



Federal Public Defender
Northern District of Texas

JASON D. HAWKINS
Federal Public Defender

525 GRIFFIN STREET
SUITE 629
DALLAS, TX 75202

PHONE (214)767-2746

FAX (214)767-2886

<http://txn.fd.org>

November 2, 2015

Dear Judge Cardone and fellow Committee members:

Thank you for allowing me to testify before the Ad Hoc Committee to Review the Criminal Justice Act Program. While I note that the Committee has expressed particular interest in some 14 issues pertaining to the Criminal Justice Act (CJA) Program, I will only address those issues which directly relate to my office. Of course, I speak only in my capacity as Federal Defender for my district; I cannot and do not speak for the National Defender organization.

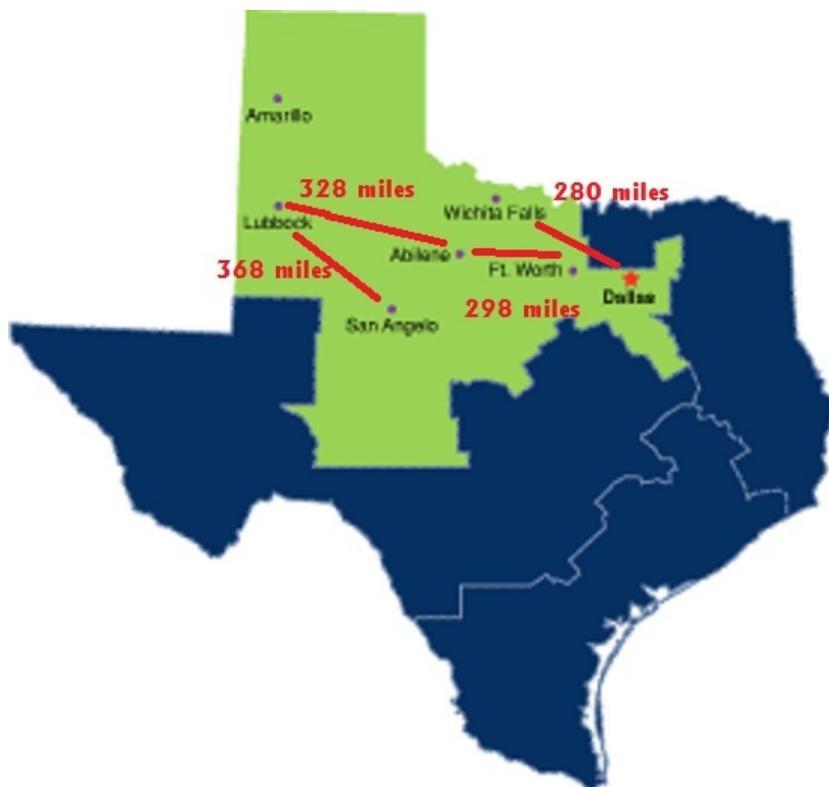
Because some Committee members may not be familiar with my office, I will begin by providing a brief history of my office and its composition.

I. DESCRIPTION OF THE NORTHERN DISTRICT OF TEXAS AND THE DEFENDER ORGANIZATION

The Office of the Federal Public Defender for the Northern District of Texas (Northern District) was established in 1989 and covers a 96,000-square-mile area stretching from Dallas to San Angelo and all areas in Texas that are north of that line. The Northern District is comprised of seven divisions: Dallas, Fort Worth, Lubbock, Amarillo, Abilene, San Angelo, and Wichita Falls. The Dallas Office opened in 1989, quickly followed by the Fort Worth Office (1990), the Lubbock Office (1993), and the Amarillo Office (1994).

Our main office remains in Dallas. But in addition to its caseload and the caseloads handled in Fort Worth, Lubbock, and Amarillo, we also handle cases arising from the geographically-distant Wichita Falls, Abilene, and San Angelo Divisions even though we maintain no staffing in those three divisions. (Our district's Plan for Implementation of the Criminal Justice Act requires that the defender organization

“be capable of providing legal services throughout the district.”¹)



As you can see, the distances between our various offices and the remote divisions (San Angelo, Abilene, and Wichita Falls) implicate extremely time-consuming drive time (“windshield lawyering”). My Lubbock-based assistant defenders routinely drive 368 miles round trip (5.5 hours) to San Angelo and/or 328 miles round trip (5 hours) to Abilene to represent clients in court in those divisions. Attorneys and investigators in Fort Worth will occasionally drive 298 miles round

trip (5 hours) to represent clients in Abilene. Attorneys and investigators in Dallas will drive 280 miles round trip (4.5 hours) to appear in federal court in Wichita Falls.

A. Current Staffing in the Northern District of Texas

Two separate entities tightly control my office’s staffing levels: the Administrative Office of the United States Courts (AO) and the United States Court of Appeals for the Fifth Circuit (the Circuit). Per the AO’s new Work Measurement Study Formula imposed upon all Federal Defender Offices, my office is currently limited to employing 48 full-time employees and one part-time employee. And, of those 48.5 employees, the Circuit has imposed a self-determined cap of 22.5 assistant defenders (courtroom attorneys) that I am allowed to allocate throughout my four offices. My remaining 26 employees are support personnel and include research and writing attorneys, investigators, paralegals, legal secretaries, information technology personnel, and administrative officers.

B. Current and Projected Caseloads for the Northern District of Texas

In order to estimate the national funding and staffing requirements of federal

¹ <http://www.txnd.uscourts.gov/sites/default/files/orders/misc/MiscOrder3Criminal.pdf>

defender organizations, the AO has recently devised a set of “case weights” for each type of indigent representation. By averaging the number of hours that attorneys throughout the federal system typically spend on a particular type case, the AO has set a case weight for a case involving that type representation. In this way, the AO can measure an attorney’s caseload by cumulatively tallying those cases’ weighted total.

For example, an illegal reentry offense will score a 1.08 weight. In contrast, a wire fraud case will score a 3.50 case weight. The difference between the two weights is a function of the average amounts of time necessary for an attorney to complete the respective representations.

The case load in the Northern District of Texas has exploded and continues to rise significantly.

Statistical Year	Weighted Cases
SY 2010	2349
SY 2011	2398
SY 2012	2608
SY 2013	2604
SY 2014	3151
SY 2015	3180

If I may speak candidly and urgently, my office has struggled to keep up with these case numbers (and the constant increases) because our attorney staffing remains tightly restricted. In 2014, for the first time in a decade, the Circuit approved additional assistant-defender hiring. That year, I added four new assistant defenders to my offices. In approving these positions, the Circuit increased the cap it has imposed on my assistant-defender hiring from 18.5 to 22.5 attorneys.

Notwithstanding the new hires described above, the application of the AO’s Work Measurement Study Formula to my office’s weighted case totals reveals that we remain significantly understaffed. According to the AO’s metrics, a Defender organization in the Fifth Circuit cohort group that handles an average of approximately 3,100 weighted cases is entitled to 56.8 employees. I currently have 48.5 employees. Should the average weighted cases hold at 3,100, the AO’s hiring formula will allow me to hire eight new employees over the next two fiscal years. That is good news. But if I seek to fill any of those eight new slots with assistant defender hires, I must first obtain the Circuit’s approval to increase the cap it has imposed upon assistant-defender hiring.

C. Diversity in Hiring

Since assuming my duties as Federal Public Defender in Summer 2013, I have sought to further diversify the office. And, as to gender and ethnic re-balancing, I have been successful. But with regard to increasing my office's racial diversity, my results have been less than I had hoped for. So I am undertaking a new initiative. My immediate focus is on recruiting more African-American attorneys. During the past two years (and beyond), my office has not received many resumes from African-American lawyers. Nor have we received many applications from law students for our summer internship program. With the anticipated hiring of eight new employees over the next two years, I recognize I have a unique opportunity to re-engage and succeed in my effort to recruit African-American attorneys.

In this vein, I realized it was not enough to simply advertise positions nationally and hope that more African-American attorneys would apply. So I have recently determined that, if these candidates will not come to us, we will go to them. In the past the office has never attended a career fair or actively recruited new attorney hires at law schools. But this has changed as of this past month.

In October, two of my attorneys and I traveled to two of the historically black law schools (Howard University School of Law and Florida A&M Law School) to tell the students who we are and to recruit them to submit their resumes for attorney employment with our office. (The initial results have been outstanding.) Furthermore, we also attended the Equal Justice Works Career Fair in Washington D.C. in late October and we plan also to attend the Public Interest Law Center Career Fair at the New York University School of Law in February 2016. I am confident that, by consciously expanding our recruiting efforts, we will achieve further diversity in our attorney ranks.

D. Training Services Provided by the Northern District of Texas

As part of our mission, Defender organizations have traditionally taken steps to educate and train "CJA panel" lawyers. My office has always done so and, during my tenure, I have re-emphasized those efforts and actually formalized our training programs. Last summer, my office co-sponsored an annual CLE seminar in Dallas that drew upwards of 225 attorneys over a 2-day period. For the first time, my assistants devised and implemented three separate training tracks: a separate day-long "Fundamentals" track for new and inexperienced federal practitioners; a day-long "Refresher" track geared to the more-seasoned CJA practitioner, and a daylong "Trial" track by which to teach new and experienced federal practitioners various aspects of trial court preparation. In doing so, my assistants consciously chose to recruit not only federal defenders as instructors but also CJA attorneys themselves, thereby emphasizing to the CJA Panel at large that it boasts much expertise in its own right.

Our summer training program was wildly successful and we are already expanding its scope next year to include drafting/writing, appellate practice, and other topics. Furthermore, we are “taking the show on the road” to other divisions within the Northern District. We are currently planning “Fundamentals” programs in Lubbock, Amarillo, and Fort Worth. And we will also in San Angelo/Abilene and Wichita Falls. Finally, we are in the process of producing a podcast about legal issues arising nationally and within the Northern District of Texas which CJA attorneys will be able to download for free.

II. THE CRIMINAL JUSTICE ACT PLAN IN THE NORTHERN DISTRICT OF TEXAS

A. History and Overview

The Criminal Justice Act (CJA) plan for the Northern District of Texas was amended and adopted on June 29, 2000, and approved by the Fifth Circuit on September 15, 2000.² The plan establishes a CJA Committee (committee) “to assist the district in administration of the Criminal Justice Act and make recommendations to the court as appropriate.” In accordance with the plan, the chief judge has appointed to the committee one district judge to serve as chair, one magistrate judge, at least two experienced criminal defense attorneys, the clerk of court, and the Federal Defender. The committee is limited, for all practical purposes, to the operations of the panel for the Dallas Division, one of seven divisions in the district. It serves only as a Committee for identifying new CJA panel members in Dallas.

B. Composition and Appointments

In the Dallas Division, attorneys choose to apply for CJA membership. In contrast, in the other divisions, every attorney admitted to practice in federal court must submit an application for panel membership. This mandatory application requirement in the other divisions applies to all attorneys seeking admission to the court to practice, even if they specialize in noncriminal law areas such as patent and trademark and general civil litigation, with no experience or expertise in federal criminal defense. Such attorneys have been admitted and appointed to represent CJA-eligible clients.

The CJA plan refers to the Dallas Division as the “voluntary panel” and allows attorneys on that panel the opportunity to be removed from the panel upon a written request. The panel members in the other divisions are not provided this opportunity.

The plan ensures that a substantial proportion of CJA appointments go to panel attorneys, and defines substantial as approximately twenty-five percent. Additionally,

² <http://www.txnd.uscourts.gov/sites/default/files/orders/misc/MiscOrder3Criminal.pdf>

the clerk's office maintains public statistical data reflecting the distribution of appointments between attorneys from the Federal Public Defender office and those from the panel. Taken as a whole, panel attorneys in the district are appointed to more than a substantial proportion of the cases as defined by the CJA Plan.

C. Compensation

Claims for compensation (commonly referred to as “vouchers”) from attorneys in all divisions are processed by the clerk's office in Dallas. Consistent processing standards and personnel have resulted in timely payments throughout the district, regardless of division.

In a 2014 Regular Assessment of the Defender Services Program in the Northern District of Texas by the AO, they noted that several attorneys explained that, as a result of experiences they have had with the court reducing their vouchers, they often either reduce their vouchers before submitting to the court or simply do not submit claims at all, considering their work to be pro bono, even though they are entitled to compensation under the CJA. Other attorneys described their decisions to decline appointments (to the extent allowed in a particular division) and even requested removal from the panel based on what they viewed as unreasonable voucher reductions.

D. Funding for Experts

The availability of expert and support resources for an individual case should not vary based on whether a defendant is represented by the Federal Public Defender office, with an investigator and other professionals on staff, or by a panel lawyer who must seek funds from the court to secure this investigative assistance. But statistics kept by the AO reflect that, in 2014, of the 704 representations by the panel in the Northern District, there were a total of 32 experts approved and paid for by the courts. In other words, in only 4.5% of all panel lawyer representations was an expert sought and approved by the courts. This statistic is troubling as I employ ten investigators and paralegals on staff and my Assistant Defenders would find it extremely difficult to represent clients without such investigative expertise. As a result, I have refocused part of our training initiatives to teach CJA panel members how to obtain experts and other investigative assistance.

III. CAPITAL HABEAS REPRESENTATION IN TEXAS

Since being appointed as the Federal Public Defender, one of the recurring challenges that I face is the difficulty in finding lawyers who are both trained and willing to accept appointments in capital habeas cases. Over the past 12 months I have received multiple requests from judges in the Northern District to aid them in locating experienced attorneys willing to handle these types of cases. I have generally been able to help do so, but that is only because I found Capital Habeas Units located

in Federal Public Defender Offices outside the State of Texas that have the staff and resources to handle these Northern District cases. While the creation of a Capital Habeas Unit in Texas may or may not currently be feasible, I believe the establishment and training of a small group of assistant defenders to handle capital habeas cases within my office on an ad hoc basis is a better response to the uneven quality of current capital habeas representation in this district. The fact that the current system has worked, albeit unevenly, does not mean that it will continue to do so. (Other Capital Habeas Units outside of Texas have recently rejected my requests due to their own staffing and caseload issues.)

Sincerely,



Jason D. Hawkins
Federal Public Defender