STATEMENT

of

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President of the

AMERICAN BAR ASSOCIATION

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AD HOC COMMITTEE TO REVIEW

the

CRIMINAL JUSTICE ACT

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Statement of President Paulette Brown Regarding the Criminal Justice Act

INTRODUCTION

My name is Paulette Brown. I am the President of the American Bar Association (ABA), and am pleased to speak to you today about the Criminal Justice Act (CJA). The ABA is the voice of the legal profession in the United States. With over 400,000 members, it is one of the world’s largest voluntary professional organizations. The right to effective counsel is a cornerstone of our justice system and an important constitutional issue.

BACKGROUND

In 1964, the Criminal Justice Act created a broad system for appointing and compensating attorneys to represent indigent individuals in federal cases. The CJA authorized reimbursement of reasonable out-of-pocket expenses and payment of expert and investigative services. Although the CJA provided for compensation, the rates were considerably lower than market rates for private attorneys.

The CJA was amended in 1970 to create federal defender offices as a counterpart to U.S. Attorneys Offices. Federal defender offices were established in jurisdictions where at least 200 defendants annually required court-appointed counsel.

Today, there are 81 federal defender organizations in the United States. They comprise over 3,100 lawyers, investigators, paralegals, and support personnel and provide defense services for 91 of the 94 federal judicial districts.¹

While the CJA has created a system to better serve our country’s indigent defendants, and to compensate attorneys who offer their services to indigent clients, there is still work to be done to create a more fair and effective system for all.

ABA POLICY

For decades, the ABA has promulgated national indigent defense standards and policies. Today, I’d like to focus on the ABA Ten Principles of a Public Defense Delivery System,² as well as the ABA Standards for Criminal Justice; Providing Defense Services.³ The Ten Principles provide guidance on shaping an effective public defense delivery system. Former Attorney General Eric Holder said the Principles have “not only given shape to our aspirations, but quite literally set the standard, and developed a framework, for progress.”⁴

With that, I would like to discuss how ABA policy can help shape a more fair, just, and effective system. Of the ten Principles, I’d like to focus on Principle 1 (independence), Principle 8 (parity), and Principle 6 (training).

**Independence**

Under the *Ten Principles*, the public defense function must be independent. This Principle is echoed in *Providing Defense Services*. The first Principle requires that “[t]he public defense function, including the selection, funding, and payment of defense counsel, is independent.” That is, judges who may face pressure to limit funding should supervise defenders only to the extent that they would supervise retained counsel. Under the Criminal Justice Act, this is not always the case. Our current system forces judges to engage in decisions, especially regarding funding and payment of defense counsel, that would be better left to an independent agency. We should not ask our judges to compromise their neutrality, nor should we require our defense attorneys to litigate payment and resources with a judge before whom they will try a case or present a plea. A better model for overseeing defense systems would include a nonpartisan board comprised of attorneys admitted to practice in that jurisdiction, rather than members of the judiciary. Judicial and defender independence ensures that defender systems are immune from the political forces often present in the judiciary and ensures evenhandedness in the oversight of defender services.

**Parity of Resources**

Under the eighth Principle, prosecutors and defenders should have parity, or equivalence of resources. This Principle requires that prosecutors and defenders be given similar salaries, workloads, and access to trial resources. Defenders should be entitled to the same high-quality paralegals, investigators, and experts as prosecutors to ensure that public defense is regarded as an equal partner in the justice system. Currently, in order to obtain experts, federal defenders must request funding for such resources from the court prior to obtaining them. Panel attorneys have slightly more leeway and may enlist the help of experts and investigators prior to obtaining authorization up to a statutorily determined cost limit. Unfortunately, federal defenders are often denied requests for experts, possibly due to political pressure on the judiciary to cut costs. An attorney’s ability to mount an adequate defense should not depend on the defendant’s ability to pay for experts or investigators.

Often times, federal defenders do not have access to the same high-quality training and resources that prosecutors do. For example, the Department of Justice (DOJ) operates the National Advocacy Center (NAC), a training center for federal prosecutors. NAC provides training for around 20,000 prosecutors each year. Unfortunately, there is no such center or equivalent for federal defenders. Disparities in training create an unequal and ineffective criminal justice system, which could have disastrous consequences for criminal defendants. In order to guarantee that federal defenders are viewed as equal partners in the justice system, this disparity in the availability of training and resources must be remedied.

**Adequate Training**

This leads me Principles 6 and 9. Principle 6 necessitates that “defense counsel’s ability, training, and experience match the complexity of the case.” Principle 9 requires that defense
counsel is provided with and required to attend continuing legal education. Quality training is a vital element of a healthy defender system. It is essential that the court appoint attorneys whose ability, training and experience match the complexity of the cases to which they are assigned. This ensures that only attorneys who are properly trained and seasoned will work on the most complex cases involving clients facing the most serious repercussions. Appointing only experienced and well-trained attorneys protects clients from inadequate representation and also protects attorneys from being forced to take on cases that could cause damage to their professional reputations.

Defense counsel should be provided with quality continuing education courses. Defenders and panel attorneys should also have access to high quality trial advocacy training, similar to the type of training given to prosecutors at the NAC. This will ensure that both public and private defenders are adequately trained and knowledgeable in the types of cases to which they will be appointed. This also protects the clients from receiving inadequate or outdated information from their appointed attorney.

CONCLUSION

Effective representation is the foundation on which a fair and equal administration of justice rests. If a system does not meet the Ten Principles, it is bound to fail its clients. Indigent defense systems across the country have long been understaffed, underfunded, and poorly trained. With the recent popularity of documentaries and television programs about indigent defense, it is my hope that an understanding of the failings of our justice system will help to shape its future. On behalf of the ABA, I thank you for the opportunity to share our views and would be pleased to answer any questions you have or to provide further information at your request.