



# A Federal Public Defender's Perspective



*There is a maxim attributed to many sources that a society is best judged by how it treats the least of its citizens. Perhaps if the federal defender program had a motto, that would be it.*

**BY PAUL D. HAZLEHURST**

The federal public defender system plays an integral role in federal criminal practice. It serves as counsel for the majority of defendants unable to provide financially for their own defense. It also supplies critical support and training for attorneys appointed under the Criminal Justice Act (CJA) to counsel clients who are not represented by federal defenders. As such, it is the bulwark of the federal criminal defense bar. Given these roles, it is difficult to imagine life without it.

I admit I may have some bias in the matter. I am a public defender by vocation and inclination. I currently serve as an assistant federal public defender in the District of Maryland. I have filled that role in two different incarnations, first from 1994 to 2010, then from 2012 to the present. In between, I was briefly in private practice, during which time I was a very active member of the CJA panel (a public defender in private enterprise, as I liked to think of it). Before coming to the federal office, I was a state public defender in Maryland from the time I was licensed until 1994.

When I was asked to write this article, it was put to me as “A Day in the Life of an Assistant Federal Public Defender.” I will try, at least in a general sense, to do that. But given that this year celebrates the 50th anniversary of the passage of the CJA, which has been called the gold standard of public defense.<sup>1</sup> I also thought it important, if only to inform my own sense of self, to explore the origins of the federal defender program.

#### **The History and Evolution of the Federal Public Defender Program**

Of all institutions at work in the federal court, the defender program is by far the newcomer. Imagine, if you will, that each entity is represented by a portrait. The courts and the office of the U.S. attorney, both dating to 1789, would be oil paintings, formally posed and suffused with the glow of old money. Even federal probation, which traces its origin to 1925, would most likely be represented by a stately black-and-white photo housed in a handsome art deco frame. The defender program? It would be a color photo from the Sears studio of a freckled, innocent-looking youth with a nice smile and a mop 1970s-era haircut—the type of picture all of those who lived through that period now strive to keep off Facebook. The mental image is appropriate, though, as emblematic of a fresh attitude, a child of the Kennedy New Frontier.



The CJA was the first successful legislative attempt to comprehensively address the substance of the right to counsel in a criminal case. The evolution of the debate that led to passage of the act, and specifically the concept of professional defenders, has been amply set forth by scholars, and I will not attempt to fully repeat or better those accounts here.<sup>2</sup> Nevertheless, it is important to at least review the origins of the idea that a meaningful right to counsel requires that the task not be left to inexperienced lawyers or be required solely as a function of pro bono service.

The idea of creating a defender program was first broached in 1937 by the Judicial Conference of the United States.<sup>3</sup> A bill to create such a program was introduced in Congress in 1939 but was unsuccessful. It was not until the formation of the Allen Committee by Attorney General Robert F. Kennedy in 1961 that the concept of a federal defender program gained any real footing. Officially entitled the Attorney General's Committee on Poverty and the Administration of Justice, the body issued a report (the Allen Report) that recommended the creation of a professional defender system. The committee's report became the essence of the bill that passed the Senate on the way to becoming the Criminal Justice Act of 1964. Unfortunately, the defender portion of the bill did not survive conference committee, and the final law instituted only a system to recompense appointed counsel.<sup>4</sup>

While the idea of defender offices hanged legislative fire from the 1930s onward, the Sixth Amendment right to counsel expanded in the courts. The Supreme Court held in *Johnston v. Zerbst*<sup>5</sup> that counsel must be appointed for criminal defendants in federal court and extended the right to state capital prosecutions in *Powell v. Alabama*.<sup>6</sup> The Court refused to expand that ruling to state noncapital cases in *Betts v. Brady*<sup>7</sup> in 1942 but overruled *Betts* in *Gideon v. Wainwright*,<sup>8</sup> which truly provided the birthright for the defender system. Unfortunately, all of these developments came with no corresponding financial backing to pay counsel, nor any authority for the hiring of investigators or experts. The result was that lawyers with little or no experience, no financial incentive in the representation, and no resources other than those they provided themselves were left to safeguard the rights of the accused. The quality of service rendered under these circumstances was predictably uneven at best.

There was no consensus as to the solution to this problem. Some saw no problem. Prior to the passage of the Criminal Justice Act, a survey of federal prosecutors and district judges manifested a belief that the system of appointed counsel without compensation provided adequate representation, though both groups largely favored a move to paid lawyers.<sup>9</sup> Others vehemently opposed the idea of public defenders. One federal judge, in particular, viewed the idea of a paid system of defenders as emblematic of a totalitarian system and questioned how a defendant would react when learning that both his attorney and the prosecutor were employed by the state.<sup>10</sup>

Such criticism certainly slowed the move to a defender system. Nevertheless, in 1967, the Judicial Conference's Committee to Implement the Criminal Justice Act and the Department of Justice commissioned a study to consider possible improvements to the CJA. The study, known as the Oaks Report, concluded that certain large urban districts were having difficulty fulfilling the need for experienced counsel from the list of potential panel appointees.<sup>11</sup> It recommended giving those districts the option to employ full-time salaried defenders. This suggestion was the basis for the 1970 amendment to the CJA which authorized formation of defender organizations in districts

or parts of districts in which "at least two hundred persons annually require the services of appointed counsel."<sup>12</sup> Two types of offices were specified: federal public defender organizations and community defender organizations. A federal public defender office consists of salaried federal employees. The community defender versions are nonprofit organizations that may receive "initial and sustaining grants from the federal judiciary" but are governed by a board of directors.<sup>13</sup>

By 1976, there were 22 federal public defender offices in existence and nine community defender organizations.<sup>14</sup> For that fiscal year, 35 percent of the defendants represented under the Criminal Justice Act (47,000 people in total) were counseled by defender offices.<sup>15</sup> By 1995, there were 48 federal defender offices operating in 58 federal districts, as well as 11 community defender organizations in 13 districts.<sup>16</sup> Of the 89,000 defendants represented under the Criminal Justice Act, almost exactly half had lawyers from defender offices and half from CJA appointments.<sup>17</sup> According to the U.S. Courts website, today there are 81 defender organizations operating in all but three of the 94 judicial districts. These organizations employ more than 3,100 lawyers and receive approximately 60 percent of the total appointments under the Criminal Justice Act.<sup>18</sup> In fiscal year 2013, 230,000 people were represented by defenders and panel attorneys.<sup>19</sup>

## My Experience as an Assistant Federal Public Defender

I currently serve as an assistant federal public defender in the District of Maryland. My cases largely come from the Northern Division and are heard in Baltimore. I practice in the land made famous (infamous if you are Baltimore's mayor) by the HBO production *The Wire*, the NBC drama *Homicide*, *Life on the Streets*, and the National Public Radio podcast *Serial*. I must admit that I never watched either series nor listened to the podcast. I remember a conversation with a probation officer who asked me if I was a fan of *The Wire*. I told him that I did not watch it. He was surprised, saying, "But that's what we do." I replied, "Exactly." I also, far less frequently, have cases in the Southern Division, which are heard in the courthouse in Greenbelt, a suburb of Washington, D.C.

My office—which is of the federal defender model—celebrated its 40th birthday in 2014. When the office first opened, there was a federal public defender and two assistant federal public defenders. In 1975, the office handled 600 cases. In addition to the current federal defender, James Wyda, there are now 22 assistant defenders. In the last fiscal year, the office handled 2,631 cases. We defend people charged with felonies in both divisions, as well as defendants charged with misdemeanors, petty and traffic offenses that are alleged to have been committed on the numerous federal installations in Maryland. We also represent our clients through all stages of appellate review. I doubt any other law firm can match the breadth of our practice. From driving offenses to large-scale drug conspiracies, racketeering to environmental crimes, homicide to political corruption, complex fraud cases to terrorism, the office does it all. A colleague likes to call us "expert generalists." In addition to representing people in court, the office also acts as a source of information for the 140 CJA attorneys who are eligible to be appointed in cases in which the office is not involved. This role includes holding semi-annual training seminars for the panel.

As I reflect on my personal experience, I have been counsel in everything from capital cases to those charging the illegal taking of migratory waterfowl. I do not usually handle white-collar cases, so that perspective may be lacking. I have had to contend with cases involving intense media speculation, but, more often than not, ones

that mattered most only to my client and myself. I will not drag you through the weeds of my daily existence, but I will attempt to provide an overview of the progression of a typical case before reflecting on what I think I have learned from my time as a defender.

### **The Progress of a Typical Federal Criminal Case**

The initial step is usually a call from a courtroom deputy clerk that a case has been set for initial appearance before a magistrate judge. We are always the last to know. The government is always the first. To bring a defendant into court, the government must first file a charge. By definition, they initiate the process. More often than not, it is by indictment. It can, however, be by complaint in which a law enforcement officer provides an affidavit to establish, to the satisfaction of a judicial officer, probable cause that a crime has been committed and that your client is the one who committed it. A duty

through police lockups, and others may have been delivered from state custody when their state charges were dismissed in lieu of federal prosecution. No matter the point of origin, all are eager for information and experiencing some mix of fear, anger, and anxiety.

Upon meeting the client, one tries to gather as much information as possible and make some quick analysis not only as to whether there is an appreciable opportunity to gain pretrial release but also what path the case is likely to take. One of the most wrenching decisions faced by client and counsel in the federal system is whether, from the earliest possible moment, it is a good idea to have the client sit down with prosecutors and government agents to provide information. It does not happen in every case. We often encounter situations in this district in which the client is intercepted on the highways or at an airport or other port of entry allegedly carrying narcotics. The law enforcement push is to have the cli-

*There are several reasons to wish to be the first to meet the client. The first is fairly apparent: No good defense attorney ever wants a client speaking to anyone, much less an employee of the government who directly reports to the court, without being present. The second is rapport.*

attorney is scheduled in the office for each working day. That attorney is responsible for handling all court calls as well as any requests for information from the general public or panel attorneys.

Before we have an opportunity to meet our prospective client, he or she is often interviewed by someone from Pretrial Services. Pretrial Services acts as an agent of the court, ostensibly to gather information that reflects on the subject of pretrial release. By statute, the information gained is supposed to remain confidential and be made available only to the court, the prosecutor, and defense counsel.<sup>20</sup> During this interview, the Pretrial Services officer will question the defendant about his or her background, including such potentially damning subjects as whether they have ever had any gang affiliation or are currently using drugs. Much to our chagrin and despite our best efforts, we have never been able, as a matter of protocol, to ensure that we are at least present for this meeting, much less have an opportunity to meet with the defendant before the Pretrial Services interview.

There are several reasons, from a defender perspective, to wish to be the first to meet the client. The first is fairly apparent: No good defense attorney ever wants a client speaking to anyone, much less an employee of the government who directly reports to the court, without being present. And though Pretrial Services is ostensibly neutral in the process, it is not all about finding out what's good about the client. The second is rapport. Very few of the defendants facing initial appearance have ever been in federal court. Even if they have incurred state criminal charges in the past, federal court is an entirely alien experience. It is important, from a client trust standpoint, to be there for them early and often. Some of them have been plucked off the street and brought directly to the federal courthouse, some may have wended their way

ent turn and complete the delivery before the intended recipient knows something is amiss. The recipient is then arrested, and the process repeats with the government hoping to climb the ladder to the leader of the enterprise. If one takes this step, with very few exceptions, it is a path to a guilty plea. It may be a plea that results in a relatively favorable resolution that avoids mandatory minimum sentences and sentencing guideline enhancements, but it will still end in a conviction. The rare client will decide before he meets counsel if this is the proper path. Usually, the defendant will look to the lawyer, who will have to beg as much information as can be gained from the prosecutor about the government's evidence and the client's exposure to punishment. It is lawyering on the fly with potentially huge implications. To gain maximum benefit in cases where the government seeks instant cooperation, there may be, at most, a day to help the client decide which way to go.

If pretrial release is the most pressing issue, the task is to try to get as much background information as possible, including the names and contact information for family or friends that may be willing to supervise the defendant as third-party custodians. Detention before trial is not an enviable option where I practice. Unlike some jurisdictions, there is no federal pretrial detention facility in Maryland. Not that a federally run facility would necessarily make things better. It used to be that the U.S. Marshals Service would house federal detainees in county jails surrounding Baltimore and Washington, D.C. That practice was deemed too costly. The state of Maryland then converted what once had been colloquially known as Supermax—its prison for the most difficult of state inmates—to a pretrial facility in which it now houses federal detainees in Baltimore under a contract with the

federal government. One might question how easy it is to convert the severest of prisons to a facility to house those who have never been convicted of a crime. The answer, from an empirical perspective, is that it is not easy. The place is especially restrictive and without sufficient recreational facilities (probably because it is built like a fortress). Clients complain that it is too hot in summer, too cold in winter, and has poor food and bad medical care. I have found, sometimes despite the best efforts of the staff at the facility or the federal marshals, that the complaints are usually valid. The client has no one to turn to other than his lawyer to make things better.

If a client proceeds to a hearing on the issue of release—in a bad case of foreshadowing, they are called detention hearings in Maryland—the likelihood, in my experience, is that they will be locked up pending trial. Under the federal Bail Reform Act, the court must consider two issues: whether the defendant poses a risk of flight and whether he poses a danger to the community.<sup>21</sup> Presumptions against release apply in certain categories of cases, most notably those involving drugs.<sup>22</sup> The best results in detention hearings are usually obtained when an agreement can be reached in advance of the hearing for the client to go home to the third-party custody of another individual. Pretrial release to drug treatment or a halfway house has largely evaporated as a possibility in recent years due to cost and unavailability. The last time I sought release for a client to a halfway house was in early November 2014. I was told bed space would be available in February 2015.

Once the issue of release or detention has been determined, the next official step is arraignment. Unlike the practice in many state courts where a possible plea agreement is discussed and many cases are resolved, arraignment in federal court is a short proceeding where a formal plea of not guilty is entered and a schedule for the case is presented. The issue of discovery (or production of the evidence upon which the government will rely at trial) is also first mentioned here. The prevailing practice in the District of Maryland is for defense attorneys to enter into a “standard” discovery agreement with the government. The positive effect of signing such an agreement is that it may result in certain pieces of evidence—such as the statements of government witnesses—being produced far earlier than required by case law or the federal rules of procedure. Such information is often critical in trying to assess a case. One major downside is that these agreements stipulate that a copy of the discovery cannot be given to the client. It may be reviewed in the client’s presence, but he or she may not keep a copy.

The schedule presented at the arraignment varies with the judge who is randomly assigned to the case. Some merely set a date for a pretrial conference, some provide dates by which motions must be filed, and some include an actual trial date. Whether to file a substantive pretrial motion is the first real decision of any consequence. In those situations where there appears to be a legitimate issue—for instance, what looks to be an illegal arrest or a bad search in violation of the Fourth Amendment—the client must start to make some very difficult choices. In helping my son prepare for his third-grade social studies test on economics recently, I was astonished to find the term “opportunity cost” among the required vocabulary. It was not a term I was familiar with in third grade, but it aptly defines the crossroads reached by the client. Opportunity cost is defined by the New Oxford American Dictionary as “the loss of potential gain from other alternatives when one alternative is chosen.”

In Maryland, when a defendant files a substantive motion and the

government is required to answer the motion in writing, much less proceed to a contested hearing on the matter, the government’s position is that such activity is inconsistent with full acceptance of responsibility. Acceptance of responsibility is a concept incorporated into the federal sentencing guidelines that provides for a two-level reduction in the advisory guideline offense level for clearly demonstrating acceptance of responsibility (read: entering a guilty plea), plus a third level, upon motion of the government, if the defendant “has timely notified authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently.”<sup>23</sup> In other words, if a defendant chooses to challenge the prosecution, even on a pretrial matter, the opportunity cost is at least forfeiting the third point for acceptance of responsibility. Winning a contested motion is rare. In the greater scheme of things, depending on factors such as the nature of the offense and the defendant’s criminal history, forfeiting one offense level to require that the government answer a motion may not result in a huge increase in sentence if the defendant is ultimately convicted. That obscures the larger issue. The mere existence of the acceptance of responsibility provision begs the question of what the resources of the government and the court are for if not for trial? Why is there a built-in premium for a guilty plea? The rate of federal criminal trials has steadily diminished over the last several decades.<sup>24</sup> The opportunity cost to the client may explain why, but it is an extremely troubling explanation.

As the case moves forward and the question becomes whether to proceed to trial, the opportunity cost mushrooms. Part of any negotiation in any federal drug or firearm case with a defendant with any appreciable criminal record involves attempting to avoid guideline enhancements or statutory mandatory minimum sentences. For a defendant in a drug case who proceeds to trial and has prior convictions for similar conduct, the federal code contains provisions that permit the government conceivably to seek a mandatory sentence of life in prison.<sup>25</sup> A defendant who is considered a career offender<sup>26</sup> under the sentencing guidelines and is convicted of using or carrying a firearm in relation to any drug-trafficking crime or crime of violence faces a guideline sentencing range of 360 months to life if convicted after trial.<sup>27</sup> If a defendant elects to proceed to trial, these potential outcomes loom large like the iceberg to the *Titanic*.

I am especially cautious in advising the clients I am charged with defending. No one in their right mind would advise a client facing such draconian penalties to test the government’s evidence unless there were some strong certainty of success. I can well remember, after leaving the state public defender’s office with great confidence in my trial skills, remarking to one of my new federal defender colleagues how eager I was to try cases in federal court. That was met with a chuckle and, “You’re in the wrong place.” That was in 1994, and I cannot say that things have gotten better. There have been trials, but they have been carefully vetted with clients. Certainly gone are the days of state court where I could have what I term a “trial in mitigation,” in which the law might be against me, but I believe the client would be better off with a fuller airing of the facts than the court would tolerate at a sentencing hearing after a guilty plea. Choosing trial, unless the client is acquitted, has a built-in penalty in federal court.

David Patton, executive director of the Federal Defenders of New York, in an excellent essay entitled “Federal Public Defense in an Age of Inquisition,” said, “Today’s defendant is typically better served by an attorney who is a skilled counselor, negotiator, and mitigator than



by a great trial lawyer. ... [T]rial skills are still a vital part of good federal defense work. But as a relative matter, they count far less than they used to.”<sup>28</sup> I could not agree more. Trial skills for a defense attorney in federal court are akin to a standing army for a small country. You need them to keep the peace by ensuring the prosecutor knows you are willing and capable of defending your client in open court. But if you have to use them, there is a good chance you will use them in bloody vain. That is not intended to sound defeatist or as a reflection on skill or resources. My colleagues are excellent trial attorneys—the best, in my opinion—and I am very confident in my courtroom abilities. Defender offices, thanks to the CJA, are well-provisioned to fight. But we start at a disadvantage. Federal prosecutors choose the cases they wish to prosecute as well as the charges they wish to file. They make the potential consequences of a pitched battle so dire that the only rational decision is usually not to fight (at least at trial). It is dangerous to be a pugnacious defense lawyer in the federal system. Going to war with the government may be personally, emotionally satisfying—but not at the client’s risk. That’s not what we signed on to do. Our efforts are usually better directed to maintaining a rapport with the client so that he will listen to advice (counselor), defusing the threats posed by mandatory minimum sentences and guideline enhancements (negotiator), and presenting the client in the most favorable light at sentencing (mitigator).

As most cases end in guilty pleas, significant effort is expended in preparing for sentencing. From the beginning, the CJA was forward-looking in allocating for the use of investigators and experts by appointed counsel. The importance of both resources are especially crucial today. My office maintains a staff of excellent investigators, including one whose expertise lies in social work. They are important to the traditional task of investigating the case and preparing for a possible trial, but they are equally crucial in preparing for sentencing. Counsel trained to defend capital cases learn to follow a dual track in investigation. They not only deconstruct the government’s case, they

changed, there was a huge influx of what we call gun cases. These usually charge a defendant who already has a felony conviction with possessing a firearm. If a defendant has three prior convictions for crimes of violence or serious drug offenses, the offense carries a minimum mandatory sentence of 15 years.<sup>29</sup> Then came a wave of child pornography cases, and now added to the mix are so-called Hobbs Act robberies, or robberies that affect interstate commerce. That pretty much means any type of robbery that involves a commercial establishment. Federal jurisdiction is expansive, and almost every conceivable criminal offense seems to have a “federal hook.”

Penalties in federal court are usually orders of magnitude higher than those in state court. Many of my clients have state criminal records, usually from Baltimore city, where the court system is overwhelmed and there is significant pretrial delay during which the defendants linger for extended periods in jail. Sometimes defendants in less-than-worthy state prosecutions may plead guilty to avoid yet another postponement and because they want to go home. The sentences imposed in such cases often are for time served during pretrial detention with a period of probation to follow. A client with one or more prior drug distribution charges in state court for which he or she may have served three years of total incarceration—most of it in jail awaiting trial—may find himself in federal court facing a 10-year or greater mandatory minimum sentence. The only out is if he or she is willing to cooperate with the authorities and plead guilty. Some of the most pathetic cases we handle are of relatively low-level conspirators who face heavy penalties but don’t have enough information to bargain their way out of trouble.

Clients are often in such a state of disbelief, or sticker shock, upon being informed of the potential time they are facing that they doubt if I am telling them the truth. It is just one of many issues that can prey on the mind of a defendant in federal court. I am white (as are most of the people who sit on juries in this district), and most of my clients are African American. I am 52 and usually

*Clients are often in such a state of disbelief ... upon being informed of the potential time they are facing that they doubt if I am telling them the truth. It is just one of many issues that can prey on the mind of a defendant in federal court.*

also deconstruct their client’s lives in anticipation of a penalty phase. This requires interviews of family members, extensive gathering of educational and medical records, and, often, consultation with mental health and other experts. These activities are carried out, albeit on a smaller scale, in almost every case handled by my office. The focus is on being able to “translate” your client to the court. You must explain, in as favorable a way as possible, why criminal conduct occurred and, more important, why there is a good chance it will never happen again.

### **Lasting Impressions**

When I began work as a federal defender in 1994, the office caseload consisted mainly of drug cases. Then, as prosecutorial initiatives

10 to 20 years older, if not more, than most of my clients. They are aware that I am a federal defender and that I am paid by the federal government. They are also aware that I have a larger caseload than an appointed attorney would and that I will be paid regardless of the effort I expend on their case. When they ask for a copy of the evidence against them, I tell them I cannot give it to them unless we file a motion to get it, in which case much of it will be taken back and not produced by the government until just before the trial date. All of these things cloud the background and make my job that much harder. Consistent visits and diligence will usually win over clients, but their concerns are understandable. Some defendants’ dismay has become so extreme as to cause them to claim—citing

bizarre and convoluted quasi-legal theories—that they are immune from federal prosecution.<sup>30</sup> I attribute it to these defendants feeling that the social contract is so out of whack that their rights, if not their very lives, are being so suffocated by the power of the federal government that they are simply trying to find a way to opt out. If you think about it, it's not a wholly different motivation than what prompted Declaration of Independence.

The fact is that government's power within the federal criminal justice system is crushing. There is no better illustration of this than the existence of mandatory minimum sentences. The government has huge resources to investigate and prosecute cases. Once it brings a charge, there is a significant likelihood it will prevail. If a mandatory minimum applies, a judge has no authority to ignore it. The only exception is if the government moves for a sentence reduction based on cooperation. The prosecutor controls. History has demonstrated time and time again that concentrating power in one person or entity without any equivalent check leads to significant mischief. Our system of government is predicated on this premise. How it has come to be ignored in the criminal justice system is mystifying. The fact that the sentencing guidelines are now advisory instead of mandatory has made the system only slightly less coercive. Judges still largely appear to adhere to the punishment suggested by the guidelines, if only because they are familiar. All in all, there is something fundamentally wrong with a system that so smothers a defendant and the exercise of his or her fundamental rights.

There is a maxim attributed to many sources that a society is best judged by how it treats the least of its citizens. Perhaps if the federal defender program had a motto, that would be it. I am extremely proud to be a defender and believe that the reforms introduced by the Criminal Justice Act—including, ultimately, the creation of a national defender program—have indeed advanced the cause of justice on behalf of the accused in federal court. Unfortunately, my experience leads me to believe that these positive changes have limited value in a system so tilted to favor one side. Balance needs to be restored, if balance there ever was, for the Criminal Justice Act to fulfill its true promise. ☉



*Paul D. Hazlehurst is an assistant federal public defender for the District of Maryland in Baltimore. He served in that capacity from 1994 to 2010, was in private practice from 2010 to 2012 and returned to the federal defender's office in 2012. He was also an assistant public defender in the state courts of Maryland from 1991 to 1994. During 2009, Hazlehurst served on*

*temporary assignment from the federal defender program as counsel to the U.S. Senate Committee on the Judiciary for Sen. Edward M. Kennedy. He is a graduate of the University of North Carolina—Chapel Hill, and the University Of Maryland School of Law. © 2015 Paul D. Hazlehurst. All rights reserved.*

## Endnotes

<sup>1</sup>See *Criminal Justice Act: At 50 Years, a Landmark in the Right to Counsel*, available at [news.uscourts.gov/criminal-justice-act-50-years-landmark-right-counsel](http://news.uscourts.gov/criminal-justice-act-50-years-landmark-right-counsel).

<sup>2</sup>See Geoffrey Cheshire, *A History of the Criminal Justice Act of*

*1964*, *THE FEDERAL LAWYER*, March 2013, at 47.

<sup>3</sup>See John J. Haugh, *The Federal Criminal Justice Act of 1964: Catalyst in the Continuing Foundation of the Rights of the Criminal Defendant*, 41 *NOTRE DAME L. REV.* 996, 997 (1966).

<sup>4</sup>See Hon. Dudley B. Bonsal, *The Criminal Justice Act, 1964 to 1976*, 52 *IND. L.J.* 135, 136, n. 9 (1976).

<sup>5</sup>304 U.S. 458 (1938).

<sup>6</sup>287 U.S. 45 (1932).

<sup>7</sup>316 U.S. 455 (1942).

<sup>8</sup>372 U.S. 335 (1963).

<sup>9</sup>Haugh, *The Federal Criminal Justice Act of 1964: Catalyst in the Continuing Foundation of the Rights of the Criminal Defendant*, 41 *NOTRE DAME L. REV.* at 998, n. 17.

<sup>10</sup>Hon. Edward J. Dimock, *A Step Toward a Police State*, 41 *A.B.A.J.* 219, 220 (1956).

<sup>11</sup>See Oaks, *Improving the Criminal Justice Act*, 55 *A.B.A.J.* 217, 221 (1969).

<sup>12</sup>18 U.S.C. § 3006A(g)(1).

<sup>13</sup>Bonsal, *The Criminal Justice Act, 1964-1976*, at 135.

<sup>14</sup>*Id.* at 135, n. 53.

<sup>15</sup>*Id.* at 135.

<sup>16</sup>See John J. Cleary, *Federal Defender Services, Serving the System or the Client*, 58 *LAW & CONTEMP. PROBS.* 68. (Winter 1995).

<sup>17</sup>*Id.*

<sup>18</sup>United States Courts, *Appointment of Counsel*, available at [www.uscourts.gov/FederalCourts/AppointmentOfCounsel.aspx](http://www.uscourts.gov/FederalCourts/AppointmentOfCounsel.aspx).

<sup>19</sup>United States Courts, *Criminal Justice Act: At 50 Years, a Landmark in the Right to Counsel*, (2014), available at [news.uscourts.gov/criminal-justice-act-50-years-landmark-right-counsel](http://news.uscourts.gov/criminal-justice-act-50-years-landmark-right-counsel).

<sup>20</sup>See 18 U.S.C. § 3153-3154.

<sup>21</sup>18 U.S.C. § 3142(f).

<sup>22</sup>18 U.S.C. § 3142(e)(2).

<sup>23</sup>United States Sentencing Commission, *Guidelines Manual*, § 3E1.1(b) (Nov. 2014).

<sup>24</sup>David E. Patton, *Federal Public Defense in an Age of Inquisition*, 122 *YALE L. J.* 2578, 2599, n. 98 (June 2013).

<sup>25</sup>21 U.S.C. § 841(b).

<sup>26</sup>A defendant is considered a career offender if: (1) the defendant was at least 18 years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled-substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled-substance offense. USSG § 4B1.1(a) (Nov. 2014). Prior felony conviction means a prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed. USSG 4B1.2, n.2 (Nov. 2014).

<sup>27</sup>USSG § 4B1.1(c)(3) (Nov. 2014).

<sup>28</sup>Patton, *Federal Public Defense in an Age of Inquisition*, 122 *YALE L. J.* at 2599.

<sup>29</sup>18 U.S.C. § 924(e)(1).

<sup>30</sup>See *United States v. Mitchell*, 405 F.2d 602, 603 (2005) (explaining the so-called “flesh and blood” defense).