



Chambers of  
**JOHN V. ACOSTA**  
United States Magistrate Judge

*United States District Court*

DISTRICT OF OREGON  
1127 United States Courthouse  
1000 S.W. Third Avenue  
Portland, Oregon 97204-2902

February 1, 2016

Hon. Kathleen Cardone, Chair  
Ad Hoc Committee to Review  
Criminal Justice Act Program  
Thurgood Marshall Federal Judiciary Bldg.  
1 Columbia Circle NE  
Washington, D.C. 20544

Re: Testimony of Hon. John Acosta, Magistrate Judge, District of Oregon  
Testimony date: Wednesday, February 3, 2016, 2:15 p.m. to 4:45 p.m.

Dear Judge Cardone and Ad Hoc Committee Members:

No doubt the Committee has received a significant amount of written testimony to read. My written submission is direct and brief so as to not unnecessarily add to that amount. At hearing I will expand on topics contained in this letter and will be ready to answer the Committee's questions about my written or oral testimony.

**Oregon's Magistrate Judges**

Magistrate Judges in the District of Oregon are responsible for all initial matters in criminal cases.<sup>1</sup> We appoint counsel; advise defendants of their rights; conduct arraignments, detention hearings, probable cause hearings, identity hearings, violation hearings, and removal hearings; issue (or not, as appropriate) all warrants except wire-tap warrants; preside over the monthly CVB docket; and occasionally take pleas and determine sentences in misdemeanor cases. All other motions, proceedings, and hearings in criminal cases are handled by the court's District Judges. In addition, Magistrate Judges participate in the district's Court Assisted Pretrial Supervision ("CAPS")

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<sup>1</sup> District of Oregon Magistrate Judges are assigned a civil case load fully equal in quantity and variety to the case load assigned to District Judges. We preside over the civil cases assigned to us from filing through summary judgment and, if all parties consent, over trial.

Program.

### **The CAPS Program**

The CAPS Program is a form of enhanced pretrial supervision. A Magistrate Judge participates in the defendant's supervision in concert with the defendant's assigned Pretrial Services Officer ("PTSO"), the defendant's attorney, and the Assistant United States Attorney ("AUSA") assigned to the defendant's case. The Magistrate Judge does not replace the PTSO, who retains full responsibility for the defendant's supervision, but instead participates in a team approach to a defendant's pretrial supervision.

The CAPS Program supplies additional supervisory structure to high-risk defendants who are on pretrial release, through direct interaction with the Magistrate Judge. The concept upon which the CAPS Program is based arose from a 2009 pretrial release decision of a defendant whose criminal history combined with the then-current charge to make his release a very close question. I suggested to the PTSO initially assigned to the case that the defendant's release conditions include regular meetings with me, as way to assist the PTSO's supervisory efforts and to emphasize to the defendant the court's particular interest in his compliance with release conditions. Pretrial Services formalized the CAPS Program in 2010.

The Magistrate Judge's participation in the CAPS Program is voluntary. The Magistrate Judge decides whether a defendant should be ordered to participate in the CAPS and often initiates a defendant's participation in CAPS. PTSOs and defense attorneys, however, also may and occasionally do ask the court to place a particular defendant in the CAPS Program.

### **The CAPS Program Philosophy: One Judge's Perspective**

Although the CAPS Program began as a method of providing additional support for the PTSO's supervision efforts, it evolved into the broader role of helping pretrial defendants prepare for success beyond the conclusion of their cases and the completion their sentences. Typical release conditions, such as maintaining employment, attending school, and participating in drug or mental health treatment, continued to be a component of most defendants' pretrial release. But combining these conditions with regular meetings with the Magistrate Judge, the AUSA, and defense counsel showed defendants that the system viewed them as more than a series of months on a sentencing grid; they learned that the system consisted of people who cared about and were interested in their

success.

Defendants who participate in the CAPS Program are readily recognized for their successes and promptly held accountable for their missteps. The relationship among the participants that develops through the process creates trust and enables preventive steps to address violations before they actually occur. The ongoing relationship with the court and other participants also allows release conditions to be better tailored to the individual defendant and, in response to a defendant's performance, adjusted or removed in keeping with the Bail Reform Act's directive that conditions be only as restrictive as necessary to ensure the safety of the community and the appearance of the defendant.

Defendants have responded positively to the court's and lawyers' increased involvement in their pretrial supervision. The CAPS Program often was their first experience with being treated respectfully by authority figures whose role in their lives historically had been to put them in jail or demean, criticize, or punish them for any mistake or failure. The Magistrate Judge's interest and involvement in their cases often serves to increase defendants' motivation to succeed. Defense attorneys and PTSOs have received comments from defendants and their families about the positive effect the CAPS Program had on them and on their view of the justice system.

#### **Defense Counsel's Role**

The work of the defense attorney in the CAPS Program is critical to the defendant's success. The CAPS Program's effectiveness depends in part on the community of family, friends, employers, and health care providers defendants have outside of the physical courtroom and the framework of the pretrial process. Defense counsel take the lead or coordinate with pretrial services to include and maintain the involvement of these stakeholders to support defendants' CAPS efforts.

Defense counsel also helps to ensure that defendants maintain focus on the goals the defendants have set for their CAPS Program participation. Defendants conduct the great majority of their CAPS Program work outside the courtroom, which makes defense counsels' participation in the CAPS program a critical component of defendants' success. Defense counsel usually are defendants' primary contact point for assistance in exploring and obtaining educational and employment opportunities, community service work, securing specialized treatment and counseling, and finding other services important to defendants' success while on pretrial release.

### **CAPS Program Success**

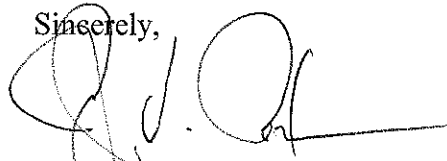
Many defendants who have participated in the CAPS Program have used the opportunity to change the behavior and habits that caused or contributed to their involvement in the criminal justice system. Through the structure and support of the CAPS Program defendants have developed confidence and self-esteem, forged and maintained healthy new habits, and began to think about and plan for their long-term future in positive terms. For many defendants it is the first time they have thought of a future beyond the next drug test or sentencing hearing.

Not every CAPS Program defendant succeeds in the program, but every CAPS Program defendant benefits from participating in the program. CAPS Program defendants who have achieved and sustained improvement have experienced either betterment of their personal circumstances, gained a sentencing outcome better fitted to them as individuals, or both. Defendants are able to develop skills useful to constructively navigating everyday life.

The Committee will be fortunate to meet with and hear from a few of the CAPS Program defendants with whom I have worked. These individuals are my among my personal heroes and it is my privilege to know them. The Committee will understand why I make these statements when it hears their stories and learns about the work they undertook to become the people they are today.

Thank you for this opportunity to testify. I look forward to addressing the Committee at greater length on February 3, 2016.

Sincerely,

A handwritten signature in black ink, appearing to read 'John V. Acosta', with a long horizontal flourish extending to the right.

John V. Acosta  
U.S. Magistrate Judge