

Testimony before the Ad Hoc Committee to Review the Criminal Justice Act
Chief Judge Raner Collins
November 2, 2015

While I am sure that the committee will receive many more scholarly and research based comments, I offer my comments based upon my 17 years on the bench in the Federal District Court and what I have observed. I think that the Federal Public Defender and the Federal Defender system are great. I see it on a national basis as being well run, (particularly in the 9th Circuit), the only one I really know. My sense is that the overall defender program allows defenders the ability to provide quality legal services to all those who require it.

I think it is great that the Federal Public Defender Office is appointed by the circuit and is not appointed by the local district judges. The district judges should be asked for their input about the qualifications of a particular person, they should not have veto power about who the Federal Public Defender is.

I am also concerned about the fact that what is an acceptable caseload in one circuit may not be an acceptable caseload in another circuit. I would prefer a system where a level of staff is determined by the caseload based upon the recent staffing formulas that have been adopted by the judicial conference, and not whether the circuit thinks that a certain number of positions should be authorized.

I have great respect for my circuit brethren I have some doubt about how they are in the best position to determine what the staffing level of any Federal Defender organization should be.

I think that the budget and staffing process administered by the administrative office, while not perfect, is a fair one. I think the decisions to hire staff at various offices should be made in conjunction with the recent staffing formulas provided by the A.O. and Defender Services input. I believe that the ability to move funds around on a national basis where they are needed is good. I think that overall the Federal Public Defender and the FDO process model gives a consistent high quality product. While a particular AFPD may not have the flash and pizzazz of some of the high priced criminal defense lawyers in private practice, they are consistently good.

I also think we should be careful to make sure that the FPD and FDO are not seen as judicial employees. Although they are under the umbrella of the

Administrative Offices, they should not be considered as judicial employees. I think that would be a blow to their independence and being seen as part of the system by clients. Their role is a very specialized one and should be protected at all costs.

When I was appointed to the Defender Services, the office held a full directorship at the A.O. That has changed over the last few years. I believe that was a mistake, I believe that status of having a full director should be returned to the program. While I am certainly cognizant of the need to reorganize the A.O., I still believe that having the Defender Services be a program with the same level at least on the directorship level is one that should have been maintained.

If I could have my way, every case would be handled by the Federal Public Defender or from the FDO. However, I realize because of conflicts of interest and things of that nature that's not going to happen.

I want to talk now about the CJA panel. I believe the CJA panel are hardworking lawyers and they should be commended for the role that they play in providing critical legal services to those who cannot afford them. I am, however, very concerned about the judicial involvement in deciding what fees are paid, what expert witnesses can and cannot be hired, what investigators can and cannot be hired are roles that should not be played by a judge, particularly the judge presiding over the very same case.

Judges do not necessarily know at the time of appointment or request for services how complicated a case is or is not. Judges do not know how difficult a client is or is not. Judges have a very difficult time understanding what type of work is going to be required for any given case. One of the problems is that almost all of the cases at some point result in a change of plea. Over 97% are disposed of on that basis.

CJA lawyers have very different ways of how they do things. Some read every line on every page. Some skim, some only look at where their client's name appears in a paragraph or sentence. Some people visit their client once, some three, four, five or six times. It is very difficult for a judge to know if this is a one time or two time visit client, or a five or six. Lawyers should not have to determine how much work they put into a case based upon their view of whether or not a judge is going to pay them for the work that they do.

I am also against a flat fee for each case. I think compensation should be based upon the work put into each case. I would love as a judge, to be out of the

voucher review business. Making decisions after the fact about whether work in a case was reasonable or not is a very difficult task. A task that in 17 years, I have yet to master.

Too often judges have to rely on their instincts about whether something is reasonable or necessary. There are no guidelines about how many hours a particular case should take, and the difficulty of the case. These make the current system of the judges determining how much lawyers get paid, and whether or not they get experts for their cases fraught with peril.

I will now comment about border issues: These cases involve issues regarding reentry, drugs and alien smuggling, attempts to cross money and weapons across the border.

Sometimes to the outside observer these cases can seem rather uncomplicated. That can definitely be far from the truth. Dealing with clients in a foreign language, on a foreign soil to them can be quite difficult. Sometimes one gets the impression that other judges who are not dealing with these border issues think the cases are similar to handling parking tickets.

Even numbers used in the staffing formula sometimes can give those impressions such as giving a reentry case .8 of a case for statistical purposes. Lawyers who speak Spanish are invaluable. Lawyers who speak Spanish and understand the culture are more so.

Cases coming off the reservation have their own concerns. Judges need to be sensitive to the culture, travel issues and resource availability in handling these cases. By resource availability I mean access to counseling, halfway houses, treatment centers, etc.

I believe that the current system of having the Defenders both Federal Public Defenders, CDO's and Panel Lawyers funded under the judicial umbrella is probably a wise one. I fear that if the budgeting function were left on a stand-alone basis away from the judiciary, that it will suffer dire consequences. I would like to see some sort of a hybrid system where an independent agency that over sees the Defense functions could be set up. Or a system where lawyers and other trained staff actually run the program and not rely on a system where judges appoint and decide how much lawyers are going to be paid for the cases they are appointed to.