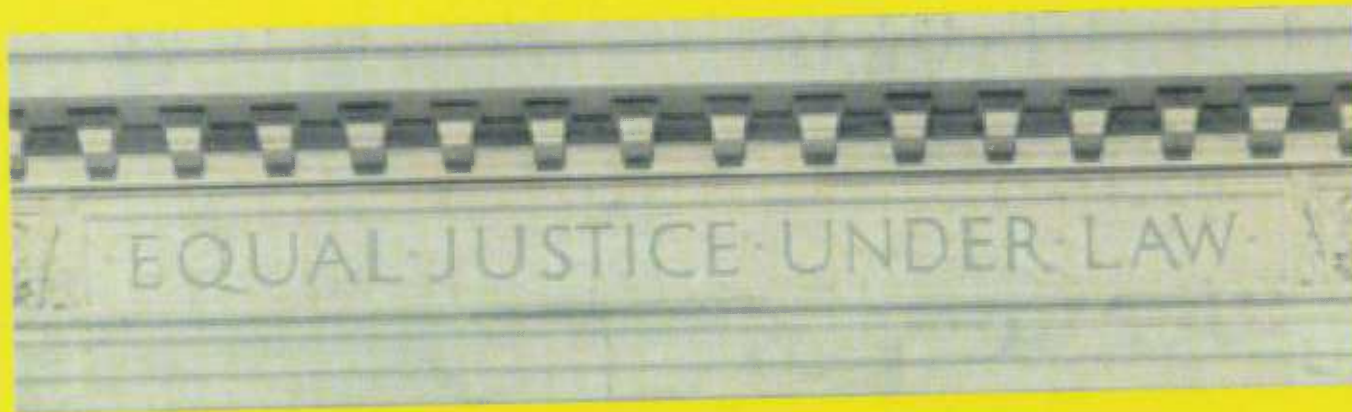


The Judiciary
Fiscal Year 2014
Congressional Budget Summary



COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

Defender Services

SUMMARY STATEMENT OF ACCOUNT REQUIREMENTS

Fiscal Year 2013 CR Level (P.L. 112-175)	\$1,037,310,000
Fiscal Year 2014 Appropriation Request	\$1,068,623,000
Requested Increase from Fiscal Year 2013 Appropriation	\$31,313,000

APPROPRIATION LANGUAGE

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

Defender Services

For the operation of Federal Defender organizations; the compensation and reimbursement of expenses of attorneys appointed to represent persons under 18 U.S.C. 3006A and 3599, and for the compensation and reimbursement of expenses of persons furnishing investigative, expert, and other services for such representations as authorized by law; the compensation (in accordance with the maximums under 18 U.S.C. 3006A) and reimbursement of expenses of attorneys appointed to assist the court in criminal cases where the defendant has waived representation by counsel; the compensation and reimbursement of expenses of attorneys appointed to represent jurors in civil actions for the protection of their employment, as authorized by 28 U.S.C. 1875(d)(1); the compensation and reimbursement of expenses of attorneys appointed under 18 U.S.C. 983(b)(1) in connection with certain judicial civil forfeiture proceedings; the compensation and reimbursement of travel expenses of guardians ad litem appointed under 18 U.S.C. 4100(b); and for necessary training and general administrative expenses, [\$1,037,310,000] \$1,068,623,000, to remain available until expended.

**SUMMARY OF REQUEST
DEFENDER SERVICES
FISCAL YEAR 2014
(Dollar amounts in thousands)**

Fiscal Year 2014 Resource Requirements:

<u>Page</u>		<u>FTEs</u>	<u>Amount</u>
	Fiscal Year 2013 Obligations.....	2,763	1,054,771
	Less unencumbered carryforward from fiscal year 2012 into fiscal year 2013.....	-	(8,738)
	Less prior year recoveries from fiscal year 2012 into fiscal year 2013.....	-	(8,723)
	Fiscal Year 2013 CR Level (P.L. 112-175).....	2,763	1,037,310

Adjustments to Base to Maintain Current Services:

A. Pay and benefit adjustments

6.16	1. Proposed January 2014 pay adjustments		
	a. Federal pay adjustment (1.0% for nine months)	-	3,338
	b. Panel attorney capital ECI rate adjustment (from \$178 to \$180, effective January 1, 2014)	-	243
	c. Panel attorney non-capital ECI rate adjustment (from \$125 to \$126, effective January 1, 2014).....	-	345
6.17	2. Promotions and within-grade increases.....	-	3,336
6.17	3. Health benefits increases.....	-	1,049
6.17	4. FICA increase.....	-	299

Page

		<u>FTEs</u>	<u>Amount</u>
B. Other Adjustments			
6.17	5. General inflationary adjustments.....	-	2,660
6.17	6. Inflationary increase in space rental costs.....	-	1,265
6.17	7. Change in weighted caseload.....		
	a. Change in FDO weighted caseload.....	29	6,353
	b. Change in panel attorney caseload.....	-	4,963
6.18	8. Increase in appropriation to maintain fiscal year 2013 requirements due to a decrease in non-appropriated source of funds.....	-	7,461
	Subtotal, Adjustments to Base to maintain current services.....	29	31,313
	Total Current Services Appropriation Required.....	2,792	1,068,623
	Total Fiscal Year 2014 Appropriation Required.....	2,792	1,068,623
	Total Appropriation Increase, Fiscal Year 2013 to Fiscal Year 2014.....	29	31,313
 <u>Financing the Fiscal Year 2014 Request:</u>			
	Total Appropriation Required.....	2,792	1,068,623
6.18	9. Anticipated Carryforward from fiscal year 2013 into fiscal year 2014.....	-	10,000
	Estimated Obligations, Fiscal Year 2014.....	2,792	1,078,623

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES
DEFENDER SERVICES
Obligations by Activity
(\$000)

Activity	FY 2012 Actual	FY 2013 Estimate	FY 2014 Request
CJA Representations & Related Expenses	1,037,432	1,046,161	1,069,889
Program Administration	6,777	8,610	8,734
Total Obligations	1,044,209	1,054,771	1,078,623
Anticipated Financial Plan Savings	-	(10,000)	-
Revised Obligations	1,044,209	1,044,771	1,078,623
Unobligated Balance, Start of Year	(20,424)	(8,738)	(10,000)
Prior Year Recoveries	(1,524)	(8,723)	-
Unobligated Balance, End of Year	8,738	10,000	-
Encumbered Carryforward	-	-	-
Available Appropriation	1,031,000	1,037,310	1,068,623

**COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES
DEFENDER SERVICES**

Obligations by Budget Object Class (\$000)

Description	FY 2012 Actual	FY 2013 Estimate	FY 2014 Request
1100 Personnel compensation	285,372	288,187	300,490
1200 Personnel benefits	86,156	87,935	91,022
1300 Benefits for former personnel	256	270	307
2100 Travel	8,729	9,823	10,854
2200 Transportation of Things	250	268	273
2310 Rental payments to GSA	39,354	40,533	42,041
2320 Rental payments to others	402	408	398
2300 Communications, utilities & misc.	5,838	6,709	7,360
2400 Printing and reproduction	118	158	160
2500 Other services	473,797	474,821	478,261
2600 Supplies and materials	1,749	1,865	1,949
3100 Equipment	12,130	12,150	11,599
4100 Grant Payments (to Community Defender Organizations)	130,058	131,644	133,910
Total Obligations	1,044,209	1,054,771	1,078,623
Anticipated Financial Plan Savings	-	(10,000)	-
Revised Obligations	1,044,209	1,044,771	1,078,623

Full Time Equivalents (FTEs) by Activity

Activity	FY 2012 Actual	FY 2013 Estimate	FY 2014 Request
CJA Representations & Related Expenses¹	2,675	2,730	2,759
Program Administration	29	33	33
Total, FTEs	2,704	2,763	2,792

¹The FTEs listed are attributable to Federal Public Defender Organization staff.

**COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES
DEFENDER SERVICES**

Relation of Obligations to Outlays (\$000)

	FY 2012 Actual	FY 2013 Estimate	FY 2014 Request	Difference
Total Obligations	1,044,209	1,054,771	1,078,623	23,852
Obligated balance, start of year	26,344	27,192	30,963	3,771
Obligated balance, end of year	(27,192)	(30,963)	(41,672)	(10,709)
Recoveries of prior year unpaid obligations	(708)	-	-	-
Less: Offsets	(3,105)			
Net Outlays	1,039,548	1,051,000	1,067,914	16,914

GENERAL STATEMENT AND INFORMATION

Funds appropriated for the Defender Services account support the appointment of counsel and other services necessary to represent financially eligible defendants, which the judiciary is required to provide by the United States Constitution; the Criminal Justice Act (CJA), 18 U.S.C. § 3006A; and other related statutes. Funds provide for the continuing education and training of those who furnish representational services under the CJA. The fiscal year 2014 request for appropriated funds is \$1,068.6 million, an increase of \$31.3 million (3.0 percent) over the fiscal year 2013 assumed appropriation of \$1,037.3 million.

MISSION AND GOALS OF THE DEFENDER SERVICES PROGRAM

The constitutional right to the assistance of counsel is a critical component of the criminal justice system. In *Gideon v. Wainwright*, 372 U.S. 335 (1963), the United States Supreme Court wrote: “The right of one charged with a crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.” The mission of the defender services program ensures that the Sixth Amendment right to counsel is available to those who cannot afford to retain counsel and other necessary defense services. By fulfilling its mission, the Defender Services program helps to: (a) maintain public confidence in the nation's commitment to equal justice under law; and (b) ensure the successful operation of the constitutionally-based adversary system of justice by which

both federal criminal laws and federally guaranteed rights are enforced.

The four goals of the defender services program are to:

- (1) timely provide counsel services to all eligible persons;
- (2) provide counsel services consistent with the best practices of the legal profession;
- (3) provide cost-effective services;
- and (4) protect the independence of the defense function performed by assigned counsel so that the rights of individual defendants are safeguarded and enforced.

TYPES OF COUNSEL:

Federal Defenders and Private Attorneys

The CJA authorizes the appointment of counsel, who are either attorneys employed by a federal defender organization (FDO) or private “panel” attorneys. The CJA specifies that in all judicial districts (including those served by an FDO) private attorneys shall be appointed “in a substantial proportion of the cases.” 18 U.S.C. § 3006A(a)(3). In the 91 (of 94) judicial districts served by an FDO, there is a critical need for qualified panel attorneys. Ethical standards prohibit appointing FDOs in conflict-of-interest situations (*e.g.*, an FDO is precluded from representing more than one defendant in a multi-defendant case, and is disqualified from accepting a new appointment that may present a conflict with the interests of previously represented clients). In situations where federal defenders are unavailable due to FDO conflicts or workload demands, and in the districts not served by an FDO, private or “panel” attorneys must be appointed to represent all eligible individuals. Three districts (Georgia-

Southern, Kentucky-Eastern, and Northern Mariana Islands) have no FDO.

Every year Criminal Justice Act attorneys are appointed in over 200,000 cases where liberty, livelihood, and personal integrity are at stake. Federal defenders and panel attorneys rely on adequate funding and resources to fulfill their Constitutional mandate to ensure that the Sixth Amendment rights of individual defendants are safeguarded and enforced.

Federal Defender Organizations

The CJA authorizes two types of FDOs: (1) federal public defender organizations, which are part of the judiciary, and (2) community defender organizations, which are private, state-chartered, non-profit corporations funded by annual federal grants. An FDO may be established in any district (or combination of adjacent districts) in which at least 200 appointments are made annually. There are currently 81 FDOs authorized to serve 91 of the 94 judicial districts. For fiscal year 2014, the judiciary projects that federal defenders will be appointed in approximately 127,600 cases (57.9 percent of the total projected CJA caseload).

FDOs are the flagships of federal criminal defense, delivering high-quality representation at reasonable costs while safeguarding the rights of individuals under the Constitution. They attract, train, and retain lawyers with skills comparable to those who prosecute criminal matters in U.S. attorney offices. Because of the expertise and efficiencies they have developed as law offices focused exclusively on federal criminal practice,

FDOs provide cost-effective defense services, consistent with the best practices of the legal profession.

FDO attorneys are available for appointments on short notice, ensuring that the rights of the accused are protected and that the operations of the courts are not disrupted. FDOs also make optimal use of national resources by sharing their expertise and best practices with other FDOs and panel attorneys.

FDO staff reduce costs and improve the overall quality of CJA representation within the districts they serve by providing expert advice, training, and other assistance to panel attorneys in complex legal and technical areas such as sentencing, litigation support, and issues involving death penalty cases.

Panel Attorneys

A “panel” attorney is a private lawyer who serves on a panel maintained by the district or appellate court and is assigned by the court to represent financially eligible defendants in accordance with the CJA. Nationally, over 90 percent of CJA panel attorneys are in small law firms (with six or fewer lawyers), and approximately 60 percent are sole practitioners. The CJA provides that these attorneys shall be reimbursed for their expenses and compensated at statutorily authorized hourly rates for their services.

CHANGES IN FEDERAL CASELOAD

Changes in technology, prosecution tactics and priorities, legislation, sentencing policy, and case law add to the challenge and expense of providing competent representation to financially eligible criminal defendants in the federal courts.

Obligations to Advise of Plea Agreements

The United States Supreme Court's decisions in *Missouri v. Frye*, 132 S. Ct. 1399 (2012), and *Lafler v. Cooper*, 132 S. Ct. 1376 (2012), recognized that ninety-seven percent of federal convictions are the result of guilty pleas. The Court found that: "The reality is that plea bargains have become so central to the administration of the criminal justice system that defense counsel have responsibilities in the plea bargain process, responsibilities that must be met to render the adequate assistance of counsel that the Sixth Amendment requires in the criminal process at critical stages." *Frye*, at 1407. In *Frye*, the Court held that, "as a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." *Id.*, at 1408. As a practical matter, these decisions not only reinforce defense counsel's duty to communicate plea offers, they also may expose defense counsel to needless litigation over the plea process when a client is unhappy with the resolution of his case. Defense counsel may have to make repeated visits to clients to discuss each plea offer, and will need to take extra care to document each step of plea negotiations to maintain a record of the process. As a result, the costs of all representations will increase.

Immigration Consequences

The United States Supreme Court's decision in *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010), held that attorneys must advise defendants of the immigration consequences of their criminal case. Defense counsel must not only avoid giving incomplete or inaccurate advice about immigration law; they must affirmatively advise their clients on certain immigration law matters. The United States Sentencing Commission reports that, in the second quarter of 2012, 47 percent of federal defendants were non-U.S. citizens.

Most CJA counsel do not have specialized expertise in immigration law. As a result, they must consult with immigration law experts and conduct additional research, training, and investigation in order to inform their clients adequately about the immigration consequences of their case. This added responsibility has increased defense workloads across the country.

Change in Circuit Precedent

In *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011)(en banc), the Fourth Circuit held that prior North Carolina state felony convictions cannot be qualifying predicate offenses for 21 U.S.C. § 851 enhancements unless the prior state conviction actually exposed the defendant to a sentence greater than one year of imprisonment. This decision overruled *United States v. Harp*, 406 F.3d 242 (4th Cir. 2005) (court to consider the maximum aggravated sentence for a hypothetical defendant). As a practical matter, *Simmons* requires FDOs and panel attorneys to review and assess current and older cases to determine whether reliance

on *Simmons*-type prior convictions has resulted in excessive and invalid federal sentences.

Multi-jurisdictional and International Cases

The complexity of multi-jurisdictional cases and international prosecutions greatly increases the amount of resources expended by the defender services program. For example, an ongoing international terrorism case charging the bombing of U.S. facilities abroad cost the defender services program over \$1 million in fiscal year 2011 and was one of the program's most expensive cases in fiscal year 2012. How much has been spent on this case by the Department of Justice and federal and local investigative agencies is not known.

Terrorism-Related and Other High Profile Cases

Terrorism and national security cases often require extraordinary resources by requiring full-time efforts of one or more assistant federal defenders supported by investigators, paralegals, interpreters, research and writing specialists, and expert services (such as information technology specialists). In addition to the interpreters who facilitate defense team communications with clients and witnesses, these cases often require translators for the review of foreign language discovery, audio recordings (sometimes involving years of surveillance), and transcriptions of recordings. The cost of terrorism-related and other high-profile cases is further affected by the need to conduct investigations in foreign countries under difficult circumstances.

Adding to the resource-intensive nature of these cases is the government's requirement that lawyers, investigators, and

service providers have or obtain appropriate security clearances. This increases both the cost and time expended on representations. Because the penalties for a conviction are significant, such cases generally go to trial and through the entire appeals process.

In addition to the prosecution of terrorism and national security cases in Article III federal courts, FDOs have been appointed to represent approximately 55 of the detainees held in Guantanamo Bay, Cuba, requiring commercial and military flights to Guantanamo Bay by attorneys, investigators, interpreters, and psychologists in order to prepare habeas corpus petitions, defend against the charges, or negotiate transfers to other nations.

Increased Enforcement along the Southwest Border

In recent years, the Department of Justice has prosecuted high numbers of immigration-related federal criminal cases along the Southwest Border. These cases require the appointment of CJA defense counsel. Before recent increases in assistant U.S. attorney positions assigned to districts along the Southwest Border, U.S. attorneys' offices typically filed charges only in the most egregious and readily provable cases. With increased staffing, federal prosecutors are prosecuting cases that would previously have been declined, including matters with significant evidentiary, legal, and sentencing issues. It is anticipated that the additional U.S. attorney staff will also result in more resource-intensive indictments targeting multiple defendants and larger conspiracies.

Charging Large Numbers of Defendants in One Indictment

Cases that charge 40-50 defendants or more in one indictment adds to the cost of each individual representation. The defender services program has seen an increase in these types of cases. This charging practice strains Defender Services program resources. Data show the most expensive cases have three characteristics: 1) a high number of defendants; 2) a number of death eligible defendants; and 3) a high volume of discovery.

Seventy-seven defendants were charged in one racketeering case alleging money laundering and the distribution of drugs – some were death penalty eligible. In fiscal year 2011, over \$3 million was spent on this case alone, and over \$5 million overall. Comparative data on the costs that have been expended by the Department of Justice in this case are unavailable.

COST CONTAINMENT INITIATIVES

Cost-Effective Services

The defender services program has engaged in extensive efforts to contain costs and practice fiscal responsibility, without compromising its constitutionally mandated mission to ensure that the Sixth Amendment right to counsel is available to those who cannot afford to retain counsel and other necessary defense services. There is strong awareness of the budget challenges facing our nation and the need to continue cost-containment measures in every aspect of the defender services program.

Key cost-containment initiatives include, but are not limited to: (1) promoting the use of case budgeting to limit expenses in capital and other high-cost CJA panel attorney representations; (2) applying FDO case weights to assist in projecting FDO resource requirements nationally and evaluating individual FDO requests for additional resources; (3) developing and implementing an electronic voucher system for submitting, reviewing, and approving CJA vouchers; and (4) supporting distance learning initiatives to maximize the training available to CJA attorneys with the funds available for this purpose. The defender services program is also continuing other strategies, in collaboration with DOJ, to reduce the costs of federal defender and panel attorney representations (as well as those of other judiciary and DOJ personnel) associated with matters of discovery, the death penalty authorization process, and the placement of pretrial detainees in remote facilities.

Case Budgeting of CJA Panel Attorney Representations

Since 2007, the Defender Services has funded Case-Budgeting Attorneys (CBAs) in the Second, Sixth, and Ninth Circuits to identify cost drivers, monitor case expenditures, assist district and appellate judges and CJA panel attorneys with individual case budgets and cost issues, assist courts in reviewing vouchers in complex cases to help ensure the reasonableness of the claims, and coordinate case budgeting and other CJA cost-containment efforts in high-cost representations that significantly impact Defender Services costs.

In fiscal year 2012, the 2.6 percent of panel attorney representations eligible for budgeting (all capital cases and

non-capital representations exceeding \$30,000) accounted for approximately 30.2 percent (\$135.7 million) of the annual expenditures for all panel attorney representations.

The Federal Judicial Center (FJC) conducted an evaluation of the Case Budgeting project to discern its impact on case management and cost control. The FJC's December 2010 evaluation report found that the CBA's accomplished the goal of containing costs, while achieving a high-quality defense, by enhancing management of and accountability over high-cost cases. The FJC report also found that the savings from the program exceeded its costs and that the "most modest estimate" of the program's net savings was about \$2.0 million between fiscal year 2007 and fiscal year 2009.

The judiciary continues to promote the use of case-budgeting techniques for these representations nationwide in order to help ensure that, in all capital and other high-cost panel attorney cases, the expenses of representation are anticipated, substantiated, monitored, and, where appropriate, limited before they are incurred.

At its March 2011 session, the Judicial Conference approved the utilization of circuit CBA positions, the continued defender services-account funding for the three current CBAs and an incremental expansion in the number of positions.

FDO Resource Management using Case Weights

Several factors, including the number and type of cases, and case- and district-specific complexities, determine the funding an FDO requires to provide effective CJA representation. Starting in fiscal year 2012, the judiciary implemented a

budget methodology utilizing the weighted case analysis developed by the RAND Corporation.

RAND's case-weighting system is based on average FDO attorney time expended to complete each case type in comparison to the national average for all case types. RAND concluded that the weights could be used to help evaluate workload changes for a particular organization from year to year and noted that weighted caseloads offer a better tool for identifying new resource requirements than raw case numbers, presenting an improved way of assessing evolving needs.

Beginning in fiscal year 2014, the judiciary used a new method for formulating the FDO portion of the Defender Services budget request. This method relies on case-weight measures as the sole means for determining workload and funding needs. This approach promotes an empirically-based model that more accurately reflects the needs of the FDOs.

Electronic Panel Attorney Voucher Management (eCJA)
Pilot testing of an electronic CJA processing system (eCJA) began in December of 2012 and national roll-out of the system will begin in April of 2013. This system will improve quality control of panel attorney payment vouchers as well as decrease the time and overall cost associated with processing payment vouchers. In addition, the eCJA system should result in more accurate and timely projections of future payments.

Distance Learning

The defender services program continues to develop and produce distance learning programs. Beginning in October 2010, substantive criminal defense training sessions have been available to CJA practitioners by video, expanding the reach of the programs without the necessity of additional live training events. There are 50 training videos currently available to CJA practitioners, which were accessed 2,266 times between October 7, 2010 and October 30, 2012. The training made available through distance learning provides an additional resource to improve the quality of representation provided by CJA counsel, and enables live training programs to have a greater impact nationally.

For example, the District of Arizona FDO is using the video training sessions available through the distance learning initiative as part of bi-weekly, lunchtime continuing legal education programs for CJA panel members. These programs offer readily available training resources to local CJA panel attorneys who can obtain more training, more often.

Discovery Costs

As the data associated with individual CJA representations expands in size and complexity year after year, CJA attorneys—both FDO staff and panel attorneys—require new tools to help them organize, review, and manage the large amounts and variety of information provided by the prosecution as discovery material. Paper documents must be scanned, and analog recordings digitized. This is especially necessary for cases with hundreds of thousands or millions of pages of information. Evidence encompasses not only discovery materials produced by the government, but those

gathered by third parties and the defense. Federal defenders and panel attorneys must have sufficient litigation resources, including national support staff, to meet the challenge presented by DOJ's litigation support capabilities. The judiciary foresees that the number of discovery-intensive cases will continue to grow.

Three major initiatives are in place to address this issue.

- 1) A collaborative effort between representatives of the judiciary and staff from the Department of Justice reached fruition with the creation of "Recommendations for Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases," which was released in February 2012. The Recommendations are designed to facilitate a more predictable, cost-effective, and efficient management of electronic discovery, and a reduction in the number of disputes relating to ESI, by encouraging early discussion of electronic discovery issues through "meet and confers" between the prosecution and defense; the exchange of data in standard or reasonably useable formats; and resolution of disputes without the necessity of court involvement, where possible.

For example, in a current case, 34 defendants are charged with racketeering involving the MS13 street gang. The discovery provided to defense counsel by the U.S. Attorney's Office contained over 10,000 hours of wiretapping conversations in a foreign language, but included no index, no chronology, no

organization, no identifying information as to which defendant the tape pertained to or where and when the recordings were made. As a result, 34 defense attorneys face the daunting task of translating and reviewing over 10,000 hours of taped wire interceptions to determine which conversations pertain to his or her client. With a more collaborative effort between the judiciary and the Department of Justice, situations like these, and the associated increased costs, can be avoided in the future.

The judiciary will continue to work with the Department of Justice to prioritize the management of voluminous discovery cases by setting reasonable policies and procedures that allow for a mutual reduction in expenditures of resources.

- 2) Contracts with three coordinating discovery attorneys (CDAs) to advise panel attorneys and defender offices on cost-effective ways to manage large volumes of documents in the most complex cases, while providing a high quality of representation to the client. As of October 2012, the CDAs have been appointed in more than 35 cases, and because nearly all of the cases are multi-defendant cases, are providing services to approximately 500 CJA attorneys nationally.
- 3) The procurement of a nationwide "evidence review platform," which consists of one or more software applications, permits the capture, organization, analysis, and review of case-related electronic data by CJA panel attorneys and FDO staff while avoiding the

higher cost alternative of purchasing software in multiple cases year after year.

Remote Detention

The judiciary remains concerned about increased costs caused by the remote placement of pretrial detainees. CJA panel attorneys and federal defenders must meet with their clients in person to provide effective representation. When they have to travel long distances in order to do so, substantial additional costs are incurred.

In the Western District of Texas, the Pecos division has facilities ranging from 30 to 135 miles from the courthouse. In the Del Rio division, "Operation Streamline" defendants are housed at a facility one hour away, while other defendants are housed in San Antonio (three hours away), Zavala County (two hours away), and Uvalde (90 minutes away). In El Paso, there are three remote facilities used: West Texas (Sierra Blanca), 90 minutes away; El Paso County Jail Annex, 45 minutes away; and the Otero Facility, 30 minutes away. Moreover, Austin has a very challenging remote detention problem, both in distance from the office and in travel time because of traffic. The closest facilities are an hour away - one way - and other facilities are 90 minutes to two hours away - one way.

The defender services program is currently engaged in an initiative to identify the judicial districts in which costs are most affected by remote detention, with the goal of helping them identify and pursue initiatives that can reduce those costs.

Improvement in DOJ Procedures for Decisions Not to Seek the Death Penalty in Death-Eligible Cases

Over the past several years, the judiciary has pursued discussions with DOJ about streamlining its “fast-track” protocol for evaluating and reaching decisions *not* to seek the death penalty. Until DOJ notifies counsel that it does not intend to seek the death penalty for a death-eligible defendant, defense counsel must assume that the death penalty will be pursued. The judiciary’s defender services program is obligated to bear the substantial cost of the statutorily required two defense counsel providing representation, compensated at the higher capital rate, as they carry out their professional responsibility to undertake mitigation investigations and gather other evidence relevant to the question of whether a death sentence would be appropriate. The goal of this judiciary initiative is to reduce the length of time between the indictment of a defendant on capital-eligible charges and a decision by the Attorney General that the defendant will *not* be prosecuted capitally in cases where it is highly unlikely that the DOJ will ultimately seek the death penalty. An early decision by the Attorney General *not* to seek the death penalty usually achieves significant cost savings for the defender services program, as well as eliminating unnecessary diversion of limited judicial resources.

Based on these discussions, CJA Guideline 670 was jointly developed by the judiciary and DOJ staff, and approved by the Judicial Conference in September 2007. The guideline encourages courts to set reasonable deadlines for stages of the death penalty authorization process (subject to extension for good cause). In July 2011, DOJ published a revised death penalty authorization protocol. Efforts will continue to

encourage DOJ to streamline its non-death authorization protocol further.

PANEL ATTORNEY RATES

In fiscal year 2010, Congress approved a \$125 maximum hourly rate at which panel attorneys may be compensated in non-capital cases, which is \$16 below the fiscal year 2014 statutory maximum rate of \$141 (the statute provides for inflationary adjustments to the rate, subject to the availability of funds.) For fiscal year 2014, the judiciary projects that panel attorneys will be appointed in 92,900 cases (42.1 percent of the total projected CJA caseload).

The CJA authorizes the Judicial Conference to implement annual cost-of-living adjustments (COLAs) for panel attorney rates. Congress has not fully funded these adjustments. If COLAs had been provided annually as authorized by the statute, using OMB-projected inflationary adjustments, the non-capital rate would reach \$141 in fiscal year 2014. While the judiciary firmly believes that the full statutory rate of \$141 is justified for fiscal year 2014, it recognizes the fiscal pressures Congress faces. Consequently, the judiciary has again deferred seeking the full statutory non-capital rate for fiscal year 2014, but is requesting a one-year cost-of-living adjustment to increase the non-capital rate by \$1 to an estimated \$126, and increase the capital rate by \$2 to an estimated \$180 per hour. The non-capital CJA hourly panel attorney rate is meant to cover both overhead (approximately \$70 per hour) and a fair hourly fee. After deducting overhead, panel attorneys average \$55 per hour before taxes (at the \$125 rate).

JUSTIFICATION OF CHANGES

The fiscal year 2014 request for appropriated funds is \$1,068.6 million, an increase of \$31.3 million (3.0 percent) over the fiscal year 2013 assumed appropriation of \$1,037.3 million. Of this amount, \$12.5 million is associated with pay and inflationary increases; \$11.3 million is associated with additional projected representations in fiscal year 2014; and \$7.5 million is associated with expected changes in non-appropriated sources of funding. The judiciary is requesting no program increases in this account.

ADJUSTMENTS TO BASE

The following narrative provides information and justification for each of the adjustments to base for this account.

A. PAY AND BENEFIT ADJUSTMENTS

1. Proposed January 2014 pay adjustments

a. Federal pay adjustment

Requested Increase: \$3,338,000

As of February 2013, the Office of Management and Budget is projecting that federal pay rates will increase by an average of 1.0 percent beginning on or after January 1, 2014. The requested increase provides for the cost of nine months of the anticipated pay increase in fiscal year 2014.

b. Panel attorney capital ECI rate adjustment

Requested Increase: \$243,000

The requested funding would increase the capital panel attorney hourly rate by an assumed ECI adjustment of 1.0 percent. This would increase the hourly rate from \$178 to an estimated \$180, effective January 1, 2014. There is a time delay between when the rate increase is implemented and when vouchers are submitted with the higher rate. Therefore, the requested increase provides for the cost of three months of the rate increase in fiscal year 2014.

c. Panel attorney non-capital ECI rate adjustment

Requested Increase: \$345,000

The requested funding would increase the non-capital panel attorney hourly rate by an assumed ECI adjustment of 1.0 percent. This would increase the hourly rate from \$125 to an estimated \$126, effective January 1, 2014. There is a time delay between when the rate increase is implemented and when vouchers are submitted with the higher rate. Therefore, the requested increase provides for the cost of three months of the adjustment in fiscal year 2014.

2. Promotions and within-grade increases

Requested Increase: \$3,336,000

The requested increase provides for promotions and within-grade increases for FDO personnel. The salary plan for federal defender personnel provides for periodic within-grade increases for staff who achieve at least satisfactory performance ratings.

3. Health benefits increase

Requested Increase: \$1,049,000

Based on information from the Office of Personnel Management, health benefit premium contributions are projected to increase by 3.3 percent in January 2013 and 3.3 percent in January 2014. The requested increase annualizes the 2013 premium increase, and includes a nine-month provision for the anticipated fiscal year 2014 premium increase and other changes.

4. FICA increase

Requested Increase: \$299,000

Funds are requested to provide for the base adjustment in employer contributions to the Old Age, Survivor, and Disability Insurance (OASDI) portion of the FICA tax. The salary cap for OASDI is estimated to increase from \$110,100 in January 2012 to \$113,700 in January 2013. The requested increase estimates the additional agency contribution.

B. OTHER ADJUSTMENTS

5. General inflationary adjustments

Requested Increase: \$2,660,000

Consistent with guidance from the Office of Management and Budget, \$2.7 million is required to fund inflationary increases of 1.9 percent for operating expenses such as travel, utilities, contractual services, supplies and materials, and furniture and equipment.

6. Inflationary increases in space rental costs

Requested Increase: \$1,265,000

FDOs are located in both courthouses and private commercial office space. The amount requested funds inflationary increases of 2.5 percent for current space in fiscal year 2014.

7. Change in fiscal year 2014 caseload

a. Change in FDO weighted caseload

Requested Increase: \$6,353,000 FTE: 29

The requested increase provides for costs due to projected changes in the capital and non-capital weighted caseload. These cases include drug offenses, weapon violations, immigration matters, fraud, and other criminal and non-

criminal matters, resulting in a projected increase of 1,276 weighted cases in fiscal year 2014. The requested additional 29 FTE (58 attorney and non-attorney staff) will be required for this additional weighted caseload, using the previously discussed case-weights methodology.

b. Change in panel attorney caseload

Requested Increase: \$4,963,000

The requested increase provides for costs due to projected changes in the panel attorney capital and non-capital caseload. These cases include drug offenses, weapon violations, immigration matters, fraud, and other criminal and non-criminal matters.

Projected CJA Representations			
	FY 2013	FY 2014	Difference
Federal Defender Organizations*	115,055	116,331	1,276
Panel Attorneys	92,300	92,900	600
Total Projected Representations	207,355	209,231	1,876

* FDO caseload projections are based on raw cases converted to weighted cases

8. Increase in appropriation to maintain fiscal year 2013 requirements due to a decrease in non-appropriated source of funds

Requested Increase: \$7,461,000

The defender services program has been able to reduce requirements for appropriated funds through the use of unobligated no-year funds carried forward from prior fiscal years. In fiscal year 2013, \$17.5 million in balances from fiscal year 2012 was available to finance fiscal year 2013 requirements. In fiscal year 2014, the judiciary expects \$10.0 million in non-appropriated funds to be available, a decrease of \$7.5 million from fiscal year 2013. Therefore, \$7.5 million in funding is requested to substitute direct appropriations for base expenses previously funded from carryforward balances.

FINANCING THE FISCAL YEAR 2014 REQUEST

9. Anticipated carryforward from fiscal year 2013 into fiscal year 2014.

Estimated funds available: \$10,000,000

The judiciary projects \$10.0 million will be available through anticipated savings to carry forward from fiscal year 2013 into fiscal year 2014 and offset the fiscal year 2014 appropriation request for the defender services program. Savings are related to expected unobligated FDO funds. The judiciary will advise appropriations subcommittee staffs of changes to this estimate.