



Rich Curtner
Federal Defender

**THE FEDERAL PUBLIC DEFENDER
for the DISTRICT OF ALASKA**

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

Re: Testimony of Rich Curtner
Federal Public Defender, District of Alaska
San Francisco, California, March 3, 2016

Dear Judge Cardone:

Thank you for the invitation to address the Committee to review the Criminal Justice Act Program and to submit written comments for the Committee. I have been the Federal Defender for the District of Alaska for 20 years. My career as a public defender covers 40 years. During my career, I have worked in different public defender offices that represent the range of models for the administration of indigent criminal defense.

My testimony will focus on the administration of the CJA program in the District of Alaska, on issues of case budgeting and mega-cases, and on the independence of federal indigent criminal defense under the Criminal Justice Act.

**Description of the Federal Public Defender Office
for the District of Alaska**

The Federal Public Defender Office for this District was established in 1992. Before that, there was a "branch office" of the Federal Defender for the Western District of Washington in Anchorage. That office had two attorneys, one investigator and one secretary to cover all of Alaska.

The first Federal Defender for Alaska was appointed in 1992. I was appointed in 1996. Our office now has a total staff of 17, including five Assistant Federal Defenders. The entire staff is located in Anchorage, with unstaffed offices in Fairbanks and Juneau. Assistant Defenders and investigators travel to Fairbanks and Juneau on a weekly basis.

Travel to see clients and investigate cases ranges from Barrow to Savoonga to Kodiak to Metlakatla, Alaska.¹

Our practice is widely varied, including not only the typical “drugs and guns” cases, but also Lacey Act prosecutions, environmental crimes, federal benefits fraud, child pornography cases, immigration cases, and criminal investigations on the vast expanse of the national parks and reserves in Alaska.

In addition to our typical caseload responsibilities, our office has recently taken on the demands of post-conviction sentence reductions. Amended drug guidelines have reduced the sentences of approximately 100 clients, resulting in over 200 years of prison time reduction. Two clemency petitions have been granted to Alaskan clients; one client had a BOP release date in 2036, but is now on home confinement with his family. Our office is also reviewing the files of clients who are imprisoned that may seek relief under the recent decision of *Johnson v. United States*, 135 S.Ct. 2251 (2015).

The District of Alaska has also created a reentry program called “Hope Court” to reduce the incarceration of clients imprisoned, not for their crimes, but for their “failures” while on supervised release. It is the goal of the Hope Court team and judges of our District to reduce the rate of recidivism in Alaska. We have also been working with the U.S. Attorney’s Office on initiating a pretrial diversion program in Alaska.

CJA Plan and Federal Public Defender Management of the CJA Panel

This District has a panel of 68 attorneys. Some of the attorneys on our panel reside in Fairbanks, Juneau, Ketchikan and Kenai, Alaska. There are 15 attorneys that handle appeals and five attorneys that handle habeas cases.

The legal community as a whole, and the number of attorneys qualified to represent clients in federal criminal matters, is much smaller in Alaska than many other districts. However, the general consensus is that the CJA Panel in Alaska is well trained and committed to zealous representation. We are also able to call on the resources of other Defender offices and occasionally panel attorneys from the Western District of Washington when special needs require.

¹ The distance between Barrow and Metlakatla is 1,345 air miles. Savoonga is 36 miles from Russia. Anchorage is centrally located within the District. Only Anchorage and Fairbanks are accessible by road.

In order to meet the challenges of maintaining a strong CJA Panel, the Federal Defender Office is very involved in the administration of the panel. CJA Panel administration was originally completed within the District Court. Since my appointment as Defender, my office has assumed that responsibility. We recruit and train new panel members, with the assistance of a CJA advisory committee of five experienced panel attorneys and one District Court judge.

The Federal Defender Office now has a full time CJA Administrator. While the District Court judges ultimately approve all CJA vouchers, our CJA Administrator reviews vouchers and advises panel attorneys in submitting adequate documentation with their vouchers for judicial review. Having an administrator serve as an advisor between panel attorneys and the court greatly facilitates efficient voucher review and fair compensation for panel attorneys.

The Federal Defender Office is committed to the continued training and education of panel attorneys. We conduct monthly lunch meetings that typically meet Alaska Bar Association CLE requirements. We also work closely with the Bar Association and other criminal defense organizations in providing training opportunities to panel members. Our District Court judges fully recognize the value of a well-trained and adequately compensated panel, and support our training efforts and the administration of the CJA Plan.

I feel that our CJA Plan and administration of the panel is a model for successful support of the defense function. Our success is due to the "buy-in" of our judges, the United States Attorney, and the defense bar in having zealous defense representation.

Case Budgeting and Mega-Case Issues

Since I have been the Federal Defender, the number of federal prosecutions have dramatically increased, as well as the complexity of cases. The nature of our cases taxes our office and the resources required to meet the challenges of modern federal investigations. That challenge is greatly exacerbated for panel attorneys who have a caseload comprised, for the most part, of state prosecutions.

The biggest challenge is with "mega-cases." The Federal Defender typically takes a leading role in organizing management of the voluminous discovery in these cases. Our District is moving more toward case budgeting and interim payments in mega-cases.

The coordination of the Federal Defender, panel attorneys and the judges is critical in managing increasingly complex prosecutions, and the assistance of budget analysts provided by the Ninth Circuit is invaluable.

Independence of the Federal Indigent Defense Bar

In 1974, I began my career in criminal defense as a law clerk with the Legal Aid and Defender Association in Columbus, Ohio. The LADA contracted with the City of Columbus and Franklin County to provide representation in the Municipal and Common Pleas Courts. As an independent contractor, the Legal Aid office was certainly independent of government administration. But we were overloaded with large caseloads, underpaid, and not provided with training. This model was recognized as the "two years and out" paradigm of being a public defender at that time.

By 1976, the Office of the Franklin County Public Defender was formed. Again, this was a nonprofit organization that contracted to provide indigent defense services to the court system. The Franklin County Public Defender was independent in the sense that the County Public Defender was appointed by Franklin County Commissioners, but was free to administer the program as they chose. Staff attorneys felt independent in their practice, but were expected to handle expanding caseloads for low pay and no benefits or retirement.

After ten years, I joined the faculty of the Ohio State University Law School. As an attorney in the legal clinic, I supervised law students in the courts of Franklin and Delaware Counties. Of course, the structure of a teaching law clinic was truly a practice independent of any concerns of budget or oversight.

I moved to Alaska in 1987 to work for the Alaska Public Defender Agency. The state defender agency in Alaska was well-funded and had developed an excellent staff of attorneys. But the agency was under the administration of the Alaska Department of Administration. The head of the office was appointed by the Governor, and had to lobby the state legislature for the office budget.

I am extremely proud of joining the Federal Defender organization in 1992 as an assistant, and being appointed as the Federal Defender for Alaska in 1996. I am describing my other experiences as a career public defender because I feel I can provide a somewhat unique perspective on the administration of a public defender structure, and the relative "independence" of each model.

I feel particularly fortunate to be a Federal Public Defender in the District of Alaska and the Ninth Circuit. The independence that I have experienced in this position has been extraordinary. However, I am concerned about the future of our program and the independence of Defenders and panel attorneys in other Districts.

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In the past few years the foundation of our independence has been compromised. The demotion of the Defender Services Office and the Defender Services Committee threatens a very critical component of the support Defender offices have enjoyed.

I have read the testimony of many fellow Federal Defenders on these issues. I don't think I can amplify the suggestions that have been presented to this Committee. But I fully support the view that a critical evaluation of the Criminal Justice Act needs to be conducted to protect the independence of those who represent the Sixth Amendment in our federal courts.

The one issue that concerns me the most is that recent decisions regarding the administration of the CJA program have been made without adequate input from the attorneys who are working in the trenches of the criminal justice system. I truly appreciate this Committee's work in conducting this review, and for the opportunity for me to speak from one far corner of our federal court system.

Sincerely,



Rich Curtner
Federal Defender

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