

Ad Hoc Committee to Review the Criminal Justice Act

Public Hearing # 3—Portland, Oregon

February 3-4, 2016

Transcript: Panel 3—Views from Judges and a U.S. Attorney

Dr. Rucker:

My name is Bob Rucker I'm from the Ninth Circuit, Circuit Executive's Office in San Francisco. I'd like to welcome all of you to the second day of our hearings here in Portland and thank you for coming. We're very interested in what you have to tell us. I think probably all of you know, maybe you've been watching the streaming that we've been doing that this Committee was appointed by Chief Justice Roberts almost one year ago to do a review of the Criminal Justice Act. He assigned us fourteen broad points to cover, two of which today we're going to focus on but we can cover any of the fourteen points. Those two points are the quality of representation and panel administration.

What I'd like to do is begin by introducing the people on the Committee and especially the staff to the Committee. On my far left at the table is Arin Brenner who is staff with us; Autumn Dickman; and Mark who was in the room just a minute ago; Mark Gable who is staff to the Committee. Our Chair of the Committee is . . . to the right of me, three away, the Honorable Kathleen Cardone, she's doing a wonderful job chairing the Committee; to her right is lawyer representative, Mr. Chip Frensley; to Mr. Frensley's right is our reporter, Professor John Gould; to my immediate right on the panel this morning is Judge John Gerrard; and to his right is the Honorable Judge Dale Fischer from the Central District of California; on my left is Mr. Reuben Cahn; he's a Community Defender from the Southern District of California in San Diego; and to his left is Miss Katherian Roe who is the Federal Public Defender in Minnesota.

Not attending today but part of our Committee is the Honorable Fifth Circuit Judge, Edward Prado who is very famous from the report that he did in 1993 and that we're following in his footsteps. Also not with us today, the Honorable Mitchell Goldberg, district judge from Pennsylvania Eastern; the Honorable Reggie Walton from the District of Columbia; Professor Kerr who is from George Washington University Law School; and Neil MacBride who is with Davis Polk. What I would like to do is say a couple of comments. We are streaming this live today and we are certainly open to written comments and you can submit them to <https://cjstudy.fd.org>. That's cjstudy.fd.org. If people want to submit anonymous comments, we will take those as well. We really love to hear from you. We're really concerned about doing a good job with this report in making recommendations that will make improvements to the Criminal Justice Act.

We have about one more year to go, so we are about at the midpoint with the study and we look forward to hearing what you have to say in. Let me begin by asking each of the people before us testifying today to begin with

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an opening statement of about five minutes and if I can, let me begin with Judge Peterson.

Judge Peterson: Thank you, Dr. Rucker. As you know from my written materials, I've had a variety of experiences with the CJA panel, with the CJA Act, both as a CJA attorney, as a CJA representative, as a district judge and as a chief judge and I have noticed that there is a tension between the judiciary and the CJA. I see this tension as the conflicting and somewhat complimentary roles of the judiciary and the CJA. There needs to be judiciary support for CJA, judiciary oversight, but there needs to be CJA independence. As far as the judiciary support for the CJA, I'm a firm believer that the budget for the CJA and all Defender Services should remain in the judiciary budget. The reason for this is as a chief judge, when I've had the opportunity to meet with congressional members and advocate for the judicial budget, it's a very promising conversation to be able to advocate also for the need to support indigent defense.

I challenge whether or not indigent defense advocates on their own could have that same power as an article three judge arguing for the importance of funding indigent defense. But there seems to be some general confusion that I have noted in conversations with federal defenders around the country about whether there's a competition between the judiciary and Defender Services when it comes to money. I've been asked, "Well, what happens when it's a tie between giving Defender Services money and a judge's project money?" But, I think that misunderstands, miscomprehends the way that the judicial budget is established with separate accounts or buckets for each of the various areas where the judiciary allocates money. Once money is allocated into a CJA bucket or Defender Services bucket, it's my understanding, it really cannot be moved.

The question becomes how does it get allocated into that bucket to begin with? Some of the suspicion, I think, arose during sequestration when federal defenders and CJA attorneys thought that the judiciary was meeting their sequestration cuts by cutting Defender Services and taking no hits of their own. As chief judge during that time, I can assure you, we took significant hits in the judiciary. For instance in my district, our funding for staffing was cut by one third and we had to reduce our staffing cost in order to meet our sequestration requirements. There was in no way an attempt that I'm aware of by the judiciary to meet the budget restrictions by decimating the Federal Defenders or Defender Services.

The judiciary can also support the CJA by encouraging attorneys to join the CJA panel and also, with rulings. Thus, the judiciary can be supportive of rulings on continuances, discovery requests. They can even be playing field between the U.S. Attorney's Office and indigent defense because

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there are restrictions that CJA attorneys encounter that the U.S. attorney's office does not. For instance, getting experts to assist and how much longer that takes and how much less resource is available for the CJA attorney. I think judiciary oversight is important for CJA administration, both to maintain the quality of CJA attorneys because the judges actually see the attorneys in court. I know what it's like to be a member of the panel. I know that everyone is reluctant to rat out or complain about another attorney who's not doing good job, but a judge sees everything going on in the court room. As well as selection of CJA attorneys, I think that should remain with the judiciary because the judiciary has a vested interest in making sure that the defendants are represented as well as they possibly can be represented.

I also think that the judiciary should maintain control of appointment of cases to CJA counsel. I know in many districts, the federal defender takes on that role but I challenge whether or not that could either have a conflict of interest or present the appearance of a conflict of interest of a federal defender who's representing one defendant in a codefendant case of possibly representing not as an effective of a CJA counsel to a codefendant. I think it's also important to have CJA independence. This one gets really tough. I think judges should get out of the business of reviewing vouchers. Personally, I'm not sure we're very competent to do it. Most of us have been out of the practice of law for a long time and when we are asked, "Well, gee. Should it have, have taken ten hours to have written that motion for a suppression? Oh no, I could have done it in two." There's a reason why somebody couldn't have done that in two.

Well, the farther we get removed from the practice of law, I think the more inexpert we become at judging what is a reasonable cost. I think it would be desirable to either have an independent person, somehow affiliated with the court or with the federal defender's office be able to review both the approval of experts and vouchers as it is done in some districts but the ability to hire an experienced attorney in any small district to do nothing but review CJA vouchers would probably be cost prohibitive. I suspect I'm at the end of my five minutes.

Dr. Rucker: I'll give you a couple of more.

Judge Peterson: I want to say that I think indigent defense is incredibly important. I think in our district, we have a Community Defender Organization, not a Federal Defender Organization, which is an entirely different thing and presents its own challenges. But we have excellent CJA attorneys and we have some not so great CJA attorneys but that is just simply going to be true. That's true in the U.S. Attorney's Office. There's no way to make a uniform standard, I think no matter how hard you train, how hard you

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scream, there's just going to be an inequity and that's the way the practice of law is. Thank you, Dr. Rucker.

Dr. Rucker: Thank you, Judge Peterson. Judge Aiken?

Judge Aiken: Dr. Rucker, Chairman Cardone, Judge Cardone, and members of the Committee, it has been my honor and privilege to be the judge hosting you here in Oregon; I thank you very much for choosing us to have these hearings. I had the benefit of sitting through yesterday's testimony. I can answer questions that came up there and I'd be happy to do so. I stand on my written testimony. I don't think I need to say anymore in terms of what I feel about the opportunity to be a judge on the federal bench and to walk in a courtroom and expect maybe even demand an even playing field for the defense and for the prosecution. There can be no greater task than what you're doing is to address the difficulties we faced during sequestration.

I want to give you a little bit of background. I come from the state system. I spent ten years on the state of Oregon Circuit Court and District Court for Oregon and I managed the indigent defense budgets and I reviewed vouchers and I had to address these issues and coordinate and administer justice with regard to how to address the problems that we had. I also served the last two years as the juvenile judge, so I had an opportunity to do different work in terms of trying to problem solve and address what are the roles of the lawyers and what are the roles of the judges. We are changing how society manages the incredible, incredible numbers of people going to prison and what happens when that is our only solution in the courtroom to many of our particular problems.

It's a very complex system that we keep passing on to later generations to address. What I want to talk about is when I came over from the state system to the federal system was Sentencing Guidelines and we had the difficulties was just simply sending people to prison was really our only option. We didn't have any other way to address it. Than in the state of Oregon in 2003, raging methamphetamine epidemic. Raging. So, what do we have? Send people to prison, three problems on supervised release coming out of prison, they're going right back into prison. As a federal judge, what do you do? I can pay lawyers to come in and just represent people as they go back to prison or we can look at something different because in the state system when I came over, it had everything to do with incentivizing people and getting better work.

Now, as the chief judge, I've served the last seven years as chief judge and eleven years on this bench before that time, I have witnessed a great deal of change and it's actually been led by the judiciary. It's been led out in the communities by judges who are not satisfied with what the results are in the court room and trying to address better ways to do better work. As

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my time served completed last Friday as chief judge, I would tell people, “You have two choices as a presiding judge, you can be all about efficiency. Move that paper and move those people, or you can try to do better work.”

In this district, you heard lengthy testimony about how we decided we were going to do better work and be efficient. Now, we handle the things efficiently. You heard Steve Wax talk about the system that’s been in place for his thirty-one years, it evolved. The relationship between, the tensions between the judge and the Defender Services Office, as well as the CJA panel are resolved because we’re collaborative. We’ve been collaborative on everything we’ve taken on because it is important that we look at things as a system.

Another advantage that I’ve had coming to this place is I have served not only in the Oregon Legislature as the chief clerk of that house many, many times in that body but I’ve also served in Congress. One of the things I’ve learned in taking a look at systems change which is what we’re talking about, systems change. You should not have a systems impact. When you’re looking at this issue with regard to indigent defense and focusing on indigent defense, you have to understand that the system has to take a look at what problems are coming into the court and who bears the brunt on addressing those problems? What has happened in Oregon is this collaboration between the bench and frankly, the defense bar and the service providers and the probation office to try to do better work. Whatever we want to say about how we do our work, it’s sometimes very difficult to measure in concrete terms but it is very easy to measure one case at a time which is what we should be looking at as how we approach our particular cases. Let me give you an example. I am going to hand you a copy of what we did when we decided that just simply sending people back to prison with the methamphetamine epidemic wasn’t good enough. We put together academics, probation from national offices, probation from the D.C., everyone together at a summit in 2003 to look at how we can do work better. And I give credit to Steve Wax who said, “What we need to do is have a backend drug court.” We said, “Well, how can we do that?” We said the judges are in charge of addressing the needs of people coming out of prison, we can build a system that way.

Then, we had a panel at that same conference over at the prison of success stories. What worked? Looking at academic research and actually talking to people about what works and we had a myriad of things that we cookie cutter. We set up a one size fits all for everybody and that’s to some extent, what I want to talk about here is one size fits all doesn’t work. It doesn’t work in my state. Yesterday you heard lengthy testimony and it was really Portland centric. Nobody mentioned that it’s seven hours to drive from . . . if you’re a lawyer in Medford where we have a heavy case

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load to Sheridan to see your client, nobody mentioned that. Nobody mentioned that Eugene has to drive to Portland or Columbia County. The cost of moving people around the state and the way in which we have to be smart about how we do our work is critical and important.

There's all different ways in which one size doesn't fit all in any solution. What I will tell you and when we look at our comprehensive CAPS program with our backend reentry program, what I will challenge and I would challenge judges to say, "We're the success stories." Why don't we change how we value and take a look at where we're succeeding and share that information. That happens in this state. That happens in the body of research that we've developed. That's happened in the analysis of the cases. That's happened in how we work better together. I want to tell you that we have a reentry model and why that's important is we work collaboratively, so sitting in our reentry courts, we have a judge, a probation officer, a public defender or a CJA lawyer assigned to that case. We have a treatment provider, we have the U.S. attorney, we have an education specialist. We have a various outside people who are addressing particular problems and we meet with our highest risk offenders, we use the AO's PCRA scores, we use the data analysis.

We gather data and we use strategic evidence based behavioral models to help change behavior because at the end of the day, when I first came on to this bench, I would come down at the end and they would say, "How many years did you give people, Judge?" I said, "That's failure." What you need to understand is what are we going to do to bring people back into the community and be successful? It takes a lot of work. It has taken this district a lot of effort. It has taken us a collaboration with the Public Defender's Office to understand when they do all the work they do, holistically which you heard, holistically is throughout all of our work. They've done that work upfront, what happens to that work if we don't follow through? It's a natural extension of what we've done is to build in the opportunities for doing holistic work.

How do you measure the quality of representation? You measure it because we talk to people. We're in the courtroom, we know their excellence. They don't just treat people like a file. They speak to them, they go the distance, they write the letters. I think you might even hear some conversations I have one of my reentry people coming and we followed him for the fifteen less with a credit retirement served sentence he had and I wrote letters with him back and forth, his lawyer followed through to make sure he was adequately taken care of in the prisons. Quality representation means you're taking a step-in in a case where it's needed and we address the needs as we find them. It's hard to summarize really quickly all of what we do but I want to hand it to . . . because I listened yesterday. I hand it to your incredible research staff what we get

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in reentry which is using all the tools on risk predictor scores, all the criminogenic issues we need to address, all the data we need to put together by an individual and we meet monthly in the court room.

By meeting monthly, and I am going to tell you, I met for ten years every month, with our team, with our highest risk offenders, and I've missed two, it is the most important work we do in terms of how we change the work and the opportunities to make a difference in this system, it has been an extraordinary education and it's our favorite day of the month and all but one of the members have been on this for ten years as we've grown and built a model based on evidence, research, data and fine tuning it using the Kennedy School of Public Policy which sets up putting up a model and then, fine tuning it to be more successful. We're gathering the data, we've . . . the second piece you'll have, so you'll have all list of the people we're serving.

Dr. Rucker: Excuse me, Judge Aiken. Maybe two minutes and then, I am sure there's going to be a lot of follow up questions for you.

Judge Aiken: I know. I'm laying the groundwork for the questions. The other one is a list of where we were a part of the FJC's quality assurance year-long study with assistance. We started collecting our own data to be able to show where the impact is and to be able to take that data with an economist and expedientially make the calculation on how much money we're saving system wide. We need systems impact when we make these broad decisions. I am going to stop there because all of this ties in to understanding the need for independence of the defenders to ask for what they need from the court and get what they need so they could come in and help make a difference before us because I am going to suggest you, I know the day I become arrogant enough to think I know which person in front of me is a defendant will change, is the day I need to leave the bench because I am going to tell you, in the twenty-eight years I've been on the bench, people surprise you. They surprise you at unique and in particular moments and it's with the advocacy and the fearlessness of the defense bar that they're able to put some of those issues before us. I have a different approach about independence. I think we are well served when they have the independence and the judges are not viciously intermeddling in their day to day work.

Dr. Rucker: Thank you, Judge Aiken. Magistrate Judge Rankin?

Judge Rankin: Dr. Rucker, thank you, and Chairman Cardone and members of the Committee, thank you very much for this opportunity to come and speak to you. I know your work is very important and it's tedious, you've been on the circuit so to speak and we've been all watching you on videos and we applaud your efforts. Certainly, just by way of early commentary, I

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think Congress got it right that many decades ago and the Criminal Justice Act is certainly a model for state systems and we're very fond and supportive of the act and certainly there is always, as you know, room for improvement and that's why we're here.

I come at from a perspective as a[n] administrator for our CJA program in the District of Wyoming so I see first-hand the attorneys not only in the court room but also in terms of making the appointments to both the panel and the federal public defender. I've come, over my years, in my prior life, I was a U.S. Attorney for the District of Wyoming and an Assistant United States Attorney and I've come to have tremendous admiration for all of the attorneys that work for the CJA program in Wyoming, and certainly I am sure that's true elsewhere.

I also saw firsthand how difficult their jobs are. They work tirelessly oftentimes dealing with clients that are substance abuse addicted. They are folks that have been in and out of the criminal justice system many times and they are dealing with crime and despair and not to mention the mental health issues that many of them face. Lots of things to consider if you're a CJA or public defender and you're juggling all of those balls when you're handed a case by the court or the Public Defender's Office. Wyoming has a slightly different perspective. I think you've seen this and Judge Gerrard, you can certainly relate to this. We're a very rural district, and I think Judge Aiken pointed out, driving seven hours from the court house, want to see your client, that's exactly what we face. We have a couple of pockets of panel attorneys near our national parks where our magistrate judge up in Yellow Stone handles those appointments and he also handles appointments out at Grand Teton National Park.

Otherwise, our district court judges are in Casper and in Cheyenne, some two and a half hours away, barring wind and cold and snow like we have today. But our panel attorneys are spread all over the state, and we try to keep them as close to Cheyenne and Casper as possible but there really is a tremendous amount of windshield time. When sequestration hit, certainly we try to do our very best in terms of appointments and making sure that our panel attorneys were traveling as close to the courthouses as possible, but it really is unavoidable. I think just a recognition for small rural districts like Wyoming, we have a total of 560, 000 people, yet we're very vast geographically and we've got mountains and plains, but folks were on the road a lot. As I recall in the U.S. Attorney's Office, one total FTE was dedicated, you could have provided an FTE for the amount of time that people were on the road.

Lots of face time, lots of windshield time. We in Wyoming have forty-two total panel attorneys and the way it operates is when we find that somebody's indigent, we appoint the Public Defender's Office, if they

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have a conflict, then we hand it over to one of our forty-two CJA panel attorneys. None of our panelists are making a living on the CJA panel. They get on average about four cases per year if you're on our core panel and you get about two cases per year if you're on the supplemental panel. Perhaps in some districts, folks are really making a living, but not in the district of Wyoming and so, that begs many questions in terms of training and support. They're part-timers. Most of these folks are solo practitioners, have very little staff and support outside of their own practices in oftentimes rural Wyoming. So, how do we afford them an adequate amount of training and mentoring and the like? We, I think are fairly robust in the area of training. We rely upon the Federal Public Defender's Office and our CJA standing committee which is a small group of people that advise the court and help us direct our program. But it's really imperative for us because of the changing dynamic in the criminal justice practice to make sure the folks were adequately trained and maybe that's a funding issue but that is really important. Because what often happens is people get into a case that's highly complex and difficult for them to adequately and effectively represent their client, and so where do they turn?

One of the things that I would urge and I know you've heard some about this is making sure that we have some sort of protocol or model for training going forward even for those smaller districts. Again, we don't have full time panel attorneys and the Federal Public Defender's Office have their resources and they certainly are always willing to help. Sequestration, real briefly, to feed off what Judge Peterson said, was a difficult time for everybody for the courts. But there certainly was a perception that at the bottom of the totem pole, were panel attorneys and there were delays in payments, there were costs cut concerns about whether they would get cases, concerns about whether they would get experts appointed and so on. And so, I don't know how we change that equation. I don't know if we tether that to the judiciary or some independent group associated with the judiciary, but it is at least perception wise a concern. The panel attorneys, I think feel like when the shoe drops again, where will they stand? I think that's an important consideration.

We continue to make adjustments in light of those budget considerations but anything I think that this Committee can do in terms a model or protocol for funding, training, mentoring, all of that to support large and small districts alike would be very helpful. I look forward to answering any of your questions. Thank you.

Dr. Rucker:

Thank you, Judge Rankin. Mr. Williams?

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Billy Williams: Good morning. Thank you, Dr. Rucker and Judge Cardone and members of the Committee. I have to tell you, I didn't know until . . .

Dr. Rucker: Speak up a little more . . .

Billy Williams: until early this week that I was going to be able to attend this event today because I spent the last month at Burns, Oregon with the wildlife refuge occupation, and it's only slightly less intimidating being here than it was the last month with armed occupiers. But in any event, it's a pleasure to be here. I did not, because of that, submit comments, I've prepared some that I can submit after the hearing today if that would be helpful.

Dr. Rucker: Thank you. We'd appreciate that.

Billy Williams: Just briefly, I can tell you that this subject is of great importance to me in terms of where I started my legal career. I moved to Portland, Oregon in 1983 to take a job as a trial assistant at the Public Defender's Office and worked there for three years managing clients and working with assistant public defenders in case analysis and preparation and working on alternatives to sentencing. I think that's important because that experience influenced the way I viewed my responsibilities as a prosecutor for the last twenty-six years in both the state and federal systems. I'm a big proponent of qualified adversaries defending people charged with crimes, I think it's of in critical importance and I've tried everything from shoplifting to capital murder and I always thought there was a better result when I had really good opposing counsel on the other side and I've encountered many, many of them in both the state and federal system.

I think that it's a critical importance that while my role here and my capacity as U.S. attorney is limited, I think by the subject matter of your task, I do think it's important to emphasize how we view the work of the Public Defender's Office and the CJA panel because it makes a difference in terms of the quality of justice that's ultimately produced in our system. We work closely with Lisa Hay, the Federal Defender of Oregon and her predecessor, Mr. Wax on a number of issues. I just want to highlight a few of them. Obviously in terms of discovery, with the growth of electronic discovery which has caused lots of issues for all parts of the criminal justice system, we meet routinely. We've got a system worked out within our offices and with the CJA panel lawyers so that they can get discovery quickly and have it provided in a readable searchable manner.

That's a challenge that's been going on throughout the entire country as you all well know, but I have to say that the work that we've done to try and avoid unnecessary tensions and delays in litigation is a good mark of the collaboration that we have with the lawyers practicing in the District of Oregon. Judge Aiken has outlined the incredible efforts at reentry and we

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work closely with the court and other members of the court family and the Federal Defender's Office and CJA panel attorneys to help with that transition. I think the payoff that we've seen through the reentry courts here in Oregon has frankly helped bolster the onset of the "Smart on Crime" initiative that came into being in 2013 and I think the Department of Justice continues to find ways to further that. We've hired a "Smart on Crime" Assistant United States Attorney to help us explore what else in addition to reentry that we can do to address recidivism and other unique factors here in the District of Oregon in terms of how we can help out. Availability of counsel or things like Len Bias investigations.

We have a system set up with Miss Hay's office where we can get individuals involved in those investigations, get them counsel early on, that includes in the middle of the night, so that they can be properly represented in that process. It also includes a lot of collaboration in terms of arrest. Many of our drug cases are multi-defendant cases. We just had one come down yesterday and there's twenty-six defendants all together and I think three states and it's a process where we can work with Miss Hay's office to get notice in advance so that panel attorneys can be lined up and people can be represented. We have ad hoc meetings between management staffs, the U.S. Attorney's Office and the Federal Defender's Office to address whatever issues that may come up because we feel like it's better to try and resolve problems at the onset rather than let things vaster and get in the way.

I know the Department of Justice, I think submitted to this panel some suggestions, general suggestions from the Department of Justice in terms of reviewing the CJA development. I would highlight one of those because I think it's pretty invaluable and that is when it comes to the periodic assessment of CJA panel attorneys, I think it's essential to involve input from not just our office but other members of the court family from Pretrial Services, U.S. Probation, U.S. Marshal service. These are entities that have frankly, in many cases, more contact with CJA lawyers than the judiciary and I think they can provide valuable insight in terms of analyzing whether or not someone should continue. We can provide periodic input and we've done that.

I think it was noted earlier, it's no one likes to complain or criticize another lawyer's work even though I think it's essential for both U.S. Attorney's Office to hear it, about how we're doing and we do, as well as defense counsel. With that input, I think it would raise the bar in terms of ensuring the quality of individuals representing people charged with very serious crimes, it's not a novel statement to tell you we have a clear understanding of the power that goes with being assistant United States attorneys and making decisions based on evidence that are going to impact another person's life and their family for the rest of their lives and we take

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that very seriously. It's something that we instill in the hiring process and I just personally find essential that we have that firm understanding.

With that responsibility, I think we have a sense of who's doing the work well from the defense side and we try and be judicious about criticism. I'm pleased to say that I was given an opportunity in the last ten months to provide some input in this process and I believe that the concerns I expressed about a very, very small number of individuals who in the eyes of our lawyers weren't doing their client's justice whether it was not showing up on time, whether it was hearing complaints from defendants themselves that they hadn't had enough time with their lawyers. Things of that nature. That just can't happen. We're a top tier system and thanks to the guidance of Judge Aiken over her term as chief in this district. We've made incredibly strides of looking outside the box and inviting our lawyers to think outside of the box and our goal is to do justice, not just send people to prison.

Don't get me wrong. People go to prison and for good reason and we don't make any apologies for that but in the process, we can be smarter, we can be better, the individualized assessment fostered by former attorney general Eric Holder is critical and it's also something we've done in this district for a very long time. So thank you very much for this opportunity. It's great to be here.

Dr. Rucker: Thank you, Mr. Williams. Judge Fischer?

Judge Fischer: Thank you. I thank all of you for being here. I am going to start right in with Judge Rankin and talk about an issue that we see all the time in Central District of California as well. You mentioned in your letter that in your complex cases, you have a wide range. Some attorneys review and analyze every evidentiary item and others give it a more cursory review and that's vastly different costs, probably vastly different other aspects as well, but your suggestion is a more formal structure and added support on a national level will help attorneys strike a proper balance. Can you give us more detail? We're going to see all the problems, so we're getting a little bit concerned about what the solutions are and the more we can get from the people who appear before us, the better. Do you have a more concrete suggestion about what to do with that?

Judge Rankin: Judge Fischer, thank you for your question. It's a tough question and the reason it is, is because dealing with cases other than what we see in the court room is really an intimate process. One attorney deals with one case in an entirely different way from another and sometimes in Wyoming and most of our CJA appointments are very complex drug related cases where there's electronic discovery and there's wire taps, etc. How do they cull through all of that? I think it takes somebody with real world experiences,

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we have now budget folks that can handle budgeting matters for the Tenth Circuit and I think the other circuits do as well.

I don't have a real specific recommendation other than whomever is in place at a national level or at a circuit level needs to have some background, some appropriate background as a criminal justice attorney, as a defense attorney, perhaps even as a prosecutor, they have to have real world experiences. And I know it comes back to dollars and I know it's a funding issue but at least in the circuit level or in a district or multiple districts, if we could have somebody in place to review, and it goes on to the voucher issue as well, but to make sure that attorneys are doing the right thing. Then, report to the CJA Committee or report to the court or somebody within that chain, if you will, would I think make a big difference. It's sort of willy-nilly as it is, and judges are as we know, very uncomfortable in most instances saying, "Gee, I'm going to cut a voucher because you did too much or too little," etc. I just think to the extent if I have a magic wand, if we had beaucoup bucks, the right people in the right positions whether it's at a circuit level or the national level provide us with a model, some reasonableness standards so that we know how to look at the work that's being done. It's tough stuff but I think we need some help and some guidance to do so. I don't have any particular language for you, but I think it's something that can be done along the lines with our budgeting folks and other people that are important to us in the judiciary.

Judge Fischer:

Thank you. You described the appointment process where the public defender has a conflict and can't take a case and are you selecting personally the individual attorney among the forty-two to appoint, and in that process, what are you evaluating? Because I think there are equal concerns whether the FPD is selecting or a judge is selecting as opposed to just going down a list. Are there some lawyers who say, "Hey, I should've gotten that case that is going to require me to spend a hundreds of hours reviewing discovery as opposed to the next guy."

Judge Rankin:

Well, maybe it's good or bad but in my former life in the U.S. Attorney's Office, I got to know all of the or most all of the CJA attorneys quite well, so we as I said earlier, we immediately turn to the Public Defender's Office and then, they determine if there's a conflict. If there is not a conflict, then I look at our list, and if it's a complex case and it's a core panel attorneys turn, if you will, we don't go down the list, instead we take into consideration the complexity of the case, the nature of the case, the geography of the attorney and the court and who's turn, and all of that goes in to the hopper.

Then, I make an appointment based on that and try to keep it equitable by years end so that each attorney gets roughly four appointments. But I know those attorneys that have dealt in the past with complex cases,

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wiretap cases for instance, so I am going to lean on those folks and then also take into consideration the location of the court and the client. There's no magic to it, but I try to do it as equitably but it is awfully subjective. We find that if we go right down the list, for us, it would be a mess.

Judge Fischer: Thank you. One last question for you about your mentoring program, what are some of the best aspects of it and what would you change or improve if you could?

Judge Rankin: It's a fairly new program. We try to keep a small group and the idea, of course, is to generate some new fresh energy into our CJA program. And we have solicited a core panel attorneys to serve as mentors and we have a little committee that reviews the progress of the mentees and they pair up with the core panel attorneys and help them through cases. They have to first get permission from the trial court, the court that's assigned to the case. For those that are invested and eager to be a member of the CJA committee, it works quite well. On the other side, how do we . . . and this is a difficulty for us, how do we move on and allow other attorneys an opportunity in our CJA program? We don't appoint them to terms. Instead they are sort of there until something bad happens or if they move on on their own. There's not a lot of room to bring new attorneys in and if we flood it with too many attorneys, then you dilute the quality and it creates some other issues as well. It works well for those that want to work the program and we are excited about it but we need to figure out a way to keep attorneys moving into the CJA panel so that we can get some new energy and new experiences.

Judge Fischer: Thank you. Chief Judge Peterson . . .

Judge Peterson: I need to say, I actually as of last week, I am no longer Chief.

Judge Fischer: Oh, okay. Well, I will cross that right off of there. You have presented the side of keeping a number of things within the judiciary, you think that the vouchers should come out. I think there are a lot of judges who would be happy not to have to review vouchers but if that stays within the judiciary, are there any concerns in your district? We are hearing from some places where the judges seem to think that we're responsible for keeping the cost down and you talked about the defense lawyers not understanding the relationship of the budget. I think some judges don't understand that either although we've been advised by Judge Blake about that. Do you have any issues about that system in your court?

Judge Peterson: Well, you will have the advantage of hearing from both our CDO executive director Andrea George, and Pete Schweda, or CJA Rep. Whatever I say, they can readily refute, but as far as viewing it from the judges' perspective, the fact that the judiciary has assigned the judges to

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review the vouchers, automatically I think makes the judges look with a very discerning eye as to whether someone has done work, from the judges' perspective, that equates to that high of a voucher. I think as judges and I do sense this from my colleagues on the bench, that they take it as part of their responsibility to actually put a critical eye on these vouchers, not just sign off. Whether they feel they have to balance the federal budget by cutting a specific CJA attorney's voucher that has never been anything that I have been aware of, any thought that any of my colleagues have expressed. So, I think, in answer to your question, the direct answer is no. I don't think judges are saying, "Gee, we only have \$5 billion, we've got to cut \$50,000 from this attorney's voucher." Instead, they are very aware, "Boy, I didn't see that work. I didn't see any product that would justify this \$100,000 voucher."

Judge Fischer: Is there a review system in place or do judges give explanations if they do cut vouchers?

Judge Peterson: They are supposed to. Yes, I have cut a voucher before, one voucher and I did meet with that attorney and I explained, "I don't see how anyone can file a one page motion to continue and charge two and a half hours of work. Explain it to me." It still was cut.

Judge Fischer: You've mentioned that the lawyers get at least two appointments per year. Are they satisfied with that number? Obviously, they do other work if they are only getting two appointments and I think the flip side, are the judges satisfied that they are getting enough experience to keep up the level of quality with that number of appointments?

Judge Peterson: We don't actually have a guarantee of two. It's a general and that's about what they are getting. No, that is not enough, I think, not enough appointments, and I think the CJA counsel would like to be getting more appointments per year and I think the judges would like to see the panel get more appointments per year. We have undertaken an attempt to shrink our CJA panel and that presents two challenges. One is, like my fellow districts here, we're a large geographic area so shrinking it means doing away with some attorneys in good locations but we also are trying to keep the quality up. We do have a three-year review. That can be a painful process, especially as we get into our district a sixty codefendant case because then we're turning around and asking people whom we've removed from the panel to take a CJA case because we need those attorneys.

Judge Fischer: Thank you. One last issue, you've mentioned that the U.S. attorney's policy on the release of discovery, and I am wondering, does that apply to all cases or just, I think in our district, it's identity theft type cases, you are not going to give that to the defendant. And if there's a concern that that's

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not necessarily appropriate, are the judges making orders or being requested to make orders to expedite that process?

Judge Peterson: I am just going to flesh that out for the streaming video. In our district, generally, and I am not sure that I can say blanket, that it is 100%. It is certainly been true in, I think all of the cases, certainly in all types of cases that have been before me, the U.S. attorneys have a policy that the defendant will not get copies of the discovery. That means that CJA attorneys or defenders have to go and sit with the defendant to review the copies. If the defendant is detained, that presents all sorts of problems, especially in electronic or Title III cases where there is just numerous wire taps or email messages trying to get an electronic review of discovery.

In answer to the second part of the question, there has not been a challenge that has been successful. Quite frankly, the defense bar pretty much figures, "That's the way it's going to be." We are aware that it is particularly in the Ninth Circuit but nationally, there isn't that much discovery entitled to the defense. The fact that the prosecution is willing to provide discovery in a timely manner somewhat outweighs the challenges of, "Let's give that discovery to the defendant."

Judge Fischer: Thank you. Judge Aiken, thank you so much for hosting us here and we've just been treated wonderfully with the exception of the weather today but . . .

Judge Aiken: We can only do so much.

Judge Fischer: We understand you didn't order it [laughing]. You've made some very interesting comments in your written testimony and you have amazing programs here. One of the things that you said that I wanted to ask what you meant was, you refer to "the crazy quilt system of federal defense attorneys and panel attorneys." Could you tell us a little bit more of what you . . .

Judge Aiken: I would be happy to. I compare that to what I found when I was on the governor's commission on addressing the needs of representation of children in juvenile court. In the state of Oregon, we have thirty-six counties. In every single county, there was either no lawyer appointed, maybe a CASA, maybe a lawyer, maybe both. It was a crazy quilt system. Wherever you ended up in the state, if you are born and in a county, maybe you got a lawyer, maybe you got nobody. Across the country, what we have is a crazy quilt of combinations of systems. It's cultural. It has everything to do with everything is local. We've grown up in a system that has hybrids everywhere. So it's very difficult, it is kind of what I talked about earlier. One size doesn't fit all. So you have to look at the issues of a particular community, and set in a public policy standard, what's the

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expectation of quality representation? What's the expectation of what's provided quality representation in terms of services? And how to best serve a community that maybe, for example, five hours south of here with a very heavy criminal case load needing very fine lawyers, all sorts of different challenges, over against being up in Portland where you run across the street to the court house and you don't have to go distances. It is a crazy quilt combination of ways in which we serve. It is very hard, I think you have a very difficult assignment to try to figure out, what is the best model? And how then to do, from a hierarchical standpoint, how do you put in place something that will make a difference overall to the entire structure? Maybe you have to look at across the country, what are the models that best work? Can they be, shall we say, capacity built? I would give the example of the District of Oregon and the testimony you've heard over the last day or so. We have a really interesting hybrid. I am really proud of how it's been fine-tuned as we have developed and found issues. Everything that you've raised and asked with respect to the two other speakers, we have to deal with and address. I tell you, we have panels of attorneys in each of the respective areas to address those distances. We have training that is across the board so everybody has the same training. Again, we try to keep things close to where they can be adjusted and when I went back to the systems impact, if we make a change in how we handle defense, it can have a ripple effect with the U.S. Attorney's Office budget. It can have a ripple effect with the Marshal Service, with who pays for where people are put in prison.

All of that is part of the crazy quilt on how do you address different models that are perhaps incredibly cost effective with high quality, but need that autonomy and that independence to best serve the clients here. I think this Commission is doing a wonderful job of going out and finding out how does it really work? We are getting . . . for judges, sitting at the table, talking to real people, getting in the discussions of why isn't this happening? Figuring it out is pivotal to try to take it back and put it in a public policy model. But at the same time, I would hope that you would understand that when you look at that, there are places in this country and I am well aware of it them where they never ask for an investigator. They never ask for additional services. They just frankly just take a file and move a person through.

At the end of the day, in terms of quality of representation. I hope we are understanding that, there by the grace of God, could any of us be. If you have a mental health issue, if you have a child with a drug addiction, if you have all sorts of . . . we want the best representing them and we want to give them the best resources to intervene and make a difference in their criminogenic behavior so that they don't recidivate. All of our model in Oregon is around: stopping the recidivation and the re-victimization of our communities, spending our money not on prisons but on schools and

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education because one of the things you learn in the system is that the education system is not doing a lot of justice towards the people we are seeing in court, and looking holistically, like a medical model. By symptoms, what are the symptoms of people going in and committing crimes?

A crazy quilt is in some communities, we have the person gets the Cadillac. If you, for example, in the Eugene reentry court. You have access to a myriad of services because we built it up. We built it up at the backend and we can intervene and be strategic. If you are in other places in the country, what do you have? That's the crazy quilt that I meant.

Judge Fischer: The other very interesting comment that you made is something to the effect that how can you have a Department of Justice that only has one side of the justice equation? Do you think that it's feasible either now or perhaps sometime far in the future to either create a separate but equal department of defense justice or to adapt the present department of justice so there's two separate wings . . . I am not sure exactly but it . . .

Judge Aiken: Only when the CJA act was written and you go back to some of the original testimony and what the intent was. That was the intent. Sometimes, we let money and just options get in the way but at some point what I wrote is aspirational. What I want us to have is to have that as a goal where there's that independence because in many respects, a defender is a reactive person. They don't control the cases. They have to react and respond, and do a fair amount of work after the fact, and they need the resources. And wouldn't it be just how the system should best function as we are working globally in this world and we are the rule of law and we are looked at as the beacon that the defense function which is just as important as the prosecution function be at an equal status? I've thought about, I wrote these comments. In fact, that would be one of my first . . . that will probably be my first aspirational choice if you look back in history in what we're trying to do, but I also look at the Federal Judicial Center model. Maybe there's something along the lines of that that's a part way step that gives the independence because they can't just be a department of the AO and that's what they've been relegated to be. That's unacceptable. It just really offends me that you appreciate or understand that they need that independence and that the judges need to step away from it and give them the autonomy to bring us what I'd like to say to the lawyers, "Make me do my job. Make me work hard because you have the best and you bring those good issues into me." You can't do that when we're basically, in many respects like we don't like to say it but we are way too much involved in what they are able to do and what they can do because we control the purse.

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Now, I'm an old legislative person. I've been in lots of budget processes. The fact that they're part of our bigger budget is a problem and is a concern and that autonomy, giving them the autonomy so that they are . . . in some ways, we are responsible, we hold the high standard, we're involved at what they do but giving them the autonomy to be able to have their resources and expand them thoughtfully and be held accountable for it, there has to be a better model to do it. They have to have the ability to do some R&D, they have to be able to collaborate with and between and among offices . . . some of the best work is done with collaboration. All of our reentry programs here, let me just say, I've had probably sixty districts, U.S. attorneys, everyone come here to see how they could do better work.

That's collaboration. That's the system. It doesn't necessarily work top down. It works when you give that independence and you hire the best. I listen to a comment about reducing the number on the CJA panel and there are 35,000 students coming out of law schools every year. The Department of Labor says there are 14,000 jobs. We could have a different way of running criminal defense, probation, the courts, doing better work. If we understood there's a better model out there to do qualitative work and do our criminal work so that we have the courts and then, we have the repair system so to speak. The service delivery that can help people come back and not recidivate, or stay out of prison because we've finally gotten what they need.

Judge Fischer: Thank you very much. Mr. Williams, you have a unique perspective in looking at criminal defense lawyers and we appreciate your comments that the better, they are, the better the system works. From your perspective, what do you think are the parity issues? Do you see, and maybe you can't observe them, but do you see issues with not getting investigators, or paralegals, or experts where you would have expected that?

Billy Williams: Honestly, in the District of Oregon, that has not been my experience. It's not an infrequent complaint by some of the lawyers in our office, something to the effect of, "Gosh, I'd love to know what it cost to defend in that particular case because of the resources available." Of course, that's none of our business. That hasn't been our experience here.

Judge Fischer: I don't know that you're suggesting, but maybe I will just ask a question. Are there issues that you have with resources? What is the process that you need to go through to hire what might be considered an expensive expert?

Billy Williams: There's a process . . .

Dr. Rucker: Would you speak into the mic, Mr. Williams?

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Billy Williams: I'm sorry.

Dr. Rucker: Thank you.

Billy Williams: There's a process we go through of main justice and frankly, it depends upon what kind of expert we're in need of, and there's paperwork that's filed with our request, and generally in terms of a litigative cost, we're able to get the expert that's needed. We have paralegals and legal assistants and I've made a litigation specialist in our office that assist in every trial, and the work up to trial, but if there's some kind of extraordinary expense, main justice is someone who has the ability to make that ultimate call.

Judge Fischer: Do you have any suggestions about what the U.S. Attorney's Office could do to help contain the cost, I mean it's all tax payer dollars, so . . .

Billy Williams: That's hard, because a good defense can be expensive, and it's a case-by-case analysis. I think in terms of what we do already in terms of again trying to assist and streamline discovery issues with electronic discovery, but at the end of the day, it's a decision that is between the court and defense counsel about what's needed in a particular case. Again, my experience has been, in this district that defense counsel, is able to get what it needs, investigators who have flown all over the world to track down witnesses in international cases, everything from illegal reentry cases to major drug trafficking investigation. It has not been my experience that they aren't able to get those resources in the District of Oregon.

Judge Fischer: Thank you, Dr. Rucker.

Dr. Rucker: Judge Gerrard. Thank you, Judge Fischer.

Judge Gerrard: Very well. Thank you. I just want to follow up on a couple of things from Judge Fischer. First of all, I want to say to you, Mr. Williams, you had indicated earlier that your role may be somewhat limited as far as what this Committee is doing and I want you to know that your role is not limited. It is crucial to carrying out the charge of the Sixth Amendment in a robust way and what we've seen in Oregon, the entire system is better when the playing field is even, and the quality of representation is high. You are to be commended, and your entire office is to be commended. I will come back in just a couple of moments.

I wanted to ask two questions, one is a little more on the ground and the other is maybe 30,000 foot view. But I want to address a matter that we've heard, and probably are going to continue to hear throughout the country, as far as windshield time. Three of the judges on this panel and

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many of the judges that we see, I want to know how your districts handle travel time and windshield time and secondly, whether a more formal recommendation should come from this Committee. When I talk about how do you handle it, I am addressing you particularly, Judge Peterson, but all of you, and one of the things that you said was we need judicial support and oversight and along with that judicial support, how do you handle that? Some districts will cut vouchers as far as windshield time or say, arbitrarily, there can only be two visits to a prison in this type of case, etc. I want to know what your districts are doing and what each one of the three of you see a need for a formal recommendation from this Committee? I will start with you, Judge Peterson.

Judge Peterson: All right. In answer to the question, no, we do not reduce the voucher amount for windshield time. As far as I'm aware, none of my colleagues and certainly I do not limit how many trips there can be to visit the client. We have instituted something which I am not sure is successful or not, but our Community Defender's Organization which I interchangeably call the federal defenders, have and our probation office, have each set up video conferencing abilities in their offices with the various . . . with at least some of our detention centers and we have no federal detention center in our district.

Are we really going to get enough privacy to protect attorney-client privilege? Probably not. Could some things be accomplished by video conference? We hope so. I think it's a very poor substitute for meeting with the individual and certainly, a number of CJA attorneys have said they can't build up the trust with their client by meeting with them over video and I think that's absolutely right. I don't have any good solutions for that. One thing is, the court has pushed a little on the Marshal's, and the Marshal's are willing to transport the defendant back into the same city as where the attorney is in order to have some conference time, but I don't think that's particularly fair to the defendant to be put on a very uncomfortable transport just to be able to talk to their attorney.

Judge Gerrard: Very well. Thank you. Judge Rankin?

Judge Rankin: Thank you, Judge. Related to cost of travel and location of prisoners, in many ways we're missing a part of the government that we can't talk to or control during these meetings and that's the executive branch. For a rural state, as you are familiar with, we really rely on the Marshal Service to transport folks where we need attorneys to visit with their clients. Our protocol has been on the heels of sequestration, Chief Judge Freudenthal implemented a no or minimized travel policy because we had a very cooperative Marshal at the time that said, "Look, I'll bring those clients daily to Casper and Cheyenne and then the attorneys could meet with them in the court house.

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I think to be frank, most or some, rather, attorneys, would say that that was great but it wasn't ideal because there were screens and they're not great face to face contacts and they were at the mercy of the Marshal and the timing and other attorneys, you had to make an appointment. It created some challenges. When those dynamics change and your question is very timely because our Chief Judge just sort of loosened up that policy and now says, "You don't any longer need to express a specialized need in your vouchers about why you need to travel outside of the Marshal's transport. Now, you can travel. Please be mindful of the public dollar, use it judiciously." I think that works better but again, there's a component here for us that controls that conversation. That's a difficult one.

I think again it comes back to the almighty dollar. Each attorney ought to be given enough flexibility to go see their clients when they deem it appropriate. The attorneys work so hard to fill so many gaps, medical, separation, food, mental and you've got some higher maintenance clients than others and they just need that flexibility. You hope that the attorneys don't take advantage of that, how do we scrutinize that? How do we determine whether it's appropriate or reasonable? Again, I think some point of contact nationally released by circuit that can view those things in an objective manner to make sure we're not getting out a hand would be helpful.

Judge Gerrard: Very well. Thank you. Thanks. Judge Aiken?

Judge Aiken: I travel the entire state. I know what they're up against, and you only resolve cases when you have the trust of the client. So to do anything that would interfere with that ability by having an impediment to their numbers of time they need to see them, that's, I respect what we have as a system. They don't overuse it. What we do as a court is we aggregate cases so that when we are having dockets down in southern Oregon, I go down there. We aggregate, so we talk to folks. We developed during sequestration, what I called the stakeholder meeting. Nobody could make a decision that might have an impact on the other parts of the system unless it was shared ahead of time. Because we had something happen where it actually was detrimental to the entire system and we got everyone at the table, U.S. attorney, the Marshal's, the court, the clerks' office, the bankers, everyone, at the table and we said, "This is how we're going to handle it."

We made fundamental decisions about how to best preserve the time and the resources. I would tell you we have such a good working relationship with the defense bar and those who service in those particular communities on drive time, that they know that we have their interest at heart and that we will back them so they are not in a court position where they are in court and have not spent the time with their client to be able to meet the needs of a fair court proceeding and that the client has that

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competence. We have a high bar for our lawyers and it's expected. I do the drives myself. I know that there's a lot of things now with the car you can do that you can do CLE's, you can talk to clients, you can do work. It can be productive time, but it also is important that they have access.

Our Marshal has worked with us, but we have seven or eight facilities, local jails, and we're spending money there, we have one federal facility that's over towards the Coast, beyond Salem. It takes a long time for everybody to get there and so, we know that when they are able to have that kind of relationship, we get better work done. That's it. Going back, I will just respond back to my question about the crazy quilt in juvenile court, we now have lawyers for every child that comes in. Sometimes when you have to take a look at taking a system and deciding whether to level down or level up, I really believe in this instance that we always should level up.

Judge Gerrard: Okay. May I ask one other question, Dr. Rucker?

Dr. Rucker: Yeah. Sure.

Judge Gerrard: In many ways, Judge Peterson, I found your testimony compelling as far as the CJA meeting, judicial support, judicial oversight in the areas that you talked about and yet, a great degree of independence and what I wanted to do was ask you to flesh that out a little bit, put some meat on the bones as far as what that model would look like? We've heard about potentially the FJC model or a model like that, but I'd like to hear from you as far as what that would look like because we're looking to solutions as well as issues.

Judge Peterson: Well, I have to confess, I don't know what the FJC model is. I'm a little dubious personally about having the DOJ have a separate department for the U.S. Attorney's Office and one for the federal defenders. It just, to me, would carry the appearance of impropriety, that it would . . . again going back to Congress, saying to Congress, we need this amount of money to fight these crimes and this amount of money to defend these individuals. I just don't think it would be an effective method.

Judge Gerrard: But as I understood in your testimony, maybe I didn't ask the question properly. As I understood your testimony, you were indicating that the judiciary should support, in other words, the budget should be underneath the judiciary, so that it would be covered there and, so to speak, and that there would be oversight in selection and removal of CJA panel, and yet a degree of independence. In other words, a separate pot and I guess that's what I am asking about.

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Judge Peterson: Well, I think that again within the judiciary budget, having a segment as we do now, identified as Defender Services but perhaps, strengthening that Defender Services aspect of the AO and I've heard the criticism that that position has been somewhat denigrated over the years. Perhaps to strengthen that, so I could see where having a very strong Defender Services within the AO saying, "Here's your budget allotment, have at it, review the vouchers, set up everything, approve the experts," which would mean some other individuals around the various districts who report directly back to that Defender Services Department are not reporting through the court and the judges are not controlling the expert vouchers or the CJA vouchers, but instead all of Defender Services are there, but the judiciary still advocating to keep that pot of money for Defender Services.

Judge Gerrard: Okay. Very well. Thank you.

Dr. Rucker: Thank you, Judge Gerrard.

Judge Gerrard: I'll pass it on.

Reuben Cahn: Can I start with you, Mr. Williams? I had a question about discovery in light of what Judge Peterson mentioned, the policy of the U.S. Attorney's Office in her district to provide discovery subject to restrictions that they could not be left with defendants. Do you have any such policies in your district?

Billy Williams: We do. That issue is similar in this district and the way we try and work with defense counsel on that is that we encourage protective orders, redaction, but there is a great hesitation to provide a defendant who's in custody in particular, with hard copies of discovery that contains personal identifying information of witnesses, victims and the like. I think generally we're able to resolve those issues with agreements with defense counsel, if we can't, then we go to the court and get a resolution in court, but I think protective orders are pretty invaluable. I don't think it ever is . . . it can be such a risk to people, including the defendant, to have discovery inside an institution. It's complicated in some regards but I think we're able to resolve it in almost every case just informally.

Reuben Cahn: I guess my question to you is, is it your practice to produce all discovery with personal identifying information in it, not to redact that, or it is your policy normally to redact that and produce the discovery?

Billy Williams: To redact it.

Reuben Cahn: I guess I'm not understanding the issue if you redact the personal identifying information which I understood to be DOJ policy. Why would there be a need for protective orders?

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Billy Williams: I'm talking specific to someone inside a facility. That presents a safety issue for individuals. Let's say there's a copy provided inside the facility and someone else gets a hold of it who has contacts on the outside and starts threatening witnesses in a criminal case. Why invite that problem? Certainly it can be inconvenient for an attorney who has a client who wants to see everything. It's worked out where defense counsel and their investigator is able to sit down with the client who's in custody and review everything and then, remove it. Those are just public safety issues that are just hard to get past.

Reuben Cahn: I guess I would ask then the judges on the panel whether you've considered at any point orders that would require or would provide the discovery subject to Rule 16, not that it's outside of Rule 16, that the government is providing voluntarily, not be subject to such restrictions because of the increasing cost that it results in when defendants can only review discovery with their lawyers or investigators present. Judge Aiken?

Judge Aiken: We have done that over and over again for safety reasons. We have had threats in the institutions and I am told by many of the defendants coming out that they're asked when they go into prison, "Where are your papers?" We want to look at it and it has everything to do with some of the gang organizations in prisons, safety factors and they've been appreciative that we have not done that. That's the ones coming out. In a case where we know there are offenders that are going to be awaiting trial and they have identifying information or they have a hold of it and that they can operate from the outside, I have a case pending right now, there was a tremendous threat to somebody from someone who had an ability to act on the outside because by mistake, that information was given to him, and it's been a very difficult problem to resolve. That's just in the immediate past. But overall, that's been a long standing rule so that the lawyers go over, and I think it's a good thing. They go over and then spend time with their clients reviewing the materials in depth and talking with it and with not just sending the papers over for them to read and interpret. In all, I think on balance, public safety versus providing the information they need to help adequately defend their case, that's the tension that we resolve in favor of the protective orders and the understanding. If there were something different, there is every right in the world to come into court and give me a different situation or give any of my colleagues a different situation why we need to do something different but it has worked well in this district.

Reuben Cahn: One of the reasons I'm asking about this is of course we see now with electronic discovery and the sort of surveillance state that we've began to grow, where in the simplest case, you have cell site data, you have license plate readers, you have sometimes intercepts, you've got downloads from phones, you've got all sorts of things, very small cases suddenly that used to be a file this thick are now a terabyte of information. Obviously what

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you're talking about becomes an extraordinarily expensive proposition. How are you dealing with that and how should we deal with that? Yeah, Judge Peterson.

Judge Peterson: I would like to answer both of this question and the last one. As to whether we would be tempted to just say to the U.S. Attorney's Office, "Well, we can't see any reason why this presents a danger to give this discovery to these defendants, you have to give that discovery to these defendants in physical copy." We are perhaps overstepping our role as the court because at least in our district, there are regular objections by the U.S. Attorney's Office that we require disclosure of a variety of discovery as early as possible. In other district, I believe Minnesota is one of them, where a lot of information is not released until say, Friday before Monday trial, I may be wrong, but I had a discussion with Andrea George before, we might require that six weeks earlier.

There's a matter of horse trading that goes on. We get the goodwill of the U.S. Attorney's Office in providing some information. We can only push so far. This would be an area that would be very appropriate for Congress to weigh in on, and say discovery will be produced. It will be produced and given in hard copy except for . . . unless a showing is made that there would be a danger or something else. I am not sure that I agree it would be appropriate for the court with the state of the law as it is now, providing almost no rights to discovery for the defendant, for the court to step in.

One of the things I eluded to in my written testimony was the use of the Community Defender to serve as a discovery organizer to take their expertise, especially with electronic discovery, to organize it, to make it in searchable format. In a thirty-eight codefendant case that I presided over recently, this worked particularly well, where the Community Defender took on that cost, provided their expertise, gave all of the CJA counsel searchable discs and then, the counsel organized teams to figure out what motions would be appropriate so that we didn't have to hear thirty-eight different motions basically on the same thing, but instead, one motion applying to all codefendants. That's the way we've handled that.

Judge Aiken: That's routinely been done in Oregon as well.

Reuben Cahn: Judge Rankin, the problem has got to be even more difficult in your district where if people are going to review discovery with their client, they've got to drive eight hours first to do it. What has your approach been?

Judge Rankin: Well, if I may, we had a collaborative meeting and we sat down the Public Defender's Office, representatives from the CJA, I was included. We agreed and articulated a plan about how to deal with both areas. One, is

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other than the personal identifiers and the Department of Justice takes that out and redacts that automatically, but most of our cases, are drug cases, multi-defendant drug cases, and most of whom are cooperating and providing statements. The concern for both defense attorneys, codefendants, the court, and the prosecutors, is that information gets out into the jails.

The approach that we've taken by agreement and really without any consternation that I'm aware of, the prosecutor will stand up in the court and say, "Judge, this is one of those cases where we ask for a protective order that says if the defense attorney cannot copy the information and provide it to any third person to include his client or her client." That's the way we do it, and it's an agreement that all the panelists and the defender's office follow and adhere to. We have had some security issues, we've seen those summary statements, those proffer statements, show up in search warrants, and in the jails. So, it's really been a security issue for us as well. Everybody for different reasons perhaps follows that same protocol.

With respect to the electronic discovery and the massive discovery that sometimes are on terabyte hard drives, we have placed . . . we have no BOP facilities in Wyoming, we have no federal correction facilities, we contract only with county jails. But in the select county jails that we principally use, we have a standalone computer so that we can send a hard drive, the attorney can, via mail or in person, and the client can take some time on their own and go in and without getting on the internet or anything of that sort, they can review their discovery. Then, the hard drive is given back to the jail facility. It's an agreement that the Marshal's have worked out with our local jail, so that they can review their discovery. In addition to, of course the attorney will show up and review that information as well.

It means sometimes, to answer the third part of your question, that there is more travel and again, it's more of that windshield time and it means that they need to go over the calls and so forth. There are expenses associated with that but we've taken steps and I think we've collaborated in a way that reduces the cost and also finds a happy medium for all concerned.

Reuben Cahn: I am guessing that even simple cases in your district with those policies are going to tend to exceed the cap. Is that accurate?

Judge Rankin: It can. Although, and it may be because of individual attorneys again, we don't have excessive billing or vouchering problems very often. One of the things that we do is we order the defense attorneys in a multi-defendant case to confer with U.S. Attorney's Office and come up with a discovery plan, dates for release of discovery, how the discovery is going

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to be used other than the way I just described, or in addition to the way I just described. They work quite well together. The nice thing about a smaller district is that they all know one another and they work together repeatedly, over and over again, and there's just not a lot of screeching over the way discovery is handled in our district. I think defense attorneys work together to get the information they need. Is it ideal? Probably not. But it works fairly well.

Dr. Rucker: Ms. Roe?

Katherian Roe: Thank you. Judge Rankin, I just want to follow up on that for a minute. I read in your statement that obviously your district is huge, and when we're talking about the travel time, maybe seven hours to go see a client, then, seven hours back, there are fourteen hours right there. If you only stay there let's say three hours or let's say six hours during that travel, maybe even over two days. That's twenty hours for one trip to go over six hours of discovery. Now, the cases that we're talking about, these multi-defendant drug cases, which are mostly the cases you have in CJA. It's going to be a significant amount of discovery if the client cannot have the discovery with them, so you have to go over every piece of it. So twenty hours in one trip. The statutory cap allows for seventy-seven hours of attorney time. That's going to have to count court time; that's going to have to count any time you spent with your client; research, hopefully, writing, hopefully. Those are things we're hoping the lawyer is doing. How is it possible that they do not go over the statutory max? And with all due respect, I heard you say "excessive vouchers." I assume that means to you, go over the maximum of seventy-seven hours. But four trips would take them over the maximum even if they never went to court and they never opened the Guidelines book to even review the Guidelines on the case.

Judge Rankin: Let me just clarify. When I said excessive, I mean somebody taking advantage and perhaps billing more than maybe seems reasonable. Again, we don't have much voucher cutting in our district and we certainly defer to the good judgment of the attorneys, so that's not really an issue. The example that you gave and that I gave is certainly an extreme example and I think because we've centralized the appointments where the courthouse is or courthouses are located in Casper, in Cheyenne and also with some cooperation from our Marshal Service, we're able to move people around more effectively. But when we have a large case, I prosecuted a case back in the day with thirty-three defendants, and I don't know what I was thinking because I didn't think about the impact it had on the system and so we were looking for counsel from Colorado, from Wyoming, from every CJA city or every place where we had a CJA attorney in Wyoming. Those are cases where they were traveling great distances to visit their clients and to go over discovery.

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We've done a better job, I think recently, in dealing with how we appoint them and where we appoint them but when we have a lot of folks, then sometimes that stretches the outer bounds of the number of attorneys and the budget. The good news is the example you gave, almost doesn't occur anymore but it has the potential, should the U.S. Attorney's Office indict a ton of people. It's sort of several moving parts and your point is a good one. We're trying to cut where we can, or not cut, but modify our travel and our appointments such that we don't have just travel, travel, travel but you can't avoid it altogether.

Katherian Roe: All right. Let me ask you a question. When you refer to the big multi-defendant cases in your statement, you are referring to cases of six people or seven people?

Judge Rankin: Any more than that's . . . we'll see a dozen from time to time or so.

Katherian Roe: Twelve or less?

Judge Rankin: Yeah.

Katherian Roe: Okay.

Judge Rankin: It used to be eighteen, twenty, twenty plus, thirty plus.

Katherian Roe: Let me ask you another question about appointments. It seems that you have a very, I would call it a client-centered approach to appointing and assigning counsel. The first question is, was it always that way? And if it wasn't, which I suspect it was not, what caused you to change your approach to being very specific about trying to find the right lawyer for the right case if you will?

Judge Rankin: About three years ago and for many, many years, the administration of our CJA program came from the Public Defender's Office and they did a great job. I think there were perception issues about who was getting cases and trying to sort of pull back and at least from an appearance standpoint, make it as objective as possible. I think coupled with the fact that I had some personal relationships and individual experiences with many, if not all of the CJA attorneys, and had a sense about the type of cases that the U.S. Attorney's Office is bringing. I think that combination and then looking at experiences of individual attorneys and types of cases they handled and again geography all came into play and so, that's the way we've been able to individualize those appointments to try to select them based on those criteria.

I think there was out of need, previously just hand out a case and just go down the list and get people, get a body, quite frankly because at that time,

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our case numbers in the district were much higher than they are today. What remains to be seen is when those case numbers increase at some point and they will, how do we handle that but I think we've got the right balance and number of attorneys to assist that in the future. I don't know. I think it's a number of factors and the Marshal's Service helps that in terms of getting folks where they need to be as well. I hope that answered your question.

Katherian Roe: Yes, it does. How many people are on your panel?

Judge Rankin: Forty-two. We have a core panel of about fifteen or sixteen and they take about four cases per year roughly and then, we have a supplemental panel, the spillover help with conflicts, lesser experienced attorneys, or they're distantly removed and they get about two cases per year.

Katherian Roe: I understand. Thank you. Judge Peterson, I have a few questions for you. You're talking about the voucher cuts or the lack of voucher cuts in your district. Now, I was wondering if in your district, they actually track the voucher cuts, if the judges or the clerk's office tracks the actual cuts of your district. A second part of that question is whether or not, if they do, whether those are distributed to the judges so they know what the percentage of voucher cuts are in your district.

Judge Peterson: To my knowledge, the answer is no.

Katherian Roe: All right. Basically, folks know if they cut vouchers but they don't know if one of their colleagues cut vouchers?

Judge Peterson: Right.

Katherian Roe: Okay. Another question I had is you were talking about when you review vouchers personally, and that you look with a discerning eye to see whether or not the work was done. If the work was done, then you pay for the work. Is that fair to say?

Judge Peterson: I look with a discerning eye if something jumps out at me as being so obviously aberrant, then it attracts my attention more, or if there is something about that particular CJA attorney, and the pattern of that particular CJA attorney, then I look more closely.

Katherian Roe: All right. For example, you had given us a scenario about someone who had written a motion that was a very simple motion and then, billed what you considered to be an excessive amount for, is that correct?

Judge Peterson: Right.

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Katherian Roe: What you were suspecting was that that time was not put in. If it was, it wasn't reasonable.

Judge Peterson: For that motion, yes. A one page motion to continue, with no supporting declaration, two and a half hours.

Katherian Roe: Understood. My question is this, we've heard in many districts that judges will look at the vouchers and that it's not that they don't think that the vouchers are legitimate, that being that the person actually put the time in but that the work was reasonable and necessary. It's that the judges believe that there is a pro bono component to CJA work, not the rate being a component but the number of hours. And then, cutting the voucher, a percentage, 10%, 15%, 20%, sometimes 50%, because of that. Is that something that you would support and is it something that you believe, to your knowledge, happens in your district?

Judge Peterson: I would not support that and to my knowledge, that does not happen in my district, but I am not in the heads of my colleagues. However, I do want to comment just briefly because of the pro bono aspect and you refer to it as the hourly rate, which I understand. But I think that is something else that needs to be addressed a little bit nationally. Which is like federal judges salaries. In Spokane, that can be a very princely amount, but in New York City, that same amount would be considered pro bono. There's that aspect in trying to make some national standards that is very disparate. But as far as for CJA attorneys, I don't think pro bono should enter into it at all.

Katherian Roe: One more question about something that you were talking about earlier, I think in your statement and that was the issue of who assigns and selects the CJA counsel? You had indicated that you thought it was important for the judges to have a role in that or to continue their role in that process because they have the opportunity to actually see the lawyers whether it be in trial, or pleas, or sentencings, or whatever it may be. In order to maintain quality, they should have the say, if you will, as to who is on the panel and who gets cases. Correct?

Judge Peterson: That is what I said and I do agree with that.

Katherian Roe: Let me ask you this. Do you agree that also there could be an issue or a perceived issue that a person does not get appointments or is not on the panel because the judge doesn't care for their particular brand of defense, that they may be too aggressive in that judge's view, or they may challenge the judge in a way that the judge doesn't appreciate. Not in a way that would be unethical in any way, not in a way that would be reportable in any way but just in a way that the judge really doesn't appreciate.

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Judge Peterson: I certainly think that's possible just as I think it's possible that if the Federal Defender's Office is doing the assignments and the evaluation of the individual defense counsel, they might have a concern that the competition is too hard or that in this case, they don't want the codefendant to be represented by somebody. I think there is that possibility. I don't think in either situation does that occur, certainly my colleagues and I'll tell you, I like zealous advocacy and a case is always better to try when there's really good counsel on both sides who have explored all possible options. But, is it possible? Of course, it's possible.

Katherian Roe: Thank you. Judge Aiken, a few questions for you. You have a district that has a Federal Defender's Office that is intricately involved in the administration of the panel and we've heard a lot about that over the last two days and I'm sure we will hear more about it when Ms. Hay testifies later on today. Can you tell us whether or not the bench in general thinks that that is valuable? If so, why? If not, why?

Judge Aiken: I think there has been over the period of time that Steve Wax ran the office that has evolved. I think our bench is very satisfied because we . . . I did your numbers, just because you asked how many were on the panels in Judge Peterson's district and I thought if you asked me and I would have to tell you, we just did a big review and added our panel and took a look at it. It was a very collaborative process. I spent time with Lisa Hay when she came on board. She's only been on board a year, and has completed the review of the panel. Every single judge on our bench was given an opportunity to sit down and talk about panel membership, who should be on, new people, take a look. Everybody was consulted.

She sets up a committee that goes into the different areas that we have a panel in Portland, a panel in Eugene, a panel in Southern Oregon and we sort of take a look at how to augment and how to move people off the panel into an emeritus status and to take specific kinds of cases and how to keep the panel robust so that the work is relevant, the people are staying current and that it's active. We do have those really complicated big cases where we've got to use a lot of different people, so we really try to keep that broad stroke. But we have a process where we put on local judges from those communities and it's in outside the judiciary to look at appearance of lawyers, so you have a circuit court judge often. You have a senior lawyer who sits on the committee. You have Lisa Hay who sits to review and then, all the feedback from the court.

It comes back to the court, it's presented to us. We have a chance to comment or take a look and as a court governance body, we vote on and adopt the recommendations with a tremendous amount of interplay between her office and the court. I can tell you I have had times when I thought I don't think a part of the state has adequate number of people.

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I've gone out and recruited, I had events down in the southern part to get people who would be willing to drive over the mountains from Klamath Falls to Medford to be part of the panel because we don't have enough people and it's a three-hour drive from Eugene.

We go out and recruit to try to bring people on. But unless you do federal work, criminal defense work on a regular basis, most lawyers are reluctant to, shall we say dabble, and just doing a federal case now and again because it's really important that they be up to a top practice. We have to hustle to get people to want to participate and we also need to . . . I am a big believer in succession planning and leadership development, so that we have a monitoring panel of people who want to come on board and then they can be observed and then, they can be mentored and they can be brought on in a thoughtful way so that we replace the senior people with experienced folks who have played so to speak, work up.

It's a holistic approach to trying to keep the panel robust with the right amount of people to take the tough cases when we need them but also bring in the next players because some of these cases are just burn out cases for lawyers. You can't do some of the other work that you need to do just to run a holistic practice if you're a CJA panel and you're really deeply embedded in some of these high profile very difficult cases. It's a balancing act and we, I think, share that burden and responsibility well, and I don't think there has been an opportunity where any of us that felt that we didn't fully discuss where we thought there were some problems and where somebody maybe needed to have an intervention or a discussion about either billing or something that might have happened and we trade that information and we expect because she has that responsibility that Lisa will take it and handle it and come back to us.

Katherian Roe:

Thank you. Mr. Williams, I just want to follow up a little bit with what Mr. Cahn was asking you about, but I also want to say that we heard a number of stories yesterday about success cases in this district even some stories in which the Assistant U.S. Attorney involved, either would agree to a downward departure, significant downward departure, based on some very significant, if you will, personal characteristics of the defendant and/or even dismiss the case. And when we talk about doing justice and thinking outside the box, that is very commendable. I can tell you that in some of the districts we've been in, and certainly my own district, none of those cases would have been dismissed, no matter how convincing the support was towards dismissing them. I want to start with that.

The only question I have for you is about the discovery that Mr. Cahn was asking about and did I hear you correctly in that all discovery either has a protective order or this policy practice that you have and that you don't provide it to folks if they're in custody including Rule 16?

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Billy Williams: Not all cases have protective orders. That's only if there are specific issues related to the discovery in that case. By and large . . . matters are redacted that we're required to redact, it's the routine cases where it's really not an issue. It's only if there is a particular concern in a particular case that we seek a protective order.

Katherian Roe: So it's not your general practice?

Billy Williams: To?

Katherian Roe: To either get a protective order or not provide or not allow copies of documents that you provide to go to the client?

Billy Williams: We find protective orders are particularly helpful in cases where the discovery is massive and the time to redact is incredibly time consuming and costly and so, what we have found in those cases, you know, maybe in a big fraud case or title three case, where it's just almost cost prohibitive to do redaction to seek a protective order to help resolve the issues that we have. But we do not seek protective orders in every case.

Katherian Roe: Okay. The conflict here of course is what you just said is that you seek them in the cases where there's so much material that it's not cost effective to redact but of course, then there becomes so much material that the cost goes on to the other side, goes on to the defense side because they have to actually be there when the client looks at the materials. So you see when I think about what Judge Aiken was saying about looking at the system and the cost to the system, it's just somewhat ironic that it's those situations where you save the cost on one side and then we are in a position where when we look at the cost for attorneys going and looking at the discovery and bringing the discovery to their clients because they can't give it to them for them to look through. Thank you for your response, Sir. Dr. Rucker?

Dr. Rucker: Thank you. Let me turn it to the other members of the Committee and let me begin with Judge Cardone.

Judge Cardone: Okay.

Dr. Rucker: It should be on Judge.

Judge Cardone: Well, I think he turned it off.

Reuben Cahn: There should be a tiny green light on the top of it. [CROSSTALK].

Judge Cardone: Thank you, Judge Fischer. I can hold it, it's okay. My first question is for Judge Peterson. Judge Peterson, you mentioned about the issue of the

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perception that there is some sort of meddling by the judges in the running of the budgets and sort of controlling the money and you mentioned that there are actually separate budgets that exist in the judiciary for the defense function and for the judges and you talked about the fact that there's really no ability to move money between those two budgets, but then when sequestration happened and a couple of years ago, we've heard testimony about how there was a demotion of the position of the DSO there at the AO. There was a . . . taking of control of the DSO budget by essentially the executive committee, we've heard about at the AO, the merging of various offices including IT, which is the information department, I'm sorry, all of the computer work that goes among the defender's offices, that was taken over in order to reduce a cost.

I guess my question to you is, though the budgets are separate, doesn't that demonstrate a certain amount of control over those budgets even though they are separate budgets and does it not concern you that judges or offices of the judges have the ability to be involved in the IT for the defenders? That would never happen at the Justice Department. Does that not raise any concerns for you?

Judge Peterson: It does raise concerns for me and it's my understanding that the budgets can be altered year by year . . .once the budget is established for that year, it's my understanding that the money cannot be, for instance, switched out of Defender Services. Certainly in preparation for the next year, the executive committee could alter how much money went to Defender Services. That is my understanding of the system. It's not during the middle of the fiscal year that that transfer can occur. I would recommend a stronger Defender Services branch, pull out the IT, put it back in Defender Services, make them independent but within the giant umbrella of the judiciary budget, just so the judiciary can make sure Defender Services gets funded at all.

Judge Cardone: We're looking at the structure and I guess the bigger question is we've heard this repeatedly but I guess the question is that there is the ability to do that. How do you see structuring it so it doesn't happen again if it is a concern? What can this Committee recommend to say this shouldn't happen, this is a separate function in the court for the defense and how do we have some guarantee? That we can make all these recommendations, it used to function differently, but a year from now, it could all change again. Do you see some method or do you have some suggestion to us about how that might work?

Judge Peterson: I wish I were smarter, so I can come up with some better suggestions. Again, Congress could do this. Congress could, I think, establish some parameters for Defender Services but I think to get the current Congress to protect, Defender Services is not realistic which is why I think it has to be

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within the judiciary. The real problem, I think, is that everything about CJA, everything about Defender Services is by its nature, reactive. It depends on how many cases are filed by the U.S. Attorney's Office. In our past year, we've had a 34% decline in criminal filings. That means everybody is awash with money trying to justify what they're doing, but next year, who knows? We might have a 70% increase and then we're all going to be scrambling trying to find money for Defender Services and to find more CJA panelist, rather than less.

It would be possible maybe for this Committee to recommend X percent of the entire judicial budget no matter what it is should go for Defender Services. What is it? One sixth right now, I believe of the entire judiciary budget goes for Defender Services or at least, that's my memory. But that's really not a good solution because what if all filings are always down by 34%. We'd like to say the American populous is not committing crimes, so that we don't have to deal with it, but there's so many other factors whether the U.S. Attorney's Office has staffed up, whether Congress has implemented more or enacted more crimes. There are so many moving parts that I'm afraid I can't give you a better answer. I'm sorry.

Judge Cardone:

Okay. I guess this goes to you, Mr. Williams, about following up on what Judge Peterson just said. It's been my experience. We've heard testimony repeatedly from other judges, from defense counsel, that what the defense counsel does is in reaction to what the Justice Department does. We've also heard discussion about remote detention. That's all part of the executive branch. It appears that what is happening in the executive branch, very much affects the cost of what it cost to defend a defendant in our country, today. If a defendant is remotely being held and the Bureau of Prisons or the Marshal's or whoever is making the decision about it because it's a cost effect to keep somebody seven hours away, it's certainly cost effective for the Bureau of Prisons but it's not cost effective for the CJA. There's no taking that into account because the courts have no control over it, the defense function has no control over it. So, that's just one issue.

How cases are indicted and we have heard repeatedly that the way cases are indicted is multi-defendants. It's no longer one or two, it's six, it's ten, which takes the ability to give it through the federal defenders or a CDO takes that ability away because you need more attorneys when there's thirty-eight defendants, then you do when there's one or two and creates more conflicts. The discovery issues, these huge cases. It seems that it is very controlled or reactive to what's happening in Justice. An interesting thought has been raised about putting the defenders under the Justice Department in creating this co-equal system where there might be the ability for Justice to actually be as responsible to defend people as they are

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to prosecute people. Any thoughts? I know you're the U.S. attorney here, I don't want to put you in a bad position but do you see any way that those costs, they're costs that we're dealing with and we're having to address how to deal with that in today's world but yet, there's no control on the part of the defenders to address those costs if they're reacting.

Billy Williams: I discovered overtime that sometimes questions are above my pay grade but I will . . . just my own thoughts on the idea of somehow structuring the defenders within an umbrella of the Department of Justice is a really bad idea. Because I think not only on the appearance but in actuality, you venture to lose the independence of the defense capacity if you do that. How does an Assistant Federal Public Defender fully gain the trust of their client if there's the appearance of we're all under this big government umbrella and I am going to do my best but things are controlled by the Department of Justice which, oh by the way, controls the prosecution. I don't see how that would work.

Judge Cardone: You don't think defendants have that perception about the judges? The judge is going to put me away for 150-months, but, somehow they're also deciding whether or not I get an expert?

Billy Williams: Absolutely. They probably do. Having been dealing with a group of the populous who doesn't even believe in the power of the federal government or the jurisdiction I should say of the federal government, I am convinced you can't convince people who believe certain things that they're wrong. Look, cases, ebb and flow, investigations, titles threes, and with great frequency, major fraud cases are going to involve large numbers of defendants and at some point, you reach decisions about, "Okay. Well, what's the cut out point here in this title three?" Twenty-five, thirty-five, is that . . . you go where the case leads you obviously. I don't see that phenomenon going away which creates problems for getting inadequate number of qualified panel attorneys and it's costly in the District of Oregon like other districts. We're a large geographic district and travel is just a factor that I think has to be administratively appropriately addressed.

Judge Cardone: Just one quick question, you mentioned the DOJ having given this Committee some input and I ask you, we haven't seen it . . . I don't know where that, we've asked for it and they've indicated they were going to give it to us but we haven't seen it. I don't know what status that is or why we haven't seen it but number one, do you know? Number two, if you can, can you . . . because we really would like input about that.

Billy Williams: I can track that down with some certainty whether or not it's going to be provided. It was my impression that it would be, there were discussions going on within the Department about what that would look like but apparently, it hasn't been done yet.

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Judge Cardone: Well, in really, honestly I am happy to talk to whoever, and I know that I believe Mr. MacBride was being instrumental in that, but our concern is that we are having public hearings. We are trying to seek information and with not having that, it rounds up the picture and there are questions we could ask you if we have that but we don't have it so it makes it a little more difficult to have those conversations.

Billy Williams: I can provide that feedback.

Judge Cardone: That would be great. Thank you so much.

Judge Gerrard: As well as your letter. Thank you.

Judge Cardone: That would be appreciated. Judge Aiken, I have just a quick question for you? That has to do with . . . as I think other Committee members have mentioned, we've been here and thank you so much for hosting us and we have seen a program, a model program here and we are doing quality of representation. I guess my question for you, having traveled around the country is that it is not, other parts of the country are not Portland, but even more specifically, the concern is that even when you have judges that are very, and each of these judges—Judge Rankin, Judge Peterson and yourself—are all engaged in what's happening with the defense and how the program is working and how the defense function is working in your courts. But it's my experience that all judges are not that engaged. All judges are not that informed. Both you and Judge Peterson are former chief judges.

What we are trying to figure out is, we can always come up with ideas but it doesn't bring . . . it is very judge centric from what we've seen about how things are functioning. How attorneys are appointed? How vouchers are being paid? What's being allowed or not being allowed? It is different throughout the country. It is even different throughout districts because different judges have different views. I guess my question for you is has that been your experience and do you have any advice for us as a Committee because we are in a system where the federal judges have a certain amount of discretion to do what they want to do in their court and if they are the ones making that decision and all these are guidelines, where does that leave the whole program?

Judge Aiken: Thank you for the question. Here's what I would like to just impart, it really does have everything to do with setting a tone and setting a model and being courageous. When you come to the federal bench, you are totally independent in so many ways. It's just an incredible privilege and opportunity. You take a look at what the work is. When you are sending people back to prison over and over and over again and the problem in the state of our population and the court here is 70% drug affected people and

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going to prison isn't going to solve the problem. You have to look at what you do differently. What I would tell you is it has everything to do with building relationships and models.

We built a model out here and our model was developed and trying to do better work at the backend. It was developed and we videotaped it and we developed the model with academics and with evidence based practices and about the time the Sentencing Guidelines that allowed discretion, judges had been doing guidelines for twenty plus years and really had forgotten what it meant to do behavioral changes in people and how to look at what's our goal? What's our real goal? Isn't it to stop re-victimization? Isn't it to stop recidivism? Isn't it to put people in prison and hold them accountable? And give them hope for the future to do something different.

We developed a program out here and it was taken by the FJC. I've had judges, [inaudible] here from the federal defender from Utah. Judge Brooke Wells called me and said, "I've heard about this program. Can I fly up?" I said, "Absolutely." Many people said that, but you know what? They started coming. I have had probably fifty, sixty districts come here. U.S. Attorneys from across the country coming to look at how to do better work.

There are people out there that want to do it and there are people who don't want to do it and the ones who will do it and want to do it should be doing it and should be given the opportunity to help lawyers do better work with their clients and be more holistic. It's hard because we spend an awful lot of time on the administration of the CJA work and not the quality. I have two reentry guys. You heard about the CAPS program at the front end. We have and I have given you the numbers, we are doing it at the backend with the highest risk offenders coming out of the institutions who've been in prison for twenty and thirty and fifteen years. We are having a tremendous, tremendous response with addressing their particular needs and getting them back and being law abiding and reducing at the back end the cost of sending them back to prison.

That requires having quality lawyers involved and having quality resources and having the kind of opportunity for intellectually moving the court in better information, better technology, better resources, better ways of educating and so the training for the lawyers and the judges, that's why the FJC is such an important component and another model of trying to really look at outcomes using data analytics. Looking at quality and quantity, what are we doing that helps this system better? When I go back to the very beginning: systems impact. What is the goal of the justice system? Isn't the goal to hold people accountable, address their issues and needs holistically because it generally isn't just one thing.

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Design something that is going to individually meet their needs and work with them, hold them accountable through that process and move them out of the system, that's not only an aspirational goal. It's a real goal. I hope one day that we will be comparing success stories, so that the people on my docket that I have, 60% of them have jobs. Their family needs are met. They've got these issues we're working and we'd take a look at it as we move people back. I have to go back to I spent my time in juvenile court. I have worked with a therapeutic pre-school program that does early intervention for kids in abuse and neglect and I've said this over and over again.

Child abuse and neglect explains generally why most of the people are standing in front of me, it's not an excuse, but it's a tool. Why do we think when we have people who are . . . and read the files, I sat in the governor's office and read commutation of pardon files when I was a law student, for over a year. It didn't take a rocket scientist to figure out what we are dealing with as a system. From my stand point, why is it we think when somebody turns eighteen, they are going to all of a sudden be law abiding, with a job, able to take care of a family, do everything correctly when their lives have been chaos all the way through? Whatever stage, whether it is a lawyer as for a juvenile, whether it is a lawyer at the federal end, we are all working towards one goal and how do we do something better to address the needs?

I could have people come up here and talk to you about at sixty-seven figuring out that they didn't know how to read. That they always thought that they were just bad. There's this disconnect between judges who are involved with the people we serve and judges who that's not what they want to do and that's not their interest but the way we are going to change how the federal government is viewed and how we solve some problems is for judges to actually decide this work is legacy work, to change the lives of the people in the court room and take it on.

The public defenders do that day in and day out. We support the ones that come in and as judges, my job is to help them do what they need to do and that's to move people out of the system and to be law abiding and then solve some of those problems. I've had so many judges tell me in the reentry program and come to see quality work, they said, "You've addressed an issue of judicial burnout. It is the best day of the month for all of us. We've learned and everybody in this district practices differently because we really do understand and see the individual and what we can do with all the evidence based practice work and holding people accountable and engaging what we can do to change the system."

I can tell you the two gentlemen who drove up here from Eugene to talk about what we do when they come out of prison that makes a difference. I

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would love to have you hear from the people who we really have made that difference and they are now back with jobs, families, paying taxes, doing all that they do coming out. Because there are 650,000 people coming out of prison every year. That's a lot of problems and we need excellent representation as they come out and excellent services and it's a holistic approach, not only for the lawyers but it is a holistic approach for the system to figure out what's our goal? Isn't it to make our communities better and spend our money not on prisons but on education and infrastructure to compete globally.

Dr. Rucker: Judge Aiken, I'm sorry to interrupt you. We're going over, I'd like to stop on that optimistic note.

Judge Aiken: I would like to too because I really think that that's really one of the things that didn't quite get highlighted in this panel and in this group and I think the holistic part is so powerful. Judges have good power and if we actually use our good power for more . . . we're simply much more effective. Thank you.

Dr. Rucker: I want to thank all of you. This was really a thought provoking session and very informative. I wish we had two more hours to invoke all of you. Thank you very much and I want to apologize to the rest of the committee for not getting to ask question including myself because I had several I would like to ask you but thank you again very much for your participation here.