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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 Laine Cardarella,
Federal Public Defender, Western District of Missouri

Dear Judge Cardone:

Thank you for the invitation to address the Committee. I joined the Federal Public Defender's Office for the Western District of Missouri as an Assistant Federal Public Defender in 1998, after having been an Assistant State Public Defender in Missouri for 7 years. In 2014, I became the Federal Public Defender. I am the 6th, 7th and 8th Circuits' FPD representative on DSAG (the Defender Services Advisory Committee.) I am grateful for the opportunity to share my thoughts with the committee.

The Western District of Missouri is, basically, the western half of the state from the northern border with Iowa to the southern border with Arkansas. Our district includes five of the six biggest cities in Missouri. The district is divided into five divisions, with staffed courthouses in three of those divisions: Kansas City (the Western division), Springfield (the Southern division), and Jefferson City (the Central division.) The Federal Public Defender has staffed offices in each of those three divisions.

There are currently 38 employees in the district, including two part time positions. We are authorized for a staff of 37.9 full time employees and as of February 22 will be fully staffed. Our AFPDs are typically seasoned criminal defense attorneys before joining the office, and few choose to leave before retirement. We have a robust internship program working with the law schools at the University of Missouri in Columbia and Kansas City, as well as undergraduate programs at local universities.

Since sequestration, we have experienced a fairly steady growth in our caseload. While the statistics I've seen suggest that filings in the district are slightly down, our caseload is not. Currently, our AFPDs in the Kansas City and Jefferson City offices carry active loads of around 50 cases each, most of them felonies. Our AFPDs in Springfield have slightly lower caseloads,

but with a higher percentage of cases alleging sexual misconduct, often child pornography or child enticement. Throughout the district, we see a lot of multi-defendant drug cases, as well as multi-defendant fraud or white-collar cases. We see a lot of gun cases as well, and plenty of social security fraud and bank robbery. Because we have a federal medical center in our district, the Springfield office handles a lot of mental health cases. We also handle misdemeanor cases from the federal lands in our district and the air force base. We do not have a separate appellate unit. Our AFPDs handle their cases from arraignment through cert petition. I hired the first research and writing specialist in the district almost two years ago, and we will soon have our third specialist coming on board. These attorneys help significantly with our appellate caseload.

I feel like we have a heavy caseload until I hear my colleagues from the Border States start talking. Nevertheless, we are quite busy. In spite of the numbers, we provide high quality representation to our clients, and I believe the judges in our district and circuit would agree. As a district we also work hard to help train the panel attorneys so that they, too, are able to provide quality representation.

In the Western District of Missouri, we enjoy a good relationship with our district and circuit court judges. I believe they appreciate our zealous advocacy, and I am not aware of any attempts by either court to interfere with our policies or efforts on behalf of our clients. I have only had the occasion to ask for an additional AFPD position once in the nearly two years I have been Defender, and that request was granted. My predecessor was the Defender for approximately 30 years, which I think reflects the circuit court's respect for stability in our office, and the independence that comes with job security.

Of course we work most closely and regularly with our district court judges. I have found the district court to be quite supportive of our office. During sequestration, I'm sure the judges felt their hands were tied, but they worked with us, especially regarding scheduling around our furlough days. I occasionally worry about our caseload, and am comfortable talking through those concerns with our chief magistrate and our district court chief. I think the court appreciates our commitment to our clients, and I've never had any sense that they seek to impede our work. I am hoping to develop a more in-depth dialog with the court about the structure of our CJA panel, and I think that we will be able to have meaningful discussions.

Western Missouri is a district where cooperative efforts result in the more efficient administration of major projects. Since 2008 there have been three massive resentencing efforts in response to retroactive guideline amendments. In each instance, one AFPD, one AUSA, and one district court judge reviewed and processed the hundreds of cases potentially impacted by the amendment. The cases were not reassigned to panel attorneys unless a conflict existed, which was a tremendous savings to the court. Because the AUSA and the AFPD were the only ones working the cases, they became experts and were able to work quickly and well. The Supreme Court's decision last summer in *Johnson v. United States* has created another special project. The FPD office is reviewing over a thousand cases to determine eligibility for sentencing relief. The list of potential clients was provided by the sentencing commission because our chief district judge was willing to obtain the list and distribute it to the FPD and the U.S. Attorney's Office. Without that assistance from the district court, we would be struggling to identify these clients. Because we were able to obtain the list early, and because the government has been willing to join us in

motions seeking relief where they agree the client is eligible, several of our clients have already been released from custody

We have a number of well-qualified attorneys on our CJA panel. I believe many of them share my concerns about the structure of the panel, the consistency of quality representation, and the ability to maintain a strong panel.

As you have likely surmised, it is my opinion that the area where we have the most room for improvement in Western Missouri is with our CJA plan. The CJA plan in Western Missouri does not have any criteria for membership to the panel. While the plan says that the full time magistrates in each division shall revise the panels at least annually, I'm not aware of what revisionary process is undertaken. I have no independent access to the panel membership list. A list I recently obtained from the court shows that our panel membership numbers over 200 district-wide. Other than an occasional note indicating that a particular attorney speaks a foreign language, or is partners with another attorney on the list, etc., there is little or no information on the list about each attorney, including level of experience.

I am aware that our magistrates have the laudable goals of increasing diversity on the panel, and bringing new attorneys into the panel. I think both of those goals ultimately will serve our clients and the legal community well. Without sufficient structure however, the process of meeting those goals, particularly the goal of bringing new attorneys to the panel, might prove detrimental to the clients. My own assistants and several of the more seasoned CJA panel attorneys have shared with me concerns about the quality of representation from inexperienced and virtually unsupervised new attorneys.

Over the last two years, my office has nearly doubled the hours of free CLE programs we offer to the panel annually. But with no requirement that any panel member, new or otherwise, attend FPD sponsored training, attendance at the events is sometimes lackluster. There is no requirement in our plan that any panel member attend any federal criminal defense training whatsoever. I'm working to develop a "Sentencing 101" program that I hope my office will be able to offer to the panel at least twice each year. I hope that the court will amend the plan to mandate attendance at that program, and hopefully more federal criminal defense programs, for any new attorney hoping to join the panel. I would like to see some added structure to the panel so that the court can easily determine levels of experience among the attorneys. I hope that the court will consider creating a committee whose responsibility it would be to determine panel membership and retention on a three or four year basis. I hope that the release of the newly revised model plan will stimulate some reflection on our own plan, and revisions of our plan to more closely match the model plan.

The court typically does not ask me to recommend appointments in individual cases. My office does not review vouchers or have any involvement whatsoever in that process. Like others, I am concerned that the CJA attorneys are required to ask the presiding judge in a case for approval to spend money in defense of their clients. I have heard, generally, that in Western Missouri those requests are granted. But I have also heard from CJA lawyers that they are hesitant to make requests in the first place, for fear of being overlooked for the next available appointment. Many panel members feel that with so many attorneys on the list, an attorney who falls out of favor for

any reason, including by asking for too much money for herself or experts, might well become *persona non grata*. Even if that concern is not valid, the process of seeking the approval of the trial judge, I believe, runs the risk of negatively impacting the client. The attorney must share privileged information and strategy with the judge who will be hearing the trial and sentencing. I understand concerns about the FPD being involved in the process of approving expense requests for panel attorneys, and frankly my office does not have the time or the staff to take on this task. But I do hope this is an area the committee scrutinizes closely, and I hope you are able to make a suggestion that takes this process out of the hands of the individual judges or otherwise addresses the concerns so many of us have expressed. One idea might be that a panel could review vouchers, even if only in the cases when a judge is inclined to cut the voucher.

I understand that the focus of the hearings in Birmingham include death penalty work and capital habeas. Western Missouri is a deadly district. I don't believe that my predecessor was very involved in the process of insuring quality capital representation in cases where we did not represent a party. I am deeply interested in doing whatever I can to insure quality capital defense in our district. I have asked the judges to abide by the statute and seek my input regarding the appointment of counsel in capital cases. I believe that they will do so. I co-sponsored a capital defense training program with the FPD office in the District of Kansas last year, and hope to do more targeted training in the future.

Despite the fact that the state of Missouri is second in the country in executions, we do not have a very deep pool of qualified capital defense attorneys in the Western District of Missouri. Capital resource counsel has been and will continue to be critically important in assisting with finding or providing representation for cases in our district, and with on-going training of attorneys within our district. I hope that my relationship with resource counsel, and the cooperative relationship I have with the court, will lead to improved capital appointments in our district.

In our district, as elsewhere, there is concern about the quality of representation in the capital habeas stage as well. As I have said, I am committed to insuring that quality capital representation is the norm in our district. My commitment includes a willingness to host a capital habeas unit if the court were to ask us to do so.

Finally, I would like to touch on issues of national consequence. As I have noted earlier, in my experience, the judiciary has generally not interfered in the representation we provide to our clients, and in fact has been supportive. I am concerned, however, that, as the recent NACDL report points out, judicial oversight has undermined the independence of CJA counsel across the country.

When I joined the Federal Public Defender's office in 1998, my supervisors at the state office cautioned me about the perils of "working for the court." I have never felt that my ability to defend my clients was constrained in any way by the fact that my predecessor was, and now I am, appointed by the Eighth Circuit. I do, however, see the huge conflict that exists in the structure of our program for CJA panel attorneys. I have had an attorney tell me he was reluctant to ask for funds to travel and be with his client who was too sick to appear in court and was going to be sentenced via video. No AFPD in my office would hesitate to ask me for travel authorization to be on the client side of a video conference, nor would I hesitate to give it. Nearly every panel

attorney I've spoken to has told me that investigation is done by the attorney, and not by professional investigators, because of the belief that the (1) the court will not approve the spending request or (2) the court will not approve enough money to allow the attorney to hire a competent investigator. Meanwhile, like all other institutional defender offices, we have full time investigators on staff. We have a certified forensic computer specialist on our staff, but CJA counsel rarely hire computer specialists in their child pornography cases. The point is this: it is mere chance that appoints us to represent one defendant in a case, and a panel attorney to represent another, yet the consequences of that happenstance can be astounding. Under the current structure, it is the panel attorneys who may feel like they "work for" the court, and who may feel the need to tailor their strategies and funding requests to please the court rather than to meet the needs of the client.

The "square peg" fit of the CJA program within the judiciary has been exacerbated by recent changes to the program like demotion of DSO to program services, and the transfer of budget and staffing authority to the Judicial Resources and Budget Committee rather than the Defender Service Committee. At the very least, the DSO should be restored to its prior position as a directorate.

As a member of DSAG, I would like to see the composition of our group expanded. It is difficult for me to represent the Defenders in circuits other than my own, not knowing necessarily what their issues are. I believe each circuit should have a Defender and panel attorney representative in the group.

Thank you again for the opportunity to address the Committee, and I thank you and every member of the Committee for your dedication to this difficult task.

Sincerely,

Laine Cardarella
Federal Public Defender
Western District of Missouri