Ad Hoc Committee to Review the Criminal Justice Act
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Transcript: Panel 3: Views from a Mixed Panel

Judge Cardone: We're actually missing one of our Committee members, but we're going to get started, so we don't get too far behind, and he'll, I'm sure, join us in just a minute. We are now on our last panel for this afternoon. It's "Views from a Mixed Panel," and we have with us here today Judge John Carroll from Cumberland School of Law Samford University; George Kendall, Director of Public service Initiative from Squire Patton Boggs; Professor Norm Lefstein, Professor of Law and Dean Emeritus Robert H. McKinney School of Law, Indiana University; and Andrew Zaso, Chief Case Management Systems Office, from the Administrative Office of the United States Courts.

Good afternoon everyone. Thank you for being here. Before we get started, let me just tell you, if you haven't heard how we function, brief opening statement to give everybody the opportunity to give us an overview, but we have received your written statements, we've reviewed those, and then we really like to have the opportunity to ask you questions. We'll start with the brief opening statements and we'll start with you Professor Lefstein.

Prof. Lefstein: Thank you very much Judge Cardone and thank you for the opportunity to visit with you this afternoon about the Criminal Justice Act. As you indicated I submitted a statement to the Committee and I think I'll just make a few comments based on the statement. First, as I indicated in my statement, my background is different than most of your other witnesses because my primary preoccupation, literally for decades, has been defense systems in state courts. In that connection I've worked on standards for the ABA, and I have studied the subject in a number of different states, and I've written about it extensively.

Including a national report that was issued in 2009 by the Constitution Project on behalf of the National Right to Counsel Committee that looked at all of the problems in indigent defense in state courts. I have had some involvement with federal defenders and with the Criminal Justice Act. I was on the board with a community defender program in Indianapolis, a founding member of that board. I also headed up, at the request of the defender's services office, a study of the cost and quality of death penalty representation back in the 1990s.

Which I think was often referred to as the Spencer Report, and I think your reporter John Gould was involved in the success of the report. I also was involved, many years ago, in helping to develop the D.C. public defenders service, and participated in writing the statute for that program, which is often cited, and I know has been cited in your testimony, as a model state

defender program, but of course it only serves the District of Columbia. I appeared before the Prado Committee back in the early 1990s and I don't have any specific recollection of what I said.

Judge Cardone: We do.

Prof. Lefstein: I see Judge Prado is here, and I . . .

Judge Prado: Want me to recite it back to you?

Prof. Lefstein: I would be very impressed if you could do that, but I do feel certain I said things before the Prado Committee that are similar to what I said in my statement about the need for independence, which of course was adopted by the Prado Committee, but one of the points that I made in my statement, related to the fact that this is not a new idea of the American Bar Association. Which has been at the forefront of developing standards for defense services in the United states.

The first edition of standards for providing defense services, which were published in 1968 made it very clear that those who furnish indigent defense representation should be subject to judicial supervision. Only in the same manner and to the same extent as our lawyers in private practice, and now more than fifty years since the Gault decision, and almost fifty years since those words were written, we're still in search of that proposition. Both in the federal courts, and unfortunately in many state courts as well.

That concept has been repeatedly embraced by organization after organization. A National Advisory Commission on Criminal Justice Standards and goals back in 1973, the report that I referred to had a number of recommendations published in 2009, and there are others. Of course the idea of independence is the first principle of the ABA Ten Principles, which is, as I said in my statement, is simply a distillation of policy positions that the ABA has long adopted, but we made it the first principle. I worked on these as well. We made it the first principle of the ABA Ten Principles because we thought it was imperative in order to have a fully successful system that the selection, and funding, and payment of council be independent.

Independent both of political forces, but also independent of the judiciary. As I indicated in my statement, in 1968 when those first standards were developed the chair of the Advisory Committee that was reviewing those standards, was a late Chief Justice Warren Burger, who was then a judge of the D.C. Circuit, and there were two other judges, circuit court judges who were on that ABA Advisory Committee at the time. As well as professors and prosecutors and defense lawyers.

In my statement I also address the actual independence of the defense function in state courts. Among my comments I said, there are few states in the country, if any, in which the states judiciary has the kind of total control over the delivery of defense services that the federal judiciary has over the federal defense program. It's a control that has existed since the inception of this program. Many of the problems and issues that have been cited to this Committee in testimony and in the hearings you have held, and I've gone back and reviewed statements, and I've listened to some of the tapes, all of them, seemingly, or at least I can say the vast majority of them, are attributable to the judicial control that the federal judiciary has.

I said in my statement as well that this really constitutes a conflict of interest for the federal judiciary by analogy to rule one point seven of the Rules of Professional Conduct and indeed the very decision making of the federal judiciary in deciding whether or not to retain that control is in and of itself inherently a conflict of interest. I also in my statement talked about . . .

Judge Cardone: Professor, Professor, Professor, could I ask you to wrap it up pretty quickly so we could short statements from everybody.

Prof. Lefstein: I'm sorry. If I'm going too long I'll be very happy to conclude.

Judge Cardone: Yes, because we want to get to the questions.

Prof. Lefstein: That's fine. I apologize for being longer. I did not time this and I appreciate your time constraints. Thank you very much.

Judge Cardone: Judge Carroll.

Judge Carroll: First of all I very much appreciate the important work this committee is doing and your accommodation of my schedule. I was scheduled to be with you all in Birmingham, which is my home, but I appreciate the opportunity to visit Minneapolis. What I want to talk about this afternoon is the importance of coordinating between the state and federal proceedings. The Capital Habeas Units and I come at this issue from a wide variety of perspectives.

First as a lawyer who has represented people charged with capital crimes, represented them at trial and appeal, and in post-conviction. I come at it from the standpoint of a magistrate judge who rules on habeas corpus petitions, and I've ruled on death penalty habeas corpus petitions before. I think the core problem though was created when the AEDPA was enacted. Which is the AEDPA essentially shifted the responsibility for federal criminal constitutional procedure decision making from the federal court system to the state court system. What does that mean?

That means effectively that if you do not absolutely, perfectly litigate the

issue in state post-conviction, then you have lost whatever opportunity you may have litigate it in federal habeas corpus. While the Capital Habeas Units are very, very important entities, they cannot function unless in state court they have good counsel to make sure that the issues are raised in an appropriate way.

Take for example, an ineffective assistance of counsel claim, in most states, under the procedural default rules if an ineffective assistance of counsel claim is not raised exactly right, then the claim is defaulted, which means that when you get to the federal court system, federal court can't reach their merits. Even if it's not defaulted, the new rules about when, how the evidence has to be presented, that is based on the Supreme Court decision that the evidence has to be presented in state court.

How it's presented in state court, and the whole issue of the way the AEDPA structures the system of review, it's no longer whether there is a federal constitutional violation that's harmful, it's whether there's a federal constitutional violation essentially that's way, way out of line and crazy. In order for the Capital Habeas Units to function well, I think we've got to develop some system of an integrated approach where the federal Capital Habeas Units have some role to play in state court litigation. Otherwise Capital Habeas Units can't be as fully as effective as they should be, and as you would want them to be.

Judge Cardone: Thank you. Mr. Zaso.

Andrew Zaso: Good Afternoon. My name is Andrew Zaso and I'm the Chief of the Case Management Systems Office, Administrative Office of the Courts. My office is often referred to by the acronym of CMSO. It's a new office created after reorganization which took place in June of 2013. One of the outcomes of the reorganization was a merger of the case management functions for the defenders services Office, probation pretrial services office, and the court administration offices. The goal for creating CMSO was to break down operational silos in the organization, leverage best practices across the judiciary, and develop a consistent way of developing and managing application development.

In November of 2013 I joined Administrative Offices after the reorganization, so I can't speak to how defender IT was run prior to that point in time. What I can address are the goals of the reorganization, how CMSO operates today, and some of the challenges we are facing in trying to improve defender IT services. Over the past two years my organization has been dealing with many challenges as we seek to define our role, re-leveraging resources, not uncommon after any reorganization. Let me clearly state CMSO does not run the servers for all courts, probation, and defender office systems. CMSO is a software development shop that manages application

development with the exception of probation and pretrial services, for which we have an operational role in addressing service outages, and for Dismiss, which is a data warehouse system used by the office of defender services.

All other production operations are managed either by the Department of Technology services within the administrative offices, or the national IT operations and application development division, commonly referred to as NITOAD, which is staffed by employees of the Texas Western Federal Defender Office. CMSO is not the owner of the data of any system. Data collected by any system is the responsibility of that program office, or court, to share or distribute. In our role as a software development office, we do not have access to production data for any office or court unless granted by the office or court.

In my written testimony I highlighted some of the issues we are addressing with defender IT as we try to increase the value CMSO can bring to the defender community. The work of this review Committee is very, very important, and you will make recommendations which will have far reaching effects. I felt compelled to provide written testimony and to come and answer questions from the Committee so that you can have a diversity of opinion in regards to what is happening with defender IT. That is why I am here today, and I want to thank you for this opportunity to address a topic of information technology within the defender community. I look forward to answering any questions you may have.

Judge Cardone: Thank you, and Mr. Kendall.

George Kendall: Thank you. Hi, good afternoon. Thank you Judge. I'm George Kendall.

Judge Cardone: Can you pull the microphone towards you?

George Kendall: I have never been a federal defender, but I have worked with this excellent program for my entire career. I was fortunate enough my first four years of practicing law in Washington to be in a jurisdiction where PDS was there. I took my share of CJA cases, little ones and big ones. I can't tell you how important it was for me and my professional development to receive all kinds of support from that wonderful institutional defender.

There was an attorney of the day, if you were in court and you had a ten minute break and some legal question came up that you had no idea what the answer was, you could run to the phone booth, pre-cell phone days, you could call the attorney of the day, and you could, often times, have an answer. There were memos, very good memos written on new Supreme Court decisions, new court of appeals decisions that the most of us in the private bar did not have time to analyze as quickly or as thoroughly. That service was very helpful.

I went south in the mid-80s and was doing a lot of death penalty cases. We were overwhelmed with the number of capital habeas cases where there were no lawyers. I was one of the lawyers who came and met with the AO, then Ted Lutz and Steve Asin said, "we have got a problem. There's all these cases coming into federal court, capital cases, where there's no lawyers for them." Steve and Ted were terrific and their work, and work of some of your predecessors with the AO helped create the resource centers, which made a world of difference. We have a new generation of those now that Capital Habeas Units and I've been working some with the Death Penalty Working Group.

I've been close to this program for many years and greatly admire it. I came here, I've not submitted written testimony yet, I apologize for that. This has been a much busier spring than I had planned. Arin, I have driven her crazy. Arin thank you for all your leave. I was supposed to see you in Birmingham, I could not come. I was supposed to see you in Philadelphia, and so I'm glad to be here today. I want to make three points very quickly. First of all, on independence, I'm on the side that the program needs to be independent. I've seen in my practice, both retail instances of lawyers not raising issues because they thought they would offend the judge, and hurt their voucher.

I ran into a recusal issue in a state case where, through investigation I learned that the judge and the prosecutor had some kind of a very close relationship. It was an open secret in the community, but no one had ever filed a recusal motion. I said, "Why didn't you file a recusal motion?" The answer from every one of the very good, talented lawyers in that town were, "If I file that motion, I can't work here anymore." I did not live in that town, that was the only case I had, I was able to file that recusal motion, and we got through that motion, and that judge was recused.

Independence is very, very important for you to be able to do your job in these cases. I think Professor Kerr and Judge Walton raised a very good point this morning about, "Well if this wonderful program does become independent, doesn't that mean there could be some real challenges to getting the kind of money that it has always gotten in the past?" I think yes, there is that question, but I think there are things that can be done to make sure that it continues to get funding. There are, as you know, many law firms in Washington, other places that have very good lobbying offices, and I would be shocked if some of those offices wouldn't, either on a pro bono basis, or in a reduce rate basis, do the lobbying for the defenders to make sure that they got their money.

Secondly I want to talk about innovation. Whatever, however you tinker with the Criminal Justice Act, I would urge you to do it in a way that makes the federal defenders and the community defenders much more flexible to

engage in collaborative initiatives. I, at my private law firm, I teach a two semester course at Columbia Law School. I have very eager students, they come with us on the road, they provide an enormous amount of help to us on our cases. It's totally free to us and it's helps our indigent clients very much. I think a couple things you want to think about on a bigger scale, while the federal defender program is very good, it's also very white. It's had many successes, but it has not great success in attracting and retaining the kind of numbers of minority lawyers that it needs to have.

Many of our clients are minority, I'll never forget representing a young man in Georgia who was African American, who's crime occurred on February first and he was on death row before April first. Fifty-seven days from arrest to death row. His two lawyers were white, there were race claims in that case that were never raised. It was an appalling trial. We got the case overturned in federal habeas, I went back to that community to retry that case. The same judge was there, the same prosecutor was there, and before our first hearing my client asked me to see him in lockup. He said, "George you've been with me now for ten years, but I can't sit in this courtroom again, with just a white lawyer. Can you get a lawyer of color to be with you?"

I'll tell you, that was a searing moment. I worked for the NAACP legal defensemen at the time. We had done very good work for him, but this is something I should have recognized before he asked me. I would ask you to consider establishing some kind of an honors program where there's a very serious, aggressive, sustained effort to reach out, identify, recruit, train, and retain the best minority lawyers and paralegals that you can.

Lastly, on innovation, I would urge you to think about having some kind of a scholars and residency program. There are all kinds of issues that the federal defenders is currently do not have the time to look at in the way that it needs to. Deep data searches, and whatever. I think that would be a wonderful service to the entire federal defenders system and to the state defenders, and would help in various cases for there to be more justice.

Lastly John has indicated already, he wants to talk some about federal lawyers working in state courts. I would ask you to think about having, establishing a race initiative in the federal defender program. You read the papers recently, look at that report from the Chicago police. That's not the first time that there's been reports about how much racial bias there is in the Chicago Police Department. I for one, I want to be on the record, I think one of the hardest jobs one has in America is to be a police officer. It's a very tough job, but there are some bad apples in Chicago and other places, as you've seen in San Francisco, Los Angeles.

Our state defender programs do not have the resources to really tackle this issue that has been a stain on our justice system forever. Those programs are

not going to have the kind of resources to really tackle this. I think an initiative here that worked with some of the good NGOs, the not-for-profits who've been working on this for decades and decades, would be a terrific step forward. Not simply for litigating some of these issues in the federal courts, but also where necessary to go into the state court systems and litigate those issues. Thank you.

Judge Cardone: All right. Let's go ahead, we'll start with Dr. Rucker.

Dr. Rucker: Thank you Judge Cardone. Mr. Kendall may I start with you? I'm very intrigued about your idea of recruiting minorities. Could you give us some suggestions? That's one of the things we've seen around the country, is there's not a lot of minorities. We just heard about that in the previous panel as well. What suggestions do you have for us to recruit minorities? The hourly rate's not terribly high, the work is difficult, so what suggestions do you have for us?

George Kendall: Well there are a number of things. I think you can look at what are the top twenty law schools that have significant minority enrollment? Go in there very aggressively. Your summer program, hire these first and second year law students and take a hard look at them. Encourage them to come and make a career out of being a federal defender. If there need to be initial programs, first couple of years, certain internship programs. The Justice Department very successfully uses Honors Program to attract top fight lawyers of all stripes in their program.

There are ways to do this that would boost interest both for minority lawyers to apply to the federal defender programs, and to stay there. When I was at the Legal defensemen we talked about having a program where lawyers in Alabama, we didn't have an office in Alabama, could have a one, or two, or three year paid internship with a very good private lawyer doing CJA stuff. There are ways to do this. This is a program that could do all these things. It just hasn't in the past. I think, but for doing some of these programs you're not going to address this problem in any meaningful way.

Dr. Rucker: Let me follow up with that if I may. Am I hearing you say then they should work for the federal defenders, or work with panel attorneys, or a combination of both?

George Kendall: I think you want to have a system that works in both ways, that encourages, and supports, and sustains in both ways. Yes.

Dr. Rucker: Okay, thank you. Professor Lefstein, could I turn to you? I was very intrigued by your written submissions and the model that you proposed to us. I wondered if you could tell me a little bit more about how you see this working because you talk about appointments from all three branches of

government, you talk about having both major political parties involved in this, could you elaborate a little bit more about that?

Prof. Lefstein: Well, my idea is that you need to have diverse appointing authorities in creating a commission or a board of some kind to oversee defense services. It's a concept that has been often repeated for state courts. If you look at the United States there are now, in states, probably two-thirds of the states have almost, two-thirds perhaps, have independent commissions that oversee public defense. The majority of those, not all of them, the majority of them have different appointing authorities with the idea in mind that the people, once they serve on the board, don't feel beholden to the person who appointed them, and you don't concentrate power for the appointments in one individual.

In thinking about this program, and admittedly there are like eight or nine states where the governor makes all the appointments, and there's a few instances where you have a state director, public defense, and no commission of any kind. When I thought about this program, it seemed to be borrowing from recommendations we've made for what states ought to do. You ought to have diverse appointing authorities from all three branches of government. The Executive, the Legislature, and the Judicial branches because defense services I've often thought as something in the nature of a fourth branch of government. It really isn't an Executive function per se, the Executive function is really prosecution, and defense services is really quite different.

I also thought that it would be good if the people were appointed by very high level persons in the government. Which led me to suggest that you ought to have the Chief Justice of the United States make appointments. You ought to have the President make appointments, and you ought to have the major parties involved in making appointments, majority and minority leaders perhaps in the House and Senate, so that when these people are speaking on behalf of the federal defender program, they really take their seats by virtue of persons in the highest level of government.

They perhaps speak with greater authority than might otherwise be the case. Recognizing that there is a concern obviously. That defender services might not be as well funded as they are today, although I read David Patton's statement who made a suggestion about how maybe you could tie that in some fashion to a percentage of prosecution and government funding. That's kind of how I arrived at those suggestions.

Dr. Rucker: If I may follow up with that then, how would this be applied more as we go into the districts and the appointment of panel attorneys, review of vouchers, and things like that? How would that work?

Prof. Lefstein: Well, you may need something lower down, because it's obviously a big

country, and a huge program. You may need that if it was a seventeen member board to create some structures beneath the national board, or you could do it by way of legislation. Certainly you have in Massachusetts, probably the premier example of a state-wide program that has taken over all of the functions of providing defense services. Judges do not appoint lawyers, they do not review vouchers, all of that is handled by administrative staff of the state-wide program. It also is similar to the federal program in the sense that the majority of representation is provided by private lawyers.

In Massachusetts they're not particularly well compensated, not nearly as well as in the federal system, and the public defenders probably represent no more than twenty-five percent of the cases. That's what they're supposed to work up to. It can be done. Massachusetts demonstrates it, and there are some other programs that demonstrate it. There's a program in California that I studied in San Mateo county where basically the bar was vested with authority to provide defense services and they created a private defender program. The judges don't appoint the lawyers. They don't compensate the lawyers. It's all handled administratively by the private defender program.

It is just as independent as it could possibly be. You have in Massachusetts for example, something that I don't think you have with many CJA panels. Maybe you don't have any, I don't know for certain, but the program in Massachusetts has supervisors for the panel lawyers, they have mentors for the new private lawyers, they take each year, the last time I checked, five hundred files at random of private lawyers and review them. They have a task force that reviews them of other senior private lawyers, and they sometimes dismiss people from the panel because before they're put on the panel they are qualified by, ultimately the head of the program. I understood Bill Leahy was here this morning and that was his function when he headed that program. He now has a successor who ultimately has that authority.

Dr. Rucker: All right, thank you. Mr. Zaso, a question for you. Thank you for the detailed information you provided in your written statements. I appreciate that very much. One of the things we've heard repeatedly as we've gone around the country from the defenders and panel attorneys is they would like to see all of this taken away from the judiciary. There's different ways they've talked about doing that. Sometimes it would be something more like the FJC or the U.S. Sentencing Commission, something like that, or else maybe a structure totally outside of the judiciary. If we were to think of a model, let's say within the judiciary, but separate from the AO, how complicated would that be to shift what you're doing now to an agency like the FJC to do for the defender services? What kind of problems do you see with that, what kind of cost involved with that?

Andrew Zaso: That's a good question. The FJC and the U.S. Sentencing Commission are not on the same network that we currently reside on. It would have to be a

whole duplication of both the authentication system that would be used, as well as where would the data centers reside? Right now the FJC, to my knowledge, does not have the data center co-located with the judiciary, or the U.S. Sentencing Commission. They're completely separate entities. That would be a duplication of cost, again for both standing up the physical servers as well as managing the systems. Of course you have the network and security on the network that would have to either be copied in terms of policy, but managed separately. It would be a big cost.

Dr. Rucker: I'm not trying to put you on the spot but I'm going to anyway. Do you have any sense at all about what that might cost to put up something like that?

Andrew Zaso: No. Again, I run a software development shop. I'm not into the infrastructure cost that I could tell you a number with any certainty.

Dr. Rucker: Okay. Thank you. Thank you Judge Cardone.

Judge Cardone: All right. Judge Fischer.

Judge Fischer: Thank you all again for being here. I'm going to start with Professor Lefstein. You say you . . .

Judge Cardone: Can you get a little closer to the mic?

Judge Fischer: You say you can talk in great detail about the problems of taking the third branch out and putting the Executive branch in, or an independent group in, and you also mentioned something about Louisiana's system being in crisis because it has an independent board. If we are going to recommend going to big "I" independence and taking this out of the judiciary, what are some of the problems that we might not have thought of yet, and how can we avoid those?

Prof. Lefstein: Let me be clear about Louisiana. The crisis in Louisiana is not because they are independent. My point when I talked about Louisiana was that they are very independent, and it's precisely because they are independent that we have a crisis in the sense that the Louisiana public defender board has basically said, "We can't continue like this. We can't have lawyers in New Orleans handling over three hundred felon cases a year." They developed, and I've worked on it with them, they developed a protocol for declining cases after inspecting what was going on around the state.

It was really, frankly, a tribute to the independence of the program, that the crisis has received such attention. They said, "Ethically we can't do it and we can't do it consistent with the Sixth Amendment." Frankly, there is something of a standoff right now and I think we need to stay tuned because there'll be more activity on the subject as the year progresses I'm quite

confident. The second part of your question, again, was what are the . . . ?

Judge Fischer: What can we anticipate would be the problems even if we suggest this slightly less than perfect world, where the defense function is either completely outside of the judiciary or a fourth branch as you say?

Prof. Lefstein: Right, well I think, and I don't think this is an original thought, that the greatest concern would be that the funding stream not be adequate, because the federal judiciary has, not withstanding, the understandable concerns of defenders has had a budget that has provided for the defender program. If you look around the country, and I compare it with what goes on in the states, in many respects the federal defender program is quite enviable. On the other hand it is not without its problems. I worry like all of you about the funding stream which is why I think it's so important how that structure is put in place and that the people involved be high level people, who can not only speak on behalf of the program, but who will engage the appropriate lobbyists as George Kendall suggested in his remarks, but that's really the primary issue.

There is no reason, no inherent reason why a structure that Massachusetts has developed very successfully cannot be imported to a federal program. It may take more as we suggested by your question sir, that you may need some additional structures other than, or in addition to the national board that oversees the defense program because of the size of the defender program, but it is all possible.

I did want to add one other thought, and I didn't say it before, there was a time when I was at the public defenders service in D.C. in its infancy and I don't think this is any longer the case, when the monies that the public defenders service received were monies that were appropriated as part of the D.C. appropriation, the federal payment to D.C., but all of the money was turned over to the Administrative Office of U.S. Courts. The AO, basically held those monies in trust for the Public defender service. They had no responsibility whatsoever for the operation of the public defenders service, but they did provide the payment structure, the health benefits, and all of that, otherwise available to Administrative Office employees.

It occurred to me, after I wrote my statement that you could be all together independent potentially, but still have, and there may be some advantages to this, I don't know enough to know for sure, but there may be some advantages in doing the same thing with the federal program that was done in the early days of the public defenders service where the AO was simply a trustee of the funds, and provided that administrative component because they're already doing it. I wanted to make a point of that.

Judge Fischer: Thank you. Judge Carroll you talked about the choose doing even more by

integrating the process, but we don't even have choose in all circuits, do you have any suggestions as to how we can encourage that step first, assuming you think that we really should have more choose than we do now?

Judge Carroll: The only way I can think of is to continue to sell how important these institutions are. If you go across the country, representation of indigent defendants in capital cases, for the most part, is incredibly spotty. There's some places where it's good, but most places it's incredibly bad. federal habeas corpus really represents the only hope that a person on death row has for any sort of relief in early involvement of the federal defender. I think emphasizing the need for Capital Habeas Units, the value that they bring to the system is the approach that I would take.

Judge Fischer: Thank you. Mr. Zaso, you say you're correcting some of the inaccuracies that you saw, but sometimes the perception is just as important as the truth, how do we make sure that the perception that's out there is accurate? What can this Committee do, or what can the AO do to better educate everyone out there in the defense function as to some of the information that you've give us so that they have all the info they need?

Andrew Zaso: I think part of the challenge is, and getting this story out there, is to show what the value is for this relationship. Like I said, the reorganization put this NITOAD group as a dotted line to report into my group, and when I reached out to the folks at NITOAD prior to coming here and I said, "How've I been able to help you?" They talked about some of the relationships I've been able to build. Prior to this reorganization there wasn't communication flowing back and forth. The judiciary is very famous with being very insular, not reaching out to other parts of the organization, and one of the things I've tried to do is break down that wall. When the CSA conferences, the Computer System Administrative conferences happen I always try to brief the administrators from across the country as to what the AO is doing, not just from a policy standpoint, but more importantly, from a security standpoint, and what technologies we're looking at.

Things like Office three-sixty-five that we're looking at now. Changes in our security platform, being able to scan for viruses, and ransomware, those kinds of things, and trying to bridge that gap. That's happening at the computer system administrative level, I don't think it's necessarily happening at the defender level. The challenge is how to communicate that message. I don't have a great answer for that. One point that's been in discussion is maybe briefing the DSAG on a more regular basis, so that they would know what's happening. It is a challenge to get the information out there, but I think there's a lot of good things that are happening.

Judge Fischer: Thank you. Mr. Kendall you mentioned an interesting idea. A scholar and residence, could you tell me a little bit more about your thoughts on that?

George Kendall: Sure. They took the National Academy of Sciences to basically say that for a lot forensic science there is no science. Had there been a scholarship residency program at the Federal Defender Office, I think we would have been hearing that, and seeing litigation with those aims years, and years ago. I think that there are tremendous litigators in the federal defender program and as some of the earlier panels talked about, some of the CJA lawyers are terrific lawyers, but there needs to be some sort of research tank and people looking at the deep data, and developing ideas. This finger print stuff isn't nearly as solid as we all thought it was, and we've all learned that our system is a lot more fallible than we thought before DNA. Looking for the next forty years, I think this program has that kind of capacity. It's going to identify some of these problems sooner so we can solve them sooner.

Judge Fischer: Thank you. Thank you Judge Cardone.

Judge Cardone: All right. Judge Gerrard.

Judge Gerrard: Thank you. I want to follow up a little bit with the diversity Mr. Kendall, particularly, we heard from the panel just before you, we had the public defenders from Nebraska and Kansas, and southern district of Illinois, and the Dakotas. I guess my question is with the less diverse populations, and I'm a judge in one of those in a district in Nebraska, and yet thirty-five to forty-five of the defendants that appear in my courtroom are minority defendants. Yet the judge they see, the clerk they see, the probation officer they see, and most often the lawyers that they see are white, which leads to the comment that you had received from the defendant. My question is, in the less diverse populations, what type of programs or recruitment would you have to suggest? Obviously there would be the honors program, and that would provide incentive, but what other types of things do you . . . . Those are the tough areas that I see to recruit to.

George Kendall: You can't build Rome in a day. I work out of New York City, my team is very diverse. We don't do any representation in New York City. We go where there aren't legal teams who can help on cases. I think the federal defender program to do the same. I think I mentioned in my opening remarks, it would be good if the Federal Defender Office was more innovative, and had more freedom. Why couldn't . . .

Judge Gerrard: That's the flexibility you're talking about?

George Kendall: Yeah, why couldn't somebody in New York, why couldn't they send lawyers for a couple months at a time. There are ways to address this, but you just need enough lawyers in the system to address some of these.

Judge Gerrard: The U.S. Attorney's Office does that on a regular basis.

George Kendall: Absolutely. The private bar does that all the time.

Judge Gerrard: Okay, all right, very well. Thank you. Is it Lefstein or Lefstein? I've heard both.

Prof. Lefstein: I have no authority for it, but I always pronounce it Lefstein.

Judge Gerrard: That is fine. I just didn't want to mispronounce your name. A couple of questions, and I was intrigued also by the structure that you proposed of a new federal defense program. I happen to agree with you, that if there were one that it would be A. High profile appointees, and two that all three branches would be represented in both sides of the political aisle. I think the reason you suggest that is to provide a long-term political buffer if you would. In your third paragraph you said an example the board could be assembled and the first was the Chief Justice of the United States Supreme Court name five appointees to the board. Would that include judges?

Prof. Lefstein: Absolutely not.

Judge Gerrard: That is the question that I had. We had, obviously, Miss Buchanan and Miss Leighton were here earlier and they were adamant in what their board makeup was. My question is would it be helpful to have judges in any type of advisory capacity, or in no capacity whatsoever on a board? Let me hear your thoughts on that.

Prof. Lefstein: Sure. Well I would assume that the members of the board might want to consult judges, but I'd leave that up to them. The standards that have been developed, not only by the ABA but other groups are quite clear that neither prosecutors, nor judges, nor active practitioners of defense representation in the federal courts, whether they be public defenders or panel lawyers, ought to be on the board. The board is a policy making body, and you don't want to have, and should not have people who are active practitioners involved in making policy.

Sure, they ought to be heard by the panel, or by the commission, or the board, whatever we call it, but the people on it ought to have, or at least some of them ought to have prior substantial experience in public defense, preferably in the federal courts. There are other ways that you can enhance the board. You could have the president of the American Bar Association make an appointment, you could have the head of the National Bar Association make an appointment, and you might want to consider having laypersons on it. Which is the current situation with the D.C. Public Defender Service Board.

Judge Gerrard: Okay. Along those lines, the D.C. public defender service, both of them who were represented this morning and one of the questions that was posed was

would there be any tweaks that they saw in the legislation as is originally created and they kindly deferred to you sir. They said, "Ask Professor Lefstein, he'll be here this afternoon."

Prof. Lefstein: That's very kind of them. Since the initial statute was passed and took effect in 1970, there have been modest amendments to it, but I think it has worked exceptionally well, and actually the law that was passed in 1970 creating the Public defender service was a successor to what had existed for ten years prior to that known as the legal aid agency from 1960 to 1970 and it too had an independent board or commission and was commended in those standards in 1968 to which I referred earlier.

Judge Gerrard: Okay, very well. Thank you. Judge Carroll your suggestions regarding coordination between state and federal capital crimes at the early stages for the two units, what type of suggestions . . . the type of suggestions that we could make within the purview of our Committee? What do you have?

Judge Carroll: Ideally the idea would be to have federal defenders represent people in state court. There's some institutional oppositions to that, which I understand, are also a lot of moving parts to it that would have to get worked out, so I think one recommendation would be at least to study this issue, and come up with a solution. The second though, and I'll talk a little bit about the Alabama post-conviction project which has the unfortunate acronym of ABCRAP, we're trying to work on that. The community defender office in Montgomery that has a Capital Habeas Unit created a non-profit.

I was the first president of the board of the non-profit. The non-profit essentially exists to try to fund the activities of the community defender. What the community defender through the Alabama post-conviction relief project does is try to recruit lawyers to take state post-conviction cases, provide them with assistance, or appropriate, provide them with federal monies to hire expert witnesses and that sort of thing.

Certainly in the interim the ability to develop those post-conviction relief centers. One problem that they immediately run into is that the way the system works is that the non-profit has to raise money on it's own to reimburse any federal defenders that work on the state post-conviction projects in anyway. One thing this committee could do would be to try to recommend a way that that didn't have to happen. That a federal defender could work in coordinating state court activities without having had their time reimbursed. I think that's a short term solution, but the long term solution is a very serious study of how to remedy this problem.

Judge Gerrard: Okay. Very well, thank you Judge.

Judge Cardone: Mr. Cahn.

Reuben Cahn: Let me start with you Mr. Zaso, and I want to ask you a question first about something you said to, I think it was Judge Fischer, it might have been Dr. Rucker, about the cost of standing up a separate system. Forgive me if I'm wrong, but my understanding is the defenders have already their own wide area network, they have data centers where their lotus note servers, and D data servers are kept, and they have a bridge between their network and that of the D.C. and the courts, and of course each individual office already has their own network as well as their own servers for their own case files. I'm failing to understand how there'd be a huge hardware cost in standing up an independent agency.

Andrew Zaso: In San Antonio, there is a data center, and there's also one in Ashburn that houses their system. When I was asked that question I was trying to think what it would cost to move the servers from the Ashburn data center, to a separate data center, or they could co-locate in the same data center, which is owned by AT&T. That's why I wasn't able to give you a cost. There's many ways to do this.

Reuben Cahn: Why would you need to move them in the first place, just because they're co-located in the same location as the courts?

Andrew Zaso: It would depend on what the defenders want by that question.

Reuben Cahn: Okay.

Andrew Zaso: In other examples, there's been cases where just physically, within the San Antonio building there's a bigger cry for being more separate than just being in the same building.

Reuben Cahn: Okay, so you're talking about physical separation as opposed to a logistical separation.

Andrew Zaso: Right. They're in the same data center in a separate cage within the data center.

Reuben Cahn: There's really no need to do anything to the hardware to assure it's independence?

Andrew Zaso: No.

Reuben Cahn: All right. Let me ask you a little bit, because I read your testimony, and of course I've listened to, and read the testimony of the defenders, and oftentimes it seems like we're looking at two very different pictures. I want to try and clarify what I can and understand how you see the system as it exists. You describe your role as head of CMSO as a liaison role, but

defenders have stated that they understand you as having operational control, or not operational control, there's a distinction. Let's put it this way, that NITOAD and other parts of the defender IT structure are direct report to you. Is that accurate or inaccurate?

Andrew Zaso: I would say that's not entirely accurate.

Reuben Cahn: Okay. Explain what you mean by not entirely.

Andrew Zaso: The reason I say that is on the organization chart, yes they report to me, but they're employees of Texas Western's Federal Defender Office. I don't hire or fire those individuals. I have no supervisory authority over the people in NITOAD.

Reuben Cahn: What does the report mean? You say on the organizational chart they report to you, what does that mean?

Andrew Zaso: That means I meet with them on a regular basis and try to improve the relationship that we have. Seeing ways that I can help bring things that are happening at the AO to help the defender services Office. Ultimately we have a veto power about whether or not they accept something.

Reuben Cahn: About whether or not they accept something?

Andrew Zaso: Right. Let's say one of the examples I use was about firewalls, for example. I can't mandate a federal defender uses, at least I'm told I can't mandate a federal defender office install firewalls, or turn them on. I've no control over that office because of the independence. It's separately funded through separate appropriation from Congress, and again the people I don't hire or fire them. I have no control over implementing certain features that could benefit them. That's why I used the term dotted line, or advisory.

Reuben Cahn: Let's talk about the software development aspect.

Judge Cardone: Can I just interrupt for one second. I have a question about what you just said. On that issue of the firewalls for example, because that was in your letter, and I just want to follow up. I apologize Reuben, but my understanding, and you know that I'm on the Defender Services Committee, my understanding is that the issue of having, for example firewalls, or those kinds of things, is not necessarily an issue of being able to implement, but to have the money to do it. In other words, without the money, no matter how much the AO says this would be a great thing to have, unless somebody gives these defenders the money to do it, they can't do what you're recommending. Am I wrong about that?

Andrew Zaso: Right, but I don't think money is an issue there at all.

Judge Cardone: You don't think money is an issue for the firewall?

Andrew Zaso: No, like I mentioned in my letter, in the last defender automation working group meeting we talked about how to fund those firewalls. I know we can find money. That's not a question. In fact, I'm not even sure how much money is available. I'm sure the money is there, because security is such a big push right now. After what happened with OMB we know we need to improve our security. If one office doesn't have a firewall installed, that jeopardizes the entire network.

Judge Cardone: Okay, just so I understand, what are you saying it would take if defenders, because this is one of those things Reuben was mentioning, or Mr. Cahn was mentioning, is different information. What are you saying it would take? I can't imagine any defenders office saying, "I don't want a firewall." Especially with all the problems with cooperating witnesses, and other people trying to get into systems as they are. Why would any defender not come and get the money from you if you have the money and it's just a question of asking for it?

Andrew Zaso: That's a great question. One we debated for about a half hour in our meeting. We can't force the defender office. I suggested certain ideas about how to maybe encourage them to do it, and each idea was shot down because we cannot tell an individual defender office what to do, is what I was told. I just raise it as an issue of independence at each defender office has. Those computer system administrators don't work for NITOAD, they work for the individual defender office. The only people that can control them implementing, installing, and turning on, and managing those firewalls is that local federal defender.

Reuben Cahn: Let me return to the software development side, and that's something CMSO does control correct?

Andrew Zaso: Correct.

Reuben Cahn: For instance, the defenders or DSO has contracts with certain software developers, and those contracts are managed by CMSO?

Andrew Zaso: Correct.

Reuben Cahn: If defenders want changes in any of that software either that would fall within the contract or that would require a modification of the contract, they have to go through you?

Andrew Zaso: Correct.

Reuben Cahn: Let me step back a bit because you mention on page of your testimony problems with the contracting that occurred in the past. I want to make sure if I understand what these problems were and when they occurred. Could you answer the last part first? Can you tell me when the problems you're talking about occurred?

Andrew Zaso: The problems have been occurring for years, to be honest with you. In fact, two of the last people that left my office one of the reasons they cited when they left was some of the issues in dealing with the contract issues, because you have to understand they're, on paper, as being the ones responsible for dealing with the company, dealing with the contract. When their authority was usurped by someone going directly behind them they felt they were being put in unusual position to speak for the product as well as the defenders.

Reuben Cahn: Let me be a little more precise. My understanding is that the main problems with the contract that were complained about occurred during 2013 through 2015 is that accurate?

Andrew Zaso: Mm-hmm (affirmative).

Reuben Cahn: Okay, so that was the time of the work measurement study? Right?

Andrew Zaso: Right.

Reuben Cahn: That had been accelerated by the executive committee and the JRC, right?

Andrew Zaso: Mm-hmm (affirmative).

Reuben Cahn: Of course defenders together with another branch of the AO decided to use the D data system to manage the data that would be used for the work measurement study. Is that right?

Andrew Zaso: Correct. Mm-hmm (affirmative).

Reuben Cahn: That required a large number of changes to the D data system, some of which may have been within the scope of the contract, some of which may have been outside the scope of the contract right? All of that occurred after the reorganization, is that also right?

Andrew Zaso: That's correct.

Reuben Cahn: My recollection is the reorg occurred roughly . . .

Andrew Zaso: June of 2013.

Reuben Cahn: Yeah, and with defenders starting to feel its effect sometime around October.

Andrew Zaso: I think that's when sequestration took hit, yeah.

Reuben Cahn: When did you come on?

Andrew Zaso: I came in November.

Reuben Cahn: Of 2013?

Andrew Zaso: 2013.

Reuben Cahn: That's the time when changes were being looked at, and beginning to be made even later, so your group was in charge at that point of the contracting?

Andrew Zaso: Correct.

Reuben Cahn: I know you were dealing with a lot of issues because you manage not merely the defenders, which is a relatively small piece of your portfolio, but the software development for the clerks offices, for bankruptcy, probation, pre-trial, all of those, right?

Andrew Zaso: And probation, yep.

Reuben Cahn: All of those which sort of dwarfed defenders in size.

Andrew Zaso: In terms of number of users, probably.

Reuben Cahn: Yeah. Can you tell me, what percentage of your time were you able to focus on the contracting issues for defenders over that period of time?

Andrew Zaso: I didn't really spend much time, because I was brand new to the organization. There were already people in place that were managing that contract.

Reuben Cahn: Okay. That's what I would have expected, but I wanted to clarify that, but there were CMSO employees in place managing those contracts, dealing with these issues?

Andrew Zaso: Correct, right.

Reuben Cahn: We talked about D data, and I want to talk about one other system very briefly, and that's Dismiss. You mention them both in your written testimony and I notice you say that defenders are enthusiastic about D data, and you do not offer the same endorsement about Dismiss. Is that an accurate observation about your testimony?

Andrew Zaso: I would say so, and that's because Dismiss is a system that I would say is in flux. You have to realize Dismiss is a data warehouse that takes data from the HR system, from eVoucher, from the facilities management product, and also from D data, and all that data comes in and through that Dismiss system we're able to generate reports that we need both internally as well for reporting to Congress. All those systems I have mentioned have been redesigned by the AO in the past ten years. We have a new financial system, new HR system, eVoucher's new, and as a result, we still have this old system and the interfaces that connect to it, aren't what they could be, I would say. Like any investment, there comes a time when you need to make a decision about do you continue to invest and modify something you have, or move to something new. I think that's the case with Dismiss.

Reuben Cahn: Okay. Dismiss itself is an old system, isn't it?

Andrew Zaso: Right.

Reuben Cahn: There's been a new iteration, but that was not a complete ground up, redesign?

Andrew Zaso: No, the new version was mostly cosmetic, changing from one language, I forget the old language, to Java.

Reuben Cahn: Okay, and there were significant problems in accomplishing what needed to be accomplished, even in that making those changes because of the antiquated nature of the system.

Andrew Zaso: That, plus being able to really look at the data quality coming across, because we don't have insight into the defender data system. We can't tell if the data coming to Dismiss is correct.

Reuben Cahn: That's an issue I wanted to explore. One of the problems of course as a defender is the information, some of the information that gets transmitted to Dismiss is of course highly confidential information, and it's held with even more confidential information, and so you, as a non-defender employee simply can't look at it?

Andrew Zaso: Correct.

Reuben Cahn: Right. The people who actually have operational control over it have to be separate from you as the management control over it, right?

Andrew Zaso: Correct.

Reuben Cahn: Whereas if it were a unified system, if someone within the defenders had that management control, they could look into the actual data and fix these

problems directly when they occur?

Andrew Zaso: Yeah, if it was designed that way. I just want to point out though that the data coming across from defender data into Dismiss is summary data. It's not case information.

Reuben Cahn: No, I understand, but the data that's sent across is itself before it's sent across . . . located with, housed in servers that contain highly confidential information.

Andrew Zaso: Right.

Reuben Cahn: Attorney/client confidential information, right?

Andrew Zaso: Mm-hmm (affirmative).

Reuben Cahn: That's a problem that the reorg itself created by moving the management out of defender services and into a separate branch that was responsible to all of the courts, correct?

Andrew Zaso: Before it was being transferred over to DSO, so depending where you draw that line, it was still being moved over to the AO, not CMSO, but the DSO.

Reuben Cahn: But defenders had a very different view about DSO versus CMSO, correct? DSO didn't have a responsibility to the entirety of the courts, but to the defender system. Okay. I want to turn to eVoucher because you mentioned that and it's been a big subject, both for the Committee as well as obviously for the program as a whole, the Committee itself has often had questions about what kind of data we can get out eVoucher and how accessible it will be. The program as a whole has had questions about what sort of access we can get to data because it's important for planning and managing the program and my understanding right now is basically the eVoucher data is not something that defenders, or the defenders services office has any control over or direct access to. Is that accurate?

Andrew Zaso: I do not know, because the reason I say this, I know on the product back log the new features that need to be built. There's requirements coming from the defender community. I do not know what's been built right now.

Reuben Cahn: Okay, are you aware of any reporting that defenders or DSO, or judges on the defender services committee can pull upon directly without asking for authority from someone else?

Andrew Zaso: I'm not sure.

Reuben Cahn: All right. I should say, you and I have talked before, and we've talked about

some of the suggestions that might help bridge these gaps, right?

Andrew Zaso: Right.

Reuben Cahn: Hopefully we're going to implement some of those in the future.

Andrew Zaso: Correct.

Reuben Cahn: I want to leave you alone for a little bit. As I said, I don't want this to feel like a congressional hearing. I'm going to turn to you George, and I've got a question for you, and this is sort of a bigger picture question. You talked about moving the defenders into a bigger world, and that's very appealing, it's very appealing to take people who are well resourced and able, and have them look at some of the bigger issues that affect the criminal justice system, but of course we've got some bad experience with legal services, agencies, that we're focusing on big issues as opposed to the protection of being involved in the day to day case issues. I'd ask if you could comment on that as we look at possibly moving this to some relative degree of independence, would focusing the organization on big picture issues put us more at risk politically?

George Kendall: I'm not saying refocus, I think, a huge change direction. I'm saying that given the way the world works, there's a need, I think, within your program to have this added capacity that would be of service to your primary function that's litigation. That you would be ahead of where you are now in identifying, if you had a scholars and residence, if you had something like that, you could get ahead of, "Hey I think there's something wrong with this side, or the other thing."

You wouldn't have to wait for somebody else to develop that data, you, as program, would have the ability to develop the evidence to support that. I don't think that makes the program a lot more controversial. Legal services as I understand it, where they had problems was that instead of just doing divorces, and other things, they were filing major lawsuits on a variety of things. I think, what I'm talking about, is to really get into where are there some real problems in the administration of Criminal Justice that the federal defenders going to have to deal with, and just to get at it sooner is my point.

Reuben Cahn: But then to deal with it in the context of individual client representation?

George Kendall: For example, on this hundred and one disparity, there could have been litigation on that sooner than there was. There are a number of issues. Had I think the defender program been in the position to really dive deep into the data and talked, and really built a case of what's wrong with this, I think there was effort made to litigate issues around that early on, that didn't have that kind of support, thus they didn't go anywhere.

Reuben Cahn: Let me ask you about one other funding related issue, and Professor Lefstein or Mr. Carroll, you may also know something about this and that's this was, I can't say before my time, but it involved the issue of twenty-two-fifty-four, which is not something I've ever spent any time with. That's the defunding of the resource centers. This sort of bug-a-boo for defenders as they talk about independence is the loss of funding without the protection of the judiciary and of course we know that that loss of funding, that defunding occurred and in fact occurred while we were under the protection of the judiciary, so I wonder if anybody would offer a comment on that and how that might affect anybody's thoughts about whether or not one, the advisability of independence and two, whether or not the judiciary's protection, when Congress really wants to come after you is as important as it might otherwise seem.

George Kendall: If I could say real briefly because I was watching that very closely at the time, is I think that instance shows that the judiciary doesn't have as much authority as I think some of the defenders would like to think. Richard Arnold, Judge Arnold from the Eighth Circuit had the duty to pitch the judiciary's budget that year and Phil Gramm, the Senator from Texas, it was a very short hearing where Judge Arnold came, he was prepared, and the Senator said, "Look, your budgets fine, but your resource centers are toast." That was basically the end of the hearing.

I don't think the defender program is in worse shape, or less able if it has a lobbying group that can reach out to a lot of other senators and to try to deal with that problem. It might not work any better, you're not going to win all your issues in Congress, but the federal judiciary did what it was supposed to do, it defended the resource center program. It didn't have a chance because the senator was very determined to deny authorization for that program to continue.

Judge Carroll: I was in the middle district of Alabama at the time we lost our capital resource center, and it was for the reasons you suggest. They were too successful and got the ire of Congress. That's why when I was suggesting some sort of an approach to the allowing coordination, I'm confident if we went to Congress today and said, "Oh, by the way we want you to fund federal defenders in state post-conviction." We'd run into a stone wall. I think there's thinking about middle grounds that don't involve that is where we really ought to go with this. There needs to be some sort of coordination. In the current political environment it's hard for me to believe that Congress would say, "Oh sure, that's a really, really good idea." It's a serious matter that when a program, particularly in a controversial area is successful it attracts the interest of certain kinds of senators and congressman.

Reuben Cahn: Can I ask you, one of the things we've talked a lot about is what can be done

with changes in statutes, changes in policy, that sort of thing, and what can be done right now, this minute, do you have, and I listened to Christine Freeman's testimony very carefully and was moved by it, and one of the things I think about is is there anything we can do right now without statutory change to allow defenders to better work on those twenty-two-fifty-fours?

Judge Carroll: I think one change would be not to have to have them reimburse the federal defender for their time. That would allow you to create these, essentially post-conviction resource centers within the federal defender office without the need to create this non-profit that you have to fundraise for. Mechanically, how that would work within the bureaucracy of the defender services office I don't know.

Reuben Cahn: Do I have time for one last question?

Judge Cardone: Yes, go ahead.

Reuben Cahn: This is back to you George, and I'm asking you, and also anyone who's done this sort of congressional outreach over a sustained basis. One of the questions I asked earlier and I kind of pose it again is, if defenders had some independent identity, either within or outside the judiciary, what's the sort of presence they need? You look at the AO, and they've got a dedicated staff who maintains relationships with congressional staff, who's there presenting regularly to the members when they get an opportunity to do so, is that necessary? Is some lesser permanent component necessary? What do you need to actually build, develop, maintain the relationships and do the advocacy you would need to sustain an independent program?

George Kendall: I think from the sequester there was some contact between members of congress, who were just interested. How is this going to effect the federal defender program? I think the lessons from that was that this is a great brand. It didn't matter whether you had a D, or an R, or an I label who you went to talk to. The federal defender program has an excellent reputation across congress. The second thing is, unlike other expenditures, this is a necessity. This is not, "Can we buy a few less planes, or whatever this year, and save us next year." The courts have to operate.

When you take the entire judiciary budget and when you subtract out the federal defender budget, it is a pittance with regard to the entire federal budget, so I think there's a lot of hope that unless things got really, really dire, because this is a fundamental need of government, to keep the courts open and to see that indigent people have representation, there are many good arguments that I think the defenders with a little bit of help, could sell each year. However, there would need to be capacity when there is trouble, to be able to bring in lobbying shops that really have access and can really get this message out to the key people in Congress, and the executive branch.

Reuben Cahn: Professor?

Prof. Lefstein: I was just going to say that the federal judiciary can continue to be very supportive of the defender program if it chooses to do so. In the early years of the public defender service in D.C. there were examples in which the judiciary was very supportive of the program. We appeared annually before the House and Senate District Committees, which I assume may still be the case, and the judges from the superior court, the trial court in D.C. were quite supportive of the actual budget of the D.C. public defender service.

I also wanted to say in response, if I may, about the scholar and residence program, that we had started something like that at the D.C. public defender service in our early years, and we had professors come in, typically at no cost. Although sometimes you might incur costs, but they were often specialists in criminal law and procedure with some prior defense experience who had a sabbatical. We would bring them to the office, and you could do something like that on a national basis probably. Moreover, if you're going to try to recruit minority students, one technique is to bring them in after their second year.

I'm speaking now as someone who has been involved in legal education, but if you bring people in after their second year of law school, and you could make it even a national program for the summer, the likelihood of retaining them after graduation is sharply increased as they understand what's involved in federal defense. It's just a thought, these are difficult issues, but they're not impossible solutions.

Reuben Cahn: One quick follow up on that, one of the difficulties we as federal defenders have is that there are no misdemeanors for young lawyers to cut their teeth on. A lot of defenders are highly reluctant to hire lawyers with no experience, no trial experience, if we were to put that sort of effort on a concerted basis nationwide into this pre-graduation recruitment, internships, in your view, as somebody who's spent a lot of time with law students, does that pay dividends down the road in bringing those people back if we weren't going to hire them right out of law school, or is it something that you've got to be able to follow through with a job after graduation?

Prof. Lefstein: Well, potentially it does, but you're right, there is a real difference given the absence of the misdemeanors and they're not going to come in under student practice rule, and be able to perform under the tutelage of a lawyer between their second and third year, so I think that's a little less salable, and I hadn't thought of that when I made my comment.

Reuben Cahn: Thank you.

Judge Cardone: All right.

Judge Walton: Mr. Kendall I agree with you in reference to diversity of, and I've talked to a lot of law students who have a real interest in doing public defense work, but one of the big impediments is . . .

Judge Cardone: Can you speak into your microphone? I'm sorry.

Judge Walton: One of the big impediments is law school is so expensive now, and many of the students are coming out with these huge debt obligations, and they don't have the family support to help them pay those back, so going into any type of public service work becomes a real difficulty. How do you overcome that?

George Kendall: Well Judge I think there have been discussions about having loan forgiveness programs so that, I can tell you, when I was at the legal defense fund, there was awhile the only people we could hire, because of the salary that we paid were people who came out of law school without any debt. We did not like being limited to that pool of law graduates. It seems to me that's something that Congress is going to have to address. That if you go to certain law schools, if you devote ten years of public service, your loan is forgiven.

You go to Columbia, you can't get married, there's lots of disqualifiers, but you can get rid of that debt and be a public interest, but a lot of law schools you can't. There should be. If you're a doctor and you go into the public health service, on how long you stay, but once you stay that time, all your debts are over. We're going to have to have programs like that to encourage and retain people who have, which I see regularly, two hundred, two hundred and fifty thousand dollars in debt with college and law school.

Judge Walton: Mr. Zaso I don't think you directly answered this question, although I think there've been some questions that maybe touched upon it, but one of the concerns that we've had expressed to us in reference to the current IT structure at the AO, is that the confidential information in the system is not as secure now as it once was, under the old system. Do you agree with that assessment?

Andrew Zaso: I don't agree with that at all your Honor. Are you saying that because of the new reorganization, the way the organization is structured now it's less secure?

Judge Walton: Yes, that's what we've heard, because it's now incorporated with the other . . .

Andrew Zaso: No, that's not true because the defender data still resides in servers in NITOAD, and run by the same people in the NITOAD group. No one in my office, in the regular case management office, excluding NITOAD, no one

else has an account on the defender data system. The same people that managed it before the reorganization are the same people managing it today.

Judge Cardone: Can I follow up on that? It was my understanding, and correct me if I'm wrong Mr. Zaso, but you made reference in your testimony to what we heard, which was called like a hack, or something, and it was my understanding that the concern was that the AO, and I'm not privy enough nor astute enough in IT things to be able to say it correctly, but it's my understanding that there were being tests run by the AO and the AO was attempting to run a test, and when they were running the test they were going into data that was in the NITOAD system, and so they were essentially trying to get in, or messing around in there, and NITOAD wasn't aware of it. It's that kind of a concern that people that aren't part of the defense function, that are part of the AO, I understand, but that aren't really part of the defense function, because of that relationship have the ability to either try, or to actually, if they figure it out, get in there so they can run tests like that.

Andrew Zaso: Your Honor that was one of the areas I wanted to correct in the testimony.

Judge Cardone: Okay.

Andrew Zaso: Actually I can provide you, if you want, the email where one of my employees requested an account in the test environment, not the production environment, but the test environment. The reason they needed that account was so they could verify that the data coming from defender data over to Dismiss was coming over correctly, to work on that interface. When you develop software you have a development environment, a test environment, and a production environment. The reason why you have a development and test is that's where you can make all your mistakes.

That's where you write your code and then you test it in the test environment to see if it's working properly. We're getting criticized for not having Dismiss function properly, but we can't even get the data over to see if it's coming over correctly through the interface. One of my employees requested, through an email, access to the test system so they could work on that interface. It was reported to this committee as a hack. It was one of the things I wanted to correct. That's not a hack.

Judge Cardone: That's what you're making reference to and what Judge Walton's referring to.

Andrew Zaso: Correct.

Reuben Cahn: Can I clarify, because I want to make sure I understand. What really happened was a miscommunication right? That your people had requested access to the test area but hadn't informed NITOAD or defenders, and they

drew an incorrect conclusion that there was an attempt to get to the actual data, right?

Andrew Zaso: Mr. Cahn, again I can provide you with the email where we requested permission, so I don't know how that would be-

Reuben Cahn: You requested it from defenders?

Andrew Zaso: From the NITOAD group. The test environment, not the production, the test environment.

Reuben Cahn: Okay. That's what I'm trying to clear up. A request went from CMSO to NITOAD for access to the test environment?

Andrew Zaso: The test environment, not production, for the purpose of working on the interface.

Reuben Cahn: I wasn't involved in this, but to your knowledge that was the only incident that gave rise to concern?

Andrew Zaso: Correct.

Reuben Cahn: Okay. Thanks.

Andrew Zaso: Yep.

Judge Cardone: I'm sorry, Judge Gerrard pointed out something. Can we have a copy of that email, just so that we can document.

Andrew Zaso: Sure, mm-hmm (affirmative).

Judge Cardone: Great.

Andrew Zaso: Happy to.

Judge Cardone: I'm sorry, I didn't mean to interrupt.

Judge Walton: I'm fine, thank you.

Judge Cardone: Okay. How about anybody else?

Judge Goldberg: I have a quick question for Mr. Kendall. On the idea of lobbyist to lend an assist if there was complete independence on Capitol Hill, so it's been a long time since I've worked at a big firm, but I'm going to pick an eight hundred dollar an hour number. As what my guess is as to what the lobbyist would cost. Could you tell us how that would . . . could it be reduced rate but are the

big firms going to allow their hotshot lobbyist to reduce their rates? The rate now for the CJA lawyers is a hundred and twenty-nine.

George Kendall: Obviously there are people who are lobbying who bill at four figures. There also . . .

Judge Goldberg: My eight hundred estimate was low.

George Kendall: Well for some it was low. Depending on who the client is.

Judge Goldberg: Right.

George Kendall: The last part is the important part, it's dependent on who the client is. There's also various rates, and what you have here, this is really advocacy, and support of the Sixth Amendment defense function. While there might be eighty percent of the law firms who are not very sensitive with that, you only need a few who are. I would be stunned, even knowing how important some of those lobbying shops are to the bottom line of those law firms, that they would not devote a considerable number of hours at a vastly reduced rate to handle this contract.

Judge Goldberg: It's a really creative idea, which is why I wanted to ask you a couple questions about it, and even those level of lobbies, even though they go to Capitol Hill, and they represent major corporate clients, you think there's a pocket of those persons who would say, "Well, today it won't be Exxon, today I'll advocate on behalf of indigent defense."

George Kendall: You know why, because the amount of money you're talking about here is minuscule compared to what they're lobbying for on contracts and other things. What you're getting, if you have to pay eight hundred dollars, you don't need to pay the whole contract, you need, at my firm, there are two former senators. You would not need them for hundreds of hours. You might need them for five hours, because it's access. There are a small number of people on the Hill who decide this budget every year, and that's what you need, access at the right time.

Judge Goldberg: Interesting idea. That's all the questions I had, thank you.

Judge Cardone: Professor Gould.

Prof. Gould: I cannot tell you what a joy it is to be on the other side finally being able to ask Dean Lefstein a question, and Mr. Kendall for that matter. I don't know which one of you it was who said in your testimony or earlier questioning that it is was an inherent conflict of interest to have defender services, or the defense function underneath the courts, and the Committee has heard the expression conflict of interest before from people who've come and testified

before. I'm wondering if you could elaborate on what you mean by conflict of interest in this context? I'm presuming I'm not putting words in your mouth. I can't remember which one of you said it, but could you elaborate on what you mean by conflict of interest?

Prof. Lefstein: I taught ethics for a number of years, and one of the most important rules on conflicts is one point seven, which deals with when you have a personal interest conflict, and I hadn't really thought so much about it until I was looking at the impact of sequestration on the defense program, in the hands of the federal judiciary, and the cut of positions, and the reductions of the fees to assign counsel. It was a fifteen dollar reduction. I suddenly, it was clear to me that on the one hand, the federal judiciary has a personal interest in protecting it's budget, and at the same time, is also trying to support the defender program.

Suddenly you have this very clear collision between protecting the defender program and protecting the federal judiciary's budget and the clear winner was the federal judiciary budget. That to me is a serious conflict. I think that conflict plays out in other situations. Certainly in instances of the state courts I've seen it, and I perceive it to be present here too, when it comes to approving vouchers, or approving monies for experts, or investigators, because there's a concern about the expenditure of federal funds, and how it ultimately looks to the bottom line of the federal judiciary's budget.

I think there were citations in one of the statements I read about not funding capital cases, and this was a memorandum from a judge not funding capital cases as high as some might, some defenders might like. This is an inherent problem it seems to me. Where you have certainly by and large, very well intentioned members of the judiciary who have been by and large, for decades, supportive of the defender program, but when the situation really got tight, and it was really an issue of sequestration, but it plays out in other circumstances quite irrespective of sequestration. Where there is a conflict between looking out for the federal judiciary's budget that supports judges, and everyone else connected with the judicial function, and this defense function which is really very different than the judicial function.

As I said in my statement, no one, and indeed the Prado committee said it, back in the early 90s. No one would seriously consider having the federal judiciary oversee United States attorneys throughout the United States, and if suddenly somebody introduced a piece of legislation like that saying, "Well the federal judiciary has the defense function, let's give them U.S. attorneys too."

Why, nobody would take that seriously. People would dismiss it out of hand as a perfectly preposterous idea. Yet we sit around talking now, more than fifty years since the Gideon Decision, and more than fifty years since the

original Criminal Justice Act where the Congress suggested it ought to be a temporary arrangement and we still have the judiciary in control. To my way of thinking, even though there's an uncharted sea out there and nobody can predict it with perfect knowledge about how it will transpire, and how it will go down. It seems to me a bullet that needs to be bitten. Finally it needs to be an independent authority.

Prof. Gould: Thank you. George let me turn to you.

Prof. Lefstein: I want to say that I did not know he was going to ask me that question.

Prof. Gould: No, he did not. We can stipulate to that.

Prof. Lefstein: I didn't know I'd get so worked up in answering it.

Prof. Gould: I'd never get in your way Norm when you get worked up.

Judge Prado: I'm sorry he stopped.

Prof. Gould: George if I could turn to you for just a moment. Your idea about the lobbying, it's the first time I think the Committee has heard an idea like this, and I think to some ears it may seem, I'm going to go out on a limb and say, fantasy. How is it that a New York or Washington D.C. based law firm is going to decide to take on something like this, and for those who are in Washington D.C., I think it maybe a little easier to understand the nature of the pro bono practice there and why a firm might agree to take on something like this, but let's be as real politic as we can. What's in it for a law firm in deciding to put, you have what, Trent Lott at your firm? Why would someone agree to lobby on something like this?

George Kendall: On the state level, in various states-

Judge Cardone: Can I just ask you to speak into the microphone?

George Kendall: On the state level, there are law firms that lobby for indigent defense in states. If the federal defender system was moved out of the AO, and it had to defend its budget, it would need a plan every year to go and, just like as PDS described this morning, more money here, new tradition. You would want, I think, lobbying help. I think some law firms would be honored to asked to do that, just like I have to make forty phone calls to get some D.C. firm or New York firm to take a capital case at the district court level. I have to make one phone call, if cert is granted on the case, and would you like to argue this case with the United States Supreme Court?

What we're talking about here is really like that. It's not exactly like that, but it's close to it. I could say at my law firm, we are going to make sure that the

Sixth Amendment, the agency that has the obligation to carry that out has the resources it needs. We are proud to have that responsibility. I think that there would be, you know there are all kinds of people from Congress who fought on appropriations committee for these budgets, who are now working as lobbyists. I think that there would be, even choices to being about which firm, who is it that we need to really be able to reach this chair person or that chair person.

Judge Goldberg: Mr. Kendall, now that we're discussing this, the largest firm in our district, Morgan Lewis, they routinely take cases from a pro bono panel that we have in the eastern district of Pennsylvania for representation for civil right, prisoner civil rights cases. People have the same reaction as I'm having to this idea. What? Morgan Lewis is going to represent a prisoner in a civil rights case and there's a pocket of folks there, as you said, proudly, proudly do it.

George Kendall: Right, not everyone does it, but it's never been easy on the capital cases, but if you make enough phone calls you can find somebody who will take those cases that are a thousand miles away, that are in, as John was saying, that are in a heap of trouble because they've gotten through the state court system and all the evidence you need to develop the claim is not in. That's a tough assignment. There's still law firms that if they're approached correctly will say, "I'm not going to look the other way. I might not win this case, but I'm surely going to try."

Let me just, if I could John, just make one add on to what Norm was saying, Norm was talking sort of whole sale. Let me talk retail. I think that this current arrangement puts the judiciary in a difficult situation in cases. I've had cases where I've had to go in chambers and talk about a case budget, where I was told before I went in, don't tell that judge what you need, because he has lunch with the prosecutor every day. Not federal judges, state judges. I couldn't go in and advocate honestly for my client. I've had other cases where I've felt like because I had this kind of access to the judge about the theory of our case, I was in better shape than the prosecution was, because going into the case, the judge had a better understanding of some of the key legal issues, because I'd had this ex parte opportunity, which the only way to do that is ex parte, and the prosecutor doesn't have that.

The prosecutor doesn't need to, but there's just no necessity for this at that level. There's somebody else who the indigent can go to, and say this is why I need this money for these experts. It doesn't need to be the judge. Judges are critical players in our system, but they don't need to play that role. It's only the indigent defendant who has to go to the judge and to reveal these confidences to be able to have their day in court. We can move that function away from the judiciary, and I think everybody wins, including the judiciary.

Prof. Gould: If I could follow up on that, one of the things the Committee is heard from and seen in some of the evidence before this is tremendous geographic disparities in the use of experts by panel attorneys, and in the level of zealous representation across all areas of defense. There seems to be local legal cultures that are different in particular areas versus others. If the courts were to become more independent from the defense function, how is it that you see some of those regional local cultures being worked out, if at all? Is this independence going to help in improving the level of representation in areas where right now it's substandard?

Prof. Lefstein: I can volunteer an answer. My guess is it would make an enormous difference. You would have a mechanism set up within the new program and some guidelines and standards for approving investigative assistance and experts, and there would be the only impediment being an absence of adequate funds. There would be a receptive audience to it by those in charge because they would review it perhaps, or they'd put it into a budget that only if the budget was used up would you go and seek perhaps special assistance, but you're talking within the defense community.

I do think you would probably budget for it in the first instance, given the national program involved here, and only if funding was running short would you then go somewhere else for it. PDS has funded experts and investigators for years. It's in their own budget, and there are some other defense programs around the country that does it in that fashion.

Judge Walton: I thought that your, Professor, your proposal regarding a structure that conceivably could be in place that would have some supervisory responsibility for this separate entity, because obviously there's going to have to be some entity that's going to be in charge and responsible for that. We've talked, at least some people have talked about the Sentencing Commission as an example. Well, there's a problem with that because look at what is happening to the Sentencing Commission because of, I believe some dissatisfaction with some decisions that they've made, or recommendations that they've made.

What's happening is that the commissioners are not being appointed and I think they're down to five, and if there's not an appointment made soon, they become ineffective. I guess while I agree with the idea of independence, I just feel that there is enough potential opposition to the role of the defense function within our system, which I know is critical that I think maybe some congressional members don't think it's as critical. Despite its constitutional mandate who would engage in nefarious things that would undercut the ability of that independent entity to operate.

Prof. Lefstein: No one can give you absolute assurance that it will work out perfectly. My personal view is there are enough reasons to think that it would, and that the

current situation is simply not acceptable. That's my personal view of the matter. I think it violates basic notions of how to structure the defense function and I think people who have looked at this know that it violates the way in which defense services ought to be delivered, and we will need to work hard, as I think George's comments suggest, to make sure it functions as well as it possibly can. As long as you say you're concerned that those fears might be realized, and therefore we should leave the status quo alone, this issue will fester for another fifty years, or longer, because nobody can guarantee that you'll have exactly the outcome that you want.

George Kendall: Can I just make one more further comment on this? The big private bar is largely abandoned.

Judge Cardone: Microphone.

George Kendall: Has largely abandoned the federal or the public justice system. There are lawyers in every law firm who don't remember the last time they went into the federal courthouse, or the state courthouse, because they do international arbitrations, they do all kinds of other things. This is not a criticism of them, but it's just reality. It's hard to find people with stature now who could say to these law firms, "You have got to reengage for us to have a real effective system. You can't just ignore the public justice system. It's too important." I was hoping that President Obama and Eric Holder would call the big firms to the White House, just like John Kennedy did in 1963 and said, "We need your help in enforcing the Fourteenth Amendment."

The result of that one meeting are still being felt. The law firms with the best tradition for providing pro bono services are in Washington D.C. because some of the people who went to that meeting in 1963 became senior partners. Lloyd Cutler and others who say the basic core function of a law firm is to not look another way, and make sure our public justice system operates effectively. I think one of the powers that the judiciary has, that it doesn't use, is to reach out to the big bar and say, "We need your help." When we were swimming in capital cases in Florida, and Alabama, and Georgia, in the late 80s, thank goodness John Godbold was the Chief judging the Eleventh Circuit. He said, "How can I help?"

He got together with the chief judge of the Florida Supreme Court, and the Attorney General, and wrote to every major law firm in Florida and said, "Where the hell you been?" That generated about forty law firms that took cases, and most of those firms did a pretty good job. More importantly it brought them back in and when they saw the problems where they couldn't believe it. The judiciary has the power here that it doesn't use often enough frankly to reach out to these big law firms and say we need your help. Not that we need fifty thousand dollars, but we need your involvement.

Judge Cardone: Go ahead.

Prof. Lefstein: I just want to make a quick comment building on something that George just said, that one of the things a new defense program could do is mobilize law firms all over the country to support the new defense program by virtue of writing letters, maybe creating an advisory committee, they could be highly influential. I just think there are ways to get the job done if one thinks about it creatively.

Katherian Roe: Can I just ask a quick question?

Judge Cardone: Yes, Miss Roe.

Katherian Roe: Mr. Zaso I have a question. I have to say that I've read your statement, and listened to your testimony today and I really hadn't intended to ask any questions, but as I look at your statement maybe just one more time, I keep coming back to the last page of your statement, in the second to last paragraph. It says, "Let me end by saying contrary to other testimony provided to the Committee, the CMSO is providing great value to the defender community."

I can't help but remember that the testimony that you're referring to has to be the testimony of the defenders, a number of defenders who have sat before us all over this country, and said that they did not think that CMSO was providing value, and actually that they thought it was damaging the program. I guess my question really goes to the issue of, if the constituency, the people that you're supposed to be providing a service to don't believe they're getting any value from the service, first that's something this Committee should be concerned with, but second what can you do differently at the AO to serve constituency in a way that they can actually recognize, or start to believe what you're saying is true, that there is a value?

Andrew Zaso: Before I used the word insular, and I really believe the judiciary is a very insular group, and has been reluctant to look outside for new ideas. I reached out to someone in the NITOAD group, the chief of the NITOAD group and I asked him, "Can you tell me how I provided support?" He gave me some points. He said in terms of staffing, "CMSO has worked on several occasions to support efforts to get additional resources for NITOAD." On purchasing, "CMSO was instrumental on assisting purchasing software and hardware and supplementing funding received in FY14. Through the use of our super card, which is a credit card with a value over three thousand, we were able to quickly purchase items that would have normally taken months."

On relationship building he wrote, and these are all points that he wrote, "CMSO has been active in trying to get NITOAD presence at the AO. For as many years as I have been here, and have been to the AO, it wasn't until the

past year or so that I've been able to walk to the halls of the Thurgood Marshall building and actively have conversations with DTS, the procurement division, and other offices. We're now seeing more involvement and communications with other groups, and at least get a seat at the table as decisions are being made."

Awareness of AO initiatives, "One of the long standing issues that NITOAD has faced is not being aware of major IT initiatives within the judiciary. NITOAD always learns about things after the fact, and in many cases, after the defender CSAs were notified. This puts us in an awkward position within the community as we've always been seen as the group to be on top of major judicial initiatives. Through CMSO we've been able to get advice, advance notice of many judicial undertakings, and have had time to allow us to collaborate with other people."

In training, "A little while ago CMSO was able to get NITOAD management involved in agile training. This methodology information obtained from this course was able to help me and my staff develop processes and procedures to improve NITOAD operations." When I say the value I can provide, I can only provide value if I'm seen as a partner. I think that's the major change that needs to happen. I am not the enemy in the sense that I'm trying to take over control of these systems. I'm fine with NITOAD running the systems. I'm fine with the relationship we have now, but I would love for NITOAD to be able, I mean, sorry, the defenders, to be able to look beyond the defender community for ideas.

There's a lot of great innovation happening in the judiciary, there's been mobile applications written by other offices in other federal districts that I've actually had them come and present to DSAG. I don't know if you remember Reuben, I think it was about a year and a half ago, there was a mobile app that probation officers had developed that allowed them to download their clients, go out and visit them, they would track information on them, because they would do the Kronos with it. It would track the mileage, and at the end of the trip, they could upload all of that to their system.

I know this developed for the probation officer, that was the reaction I got from the defender community, but then someone said, "Those are the same people that we visit. Why can't that application be hooked to a different database that provides value to the defender community?" I think there's a lot of things that I could be doing that I have been trying to do, but we're still stuck in this whole fight over who can see what.

Katherian Roe: Thing that comes to mind when you say all those things is that their access, those folks that you talk about, their access is now dependent on the fact that they're connected to you, and connected to CMSO. Let me speak, you spoke. I'm just saying to you, that that's what it sounds like. It sounds like yes,

you're expanding their access, but it's because the defense didn't have access before, they were just stuck over to the side, but now that it's part of CMSO, they get the access.

The second point that comes to mind when you're saying all those things is you're talking about NITOAD. I'm talking about the defenders. The defenders are the chiefs of all these ninety-one offices, or eighty-one offices throughout the nation, but it's the defenders who don't see the value, so my question is more to how do you make the defenders, if in fact you are providing value, through being in this connection of CMSO and breaking down the operational silos as you put it, how do you get the defenders to see this value?

Andrew Zaso: I think the answer comes from better communication with the federal defenders. Up until now my only communications has been through the NITOAD group, and DAWG, the federal automation working group. That's been my communication channel. Love to be able to change that, love to be able to come before you in a year and say, "Here's changes I've been able to make because of the access I've been able to have." But up until now, that hasn't been something I've been able to have.

Katherian Roe: Thanks.

Judge Cardone: Anybody else? All right, well, we're pretty much right on time for a change. I want to thank all of you again for being here and for taking the time out of your busy schedules to be here, and I know a number of you had to arrange and rearrange, so thank you for all of that. If there is anything you would like to add, because once we start discussing, there are other issues that come up, please feel free to give us any further submissions that you think will address some of the things we've talked about today. I appreciate your time. Thank you very much on behalf of the entire Committee. Thank you. All right, and we need to meet real briefly as a Committee.