

The Honorable Kathleen Cardone,
Chair, Ad Hoc Committee to Review
the Criminal Justice Act Program
Thurgood Marshall Federal Judiciary Building
One Columbus Circle NE, Suite 4-200
Washington, DC 20544

Re: Testimony of the Honorable Kathleen M. Williams,
United States District Court Judge,
Southern District of Florida

Dear Judge Cardone:

I would like to thank the Committee for this opportunity to testify on a matter of great importance. By way of introduction, I have been a United States District Judge for the Southern District of Florida for the past four years. Prior to my appointment, I was the Federal Defender for this District for sixteen years. During that time, I also served as the Acting Federal Defender in the Middle District of Florida for nine months and was the Chairperson of the Defender Services Advisory Group (“DSAG”) from 2002 until 2009. I was an Assistant United States Attorney in Miami from 1984 to 1988 and I also worked as an associate attorney at the law firms of Fowler, White and Morgan Lewis & Bockius. Perhaps more notably for this Committee’s purposes, I am one of only four United States District Judges who have been appointed to the bench directly from their position as Federal Defender.

While I was Federal Defender, I spoke to numerous groups: law students; college, high school and elementary students; citizen groups; business organizations; foreign judges and attorneys; bar associations; Congressional staffers; and Committees such as this one. And in each instance, I was asked: “How can you represent *those* people?” I became accustomed to explaining the underpinning of Constitutional mandate, the critical function of the Sixth

Amendment in a democratic system and the notion that by representing the least of us, federal indigent defense lawyers represented the best of our national character. What I never became accustomed to, however, was the difficulty I encountered in persuading people involved in the administration of the CJA program, not only of the importance of the program but also of the inherent capability of the lawyers who chose this work. So I am here today to ask this Committee to recommend that the Federal Judiciary reassert its commitment to the indigent defense program, return it to its previous stature within the Judiciary and reconstitute its operational components. In light of the events of the past few years, I believe that the Judiciary must take proactive steps to restore the necessary independence of the Defender and CJA communities while guiding and protecting the work these lawyers do.

As the Chair of DSAG, I worked with Judges on the Defender Services Committee and the staff of the Defender Services Division to insure that the promise of equal justice announced by the Supreme Court in *Gideon v. Wainwright* was fulfilled: “The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.” *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963). As a Federal Defender, I understood that the client stereotype could obscure the true nature of the work and that in order to make real *Gideon’s* promise, Federal Defenders had to excel not only in advocacy for their clients but in the administration of their offices. It was evident to me that in bureaucratic and administrative contexts, the unique nature of Defender/CJA work could be difficult to grasp. But as Einstein observed, “Not everything that can be counted counts, and not everything that counts can be counted.”

Nonetheless, any objective review of the CJA program reveals that it has been a success: Defenders and CJA attorneys in coordination with the Defender Services Division and the Defender Services Committee operate a well-managed,

intelligently structured and efficient national law practice. Defenders were the first group in the Judiciary to undertake Performance Measurement work and one of the first to produce true mission objectives and engage in serious long range planning. Notably, each time outside monitors were brought in to review the program—Price Waterhouse; WESTAT; the Vera Institute of Justice; case compensation analysts at HumRRO; case weights analysts at RAND; work measurement staff from the Policy and Strategic Initiatives Office—they certified the competencies of the program, and in some instances, called for added support and funding. Each time questions regarding the program were posed, answers came back verifying what Defenders, CJA lawyers, the Defender Services Division and the Defender Services Committee had consistently represented—that the program was performing according to whatever metric applied and performing well.

And yet, despite resoundingly positive responses, some people remained resolute in their misapprehension and mistrust of information regarding the program's success, whether anecdotal or data-based. And that brings us to our discussion today.

The issue that is most concerning to me is the direction that the program has taken in the last five years. After so many people worked for so many years to promote collaboration and partnership with the Defender Services Committee and the Defender Services Division, I saw this partnership abandoned—without notice to the Committee, the Division or the Defender—for reasons that remain unclear to me. I remember years ago, when I was the Chief Assistant, attending a Defender conference with the Defender Services Committee. I watched as Defenders arrayed themselves outside a table of Judges: silent observers to a closed process determining how Defenders would manage and fund and staff their offices, how Defenders should represent their clients. But by the time I resigned my position as Defender, this process had evolved profoundly. The

Defender and CJA communities had become fully engaged with the Committee and the Division, responsible for creating and implementing accountability protocols and stewardship initiatives. And while the members of this ostensibly unlikely partnership were not always in accord, they were always committed to the mission—equal justice under the law.

Because the decision-making paradigm has changed so radically, I have several recommendations for the Committee. First, adopt policies to confirm the Judiciary's commitment to the importance of federal indigent defense work and to restore it to the status it once held. The independence of the defense function has been seriously eroded by the reconfiguration of the Defender/CJA program and events, such as sequestration, have taken a terrible toll on Federal Defenders. It is important to understand that the federal criminal justice actors most damaged by the budget crisis of 2013 were Federal Defenders, some losing 15% of their pay and many losing confidence that their work was valued by the Judiciary. Despite the challenge of numerous other budget crises, this had never happened because DSAG worked closely with the Division and the Committee to make certain that appropriate budgets and budget language were submitted for Congressional review.

Second, it is time to recognize the efforts needed to restore Defenders on the path to parity with United States Attorneys in terms of salary, training and available resources. There is no rational reason to continue contrived distinctions (*i.e.*, \$100) between the salary of a United States Attorney and a Defender or to underfund training, especially when prosecutors have access to year round educational opportunities at their own campus in Columbia, South Carolina. The complexity and breadth of federal criminal litigation (more than 25% of all federal criminal legislation has been enacted since 1980, 40% since 1970) warrants commensurate legal education for those appointed to represent the accused. Moreover, the nature of these prosecutions—terrorism, national security,

securities fraud, health care fraud, narco-trafficking, human trafficking—the expansion of jurisdiction from an almost exclusively national stage to a frequent international theatre; and the enormity of discovery involved in these prosecutions, requires defense attorneys to be proficient with current legal authority and technological innovation. Clearly, equal justice demands basic educational parity.

And while Defenders have administrative and financial personnel available to design case funding without the scrutiny of a presiding judge, CJA lawyers and their clients are subject to innumerable approaches to voucher review in courts throughout the nation. As an active trial judge, I do not think it fair that I dictate strategy to defense attorneys appearing before me through decisions on funding. The expenditures of the CJA program clearly warrant the use of program managers to work with attorneys, review budget requests and make recommendations to the Court. Having such professionals assist the Court would not only achieve desired efficiencies, but also support the linchpin of the program's place in the Judiciary: accountable independence.

Finally, and in light of the question of resources, the Judiciary should work with the Defenders and CJA lawyers to reconstitute the policies and mechanisms by which it fulfills its statutory obligations to provide governance to CJA matters. As I mentioned previously, independent, professional staff should be responsible for overseeing the program both nationally and locally. Proposals that have been raised many times in the past—CJA supervising attorneys in each District; Circuit Budgeting Attorneys for each Circuit; and a national Defender Services Division not unlike the FJC or the Sentencing Commission—should be re-examined with a view toward bringing a different and improved perspective to the business of indigent defense work. We cannot continue to rely on outdated attitudes to govern our stewardship of the CJA program.

I appreciate the time and effort each member of this Committee has devoted to the question before it: the future of the CJA program. For many years while a Federal Defender, in making presentations about or on behalf of the Defenders, I explained their relationship to the Judiciary in this way: they were the “red-headed, freckle-faced, jug-eared, buck-toothed, bastard stepchildren” of the federal judiciary.

The description was meant to demonstrate that although Defenders and CJA lawyers understood they were not considered luminaries of the justice system, they were, nonetheless, a part of the federal judiciary. Today, while I observe them through a different lens, I can say, without deprecating qualification, what I always knew: they are the brightest and purest example of faith in our constitution we have to offer. I hope the Committee will consider my suggestions so that we can keep that faith – with them, with our profession, and with the people of the United States.

KATHLEEN M. WILLIAMS
UNITED STATES DISTRICT JUDGE