

**FEDERAL PUBLIC DEFENDER**

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March 25, 2016

Honorable Kathleen Cardone, Chair  
Committee to Review the Criminal Justice Act Program  
Thurgood Marshall Federal Judiciary Building  
One Columbus Circle, N.E.  
Washington, D.C. 20544

VIA E-MAIL

*Re: Written Testimony of Federal Public Defender James Wade  
Middle District of Pennsylvania  
Philadelphia Hearing April 12, 2016*

Dear Judge Cardone:

Thank you for the opportunity to testify before the CJA Review Committee. I appreciate the important task undertaken by this Committee. I think it is appropriate to pause and examine the Criminal Justice Act. This Committee's work will undoubtedly impact the future course of the CJA.

I started my criminal defense career in the Federal Defender Organization in the Western District of Pennsylvania in 1981. I moved to the Middle District of Pennsylvania in 1986 when I became a First Assistant Federal Defender. In 1989 the Third Circuit Court of Appeals appointed me to my current position. I am in my seventh and final term as the defender.

During my tenure as a defender I have served on the Defender Services Advisory Group, the Defender Automation Working Group, and the Administration and Management Expert Panel. Currently, I am a co-chair of the

Performance Measures Working Group. Much of what I report is based upon my service on these various groups.

### **Middle District of Pennsylvania**

The Middle District of Pennsylvania consists of 33 counties in the central and northeastern part of Pennsylvania. The district has a population of approximately 3 million. There are four courthouse locations covered by 3 staffed federal defender offices in Harrisburg, Scranton, and Williamsport. My office has a staff of 37- 21 in the traditional unit and 16 in the capital habeas unit.

There are no Bureau of Prisons pretrial detention facilities in the Middle District of Pennsylvania. The pretrial contract facilities are remote. A consequence of the locations of pretrial detention facilities is a high amount of travel time for both my staff and panel attorneys. In Fiscal Year 2015, fifteen traditional staff members reported 1775 travel hours. Eleven capital habeas staff members reported 2,245 travel hours. There are nine Federal Bureau of Prisons facilities in the Middle District. Three of the nine facilities are United States Penitentiaries.

The BOP facilities contribute homicide, assault, contraband, escape, and various other cases to our workload. The Middle District is home to the Gettysburg National Battlefield Park, the Delaware Water Gap National Recreational Area and 5 military installations. These parks and installations contribute to a steady misdemeanor and traffic docket. The district handles primarily drug, fraud, immigration, and firearm offenses.

### **Middle District CJA Panel**

You will hear testimony from E.J. Rymsza, a panel attorney from my district. I only intend to set out the basics of how our district CJA plan works. The Middle District has an active Panel Selection and Management Committee (PSMC). The committee is composed of district judges, magistrate judges, CJA panel attorneys, and my staff. The PSMC meets twice a year. The entire committee meets as a whole by video conference in the fall. At the fall meeting the prior fiscal year's activities are reviewed. An annual report is produced for this meeting and includes the district wide statistics. I would be happy to provide the Committee with the Fiscal Year 2015 Report.

The CJA panel is a rotational panel. Panel attorneys serve a three-year term. The term of one-third of the members is up each year. The CJA panel is comprised of 70 to 80 panel members divided into three divisions. The spring meeting is accomplished by each division. The 3 spring meetings are to review panel applicants for that year's rotation. The Chief Judge receives the recommendations from the 3 divisions and formally accepts the new members by letter. The newly constituted panel takes effect on June 1 of each year.

Recently a committee of panel attorneys put together a Best Practice Manual. The Manual was tailored to the Middle District practice. I want to emphasize that their steadfast efforts produced a useful tool for our entire panel. Their efforts are a good example of what an energized Panel Selection and Management Committee can accomplish. The Manual is a little less than 200 pages in length. You may link to the Manual through [fd.org](http://fd.org) under our Federal Defender website. Once you arrive at our website click on the "CJA Resources" box.

**Performance Measures Working Group (PMWG)**

The mission of this group is to promote quality representation and effective management by designing a strategic planning and performance measurement system for the CJA program. The working group began its work in 1997. I credit Steve Asin, who will provide testimony to this panel in Philadelphia, with strongly encouraging defenders and panel attorneys to engage in a strategic planning process with a goal of continual improvement. This process seeks to avoid the problems of program decisions made on the basis of anecdotes by incorporating a system of performance measures. My co-chair, Beth Ford, testified in the Birmingham hearing and referenced professionally administered surveys by a company called Westat. The focus of her testimony was the measurement regarding quality.

The PMWG produced a Strategic Plan Outline. The Outline can be found on an internal judiciary website called the dweb. The Outline is composed of a mission statement, goals, strategies, and performance measures. The Outline has four goals:

- Goal 1- Timeliness;
- Goal 2- Quality;
- Goal 3- Cost Effectiveness; and
- Goal 4- Independence.

These goals and their appended strategies mesh well with the 14 points that are the focus of this Committee's review.

I believe the working group intends to make a written submission to this Review Committee but I would like to highlight two activities of PMWG. The first activity is called the Toolkit. The intent was to provide a place to share management practices and other matters between defender offices. For example,

several defenders shared their office manuals in the Toolkit. The second activity I would like to highlight is the adaptation of the National Legal Aid and Defender Association's (NLADA) Performance Guidelines for Criminal Defense Representations. The initial version of this activity was distributed at our National Defender Conference in Portland, Oregon in February of 2016. The Performance Guidelines set out duties of defense counsel through the various stages of a representation. Both the Toolkit and Federal Adaptation of the NLADA Performance Guidelines are available to defenders on the dweb under the PMWG document tab.

### **Structure and Organization**

On the spectrum of "independence" I find myself on the extreme – an independent CJA Center outside of the judiciary. In many ways such a Center would mirror the Department of Justice. In some ways it would differ. I think the CJA Center would also incorporate some current structures in place within the judiciary. Admittedly, my vision of an independent CJA Center is far from fully developed. I arrive at this position not because of any bad experience in the Western or Middle Districts of Pennsylvania. On the contrary, the districts and circuit that I have experienced have supported and nurtured the criminal defense function of both the Federal Public Defender Office and the CJA panel. The CJA program is a relatively young program. The growth of defender organizations and the various projects has occurred incrementally over the last 40 years. In my opinion, the program has reached its young adulthood stage and independence is the next logical development in its growth.

Since the inception of the CJA program there has been a discussion of the "uneasy" or "awkward" fit of the criminal defense function within the judiciary.

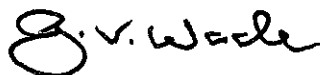
The judiciary is the neutral arbitrator yet within it is an advocate for a party appearing before the court. The current system has adapted to this uneasy fit. The adaptation is more difficult to maintain as the CJA program grows and seeks to improve.

The benefits of greater independence have been discussed by others. I agree with the recent letter from Jon Sands and Leigh Skipper to this Committee summarizing the sense of Federal and Community Defenders. The core features outlined in the letter should be in place no matter what form the ultimate structure takes.

### **Conclusion**

I am proud to be part of the current version of the Criminal Justice Act. The magnitude of the accomplishments under the judiciary's leadership since 1964 is most remarkable. To realize the full potential of what the judiciary has built, however, will require an independent CJA Center outside of the judiciary.

Sincerely,



James V. Wade  
Federal Public Defender,  
Middle District of Pennsylvania