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February 4, 2016

**Via E-mail to CJAstudy@ao.uscourts.gov – and –
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Hon. Kathleen Cardone, Chair
Ad Hoc Committee to Review the CJA Program
Thurgood Marshall Federal Judiciary Building
One Columbus Circle
Washington, DC 20544

Re: CJA Panel Hearing February 18-19, 2016
Birmingham, Alabama

Dear Judge Cardone and Honorable Committee Members:

Thank you for giving me the opportunity to appear and present testimony at the Committee's public hearing regarding the structure and function of the Criminal Justice Act.

I am a partner at Jones Walker LLP, and I practice general commercial litigation as well as compliance and white collar defense in New Orleans, Louisiana. I am fortunate to practice with a group of professionals that includes a strong contingent of talented criminal defense attorneys, including several CJA Panel members.

My firm is currently handling several CJA appointments. Generally speaking, we view these appointments as *pro bono* appointments, because the CJA hourly rates, and the per-case maximums, are well below our overhead (allotted attorney salary, paralegal salary, secretary salary, rent, etc.). This is so even though we are a firm whose footprint is primarily in the Gulf South, with billing rates well below national average for the type of work that we do.

In our legal community, I am unaware of many large firms with litigation practices that actively accept CJA Panel appointments, especially in large death penalty matters. Based on my experience, I can surmise why: it is difficult to convince the leadership of firms with significant overhead costs – and with non-litigation attorneys who may not appreciate the *pro bono*

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commitment involved in this work – to allow their attorneys to accept CJA Panel assignments when the economic case for doing so cannot be made.

The fact is that – while we are ostensibly compensated – the compensation does not even meet the overhead cost. And payments are subject to serious delays.

Our firm is currently representing an inmate on Louisiana’s death row in a § 2254 habeas proceedings. In that matter, the trial court granted our client a new trial. In early 2014, after that victory, the State appealed to the U.S. Fifth Circuit. Appellate briefing was complete as of November 2014. As of February 2016, the firm’s several vouchers have not been processed, and no payment has been received.

Moreover, while we are billing at the current CJA rate of \$183/hour for capital work, and while the current non-capital hourly rate is \$129/hour, the State’s Attorney General has retained an outside private attorney to handle *habeas* appeals, including my client’s case, before the Fifth Circuit. This same attorney has represented the State in other matters as Special Counsel. It has been reported that, in those matters, the State’s Special Counsel had been and is being paid at the rate of \$385 per hour.¹ And unlike CJA attorneys who are compensated at less than one-half the amount, the Attorney General’s Special Counsel is not required to submit his invoices to any judge for approval.

Our firm’s experience is different from those of solo and small firms. First, it is true that a large firm can sustain delayed and reduced payments more easily than a small firm, let alone a solo practitioner who relies primarily on CJA appointments. . But these delays nonetheless chill the typical large firm’s leaders from embracing CJA work. If the work of our firm and others similarly situated is considered important, then I believe that the ripple effect is clear: indigent defense is being subjugated, while the progress in meeting the mandate of *Gideon v. Wainwright* is under fire.

Nonetheless, I don’t believe that I need to make the case for having defendants and *habeas* plaintiffs represented by competent counsel, as there is no serious argument that CJA *habeas* attorneys are not essential to the administration of justice. Any detractor need only look to the exonerations marshalled by CJA attorneys to see the folly of such a position. For example, in Louisiana, CJA capital *habeas* counsel have secured the exonerations of many state prisoners. Only two years ago, Glenn Ford, who was wrongly convicted of murder, sentenced to death, and served nearly three decades on Louisiana’s Death Row, was exonerated due to the efforts of

¹ See <http://theadvocate.com/news/13576196-123/abortion-clinic-lawsuit-costs-rising> and http://www.nola.com/politics/index.ssf/2015/07/louisiana_has_spent_330000--_a.html which the undersigned visited Feb. 2, 2016, and which refer to contracts for legal work entered by the State of Louisiana with the attorney retained to represent the State in capital *habeas* proceedings as well as other prominent legal actions. See also <http://www.cnn.com/2016/01/25/politics/supreme-court-mandatory-life-sentences/>, visited Feb. 4, 2016.

dedicated CJA counsel.² Thus, in capital *habeas* cases, it is extremely important that appropriate resources be available to pursue *habeas* claims, as well as potential exonerations.

I must also mention the importance of the partnership between federal defender organizations and CJA Panel attorneys. We are fortunate, at least in Louisiana's Western District, that the Office of the Federal Public Defender lends assistance in processing voucher requests with the district court. This is very helpful and results in more consistency in application, which my colleagues and I fully appreciate. It is important that the federal public defender's office be permitted to continue this activity.

Also, in preparing for the Committee's hearing, I reached out to several of my firm colleagues as well as other Louisiana CJA Panel members about aspects of the CJA Panel program as administered in Louisiana. In my discussions with these attorneys, they described their experiences as CJA Panel members, including the process for the fulfillment of their requests for compensation, as well as that of experts and investigators.

Some of the comments and concerns expressed by my colleagues within and outside of my law firm include:

- Representation of death penalty clients is subject to varying budget approval processes. Sometimes funds that are requested are rejected without adequate explanation.
- CJA Panel attorneys are most concerned with ensuring high-quality representation, to the expense of efficiency, both at trial and in appeals. This is a view that is shared by the judges before whom we appear.
- Even with a simple plea deal, it is almost impossible to handle a case economically under the current compensation rates.
- The submission of the e-vouchers is an administrative headache and increases the cost of the work.
- While the hourly rate has increased since the 1990's and after sequestration dealt a setback, overall caps have not kept pace.
- The guideline for employment of an investigator limits discretionary employment to less than \$1,000, which is barely enough to get a case investigator started. This threshold needs to be raised so that attorneys need not involve the court in the prickly task of determining the need for investigative work, which inevitably risks revealing defense theory. The threshold amount and the cap apply also to

² See <http://www.reuters.com/article/us-usa-deathrow-louisiana-idUSBREA2B06S20140312>, visited Feb. 4, 2016.

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paralegal services, mitigation specialists, and experts. Certain judges have indicated that they will not approve expenses above the cap. This creates an inherent conflict of interest where the attorney is ethically bound to represent his client zealously, but is forced by the guidelines and the likelihood of denial of expense requests to make difficult decisions about the hiring of third party experts and investigators essential to proper defense of the case.

- Several of my colleagues echoed the concerns raised by several other witnesses at these hearings, including that delays in payment of vouchers have been significant.
- A scattering of responses have included that some judges do not compensate lawyers for travel time, notwithstanding that it is an authorized expense under the guidelines.

I look forward to meeting each of you later this month and to answering any questions that you may have.

Very truly yours,



Andrew R. Lee

ARL/jt