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The Honorable Kathleen Cardone, Chair
Ad Hoc Committee to Review the CJA
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, NE, Suite 4-210
Washington, DC 20544

Re: Testimony of Andrea K. George, Executive Director
Federal Defenders Eastern District of Washington and Idaho

Dear Judge Cardone:

Thank you for the opportunity to testify before the Committee to Review the Criminal Justice Act and to submit these comments. I have been with the Federal Defender Program for 27 years, the first 24 as an Assistant Federal Defender, Senior Litigator in the District of Minnesota; and now as the Executive Director in the Eastern District of Washington and Idaho. I am familiar with both Federal Defender and Community Defender programs; with an organization that manages the CJA panel to one that does not; and with a program located in a large metropolitan, diverse area versus one in a less-diverse, less-populated, but geographically large district. It is through this lens that I address two areas – the availability and effectiveness of training and the adequacy of compensation for legal services.

A. The Availability and Effectiveness of Training

At the end of 2015, there were 68 CJA panel attorneys in the Eastern District of Washington and 16 CJA penal attorneys in North Idaho. The attorneys are mostly solo practitioners. The Panel is not racially, gender or age diverse. The major challenge has been to recruit attorneys of color, women and younger lawyers to the Panel. FDEWI has instituted the Fellowship Program and the Mentoring Program with an eye toward making federal court less intimidating while providing excellent federal criminal training. FDEWI also provides regular training for the panel members.

1. Fellowship Program

When Judy Clarke began as Executive Director of FDEWI, it became a large part of her mission to train attorneys in federal criminal defense work. She decided to use one or two full time employee (FTE) slots for “Fellowship Attorneys.” These were one year termed positions. They received one year of intensive training while they handled immigration cases, supervised release violations, petty offenses and other low-level felonies before sending them out in the big wide world of indigent criminal defense work. Many graduates of the Fellowship Program serve as Assistant Federal Defenders across the country while others serve on CJA panels.

After Ms. Clarke left the Office, and after several years, FTEs became tight and the program lapsed. I became the Executive Director in 2012 and reinitiated the program in 2013. Attorneys who successfully complete this program have full knowledge of federal criminal defense and are excellent candidates for other defender offices and the CJA panel. Training future Assistant Federal Defenders and panel attorneys is the clear benefit. It also gives our office a wider perspective with access to a more diverse applicant pool. FDEWI simply does not receive a diverse applicant pool for our permanent trial attorney positions. The one-year Fellowship Program is an excellent mechanism to recruit young/inexperienced attorneys of color who might not otherwise apply for a permanent position in our office. With the assistance of the National Association of Federal Defenders Diversity Committee and with outreach to other Defenders, we hope to improve the recruitment process and expand the diversity of the program.

2. Mentoring Program

Under the leadership of Federal Defender Katherian Roe, the District of Minnesota created the gold standard of mentoring programs – an intense two-year program training young/inexperienced attorneys to be excellent CJA panel attorneys. The Eastern District of Washington has a limited mentoring program. Attorneys who wish to be mentored find an experienced CJA panel member who will commit to mentor. They both submit an application to the CJA Oversight Committee with final approval by the District Court. Our Office and the Court have recently started a pilot program in the Richland Division with the hopes of creating a more formal training program district-wide similar to the program in the District of Minnesota. As of now, the Court appoints our office to represent a defendant and if an appropriate case, a Mentee is also appointed at a reduced CJA rate. The Mentee works with the assigned Trial Attorney from start to finish, receiving training along the way on federal discovery, United States Sentencing Guidelines, settlement, trial strategy, etc.

3. Regular Training Programs

FDEWI provides monthly brown-bag training for CJA attorneys. We provide Nuts and Bolts training on a quarterly basis on hot topics of the moment and present an annual full-day seminar titled Thrills and Skills. The Criminal Justice Act Plan requires at least 8 hours of CLE related to federal criminal law per year. By attending the programs we offer, the attorneys are able to achieve this requirement locally.

B. The Adequacy of Compensation for Legal Services

1. Technological Assistance

Taking a CJA case can be daunting especially if it is a larger complex case. The defense is behind in the process from day one. The government has had months or even years of investigation and case work, all the while gathering evidence and reports in which to review as they progress. The defense team often receives discovery very late in the game and in a less than optimal format. These formats are not standardized, are inefficient and in poor condition. In the larger conspiracy and

fraud type cases, there are almost always tens of thousands of pages along with various audio and video files making defense teams scramble just to organize, convert and ready the discovery for review, causing further lag in providing effective assistance of counsel for defendants.

The National Litigation Support Team is a tremendous asset to the CJA community in trying to implement the ESI Protocol in standardizing discovery disclosures and providing litigation support to defense counsel in large discovery cases. Unfortunately, not all United States Attorneys Offices are providing discovery in a readily usable/workable format. Our office has already been involved in organizing discovery for the panel. We have seen that while the government has the technology to organize and process discovery into standard formats and disclose such to the defense in a meaningful and efficient manner, they are not always able to do that either by choice, lack of resources or because of the time it takes. Either way, defense counsel is left with poor quality discovery, varying formats and a daunting volume of data to get through under extraordinary deadlines.

When the Federal Defenders of Eastern Washington and Idaho is appointed on a multi-defendant complex, large or medium-sized discovery case, we provide litigation support to the CJA panel. We have the knowledge, technology and the resources.

(a) Discovery problems

One of the reasons for poor quality discovery revolves around the burden of digitizing the documents. Rather than the various agencies involved generating PDF documents from their legacy applications, they are printing them in order to provide them to the government. The government then has to scan them and export them to the defense. This process degrades the quality of the document which may be compounded by a poor quality scan. A poorly scanned document that was also printed poorly makes for sub par documents. Garbage in is garbage out. Often times the defense receives these scanned PDF documents with very poor or no OCR, making them unsearchable. This is a huge burden for the defense to overcome. This usually requires large amounts of machine time in order to OCR and render the PDF documents searchable, which is a critical tool. Often times this process has to include converting the PDF to images and back to PDF, in order to get the best possible searchable document.

The defense is also provided with a large array of audio and video formats. These formats are usually proprietary and coming from private surveillance equipment which require special codecs in order to decode and play them. Some are very old, hard to find and are often not provided to the defense. There are also many different agencies using varying equipment and software that are also provided in varying formats. Many defense counsel are now using Apple products, such as MacBook, iPads, etc. Almost all of the proprietary and special formats disclosed in their original format are not compatible on the Apple products. These formats then require conversion. Too many of the proprietary and specialized formats that come with a stand-alone player do not include an export or conversion option to allow defense counsel to produce a standardized format in which to review.

Even if defense counsel is provided standard file formats that can be viewed across multiple platforms and high quality searchable PDF documents, defense counsel still has a huge hurdle to overcome - court deadlines. Having the ability to simply search all the discovery is not enough, especially in larger complex cases. Discovery needs to be organized, searchable, filterable and analyzed for efficient review. Most of the CJA panel attorneys lack their own IT department, paralegal or even assistants that could help them accomplish this, standing alone. Our office has been instrumental in helping the CJA panel significantly reduce costs to the district court in billable hours by increasing the efficiency and quality of effective counsel by providing such services and products. In cases where we also have a client, the court has appointed our office as discovery coordinator.

(b) What we do

There are many steps to reaching the end product that require multiple software suites that CJA attorneys could not easily obtain or afford. The first step is to convert as much of the discovery as possible to PDF format, including: documents; cell phone dumps; toll data; photos; forensic reports; spreadsheets, etc. This is important for standardizing a review platform that everyone can access. Second, the PDF files are then rendered searchable by using powerful OCR tools such as Acrobat Pro and ABBY Fine Reader. Third, any relevant data is extracted and compiled in to reports, graphs and charts. Any audio or video is also converted into standard .mp3 and .mp4 formats, respectively. Once all the discovery is in standard format, it is then organized. Organization includes: document unitization, objective coding, chronology, relationships, issues, etc. The organized product is put together so that each counsel can sort, filter, search, make notes and open a link to view each file, all with a few clicks of the mouse.

Providing litigation support for local CJA attorneys has been highly successful and duly appreciated by the CJA panel and the court. In the last two years, our ACSA, and a paralegal from an outside office, have processed, organized and analyzed voluminous gigabytes in ten federal cases, including a 62-defendant and a 30-defendant conspiracy case. The total cost to the court was negligible compared with the cost of a third-party vendor. We have saved the Eastern District of Washington hundreds of thousands of dollars. The work performed by our office proved to be challenging and ranged across varying scopes, but all came together in a neatly presented product that is compatible on various platforms including Windows and Mac. This product is very simple to use and is transported and run typically on an inexpensive thumb drive. Without the litigation support, the cost in the 62 co-defendant case alone would have run into the hundreds of thousands of dollars, as shown in motions requesting vendor and third-party participation. Utilizing vendors and third parties is useful, but extremely costly.

(c) CJA Litigation Support

When our office is not appointed as counsel in these complex cases, the CJA panel is left to find litigation support from third-party vendors. There are currently large cases in this district, where we do not have a client, that desperately need the same litigation support as our office has been providing. The budgeting attorneys for the Ninth Circuit have seen the end product and have expressed great appreciation and interest in continuing to provide these services to the panel.

What the panel needs is an ACSA-type individual dedicated solely for CJA litigation support. This position could be administered by the Federal Defender Office yet funded separately from the Federal Defender budget. The computer technician would be walled off from the defender cases and network to avoid conflict but would have access to full CJA discovery to organize and coordinate for the CJA panel. An ACSA has a salary range of \$48,968 to \$71,012, depending on experience. Paying salary versus a third-party vendor represents a huge savings.

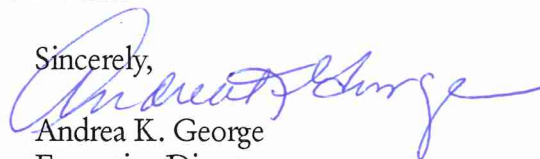
2. The Cost of Visiting Clients

One of the complaints of CJA counsel is that they do not visit their clients enough. The Eastern District of Washington is geographically large - spanning 41,960 square feet from the Cascade mountains to the west all the way to the Idaho border to the east; from the Canadian border to the north down along the Oregon border to the south. The Eastern District of Washington and the North Idaho division also have seven major Indian Reservations, the most in extremely rural, impoverished areas. Due to the unique geography that FDEWI services, many of our clients are housed at various detention centers in Eastern Washington and North Idaho. The Spokane County Jail is over-crowded and has reduced the number of beds for housing federal pretrial detainees to 10, so most clients are moved to far-away local jails. For example, the Benton County Jail is five hours round trip from Spokane and Sunnyside County Jail is six hours round trip. Generally, the Panel member has one appointed client at a time. Every visit with a client is at the least, a seven-hour expense. The Benton County Jail provides video visiting which allows the panel attorney to visit via his/her computer. The Court has encouraged panel attorneys to video-visit their clients to save expense. However because these video visits occur in the open-housing area, they are not an acceptable alternative to in-person visits when discussing case-related issues and privileged information. The same is true with telephone visits. Sunnyside Jail does not have video visiting and only provides in-person visitation.

Visiting clients is a vital part of effectively representing a client. We are no longer in a guideline-centric era of sentencing. In order to adequately present the §3553(a) factors to the court for sentencing, the attorney must present the details and nuances of the client's life and characteristics - a client-centered approach to representation. No lawyer can achieve the trust of a client from one visit. No lawyer can obtain a full social history without the client's trust. In the long run, encouraging CJA counsel to visit their clients often, without regard to the travel costs, saves money. When counsel adequately presents a client's social history, including mental and physical health issues, sexual abuse, treatment and an explanation as how and why a client came to this point in his/her life, courts see the human being behind the crime. It helps reduce long sentences and prevents recidivism by providing the court adequate information to set appropriate conditions of supervised release.

Thank you for allowing me to address the Committee.

Sincerely,



Andrea K. George
Executive Director