

UNITED STATES DISTRICT COURT
District of Wyoming



Chambers of
Kelly H. Rankin
Chief U.S. Magistrate Judge

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February 4, 2016

The Honorable Kathleen Cardone, Chair
Ad Hoc Committee to Review the Criminal Justice Act Program
Thurgood Marshall Federal Judiciary Building
One Columbus Circle NE, Suite 4-200
Washington, D.C. 20544

Re: CJA Act Testimony in Portland, Oregon

Dear Judge Cardone and Committee Members:

On behalf of Chief Judge Nancy Freudenthal, District Judges Alan Johnson and Scott Skavdahl, and all of my judicial colleagues in the District of Wyoming, thank you for the opportunity to provide input about the CJA program.

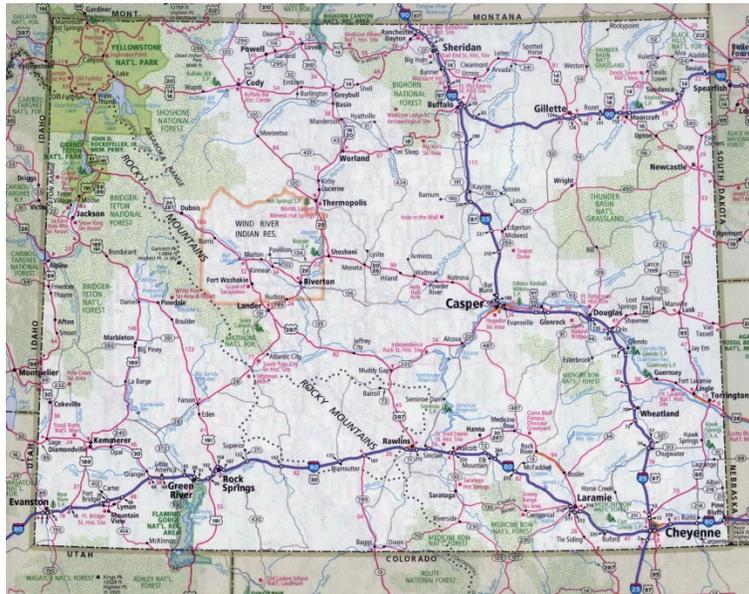
As the current administrator of our CJA program, I am particularly pleased to offer input to the Committee. Prior to my judgeship, as both our district's U.S. Attorney and as an Assistant United States Attorney, I had the great privilege of working with many exceptionally qualified and dedicated lawyers in the Federal Public Defender's Office and on the CJA panel. I also welcome the opportunity to share with the Committee some of our district's practices.

I understand the principle focus of the Committee's work in Portland will be on the quality of representation and CJA panel administration. Before I offer some thoughts on those topics, I thought it would be helpful to give you some background information about the District of Wyoming.

BACKGROUND

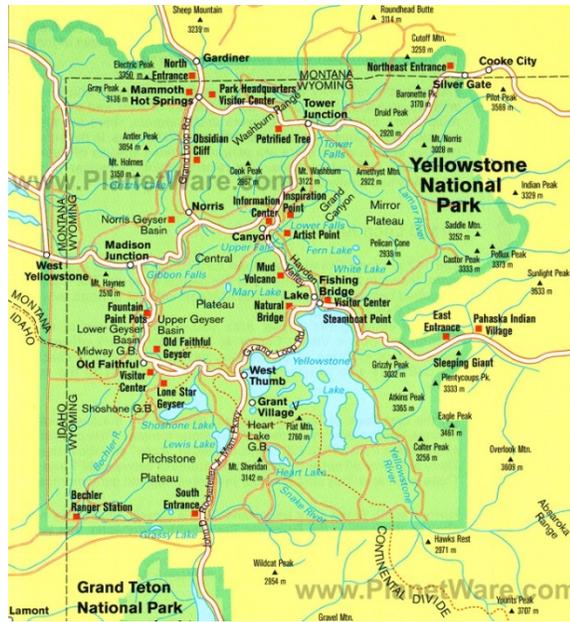
Wyoming is unique in that it is rural, geographically vast, and the least populated state in the country, totaling approximately 564,000 residents. We are the 9th largest state covering more than 97,100 square miles. From the north border to the south border it is 276 miles; from the east to the west border, 375 miles. 48% of Wyoming's land is owned by the federal government. Geographically, we are made up of vast plains and the Rocky

Mountains. The District of Wyoming encompasses Wyoming and the smaller areas of Idaho and Montana which are within Yellowstone National Park.

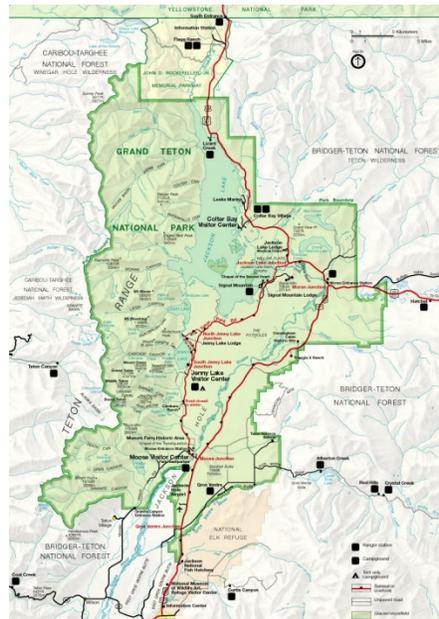


The two biggest cities in Wyoming are Cheyenne, located in the southeast corner, and Casper, located in central Wyoming. Both have a little more than 60,000 people. Cheyenne is the capitol and also where Chief Judge Freudenthal and District Judge Johnson sit. The third of our three district judges, Scott Skavdahl, sits in Casper. As a magistrate judge, I also sit in Cheyenne. Our other fulltime magistrate judge, Mark Carman, sits in Yellowstone National Park. We also have three other part-time magistrate judges; one in Casper, one in Green River (southwest Wyoming), and one in Lander (bordering the Wind River Indian Reservation in central Wyoming).

Yellowstone National Park, the nation's first national park created by Congress in 1872, covers an area of approximately 3,500 square miles, including the areas in Idaho and Montana. The park had more than 4 million visitors in 2015, a new record for yearly visitation. Yellowstone National Park is in a remote and isolated location in the northwestern corner of Wyoming. Access to the park from other locations within the district is time-consuming and costly due to heavy traffic during the peak summer tourist season and road closures in the winter. The courthouse in Mammoth Hot Springs in Yellowstone is 627 miles northwest of Cheyenne and 451 miles northwest of Casper. Magistrate Judge Carman serves the Park from its headquarters in Mammoth Hot Springs.



Created in 1929, Grand Teton National Park, the southern border of which is ten miles north of Jackson, is one of the most frequently-visited national parks in the country. In 2015, the park had approximately 4.6 million visitors, a new annual record. Jackson is 436 miles northwest of Cheyenne, 282 miles west of Casper, and 150 miles south of Mammoth Hot Springs in Yellowstone National Park. Judge Carman travels from Yellowstone to Jackson to handle court matters one or twice a month, depending on need.



Centrally located in Wyoming is the Wind River Indian Reservation (WRIR). The WRIR encompasses approximately 2.2 million acres. The part-time magistrate judge located there conducts preliminary proceedings in felony cases arising from the WRIR

and misdemeanor matters from the WRIR and federal lands north of Lander. Most proceedings are for Native American defendants from the WRIR, which often involve violent crimes. The two tribes living on the WRIR are the Northern Arapahoe and Eastern Shoshone, who have been traditionally hostile toward each other. The WRIR has been designated a High Priority Performance Goal Area by the Department of Justice, one of four Indian reservations given this designation due to their high rates of violent crime. Lander, a town of approximately 7,000, is located in central Wyoming, 276 miles northwest of Cheyenne, and 145 miles west of Casper. Approximately 14,000 Northern Arapahoe and Eastern Shoshone tribal members reside on the Wind River Indian Reservation. A substantially smaller number of non-native Americans also reside on the WRIR.



Our three Federal Public Defenders are all located in Cheyenne. We have 42 CJA panel attorneys. The CJA attorneys consist of two groups: core and supplemental. The core panelists are the more experienced attorneys who agree to take more cases whereas the supplemental panelists receive fewer appointments. Most of our panel members are located in Cheyenne and Casper, while the others are geographically spread around Wyoming. We also have two small specialized panels for matters that arise in Grand Teton and Yellowstone National Parks. The Grand Teton panel attorneys reside in Jackson. The Yellowstone attorneys live in southern Montana as Wyoming attorneys would need to travel much greater distances to get to the Yellowstone courthouse.

CJA PANEL ADMINISTRATION

Our CJA program is administered by my office in Cheyenne. Once it is determined that counsel is needed, we contact the Federal Public Defender's Office for a conflict check. If no conflict exists, they automatically receive the appointment. If a conflict does exist, then our job is to select a CJA attorney based on the nature of the case, the attorney's experience in relation to the case, geographical location, and availability, all while maintaining an equitable distribution among the panelists. On

average, and depending on the overall caseload, our core panelists receive approximately four full-case appointments during a calendar year. By comparison, the supplemental panelists receive approximately half the appointments made to the core panelists. The overwhelming majority of our panel appointments are for multi-defendant drug cases.

Attorneys appointed in Yellowstone and Grand Teton National Parks are made by the Yellowstone Magistrate Judge; nearly all of which are for misdemeanor offenses.

Wyoming's CJA program is reviewed at least annually pursuant to our CJA Plan. Importantly, this review begins with a small group of panelists appointed to serve as our Standing Committee. This group is tasked with generally discharging the duties under the Act, recommending to the court the makeup of the panelists, training, and mentoring.

Our mentoring program was established two years ago. The intent behind the program is to provide an opportunity for attorneys who lack necessary experience to serve on either our core or supplemental panels. Voluntary mentors (core panelists) work with the mentees for an unspecified time and number of cases, and later make recommendations to the Standing Committee and the court for service on one of the panels. We maintain approximately 8 -10 mentees at any given time.

Training is also critical to the success of our program. The Federal Public Defender's Office and CJA Standing Committee provide periodic training to our panelists to ensure knowledge of federal practice, sentencing guidelines, and others matters related to the representation of criminal defendants in federal court.

QUALITY OF REPRESENTATION

A. Panel Size

Like districts with similar rural characteristics, deciding whether to maintain a large or small panel is a difficult question. With a smaller state population, but with considerable distance and travel, we try to strike the proper balance. Problematic with maintaining a panel that is too large, and with a smaller pool of licensed attorneys, is that invariably we settle for lesser quality. We also run the risk of shrinking the number of cases for each panelist which, in turn, translates to lesser experience.

On the other hand, if we maintain a panel that is too small then we have the added challenge of locating attorneys who do not have a conflict in a multi-defendant or related case. When this occurs we are forced to reach outside the district where travel and litigation costs increase. The other disadvantage with a smaller panel is reduced opportunities for other interested and qualified attorneys who desire to do the work. To keep costs down, we try to appoint attorneys who are close to the courthouse and client.

We currently have about the right number of attorneys. While some of our 42 CJA attorneys do not get many cases, mostly because they live a greater distance from Cheyenne and Casper, having experienced attorneys available in a time of need, especially when conflicts arise, is helpful given our caseload and distance challenges.

B. Training and Mentoring

In our view, training and mentoring are determinative to the success of the CJA program. Without it attorneys are left alone to navigate the legal and procedural complexities unique to federal criminal practice. We encourage a national standard and a regular and dedicated funding stream to these two areas.

Currently, our Federal Public Defender and CJA Standing Committee provide regular training, but sometimes that is dependent upon available funding. Many of the panel attorneys are either solo practitioners or practice in a small rural law firm. They often have little access to additional staff. Because so many of our CJA appointments involve multi-defendant drug cases, the attorney is often given a large volume of discovery. This regularly includes court-authorized intercepted phone calls or other e-discovery. Without adequate training, clients with mental health and substance abuse conditions create additional challenges. Training in these and other areas greatly aids the CJA attorney.

Our mentoring program is relatively new. As older more experienced attorneys retire or remove themselves from CJA practice, it is important to have the next generation of attorneys ready to step in and provide effective representation. Like training, any uniform or consistent guidance, along with adequate funding at the national level, to ensure mentoring is available to each district will only enhance the overall skill level and integrity of the program.

C. Regular Review of Panelists

As noted, in addition to our Standing Committee providing necessary training and mentoring opportunities, along with recommendations about the overall size of our panels, they also annually review the quality of work being done by our panelists. The Committee then makes specific recommendations to the court. One challenge in this area is how best to address an underperforming or unqualified attorney; especially when the attorney has participated in the program for an extended period of time. In a small rural district, removing longstanding panel members creates additional challenges for the Committee and court. Despite these challenges, very rarely do we encounter a panel member facing contempt, malpractice, or ineffective assistance determinations.

CONCLUDING THOUGHTS AND RECOMMENDATIONS

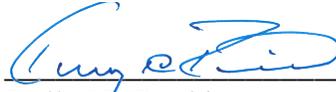
Many challenges face small rural districts like Wyoming. Our Federal Public Defenders and CJA attorneys spend countless hours driving between their offices, jails, and courthouses. Defendants are kept in various county jails as we do not have a federally designated detention facility in Wyoming. Our lawyers are thus traveling as much as five, six or more hours to get to the local jail or courthouse. Often times the travel is treacherous due to poor weather. It is unrealistic to remedy this significant travel burden by adding more jails, courthouses, and judges. Instead, it is vital to our success to ensure that funding resources recognize the cost of providing effective representation means our attorneys must get to their clients, wherever they are. While we have taken several steps to reduce travel costs by appointing attorneys as close to their clients as possible, we hope adequate funding persists given the necessary travel that occurs, especially in small rural districts like Wyoming.

The vast majority of our CJA appointed cases are multi-defendant drug cases. They often involve voluminous and complex discovery. We are pleased the Tenth Circuit recently hired a budgeting coordinator. Undoubtedly, this will provide counsel and the courts with much needed guidance and uniformity. Even so, with each attorney there is sometimes a significant difference in discovery review and overall cost. In a more complex case some attorneys carefully review and analyze every evidentiary item while others give it a more cursory review. This results in vastly different costs for similar cases. A more formal structure and added support on a national level will help attorneys strike the proper balance when reviewing and preparing their cases.

We also view training and mentoring as key to the continued success of the CJA program. Again, this is an area where national uniformity, guidance, and resources will maintain the highest integrity of CJA attorneys everywhere. In Wyoming, CJA appointed cases are not the bread and butter for any of our panel attorneys. Most either practice alone or practice in a small rural law office. Providing attorneys with uniform guidance for training and mentoring will only help improve the overall quality of their representation.

Finally, and while considering our precious available resources, we should work closely with our Public Defenders and CJA attorneys to reassess all available tools to provide professional support to the boots on the ground. The promise of effective representation begins and ends with these hardworking and dedicated lawyers. Providing them with the necessary resources and guidance will only serve to further enhance this incredibly successful program.

Thank you for this opportunity and your commitment to improve our CJA program.



Kelly H. Rankin
U.S. Magistrate Judge