Honorable Kathleen Cardone and Committee Members,

Thank you for inviting me to appear before the Ad Hoc Committee to Review the Criminal Justice Act. I am honored both professionally and personally to be of service in this important cause. Since I believe this Committee will lay the groundwork for the future of federal public defense for the next generation, I take seriously the important task we consider today. Although that task may be called a Review of the Criminal Justice Act, something more profound underlies the mission before us than simply a review. The stakeholders involved share one common goal to do good and to be just. To accomplish this goal, we here must commit ourselves to a radical reform. The Criminal Justice Act must be changed. Presently, the Sixth Amendment's right to counsel is subordinated to Judges who lack experience, point of view or resolve to appreciate the need for the independence of the defense function.

A little history puts our work here today in context. From the very beginning, those who labored to create the federal defense system had an acute awareness that placement of the program under the judiciary may not be such a good idea. In the 1970 Senate Committee Report that accompanied the legislation amending the original Criminal Justice Act to authorize federal community defenders to complement the panel, the independence of the defense function was recognized. At the same time, warning bells were sounded regarding the problem inherent in subordinating the defense function to the control of the judiciary. It is true that the committee ultimately deferred on creating an independent entity

"at this initial phase". Nevertheless they saw the problem even if they did not solve it then:

> Clearly, the defense function must always be adversary in nature as well as high in quality. It would be just as inappropriate to place the direction of the defender system in the judicial arm of the government as it would be in the prosecutorial arm. Consequently, the committee recommends that the need for a strong administrative leadership be the subject of continuing congressional review until the time is right to take the next step.

Report of the Committee to Review the Criminal Justice Act 9-10 (1993) (the Prado Report) (quoting Senate Report No. 91-790, 91st Cong. 2d Sess. April 23, 1970, at 18).

And now is indeed the time to take the next step. The request for experts, investigators and adequate compensation should not be under judicial control. A separate and wholly independent agency should be in charge of deciding issues related to the granting of expert and investigator requests as well as requests for adequate compensation. The members of this agency should be experienced criminal defense attorneys who have devoted a significant part of their career to panel work.

Although the federal indigent defense system is far better than any state system in this country, there is much need for improvement. The entire federal public defense infrastructure is in need of reform. And the reform must

begin with a recognition that a separate agency must determine what work is reasonable, what experts are needed, when to investigate and what motions to file. Quite simply, under the present CJA structure, a defender, be they federal defender or panel attorney, is in conflict. Profoundly so. If the appointment as a federal defender or panel member depends on a decision by the judge before whom the lawyer must also make his client's case, federal defenders and panel attorneys are quite naturally stymied in performing aggressive, effective, client-centered advocacy.

In the Eastern District of Wisconsin in Milwaukee, we are fortunate. Our Judges have been sensitive to the defense function. They do not hesitate to grant expert requests. And they will do so, even mid-trial, if the need presents itself. I am not aware of an instance in which an investigator request has been denied. I have only heard two complaints. First, panel attorneys have experienced cuts in requested compensation. But that is rare. Very rare. Second, a panel member was warned by a judge he spent too much time traveling to visit his client. However, in that case the panel member's request for compensation was not cut at all.

Our panel attorneys, I believe, are far luckier than those who practice in the Western District of Wisconsin. In a complex case involving a high volume of discovery, I have been made aware that a District Court told a panel attorney the Court was cutting his bill because the panel attorney spent too much time reading discovery. Although the panel members may have it good in my District, all of that could change depending on who gets

the next appointment to the District Court. We could very well see a dramatic change in our District soon in terms of Judges taking senior status. And we panel members could soon be the ones complaining rather than those who practice in other Districts in Wisconsin.

Before I close I want to address another area that affects all panel attorneys. I request this Committee consider recommending this additional reform. Interim vouchers and waiver of the case maximum compensation caps should be approved without justification or ex parte motion in any case designated as complex by the Magistrate Judge. Otherwise panel attorneys will find he or she are in a profound financial and ethical crisis. The forbearance of payment for two, three or four years creates an extreme hardship in which panel attorneys are underwriting defense of an indigent defendant. No one else in the federal system bears such a burden. No staff federal defender, Assistant United States Attorney, federal law enforcement officer or District Court has to go without compensation for such an extended period of time. Panel attorneys often have to live on credit cards just to keep the doors of their private practice open while they wait for a payment deferred too long.

At the end of the road, panel attorneys face another hurdle. He or she has to justify the request for compensation to a District Court. And this fee may be cut by the District Court often without explanation. Those who effectively champion their client's cause by studious review of voluminous discovery, litigation of motions and a jury trial will see the same pay day as the lawyer in the same case who settles their client’s case with a plea

in the early stages of the case. In my District, some attorneys are afraid to make a request for interim billing and waiver of the case maximum compensation caps on behalf of all of the CJA attorneys in a complex case because they do not want to stand out, and fear jeopardizing future CJA appointments. Some won't do it because they are lazy, and couldn't be bothered. The latter are usually the ones who plead the client out early to the client's disadvantage in order to avoid the adequate compensation problem. In complex cases, a panel attorney's Sixth Amendment obligation to the client will stand in stark conflict with the panel attorney's financial concerns. Out of this conflict, the following Sixth Amendment violations may occur. A motion that needs to be litigated isn't litigated. Discovery that should be reviewed isn't reviewed. And a case that should be tried before a jury isn't tried. Financial concerns create ineffective assistance of counsel. Sad, but true. Such is a very real danger where interim billing and waiver of the case maximum compensation caps are not automatically approved in complex cases.

Thank you for considering my written testimony. I hope my thoughts help the Committee in fulfilling its mission. If I can be any further service, do not hesitate to call upon me.

Sincerely,

/s/ Edward J. Hunt