The Honorable Bob Goodlatte, Chairman
House Judiciary Committee
2309 Rayburn HOB
Washington, DC 20515

June 30, 2015

Dear Chairman Goodlatte:

Thank you for your efforts in launching a Criminal Justice Initiative to evaluate proposals to reform our nation's criminal justice system and for holding the June 25 Listening Session on Criminal Justice Reform. We listened to the entirety of that session with great interest. We are the National Association for Public Defense ("NAPD"), a national organization of public defense professionals that was founded a little over 18 months ago. Since founding we have enrolled over 10,000 members from all 50 states, including the staff of more than 70 public defense offices/agencies. NAPD membership includes public defender attorneys, leaders, investigators, administrators, IT professionals, social workers, researchers and other professionals who represent eligible clients guaranteed the right to counsel (more information at www.publicdefenders.us)

We listened with particular interest to Congressman Ted Deutch's (R-FL21) testimony with respect to two bills that he has introduced, namely:

(1) HR 2330, the National Criminal Justice Commission Act, which would create a commission of 14 experts to conduct a comprehensive review of the entire criminal justice system; and

(2) HR 2063, the National Center for the Right to Counsel Act, which would create a national center to provide financial training, research and support to state and local indigent defense services.

We are submitting this letter in support of both the National Criminal Justice Commission Act and the National Center for the Right to Counsel Act. Passage of both of these bills, in our view, will be important in view of the many major changes that are now underway in our criminal justice system, and particularly the effort to end excessive workloads, which we discuss in more detail below.

It is beyond controversy that public defenders all over the country are carrying excessive caseloads. The problem of excessive caseloads was the primary organizing principle driving the formation of the NAPD, as well as the subject of the first position paper issued by the NAPD on March 19, 2015. See Exhibit "A."

Importantly, two state supreme courts – Missouri and Florida – have now squarely held that when a public defender's workload is so excessive that he or she can no longer provide effective assistance of counsel, that public defender should seek judicial relief from such excessive caseloads, and in appropriate cases, the entire office of the public defender should be relieved by the court from appointment to any further cases. See Stephen F. Hanlon, The Gideon Decision: Constitutional Mandate or Empty Promise? A Fifty-Year Deal Under Fire, 52 U. Louisville L. Rev. Online 32 (2013). (See Exhibit "D").

"The Missouri Project" (more information at www.indigentdefense.org), prepared by RubinBrown, one of the nation's leading accounting and professional consulting firms, on behalf of the American Bar Association Standing Committee on Legal Aid and Indigent Defendants (SCLAID) was released in February, 2014. Using a methodology developed by the Rand Corporation in the 1960s and thereafter successfully applied by a wide array of industries and professions, this study of the workload of the Missouri Public Defender ("MPD") established what level of workloads the MPD could – and could not – sustain in order to provide reasonably effective assistance of counsel pursuant to prevailing professional norms – the Strickland v. Washington standard.

Upon the release of The Missouri Project, James Silkenat, then President of the American Bar Association, commented on the study's implications: "It can now be more reliably demonstrated than ever before that for decades the American legal profession has been rendering an enormous disservice to indigent clients and to the criminal justice system in a way that can no longer be tolerated. "

In short, the courts have told us that we can no longer tolerate these excessive workloads and that we must seek to withdraw from appointment to future cases once we have reached the limit of our capacity to be reasonably effective, and we now have a proven methodology to establish when we have reached that point. Studies similar to The Missouri Project are being conducted by the ABA and the NACDL in Tennessee and Rhode Island under a grant from the Department of Justice. Similar studies are under consideration in at least six additional states, and a similar study was recently published in Texas (available at http://www.tidc.texas.gov/resources/publications/reports/special-reports/weightedcaseloadstudy.aspx).

This development in the courts and in the public defense community has major implications for policymakers. It will unquestionably put enormous pressure on an already gravely overburdened criminal justice system. Since public defenders are the first of the actors in this hopelessly compromised criminal justice system to explicitly acknowledge our responsibility for the current state of affairs, and since we are the first of the actors in the criminal justice system to proactively develop the law and the metrics so essential for our own reform, we believe that we have standing to press the other actors in this system – in particular, trial judges, prosecutors and legislators – to similarly acknowledge their own responsibility and to similarly undertake legal and cultural reforms just as difficult as the ones we are now undertaking to restore the criminal justice system to what it was supposed to be: the crown jewel of our republic.

Under these circumstances, it is going to be essential that policymakers seriously examine every available tool to accommodate this significant new pressure on the criminal justice system, in terms of both the supply and the demand sides of the economic equation that drive that system. Specifically, the following major reforms are going to be essential to avert complete breakdown of the system:

1. The demand problem: the demands on the criminal justice system must be dramatically reduced by transferring many offenses that are currently in the criminal codes of states and municipalities (primarily misdemeanors with no public safety consequences that constitute approximately 70 to 80% of the cases in the system) to civil infraction codes that where there are no

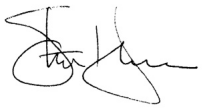
collateral consequences, and where these minor violations can be treated far more effectively and at far less cost to the taxpayers.

2. The supply problem: Without adequately resourced public defenders who can provide reasonably effective assistance of counsel to each of their clients, criminal cases will no longer move forward, and must be dismissed (and the defendant released if he or she is in custody). In short, we cannot "reform our way out of this problem"; additional resources are unquestionably going to be required.

For all of these reasons, both the National Commission and the National Center advocated by Congressman Deutch are going to be essential to deal with the coming exacerbation of the crisis in public defense. The kinds of reform needed to deal with this enormous new pressure on an already overburdened system will require the best and most experienced minds we have.

We strongly urge your Committee to seriously consider and support both HR 2330 and HR 2063.

Respectfully submitted,



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