Ad Hoc Committee to Review the Criminal Justice Act

Public Hearing # 3–Portland, Oregon February 3-4, 2016

Transcript: Panel 6—Views from Federal and Community Defenders

Dr. Rucker:

All right. I'd like to begin this last session of the very long day, and thank the five panelists we have before us attending. I'm going to be very short with comments, because I feel like my voice is beginning to fail me, even though I'm not talking that much, but I do want to welcome you hear and I really appreciate that you are here before us and willing to provide us with some testimony. What I'd like to do is begin by asking everybody make sure that their cellphones are off.

For those of you on the panel speaking before us, if you would speak directly into the microphones, they are very directional, and we are streaming this and recording it. We want to make sure that we get every word that you have to offer us, and so, let me also say that I like to begin by offering each of you to speak for about five minutes. We have read all your written comments so you don't need to read those again, please.

If you would like to take that five minutes to make some points to help us sort of jump off of with some questions after you're done with your opening comment, so let me begin on the left with Mr. Filipovic.

Michael Filipovic:

Thank you, Dr. Rucker. I like to begin by describing what the practice is like in the Western District of Washington. We're very fortunate to have a bench in the U.S. Attorney's Office that is very collaborative with the Defense function and many aspects of our practice. Somewhat similar to the testimony you heard about the District of Oregon from Mr. Wax yesterday. And that's really enabled us I think as a district to operate in a much more efficient manner in a number of different areas, particularly on the recent review of the "Drugs Minus-Two" legislation, the *Johnson* retroactivity.

We've had committees that have been put together including someone from the Clerk's Office, the U.S. Attorney's Office, the Probation Department. The Probation Department has been very helpful at the direction of our chief judge in getting us materials so that we could do the initial review, and when there's a CJA panel attorney involved we then offer, the case to that former CJA lawyer if they're willing to take it. If not, we will typically just keep the case.

Most of the "Drugs Minus-Two" motions that were granted were by stipulated motions between the government and the defense, so that culture has really been very helpful to our clients, but also very efficient and a cost saving way to approach things. With respect to CJA, our system is a little bit different than what they have in the District of Oregon. I

believe Mr. Wax testified that in their District of Oregon. The Federal Defender does the initial review on all the vouchers and makes a recommendation to the judge. And the CJA statute, ultimately, it has to be judicial determination on a voucher. There's no way around that under the current statute.

In our district, the vouchers go through our CJA panel administrator and she does an initial review. She's not as substantive as the judge would conduct. She looks for error, she looks for issues that are maybe not adequately justified by the panel lawyer, so she gets the voucher in shape before it gets reviewed, sent over to the district court judge. I do not get involved in the voucher review as a federal defender except in one circumstance, and I think you heard that through Ms. Horwitz's testimony.

We have a standing committee under our standing committee, which by the way has no judges and no prosecutors. It contains myself, our panel administrator sits in, we have three CJA lawyers, and then another lawyer who's not on the CJA panel. They serve for three-year terms, but again, we make recommendations. We do not have the authority to make final calls on vouchers, so we interview applicants to the panel, we make recommendations about panel members we respond to courts inquiries about panel attorneys that they may think are having problems.

With respect to the voucher review, we get about a half a dozen of those referred to us by the court every year. I thought the system was set up so that the defense council could refer the matter to the standing committee, but when I re-read the plan before coming here, it's really clear that it's just the district court judge, and it's a "may," not a "shall." Typically, what happens is, if there is a concern about the voucher, the district court judge will give that attorney an opportunity put in a supplemental declaration justifying the amount.

If the district judge is not satisfied with that, then the district court may, but it's not required to send it to our standing committee, and often, I would say most of the time, they will send it to the standing committee. I can tell you that I think if one of my panel members came to me and said, "Listen, I'm not getting anywhere with this voucher with the judge. I'd like to take it to the standing committee," I would expect that most of our judges, if I contacted that judge, would agree to allowing us to be involved in that process.

In terms of how things are going for our CJA panel, there is some voucher cutting that goes on. There was a question earlier about how many of these are granted, in other words, when we send in a report, how often our recommendations followed. I would say in most of the ones I've been

involved with over the two years, the district court judge has generally followed our recommendations. I've met a couple where they haven't.

One case that involved the largest voucher cut really involved a problem where I think even the committee recognize, the attorney used some bad judgment about litigating an issue that the federal court simply had no jurisdiction over it, involve someone in the state jail, and the lawyer wanted the federal judge to fix this problem for his client who was in state custody. We take this responsibility seriously. We don't just rubber stamp what the CJA lawyer puts in the bill. We do a thorough analysis.

Now, the other example that came up earlier was, we had two vouchers come in, the same, it was a trial, a jury trial, a bank robbery case. One defendant, his lawyer who was a former lawyer in my office billed very low and he billed I think like \$14,000 less than the codefendant's attorney, which for good reason, I think the district court judge said, "something's wrong here," but after we did our investigation, I spent hours going through the bill, talking to the lawyers, going through the docket. It turn out there was a reasonable explanation for it. Our former lawyer in our office does not bill very carefully, and the way he deals with that lack of care in billing, is he under bills to his own detriment. The other lawyer is incredibly meticulous on how he billed. When we explained that to the district court charge, he accepted our recommendation and he paid that bill in full. I think the standing committee works well, but I think it's not enough. I really believe that there should be much more independence in the defense function than even what our system or the Oregon system provides.

Specifically, I think much of the discussion here and among the Defense Bar has been about the national model of independence. Should we be out of the judiciary? Should we follow the Prado recommendation? Should we be something with DSO plus? What I've been focused on is the local conditions. I went back and read the Prado report this morning, and the Prado report has an interesting section about local independence and it made a recommendation that there should be local boards established. It made the point that regardless of what you did on the national level, you could establish local boards that would be independent of the judiciary, and it go into it in great detail. I'm sure you're familiar with this, but to me, that really struck me as an important place for the Committee to pay some attention in terms of the distinction between the national model and the local model, because I think a lot can be accomplished just locally under any changes that get made to the CJA statute or the judiciary guide without having to necessarily make. I think those could fit in with any model that the Committee ultimately recommends.

I wanted to make one addition to what Ms. Horowitz had stated about the 16% rate for experts in our district and why that is. I think a big part of that is, just from speaking to CJA lawyers, I do think they get discouraged by the process. For example, while the best practice, if you have to interview a witness, you may later need to impeach in a trial. Would be to have an investigator do that interview or do the interview with an investigator? I think a number of our panel lawyers just do the interview themselves, and then they expose themselves to a problem if that witness changes his or her story. A lawyer obviously can't testify for impeachment purposes.

The other thing that I think is happening is that, I think in some of the large multi-defendant cases, the panel has been encouraged to share some of the resources. Occasionally, we'll have investigators that are shared, but on just certain parts of the case for which you can avoid a conflict situation. I personally feel the 16% rate is too low. I think our panel lawyers should be asking for experts and investigators in more cases.

Dr. Rucker: Thank you. Mr. Gallagher?

Tony Gallagher: Thank you very much, Dr. Rucker. Judges, Reuben, Katherian. It's good

to see you, and I really thank you for inviting me here. Don't forget who? .

. . Hi.

Michael Filpovic: "The citizen."

Tony Gallagher: I forgot "the citizen" from Tennessee, and the Professor, and Autumn, and

Arin, thank you for being here too. Thank you for the five minutes. I'll talk to you later. Usually, when I come to Portland from Montana, there is a little red light in front of me that tells me to shut up, so perhaps Dr.

Rucker, you could be my red light.

Dr. Rucker: That's coming.

Tony Gallagher: Thank you. When I arrived in Montana twenty-three years ago, I had been

assistant federal public defender in Baltimore. I had been there for eight years. Prior to that time, I was a prosecutor in Baltimore City for six years. When I left Maryland, it was during the Prado commission, and the Prado Committee had some excellent ideas. At that time, in 1991, in 1992, I was very much in the camp of those who wanted to stay under the judicial umbrella. I am no longer in that camp. When I went to Montana, I visited each of the tribal councils, and I won't tell you which tribe it was, but I visited one of those tribes on four separate occasions. They knew I was there. I was there to explain to them that there was now going to be an institutional defender in federal court, and that I was that defender, and I would have a group of lawyers working for me in an institutional

defender's office to provide services to their sons and daughters who were charged with felony crimes in federal court. As I said I went four times, and it was only on the fourth time that at this one tribe I was allowed to make my presentation. Afterward, I stepped back and I was in the back of the room, and the tribal council president came to me and said, "You're probably wondering why we had you wait until tonight to speak to us," and I said, "yes, sir, I was wondering," and he said, "We wanted to make sure that you are a good listener."

I want to thank you for being good listeners not only through this grueling day, but also all of the days and all of the times that you have spent reading our materials, listening to our ideas, listening to our complaints, and listening to our suggestions. This may not be the time to thank you because I certainly don't know what your report will say, but I want to thank you for listening.

Now, with respect to independence, I am, as I said, outside the camp of those who want to remain within the judiciary. There seems to be a consensus, or at least the majority, that vouchers and experts should not be handled by judges. There are lots of reasons for that and you've heard some of those reasons today, and judges don't want to do vouchers. They find it very difficult, and in my written remarks, I have cited some examples of cuts within my own district. I can tell you, like Tip O'Neill, all politics is local, all offices, all situations, all customs and cultures are local. I have a great bench. Three great active judges, three really great magistrate judges, and my senior judges are also very good.

I was shocked to find that there was some level of voucher cutting that there is. One judge, when he was confronted with the fact that vouchers had been cut, said, "I didn't cut your voucher by that much, did I?" "Well, yes, your Honor, you cut it by \$8000. You cut it by a third." And he was shocked, and he turned to his law clerk and said, "did I do that?" She, according to this panel of lawyers, she said, "well, yes judge, you did." There is a concern about those cuts and that leads me to my second point, which I was to make in this opening remarks.

If the judges don't want to have to do the vouchers, if there is such a consensus that voucher cutting and expert handling for the CJA panel is anathema, then why is it that the defender is appointed by the court? Why isn't there the same distaste for that function? And why is it that some of my colleagues a few of whom are seated behind me, they have to go to the circuit to ask for another lawyer and don't get it, even though they've demonstrated through their data that it is not only supported, but needed, which brings me to my final point that I'd like to make in these opening remarks.

We've heard much and I've listened to a lot of the hearings. I don't really have a life outside being the federal defender in Montana, so I spend those few hours between midnight and 6 a.m. when I can't sleep and I'm thinking about some other case, and trying to take my mind off the fact that the government is trying to kill one of my clients, that I heard a lot about empirical and anecdotal information, data, and stories. I submit to you that the only difference need be found in a jury instruction and that there is no difference between direct and circumstantial evidence.

Now, I will close with what I do every time I leave my office when I'm going to court or going to see a client, and I'm off to do God's work.

Dr. Rucker:

Thank you, Mr. Gallagher. Ms. George?

Andrea George:

Thank you, Committee, and Chip. I was very fortunate. I came to the federal defender system right out of law school and I went to the District of Minnesota. In fact, Katherian grilled me, she interviewed me and grilled me much harder than the people that have sat on this panel and testify, but I have been in the system for twenty-seven years, twenty-three of them in a Federal Defender Organization, and then I am now in my fifth year as the executive director in a Community Defender Organization.

I could tell you that in the District of Minnesota, we appointed or assigned CJA counsel to the cases, and that was an incredible benefit because we understood the skill and knowledge of each CJA counsel. Those more experienced had the more . . . the clients facing much more time or the more serious offenses, and so it was an excellent system in providing really good counsel for those that needed it. I then moved to CDO program, which we don't appoint. We have no panel involvement other than training. And I was very surprised that we did not have the control to appoint the lawyers to the cases, because, certainly, we as defenders who see counsel in the courtrooms know their skill level and experience and can also be there to help them, but if it's just the wheel coming up and that person may get someone who is facing a great deal of time and not have the experience to handle the case. In that regard in being in both systems, I think that one that controls the panel on one that does not, that the one that controls the panel is much better for the client.

On the other hand, the judges in Eastern District of Washington, I've talked with them about this. They have indicated concerns about conflict because we have CJA counsel on our board of directors, and so it may appear as though there's a conflict. I don't think that there would be necessarily a conflict, but there if there is appearance of a conflict, they didn't think that that was appropriate. My first year as the defender, and I'm trying to figure this all out and working through employee issues and things like that. Suddenly, the February 14th, we call it the Valentine

massacre, the letter came down and which all our budgets were slashed. So suddenly, the budget is slashed, and then sequestration hits, and then a sixty-two defendant wiretap case came into the district. It was frightening, because here, the panel, the payments were being slashed or delayed and there was a real question about where the money was going to come from, was it going to be taken from Peter, the panel, to pay Paul, the defenders, and what we're going to do with the sixty-two defendants? There was all of the discovery started to come in and it was complicated. It was wiretaps, it was audio, it was video, it was Pole Cams, it was all on different platforms. Some of it was not OCR'd, some of it was unitized, so that it was extremely difficult for the panel members to deal with this mass of electronic discovery that they were getting. So then there was a question of, and this was again during all of sequestration and the concerns of financial situation, the panel members had worked with thirdparty vendors before, but at the cost of hundreds of thousands of dollars. And there is the National Litigation Support program, and they do incredible work. They do incredible work and we did actually use them on this case, but I have to say, with all due respect to the panel, they are, many are...and they would agree, and I've talked to some about it so I don't think I'm offending them, they are technological dinosaurs and don't have the skills. We have talked about that and they've waste much frustration with the platform that was used. It was just too complicated for them, and so they were wanting a third-party vendor, again, at the cost of hundreds of thousands of dollars. I talked with my computer person, and we sat down, and we figured out a platform that would be as far as simplified for them to be able to use that was really cost-efficient.

That was my assistant computer person put it on . . . he unitized it, he put it on a standard platform, and then he put it all in an Excel spreadsheet where there would be a button and it would just say "play." You would click "play," and the wiretap would come up and play, and then a line sheet would come up for an example, but it was such an easy program and something that was so useful for our district where we have mostly solo practitioners who are not tech-savvy, and so it was incredibly useful and financially efficient. So then, after that, and that they used Attorney's Office, felt that it was easier to panel lawyers, felt that it was easier and it was put on a thumb drive, so that every time we updated it, they would just come and get their thumb drive reloaded. We started doing this in more cases. We would be appointed as the discovery coordinator and it works out really well in our smaller district that doesn't have the terabyte cases, the ultra-huge cases, but the medium cases that are too small for the National Litigation Support Team to work on because they're too busy on really much bigger cases, but it's an excellent system.

What I think would really work for the panel which would just be really so cost-efficient is to have a computer person, and it could work like the CJA

administrator. Have a computer designated for the panel members and that person would be on salary, it could be administered by our office and smaller offices like ours, or medium-sized offices like ours, and then the panel would have access to computer assistance without the huge cost of going to a third-party vendor.

Another issue through all of this, on this case was, there were sixty-two defendants. I believe over half of them were detained and they were detained in remote jails. One is five hours round trip from Spokane. One is seven hours round trip, so you can imagine the cost for CJA counsel, at least thirty, to go visit their clients. You figure seven hour trip at even \$100 an hour and time to sit down a visit with a client that's about \$1000 a trip. At thirty counsel, that's \$30,000 for the lawyers to see their clients once.

I heard the last panel talk about video conferencing that that would ease that burden. We had video conferencing, but the conferencing . . . there wasn't the privacy, so that when the client spoke with the attorney, it was in a group. It was in sort of an area off the main pod so other inmates could hear what was being said, and there also isn't that personal contact, that human contact that you can't get from a video. I don't know what the solution is for these remote jails, other than to have the Marshal's build holding facilities in areas.

What's working now, or what's happening now is just so expensive, that panel lawyers are . . . I don't think the judges are doing this on purpose of course, because they want the panel lawyers to give excellent representation to the clients, but there is . . . it becomes difficult for them to see their clients the way we believe clients should be seen.

Dr. Rucker:

Thank you, Ms. George. Ms. Hay?

Lisa Hay:

Thank you. Welcome everybody to Portland. I'm very happy to be here to testify and happy that you are here. I heard that we recalled Sweden yesterday and I felt complimented by that, but today, we recalled Nirvana so I know we've kind of hit the best we could be at. You heard testimony over the last day and a half from various people about the quality of defense in Oregon, and I know one of your tasks is to measure quality of the defense and whether there is accurate and reliable data in order to do that, so I had three points I wanted to make that before I had a few thoughts about structure. The first point is money, high quality defense costs money.

You heard that in the District of Oregon, people use experts. People use mental health experts. We use investigators. We use paralegals. Those kind of resources made a difference in cases and you heard from the

attorneys where they made a difference, and you heard from clients where those made a difference. We start using our resources as soon as we get the case, because we know trying to get somebody out on pretrial release is critical for rehabilitation, and I think we have about 44% of our defendants is getting out of custody if we don't include the ones with ICE detainers, where now we've been getting the ones with ICE detainers out of custody with the new change in the law. So it cost money, but it's important to not only focus on how much the defense cost at the beginning of a case.

Second point is opposite of money, which is savings. When you talk about how much money defense cost, you should also include in your report how much money is saved by the lack of incarceration that occurs at the end of the case. I included some of that in my written testimony. We did a little sample study of gun cases and bank robbery cases over the last six years in Oregon, and we just compared what the government ask for in its sentencing memo and what the judge actually impose.

We showed \$15 million were saved presumably as result of defense advocacy because I don't think the government changed their mind, and as for less time, without our work. That's \$15 million and just two type of cases, and that of course drastically understates the actual value of the defense work, because that doesn't give credit for any of the defense work that went into the negotiation before you got to that sentencing recommendation. And yesterday, you heard testimony from two people who were charged in drug cases, mandatory minimum, ten year sentence, and a career offender, fifteen year sentence. Those were the sentences the government was seeking in their charges at the beginning of the case. They each got probation. That's three quarters of million dollars, \$750,000 that would have been spent in incarcerating them at the cost of \$30,000 a year, and that's money that was saved by that defense work. The defense attorneys spent money on mental health resources. You heard they hired psychologists, they had investigators. One of them went to California to verify a client's story. That was so worth it in just the money. That's something to make sure you take into consideration when people say defense cost money. The answer is ves, it does, and it saves money at the other end. And then the last point is, again, the opposite of money. It's that intangible, that immeasurable benefit the society gets from not having those people go to prison.

You heard, I hope, the compelling stories that they told you about reconnecting with their children, going to PTA meetings, going to basketball games. The cost of having those defendants having spent ten years in custody is huge to society, and we avoided that by the work that was done, so they were back home with their families.

You can't measure that, but I think that's really important. It also struck me, and I hope it struck you, that these were defendants coming in here testifying in front of you in the very same court house where they were sentenced and prosecuted by the federal government, and they were sitting here should to shoulder with a federal judge, and with the defense attorneys facing judges and talking to you about what happened to them in the system, and they had a positive reaction to it. They were talking about now paying taxes and what they were doing to be good citizens.

The effect of our work on promoting the sense of justice is critical, and I think when you think about what Congress sent, a sentencing goals, it's rehabilitation, deterrence, protection of the public, and promoting respect for the law by just punishment. Each of those goals was so served by what happened to those defendants without ever putting them in a federal prison, but that work could never have happened if defense attorney's didn't go back to the magistrate judge a couple times and say, "We need to work on pretrial release again, judge." It wouldn't have worked if we didn't have pretrial services supporting us.

It wouldn't have worked if we didn't have magistrate judges who are willing to let somebody back out of custody after they failed once, because unfortunately, with our drug addicted clients, they do relapse. We let them out on pretrial release, and they relapse, and in some districts, that's the end of the road. Okay, you relapsed, that's it. You go back in. In this district, you got to go back into custody, but it might just be for a day, and then you get to come out again, and you get to try again. That sense that there is a process makes a difference.

I heard you when you talk about the quality of defense work and how to measure it. You don't forget those immeasurables that we can't put a value on, the sense of respect for the law that's promoted when people are treated fairly, and the cost that we avoid to society, to children's, and families, and communities. That's part of the cost I want to make sure that you think about, because the reality is, everybody who's been coming here and saying, "Nirvana and Oregon is wonderful, you get to do all the stuff." If you do that everywhere in the country, it certainly going to increase the cost of federal criminal defense.

There's just no doubt about it, because the work isn't free, and so if you're going to do it, you have to pay for it. In order to pay for it, I think you have to know in your heart that it's justified. I hope you heard the testimony today and yesterday that would show you what makes it justified. I also do want to talk about structure because I really appreciate that there'd been so many question about it. I agree that structure, it's important to figure out because it creates the incentives, it creates the accountability, it just creates the opportunity for work.

I oppose creating a free standing federal defender structure outside of the judiciary. I know that's not what all my colleagues necessarily think. I'm happy to tell you more of the reasons I oppose that. I do believe within the judiciary, you can create a structure that would allow for an independent defense work, but have some role of judges in the system. I recognize that if I could have it exactly how I want it, I would say don't do anything, because of course, we live in Nirvana and any changes we need, we can do right here.

I take seriously what my colleagues have said about problems around the country, and I do think judges should not be involved in the selection of the CJA panel, and the assignment of CJA counsel, and in the money at the local district micro-manage level. The two points about structure I wanted to make just briefly that I haven't heard that are good about the structure we have now. We have the Federal Defender Offices and CGO offices that are salaried employees, and then we have the CJA panel that are the paid by the hour employees.

They're two models that I think work really well together, because the federal defender, CDO-salaried employees, create an institution, a sense of stability, something that can work and actually does serve the court. That institution doesn't only have clients at issue. The institution also does work for the court. We try to make things efficient, we try to work with the judges, and we can be a partner in that, at the same time that our individual attorneys and individual cases serve the clients.

The individual CJA attorneys can't provide that, but one of the problems with having a salaried set of people in an institution is it's not very flexible, so when there's a change in the amount of work, you can't change the institution very well, and the danger of that is if it's flooded with cases. If you have a certain number of lawyers, and all the sudden they have their case-loads tripled, they need to have a way to avoid becoming so overworked that they end up doing the wrong thing, and whatever they fear is that lawyers who have too many cases will not do the work that's needed. They'll negotiate them quickly, it'll become a meet and plead district and you won't get the quality of defense, so that's the problem with an institution like that. The opposite is with the CGA paid by the hour folks. There's real flexibility there. If there's extra cases, you can bring more people into the panel. It's not such a rigid institution, but the problem with that unit, is you still have to figure out what keeps them from deciding to take every case or trial because they're paid by the hour rather than negotiating a quick deal. You can rely on their integrity as lawyers, but what's the institutional check on making sure that the hours they spent are actually in the client's interest, and I think for that you need a peer review model, a peer review committee that helps review their hours so that they have the integrity of saying they're doing the work

that's needed and you have a peer review system that looks at those hours and justifies it. I think there's a benefit for the structures we have, the salaried institution and the flexibility of the paid by the hour people, because you can add and subtract more easily.

I think having decentralized local control makes a difference, because you've heard things are different in every district. You can't really change how people act without creating an institution where they can act differently, and nobody in a rocket docket district is going to feel like they can spend money on a mental health evaluation where you need to get the person's IEP and elementary school records to show the psychologist how this person has been diagnoses from a really young age as having brain trauma for example.

They're not going to do that if you're going to have your client plead in sentence before you ever get to use that report, so you have to create opportunities, and then within those opportunities try to push structures to change. I don't think you're going to be able to create a national model that changes everything, but you can find structures that the local level allow this kind of creativity to occur. Maybe if we can keep telling people about the Oregon model without it having get squashed, is of course the one word around here which s, "Don't tell anybody how good we have it." But I think it's important for people to know, "This is what we do and we're proud of it," and the more we can tell people that the more they will try to spread that around the country. I'm happy to answer other questions. Obviously we had ministers in CJA panel, you've heard lots and talk about that, our written testimony covered it. I'm happy to tell you more what we do with the panel itself, but those are my ideas about the structure, and I'm glad that you're looking at it.

Dr. Rucker:

Thank you. Ms. Nester

Kathy Nester:

Thank you, Judge Cardone, Dr. Rucker, honorable Committee members, including Chip, for inviting us. Since I am the last speaker of a long two days, I thought I might try discussing a slightly different topic with you all, and to put it in context, I would start with this. I consider it a privilege and an honor to be a federal public defender. To go in to defend my clients, to protect their rights under the Constitution, to work hard to get my attorneys, and my office and the staff, the resources that they need to do their jobs and do it well. And to work with such people of honor and integrity that are all trying from our different perspectives to do what we think is right, and I truly believe we're all trying to do that. However, our profession, the principles that we tend to value are precedent in stability, and predictability, and fairness. Sometimes, those principles make it very challenging to implement change in the way that we practice law. We're

all very comfortable implementing change and applying the law, and watching the law evolve with society, and how we apply it in cases.

However, we seem to be very resistant as a community to implementing change of how we practice the law. I think those of us who had been practicing for more than a couple of decades still understand the need to cling to your foamy boards, so I do think there's a moment here for this Committee to perhaps be a voice of how we can involve in the way we practice law, not just the way we apply it.

In Utah, we have been making some real changes to how we actually approach the practice of criminal justice. The way we're doing that is we are releasing our tight hold to years and years of . . . well, in my gut, this feels like the just thing to do. If we sentenced someone longer and put them in jail for longer, we're sending a stronger message and they won't do it again when they get out, because that's instinctual, it's intuitive, and we just feel that that's what we believe, and that's how we've always done it.

Well, social science has started putting its nose under the tent, and telling us over and over in many different ways that that is not actually what the evidence shows. We have been trying in Utah to incorporate evidencebased approaches to sentencing to pretrial detention issues, and to re-entry into the community. We are looking at what the science is telling us about what really does stop recidivism, what really does make our society safer, our communities richer and more vibrant. We've focused on a few communities that we feel have posed the most problems repeatedly. That would be people with addiction problems, people with mental health and behavioral issues, our tribal communities which have been so underserved in terms of access to lawyers, access to their probation officers, access to care. We've focused on veterans who have very unique issues including post-traumatic stress disorder, mental health problems, and we've really focused on veterans and their issues with re-entering the community. We have also focused on people who are first time in the system, who their crimes perhaps may not be particularly dangerous, and we're trying to avoid this collateral damage of felony convictions and how it follows you forever. We are in the process of creating a pretrial diversion program that assists these people in getting back on the right track without leaving our system with this forever cloud above their ahead of being a felon, and all of these things that we are doing are working.

We are trying to get data. The hard part is with getting empirical data is you have to hire someone who is a specialist and collecting that data, which would be a social scientist, a professor. We have gone begging for grants to DOJ, we've gone begging in the community. In Utah, the LDS church has been begged, too.

We're trying to find many anywhere we can to pay for the data, and we're in this cycle of the courts wanting to say we need data before we support these programs, but we're not going to give you money to get the data, and so it's challenging and it's difficult, but we're soldiering on. I do believe that there is a serious lack of parity of resources compared to, I believe, between the federal defenders and the CJA lawyers, and every other agency in the federal system.

The Department of Justice has created designated re-entry specialist in every U.S. Attorney's Office in the country. The Bureau of Prisons has created re-entry specialist in every region in the country and has created re-entry programs including cognitive behavioral therapy, all types of reentry connections within their Bureau of Prisons facilities. The AO recently issued a memo stating they were going to invest \$15 million in probation to allow them to follow these re-entry programs, and invest time, and treasure, and resources in them.

As a public defender, we have no designated positions that support these programs, we have no program funding available to us at all. As a matter of fact and as I made this clear in my written testimony, we don't get credit for these programs to compare what we're doing to prevent, as my colleague Lisa Hay just said, that thousands and thousands of dollars you're saving on recidivism, they're giving us credit as if it were an illegal re-entry case. Half of that. Now, most illegal re-entry cases are over in our district, we have fast tracked. They are over in a period of a month or two. We spent very little resources on them, very little time on them.

Our re-entry programs last anywhere from twelve to eighteen months. They involve travel to remote tribal communities. They involve resources. Our Drug and Mental Health Courts meet weekly, and yet we are getting less credit for that than a misdemeanor, and so my office took quite a hit when we have the staffing formulas because of the fact that a lot of this very good work that we're evolving, and growing, and doing is not credited and is not supported. I would ask the Committee to consider, as you prepare your reports as Lisa said, there's more ways than we save money than simply cutting vouchers.

For every person where we prevent recidivism because they've successfully completed a drug court, a veteran's court, a mental health court, we're saving the community time and trouble. I will say just to add of a minor aside, we actually did add up how much money we saved on our most recent "Drugs Minus-Two" project in our office where we spent many, many hours preparing orders so that these people can have their sentences reduced based on the revisions to the Guidelines.

We, just in my office alone, saved over \$6 million to the Bureau of Prisons on the amount of time that we cut off of those sentences, so I would be grateful if the Committee would consider these alternative programs to appreciate that it is time to evolve, to look toward what the science is showing us, to focus on a holistic representation of a client that doesn't end as they walk off to prison, and I would ask you to consider that, and I thank you for your time.

Dr. Rucker:

Thank you. Judge Fischer, do you like to begin the questions?

Judge Fischer:

Thank you Dr. Rucker and thank all of you for being here. It is the end of a long two days, but there's a lot of questions that we have to ask and we've really need to not only identify the issues, but get some of the solutions. I'm particularly interested Mr. Filipovic about your standing committee that reviews the vouchers, and it sounds like if all is well with the judge, the judge doesn't send it to the committee. Is it only when he/she plans to cut? Do you know, or is it just if you looking at a larger voucher and just wants some input?

Michael Filipovic:

I think it can be both. I've had some where the good judges wants the committee to weigh in from the Defense Bar's perspective, and I think we're in a position to maybe do a little bit more investigation than a judge can. I think in some cases, the judges has some serious concerns, he or she may have some serious concerns about how the lawyer perform in that case. When I say perform, the example I gave was of a lawyer that was the big part of his litigation and his billing had to do with an issue that he was litigating that had really no business in federal court. That was helpful that that voucher got cut. The lawyer was kind of referred to the standing committee, also for some counseling and mentoring. I meet with that lawyer once a month now. He's a good lawyer. He really didn't do a very good job on this one case, but he's still on our panel and we're recommending that he stay on the panel.

Judge Fischer:

Do you have any idea about the amount of time that that committee spends either annually or on a particular case? We're trying to get a handle on what kind, because I think they do this literally pro bono.

Michael Filipovic:

That's correct. We meet four times a year. We're required to meet a minimum of four times a year. Much of the work we do on the voucher review, it gets assigned to one person, and most of the time it's me, to begin the process. Sometimes I can take eight hours off my work and I organize it, send the materials out to the committee by email, and then we all weigh in. Often, I'll draft a rough letter, and then the committee members will spend, they're probably each spending an hour to thinking it through, looking at the letter, and making suggestions. And we have disagreements within the committee, and it's been very useful. I've never

been in private practice, so I have to rely on the CJA lawyers and the private practitioners to explain some things to me as well in terms of the billing and how it's done.

Judge Fischer:

What are the kinds of things? I'm thinking what happens when a judge looks at a voucher. Is there a line-by-line review? Do they go back, for example, if there's a hefty sentencing charge or a hefty charge for a motion? Do they go and read the documents and evaluate that kind of thing?

Michael Filipovic:

The one case that Ms. Horowitz referred to that's presently been sent up to the district court judge. It involve the lawyer who billed a substantial amount of time for researching a suppression issue, a Fourth Amendment suppression issue, in a substantial amount of time with the client trying to explain why that motion should not be filed. We had a case where there was no suppression motion filed, and yet a lot of time was billed, and it was legitimate.

There were good reasons to spend time with the client to recommend against filing the motion because of the negative ramification it will have on the other side from the government, threatening to not agree to acceptance of responsibility or bringing a mandatory minimum. Often, as the judge, I don't think you necessarily see those things going on behind the scenes, so that's one example.

Judge Fischer:

Thank you. A quick question about your suggestion that attorneys go to a judge other than a presiding judge for things like expert services. I maybe the only in the world who has this concern and maybe it's totally unfounded, but I'm a little bit uncomfortable, and honestly, in my district we have a CJA administrator, so I don't review my own request either, but if our administrator were to turn down a request, then the attorney could come to me.

I'm a little bit reluctant to have some other judge or somebody else looking at that and saying no, and messing up my case, where if I would have said yes . . . and maybe that just won't happen or maybe the ability to appeal to the judge presiding is the way to answer that. Do you have any thoughts?

Michael Filipovic:

I think that would be the ultimate answer that maybe the final arbiter could be that the trial judge if, final appeal for the lawyer. Our view and my view is that it shouldn't go to any judge. It should, and this would require some changes in the statute and in the Judiciary Guide, but I think either the Federal Defenders should decide it, or what I've said in my letter, "If we have a real conflict, I think you could train two or three CJA panel

members to step in and do that review under the same criteria that I would apply to my own lawyers when they make an expert request."

I think under the existing system you could do that, and I think Oregon does something very similar to this, and then you get the recommendation from the Federal Defender or from the standing committee to a different judge other than the trial judge with the hope that that judge would respect our recommendation. I think that putting that in the middle of this process would be helpful.

I'm sure this has been mentioned, but the classic example where you really don't want the sentencing judge to be ruling on this would be, in our district, they charged a lot of child pornography cases and the government always want us to present to them, for negotiation purposes, a psychosexual evaluation. Sometimes, those evaluations are not very good for our clients. If I've had have to go through, your Honor, to get that approved, and then we end up at sentencing, six months later and you don't see a psychosexual evaluation.

I know as a judge you're exposed to kind of put that out of your mind, but I think really hard thing for a judge to ignore, assuming you remember that you had granted that request.

Judge Fischer:

I wouldn't have remembered, but if it's the practice for the U.S. Attorney's Office to have you get one, and then you don't use one, then don't the judges know that that's the practice and you haven't used it anyway?

Michael Filipovic:

Because we don't use them, we don't always do that. I mean there are cases where we just say, "you're not going to get a psychosexual," and we don't do the psychosexual evaluation for any number of reasons, but that would hold true for other experts or just a psychologist in normal case, and then you don't see it at sentencing. I think that, to me, that's a big problem. And the other problem I was identified was the ex parte in nature of the proceeding. Some defenders like the idea that they can make these ex parte requests and weigh out the theory of their case to the trial judge. I think it's a bad practice.

Judge Fischer:

Mr. Gallagher, you mentioned about a thousand staff hours annually that your office spends on the panel. As I understand it, you don't necessarily get any extra money for that.

Tony Gallagher:

No, Your Honor, we don't and I'm seeing that's not only lawyer time, but that's also staff time. We do not have a CJA panel administrator. Although, I do have a panel coordinator who is also my legal assistant.

Judge Fischer:

Remind me what those people do, and the reason that I'm concerned about this is, I think when we make recommendations, we're going to be asked how much is this going to cost, because that's what Commerce is always interested in, and the AO is going to be interested in that. I'm trying to figure out how we can evaluate what the various alternatives would cost, because if we're not doing that or we're not suggesting that some kind of study be done to evaluate that, then we may end up in the same position as the Prado recommendation and I'd like to gather more backup for the recommendations. What is your district?

Tony Gallagher:

Certainly, it would be difficult for me to give you empirical data on the cost. I can give you anecdotal information with regard to the cost. Of course, we keep time for the lawyers, the paralegal, the investigator, and so I can call out that time that is spent in CJA panel consultation. I think you've heard from Ms. Holton and Mr. Hoovestal earlier today, we consult with our panel almost every day, somebody is talking to the panel attorneys about the case, about a theory, about obtaining experts, about where to go and what to do.

Oftentimes, there is a lot of our support staff is also assisting the panel in ways that may not show up on the timekeeper because they don't keep time, but they may be delivering things to a client's family that had been sent to our office, and our investigator went out and found where the family was, and then they are delivering that material whatever it might be, the client's clothing, the client's personal belongings, so on and so forth.

We offer that assistant to the panel as much as we possibly can. That's one area of cost, the other of course is training. We don't train as often as some of the other offices. I know you will hear or you've seen that some train as much as once a month. We have a huge district, we have one division. The billings division is actually larger than twenty-four states, so it's hard for us to get around to each of the offices, and get our panel together and train them.

We do them at least four times a year in brown bag luncheons or end of the day CLE sessions on a Friday or a Thursday, and then we have an annual conference where there is two solid days of training for the CJA panel and for other members serve the Montana Association of Criminal Defense Lawyers and other criminal defense lawyers in our state, which also gives us some contact with new, young lawyers who were up and coming, and hopefully we can train them and they will apply for the panel in a later day.

There is a lot of work that is not as an intense as Mike's work, and certainly not as intense as Lisa's work where they are doing the voucher

reviews and deciding all of those things. We don't do that in Montana. That is not part of our function, but in the lesser realm, we're still devoting about a thousand hours.

Judge Fischer:

Ms. George, have you thought about how much time it would take? I know you're already doing a lot in the way of discovery assistance. Have you thought of how much additional time or how many FTEs you would need to, say do the things that Ms. Roe does in her district and run the panel appoint council? Things like that.

Tony Gallagher:

You mean to handle the panel, she also has an incredible mentorship program.

Judge Fischer:

Correct.

Tony Gallagher:

That is another. I think that you would need, at the very least, a panel coordinator, and then I believe they have spent five years, but budget person that helps appoint the individual panel lawyer, so two FTEs I would think.

Judge Fischer:

Ms. Hay, you talked about your district and you have at least three personnel you said.

Tony Gallagher:

Right, we have three full-time employees who work an hour of CJA office, so I think you heard Steve Wax saying it's the only office and still is with the lock on the door, with locked file cabinets, and they're in down one of the quarters in our office, so three full-time employees who only work on the panel. Plus, we occasionally have another legal assistant help if we're behind, and then my chief deputy spends a lot of time reviewing vouchers, and I review some vouchers.

Although, I have delegated a lot of that to him recently, but I've also spent a great deal of time right now on the panel revision. I've only been a federal defender for a year so I've spent time just meeting all the panel attorneys trying to know what their work is. I spend an inordinate amount of time in the panel and would like to spend less, and so I'm hoping to set up structures that don't require so much time from our office, because I think it's great to have a Federal Defender Office run the panel.

I think it's a great responsibility and we should do it, but part of our role I think is to develop the panel into another organization that there are independent agents, but they have some ability to communicate with each other, that they help cross-pollinate and share briefs also, and that they have more cohesiveness. I think over the years our panel has become that. Our monthly meetings, monthly CLEs, also they're brown bag lunch, it's also slightly social. You get to talk to your friends and colleagues there,

and we're trying to develop other ways where they can just interact and take on more of the role of leading the panel, because I'd rather not do that.

Judge Fischer:

Let me focus you on something that you said in your written submission. If I understand it correctly, you think that a national budget would be better than a local budget, and I've talked a little bit with my defender about this, how would you envision if the FPD were to, I guess you pretty much do it, but you don't have the budget and you're not controlling the funds, you're reviewing the vouchers but you're not dealing with, "How much money do I have for my district for CJA?" You're dealing with it, "How much do I have for FPD?" How would you see it if we were to recommend, let's have the FPDs or the CDOs in all of the districts take over the panel with regard to how that would be budgeted?

Lisa Hay:

To the budget? Right now, the FDOs, the Federal Defender Organizations all get their own budget each year and you've heard discussion about that. The panel attorneys, there's not a separate budget. It's a national pot of money. I don't think it would be a good idea at all to try to create local pots of money for each panel, because one of the great things about the CJA panel is that it is flexible, and so when you have a terrorism case in your district, you don't have to go apply for increase in the budget, and in a mega-case, your judges can approve it and there's money available in the national pot.

The panel can sometimes be a safety valve if the defender office itself can't keep a case that's just going to break the budget, the panel can take that case and that creates a flexibility that doesn't exist otherwise, and so I think it would be bad idea to try to create a local budget for the panel. It ruins the entire flexible approach that I think the CJA panel has, so I think it's better to keep the current system, which is a national pot of money for the CJA panel also because that money rolls over. I understand it can be used in later years, then the Administrative Office can control that money in later years, and if you have a national budget, of course it means you need more of a national oversight of how each district is working. Without calling in a budget, I think there should be review.

Judge Fischer:

Thank you and Ms. George, you talked a little bit also in your letter about lack of national guidelines and judges being concerned about that as well. What's your suggestion? Would it be helpful to get more detailed suggestions, or guidance, or rules in the guide? What can we do to recommend something that would . . .

Andrea George:

I would say that specific comment in my report came from my chief judge, Judge Nuffer who was particularly about that on behalf of the judges. They do feels somewhat like there's not a whole lot of guidance for them

in terms of what is reasonable short of these caps, and especially, they feel some pressure and concern about that. Honestly, I think it's going to depend largely on whether you have local or national budgets. I do think that the DSO actually takes a pretty active role now in training judges, especially if they're new to the bench or new chief judges in terms of how to manage panel issues when they attend trainings up in D.C. However, I think once they do that first training, I don't think there is a lot that follows after that, so I think some type of national best practices would be appropriate, whether it was the judges that are ultimately making these decisions about reasonableness, or whether the committee ultimately recommends a board type situation.

I do think it's a good idea to have a general guidelines. I think we have to be very careful though to avoid rigid caps on fees or caps on hourly rates, because you do want the flexibility and creativity to deal with each case as it comes along. I don't think we want to lose that. I don't think we want to go to a system where you say, if you pay a psychiatrist more than \$200, that's too much, because you may have a situation where it's a very unique type of case and you don't need near that much or you need twice that, and depending on where you practice, how many psychiatrist do you have available, who's available in this particular area? I just think that makes me nervous to have very rigid guidelines. I certainly think giving more feedback to either judges or boards in terms of what would be reasonable, at least what types of criteria they should be looking at, rather than dollar amounts, I'm sure the judges would find that helpful. I know ours are concerned about that.

Judge Fischer: Thank you.

Dr. Rucker: Mr. Cahn?

Reuben Cahn: Mike, if I can start with you. Do you know roughly how many CJA

representations you have in a given year in your district, or how many

vouchers, or process in a given year?

Michael Filipovic: I don't and out of the top of my head. There's at least several hundred.

Reuben Cahn: Can you ballpark what percentage of those vouchers get sent to this

standing committee in a given year?

Michael Filipovic: Only about a half a dozen go to the standing committee. Some get cut

though without us getting involved, because the judge may not refer it or the attorney decides he or she's not going to appeal it. Many of those things are handled when there are cuts between the judge and the defense

counsel.

Reuben Cahn: Okay. Lisa, I had the same set of questions for you. Do you have any idea

how many CJA representations and how many vouchers there are in your

district in a given year?

Lisa Hay: I do but we do interim vouchers, so the numbers are going to be odd. We

have the CJA 20s, and then there's others for experts, so the total is 1691

last fiscal year 2015.

Judge Fischer: Vouchers or cases?

Lisa Hay: Those are just the vouchers that were submitted.

Reuben Cahn: What about, can you put that in perspective by giving me representations?

Do you know that number?

Lisa Hay: It's probably a quarter of that I'd say, my guess.

Reuben Cahn: Your office is putting eyes on every single voucher and recommending. . .

Lisa Hay: Right, so we have the panel office does the first cut on them, and so

something that's pulled out the statutory maximum or that is sort of an interpreter that goes within guidelines. They might look at the request to have it authorized to begin with, and their second level of review, they do within that office and they can send that onto the judge to say, "We think you should approve this at this level." Others that are coming in that are

over the guidelines, or over the maximums, we look at all of those.

Reuben Cahn: But the panel offices within your office, right?

Lisa Hay: Yes, so the panel office looks at every single one and they also audit it for

mathematical errors, for consistency with the guide, are you charging for

something that the rule say you can't charge for?

Reuben Cahn: Then, when you say that you were separating the panel office from the

other, I'm gathering that if it's above the statutory maximum, you or

another lawyer puts eyes on the voucher.

Lisa Hay: Right, so either I, or the chief deputy, or occasionally Mr. Needham who

you heard testify yesterday, another one of our senior litigators. He might

look at it.

Reuben Cahn: I imagine you've got quantified the total number of staff hours that are

being put into this effort.

Lisa Hay: I didn't add that up. I mean three full-time employees, of course, you have

to multiply that out whatever the standard federal numbers is for that.

Reuben Cahn: 1767 or something.

Lisa Hay: Yeah, so that's a lot right there. As I said, we sometimes have overflow

from another person, so sometimes we call it 3.5. I don't know if we'd say that this year, and then I think probably Steve Sady spends half of an afternoon every week doing vouchers. I probably spend Sunday afternoon

doing mine, so I spend like four hours a week.

Reuben Cahn: That's another fifth of a lawyer every year. The reason I'm asking these

specific questions is, when I look around at the districts that manage the panel and actually handle the vouchers, they're not the largest districts and I'm wondering is it possible to scale these solutions to the Central District of California or the Southern District of Texas. Frankly, it frightens me when I think about the idea of having to manage the vouchers in my

district. Not that I think there's any risk of that happening soon.

Judge Fischer: Be careful what you wish for.

Reuben Cahn: Do you have any thoughts on that?

Lisa Hay: If you're redesigning the system and changing the statute, you could

change some of these levels of review. I mean some people have commented already that maybe there's just too many levels of review. Within our own office, we have our panel folks working, sometimes doing extra work I think, because why do they need to look at something just because it's over \$800? I mean it's always going to be considered reasonable if my attorney writes a declaration saying I need an investigator, go drive to Southern Oregon to look for witness, and it's going to cost more than \$800 for their mileage and their hotel in two days. ... no one's going to say no to that at the first round, so I think there is way under the statute as you were asking earlier, you could increase some of the maximums right away and just have a \$2500 presumptive investigator cost, and the \$5000 mental health expert, and increase the attorney hours above 10,000, and then you could eliminate some of these interim vouchers or early approval request. You could just have the statutory maximums behind of that the attorney could know they could bill for that, submit their declaration and say, "I did this work." And assuming that their work meets sort of the standard that they know in the district, they would get paid, so you wouldn't have to do as many levels of review. So, I think there's way to change the maximums under the statute, change

the levels of review needed, and cut out a lot of work.

Reuben Cahn: One of the questions said another member of the Committee brought up

who's not here today is, how we ought to be reviewing these vouchers in the first place and what standard of review in looking at the vouchers? Are they presumptively reasonable and only when they're transparently

unreasonable do we reject or is there some other way to look at them? I mean I think about the Pentagon that had examined the bill sent to them with the same scrutiny that the federal judiciary examines vouchers, and there's good and bad now as we all know, so I'm wondering if you have any thoughts on that.

Lisa Hay:

I think the presumptively reasonable standard is a good standard. I don't look at the request from my attorneys in my office and say, "Is it absolutely necessary? Is there anything you could do?" In normal case, if they come to me and say, "here's the expert request," and they do have to fill out something for the expert request in our office too, I read their explanation, I consider whether they have a rate that's within what I would consider a normal rate in the district. If they've written an explanation of why they need it and it's the first request, I'm going to approve that presuming it's reasonable.

When I get a second one and a third one, and the same expert needs more time, that's when I call them and say, "Why are we asking for a second? Why didn't the expert finished? What is going on that we need more time?" Sometimes, in those cases we'll say, "The expert really needs to see if they'll finish this report without any more money, because this has already been a lot." Within our office, that would be the standard, so I would expect to do the same thing with the CJA panel.

Reuben Cahn:

That clarifies it, so you apply basically the same standards that you apply to your own office in examining a request of the expert request from outside?

Lisa Hay:

Yes, and if it's a big case, if we know that it's going to be an expensive case, then we're going to want more explanation from the CJA panel attorney going forward to say what are the cost that we think are going to be happening, and this is something we're still working on, these budgets to figure out what is your prediction and why is it going to be an especially expensive expert in that case. I think it depends on the kind of case in the sense of a normal case, there's not anything unusual about it, there's not a reasonable question why they would choose that expert, you can go to the presumptive reasonable standard.

Reuben Cahn:

Mike, can I turn to you and ask you the same questions? What thoughts do you have about scaling what you do to a much larger, faster moving district? Do you think it can work?

Mike Filipovic:

I think it can work, but for example the Central District of California, it's a huge district. You would probably need to have a large number of FTEs and probably have an attorney in charge of the CJA vouchering program. I don't think the Federal Defender could be spending time looking at every

voucher over the limit in the district that size. I think it would take a recognition that that office would need more resources.

Even our office, we have three full-time FTEs who run the CJA program and they do that cursory, not the substantive review of the vouchers. If we had to ramp things up and actually be the entity for doing the substantive review, we would need a little bit more assistance in that at least another half FTE.

Reuben Cahn: The people, you have the three FTEs. Are the non-lawyers doing those

reviews?

Mike Filipovic: They are non-lawyers, yes.

Reuben Cahn: These are technical and mathematical reviews you're doing?

Michael Filipovic: Our CJA Panel Administrator, Natalie Harmon, is very skilled. She's been

doing this for a long time. She's just one of those people that has good instincts on what maybe doesn't seem quite right and she'll go to the lawyer and say, "we haven't justified this." It's not just mathematical, it's a little bit more than that. She's really go to some of the newer lawyers on the panel and getting their vouchers squared away just to avoid the problem of it and coming back in the back and forth with the district court judge. I think that can be done by a non-lawyer, but I think it's a higher

skill level than just maybe an assistant or a paralegal assistant.

Reuben Cahn: The time frame? Lisa, I want to turn back to you about an observation you

made or position you took that you wouldn't want a local budget for your CJA lawyers or your CJA experts and I want to ask you about that. One of the reasons that I think that we trust federal defenders to manage their own budgets and manage the way in which resources are expended is that, they have a sense of their overall resources and they make judgments, at least I do and I'm sure you do, but when the budget is very tight, we may drill

down a little deeper when the request come from our assistants.

When it's late in the year and not much left, we may press them a little harder on those issues, and that's part of that the overall number we've got in the back of our head, the running tally is this source of fiscal discipline, and if that doesn't exist, what's the substitute? What sort of allows us to say to Congress, you should trust us, even though the people making the

decisions don't have an eye on a big number?

Lisa Hay: I think you'd have to establish something within the Administrative Office

that helps with the national budget that has more of an idea of the CJA practice in each district and that's why I believe the judiciary still should be part of this project. If you had local peer review of CJA vouchers in the

district with the Federal Defender assisting in that, but also included judges on that peer review of the CJA vouches. The judges would be able to report back to the AO about the effective use of the money, that this is a wise use of the money, and I guess the fiscal discipline would occur at a higher level.

It could be with the circuit, how much money is the circuit spending overall in the CJA, and does that make sense given the kind of cases circuit-wide this year, and then at a national level, if the judges feel like the money is being spent wisely and the CJA panel that are representing the AO think it's being spent wisely, then you have a couple checks that way. I just go back again to not thinking that a local budget makes sense for the CJA because the case load is so much more influxed.

Suddenly, we have a whole bunch of multi-defendant cases in the district, and so we luckily are just in the middle of panel revision, add some more lawyers to the panel and so we can handle all those cases, but the case where it dries up, the panel size is probably going to shrink after three years again. I think there's a flexibility in not having to have one budget, a local budget for that group. I think I do agree, you need fiscal responsibility. I think it has succumbed, as I said, to peer review at the local level, and then the overall sense of, how much money do we have, how much can we spend? I think that has to be a directive that would come from the Administrative Office in a different unit there.

Reuben Cahn: Tony, you look like you wanted to say something about that.

Tony Gallagher: No. Thank you, though.

Reuben Cahn: No? Dr. Rucker, I guess I will turn it back to you.

Dr. Rucker: Judge Gerrard?

Judge Gerrard: I imagine this conversation last ten minutes has made you crazy, Mr.

Gallagher, so I want to talk about structure. In written, we've had a lot of testimony and that only last a couple of days, but before this and we got a whole spectrum of independence from complete independents to independent, but not too independent from the judiciary and I want to give you an opportunity. If you were to rewrite the statute, go back to 1992, what does complete independence mean to you? What would the structure look like anywhere from the Federal Defenders Office to CJA panels and

right on down the line?

Tony Gallagher: I would obviously go back farther than 1992. I mean when the legislature,

when the Congress created . . .

Judge Gerrard: I am talking about the amendments....

Tony Gallagher:

Right. When they created the Federal Public Defender Office and the Community Defender Organizations, in the legislative history, it says "during these initial stages," we should probably have it with the judiciary so that the judiciary can champion our nascent defender organizations and protect them from the Congress. When 1992, when 1991 rolled around, I was one of the people who were still very much, "Yeah, we should stay with the judiciary," but now forty-six years on, maybe the initial stage is over. With all due respect, as I said, I love my judges. I mean they're great to work with, but I find . . . the other thing is too I'm a Community Defender Organization, so I don't have to worry about the judges in the appellate court that I appeared before are going to be deciding on whether or not I stay employed. They are certainly deciding on whether my argument is any good, but I don't want them to decide whether or not I should remain as the defender for Montana. That's why in Community Defender Organization, I believe at least in having experienced both models, at least for me works the best.

The national structure should be something like that. I have to say that I've read carefully the Prado report, and I've read the dissent to that report, and the idea of having a national organization separate and apart from the judiciary, separate and apart from the Department of Justice, separate and apart... essentially a Defender General. I know that that's aspirational, I know that it's probably not going to happen, and I know that I probably will be a footnote in the descent that maybe written to this report, or maybe not because we know how data gets lost or not used.

Recent events within the last few years have turned me to the bright side of independence. Those recent events of course is sequestration. I know that you've been beat over the head for the last few months with sequestration, so I'm not going to go into that and I'm not going to go into the fact that the judiciary that was supposed to champion us told us to fend for ourselves, but I am going to go into the fact that having judges control whether or not an organization should continue in one shape or form is problematic for me because it shows an oversight that becomes invasive because I don't believe judges should be naming who the defender is.

If an individual is qualified to practice before the court, he is a member of the bar of that court, and there should be a separate organization, entity, agency that decides whether or not that individual has the sufficient wherewithal to not only be a good trial lawyer and lead his institutional, or her institutional defender office. There also has a wherewithal to manage that office and to protect the government FISC and have good stewardship. Certainly it's a government office, certainly it would have to go to Congress.

The structure that I see is much the same, it would be a national PDS. The Washington D.C. has a wonderful Public Defender Service, and if you hear from any alumni of that service, they will tell you over and over again how wonderful their service is and better than yours, but be that as it may, I think that that . . .

Judge Gerrard: It's at a smaller scale obviously.

Tony Gallagher: Yes, obviously on a smaller scale and certainly there may have to be, as I

mentioned before, each of our offices is local and there would have to be some sort of regionality to the structure so that we would be attuned to and

attentive to the cultures of various districts and circuits.

Judge Gerrard: Ms. Hay, I had read your written submission, what are your comments in

regard to the structure?

Lisa Hay: As I said, I oppose creating a free standing structure. I know PDS is a

great model, but I think probably three reasons I would say I oppose it. One is I don't think it's realistic, I don't think Congress is going to create this new bureaucracy that will have all of the things we need. Now, I also don't think it's efficient. I think the Administrative Office . . . we're not starting from a clean slate. If we really were going back in time, we might

do something different, but we aren't starting with a clean slate.

We have institutions that exist already and the Administrative Office does support us in a lot of the bureaucratic things that we need and we all hate bureaucracy until we need it, but our former employee is suing us right now and I really like that the General Counsel is available and the Administrative Office to take care of that, and I don't have to worry about it. The Administrative Office also has an auditing office. It makes sense to have all of our budgets audited and we rely on them to do that. They have a personnel office, they help on the retirement.

There are a lot of administrative bureaucratic things, rent, everybody hates the GSA, but nonetheless, they're an agency that helps there. Training, some of those things I think are parts of bureaucracy that we rely on for them and we should still keep doing it. I think within the Administrative Office we should just have a defender conference the same way there's a judicial conference. That's the guiding body for the judiciary. We should have the defender conference and it should just be by circuit, maybe representative of how many defender offices are within that circuit.

We could have a representative on that council or conference, whatever the highest level is. Underneath that defender conference, you could have a Defender Services chief, who's the administrative chief, under that you have your own IT that would be kept separate, your own budget, but then

we rely on some of the other administrative functions of the AO. The benefit of being within the judiciary is you need to have some place where there's overlap of policy, a joint policy group between the defenders and the judiciary, so that on some of the things where we are causing costs to each other or we have policy that we should discuss together, there's a systemic place where we have those discussions.

I don't think it's only the fear of going to Congress that would make us stay within the judiciary really do have common interest. The judiciary is responsible and obligated to support under the Constitution the Sixth Amendment, and we share that obligation and that interest. Every judge wants to have a well counselled defendant in their courtroom. No judge wants to have proceedings where they look out, as Judge Fischer was saying, she doesn't want to have somebody else deny the expert voucher, and then think why doesn't this defender have a mental health expert in my courtroom. So, every judge wants to have justice in their courtroom, so I think we do share common interest there. I would just have there be policy discussions between the two branches, but let the defenders submit their own budget as a separate item within the judiciary, the same way maybe the Sentencing Commission aligned as part of it, but it say defender budget, the defense goes up with the AO to defend it with Congress, but we have judges supporting us having looked at it, having been part of the development of that all along.

I don't know exactly how it would work, but I think there's a way that we could still share being within the AO, but have an independent IT, independent governing group, and independent budget, but work on policy together. I think there's a way to do it, but I don't have it planned out for you exactly.

Judge Gerrard:

All right. I'll let others ask you about the structure more. I do want to switch gears just for a moment, and that would be in ongoing training for the CJA panel members. We've had a number of CJA, but without the advantage of having the number of CJA panel members testify over the last couple of days. I'd say some of them do not feel totally supported. I would say that there's been evidence of not using the experts maybe to the fullest exempt and some of that maybe . . . there are various factors for that including training in that area. And I would say, what would be the best practices that you have seen or utilized in your districts as far as ongoing training and support to CJA panel members, particularly in the use of experts and auxiliary services. I'll let any of you answer that. Ms. George?

Andrea George:

Thank you. We have a monthly brown bag training for our CJA, and then we have a nuts and bolts training, which we do about four times a year, and that's when there is hot issues. For instance, there is this wiretap case

that we had with the sixty-two defendants. We had a nuts and bolts training where we brought in experts on conspiracy law and technology, and then we have an annual what we call thrills and skills where we bring in national speakers who speak on very interesting topics, so we do a lot of regular training. I want to go to the experts in our district.

It may be that our numbers are 25%, I think that's what the number came up as, because since 2012, we haven't had to hire, or the panel hasn't had to hire, or a third-party vendor for discovery issues if our office is involved in the case as well because we've organized the discovery for the panel members, and so that would reduce the experts there. If we're not in the case, then they do have to hire a third-party member and that becomes, again, very expensive.

I want to amend my statement to you, Judge Fischer. You asked how many FTEs, I said two. I'd like to amend it to three based on what Mike and Lisa said, but I also think it should be four because I think there should be a computer person designated for the panel that would fit along with the FTEs for just panel use.

Judge Gerrard:

Other ideas on . . . there are certainly the brown bags, whether it's a monthly or quarterly, are there other ways to use technology and it's possible that the CJA panel members aren't good listeners.

Andrea George:

We're doing something.

Judge Gerrard:

I expect there are other ways to get to them.

Chip Frensley:

What did you say? [LAUGHTER]

Lisa Hay:

We're doing something similar to it. Our panel office is working on the training for our CJA panel on using a specific database, for one is multi-defendant cases. We've had a couple trainings at our office now where we brought in an outside vendor, essentially being a discovery coordinator. We asked one CJA lawyer to put that on their bill, and then we told the judge this is for a twenty defendant's case, but this one person is going to be paying the vendor and he came into our office, did a training for everybody.

People use different . . . some people, they want to use a Mac, they want to use a Dell, but mostly everybody liked it. We're working things just as a case comes up to try to figure out the training that's needed.

Kathryn Nester:

If I might answer as well, we are evolving a little in this as well. We are really utilizing the webinar technology which is affordable and a lot of times can be done at their desk or we show it on our video screen at our

office over lunch and everybody comes and does a quick webinar. Also, I wanted to mention, I believe that was Judge Gerrard that asked the question about why there's a big disparity in experts. Another reason I think that I haven't heard anyone mention, our district has one of the highest districts of expert use in the country, but I do think a lot of that can be driven by the nature of the cases that are being filed in your district.

For example, our district has a very high fraud docket, so we tend to be much more commonly using paralegals, forensic accountants, tax attorneys, things of that nature that you just have to go and get those experts for most big fraud cases. I do think that is also something that impacts which districts are using which experts and why. I do think that's one of the reasons that our district has such a high use of experts and additional resources.

Judge Gerrard: Okay. Thank you, doctor.

Dr. Rucker: Ms. Roe?

Katherian Roe: Ms. Hay, I'm going to come back to you about the structure that you set

up. It's very interesting. I haven't heard that particular structure before, but I think it's very interesting. The question I have is, where do the CJA

lawyers fit in there?

Lisa Hay: I think it would probably be part of that defender conference. You'd need

to have CJA representatives that are stronger and try to have more unified CJA groups in each district. Right now I was surprised to hear there are places where the Federal Defender doesn't know who's on the CJA panel or that the judges don't want to hand out that information out. Seems like that's a classic way of kind of divide and conquer. Our CJA lawyers can be stronger because they can work together, they know what works with

different judges.

I think trying to build up the CJA within each district by having a Federal Defender, have a CJA office creating that resource, creating that sense of community for them, and then within the AO, you would want them to be

represented on that defender in the defender conference.

Katherian Roe: I want to ask you a little bit about the peer review concept. My understanding of your structure the way it was set up was that, you thought that we should say that the Federal Defenders, and the Community

Defenders, and the CJA should stay under the judicial umbrella, especially for funding reasons, but other services also. You also indicated that you didn't think that the judges should be involved in choosing the folks who

were on the panel and/or appointing them to cases. Is that correct?

Lisa Hay: Assigning them. I think the judges could still decide that somebody

qualifies for court-appointed counsel, and what they do in this district is they say, "We're appointing counsel to represent this defendant. Order the Federal Defender to tell us who that is," and then we send over the name.

Katherian Roe: Right, so assigning them? The judges wouldn't assign anymore. I mean

obviously, in some districts, the judges assign to every case. They don't just appoint, they assign, but in this district, that's not true. My question is about the vouchers. Your peer review would be for all voucher review?

Lisa Hay: I don't have it all figured out. I only dreamed about it last night.

Katherian Roe: All right. I'm just trying to clarify.

Lisa Hay: No, I think the idea would be that, whenever you have any system that has

hourly pay for anyone, I think this works in the medical model, too. If the HMOs that get overbilled and you have the fee-for-service medical center. If you all can solve that for defensive counsel, you could solve a lot of medical problems here too, but the idea would be, you need a peer review of the final product and what the lawyers did, so I wouldn't think you would want to have a peer review counsel look at every expert

authorization.

That's why I think the maximum should just be higher so there's a presumptive reasonableness, but at the end of the case, or during the case if it's a big case, you'd have a peer review group that could say, "Okay, let's look over what you did here," and maybe you wouldn't get voucher cutting. Maybe it would be more that, "Hey, this looks like you didn't do this very well. Let's get some assistance for you. Let's think about how to do it differently next time," but you'd have lawyers who know how the

cases actually should be handled looking at these.

Katherian Roe: So with the ultimate decision be a judicial decision as to whether the

voucher was paid or not paid?

Lisa Hay: If you can change the statute, I wouldn't do that. I would have the peer

review group have the CJA attorneys on it, and then have maybe two district court judges who could get outvoted, so you'd have two judges and five panel attorneys, but the judges would be there so that they could help pass the word up through the AO and whether the practice seems to work in this district, if it's got the approval of the judges. I think that's important only because Congress doesn't anything about a criminal cases either. I mean I heard panel attorneys say, "Well, judges in the courtroom don't know what kind of work we're doing outside of the courtroom, so

they really can't review this."

That's true, I don't think judges know enough about what we're doing, but they know more than our representatives do, more than our Senators do. If we want somebody to know more about what kind of work we're doing and why it's useful and why it's supported in this district, I think the judges are the right ones. I wouldn't want them to make the decision on approving or denying a specific voucher in a case, and so I think we should get away from having the trial judge actually decide the voucher in a case.

Maybe somebody mentioned you could appeal to a trial judge. I don't like the idea of during the case, the judges seeing any of the vouchers. To me that just seems really odd, but I know panel lawyers are used to it and you've heard one of our lawyers loved it, so I'm not sure. I don't know how that would work. I think it's important to have judges on there so that the word can go up through the AO about whether within the district and within the circuit, the practice is approved.

That's that accountability that Reuben asked about earlier, where is the lead on it? I think you need somebody and I would rather not have it be Senators and representatives, because they really don't have an idea of what we're doing.

Katherian Roe:

Thanks. Mr. Filipovic, you were also in your statement talked about local controller if you will, local boards. The local boards that you were thinking of to review, would they be for reviewing vouchers, and every voucher or just disputed vouchers?

Michael Filipovic:

When I was suggesting the local board, I was thinking more along the lines of what the Prado Committee recommended for the local level, and those boards would select the Federal Public Defender, those boards would select who would be on the panel, and that board will be responsible for setting up the systems for voucher review. These are unpaid position so I don't think you could have an independent board doing all the voucher review. Whether it'd be the Federal Defenders Office where the CJA unit doing all the voucher review or some other hybrid model, I think each independent board could decide how to set that up.

Also, with judicial recommendations, but not judicial decision making. It's almost the flip of what we have now, we have a standing committee that makes recommendations, but we don't make the decisions and what I'm suggesting is that, the judges are a valuable asset to what we're doing, as Ms. Lisa Hay says, and I think it would not be a good thing to take them out completely in terms of their involvement. It's a question of who is the decision maker, who gets on the panel, which vouchers get paid, who becomes the Federal Public Defender for the district?

I think that decision should be removed to an independent board. I think that can be created without necessarily changing...making major changes to the national structure. Although, I agree with Tony, I go more and more to the independents model at the national level, but I fear that politically, that may not be something that can be accomplished at this point in time. That's why I've suggested maybe putting an independents model more at the local level and see how that works.

Katherian Roe:

Let me just ask you just to follow up on that. If there was a local board in every district let's say, would the model that they set up as to how to review vouchers, let's say for instance how to request experts. Would it have to be the same in every district or would that local board have some kind of discretion in making a determination as to what worked best in their district?

Michael Filipovic:

I think you'd want to have some basic national standards, but I think you do also want to leave a little flexibility for differences in local culture, so I think the board should have some flexibility in setting some additional standards or factors to look at, because like in the District of Oregon, 54% of the cases have experts. The judges here...want to hear psychologist evaluations, they want mental health reports, the nature of the case it's called for. In some other districts, maybe not so much, and so I think it's important for the independent board to be able to adjust to local circumstances.

Katherian Roe:

Thank you. Ms. Nester, I wanted to ask you a question about the amazing problem-solving courts if you will, it may be a better term, but the courts that you have in the District of Utah. The first thing that I thought about when I saw those was that I can't believe that that's happening in a federal district. The second thing I thought was what you started to bring up at the end of your testimony, and that was, how could this possibly be the way the Federal Defender program is funded? With the new funding formulas, the FTEs have to be . . . let's put it this way. Weighted cases decide what your FTE is, and if these folk, they're not bringing in weighted cases or they're very, very small case weights. The same with what I was thinking with Ms. George's program, the fellowship program. I mean those folks are just learning so they're not able to sustain a full case load and kind of pull their own weight. How was it possible to continue to do these things if we don't change the way we fund the Federal Defender program?

Kathryn Nester:

The short answer is it's not, and that's basically what I've said in my written testimony, that's what I've said to my judges. These programs are in our hearts, this what our clients need, this is what we should be doing, this is making our communities better, but the reality of it is that if every lawyer that I assign to go work on mental health court, or to go work with

the veterans, or to go work with our tribal communities is getting less than a misdemeanor's case worth of credit.

We cannot continue to sustain our involvement in these programs, and to me that would be a tragic loss and a complete inability to evolve what it is we do and why we do it. The science says we should be doing this. Every other agency in the federal family has acknowledged this is important and is investing resources in it. I think the Defender Services need the flexibility, and frankly, to bring in the CJA panel. Most CJA plans have no provision to pay a CJA lawyer to do drug court.

We have some CJA lawyers that would be fabulous doing this type of work that have connections to our tribal communities and there's no way to pay them, because there's not an ongoing revocation. It's a true re-entry model where there's not a client you can bill it to, and I think that that's another fabulous way to train panel members. I am not in a liberal bastion. I come from Utah. We're a very "Red State" and our judges are thoroughly engaged in this process. It changes their philosophies, it changes the way they interact with clients.

They really truly enjoy it, and some of them, it's their favorite part of the day. It's hard to send people to jail all day every day. It's wonderful to help someone stay out and I just feel like, if we just had a little bit of support and flexibility around our staffing where we could say, "If you have six problem-solving courts, you get two extra FTE," then I don't have to pull out of these programs, and I guess I'm just really grateful that you're thinking about these things and helping us evolve together.

Katherian Roe: Ms. George?

Andrea George: Can I say that the former director of the Federal Defenders of Eastern

District of Washington was on the step court, which is our re-entry court, and he was very, very good in this program. When I came on, the district court judge asked whether he could stay on and continue doing it as a panel attorney, and because he was so good at it and because it kept him involved, I agreed to that and I believe he received authorization through the Ninth Circuit to be paid. He's paid as an appointment on the CJA for

maybe four hours a week to do the step court as a panel attorney.

Katherian Roe: That's helpful. Ms. Nester, just to follow up with you for one moment.

When you were saying earlier that because of all the personnel that you

contribute to this court, that you took a big hit.

Kathryn Nester: I did.

Katherian Roe: Does that mean that you lost staff?

Kathryn Nester: It means I've been given direction to lay off nine. Yes. There's other

reasons for that, too. We had a big drop in our cases for a period of two years, which rolled into our staffing formula, so that's not the only reason, but I consider it a major reason why our numbers were not as high as they could have been if we were fully taking into consideration the work that

our staff is doing.

Katherian Roe: Thank you.

Dr. Rucker: Judge Cardone, do you have any questions you'd like to ask?

Judge Cardone: Save some time for Mr. Frensley . . .

Dr. Rucker: Okay, Mr. Frensley?

Chip Frensley: So we're nearing the end of our third public hearing and it seems, if my

memory serves me correctly that there's been your unanimous consensus that, with respect to voucher review and review of experts, that it's a good idea to get judges out of that business. What we've heard particularly in this hearing is that, an alternative to that and many, in fact, of you advocated for this is to place that responsibility somehow under the umbrella of the defender services, be it in defender services, or be it in

defenders office, or some other entity that is affiliated with the Defense.

I want to go back to the point that Judge Fischer was asking about earlier and I thought direct this to you Ms. Hay, because your office is involved in this regard. The acknowledgment that this would require additional staff, which means additional money, what do you think the justifications are or the benefits of spending that money that we could, if we were to make such a proposal, say this is why it should be done this way? What

are those benefits?

Lisa Hay: The idea is to get the judges out of that part of it, so I think that's the

benefit. We've heard around the country that there are places where judges are stifling the panel and stifling the creativity that's needed because they're not funding, so one of the main reasons is just to create not only the appearance of kind of judicial neutrality, but actually not having the judges involved. I think really that's the main benefit to say that judges shouldn't do it, they shouldn't select the panel, they shouldn't assign the people, and they shouldn't look at the vouchers for the attorneys right in

front of them because they're not approving them.

When the don't approve them, defense attorneys will not be able to do the work they're doing, so that seems like a benefit right there to me. I mean we could go around the country and say, in this districts, people are spending lots of time in federal prison, and maybe they wouldn't be

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spending as much time in the prison if you could get them some experts and some help earlier.

Chip Frensley:

So theoretically, we could argue that back end savings would be a benefit that were derived from the change from judicial-centered decision making to some other fashion?

Lisa Hay:

That's going to be complicated a one to put together, but yeah, you could eventually say that if the defense attorneys are able to do the work that they ought to be doing, getting experts, investigating a government's case thoroughly, knowing their client's backgrounds that they are likely to save money in the end by lower sentences, or at a minimum getting their clients invested in a process to believing they're being treated as a person, not a number, and that when they come out of the system, they can join a reentry court, and then start making progress.

I think everybody knows and you heard so much testimony yesterday about how good it feels to have the system recognize you as a person and how bad it feels to be considered a number, and getting the defense attorneys the resources so they can treat their clients all as people and not as one more case that have to get done, is a huge benefit to not just the person in the system, but to our society.

Kathryn Nester:

Mr. Frensley, too, it's a fallacy really I think to accept the fact that this is going to be new work that's not already been done. It's more just a shifting of work that it's going to happen somewhere. It's either going to happen in the judge's chambers, it's going to happen in the defender office, it's going to happen on the board. It's going to happen, so it's not like it's an additional cost that doesn't exist right now in the system, so I do think that that's important that we recognize it's got to be done. And, I think that the goal, again as we evolve, how we practice law is to have whoever does it have the least impact possible on the way the defense is managed, so that one is not chilling the other. And I think that the Sixth Amendment has to be at the forefront always. I'm not sure we all have different opinions about where that might be, but I think that if you start with the premise, this is going to be an expense somewhere, so how do we least interfere with the Sixth Amendment right to a complete and zealous defense. I think that might be a more helpful approach.

Chip Frensley:

What about the impact on the ability to recruit and retain qualified counsel to be available for representations as CJA lawyers? If one of the reasons why, apart from just the general sort of intellectual independence argument, we've also heard about these cuts and how they impact lawyers. Do you think that that kind of a shift could potentially have benefits to the sustainability of the system with respect to retention and recruitment of lawyers for the panel?

Andrea George: Absolutely. I have heard from lawyers in our district that they're just not

on the panel because it's just too much paperwork, not too much work as far as the defense, but too much red tape to get through the process and it's just not worth the time. We're losing really good attorneys, because generally, the attorneys that are in the bigger firms choose not to do it

because of that.

Chip Frensley: You suspect that a change with respect to the structural change of taking

the judges out and putting it in some more Sixth Amendment oriented type

of entity would benefit in that way?

Andrea George: Yes. I'm sure Lisa gets her vouchers out like right away.

Lisa Hay: Now, you heard some complaints from our CJA attorneys about delay and

I have to admit I'd have to ask questions, figure out how it works, so if there's any delay, it was me and not our panel office, but eventually, we can be faster. That's our goal of course is to be people who work well for the panel and assist them. I think you're right, if panel attorneys know that the person who is looking at their vouchers has the Sixth Amendment in mind wants strong defense, they're going to feel more comfortable that

they're going to get paid for their work.

Chip Frensley: Any other ideas? Anybody else have any ideas for how you make that

pitch? I've heard it said that Congress isn't really interested about the Sixth Amendment, they're really interested about making sure that there's somebody there to represent somebody, and when you make a money argument, they want to know, "What are we getting for our money?" Is there any other thoughts that you might have in terms of benefits of that change that would be something that would be a compelling argument to somebody who doesn't come at the system from the same approach that

we all enter at?

Michael Filipovic: Two things. I'm not sure I'd agree with your premise. I think Congress,

when they understood the problems the defenders were facing during the sequestration, we came out pretty well with Congress and support from both sides, from the Republicans and the Democrats. I'm not sure you can say that we can't make the case for quality representation and improvements in that. But I think there are savings in other parts of the system, to the extent that the Federal Defenders Office in my district now

is doing the panel administration.

That's a task that the clerk's office no longer has to do, so there's savings and resources there. Over time, those clerks would be doing other things or through attrition, maybe they could lower their staff. Similarly with the judges. I'm sure most judges do not like spending hours and hours reviewing these vouchers and having their assistants help with that

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process. They could be doing better things with their time or maybe taking extra cases to do some substantive work. Maybe just one or two cases.

Judge Gerrard: To dispel that, judges do review... we don't have our systems help, or

most judges anyway, then I think those that are on the panel, we reviewing. I've not picking on you, but I've heard it two or three times, so

I thought it would indicate that we do it.

Michael Filipovic: Thank you for the correction.

Judge Gerrard: Okay.

Tony Gallagher: I... I'm sorry ...

Andrea George: No, go ahead.

Tony Gallagher: I have to

I have to agree with Michael that, I think that the experience of sequestration as bad as it was for the panel for the defenders was an instructive device for the Congress. I'm not saying that that device will necessarily last and nor am I saying that the Congress would turn in to the District of Oregon, but what it did was show that there was support on both sides of the isle. When Lindsey Graham was one of the ones who said that we have to have a strong criminal defense, when then congressman, now Senator Steve Daines spent thirty-five minutes in my office listening to me talk about our system and how good it was. And that we, in the Defender program, not just Defenders, but our CJA panel were a dedicated group of professionals who promoted the best practices of criminal defense, such that every one of the judicial offices and officers in our district will tell you that our panel and our Defender Organization are on par better than retained Bar. I think that kind of educational endeavor is effective and I think it certainly was shown to be effective by the testimony of panel members and Defenders alike two years ago.

The other thing is that in most districts, and I think that it's true in the five districts that are represented here and the twelve or fifteen districts that are seated behind me, is that they have dedicated CJA panel members and there is a line of folks who want to get on the panel. For one reason or another, they can't because of numbers restrictions, because they don't have the federal exposure that the Defender believes is necessary or the selection committees believes is necessary, but these are dedicated professionals.

These are folks that do have, because of the money that they are paid, it's a pro bono component. When they leave the office, I'm sure all of them in one way or another say, "I'm going to do God's work."

Dr. Rucker: Professor Gould?

Professor Gould: No questions for this panel.

Dr. Rucker: All right. Let me say on behalf the Committee how thankful we are that

you came here today to share your time with us and your ideas. It was very thought-provoking and very informative, and again, I really do appreciate you taking the time off your schedule to be with us. With that, we'll close

the hearings. Thank you.