

January 19, 2016

The Honorable Kathleen Cardone, Chair
Ad Hoc Committee to Review the CJA Program
Thurgood Marshall Federal Judiciary Building
One Columbus Circle
Washington, D.C. 20544

Re: Amy Baggio's CJA Panel Attorney Testimony

Judge Cardone and Honorable Committee Members:

Thank you for the opportunity to speak with you today. My name is Amy Baggio and I am a career-long criminal defense attorney. I clerked with the Federal Public Defender (FPD) while in law school, worked briefly as a state court public defender after I became a member of the Oregon State Bar, returned to the FPD in 2002 and worked there until 2012, left the FPD at the end of 2012 and opened my own solo practice in January of 2013. As a private bar attorney, I receive court-appointed cases through the Federal Defender's Panel Office. I practice almost exclusively in federal court and, according to ECF, I have represented over 250 clients in federal court.

I have represented people accused of all manner of federal offenses, including fraud, assault, illegal reentry, bank robbery, child pornography, drug trafficking, murder, and terrorism. "What in the world are you doing representing those people"? I hear this question often, whether from neighbors, parents at school, and even other attorneys with whom I have worked on committees. Why should we provide quality representation to "these people"? This is what I would like to speak with you about today.

People facing criminal charges face incredible stress and an accompanying array of unpleasant choices. From unflattering headlines and mug shots, to decisions whether cooperate and "snitch" on others, to hoping that your lawyer has the knowledge and experience to protect your rights and negotiate effectively, to deciding whether to accept responsibility and plead guilty or to force the government to prove its case in a court of law, to worries about forever being branded a felon and having to explain to your parents, or your children, why you have to be apart from them for so long. Especially with so many collateral consequences to criminal convictions, now more than ever, even a seemingly straight-forward case involves forever life-altering consequences. Most folks do not appreciate this. At least not until they, or someone they love, is charged with a crime.

Meanwhile, the federal government has grown increasingly aggressive and creative in its investigation of potential criminal conduct and in charging federal criminal cases. Federal law enforcement officers are constantly trying to stay one step ahead of those they consider “the bad guys.” The government uses state-of-the-art surveillance methods, takes advantage of a greater amount of information sharing between agencies than ever, and creatively prosecutes its cases to achieve its goals and protect its sources.

So, where does the criminal defense attorney fit in? I have dual roles. I function both as the guiding hand of counsel to my client, and as a foil to aggressive and creative law enforcement methods by our government. Both roles are equally important.

As to the guiding hand of counsel, every client I have ever represented is in a state of crisis when we first meet. Some worse than others, of course, but every one finds him or herself in the undesirable position of being under investigation, or under indictment, by the United States Government. Their status as a target of the federal government does exist in a vacuum. There are a number of complex life experiences that lead him to be accused of robbing the bank, or trafficking narcotics, or murdering another human being. To represent that person, I must undertake every effort to understand him. A quality relationship with the client is essential for at least three reasons.

First, only by connecting with my client will he begin to trust me. Connecting with my client may involve hiring an investigator to conduct background interviews, obtain school or mental health records, or find percipient witnesses to the events underlying the current charges. This may also involve hiring an expert to evaluate my client’s cognitive abilities or his mental health. Once I understand my client’s background and history, including aspects such as his cognitive strengths or limitations and his history of substance abuse, then I am in a much better position to be able to communicate effectively with my client. He must understand the nature of the charges and the proceedings against him, which in federal court can be an incredibly difficult task. If my client trusts me, he will be more willing to accept my counsel, he will be more willing to accept my assessment of the case against him, and he will be more willing to rely on my opinion as to whether cooperation might be in his best interest. If he trusts me, he is less likely to request a substitute attorney, which improves efficiency and reduces costs significantly. If he trusts me, he is less likely to file a federal habeas petition claiming I was ineffective, also significantly saving resources. In short, a quality relationship between counsel and client is a good thing all around.

Second, spending time with my client is also essential in understanding the facts underlying the charge. Once I establish a relationship with my client, that client is more willing to share with me his own knowledge of the events underlying the charge. His active participation in the case improves efficiency as it allows me to more quickly understand the facts

of the case, be aware of relevant investigation I need to undertake, and identify potential defenses and misunderstandings that the government may have developed about my client. In my experience, the government relies on defense counsel to provide this assistance. No person is served if the innocent are convicted or if the guilty are unfairly sentenced for aggravating circumstances that have no basis in fact. Only with a quality relationship between counsel and client can these goals be achieved.

Third, making best efforts to understand the circumstances that have led the client to his current predicament is necessary in order to prevent him from repeating his behavior. Whether obtaining treatment for someone with mental illness or addiction, or reconnecting a client with family members, or helping them learn to read, the federal criminal justice system – unfortunate as it may be – is often the place in which the fundamental problems underlying a person’s criminality are first identified and can begin to be addressed, whether by U.S. Pretrial Services, the defense team, or U.S. Probation. Addressing these problems is not only the right thing to do as human beings, but also allows us to reduce recidivism, which also benefits society as a whole. Achieving a level of trust between me and my client allows me to effectively guide my client toward fixing the things that have led him to his status as a federal criminal defendant.

This brings me to my second role as appointed counsel – to act as a foil to the government. Obviously, the criminal justice system is adversarial. The Executive Branch develops cutting-edge investigative methods and new approaches to prosecuting its cases. Defense counsel are tasked with reviewing the government’s actions and identifying motions to challenge the government when we believe that they have broken the law in investigating or prosecuting a case. My job is to defend the Constitution. The judge’s job, in turn, is to evaluate my challenges to the government’s conduct and assess whether the government has acted lawfully. This system of checks and balances is absolutely essential work.

Unless a zealous defender questions a government practice, the judge may not know that a new practice even exists. Unless a judge is made aware of a pattern of investigation or a creative theory on legal culpability or admissibility of evidence, then the executive branch operates in the dark, untested. When we defenders challenge a government investigative practice and a federal district court judge tells the government that its conduct violates the Constitution, then the practice stops and the rights of all citizens are protected.

The vast majority of people charged with federal offenses receive court-appointed counsel. The federal/community defenders and panel lawyers are therefore the front line of reviewing government practices and identifying conduct that threatens our civil liberties and violates the Constitution. Our work affects not just our clients, but all citizens. What a hugely important role.

I am incredibly lucky to have the job that I do and to practice in the District of Oregon. The Federal Public Defender and the CJA Panel Office, located within the FPD, provide efficient, high-quality support and training. The Oregon approach works very well here, where there is an appreciation by the judges of why what we do is important. Time and again, the judges support me in my role as appointed counsel and provide me with the resources needed to do my job. This is good not only for me and my clients, but for our system as a whole.

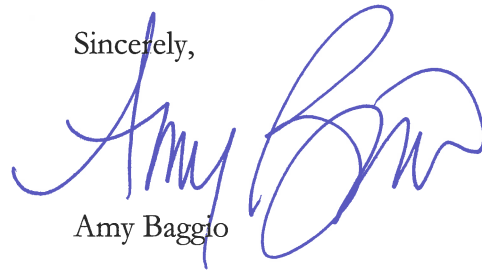
In terms of overall suggestions for improvement of CJA cases, I offer the following:

1. Statutory compensation maximums have no place in the federal criminal justice system. Every case is unique. A prison assault case with 50 pages of discovery and the defendant's 30 seconds of conduct caught on surveillance tapes might be resolved for \$2,500. A terrorism case involving five years of investigation, classified information, a hundred-thousand pages of discovery, witnesses spread out all over the world, and a variety of cultural and language differences, may cost \$500,000. Both cases are felonies, but the similarities beyond that label are limited.
2. Initial review of vouchers are best handled by someone within the federal defender or community defender office, where reviewers have the advantage of understanding both the role of defenders and the CJA lawyers' reputations. If there are concerns with waste or misuse, individual CJA lawyers should be handled individually.
3. I have no objection to my trial judge providing a subsequent level of review of my vouchers. I understand issues have arisen in other districts where trial judges have cut vouchers, perhaps unreasonably. That has not happened in my experience. To avoid losing good quality panel attorneys and to address problem panel lawyers (or judges), I suggest implementation of a voucher reduction appeal process to take place at the circuit court level. Such an addition seems to comport with both fairness and due process.
4. The retained rate for federal criminal cases varies greatly in our area, anywhere from \$275 to \$600 per hour. The current CJA rate of \$129 per hour is significantly less than the going rate for retained counsel; however, I have no objection to the current rate of compensation. I believe in the importance of providing quality representation to indigent people and I am willing to work at the lower rate to provide this service.

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Our system is far from perfect, but in the District of Oregon, we have established a system that works very well for clients, judges, and defenders alike. I thank the committee for its time and hard work in studying our system of indigent defense. I am pleased to be a part of this review and would offer any additional assistance the committee might desire.

Sincerely,

A handwritten signature in blue ink, appearing to read "Amy Baggio". The signature is fluid and cursive, with the first name "Amy" written in a larger, more prominent script than the last name "Baggio".

Amy Baggio