

**OFFICE OF THE FEDERAL PUBLIC DEFENDER
NORTHERN DISTRICT OF ALABAMA**



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KEVIN L. BUTLER
Federal Public Defender

February 8, 2016

The Honorable Kathleen Cardone
Chair, Ad Hoc Committee to Review Criminal Justice Act Program
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, NE
Washington, DC 20544

RE: Testimony of Kevin L. Butler, Federal Public Defender for the Northern
District of Alabama

Dear Judge Cardone:

Thank you for the opportunity to address the Committee. In my remarks, I first will introduce myself and give some background on the history of the Federal Defender Program in the Northern District of Alabama. Next, my testimony will address how the Circuit's budgetary oversight and approval process influenced the strategy I employed to rectify the staffing and budgetary shortfalls I encountered during office startup. I will then address why the staffing and budgetary controls that have now been put in place should substantially reduce the need for Circuit oversight of staffing of Federal Defender Offices and provide increased agility to the Federal Defender Program.

I have been a lawyer in the Federal Public Defender program since 1992 and have held multiple attorney positions in the Federal Defender system – Research &

Writing Attorney, Assistant Federal Defender, Chief Trial Attorney, First Assistant Defender, and Defender. As a consequence, I have had the privilege of witnessing and participating in the outstanding work performed by the attorneys and staff who are dedicated to providing those with the least resources the best legal representation possible. I became the first Federal Public Defender for the Northern District of Alabama in October of 2011. The Circuit and District Courts have been extremely supportive of our new office, and in most ways, the Criminal Justice Act has worked very well for us here. However, we have faced some hurdles that I will address.

District Structure and Recent History of Federal Indigent Defense

The Northern District of Alabama encompasses 31 counties and is the largest federal district in the state both geographically and by population. There are five active court houses in the District, though the majority of cases are adjudicated in Birmingham and Huntsville. Many court appearances require approximately 100 miles of round-trip travel. All of our detained clients are housed in remote detention facilities requiring an average of 60 miles of round-trip travel per client visit. The United States Attorney's Office employs 36 attorneys who handle criminal matters compared to our 7 Assistant Federal Public Defenders (AFPDs).

Prior to my appointment in 2011, the Northern District of Alabama was one of only four federal court districts that did not have either a Community or Federal Defender Office. CJA panel attorneys handled all representation of indigent federal defendants. Prior to 2008, the District did not have a formal process for panel selection, and panel membership was left largely to the discretion of the Judges and the court staff. Local training of the CJA panel was coordinated by the United States Probation Office and there was limited structured sharing of experience, information, and developments in law and policy between CJA panel attorneys. Additional CJA training was often limited by financial considerations: many CJA panel attorneys felt the need to balance the time and expense necessary to attend local and national training against the number of indigent appointments they were receiving, and the money they would earn from those appointments.

Beginning in 2009, the Court embarked upon the creation of a Federal Public Defender Office. On July 1, 2010, the Eleventh Circuit approved the Northern District of Alabama's request to establish a Federal Public Defender Office, and I was appointed Federal Public Defender for the Northern District of Alabama in October of 2011. By June 2012, temporary office space had been secured for the Birmingham (main) and Huntsville (branch) offices, the initially authorized staff (6 AFPDs and 7 non-AFPDs) had been hired, and all necessary administrative and operational processes were in place. By August 1, 2012, we accepted our first case and began fulfilling our mission of providing outstanding representation to indigent federal defendants.

Delayed Ability to Address Significant Understaffing

Almost immediately, in August of 2012, I realized that we would need more attorneys. The office experienced a rapid increase in case load, and within weeks of accepting our first appointment, it became clear that our initial staffing and budget formula had not taken into consideration the "weight" of the cases opened in our District, nor the number of supervised release, appellate, and habeas appointments we would receive.¹ Due to our quickly growing case volume, we were understaffed and underbudgeted. I projected that by early 2013 our attorneys would have extremely large case loads and that our resources would be strained.² Based upon these

¹ Prior to Fiscal Year 2016, staffing and budget levels in Federal Public Defender Offices were based upon the weighted cases opened (WCO) by the attorneys in each office. All cases were weighted based upon a detailed Rand Corporation study adopted by the Office of Defender Services (now Defender Services Office - DSO). However, at the time our office was proposed and staffing levels determined, Rand weights were not applied to our attorney staffing projections.

² Based upon case data received to date, in order to meet the demands of this District, our office requires 23.4 full-time employees to address the approximately 844 weighted cases opened each year. More specifically, to address our case load, this office requires 8 AFPDs and 15 non-AFPDs. However, at the time this office was approved, a "Rand" weight analysis was not applied to our anticipated case load and it was estimated that our office would receive approximately 425 cases per

projections, I estimated that we would require two additional AFPDs to address the needs of the District's indigent defendants.

Of course, I needed data to obtain Circuit approval to increase the number of AFPDs (and correspondingly our budget). Because we had just opened and there was little historical or empirical data supporting my forecasted staffing and budgetary shortfalls, I felt compelled to delay for 8 to 12 months a request to the Circuit for additional AFPDs. I also felt that because our normal operating case load had yet to be attained at this early stage of operation, the rapid increase in our case load could be adequately addressed while we continued to gather adequate data to support a Circuit request for additional staffing. Without hesitation, my outstanding staff accepted this reality and performed outstanding work. Then lightning struck.

Approximately five months after taking our first case, when office staff was coalescing as a team, and prior to having adequate data to support a request for Circuit approval to increase our staff and budget, sequestration hit. As a consequence, our already inadequate startup budget was cut by an additional 10%. However, our case load continued to climb; by February of 2013, each attorney's case load was approximately 30% greater than appropriate. In order to address the budget shortfall and still address the needs of the District, in April of 2013, we began a "furlough" rotation of all employees, and plans were put in place to close the Huntsville, AL branch office. Fortunately, because of the commitment of my outstanding staff to our office mission and prudent financial management, we were able to withstand the impact of sequestration, retain all employees, and not close the branch office. I will be forever grateful to my staff for the sacrifices they made during this period.

Though my staff was still straining under the weight of extremely high case loads and strained resources, by July of 2013 we were in possession of adequate data to support a request for a staff and budget increase. With the District Court's support, we sought Circuit approval to increase our AFPD staff by two. Because of budget constraints impacting the entire Circuit, and based upon their consideration of our workload, on October 2013 the Circuit approved one additional attorney position. The

year and would require 6 AFPDs and 7 non-AFPDs to address this case load.

position was advertised and filled by February 2014.³

The Circuit has been extraordinarily supportive of this office and our mission, and it understandably needs documentation before deciding how to allocate limited resources. Given the tight fiscal constraints impacting the entire judiciary in 2013, we are grateful for the position we were allowed to add. However, the process of seeking Circuit approval for staffing extended the time needed to implement corrective actions. While my office's initial staffing problems certainly were not caused by the Circuit, the Circuit's budgetary oversight and approval process influenced the strategy I employed to rectify my staffing and budgetary shortfall.

If allowed the independence to address unexpected budgetary events without Circuit approval, the impact of unexpected budget issues could be mitigated. The Work Measurement Study and resulting staffing formulas that have now been adopted by the Federal Judiciary provide Defenders and the Defender Services Organization (DSO) an empirically based and analytic tool to effectively and efficiently address staffing and budgetary issues. The WMS provides Defenders with the tools necessary to staff their offices based upon hard data that tracks the case trends in their districts and should substantially reduce procedural delays in reacting to budgetary and staffing crises, while ensuring accountability and responsible stewardship of limited resources.

Staffing Formulas Expedite Adjustments to Staffing Levels

Between 2013 and 2015, the Federal Defender Program undertook a national Work Measurement Study (WMS) to assess and determine the staffing levels in all defender offices. I was honored to be selected by Judge John D. Bates, Director of the Administrative Office of Courts, to serve on the Federal Defender Work Measurement Steering Committee. The study was based upon comprehensive and detailed data collection from all Federal Defender Offices and careful analysis of that data by expert statisticians and program analysts who work for the Administrative Office of Courts. Indeed, the study's director, Harvey Jones, praised the study for the complete and

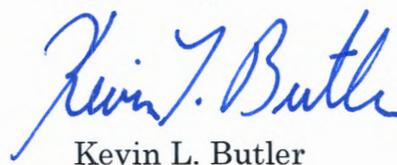
³ This year I will seek Circuit approval for one additional AFPD position.

collaborative participation of all Federal Defender Offices, the comprehensive and detailed data collection, and the study's thorough analysis and results.

As a result of the Work Management Study, the staffing level of each defender office can be based upon a dynamic model that tracks an office's most recent five-year average of weighted case openings (WCO). If a district's WCO shows a decline over five years, the Defender office's staff (and corresponding budget) will be adjusted downwards. Inversely, if a district's WCO shows an increase over five years, the office's staff (and corresponding budget) may be adjusted upwards.

As both an engineer and a lawyer, I am not certain whether a staffing formula is the best way to determine staffing levels in a discipline that is so often governed by non-quantifiable variables and dynamics. Nevertheless, the formula has been adopted by the Judiciary, and it is the standard by which all defender offices must now operate. Defenders now have the tools to assess and manage their staffing and budgetary requirements based upon historical and empirical data and adjust their staffing requirements to meet the needs of their districts. The defenders are uniquely situated to monitor their districts' case trends, resource demands, and employ the staff necessary to meet their districts's needs. The possibility of the misuse of resources and the need for Circuit oversight is greatly diminished because defenders simply will not be allocated staffing and budgetary resources if their districts' empirical data does not support it. Simply put, the Work Measurement Study and staffing formulas now serve as resource regulators and greatly diminish the need for Circuit oversight of staffing decisions in Federal Defender offices.

Sincerely,



Kevin L. Butler