Statement of Norman Lefstein*
Submitted to the Ad Hoc Committee to Review the Criminal Justice Act

Prepared for Public Hearing on Monday, May 16, 2016
Minneapolis, Minnesota

Judge Cardone and members of the Committee:

I want to say a few words about my professional background because it is likely different from most persons who have appeared before the Committee. Although I have had some involvement with federal defense services,[1] including appearing before the Prado Committee in the early 1990's, I have been extensively engaged for more than 45 years with the delivery of criminal defense services in state courts. In this capacity, I have studied and written about defense services in state criminal courts,[2] helped to develop national and local standards for defense services,[3] and often testified or submitted affidavits as an expert witness in state and federal courts about the failure of states and local jurisdictions to deliver competent and effective legal representation. I also assisted in helping to draft the statute for the D.C. Public Defender Service, which

---

* Professor of Law and Dean Emeritus, Indiana University Robert H. McKinney School of Law (Indianapolis, Indiana)

[1] During 1997-1998, I served as Chief Counsel for the Subcommittee on Federal Death Penalty Cases of the Committee on Defender Services. This led to the publication in 1998 of FEDERAL DEATH PENALTY CASES: RECOMMENDATIONS CONCERNING THE COST AND QUALITY OF DEFENSE REPRESENTATION. The report was approved by the Defender Services Committee and submitted to the Judicial Conference of the United States. Also, from 1993 to 2001, I served on the Board of Directors of the Federal Community Defender for the Southern District of Indiana.

[2] *See, e.g.*, NORMAN LEFSTEIN, SECURING REASONABLE CASELOADS: ETHICS AND LAW IN PUBLIC DEFENSE (American Bar Association 2011) (hereafter Securing Reasonable Caseloads); JUSTICE DENIED: AMERICA'S CONTINUING NEGLECT OF OUR CONSTITUTIONAL RIGHT TO COUNSEL, Report of the National Right to Counsel Committee (The Constitution Project 2009) (hereafter JUSTICE DENIED)(Co-Reporter and Principal Author); GIDEON'S BROKEN PROMISE: AMERICA'S CONTINUING QUEST FOR EQUAL JUSTICE, Report of the American Bar Association Standing Committee on Legal Aid and Indigent Defendants (2005)(Co-Author); NORMAN LEFSTEIN, CRIMINAL DEFENSE SERVICES FOR THE POOR: METHODS AND PROGRAMS FOR PROVIDING LEGAL REPRESENTATION AND THE NEED FOR ADEQUATE FINANCING, (American Bar Association 1982)

[3] I was the reporter for PROVIDING DEFENSE SERVICES, Chapter Five, American Bar Association Standards for Criminal Justice (2d ed., Little, Brown & Co., 1980), and I chaired the task force that developed the third and current edition of these standards, which were published in 1992. I also was the reporter for the ABA EIGHT GUIDELINES OF PUBLIC DEFENSE RELATED TO EXCESSIVE WORKLOADS (2009) and a member of the ABA Standing Committee on Legal Aid and Indigent Defendants when it prepared and published the ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM (2002). All of these recommendations were approved by the ABA House of Delegates. Today, I serve as a Special Advisor to the ABA Standing Committee on Legal Aid and Indigent Defendants and to the National Association of Public Defense.

was passed by Congress effective in 1970, and I served as Deputy Director and Director of the agency during its formative years.

At the outset of these remarks, I also want to comment about what I perceive to be the overall excellent quality of the federal defender program, especially in comparison to the enormous problems that persist with defense programs in state courts. Federal defenders are deservedly well-respected, because they are skilled lawyers with reasonably controlled caseloads. In addition, I believe that the private lawyers who serve on CJA panels are by and large well trained and usually provide effective representation.

The presence of both CJA panel lawyers and federal full-time defenders exemplifies precisely what the American Bar Association (ABA) has long recommended – a "mixed system of representation" in which there are both public defenders and substantial private bar participation in providing defense services. In state courts, absent private bar involvement in defense representation, the results have sometimes been disastrous as caseloads frequently have outstripped the capacity of full-time public defenders. In other words, besides contributing their talents, private lawyers serve as a vital safety valve capable of accepting appointments when full-time public defenders are unavailable.[4] Moreover, the compensation of CJA panel lawyers, although perhaps not sufficient to attract a strong panel in some areas, is far better than payments to private lawyers who serve as assigned counsel in state courts. And both public defenders and CJA panel lawyers normally have access to investigative support and expert witnesses, which is often a much more serious problem in state courts.[5]

The remarks that follow are organized around four primary subject areas:

(1) Recommendations about independence of the defense function;

(2) Independence of the defense function in state courts;

(3) Need for an independent federal defense program; and

(4) Structure of a New Federal Defense Program.

Recommendations about Independence of the Defense Function

Principle 1 of the ABA Ten Principles of a Public Defense Delivery System, approved by the ABA in 2002, is often cited for the proposition that the "selection, funding, and payment of defense counsel … [should be] independent." And it is the first principle for a reason: unless you have independence, the other principles vital for genuinely successful public defense

[4] The ABA recommends that "every system [of public defense] should include the active and substantial participation of the private bar." ABA CRIMINAL JUSTICE STANDARDS, PROVIDING DEFENSE SERVICES, 5-1.2 (b) (3rd ed. 1992)(hereafter ABA PROVIDING DEFENSE SERVICES.)

[5] On several occasions, I have worked with federal defenders while serving as an expert witness in capital habeas corpus cases, and I have been enormously impressed with their legal abilities and dedication.

programs are usually difficult to achieve. In addition, the importance of independence was not a new idea for the ABA in 2002, because the "Ten Principles" are simply a distillation of policy positions that the ABA had previously adopted.

The ABA first addressed the concept of defense function independence in its first edition of ABA Criminal Justice Standards, Providing Defense Services, adopted by the Association's House of Delegates just five years after the *Gideon* decision, in 1968. In Standard 1.4, the ABA recommended that the plan for defense services should be designed to guarantee that "the lawyers … [are] free from political influence and should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice." Both the black letter of this standard and its commentary also discussed the value of having an independent board of trustees. [6]

The current black letter of ABA Criminal Justice Standards, Providing Defense Services (3d ed.), Standard 5-1.3 (a), approved by the Association in 1990, reiterated the language quoted above from the first edition of the standards and further stated that "[t]he selection of lawyers for specific cases should not be made by the judiciary or elected officials, but should be arranged for by the administrators of the defender, assigned-counsel and contract-for service-programs." In addition, Standard 5-1.3 (b) recommends that in order to secure professional independence, consideration should be given to having defender organizations governed by a board of trustees. In the case of assigned counsel, the standard recommends unequivocally that there should be a board of trustees to oversee operations of the program.[7]

Further, Standard 5-1.3 (b) provides that neither judges nor prosecutors should serve on boards of trustees. The following explanation appears in commentary to this standard: "This restriction is necessary in order to remove any implication that defenders are subject to the control of those who appear as their adversaries or before whom they must appear in the representation of defendants, except for the general disciplinary supervision which judges

[6] As an example of an independent board, the commentary referred to the D.C. Legal Aid Agency, founded in 1960: "In the District of Columbia, the concept of a Board of Trustees has been adopted to a public defender system. The concept of a Board of Trustees is familiar in many other contexts such as public education and hospitals." ABA PROVIDING DEFENSE SERVICES 20 (1968). The program to which the commentary referred was the forerunner of today's D.C. Public Defender Service, which has had an independent board of trustees since it began 46 years ago, in 1970.

[7] The commentary explains that boards of trustees were not recommended for all public defenders because some public defenders are elected and others who are locally appointed have achieved a reasonable degree of independence without having a board of trustees. ABA STANDARDS FOR CRIMINAL JUSTICE, PROVIDING DEFENSE SERVICES 18-19 (3d ed. 1992).

maintain over all members of the bar."[8] And there are a number of states in which this prohibition has been incorporated into state law.[9]

Besides policy statements of the ABA related to the need for independence, there are other groups and organizations that have made similar recommendations. Thus, in 1973 a federal government commission called for public defenders to be "as independent as any private counsel who undertakes the defense of a fee-paying criminal accused person."[10] Similarly, several years later the National Legal Aid and Defender Association called for attorneys who represent the indigent in criminal cases to "be as independent as any private counsel who undertakes the defense of an accused person."[11] And much more recently the National Right to Counsel Committee urged that "[s]tates should establish a statewide independent non-partisan agency headed by a board or commission responsible for all components of indigent defense services."[12] The commentary to this recommendation explains its rationale:

> It is exceedingly difficult for defense counsel always to be vigorous advocates on behalf of their indigent clients when their appointment, compensation, resources, and continued employment depend primarily upon satisfying judges or other elected officials. In contrast, prosecutors and retained counsel discharge their duties with virtually complete independence, subject only to the will of the electorate in the case of prosecutors and to rules of the legal profession. Judges, moreover, do not select or authorize compensation for prosecutors or for lawyers retained by persons able to afford an attorney's fee. At a minimum, judicial oversight of the defense function creates serious problems of perception and opportunities for abuse.
>
> What is needed are defense systems in which the integrity of the attorney-client relationship is safeguarded and defense lawyers for the indigent are just as independent as retained counsel, judges, and prosecutors.[13]

---

[8] *Id*. at 19. The identical language appeared in the commentary to the first edition of ABA Providing Defense Services approved in 1968.

[9] For example, in my home state of Indiana, the statute establishing the Indiana Public Defender Commission, which has partial authority over defense representation in the state, provides that no member of "law enforcement" or a "court employee" may serve on the Commission. *See* IC 33-40-5-4 (2). The statute's purpose was not only to prevent prosecutors and judges from serving on the Commission, but to exclude all persons involved in any way with law enforcement and the courts.

[10] NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS, COURTS 13.8 (1973).

[11] NATIONAL LEGAL AID AND DEFENDER ASSOCIATION, STANDARDS FOR DEFENSE SERVICES III.I (1976).

[12] JUSTICE DENIED, *supra* note 2, Recommendation 2, at 185.

[13] JUSTICE DENIED, *supra* note 2, at 186.

Independence of the Defense Function in State Courts

Clearly, there are very significant problems in delivering effective and competent criminal and juvenile defense services in state courts throughout most of the country. The situation was summed up in the most recent, exhaustive national report on indigent defense services: "Throughout the United States, indigent defense systems [in state courts] are struggling. Due to funding shortfalls, excessive caseloads, and a host of other problems, many are truly failing."[14] However, in the vast majority of states, the major problem is not independence from the state's judiciary.

To illustrate this point, consider the terrible caseload problems and grossly inadequate financial support for public defense in Louisiana. Just in 2016, the New York Times has published several articles about the horrific situation adversely impacting Louisiana's public defense system.[15] In January, the newspaper began one of its articles with the following statement: "The cash-starved public defender's office in Baton Rouge faces 'chronic underfunding,' a federal lawsuit contends, a situation that has led to poor people arrested in connection with crimes being placed on a 'waiting list,' leaving them in jail without access to lawyers."[16] However, Louisiana has an independent authority that oversees the delivery of the state's defense services, i.e., the Louisiana Public Defender Board (LPDB). In fact, it is precisely because Louisiana has an independent board that the current crisis has arisen. For years, the caseloads have been grossly excessive and the financial resources for public defense far too low. But now the LPDB is saying that enough is enough, and they have invoked a restriction of services protocol, which has resulted in a number of defender offices declaring that they cannot continue to accept more cases when their finances are being reduced and their lawyers are totally overwhelmed with far too many cases. The LPDB maintains that to continue to accept more cases will require defenders to violate their ethical duties and result in the denial of effective assistance of counsel.

The independence of the Louisiana defender program is not unique among the 50 states and the District of Columbia. In fact, the majority of states in the U.S. have heeded the call of the ABA and other organizations and established independent commissions with either full or partial authority to oversee delivery of the state's defense services. More than 30 states now

[14] JUSTICE DENIED, *supra* note 2, at 2. *See also* MINOR CRIMES, MASSIVE WASTE: THE TERRIBLE TOLL OF AMERICA'S BROKEN MISDEMEANOR COURTS (National Association of Criminal Defense Lawyers 2009).
[15] *See, e.g.*, Campbell Roberts, *In Louisiana, the Poor Lack Legal Defense*, NY TIMES, March 19, 2016; Derwyn Bunton, *When the Public Defender Says, 'I Can't Help,'* NY TIMES, Feb. 19, 2016;
[16] Richard Fausset, *New Orleans Puts Poor on 'Waiting List' for Lawyers*, NY TIMES, Jan. 15, 2016.

have statewide independent commissions that oversee the state's delivery of defense services. And there are another ten states that have independent commissions with partial authority over delivery of defense services.[17]

But despite a strong trend toward achieving independence for the defense function, especially since the year 2000, there are still a few states where the defense function is not fully independent. For example, there are seven states without a commission in which the governor appoints a state public defender who is subject to removal at the governor's discretion.[18] Moreover, in jurisdictions without statewide independent programs, there are sometimes political bodies, such as county governing boards, that select local public defenders and exert substantial pressure to keep expenditures from increasing.[19] And, to be sure, there are counties and judicial subdivisions in this country where judges select and pay private lawyers through various fee systems and judges sometimes arbitrarily reduce payments for lawyers that cannot be effectively challenged.

However, there are few states in the country, if any, in which the state's judiciary has the kind of total control over the delivery of defense services that the federal judiciary has over the federal defense program. The many positive features of the federal system would only be enhanced by greater independence, as the state program described below demonstrates.

Massachusetts has one of the most commendable statewide public defense systems in the country because all legal representation is coordinated by the Massachusetts Committee for Public Counsel Services (CPCS). Not only is CPCS better funded than most other state defense programs, but its structure secures the independence of the defense function for both public defenders and private lawyers. Unlike the federal courts and many other state courts, Massachusetts complies with the ABA's admonition in the first of its Ten Principle since neither "the selection, funding and payment of defense counsel" is controlled by the judiciary.

---

[17] Material in support of these statements is contained in JUSTICE DENIED, *supra* note 2, in Table II at 151. Since this table was published in 2009, several states have amended their statutes in order to promote independence of the defense function, and these changes have been taken into account in totaling the number of states with independent systems. *See also* Jon Mosher, *Designing a Statewide Commission*, Sixth Amendment Center, May 5, 2014, *available at* http://sixthamendment.org/designing-a-statewide-commission/ (last visited April 30, 2016).

[18] *See* JUSTICE DENIED, *supra* note 2, in Table II at 151. This table lists New Mexico as one of the eight states without a commission, but New Mexico's law has been changed. *See* David Carroll, *New Mexico Legislature Begins Work on Public Defender Commission Bill*, Sixth Amendment Center, December 6, 2012 ("On November 6, 2012, the New Mexico electorate passed a constitutional amendment requiring the creation of an independent public defender commission.") *available at* http://sixthamendment.org/tag/new-mexico/ (last visited April 30, 2016).

[19] For examples of political pressures sometimes faced by public defenders, *see* JUSTICE DENIED, *supra* note 2, at 80-81.

Key features of the Massachusetts program include the following:[20]

- CPCS has an independent governing body of 15 persons, known as the "committee." Nine members are appointed by the justices of the Supreme Judicial Court of Massachusetts, with six members appointed as follows: two by the Governor; two by the Speaker of the Massachusetts House of Representatives; and two by the President of the Massachusetts Senate.[21]

- CPCS has broad responsibilities for the appointment of private counsel, approval of their expenditures, and the establishment of standards for defense representation.

- CPCS is required to "supervise and maintain a system for the appointment or assignment of counsel" at all stages of criminal and noncriminal proceedings in which counsel is required for indigent persons. Pursuant to this authority, appointments are made to lawyers who have been certified by CPCS to accept assignments in particular types of cases. Judges and their staffs are thus not involved in the appointment of lawyers to specific cases.

- CPCS also employs hundreds of staff lawyers, investigators, and social workers in its Public Defender Division, Children and Family Law Division, and Youth Advocacy Department.

- The staff of CPCS also includes personnel who train, certify, support and oversee the performance of private counsel; staff to pay private counsel, investigator and expert witness bills; and an internal Audit and Oversight Unit to maintain the integrity of its expenditures.

- CPCS is required to "establish standards and guidelines for the training, qualifications and removal of counsel in the public and private counsel divisions who accept its appointments, and shall provide pre-service and in-service training for both private counsel and public counsel who accept assignments and salaried public counsel."

- The CPCS statute prohibits lawyers from the public defender division from being "assigned to represent more than one defendant in any matter before any court on the same case or arising out of the same incident …." Thus, the representation of one or more codefendants by multiple public defenders constitutes a conflict of interest and is prohibited by statute.

---

[20] Much of the discussion of CPCS is drawn from my book, SECURING REASONABLE CASELOADS. *supra* note 2, at 193-205. One of the most important changes in the operation of CPCS that occurred since publication of my book in 2009 pertains to the extent of the caseload that CPCS lawyers are required to represent. In its 2012 appropriation, CPCS was mandated to provide representation in at least 25% of the cases and the size of its staff was increased in order to enable the agency to do so. Cases not represented by CPCS staff are defended by private counsel. For additional information on this development and the agency's expansion, *see* Testimony Presented by Anthony J. Benedetti, Chief Counsel, Committee on Public Counsel Services, presented to Joint Committee on Ways and Means Committee, February 28, 2012, *available at* http://macaa.pairserver.com/wp-content/uploads/2015/01/20120228-CPCS-WM-Presentation.pdf (last visited on May 2, 2016)

[21] Mass. Gen. Laws Ann. 211D § 1. Until several years ago, the Massachusetts Supreme Judicial Court made all appointments to the CPCS governing body, but the legislature amended the CPCS statute, making it possible for the governor and legislative leaders to make appointments to the committee.

- CPCS is also required to "establish standards" for representation by public defenders and private attorneys that include "vertical or continuous representation at the pre-trial and trial stages … whenever practicable."

- Further, CPCS must "establish standards" that ensure "adequate supervision provided by experienced attorneys who shall be available to less experienced attorneys." In implementing this provision, CPCS compensates experienced private lawyers for supervising and mentoring less experienced private assigned counsel.

- In order to control caseloads, CPCS is required to "establish standards" for both public defender and private assigned counsel that "shall include … specified caseload limitation levels."

- CPCS imposes "an annual cap of billable hours per fiscal year, currently 1,800 hours." The purposes of this ceiling are to promote quality defense services, an equitable distribution of cases, and to guard against over-billing. Also, except for murder cases, lawyers are limited to a presumptive maximum of ten billable hours per day. However, a lawyer who is on trial may bill up to a maximum of fourteen hours per day.

Need for an Independent Federal Defense Program

It seems clear from the recent report of the National Association of Criminal Defense Lawyers[22] and from testimony of witnesses who have appeared before this committee that there are significant problems with the federal defense program because it is not independent of the federal judiciary. The statement of David Patton, Executive Director and Attorney-in-Chief of Federal Defenders, Inc. of New York, provides an effective summary of persistent problems, including unexplained cuts to vouchers of CJA panel lawyers; judicial control over the selection of CJA panel members; Circuit approval of attorney staffing; judicial selection of federal defenders; judicial management of the federal defender program budget; and Administrative Office management of defender services. In view of these and other problems that witnesses have identified, I want to offer three observations.

First, the problems identified are excellent illustrations that explain the ABA's insistence, now almost 50 years ago, that defense services be independent of the judiciary. This recommendation was never simply an abstract concept that the ABA promoted due to hostility toward the judiciary. In fact, when the first edition of ABA Standards Relating to Providing Defense Services was published in 1968, the chair of the Advisory Committee that recommended the standards was the Hon. Warren Burger, later Chief Justice of the U.S.

[22] *See* FEDERAL INDIGENT DEFENSE 2015: THE INDEPENDENCE IMPERATIVE (National Association of Criminal Defense Lawyers 2015), *available at* https://www.nacdl.org/federalindigentdefense2015/ (last visited May 6, 2016).

Supreme Court, and at the time a U.S. Circuit Court Judge and former Assistant Attorney General of the United States. The other persons who recommended the standards included two other federal circuit court judges, a Minnesota Supreme Court justice, a well-known prosecutor in New York City, practicing lawyers, and law professors with expertise in prosecution and defense.

Second, the Prado Committee had it exactly right when they made the following statement in their report: "No rational policy maker would suggest that the judicial branch supervise the activities of privately retained defense counsel, much less the Department of Justice or individual U.S. Attorney Offices." In fact, if a proposal were to be made today that the federal judiciary have some oversight of U.S. Attorneys throughout the country, the suggestion would be met with laughter and rejected out of hand. Regardless of political persuasion, no judges, lawyers, academics or politicians would seriously entertain the idea that the federal judiciary should be granted authority over the hiring, payment, and budget of all U.S. Attorneys. And, if this is correct – and I submit that everyone on the committee knows that it is – why then should the response be any different when the issue is federal judicial oversight of the federal defender program?

Third, depending on the circumstances, oversight of the federal defense program can actually constitute a gross conflict of interest. And, at least by analogy, the logic of professional conduct rules dictate that judges ought to refrain from putting themselves into situations where there is a serious risk of a conflict of interest developing. Consider, for example, ABA Model Rules of Professional Conduct, Rule 1.7 (a)(2), which states that "[a] concurrent conflict of interest exists if…(2) there is a significant risk that the representation of one or more clients will be materially limited…by a personal interest of the lawyer."

The federal judiciary necessarily represents not only its own interests, but the federal defense program's interests as well. And, during the recent sequestration, it seems patently clear that the interests of the federal defense program were in direct conflict with the personal interests of the federal judiciary, and the federal judiciary was the clear winner. As David Patton explained to your committee in his prepared statement at page 3, as a result of sequestration, "federal defender offices lost approximately 400 people, roughly ten percent of the total staff, and … [incurred] unpaid furloughs equivalent to 20,000 workdays. No corresponding staffing actions were required of any other Judiciary unit." Mr. Patton then explained how the hourly rates of CJA panel lawyers were reduced by $15 per hour and that both "[the] staffing and rate cuts were imposed over the objection of the DSC and the defender advisory groups…."

Structure of a New Federal Defense Program

Finally, I want to share with the committee ideas about the structure of a new federal defender program. I agree with David Patton and other witnesses that the program should be completely independent and located outside the federal judiciary. I also believe it imperative that the board selected to oversee the defender program not include prosecutors, law enforcement officials, active federal criminal defense practitioners, or active members of the federal judiciary.[23] Whatever the size of the board, I recommend that careful consideration be given to how the members are chosen, and in this respect my views are somewhat different than Mr. Patton's and perhaps from your other witnesses.

First and foremost, I believe that Board members charged with overseeing the new federal defender program be as high profile appointees as possible *and* that there be (1) multiple appointing authorities; (2) that the appointing authorities represent all three branches of government; and (3) that the appointees be drawn from both major political parties. The last requirement is necessary in the event that the federal defender program is called upon to lobby the Congress either about budget matters or other important substantive issues. If this occurs, the program may need to call upon board members from both sides of the political aisle, and it may be especially helpful if these persons were placed on the board by the most important officials in the national government.

As an example of how the board could be assembled, suppose the Chief Justice of the United States Supreme Court named five appointees to the Board, the President of the United States named four appointees to the Board, the Speaker of the U.S. House of Representatives and the minority leader each named two appointees; and the majority and minority leaders of the Senate each named two appointees. These arrangements would yield a 17-person board and would assure diversity of political party affiliation.

My rationale for structuring the Board in the manner suggested derives partly by analogy from recommendations of the National Right to Counsel Committee report cited earlier.[24] In

[23] The ABA recommends that "[b]oards of trustees … not include prosecutors or judges." ABA PROVIDING DEFENSE SERVICES, 5-1.3(b), *supra* note 4. The commentary to this black-letter provision explains: "This restriction is necessary in order to remove any implication that defenders are subject to the control of those who appear as their adversaries or before whom they must appear in the representation of defendants, except for the general disciplinary supervision which judges maintain over all members of the bar." *See also* NLADA GUIDELINES FOR LEGAL DEFENSE SYSTEMS, at 2.10 (f): "The commission should not include judges, prosecutors, or law enforcement officials.

[24] *See e.g.*, notes 2, 12-14, and 17-19 *infra*.

discussing the structure of statewide commissions for overseeing defense services, the committee recommended the following:

> States should establish a statewide, independent, non-partisan agency headed by a Board or Commission responsible for all components of indigent defense services. The members of the Board or Commission of the agency should be appointed by leaders of the executive, judicial, and legislative branches of government, as well as by officials of bar associations, and Board or Commission members should bear no obligations to the persons, department of government, or bar associations responsible for their appointments. All members of the Board or Commission should be committed to the delivery of quality indigent defense services, and a majority of the members should have had prior experience in providing indigent defense representation. [25]

The commentary in support of this recommendation explains that "[t]he reason for having a number of different officials appoint the Board or Commission is to reduce the likelihood that members of the governing board may feel in some way beholden to the persons or organizations responsible for their appointment. … It is also preferable if no single person or organization is authorized to appoint a majority of the Board or Commission members. In some states, for example, the governor appoints a majority of the commission or board members, but this approach is not recommended."[26]

Thank you for your invitation to appear before the Committee and to submit this statement.

[25] JUSTICE DENIED, *supra* note 2, at 185.
[26] JUSTICE DENIED, *supra* note 2, at 186-87.