

DRAFT

COMMENTS OF THE CRIMINAL LAW SECTION
OF THE DISTRICT OF COLUMBIA BAR
ON THE PROPOSED FEDERAL DEFENDER

The Criminal Law Section of the District of Columbia Bar respectfully submits the following comments in response to the proposed establishment of a Federal Public Defender Organization for the District of Columbia.

The Criminal Law Section submits that a separate Federal Public Defender Organization is not the best means of attaining the goal of providing superior representation to indigent defendants in the federal system at reasonable cost. As proposed, the Federal Public Defender lacks necessary independence and is unnecessarily duplicative of the services provided by the Public Defender Service. The establishment of a federal unit in the Public Defender Service (PDS) would ensure the independence of the federal defender organization and would provide the resources and expertise of PDS substantially less *with* start-up time and cost.

As proposed by the Judicial Council for the District of Columbia Circuit, the federal defender would be appointed by the United States Court of Appeals for the District of Columbia Circuit for a term of four years. Although the defender could be reappointed to additional terms, the Court would make that determination every four years.

There is at least a potential conflict *for the appearance of a* of interest in this arrangement. A public defender who must depend upon the good will of the Court of Appeals for his or her reappointment might be deterred from pursuing aggressive tactics which are necessary

The views expressed herein represent only those of the Section on Criminal Law and Individual Rights of the District of Columbia Bar and not those of the DC Bar or of its Board of Governors.

for the defense but which could anger or alienate the court.

~~[authority for fact that this arrangement constitutes a conflict~~

~~of interest]~~ While appointment by the court appears to be the norm in other circuits, the fact that the practice is widespread does not mean that it is conflict-free. We submit that this *potential* conflict should be avoided by using the viable, and indeed *for* preferable, alternative of the Public Defender Service.

The Public Defender Service has provided exceptional representation to indigent defendants since 1970. It is a well respected organization which recruits and trains highly qualified attorneys. A federal unit at PDS would benefit from the agency's expertise and experience and would substantially reduce the time and cost in establishing and running a federal defender office.

The Public Defender Service operates a highly effective training program which provides basic skills for its new lawyers and advanced training for its experienced lawyers and members of the bar. The agency also has well established and professionally staffed specialized divisions, including the Investigative Division, the Offender Rehabilitation Division, the Mental Health Division, the Prisoner's Services Project, and a newly formed Prisoner's Rights Program. A separate Federal Defender Organization would have to duplicate all of these resources to provide a comparable level of representation. The money wasted on such duplication would be better spent on providing more of the direct client services which the divisions offer.

In addition, the creation of a federal unit at PDS would

substantially reduce the operating cost of the federal defender. The federal Public Defender budget submitted by the Administrative Office of the United States Courts includes \$114,500 for rental of office space, \$40,000 for purchase of a library, and \$8550 for purchase of a telephone switch board. Much of these start-up costs and the on-going costs will be substantially reduced if a federal defender unit is established at the Public Defender Service.

In a recent interview with the Legal Times, Chief District Judge Aubrey Robinson Jr. expressed a desire for "fewer entanglements with the local system" in setting up a federal defender organization. First, if such "entanglements" mean that the judges lack direct control over the organization, we submit that this is desirable. If such "entanglements" refer to a board of directors under the control of the local government, the Chief Judge's concern can be addressed by the creation of separate federal unit with a distinct budget, staffing, and guidelines for operation. The benefits from running such a unit within an organization with a the resources and proven track record of PDS more than outweigh the concern for local interference.