

Ad Hoc Committee to Review the Criminal Justice Act

Public Hearing #7—Minneapolis, Minnesota

May 16-17, 2016

Transcript: Panel 4—Views from CJA Attorneys/District Reps.

Judge Cardone: This is our second day of hearings. Before we get started, let me remind everyone, if you have a cell phone, to please silence it and if you are testifying or on our Committee, make sure that if you have iPads or cell phones, that they're not anywhere near the microphones because they tend to make it reverberate. Also, I know we have limited microphones, so if you don't mind sharing, and they're pretty much direct microphones so you have to speak right in to them. Welcome, let me go ahead and introduce our first panel this morning, which is "Views from CJA Attorneys/District Reps".

We have Edward Hunt, CJA Panel Attorney from the Eastern District of Wisconsin; Robert LeBell, CJA District Representative from the Eastern District of Wisconsin; Robert Richman, Board Member, Minnesota Association of Criminal Defense Lawyers; Stephen Swift, CJA District Rep from the Northern District of Iowa; Donald Sauviac, CJA Panel Attorney from the District of North Dakota. Welcome, we're going to get started with each of you making a brief opening statement. We've got your written submissions, and I would just ask you to keep them brief, because we really get a lot from being able to do the question and answer and the exchange, so if you could try to keep it two, three minutes, it would really be helpful, especially with a panel as large as this one is. We'll start with you, Mr. Hunt.

Edward Hunt: Good morning, my name is Edward Hunt. My nickname is EJ. I have been fortunate enough to be a member of the Wisconsin State Bar since 1981. I practiced for most of my career criminal defense work . . .

Judge Cardone: Excuse me, Mr. Hunt, is the green light showing on your microphone?

Edward Hunt: It is.

Judge Cardone: It just needs to be a little bit closer.

Edward Hunt: All right. I practiced for most of my career concentrating on criminal defense work in both state and federal court, both at the trial level and at the appellate level. I'm not exactly sure what you desire from the opening statement. If it's merely background information about me, I'm willing to give that with the thrust of what I believe changes should be, I'm willing to share those.

Judge Cardone: It's the thrust of what you think is important for us.

Edward Hunt: Right, well enough about me then. If we could start with what I think would be an ideal system for delivery of federal indigent defense services, it would be the creation of an independent entity, separate from the judiciary, that is

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charged with responsibility for federal indigent defense services. In particular, let's focus on panel work. It would free judges from the control they presently have over vouchers approval of experts interpreters, and it would, by doing so, insulate federal indigent defense service from judicial interference.

Another change, that's kind of a subheading of the change I propose in terms of an independent entity, is that this independent entity should be comprised of attorneys who have criminal defense experience, and who know the work and have done federal panel work themselves. A few other modest suggestions I have is a change in the way, in complex cases only, the determination is made to waive the fee caps and provide interim billing. I want to emphasize again, in complex cases only. Once a magistrate judge has made the finding that the case is indeed a complex one, there should be an automatic elimination, for lack of a better phrase, of the mandatory fee caps, and establishment of interim payments to panel attorneys.

As it presently exists, and I speak to this in my written testimony, so I won't spend a lot of time on this factor, the panel attorney operates under a financial and ethical crisis that no one else in the case has to think about. That is that he will have to, or she will have to, forego payment for an extended period of time, sometimes two, three, four years, and live on credit cards. Most of the panel attorneys, they're not from big firms; they're solo practitioners, they're small lawyer firms. At the end of the road, they'll face another hurdle; they'll have to apply to the judge for compensation. In, let's say, a twenty defendant case, there will be attorneys who will resolve their cases right away, sometimes not to the benefit of their client.

It creates a problem in that the attorney that wants to fight hard, wants to litigate motions, wants to take a case, on behalf of his client, to trial, because his client wants to do that, he's worried about whether he or she can pay the light bill, whether they can meet their obligations. As I said in my report, there's a danger that, discovery that should be read, motions that should be investigated, research drafted and brief, are not done so. On top of all that, there's a danger that there are cases that should be tried, are not.

Attorneys can be very persuasive, as this court knows. Sometimes they're not persuasive, but to that indigent defendant sitting in that jail cell, he might, or she might, be able to convince that indigent defendant to take a deal that maybe that indigent defendant should not consider at all. I can't help but think that these economic pressures play in. That's, in a general sense, what I wanted to speak to. Thanks.

Judge Cardone: Thank you. Mr. LeBell.

Robert LeBell: Good morning. I set out, in my written submission, some of my ideas, some

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of my concerns, but perhaps what I neglected to do is tell you what was most important from my perspective. That is, I would hope that whatever emanates from this Committee, the recommendations, the specific suggestions, the proposals for legislative changes; all those things should, in my opinion, consider an overarching principle parity. There is categorically, from my perspective as a defense lawyer, no reasonable, logical, ethical, lawful explanation why there should be a distinction between the defense function and the prosecution function. There is no reason why defendants, as defense lawyers we should have to go to the judiciary and basically be beholden to their largesse. It just doesn't make any sense to me.

The prosecution doesn't go through these machinations. We should not have to. It certainly impacts on the quality of representation. Everybody in this room is dedicated to quality representation, more importantly to make sure that defendants, that prosecutors, that we're all on an even playing field. If I hear that term one more time, I don't know what to do with it, because it simply doesn't mean much in practicality from my perspective. Whatever comes out of this particular Committee, whatever the recommendations are, I would hope that the overarching principle is parity.

Judge Cardone: Thank you. Mr. Richman.

Robert Richman: Thank you. My name is Robert Richman, I'm a member of the board of the Minnesota Association of Criminal Defense Lawyers. For thirteen years I was an assistant federal defender in the districts of Massachusetts and Minnesota. I've been a member of the CJA panel since 2000. In my view, in this district, the biggest obstacle to the Criminal Justice Act achieving its purpose of achieving equal justice under law, are the routine voucher cuts by the Eighth Circuit. These are cases in which the district court has signed off on the voucher, in many cases the district court judge has added comments to the voucher attesting to the reasons that the case was complex or extended, and yet still the Eighth Circuit routinely cuts vouchers 10, 15, 20%, on the ground that the voucher is, say, 200% more than the maximum, and that's what Chief Judge Riley states in his reasons.

While, obviously, there is a financial hardship that goes with that, I am more concerned about the message that that conveys. It is very difficult to communicate the message that we want you to zealously represent your clients, but we're not going to pay you for it. Cases in federal court, as every one of you knows, the stakes are extremely high. The mandatory minimums, the penalties are enormous. To give you one example of a typical case, I just finished a case a couple of months ago, it was a child pornography case.

There were issues of statutory interpretation as to the applicability of a mandatory minimum. There were guideline issues. There were variance issues. As a result of which, the government's position was there was a

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mandatory minimum fifteen year penalty, and the government was advocating a sentence of twenty years. My position was that the mandatory minimum was five years, and I was urging a sentence of five years. The district court ultimately agreed with me. I just found out a week ago that the Department of Justice has chosen not to appeal that decision.

What I find most troubling is that in my research I found a case from this district, from a year or two ago, in which the exact same issue had been raised, and CJA counsel did not raise it. As a result, the defendant in that case ended up with a fifteen year plus sentence because there was no argument about the applicability of the mandatory minimum in those circumstances. These cases are not cases for dabblers or neophytes. The stakes are simply too high. Any compensation system that creates disincentives for experienced lawyers, for lawyers who have handled a lot of federal cases, is a system that is not going to ensure the protections of the Sixth Amendment. Thank you.

Judge Cardone: How do you say your name?

Donald Sauviac: Sauviac.

Judge Cardone: Sauviac.

Donald Sauviac: Most people from North Dakota don't talk like this. I'm actually from New Orleans, originally. I've had the privilege of serving on the panel down there, as well as the public defender system and its entire crash following Hurricane Katrina. I'm now located in the Bismarck, North Dakota area. I graduated from law school in '91. I was an honor student who went with the Department of Justice to the immigration facility in Oakdale, Louisiana roughly three years after it was burned to the ground. I was one of the prosecutors who got placed there, stayed with the Department of Justice for approximately a year. I've been in private practice in New Orleans the majority of the rest of the time, doing criminal and civil with a desire to do nothing but criminal defense work ever since serving as a paralegal prior to going to law school. I've had the privilege of serving New Orleans Parish Public Defenders Office for a period of approximately fifteen years under the, so to say, old regime that was in place there. I had also served in a public defender's office across the Lake Pontchartrain, in St. Tammany Parish as a public defender on that side of the lake.

During the course of all of that, I had a private practice, which was pretty much exclusively criminal, traffic and DWI work. I've also served as a CJA panel now going on twenty plus years in New Orleans, where basically we had sixteen judges to answer to in cases. I've attended the National Criminal Defense College. I finished that. I've been capital certified in death penalty cases, which I've handled in Louisiana, probably saving the lives of approximately twenty-four people who were facing death over murder and

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sex crimes. I've gotten acquittals on second-degree murders that probably total two dozen plus cases, and I've been involved in probably 200 to 500 homicide cases.

I truly have always wanted to be a public defender my entire career, part and parcel of what has fit in to this has been my experiences which I've had on the CJA panel. What I bring before the Committee today is experiences that I can answer questions on by looking at the two extremes: New Orleans, which was a big, huge, bustling district versus Bismarck, North Dakota, which is probably one of the smallest, coldest places I've ever been in my life, but love it. I've learned how to ice fish, and it's actually a pretty great place to be. From a CJA standpoint, I will tell you, I do not have half of the issues or problems that I faced while serving as a member in New Orleans, and can compare and contrast those two organizational setups of how it functions, because they are totally different. I can compare those two. I can give you a lot of insight on vouchers, as far as the cutting issues, totally different systems of where and how they were evaluated and presented to the courts in the two different forms.

I've been through the training programs approximately twenty plus years ago. There was a full blown training program that was in place as a new attorney that I had the privilege of going to, one of which was in Milwaukee, Wisconsin, I remember. I had great folks that were on that group such as Terrence McCarthy, Mr. Kramer, Hugo Rodriguez, Carmen Hernandez; names that I'm sure you all have heard of and experienced. These were the people who were my inspiration twenty plus years ago. Doing what I wanted to do I knew was the right thing, but basically was able to get significant training to where they weren't basically putting me on the interstate on a bicycle with training wheels.

When I left from there, I had speakers who gave me insight. I left with a case full of books, from a research standpoint, and a lot of resources nationwide to reach out to. That is no longer in existence for training seminars that are available to new people who are attempting to be recruited into the system. I can give you insight as to the complete crash of the public defender system from within Louisiana. I worked in Orleans, as I said. I had also been considered as an applicant to go into Calcasieu Parish up in Lake Charles, which was one of the worst districts, as far anyone's concerned, nobody death penalty qualified in that district, and decisions that were made in connection with hiring and the whole system that was put in place.

I can speak to diversity and my beliefs of diversity, and why or why it won't work. I can give you complete insight as to private practice and the struggles that you have as a private practitioner trying to work within the confines of the CJA system, of public defender system, as well as private practice doing criminal justice. I am pretty the poster boy for hardship as it comes to that. I

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understand what EJ was sharing with us, and the other speakers on this panel, I doubt that there . . . I've heard the stories from yesterday, that I applaud with other public defenders having to reach into their pocket and pay for tickets. My situation goes much, much deeper than that.

I look forward to answering the questions of this panel and just wish we had weeks to deal with this issue, but I appreciate your inviting me here. I did not submit, I happen to be invited the last few days, which I had found out about and reached out to, and I am very honored to be here. Twenty plus years ago, I never would have dreamt that I would be a person who could come and bring to the table the years of experience that I have had, and pleasures that I've had representing clients through federal, state system and private practice.

Judge Cardone: Thank you, Mr. Sauviac. Mr. Swift.

Stephen Swift: Thank you, appreciate the time and effort everybody is spending on this review. It's long overdue in terms of activity. I will try to be fairly brief and swift. Since I submitted my remarks, I have received one communication from one panel member, a senior experienced, very skilled panel member. He has resigned from the panel. I think he might be getting older. He indicated that he'll still continue to represent paying clients in federal court, but the current CJA panel hourly amount, delays in payment and problem clients have taken the "fun" out of representing indigent folks in federal court. There is a certain amount of fun. It is a privilege, an honor, to be appearing in federal court. The level and skill demanded is of the highest level. My parents, in front of former District Court Judge David Hanson, I think made me a much better attorney, having him tutor me during sentencings when we were going through the early parts of the Guidelines, and just his intellectual stimulation there.

I note, geographically, the panel has been set up well because I'm at the polar opposite in terms of my suggestions as to what sort of changes or improvements need to be made. I have recently completed four years of serving on DSAG, and serving on DSAG I have been exposed to a lot of thoughts about the independence issue there, however I am inclined not to suggest making huge changes. I have suggested, however, we could make one, I think, fairly significant change that addresses some of what we've talked about here, which is to vest with the district court the authority to review and make the decisions on the vouchers, rather than having excess fee applications go up automatically to a circuit court judge who has seen nothing about the actual performance, knows nothing about the client that we're representing, knows nothing about the difficulties that might have been involved either through being discovery, or the aspects of the case, who's not particularly familiar with the distances that might be involved in traveling to visit with the client.

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I can report to you, I've spoken with district court Judge Reed this past week about what I recommended, and she suggested that she's not in disagreement with that sort of an idea. She stressed to me her major thought was to make certain that the panel was both skilled, but small enough that there would be enough representation, enough appointments given to individuals so that they could remain vested and interested in doing the work and spending the additional time that it takes to be qualified, reading the daily summaries that we get. The hybrid system that we have is very helpful, we get daily summaries from the various defenders offices about the emerging and recent decisions. That keeps us up to date.

If you're not getting a case but want to hear, I'm not certain you're reading those cases, and then those summaries, and then following up and reading all the cases, just to keep up on the interesting issues that you see that you haven't heard about before, or that might relate to a pending case you have. Other than I would support the idea of an interim payment system, if we could find it without a way of potentially discouraging the attorney who's getting potentially cut as we go along, like, "Do I want to do this? I'd rather get a big surprise at the end," apparently, I guess. I have also had the opportunity to go two and a half years, and work hundreds of hours, hundreds of hours on a case, people weren't getting paid. I do recognize that, and luckily I have three other partners who can carry me until the day I can bring in a bigger paycheck. Thank you.

Judge Cardone: We'll start with Judge Fischer.

Judge Fischer: Good morning, thank you all for being here. Real quick and easy question to start off with. The statute that provides for transportation from the marshal service provides for one way transportation; has that posed problems for any of you in dealing with your client? Somebody mentioned money out of pocket, I don't know if that's what it related to. Why don't we just start with Mr. Hunt, have you had any issues?

Edward Hunt: I haven't encountered that problem in our district . . . [INAUDIBLE]

Judge Cardone: Microphone.

Judge Fischer: Mr. Richman.

Robert Richman: That's fairly routine in this district, to get funding for travel.

Judge Fischer: It's one way. Is there any problem with . . .

Robert Richman: It hasn't come up for me in a while, but I seem to recall that there is some, what I seem to recall in this district, Katherian can correct me if I'm wrong,

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but I think that the marshals pay to fly a person here and then they give per diem funding that allows a bus ticket home. I think that's what happens in this district, but I haven't had far flung clients for a while.

Judge Fischer: All right, thank you.

Donald Sauviac: Judge, I have no dealings with that aspect whatsoever.

Judge Fischer: Okay. Mr. Swift.

Stephen Swift: I don't have a problem.

Judge Fischer: All right, thank you. Mr. Richman, the letter we received from the association had some interesting suggestions, and we've been struggling a bit with the issue of what kind of representation should the public be paying for? What kind of representation are indigent defendants entitled to? The letter talks about what a reasonable person facing serious federal charges should receive, and what would a person with substantial, but not unlimited, means insist on for his own defense, and you gave a couple of examples: bankers, doctors, a state politician. That's something that I think everyone struggles with. The word reasonable isn't necessarily very helpful, maybe in the eye of the beholder. Did you want to expound on that, and then I'd ask the others whether they have any thoughts about how to evaluate or describe what the level of representation is that should be provided to indigent defendants.

Robert Richman: I guess for me the starting point is that simply passing muster under the Sixth Amendment is no standard at all, and that what we're striving for is some modicum of equal justice under law. Certainly in the cases that I handle, I pride myself on providing the same quality of representation to my indigent clients as to the clients who are able to retain me privately. My clients, my retained clients, are middle class clients that I struggle with on a daily basis about what are the resources that we can bring to bear in the defense of the case, what are the experts that we can use, the investigation that we can avail ourselves of and so on and so forth. I don't know the words that defines that, but I do think that the current administration, at least in this circuit, of the CJA errs more on the side of fiscal responsibility than on the side of actually ensuring that the resources exist to put up a vigorous defense against a United States government that does have virtually unlimited resources in the prosecution. I think that it's important that CJA attorneys are not simply going through the motions, but in fact have the resources to mount a vigorous defense.

Judge Fischer: Thank you. Mr. Hunt, do you have thoughts or another description?

Judge Cardone: Microphone, I'm sorry.

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Edward Hunt: I would mirror what Mr. Richman just said. The Sixth Amendment, every case I've read that touches on it, it has such soaring language that attends it and is surrounding it, and everyone has profound respect for that right to council, and has had so in this country since *Gideon* and *Powell* and that whole litany of cases that had consistently addressed the Sixth Amendment and its importance. However, it's an unfunded mandate. Everyone that does indigent defense has heard that phrase: it's an unfunded mandate. I think until Congress realizes, and this is, I know I talked about an independent entity, and I want to clarify something, I don't want that independent entity to be in the role of a lobbyist trying to get money, because we're not going to get money. This is where it sounds like I'm crossing two sides of the street. We need the judiciary. We need, in the beautiful words of Justice Roberts, those people in the justice system who call balls and strikes, we need the umpires to step up and say, "Look, it's not fair for one side if it's so grossly unfair for the other side."

The prosecution has unlimited resources. I'm not saying, by any means, blank check, because I realize that it is an unfunded mandate, but what I'm saying is one role that judiciary can fulfill, and would be inestimable in its worth and its value, is to champion funding for indigent defense in federal court. I don't think there's any judge, frankly, that wants to be a bean counter. You didn't get, maybe some judges are CPAs, but you didn't go to business school and get an advanced degree in accountancy. I think you'll want to wear a green visor. It'd be nice if the judge didn't even have to deal with that type of work. We need that phrase, equal justice under the law, to be more than aspirational. If anyone is interested, I have some ideas on how we can find the money, but that may be for another discussion. I think the money is there.

Judge Fischer: We may be giving you a call. Mr. LeBell.

Robert LeBell: I have a fundamental problem that somehow we have dumbed down what the standard of representation is, and we, especially for CJA lawyers, it's sort of like, if you're entitled to an adequate defense; I don't know what an adequate defense is. From my standard, I have my own standards of what appropriate defense is, and I can only tell you anecdotally, when a private client comes in to my office to retain me and has X number of dollars for the appointment, or for the retention purposes, and I say, "I anticipate there's going to be this, this and this expert. If you don't have funding for that, I don't want to represent you because it's not fair." I'm fortunate that I'm able to do that, and maybe that's inappropriate, but that's how I run my show, and I don't think it should be any different whatsoever for CJA appointed lawyers.

There's no reason to have an "adequate defense." Those folks who are indigent should have precisely the same resources available to them, precisely the same energy level afforded to them if they came in with empty

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dollars to plunk down in front of their lawyer. That goes back to what I was saying, the way the system is structured right now, we have to go to the judiciary to say, “Here’s why this particular project is, this particular service, is necessary.” I have to justify it for you.

I can give you an example. I did a domestic terrorism case several years ago. My client was accused of planning to blow up a federal building. One of the things that the government did was they did a three dimensional reconstruction, and they had to provide me with the fees that were expended to this particular engineering firm to do this project. It was forty grand. By the same token, I was applying to the court to get, I think it was like \$5,000, to get my own expert to take a look at the incendiary devices that were going to be used to see if, in fact, the amount of destruction was considered to be a mass destruction case. I was struck by the total inconsistency of the approach in that particular case. It’s consistent through everything that we do on a daily basis, and I cannot justify it. I don’t know why it is this way. I think it’s totally inappropriate.

The message that this sends to the client, whether the client understands it or not, I’ve got some bright guys, and they’re saying, in fact I represent somebody right now saying, “Why do you have to go to court to get this expert? We need this expert,” and I say, “Yeah, we need this expert.” Why do you have to lay out your defense? Why do I have to explain why it’s necessary? I don’t have an answer to them, other than say, “That’s the way it is.” That’s not the way it should be.

Judge Fischer: Thank you. Mr. Sauviac.

Donald Sauviac: Judge, I take every case as if it’s a death penalty case. My experiences of dealing with that has changed the way that I function from being a frontline public defender in a section of court in New Orleans to looking at things a totally different way. In doing a lot of capital cases, we kind of thought of things of, you’re dealing with life or death, so there’s nothing that’s too expensive or unavailable. I personally have found very few limitations with my abilities as a CJA panel attorney. In fact, I find that my clients are probably better represented than most private pay clients have been, and I probably have access to resources that are better than the public defender’s office. I have the ability to take on things that I otherwise could not do.

Some of the challenges, when I got to North Dakota I started challenging halfway house detention issues, which had never been addressed before. I took on pretrial drug testing procedures which I felt were deficient. I started taking on jury composition issues. I started doing psychological evaluations. I started dealing with trial venue issues. Those were issues that as a private pay client could never have afforded for me to do, and I doubt that a public defender’s office in many cases could do it.

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If you roll back to the testimony given by a friend of mine, Claude Kelly, to chief defender in New Orleans, Claude Kelly made mention, and I never realized what was happening for all of the years of why I was there, but they would have a case, and it would go down the trail, say, six months or so and then all of a sudden I would get a call saying they had a conflict or an issue in the case, which I would end up taking over a client that was a very difficult client that was headed towards a trial. Part of it is they were going to need to hire experts. We were going to need an expert to testify about some aspect of the case. Part of that, I think, was based, as he's written and said, was that his budget was so much but my access of being able to apply for a voucher as a CJA was greater, so I had greater resources, technically, than the public defender had.

A lot of those cases, by my putting those extra resources into it, I had a client that was absolutely bent on going to trial, and when I did the things that needed to be done, the client oftentimes changed course and said, "Okay, the issues that were of concern to me have now been explored. You've done what I've been asking to get done. It's done, it's in black and white, and now I'm willing to work out and take on a plea." That's kind of been my experiences, I think. There are resources we have.

A private lawyer across the hallway from me, I speak to often, he's jealous. He's like, "I can't do those kinds of things that you can do." Historically, I was scared to use the voucher system for experts. I always kind of felt like there was this big riff over spending money, not that that was ever directly said to me, it was just complicated procedure for me to understand, and now that eVoucher is in place, I'm able to do those basically from my desk. Scan and attach my letter to it, send it on to the judge and it's a quick turnaround time in Bismarck that I get approval generally in a day or so to hire my experts.

The concerns on the other side is, "Oh goodness, this guy may run rampant with these charges," but I can't, because there's caps that are in place. I can only get initial approval, without going up to the circuit, for so much, so it's got stopgaps along the way, and I haven't exceeded those limits. I know at some point in time, when I start attacking things and making headwaves, such as undermining, so to say, the drug testing system, which I just have some serious challenges to, I get feathers ruffled and people get upset, and that's the only time in Bismarck I've been denied an expert witness, which was a drug testing expert in the area who was, I believe, going to disassemble the system and say, "You're not doing it right."

On another occasion of going after the jury composition, I felt that Native Americans were not truly represented here, and I discovered the way that the pool was working, and de-selection of people, and I've challenged that issue

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once and was heading towards it in the second go-round. I can understand the judge's perspective of saying, "Oh my goodness, this man's about to upset the world here," but, you know, it's our job to upset the world. That's part of what we have to, do our jobs and serve our clients. They may not be dying, but if they're going to jail for five, ten, twenty years potential, we need to do everything that we can in our power, or you will hear the stories, as you've heard for the last day of, that lawyer shouldn't have did this for post-conviction purposes, and he didn't do that, or he didn't take that hindsight vision.

I feel very comfortable with the voucher system. I am happy with that. I can get what I need to generally do my cases. I think sometimes, now, my newness to the system in North Dakota has been seen and sometimes the judge wants to kind of shut that down, because pleas are a lot smoother than trials, but that's my two cents worth.

Judge Fischer: Thank you. Mr. Swift.

Stephen Swift: Thank you. One of the things I frequently am asked by new clients that I've been appointed is, "Can I hire you?" And I tell them what I would charge, and they think, the expression is if they pay me, I'm going to somehow do a better or a different job. I think all of us are professionals and all of us who are doing this work are probably somewhat true believers and committed to what we're doing just as professionals. I tell them what it's going to cost and then we don't hear about that discussion anymore.

A few comments, I would echo those comments just made about eVouchering, I know I constantly have been, as panel rep, contacted by panel members and they're not certain, exactly, how they go about getting an expert appointed; what the steps were, the process, there was differences between the northern and southern district in Iowa, as is some of the steps and procedures as to how they wanted you to go through like that. eVouchering seems to have been reducing that. It seems to be a lot quicker. It's important that there be timely process.

I had one time, before eVouchering, where I was seeking to get an expert, and it was a while before we could get the expert appointed, the amounts of money that we were going to ask, we're going to go up to the circuit, there was quite a delay, there was further logistical concerns, it was a child pornography case and the question is where were they going to be able to access these images, they had to be in control. We had one issue where one prosecutor wouldn't, and then we had the second of three prosecutors on this case that agreed that he could be shipped to a remote U.S. Attorney's Office and viewed there in a more convenient location for the experts, and that saved him a lot of money.

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Following up, in the private retained cases, I've had a case where I was retained by the family, and the CJA act still came into play because we were looking to get an expert. We didn't have the money to hire an expert. We made an application to the court saying that we didn't have the additional funds, and we were able to get an expert. That filled in some of the gap there, to give us the opportunity to fully explore everything that we needed to explore for this client.

One thing that has been touched upon here, but a few years ago we had a paralegal working in our office, and we would occasionally seek to bill her services as expert sort of services in the case. There's nothing really in the statute that directly addresses that issue. I think there is a possibility, if there was some sort of authority for a paralegal to be compensated at some sort of scheduled rate, there are some economic, some savings. There are things that a paralegal could do that I'm going to do. They're going to charge a lot lower rate if they did it versus I. If there could be some provision in there that might be a way of fine-tuning You're shaking your head.

Judge Fischer: I'm not understanding what you're saying. We use paralegals, we bring paralegals in hundreds of CJA cases. Are you saying that in your district . . .

Stephen Swift: We were only able to reimburse at the effective cost that we had invested in that person. We were charging a paralegal at twenty dollars an hour. After a while, we thought, "We can't have our paralegal do that," and just try to cover her overhead, because she could work on some probate file for my senior partner, and be paid seventy-five dollars an hour. If we had some reasonable schedule of fees for potentially having that sort of paralegal staff, and someone who's got a . . .

Judge Fischer: Are there not outside paralegals that, maybe it doesn't make any logical sense, but don't you have, you said it would have saved a lot of money; couldn't you just go out and hire a paralegal at whatever? We always make assumptions based on the districts we come from and find out things are different in the rest of the world.

Stephen Swift: In Iowa, we really don't have that sort of, funds are not free standing paralegals like that. There was one individual who tried to do that a number of years ago, and she's out of business, doing something else. We don't really even have that option, but even if I'd had that option, we would have been paying them at twenty dollars an hour sort of rates.

Judge Fischer: Instead of billing her out . . .

Stephen Swift: Yeah, like that. I'm not certain that that's an answer, it is a thought.

Judge Fischer: Thank you. Thank you, Judge Cardone.

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Judge Cardone: All right. Judge Gerrard.

Judge Gerrard: Yes, thank you. I want to come back to vouchers for a couple of questions and then move on. First off, woops, sorry. I wanted to address this to Mr. Hunt and Mr. Swift in particular, talking about interim vouchers. You were discussing having problems with interim vouchers, is that because of local rule, or local custom, or what is the issue as far as not seeking or not being allowed interim vouchers in lengthy or complicated cases?

Edward Hunt: Your Honor, some judges will approve interim vouchers without any problem. It's not even an issue. You'll see a waiver, the cap, when you apply for it on a complex case. There are judges that it's common knowledge among the members of the Bar, don't even bother to apply because they're not going to approve it. It's not that they're unfair people, they're just not going to approve it. There are cases where you'll have a group of panel attorneys, and I've heard them say this, they've said, "I just don't want to go through the hassle," or they're afraid that they're going to stand out by applying for a voucher, and they don't want to be that nail that's standing out. Then somebody else in that same case will say, "Will you do it?" "No, I don't want to do that." Part of it is, I think, some are worried that they will not get other appointments. Bob and I are seasoned members of our panel, so we don't worry. We'll apply when we hear complex. I've talked to people who have had cases that have dragged on for years, and they don't have that tool, interim billing.

Judge Gerrard: Why? Have they not utilize the tool?

Edward Hunt: Part of it is they might not utilize it, but part of it is there are judges, and I'm not naming names, because the people I spoke to, by the way I'm former President of Wisconsin Association of Criminal Defense Lawyers, and I assured them anonymity; there are people that have applied and that got no response when they applied for interim vouchers.

Judge Gerrard: I take it somewhere other than from the eastern district of Wisconsin.

Edward Hunt: Right, as I point out in my writing, the universe Bob and I practice in, we're very lucky. We've got judges that are very sensitive to the defense function. I know of no case, and I've been on the panel many, many years now, where a judge has denied investigator or expert applications. This is getting off topic, in the western district, there are attorneys that are very free to share war stories, but not on the issue you're talking about, interim vouchers. My proposal, your honor, is just that it be automatic, because you will see a case where you won't have, for lack of a better phrase, village elders, who will say, "No, we'll put in that application." I know Bob puts it in regularly. I will put it in regularly. If you get a group of sub-ten years' attorneys that won't

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put it in, and then down the road they're suffering. I hope that answered your question.

Judge Gerrard: Very well. Mr. Swift, from your perspective, what were the issues with interim voucher payments?

Stephen Swift: Judge Malloy, I recall, we had two cases with him that were twelve, thirteen defendant sort of cases, and he authorized and indicated up front that a potential interim voucher could be submitted and would be received. It's not something that we would consider or do any that, remote, remotely that occurs in our district, or, from what I've heard, in the southern district.

Judge Gerrard: Is that because of rule, or culture?

Stephen Swift: Culture. I'm frank. I heard when I was first on the CJA panel, and was going to these annual meetings as panel rep, the experience, I think it was the central district California had a regular system where they were paying monthly, I think. I don't know if they're still doing that.

Judge Fischer: They changed to quarterly.

Stephen Swift: Quarterly? Wow.

Judge Gerrard: That would be acceptable to you?

Stephen Swift: Yeah, that would be acceptable. It's nicer to have that. It's also much more feasible now with eVouchering. The older times, the hassle, putting together the bill and then starting to put together a letter, like that, because at some point on those sort of cases that we had, we were going to exceed statutory Guidelines. It's not something I want to do, and frankly, not something I would want to necessarily impose upon the court to have to spend that much more time. That's an argument for the position down there to have some sort of independence in terms of reviewing the vouchering like that. Those are the comments that I have.

Judge Gerrard: Very well. Yes?

Donald Sauviac: If I may, I think I could shed some insight to that. In the eastern district, there were no interim vouchers that were submitted except to people who were within the sub-panel of the capital panel. I did have one case which ultimately went capital, which we were told up front that we were going to be allowed to submit interim payments on. However, the way that it's administered historically, and eVoucher may be changing this system, was you had to turn in your bill to the public defender's office in New Orleans, and they had a staff member, who has now grown into a second staff member, who basically audited those bills. They would go through and check

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cost of copies, the changes, if you remember historical rates, I was on from the days when it was thirty dollars if you were in court and forty dollars if you weren't, so we had all of these magic cut off dates where it changed and you had to make sure all of that worked out, and the addition all worked, et cetera.

There was a person within the public defender's office, who I understand is still there, who has a desk that probably wraps as big as this, and they have all of the vouchers stacked on there, trying to work through them. The theory, I guess, that portrayed, is I have to deal with all of these vouchers on these cases, so if I have to do them five times, it's going to be five times the stack, but that's not necessarily the case, because when I first showed up in Bismarck, I had basically died on the vine waiting for my cases to close to get any money. I was interim financing them, through financing companies, paying interest on these things and getting a partial amount of money, and then praying for the day it would come in and that I'd have enough money left to pay off the interest on the accounts receivable funding.

When I got to Bismarck, one of my first approaches was to the clerk's office, of, "Can I do interim billing?" And they said, "Well of course you can," and I died and went to heaven, basically. I said, "This is not a problem for you?" And they said, "No, we actually would rather see interim, because if you come here on interim, I have to deal with five pages of a bill this month, and in six months, or the next juncture in a case, I need to deal with six more pages. That's easier for me, and that's easier for the judge, so I would rather do that than deal with a fifty page bill that I have to sit here and be tied up for two or three days on dealing with." From their perspective and standpoint, that was greater.

I'll tell you another point of where it becomes greater. We worry about the cutting, cutting. I was subjected to the audits of New Orleans, which obviously they had a full audit team in place, so maybe I got kind of ground down to the system of what's acceptable and what's not acceptable in vouchers and got used to what could be billed and what couldn't be billed. Thank goodness, knock on wood, I haven't had any troubles in North Dakota.

If I'm going to submit a bill, and the big battle doesn't seem to be in the district court, it seems to be in the court of appeal, and again, that's not my historical problem, but what I understand from testimony, if I have that first bill and I cut it off at \$9900 now, and I submit that, and the district judge approves it, which is going to be primarily the front end load of the case, it's going to be dealing with all of those discs of discovery. It's going to be traveling to talk with that client and show them and explain to them what's going on. It's going to be tracking all of the other defendants that are coming in and out of the case and doing debriefs.

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That part of the bill is going to already be cleared, so when I submit my second part which carries over that cutoff amount and gets me on the way to the \$30,000 cap of going to the court of appeal, the court of appeal is going to be looking at a \$3000 bill, or a \$4000 bill, so maybe from a court of appeals standpoint, that judge is looking at, “Okay, here’s this attorney submitting \$3500,” rather than submitting \$13,500, and may be less inclined to cut that bill.

Judge Gerrard: That’s not necessarily been the experience in the Eighth Circuit.

Donald Sauviac: Again, I haven’t had that experience, but a lot of my time is just hard time. If you’re driving from one location to the other, that time is that time. There’s nothing there to be cut. I didn’t take a detour and go on a picnic before I went to visit the client.

Judge Gerrard: Thank you. I do want to ask Mr. Richman, because we did receive your testimony, of course we’ve received other testimony with respect to voucher cutting in the Eighth Circuit; I do want to ask is it an issue, in any systemic way, at the district court level, or is it primarily at the circuit level?

Robert Richman: The district court judges, I think, are very supportive of the defense function, and as I mentioned briefly at the outset, I’ve had situations where the district court judge goes to bat for us with the circuit, but the circuit will still cut the voucher. It’s not an issue, as Mr. Sauviac suggested, of questioning whether the time was put in, it’s just that it was more than the amount of the maximum, and therefore there should be a 10%, 15% taken off the top.

Judge Gerrard: You’re an experienced lawyer in this district. What effect does that have on the CJA panel, or representation, or numbers of attorneys that are willing to accept CJA appointments?

Robert Richman: Katherian would be in a better position to speak to that. I don’t really deal with systemic issues. I can say personally, while it has not prevented me from taking CJA appointments, I do find it somewhat demoralizing. As I said, I pride myself for the quality of my work and while it may be that Chief Judge Riley is not questioning the quality of my work, still when a voucher gets cut, it’s hard not to take it personally.

Judge Gerrard: Before I leave vouchers, I want to ask the two lawyers from the Seventh Circuit, what experience do you have, either voucher cutting at the district court level or the circuit level, in the Seventh Circuit? Do you have the same experiences, or different?

Robert LeBell: I can only speak to the district court where I practice, and there is sort of an outlier, there’s one judge who has been cutting vouchers, and people have resorted to self-audits. I think it’s totally improper. There’s another problem

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where people were declining appointments for that particular branch. Basically what would happen is the federal defenders office would call the lawyer and say, “Okay, it’s assigned to this case,” and the lawyer would say, “I’m taking a pass.” That’s a total disincentive.

Judge Gerrard: You’ve not had the same experience, or issues, on voucher cutting when the fees exceed the \$9900 cap at the circuit court?

Robert LeBell: No, I have not.

Judge Gerrard: Okay.

Edward Hunt: I can mirror that. Our judges in the eastern district, for the most part, they’re our advocates. I’ve had a judge share a letter he sent, being my advocate for why this Seventh Circuit should approve a bill. By the way, not one cent was cut, and it was over the cap. I guess that’s a short answer then to the question.

Judge Gerrard: Okay, very well. I do want to ask for each of the panel members, two of the areas that we’re focusing on in Minneapolis are remote location, or remote detention, representation, and also particular issues with respect to Native American representation. I would ask you are there unique issues that you as CJA panel members face with respect to either remote detention, remote location representation, or Native American representation. I know Judge Fischer has asked about the transportation issue. That doesn’t appear to be a particular problem, it is in some other areas of the country, and oftentimes it’s the marshal service that can be an issue with regard to that, but windshield time, or any other issues that you may set forth. Mr. Richman, I’ll start with you.

Robert Richman: In this district, the marshals primarily use, for detention of pretrial detainees, use the Sherburne County Jail, which is about an hour outside of the Twin Cities. Meeting with a client who’s in custody there is at least two hours of travel time to have that meeting. There is additional time just going through the logistics of the jail; getting in, getting your client brought to you, and so on. We also have federal jurisdiction on a number of Indian reservations, the Red Lake Reservation is in northern Minnesota, it’s five hours from here. Not only does that require a lot of travel time, but the cases that are venued in northern Minnesota get assigned to, I don’t know the exact terminology, they use the federal courthouse in Duluth. You can have two or three court appearances in Duluth on one of those cases, which is three and a half hours from the Twin Cities. Those cases do require a lot travel time. I spoke to that issue in the written testimony because the seventy-eight hours that go into the \$9900 cap can evaporate pretty quickly.

Judge Gerrard: Half of it can be travel time, just meeting clients.

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Robert Richman: Without even having really worked on your case. Going back to the issue of voucher cuts, former Chief Judge Loken had stated his position that you don't really need to have regular contact with your clients. I think that it may be that the travel time certainly weighs into that. I think that the most common complaint that you hear from CJA clients is they don't see their attorneys enough, and they're not going to, most cases result in a plea, and the only way that's going to happen is if your client trusts you as a lawyer, and that requires face time, not only to be an effective advocate for your client, to know who that person is, but for your client to trust you. In this district, there are issues with respect to travel time, just because of the logistics.

Judge Gerrard: But no issues as far as payment at the district court level that you've experienced?

Robert Richman: No, correct.

Judge Gerrard: But it is an issue as far as representation of your client.

Robert Richman: Attorney time.

Judge Gerrard: Okay, very well. Mr. Sauviac.

Donald Sauviac: It's a serious issue in North Dakota. They're primarily housing pretrial detainees in Devil's Lake, Rugby and Jamestown, which is a huge drive involving anywhere from probably five and a half to eight or ten hours round trip. A more developing issue is that post-plea pending sentencing, they've started to move a number of the clients to Rapid City, South Dakota, which is an all day and probably should be an overnight affair to travel that kind of distance. It's inherently going to come into play because I'm going to get a pretrial interview, I'm going to end up with a presentence investigation report, I'm going to end up with an objections, and I'm going to end up with a sentencing memo that needs to come out of that. Most of these things are not things that I feel comfortable talking over the phone, obviously, with. There was a video system in the public defender's office in Bismarck that was utilized. That system, last time I checked, had been down for about six months and I don't believe it's up again.

A majority of my time is drive time. However, there are economies of size, so to say. Generally, by having more appointments, since there are less lawyers in North Dakota, I'm able to divide many of these visits between two or three clients, with the exception of the South Dakota visits. At the end of the day it works out to where cost-wise, it's a third of what it would have been for me to drive to see one client. Flip side of that, historically, in New Orleans I could walk across the street, generally, to visit a client, or there were five or six jails. It does create other issues, the way it's set up of running across codefendants in a case, these smaller remote jails have less abilities to keep

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people apart, and I don't know that the local jails are on top of the cases, and my clients often communicate to me fears that they're going to be thrown in with someone who's a codefendant that they have cooperated against in a case and they'll be in jeopardy of being harmed.

Judge Gerrard: Okay, very well. Mr. Swift.

Stephen Swift: Thank you. Again, the northern district, generally not a problem because most of our clients, if they are detained are held in the Linn County Jail right there in Cedar Rapids, so it's frequently available. Some of the jails used in the northern district, Fayette County, I recall, very accommodating in letting us call and putting our client on, saving potentially having to drive an hour and twenty minutes for something that could potentially be covered by phone. Not everything can, that interview, that delivery, that review, that presentence investigation report needs to be in person; I just can't see how that could be avoided.

In the southern district, and I started taking some southern district cases for a variety of reasons, but one was because being on panel rep, and going to those national meetings and hearing how everybody else was traveling so far, I wanted to see it. Second reason was Judge Jarvey recruited me at the Hy-Vee grocery store in Cedar Rapids to come on down. I think it paid windshield time, I think was the phrase. I like that. I wanted to kind of experience it, to see what that was. In Davenport, in the southern district where I've taken the cases, they frequently house people in Muscatine County, half hour drive from Muscatine, forty-five minutes, fifty minutes from where I'm at in Cedar Rapids. I like that.

Most of these things, functions, again, Muscatine County Jail, very good. If anything, if we can leverage the marshal's office to put in those contracts that they're going to facilitate phone contact, that would help a lot. Muscatine County is very good in that. Davenport County, or Scott County Jail, you can't get anybody on the phone, if you're going to talk to them, you got to go down there, drive, in person.

Donald Sauviac: Another part of our component of the pretrial housing is dealing with the halfway house system. There was not a whole lot of that in New Orleans, pretrial is, of course, all post-sentence, but there were two halfway houses, and they were local and close. I started exploring why it was taking us months to get our clients, who were ordered to a halfway house, into the halfway house. They were being held in marshal custody at these remote locations at, I think it's seventy-eight dollars per day to do that, as opposed to a halfway house, half the price. I thought it was an issue over bed availability in the community, so I started exploring that.

It turned out that the issue was pretrial services' budget. Pretrial services

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didn't have the budget to buy the extra beds. The halfway house says, "We got more beds than you could ever use, but this is all they can pay for." They were throwing their budget, so to say, on the marshals saying, "You go house them at this three hour away location for seventy-eight dollars rather than us having no budget to pay to keep them here for \$20-something," which they will probably supplement, because they will be able to work during the day, come back and pay their share of the game.

That, to me, seemed to be a big, big deficiency that I kind of started poking the stick at and stirring up a little bit of commotion over, but got to the bottom of what was really going on, and what was really missing and could be of service to our folks, because a lot of them need pretrial issues, as far as mental health, they need health issues to be dealt with, and from that tribal aspect, I don't get a lot of direct tribal cases, because it has to be a conflict for me to come into the picture, but if I get a drug conflict case, so to say, would a client with a mental health issue that I ferret out and figure out what it is, I can get them free treatment through IHS, Indian Health Services. It doesn't cost the system anything, but I can't get that for them if they're sitting three or four hours away in Rugby Jail. If they're in the halfway house, they can get a release, go to the facility, get their medications, Indian Health is going to pay for it all.

It's like a lack of coordinating what's in our plate and available, and shifting of responsibilities, when a client's been declared, "This is a person who's a good risk to put in a halfway house and help them on the road to recovery," or treatment for mental health, or whatever their underlying issue to the crime may be. That's problematic for me, that I've discovered in this district.

Judge Gerrard: All right. Mr. Hunt or Mr. LeBell, anything you wish to add?

Robert LeBell: I don't think there's any systemic problem with respect to payment for travel time. The problem that I see repeatedly, as far as remote detention, is when there is a protective order regarding discovery, those are sent, all materials are sent on CD, and each jail has its own process for dissemination of that information, or access to it, and invariably there are problems, my clients don't have nowhere near enough time to access the information in a case where there's volumes and volumes of material. If there could be some plan that's consistent from jail to jail to ensure that our clients have the same access to the discovery that we do, that they should have.

Edward Hunt: We are not getting cut for travel in my district, but trying to get the discovery to the clients and trying to get the jail to cooperate in access is a problem. One other thing I will say, I will not talk to a client from the jail. I know that that's been suggested as a cost saver, and in an ideal system it may be, but we have this system in Wisconsin where they play, "This is a call from the correctional facility, it is recorded." I have listened to attorneys say, "This is

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an attorney-client communication, so if anyone's listening, get off." Bob and I have a case right now where it's hours of listening to this attorney talk to his client. He was trying to do the right thing, save some time, they were minor issues, but they were substantive issues.

Bob and I used to represent Native Americans. We have several reservations, but since the establishment of the Community Defender Organization, we've been divided into different appointment districts, for lack of a better phrase. There's a Green Bay division that does appointments or cases that Bob and I did for years, so I can't speak to the Native American issues. Thanks.

Katherian Roe: Mr. Hunt, I'm going to begin with you. I'm curious about your district in that you've said something that we've heard in so many districts, and that is, "Things are good at our district. We're really lucky and I'm really fortunate to be in my district," but then the other shoe drops, and that shoe, in your situation and in many, is people won't apply for interim vouchers. Even though they go for years without getting paid and it's a huge financial burden, they won't apply for interim vouchers because they're concerned that they're going to stand out, that they don't want to look different, that they don't want the judges to see them as people who are needing the money, people who are actually trying to get paid for the work they do in a timely manner, I don't know, stand out in some way where they'll be recognized and singled out, because they might not get future appointments. That's the issue for me is I can't understand that. I can't understand the culture that everything is good here, but obviously there are reasons, or maybe there's not, but there seems like there must be reasons why people would feel that way. Can you enlighten me on that?

Edward Hunt: It's a good question, and when I think about it, the best answer I can give is if you're of the generation that Bob and I are in, you're going to find somebody in that group that's going to apply. I find that the younger people are more timid about it. That's why we need some type of automatic system where if it's declared complex, because here's what happens, I think, you'll get a younger, more talented lawyer, he'll get stuck on a case like that, you won't see him back. We might lose talent from the panel.

As Bob indicated, there might be an outlier who will say, as a judge, will say, "No, I'm not going to do them as a matter of course," or they may rely on urban legend, that, "Oh, this judge cut so I don't want to apply." Then there are, and I touched on this in my testimony, not saying everybody, and certainly not in every case, but there are attorneys that want to shut down that case fast. There was a nickname we used to have for them in courthouse coffee shops, that they were V6ers. They were walking violations of the Sixth Amendment.

We've got a good panel, we don't have that so much, but there is timidity.

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Those same people are timid about applying for experts and investigators. What I'm addressing maybe isn't structural, but we've got to change the culture. In our area, our neck of the woods so to speak, we have a community federal offender organization. Good people, really talented lawyers as well, but they operate as kind of a private law firm separate and apart from us, the panel. We're run by a board, but if you ask me to name more than three names of people on that board, I'd have no idea. Our board, by the way, has one panel attorney on it. I take that back, that panel attorney just took a job with the state public defender's office.

Focusing again on this interim billing problem, if you have an attorney like Bob LeBell, or me, or a man named Thomas Wollmuth, who used to be our panel administrator when he was in the federal defenders office, he's not going to think twice about applying for interims. I think you're going to have others that just don't want to do it. Let's say you have a group of people that don't know any better, and somebody is saying, "I don't know, I don't know if we should apply," because they've heard stories about the judge, that Bob pointed out, that for one judge, who by the way is a great trial judge, excellent trial judge, but there is this reputation where people don't want to take his cases. I love taking his cases. At times, you're going to get a cut. As I said in my piece, cuts are rare in our district. You're going to get a cut.

We have a system now, where it's not good, where people will say, "I'm not going to take that judge," or if I can segue into the western district of Wisconsin, which from what I hear from my friends that practice there, there's a real problem there. One I hope we won't have when there's a sea change I think that we're going to have in our district court judges. Many may go to senior status, and I hope the new judges coming in are different.

I spent some time on the phone with lawyers in that district, the western district. A very good lawyer told me, and I put this in the report, that he was called in by the district court judge and told, "I'm going to cut your bill. I think you spent too much time reading discovery in the case." I didn't know this, but this lawyer told me in the week or so before I came here, "Oh, but you should talk to so and so about what he experienced," so I did, I called him up. He got called in by, I think it was the same judge, but in fairness maybe it was a different judge in that district, and he was told that after a jury trial, he was getting his bill cut because he spent too much time in preparation for the trial. Bob and I haven't had conversations with judges like that, but Madison is just an hour and fifteen minutes down the road. It could happen. That's why I ask for those two proposals, an independent agency and some reform of the interim voucher system.

Katherian Roe: Thank you. Mr. Richman, I wanted to ask you a question, actually of you and Mr. Swift. Both of you, in your statements, talked about taking the circuit court out of the equation. Essentially, the district court would decide whether

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a voucher should be paid in full or paid partially, whatever it would be. The question I have for you is we've talked with a number of folks about the possibility of raising the statutory maximum caps significantly. It just went up to \$10,000 in January. Raising it significantly would, as you know, keep the vouchers at the district court level, and then the circuit judge wouldn't review them anyway. I'm asking, what's your opinion about that? Do you think that we should recommend that the statutory caps be raised \$5000, and additional \$10,000, whatever it happens to be, obviously well above the 78 hours that are allowed now at the rate of 129, or do you think that that's not going to solve the problem, at least the problem that you've identified, and that we should recommend taking the circuit court out of the process? Mr. Richman, I'll begin with you.

Robert Richman: First of all, I think that raising the statutory maximums is a very good first step. Even when vouchers are not cut, it takes a substantial amount of time to prepare the justification that's all uncompensated time, and increasingly, with the complexity of federal cases, at least for me, it's fairly routine that I find myself above the statutory maximum and having to justify my voucher. In this district, given the culture and the attitude of the district court judges, that would probably solve the problem, that if the district court simply approved the vouchers at the district court level. I think that, from my understanding, other districts are not so fortunate, and so as a national solution, I think it's not a good one. In addition, I think that there is, again, this is not an issue in this district, but I think that there is a valid concern about antagonizing a district court judge through the zealotry of your advocacy and having to worry about having your voucher cut in response. For that reason, I agree with Mr. Hunt and his proposal that there be some separate panel, separate from the court to, with experience in criminal defense, to review vouchers.

Stephen Swift: Certainly the proposal to increase the limits substantially, and I don't know what the number that's being kicked around, but I would pick out like \$30,000 sort of figure, that would solve many of the questions, because there just are not that many vouchers above and beyond that point, that's not a bad solution. The more I plod about the issue, the more I was struck by why is the statute providing for the circuit court to actually have to do that sort of role and function. They are remote from the actual case, they don't know what actually went on, and that's why I made the suggestions that I made. If I got that, if it went up to that sort of level, that'd solve a lot of our problems. It wouldn't solve all of them. I've had cases go beyond that limit, so they're still going to be subject to being reviewed at that point.

I've tried to articulate my letter, my statement, as to why I thought the district court, and why a court should be involved in a lot of this decision making like that. I think there's that interaction that should take place. Having a district court, if the district court is routinely cutting people, the district court's going to get the panel that they don't want in the long run. I think

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there is more control, more interaction, if we invest power with the district court on that matter. I do realize that people are concerned, and it's legitimate concern, that we're doing everything, then maybe the district court penalizes us. I'm going to do the job. I'm going to do what I think needs to be done for that client. If the district court decides, in some fashion, it wants to control or penalize me, then that's the district court's decision.

Katherian Roe: Yes sir, Mr. Hunt.

Edward Hunt: Can I very briefly respond to that? There are attorneys who have that saintly approach. There are, I commend them, but if you're a young attorney, and you are just starting off, and it's such a great honor to be on the panel, and you're trying, you're researching, you're pulling those cases, as Mr. Richman said, where he found out things that weren't done, but things that should have been done, and you're really putting in the time to service that client. You're saving that judge, by the way, from the problem of looking at letters saying, "This lawyer doesn't understand me. This lawyer doesn't spend enough time with me." That young attorney, when he gets back a voucher that's cut, or when he or she says, "I've heard some stories about cutting, so I'm going to take that \$9700 cap, or \$9900 cap, and I'll just leave it at that." That young attorney, who could be a great addition to justice, that young attorney is going to eventually say, "No, I want to go home early. I'm going to do elder law." Then justice isn't served.

Katherian Roe: Let's talk about that, because that's one of the issues that Mr. Swift brought up, and that's the issue of, as he put it and as many folks have put it around the country, the aging panel, the aging CJA panel. I think that's a very good point, and I'd like to have the other folks address that also, and that's the issue of when you have these voucher cuts, and the voucher cuts are not because you didn't put the time in, but because in the end the judge may think that the case is not, as they say, worth it, worth paying that much for. You have the voucher cuts, you have the economic pressures of it, and then you have a low rate, and then you may still have school debt, law school debt that, as we know, is getting higher and higher with every year; how do we bring folks into the panel and deal with this aging panel issue when those are the pressures that they have to deal with?

Edward Hunt: One way is do what we're suggesting here today, I think.

Katherian Roe: Go ahead, tell me.

Edward Hunt: One way is . . . it's pretty easy . . . it may seem hard to believe, but I remember when I was a young attorney. I remember what it felt like to be scolded by a judge. I did take it personally. If I'm a young attorney, and I submit a bill, and Mr. Richman has such a beautiful phrase, it sums it all up, "So demoralizing." It's hard to get people on. The Bar, the criminal defense

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Bar in Wisconsin, or rather in Milwaukee, is not all that big, nor is it in Madison. When a war story gets out there, you lose the application of the person that might be a tremendous addition. I think the senior attorneys, the elders in the villages I call them, love it when a young attorney gets on that panel, has questions, wants to do the right thing. The problem is keeping them there. If they know they won't be demoralized, if they know that their work is valued, we'll have more people applying to that panel. That's just my thought.

Stephen Swift: I would add, I am very worried about our future panel, and where we're going to come from. Frankly, we haven't mentioned it, but the rate of pay is going to need to go up to attract these people from getting into just civil practice like that. It needs to be put up to what the statute could have had going on, to get those people to make money. When I was outlining in my statement the amount of money I could generate if I worked full time like that, that envisioned I worked on Christmas day, and Thanksgiving weekend, and all the other holidays; I scheduled myself, I think, two weeks of vacation there, which I'm going to take more than that. The rate of pay, for the future, is going to be what is going to attract younger attorneys.

Katherian Roe: Let me ask one more question, and that's something again that Mr. Hunt raised an issue, maybe indirectly if you will, and that's the issue of the relationship between the CJA panel and your defenders office, whether it be community defender or federal defender in your district. Mr. Hunt said that in the eastern district of Wisconsin, that's more like that's an independent law firm, and those folks are kind of over there and CJA panel is over to the side, in a different place. I'd like to hear from the other folks who are from other districts about the relationship between your district, and the panel, and what . . . I mean, I'm sorry the FDO/CDO and the panel, and what do you think the significance of that is? Mr. Richman.

Robert Richman: I've practiced in two districts in Massachusetts and Minnesota, and it was very different, and I've seen the pros and cons of each. In Massachusetts, the district court judges appointed counsel, and so they would either appoint the federal defenders office or they would appoint a member of the panel. I think that the idea was that if the federal defenders office is staffing a case in which the federal defenders office represents one of the defendants, there is a potential conflict. The problem with the Massachusetts version is the district court judges, at least at the time that I was in that district, it may have changed since then, I think did not have a lot of respect for the federal defenders office, and the juicy cases, the good cases, they would appoint their friends who were in some law firm. It created a situation where the federal defenders office was essentially in competition with the panel attorneys for the good cases.

In this district, the appointments go through the federal defenders office. I

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don't think there really, well there may be a theoretical potential for conflict, that, as far as I know, has never actually occurred on the ground. The federal defenders office is in a position where because it knows a little bit about the case, is able to match the skills of the panel lawyer to the particular case, and it allows, most importantly, the federal defenders office to be working cooperatively with the panel and to be support to the panel. I think that it's extremely important that the Federal Defenders Office, or the Community Defender Organization, have a very close symbiotic relationship with the panel. I certainly know, as a member of the panel, I rely regularly on the expertise of the federal defenders office. My practice is almost exclusively in federal court, and even still I don't have the volume of cases certainly that the federal defenders office does, and so I rely on the expertise of the federal defenders office regularly, so it's very important to have that symbiotic relationship to strengthen the skills of the panel.

Donald Sauviac: I missed two to three rounds, I'd like to throw something in, if I could please. One is you dealt with the attorney's fees and what do you think would be a cap that would work, and I think \$20,000 would be a cap that would work. I don't know of a whole lot of bills that exceed that amount. I also think about if the bills are getting cut like they're getting cut, my question is what are they being cut for. Is it just a judge who says, "You're making too much money and I never made that kind of money before I became a judge," or, "I think you should be doing this for free," or, "I think you spent too much time doing a particular task, A, B and C," so I think isolating those issues of why are you cutting and what's the complaint about probably pulls us to the table here. We're working for such minuscule fees. I have litigated attorney's fees on basic domestic cases, I've litigated on . . .

Katherian Roe: I don't mean to interrupt, but I'm watching that clock, so what I really want you to answer is, I know you were in North Dakota and Louisiana; could you direct your comments to that as far as the CDO/FDO, thank you.

Donald Sauviac: Certainly. I think that that amount would work, and I think that we should litigate some of the fees being denied is my solution, just like you'd do a 1983 civil rights litigation. The aging of the panel, I don't believe that that's an issue. I think you run a bigger danger of putting too many people on the panel. Judges in North Dakota are begging people to come on to the panel. We're getting lawyers who are doing real estate work, who are doing a bunch of other things. This is the big leagues, basically, of what we do, and you need to stay on top of the case, and the way to be able to stay on top of the case is having a few people who do a whole lot of it and stay in touch, just like the defenders would do. Our relationship with the defenders, historically, before there was a defender that was working in North Dakota, the attorneys felt like they were alone on the prairie. They're glad to have them there. They see more activity going on and more resources. I never hesitated going to the Public Defender's Office in New Orleans saying, "Can I borrow a motion, or

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can you help me out with this issue?” That’s the simplicity of where those three issues are, as I see them from experience of the two places that I’ve been.

Katherian Roe: Thank you. Mr. Swift.

Stephen Swift: I think we have a very good relationship in Iowa. We have eight federal defenders offices for the state, with local offices there. They do an excellent job of hosting two seminars a year. They do a lot of informative emails. I maintain kind of an emails panel with the northern district that covers the entire state. There’s a lot of exchange of information, they are a ready resource for us. They’re staffed by very many skilled attorneys, the late Nick Drees among them, currently Jim Whalen, excellent attorney, and Jane Kelly, who must have had some talent, apparently.

Katherian Roe: Thank you, Judge Cardone.

Judge Cardone: I just had a couple more follow up questions to Mr. Sauviac. It has to do with something Judge Fischer asked you, but I wasn’t clear I understood the answer. You said something about needing an expert to challenge the jury composition, then you asked for an expert regarding challenging drug testing. Am I correct in understanding that those are the two occasions when it was denied?

Donald Sauviac: I had only one of them that was denied, and one I asked for one to challenge pretrial drug testing procedures. I had clients that were coming in, who I was actually present for one of them, first came in and said, “You failed your drug test.” We were there for an interview, and the client swore up and down that they did not fail the test. Well, of course I’m torn as an attorney that I want to believe my client, but I have someone telling me . . .

Judge Cardone: Did the judge tell you why they were denying that expert request?

Donald Sauviac: He told me there might be a better case that I could raise that issue, actually I wanted before the magistrate judge, because they tried to revoke on that ground, they retested, and we went before the magistrate, they passed that test. I needed an expert to counter it, and because they could not forge forward with their proof, they ended up revoking them on the sheer jurisdiction that the U.S. attorney had because my client had already plead guilty, that they could request that they just be taken into custody absent failing the drug test, or absent any of the other issues. When I brought it up to the district judge, because I realized it would be reimplicated at sentencing that they had actually messed up retrial, I said, “Judge, I’ve been denied my expert to prove that this is not a valid system that you’re putting a lot of reliance on. You’re pulling my client off the street and you’re going to make a sentencing issue on it.” He said, “This may not be the case.” I said, “Judge,

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my approach to it was different than what my instinct was. My instinct was I could have filed the class action 1983 lawsuit, on behalf of all of the people who were adversely affected by this, and then come back and ask for attorney's fees. However, I was head on with a client in front of me directly impacted. That was the only one I've been denied on.

Judge Cardone: Okay, so on the other one where you won, to challenge the jury panel, you were not denied?

Donald Sauviac: I was allowed it initially, and then I got basically placed into a trial posture where I started to raise those issues again. Did not have time to bring another expert in, but the judge saw where I was headed with that issue, and it became a very difficult situation because he saw I was going to bring up all of what I had already accumulated by virtue of my prior case, which ended up pleading out before we got to that challenge.

Judge Cardone: I'm not understanding, did you request an expert and you didn't get the expert?

Donald Sauviac: No, I requested an expert, I got the expert. The client ultimately plead out. The issue re-presented itself, again, it's an issue that constantly evades review. I was prepared to bring it up again at another case heading to trial, never got to the point of asking for an expert again.

Judge Cardone: Okay, all right, that's what I didn't understand. Mr. Richman, a follow up to I think to one of Ms. Roe's questions, you indicated that you had been both in Massachusetts and in Minnesota. In Massachusetts, the judges were involved with the appointment of counsel and overseeing the panel. In Minnesota, it's different. Do I understand you to say that in Minnesota, where you have the defenders office, or the community defender, federal defender, overseeing, or assisting with the panel, that you prefer that, having experienced both?

Robert Richman: Yes, your honor.

Judge Cardone: We've heard issues about conflicts, et cetera; what do you think are the advantages to having that kind of involvement?

Robert Richman: Involvement of the federal defenders office?

Judge Cardone: Yes.

Robert Richman: I think that the federal defenders office is in a position of staffing a case in a reasonable way. I know that Katherian tries to match attorneys to the case, because I have more experience, I am typically brought into cases that, where it has been identified early on that there might be some novel issue of law, that happens to be a strong suit for me. I am called less often with say a

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routine gun case. The federal defenders office staffs the case and I think that's the benefit.

Judge Cardone: Are they also involved with the issue of vouchers?

Robert Richman: With I'm sorry?

Judge Cardone: Vouchers, helping and assisting on issues on vouchers, or something to do with vouchers.

Robert Richman: Yes, and in fact they are very helpful with the panel on vouchers. This issue that has been discussed, with interim vouchers. There is a staff person in the federal defenders office who helps with that process. In this district, getting approval for interim vouchers is not a problem, and I think that is both because of the attitude of the judges here, but also because of the logistical support that the federal defenders office provides to the panel to walk us through that process of getting approval for interim vouchers. There are situations in large multi-defendant cases where one defendant, one lawyer asks for interim payments, and through the federal defenders office it's sort of automatically arranged that that approval applies to all of the counsel so we only need to make one request in say a ten defendant case, and interim vouchers are approved for everybody; that's all done through the federal defenders office.

Judge Cardone: All right, thank you. How about Judge Walton.

Judge Walton: Mr. Swift, you indicated that there was going to be a need for greater pay in order to attract younger lawyers to the panels. What hourly rate of pay would you think, at this time, would be a reasonable amount, and should the rate of pay be adjusted based upon the cost of living that varies in various parts of the country?

Stephen Swift: The latter part is a really interesting question for me. I have struggled with the idea that there are attorneys in New York City, and areas in California, and other large metropolitan areas, who may have a much higher, even than I have, overhead expense. Their ability to make a living is obviously affected by their overhead there. I'm not adverse, even though it's potentially against my interest, and the panel members that I'm representing in the state of Iowa, that they may not get paid as high a rate as other areas might be.

Judge Walton: In terms of an hourly rate?

Stephen Swift: The hourly rate, it's a long term sort of an issue for me. I think they have to see that they're going to get paid enough so that they can justify doing the work and being able to pay that student loan that many of them are carrying. There's a young gentleman who I met in the Cedar Rapids area. He's a

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lawyer at one of the big law firms. He's not doing any of this sort of work, he's doing civil contract sort of work. He seems to be an excellent attorney, but he's never going to do this because they need to be able to generate enough revenue to be a partner in that big law firm. Statutory rate, I think we're up to around 147 or so. It's a function of figuring out a little bit of some of the mathematics.

How much are we going to be able to bill? How many hours are we going to work? How much revenue are we going to generate? What sort of potential profit? What sort of money do I end up putting in my pocket after I've paid my expenses and then have to pay my taxes on it? I think we should be up to the 147, I think it's 147, rate at this point, and taxing it for inflation is obvious, because if 20 years from now you're at 147, you're going to have the same problems that you have today. We've been doing that within the system now, we're getting these one dollar a year raises. Thank you, somebody, for that. That's what I think.

Younger attorneys, I'm not seeing, we're keeping our panel small. I've recruited, we've added two younger attorneys in my eight years or something like that. Ten years from now, more than half of the people on our panel are not there anymore. Within three years, at least three or four of them are not there. We do need to address that. They're not going to be attracted. I mentioned one attorney, I'm thinking of another attorney who I tried, VOP case, I represented somebody in a divorce there, and the other person was privately retained, excellent attorney, tried to recruit him early on and he just didn't want to battle it. Pay was too low, work too difficult, judge was not a fan. He was not a fan. Heard the horror stories of how difficult it is and stuff like that. Take all those, he just is never going to come across. A person who likes to do trial work, who would be a good lawyer in this area, and we're never going to be able to attract him.

Judge Walton: Any other perspectives on that?

Robert LeBell: From my perspective, just raising the rate is not going to do it, and certainly the rate of 147 is well below the market value virtually anywhere in the country. Should it somehow be tailored to the community in which you practice? That's probably a good idea. By the same token, unless these other measures that we've all been talking about all morning are put into place, where let's assume that you raise the rate to \$200, but you didn't remove the authority from the judiciary of reviewing those vouchers, basically tailoring those vouchers to what that judge thought was appropriate. It doesn't mean anything, and in fact might even be more of an incentive, and no denigration intended, for some judges to say, "Wait a minute, the rate is \$200 and now I have a better hand in this, and I should have a better hand in this, in moderating whatever amount actually goes to the recipient." That wouldn't work. I think unless there's some systemic approach, including raising the

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rates, and taking it out of the responsibility of the judiciary. Then you have a much more viable system.

With respect to attracting other people, we have a problem in Milwaukee, and maybe I take fault at this, maybe it's a fault just as far as the general theory of how the federal system works, but I run into many, many young lawyers who say, "I'm not going in federal court. I don't know what to do there. It's just so difficult. The austerity is something I just don't want to deal with. I sort of like the run by the seam of your pants approach in state court," which is basically what happens, and they're much more comfortable. The message has to go out, and perhaps as a CJA panel representative, that's in part my responsibility, but I think there's got to be another message overall that federal court is not something to be abhorred. It's not something to be feared. It's something that's an absolute, from my perspective, pleasure to do.

I enjoy the academic approach. I enjoy the regimen. I enjoy the idea that I'm going to be listened to, I may not be followed, but I'm going to be listened to, and that's all I want: to be treated civilly, respectfully and have my thoughts considered. If young lawyers know this, and if there's a program in place, again, this is part of the systemic overarching theory of having, as example, a mentoring program, where you can marshal these folks in, slowly by slowly, and they recognize that they're going to be able to have that, then you're going to attract a younger group. You're going to avoid this problem with the aging panel. You're going to have a good transition. This panel is always going to be filled with lawyers of different ages, but basically all the same quality.

Robert Richman: I agree with Mr. LeBell. I think that federal court is a very intimidating place for many, many reasons. There are many young lawyers who have become comfortable practicing in state court, but taking that step over the threshold of this building is a completely different exercise. In this district, through the federal defenders office, through Ms. Roe's initiative, there is a mentor program in place in which young attorneys who have state court experience are identified. They go through a two year mentor program where they are assigned basically in a second chair position with experienced CJA lawyers. There is funding through the court that actually pays them for their time, with the hope that those lawyers will, after handling a few cases under the supervision of a more experienced lawyer, will then be in a position of becoming a part of the CJA panel. I think that for the reasons that I said at the outset, the stakes in federal court are extremely high, and so there needs to be some way of bringing those young lawyers into the system and simply, while I agree that the CJA rates should be increased, and I think it's appropriate to index based on cost of living, that is not going to solve the problem without additional outreach and training.

Judge Walton: Yes, please.

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Edward Hunt: Judge, what I'm about to say dovetails into what Ms. Roe said, and also what Mr. Richman said. We, for a long time, just had a panel. We didn't have a Defender Organization. About ten years ago, we, or what was established was a Community Defender Organization, and at first it was really exciting. They had a great relationship with the panel attorneys. As a matter of fact, Dean Strang, of network, Netflix fame, was our first federal defender, wonderful lawyer, great guy. He wanted to make sure that there was a relationship. Then we went through probably two other federal community defenders and things changed. Can we get back to where Mr. Strang originally designed it? Yes. Interestingly enough, he's now the chair of the federal defender board. There's a hope, those of us are very excited about that. Does Dean Strang wanted to bring on young people? Yeah, I think he does.

By the way, we had a mentor program in the first few years, our federal defender office, but it stopped. There is . . . I just wanted to tell a story because I was thinking about this, and I can tell this from personal experience. I was in a mega trial, longest trial in the eastern district of Wisconsin history, and it was the outlaw racketeering case. It lasted about about four and a half months. This will show what effect the demands of a long case can have on people. To his credit, the judge who was in charge of that case, and managed it well, because that four and a half month case could have gone six, seven months, but to his credit, without being asked, that judge said, "I am giving interim vouchers while this case is in trial," and we were getting paid, I think, every two weeks.

At the end of the case, granted that was twenty years ago, I was a younger lawyer, at the end of the case, we all got our final payment. Uniformity, everybody got a cut, everybody got a cut, but some were more sensitive about the experience than I was. I mirror what Bob says, it's such an exciting place to be, federal court. As one of my mentors told me when I was a young lawyer, "In state court, you're going to deal with personalities, and just personalities. In federal court, you deal with the law, and it's wonderful." You deal with the law. He was right, that's why I started doing family work.

Out of that whole group, at one time there was seventeen lawyers on that case, out of the group that were panel people, there's really just me and another attorney that continued to take panel appointments. Even though they loved it, and I was single then, I could take the hit. Even though they loved it, it just became too much of a burden. By the way, to this day, I have tremendous respect for that judge, because I thought he was a tremendous teacher. That's just a story to illustrate what can happen.

Judge Walton: Let me just ask this because it's something that I'm really struggling with, and that is the idea of independence, which I think from an aspirational

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perspective, is something that we should be considering, but what would the structure look like, because I don't know of any federal entity that doesn't fall under the auspices of one of the three branches of government, so it's going to have to fall under one of those branches. If it remains, at least, under the judicial branch, what would the structure look like that would give the independence you're talking about, but yet be under the authority of one of the branches of government? I assume that would be the judicial branch.

Edward Hunt: I don't really have a problem with it being under the judicial branch. I don't have a problem with it being connected to the administrative office, but I want it to have the type of independence that let's say DOJ has. Right now, from what I understand, and I get the acronyms mixed up, Federal Defender Service or Federal Defender Organization, it is now on the same level as probation or parole, if I'm correct. What I would do is I would elevate its status, and it would be given a budget. Out of that budget that is given to the judiciary, and the reason why I say I don't mind the help of the judiciary, I think if they lobby for this it will carry more weight than if, let's say, a defense organization, speaking of personal experience, as I often say to people, "If we don't want to get this judge elected we should endorse him as the Wisconsin Association of Criminal Defense Lawyers number one choice." The young attorneys say, "Let's announce this judge." "No, no, no, let's just sit this out."

I would establish an entity of attorneys that have this shared experience, that have done panel work, they are experienced criminal defense attorneys, and have them as the panel administrators, and they're in charge of reviewing vouchers, and decide it. There's a person in Chicago who is connected with the Seventh Circuit for many years, I think he's retired, but he had the title as Panel Administrator for the United States Court of Appeals for the Seventh Circuit. His name was Collins Fitzpatrick. By everyone that I've ever heard speak of him, he did a fabulous job. He was a wonderful person, but I think he had a degree of independence. That's why you'd hear prosecutors, defense attorneys, everyone, "Well, what does Collins Fitzpatrick say about this problem?" He was a problem solver that was held in high regard.

Why not establish just a separate entity that has as its mission: voucher approval, approval of experts, approval of investigators and training? Which is another sub issue. We used to have regular training put on by the Community Defender Organization. We used to have regular training. We don't. There was a long gap and finally the Community Defender Organization put on a wonderful program this year, and I give them tremendous credit. Bob is putting together a program as our CJA rep that I think the panel will show up on en masse for. Why not have that person in that particular district be in charge of that? For cost saving . . .

Judge Walton: Why isn't community defender doing training anymore?

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Edward Hunt: I don't know. That's a good question. There's an organization called Eastern District of Wisconsin Bar Association that is engaged in training, but, as I said, they did put on something this past, probably four or five months ago, that was very good, but there was a drop off there for a while, a significant drop off. By the way, when Dean Strang was in charge, we were having huge seminars all the time. I don't know. In terms of cost effectiveness, I would just make this proposal: that it should be by state. In our neck of the woods, we have two districts and then we have a division in Green Bay, so just have it established per state that they be in charge of it. The numbers, I don't know, make it a triumvirate, three, make it four people, five people, but people that know what they're doing, and vet them. Just like we vet the appointment of federal judges, vet the people that are going to be on the panel. Not the panel, the entity that will decide what I've been proposing.

Judge Walton: Thank you.

Judge Cardone: Dr. Rucker, any questions?

Judge Prado: Just a follow up, are the seminars that are conducted in your area free for CJA lawyers, and do you get, sorry, are they free for CLE lawyers, and do you get your travel expenses paid, and if there's an overnight stay, do you get hotel expenses? Are you reimbursed for this training that takes place in some of your districts?

Stephen Swift: I like going first, because other than Judge Walton, I normally go at the end, and growing up, Swift was always at the end too. Yes, they are free, and we have in the last couple years, they've started signing up so that you go to your local courthouse and watch the video, so we don't have those sort of travel expenses. Used to be that we were driving down to Des Moines from Cedar Rapids, or Davenport to Des Moines, couple hour drive each way. If you had an all-day seminar, it's a long day. Sometimes some people are willing to overnight. We are not getting reimbursed for any of that. We don't have that expense. You can go to your local courthouse, Davenport, Cedar Rapids, Des Moines, Sioux City.

Donald Sauviac: Judge, it's done regional. In North Dakota there's one being offered in Bismarck, a one day seminar, there's no reimbursement. New Orleans used to have two or three days seminar that was pretty fabulous from what I've seen presented by their federal public defender. They have cut that out in the last year or so based on funding. Historically, there was no CLE in the world that was better than what was offered with this program as a kickoff of defender trials. It was available, it was regional, east coast, west coast, central, and there was the ability to get in. A seminar, slowly you could not get in to any longer. You paid to get there. You paid for your meals. You paid for your hotel, but the entire CLE was free, and it was enough CLE to carry you over.

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It was very specific on what we were doing, and I felt that was a part of my reason for wanting to get on to that panel was to get that specific training from these superstar defenders that I mentioned earlier.

Robert Richman: In this district, there is regular training sponsored by the federal defenders office, typically in this building. There is a nominal expense, maybe twenty dollars to defray copying costs and so on. I don't think that there is availability of reimbursement for travel expenses. I'm not sure about that, although the vast majority of the panel is in the Twin Cities area.

Robert LeBell: In the eastern district, there is no compensation and there is no reimbursement for travel. The one I'm working on right now, I can make the application for CLE, it's hopeful that we'll get seven credits for it, and it is to no cost to the attendees. The other thing that I'm trying to convince people of is that if you're on fd.org, there are a ton of seminars throughout the country, they do have money available under certain circumstances you make the application. Even if there's a district that has less training than you would expect or want, federal defenders office in Washington has been putting out some amazing programs that are just absolutely exceptional.

Edward Hunt: Judge Prado, if I could, just address your question very briefly, that seminar that the Federal Defender Organization held about five months ago, that was free. They didn't charge us anything, but the seminars that have been put on by the Eastern District of Wisconsin Bar Association, their federal branch, we get charged for those.

Judge Prado: Mr. Sauviac, just one question, where are you getting your Cajun and Creole food in your area?

Donald Sauviac: Judge, I have brought Cajun to North Dakota. When I got there I joined the Knights of Columbus, transferred over and the first question they asked me was, "What was that spicy rice stuff that you cook?" We had a fais do-do for them and had almost 400 people show up on that. It turned out that that became one of the keynote projects that were done and it's going on to the national convention as one of the prize winners from North Dakota, so they have accepted me. They do not understand me. We're still trying to reach that, and I'm trying to get a pilgrimage to New Orleans to bring them down and try to help them understand it a little bit better, and they seem somewhat willing to go along with that.

Judge Goldberg: Judge Cardone I was going to follow up with a question as to why likes ice fishing, but I'm going to cede my time to our counsel, who I think has a couple questions.

Donald Sauviac: I could answer that . . .

Transcript (Minneapolis, MN): Panel 4—Views from CJA Attorneys/District Reps.

Judge Cardone: Let me have Ms. Brenner, go ahead.

Arin Brenner: I would also like to hear the answer to that. The Committee has, across its public hearings, heard about wildly different cultures and practices across districts, even in districts that are immediately next to each other. You all operate in a universe unto yourselves. Some of you are panel district representatives, some of you are not. Is that program working? Is it adequate? Is it enough? Do you feel that you have enough of a voice at a national level? Do you feel it's enough support at a local level? Regardless of what the Committee decides to recommend nationally, are there local support structures that you think would elevate that defense culture in every district? All of you, go ahead.

Edward Hunt: There's something very good in uniformity. If I was going to pick my best practices that you as a committee, charged with a very noble goal . . . I think if you start with the question of control that I talked about before, control over funding, that's got to be uniform. It can't go from district to district. You can't have judges ninety miles down the road calling in attorneys and saying, "I think you spent too much time, I'm going to cut your bill," when an attorney ninety miles the other way is not feeling any apprehension. I know that this isn't perhaps your responsibility, but Congress has got to realize that this federal indigent defense system is underfunded. It's a bicycle and one of the wheels is not only flat, it just was never put on. It's underfunded. What we have to do is make sure that indigent defense counsel from district to district, this is uniformity, they have to have the expertise, they have to have the training. Then you get bonus rounds. You get young people that want to be federal panel attorneys, when they know that there's training, when they know that they can graduate to a higher level and not be fearful about it.

This ties in to the other goals. There's nothing like training, and consistent training. You can't have one district that has fabulous seminars and then another district down the road has no seminars, nor can you depend on just brown bags, where let's say a group of ten lawyers say, "Come over to my office, we're going to discuss the decisions this month from the Seventh Circuit." It's got to be something better than that. I suppose one way to achieve this uniformity is through transparency. I realize the judiciary, at times, is going to be at loggerheads with the legislative branch. I see that all the time on the state side level, where I'm from. Some way to increase that dialogue so that you can send a message to Congress, justice is random in this country. One district it can be okay, but another district, it's not okay at all. In another district, it's excellent. By sheer caprice, depending on who's in the district, you can have great delivery of indigent defense services. You might think to yourself, "Hey Hunt, why are you complaining? You've got it pretty good over there." Yeah, I do, but I'm Irish. I'm paranoid. I always think about what could happen down the road, and we could have a change and then, not so good. With that, thank you for having me.

Transcript (Minneapolis, MN): Panel 4—Views from CJA Attorneys/District Reps.

Robert LeBell: I think that you have to sort of divide up what should be consistent and what should be inconsistent. Clearly the way in which lawyers are treated by the judiciary should be consistent. I give you an anecdote. I was in a meeting, the last CJA meeting. We sit around and a lot of what happens is people talk about their own individualized experiences, and they compare and contrast. Some person stood up and said that in her district, routinely what happens is, let's assume you litigate a Fourth Amendment issue, and you lose it; you will get an order denying your motion, and then there will be a margin entry saying, "Do not submit any litigation cost in conjunction with this, with your CJA voucher." Those are the sort of things that have to be eliminated, that lack of consistency, because clearly that's not the way it happens across the country.

By the same token, as far as training is concerned, there's no reason why I can't be consistent. As far as overall quality of representation, and the quality of the individualized lawyers, there's no reason it shouldn't be consistent. As far as support from the federal defender in Washington, there's no reason why it can't be consistent. As far as access to services, no reason why it can't be consistent. We have to sort of divide up what should be, there should be continuity, and for what things there shouldn't be.

Robert Richman: In this district, the panel reps have always been very experienced, distinguished lawyers; you'll be hearing from the current one this afternoon. Even with that, I can't really tell you what it is that they do. If I had a problem with the panel, with my experience as a panel lawyer, I would contact the federal defenders office. It would not occur to me to contact my panel rep, so I feel that I'm supported, but it's because of the federal defenders office, and so I don't really know that the structure that you speak of, of the panel representatives; I don't really know what that structure is, and what it's designed to do.

Donald Sauviac: New Orleans, we had a very aggressive panel representative who got a lot of things done, as far as even newsletters and things that went out. I was unaware of who the panel rep was in North Dakota, I started calling around a few days before I showed up here only to find out who the person was. I placed a phone call to them and I haven't heard back from them yet. I think that's a key component of what needs to happen, and a person who's a point person can make change. I think the danger that lies here most is trying to make everything fit into one mold. The total disaster of the Louisiana State public defender system is we had some parishes that worked very, very well, but they worked very, very different than other parishes, and it was this major transformation of trying to take power away from the judges, trying to take power away from the local boards, trying to make everybody fit the mold and make it all work.

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Right now, there's a complete disaster and shutdown on the public defender system in Louisiana, which they believe they're going to be able to litigate their selves out of. It is not going to happen. The state is broke. Education is failed, et cetera. The last thing they want to do is put money in the public defense. Trying to sit here and reformulate a system that's working runs a danger, and trying to make North Dakota work like New Orleans worked, or New York, is a danger. It's working in North Dakota. I would rather have twice the number of cases than you doubling my CJA pay. I would like to have a major component of that, of legitimate seminars that are at three sites, east coast, west coast, central, that I could legitimately get in to, that they didn't fill up the day they put them online, before I knew about them, that I could pay my way to get there, pay my hotel to get there, pay for my meals to get there, and come home with, instead of a case of books, now CDs, that basically are going to help my practice in that area, and that I'm going to hear from the best in the nation who are going to lay things out to me to help me to in turn help my clients.

I'm going to be able to do that volume of turning those cases around, and handling them, that I'm going to be on the cutting edge, not having to charge exorbitant hours to learn basically the tricks that are happening elsewhere in the nation, that you will have if you dissipate the pool, and you have lots of lawyers you bring to the pool that are not in the chain and are not basically the mice on the wheel, or the rat on the wheel, that's running, doing this stuff all the time, and they have to relearn, and reinvent that wheel in every case because they're only hitting one case every four months, or what have you. I would rather sit there and deal with eight cases a year, or seven or nine or ten cases a year, be paid less, don't give me more money; give me more volume, give me more training. That's all I ask for.

Stephen Swift: Structure on the panel rep and the panel system. When I was initially appointed as a panel rep, I had no clue what a panel rep was, other than, "Oh, I get to talk a little bit closer to the judge, apparently it's some issue." I didn't really have that real insight as to how much power and input I could have through that. Going to the first annual meeting, which was down in New Orleans. That's kind of the theme, popular theme. It's being exposed to all the other panel reps from across the country, some of whom have become good friends of mine. They're very insightful. The annual meeting serves a very valuable function for the panel rep member, in terms of giving them education about what their role is, what they can do, a strong push to set goals and get things accomplished, which I believe I've carried out.

I believe the membership in both the northern and southern district, now know who the panel rep is in the northern district. Most of them probably know that Angela Campbell, an excellent attorney, is the panel rep for the southern district, but because I'm sending out emails and probably, I don't think a week goes by that I don't get one, and there are days there are several.

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I'm constantly being contacted as panel rep, with individuals having questions, and they're asking me to give input.

I have concerns. I'm going to term out, or I'm going to retire, in the not too distant future. What's going to happen then, and who's going to be that individual? No matter what sort of structure, and Judge Walton talked about changing the structure of this, and we're talking about overall changes in structure, it doesn't matter what structure, there's still going to be people implementing it on every level of the game, from the judges who are involved, from any sort of administrator who's involved, to the panel attorneys and the panel reps; we're all going to be attorneys and we're going to have different levels of commitment, expertise and energy that we're going to bring to these matters.

I don't know anything specific that I could suggest that would improve the panel reps' responsibility, or do more than what we're already doing for our panel membership. Some of my frustration with my panel, when I try to recruit and try to, "Give me your input, I'm coming up here to testify, tell me what you want," I'll get the three or four people who are the ones who will get the comments out there. To get things organized, the phrase has come up that I've learned, "You can't hurt cats." To get all these individual attorneys on the same page is pretty difficult.

Arin Brenner: Thank you. I have one more question, and I'm going to be channeling Professor Gould, who had to leave. Mr. LeBell, Mr. Hunt, I'm going to put you a little on the spot, I apologize. As Ms. Roe said, we keep hearing from panel attorneys who say, "We're fine, but we hear horror stories about everyone else." You spoke about the Western District of Wisconsin having a more difficult time. The Committee does have some numbers about expert and investigator usage and I looked at them. They are not exact, they more measure trends, but consistently the Western District of Wisconsin, in twice the percentage of cases that you have, have used expert and investigators in their cases. How should the Committee make sense of that?

Robert LeBell: From my perspective, it's a lack of education on two fronts. One, just utilization of experts and knowing what experts to get, and two, the process of making the application for the experts. Just as an example, we had a discussion about paralegals. I personally use paralegals, but I have a feeling that my panel is not used to making an application, or considering the use of paralegals in complex cases. Part of it is just an educational thing, and that's why this seminar that I'm putting together is in direct response to the statistics that came out about our district. I think it's just incredible that people are not using litigation specialists, or they're not using paralegals, they're not using investigators; whatever it may be. You wouldn't do that on the state side, so why would you think that there's a different package for the federal system?

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I think it's a question of alerting people to what the problem is, if it's a problem, and making sure they understand the resources, and making sure that it isn't one of these things where they have to go to the court and you're fearful that you're going to get shut down. We get shut down every single day of the week, all day long, so what difference does it make if you get shut down once again? Again, I'm dealing with eighty-eight people in my panel, and everybody comes from different vantage points, and different positions, and they also have different experiences. It comes down to education, it comes down to understanding what's available, and if they don't use them, you can't force it to do it, so that's what I'm doing. I recognize the problem, I understand it completely, and I personally am trying to address it.

Edward Hunt: If you notice in my remarks, I didn't even touch, in the western district, about experts and investigators, I addressed compensation issues that related to attorneys. I'm not surprised that they asked for more experts and investigators. I bet you I would also not be surprised that more cases go to trial in the western district, on average, than cases in the eastern district. I also would not be surprised if the sentences post-*Booker* are still higher in the western district than they are in the eastern district. That's just what I've heard. It is a hard place to practice. What you just revealed about experts and investigators, I say bravo to. I say bravo that they're being approved, but I think that's also an indication of the culture. In our district, judges are very sympathetic, very receptive, to sentences that are below the Guidelines. We're known for that. As I've said too many people in our state, we are spoiled here. We are spoiled in the eastern district. If that answers your question.

Judge Cardone: All right, we're going to go ahead then and break for lunch. On behalf of the entire Committee, I want to thank all of you for your testimony here today. I also want to let all of you know if you have something you would like to add that you didn't get a chance to tell us, or that you think you could enlighten us about; please feel free to submit that, because we do want to hear from you regarding anything that you think would be helpful. I do want to thank you all for your time on behalf of the entire Committee. We will adjourn until, I believe it is 12:45, thank you.