March 22, 2016

The 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 Edson A. Bostic,
Federal Public Defender for the District of Delaware

Dear Judge Cardone:

Thank you for the opportunity to testify before the Ad Hoc Committee to Review the Criminal Justice Act Program during the April 13, 2016 Public Hearing in Philadelphia, Pennsylvania, and to submit written comments in advance of the hearing. My testimony and comments will focus on the hearing’s central theme, which is the structure and organization of the Criminal Justice Act Program ("CJA Program") on a national level and in my specific district. I will begin by providing my background and an overview of the District of Delaware and the Federal Public Defender’s Office because my experiences shape most of my thoughts on the CJA Program.

I have been the Federal Public Defender for the District of Delaware since 2006. In January 2012, the United States Court of Appeals for the Third Circuit appointed me to serve as the Interim Federal Public Defender for the District of the United States Virgin Islands to restructure that program, and I simultaneously managed the defender offices for both districts for approximately two years. As a chief defender, I have participated in projects and programs that have impacted the national defender program, including appointment as a member of the Work Measurement Study Committee and served as a member of the Back-fill Advising Panel during the difficult period of sequestration.

Prior to my tenure, I was an Assistant Federal Defender in the Eastern District of Pennsylvania from 1994 to 2006, and I served as the supervisor of the Federal Community Defender Office’s Allentown Branch from 1994 to 1998. I also worked in the private sector for six years, first for a Philadelphia-based national law firm, and as a solo practitioner and member of the CJA panel in the Eastern District of Pennsylvania. Additionally, I was a state public defender in New York and Pennsylvania.
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The Federal Public Defender’s Office for the District of Delaware

Our defender organization is a Federal Public Defender Office (“FPDO”), and each staff member is a federal employee of the Judiciary. The office previously operated as a branch of the Federal Public Defender’s Office for the District of New Jersey. In June 1999, the Third Circuit Court of Appeals approved our district’s CJA Plan and established the office as its own entity.

When I was appointed to serve as the Federal Public Defender, the office had seven employees working in a traditional trial unit (“Traditional Unit”), and capital habeas appointments were assigned to other federal defender offices in Pennsylvania. The office’s operations and staff have substantially increased over the years, with the addition of a Capital Habeas Unit (“CHU”) and increased staff in the Traditional Unit. There are currently 23 staff members in my office, which includes nine assistant federal public defenders in both units, two CHU research and writing attorneys, an administrative officer, CSA, and a team of paralegals and investigators.

The office adheres to the highest standards of equal opportunity employment. The staff is diverse and accomplished, with women and racial minorities at all levels of the organization’s hierarchy.1 This diversity and depth of experience has been beneficial to our clients, and it has enhanced our service and representation.

The office’s caseload has fluctuated over the past nine years. Our cases decreased in the recent past, as is true throughout most districts around the country, but we have experienced an upswing during the current fiscal year. Most of the cases in our Traditional Unit consist of drugs, firearms, immigration, and child pornography offenses, but we also handle complex white collar fraud cases, including Mortgage-Backed Securities Fraud, ERISA, tax fraud, securities violations, and other specialty offenses. Last summer, the office tried the nation’s first cyberstalking and interstate stalking resulting in death case. We currently receive appointments to handle non-capital habeas matters and out-of-district appeals, and following the Supreme Court’s decision in Johnson v. United States, 135 S.Ct. 2551 (2015), we are deeply immersed in reviewing cases to determine whether clients may be eligible for sentencing relief. The CHU handles death penalty habeas cases for the State of Delaware and has received a small number of appointments to represent capital habeas inmates in Section 2255 proceedings from other circuits.

Throughout my tenure, the office has enjoyed the solid support of our district court, and the court has demonstrated an appreciation for our office’s independence and operations. The court’s chief judges have shown great support for the CJA Program, and supported our growth and need for increased resources at every turn. Indeed, during the sequestration period, the district court took steps to ease the pain of furloughs by eliminating a day of criminal hearings, which allowed the office to manage and handle cases during staff furloughs. The Third Circuit Court of

1 The office’s staff is: 74 percent female, 16 percent male, 65 percent Caucasian, 21.7 percent African American, 8.7 percent Hispanic and 4.3 percent Middle Eastern. Staff members cover all generations, and most, if not all, of the non-lawyer staff have college degrees.
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Appeals provides the same level of support, and has approved my requests for additional AFPD staff, even in the immediate aftermath of sequestration.

**The District of Delaware’s CJA Panel**

The number of experienced **federal** criminal practitioners is relatively small in the District of Delaware. Thus, the district’s CJA Panel Committee, of which I am a member, has found it necessary to include practitioners from other CJA programs, particularly the Eastern District of Pennsylvania and the District of New Jersey, because of their close proximity to Wilmington, Delaware. This expanded CJA Panel provides the district court with the ability to appoint counsel in large, multi-defendant indictments. With the district court’s approval, locally barred attorneys with less experience are allowed to second chair cases with this office in order to develop more experience.

Although the expanded CJA Panel is generally diverse, it can benefit from additional diversity, particularly in the area of African American practitioners. I am working with the CJA Panel Committee to remedy this situation by seeking out qualified minorities for CJA appointments when possible.

To ensure that CJA Panel members are equipped and well-trained, my office provides at least one full-day CLE training program annually for the CJA Panel, and the district court provides lunch for our programs. The office occasionally co-sponsors training programs with the District of Delaware’s Federal Bar Association, and we provide each panel member with a copy of *Defending a Federal Criminal Case*, which was written by experienced federal defenders, CJA attorneys, and practitioners from around the country. The office’s legal staff also provides support and assistance to CJA counsel when requested.

The district court has treated our CJA Panel with similar appreciation and respect. The appointment process is handled fairly and consistently, and there have been no panel member complaints regarding the payment or processing of CJA vouchers or requests for expert services. The CJA Panel Committee takes its duties and responsibilities seriously, and the panel’s comments and thoughts have been well-received and acted upon by the district court.

The operation of the CJA Program in this district and the relationship between my office and the district court epitomizes most of what works well under the current CJA Structure and Program. Based on my extended personal experiences and conversations with numerous defenders, CJA representatives, and panelists, however, I am aware that not all FPDOs and CJA Panel members enjoy the high level of support and appreciation for self-guidance that my office receives from our district court and the Third Circuit.

These issues include the interference of local district courts or circuit courts on how to manage their offices and the delivery of services, and some defenders have been unable to obtain
approval for much-needed AFPD positions. In other instances, local district courts exert control through the unreasonable scheduling of trials, which is particularly burdensome for smaller offices or the general ability to adequately prepare for and defend cases. CJA counsel around the country have complained about the apparent arbitrary cutting of vouchers, and the difficulty in obtaining approval for expert services or payment to experts once the work is completed.

Because the CJA Program is closely tied to the Judiciary, defenders and CJA counsel experiencing difficulties within their districts are left with little recourse. Thus, regardless of how well the CJA Program may work in this district or other districts with similar positive relationships, the concerns and problems expressed by defenders and CJA members to this Committee indicate that the current structure and organization is in need of change.

I support the defenders who have written and testified about the changes that are needed to the structure and organization of the CJA Program. I recognize that our national organization has had a long affiliation with the Judiciary, and many of us have received tremendous support from individual judges at the district and circuit level. But as we work to protect and to defend those most deserving of the constitutional right to counsel, we must be equally committed to ensuring that the CJA Program is well-resourced and administered fairly and consistently in every district.

Thank you for the opportunity to provide this written statement and to testify before this Committee on April 13, 2016.

Respectfully submitted,

Edson A. Bostic
FEDERAL PUBLIC DEFENDER