

TESTIMONY BEFORE THE AD HOC COMMITTEE TO
REVIEW THE CRIMINAL JUSTICE ACT

Chief Judge Timothy Burgess
District of Alaska

March 3, 2016
San Francisco, CA

Judge Cardone and members of the committee. Thank you for the opportunity to speak with you today. I understand that the focus of these hearings is on case budgeting and mega-case issues. I would like to share a few observations based upon my experience in Alaska. I offer these comments based upon my 10 years as a District Judge and almost 30 years of practicing law in Alaska.

Case budgeting in Criminal Justice Act (CJA) cases is becoming increasingly important as both the scope and complexity of criminal cases grow. In Alaska, large multi-defendant cases are becoming more common. While the number of defendants can increase the complexity of a case, discovery issues are becoming an even greater complicating factor. Even in what was once considered a relatively routine case, discovery has increased dramatically in volume and complexity. Multiple defendants obviously increase this exponentially. Where we once spoke of discovery in terms of hundreds or thousands of pages, we now routinely speak in terms of gigabytes and terabytes of information. This presents a host of challenges that make criminal cases more complicated, slower and more expensive. For example:

- How and in what format is the discovery provided?
- Is the discovery in a foreign language, or does it need to be translated into a defendant's language?
- For defendants being held in custody, are there adequate means and opportunity for timely and meaningfully review of discovery material?
- For multi-defendant cases, how can discovery, including the issues just mentioned, be accomplished more or most efficiently?

In regard to the last question, the Ninth Circuit Court of Appeals has hired several case management attorneys who are available to provide assistance in mega-cases. It has been an invaluable resource, especially in smaller districts such as mine. In addition to working with defense counsel in mega- or multi-defendant cases to develop case budgets, case management attorneys also help in implementing case efficiencies, such as hiring a discovery paralegal who can streamline the discovery process for CJA counsel; for example, by coordinating attorneys' expenditures for experts or the purchase of software that can be shared by CJA counsel in the case. This helps save time and ultimately money in complex cases. The ability to require CJA counsel to work together with the case budgeting attorney streamlines the process and eliminates the need for judges to review and approve expenditures for each attorney.

I would also like to touch briefly upon several issues that present challenges to these types of cases in Alaska; specifically, geography, the lack of federal prison facilities and the small size of our bar.

We have a talented and dedicated panel of CJA counsel in Alaska. Almost all are located in Anchorage, Alaska's largest city. However, in our district, criminal cases are filed and heard in Fairbanks, Anchorage, Juneau and Ketchikan. Fairbanks is 400 miles north and Juneau 600 miles south of Anchorage. Juneau, Alaska's capital, is accessible only by plane or boat. Furthermore, many criminal defendants come from remote communities that can be difficult or, depending upon the weather, impossible to reach. This means that it is often expensive and time consuming for CJA counsel to meet, consult and review evidence with their clients in person.

An additional challenge comes from the fact that we have no Bureau of Prisons (BOP) facilities in Alaska. The closest BOP facility is located 1,500 miles (or 3.5 hours by jet) from Anchorage. In the past, federal pre-trial detainees were routinely housed outside of Alaska, usually in Seattle, before trial, greatly complicating case preparation. In particular, when defendants are housed outside Alaska, time zones can become an issue. For example, when a defendant is in Seattle, it is only a one-hour time difference, but when a defendant is housed in a BOP medical facility, it can mean a three- or four-hour time difference, and the ability to coordinate BOP personnel and a

defendant's presence for telephonic hearings is limited. In recent years, this challenge has been somewhat alleviated because the United States Marshal has generally been able to find sufficient bed space in state run facilities in order to keep defendants in Alaska pretrial through sentencing. There is no guarantee, however, that this will continue to be an option in the long term.

Moreover, while preferable in geographical terms, Alaska's state prison facilities can present significant challenges to case preparation. There are significant limitations regarding access to discovery, especially in cases with large volumes of electronic discovery, which is common in most federal cases. Unfortunately, computers in state facilities are often incapable of reading discovery as provided by the government. To this end, the Federal Defender is now making computers available to CJA counsel. However, these computers are subject to state prison facility regulations, which can make using them a slow and cumbersome process. It is often difficult for counsel to see or speak with clients in these facilities. This is exacerbated by the fact that federal prisoners are sometimes moved from one facility to another without notice to counsel or the United States Marshal. Indeed, it is not unusual to have difficulty with defendants being able to participate in hearings by phone even when scheduled well in advance.

It is a challenge to find CJA panel members outside of Anchorage. Consequently, we must often rely on Anchorage panel members to cover cases around the state. Additionally, due to the small size of the Alaska bar, conflicts are not uncommon for local panel members, especially if defendants have had state criminal matters. Therefore, we frequently have panel members from other states. This can have a significant impact on case budgeting. Unfortunately, being 1,500 miles away from one's client makes establishing meaningful client relationships difficult.

Despite these challenges, we have an incredibly dedicated and innovative panel of CJA counsel who are performing an invaluable public service.