Ad Hoc Committee to Review the Criminal Justice Act
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Transcript: Panel 4—Views from CJA Panel Attorneys

Dr. Rucker: My name is Bob Rucker, I'm from the Ninth Circuit. With me on the panel this morning to my immediate right is the Chair of our Committee, the Honorable Judge Cardone; to her right is the Honorable Dale Fischer from the Central District of California; on my left is Mr. Chip Frensley, the panel representative; and on Mr. Frensley's left is Ms. Katherian Roe, the Federal Defender from Minnesota. What we'd like to do is begin with statements from all of you, for about five minutes each, if you would please. We've read your written statements that you submitted to us, so please do not read those. We would rather have you highlight the main points you'd like for us to talk with you about today. Then, I'll open it up for questions from the Committee. Then, at the end, I'll reserve a few minutes for questions from the other ones. I would like for all of you, if you would please, to speak into the microphones because they are directional, and if I may begin with Ms. Baggio.

Amy Baggio: Good morning, everyone. My name is Amy Baggio and I am one of the members of the CJA panel here in the District of Oregon. Before I began in private practice, I worked at the Federal Defender for the District of Oregon and I worked there for over a decade. I was hired first as a law clerk, and then, I worked as a research and writing attorney and then, finally as an assistant Federal Public Defender. While at the Federal Defender Office, I enjoyed the benefits of immediate and extensive resources, amazing, amazing investigators, high quality paralegals, topnotch legal assistants, and these folks were available, really, twenty-four hours a day, seven days a week. It was incredible. Not only did I have my own team, my own support staff, we also had available to us, through the Federal Defender Help Desk, really connections with the Federal Defender offices coast to coast. If I was looking for an expert or had a question about whether someone had litigated a particular issue, I could send an email out to all the Federal Defenders across the country and get help from everyone. It's really a tremendous opportunity to be a part of the Federal Defender family.

I left the Federal Defender and its fabulous resources at the end of 2012 and opened my own solo law practice. I now have one of the worst legal assistants in town, me, and you'll see that in my letter. There are some typographical errors in there. I apologize for them. My secretarial incompetence has been balanced out by the benefits of a fully flexible schedule, and the ability, for the first time in my legal career, to say no. That is why I left the Defenders, a wonderful, wonderful work environment. I think that my experience in both worlds allows me to bring a unique experience to this Committee's involvement in the CJA review. I've been receiving cases under the Criminal Justice Act now for three

years. In my statement to the Committee, I outlined my dual roles as appointed counsel, both in helping the clients and in reviewing the lawfulness of the government's action. I thought, "In my oral testimony, I might offer an example or two of how these roles play out in a typical appointed case. Then, I would welcome your questions."

In terms of the guiding hand of counsel, I once represented a client who was charged with multiple federal felonies. This person had no recent criminal history, but he committed a series of serious federal felonies in a very short period of time. When he was caught, his family was shocked. In a short period of time, that shock turned to anger and embarrassment that their family member would do this. They judged . . . his family judged my client, excuse me, more seriously and more harshly than any Article Three judge could. It was a very difficult time in my client's life. They just couldn't believe he would do something so stupid. I engaged in multiple meetings with my client and the client, in interactions with me, was pretty good at seeming to understand what was going on. But, when I pressed him, pressed him to make sure that he understood complex federal questions such as guideline enhancements or the grouping rules, he got a little bit cranky and even rude.

I used my investigator to conduct background interviews with key family members and what we learned through those interviews and reports was that my client had developed an increasingly bad attitude and self-imposed isolation in the weeks leading up to the offenses. Something wasn't right. I brought in a forensic psychologist to help me to assess the client's functioning. We gave the doctor all of the interviews that we had done and related background materials that we had gathered. The doctor reviewed the materials and then put my client through a battery of tests. This doctor was able to figure out that the client was exhibiting significant signs of early onset dementia. It was an extraordinarily difficult job to give that news to the client and his family. Figuring this out was huge not just for his case, because obviously it had grand implications, excuse me, for the sentence imposed, but it had a huge impact in this person's life.

His family was not angry anymore, and they did not close their doors to him, they opened them and their hearts. Excuse me. I'm sorry. We were able to work with the United States Pretrial Services to get this man the help that he needed and to help educate the family so that they could also know what to expect, both in terms of his federal criminal case and with his related health issues. In the process of sentencing and after sentencing, we worked with the United States Probation Office to help them know best how to manage this person, and how to best keep him out of trouble. I would note that a lot of the work that I do in cases is after the case is closed, my voucher is submitted. If a client, needs me to do something, I help them, because it's the right thing to do. I don't bill for that. That

client did stay out of trouble. The charges were extremely serious, but the investigating and using of an expert to help us understand this person's conduct in context allowed us to not only address his conduct appropriately, but to also set up a real plan to prevent further crimes.

It was a terrible situation, but one that was made a little less terrible because of the help of the resources made available to me as his appointed attorney. He was punished and he was punished appropriately. He did not re-offend. He is what you might call a criminal justice success story. Regarding my other role as appointed counsel, in examining the lawfulness of the government's actions, when I get a case, I spend what I believe is an appropriate amount of time reviewing the government's evidence, making sure that it's all there, and asking questions about from where it came. I provide an initial legal analysis to make sure that I am reasonably, appropriately, assessing what the government did, how it did it, as to both investigation and its charging decisions. Even if my client broke the law, it does not entitle the government to break the law or even bend the rules.

While I couldn't . . . if they're not following the law, then why should anyone? I think that's an important thing that we carry with us and it's important to our clients, too. They want to know that the police are following the law just like they have to follow the law. Now, I couldn't find an exact number of the percentage of federally charged individuals who are given an appointed attorney. Whether through the Federal Defender's Office, or through the panel, but in my experience, it's got to be close to 95%. That means that in approximately, again, if my numbers are correct, about 95% of the cases is up to us, appointed counsel, to assess the lawfulness of the government's conduct. This is particularly important with regard to cutting edge legal issues related to search and seizure and creative charging decisions. I don't sit and twiddle my thumbs, billing all the time, wondering how can I come up with some far-fetched implausible legal argument. That is not what I do.

I utilize the rule of reason. I'll give you an example. In a large case, on which I was appointed, the government provided discovery that included recorded attorney-client communications and communications covered by the work-product privilege. It was a huge case and there were not many of them, maybe six, but one is not okay. These seized communications were not minimized as privileged upon initial interception, nor subsequent review. They were not later flagged as potentially privileged and sequestered for review by a filter team. I received the privileged communications in the course of regular discovery along with all the other materials that had been provided to me by the case prosecutor and had been provided to him by the case agent. While I do not normally file a motion requesting disclosure of any filter team protocol in existence in a

given case, this time I did. I did because it was reasonable under the circumstances and based on my review of discovery which was that there was proof positive, that there was a problem in the handling of this evidence. What did I do? I made a Federal case out of it. Why? It matters. It matters not only for my client, it matters for every client, for every potential client.

It also matters for every attorney. It matters for our entire system of justice, and even in filing these motions, even if you don't win your motion, or get your charges dismissed, and I didn't do either of those in this case, the lawfulness reviews allow for identification of big picture systemic problems or questionable practices that need to be thoroughly vetted by an independent judiciary in open court. This is good for me. It's good for you, and it's good for our entire system of justice. Whether spending time and resources to help clients or in thoroughly vetting the lawfulness of government conduct to keep the executive branch in check, we are absolutely essential. I thank you all for the hard-work that you've done as part of this Committee. Our system has a long way to go before we arrive at true justice, but I implore you to use this opportunity to do whatever you can to make us better, to protect us from budget cuts and from politics. We are not powerful. We are not popular. But we are necessary. Thank you.

Dr. Rucker: Thank you. Ms. Holton?

Wendy Holton: Thank you. Thank you for giving me the opportunity to testify here today. I have done a lot of work in our state public defender system and I can tell you that if I could raise that system to the level of the CJA system, I would be a very happy person. That being said, there are issues that need to be addressed, and that's why we're here, and I very much appreciate the work that this committee is doing. The criminal justice system is on the frontline of handling so many issues in our society. My goal, when I take on a CJA case, is to do my best to get my client out of trouble, or to the extent that I can, get them out of trouble. Then, to give them the tools to stay out of trouble once this has passed. The fact of the matter is that almost everybody who comes into this system will, at some point in their life, be out of the system and back in society. I believe that their perception of how they are treated in the system, whether they think that somebody fought for them, whether they thought that they were being treated fairly in the system, will impact their reentry into society, and impact whether they believe that they have a vested interest in being a productive and supportive member of this society.

That's the way that I try to run my practice, so that my clients feel like they do have a vested interest in this when they come out and in being a productive citizen. In my representation as a CJA attorney in Montana, my

biggest concern is my access to my clients. I was here for the previous session and I heard that that's a huge concern throughout the West as you might expect, because our distances are so vast. Most of the clients who are detained in Montana are detained in a small town on what we refer to as the high line. They're detained in Shelby, Montana. From where I live, in Helena, it's a four-hour drive to Shelby. At this time of year, we can have really bad roads and the daytime hours are short. I really, at this time of year, cannot make that trip and spend some time with my client and get home in a day. I don't think it's safe. In the summer, I'll do it. I can't do it in the winter. That's an eight-hour round trip, so just in windshield time, that's more than a thousand dollars. If I have other travel costs, which I do, getting a hotel, food, mileage, that's probably twelve to thirteen hundred dollars for just a trip to Shelby.

I will tell you that I would so much rather be doing substantive work on my cases. Windshield time isn't productive for me. It's not productive for the system, and it's not productive for my client. As I heard discussed previously, in our district as in other districts, we get our discovery pursuant to Rule 16.4. There is a part of me that understands the reason for that, which of course, means that I can't leave that discovery with my client. I have to be there while they're reviewing it, and obviously, that can be a many hour process. The good part of that is that it helps develop an attorney-client relationship, and a trusting relationship, which I think is important. I also accomplish a lot of work understanding the discovery and understanding my client, and understanding the case when I'm doing that, but again, it is a huge investment of time. It is also difficult for us to even schedule a time to see our clients, at the facility in Shelby. They have very, very limited attorney visiting.

Even making arrangements for a day that works into our schedules, when they've got an attorney room open, sometimes, that's very, very difficult to arrange. The other thing that I've noticed, and this is probably not within the purview of this panel's inquiry, but they don't seem to have much concern with . . . or, I don't feel that they address security issues very well. One time, I went there for a debrief, they put us in the counselor's office, which had a glass window into the pod. I was there with a couple of case agents. Everybody in the pod could see my client come into that room. The case agents, to their credit when he walked in, because we were all horrified as we saw them leading him to the counselor's office. He walked in. They said, "You go back in there. You tell them that you told us to pound wood and we are leaving and we will reschedule this." That was a trip to Shelby that was of no benefit to anybody. The other problem that I see with security there is that because all of the Federal clients are essentially handled there, we have clients from the same cases in the same pod.

I have a client right now who has been housed in a pod with a man who he is supposed to testify against. I've made several calls to the Marshal. The facility has ignored on a couple of occasions our request to do separation. To me, those are huge considerations. Going back to the issues of attorney-client visitation, there are suggestions that we can do it by Vision Net or whatever. It may be a reflection of my age, but I can say that I think that the only way to develop an effective attorney-client relationship is to be sitting across the table from somebody with no barriers. Part of the reason that I say that at this Committee is in another place where our clients are sometimes held in Great Falls, Montana, there is a not a single place to visit our clients where we don't have a barrier between us. That is also the case at the Federal court houses, where we go into lock-up before court, and there are screens that frankly give you a headache, between you and your client. Those make it very, very difficult to communicate and very difficult to develop trust with your client.

Dr. Rucker: Ms. Holton, could I give you just two more minutes, please?

Wendy Holton: Sure.

Dr. Rucker: Thank you.

Wendy Holton: The next issue that I want to talk about, and I'll try to talk fast, is the resources issue, because it's inherent in the system that the prosecution has more power than the defense. That's just the fact of the matter. Therefore, I think it's really important that we attract the best and the brightest to indigent work. That does boil down to resources on many occasion. No one else in this system has to worry about whether they're going to get paid or not, whether their paycheck is coming in and when it's going to come in. Clearly, there has to be oversight of the billing process, but anybody who is a chronic offender in overbilling can be dealt with by removal from the panel. An attorney shouldn't have to work with fear that they won't get paid. As in my experience, the soft caps are simply not adequate for anything but the simplest of cases. That moves us on to experts, the soft caps on expert's twenty-four hundred dollars is simply not enough to hire an expert. I'm doing some post-conviction work right now and it all tends to revolve around DNA where the FBI analyst came in and testified that they weren't able to find a match, but my client wasn't excluded, which essentially meant they were included.

That isn't true. That could be one of every two people in this room in some occasions. The DNA people I work with, I can often talk them down a bit, but in their regular practices, they can bill over $400 an hour. That's less than six hours before I have to go back and ask for more money. It's just not enough. The other problem is the . . . that I see in retention of experts is it reveals defense preparation, and that's especially true in sex

cases where I ask for a sex offender evaluation. If I don't then use that evaluation, the clear implication to the judge who's approved the money is that there's a problem with my client. Moving on to training, which is a critical aspect, I believe, of good defense work. I think that we actually do have very good opportunities for training we do in Montana, but I would like to address the really great programs put on by the Defender Services training branch. Those can cost somebody from Montana about a thousand dollars to go to, more than that, even though the tuition is free. In that regard, I wanted to remind the committee of some wonderful programs that were put on in the early 90s called Only the Strong Survive.

They were regional programs. All expenses were paid. The speakers were fabulous and I would love it if they would come back into being. Thank you.

Dr. Rucker: Thank you. Ms. McCrea?

Shaun McCrea: Good morning, I'm Shaun McCrea. I'm based out of Eugene, and as you see from my written testimony, I served as the Oregon panel representative for about a dozen years and I was on DSAG with Mr. Frensley for a number of years. I serve as currently the Chair of the Oregon Public Defense Services Commission, so I've had a lot of opportunity to view issues from both the state and the federal standpoint. My hope is not to repeat what I've said in my written testimony. The two colleagues next to me have ably expressed a number of issues, so I came to tell you a story, because that's a lot of what we do as criminal defense lawyers. We have to learn about our clients so we can communicate with the prosecutor, with the court, with pretrial, with probation, about who this person is that we are representing in a way that they usually cannot do for themselves. What Ms. Baggio says about us doing things, after that final voucher is long gone, is so true. I have a client who served seventeen years in Federal prison for a methamphetamine related charge. He went to trial. I did not represent him at the trial.

He was convicted, that was in, approximately, 1993, did his seventeen years. I was appointed to his appeal. I did his appeal. I did his petition for certiorari, you can see how it went. I did his § 2255, and then he went on with his life. He would call me from time to time and let me know how he was doing. He would ask me questions, and I would do things for him as I could. Then, recently, I got a call from him and then from the local U.S. attorney, one of our U.S. attorneys in Eugene, saying that he had been arrested. He was still on supervised release, that he been arrested and that the locals had arrested him because he was in possession of methamphetamine. I thought, "Oh, here we go." My local prosecutor said, "Shaun, he's going to need to come in and plead guilty to another charge. He's going to go away for a long, long time. If he doesn't plead guilty,

we're going to file an § 851 notice so that we're going to invoke his prior and he's going to be looking at probably the rest of his life in prison." Not a happy circumstance, however, my client told me that what had happened is that these local officers had approached him at a gas station.

They had searched him without consent. They had then, of course, found something on him, which was not a good thing, but told him, "Look, we don't want you. We want you to work with us and nobody is ever going to know that you're working with us. Not even your federal probation officer." They wanted him to be a cooperating informant, which is a violation of his supervised release agreement without his Probation Officer knowing. Supposedly, nobody was going to find out about this, but obviously, when he had been arrested, and I came in to the matter, somebody had found out about it. That is a whole another story, but the long and the short of it is, in doing my investigation, what I determined was that what he was telling me was absolutely correct. Not only that, but they did not follow their own agency protocol of having him sign a written informant agreement. They lied to DEA about it. They had him do work for them, and he was not going to get any credit for it. This was a long drawn-out circumstance over the period of a couple of years. I was court appointed by the Federal Court. I had an investigator, a very good investigator, who actually had previously worked for that same agency and knew how they were supposed to do things, which is something I would not have known.

The long and the short of it is that I canvassed other attorneys about these same officers, the U.S. attorney I was dealing with in Eugene agreed that no additional criminal charges would be filed. My client then made admissions to violations of his supervised release agreement, I'm sorry, his supervised release conditions. He was given an additional sentence, which he then went and served, but my point is, but for our adversary system, but for the resources that were available to me as his counsel, to be able to investigate this, to overcome my own skepticism about the initial report, this would not have come to light, and these officers might still be doing the same thing. Things are changing for us as we see in the news, with all of the video capability available across the country. More police officers are required to have body-cams. They have video access from their own vehicles and we have bystanders taking videos of what occurs, which makes a big difference. Part of that is helpful because, now, we the defense attorneys, do not have to be searching as the same way we have been to get at this information, because there is a record of it.

Part of it shows us that what is being brought forward in discovery is simply not true. In other words, the written police reports are not supported by the actual evidence, which is all the more reason that active, careful defense counsel who are trying to make sure that a defendant is

provided due process, is important and critical in our system. Let me get back to my client for just a second. Time has gone on, I'm no longer officially representing him, but as Ms. Baggio says, he still calls me. I appeared in juvenile court with him on a matter regarding the custody of his child, not as his attorney, but as support. We are not spigots that can be turned on and off. We develop relationships with these people and that is valuable for all the reasons that Ms. Holton mentioned, and it is important. I just want you to know that. Now, just one more minute. I just want to tell you, I know there's issues, I know there's problems. I'm not going to dwell on those, but what I do want to say is we are so lucky in the District of Oregon. We have always . . . I have always felt so lucky.

Every time I've come back from a CJA panel attorney conference, hearing the horror stories of other places, we have U.S. attorneys we can talk to. We can work out issues. We have been so fortunate to have Judge Aiken as our Chief Judge. This woman has probably, I wasn't able to attend the previous panel because we were driving up, but Judge Aiken has more energy than any group of people I've ever seen and she has gone to bat for criminal defense attorneys. She tries to get the parties to talk. She tries to make things happen, and I don't want to short our Federal defender, because Steve Wax was always there for us. It was frankly a shock to me when I would go to panel attorney conferences and I would hear some folks say that their defenders didn't help them. That they didn't put on CLEs, that they didn't do anything for them, that they were actually at odds with them, because our Federal Defender has always been there for us. Lisa Hay is doing the same good things that Steve Wax did. They put on CLEs for us, they talk to us. Yes, they call us up and say, "Well, what about this in your voucher?"

We have to go back and look at it carefully, but it is going well, and I commend our system to you.

Dr. Rucker: Thank you. Mr. Warren?

Ernest Warren: Good morning, my name is Ernest Warren, Jr. I have a dream of this panel, and this panel has the power to make my dream come true. I want you to put your hands around the fact that you need zealous advocates to stand in front of judges and fight for these people accused of crimes. I've been trying cases for over twenty-seven years. I try about four cases a year, and I only do jury trials. I don't even want a civil or criminal case unless it's a jury trial. That's what makes our system work, is that we can communicate with the jury and a judge and really get the best deal we can for our clients. Could you imagine that you have a young lawyer step into your courtroom unprepared and wasting your time? That's not going to happen in the District of Oregon. That's not going to happen. They have the most experienced lawyers who were fighting for clients and trying to

do the right thing for their clients. Twenty years ago, when I was chosen to be a panel lawyer, the Federal Defender and Steve Wax took a special interest in me. They wanted to make sure that when I . . . they knew that I was a good lawyer already, but they wanted to make sure that I could do what Federal Judges wanted me to do.

Twenty years later, I can say, "I'm not going to let them down." Every month, the Federal Defender's Office here in Oregon puts on a CLE on a hot topic, so we can know what to say to the judges, so we can know how to talk to the judges, so we can know how to negotiate these complicated cases. Over my twenty-year career, I've done terrorism, hundred million dollar bank fraud, and these complex drug cases, hundreds of thousands of documents. How do you put that all in a place where all of a sudden you can put your client in front of this court and get the best result for them that they can, if they plead guilty. What if you do have to go to trial? Then, you want a zealous advocate. Just ten weeks ago, across the street in Multnomah County Circuit Court, I had a very serious trial, sex abuse, two victims, four different counts. All of a sudden, I looked up, there's Judge Mosman from U.S. District Court. I asked Judge Mosman, "What are you doing here?" He says, "I'm coming to watch your opening statement."

I see an entourage with Judge Mosman, I say. "Who are all those people?" He says, "That's the Pakistani delegation of judges. They've never seen a jury trial before. They're about to watch yours." I say, "All right." They watched my opening statement, Mosman comes, taps me on the back, "Good job, good job. This is going to be an interesting case." I didn't have the chance to tell him that we got a full acquittal on that case yet, but I hope to tell him that soon. I just think it's so important that, in my practice, when I sit down, I go and I'll drive two hours and meet with my client for four hours, and go over these documents that are subject to a protective order, and I'll go over with them again, and again, and again, and again. I want to know everything about my client before I ever start to negotiate. I want to know every question that the presentence report people are going to ask before it's ever asked. I want to know everything about my client's mental health condition way before anybody else does, so I can make a decision on what is going to be the best approach to take, to try to get the least amount of time for this person or get this person released, or off. That's what I want to know.

I can say the judges have actually asked me, "Go get your client evaluated." At the end of the day, after I did get them psychologically evaluated, I didn't share it, because the evaluation was very bad and it wouldn't have been helpful to the sentence. They actually asked. I don't want to expend any money extraordinarily unless it's necessary, period. It's just a waste of time. It doesn't make sense. That's not what we're in the business for. We're in the business to try to zealously do the best for

our client. We're the last one standing between the prison and freedom for our client. That's the way that I see it. Finally, I just want to say, I thank you for being here, for being concerned about what we do here in the District of Oregon. I look forward to accepting any questions you may have on behalf of the panel and my clients. Thank you.

Dr. Rucker: Thank you very much. Ms. Wood?

Terri Wood: Good morning, still. I want to ask the Committee's forgiveness today because I'm coming down with a cold. I almost didn't come. I decided since I wasn't coughing, and I'm going to try not to cough, that this was too important. An opportunity not for me to testify to you, but because I have such a diverse background starting off with the state Public Defender's Office in Florida; moving to Oregon about six years later, and doing court appointed indigent defense, as well as starting a private practice; getting on the CJA panel. I've been a member for about twenty-five years now. I've stopped doing state indigent defense, but I have that type of perspective of dealing with indigent defense in a number of jurisdictions and settings. I did want to come here and be available to answer any questions or chime in if I thought there was something I could say that hadn't been said by another panel member. The only small point I want to make is this, when I got out of law school, I knew that as a lawyer I had to zealously defend my clients. They didn't teach you that if you had an indigent client, you could be a little less zealous because it would cost the system less money that way.

I have always practiced the same, whether I'm representing a client as a public defender, or a court appointed case, or a CJA panel. I stopped doing state court appointed work because at that time the judges actually controlled the attorney bills and whether or not they were paid. I never had a bill cut, but I was called in a few times by the chief judge and basically saying, "We don't understand why your bill is so much higher than other people's bills." I'm saying, "Well, Your Honor, if you want to order me that I don't put in more than X number of hours, then I'll abide by that order, but otherwise, I have to zealously defend my client. I'm only doing the work that I think needs to be done." We don't get rich doing indigent defense. When I was doing state cases, I was netting maybe ten dollars an hour. I was doing capital case litigation, so it's not something that anybody here, that works on CJA cases or indigent defense, we're not rolling in dough. We're not doing it for the money. We're doing it because we think we can make a difference in people's lives. I can tell you that I think everyone here has made a difference in a number of people's lives, and for the better.

Not just them, but their families, and so it's a good investment to give us resources and pay a salary that will attract quality lawyers. Thank you.

Dr. Rucker: Thank you for those opening statements. Judge Cardone, would you like to begin?

Judge Cardone: I have a question for Ms. Holton. Who manages your panel, Ms. Holton?

Wendy Holton: The attorney's serve at the pleasure of the federal judges, but the Federal Defender's Office basically manages our panel. They assign the cases.

Judge Cardone: Alright, and that's the same in Oregon, and so I guess my question to all of the panel is we're looking at different systems. I don't know if any of you have had experience with a different system than that, but I just wanted input from you, Ms. Holton. Does it work and do you have any criticism or concern about conflict or any of that?

Wendy Holton: That is frankly not one of my concerns in Montana. I think that the panel administration is done pretty well. I'm on the committee, the CJA committee, where we're right sizing the panels for each portion of the district so that everybody gets enough cases and stays up with the Federal practice. That's a cooperative effort between the judiciary and the Federal Defender's Office and CJA panels. Like I said, that is not my concern in Montana.

Judge Cardone: Thank you. I have no other questions.

Dr. Rucker: Judge Fischer?

Judge Fischer: Good morning, still, and thank you for joining us. I have a couple of questions, probably to each of you. Ms. Baggio, you say in your written statement that you think it's okay for the district judges to review vouchers, but you need a level of appeal. What is the present status in Oregon or if you were just talking about other places that you've heard of, what do they do?

Amy Baggio: As I understand it here, the Federal Defender does a preliminary review. I think there's two levels of review within the Federal Defender's Office. Then, it goes to the Article III judge assigned to the case. Then, if it's over, a certain amount, of course, has to go to the Ninth Circuit. There is no appeal that I'm aware of, appeal process here in the District of Oregon. The reason why I mentioned that in my statement was in viewing the testimony of folks in other districts where things were quite different, it makes sense to me that there should, could be a level of review. I understand, I believe it's in Seattle, they have a small group of folks who are available to review vouchers on which the judge has raised some concern. I think there could be a way to do it, so that when there are these outlier cases, they can be addressed on an individual basis.

I think that the review should be done by people who understand the defense function. As far as my experience on the panel, if there's ever a question, the person just picks up the phone and calls me. The Federal Defender has called me before and said, "You've made this request for this expert. He's $400 an hour, is there really nobody closer to Portland and cheaper that we can use?" I had no problem answering that question because I tried, and so it was an easy question to answer. That type of review that we have now, in my opinion, works well, but I wouldn't be opposed to . . . I'm not opposed to having my judge ask me those questions.

Judge Fischer: Okay. Thank you. Ms. Holton, you've raised a number of questions. You're talking about problems with the hourly rate, which of course we're hearing a lot. Do you have a thought on what hourly rate perhaps for your district would get the more quality attorneys? Then, again, somebody mentioned it earlier, I don't know if you heard, but how do we deal with the fact that in some places in the country $129 now might even be a good money, whereas in other places, it's substantially pro bono, maybe 20% of what other lawyers are making.

Wendy Holton: As I said in my written testimony, I don't see it as . . . it's about half of what a regular hourly rate for a very respected attorney in Montana would make. We have several of those attorneys on our Emeritus Panel. Most of those attorneys who are making $250 to $300 an hour aren't really interested in serving on the CJA Panel as a regular panel member, but a couple of them have agreed to serve on our Emeritus Panel for special assignments. As I also said in my written testimony, I think it's really hard to argue in a place like Montana that $129 an hour is not a substantial sum, when you compare that with other rates. I don't know if there is a way to balance that, balance the hourly rate or regionalize the hourly like they do for per diem rates. I don't know how that would work, frankly, if it was tried to be done.

That being said, I will say that $129 an hour is well over twice as much as the panel attorneys for the state public defender system make, so I don't want to be grousing about it too much.

Judge Fischer: Yeah, we won't tell them. You've mentioned one thing in your testimony, and it is a subject on our list of, I think, fourteen items, but we hear very little about it, so I want to ask you about the Marshal Service Transportation. You did mention that in at least one case, you asked to have a release revoked so that the client could return to trial. Could you tell us a little bit more and if there are other similar problems that you've had.

Wendy Holton: That was an extreme case, but it happens frequently on a smaller level in Montana because many of our clients, especially our native clients who come from reservations at several hundred miles, they will be indicted, arrested, brought for their initial appearances. If we're able to gain release at an initial appearance or subsequently at a detention hearing, then there's no provision for getting them back home. That oftentimes falls on the shoulders of the defense attorney to either provide funding to get them home, or do something else. The example that I told you about in my written testimony was a huge child pornography bulletin board case, where they were pulling people in from all over the country. My very, very poor client came from Missouri, this was in the dead of winter, we were able to obtain release for him. There was no way to get him home. He had no clothes, appropriate clothes. We had to address all of those problems. Then, when it came time for him to come back to court, he had . . . I could have paid for a bus ticket, I suppose, but there's no provision on our system for it.

In order to get him back to Montana without a cost to him or his family, the only way to do it through our Federal System was to have his pretrial release revoked so he could be transported in con air, essentially.

Judge Fischer: Thank you. Ms. McCrea, you've mentioned a little about reinstatement of the DSO and we've heard a lot about that. I don't know if you have seen any of our hearings, but do you have anything specific that you want to say about that? Is that a substantial step toward alleviating some of the more recent concerns? Is it just the start? Is it enough to improve the feeling of independence of the defense function? What are your thoughts on that?

Shaun McCrea: Judge Fischer, members of the panel, I have not been able to watch the other hearings. I had the best of intentions but the reality of private practice is that I was not able to make the time. For that, I apologize, because these are matters near and dear to my heart. I was grieved when Defender Services was reduced from where it had been to where it currently is. I suggest that re-elevating and re-initiating it into the separate area that it was would be a significant benefit in terms of independence. I'm expanding a little bit on your question because in my written testimony, I provided some discussion of my meeting with Judge Gleeson a few years ago, and the question of should Defender Services be outside the judiciary? Should we come out from underneath your protection? My answer strongly, at this point, is no. It has worked in the state system, but we have the assistance of the Chief Justice there.

Well, we need a certain amount of independence and I submit that having Defender Services in that role is a great benefit to the defense function.

We still need to have the assistance and the protection of the judiciary to make sure that we are budgeted fairly by Congress.

Judge Fischer: Thank you. Mr. Warren, do you have . . . I think I saw you nod, do you have a thought on that you want to add?

Ernest Warren: Yes, I think that it would be a mistake not to have it under the judges totally, because sometimes the issues with respect to services, should be held ex parte. It should not be made available to the prosecution to know what the defense is going to do. I just think it's more of a confidential process that might be in jeopardy if it's put somewhere else.

Judge Fischer: Let me also ask you and several of you, first of all, thank you all for your dedication to criminal defense and some of these stories just sort of tug at us, actually, hearing from Ms. Baggio and others, but how do you see the future of criminal defense? We're a hearing a bit about aging panels and difficulty getting people coming out of law school to be interested in criminal defense. I don't know if that's just the monetary aspect, because with the numbers of lawyers coming out with no legal jobs, and we hear them greeting at Walmart, $129 would be a good thing, but they need to get some experience first. Do you have concerns about that? You started off by talking about we can accomplish getting zealous advocacy, and so that's the goal.

Ernest Warren: Yes.

Judge Fischer: How do we do that with this present system?

Ernest Warren: Well, I can only say what I'm doing at my firm. I just took in a young associate, twenty-six years old, and he has to go to all the trials that I go to every year. He has to work very hard with me. I just paid $200 for him to join the Federal District of Oregon as a member. My goal is to build him up, to where he can be a panel member. Yes, it doesn't pay a lot. I wish pay was better. The cost of living in Portland is probably a little bit different than in Montana. Certainly, the cost of living on the West Coast is pretty high. I think that this is something that's different than Miami or some other places, the cost of living. Portland, San Francisco, Los Angeles, Seattle, they all have a high cost of living, they cost a lot here. In fact, the price of property in Portland right now is skyrocketing. It's hard to make a living here. So I hope somehow those type of facts would be considered when determining how much a reasonable hourly rate. I would say . . . Ms. Holton said that for her emeritus lawyers, $129 an hour is probably half of what they make. In Portland, I'd say that it'd be one third of what a good lawyer would make.

Judge Fischer: Thank you, and Ms. Wood, you've talked about . . . and we've heard this before, the $800 being too law, the $2400, we've heard is too low. I think the statutory maximum, I think, at this point is too low. We're hearing all of those things and you also mentioned that it takes too long to get prior authorization for funds. From someone in the District of Oregon, that's particularly interesting because all we're hearing is how wonderful the process is and how great the judges are. Where do you see the holdup? Is it just in the system itself that the way things have to follow through and get to the circuit or . . . ?

Terri Wood: The judges here are very good about approving expert funds. We, as lawyers, of course, have been well-trained by the Federal Defender's Office to generally . . . I'm filing a three to five page declaration of counsel that lays out why I need an expert, what that expert is going to do and the best estimate we have as to cost. The difficulty that panel lawyers have, the Federal Defender's Office has funds in their budget for experts. When Ms. Baggio, when she worked for them, if she needs an expert, she talks to the supervisors there and they say, yes, and she's got it like that. Here, we of course, file the motion and affidavit. It's ex parte, it gets reviewed by the Federal Defender's Office. Sometimes they have questions not usually . . . I've been doing it for so long. I don't usually get questions. Then, my understanding is it gets passed to the judge. I'm not sure where the delay is. I just know . . . I recently had a case where my client had not been indicted but it was a potential Len Bias case and he had cooperated. We were going to be looking at mitigation and getting him the best sentence I could.

I had good reason to ask for a psychological evaluation on him and I filed that and I knew it would have to go to the Ninth Circuit because it was going to be $4500. After sixty days, which is usually the longest time, I started contacting the Federal Defender going, "What's going on? I need to move this case." It apparently was sitting on the Magistrate's desk and once they talked to the Deputy, it got moved. I don't know why, but it does seem to take routinely more than thirty days and sometimes, more like forty-five days. That's a long time, especially if you have a case that's going to trial, and you run out of funds halfway, so those are . . . I'm not sure how you fix it other than maybe . . . In our district, we work so well with the Federal Defender. If the Federal Defender's Office had preliminary approval on something up to $5000, let's say, for forensic psychologist, when the client's in custody, so they have to travel and deal with getting into prisons and stuff, to do the evaluations.

If there were some reasonable scale set so that the lawyer knew, if it passes the Federal Defender, it may need to go up for judicial approval but you can go ahead and get your expert started because they're 99% guaranteed those funds would be approved. But especially with the

budget problems in recent years, we've gotten the message, "You better not have your experts start until you get those funds approved."

Judge Fischer: Thank you.

Dr. Rucker: Okay. Mr. Frensley?

Chip Frensley: Thank you. Ms. McCrea, hi. I wanted to ask you a question follow up on some of the remarks you made earlier about your experiences as the panel attorney representative, and having the opportunity to interact with and have conversations with lawyers in that capacity in other districts. How you would come home recognizing how privileged you were to practice in a district like this as opposed to some of the horrific places that things were happening really bad for clients and bad for lawyers. I want to ask you, what do you attribute that to? What do you think it is that makes it different here than the way you've heard it is in other places?

Shaun McCrea: It's different here for a couple of reasons. One is, because there is communication between all the different parties. The judges talk to us. The U.S. attorneys talk to us. We talk to them and we talk to our colleagues. That's one thing. The other piece of it is that, I can't speak for other places, Mr. Frensley, but I can tell you that we have judges here who have long recognized the importance and the need of what we do. They're willing to do whatever it takes to make the defense function work, as well as having Federal Defender's people in charge, Steve Wax, and now, Lisa Hay, who are also committed to that. We're able to call up the Federal Defender's Office, either the Eugene office, the Portland office. I talked, actually, to the Assistant Federal Defender down in Medford where I have a case the other day. They will talk to us. They will help us. They will provide us motions. They will give us suggestions, and all of that makes a big difference, an incredible difference. We also, I guess the other piece of it is, we talk to each other. Ms. Wood and I drove up today carpooling, partly because we're Oregonians and we're careful about that, and partly because we're CJA lawyers and we're trying to be conscious of the system. We spent the whole time coming up here talking about law. That's what defense lawyers do. You get together, and no matter what the circumstance, you end up talking about law and your cases, but it is very collegial. There have been times in the past where there was one particular prosecutor in the Eugene office, who shall go nameless, but I'm sure that my colleagues will recognize him by his description. He has been a prosecutor for so long that when we have a case together, we end up trying the case by phone just saying . . . he'll say, "Well, you're going to do this and then I'm going to do this. Then, you're going to say this. Then, I'm going to do this."

I end up chiming and then said, "Yeah." "Then, I'm going to file this motion, and you're going to respond this way." It actually is beneficial because we're able to streamline the issues. Those are the factors, I think, that we have in Oregon that make us different. I also want to say, Mr. Frensley, this is not what you asked, but I do feel compelled to add it, which is that, this is not to take away from any of the CJA panel attorneys I met throughout the country, because even though I sat on the National Criminal Defense Lawyer Board of Directors for five years, it is those CJA lawyers who really impressed me. Those are the people that if I have a question about something in Montana, or Nevada, or some place, Georgia, even somebody I don't know, I pull out my old sheet of the CJA panel lawyers and I'll call a person and they will help me. They will talk to me. That is a benefit for me, for my client, and for the system.

Chip Frensley: Those things you talk about are sort of cultural and personality related. It seems that that's one of the criticisms of the system, is that it is in large measure personality driven, with respect to whether a particular judge is inclined to do this or inclined to do that. I'm curious, because one of the things we've heard a lot about is the role of the Defender's Office in panel administration in Oregon. I'm wondering to what extent that structural situation of the Defender's Office, administrating the panel in Oregon, contributes to the type of environment that you're talking about, and also helps to build the culture that you're describing as the reason for the success in Oregon.

Shaun McCrea: Well, people do make all the difference, that certainly is true. The structure in Oregon seems to work. It's been in place for a long time. For a period of time the Federal Defender here had a specific attorney hired to do the panel administration. There were some issues with that, with sequestration, that is, as I understand it, back in place, there are people that we can specifically talk to, who talk to us. If you have the structure and the right people, it's going to go smoothly. If you don't have the structure, it's not going to go smoothly. I remember some of the horror stories I heard at CJA Panel Attorney conferences about the clerk's office in various districts being the ones who assigned the cases or who reviewed the vouchers. It was an absolute nightmare, regardless of the individual personalities. I suggest structure is very important as well as having people who are committed to the defense function.

Chip Frensley: With respect to the issue of vouchers and expert approval and that sort of thing, it seems like there aren't huge concerns in Oregon, at least, about if you submit a voucher it's going to get paid as long as you reasonably can explain what you've done. There are places where that isn't the case, and so I think when you're in a situation where you have an expectation that you're going to get funds or you're going to get paid, the idea of the judges having the final say is not so intolerable because it happens.

Whereas, if that weren't the case, then it might not be as good of an idea and so, it may be unfair to ask you, at least those of you from Oregon because you don't have that experience, but I'm wondering, if not the judges, who? If we didn't have the judges making the final decision, and I'll just ask the question to Ms. Baggio, perhaps, who do you think would be an appropriate person or group, or entity, or whatever, who can make those final decisions about vouchers, about experts, and that sort of things, if not the judges?

Amy Baggio: I think that that role could be housed within the Federal Defender as part of the CJA Office, if we have an attorney in that role, and assigned the job of just reviewing vouchers. I think, especially, as we have more and more of these large multi-defendant complex cases, there's an opportunity there to make sure that not only people aren't asking for too much, but they're asking for enough. We could adopt a system in which when you have a large serious case, that an appointed counsel needs to develop a trial plan. I do that anyway, not because somebody's going to look at it, but because it's a good idea. Then, you can get a sense of what the resources are going to be needed to make sure that all of the defendant's rights are maintained, and that we zealously represent our clients. If there was an independent person within the CJA Office who has defense experience and is an attorney, who I could go to and say, "Okay, I've got this big complex Title Three case, two hundred thousand pages of discovery, a million wiretap intercepts, this is how I plan to address the case:, these are the experts I think I'm going to need; this is basically how much time I think it's going to take try it." Then, there's communication about and expectations about what I'm doing and why I'm doing it. If I come in and I say, "I've got this case and this is what I'm going to do." They say, "Whoa, where is your time spent on litigation? This is a wiretap case. You need time spent in reviewing the lawfulness of the wiretap applications." In that way, you can both provide quality assurance, to make sure people aren't doing too much or too little. I think that would benefit the whole system, but I do believe that it could be part of the CJA Office.

Chip Frensley: Would your level of comfort or confidence in that proposal be the same if that individual you're describing were an employee of the clerk's office as opposed to the Defender's Office, for example?

Amy Baggio: Well, I saw some of the testimony about people's experiences with the clerk's office and I don't want to make a blanket statement because I do agree with Shaun. It totally depends on the person. If you've got someone who's committed to zealous advocacy and believes in the need for it, as long as that person is honestly doing their job and they know what to do and what to ask of people, I don't know that it necessarily matters where they are. I just know our Federal Defender Office and our Panel Office and I would trust for it to be set up in that position here in Oregon.

Chip Frensley: Does anyone else on the panel have any thoughts or opinions about that concept of, if not the judges, then whom and where that person would be, or under whose authority they would be?

Ernest Warren: Yes, I think it would not make good sense to have it in the clerk's office, at least in the District of Oregon because the big thing always, from the panel of attorneys that I spoke with around the country, is the fear of rejection. When they really feel that they needed an extraordinary expense, maybe like in Amy's case, a psychosexual evaluation, or some very important extraordinary expense that's going to help figure out how well we can do for our client in a very serious case. It'd be hard if you were met with rejection from a clerk and then you had no way to get to a resolution or some common ground. In my experience, I only try to request when it's reasonable. I don't ever want to do anything that's unreasonable. In my practice, most of the time, the CJA person will tell me if my doctor or whoever expert is unreasonable, and I'll try to look for someone else. I think that it might have a chilling effect on the defense practice if we had it in the clerk's office, and we have this perception that these people don't understand what we need, and we're met with rejection.

Chip Frensley: One last question I would like to ask and that relates to compensation. We've heard testimony from individuals talking about panel attorneys not billing for everything they do, certainly, a lot of time that's just purely pro bono given. We've also heard about delays in processing vouchers, particularly excess vouchers that go to circuit. I'm just curious, in your practice or in that of your colleagues, is it common for folks to self-cut their vouchers in order to avoid having to go to the Circuit or avoid any potential concern or conflict with whether or not that voucher is going to get paid because it's a certain amount, and so you self-cut to bring it down to a number that seems like it's going to be more palatable?

Ernest Warren: Yes.

Chip Frensley: Is that a universal answer?

Amy Baggio: No, no.

Chip Frensley: No? Regardless of what the voucher is, you send it as it is?

Amy Baggio: If I do it, it's because it was needed and I expect to be paid for it.

Terri Wood: I've self-cut, sometimes, if it's going to take more time. If I'm close and I'm going to lose a few hundred dollars versus spend two hours or an hour and a half looking through everything in writing a detailed declaration to support it.

Chip Frensley: Thank you.

Dr. Rucker: Ms. Roe?

Katherian Roe: Thank you. I'm going to start with the question about experts, and Mr. Frensley was asking all of you folks about your concerns, about having the judges, or your lack of concerns whichever it may be, about having the judges review your request for experts. My question is about the same thing but a little bit different. Do you have any concern about having the judges review your request for experts when the request itself discloses your defense or may disclose that you had someone review the case, let's say a psychologist and then the report is never used again, is never seen by the judge? Obviously, there's the problem of a negative inference. Same judge obviously who is trying your case or sentencing your client, whichever it may be, do you have a concern about that? Ms. Holton?

Wendy Holton: Yes, and I think that that's especially true, as I mentioned previously, in sex offender cases. If you don't then use the sex offender evaluation that you've received authorization for, the clear negative inference is that it was really bad for your client and that can impact sentencing. That being said, I think that there's also a lot of time that goes into the justification. It would be easier to pick up a phone and say, "I need somebody because of this." I'm working on a DNA case right now, where I need supplemental funds for my DNA expert. I have to justify that. I'm spending an hour, two hours, three hours of mine and my expert's time saying what we've got to do in that, why we need this extra money. That's just more time and money. If there was some kind of streamlined way to do that, I do think that there's the problem with in essence revealing our defense even though we can do it ex parte, but there's also a lot of time that goes into it. If we could get a bigger authorization initially, I think that would be helpful, too.

Katherian Roe: Other folks?

Ernest Warren: I don't think I'm revealing my defense to the judge by putting in an ex parte order. Who I don't want to know about my defense is the prosecution, until we figured out exactly what my defense is. I want to keep them off guard to what possible defenses might be. Also, I believe, when you give a declaration to a voucher, sometimes, you can educate the decision maker a little bit about what you're trying to do. I don't think that that's a bad thing at all.

Katherian Roe: Ms. Baggio?

Amy Baggio: In terms of revealing to the judge, I think that when the judge . . . in the normal course, the judge will see the client. Usually, not even for

arraignment, in almost all the cases, it's for change of plea and sentencing. If instead the judge has some sense of what's been going on in the development of the case, appropriately, in the context of reviewing request for experts, or reviewing an interim voucher on my part, it can be helpful to the judge. To have a better sense of the person who's ultimately going to appear in front of him or her. I think that that adds additional valuable information to the imposition of sentence. In terms of being concerned about requesting a report and then having it turn out bad and not wanting to turn it over to the judge, in most cases, clients have had multiple experiences in the criminal justice system, and for a lot of them, they've had previously identified mental health disorders and part of what we do in our course of investigating the case is to get those reports.

If I get prior attorney files, or juvenile files, or court files, and I'm seeing terms that are not helpful, in terms of presenting my client in the best light to the judge, I'm going to be less likely to request a new evaluation because I already know what's in there.

Katherian Roe: What if it's something that has to do with dangerousness, like a psychosexual and it's about dangerousness, it's child pornography case, and you get, you asked for the expert services. You have to reveal enough about it to be able to get the judge to authorize a $5,000 payment, or something of that nature. What's the situation again when you're not going to use it? You know the judge knows exactly what that was for.

Ernest Warren: Well, most of the time in a psychosexual evaluation, they also have a polygraph. Nine times out of ten, the client is not going to pass the polygraph. It's been my experience. I think many times in psychosexual evaluations, what we're hoping for is that our client is at one out of ten times that they're going to pass, that they're going to look good. That they're not going to have a fear of recidivism in the psychologist, and all of the sudden now, you could come in with a stronger theme with the judge. At least in the District of Oregon, when these issues come up, I believe that the judges understand that this is something that needs to be done in a sexual case, and that probably they're not going to see a report but at least that the defense lawyer is zealously advocating for the client. I think that's the type of perception I want the judge to know, that I'm zealously advocating for my client.

Katherian Roe: Isn't there a . . . you just created a presumption. You're saying, so now the judge knows that your client failed the polygraph, right? I'd rather the judge didn't know my client failed the polygraph than knew that I was doing a good job.

Ernest Warren: Well, I think that nine times out of ten, it has been my experience, in twenty-six, twenty-seven years, that in a psychosexual evaluation, the

defendant is going to fail the polygraph. I think the courts know that. I think they have experience with that. The contrary would be not to do a psychosexual evaluation at all in that one out of ten hope that your client is going to pass. When my client passes the psychosexual, when my client passes the polygraph, that's just so much more of a stronger position for that particular client, that that's the risk that I would be willing to take.

Katherian Roe: All right. Ms. Wood, let me ask you a question. Ms. Wood, you were an attorney in the state public defender's system, essentially, or accepting appointments, as I understood?

Terri Wood: In Oregon, yes, and I was with an actual state Public Defender Office in Florida.

Katherian Roe: My understanding is that the Oregon State Public Defender's System now is independent of the judiciary, is that correct?

Terri Wood: That's correct.

Katherian Roe: Can you tell us about the comparison, if you will, between those two systems, the Oregon . . . the Federal System in Oregon, which is obviously not independent of the judiciary and the state system which is?

Terri Wood: I can tell you a little, and Ms. McCrea may be able to tell you a little more. I think I was explaining about being called in by the judge about cases and so, when I got to the point where I didn't have to do state indigent defense, I stopped doing it. I was uncomfortable feeling . . . number one, I didn't want to have my bills cut. I didn't want to have to go see the judge every time I did a case. I did a lot of capital case litigation here and those cases, they did tend to usually approve everything because, of course, the ramifications of a death sentence and the levels of review it go through, but then, doing other cases. At that time, it was judge-based. Then, they went to this independent office and I think the concern is this, in Oregon, we have a very strong Criminal Defense Lawyer's Association. We have thirteen hundred members. We're state wide. We've had an active lobbyist, a fiscal lobbyist and a substantive lobbyist, and so we have been able to educate legislators in the state about the importance of the defense function and the need for funding so that people get a good quality of defense.

Now, there's always problems with funding, but they do fund this independent public defender's office. It's very quick to get expert funds and investigative funds approved through that office. I do that on cases, as I said on my letter, where I may be retained but the family is paying me and they don't have funds to hire experts or investigators. I can write the two, three page letter, explain what I need, and I can get funds approved in

two or three days. It's a good process in that sense. I share concerns that you have in terms of having courts review the reasons why you want experts. Certainly, it's a two-edge sword. In some cases, you can get the judge prepared for your sentencing arguments in advance by writing your . . . it's an ex parte application and you're going to give the judge the defense pitch, and why you need that expert. That works out well if it's not a psychosexual evaluation. I've often just tried to run a polygraph first, rather than ask for the funds to . . . and I do that with private clients—don't spend $3,000 or $3,500 on a psychosexual evaluation if you can't pass the polygraph, because you're never going to use it.

I'm not sure. I'm a little fuzzy headed this morning, so did I answer your question?

Katherian Roe: Yes, you did.

Terri Wood: Okay, thank you.

Katherian Roe: Ms. Holton, I wanted to ask you a question about the windshield time you're talking about earlier and just how much of your bill that can become. You were talking about a round trip, I think, was it seven hours do you think?

Wendy Holton: Eight hours.

Katherian Roe: Eight hour round trip, and then obviously the time that you spent with the client. Has that been an issue for you or your colleagues in your district with regard to voucher cutting or at least even voucher questioning because of the amount of time that you spent in travel versus the amount of time that you spent actually researching or writing or meeting with your client? Because just the example you gave us, even if you met with your client for four hours, you spent twice as much time driving your car.

Wendy Holton: I can tell you, I have not personally had a voucher cut because of that. For me, the windshield time is more of . . . my objections to it are more that it makes the attorney-client relationship more difficult. It's also, I don't think, is a good expenditure of my time. As I said before, I would much rather be doing substantive legal work. I would much rather be reviewing the case. I would much rather be doing legal research than being on the road listening to books on tape or my iPod.

Katherian Roe: It's your experience that the judges in your district recognize that it's necessary?

Wendy Holton: I think that they do recognize that it's necessary.

Katherian Roe: Another question I wanted to ask you about was the rates of experts and the availability of experts in your district. You were talking about the rate that you could pay and how folks were not available to be hired at that rate, or to provide a service at that rate. What rates were you referring to?

Wendy Holton: The most expensive rate that I'm dealing with right now, although I was able to get this DNA expert to reduce his rate to $250 an hour, but he just informed me that his new rate was $450 an hour, that's frankly the most extreme one. The other experts in our district, I think, are cutting. I know our investigators are coming in to CJA work at less than what they're charging and they're much less than they're charging in their private work. I also know that, for example, our experts who do the psychosexual evaluations are cutting their fees for that as well in order, basically, to help us out.

Katherian Roe: There's no actual scheduled rate that you can pay with a cap on it? It's just that it's difficult to get folks to do it at a rate that seems like something that would be reasonable to the court. Is that what you mean?

Wendy Holton: I think it would be difficult for me to get a judge to approve a $450 an hour expert. I think that that would be very difficult for me. The cap, the soft cap of $2400, which is really all I can get upfront is probably, on many cases, it's not enough to investigate a case and it's certainly not enough for, for example, a DNA expert. It would be nice to be able to go in once, ask for what you really think it's going to cost.

Katherian Roe: Can you give us an estimate, if you can, how much time it takes to get the approval? Not for the . . . obviously, the $800, which is the pre-authorization, but the $2400 and then if you need to get approval for the higher amount? We've heard it in Oregon how long it can take, but can you give us an idea from Montana?

Wendy Holton: Once I get my motion in, it's probably, for the initial request, it's probably a day or two for that to turn around if the judge is in the office. The subsequent request, it takes a little bit longer. It probably takes me, to write those requests, it probably takes me an hour, an hour and a half. Then, I've also got to be communicating with my experts during that time, so that's billable time for them as well. Then, once I'm over that cap, or the soft cap of $2400, then it's got to go to the circuit for approval, and so that delays my case a little bit.

Katherian Roe: Excuse my ignorance, but how many judges do you have in Montana?

Wendy Holton: We've got three Article III judges, and three magistrate judges.

Katherian Roe: All right. Thank you. Take it up.

Dr. Rucker: Judge Cardone, do you have any more questions?

Judge Cardone: I would let the other panel members.

Dr. Rucker: All right. Judge Gerrard?

Judge Gerrard: Yeah, just briefly because we're . . . is the mic on? Should be? Okay, we're talking about systems amongst other things and I think all of you come from a Public Defender CJA Panel Management System as do I in Nebraska. In fact, Mr. Stickman is our Public Defender who is sitting in back today. That's where the federal public defender manages, along with the committee itself, manages the selection, the attorney appointment, the removal, if there needs to be a removal, as well as initial review of vouchers. My question is this, do you see that as a system that works sufficiently that you would recommend to the Committee, that there would be a one-size-fits-all recommendation? Or, are there ultimate systems that you would see or should we consider both? I guess I'll ask that to each one of you.

Amy Baggio: This is in reference to the panel revision process?

Judge Gerrard: Yes.

Amy Baggio: I head Mr. Williams' testimony earlier and that he's seeking to offer the U.S. Attorney's Office opinion about panel numbers. I think that that information should go to the panel review committee. If there's a problem in a particular case, or with a particular defender, that should be taken up with the judge then and there. I don't know that at the end of the . . . years later, when there's a panel review process, that people should run and air dirty laundry at that point. I think it should be addressed when it's a problem.

Judge Gerrard: I guess I'm talking about the panel management system as a whole.

Amy Baggio: Oh, I'm sorry.

Judge Gerrard: Okay. In other words, the system that you have in Oregon would be similar to a number of the systems that are out there. My question is, do you see that as a one-fits-all system or do you think that should be locally controlled?

Amy Baggio: I think local control is best. It's a huge country and the districts vary so greatly based on all of these different personalities. What we have here works well, but I wouldn't speak for other districts.

Wendy Holton: You're speaking about the federal defender's controlling the appointment process?

Judge Gerrard: The panel administration all around, it would be the appointment process, it would be initial review of vouchers.

Wendy Holton: Okay, and our Federal Defenders don't do any initial review of vouchers. I think that that might be a good thing. As I said in my written testimony, I don't have much . . . I haven't had trouble with that recently but I think there are attorneys who have.

Judge Gerrard: It goes directly to the Article III?

Wendy Holton: It goes directly to the judge, yes, but I think that having the Federal Defenders involved is a very good thing.

Judge Gerrard: Ms. McCrea?

Shaun McCrea: It certainly works here. The alternative of having it go to the judges, I submit would not work as well. Having it out-sized to a different agency like the state agency we currently have, is the Oregon Public Defense Services Office, that is working for the state system but that has been going on for fifteen years now. We have substantially changed the Oregon State System, so there are very few lawyers who are practicing criminal defense on a court appointed basis, on an hourly basis. It is more that there are public defender offices, different regions have public defender offices. Then, there are consortiums of various law firms and all of those individual entities contract with OPDS on a biennial basis. It's very, very different but in comparing that to what we have in terms of the Federal System in Oregon, my feeling is that what we have in the Federal System is working well for us.

Ernest Warren: Your Honor, I believe that the Federal System that we have here in Oregon is a model for other places. It works very well. The defender here has a great relationship with the court. If other defenders around the country had that relationship with the court, I think the system would work well, and the court would have someone to talk to, and funnel it back to the panel lawyers, what their concerns would be.

Terri Wood: I agree.

Judge Gerrard: That's all I have at this time.

Dr. Rucker: Mr. Cahn?

Reuben Cahn: Thanks. Ms. Baggio, I had a question for you. When you were testifying earlier in your oral statement, you mentioned that you wanted to make sure that judges understood that you weren't sitting around in your office thinking of implausible legal motions. Of course, one judge's implausible legal motion is another's creative legal argument. Cases like *Apprendi*, and *Ring*, and *Crawford*, and *Johnson* all started out as those implausible arguments. How do we square the need to have our panel lawyers, not just our defenders, engaged in creative legal advocacy with that requirement that judges see us, see panel lawyers as responsible?

Amy Baggio: I think a big part of the reasonableness of what we're able to do is because of the training that the Federal Defender provides to us. We work together to talk about what is the U.S. Attorney's Office doing differently now? How is the DEA investigating cases differently now? There's open communication about changes in practice and changes in the law. When I said implausible, I meant truly implausible. I think creative litigation is essential because they're creatively investigating and creatively charging and we need to take the time to look at that carefully. When we have a very large case, in terms of the billable hours that are going to the judge, I think that generally speaking, if there's a ton of attorney hours in there, it's because there's a ton of discovery. Or, there's novel legal questions that there should be either motions filed in the case or at least detailed notes and research done in the attorney's file. If there's any question, we can be open to say, "No, I needed to look at this. This is a cutting-edge legal issue and it needed to be . . . I needed to spend the hours I spent analyzing it."

I think as long as there are some trust, that we're not abusing the process, and we have a genuine work ethic, that one that we all share, and that it's honorable, that there should be a presumption that what we're doing isn't twiddling our thumbs. If there's a concern, we have our files documented to the point where if anyone has a question, you pick up the phone and call and say, "Well, Amy, you worked . . . really? You did twelve hours of legal research on whether or not you can charge a conspiracy . . . you can conspire to conspire?" I can say, "Yes, I did, and I'd love to tell you about it." I think that it can be encouraged, and as long as we're all being honest in the process, there's no problem with having those questions asked because we're prepared to answer them.

Reuben Cahn: If you were in a district where the judges were inclined to take a look at a motion and say, "I don't think you really . . . it made sense to go down that route in this case," you'd have a different feeling about the process though.

Amy Baggio: If I lived in one of those districts, I wouldn't do panel work.

Reuben Cahn: That's a good answer. Let me ask . . . I want to address this question to . . . well, I guess, first to Mr. Warren. You talked about the idea . . . this is an idea that's come up in a couple of different panels, and in private conversations also. The idea of essentially, locality pay for panel lawyers. Obviously . . . and I come from San Diego, and it's quite an expensive place also. I've hired young lawyers who are coming out of law school with crippling debt, and so I understand the imperatives. It's got some appeal, but I'm also concerned when I look around at the country as a whole and I see a couple of things that bother me, one, that sometimes we see low cost of living in districts line up with places where the defense culture is less vigorous and representation is lesser quality. We also see, oftentimes, districts with lower costs of living line up with places where we have heavy concentrations of extraordinarily disadvantaged minority communities. I can think of, say, Montana, where you've got a Native American community that just is [INAUDIBLE]. I wonder, I'm concerned, and I do not have any answers, so I'm really asking if you can give me your reaction and maybe some thoughts on this. Are we creating legal ghettos in those communities or at least the appearance of that? If you could give me your thoughts on that.

Ernest Warren: Thank you for asking that question. I believe that you have to be passionate about your client. Those are some things that you don't learn in law school. You got to be passionate about what you do. You got to . . . for me, it's really easy because you start talking about the Bill of Rights, and I believe that I'm the last person standing to defend my client zealously. I just do. Whether they're indigent or no matter how much I get paid, just like Ms. Wood, I'm going to give them a $500 an hour defense, and I want to surround myself with people like that because I believe that's really the American way. You're right, I talk with my friends from down south and I talk with my friends from around the country that do panel work, and they do criminal defense work. They really fight hard, but they don't get paid very well. I think a lot of thought has to be put in to how do we train people to get excited about what they do? I do think there needs to be some parity between what a panel lawyer does or a Federal Defender does and what a U.S. Attorney does.

That's the way we look at it in the state system here in Oregon. We're always trying to evaluate, "Well, look at what this defense lawyers do in here, and look at what this prosecutors getting paid here with these full benefits." I don't think there's any distinction between the quality of the lawyers. I think it's the politics. I think that we have to train lawyers to be excited about criminal defense.

Reuben Cahn: Ms. Holton, can I ask you to address that issue also?

Wendy Holton: Yes. I actually . . . what Mr. Warren just said about the parity, I think, is really a great idea when you say, okay, what is in . . . for example, an Assistant United States Attorney making in salary and benefits and other perks of the job, I guess for a lack of a better way to say it. Then, maybe figure that out on what you can really legitimately bill in a day, five or six hours is . . . if you're working at ten hour a day, you probably got five or six hours of billable time and base the CJA rate on that, because . . . by the same token, as I look at $129 an hour, I think about the people who even with overhead can't make that. Then, you transfer that into the legal system where people are making much more money. It's a very difficult question. I think that most of us do this work because we feel like it's a calling, because we want to work, because we believe . . . we think that this is the way to defend the Constitution and the Bill of Rights.

On some level, you will never attract the best and the brightest unless there is some kind of parity in how much money people can make. I think that it's really important from presenting those novel legal arguments, from doing everything that we can do to get quality defense, to making it even fun for the judges to be judges and be listening to quality legal arguments, that you've got to compensate people on a level that this is what people want to do. I'm not sure if that answered your question.

Reuben Cahn: Let me follow up with one other question I have about . . . I just spoke about the young lawyers in my office and the crippling debt that they have. One of the things we talked about is the graying of the panels in many districts, that's certainly true in my district. For those of you who've got a sense of your panel, do you see difficulty in bringing in those younger lawyers and do you see it due in part to the hourly rate as it exists today? I want to start with you, Ms. McCrea, because you have some national rep work.

Shaun McCrea: Well, my answer is absolutely. It's a difficulty. I'm giving you an example from a state situation, but it translates over into the Federal System, and that is, I was talking to a consortium lawyer at the most recent commission meeting that we had. She was advising me that they have brought a young lawyer into their consortium, given him a quarter time, but he's got a hundred and forty thousand dollars in student debt. He doesn't know how long he can possibly do this. Locally, in Eugene, we just had our panel revision. We had a few applicants who were younger lawyers, but our panel is mostly pretty experienced lawyers who tend to have a pretty solid criminal defense practice, or maybe partially criminal defense, partially other things, that can afford to take some panel cases. Because, let's face it, there really is a pro bono element in what we're doing at a $129 an hour given our overhead and the time involved. We want to do that.

The younger generation, the people that I come across who are in law school, I've got a first year student that I'm mentoring right now who really, really, really wants to be a criminal defense lawyer, want to do it but they don't know if they're going to be able to because they don't know if they're going to be able to afford it. I see it as a problem that is happening now. It's going to be worse very, very soon and it's something that we need to consider.

Reuben Cahn: Thank you.

Dr. Rucker: I'd like to follow up on it before I give Professor Gould a chance. Mr. Warren, you mentioned earlier that you had hired a young attorney, and I think you said he's twenty-six years old.

Ernest Warren: Yes.

Dr. Rucker: And that you hoped that he would someday be on the panel. Are you training him? Is he being funded partially through CJA funds? How are you paying for him?

Ernest Warren: Well, yeah, of course, because part of my income comes from the CJA panel, but yes. I also fund him through my other private work, and that's what's really paying for his salary. Certainly, I don't make a lot of money when I go to trial with him. I have to pay him. He's getting paid at least $80,000 this year and he's very enthusiastic and young, and probably wouldn't have a job otherwise. I can't say that I can keep him very long, but he seems to be very interested in criminal defense, loves it, motivated and young, high student debt that he left Indiana University Law School, so yeah I'm financing his way to become a criminal defense lawyer, yes.

Dr. Rucker: He's not directly being paid then as like a paralegal or something?

Ernest Warren: Oh, no, no. I don't bill for any paralegal work. No, he doesn't actually do any Federal defense work at all at this time.

Dr. Rucker: May I ask the rest of the panel or any of the others, are you doing something like that?

Amy Baggio: With regard to mentoring? The Oregon State Bar requires new attorneys to have a mentor and I'm participating in that, so I'm mentoring through the state bar. We had talked about whether, when the panel revision happens, when some of the younger lawyers get on board, and I'm very excited about that notion. There are some really smart younger lawyers that I hope are going to join us on the panel. There was a discussion about whether we would provide mentoring services to them. I'm hoping that we can get paid to do that, because these cases are so complex that I want to be able

to do it a hundred percent. I think that it's reasonable to have a more experienced attorney on as co-counsel for these younger lawyer's first cases. Then, they can learn how to do it right and how to address big complex cases or large amounts of discovery and we're teaching efficiency and we're teaching the right approach for this district.

Dr. Rucker: Thank you. Professor Gould, do you have any questions?

Prof. Gould: I actually do, yes. Thank you. I think one of the themes that I have heard in the panel this morning, the five of you, is how careful you are with Federal funds when you go to submit your vouchers. I was struck by the statements of two of you in your opening statement that is, where you were talking about there are certain kinds of tasks, a few tasks that you'll do on a case that you won't necessarily put into the voucher. Yesterday, the panel heard a story from a lawyer who was talking about a phone call, after phone call, after phone call that he would get from the client's mother. It would be for ten minutes at a time and he just wouldn't put it in the voucher because it was either too difficult to keep track of or he didn't think it was the kind of thing that he would pass along. I'm curious, in your own experience, what kinds of things like that or others are there on a case that you'll do but it won't necessarily make the voucher?

Ernest Warren: Well, for me, for example, we see the e-filings that come across our cellphones and computers and I'll review it quickly. If I have the dates calendared already, I won't put that on my filings that I read those e-filings. Anything that probably takes less than two minutes, I won't put on. I only try to really concentrate on things that are very substantive, that take more than twelve minutes, because something less than two minutes I don't think is significant.

Prof. Gould: Anything from the rest of you?

Amy Baggio: I will not bill for contact with my client's family if it's not case related and I think that's very important. Some clients are higher maintenance than others and some of their families are higher maintenance than others. If I'm getting repeated calls from a client's wife or girlfriend asking questions, I don't bill for any of that. I think that that's important to the client relationship because it's important that my client knows that I take his girlfriend's calls, but I'm not billing for that. I also do not bill for anything under six minutes. I'm honest in my billing. Looking at an ECF notice doesn't take six minutes unless it's a big long minute order that I need to take a look at, but I don't bill for that either. Then, sometimes, in meeting with client families, I'll stop billing once really it's more hand holding activity, and it's less something that's going to help me represent the client in court. Occasionally, there will be peripheral issues of, "Hey, do you know a tax attorney?" Or, "I'm having this issue with my child. I

need to go do this or that or the other." I'll make best efforts to help them. I also don't consider that case related.

Prof. Gould: Any from the rest of you?

Terri Wood: It just varies on the case. I talk to client's sometimes, I talk to client's families sometimes, and it's just like, if I wouldn't bill a private client for it . . . sometimes, you just go, "I guess I didn't explain it well the first time, so this one's on me. Let's go through it again." I'm not talking about spending an hour usually and not billing for it, and certainly, I think everybody here does those . . . takes those follow-up calls and I tell every client, "If you have trouble, if you have questions after you are sentenced, call me. We're here." Only if it involves some new case getting started do I ever go and asked to be compensated for that.

Shaun McCrea: I agree with everything everyone said. Those were things that I probably wouldn't bill for. The culture in Eugene is a little different than Portland. It's probably fair to say it's a little more relaxed, so we are able to do a lot of business by email, with the court's staff. I may have emails going back and forth between me and the court staff as well as the U.S. Attorney to try to change a date on something. Unless it's really involved, I usually don't put that down as a charge.

Prof. Gould: I guess what I'm trying to get at here is, you don't see this as you providing a pro bono service to the court, you see this as just the cost of normally doing business as a lawyer?

Shaun McCrea: I see it as providing a service to the court and I will say that . . . I can't speak for everybody else on the panel, but my sense of it is that when we hit sequestration, that was . . . we've got to be super careful. You got to look two or three times at what you're asking for or what you're billing for, what you're doing and it had a greater . . . again, I'm sorry. I don't want to speak for these guys, but it had a greater impact on me not about the amount of time, energy and effort I put forth on behalf of my client, but what I actually put down on my voucher and billed for.

Prof. Gould: Okay, so can you explain that a little bit more?

Shaun McCrea: Well, yes, it was . . . I became concerned that if I put down on my voucher everything that I was doing, which I believe was a reasonable service for my CJA client, which is everything that I would be doing for a retained client, that that would reflect poorly on me as a CJA lawyer and on the CJA panel, and make matters more difficult for Federal Defenders.

Prof. Gould: It would reflect badly with whom?

Shaun McCrea: With the court.

Prof. Gould: What would happen as a result?

Shaun McCrea: Well, the court might have to start cutting vouchers because of national pressure on the CJA attorney budgets and the change in what occurred with the structure, with the administrative office and Defender Services, with the change from independence to a different position. I'm not saying it was a rational fear, but it was certainly a fear. And I will tell you that it is something that stays in the back of my mind. It has had an impact on me in the sense that I have worked at expanding my retained case base as opposed to my CJA panel cases. That is an issue, a little bit here in Oregon because we get maybe four panel cases a year. My cases tend to be bigger cases, which take a long time, but I did one grand jury witness case that I did in two days. It has made me concerned about the value of my services to the courts, to the system as a CJA lawyer and a feeling of insecurity that I can't count on, that is . . . it has always kind of been, "It's the government, they'll pay me." I can't count on that as a future going concern.

Prof. Gould: Ms. Holton, you were nodding your head? Which part of that were you nodding to?

Wendy Holton: Well, I guess just responding to what the rest the panel has said about this topic. There is a part of me that thinks it's important to record every service that we do for a client simply so that there is a record of that. I think it is really important to have a record of communications with the client, communications with the family. A record that you actually opened the CMECF document and put it into your file. I think that it's important to have that record. It's important for our own safety. I do know that we all . . . well, I guess I can't say we all, but I also know that when I do my billing, I am very cognizant of the fact that there is a budget, that I don't want to do anything that reflects poorly on CJA work, or criminal defense work. Perhaps we're a little more conservative because of that, but then, also to go back to something else that was said earlier, I really do think that, for example, the judges in Montana, are . . . they really appreciate good legal work and they would not see the beginnings of an *Apprendi* argument or something like that as frivolous. I think that they would, if it was done well, they would be grateful for it.

Prof. Gould: Okay.

Ernest Warren: I just want to be clear, I bill my private clients for every second. I want you to know that, and I don't do that for panel work.

Prof. Gould: Why?

Ernest Warren: Well, because, again, what everyone has said here, because of the perception that you may be singled out as billing too heavily or whatever.

Prof. Gould: Thank you. I want to just clarify one thing, Ms. Baggio, you mentioned Mr. Williams' testimony from earlier today, where he talked about the fact that he had passed along some concerns about some panel attorneys. I actually caught him afterwards. Just to clarify for all of the Committee, that was not unilateral from the U.S. Attorney's Office, he said. Instead, he said that was in response to questions from the public defender that was doing a review of the panel.

Judge Gerrard: From the committee.

Jon Gould: Yes, exactly. Thank you.

Judge Cardone: Can I just ask a quick question of Mr. Warren and Ms. McCrea and Ms. Wood in particular, because I think you're the three that said this? I'm really confused about a statement that you all made, and then later another statement you made, because all three of you told me or told us how much you believe that it should remain under the judiciary and that it really works well. You highlighted that it really works well here in Oregon. Your state system doesn't, what's the difference? If it's so great for judges to have this power, why don't you give that power to your state judges?

Ernest Warren: Well, I believe that the state system did work well when this power was with the judges. What happened was, somehow, they forced upon us, maybe fifteen years ago, that they're going to do it differently in the state system. It didn't work better, it's something that we have to live with now, so it was forced upon us, as I recall about maybe fifteen years ago, but before that, it worked just fine, in my opinion.

Judge Cardone: If it went back to the judges in the state, you'd be happy?

Ernest Warren: I'd be happy.

Judge Cardone: Okay.

Terri Wood: I wouldn't.

Judge Cardone: Why?

Terri Wood: Because of having the experiences I described. I even had a capital case where a month before trial the chief judge didn't want the case to be tried and so he quit paying everybody that was working on the defense team, investigators, everything else. I got to the point of having to be ready to file a motion to withdraw and worked with somebody else that dealt with .

. . in the indigent defense review process, and she was able to talk the judge into finally releasing funds, so I didn't have to move to withdraw on the eve of trial. You run into personalities that way. My concern is that I don't . . . I can't trust Congress to appreciate the importance of the defense function and to fund it. If we go as a separate agency without . . . and don't have the judiciary, which by and large understands and supports the defense function, I think funding would be worse and resources for counsel to do cases would be worse. That's just my perception of Congress, as being dysfunctional.

Reuben Cahn: Is it fair to say that if you weren't worried about money, you wouldn't want the judges anywhere near this?

Terri Wood: I believe that having an independent defense office, the judges don't control the U.S. Attorney's Office. They don't decide who gets assigned to cases, or whether they've spent too much time or resources out of their budget. I guess I feel, again, that three legs of a stool, the prosecution, the defense, and then the judge who's the referee, and that's what makes our system so strong, and what makes it work. Whenever one of those three legs gets too close to controlling another leg, there is at least the potential for problems and conflicts.

Ernest Warren: Your Honor, I want as much contact with the judge as the U.S. attorney has with the judge. Every time a search warrant is signed or wiretap motion, anything of that nature, the U.S. attorney is in the office of the judge back there in the chambers, explaining what this affidavit means and everything else. Every time I can have my ex parte contact with the judge, I want my ex parte contact with the judge, too, because I think that is something that the U.S. attorney has over the defense bar, is the fact they have ex parte contacts. If this is the only way I can have it, is to ask for money, I want it.

Judge Cardone: Ms. McCrea?

Shaun McCrea: The Oregon system is working well. Our biggest problem is, we don't have enough money. It is shameful that we have to pay investigators $29 an hour. I am embarrassed by that, but anytime you have a situation where judges and defense lawyers are vying for pay with the legislature, there is an inherent conflict. That was one of the issues here. And now that we don't have that issue, there has been substantial improvement in the Oregon State System. But I agree with Ms. Wood, it's . . . if we could trust Congress, we might be in a different position, but given the political arena that we face these days, we need to be under the auspices of the judiciary. Otherwise, I would, if I felt comfortable with the financials, then my preference would be to have a separate agency through Defender Services

and to have judges as advisors and to assist the defense function but not to have us within the judiciary itself.

Judge Cardone: Thank you.

Dr. Rucker: I'd like to thank you, on behalf of the Committee, for your thoughtful and very candid comments. It truly is helpful and we do appreciate having you here. If in the future you think of anything else that you like to communicate to us, we'd love to hear from you. You can send emails to us at cjastudy.fd.org. Again, I would emphasize, please share any thoughts that you have with us and thank you again for coming and giving us your time today.