



Fw: Written Testimony Minneapolis
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From: Richard Anderson <racemule@gmail.com>
To: cjastudy@ao.uscourts.gov
Date: 05/01/2016 09:25 PM
Subject: Written Testimony Minneapolis

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Honorable Kathleen Cardone

Chair, Ad Hoc Committee

Thurgood Marshal Federal Judiciary Building

One Columbus Circle, N.E.

Washington, DC 20544

Re: Minneapolis Public Hearing

Written Testimony

Dear Judge Cardone:

Thank you for the opportunity to address the Committee To Review The Criminal Justice Act Program.

Background

I was licensed to practice law in the State of Texas since 1973 and the State of Colorado since 1986. Since 1978 I have been Board Certified in criminal law by the Texas Board of Legal Specialization. In private practice I was President of the Dallas County Criminal Bar Association (1983); Chairman of the Criminal Justice Section, State Bar of Texas (1985); and President of the Texas Criminal Defense Lawyers Association (1991). From 1992 – 2007 I was a Board Member of the Judicial Advisory Council of the Texas Department of Criminal Justice.

From 2006 – 2013 I was the Federal Public Defender for the Northern District of Texas. From 2010 – 2013 I was a member of the Defender Services Advisory Group (DSAG) representing the 10th and 5th Federal Circuits.

Experience as a CJA Panel Attorney

Since 1974 I have been a member of the CJA Panel in the Dallas Division of the Northern District of Texas. At that time, all members of the Federal Bar of the Dallas Division were eligible for CJA appointments. Typically when a solo practitioner or a large firm attorney was appointed to represent a Federal indigent, the firm or lawyer would hire lawyers specializing in criminal law to handle the appointment either with them or for them. As a result criminal defense practitioners normally received a higher hourly rate than that statutorily posted for a CJA attorney. In the early 1990s the Dallas Division went to a volunteer panel for CJA appointments, selecting only those interested in practicing Federal criminal law.

In my experience as a CJA Panel attorney from 1974 to 2006, I rarely heard of Judges in our division cutting voucher sheets. However, there was significant scrutiny by the judiciary on CJA fee submissions, especially as it related to investigative and support services. Because of the amount of pushback from the judges on expert and

support services, most of the attorneys absorbed those costs or declined to pursue them. The panel was at a manageable 120 attorneys, so the attorneys received 2 or 3 appointments a year. Even though the Federal Defender office opened in Dallas around 1989, both the Fifth Circuit and the local judiciary emphasized the use of Panel attorneys. This changed significantly in the early 2000s. The Federal Defender's office increasingly carried a larger percentage of indigent appointments and the CJA Panel swelled to almost 300 attorneys. The result was, with the exception of Spanish speaking attorneys, a CJA Panel member might only get 1 appointment every 18 months. In my opinion, this did not provide sufficient work to encourage CJA Panel members to remain proficient in their skills in representing indigents. While there was a core group of attorneys who had sufficient retained Federal criminal work to maintain proficiency, it suffered when attorneys with marginal Federal criminal experience were appointed. This was experienced most frequently in cases with multiple defendants where you could clearly observe the failure of some attorneys to adequately go through discovery before negotiating with the government. That being said, my impression of the overall quality of Panel work was fairly high in our division. While there was some training provided by the Federal Defender's office, the bulk of the training was delivered through the Texas Criminal Defense Lawyers Association and the Texas Criminal Defense Lawyers Project. The State Bar of Texas at its week long Advanced Criminal Law Course would offer one day of specialized Federal Criminal Law training.

Experience As The Federal Public Defender

It was not until I was appointed the Federal Public Defender for the Northern District of Texas in 2006 did I start to experience "the culture of no". Despite rising case loads and the fact that the prior defender received assurances of 2 additional slots for AFPDs, the prior Defender had not filled those spots for fear of being looked upon as wasteful by the Fifth Circuit. My interactions with a number of judges on the Fifth Circuit convinced me that there was a strong bias against institutionalized defender services and a great preference for ad hoc CJA appointments. While the local judiciary was very supportive of the defender offices receiving adequate resources to competently discharge their mission, you did not get the same feeling of support from a number of the judges on the Fifth Circuit. During Judge Edith Jones tenure as Chief Judge, Joseph St. Amant acted as a gatekeeper for access to the Fifth Circuit, and in my opinion he reflected the bias against institutionalized defender organizations of the Chief Judge. I believe the defender organizations in the Fifth Circuit seldom got to air their grievances to judges on the Fifth Circuit who did not have this bias. [As an aside, I have read the written testimony of Mr. St. Amant and it reflects a continued lack of understanding of the tension between the judiciary and the duties of competent appointed criminal defense counsel.]

This tension between defender organizations and the judiciary became exacerbated in

2011-2012 when sequestration effectively pitted the judiciary against defender organizations in seeking scarce resources. The resulting restructuring of the A.O. in which the defender's voice was relegated to a lesser status and the budgetary reins of the defender organizations handed over for oversight to a judicial review committee had defenders questioning the importance of their contributions to the Federal criminal justice system.

As a result of sequestration I lost staff, and more importantly to me, I was unable to fulfill promises to some of the outstanding attorneys in our defender system that resulted in them leaving for private practice.

On the plus side, the defender organizations took to heart their obligation to educate CJA panel attorneys, and the panel attorneys can now avail themselves to truly outstanding Federal criminal legal education.

That Was Then, This is Now

It is my understanding that an easing of sequestration has allowed defenders to once again seek staffing commensurate with their caseload. Chief Judge Carl Stewart has appointed individual judges on the Fifth Circuit in the district of each defender who appears to be more open to properly evaluating staffing requests by each defender. It remains to be seen whether these new advocates will reverse "the culture of no". By the time of my oral testimony in Minneapolis, the Fifth Circuit will have met at their annual convention to vote on these requests and we should have the answer.

The Future

This Committee has already received outstanding recommendations for improvement of delivery of criminal defense services to the indigent from Marjorie Meyers, Jason Hawkins, John Convery, E.G. Gerry Morris and Stephen Bright. Rather than repeat their suggestions, I add my voice of support to their testimony.

Thank you for this opportunity.

Sincerely,

Richard A. Anderson