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July 29, 2014

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Dear Ms. Katzman,

Thank you for the opportunity to address concerns about the two recently published U.S. Department of Justice (DOJ), Bureau of Justice Statistics (BJS) reports: *State Government Indigent Defense Expenditures, FY 2008–2012*¹ and *Indigent Defense Services in the United States, FY 2008-2012*.² To be timely, the 6AC worked in conjunction with the National Association for Public Defense (NAPD)³ to get you this information.

Be advised that the analysis that follows is not a comprehensive recitation of all the inaccuracies or omissions in the two reports. Rather, the 6AC details a number of issues and then includes a few demonstrative examples of what we mean. In our expert opinion, these issues collectively refute BJS statements such as, in “2012, state governments spent \$2.2 billion nationally on indigent defense, the lowest amount spent during the 5-year period from 2008 to 2012,”⁴ and from “2011 to 2012, state government indigent defense expenditures decreased by \$45 million nationally (down 2.0%).”⁵ That is, our experience indicates that state expenditures on indigent defense collectively increase annually.

To be clear, state support of indigent defense services is nowhere near sufficient to

¹ Herberman, Erinn and Tracey Kyckelhahn. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. *State Government Indigent Defense Expenditures, FY 2008–2012*. July 2014. NCJ 246684. Available at: <http://www.bjs.gov/content/pub/pdf/sgide0812.pdf>.

² Owens, Stephen and Elizabeth Accetta. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics *Indigent Defense Services in the United States, FY 2008-2012*. July 2014. NCJ 246683. Available at: <http://www.bjs.gov/content/pub/pdf/idsus0812.pdf>.

³ See: <http://www.publicdefenders.us>.

⁴ *Supra*, note 1, at page 1.

⁵ *Ibid*.

ensure that each and every indigent accused receives constitutionally adequate representation. And state expenditures have not kept pace with the ever-evolving demands placed on public defense lawyers, and the systems in which they practice, by the U.S. Supreme Court.⁶ However, state government expenditures have increased annually, even as county expenditures collectively are rapidly in decline. The 6AC and NAPD stand ready to assist DOJ in addressing the reports' inaccuracies and omissions.

State Government Indigent Defense Expenditures, FY 2008–2012

Issue #1: BJS does not delineate “state” from “county” expenditures uniformly from jurisdiction to jurisdiction. State government expenditure data in the BJS report alternatively is: a) inclusive of all county expenditures (e.g., Kentucky); b) inclusive of only a portion of county funding (e.g., Nevada); c) exclusive of county funding entirely (e.g., Kansas); or d) inclusive of all county funding and exclusive of state funding entirely (e.g., Ohio).

- *Inclusive of all county expenditures:* The Kentucky Department of Public Advocacy (DPA) is a statewide, state-funded agency overseeing primary and conflict services in the state's 120 counties. From the inception of the state system, cities/counties with a certain number of judges are required to contribute to the state system. As such, Jefferson County (Louisville) contributes to representation provided by the Louisville Metro Public Defender Corporation. The BJS reports that in FY 2012, the Commonwealth of Kentucky spent \$43,586,000 on indigent defense.⁷ The DPA reports to the 6AC that its FY 2012 total indigent defense expenditure was \$43,616,212 (a difference of only \$30,122), but that figure is inclusive of the \$2,100,000 contributed by Jefferson County (the state portion was \$41,516,122).⁸
- *Inclusive of a portion of county expenditures:* Nevada statutes require all counties with a population greater than 100,000 to create a county public defender office [Clark County (Las Vegas) and Washoe County (Reno)]. The remaining 14 counties and one independent city (Carson City) may opt into a state public defender system in which the participating counties are asked to pay a portion of the funding. BJS reported that the state expenditure in FY

⁶ Over the past seven years alone the Roberts' Court has: a) extended the right to counsel to its earliest point in the adversarial process [*Rothgery v. Gillespie County*, 554 U.S. 191 (2008)]; b) required counsel to explain the collateral consequences of guilty pleas, including immigration consequences [*Padilla v. Commonwealth of Kentucky*, 559 U.S. 356 (2010)]; and, c) determined that an indigent defense attorney must be constitutionally “effective,” not only to trials, but also to plea bargains as well [*Laffler v. Cooper*, 566 U.S. ___ (2012) and *Missouri v. Frye* 566 U.S. ___ (2012)].

⁷ *Supra*, note 1 at page 5 (See Appendix Table 1).

⁸ Email from Ed Monahan, Public Advocate to the 6AC, July 25, 2014.

2012 was \$3,234,000.⁹ The Nevada State Public Defender reports to the 6AC that their total operating costs in FY 2012 were \$3,241,387 (a difference of only \$7,386). However, that is inclusive of the participating counties' costs and exclusive of Clark, Washoe and the non-participating rural counties.¹⁰ The actual state expenditure was \$1,655,350.

- *Exclusive of all county expenditures:* The Kansas Board of Indigents' Defense Services (BIDS) is a statewide, state-funded commission overseeing appellate and felony representation. The state's 105 counties maintain the responsibility for funding and administering right to counsel services on behalf of defendants in adult misdemeanor and juvenile delinquency matters. BJS reports that the FY 2012 state expenditure was \$22,714,000.¹¹ BIDS reports that their FY 2012 state expenditure was \$22,743,889 (a difference of only \$29,889).¹² The American Bar Association reports that Kansas' counties collectively spent an additional \$7,232,007 in FY 2008, a figure that may have gone up or down over the intervening four years.¹³
- *Inclusive of all county expenditures and exclusive of state expenditure:* Trial-level services in Ohio are the responsibility of the state's 88 counties.¹⁴ The Ohio State Public Defender (OSPD) is a state-funded entity that handles certain appellate cases. A county may opt to contract with the OSPD to provide trial representation (though only 10 counties have done so). OSPD also reimburses counties a portion of their trial level costs. BJS reports that in 2012, the state expenditure was \$70,413,000.¹⁵ In 2012, the total indigent defense expenditure in Ohio was \$126,222,376 of which the state spent \$50,327,787 and the counties collectively spent \$75,894,589.¹⁶

Issue #2: BJS does not account for state-funded primary and conflict representation systems uniformly from jurisdiction to jurisdiction: The Sixth Amendment right to

⁹ *Supra*, note 1 at page 5 (See Appendix Table 1).

¹⁰ Email from Pam Sturlin, Legal Office Manager, Nevada State Public Defender, to the 6AC, July 25, 2014.

¹¹ *Supra*, note 1 at page 5 (See Appendix Table 1).

¹² Email from Patricia Scalia, State Director, Board of Indigent Defense Services, to the 6AC, July 25, 2014.

¹³ American Bar Association. *State, County and Local Expenditures for Indigent Defense Services, Fiscal Year 2008*. Prepared on behalf of the American Bar Association, Standing Committee on Legal Aid and Indigent Defendants, Bar Information Program by The Spangenberg Project, The Center for Justice, Law and Society at George Mason University. November 2010. See Table 1, page 72. Available at: http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_expenditures_fy08.authcheckdam.pdf.

¹⁴ For ease of the reader, this is a brief synopsis of how Ohio is structured. For a full account, please see: <http://sixthamendment.org/the-right-to-counsel/state-indigent-defense-systems/ohio/>.

¹⁵ *Supra*, note 1 at page 5 (See Appendix Table 1).

¹⁶ Email from Tim Young, State Public Defender, to the 6AC, July 25, 2014.

counsel is an individual right. States owe the same level of minimally effective representation to each and every defendant, regardless if an individual is deemed co-defendant #1 or #2. Since primary public defender offices cannot ethically represent people charged as co-defendants, jurisdictions need secondary and, depending on the structure of the secondary system, perhaps even tertiary systems as well. There are instances in the BJS report where the state expenditure reflects only primary representation. For example:

- The Alaska Public Defender Agency (PDA) is a state-funded staffed public defender office providing indigent defense services for all criminal matters. BJS reports that the FY 2012 state expenditure for all of Alaska is \$24,916,000.¹⁷ The PDA budget for FY 2012 was \$24,928,000¹⁸ (a difference of only \$12,000). However, AS § 44.21.400 through 470 creates the Alaska Office of Public Advocacy (OPA). Like PDA, OPA is an independent agency of the executive branch overseeing the representation of the indigent accused in criminal and delinquency proceedings in which PDA has a conflict. OPA also serves as public guardians for adults who cannot handle their own finances; guardian ad litem for the children who have been taken into the state's custody; and civilly prosecutes persons accused of defrauding indigent senior citizens. Approximately, 65% of the OPA FY 2012 budget of \$24,513,600 is dedicated to right to counsel cases (or, approximately \$15,933,840).¹⁹ This means that the actual state expenditure for Alaska in FY 2012 was \$40,861,840 (a difference of nearly \$16 million dollars from what BJS reported).
- The Virginia Indigent Defense Commission (VIDC) is an independent, state-funded body in the judicial branch responsible for the delivery of right to counsel services across the state. Although the VIDC administers a statewide roster of qualified assigned counsel handling all cases where there is no public defender office, and handling conflicts where there is such an office, the VIDC does not pay the assigned counsel vouchers – the Virginia Supreme Court does. The BJS report states that the Virginia state expenditure for FY 2012 was \$43,257,000.²⁰ This figure is just the VIDC expenditure. Though the 6AC has not confirmed the exact expenditure for assigned counsel representation, we note that a 2010 report by the American Bar Association looking at FY 2008 indigent defense expenditures reports that the state spent

¹⁷ *Supra*, note 1 at page 5 (See Appendix Table 1).

¹⁸ State of Alaska FY2014 Governor's Operating Budget, Department of Administration, Public Defender Agency, Component Budget Summary (showing FY2012 actual expenditure) at: http://omb.alaska.gov/ombfiles/14_budget/Admin/Proposed/comp1631.pdf

¹⁹ Email from Richard Allen, State Director, Office of Public Advocacy, to the 6AC, July 25, 2014.

²⁰ *Supra*, note 1 at page 5 (See Appendix Table 1).

nearly \$97 million on indigent defense that year,²¹ suggesting that the correct state expenditure in 2012 for Virginia is approximately twice what BJS reported.

Issue #3: BJS does not uniformly account for non-criminal, non-delinquency, civil representation from jurisdiction to jurisdiction: The U.S. Supreme Court has extended the right to counsel to all criminal and delinquency procedures in which the accused may potentially lose their liberty.²² However, a number of states have chosen to expand the right to counsel beyond the requirements of the Supreme Court to include other civil matters. The *Census of Public Defender Offices, 2007 – State Public Defender Programs*²³ notes that some state indigent defense systems provide representation in the following civil cases: mental commitment, state post-conviction or habeas corpus, federal habeas corpus, status offense, child protection or dependency, termination of parental rights, or sexually violent predator cases. For example, the following jurisdictions’ state expenditures are inclusive of civil representation: Arkansas, Massachusetts, and New Jersey.

However, other states have separate “systems” for some or all of these types of representation. The most notable example is the money the state of New York pays for law guardian cases, etc., though such representation is not included in its state expenditure line. Granted, it is difficult to put a definitive number on the state expenditure for civil representation in New York, but the 6AC notes that the state commitment for juvenile dependency representation alone is \$115,384,350 – just about double the number reported by BJS.²⁴

Still further, there are instances where county expenditures on civil representation are recorded in the state expenditure line, even though the state agency does not provide such representation. For example, the Minnesota Board of Public Defense is a state-funded agency overseeing the delivery of public defense services in the state’s 10 judicial districts for criminal and delinquency representation. However, Hennepin County (Minneapolis) augments state funding. The BJS report indicates that Hennepin spent approximately \$15 million²⁵ on indigent defense but, in reality,

²¹ *Supra*, note 13 at page 75.

²² *Gideon v. Wainwright*, 372 U.S. 355 (1963). established the right to counsel in felony proceedings. In the intervening 50 years, the Supreme Court has extended the promise of *Gideon* to any criminal case in which a defendant may potentially lose their liberty. The *Gideon* mandate now extends to: direct appeals [*Douglas v. California*, 372 U.S. 353 (1963)]; juvenile delinquency proceedings [*In re Gault*, 387 U.S. 1 (1967)]; misdemeanors [*Argersinger v. Hamlin*, 407 U.S. 25 (1972)]; misdemeanors with suspended sentences [*Shelton v. Alabama*, 505 U.S. 654 (2002)]; and, appeals challenging a sentence as a result of a guilty plea [*Halbert v. Michigan*, 545 U.S. 605 (2005)].

²³ U.S. Department of Justice, Bureau of Justice Assistance. *Census of Public Defender Offices, 2007: State Public Defender Programs*. September 2010. NCH 228229. See Table 7, footnote d at page 10. Available at: <http://www.bjs.gov/content/pub/pdf/spdp07.pdf>.

²⁴ Email from Andrew Davies, Director of Research, Office of Indigent Legal Services, to the 6AC, July 25, 2014.

²⁵ *Supra*, note 2. See Table 27 at page 15.

only half of that is for indigent defense representation. The balance is spent on civil representation.

Issue #4: It is difficult to make claims about what has occurred in the states collectively when the most populous state with a state-funded indigent defense system is not accurately accounted for: Though Florida is the fourth most populous state in the country,²⁶ it is the most populous state with a state-funded indigent defense system. Primary public defender offices overseen by popularly elected chief defenders provide representation in each of Florida's 20 judicial circuits. Five of the 20 circuit defenders provide appellate services. Money for experts, depositions, copies of records, transcripts, etc. is in a separate budget line called "due process appropriation." So an accurate accounting of Florida's "primary" representation must tally trial-level expenses, appellate and due process appropriations.

When a circuit public defender has a conflict, five regional conflict defender offices covering each of the state's five appellate jurisdictions provide secondary representation. Tertiary representation is then provided by private attorneys paid on an hourly basis or under contract to the judiciary. Additionally, the state of Florida also maintains three Capital Collateral Resource (CCR) Offices (one office each serving the northern, central, and southern regions of the state) providing representation to people convicted of capital crimes in state and federal post-conviction proceedings.

Therefore, there are six distinct budget areas that the state funds: circuit defenders (20 offices), appellate (5 of the 20 circuit offices), due process (case-related costs), secondary conflicts (5 offices), tertiary representation (accounted for in the courts' budget), and the CCR offices (3). Though BJS states that Florida could not be accurately accounted for,²⁷ the national "\$2.2 billion dollar" figure used in its conclusion is inclusive of a reported state expenditure of \$214,526,000.²⁸ In FY 2012, the circuit public defenders expenditure alone was \$200,701,972. The CCR offices expended \$6,734,506. The state funded the budget the five regional conflict offices at \$33,599,882. And, tertiary representation and due process costs were \$80,951,290. This means the total state expenditure in FY2012 was \$321,987,650 (a difference of \$107,461,650 from what was reported).²⁹

Issue #5: Using a rate of inflation index to adjust 2008 expenditures to 2012 dollars creates the illusion of a decrease when in fact there was an increase: In actual dollars,

²⁶ U.S. Census Bureau, *State and County QuickFacts* at <http://quickfacts.census.gov/qfd/index.html>. California, Texas and New York all have county-funded indigent defense systems with limited state involvement.

²⁷ *Supra*, note 1 at page 4.

²⁸ *Supra*, note 1 at page 5 (See Appendix Table 1). The 6AC added the expenditure figures in Table 1 and reached a sum of \$2,231,306,000.00.

²⁹<http://www.flitsyourmoney.com/web%20forms/Budget/BudgetService.aspx?rid1=50157&rid2=21785&ai=21000000&title=JUSTICE%20ADMINISTRATION>

most states went up a small percentage point or stayed flat from 2008 to 2012. So if one adjusts the lower number (FY 2008) one will create the illusion that there was a significant decrease. For example, from the references in the BJS report, the inflation index applied appears to be 5.846%.³⁰ Though the 6AC notes that the American Bar Association FY 2008 report indicates that the Massachusetts indigent defense expenditure in that year was \$186,706,437,³¹ we will assume for the moment that the figure of \$204,625,000 that BJS obtained is correct.³² If one multiplies \$204,625,000 by 1.05846, the result is close to the \$218,775,000 figure BJS uses in its report. So this one adjustment accounts for about \$14 million of the noted decrease.

Issue #6: Adequate funding is a prerequisite condition, but not a perfect indicator of, quality representation. Just because a state decreases its indigent defense expenditure does not in itself equate with a decrease in quality. For example, from 2002 to 2011, much of the rapid increase in indigent defense spending in Alabama was seen as a result of the unique structure of the state's indigent defense system. During that time, while right to counsel services were provided locally, the funding for those services was largely the responsibility of the state. Either way, the counties and the local courts were not on the hook, fiscally speaking. But the state had no control over the methods used by the counties for providing those services, nor the way the counties used the state's funds. Traditionally, Alabama counties employed assigned counsel systems in which judges signed off on lawyer vouchers that were then sent to the state for payment. Critics charged that such a system encouraged judges to use assignments to reward lawyers who contributed to their re-election campaigns.

In 2011, the Alabama legislature passed a bill that created a central Office of Indigent Defense Services (OIDS) to oversee how right to counsel services are provided throughout the state. In conjunction with local authorities, OIDS now has the ability to decide what delivery model is best suited for each county, including whether to create public defender offices or institute private attorney contracts. Whereas some critics suspected OIDS would simply move to flat fee contracts as a means of stemming the increase in spending, without care for quality of representation, the opposite occurred. Jefferson County (Birmingham) and Montgomery County moved to a staffed public defender model. The expansion of the public defender model in Alabama is largely seen as a more responsible way of containing costs while improving quality. Indeed, the dramatic increase in indigent defense spending for 2011 is largely due to assigned counsel attorneys turning in back vouchers for payment while the rules allowing them to bill extra for overhead

³⁰ The inflation index was at 105.008 in 2012 compared to 99.208 in 2008.

³¹ *Supra*, note 13 at page 75.

³² *Supra*, note 1 at page 4.

costs were still in place.³³

Indigent Defense Services in the United States, FY 2008-2012

This report purports to describe how right to counsel services are structured in all fifty states.³⁴ However, there are a number of omissions and factual errors through the report. The BJS report appears to be a summary of state public defense statutes. However, not all indigent defense structural issues are determined legislatively. For example:

- Pursuant to the Nevada Supreme Court’s inherent authority to regulate legal practice in the state, the Court issued Administrative Order ADKT-411 on January 2008 that, among other things: a) instituted performance standards for attorneys in trial-level adult criminal, juvenile delinquency, and appellate representation; b) removed the judiciary from the oversight and administration of indigent defense; and c) required each county to submit to the Supreme Court for approval local plans for delivering indigent defense services.
- In January 2011, then-Chief Justice Myron Steele sought to end Delaware’s undue judicial interference in the state’s conflict indigent defense services by transferring responsibility for the administration of the conflict panel from the court to the Office of the Public Defender (OPD). The BJS statement that the “Delaware Administrative Office of the Courts pays the attorneys and tracks the data on conflict counsel,” is incorrect.
- In 2000, the South Dakota Supreme Court set public counsel compensation hourly rates at \$67 per hour. To ensure that attorneys were perpetually paid both a reasonable fee and overhead, the Court also mandated that “court-appointed attorney fees will increase annually in an amount equal to the cost of living increase that state employees receive each year from the legislature.” Assigned counsel compensation in the farmlands of South Dakota now stands at \$84 per hour. This same order does not allow for the use of flat fee contracts.
- Tennessee Supreme Court Rule 13 establishes the rules for the appointment, qualification and payment of attorneys in those cases where the public

³³ This is a synopsis of a more comprehensive account of the Alabama reform movement. See: Carroll, David. *Pleading the Sixth: Alabama Reforms Spark Expanded Use of Public Defender Model*. February 22, 2013. Available at: <http://sixthamendment.org/alabama-reforms-spark-expanded-use-of-public-defender-model/>.

³⁴ The 6AC has detailed descriptions of every state and U.S. territory’s indigent defense structure at: <http://sixthamendment.org/the-right-to-counsel/state-indigent-defense-systems/>. The 6AC recognizes that having the U.S. DOJ say much of the same information adds value. As such, the DOJ should consider using this resource to compare the BJS descriptions.

defender has a conflict of interest. Tenn. Sup. Ct. Rule 13(1)(b) directs each trial court to “maintain a roster of attorneys from which appointments will be made.”

- Washington Court Rule 1.8 states that flat fee contractual arrangements create an “acute financial disincentive for the lawyer” and “involve an inherent conflict between the interests of the client and the personal interests of the lawyer,” and are thus banned in that state.³⁵
- The BJS report states that, “indigent defense in Arkansas is county run.” However, in *State v. Independence County*, 312 Ark. 472, 850 S.W.2d 842 (1993), the Arkansas Supreme Court ruled that the state is responsible for the funding of indigent defense services. Counties are responsible for some limited physical plant costs including utilities and telecommunications for public defender offices. Additionally, counties and municipalities can – if they so desire – contribute to an office to increase staff and augment state funding (though only the city of Little Rock has chosen to do so). But the state Arkansas Public Defender Commission has complete authority over the delivery of services; the counties are not involved in the administration of services. The BJS statement is factually incorrect.

However, omissions of court rules and judicial fiats do not explain all of the oversights. In some instances there are statutes that involve significant indigent defense structures that are not contained in the statutes describing the primary public system. For example:

- As with BJS’ report on expenditures, described above, the entire conflict Alaska conflict system is omitted in this report as well.
- In Illinois, in counties maintaining public defender offices (whether compelled or by choice) the chief public defender is selected either by the president of the county’s board of supervisors (in counties with more than 1 million residents) or by the presiding circuit court judge (everywhere else). The state covers 66.6% of the cost of the chief defender’s salary in each county with a standing public defender office. For everything else, the counties must determine for themselves how much to fund services with no oversight by the state.
- The report describes the Georgia Public Defender Standards Council (GPDSC) well, however the main problem in Georgia is that counties can opt out of the GPDSC system (and many have), meaning the state has no regulatory authority over those regions. That is missing from the description in the BJS report.

³⁵ Washington Court Rule 1.8. Available at:
http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=rpc&ruleid=garpc1.08

- The authority of the Kansas Board of Indigent Defense Services (BIDS) is limited to felonies. Counties maintain the responsibility for funding and administering right to counsel services on behalf of defendants in adult misdemeanor and juvenile delinquency matters.
- As structured as the Louisiana system is, the state stands alone in the nation as the only jurisdiction with a statewide indigent defense system that relies to a large extent on locally generated dollars to fund the right to counsel. The majority of funding for trial-level services comes from a combination of fines and fees (e.g., bail bond revenue, criminal bond fees, revenue from forfeitures, and indigency screening fees, among others). The single greatest of these revenue generators for indigent defense in Louisiana is a special court cost (\$45) assessed against every criminal defendant convicted after trial, pleads guilty or no contest, or who forfeits his or her bond for violation of a state statute or a local ordinance other than a parking ticket. The result of this funding scheme is that a significant part of funding for trial-level representation in Louisiana comes from fees assessed on traffic tickets.
- The authority to determine the delivery model used in each judicial district in North Carolina is a legislative decision with input from local actors (county bars, judiciary, etc.). To date, only 16 judicial districts have established public defender offices. The presiding judge of the Superior Court in the district has the authority to hire the chief public defender.

Over and above these omissions, there is often a major difference between what statutes say is the structure of indigent defense and what is actually occurring on the ground. For example:

- The Indiana State Public Defender solely provides representation in post-conviction proceedings (i.e., indigent adults and juveniles who are incarcerated and are challenging a sentence or a commitment). Additionally, state funding for the reimbursement plan administered by the Indiana Public Defender Commission has not always kept pace with its intended effect. For example, reimbursements to counties for non-capital representation dropped to a low of 25% in 2003-2004. In the 2011-2012 fiscal year, however, the Commission was able to raise the reimburse rate for participating counties back up to the state's intended 40%. But part of the explanation for why the state was able to reimburse counties 40% of their non-capital representation costs is due to the fact that the number of counties seeking reimbursements has steadily decreased from a high of 72% of all counties participating (66 of 92 counties) to just 56% of counties in 2012 (52 counties). In short, more and more counties are choosing to forgo state assistance, opting to cut costs through flat fee contracts. One could

conclude that flat fee contracts are not an issue in Indiana from reading the BJS description of the state.

- As originally conceived, the Nevada State Public Defender was funded through a combination of state and county funding, with the state paying for 80% of all public defender costs in the rural counties and the counties paying the remaining 20%. In 1989, the legislature compromised the ability of the State Public Defender to render effective services by demoting the position from a gubernatorial cabinet-level position to one of several intra-agency positions within the Department of Human Services. This means that the State Public Defender must now justify the office budget among all human services divisions and then have the Director of Human Services argue that budget amongst all other cabinet departments. Over time, this arrangement resulted in the state reducing its financial commitment to the point where today participating counties pay 80% of the entire cost of the system. Counties learned that, by simply opting out of the state system, they could spend less money to provide the services *and* exercise local power over their public defense systems. However, this movement out of the State Public Defender system was done with no guidance whatsoever by the state (i.e., there are no standards as to how the counties must set up their systems). In most instances, the county governments established systems in which the lowest bidder is contracted to provide representation in an unlimited number of cases for a single flat fee. The attorneys are not reimbursed for overhead or for out-of-pocket case expenses such as mileage, experts, investigators, etc. Today, the State Public Defender serves only Carson City and White Pine County. Just on a reading of the description in the BJS report one could assume that all rural counties are part of the State Public Defender system and that flat fee contracts are not an issue in the state.

Conclusion

The issues raised in this letter are not a criticism of the Department of Justice's commitment to the right to counsel in America. We recognize that, as the 6AC 2013 Annual Report states, "more has been done under the current administration to advance the right to counsel than all others." This includes: the 2010 Indigent Defense Symposium; the Statement of Interest in the *Wilbur* case; the Access to Justice Initiative; increased grants; and the investigations by the Civil Rights Division into the inexcusable treatment of children in Shelby County, Tennessee, Meridian, Mississippi, and now St. Louis, Missouri.

However, having inaccurate data emanating from the U.S. Department of Justice makes the task of rectifying our country's longstanding and deep-rooted indigent defense deficiencies all that more difficult.

Thank you.

A handwritten signature in black ink that reads "David Carroll". The signature is written in a cursive, flowing style.

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