

OFFICE OF THE
FEDERAL DEFENDER

District of Minnesota

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TIM TREBIL
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19 July 2013

Senator Al Franken
309 Hart Senate Office Building
Washington, DC 20510

Re: Judiciary Committee Hearing - Sequestering Justice
July 23, 2013

Dear Senator Franken:

I write concerning the budget cuts that are looming over the Federal Defender offices, and next week's hearing of the Subcommittee on Bankruptcy and the Courts. The hearing, "Sequestering Justice: How the Budget Crisis is Undermining Our Courts," will highlight the devastating impact that the projected cuts will have on the courts in general, and on the Federal Defender system in particular. Put simply, the cuts will decimate the Federal Defender system, in Minnesota and nationally. I ask for your participation and your support.

The current figures involve a cut to the budgets of Federal Defender Offices of as much as 23 percent for fiscal year 2014. Consistent with offices around the country, the proposed reduction will cut this office to one half of what it was and where it should be, based on our caseload. We were already lean, by any measure. Already down one lawyer and one paralegal, this office consists of eighteen people: the defender, seven additional lawyers, three investigators, and seven other support staff. The cuts will require either that we eliminate an additional seven people, three lawyers and four support staff, that the office furlough all of its personnel for fifteen weeks, or some combination of the two. Once an office of twenty, with nine lawyers, we may become an office of ten. These outcomes are as untenable as they are inescapable, and they will be replicated in every District of every state.

Paradoxically, these cuts will increase the cost of indigent defense to the American taxpayer. There are forty-six AUSAs assigned to the criminal division of the Minnesota U.S. Attorneys Office. The eight lawyers currently in this office handle 75% of the criminal appointments in the District of Minnesota. With this level of staffing reduction, we will have to substantially reduce our workload. Of necessity, the remaining caseload will be shifted to the District's Criminal Justice Act (CJA) Panel. Because CJA representation is more expensive than representation by Federal Defenders, this shift will increase the cost of federal indigent defense.

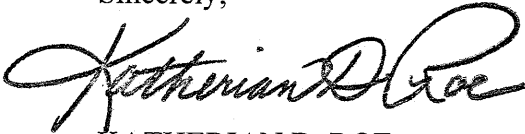
On average, a case handled by an Assistant Federal Defender in Minnesota costs only 70% of what representation by the CJA Panel costs. During the past three years, assigning cases to this office saved the taxpayer \$ 4.1 million. These cost savings come both from the efficiencies and economies of scale available to centralized defender offices, and from the experience brought to each case by the attorneys from the Federal Defenders Office. The CJA Panel fully supports this office and whatever steps are necessary to secure adequate funding.

The lifeless statistics of these cuts fail to portray the human reality that lies underneath. If nothing is done, costs will rise, and the quality of representation that the poorest and neediest among us will receive will fall. Committed, experienced personnel will lose their jobs. A model and a system that has served this nation well for decades will suffer irrevocable harm, harm that no future restoration of funding will cure, even if such an outcome were possible. That these things would happen on the 50th anniversary of the Supreme Court's decision in Gideon v. Wainwright, the decision that made the Constitution's promise of the assistance of counsel real for all Americans, is nothing short of tragic.

This is the situation we face in Minnesota, and it is also the situation facing defender offices nationwide. At the hearing, information concerning the national picture will be presented. I am grateful for the Subcommittee's attention to these issues, and hope for your participation in the process and your support of the Federal Defender system.

I attach a letter from Chief Judge Davis to the Executive Committee of the Judicial Conference concerning the state of affairs in Minnesota, and Fact Sheets that provide more information about the national situation. If additional information or input would be helpful, I would welcome the opportunity to provide it.

Sincerely,

A handwritten signature in black ink, appearing to read "Katherian D. Roe". The signature is fluid and cursive, with the first name "Katherian" being more prominent.

KATHERIAN D. ROE
Federal Defender

KDR/ahm



UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

CHAMBERS OF
MICHAEL J. DAVIS
CHIEF JUDGE
300 SOUTH FOURTH STREET, SUITE 15E
MINNEAPOLIS, MINNESOTA 55415
(612) 664-5070

July 15, 2013

Honorable William B. Traxler, Jr.
Chief Judge
United States Court of Appeals for the Fourth Circuit
C. F. Haynsworth Federal Building and
United States Courthouse
300 East Washington Street, Room 222
Greenville, SC 29601

Dear Chief Judge Traxler:

As Chief Judge of the District of Minnesota, I write to you today on behalf of all of the judges in my district to express our deep concern about the fiscal crisis that is threatening to decimate the Office of the Federal Defender in Minnesota.

Our Federal Defender's Office is a small office, with only eight attorneys and ten support staff. Despite the extremely lean staff, the Federal Defender represents 71% of indigent defendants charged with federal crimes in Minnesota (89% of single defendant cases), and over the past five years, the attorneys each averaged 85 weighted cases annually. If the looming budget cuts are implemented, the Federal Defender will have to eliminate two to three attorney positions and at least four support staff, effectively one-third or more of the remaining staff. In addition to the obvious negative impact on morale, the remaining attorneys and staff will be unable to maintain the existing caseload. As a result, many cases will have to shift to the Criminal Justice Act (CJA) Panel.

In these difficult financial times, we understand that funds are limited and recognize that some programs and positions within the judiciary may be eliminated or seriously cut. The Executive Committee of the Judicial Conference is faced with difficult decisions in reducing spending. Recognizing that, we still feel compelled to urge your Committee to reconsider how to distribute the cuts to the Defender Services budget. If the Federal Defender Program is required to shoulder the entire burden of cuts to Defender Services, it will no longer be the model it once was for indigent defense

representation. This is especially troubling as we celebrate the 50th anniversary of the Supreme Court's opinion in *Gideon v. Wainwright*.

In our district there are three different factors which make the continuing vitality of this program essential to the administration of justice in our court.

First, the Federal Defender reduces costs to the court and, ultimately, to the American taxpayer. On average, a case handled by an Assistant Federal Defender in Minnesota costs only 70% of what a private attorney would cost, who is appointed through the CJA Panel. The results of an analysis of the past three years of representations in the District of Minnesota, comparing costs of Federal Defender representation to CJA Panel representation, indicate that, during that three year period, assigning cases to the Federal Defender saved the taxpayer 4.1 million dollars. These cost savings come both from the efficiencies and economies of scale created by centralized defender offices, and from the experience brought to each case by the attorneys from the Federal Defender's Office. Their backgrounds and knowledge enable them to efficiently and effectively represent individual clients, learning the necessary skills and relevant case law and applying them to many cases.

Second, the quality of representation provided by the Office of the Federal Defender in our district is, simply put, exceptional. Consistently, these attorneys are skilled practitioners who are well prepared and knowledgeable about federal criminal law. They are dedicated and completely committed to the work they do. While many talented attorneys are among the ranks of our CJA Panel attorneys, in general the most consistent, high-quality representation has been provided by the Office of the Federal Defender.

Third, the Office of the Federal Defender provides countless services to the Court that could not be replicated in their absence. For example, when the sentencing guidelines applicable to crack cocaine cases were reduced and made retroactive twice in the last five years, our Federal Defender's Office stepped in to help immediately. The staff and attorneys reviewed over seven hundred files to identify persons who might qualify for sentencing reductions, and then effectively represented the defendants who were eligible for relief. Beyond responding to major events such as retroactive changes in the guidelines, the Office of the Federal Defender also administers our CJA Panel. The Office conducts specialized training seminars that greatly improve the quality of representation the Panel attorneys are able to provide. Panel attorneys also benefit from being able to use the Federal Defenders as a resource for their cases and as a resource for keeping current with developing law. The Office has also created a Mentor Program,

which provides one-on-one training and mentoring designed to further improve the quality of future Panel members.

In addition, attorneys from the Office of the Federal Defender are always available to assist the Court when unexpected and critical issues arise. Whether they are asked to come immediately to the courtroom of a trial in progress to represent a witness for whom a Fifth Amendment concern has arisen, or asked to address visiting dignitaries from another country who want to learn about our justice system, or to participate in community outreach programs that are promoted by the Court, we can always count on the attorneys from the Office of the Federal Defender to assist. The Federal Defender is also frequently called upon to mediate between disgruntled clients and their Panel attorneys, often saving the Court the cost of a second attorney and a delay in the proceedings. It is difficult to imagine who would perform these challenging but essential functions if the Office of the Federal Defender is forced to reduce its staff even further.

The close attention brought to the defender system may ultimately identify national reforms that need to be made in staffing and funding in order to bring more uniformity and fairness to the distribution of resources. Perhaps that may benefit our district someday. For now, we are concerned with the negative impact that reducing the size of our Federal Defender's Office would have on the efficient and fair administration of justice in Minnesota and the quality of representation for indigent defendants, who are the least powerful and most needy amongst us. We urge the members of the Executive Committee to fund the federal defender offices by suspending panel payments for the period of time necessary to avoid further cuts to the defender budgets.

Sincerely,



Michael J. Davis
Chief Judge
United States District Court

cc: The Honorable William Jay Riley
The Honorable Rodney W. Sippel

Bcc: Katherian Roe