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April 29, 2016

The Hon. Kathleen Cardone
Chair, Ad Hoc Committee to Review the CJA
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E., Suite 4-200
Washington, DC 20544

Re: Written Testimony of John L. Carroll

Dear Judge Cardone:

Thank you for the opportunity to appear before the committee and to submit written comments. These comments flow from my over 40 years as a lawyer, judge and a member of the legal teaching academy. My days in the practice of law were spent as a lawyer with the Southern Poverty Law Center in Montgomery, Alabama. I spent a significant amount of time representing persons charged with capital crimes at trial, on appeal and in post-conviction proceedings in both federal and state court.

In November of 1986, I was appointed as a United States Magistrate Judge for the Middle District of Alabama. I served in that capacity until June of 2001 when I became the dean of the Cumberland School of Law at Samford University in Birmingham. I held that position until June of 2014 when I returned to the faculty to teach. While serving as the Dean, I had the opportunity to serve on a committee of the American Bar Association which assessed the Alabama Death Penalty and issued a report in June of 2006. My statement will cover two topics – the value of having a federal defender and the importance of empowering capital habeas units to take appropriate steps to guarantee appropriate litigation and exhaustion in state post-conviction proceedings.

The Federal Defender System

I have been involved in two federal districts with the transition from a purely appointed system to a federal defender system. When I was the Chief United States Magistrate Judge in the Middle District of Alabama, then Chief Judge Harold Albritton, with the enthusiastic support of the other members of the court, made the transition. Not too long after I came to Birmingham, then Chief Judge Sharon Blackburn spearheaded the effort to establish a federal defender system in the

Northern District. I was able to meet with the judges of that court and share my experience with the federal defender system in Montgomery.

I have thus had the opportunity to observe the federal defender systems in both the Middle and Northern Districts – the Middle from inside and the Northern from outside - and have been overwhelmingly impressed with the benefits of the system to both the quality of justice and court administration as well.

When I was admitted to the bar of the Middle District of Alabama over 40 years ago, we had a true appointment system. Any lawyer who was a member of the bar was considered for appointment to represent an indigent criminal defendant. That system worked well in its day but as this committee well knows, times have changed. The practice of criminal law has become, like most of the law, more complex. The federal sentencing guidelines add another layer of complexity. The defense of indigent defendants in federal court is best served by a system which delivers highly qualified counsel whose only job is to represent indigent criminal defendants in federal court and who specialize in that representation.

As I noted above, one of the benefits of a federal defender system is enhanced court administration. When I was a magistrate judge and our system was entirely appointments from a CJA panel, there was often difficulty in getting a panel lawyer for initial appearances. Now one phone call accomplishes what used to require multiple phone calls and significant effort by court personnel.

Another benefit of a federal defender system is that it lifts the skills of all of the lawyers in the criminal justice system. The representation of indigent criminal defendants is certainly enhanced but the representation of the government is enhanced as well. I had the pleasure of watching while the presentation of the Assistant United States Attorneys in the Middle District of Alabama got better and better because they were facing the skilled lawyers from the Federal Public Defenders Offices. To use a well- worn cliché, a federal defender system is a win- win for everyone – the indigent criminal defendant, the government and the court.

Capital Habeas Units and Coordination with State Post Conviction

As I noted in the introduction, I spent a significant amount of my years in practice representing persons charged with and convicted of capital crimes. That representation included representation at trial, on direct appeal and in both state and federal post-conviction proceedings. In addition, as a United States Magistrate Judge in the Middle District of Alabama, I had responsibility for writing reports and recommendations on the disposition of cases filed under 28 U.S.C. § 2254 including those filed in capital cases. Frequently, I saw cases with potentially meritorious issues that could not be reviewed in federal court because the issue was procedurally defaulted in the state court proceedings.


Capital Habeas Units are important additions to the representation of persons convicted of capital crimes. The problem is that because of the procedural default rules developed both by case law and statute, federal habeas relief on a potentially meritorious claim may be foreclosed by representation in state post-conviction proceedings that did not satisfy the rigorous rules about when and how claims must be presented. Thus, even the best capital habeas unit in the country may be unable to have success on a potentially meritorious claim because that claim was not properly handled in the state post-conviction proceedings. Accordingly, we must develop some better ways of coordinating and assisting in the development of claims in state post-conviction. In the words of the written testimony of Christine Freeman, the Executive Director, of the Federal Defender Office in Montgomery, Alabama to this committee:

Just as a Federal Trial Unit Attorney would be deficient if she failed to coordinate representation and resolution of a client's federal case with a client's state lawyer on a pending state case, CHU counsel must also insure that state post-conviction proceedings do not create obstacles to fair proceedings in state court¹

I certainly endorse the written testimony of Professor Sean Kennedy of Loyola Law School² and Christine Freeman which illuminate the problem I have described. I also know the problem first hand because I served as the first president of the Alabama Post-Conviction Relief Project which was developed by the Federal Defender Office in the Middle District to respond to the problem.

I very much appreciate the opportunity to provide this written testimony. My hope is that this testimony and the testimony of others will lead to a serious dialogue which will create policies and procedures to allow every Capital Habeas Unit to take steps to guarantee appropriate litigation and exhaustion in state post-conviction proceedings.

I look forward to seeing you in Minneapolis.

Sincerely,

John L. Carroll
Professor of Law

¹ Written Testimony of Christine Freeman dated February 4, 2016 at page 12

² Written Testimony of Professor Sean Kennedy dated February 12, 2016