

SIXTH DISTRICT APPELLATE PROGRAM

A NON-PROFIT CORPORATION

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June 1, 2020

Dear SDAP Panel Members:

The last week in our country has been a trying one. Even before George Floyd's callous murder was caught on video, 40 million of our fellow Americans had lost their jobs and 100,000 had lost their lives due to COVID-19. This pandemic has disproportionately affected communities of color, both in terms of lives lost and economic impact. The United States was a tinderbox waiting for a fuse, as we struggled with – and vigorously debated about – the appropriate next steps in fighting COVID-19, a challenge made all the worse by the vacuum of national leadership guiding us through these trying times. Mr. Floyd's murder rightly inflamed millions of Americans, who we were sick of seeing unarmed people of color lose their lives at the hands of those entrusted to protect us.

To those of us who have taken on the vocation of representing indigent criminal defendants, the murder of Mr. Floyd was infuriating but part of an all-too-depressing pattern. As we all know, people of color, particularly African-Americans, have always been ill-served and unfairly treated by all facets of our criminal justice system – not just in terms of the force used against them. When compared to white Americans, African-Americans are stopped, searched, and arrested at higher rates. They are excluded from jury service by prosecutors, misidentified by eyewitnesses, subjected to higher bail amounts and more serious charges, and sentenced to longer terms in prison.¹

In some respects, the images from this past weekend have been heartening. I find hope in the images of so many Americans – from all backgrounds, including some law enforcement officials – recognizing and protesting the murder of Mr. Floyd and the failure to properly charge all of the involved officers. The protests indicate how frustrated and exhausted we are as a country in seeing a segment of our population unfairly – and, at times, savagely – treated by law enforcement and the criminal justice system.

¹ See, e.g., <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>.

With that said, my hopefulness has also been mixed with anger and helplessness as I watched yet another unarmed black man killed by police while the officer's compatriots did nothing. I was frustrated to see law enforcement, when dealing with the protests, utilize some of the very same tactics that led us to this point in the first place.

For all of us representing indigent defendants, we must remember that we are on the front lines, fighting the important battle of inequity in our justice system. As appellate practitioners, this role can, at times, be limited by the facts and circumstances of individual cases and by what transpired in the trial court. The law and standard of review are frequently stacked against us, but the very nature of our work gives voice to so many individuals who society would otherwise like to ignore. We help to hold law enforcement, prosecutors, and judges accountable for the decisions they make. Every letter we write, every brief we file, and every argument we make are helping to bend the arc of justice, even in a small way.

While it's always gratifying to gain some benefit for our clients, this is still true even when we lose. Countless times, I have heard from clients who, win or lose, have found some solace and even strength in seeing someone really go to bat for them. Our efforts are not in vain.

I imagine that many of us are angry by things that have recently transpired. Be angry, but harness your frustration into the representation of your clients. Remind yourself why you are in this field and about why it is important. Let this letter serve as the beginning of an ongoing dialogue I'd like to have with each and every one of you about how we as appellate practitioners can do better. If you have additional ideas of resources we can provide you to improve the representation of our clients, please let us know.²

Use this moment to inspire and invigorate your practice. We at SDAP will do the same. We all – as individuals and as a society – have a long way to go.

Sincerely,



Patrick McKenna
Executive Director
Sixth District Appellate Program

² For those looking for ideas about fighting racial justice beyond our practice may find some helpful ideas here: <https://medium.com/equality-includes-you/what-white-people-can-do-for-racial-justice-f2d18b0e0234>. If you need to be inspired, check out Bryan Stevenson's book *Just Mercy* or, if you want to understand the scope of the problems with our justice system, check out Michelle Alexander's *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*.