

May 14, 2022

Dear Governor Brown, Chief Justice Walters and Attorney General Rosenblum:

In a recent letter to the Attorney General, statewide leaders of our public defense system recognized that “Paige Clarkson, the Marion County District Attorney, and President of the Oregon District Attorney’s Association, sent out 2 mailers that blatantly disparaged and defamed all individuals who take on the constitutionally mandated, and highly valued, work of representing individuals accused of crimes, especially those individuals who do not have the means to hire attorneys.”

We are all Past Presidents of the Oregon Criminal Defense Lawyers Association and we write to you in solidarity with those dedicated public servants who sent the letter to the Attorney General and to highlight our views on the recent actions by DA Clarkson.

Recently, the Chief Justice sent out a letter to the entire state bar where she eloquently stated that:

As a judicial system and as members of the legal profession, we must ensure that peoples’ fundamental constitutional rights to counsel are met, and we desperately need every available lawyer to be part of the solution.

Those words echoed the view of a prior Oregon Attorney General, Robert Thornton, who was among several State Attorneys General who filed a brief in support of Clarence Earl

Gideon in the landmark case of *Gideon v. Wainwright*. In *Gideon* the United States Supreme Court opinion by Justice Black affirmed :

...in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society...lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.

Fundamental and essential.

Yet we still have an elected official, who also heads the statewide association of prosecutors, who takes a starkly different view of the right to counsel and the role of the public defense public servants in our legal system. District Attorney Clarkson sent a mailer that intimated her opponent should not be elected because he was supported by endorsement and financial contributions by 11 named criminal defense attorneys.

After the 11 wrote to DA Clarkson and requested that she retract the defamatory statements, she refused to retract her statements but rather professed to have “apologized”. However her response was anything but an apology and only reinforced her microaggressions<sup>1</sup> against the criminal defense bar. As

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<sup>1</sup> The term “microaggression” was first used around 1970 by Harvard psychiatrist Dr. Chester Pierce. Dr. Pierce used the term to describe the regular insults and dismissals

someone who has been a long time prosecutor, especially one who prosecuted domestic violence (DV) cases, she should know there is a difference between saying one is sorry and one's actions were wrong, and saying the person is sorry that her actions were misinterpreted by those who were wronged. DA Clarkson's "apology" amounted to expressing "regret" about how her first flier was "interpreted" ("I do feel sorry that that is how folks have interpreted that"). She did not apologize to them. She did not accept responsibility for her actions. Indeed, then she sent a *second* mailer claiming her opponent is supported by criminals and those who want to defund the police, thus implicitly characterizing defense attorney supporters as criminals and people who want to defund the police. However she was not done "apologizing". Her most recent "apology" came via social media yesterday (Friday May 13th)<sup>2</sup> where she said "the mailer was never intended to disparage [the criminal defense bar] but rather to highlight the significant contrast in the support each campaign has received." DA Clarkson still has not apologized. She continues to contend— publicly— there is something ominous, dangerous and "bad" about lawyers, officers of the court, supporting her opponent.<sup>3</sup>

As far back as 1989, in *State v. Lundbom* our Oregon Court of Appeals held that:

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he witnessed against particularly the Black community by non-Black speakers. Microaggressions are comments or actions that subtly and often unconsciously or unintentionally express a prejudiced attitude toward a member of a marginalized group, here, the criminal defense bar.

<sup>2</sup> Of note is that she, unlike Attorney General Rosenblum, refused to speak to Noelle Crombie and give the public apology all were anticipating but she did find time to issue what she framed as an "apology" via twitter without having to face what would likely have been difficult questions posed by a skillful reporter.

<sup>3</sup> It is also disturbing that one of the 11 attorneys she disparaged is actually employed by the Oregon Department of Justice and has been so employed for over one year.

“making unwarranted personal attacks on [a defense] attorney \*\*\* is not only unfair, but it impugns the integrity of the [criminal justice] system as a whole.” 96 Or App 458, 773 P2d 11 (1989).

DA Clarkson’s statements are unwarranted personal attacks on named defense attorneys and on the criminal defense bar—particularly the public defense bar — as a whole.

Her actions are unconscionable, unfair and further impugn the integrity of our entire criminal justice system at a time when we can least afford to have criminal defense further diminished. The work we defenders do has always been hard and soul trying but satisfying. It is we who ensure that even those who society designates the worst among us are accorded due process because, if we as defense lawyers don’t do that, then quite frankly, it would not happen.

Yet public defense is in crisis, arguably the worst crisis ever. Public defense providers are quitting due to crushing caseloads, compensation way below their counterparts in the offices of district attorneys and the Oregon Department of Justice. New defense attorneys are not stepping up. And yet, DA Clarkson, who is also the President of Oregon District Attorneys’ Association (ODAA) and, as such speaks for every elected district attorney and every deputy district attorney in the state, chooses in this moment in time to very publicly take a cheap shot for purely political reasons at public defenders and — by extension the entire criminal defense bar — a shot designed to denigrate and disparage those who are an important and integral part of our criminal legal system. DA Clarkson’s remarks not only denigrate the specific individuals she attacked but put a stain on our whole system of justice. We cannot sit idly by and let her belief be unchallenged in the public square.

We know the three of you have been and continue to be staunch supporters of Oregon public defense. Chief Justice Walters is an *ex officio* member of the Public Defense Services Commission and issued the recent statement noted above. The Attorney General's very gracious and laudable comments yesterday in the media shone positive light on the criminal defense bar and its importance in the legal system. In word and deed Governor Brown has been a consistent and stalwart supporter of public defense, both in the realm of criminal defense and juvenile defense as well as consistently working for social justice.

We now respectfully request the three of you unite behind your common beliefs and reaffirm your commitment to our entire legal system— specifically including all of those individuals who work each and every day— to keep and protect the constitutional rights of all of persons. We ask that you issue a joint statement that in this time of crisis you stand with public defense and disavow any public official, person of authority or public safety office who disparages public defense or the work of the criminal defense bar.

Respectfully submitted,

Past Presidents of Oregon Criminal Defense Lawyers Association (OCDLA):

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