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The Honorable Kathleen Cardone
Chair, Ad Hoc Committee to Review
the Criminal Justice Act
Thurgood Marshall Federal Judiciary Building
Washington, D.C. 20544

Re: Birmingham Public Hearing Testimony of Gordon G. Armstrong, III
CJA Panel Attorney District Representative, Southern District of Alabama

Dear Judge Cardone and Members of the Committee:

I would like to thank you all for this opportunity to testify regarding CJA matters of great importance and for your work on this project.

By way of introduction, my name is Gordon Armstrong and I am the CJA Panel Attorney District Representative for the Southern District of Alabama. I have been a panel attorney since 1990 and have served as District Representative since 2000. I am a Past President of the Mobile Criminal Defense Lawyers Association, a former Area Vice President of the Alabama Criminal Defense Lawyers Association, and my current practice focuses on state and federal criminal defense as well as business/collection litigation.

Less than three weeks ago, on February 1st, 2016, I was in a federal courtroom in Mobile, Alabama, and sitting next to my client, a 24 year old African-American woman with no criminal record that I had met just a few shorts months before, began the process of jury selection for her trial to commence immediately following the seating of the jury. Here I was handling another federal criminal case assigned pursuant to the Criminal Justice Act. My client, unmarried and now a high school chemistry teacher, was accused of seven counts of tax fraud dating back to 2012, in violation of Title 26, US Code, Section 7206(2). In short, the government alleged that my client worked for a small, local tax preparing company in Selma, Alabama, and had knowingly falsified customer returns by inflating their earned income so that they'd qualify for Earned Income Credit (EIC). Her fraud, they said, resulted in rather large refunds to the customers. Each of the seven customers received refunds ranging from \$3-\$7 thousand dollars. My client worked for the tax preparing company part time and was paid a set amount per return regardless of the refund amount. The customers who received the proceeds were labeled victims,

and my client became the defendant. The victims, who had all signed the returns and various documents verifying their income, and who each acknowledged receiving and spending the refund checks, were now blaming my client for the fraud. To do otherwise would have been an admission of a federal crime, and each of the single mother “victims” had been promised that they would not get in trouble by cooperating against my client. Approximately 15 witnesses, including 5 IRS Agents, stood ready to testify against my client, and no less than 3 assistant U.S. Attorneys were in court during jury selection for the prosecution. If convicted at trial, she was facing a guideline range of 51-63 months and an estimated intended loss of \$1,369,958 (that’s quite a figure especially on a teacher’s salary).

I offer this case history not to regale a war story, but to premise my comments that such a situation is quite typical of a CJA appointed case in my district these days. Quite often, panel attorneys are called in to defend an individual who has no resources with which to endeavor to defend against a prosecution that has been under investigation for several years. Such individuals are indigent by definition. Though some have experience with the criminal justice system, none have the legal knowledge or training to aid in their own defense. It is no exaggeration that most all are 100% dependent on their CJA counsel to properly evaluate, prepare and put forth a defense. The stakes are quite high. It is literally the panel attorney standing between the accused citizen and the jail house door. Accordingly, if I do nothing else, it is my goal to emphasize that CJA lawyers need the absolute, unequivocal support of the Judiciary to provide the resources and funding with which to properly put forth such a defense. We have no other lobby. As the Season of Lent begins, *Gideon’s* legacy of providing for the defense of the poor takes an ironic, parallel course with Jesus’s instruction to provide for the least of his brothers.

With these thoughts in mind, I offer the following views on some of the issues facing CJA lawyers in the Southern District of Alabama, which are likely similar but may not be the same as other districts throughout the country.

Compensation

This is my biggest area of concern. Though hourly rates recently increased to \$129 per hour, this amount is still woefully low as compared to fees earned outside the CJA system. CJA rates do not keep pace with the remainder of the legal community making it more difficult to convince quality lawyers from the larger, more established firms to join the panel. Quite simply, it is because of the lack of compensation and the fact that they can earn more doing other work.

Currently, the panel in the Southern District of Alabama has 33 lawyers on the trial panel and 5 lawyers on the appellate panel. We also have 7 lawyers on the training panel, which is reserved for newer lawyers hoping to be on the trial panel but in need of experience. Training panel attorneys are not paid for their time. Of these panel participants, only 2 are from firms with more than two lawyers. Most all are solo practitioners.

Sufficient and proper compensation has long been a particularly nasty thorn in the side of the CJA. While there are no CJA panel lawyers who intend to retire from the proceeds earned as a panel member, we have to do more than simply talk about the low pay issue. First, the full amount previously scheduled by statute as reasonable compensation should be authorized by

Congress. Second, this Committee should recommend an increase in the hourly rate to keep pace with the legal community. The recommendation should result in a request that Congress provide full funding to pay the statutory-authorized rate and appropriate cost of living increases.

I understand and appreciate that the Judiciary has long-recognized that an adequate compensation rate is essential to attract qualified panel attorneys. I am also fully aware that Congress funds the CJA, and that budget constraints has resulted in cost containment measures as opposed to increases. Often I'm told to be grateful for any increase. Well, I'm not. Instead, I'm offended by the diplomatic groveling that CJA lawyers and their advocates in the Judiciary are forced to undertake to seek proper compensation. We are already years behind our non-CJA peers in terms of pay, both in the private and government sector, but now we must implore Congress just to fund what the CJA has mandated. Moreover, by comparison, the U.S. Department of Justice pays over \$200 per hour to retain private counsel to represent current or former federal employees in civil, congressional, or criminal proceedings (pursuant to 28 C.F.R. §50.16). And, although hourly rates of compensation for private attorneys vary by region, most respected publications confirm that median billings rates across the country are greater than \$200 per hour, and even far greater in some large metro areas.

Likewise, once adequate funding is provided, corresponding case maximums must be increased to keep in step with hourly increases. Without such consideration, then an increase in the hourly rate has no effect other than to arrive at the case maximum sooner.

This plea for adequate funding is in no way meant to demean the quality of services currently being provided in the Southern District of Alabama. Indeed, our panel is fortunate to have experienced and highly-skilled private attorneys who are committed to providing the absolute best legal service within them. Many on the panel are also considered the top retained attorneys for federal criminal cases. However, an increase in the hourly rate to the full statutorily-authorized amount is the best way to ensure that panels will continue to attract enough qualified private attorneys in the future to take on the complex and important work necessitated by federal criminal cases.

Training

Unlike the compensation issue addressed above, training for CJA Panel lawyers is in a much better position than in years past. CLE training and support for panel lawyers sponsored by the AO Defender Services Office Training Division is a tremendous resource. Additionally, our local federal defender, Southern District of Alabama Federal Defenders, Inc., led by Carlos Williams, sponsors an annual federal CLE for panel lawyers free of charge. This seminar usually provides up to 11 hours of CLE. The emphasis at both the national and local levels to CJA training is sufficient.

Individual Case Resources/Voucher Payments

As in area of training, case resources for funding defense costs (investigators, experts, etc.) and voucher payments are not a critical issue in this district. At national CJA conferences, I hear horror stories about voucher cutting and lack of approval for defense costs from panel

lawyers in other districts. By and large, our district works well in large part to a bench supportive of CJA efforts, and a highly efficient and well-run clerk's office. Our Clerk of Court has been a leader in implementing the electronic submission of panel vouchers (eVoucher). We first started submitting vouchers online in late 2013 while some districts continue to plod toward that goal. The CJA eVoucher system has made it easier to submit vouchers and sped up the approval and turnaround of payment. From personal experience, the typical time frame in our district to receive payment under the cap from time of submission of the voucher by the panel attorney to the date a check arrives in the mail is less than 2 weeks. No one in my district is complaining and I hear of very little voucher cutting. Moreover, I only see improvements once the Circuit "goes live" in July 2016, and even more so when direct deposit is implemented.

Conclusion

Most every CJA lawyer I've met does not expect nor seek an advantage in their cases. They simply want a level playing field. Proper funding and compensation may not level the field, but it will assure that accused citizens do not have to lament their financial inability to retain or provide for a proper defense. Government lawyers are not burdened by this problem, and neither are privately retained lawyers who are free to set their own fees.

Certainly, there are other issues to be addressed, such as electronic discovery, access to clients in remote detention facilities, and proper time allotted to prepare a defense, but many of these can be resolved at our local level.

CJA Panel lawyers are a unique and special breed. They are often assigned the most difficult of tasks, and with a belly full of vim and vigor, proceed with the confidence of a marine storming Normandy. Such Defenders deserve just compensation, and I hope this Committee takes this opportunity to boost the CJA to the level it is designed to achieve, and thereby enhancing the quality of representation that the least among us receive.

Epilogue

Back to my tax fraud trial, after jury selection my client was offered a misdemeanor plea to a single count. I have no doubt that the stand she was willing to take and the work I put forth to properly prepare her case resulted in the successful outcome. I fully expected her acquittal, and despite my own buyer's remorse after the compromised settlement, I know she made the correct decision to accept the offer. A failing CJA system, and by failing I mean underfunded, will diminish such outcomes in the future.

I eagerly look forward to the opportunity to expand on these comments in person.

Sincerely yours,

/s/ Gordon Armstrong

Gordon G. Armstrong, III