

LAW OFFICES OF BOBBI C. STERNHEIM

212-243-1100 • Main
917-306-6666 • Cell
888-587-4737 • Fax

33 West 19th Street - 4th Floor
New York, New York 10011
bc@sternheimlaw.com

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Honorable Kathleen Cardone, Chair
Ad Hoc Committee to Review the Criminal Justice Act Program
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Washington, D.C. 20544

Dear Judge Cardone and Committee Members:

Thank you for the opportunity to appear before the Committee and to lend my voice to your important task.

By way of introduction, I have been a member of the CJA Panel of the Southern District of New York (SDNY) since 1985. I also am a member of the District's capital case and habeas panels, as well as a member of the CJA Panels of the Eastern District of New York and Second Circuit. (I currently serve as appointed trial counsel in the Western District of New York, having originally been appointed as learned counsel.) For the past decade, I have served as SDNY's Panel Representative and as an original mentor in the District's Mentoring Program. In addition, I am an original and reappointed member of the board of directors of the Federal Defenders of New York, Inc. Panel membership continues to be an honor, privilege and highlight of my career.

My career as a criminal defense attorney has been based in the courtroom as trial and appellate counsel. In addition to my practice, concentrated in federal criminal defense, I am an educator, teaching and directing trial skills programs in New York and serving on the faculty of the Federal CJA Trial Skills Academy, a trial advocacy program for assistant federal defenders and CJA attorneys.

My membership on the SDNY CJA Panel began with and for the first five years included trying several mega-trials, most lasting three to six months and involving more than 10 co-defendants. The commitment required dedication, passion and re-orientation of my practice, including restricting my caseload to

accommodate the demands of federal practice without compromising the needs of individual clients. Through these many years of Panel membership, I have taken advantage of opportunities to advance and evolve my knowledge, skills and practice by attending a multitude of training programs offered by Defender Services, Capital Resource Counsel, FDNY and CJA Panels. In addition, I have engaged in matriculating post-JD education: obtaining a Master's degree in Forensic Psychology and an LLM in Advocacy (to be conferred in May).

My extensive tenure as a Panel member and leader in the District's criminal defense community provides a solid foundation for my testimony before the Committee and my advocacy for an independent body to oversee the CJA Program.

The CJA Panels of the Southern District of New York include approximately 150 highly experienced, zealous and exceptional advocates of criminal justice. In essence, the best that money could buy. A seven-member Panel Review Committee, chaired by the Federal Defender of New York, David Patton, rigorously vets each applicant, conferring with judges, prosecutors and defense counsel. The chair and two committee members jointly interview each Panel member applying for a renewed three-year term and each new applicant with demonstrated state and/or federal trial experience. Each application requires submission of two most-recent writing samples. Membership requires completion of nine CLE credits in relevant areas of federal criminal practice. Annual applications far exceed available spots on the Panel. In a traditionally (white) male-dominated area of practice, efforts to diversify the Panel are ongoing. The Mentor Program helps criminal practitioners transition from state to federal practice and prepare for the rigors of federal practice, with the goal of diversifying panel membership. To date, the success of the Mentor Program has contributed to new members on the CJA Panel.

The Committee has read and heard the statements of Panel members from a variety of federal districts. I am pleased to report that voucher cutting in SDNY is the exception rather than the norm experienced by fellow Panel members throughout the country. In my experience, most SDNY panel members do not bill for every minute of service, including review of the daily deluge of ECF bounces, travel time to and from court and jail, and waiting time in the jails and on the security lines to enter the courthouse. We are undercompensated for our expertise and never reimbursed for the many extras we provide our clients –

clothing for trial or release from detention; supplies (paper, file folders, photocopies); books and other reading materials; funds for commissary, phone calls, transportation to and from court and attorney-client conferences, etc. This does not deter commitment to our clients or our desire to maintain membership on the Panel; it evidences our professional devotion. Nor has our dedication waned despite times when hourly rates were reduced, payments were delayed, and requested services, deemed reasonable and necessary for defense of our clients, were denied. We recognize that Panel membership is a professional privilege and that best practices regarding fiscal responsibility should be followed, these beliefs held us in good stead during fiscal crises, including the recent furlough period.

Yet, despite our exercise of best practices, we are dependent upon court approval for the services required for proper representation of our clients, the majority of whom face severe prison sentences, including life without possibility of release. And it should be underscored that the Southern District of New York, the so-called “Mother Court” of the Federal Judiciary, is the forum for adjudication of some of the most serious and complicated federal offenses - terrorism, murder, RICO, financial fraud - with Panel members routinely serving as counsel in such cases (*e.g.*, trials pertaining to 1993 World Trade Center bombing, U.S. Embassy Bombings, Madoff associates).

While judges strive to ensure that criminal defendants receive representation by conflict-free counsel, judges are not conflict-free when they assume the role of fiscal authority over Panel-attorney compensation and approval of investigative, expert and other services we believe are reasonable and necessary in defense of individuals charged with serious federal offenses. The judge presiding over a criminal prosecution has no say in the expenditures by the prosecution to fuel multi-year investigations, nor the number of AUSAs sitting at counsel table, the government’s retention of experts, costs for high-tech demonstrative exhibits, compensation provided to cooperating witnesses, etc. In contrast, the same judge controls the purse strings of Panel attorneys defending clients facing a fortress funded by the prosecution. The presiding judge controls far more than attorney compensation. The judge has discretion regarding appointment of associate counsel, paralegals, investigators, mitigation specialists, experts and expenditures for travel expenses. The playing field is never level in a federal prosecution and the Courts have the discretion to make it even less so. Imagine a referee in a

multi-million dollar prizefight depriving the contender of a corner man and a mouth guard... In essence, Panel attorneys face similar challenges in defending our clients.

I advocate establishing an independent body that oversees the management and supervision of the CJA program nationwide. I am familiar with and support Federal Defender David Patton's proposal for the creation of a "Center for Federal Defense" to be governed by a 17-member national board of directors, selected as proposed by Mr. Patton. I suggest that CJA attorneys on circuit and regional boards have a minimum of 10 years of Panel membership, that regional boards include equal numbers of federal defenders and Panel members from each circuit and district, and that current Circuit Budgeting Attorneys have a consultative role in this independent entity.

This proposal does not ignore the positive and successful aspects of the present model; rather it seeks to improve upon and remedy those that are less effective and conflict-ridden. This is not a simple endeavor. Nonetheless, it is achievable and bodes well for the future by acknowledging the competing interests of the individual entities comprising the criminal justice system - the judiciary, the prosecution and the defense - and helping to level a perpetually imbalanced playing field.

We recently celebrated the centennial anniversary of *Gideon v. Wainright*, the landmark decision at the core of the Criminal Justice Act. I look forward to celebrating a new legacy of *Gideon*, the establishment of an independent Center for Federal Defense, its success and its many anniversaries to come.

I look forward to appearing before you in Philadelphia on Wednesday, April 13th.

Very truly yours,

Bobbi C. Sternheim

BOBBI C. STERNHEIM
CJA Panel Attorney Representative
For the Southern District of New York