, DC Superior Court (DCSC); and
- Karl Racine, Attorney General for the District of Columbia.



Dr. Matthew, Panelists, and Director Butler commence Session Three of the Virtual Public Meeting Series

COVID-19 Panel Discussion

The moderator set the stage for discussion by posing the following two questions regarding COVID-19 to the panelists:

- How has the pandemic affected court operations, prosecution of cases, and PDS's interactions with clients?

- What role did the court, prosecutors, and PDS play with respect to releasing individuals from the DC Jail to avoid the spread of COVID-19, and what factors were considered when making these decisions?

DC Superior Court

Chief Judge Morin commended CJCC for convening the virtual meeting and his fellow panelists for their support of the Court and its proceedings. He commented that the Court's response to the pandemic was informed by, among other things, the District's public health planning efforts as well as the early experience with employees who contracted COVID-19 in March 2020. Initially, the Court reduced operations to three courtrooms. Currently, Court operations are executed remotely with a total of 77 courtrooms equipped with videoconferencing capabilities. Fifteen courtrooms are designated for criminal proceedings, 13 courtrooms are designated for juvenile matters, and seven courtrooms were retrofitted with plexiglass to accommodate social distancing during in-person proceedings. In-person proceedings have commenced on a limited basis for detained individuals who can appear in person. Attorneys can appear in person or virtually for those proceedings.

OAG

Attorney General Racine offered the following. He praised Chief Judge Morin for his leadership in ensuring the safety and welfare of Court personnel, its officers, and the general public, by limiting Court operations until appropriate safety measures could be developed and implemented.

Regarding changes to prosecutorial proceedings, AG Racine emphasized that the OAG does not engage in grand jury empaneling procedures and does not handle felony cases. He offered that the immediate challenges presented to his office pertained to juvenile cases, securing witness statements, and ensuring that witnesses had access to hardware, software, and the broadband necessary to fully participate using virtual technology. Further, he noted the court has designated several locations across the city where persons who do not have access to a computer or internet can go to participate in remote hearings. AG Racine highlighted that all stakeholders agreed to limit the number of cases brought to the court and the DC Jail during the pandemic. The office's goal was to protect public safety while also limiting potential exposure to the coronavirus for system-involved persons. As a result, they worked with the court to expand the types of offenses for which MPD could issue a citation (in lieu of an arrest) that required defendants to appear at a later date. He noted that his office will assess the viability of continuing to utilize the citation process in the future if feasible. Finally, AG Racine indicated the Court is hearing difficult cases, including guns and mental instability matters, and Extreme Risk Protection Orders (ERPO).

U.S. Attorney Office (USAO)

Attorney Hill noted an uptick in violent crimes in the District, including a distressingly high number of shootings and homicides, year-to-date. His office has prioritized shootings, homicides, domestic abuse and child abuse cases. He indicated that his office is optimizing the use of virtual technology platforms and other justice system partners are doing the same.

Presently, USAO is evaluating new arrest data and emerging cases presented to the office. It is also working with the court on search warrants and trying to interview witnesses remotely, in order to build

cases. Fundamentally, USAO proceedings are predicated on the empaneling of grand juries to hear testimony. To date, however, that process remains inactive. A consequence is that the office has been unable to conduct personal interviews with witnesses affected by domestic violence and other violent crimes. Due to the pandemic, many of those persons remain confined indoors, and those victims lack the ability to build rapport and communicate with justice system agencies with respect to their cases. Further, in cases involving child abuse, the absence of teacher observations of students in their classrooms has virtually eliminated mandatory calls to the Child and Family Services Agency (CFSA). As such, reports of child abuse cases are down by 60% from last year. Additionally, Attorney Hill noted office operations are challenged by the need to resolve high caseloads resulting from the lack of jury trials. Another challenge presented to the system is that defense attorneys need to engage in plea offers and discovery but are unable to do so remotely. Nonetheless, the prime focus of the office continues to be tracking and responding to violent crime matters.

With respect to limiting the spread of COVID-19 among system-involved persons, Attorney Hill indicated his office works routinely with MPD, OAG and the Court to expand the universe of offenses (felony and misdemeanor) eligible for citations, which would result in fewer arrests and jail time. He did indicate that MPD is required by law, however, to still make arrests for domestic violence offenses. The use of citations would require individuals to appear in court at a later date. In summation, Attorney Hill offered that the overriding goal of his office is to focus on violent crimes and to reduce its effects on victims and the community.

PDS

Director Buchanan responded that the pandemic presented unique challenges to her agency as well. The pandemic forced PDS to resort to conducting all of its operations virtually, including client visits. She noted that the Department of Corrections (DOC) modified its policies to accommodate the need for detained clients to communicate with counsel and loved ones virtually, given restrictions on in-person visits. DOC also enhanced its videoconferencing capabilities to accommodate virtual hearings. Nonetheless, some challenges persist, including an inability for her staff to access and engage witnesses who can be an integral part in building a defense for PDS clients. Further, she stated there are limitations imposed on the ability to conduct investigations. Despite procedural disruptions presented by the pandemic, her office is participating in more virtual hearings as more courtrooms become available.

Personal visits continue to be limited in order to protect all parties concerned, including juveniles, persons in non-secure hospital facilities, and individuals diagnosed with mental health illnesses. Director Buchanan emphasized that there is no substitute for face-to face staff and client interactions, in addition to in-person court proceedings and witness engagement. She also offered that her office and staff continue to explore ways to work around existing pandemic-imposed challenges. Finally, she noted the interests of her clients will continue to be harmed until normal grand jury proceedings and related court activities are resumed.

Early Release of Incarcerated Individuals

Dr. Matthew inquired about the dangers presented by COVID-19 to the estimated 1300 inmates at the DC Jail and media accounts which suggested there was some reluctance to considering compassionate and early release to mitigate the health risks. The following responses were provided related to motions to release detained and incarcerated persons.

Chief Judge Morin mentioned that he has conferred with Presiding Judge McKenna of the Criminal Division and reviewed conditions of release and all sentences of incarcerated persons at the DC Jail. In addition, the court has reviewed approximately 800 motions for conditions of release and approximately 400 motions for reduced sentencing. He commented that PDS, OAG and USAO were helpful in coordinating with the court for the release of 400 persons in an ongoing review process. He acknowledged that it is imperative and useful to review medical and other mitigating conditions of detained persons, and to balance the health risks posed to the detained population by the pandemic with public safety concerns.

AG Racine responded to the inquiry and cited the differences between his role as a locally elected prosecutor, with limited jurisdiction over adult criminal matters, and a federally appointed U.S. Attorney, whose office is primarily responsible for prosecuting adult felony cases. Nonetheless, the OAG has filed motions for release on a dozen cases, and supported two defense motions for release. AG Racine noted that the OAG serves as the defense counsel for the city, and served as counsel for the city on the federal case brought against the DOC for its handling of clients at the DC Jail at the onset of the pandemic.

AG Racine also highlighted the health perils presented by housing inmates in an antiquated facility such as the DC Jail. He offered that the pandemic presented acute challenges associated with ventilation and supporting the health and welfare of incarcerated persons and facility staff. In that regard, his office complied with the Court's orders to ensure changes were made at the DC jail to protect staff and inmates.

Attorney Hill commented that his office appreciates the unique challenges presented by COVID-19, and the fact that Court operations have been placed on hold as well as normal procedures employed by defense attorneys and prosecutors. He stated the each of the parties work to fulfill their mandates, the court as a neutral arbiter, prosecutors striving to protect public safety, and defense counsel to protect the rights of their clients. He offered that the pandemic presents exceptional circumstances and challenges: primarily related to conducting preliminary hearings, issuing indictments, and conducting trials. In response to motions to release detained persons, and presentments to the USAO, his office has attempted to balance its charge to prosecute cases with the potential dangers presented by early release of incarcerated persons who may present a danger to public safety.

Director Buchanan stated that her office has sought to focus on filing motions on behalf of detained and non-detained persons. The overriding goals of her office and staff are to minimize the exposure of detained persons in jail to the pandemic; to ensure that persons who do not deserve to be detained are not kept there and to seek their release; and to file motions on behalf of groups, including alleged parole violators, and persons awaiting pretrial hearings. She also cited motions filed for compassionate relief and on behalf of persons who suffer with challenging health conditions that could be exacerbated or compromised by the pandemic during confinement.

Finally, Director Buchanan offered that her office has advocated for the use and expansion of citations by MPD in order to take the pressure off secure detention facilities and inmates. Further, multiple motions have been filed, including bond review and other compassionate release motions on behalf of juveniles, and persons with physical and mental health problems.

In closing, Dr. Matthew inquired whether everything was being done to release individuals and minimize the effects of COVID. The following responses were offered.

- The Court has benefited from lessons learned and modified court procedures may very well carry-over post pandemic.
- Partner collaboration has aided efforts to respond to the pandemic and mitigate potential harmful consequences.
- Quality advocacy is being conducted by PDS for not only its clients but in support of others as well.
- The goal remains to employ citations as a proactive measure to limit in-jail detentions.
- Motions for release are being considered and accommodated, but not to the extent desired or required by PDS.
- Consideration must be given to the pernicious effect of the pandemic and its effect on persons detained and working inside secure facilities.
- Fundamentally, it is critical to view the administration of justice through a lens that takes into account disparities (economic, social, education, etc.) exacerbated and compounded by the pandemic.

Institutional Racism

Dr. Matthew referenced a Washington Lawyers' Committee report that cited approximately equal numbers of Black and White persons live in the city, yet 8 out of 10 persons arrested for crimes are Black. She inquired regarding the implications of that reality.

DCSC

Judge Morin mentioned that issues of racism and unequal justice are topics that should concern everyone. He commented that the court hears and adjudicates the cases that come before it. Regarding the implications of the demographics witnessed at the Moultrie Courthouse, where felony/misdemeanor cases are heard, and defendants are comprised overwhelmingly of African American males, he acknowledged that is a concerning and stark demographic that warrants examination.

The Court offers training on implicit bias for judges and staff. A standing Committee on Access and Fairness exists to explore all processes, rules, and procedures to ensure they are not imposing disparities based on race and poverty.

OAG

AG Racine offered that it is imperative for prosecutors to receive training to support their work, including implicit bias training, which has been provided within the past five years. He commented on the importance of assessing the system. In particular, efforts have been made to diversify the hiring of staff with broad experiences and backgrounds. The OAG is also moving quickly to open a public data portal to allow for more transparency. Relative to juvenile justice and crime, efforts are ongoing to look at the indicators that dictate what type of services are required for youth to make better decisions that will deter

them from criminal behavior. His agency also continues to advocate before the Council for enhanced budgetary support for early intervention services for young people.

USAO

The USAO is exploring diversion programs that assist in addressing lower level offenses. To that end, there are programs that offer alternatives to traditional prosecution, including alternatives to conviction, i.e. community service, employment track programs, mental health, community, and drug courts that will afford clients enhanced opportunities to get back on their feet. Attorney Hill offered that the data supports his office in making better decisions, especially in processing misdemeanor cases. In that regard, Attorney Hill's office recruited personnel from the OAG's office that were instrumental in applying data metrics, resulting in a dramatic decrease in monthly misdemeanor cases.

Implicit bias awareness serves as a cornerstone for training at the USAO, and it is an integral training approach that informs line prosecutors and prepares them to handle cases and engage clients. The office also recruits across diverse populations. Attorney Hill commented that while most of the individuals charged with violent crime offences are Black, most the victims are also Black. He indicated that oftentimes aggrieved parties ask prosecutors to hold accountable the individuals perpetuating violence in their communities.

Attorney Hill also addressed the topics of police-involved shootings, allegations of excessive force, and cases involving race-based behavior and misconduct. His office employs a dedicated process that starts with an MPD Internal Affairs investigation, which is augmented by selected prosecutors who work in a dedicated unit that focuses on public corruption and civil rights. The unit has the power of the grand jury and the ability to avail themselves of the assistance of the Federal Bureau of Investigation (FBI) as necessary.

PDS

Director Buchanan rejected the premise that courts and prosecutors are bound by a passive system, i.e. they merely try the cases they receive. For example, prosecutors make charging decisions, which can result in deeper penetration of the justice system for many African Americans. Director Buchanan offered that she and her staff are arguably more passive in that they must respond to indictments and have no power to charge cases, etc. She asserted that clients are at the mercy of prosecutors, and that her office and staff operate from a reactive position. As a result, where opportunities exist, her office will file class action suits to disrupt unjust systems. Her office is also examining how it operates to determine whether anything they do exacerbates or contributes to systemic racism.

Reducing Racial Disparities

In preparing to conclude the session, Dr. Matthew asked each panelist to identify what can be done structurally to reduce racial disparities in the justice system.

Judge Morin affirmed that he and his colleagues function in a system that uses sanctions in an attempt to modify behavior. He offered that the use of diversion programs fails to account for the fact that imposed sanctions are driven by an assumption that people's lives are linear, which they are not, and there may

be mitigating circumstances that undermine the prospects of individual success. He cited the need for interventions and redirection in people's lives. He offered that fundamentally, the criminal justice system has to be transformed to focus on interventions that help redirect people's lives and deliver better and different outcomes.

AG Racine noted that the system must employ alternatives to prosecution. For example, his office has ramped up its diversion program that has included 2500 kids in the past five years. He offered that many youth experience various challenges and traumas that negatively affect their capacity to comply with the myriad sanctions imposed upon them. He explained that his office focuses on the services the youth require, including the engagement of a responsible adult in their life. AG Racine also indicated that within his office there are seven trained professionals who advocate for restorative justice approaches as opposed to prosecution, which often aligns with the interests and needs of aggrieved parties. He also cited the Cure the Streets initiative that utilizes de-escalation approaches and employs returning citizens in reducing gun violence across designated communities.

Attorney Hill offered the following structural responses to reduce the effects of racism, including: training people, hiring diverse workforces, and identifying alternatives to traditional prosecution. He said the goal of diversion is to put people on a track where they do not incur additional charges and cases. Further, he mentioned the challenges presented in identifying programs that can be supported by empirical data that demonstrate success. Additionally, he cited the goal of his office is to reduce crime via those programs and promote public safety. As a practical matter, Attorney Hill stated he does not want to see repeat offenders, and noted that in presentencing reports on felony matters, all too often, the subjects identified are beset by any number of ills, i.e. abuse, lack of education, and a lack of family support that predispose them to exposure to the justice system. Finally, Attorney Hill commented that the role of prosecutors lies beyond social work, or educating youth, and that their efforts must be driven by research-based evidence to support crime reduction.

Director Buchanan offered final comments, concurring with the other panelists including: revisit assumptions associated with the police reform movement; reassess the definition of public safety; revisit sanctions-based approaches; reassess conditions of release that present all manner of impediments to persons on probation/parole; evaluate why persons must be incarcerated to access social services; and explore appropriate proactive interventions to system-involved individuals.

Public Question and Answer Session

- USAO
  - Has there been any consideration to hire mental health professionals to support defendants?
    - Technically no. The USAO is not allowed to have communications with represented parties who are in the system. The office does employ victim's advocates for persons undergoing trauma; otherwise those services must be provided by the Court, defense counsel, or PSA.

- Reimagining the reality of a system that is less siloed than currently configured, could your agency collaborate with organizations that provide the social services needed to support clients?
    - Chief Judge Morin offered that the Court must remain neutral and presume the innocence of defendants; however, because those persons are in the system, they warrant intervention efforts. People and offices change including their approaches that affect the continuity of policies. As a whole, on matters of violent crime, those allegations should be treated seriously. However, there are opportunities to review how the system addresses drug cases.
    - With respect to drugs, AG Racine shared that despite the District's decriminalization of marijuana, there continue to be overwhelming disparities in the number of Black (versus White) people arrested for marijuana. He also noted other considerations including the concerns voiced by some elders (e.g. residing in buildings where secondhand marijuana smoke wafts into common areas subjecting them to the residual by-products, including THC).
    - Regarding structural changes, AG Racine also offered the opportunity to explore other countries' systems, i.e. Portugal, that previously criminalized drug addiction, but transitioned to using a public health approach; thereby reducing addictions and providing support services. Germany's system of juvenile justice does not focus on rehabilitation, but instead on education. In Rwanda, restorative justice approaches have been employed as opposed to adversarial approaches that are predicated on penal sanctions.
    - Attorney Hill offered a reimagining scenario that recognizes getting cases right from the outset, including papering or non-papering cases, engaging in investigations, etc.
        - The office has implemented reforms that include working with MPD as opposed to functioning as adversaries, i.e. using body worn cameras to identify how to identify flaws in procedural execution and using the data gathered on camera to serve as a roadmap to provide training.
        - In addressing domestic violence cases, police are required to make arrests, which can be frustrating to both the police and families who were seeking mediation. In these instances, a social worker could better serve the scenario.
- Director Buchanan reimagined a system that involves the following:
    - Ensure everyone has a defense attorney regardless of cost.
    - Reassess the purpose of police within the context of the Constitution
        - Leverage the existing climate to support a redefinition of public safety
        - Step back and look at the actions of people and how we respond to them.

Closing

Director Butler acknowledged the career service and contributions of Chief Judge Morin and wished him well in his retirement. She thanked the moderator for her contributions and insights, and she also thanked the other panelists for participating. Director Butler invited attendees to participate in the final virtual public meeting scheduled for Tuesday, September 29, 2020, at 5pm, which will focus on Court Services and Offender Supervision Agency's (CSOSA) and the Pretrial Services Agency's (PSA) responses to COVID-19 and the calls for racial justice.