

Ad Hoc Committee to Review the Criminal Justice Act

Public Hearing # 3—Portland, Oregon

February 3-4, 2016

Transcript: Panel 2—Views on Quality Representation

Judge Cardone: We have a panel in front of us, and so we'll get started right away. Let me introduce the panel which is Mr. Felton Howard; Mr. Jerry Needham who is the Assistant Federal Defender from the District of Oregon; Ms. Jennifer Cleveland; Ms. Melinda Bell; Magistrate Judge John Acosta from the District of Oregon; and Mr. Matthew McHenry who is a CJA panel attorney here in Oregon.

We're going to get started. It is my understanding that, Mr. Needham, you're going to go ahead, and I want to remind everybody, we're going to have brief opening statements, and then the Committee will be asking some questions. So Mr. Needham, my understanding is that you are going to begin the opening statement, and then introduce your clients. Is that correct?

Jerry Needham: That is correct. I appreciate the opportunity to address the Committee, and just begin by letting everyone know, my name is Jerry Needham. I've been a federal public defender here.

Judge Cardone: Can you get a little closer to the microphone? They're very direct.

Jerry Needham: Okay. I've been an Assistant Public Defender here in the District of Oregon for the last twenty years. Prior to that, I was a criminal defense attorney with the Legal Aid Society in New York City. So I think I have a pretty good perspective on a busy, overworked, underfunded state system, and the state-of-the-art here in the District of Oregon.

Before I introduce my clients, Jennifer Cleveland and Mr. Howard, I just wanted to give the Committee a little overview of the approach that the Federal Defenders Office here in the District of Oregon takes with our cases. Our commitment is to the whole client approach. As the Committee is probably aware, many of the individuals that come in to federal court have a long array of social problems from mental illness, drug and alcohol addiction, unemployment, housing problems.

We attempt to address as best we can all these aspects of our clients' backgrounds. We've committed to the approach of that a stable client is better obviously for the client and the outcome of the criminal case, as well as the safety of the community and the long range goal of rehabilitation.

In the District of Oregon, the Federal Defenders Office, but typically, are appointed pursuant to a duty assignment. Every day, an assistant federal

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public defender is assigned to represent individuals who are brought into court that day on a new arrest.

In Ms. Cleveland's case, the government notified our office on a Friday afternoon that they were bringing in over twenty-five people on a Monday morning. They had a large investigation, and over twenty-five individuals were going to be arrested over the weekend. They didn't give us the names of the individuals, but they advised us so that we contacted the pretrial services offices and made arrangements with the Marshal's.

They brought in twenty-five individuals at 7:00 in the morning. We had over a half a dozen attorneys in the Marshal's lock up. Pretrial services had most of their staff there. We were able to meet with twenty-five individuals, and go through their charging instruments with them, as well as have most of them interviewed by pretrial services.

That is typically how we get appointed. So that was just an example of the three, four different agencies in the District of Oregon working together so that individuals when they arrived in the courthouse would get representation, and have an orderly process through their initial appearance and arraignment.

Ms. Cleveland was interviewed by pretrial services. We made an appearance before the federal magistrate. She was ordered released. Pretrial believed that she was at risk to reoffend into drug use. They recommended that she be assessed. Due to Ms. Cleveland's past drug use, she was at risk to reoffend, so it was recommended that she go into a pretrial residential treatment.

In the District of Oregon, there are two providers that have contracts with pretrial services. At that point in time, there was no beds available. Ms. Cleveland was able to obtain in-patient treatment. She went into a facility in Vancouver. This was not contracted with the government. This was private source funding.

She went through a six-month in-patient treatment program. She went back to school. She went to community college. She went under view . . . undergone counseling. She was able to obtain volunteer employment, and then part-time employment, then full-time employment.

While this process was going on, my investigator assigned to the case, Susan Moffatt, gathered background materials. It came to light that Ms. Cleveland had a number of traumas that were inflicted upon her as a young child, and I briefly mentioned some of that in my submission to the Committee, and I won't go through that.

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We were able to gather evidence. We were able to interview individuals about her background. My office then permitted me to hire a forensic psychologist. The forensic psychologist met with Ms. Cleveland, reviewed the materials that we had gathered, prepared an evaluation, was able to put together a picture of why the trauma and the events that occurred when Ms. Cleveland was a young minor had inflicted upon her, and why she had turned to illegal drug use.

She had two prior felony convictions that scored under the advisory Guidelines, and she was indicted as essentially a career offender. Her advisory Guidelines were 151 months to 188 months, assuming a plea of guilty to the most serious charge.

We presented our mitigation materials to the United States prosecutor's office. They were very receptive. They reviewed our materials, and made a recommendation of a variance from 151 months to 92 months. Our investigation continued in regard to mitigation. There was unfortunately overwhelming proof against Ms. Cleveland.

We continued our negotiation with the government, and as we gathered further records, the government ultimately came to sentencing and recommended a seventy-month term of imprisonment. Because we had been able to obtain this information about Ms. Cleveland's background as well as a forensic psychologist, and all the witnesses, we were able to convince the District Court to depart downward to a term of probation.

Judge Brown imposed a sentence of five year's probation which included nine months of home confinement, well, not home confinement, at a reentry center. The reason that Ms. Cleveland is here is to tell the Committee why all these resources were available to her and what impact they had on her and the direction of her case.

Judge Brown commented that she had never gone to this extraordinary lens to make a departure of some twenty-four levels under the advisory Guidelines. Ms. Cleveland has now been clean and sober for two years. There's been no re-occurrence of any type of criminal conduct. She is prepared to file her first tax return of this year, and is expecting a refund for the work she's done last year.

Ms. Cleveland has a brief statement that she would like to give to the Committee. When she's done, I'll introduce Mr. Howard. Go ahead.

Jennifer Cleveland: Hi. I'm Jennifer Cleveland. I'm thirty-eight years old. I grew up in California, Florida, Portland most of my life. I had a pretty horrific childhood. I started using drugs at the age of fifteen, in and out of, I went to prison a couple of times, in and out of jail. I remember right before I got

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arrested, I remember waking up at thirty-six years old in an attic in somebody else's house looking around at all my possessions in boxes wondering, "Is this what my life's gone to? Thirty-six years old, wow! All my stuff is in boxes. This is great."

So when I got arrested on this case, I realized I needed to make a change, and I never had the help to make that change. When I was released on pretrial, me and my mother, I was released to my mother, we bashed heads, so it wasn't great. I had to go back to where I first was arrested. And so I needed to make a choice because I didn't want to go back to using drugs.

I found a faith-based treatment center. I got myself in there. I started school . . . I started volunteer work, then I started school, then I started work, and I kept volunteering there, and Jerry, and Susan, and Ms. Martin, they're always checking up on me, seeing how things were going. The evaluation with Ms. Martin was, it was very painful. I wouldn't want to ever have to do that again, but she helped me face some demons and realize some things.

And so I could have fallen into some deep depression if it wasn't for them being there for me. Yeah, they were there. I remember when we're in jail, there are a lot of the clients or a lot of people would say that we just felt like we were a number, that just hurry up and get through the court and get us out of here, but with, and Susan, and everybody, we actually felt like that they helped us. They were actually there to help us help ourselves, so that I could actually do something with my life.

Like he said, today where I'm at is I'm a responsible adult, and I'm actually going to file my first taxes, so. That's it.

Jerry Needham:

Thank you. Mr. Howard was initially, and all throughout his criminal case, he was arrested [represented] by Steve Wax, who I understand testified this morning. Mr. Howard was indicted back in 2005 for the distribution of crack cocaine. It was a five-year mandatory minimum based on the amount that was in the indictment.

Mr. Howard was released on pretrial conditions. He had some difficulty on pretrial release, and he was taken back into custody. He was given a second opportunity, did much better that second time. He met with Mr. Wax. I understand he was evaluated at some point in time. It was his first time to actually sit down with a psychologist, and face some of his demons.

Mr. Wax was able to negotiate a plea agreement where the government waived the mandatory minimum. He was ultimately sentenced to an

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eighteen-month term of imprisonment. Shortly thereafter, the United States Sentencing Commission reduced the Guidelines for crack cocaine. Mr. Wax was again appointed to represent him. Due to a two-level reduction in his offense level, he was ultimately sentenced to a period of time served.

When he was released, he was admitted to the reentry court or the drug court here in the District of Oregon. Judge Redden was at that time running the drug court. He performed very well, got a reduction in his supervised release term, and was released from supervised release early.

Now, Mr. Howard is five or six years away from supervised release. He's giving back to the community, and he is a program manager at the reentry center here in Portland at Mercy Corps. I'm very happy to introduce Mr. Howard.

Felton Howard:

Thank you. One of the things that got me here is when they said that Steve Wax kind of recommended me to come here. I just made the joke that I'd do anything Steve asks me to do as long as it was legal. That's how good he was with me. I was listening to this young lady right here tell about her, that she woke up after thirty-six years and realized that she was in trouble, and that she was a drug addict.

And I just reflect on the fact that I had thirty-six years of bad behavior. I always tell all the young people that come in to my office that, "you know, you're getting it now, you need to keep it." I wished somebody would have gave it to me when I was thirty-six. I think if I would have met somebody like Steve back at that particular time, I might have straightened out.

Unlike her, I didn't have any real trauma in my life. My parents were great. I had a great childhood up until the time I was sixteen, and I got arrested for the first time for smoking weed on the beach in Tillamook County. Spent three days in jail, that's the first time I was ever in jail. I had a series of arrests, just book and releases, book and releases for the next thirty-six years.

I actually got arrested for the first time and spent some time, actually went upstairs in the justice center for the first time when I was fifty-two years old. I never spent the night in jail before, just a lot of book and release, book and release.

I remember the judge in the courtroom that I had to go to after a bad behavior you were talking about where I wasn't doing well on pretrial. I can't remember the judge I was before, but he told me, he says, "Mr. Howard, you've been doing a whole of book and release, book and

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release.” He says, “This is the United States of America, and we don’t play,” exactly what he said.

He gave me a choice. He told me that I could spend the rest of this time I want in jail and wait until my sentence or they would put me into a treatment center. I went into Willamette Family Treatment Center. I think that’s when I finally got it. It was the worst experience I ever had in my life, but I got through it, and I think that that’s what helped change.

Now, the thing I want to say about Steve, and you guys and this panel is here to look at how public defenders work, one thing I will say about Steve that was different from everything, I’d had lawyers before in the county system, and it’s a little bit different with the county system. I know now because of the work I’m doing is their caseloads are just like huge.

One of the things that I noticed about Steve was once I got out of . . . I did seventeen days in Inverness. It was the first time I’d ever been locked up. When I went to court after coming out of there, that’s when I met Steve. Steve told me right away, he goes, “here’s the guidelines.” He says, “I’m going to be your lawyer.” He says, “Don’t lie to me.” He says, “Take my suggestions and we’ll get along fine.”

Steve was one of those ones that would call me. I never got any calls from my other lawyers in my, from the, you know . . . he’d call, he want to see how I was doing, he’d call the treatment centers and see how I was doing. When I got out, he sat down and brought me up to his office, and he opened up the big book is what he calls it, he showed me exactly what I was looking at which basically had my heart doing like this.

He said, “Well, we can get through it.” He told me that, “put in some work,” which I did a lot of work. I did some cognitive things, I finished the treatment center and all that. I went before Judge Anna Brown and he represented me there. Ms. Brown, I was thinking to myself that I may get probation and not have to go to jail which is that’s wishful thinking.

I should have known that my sentencing date was 9/11/2006, so that wasn’t a good omen to begin with. She sentenced me to eighteen months, but what she did tell me is that the work that I put in that she would recommend if I got out of prison, I did well for a year, that she would recommend early release from probation. I did a year and a half on four years’ worth of probation, and they let me go. They released me from the probation.

One of the things though . . . last thing, I don’t want to take a lot of time but I want to let you know how deep Steve worked for me. I had an issue that happened in Sheridan. I was in Sheridan Prison, and I was at the

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detention center. One of the counselors there was kind of like stepping on my neck a little bit. I was supposed to be there for eight weeks, and I was there for four months. This is when they had twenty-one hour lock down there, you only get off for three hours.

So I called Steve and I asked him. I said, “Hey, man. I was only supposed to be in here for eight weeks, now it’s going on five months.” He said, “Oh, don’t worry about it.” He says, “I’ll take care of it.” I said, “Hey, man. You know, be careful because these people will try to still get me in trouble.” He says, “Oh, I won’t. I won’t. Don’t worry about it. I won’t. I won’t do anything.”

Two days later, I got called up into the counselor’s office, and she said, “Oh, we found your paperwork. It was in Texas.” So I was released to the federal corrections, well, actually the FCI at Sheridan about probably four or five days after that. I know that was Steve that called in and wanted to know, why is this guy still here.

Steve is also I think he was one of the people if I’m correct now that helped spearhead the crack laws out of his office. He worked hard on that. Some of the lawyers from the Federal Public Defenders Office here came and visited us in Sheridan and let us know what was going on with that which I thought was really thoughtful because we had no idea what they were even doing. They gathered a bunch of us up together in the prison and explained about the crack laws.

When I was released from Sheridan, I walked out of Sheridan December 10, 2007, Steve was on the phone as I was pulling out of the parking lot telling them they had let me go. For me, he was like somebody who was actually paying attention to a human being rather than . . . I really felt like he was going to bat for me.

The last thing I like to say is that yesterday, it was February 2d, that was the first time . . . ten years ago, February 2d was when I met Steve. That’s ten years that I haven’t had any drug use, in ten years I didn’t have any criminality. That’s my anniversary date. Thank you.

Judge Cardone: Congratulations! Judge Acosta.

Judge Acosta: Good afternoon. Thank you very much for this opportunity. I won’t repeat what I said in my letter submission to the Committee. What I’d like to do is expand a little bit on some of the origins of this district’s court-assisted pretrial supervision program. I came to the bench in March of 2008 after twenty-five years in civil practice. I had no criminal law experience, except some classes in law school, and a semester of a clinic program that

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allowed me to participate in misdemeanor trials. That was the sole sum total of my experience.

I think because of the type of law I practiced in the large firms I practiced, then I probably came to the bench with some misconceptions about who criminal defendants actually were. When you start to read the stories that caused them to be in the system, it changes your view, at least in my experience, quite quickly.

You realize that the people who come to court in this system, they're not born bad people, but they've been born into bad circumstances by and large or they've had some unfortunate circumstances along the way or no one's taken an interest in them to show them the ways to be successful as individuals.

The very first defendant in which, I suppose, developed the CAPS concepts was back in 2009. Before there was a CAPS program, I mentioned that in my letter I want to explain a little bit about that particular case. He had a criminal history, it was a gun charge with drugs. The police went into his apartment unannounced on a warrant, and picked him up. It was a very close call for a release decision.

I remember talking to the pretrial services officer in my office before calendar that day. We have a criminal calendar every day at 1:30 here, Monday through Friday, and it was my duty month. He was not recommending release. And I said, because it was a very close call on the charges and the evidence, and I said, "Would it make a difference if I met with him after I released him maybe once a week or so?" He looked at me like I guess he had never seen anything like me because I suppose no one had ever suggested that to him before. We did that.

One of the things that impressed me about this particular individual is when he appeared before me for his initial appearance, there were people there for him. His mother was there. He had an uncle. He had others. He had a community behind him. It was a close call, and I wasn't sure I was doing the right thing, but I released him on conditions, and we started to meet in court once every week.

The approach I took, which is the approach that I ultimately adopted for most all of my CAPS defendants, is that that very first meeting and at the several meetings that followed, I gave him homework. The first thing I asked him to do is to write about something that was very important to him. What did he want to do with his life? What did he want to do on pretrial release? What did he want to do after he was finished with this case?

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I did that for two reasons. Sometimes it seemed to me, no one's ever asked the people who are on the other side of this table what they want to do, where do they see themselves, how do they think about their future.

The other thing I wanted is when he wasn't before me in court, when he wasn't in his lawyer's office, when he wasn't meeting with his pretrial services officer, I wanted him to be thinking about me. I wanted him to be thinking about the things I'd asked him to do, and the next meeting with me, and perhaps that would motivate him to at least provide additional incentive to comply with his release conditions. That's how we started.

I ended up meeting with him for probably an eight to ten month period between the time I first saw him on initial appearance and the time of his sentencing. He did incredible work, and he did incredible work after two or three unforeseen, unfortunate developments in his life that would have thrown anyone else back into whatever habits they had developed which had gotten them involved in the system in the first place, but he stayed with it.

He put 110% effort into complying with his release conditions: employment, school, meeting his treatment program requirements. At the sentencing hearing which I attended, he had done so well that the assistant U.S. attorney assigned to the case was defending to the sentencing judge his recommendation for a below Guidelines sentence for this individual. He was actually, I think it's fair to say, advocating for this individual and the sentencing recommendation the parties had reached.

He had an eighteen-month sentence. He served about a year of that. He went to a halfway house. He came out. And last year, he got off paper. I've seen him several times since, and his mother several times since. He has a young son. He has a very healthy relationship with the mother of his son. He's made some very good decisions. He has a business that he runs, and he is in a really, really good place.

And he did the work, but the important takeaway from this is, because we took a different approach with him, he had support and encouragement from the system. He wasn't just, I think it was Ms. Cleveland who mentioned this just a few moments ago, he wasn't just treated as a number to be brought into court and then cycled out for the next case.

As Jerry mentioned, the approach in that case was really a whole client approach, and it served as the basis of the court's CAPS program. In that time since, I've had probably two to three dozen CAPS defendants now.

One of the questions that some of you may have for me is, "do they all succeed?" No, they don't. They don't all succeed. That doesn't change my

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mind however that I think I can help everybody that I decide to take into the CAPS program. As I sometimes say, if my older daughter is sometimes wrong, but never uncertain, I always take them with the idea they're going to make it.

They sometimes don't make it, but even when they don't make it, they are thankful for the opportunities they had, and they found something that in many instances, they never had before. That is this. They found that they could do things, they could do good things, they could improve and change, and for some, it just takes longer than others.

I just want to mention briefly a couple of other CAPS defendants that I've worked with since that time. Another individual was before me on another felon in possession charge. He had a prior bank robbery conviction for which he had served five years in prison. He became an enforcer for an Aryan prison gang. He had the tattoos to prove it.

He was a very difficult release decision for me, and I took him into the CAPS program, and he performed spectacularly. One of the things that helped him is he had a wife who kept him grounded. He had kids he cared about, and I used that, if you will, as leverage to help them stay focused on complying.

He also had a skill. He was a welder. During the time he was in the CAPS program with me, he became a journeyman welder, and he was so good, both at the technical requirements of his job, as well as making sure the work got done on site, he became a foreman. He got straight probation from the sentencing judge, and that was absolutely deserved. He absolutely earned that.

During that period of time, I think it's very important to point out, he had a drug addiction, and he had a drug addiction for many of the same reasons that Ms. Cleveland touched upon in her life. He wanted to get the tattoos removed from his neck. He refused prescription pain medication because he did not want to risk being tempted to basically go off of his sobriety, so he used Tylenol or Advil, but that was it.

And if you know anything about tattoo removal, you know it's an extremely painful process, and these were on his neck. He went through every treatment without prescription medication. That was how intensely dedicated he was to the success of his program. He's doing great now. He's been on probation for two years of his five-year probationary sentence, and there have been no problems.

The other person I want to mention was someone who was supposed to be here today who was not able to be here. I mentioned him in particular

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because of all the CAPS defendants I've worked with, and as difficult as the circumstances have been that many of them come from, he started with the least, and he made the greatest progress because he started so far behind.

He's an individual who's only a few years younger than I am. His whole life had been criminal history. I remember when the pretrial services officer came to talk to me about him. Here is a man who at the time was fifty-two years old. This was what, four, five years ago. There wasn't really anything to work with here. I mean, I couldn't really understand why we were going to take a chance on him because he had never been able to stay out of incarceration, either pretrial release or in any other way.

I put him in the CAPS program, and within a week, he violated because he used. I brought him back into court, and I said, "I'm going to temporarily revoke you and have you sit over the weekend to think about what you really want to do." In the meantime, we had him assessed, it turned in to be a two-week hiatus. I put him back in the CAPS program, he went out and he did great.

He got straight probation from the sentencing judge, and he's been doing really well. I continue to meet with him even though he's now on probation because, I suppose, I became part of his community.

So the other person is Melinda Bell who's here to my right, your left. Ms. Bell is another one of the tremendous success stories that I think are the hallmark of the whole client approach, and I really like that, Jerry, so I'm going to start using it now.

Jerry Needham: Thank you.

Judge Acosta: Ms. Bell is another one of those close calls when I first saw her. The pretrial services officer who worked with me on the very first CAPS defendant I ever had, the one I mentioned to you already, recommended putting her in the CAPS program, and I had serious doubts whether she would be able to perform well and succeed, but I released her, and from the very beginning, Melinda Bell performed spectacularly.

She was motivated to succeed. She has children that served as an anchor for her success. And over time, she became more and more successful in achieving goals that she set for herself. One of the things that . . . we all do it differently here in the district, those of us who do the CAPS program, And one of the things that I do if someone's been with me for a long time and done well is instead of court, which is a rather constrained environment, it's formal, it can be intimidating, I bring these defendants back into my chambers and we sit in my office where they're surrounded

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by my world, so they see what I am and what I'm about, my family pictures. And we talk about their family. We talk about strategies to succeed and preventative strategies if you start feeling those things that maybe tempts you to go sideways and violate your conditions.

Every step of the way, Ms. Bell showed tremendous judgment. She showed tremendous resolve, and she showed a tenacious persistence to succeed. That was impressive. It was incredibly impressive. Melinda got straight probation, and last year, was it August?

Melinda Bell: August.

Judge Acosta: She got off paper early. And she is, she'll tell you more about this. She's involved now in a local program that has been very, not only very beneficial to her, but very constructive for those that she now works with. With that, Melinda Bell.

Melinda Bell: Hi. So I'd just like to say that I was involved in a drug conspiracy that had like eighteen other defendants. My attorney was Bob Reid. I had struggled in the beginning. I went to the halfway house. They put me in the halfway house. I was there for a couple of weeks. Then they put me in [INAUDIBLE] where my kids were. I really hadn't been in any trouble before. I'd gotten like a DIU, spent the night in jail, some assaults, stuff like that, but never really had been in this much trouble.

And I really didn't understand how much trouble I was in until my attorney started breaking things down for me like, "You're getting ready to go to jail for ten years prison." I'm like, "for what," you know? He's like, "for the crime you committed." I'm like, "whoa, whoa, whoa!" So between him, Bob Reid, Tiffany, I can't remember her last name but she was my private investigator, they took the time to figure out, investigate my life, my early childhood, and figure out why I was doing the things I was doing.

I told them that I had been smoking weed since I was two years old. My mom put beer in my bottle when I was a baby so I'd fall asleep. So all these things that I was used to doing was forced on me as a child, as an infant, basically. That's the way I grew up, you know. I came from a line of drug dealers, pimps. Nobody really there to stop me and show me, "well, hey, you need to go this way."

I did graduate high school because I had to get up and go to school every day. Once I had moved in with my grandmother, she was more stable, but when she passed, I went back out there and did whatever I wanted to do. So once Bob Reid and Tiffany started getting into the basics of why I was

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doing what I was doing, I was able to see for myself that that was not me, that was somebody that was created through my past.

When I got out of jail, when Judge Acosta let me out, he told me, he's like, "This is your last chance. Nobody gets four strikes. So you better make this one work." So I said, "Okay." When I was in jail, I found a flyer on the bookshelf for Women's Life Change Program, Union Gospel Mission. That's the program I chose because it was faith-based.

So I had to work that program for four months before sentencing came up, and it was hard work. Two weeks into my program, I wanted to go back to jail. I was just like, "This is hard. It's easier to just stay in jail and do nothing. Get up for meals, get up for med line, and sleep." But he's like, "You haven't done anything wrong, so I can't put you back in jail." I was like, "Okay."

So I went back to the Union Gospel Mission, and started to work in my program. I met with him every week for like four months, and he did give homework every time we met on top of my treatment that I already had. So, for four months that happened, I had then, it came up to sentencing, and when I got sentenced, I was sentenced ultimately to a year in the program. So that was a blessing. I got time served, and to do a year in this program.

Ultimately, my prison sentence was waived, and I did sixteen months in a rehab in a residential treatment facility, which was great. I graduated that, was able to get some of children here in Portland area to live with me because I'm not from this area. I'm from Hermiston, Oregon, and that was one of the things that when he let me out, I told him I didn't want to go back home because it was too easy for me to access the things that I wanted, to use drugs, and to control my environment.

It was better for me to stay out here, and so I did. And I still live here. I live in Beaverton at the Union Gospel Mission, Women's Life Change Program where we can have our children with us. What else?

Judge Acosta: All the work you did to get your license back . . . [whispering]

Melinda Bell: Oh yeah. I didn't have a driver's license when I first came out here. There was like, my credit was bad. I was able to pay off a lot of my bills. I was able to get my driver's license back. I ultimately signed up after I graduated the first part of the program to an internship called WOW, Women of Wisdom, where I learned all the aspects of the ministry field inside of that organization. It's a nonprofit.

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My last job there was case manager. So I was getting women out of jail, and giving them the second opportunity that I was afforded to get a second chance at life, and speaking into their life, speaking back. Unfortunately, none of the women that I got out of jail were able to make it. Couple of, one of my clients that I had is doing fifty months right now, but that was of her own choice, but I was just happy to be able to give her that opportunity that I was afforded through what I've learned here with CAPS hearings, and the training that I was given at Union Gospel Mission.

Also, I have a set of twins that are with their father who's a level three sex offender in Spokane, Washington. And

Judge Acosta:

Let me speak to that just briefly while Melinda thinks about what she wants to say next. One of the things that impressed me very much about Melinda's evolution in the CAPS program is her decision making. One of the problems that we see on the criminal side of the court's business are people who just make bad decisions. They have poor judgment, they go at things the wrong way.

Oftentimes, it's because unlike those of us sitting in this room who are lawyers and judges, they don't know how to navigate the everyday things that we do. They don't know how to get their license back. They don't know how to get their Social Security card. They don't know how to do fill in the blank that we all know how to do and can't remember when we didn't know how to do it.

Melinda's twins were a tremendous source of stress, and sadness, and anxiousness for her, but she worked through the proper process, and she's still doing that. I think that is an amazing thing because she's had every reason to be angry and to be vindictive in ways that might have gotten her into trouble at any point in her pretrial or probation process, but she made good, deliberate decisions.

Is it over yet? It's not. Is it still frustrating for her? It absolutely is. Is she still working through the system the right way with a lawyer in Spokane? Yes, she is. I have no doubt just like everything else she's achieved, she will be successful at that as well.

Melinda Bell:

Yes. Thank you. So, yeah, like Judge Acosta said, I do have a lawyer, and I'm looking to start family reunification counseling with them soon. I haven't seen them for three years. At first, I blamed myself for losing them to their father who has this level three sex offender status. Once I stopped blaming myself for being an addict and doing the things that I had done, I was able to look forward to see that I will get my kids back someday. This is only temporary.

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That was something that Bob Reid always would tell me that keep me going. He'd be like, "This is only temporary. You're not going to spend the rest of your life like this. This is just one glitch in time that you're going to have. So, you know, cheer up. Everything's going to be okay."

With meeting with Judge Acosta as far as my twins go, there was times I come in there, and I did a lot of crying, you know, let out some things that I've felt, and he listened. For me, having the CAPS hearings and having the federal attorney that I had in the pretrial services and the investigator, I had accountability. They became like a family to me. They helped me. They didn't dictate what they wanted me to do. They came alongside me and walked through this justice system with me because like I said, I didn't understand the significance of what I had done, and how serious I was in deep trouble. You know, I didn't really get it.

By them taking the chance on me, it gave me the opportunity to turn, and now I'm doing things that I would have never thought I would have done ever in life. You know, I didn't think that I would be helping women that were doing the same thing I was doing or even worse or maybe even less, but giving them, the strength to just to even go on another day, and tell them that the sober life is a good life, and there's better ways of living than just the way that we were living, and also I'm showing my children now that I am a good mom.

Before, I thought I was a good mom, and I wasn't a very good mom when I was on drugs, but now I am. I'm there for their basketball games, I'm there for their football games, I'm there for parent-teacher conferences, I'm there for them, period. I'm there in the home every night, every day. When my son gets off the school bus, I'm picking him up outside off the school bus, and that would have never happened in my drug addiction. He'd have to come in the house by himself.

So, it's just the things that I've learned from being assisted with all this extra help that I never knew before is what helped me. Thank you.

Judge Cardone: Alright. Mr. McHenry.

Matthew McHenry: Thank you. I want to thank the Committee for the work you're doing, and then also for, of course, the opportunity to speak before you. I'll give you a little bit of background on me. I'm a partner at a small law firm here in Portland. I started doing criminal defense work when I was a second year law student, and our now federal defender, Lisa Hay, hired me as a law clerk with no criminal work experience in my background whatsoever.

I haven't looked back since that time. Since I graduated law school in 2004, I've done nothing but defense work for the last twelve years. My

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partner and I do a mix of privately retained cases and CJA work. We do trial level work, we do appellate level work, we do post-conviction and habeas work. I also spent a short stint at a local county public defender's office right here in Portland.

So I think I also come before this committee with a broader view of the criminal justice system, and what works, and what doesn't, and how our work on the CJA panel and through the FPD here compares to other aspects of the criminal justice system.

I love this work. I get to help people facing the direst of circumstances, and get to meet my clients who are the most unique, and complex, incredible people that I've ever had the pleasure of running into. And I get to work with these folks to find positive outcomes to situations that when they start, and when they first meet me, it doesn't look like there's going to be anything positive that can happen.

Of course, I've seen some horrible outcomes as well, but for the most part, the vast majority of my clients end up bettering lives, bettering their own life, and bettering the lives of others when it's all said and done.

What I want to talk about today is how I'm able to do that, how we're able to achieve those results, and that's . . . I don't do it alone. I need lots of help. I'm not an expert at everything related to a criminal defense case. I'm not an expert at everything related to a particular client's case.

I keep hearing the whole client approach, and Jerry mentioned it, Judge Acosta mentioned it. I'm not sure who in this district coined that phrase, but it's certainly a phrase that all of the federal defenders use, and that all the CJA panel attorneys use.

What we try to do here is look at a client not just what they're charged with. I want to know the background of that client. I want to know that client's upbringing. I want to know the intimate details of that client's life. Everybody that finds themselves in this system facing a federal charge has particular motivating factors for why they found themselves here.

It's something in their family history. It could be a particular psychological diagnosis that has thus far have been untreated. It could be manipulation by others, but I need to know these things. I need to know if the allegations against them are true. And if they're not, I need to know how to let others know about that, judges and attorneys.

To accomplish these things, I have to have experts, good, qualified experts that cost money and that have experience doing this kind of work. I need

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my investigators, I need my psychologists, I need mitigation experts, I need discovery experts, I need drug and alcohol evaluators.

I see the other side have what seems to be a bottomless pool of resources. The prosecution has an endless supply of investigators and forensic experts, and investigatory tactics, and tools at their disposal. Those are all used for the most part with the goal of convicting my client, and usually sending my client to prison.

The defendants that I defend, most of which have their very freedom at stake, need to have these same resources to make this a fair system. I spoke in the materials that I gave the Committee, I spoke of several cases with outcomes that we achieved that benefited not just my client, but the community. Outcomes that simply could not have been possible without experts I hired, psychological evaluations similar to what we've heard before that revealed some deep-seated origins for drug use or mental health afflictions that were undiagnosed or untreated up to that point, investigations that illuminate the true reasons for a client doing something.

Through the use of these experts, and frankly, the wonderful support of our judges in this district who our willing to fund these experts, and a U.S. Attorney's Office that's willing to listen to us. We don't always see eye-to-eye, but they are willing to listen to what we have to say, and to give us the time that we need to present a full case, to present the whole client to them.

Through that, we've been able to get the people the treatment they need, and to get them back into the community, to get them back working, to get them supporting their selves, their families, both financially and emotionally. We keep them out of prison. As I'm sure, the Committee is aware the Charles Colson Task Force just last week released its final recommendations on how to improve the federal corrections system. Their first recommendation was embracing alternatives to incarceration because that's where the science and the data say we can save lives and we can save money.

By spending money upfront for these experts, we keep people out of prison. We keep them to shorter prison sentences that save money for the public in the long run, and get these folks, not just saving them money in terms of the institutional cost and the incarceration cost, but getting them back into their community and being productive, and working, and being good citizens, and employees.

The way that we do that in this district is with qualified experts in appropriate cases. I also want to emphasize that we don't just automatically ask for money for experts in every single case. There are

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cases that come along that occasionally I don't use an expert. I also want this Committee to know that none of this is a rubber stamp in this district.

I have had judges call me, I have had the Federal Defender Office call me and say, "I understand you want this expert. You need to explain to me exactly why this money is going to be spent here, and why it's worth it to do it in this case," and I do that through affidavits, and declarations, and conversations, but this is not a situation where we ask for experts and the money just comes.

There's somebody at every level looking at these requests very closely, and calling people out when they're not required, and making sure that the money that is spent is spent in an intelligent way.

Now, at this point I was going to introduce a former client of mine, a woman named, Italia Porter, a remarkable young [woman] who is shining example, I think, of the success stories that we can see that are echoed by Ms. Bell and Ms. Cleveland, and the other folks that I know this panel's heard from.

Unfortunately, Italia couldn't be here today. She contacted me late last night, and had a medical family emergency that is requiring her to be away today. She's very sorry about that. She very much wanted to be here. She sends her regrets, but she did want me to say some things about what she would have liked this panel to know.

In 2014, she was indicted on multiple charges of sex trafficking of a minor as a twenty-four-year-old young woman for involvement in transporting a sixteen-year-old across state lines for the purposes of sex. The charges she faced carried ten-year mandatory minimums. Italia had never been in any kind of trouble before other than an arrest for prostitution in Nevada. That was her only criminal history of any kind.

When I got to discovering the case, we sat down and we looked at the reports, and listened to the recordings. It looked very, very bad for Ms. Porter on paper. It looked like not only that she was highly involved in this, but was probably the leader of this conspiracy. And her version of the events was frankly very difficult to believe, and that was that she had somehow been manipulated by a pimp in California that she'd never met face-to-face.

She was released on pretrial supervision, and with the help of Mike McFarland at pretrial services, she got a full-time job. She stayed clean and sober the entire time she was on pretrial release. I was given the funding to hire psychologist, Dr. Linda Grounds, who I believe testified in front of this committee earlier this morning.

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Through Dr. Grounds' work, we were able to establish that not only was Italia's version of what had occurred believable, but it was surely what had occurred. Dr. Grounds did a very extensive psychological evaluation that dug into her, Italia's entire background and history. It was a painful process for her.

But in the end, it was very clear that because of what some of the traumatic experiences that she'd faced as a young woman that her explanation for what occurred was absolutely the truth, and absolutely believable. We took that report, and we presented it with some more mitigating information to the U.S. attorney that was handling the case here.

And she, it was Hannah Horsley, and she saw the whole client, and agreed to dismiss the charges against Italia with an agreement that she would engage in the services of a couple of organizations here in Portland that specialize in assisting women from exiting the sex industry.

She engaged with those organizations. This was, I think the dismissal came about a year and a half ago. She has a job at US Bank. She has a healthy relationship. She has health benefits. She's rekindled her relationship with her mother. And all of this happened with her making only one court appearance. She was arraigned, and everything else happened behind the scenes, saving significant amounts of resources in terms of time and dollars.

What she would like you to know today is that without Dr. Grounds, and without the resources that were available to her, she'd be sitting in prison right now. She is one of several clients and success stories that I could relate to this Committee and I related some of them to this Committee already in my comments, I don't need to repeat those here unless there's some specific questions about that.

That's what we do here, and that is . . . we couldn't do that without qualified experts that cost money, and without judges that support us, and without, frankly, U.S. Attorney's Office that's willing to listen to us.

Judge Cardone: All right. We're going to begin the questioning. Judge Fischer, we'll start with you.

Judge Fischer: Thank you all for being here, especially the three of you with such wonderful information to provide to us. It's really stirring, but we are tasked with making recommendations to improve this system, so I'd like to ask Mr. Needham, and Judge Acosta, and Mr. McHenry, how do we translate the things that you've told us into specific recommendations to improve the CJA?

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You've mentioned we need judges who will understand and do these things, and we need U.S. attorneys who will do that, and obviously, we need to make sure that all of the criminal defense lawyers know about these things as well. Do you have any more concrete suggestions for recommendations that we could make either in the present structure or with some change to the structure of the CJA, that would make sure that what you're doing here becomes more widespread, and that people know that it works, and how it improves the system? Mr. Needham?

Jerry Needham: I think as Mr. Wax and Mr. Hillier testified this morning, you can't really place a number on a cap for a case or just an arbitrary cap. You have to give the discretion to the attorney and the court to determine what type of resources must be involved to properly defend the case.

I'm not sure, I think the CJA cap is \$3500. That may work for a very slim number of cases, but that's just not realistic in today's federal criminal defense world when we need experts to help analyze drug amounts, to deal with large computers, large discovery matters that we receive from the government. It's just unrealistic to set an arbitrary cap. I think the attorneys and the court must be able to have the discretion to put the resources that are needed on an individual case.

I just wanted to comment a little bit about the CAPS program. I don't want the Committee to think that just because a criminal defendant gets accepted to the CAPS program and successfully completes it that the United States Attorney's Office rolls over and recommends probation or that the court automatically gives someone probation. That is not the case. It's one factor that I believe all the judges take into consideration on § 3553(a).

Many clients complete the CAPS program and end up having to self-report to serve a long prison sentence, but when they are released, they know that they have resources, they have people in the court system that will listen to them for their concerns. I think it not only assist the client in the court, in the community on the front-end, but also on the backend when they're released, and ultimately, most of them become productive members of the community.

I think that saves money and is also a factor for the safety of the community. To answer your question, the party is on the ground, must have the ability to decide what is appropriate in each and every case.

Judge Fischer: Thanks. Judge Acosta, do you have something to add?

Judge Acosta: I agree generally with the things Jerry has said. There's a difference between throwing money at a problem and using resources well to

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problem solve, and there's a difference there. You just can't give the public defender's office or CJA panel attorneys a set amount of money to file motions to suppress and go through the procedural motions, literally and figuratively, that comprise a significant amount of a criminal case.

The people who come before the court through the criminal justice system are damaged in many ways that those of us here are not. Those problems need to be addressed with more than just the next court appearance or showing up at the pretrial services office to give you a random UA. It has to be okay for people like Mr. McHenry and Mr. Needham to know that they can invoke the resources of the system in ways that are non-conventional, that are creative, and that can be effective for the particular person, and that that's okay.

And I want to say one other thing before you hear from Mr. McHenry. I was a partner in the largest law firm in Oregon, one of the largest in the western states, and I was an equity partner. One of my responsibilities was to review bills. Now, I'm not going to tell you that in my private practice, I bury the bodies, I can neither confirm nor deny that in billing statements, but I sure know how to read them.

I know when a billing statement is on the up and up, and I know when a billing statement is maybe a little vague conveniently, maybe not as specific as it should be or things are being done that seem to sure take a lot of time, more than it needed.

As judges, it's our responsibility to review those voucher requests and to make sure as Mr. McHenry pointed out that look, if we have a problem, we need to call, and I've done that. It needs to be okay, and there can't be fear of fallout, retribution, consequences. If someone like Mr. McHenry or Mr. Needham have an idea for their client in this case because of her situation that is maybe not a mainstream or conventional approach, but could work for that person, and that needs to be okay, and there needs to be enough room in the budget for them to be able to try that.

If it does fail, it doesn't mean it wasn't a good idea, it means it didn't work for that person, and that has to be okay too.

Judge Fischer: Thank you. Mr. McHenry?

Matthew McHenry: What I would add to what Mr. Needham and Judge Acosta already said is that we have dedicated resources here in our Federal Defender Office, our CJA panel and particulars administered by I think three, maybe four full-time employees within the Federal Defender Office, and that is what works because I can call anytime during regular business hours or shoot an e-mail over there anytime during regular business hours, and I get a

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response from somebody within minutes about, “What kind of funding should I ask for in this case? What do you think is an acceptable hourly rate here? Is this going to work for this expert? What should I put in my declaration to support this? What did I do wrong in the last case? What should I do differently this time around when I’m asking for this particular funding?”

This is not a situation where I’m trying to call up an attorney at the federal defender who has a full case load, and might be able to get back to me and talk to me about these things at some point later in the week. I’m able to get . . . we have dedicated staff who are wonderful, who are able to respond to us and let us know the resources that are available, and that’s the other thing.

Sometimes I don’t know what’s available. I can call up my Federal Defender Office, the CJA people here and say, “I need a particular expert on this very discrete issue, and I have no idea who to call.” I’ll have a list of four names by the end of the day of people that are qualified, who will work at CJA rates, and are available to do the kind of work that we need. I think that is critically important that we have that full-time, dedicated staff whose only role is to support the CJA panel.

Judge Fischer: I’d like to ask Mr. Howard and Ms. Cleveland and Ms. Bell if you could describe for us just a couple of qualities that you think we should be looking for or recommending in the kinds of people that come to our Public Defenders Office, and the kinds of people we appoint as panel attorneys that you think would be able to do the things that you’ve experienced. What should we be looking for?

Felton Howard: I think that first off, you have to have some compassion. I think that’s the number one thing I would think that would happen. You know, it’s just kind of hard. I’ve sat on a couple of hiring panels. The county asked me to sit on a panel for them to hire probation officers. Ok, so, it’s kind of, it’s like the full circle type thing for me, but what we were looking for, what they’re looking for is a different way of working with folks nowadays.

I know that the foot on the neck doesn’t work anymore. When you’re talking about I think defense attorneys, I think that what you’re looking for is somebody who is willing to put in the work, who’s willing to look at a person as an individual because what happens is even though I was fifty-two years old, I have four kids, I was a grown man, I had done a lot of living, I was still scared to death when I was sitting there. I was confused. I didn’t know what was going on.

With Steve, I think what he did was he took it step-by-step. He just showed me, I mean, it was just like a third grade education. He’s working

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with a third grader. He just broken everything down to me so I can understand it. I think that's what you would be looking for if I'm thinking that that's the question you're asking me.

Judge Fischer: Absolutely.

Felton Howard: It's just someone that is willing to put in the work. Like I said, I could call him at any time and he would answer the phone. If he didn't the phone, one of his assistants would answer the phone. Then next thing you know, an hour later, Steve would be calling me. This is what you're looking for when you're looking for somebody to be representing you in a situation like that. I did what I did. I accepted what I did, but that didn't stop me from wanting to get the help, to get up over that.

Judge Fischer: Thank you. Ms. Cleveland, do you have any additional?

Jennifer Cleveland: I would agree with Mr. Howard. I think we need somebody more like Jerry. Open-mindedness and understanding, and willing to put his all in to actually help me help myself.

Judge Fischer: Is there a tough love aspect to this? Hearing some of the lawyers who appear before me and they'd say, "I had to take my client and say, 'Look, here's what the deal.'"

Jennifer Cleveland: He told me, "look, this is what you're facing." There were serious moments he was completely upfront and honest with me. He's like, "This is what you're facing, but I'm going to do my best to get you this."

Judge Fischer: Ms. Bell, do you have any?

Melinda Bell: Yeah, I'd have to say honesty. I'd also have to say that trustworthy. As far as Bob Reid, he gave it to me straight with no chaser, "This is how it's going to be. This is what it is. This is what you're looking at." Like she said, "I'm going to do my best to defend you, but it's not looking so good." Be willing to take that extra, go that extra mile to see what's behind that individual because he could have just took my case, read it and say, "Okay, you're going to go do those ten months, I mean, those ten years."

Just being willing to figure out the individual as that person instead of . . . like I said, I was in a group with nineteen other people, eighteen other people on the conspiracy, and they broke it down to where I just had my own separate case outside of the conspiracy, and that's how I was sentenced. Take an extra time to see me.

Judge Fischer: Thank you.

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Judge Cardone: Katherian. Ms. Roe?

Katherian Roe: Thank you. Good afternoon. Mr. McHenry, I'm going to start with you. I just have a few questions about the experts, and what it's like to try and get an expert in this district. It sounds like you and the other attorneys have it, well, I won't say easy, but it's certainly better than we've heard in a lot of other districts, but I want to ask you some questions about that.

When you submit a request for expert services, you said that it's not just automatic, but can you tell us percentage wise how often is authorized for you, you personally obviously?

Matthew McHenry: Sure. When I say experts, I mean, including investigators, interpreters, psychologists. In the majority of my cases, I'm asking for, in probably 75% of my cases, I'm seeking funding for some kinds of experts. It might be even more these days. Lately, we have these multi-defendant drug cases that come in where we receive literally tens of thousands of pages of discovery and thousands more e-mail files and audio files and Excel spreadsheets and line sheets from wiretaps.

Those cases alone requires at this point to hire an expert. We have experts here that do electronic discovery for us, and we'll take our discovery, and take those thousands and thousands and thousands of documents and files, and put them into a searchable database that allows you to drill directly into take the 36,000 . . . there's one I actually spoke about in my comments. I had 36,000 documents to start with. I was able to hire this expert, and narrowed it down to the forty-one that pertained to my client. I do hire an expert of some kind in almost every case.

Katherian Roe: How often is it? I guess my question is more to the issue of the request that you make, how often are they are authorized? How often are they granted?

Matthew McHenry: I have had one request in the four years that I've been on the panel, I have had one request denied. I have had several occasions where either somebody from the CJA panel administrators, the section here at the FPD or Steve Wax himself called me a few times or I've had judges call me where they've said, "You haven't explained yourself enough. You're asking for money here, and we need more information in order for you to authorize this."

I feel very lucky and that I've never had a situation where I've felt that a client has not gotten the defense he or she deserved because we were not able to obtain funding.

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Katherian Roe: All those times you just described, ultimately the funds were authorized, correct?

Matthew McHenry: Yes. Ultimately, funds were authorized.

Katherian Roe: Let me ask you this. You're obviously a CJA attorney so you know how the process works. There's an \$800 pre-authorization. You can get started without the authorization, but it's \$800 for all services, right? My question is, are you able in this district to just safely go forward and hire an expert before you actually receive the authorization for the court?

Matthew McHenry: I do, do that. Normally, the \$800 authorization is either not something that can be used for the experts we need or it's used very quickly. Sometimes we'll use those for interpreters, polygraphs is another thing that sometimes is a low-enough threshold to do that, but I mean, I get these experts in just about every case, and I do, do some work before the funding comes in. Usually, that's with investigators because getting an investigator is something that because of the nature of most of the cases we see here, that's something that does have to happen in almost every case.

Katherian Roe: That has to happen usually quickly, right?

Matthew McHenry: Usually.

Katherian Roe: You want to get started.

Matthew McHenry: Usually quick. Our investigators that we use here know that they can move forward into this case knowing that the funding is going to come in. That is very much a boon for the practice because I mean, if you have to wait two or three weeks because sometimes we put the funding request in, and that can be two to three weeks or a month before we get the actual approval.

If our experts didn't know that that funding was eventually going to come in, and we have to wait for three weeks or a month to start on these cases, and to start the investigation, that would very much hamstring us.

Other experts, psychologists, I guess experts that I would call not run-of-the-mill, that are specific to a particular case, like a cultural expert, those I do wait until I know the funding is going to come in, for a couple of reasons. Number one, I don't just assume the funding is going to come in particularly if it's an expert that I'm seeking that's not a typical expert.

Number two, those experts are often not always needed right away, and we have the time. I mean, I can see, "Okay. If I hire this expert this now, if I seek the funding now, it will come in in about a month, that will give the

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psychologist two or three months before upcoming, the next court appearance to get something like that done.” So it depends on the nature of the expert, but there are certainly times where we do move forward while the funding is pending just because we are confident in this district that that funding will come in.

Katherian Roe: Thank you. Mr. Needham, I also have a question for you. Just to compare the two districts or I guess this is the District of Oregon and the State of New York, the two different places that you worked, and the way in which you could represent a client in the Federal Defender’s Office in Oregon versus the legal services program in New York.

Jerry Needham: Well, in . . . as an experienced defender in Manhattan, I had a caseload of almost forty indictments. Here in the District of Oregon, I have about twenty-five to thirty indictments, but they’re at various stages. The system in New York back in the ‘80s was so crowded that when the parties declared, “ready for trial,” they had to wait three or four days until a trial court opened up and there were over eighty Supreme Court trial level judges in Manhattan.

There was an expediter who went around to the various courtrooms and was trying to find a judge that didn’t have a trial going. Here, of course, in federal court, when you have a date certain for a trial, the court sets the trial date weeks in advance, and when you have a trial date, you go to trial.

We had the ability to hire experts in state court, but the practice wasn’t as sophisticated, didn’t have the amount of the discovery that we here have in federal court. In our office here in the District of Oregon, the Federal Defender’s Office, we have a number of paralegals, investigators on staff that have expertise in various areas.

Our paralegals are able to organize the large amount of discovery that we receive from the government on disk, and put it in a format and review it so that the attorneys can have easy access to it, and see what’s there because private CJA counsel don’t have that type of a staff in their firm typically.

When we have the lead defendant in a multi-defendant case, our office takes the lead and organizes the discovery materials, and tries to work with the panel attorneys as best we can, understanding that there’s potential conflicts, so that we can organize that the discovery materials and the panel attorneys can have access to it by coming to our office, and we try to work with our co-counsels to lessen the bill, so to speak, to the CJA attorneys.

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The same thing with our investigators. Our investigators have a . . . or on-staff have a level of expertise that can look at evidence, and decide what type of experts that we need to retain. It's just more of a sophisticated practice as time has gone by since New York City in the 1980s.

Katherian Roe: Thank you.

Judge Cardone: All right. Mr. Frensley.

Chip Frensley: Judge Acosta, I wanted to ask you, what has been described in the District of Oregon really is a great example of collaboration between sort of all the pieces of the criminal justice system that a three-legged stool, if you will, the court, U.S. Attorney's Office, and the defense bar. I'm curious just to the extent that you can inform us a little bit about how that sort of a culture of cooperation and understanding of things that may be more sophisticated than sort of just simply law and order, black and white, that kind of thing comes to exist, and how it's perpetuated within the District of Oregon? And just to make things a little more complicated, how that culture could be replicated in other places?

Judge Acosta: Well, this is Oregon. We're all very nice here.

Chip Frensley: I saw something on television last night actually about people littering, and the folks of Oregon getting on to them and picking up their trash and throwing it away for them, so I think you're right.

Judge Acosta: Yeah, it's right. Let me answer the first part, the first question, what's different, contributes to that culture, by something my wife related to me when she attended the very first criminal calendar day I ever had as a judge. Of course, she was in the courtroom before I was, and so she was sitting in the gallery, and the assistant U.S. attorney, and the assistant federal public defender were at the table ready for the judge to come out as is the routine here.

She told me afterwards that she was surprised and impressed about how collegial the . . . she called the prosecutor and the defense lawyer were. I hadn't really thought about it before but I know that it was my experience as a civil practice lawyer, and I'm a big advocate of professionalism as well, so I was pleased to hear that from her.

But what I've found in my time since then over the years is that one of the things that makes our system work well is that it is an adversarial process, but the relationship that exists between the U.S. Attorney's Office here and the Federal Defender's Office is I think quite unique because the lawyers have strong opinions about things from time to time, there's no question about that, but people work together, and so when you have a

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situation where a defendant is in the CAPS program, there's a lot of collaboration, there's a lot, people recognize the common goal.

Look, if someone can get a shorter sentence, if someone doesn't have to be incarcerated, if someone fill in the blank, there's a receptiveness to that notion on the prosecutor's side and it is something the defense lawyer knows can be pursued and might well work. It won't be dismissed out of hand either by his or her opponent or by the judge.

I have a case right now where the assistant U.S. attorney on the case is, I don't know how to put it, working really hard to help this particular defendant show up at sentencing later this month, as well-positioned as possible to try to get probation, I don't know how else to say it. I mean, it's just, it's true.

I say this in all seriousness. There's just something about the people who live here, live in this district, live in this state that contributes to that culture, how can you export it if you will to other districts? One way, I've heard this said by other lawyers when it comes to professionalism. Judges have to set the tone. It's on us. Are we the only ones in the process who can make that happen? No. Everybody has to contribute, but if the judge models the behavior, models the notion, the concept, acknowledges it as something to be desired, something that he or she desires, that's a really good start.

Chip Frensley: Mr. McHenry, I wanted to ask you. You talked about the assistance that the Federal Defenders Office gives with respect to panel administration. I'm wondering if you have ever had any concerns about potential conflicts that might arise out of the panel administration being conducted through the Defender's Office. Secondly, I guess I assume that the individuals that you work with in panel administration are not lawyers, or are they lawyers?

Matthew McHenry: Some of them are lawyers, I know that. Personally, I've never had a concern about conflict over there because I know that the Federal Defender's Office here does everything they can to screen off the folks that are working under the CJA administration. They don't have their own caseloads. They don't talk to or participate in staffings, on cases that are going in the office for that reason very specifically.

The panel administrators are, I know as I said, at least some of them are attorneys and have been in the past which certainly helps when you're talking to them about what works and what's available. I guess, I would say the one concern I have and it's not related to the CJA panel administration in the office, and also not related to any specific situation of mine, I want to make that clear, but there has always been a concern of

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mine about seeking approval for funding for experts from the same judge that's going to be ultimately either presiding over the trial or over the sentence.

Again, our judges here have never given me an indication to think that that is a problem, but I can envision a situation where maybe I asked for some funding for an expert, a psychologist, for example, the judge approves that, and down the road, sentencing comes along, and I'm not presenting anything from that psychologist.

I think that that judge as human nature would be looking askance as to why this funding was authorized when it doesn't look like that was used down the road. Perhaps subconsciously, that may put a thumb on a scale with sentencing one way or the other. That's a concern I have just from I guess from a procedural and theoretical perspective.

I've never had that concern about talking to people in the Federal Defender Office about my CJA cases because I've been given several assurances, and I've seen the process over there, I've worked in that office. I know how they do things over there. They do it right.

Chip Frensley: Have you thought about or would you have a recommendation if it was the judge? In other words, if the judge wasn't the one who ultimately made the decision, yes or no on that expert, who it would be or who it should be?

Matthew McHenry: Well, I think it's right to have a judge looking at that certainly, at least at one level of approval, but I'm not sure it has to be the same judge that's presiding over the whole case.

Chip Frensley: Why do you think it's important that it be a judge?

Matthew McHenry: Well, because I think those judges have the experience in the independence to be able to . . . they have the experience of seeing the kinds of request for fundings that comes in. Knowing what the industry standard is for lack of a better term, and also being independent enough that their decisions on these things are somewhat beyond, not beyond question, I shouldn't say, but the decisions they make in these cases, being independent, not being part of the defense, not being part of the prosecution I think are at least to the public's eyes or to other people easier to stomach because you don't have somebody making the decision that is biased.

I think it wouldn't be right to have just people in the Federal Defender Office reviewing our funding requests, and certainly, it wouldn't be right to have people in the U.S. Attorney's Office reviewing our funding

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requests. I think it has to be reviewed by somebody that's removed enough from the case to have that independence, and to not have a vested interest in the outcome of the case. I think it should be a judge. I'm just not sure it needs to be the same judge that's presiding over the whole case.

Jerry Needham: I could answer that question about potential conflicts when the Federal Defender's Office reviews the CJA vouchers. Lisa Hay and the Chief Deputy Steve Sady said if they have conflict with it, they'll ask one of the other senior attorneys to review the vouchers, and sign off or make suggestions or call the attorney, and they'll step away from it because of the potential conflict.

Two panel administrators go through the vouchers from what I understand, and just look for general accuracy, make sure that the court appearances, that the attorney is claiming he or she appeared in court are reflected on the docket and see that the contact, the experts see if they had actually been used. They just do a kind of two-level review, then they pass it over from what I understand to Ms. Hay or Steve Sady, and then they review it. There's three levels of review I think before it's forwarded to the district court judge.

Reuben Cahn: Mr. McHenry, I actually want to press you on your last answer that it should be a judge approving these expenses. I'd put it to you that the U.S. Attorney's Office has a budget. They decide how they want to best spend their money representing their client, the United States of America, with that budget in mind, and no judge approves that. Why shouldn't we have somebody who is interested in the welfare of your client but is also mindful of the total resources available to the system who is not in any way a participant in the judicial system, in the action which you're a part of approving your expenses?

Matthew McHenry: Well, let me start by saying that I would feel much more comfortable submitting my funding request if it was going to be approved and only looked at by someone in the Federal Defender Organization just because as you say that they do have a vested interest in my client's outcome.

The reason I think that it makes sense to continue to have an independent member of the judiciary at least reviewing the final decisions on this is because frankly, funding for indigent defense is a political hot potato. Well, I think it would be okay, and I believe that the people in the Federal Defender Office would carry out that rule in an ethical and upstanding way.

Not everybody in this country, and not all the public feels the same way about the defense bar as I do. One of the things that over the last decade or so that I've seen more and more is more of the public getting on board

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with this more holistic approach to public defense, and to criminal defense in general. That's something that, it's a political movement and an uprising that I can very much get behind.

My personal view on that is if we want that to continue, we need to be as clear and transparent in what we do in the funding we asked for as possible. I think that getting a member of the judiciary involved at the approval level for that reason is quite important because of the public perception of where this money comes from, and what it's used for, and who's asking for it, and who's making those decisions.

Reuben Cahn: My next question would be for actually Mr. Howard, and Ms. Cleveland, and Ms. Bell. What I wanted to ask you about, we're charged obviously not with the entire criminal justice system, but only with the representation of clients and how best to further their interests. In trying to break out your stories, I'm trying to figure out what are the specific things that your lawyers did for you that most mattered to you in your cases? If I can start with you, Mr. Howard, and talk to you about what you saw, and maybe since you had a few brushes with our system, then you can tell me what your lawyer did really different from what you'd seen in the past.

Felton Howard: Basically, when I started dealing with the charges that were federal, that was the first time I'd ever dealt with the federal system. Mostly, everything that I had done was through the county. I was always in and out of a county jail and what not.

The thing that I think that Steve did, and one of the things that you guys are talking about, investigators, and people that have been hired to do things, I think that what Steve did was he had the investigator look into my family also to see probably to see if there was any trauma or anything like that. That's what they were going to do. Why was I doing what I did? Why did I spend thirty-six years just running around amuck?

Like I told you, my family was, I came from a really good family. I had no excuse. I mean, my childhood was great. I always say that. I just had the greatest childhood there ever was. My father was a minister, and my mother, she raised five kids, and three foster kids. I just happened to get into drugs and just went sideways.

I think what he did was he used the fact that I did have a good family. He used what was there which meant that I had a lot of community support. I mean, I had a lot of family support, and that I wouldn't be a real burden on society if I didn't go to prison for five years. I mean, I wouldn't be a public safety . . . I think this is one of the things that I think he explained to me because I wasn't very happy about the fact that my family was brought into this, that my mother was interviewed. He didn't tell me he

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was going to do that. He told me afterwards, but he explained to me why he did it.

I think that the number one thing that he helped me with was all the suggestions that he made about doing things the right way, doing things to help the community, that the community be aware of because I ended up using all of that, all of the things he told me I needed to do. He says, “You need to get yourself involved, and you need to go get cognitive, you need to attend AA meetings, you need to volunteer,” things like that.

I think that was the biggest thing that he helped me with was, you know, grow up, man. He said that in no certain terms. It was really easy for me to understand that the age I was, I didn’t want to be in prison, man, any longer. I went to prison at fifty-four. My crime, I got arrested at fifty-two.

I think the biggest thing that I got from him was his support. I’ve talked to Steve recently. He’s one of the people, and I think the panel that’s here will tell you that you’re going to meet people in your life that you’re never going to forget, you’re going to meet people in your life that made a difference, and he’s one of them. He’s a person that every chance I get, I always mention something about Steve and his office. I mean, the whole office was very supportive of me doing the right thing. That really helped.

Reuben Cahn: Can you give me any idea, and I know this was a little while ago, so it’s hard, but any idea of how many hours you think Steve spent with you over the course of your case from beginning to end?

Felton Howard: Ok so, I would say, let me think how many times I actually met with him because I think that I can’t remember the gentleman, the judge down here, I remember he made me think about something when he said that he would invite his clients into his chambers. Well, that’s one of the things that Steve would, “oh, come up and see me,” and I’d be in his office, and sit in there. It was always helpful because he was calm. He was really calm.

I’m looking at going to prison but he kept me even just by his calmness in talking to me. If I look at it and think how many times or how many hours he spent with me, I would have to say during the course of my . . . once I got out of jail, I was sanctioned or actually sent to jail after I didn’t act right on pretrial.

I think that . . . probably twenty hours. I may have just showed up in his office or I called him on the phone. I was pretty worried. I’d say twenty hours over the course of, from the time which was like I said, February 2nd 2006 until I actually got off paper I was talking to him. I got off paper . . . you have a better grasp. I didn’t even know I was off paper.

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I called my PO up to ask her. I missed calling her for a UA, and I called her up and I said, “Sarah, tell me I didn’t miss my cutter.” She says, “Oh, Felton. I’m sorry. You’ve been off probation for three weeks.” I was on my way to work.

I think in between that whole time from the time I actually first met him and I was in the lockup in this building upstairs in the jail, I think I was waiting for my first arraignment until the time I got off paper, probably twenty hours. I don’t know if that’s a lot of time. I don’t know if that’s . . . but for me, it was enough.

Reuben Cahn: Ms. Cleveland, I actually like to ask you that same question. Can you give me any idea how much time you think you spent with Mr. Needham over the duration of your case?

Jennifer Cleveland: Oh, my goodness. I’d never even thought about how much time. Phone calls, and conversations, and visits to the office, eeh! I have no idea.

Reuben Cahn: Can you give me guess, Mr. Needham?

Jerry Needham: I would say an excess of forty hours. We keep time sheets, and we could . . .

Reuben Cahn: I know. I’m just asking you, spitball it for me. I’m was just asking you to spitball it for me. Forty hours . . .

Jerry Needham: Yeah, I would say forty hours or something along those lines.

Reuben Cahn: How about you, Ms. Bell, what do you think about it?

Melinda Bell: I’d probably say about fifty. He came to jail and visited me quite regularly. We went to lunch a few times. We met at his office. We met at the Union Gospel Mission, had meetings there. He took me out on several outings like we went to Multnomah Falls, and met out there once. Yeah, I’d say about fifty hours. We spent a lot of time together going over my case, and what was going to happen next, what was the next step because like I said before, I really didn’t know what was going on.

We also e-mailed each other. There was phone calls. When I was in jail, he’d send the private investigator up there also if he couldn’t meet with me. He also sent the private investigator to my hometown to go over the studying of the house and how things were, and to ask me questions. That was about fifty hours.

Judge Cardone: Can I ask a follow-up question? Okay. I want to ask a follow-up question to Mr. McHenry, Mr. Needham, and to you, Judge Acosta on that same

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topic but from a different angle. I believe tomorrow, we're going to have a various testimonials about, and we have heard from other locations, problems with people that are incarcerated, remote location, trying to get to see their clients, being able to spend time with their clients, attending to their clients when you have to travel three or four hours just to see them and then get back, and all of these wonderful programs that you're talking about that when someone's incarcerated, it isn't happening.

For you Mr. Needham, and you Mr. McHenry, could you tell the Committee the difference between representing somebody that you have that kind of access as you're talking about to, and you can work with on a daily basis versus someone who's incarcerated and you can't? How that representation is different is my first question. Then also, Mr. McHenry, particularly probably for you, if you have to travel like that, how the billing is dealt with, if you have any problems with that billing?

Then for you, Judge Acosta, how is it different in the courtroom dealing with those defendants who haven't had the opportunity to have the CAPS program? So I guess we'll start with you, Mr. Needham.

Jerry Needham:

In this district, the Marshal Service generally houses clients at three locations. One, in Multnomah County Jail here in Portland they have two locations. One is right across from the street from the courthouse, and then there's another about fifteen to twenty minutes from our office that we have to drive to, but because of the cost in Multnomah County, from what I understand it, it costs \$120 a night that Multnomah County charges to Marshal Service.

The vast majority of our clients that are detained are held at the Federal Detention Center down in Sheridan which is about an hour and a half each way. They also house some of our clients up in Columbia County Jail which is about an hour each way.

When we want to visit our clients down in Sheridan, we have to e-mail the facility. Usually, the turnaround is within twenty-four hours. They e-mail us back, and say that they can fit us in on a certain date and time. Typically, the lawyers on our office try to schedule two or three clients on a visit just to take advantage of the travel time.

I guess it's been maybe ten to twelve years ago that we used to have a video hook up from the courthouse that would secure to the facility in Sheridan so that the lawyer could talk to his client through the video conferencing. The machine broke down numerous occasions, and there's never been funding to re-hook that up or have new video conferencing.

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The United States Probation Office has a video hook up from their office down to Sheridan. We are able to piggyback their machinery, and when they're not using it, they allow us to use it. It's not the ideal because they use it for their own purposes. It would be nice if the court was to spring, so to speak, to have that video conferencing that was in this building directly facility, that would certainly save time and money in meeting with the clients.

Columbia County is a very nice facility. The staff is very accommodating of us. Their phone system is rather poor. They're just low quality, and the clients don't always have the ability to get in and make the phone call. That's troubling, but they work with us, and then we have a way of one contact room up there.

On many occasions, they allow us to use the sally port where there's another room where they lock us in with our client. It's not ideal, but at least we can get a contact visit with our clients. Again, we have to call Columbia County and schedule that visit.

Those are some of the things that we encounter, but you're absolutely correct. When our client is detained, it's much more difficult to have contact with them. We have to arrange the visit, and we have to look at our calendar.

The local jails in Multnomah County have a nice feature where we're allowed to call in and speak to our client at certain hours of the day because we have an access code as an attorney. We can't do that at Sheridan or at the Columbia County Jail. The clients can call on secure lines and speak with us, call collect from both those facilities.

Judge Cardone: Well, I guess another part of my question is do you see these kinds of successes? Are you able to give the kinds of support that you're able to give these kinds of clients to those that are remotely detained?

Jerry Needham: No. Obviously, we can't have a CAPS hearing once a week with a client that is detained or the clients can't come to our office if they're detained. It's yes, it's much more difficult. It's much more of a challenging representation. You have to bring the discovery to the facility. Some discovery materials have protective orders, so we're not allowed to mail them to our clients.

We have to work with the Bureau of Prisons if we want to bring a laptop computer in which has the discovery materials on it so that we can review it with our clients. It's particularly challenging when there's a protective order. The government typically allows us, the attorneys, and our investigators, and our expert to review unredacted materials, but they do

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not want the materials furnished to the client who's . . . are in custody because it's not secure.

That's another burden that is placed on us. Our investigators have to travel numerous times because discovery is quite large in many cases. So yes, that's a challenge.

Judge Cardone: All right. Mr. McHenry?

Matthew McHenry: Echoing what Jerry Needham said, it's representing clients that are in custody is a challenge. There's no question about that. One of the things in this district that I think is wonderful about working here is that we have an excellent pretrial service release office, and we have magistrate judges that let clients out, and give them chances to show that they can succeed out of custody.

Certainly, some of the cases that I've been discussing today, the resources that are available are much more readily available to folks that are out of custody. Setting yourself up to engage with the Women's Resource Center, for example, obviously wouldn't have been available to somebody sitting in custody.

Now, that being said, we still do our very best, and I know Jerry's office does as well to give that same level of representation to our folks that are in custody, but it is much more difficult. The logistics alone of trying to get out to visit a client at Sheridan, for example, that's an hour and a half away, is hard enough for me. I have to e-mail somebody to make that happen. I have to work it into my schedule. I have to wait for a response to see if they can work it into their schedule. If they already have X number of contact visits going on that day, they can't accommodate it. That gets nightmarish sometimes when we're trying to get an expert out there as well. I want a psychologist to go out and do an in-custody evaluation on my client.

It's certainly much more difficult in those cases where the clients are given the benefit of pretrial release or at least a shot at pretrial release. Just because of the nature of how things work, they often get a better outcome at the end.

Now, that being said, if a client is held in custody at the beginning of a case, there's always reasons for that, and perhaps, there are other factors coming into play that make that client's outcome less desirable than it would have been otherwise, but we still provide the same level of service as we can.

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I'm thinking of a client that I have in particular right now who's doing a thirty-six-month sentence in Edgefield, South Carolina, who would come here today to tell you if he could that were it not for a psychological report that was done by Dr. Megan McNeil in custody, he'd be doing a seventy-month sentence, and he is overjoyed to be at Edgefield for the thirty-six months that he's doing there.

So we don't just . . . we still to try to make those things happen. In terms of the billing and how that works, it's frustrating. As CJA panel attorneys, I know we tried to do the same thing that Jerry's office does. I will try to schedule two or three clients at Sheridan if I know I'm driving out there to make sure, and bill the outbound trip to one client, and the return trip to another client. That's not always easy to do.

In addition to the facilities that Jerry mentioned, there's a facility in the Dalles that I often have clients at called NORCOR which is another hour and twenty minutes the other direction up the gorge. The problem is the phone systems, well, it's ironic that the best phone system we have that I could just pick up the phone and call a client on a secure line that's not monitored is here in Multnomah County where I can also just walk across the street and go visit them.

The ones where we really need to be able to pick up the phone and call Sheridan, Columbia County, NORCOR, we can't do that. I'm told often, depending on who you call at Sheridan, sometimes I'm told, Well, you have to send your client a letter and ask them to place a phone call to you."

Sometimes they'll say, "Well, we can give the client a message to call you back." Sometimes that works, sometimes it doesn't. When it does work, they're often calling back collect, on an unsecured line that's monitored. They say, "I can't talk to you," and I say, "Of course, you can't talk to me about this right now. This is a monitored line."

It's very difficult because there are often times where I need to speak to my client quickly about something that came up, and I can't get a phone call in, and they're an hour and a half away, and I have to schedule a meeting with them first. It presents quite a challenge in this district.

Certainly, if our clients were housed closer to us, it would make communication a lot easier, and it would also cut our billing I think significantly. I mean, that's just the nature of the practice as well here. We often have these multi-defendant cases where due to conflicts and keep separate orders, where certain defendants can't be housed with other defendants, we have no choice but to not have somebody here locally because of other inmates that are there.

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I'm not sure what the answer is there, but there response to the question is it's very, very challenging to visit these in-custody clients.

Jerry Needham: Excuse me, your Honor. Ms. Cleveland has to leave. Her ride is going to take her back to Washington. She's two hours away from Portland.

Judge Cardone: Okay. Thank you so much.

Jennifer Cleveland: Thank you very much.

Judge Cardone: Thank you.

Reuben Cahn: I just like to close the loop on the question I asked you, and I don't want to keep you, Ms. Cleveland, but if I can just ask all three of you, without the hours that you spent with your lawyers, do you think you would have gotten the same results out of this process?

Jennifer Cleveland: No.

Felton Howard: No.

Reuben Cahn: Okay. I expected that, but for the record, we needed to close the loop. Thank you. Good luck.

Judge Cardone: Mr. McHenry, do you have any problems getting paid on those remote . . . ?

Matthew McHenry: No.

Judge Cardone: No?

Matthew McHenry: No. I have never had that experience. I know that the attorneys in other districts occasionally run into that. I don't think that's been a big issue in this district. I also know that myself and the other panel attorneys that are required to keep time are pretty meticulous about the time we keep, and do our very best to explain everything.

I also know, at least in my own practice that there's a lot of times that doesn't get billed, that we don't put into vouchers for various reasons.

Judge Cardone: For example?

Matthew McHenry: For example, a phone call, I can think of one client whose mother called me every day, and while I picked up the phone and I answered that call, and I spoke to that woman every chance that I had when I was in the

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office, I didn't feel comfortable billing CJA time for having essentially calming down conversations with mom every day.

I billed for maybe 10% of those phone calls. I think it's important to stay in touch with clients' families and often, a lot of the mitigation investigations that we do require us to speak to clients' families, but I do . . . I always have an eye towards things like that and making sure that the time I submit, and I'm not alone, I know that all of my colleagues on the panel do this as well, is justified and is something . . .

I don't want to ever be putting the people reviewing my vouchers into a situation where they're raising an eyebrow and wondering if this is justified. We are very meticulous about the time we keep. We don't bill a lot of time. There are times I'd put in my voucher, I'll put in a task, and just put zero hours just because I want the court to know that this work is being done. I want the court to know that the work is important, but that I don't always have to be paid for every point one hour I spend on everything.

I do a lot of texting with clients that are out of custody. We do a lot of e-mailing with clients. Those are very difficult to keep track of in terms of time, so I'm always erring on the side of caution and being conservative in those kinds of situations, and because of those practices, and the understanding I think that we have in this district about the quality of the representation, I personally have never had a voucher cut with the exception of one time where Steve Wax cut a voucher of mine because I had a client who had a pending state court case as well.

It was a very, very sensitive situation. I was not comfortable sending my client out to deal with a state court situation with a court-appointed attorney out there who wouldn't know the history, and background, and the sensitivity of that situation. I represented the client at that hearing. I billed for my travel time out there.

Mr. Wax told me that I couldn't do that, and I accepted that, but that was in four years of practice. That's the only time I've had a voucher cut, and I understood why.

Judge Cardone: Judge, do you see a difference in the clients that are incarcerated, and outcomes, et cetera, and the way their attorneys are able to represent them versus ones that are not?

Judge Acosta: Yes is the answer, but I have to qualify that by reiterating what I had mentioned in my written submission which is in this district, we don't deal with criminal cases beyond the initial appearances and the detention

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hearings with the exception of someone who's been released and may come back on a pretrial release violation.

Let me speak to the experience that I have had on the bench. One of the things that often is important to a release decision or a detention decision is an assessment. Someone comes before us, they have an addiction history, they have current addiction, they have other issues. It could be cognitive issues or it could be mental health issues, and I can't make a decision whether the person should and be released and can comply with conditions unless I know more about their ability to understand the conditions and more about their ability to comply and that often requires an assessment.

If the person is taken out to Sheridan, if the person is taken out to Columbia County, if they are any place other than directly across the street, it makes the assessment process more difficult and more time consuming. So they're detained longer than they should be.

Here's the other thing. Someone who's detained doesn't have the opportunity to take advantage of the treatment services that can be obtained through pretrial services while you're awaiting the resolution of your case. They're in detention, they don't have a choice but to for all intents and purposes be sober, so that when they get out, the first thing they might think to do is "I'm going to go score drugs. That's what I'm going to go do."

Unless they're close by, unless I can have them initially assessed, unless their lawyer can get that assessment quickly, and advocate as appropriate for the release, it's actually to the defendant's disadvantage because if they do happen to get out later on down the road, they don't have any place to start. They've had no experience trying strategies to stay sober, to get treatment, to participate in group therapy, to find a job, to do all the other things they can do.

If they're closer by, we can get it figured out more quickly, and they can start working the resources that are there.

Judge Cardone: Judge Fischer, do you have any follow-up? Chip, any follow-up?

Chip Frensley: Maybe it's beating a dead horse, and it may not be . . .

Judge Fischer: Go ahead.

Chip Frensley: It may not be fair to ask this question, Mr. McHenry, but do you think that if instead of having your vouchers approved or your requests for experts approved almost every time, that instead you had your requests for experts

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denied every time? And there were times when you went ahead and spent the \$800 only to have the judge tell you, “Well, I’m not even going to compensate that. Now that 800 bucks has to come out of your pocket even though you weren’t required to ask me before you spend it.” Do you think that would have any impact on your position about judges being the one who are ultimately deciding that?

Matthew McHenry: Yes. As I hope I’ve made clear throughout my testimony today, we have wonderful judges here in Oregon who . . . and it’s not just because they approve our requests for funding, it’s because they also understand the importance of the whole client approach. Absolutely, if all of my requests for funding or even a lot of my requests for funding were rejected, that would cast a shadow on these representations.

I can speak to clients now and tell them, “We can get you evaluated. We can figure out what’s going on in your head. We can get to the bottom of this drug addiction issue. We have the resources to do that.” The confidence that I can speak with to clients about that instills confidence in them, and their own confidence in me and the justice system.

If I have to go in there and say, “Oh, boy! You really look like . . . It seems like you could use an evaluation here of some kind and could be really helpful, and maybe I can get the funding, and if we can’t, sorry, we’ll just have to go forward without it.” I mean, that breaks down the representation on so many levels than just in terms of the interpersonal relationships we have with our clients, let alone the confidence the client has that they’re getting the best defense out of the system going forward that they can get. I guess that’s a long-winded way of saying, yes, it would very much affect the way we do things around here if we weren’t getting approved for our funding, and certainly, if we weren’t getting even reimbursed for the \$800 threshold we have.

Chip Frensey: How is it that, and this just may seem sort of just like a goofy question to you, but how is it that panel lawyers even know that that’s the level of practice that they should be using? Is there a training that the Defender’s Office does? Is it something the court does or what . . . ?

Matthew McHenry: There is training. Our Federal Defender Office, boy, it seems like every couple of weeks we have a CLE over at the Federal Defenders Office that the vast majority of panel attorneys attend, and most of the assistant federal defenders themselves attend. We have a very collegial community here among the CJA panel attorneys.

I learned to practice law from my mentor and partner, a guy named Mike Levine, who is a federal defender for the District of Hawaii before he came over here and was an assistant federal defender in this office. Our

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more distinguished, I wouldn't say older, our more experienced members of the CJA panel are very, very willing to share their experiences to talk to younger members of the panel, and that's how I learned to do it.

I learned to do it from talking to panel attorneys that had been doing this kind of work for years. I learned to do it by talking with assistant federal defenders in the Federal Defender Office. These people are all very, very busy, but everyone seems to have the time for a fellow member of the defense bar that wants to figure out how to do things right.

That, and yes, we have these trainings. I mean, every time I go to a training, I will sit there for an hour, and sometimes I might get two minutes' worth of things that are good. Sometimes it might be a full hour of things that are worthwhile, but I never walk out of these trainings thinking, "boy, I wish I hadn't gone to that," because there's always something new that we can use in there.

Then it's the camaraderie because you're bringing everybody in for these panels, and these trainings, and you see your colleagues that are on the panel, and the trainings trigger these conversations amongst ourselves about what works and what doesn't, "have you tried this expert yet?" "This psychologist did a great job for me in this particular case." It's a combination of things, but certainly, training and our collegiality I think is a big part of it here.

Judge Fischer: I do have a follow-up. I forget and I apologize, but you also have a private practice. Do you see a difference between what you're able to get for your panel clients because the judges are so willing to do this, and what you're able to get for your private clients because maybe they don't have the several thousands of dollars to hire one of these experts?

Matthew McHenry: I do. I've seen that in more than one situation. At times, there are, you're a better defendant by being indigent at least in the federal system here. It's certainly not the case at the state level here, but we've also had situations where I've had privately retained clients who can't afford an expert, and we ask for a CJA appointment at that point or midway through the representation.

What I really see in practice is in private practice with privately retained clients, when you tell them they need an expert for something, but they'll have to pay for it, then they become very . . . they start to question very closely about how important it is to have this expert and questioning my assessment of whether the expert is really necessary.

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If it's a court-appointed case, I don't get those questions because there's not a concern about the pocketbook so much. It is a little ironic in that sense.

Judge Fischer: Judge Acosta, do you see that kind of difference in the kinds of things you do? Do they not know to advocate for the program perhaps?

Judge Acosta: It's an interesting question to me because we're not as involved as deeply in this part of the process as magistrate judges in other districts, but let me share what my experience has been on the bench. I graduated from law school in 1982, and went to a large law firm, and as a new associate in a large law firm with lots of resources, you take it for granted, the opportunities you get. Everything is done for you. Everything is paid for. You're representing clients where, by and large, resources are not an issue.

We had a joke as young, inexperienced, and perhaps somewhat naïve and arrogant, young lawyers, we used to say, "you got bucks, you got rights," and man, it's true. I came to the bench, and I didn't really appreciate how true that was until I sat up there and saw the disparity of resources between one side and another, and what a difference it makes, in your ability to represent your client. That's on the civil side.

Look, on the civil side, almost always the only thing that's an issue is money. Really, that's it. On the criminal side, man, it's a lot different. It is a lot different. The things that Matthew just described, I mean, the difference between a client questioning you closely about whether you really need to have fill in the blank kind of expert, to defend himself or herself when they have to pay for it, compared to knowing that in the professional's judgement, if an expert is needed to address a critical issue in the case, it will happen.

That's the way to be able to practice. It doesn't mean you get a blank check and you get the hire everything, and all this stuff, but you need to be able to bring to bear the resources to approximate those the other side possess because if you can't do that, you are at a disadvantage right from the get-go.

Judge Cardone: Katherian, do you have any follow-up?

Katherian Roe: Just a few things. Judge Acosta, I wanted to ask you about the CAPS program. It sounds like the program is kind of like a super-sized pretrial services. I'm wondering whether you received any push back from the pretrial services office when you decided that you wanted to be directly involved in supervising the folks who would normally be the folks they supervise.

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Judge Acosta: You bet. Not from the pretrial services office. If I did get push back, I learned of it indirectly, and on one occasion directly, from the U.S. Attorney's Office. Let me explain that because I don't want to leave that just there. Let me start with pretrial services.

Although in the very first time I ever suggested taking this approach, the pretrial services officer had doubts simply because it wasn't anything anybody had ever done, or at least any judge had done, before. What I found and there are some pretrial services officers here in attendance right now, is that the pretrial services officers were receptive to the concept because the role of the judge is to support the officer's supervision.

I tell defendants, "I am not . . . the pretrial services officer is responsible for you pretrial supervision. They are the ones that you answer to. I am here to support you in this process, and when the pretrial services officer speaks, the pretrial services officer speaks with the authority of the court, and you need to remember that."

I am not a micromanager. I don't do that sort of thing, but if the pretrial officer needs something here, she will come and talk to me about it, we share ideas, and we strategize. I think it's a very collaborative process, and I've had pretrial services officers on a number of occasions suggest to me that a particular defendant be released, but suggest they also participate in the CAPS program because they think that would help this individual.

On the U.S. attorneys side, there have been some occasions when I think the U.S. attorneys would rather be spending their time on their caseload than sitting in court or in my chambers participating in the CAPS process. Is that all the time or most of the time? No. Is it some other time? Sure. Some of the time I think that's where they . . . because they're there because it's an official proceeding in the case, and they're representing the government's interest.

There was one time when I had a discussion about the effectiveness of the CAPS program, and whether what we were doing wasn't really more like social work than like some legal process. My response to that is, "Yeah, that's great. That's your opinion, but I'm going to keep doing it because I've seen that it works for a ton of the people who come before me," and Jerry said it, it doesn't work for everybody. Some people still go and they serve sentences, but they're better off when they come out because they know . . . they're not just trying to get over the next UA, they're not just trying to get over the next court hearing. They know they have something coming out to build on, and that's what's key. The pretrial services officers are critical, absolutely critical to that process.

Katherian Roe: Thank you.

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Reuben Cahn: I have a question for Mr. Needham, Judge Acosta, and Mr. McHenry. The districts I've practiced are very, very different from Oregon. I practiced in Miami where the U.S. Attorney's Office was fond of indicting criminal defense attorneys, and San Diego where I imagine if I describe the way in which things take place here, my judges would tell me, "we aren't Sweden."

You've talked a lot about culture, and culture is notoriously hard to replicate and then almost impossible to export. The question to you with that premise is, can you talk a little bit about what aspects of the way you do things here, you think we could replicate it in districts with very different cultures, and begin to maybe move the Overton window a little bit in those cultures, to begin to nudge them in a different direction? Can I start with you, Judge Acosta?

Judge Acosta: I said a little earlier, I think it starts with judges, and I think that it's still true. The judge has to be interested in nontraditional processes, nontraditional approaches, be open to in a particular case trying something that hasn't been tried before, and knowing that it could work, but it also could not work. I think if the judge takes the lead in showing an interest in the approach, the lawyers even if grudgingly, will follow along.

Let's face it. The lawyers don't have to like each other, but if they can work together in a professional way, the process can work. It requires the court, pretrial services, the U.S. Attorney's Office, and the Public Defender's Office to all participate in the overall approach, otherwise, it can't work.

We're very lucky in this district. You've mentioned your experience in Miami. We don't do that here. I mean, every other word out of a lawyer's mouth in this district is not sanctions. It's not. Sanctions are a serious deal in this district, and so are the kinds of things that you described.

I don't know what to tell you with respect to how to export, if you will, a culture to another district so that something like the CAPS program, for example, or the collegiality that the U.S. Attorney's Office and the Federal Public Defender's Office seem to share and have historically shared, I don't know what to tell you about that. But I do believe, I really do believe that if you're going to have a chance at making it stick, it's got to start with the judge.

To start with the judge, the judge has to know that this is something that can make a difference, and a better use of the resources, than endless motions to suppress or all the other kinds of procedural mechanisms lawyers are fond of using, including motions to disqualify and everything else.

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Reuben Cahn: Mr. Needham, do you have any thoughts?

Jerry Needham: I think Judge Acosta hit the nail on the head. The judges in this district wouldn't put up with it. They expect the attorneys to act as professionals, and deal with discovery issues in an informal basis. We have a standing order to get discovery within fourteen days. Many of the government attorneys get that to us earlier than that.

If there's an issue, we try to work it out. Sure, we file specific motions and we have arguments about that, but that's maybe the last resort after we've spoken to our colleagues across the street, and they've given us the information, and we've exchanged e-mails and letters, but the court expect us to act as professionals, and deal with that.

If there is a conflict personalities between various folks, the heads of the offices meet and discuss ways to resolve it, but that's just the way it's been by the court in this district for the last twenty years and longer. I guess, it's the culture that's been evolving since Mr. Wax was appointed the first defender in this district, I guess thirty-one years ago.

Judge Acosta: If I could . . . I'm sorry to interrupt you. If I could just interject because something occurred to me based on this discussion in further response to Ms. Roe's question to me about pushback from the pretrial services officer.

In a CAPS case, many times, often, the pretrial services officer when we meet before the hearing will ask me to reinforce a particular message, concept, notion, expectation or to hold the defendant "accountable" for something that's happened that we need to talk about.

It's helping the pretrial services officer supervise the more difficult cases, the closer calls. It's a team approach to that, but the pretrial services officer is in charge and calls the shots on supervision. That's I think one of the reasons that it works well, and we don't get that friction that you asked about. Sorry.

Reuben Cahn: I know we've got other panel members.

Judge Cardone: All right. Judge, do you have any questions you'd love to ask?

Judge Gerrard: I really have a question and would have an observation that I see the whole client approach that we've been talking about as the result of a whole system approach. I mean, it really is. Chip referred to it as the three-legged stool. I would suggest it's a four-legged stool. It's the U.S. Attorney's Office working with dedicated defense lawyers in a judiciary

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that is committed to the Sixth Amendment, but it also includes pretrial and probation staff to carry out and execute what you've set forth.

I'm trying to figure out how that's going to translate to recommendations, but I found this session very, very helpful as far as what we can take and move forward with. Probably the only other observation before I was this judge lawyer thing, I was an old probation officer.

When I hear Ms. Bell, and Mr. Howard, and Jennifer Cleveland say that whether it be Jerry or Steve talk about, "they helped me help myself," that tells me you get it, and that the whole system gets it. I would just encourage you and Mr. Howard, you're already doing it, pass that forward. Carry it out and pass it forward. I don't have any specific questions.

Judge Cardone: Dr. Rucker?

Dr. Rucker: Thank you, Judge Cardone. I'd like to ask a question primarily I guess of Mr. McHenry, and maybe secondarily, Mr. Needham about extra service providers. One of the things that we've been concerned with is equality between the defense and DOJ. Do you have any issues here with getting the quality of experts that you need at the hourly rates that you can afford and be approved by the court in comparison to what DOJ maybe paying?

Matthew McHenry: I don't know what DOJ pays. I know that we have the experts that we use in this district. It's often there are times when, I mean, I certainly have investigators that I prefer, and psychologists that I prefer, and there are times when in a multi-defendant case, I will ask my psychologist to take on, my preferred psychologist to do an evaluation, and they can't because they're doing an evaluation for somebody else in that case.

That does come up occasionally, but in large part, we don't have problems getting experts here because the experts that we use here, I hate to beat the dead horse, I guess but they get this whole client approach too. They aren't in this line of work simply for the money. We have, the experts that I use routinely are charging me and the CJA half of the hourly rate that they normally charge because they see the importance of the work.

I don't know how that compares to what DOJ gets and what they spend. What I know is the experts that we get here are outstanding. I have never had one say to me, "I can't take that case because it doesn't pay enough." What I've had them say to me is, "I want to help you out and to help you out, I'll cut my rate in half so the CJA will cover me."

Dr. Rucker: Are you negotiating with them on rates or are they . . . ?

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Matthew McHenry: Yes, we do negotiate with them on rates because we do this with an eye towards the budget. I mean, we as panel attorneys know that the pool of funds are not bottomless. We often negotiate rates with investigators and psychologists. There are some experts that aren't willing to budge, like interpreters often just charge a flat rate, but most of the experts that I use are quite willing to cut their rates in order to get into a CJA case because they're also interesting cases.

Most of our federal cases where I'm trying to get a psychologist or an investigator are fun to work if you're into that kind of thing. They're not just in it for the money. They're willing to take less money to do the job because they get to work with this particular client or they get to work on this particular issue that is something that's very important to them. Does that answer your question?

Dr. Rucker: Yes, it does. Thank you. Mr. Needham, do you have any comments?

Jerry Needham: Yes. We keep a database of all the experts that the office uses, and CJA panel attorneys and private attorneys typically e-mail our office or call our office for recommendations of experts. We put the comments, the feedback we get from the CJA panel attorneys as well as the attorneys in our office, and anyone else that comments about an expert, so we have that information to share with other attorneys.

When the sequester hit, well, most of the experts agreed to take a, I believe it was a 10% reduction in their hourly rate. Mr. Wax told everyone that they were getting a 10% across the board reduction, and there was really no push back at all. They're all professionals, and enjoy doing this type of work.

Dr. Rucker: Thank you.

Chip Frensley: Judge Acosta, I just wanted to ask one question to you, and that is, what extent, if any, do you believe that the role of the Federal Defender's Office in the administration of the panel in this district has on the confidence that the court has in the actions and activities of the panel attorneys?

Judge Acosta: It has a lot. It has a lot to do with that. I think the starting place is the regard with which the court holds the Federal Public Defender's Office in this district. That's the first piece that has to be in place. Second, now this is just my, from the cheap seat sort of guesswork, but the Federal Public Defender's Office in this district has a really good reputation. They want to make sure that reputation continues.

The CJA panel lawyers that they vet and that we ultimately consider, that's part of that. I will tell you that in the time I've been on the bench,

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the lawyers I've seen in my court representing defendants, whether they're from the Public Defender's Office or a CJA panel lawyer are consistently good lawyers who work hard, and treat their clients like people, not just like this is a case file of a pile of case files I have and I have to get to the next one.

That makes a difference from the bench as well because we can have confidence in what the lawyers, including the CJA panel lawyers tell us when we are trying to make decisions like detention or release, the type of conditions, the representations those lawyers make to us about the communications they've had with family, perspective employers, ministers, other stakeholders in their particular client circumstances when they're advocating a release plan. So it has a lot to do with how the court use the CJA panel lawyers.

Judge Cardone: Professor Gould, do you have any questions? All right. Before we wrap up for the day, is there anything that any of you would like to tell us that we didn't ask you to just make sure that we're aware of? Anybody?

Jerry Needham: Just a follow-up on the training for the CJA panel attorneys. We do have CLEs once a month in our office, and sometimes we have experts from outside the office or other notable attorneys give presentations. We have a new group of attorneys who's going to be on the CJA panel, and they're going through a training in our office.

We also have a mentor program with the CJA attorneys, the new CJA attorneys. We pair them up with a experienced CJA panel attorney or another lawyer in our office.

Judge Acosta: So I would just say one final thing. Something that I would not have said eight years ago before I came to the bench and that's this. There's a special place in heaven for federal public defenders and CJA panel lawyers, and I would never have thought to say that before I came to the bench. I would hate to see those people leave that practice because they can't get resources. They need to represent their clients the way they think to do it.

Judge Cardone: Well, on behalf of the Committee, thank all of you particularly, the clients that were willing to come here and tell us their personal stories because, although as we all know, we're all in this together, you are willing to come here and be very vulnerable. We very much appreciate that. Thank you so much.