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identification purposes only*

May 20, 2016

The Hon. Ted Deutch  
United States House of Representatives  
2447 Rayburn House Office Building  
Washington, DC 20515

**Re: Support for the Independent and Effective Federal Defenders Act of 2016**

Dear Representative Deutch:

On behalf of The Constitution Project (TCP), I write to thank you for supporting an independent entity for the federal public defenders. The right to representation that is both effective and free from conflicts of interest is a fundamental principle underlying our criminal justice system. While many federal public defenders are highly effective and competent, unfortunately, several entities within the judiciary exercise significant control over the indigent defense system in which these lawyers function. As a result, the system lacks vital independence. This lack of independence has adverse consequences on defenders' cases and the justice system as a whole.

TCP is grateful for your leadership on addressing the federal defenders' lack of independence and for your commitment to a stronger federal indigent defense system.

As a former deputy federal public defender, I founded TCP in 1997 as a national, nonpartisan organization to promote and defend constitutional safeguards. TCP's work—which advances the views of bipartisan committees of experts who craft consensus solutions to the issues we address—has long focused on reforming the nation's broken criminal justice system and strengthening access to justice.

TCP has been working for years to fully realize the Sixth Amendment right to counsel, through the reports and policy recommendations of our blue-ribbon [National Right to Counsel Committee](#) (RTC Committee). Former Vice President Walter Mondale and former FBI Director and federal judge William S. Sessions serve as honorary Co-Chairs of the Committee, which comprises a politically diverse group of former judges, prosecutors, defenders, scholars, and others with firsthand experience in the system. We are determined to assist governments in realizing the promise of the Supreme Court's 1963 decision in *Gideon v. Wainwright*: that any person accused of crime, regardless of his or her ability to afford a lawyer, has the right to effective and conflict-free legal representation under the Sixth Amendment.

As you know, Congress enacted the Criminal Justice Act (CJA) the year after the *Gideon* ruling; it provides a system for appointing and compensating counsel representing defendants in federal criminal proceedings who are financially unable to hire a lawyer or other defense services. The CJA created both the offices of federal defenders as well as a system of "panel lawyers" to provide representation when, for example, the federal defender office has a conflict of interest.

As noted, however, this system lacks independence because it is subject to oversight by the judiciary, both systemically and on a case-by-case basis. The Defender Services Office—which provides support to federal defender organizations and panel attorneys—is housed within the federal judiciary.

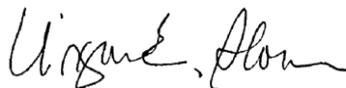
Moreover, in federal courts across the country, judges can deny or dramatically reduce reimbursement for a defender's time spent on a case or for expert services, including critical investigations related to his or her client's guilt or sentencing. In contrast, federal prosecutors can make such decisions without judicial intervention or approval.

It has been more than fifty years since *Gideon* was decided, and public defense is in desperate need of reform. Although attention is often focused on the state and local levels, the federal indigent defense system must also be reformed in order to fully comport with the Sixth Amendment. In 2009, TCP's RTC Committee issued [Justice Denied](#), which documents the structural and financial impediments jurisdictions face in ensuring that indigent defendants receive effective assistance of counsel and sets forth consensus recommendations to overcome them. One of these recommendations highlights the importance of an independent, adequately funded federal entity to ensure that indigent defendants are receiving effective assistance of counsel. Last month, TCP [testified](#) before the federal judiciary's CJA Review Committee about the importance of an independent, coordinating entity to ensure the independence of indigent defense services and the resources needed for those services, and noted your long-standing support of this proposal. I also called for such an entity in a piece in [The Huffington Post](#).

A Federal Defender Commission—or similar independent, central entity to coordinate federal defense programs—would strengthen the services of publicly funded defender programs nationwide. It would provide for the administration of grants, pilot projects, training, research, and critical data collection and analysis. Creation of such an entity would support the provision of competent counsel in the neediest jurisdictions, improve fundamental fairness and access to counsel by addressing crushing caseloads, increase training and support services for defense counsel, and give defenders the independence they need to do their job.

Thank you again for your leadership on this important issue. We hope that that you will look to TCP, our reports, and our Committee members as a resource on issues affecting access to justice for defendants. Please do not hesitate to reach out to Madhu Grewal, Senior Counsel, with any questions ((202) 580-6939 or [mgrewal@constitutionproject.org](mailto:mgrewal@constitutionproject.org)).

Sincerely,

A handwritten signature in black ink, appearing to read "Virginia Sloan". The signature is fluid and cursive, with the first name being more prominent.

Virginia Sloan