FEDERAL PUBLIC DEFENDER
CENTRAL DISTRICT OF ILLINOIS

April 29, 2016

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 Thomas W. Patton,
Federal Public Defender, Central District of Illinois

Dear Judge Cardone:

Thank you for the invitation to address the Committee. I have been the Defender in the Central District of Illinois since January 2015, after serving as an Assistant Federal Public Defender for 18 years in both the Central District of Illinois and the Western District of Pennsylvania. I will focus my testimony on three areas: remote detention, the need for Circuit approval for additional Assistant Federal Public Defenders, and the independence of the Defender program.

I. Remote Detention

The Central District of Illinois consists of forty-six counties in the heart of Illinois, with courthouses in Peoria, Urbana, Springfield, and Rock Island. The Federal Defender's main office is in Peoria, and we have branch offices in Urbana and Springfield. We do not have an office in Rock Island, so we drive 100 miles each way from our Peoria office to cover cases in that courthouse. Our detained clients are housed in seventeen different county jails scattered throughout the district, many of which are an hour or more drive from any of our offices. Accordingly, the issue of remote detention is a major issue for our office.

Our lawyers and investigators spend a significant amount of time traveling to visit detained clients. During fiscal year 2015 our seven trial lawyers averaged 180 hours – the equivalent of four and a half weeks – traveling to visit clients. I do not expect this burden to change; there is no realistic chance that a federal detention facility will be

built in our district. Travel to visit remotely-detained clients is simply a reality for our employees, because we work in a geographically large district where multiple small county jails are used to house detained clients. The CJA panel lawyers face the same challenge.

That said, I am considering the use of video conferencing to alleviate some of the travel burden, though that potential solution poses its own challenges:

1. There is no substitute for personal, one-on-one contact with our clients. In order to effectively counsel our clients, we must get to know them and build a level of trust with them, which is impossible through video conferencing alone. Nevertheless, video conferencing could be helpful to review a new piece of discovery or a revision to a plea offer we had previously discussed in person with our clients.

2. Video conferencing equipment is expensive. To implement this solution, our office would have to purchase dedicated video conferencing equipment, as inexpensive computer-based programs such as Skype are not sufficiently reliable or secure. While our IT budget is well-funded, that money is primarily needed for routine updates of our servers and individual computers.

3. Video conferencing equipment would also need to be provided in the county jails where our clients are detained. That is an issue beyond my control. However, some of the jails already do have video conferencing equipment, so I plan to further explore this area.

Apart from the inconvenience of remote detention, the time we spend traveling is not adequately accounted for in our staffing levels, due to the Administrative Office's reliance on Weighted Case Openings (WCO) to calculate staffing levels. The Commission has heard lengthy and detailed testimony about the Work Measurement Study of the Defender Program. That study resulted in a staffing formula for each office that is based primarily on that office's historical Weighted Case Openings over the preceding five-year period. The case weight assigned to each type of case, which

cumulatively forms the WCO for each statistical year, is based upon the "average" amount of time spent defending that type of case nationally.

When a lawyer in our office has to spend two hours or more just driving to meet with her client, it takes longer for her to defend a particular type of case than the national average. As a result, despite best efforts to arrive at an objective staffing formula, offices like ours suffer because our clients are remotely detained. For that reason, the Committee may consider a recommendation that the staffing formula be adjusted in some manner to account for offices that deal with remote detention issues.

Panel members are affected as well. Recently, a district judge asked me to review a voucher in excess of the $10,000 statutory case compensation maximum. The client had been detained remotely, requiring the attorney to travel four hours, round trip, for each client visit. Due to the complexity of the case—a methamphetamine manufacturing conspiracy that was prosecuted simultaneously by both federal and state prosecutors—numerous client visits were required. In the end, almost a third of the compensation maximum was consumed in travel time. Judges performing voucher reviews need to be sensitive to the remote detention issue and how it impacts the panel attorney's voucher. Fortunately, our district judges understand the remote detention issue when reviewing vouchers, and I have heard no complaints from panel attorneys regarding voucher cutting in my district, though I know other districts are not so lucky. I believe it is important for the Chief Circuit judges reviewing requests for payment beyond the statutory case compensation maximums to also be sensitive to this issue.

II. Circuit Approval for Additional Assistant Federal Public Defenders

The Work Measurement Study revealed that our office was severely understaffed, though that came as no surprise to our office. When I came on board in January 2015, the office was considered fully staffed with 19 full-time employees, including 10 attorneys (counting myself) and 9 support staff. The staffing formula that resulted from the Work Measurement Study, on the other hand, calls for our office to have 26 full-time equivalent (FTE) employees. As you can imagine, we were carrying very heavy caseloads. Following the new staffing formula, I made a request to the Seventh Circuit to authorize 2 additional Assistant Federal Public Defender (AFPD) positions. The

request is pending—I believe it will be granted—and I have no complaint about the manner in which the Circuit has handled the request. That being said, as I was writing the request, I could not help but think, "Given the Work Measurement Study, why is this request necessary?"

The Administrative Office provided the following language to include in my request to the Circuit for additional AFPDs:

> In late 2014, each federal and community defender organization in the country participated in a Work Measurement Study ordered by the Judicial Conference and managed by Harvey Jones, Supervisory Human Resources Specialist of the Policy of Strategic Initiative Division of the Administrative Office, Department of Administrative Services, Administrative Office of the United States Courts. Based on the results of the study, the Judicial Conference approved a comprehensive staffing formula for Federal and Community Defender Offices last year recommended by the Committee on Judicial Resources and supported by the Committee on Defender Services. Overall staffing and budget levels for FDOs were developed for Fiscal Year 2016 using the newly approved work measurement formula. A major goal of the Work Measurement Study was to ensure parity in staffing for all Defender offices based on objectively measured workloads.
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> Under the new staffing formula, the metrics used for allocating resources has changed. Before the new formula was approved, the distribution of FDO resources relied on a calculation of weighted cases per attorney and a support staff ratio unique to each FDO. The new staffing formula approves a total number of full-time equivalent (FTE) employees without distinguishing between attorney and non-attorney staff. This formula provides discretion to each FDO to develop a staffing plan that represents the most cost-effective way to address the demonstrated workload in its district, subject to constraints on budget and the number of assistant federal public defenders approved by the circuit.

The Work Measurement Study was a huge undertaking that required many hours of work by all Defender employees and caused great stress throughout the system. The goal of the study was to ensure parity in staffing across all Defender offices based on objectively measured workloads. It thus seems inefficient and unnecessary to require Circuit approval for additional AFPDs.

III. Independence of the Defender Program

During my first 17 years as an AFPD, I did not spend much time (really, any time), considering the issue of the independence of the Defender program. The budget was an issue the Defender worried about, and I just handled my cases. That changed with sequestration. We were told that we would need to take 2 ½ furlough days per pay period and a 20% pay cut, and that some positions might be eliminated—a sobering experience, to say the least. Ultimately, we had 13 unpaid furlough days and one AFPD was let go. Enduring this while watching the rest of the judiciary suffer no furlough days nor lose any staff (at least in the Western District of Pennsylvania, where I was at the time) drove home the judiciary's priorities, and the power it had, and still has, over our program.

I do not provide these personal details to engender sympathy or malign the judiciary. Many judges supported Defender Services during sequestration. My reason for conveying this information is to try to explain in a tangible way why this issue has become so important, or perhaps more accurately, so acute, to those of us in the Defender program. Budgets have recovered from sequestration levels and staffing levels are beginning to recover. But there is now the knowledge, or at least the fear, that if things go bad again, we will be the ones that will bear the brunt of the sacrifice called for by budgetary constraints.

My feelings on the issue are similar to the concerns expressed by Chief Justice Roberts in *United States v. Stevens*, 559 U.S. 460, 480 (2010). There, the United States attempted to save a criminal statute from being struck down as violating the First Amendment by asking the Court to trust that the government would not use the statute in a manner that violated the First Amendment. In rejecting that argument, the Chief Justice wrote that the First Amendment "does not leave us at the mercy of *noblesse oblige*." The

current structure of the Defender program, on the other hand, leaves us at the mercy of the judiciary's *noblesse oblige*. Sequestration made that very clear. Again, I do not mean to malign or insult the Administrative Office or the Judicial Conference, but the fact remains that as a program we are at their mercy. It is not a comfortable place to be.

Thank you for inviting me to testify at this hearing and engaging in this important work.

Sincerely,

Thomas W. Patton
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