

Ad Hoc Committee to Review the Criminal Justice Act

Public Hearing #5—San Francisco, California

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Transcript: Panel 1—Views on Case Budgeting & Case Management

Judge Cardone: All right. Welcome to our officially first panel. The first thing I do want to do is go ahead and introduce our panel participants. We have Kristine Fox, the Circuit Case Budgeting Attorney for the Ninth Circuit; Bob Ranz, Circuit Case Budgeting Attorney for the Sixth Circuit; Peter Shaw, Appellate Commissioner from the Ninth Circuit; Jerry Tritz, Circuit Case Budgeting Attorney from the Second Circuit; and Diana Weiss, CJA attorney from the Northern District of California.

Before we get started, let me say, as you can probably tell, we're running a little bit over schedule, but it is really important. You've taken the time to be here, we want to hear from you and so if we have to eat a little bit into the lunch hour I will make that call, so feel free. We need to hear from you and that's really important to us. The way we're going to operate this is, we've gotten your submissions and we've had the opportunity to look through those, so as we begin, you do not need to read those or reiterate those. What I'd like you to do is make sort of a brief opening statement and then we're going to get right into the questioning. We'll start with you, Ms. Fox.

Kristine Fox: Thank you, Judge. In taking that to heart, these will be very brief. Good morning, thank you for inviting me to participate in these very important hearings. I know you are grappling with many different issues, and I do not envy your task. You have my written submissions as you said, so I will limit my remarks to just some brief comments about budgeting.

Since I began working at the Ninth Circuit as one of two case budgeting attorneys, I have been asked numerous times by both judges and panel attorneys, why budget? The answer to me is three fold. Budgeting benefits the court, it benefits counsel, and more importantly it benefits the defendant. When we budget a case, we work directly with appointed counsel serving as a type of mediator between counsel and the court. This saves the court time by reducing the need for ex parte hearings and the filing of numerous individual funding requests. It also removes what I like to call the 'sticker shock' that some judges feel when extraordinarily large vouchers are submitted at the end of the case. It generally makes the voucher review easier, so long as counsel's billed time is within the budget a voucher is much more likely to be found reasonable, and absent any technical problems, paid in full.

From counsel's perspective, budgeting leads to better case management and consequently higher quality representation because the act of preparing a budget gets counsel to think through the case and plan ahead at an earlier stage of the litigation. In multi defendant cases, budgeting gets counsel to

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think about collaboration on tasks that do not involve conflict such as investigating informants or organizing discovery, or preparing joint motions. Having a budget also provides some assurances that vouchers will be processed in a timely manner and will likely be approved. All of this benefits the defendant. I have seen during some of your previous hearings questions about the under-utilization of service providers by panel attorneys and you probably are already aware but in 2010, the FJC conducted a study of the circuit budgeting attorney program and they concluded that budgeted cases have an increased use of service providers and of more different types of providers than non-budgeted cases. This again benefits the defendant by improving the quality of representation.

Thank you again for inviting me, I look forward to answering your questions to the best of my ability.

Judge Cardone: Thank you. Mr. Ranz.

Bob Ranz: Thank you, Judge. Good morning. Again, I would like to echo Kristine in thanking you for the opportunity to appear here. I'm just going to have a few brief opening statements and they might sound a little scattered because I'm assuming you all will zero in on whatever questions you're interested in.

We are, as case budgeting attorneys, in effect, as my colleague Mr. Tritz always likes to say, "We're one person trying to work with a three to four hundred attorney law firm", which is the CJA panels in our community. At the same time, we in effect serve many masters. All of our judges throughout the circuit and districts are unique individuals with their own background, their own ideas and their own areas of expertise and what they've dealt with in the past. We do, in effect, become in the sense mediators between the attorneys and the judges in many cases.

I would like to point out, maybe I should have prefaced with this, what I am planning on talking about today I would like you to take as my own personal opinions. I don't feel I have the authority or should I be speaking for all of the nine case budgeting attorneys as a whole. We are actually having a meeting tomorrow and I'm sure we'll discuss much of what goes on today. I'm my opinion, CJA attorneys are in effect second class citizens in our justice system. The prosecutors don't have to come in and beg for resources. They don't have to divulge their trial strategy to a judge in order to ask for resources or experts that they might need. AUSA does not have to justify everything they do.

I would venture a guess that to the best of my knowledge, AUSA's have never been told, "Prosecute this case as cheaply as you can", which is, although it might not be as blunt as that, that is pretty much what a CJA attorney is given to understand. That you'd better not go crazy on how much

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you spend on a case. That's a big portion of what we do is trying to get the resources for the CJA attorneys that they both need and deserve. Also, through that same vein, CJA attorneys and case budgeting attorneys, much of what we do is in response to what is done by the AUSA as I know it's been talked about quite a bit at these hearings. In today's world with computers, websites, now we're running into Facebook, Tweets, and I'm an old guy. I'm not even up to date on a lot of that stuff, but that's all included in much discovery now. You can't speed read audio, you can't speed read video tapes, pole cameras, and we have so many cases now where there's hundreds of hours of those sort of things.

Some specific cost savings that I would recommend and I talked about this in my submission very briefly, some sort of copy center, whether it be in the courthouse or whatever. Make one or two copy machines available to CJA attorneys to run their copies for their cases, for their appeals, as opposed to farming those out to individual contractors. We spend a huge amount of money copying discovery in effect, copying CDs, DVDs. A law firm doesn't farm that sort of thing out, they have their own centers for it. Making an IT person available to the CJA to help them assist with the electronic discovery. Sean Broderick's office does a wonderful job, but again, Sean has a small office and they're dealing with what I think is a ten thousand CJA panel attorneys.

I would suggest we need some sort of mid-level managers in effect, almost a new a system, whether it be in each district or perhaps shared in districts who would be a mid-level manager for the CJA attorneys. Perhaps that person could be the one who makes the decision on whether or not resources should be made available to the attorney. Take that away from the judge, take away having to divulge trial strategy to a judge who, in my opinion in many cases, would rather not deal with that issue.

As far as who should review vouchers, again, I don't presume to tell this Committee what to do. I know many of my judges aren't thrilled about reviewing vouchers and I think would be happy to pass that off. The issue I've run into throughout my own circuit and it's not super prevalent but it has happened is non-attorneys who are reviewing attorney vouchers. I have a real problem with that as former criminal defense attorney. Again, it would be like, I don't presume to tell a neurosurgeon how to do his surgery. For the same reason, should somebody in the clerk's office or in one of my districts, should a judicial assistant be the one who is reviewing vouchers and telling an attorney that this is not reasonable, you should not be charging for this. I think we need objective people to do that but it should definitely in all cases I believe be an attorney who is the one who was reviewing the vouchers and making the decision on whether or not resources should be available.

Again, these are all my own individual opinions. Again, in response to one of

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the, I think it was the Birmingham possibly, I have reviewed quite a bit of that and I heard one individual say that they felt that the \$129 per hour for a CJA attorney was reasonable. The reference was made that that probably comes out to as much or maybe even a little more than a prosecutor gets paid. On that, I would just like to point out, that a prosecutor and even a federal defender are on salary. They get paid for forty hours a week. A CJA attorney, that \$129 is per billable hour. They don't get paid forty hours a week. I think it's been shown fairly clearly in all the studies that the overhead comes to a big chunk of that \$129 per hour so I don't agree that the \$129 per hour is a reasonable fee.

The final thing I would like to say, and Judge Moskowitz I think did a wonderful job in referencing this. The same thing applies to the case budgeting attorneys and to whatever suggestions you might come up with as to how to maybe revamp the CJA. Don't get caught in the one size fits all mindset. Even among the case budgeting attorneys, one size does not fit all. Every circuit has its own needs, every circuit has its own culture and its own policies, and in fact to go even further, even within circuit every district has its own needs and policies. Where Mr. Tritz and I saw the need and were able to fill the need to review excess compensation vouchers, in the Ninth Circuit, for instance, Kristine and Blaire [Perilman], being two case budgeting attorneys, it would literally be physically impossible for them to try and review every excess comp voucher in that circuit. We need a framework, but we don't need a one size fits all.

Thank you.

Judge Cardone: Mr. Shaw.

Peter Shaw: Thank you Judge Cardone, and other distinguished members of the Committee.

I wanted to tell you about the Ninth Circuit's approach to CJA management and that is through the use of the appellate commissioner position. A bit about the creation of the position. The Ninth Circuit historically was facing vastly increased workloads with no concomitant increase in the number of judgeships. As a result, the court decided to explore the possibility of creating a magistrate level position in the court of appeals to handle properly delegable judicial functions, one of which is a ruling on all CJA appellate vouchers. In 1994 the court created the position of appellate commissioner and delegated a number of responsibilities that judges had formerly performed to the appellate commissioner.

The court authorized the commissioner to rule on a wide variety of motions, many of which involve practice by appointed counsel on appeal: motions for appointment, substitution or withdrawal of counsel, motions for leave to

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proceed in forma pauperis, for extensions of brief length, for extensions of time, motions to seal and unseal and the like.

The court also referred a number of other matters to the appellate commissioner. It referred to the commissioner the responsibility to rule on awards of fees in civil cases which has informed me as well in my evaluation of Criminal Justice Act vouchers. I also conduct hearings and prepare reports and recommendations in National labor Relations Board enforcement proceedings and other contempt proceedings in the court. I conduct hearings and issue reports and recommendations in request for self-representation on appeal. The appellate equivalent of the *Faretta* hearing that's performed in the district court. I also manage, generally in the court, quality of practice issues and attorney discipline and I conduct disciplinary hearings and issue reports and recommendations when an attorney may be subject to suspension or disbarment from the bar of the Ninth Circuit.

In complex cases, the mega cases that you're inquiring about today, I conduct case management conferences, I'll discuss that a little bit in a moment. I also handle all the CJA management responsibilities including panel composition issues, selection and training, as well as making the initial ruling on all appellate vouchers.

The former practice the court had was to assign vouchers to individual judges. Typically, the lead judge on a merits panel, a three judge panel, and that process of distributing this workload was unpopular. It was unpopular with judges, it was unpopular with attorneys. Judges often felt unprepared to make compensation decisions as Judge Moskowitz pointed out a little while ago. They often, I think, believed that the decision making process was one that was administrative that they had not been trained to do and that fell outside the judicial function for which they were appointed. As the Committee has heard in other hearings, there is considerable debate whether the judges who make merits determinations are in an appropriate position also to make compensation determinations.

Having multiple judges assigned with the task of making compensation rulings also lead to inconsistency, slow payment, and reductions without explanations. This resulted in numerous complaints from appointed counsel in the circuit and that stack of complaints that was handed to me when I stepped into my chambers for the first time was probably one of the most important reasons that the court actually went ahead and created the position.

Having a single decision maker make this the initial decisions on all appellate vouchers solved these problems. In terms of uniformity, when I first started twenty-two years ago, I took a look at all the criteria that make an appeal complex or simple and tried to identify a snapshot of the case to guide me as I looked at the vouchers. Seeing all the vouchers from all the practitioners in

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the circuit gave me a database from which to draw, to see what was the range of reasonable work. I had also spent seven years in private practice, most of which had been as an appellate litigator so I had done this kind of work and I knew what it meant to review a record and to prepare a brief and to prepare for oral argument.

I also make prompt review and compensation a high priority, so vouchers don't linger with me for months. I try and pay these attorneys. They work. It was just pointed out they're not salaried, they rely on getting paid in order to support themselves and their families and I try and do that. When I see a voucher that I believe is excessive, I will give notice to the attorney. I will give a detailed explanation of why I believe that the matter is excessive and I'll give the attorney an opportunity to comment before I make a reduction. I take those comments seriously and sometimes I change my mind based upon what they tell me.

Having the decision made by an officer who is uninvolved in the merits determination allowed for an objective view of the reasonableness of the time expended in perfecting the appeal. The decision maker, the judge who rules on the merits, may find the case very simple at the decision making time and not appreciate the fact that the attorney reasonably had to go through a lot of steps to get to that stage and really needed to cross T's and dot I's on the way there.

In terms of panel management, in our circuit, each district has its own CJA plan with its own CJA panel and almost all of them have separate appellate panels. I work with those appointing authorities in each of the districts, in selecting, training and evaluating the appellate panel attorneys. I often travel throughout the circuit and give talks about Ninth Circuit practice and procedure about my approach to compensation issues and the like. The goal of all this is to ensure high quality and efficient appellate representation.

I wanted to make a separate point to you about a matter that I'm not sure has come to the forefront of the Committee's attention and that is the question of continuity of representation. Most circuits have a rule that specifies that trial counsel will keep the case on appeal. Ten years ago the Vera Institute was looking into this question and I wanted to report to you from my own experience doing this for twenty-two years, I am a staunch advocate of appellate specialization. I endorse an approach where trial court counsel can easily come off cases, no question asked, and be replaced by an appellate specialist. My experience is that appellate specialists generally provide much higher quality representation and do so at no significant additional expense. Any possible gain that you would conceive of by a trial court attorney being already familiar with the record and getting a cost savings that way is almost always overcome by the familiarity of the appellate attorney in research and writing. Knowing how to look at a record with an eye to evaluating the case

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in the same way that the judges will who ultimately will decide the case.

Case budgeting and mega cases which is the prime topic in your agenda today, I, as I mentioned, conduct case management conferences in complex multi-party cases. The goals of those conferences are two. First, case management, trying to address issues common to all the parties, so the government attorney and all the defense counsel participate. We talked about consolidation, transcript production, briefing schedules and all with the goal of avoiding unnecessary motions practice and allowing the parties to navigate the appellate process as efficiently as possible, both for them and for the court. I then excuse the government counsel and we proceed with the second part of the conference with just counsel for the defendants, usually all of whom are appointed. It's in this section where we explore ways in which the appeals can proceed efficiently.

How can we efficiently produce briefs and records? Might it be cost effective to appoint a paralegal, an assistant to summarize a transcript of a month's long trial and make that transcript summary available to all counsel for all codefendants. Then, I have the great benefit of having two circuit case budgeting attorneys, one of which is my distinguished colleague on the panel here today, Kristine, and I then ask the attorneys to work with the case budgeting attorneys to come up with a budget, a realistic budget that will take into account what they need to do. These attorneys who are in these complex cases are often attorneys who have been hand-picked. They're experienced appellate specialists who know how to handle this kind of case. They prepare a budget, I take a look at it and I approve it or I revise it and approve it, and that facilitates the quick approval of the interim vouchers.

These are the kind of cases that may take six months or eight months before there's any work product. Ordinarily, in a non-complex case, I prefer not to give interim vouchers until the opening brief is filed and that usually is just a matter of a couple of months or so. At that time, I can evaluate the performance, but in these cases it's really unfair to make the attorneys wait for those many months while they're reviewing the record and consulting with each other and drafting the brief. In those cases, once we have a budget, I feel very comfortable in approving interim payments as we go along, so long as it doesn't exceed the budget. I think we're now doing two stage budgets, one for the record review process and then one for the briefing process.

Many circuits have delegated the compensation function to a staff member, I'm now addressing the appellate courts in particular, and that changes many of the advantages I've discussed in terms of uniformity and the like. I think that our circuit has found significant benefits in creating this magistrate level position and delegating these additional functions. There's a synergistic effect when a single person sees not only the vouchers and briefs submitted

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by appointed counsel but also evaluates and rules on those attorneys motions for extension of time, motions for leave to file oversized brief to see if the attorney is really pinpointing the issues. Looks at responses to orders to show cause, observes their presentations at case budgeting conferences and more.

Also, because I do an overall quality of practice review, I get feedback from judges and staff on attorney performance. In particular, when attorneys are under performing. That allows me to evaluate the quality of practitioners. All this not only aids in the compensation decision, but it also aids in the important decision whether an attorney is serving the clients in the court at a level expected of an attorney that the government selects and appoints to represent counsel.

There's also a valuable effect when I also, in addition to doing all these things, get to go and travel around and meet with the attorneys, the appellate panel attorney's in seminars and get feedback from them and give them information that will enable them to be better practitioners. I guess, in sum, having a qualified magistrate officer handling this bundle of functions offers a degree of credibility, stature and respect to the attorneys who serve on appellate panels, to their clients, to the courts and to the administration of justice.

Thank you.

Judge Cardone: Mr. Tritz.

Jerry Tritz: Good morning. My name is Jerry Tritz and I'm the case budgeting attorney for the Second Circuit. I was one of the first three case budgeting attorneys hired and I participated in the pilot program which lead to case budgeting becoming a national program.

When I was interviewed for the CBA position, I told the search committee that in my view, if the circuit was truly interested in conserving costs, two things had to happen. First, our panel members had to be made to realize that there was more to being a CJA panel member than merely putting your name on a list. That with membership came the responsibility to provide quality representation in a responsible and cost effective way. The second point I made with the search committee was that if the circuit was truly interested in conserving cost they'd have to come to grips with the fact that like it or not, the circuit was running a four hundred man law firm called the Second Circuit CJA panel and they should start acting like it.

Case budgeting has been a tool we used to accomplish the first goal. Case budgeting has been instrumental in changing the culture of our panel in the Second Circuit to one that accepts that along with membership comes the obligation to contain costs to be accountable and to be fiscally responsible.

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Case budgeting in capital and mega cases forces our lawyers to examine their case, decide where their case is going and how they're going to get there. Once this has been done, we encourage the lawyers to employ presumptive rates of compensation where applicable, and to use best practices when retaining expert service providers.

Presumptive rates assure that everyone is paid the same rate for the same work. All mitigation people get \$100 an hour, all investigators get the same rate of compensation. Best practices is nothing more than commonly accepted business practices which could be found in any law firm in the nation who is conscious of their obligation to provide quality representation to their clients in a cost effective way. I've given examples of this in my written statement that will not repeat them here beyond pointing that what I'm pointing out that such things as negotiating a lower price using lower cost associates and paralegals where appropriate.

These concepts have been embraced by our panel because it's in their best interest to do so. Utilizing presumptive rates and best practices and making the presiding judge aware of these efforts, they have learned that they are far more likely to get favorable rulings from the court when they use these principles. The first prong of this two prong approach is in place in the Second Circuit so let me turn to the second prong which is acceptance by the circuit by the reality that they're running a law firm. I believe this is an area where substantial improvement can be had, but that is not to say that the judiciary has not been doing an excellent job for the past fifty years in running the program. The truth is, in my view, there is room for improvement and just as the panel has accepted case budgeting because it's in their best interest, I believe the circuit should accept the idea that someone should be in charge because it's in the courts best interest to do so as well.

Now, why do I say that? Because the perception is that some judges unreasonably cut vouchers. The perception is that what you are paid may be more of a reflection of who your judge is rather than the work you performed. The perception is that to agree to a reduction is the equivalent that you did something wrong. The presumption is that making a written submission is picking a fight with the judge. The presumption is to make a prior authorization request forces you to reveal information to the court which may jump up and bite your client at sentencing. The perception is that no two judges handle vouchers or any of the other things related to the CJA program exactly the same. The presumption is that judges get no training before they take the bench on CJA matters. They may have no criminal trial experience in their background and they have maybe never represented a criminal client but yet they are called upon to make decisions which will effect the quality of representation of the CJA clients.

I think all these issues could be eliminated if it's an experienced professional

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were placed in charge of the panel and given approval authority. Approval to approve budgets, approval to approve service providers, approval to approve vouchers. This would create transparency, consistency, and insulate the court from the appearance of conflicts of interest that naturally flow when this is not done.

I want to conclude by thanking the Committee for the opportunity to appear before you today and to share my thoughts. Thank you very much.

Judge Cardone: Thank you, and Ms. Weiss.

Diana Weiss: Good morning Judge Cardone and Committee members. Welcome to the Northern District of California, we're happy that you're here, thank you for the opportunity to testify this morning and for all of your hard work in this long, overdue study of the criminal justice act.

I will not repeat my remarks contained in my written submission, however I do believe that there are several issues that should be repeated and those are in regard to the structures put into place by the criminal justice act plan in our district. They are ones that served the panel as well as the judiciary well. Our structure addresses many of the issues that have been raised in other districts as problems and I believe that they're particularly issues with respect to panel selection and funding of ancillary services. I believe our plan is successful because the court, the panel, and the federal defenders all have input into the process. We all have a stake in the outcome and we all meet and discuss issues that arise. This is true with respect to the panel selection with respect to a fee review committee as well as administrative issues as they arise.

Working together fosters a culture of transparency, collaboration, trust and mutual respect. Appointments in our district are done on a strict rotational basis. Our panel members are highly vetted and it is an honor and a privilege for the lawyers to be on our panel, we are happy to have them. We feel, in the court, that it is an honor and a privilege to have them practice before us. As a result, the lawyers, we have some of the best lawyers in the country on our panel.

Lastly, I want to discuss my position as a CJA supervising attorney. I was a panel member for over ten years and I've been working on CJA cases in this district for almost thirty years prior to taking this position. I know the judges who I practiced before who I'm now working with as well as the panel members. My position differs from other folks who are holding the same title in other districts for several reasons including the fact that voucher review and funding requests are delegated to me for approval by the court. I do a reasonableness review of the vouchers. Having an experienced federal practitioner and a former member of the panel gives both the court and the panel confidence that there will be a fair and reasonable review of vouchers.

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Additionally, with respect to funding requests and other service providers, some of them, the routine ones I am delegated authority to approve and other ones I vet and make a recommendation to the court.

This structure places me in the position of an intermediary which removes many of the issues that folks have talked about before, giving the trial judge . . . the structure basically sets up the system where I could have frank and open discussions with the panel members regarding what do they really need, what are the costs associated, what are the justifications for their requests without the fear of becoming an adversary with the trial court judge. I then also have these open discussions with the judges so that they can understand and be educated as to what really needs to be done and with a healthy respect for the defense function. This process helps to ensure that costs are contained. Attorneys receive adequate funding for their service providers and most importantly that indigent defendants receive effective and zealous representation in our district.

I look forward to answering your questions and thank you again for inviting me.

Judge Cardone: All right, let's start with Mr. Frensley.

Chip Frensley: Thank you. Obviously, one of the things we're looking at are alternatives and a number of you spoke about today in your remarks and also in your written presentations about alternatives. I guess, I'll direct my question first to Mr. Ranz and Mr. Tritz with respect to the role that you play in the circuit with respect to reviewing excess compensation vouchers. I'd ask you to start with the issue about, obviously there's a statutory requirement that excess vouchers go to the circuit. Do you think that that is necessary? Do you think that it's appropriate? Do you think there's anything magic about the circuit judge's position, whoever the designee is, that makes them well equipped to consider excess vouchers? Finally, do you think that someone in your capacity given the role that you have would be just as capable and just as adequate as being the final decision maker on excess voucher issues.

Bob, if you want to start, that's fine.

Bob Ranz: Okay. Thanks, Chip.

Again, I'm speaking for myself.

Chip Frensley: Sure.

Bob Ranz: I do not think that it's necessary for the vouchers to come to the circuit. In some cases I feel that it's almost counter-productive and that obviously the district court judge and in budgeted cases myself know a lot more about the

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case than a circuit judge who quite frankly knows nothing about the case. Which is why, at least in our circuit as you know, we have the requirement that the district court judge is supposed to send a letter to the circuit court judge on every excess compensation voucher regarding their feelings about it and that they're familiar with the case and that they're recommending approval of that voucher.

That being said, again, I'm not trying to take on more authority than I should have or to be self-aggrandizing here, but I do think the case budgeting attorney role and specifically what Jerry and I do is very important to the circuit and I'm proud of the whole program. I think we've taken the weight off of the shoulders of the judges and after, well, I guess next month will be the conclusion of my ninth year, the judges have, I feel, come to trust me and we have a designee system as you know in our circuit where the chief judge has a designate who signs off on all these things. That became a two year position I think probably because no judge wanted to sign up for it for life.

I have always wondered about why does the circuit need to sign off on it? Did Congress not trust the district court judges? I don't know what the reasoning was there, but the judges familiar with the case should have the most input into the case. That being said, I would say and in my opinion the Sixth Circuit has a very low rate of voucher cutting. I can't speak to vouchers that are below the cap that are cut because they never cross my desk, but without keeping exact standards just anecdotally and what I've seen cross my desk, I would say that district court vouchers in the Sixth Circuit that probably less than 1% are reduced. Honestly, the ones I've seen probably should have been reduced. Judge Moskowitz talked about some of the things, the ECF, the .1's. We got that word out as soon as we could and our panel members have been very good about following that sort of thing.

That being said, I don't wear rose colored glasses. Every attorney on the CJA panel in the circuit is not a saint. There is a little padding that goes on sometimes. One of the advantages to being in my position over these nine years is that I know that there are certain attorneys I need to scrutinize their vouchers more closely. By the same token I also know that there are some judges in the districts that will sign any voucher that's put in front of them, and I have to scrutinize those vouchers a little more closely too. On the whole, I think our panel members are excellent, I think our judges are excellent, but as far as just the actual requirement of the circuit having to sign off on everything, sometimes it drives me crazy that the low rate of service providers, \$2400, \$2500, then it has to come to the circuit. That rate is ridiculous. You can't get much done for \$2400 or \$2500.

Again, why should the district court judge who has the case in front of them not be the one to make a decision as to whether they should get that money for an investigator or an expert.

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Jerry Tritz: [INAUDIBLE]

Judge Cardone: Could you speak into the microphone? Thank you.

Jerry Tritz: I'm sorry. I received an email from Circuit Judge [Gerard] Lynch who sits in the Second Circuit just a couple days ago, asking me, "Do I really have to put a second signature on a \$2.70 voucher?" Someone needed a transcript of an adjournment but because of the previous vouchers that had been submitted, he had to spend his time signing a \$2.70 voucher. It is, in my view ridiculous.

When I applied for this program or when I started working on the program, Bob and I and Bob I'm sure will agree with me, we were given the equivalent of three sheets of paper and said, "Go out there and do this job." We went out there and we talked a great deal about what are we going to do? How are we going to do this? We came to the conclusion that the job will be what the court needs it to be. What the court needed was help with vouchers.

Again, preparing for my interviewing for this job, I read a report that had been done ten years earlier on the CJA administrative attorney pilot program that had preceded the case budgeting program by about ten years. One of the conclusions of that report was that the lawyers will do whatever you ask them to do, as long as you pay them promptly. I've been guided by that throughout my entire career as a case budgeting attorney. When I started in this job, the circuit was six months behind in paying their vouchers in my circuit and in Bob's circuit they were two years behind in paying vouchers. The first thing we did was get involved in the voucher process to expedite the signing of the vouchers. What that meant in my circuit was that I had to review every excess compensation voucher that came to the circuit for a second signature and I put a little comment on it, many times just a few words. Something as simple as, "Reasonable for an appellate brief."

The judge would read those, I don't know whether the judge went through every page of the voucher thereafter but my guess is that they didn't. They relied on me because I came to the job with twenty-eight years experience as a CJA attorney. I had done the practice and I was familiar with it. To this day, I just had a conversation with another judge on the court of appeals the other day when I trained her in the eVoucher system. She said to me, "Our goal is to get these things out of here as quickly as possible, to spend as little time as possible on the vouchers." This is not their priority. Their priority is decision making on the case, not in deciding the compensation.

This is a burden that they don't welcome, and candidly, I had a major event the other day. My anniversary is in three days. I will be starting my tenth year. I just had my first budget rejected. I've had one in nine full years of practice in doing this, I have never had a budget rejected until just the other day. I expected that budget to be rejected because I met with the lawyers. I

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met with the lead lawyer first, I wasn't satisfied with the way that meeting went. I then had a second meeting with all of the lawyers on the case because in that case there are three lawyers assigned to that case because of the size of the discovery material in that case. I pressed them as hard as I could to change their figures but I have no authority to tell them, "You can't have this." I can make recommendations, I can talk to them and say, "I don't think the circuit is going to approve this or the district court is going to approve it." I can tell them that, but if they don't want to, this is what they say they need, then it goes to the judge and they can argue it to the judge.

What does that mean? It means that I have been making recommendations on budgets that have been almost uniformly accepted. I have been making recommendations on vouchers as if I could sign them to have the circuit judge repeat that is to me a waste of his time and maybe even a waste of mine. Candidly, the review of those vouchers take an inordinately large amount of my daily work product. I can do a lot more and I think a lot of other things. Maybe I'm being . . . in any event, there's a lot of other things I could spend time doing. For example, I could put together a manual about CJA matters for our judges, because they don't get it anywhere else.

I don't think that there's anything magic about the court of appeals judges signing. I don't think there's even anything magic about the district court judges signing. Peter Shaw, he signs vouchers in non-excess compensation situations. I would like to see that expanded. I don't see why our judges should have to spend their valuable time doing these kind of things. I'll try to keep it short . . .

Chip Frensley: That's fine. I'd ask sort of a similar question on the district level and that is, again, understanding that there is a statutory requirement at the end of the day that the judge has to sign off on the voucher. Given the role that you play in the system, do you feel like someone occupying your type of position could just as easily fulfill that function, and specifically if you could address the issue which is primarily the one that is raised by advocates of that position who say, well, the district judge knows everything that happened in the case and they're uniquely positioned to be able to assess the reasonableness of the voucher.

Jerry Tritz: You know . . .

Chip Frensley: I was asking Ms. Weiss, but Jerry, you can speak to it too.

Jerry Tritz: They're only uniquely positioned in that limited way that they are familiar with what went on in the courtroom and what paperwork came to the courtroom. I often think that they have little or no idea what a CJA lawyer does with 90% of his time. If they have never represented a criminal client, then they don't have any idea how difficult some of our clients can be. They

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don't understand how limited their education is, or their background, their IQ, their ability to express themselves, their ability to process information when given to them.

I often see in support documents that come in in support of a voucher, statements to the effect that, "My client was of a limited ability to comprehend what I was trying to tell him and I had to go see him on numerous occasions and repeat what I told them previously over and over again because the client could not retain the information that I had given to them earlier." Unless you've been there and done that, you don't really understand how difficult that is and how time consuming that is. If anyone has been to the jail as many times as I've been to the jail . . . people ask me when I took this job, you're going to give up practicing and you're going to take this? I said, "My goal is to never go to the MDC again."

Chip Frensley: Ms. Weiss.

Diana Weiss: I shared a similar goal to Jerry when I took this job, which was, I never have to go to the jail again. With respect to . . . I actually agree quite a lot with what he had to say regarding whether or not the district judge really knows the case because much of the practice does go on not in the courtroom and not with the papers that are submitted but rather reviewing the voluminous discovery that is now being produced. Negotiating with the other side as well as meeting with the clients. In federal court as you know, the sentences are so harsh that you really do have to spend quite a bit of time with the clients to explain to them everything that's going on in the case as well as what's going on in sentencing and the pleas are different. A lot of these folks come from state court or have not been in the system. It's quite shocking to them.

I do think that somebody in my position who actually has done the work, so I know what it takes to draft a stipulation or review discovery. I require folks to tell me what kind of discovery did you review, because we all know you can review photographs a lot faster than you can review a DEA-6 or an FBI-302. That being said, it takes a lot longer than fifty pages. You can't do it in fifty pages an hour even though that's what's required now for our benchmark because a lot of work goes into representing these folks. I do feel that I am in that unique position to evaluate the reasonableness. I don't think that the district judges necessarily have that same experience. I don't even know, I think we have one judge who was a criminal practitioner on our bench. I think it makes more sense to have that intermediary person to review the vouchers and to determine the reasonableness.

Chip Frensley: When you talk about that alternative system and something that Jerry talked about, I think you may have also mentioned as well in your written submissions. One of the counter arguments or criticisms of a proposal that moves that function from the judges to some other individual, whether it be a

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supervisory attorney or case budgeting attorney or some other functionary. The criticism I've heard often going back actually to the Prado hearings is, "Well, that's creating a whole new bureaucracy." Can anybody address that issue and sort of talk about how you feel like that is or is not creating any bureaucracy and whether that matters or not?

Diana Weiss: I don't think that does in fact create another level of bureaucracy. In fact, my experience is, bureaucracies are difficult to access and in my position I think the lawyers have a lot more access to me than they would to a district court judge. My phone rings constantly, I have an open door policy and I also answer my phone when it rings. I spend a lot of my time on the phone talking to folks about their requests and what they need and their cases and what do I think might be reasonable, what would fly. I don't think it's another level of bureaucracy. I actually think it's cleaner this way.

Chip Frenslley: I know through the FJC report and other activities of the case budgeting attorneys, that greater interaction that you're describing is something that's resulted in significant cost savings. Do you see that in your position as well, and if you do, is that something that you're able to capture in any meaningful way in your district the way that interaction leads to cost savings for the defense function?

Diana Weiss: I think it leads to cost savings in the sense of I could have, especially with respect to funding, I could have those real honest discussions with folks about, "What do you need? Could we do this in stages?", without them getting their hackles up that they're not getting and they're not going to get what they need. Many times I say, "We'll give you fifty hours for your paralegal and then come back. Let's do it in smaller chunks", and people are really receptive to that. I do think it is a cost savings and I think it's also an incredible savings of judicial resources because our judges are super busy. We have a big docket here and the last thing they need on top of it is to be reviewing vouchers and having to deal with lawyers over their funding issues.

This way they get the information. I talk to the lawyers and on the requests for funding that I don't have delegation of authority for, I write usually an email to the judge and explain to them, "This is the case, I've talked to the lawyer, this is what they want, this is why they need it, this is what I think is reasonable." I write up the order and if you agree, fine, just press the button and if not, let's talk about it. I've had every little conversations about it.

Chip Frenslley: Last question I just wanted to ask to Ms. Fox and Mr. Ranz and Mr. Tritz, all because you have experience in multiple districts across your circuits that you work in and it's the same question I asked Judge Moskowitz and that is, to the extent you know how panel selection works in your districts within your circuits, do you see any correlation between the sophistication or the manner

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in which panel attorneys are initially selected and retained on the panel on the front end to back end consequences regarding voucher reductions or seeking experts or approval of experts or just any correlation whatsoever?

Kristine Fox: I don't know that I . . . I've been on this job for less than two years and frankly I'm still getting to know the cultures of our districts. We have probably the greatest variety of approaches in our circuit from everything being managed by the Federal Public Defender's Office to nothing being managed by the Federal Public Defender's Office. I'm afraid, I apologize, I don't really have that depth of experience that I could comment on it. I know these two do.

Bob Ranz: Actually, I don't. I am not involved in the panel selection process at all in the circuit or in any of the districts, although part of our job is doing training seminars in the various districts. I think that has had an effect on the attorneys. Just from anecdotal knowledge it seems that most of the districts do a good job in panel selection and are willing to recognize if a panel attorney is not doing the job that he or she should be doing that they should be taken off the panel.

On the appellate panel, I can tell you that I've spoken with some of the people in the circuit who are involved with the panel and given them my feelings about whether or not an attorney should be on the appellate panel or not. Some of that, I have literally in reviewing excess comp vouchers, I've read some appellate briefs that I think a seventh grader could have written better quite frankly, although I don't know how much of that goes back to . . . I would have to agree with Peter that I was a trial attorney, I never wanted to do appeals. I think it's two separate fields, it's two separate specialties and I've always had a problem with the guidelines saying that the trial attorney should stay on the appeal. I don't think that's a wise decision.

Peter Shaw: I wonder if I might just address your excellent questions.

Chip Frensley: Sorry, didn't mean to leave you out.

Peter Shaw: I've been chomping at the bit here. They're great questions and I have some thoughts on those. First, about the second level approval by a circuit, by the chief judge or delegee. I've worked with many circuit judges now who've been in that role because in our circuit we delegate them to three judges rather than . . . none of them feel well equipped to do that. They don't. I think just objectively from a management standpoint, it seems irrational to give that kind of auditing review to people at the top of the management level who don't have any prior experience, insight, into the details of the case. To ask them to do the kind of review that you're asking seems not cost effective. It just doesn't seem like something that would be done in any kind of a rational organization.

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Where there is a uniform voucher approver, I think you solve a lot of the problems because the one thing that you can do that way is to look at the outlier judge who rubber stamps. Even then, allocating the high level circuit judge to do that doesn't seem to me to be the rational approach. I think I can freely say to you that the unanimous view of the judges who've played that role in our circuit is that they don't want to do it and they don't see the rationale. They don't even know what they're supposed to be doing.

About panel selection, you ask both Judge Moskowitz and us the question of whether panel selection at the outset in terms of trying to get high quality practitioners yields cost savings at the end. I don't think that's true. What I think it does do is get you high quality attorneys. The way I deal with that issue is when I have a new attorney on a panel, I will give a strict scrutiny to the first few vouchers and get a sense of whether that attorney has a good idea of what's reasonable in terms of expenditures. I think that, at least from my standpoint, the way I can accomplish the goal of efficiency and cost savings is in early intervention if there seems to be a high number of hours for tasks and so I'll address that right at the outset and then they'll get an idea of what's expected from the court. I don't think there really is a correlation between quality and cost efficiency. I think sometimes there's a negative correlation there. When you have people who really put the time in to do high quality work, sometimes they spend more hours than somebody who doesn't do high quality work.

Thanks.

Jerry Tritz:

To answer your question, I think there's a direct correlation between the quality of the lawyer put on the panel and the cost of his work. In my view, a good lawyer is not necessarily only a good lawyer he's also a good businessman. That means that he bills us for everything he's entitled to bill. I've noticed that among our CJA panel we get a benefit by the poor record keeping of many of our practitioners. I'll see vouchers, there's no travel time in the voucher, "Nah, I don't bother billing for that." There are many areas where they just don't keep the records, it's too much bother to put down every phone call, "so I don't bill for that," "I don't bill for that." It's very common.

The organized, excellent lawyer, he bills for everything. He'll bill for the token to get on the subway because he's entitled to it. I don't hold that against him when his bill comes in, it's the cost of doing business. You want a quality person, you may have to pay a little extra for it. Not because he's not doing the work, not because he's not doing what he should be doing, it's because he's charging us for everything that he's entitled to charge us. I personally believe some of my best lawyers on my panel, lawyers I would put up against any lawyer in the United States. That's how good these people are.

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They're also my most expensive, because they keep good records, they know what the rules are, they know what they're entitled to receive and they ask for it and we pay it.

I think there's a direct correlation. The better the lawyer it may in fact be the more it's going to cost us.

Judge Cardone: Judge Gerrard.

Judge Gerrard: Yes, thank you.

Judge Cardone: I am, so that everybody gets a chance, I'm going to hold everybody's, particularly the answers . . .

Judge Gerrard: One or two questions?

Judge Cardone: No, you go ahead.

Judge Gerrard: I want to talk to Mr. Shaw to give voice to an area that we haven't talked a lot about and that's appellate representation, the continuity of representation rule that you discussed. In my former life, I was an appellate judge, so I would agree with you in many ways that appellate specialists are very necessary, however they are not always available in many areas of the country. Certainly on this coast, on both coasts, they're available. In between the coasts, not as much. What I want to talk to you about is systemic issue and that is how do we attack that issue within the purview of this Committee's charge? In other words, how do we give voice to that? How do we, as a practical matter, what do we do as a Committee? What suggestions would you have?

Peter Shaw: In terms of trying to recruit appellate specialists in areas where they're rare.

Judge Gerrard: Recruit, train, and whether that in fact should be a recommendation of ours.

Peter Shaw: One, you can try and do as much as you can in working with what is available to you in the geographical area that you have. One thing that has occurred to me in our circuit where we have had this tradition of getting attorneys from the district where a case arose is that that premise is not necessarily reasonable any longer. It used to be that you'd want an attorney close to where the district court was so that attorney could go look at the records and be close to that process. Now where so much of the work is available electronically and where the clients are dispersed based upon the decisions of the bureau of prisons outside the purview of the judiciary even, then it's no longer necessarily the case that the attorney will be close at all to where the client is institutionalized.

The traditional reasons why we have had attorneys close to the district court

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no longer pertain. I would say that there's no reason why a court could not expand its search for appellate attorneys outside the ordinary purview of what it had done traditionally and look for people. In our own circuit, we have a wide disparity of appellate specialists availability. Now what I see is the District of Alaska where there are few appellate specialists is now using attorneys from this Central District of California a thousand miles away. Attorneys who are proven good attorneys may be on several different panels especially in areas where there aren't some. To the extent that the court is willing to explore that opportunity, I think that's the most likely solution.

Judge Gerrard: Very well. Yes, Mr. Tritz.

Jerry Tritz: I'd just like to make the point that appellate practice as opposed to the practice of the district court, one of the main differences is that there is not as much client contact necessary. It's easier for a lawyer who may be in the Northern District of California to handle a case from White Fish, Montana, because maybe he has to make one or two trips to visit with the client to discuss the issues, but that's it. Otherwise, he's got the record, he can work in his office. The fact that he's distant in mileage doesn't really effect the quality of his representation. The fact that in certain districts there may not be as many appellate lawyers shouldn't mean that we can't make use of appellate specialists for that reason.

Judge Gerrard: There are some cultural things to overcome, but my question was, as a practical matter to be utilizing that and that's very helpful.

Ms. Weiss, I did want to ask you certainly in your district, you're doing the reasonableness review on vouchers and other services providers. One of the things that we've heard in some areas is well, that's okay for you. That's what we do in the mid-west, that's what you do, my colleague to my right does that. In some areas it's just not practical. The districts are too large, they're too big. What do you do? Obviously you are from a large district, how do you handle the circumstances?

Diana Weiss: I'm sorry, I don't really understand what you're asking.

Judge Gerrard: I'm sorry, I didn't ask a good question. That is, for example, you are doing as the CJA supervising attorney, you're doing additional reasonableness reviews, is that correct?

Diana Weiss: Correct.

Judge Gerrard: For your judges, you're doing reviews for other service providers etc.?

Diana Weiss: Yes.

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Judge Gerrard: Okay. There are some districts that are large districts that would say to have a CJA supervising attorney or somebody in that position, it's not practical to do so.

Diana Weiss: We do have a large district here and it is a fair amount of work, but it's not unwieldy. My suggestions would be, then get two of me.

Judge Gerrard: That is my question.

Diana Weiss: I really do think it's a great solution to the problem. It also ensures uniformity of voucher review. If I'm reviewing all the vouchers or there's two of us, then the lawyers know what to expect and what to put down in their vouchers and they're treated the same no matter who the judge is. I think that goes a long way for both the court as well as the panel.

Judge Cardone: Can I follow that up with a clarification? You actually work for the courts, right?

Diana Weiss: I do.

Judge Cardone: You're employed by the courts and you're paid by the courts.

Diana Weiss: Correct. I'm an employee of the clerk's office. Our district court judges made a decision, I think in 2000, that they were going to fund this position.

Judge Cardone: You're aware that there are people that do similar work to you but they're actually paid employees of the FPD's office, walled off from the Federal Public Defender or from a CDO. They work under a different structure, is that correct?

Diana Weiss: I do understand that. I'm not sure, in reality, what the difference is in what we do on a day-to-day basis. I can tell you that some of the federal defenders and alternate defender offices have a genuine concern about funding of this position. I'll leave it at that.

Judge Cardone: Go ahead.

Judge Gerrard: Ms. Roe, do you have a follow-up on that?

Katherian Roe: Ms. Weiss, I just wanted to ask you a question. My understanding, at least what I can tell from your materials and your testimony is that you have a somewhat different position than the folks out at the Federal Defender offices because you have authority to authorize investigators, interpreters, paralegals. Is that correct?

Diana Weiss: That is correct.

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- Katherian Roe: I'm not quite clear on your voucher authority. I know that you do a reasonableness review and that if you do a cut over \$450, you give the attorney the opportunity to have a conversation with you, is that fair to say?
- Diana Weiss: That is basically correct, but any reduction, even if it's a point one gets sent back to the lawyer and I ask for clarification or justification for any type of reduction. Over \$450, if they come back to me with clarification and it continues and I still say this still is unreasonable which very rarely happens, then they have an opportunity to go to a fee review committee to contest those reductions if it's over \$450.
- Katherian Roe: Just so I'm clear, are you the final decision maker on those issues? On the vouchers?
- Diana Weiss: Yes. It does not go to the judges if that's what you mean, yes.
- Katherian Roe: Okay. For excess compensation vouchers, you also do the review and make a decision. Do those go to the judges before the district court before they go to the court of appeals, or they just go directly to the court of appeals?
- Diana Weiss: They go directly to the court of appeals.
- Katherian Roe: Okay.
- Diana Weiss: Our judges have great faith in this position and myself as well as the folks who have had this position before me, the two women who have had it before me were both federal criminal practitioners.
- Katherian Roe: Let me ask you a question, unless, did you want to go back?
- Judge Gerrard: No, that's fine.
- Katherian Roe: I wanted to ask you a question about some of the materials you submitted, specifically the confidential case evaluation. When I was reading that document, I was somewhat surprised by the information that would go to the judge. It was my understanding that this information goes to the judge while the case is pending.
- Diana Weiss: Yes, we require that the lawyers fill out the confidential case evaluation initially when they submit their budgets.
- Katherian Roe: I wanted to, I don't know if you have it in front of you but it doesn't matter because I'm sure you know it very well. Question number five says, describe efforts to settle this case, if any. That's information that the attorney is expected to provide to the judge during the course of the litigation?

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Diana Weiss: Yes.

Katherian Roe: Have the attorneys ever expressed any concern about that?

Diana Weiss: No, actually they haven't, and most of the time it's done in the beginning of the case. Folks don't have . . . there either hasn't been any because they haven't reviewed the discovery properly, or they can talk about how unreasonable the U.S. Attorney is being as well, so the court understands I need to litigate these issues because the other side isn't moving or they're giving me an unreasonable offer. Nobody, to me, has voiced a concern about providing that type of information. I actually think sometimes it's good for the court to know those things so they don't always think that the defense lawyers are being totally unreasonable and why aren't you settling, this is a dead bang loser?

Katherian Roe: Just to be clear, are they putting in information such as, obviously you've probably had many, many clients who are just completely unreasonable or half crazy. No matter what you say to them they won't settle the case. Are they putting things like that in, are they talking about their clients and why their clients aren't settling the case?

Diana Weiss: No. I haven't had that. It only really refers to what's going on with the other side. I haven't had any instances where people have talked about how the client is being unreasonable. I have to say there has been an uptick in our district I think because of the book that's floating around the jail called "Busted by the Feds" where folks are either wanting to represent themselves or they are insisting on going to trial no matter what. The judges are kind of aware of that and they see what's going on. We have a great bench. They're not taking it out on clients when it comes to sentencing if that was your concern.

Katherian Roe: Thank you.

Mr. Tritz, I just wanted to ask you a question about the budgeting process that you go through. You send a budget up to the court and when you send a budget to whatever judge you're dealing with, do you also send some kind of letter that says, "These are my thoughts about it" or do you meet with the judge about it?

Jerry Tritz: No. I must admit this is an area of some concern to me. It would probably be best if there was a memo attached to every budget that went up to a judge explaining all the intricacies of the budget then why, I think it's appropriate, or what I think is wrong with it. It might be very well to do that. I don't, and it's merely a matter of time. There's one case budgeting attorney in our circuit and I wear many hats and I only have so many hours in the day. I deal with it in a more of a responsive way. If the judge has a question they're not

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shy about contacting me. I speak with them on a regular basis and if they have any questions I respond to them.

I have found, really, that the judges have two concerns. “Mr. Tritz, are you satisfied with this budget, do you think it’s appropriate?” Yes, your honor. Okay, I’ll sign it. The other question is, “Mr. Tritz, is the defense lawyer satisfied with this budget, has he accepted this budget?” If I say yes, “Fine, I’ll sign it.” They’re interested in either am I satisfied or is the defense lawyer satisfied and they’re more than happy not to get involved in the minutiae. That’s been my experience.

Katherian Roe: Are you saying they always ask you those questions? Do you they always ask?

Jerry Tritz: No, most don’t ask any questions.

Katherian Roe: Okay.

Jerry Tritz: No questions at all. They see the budget. Over the years, I’ve been doing this now nine years going on ten. I have somewhat of a feel for what a budget should be, let’s say in a capital case, a stage one budget. What my expectations are in terms of monetary figures. Where it should fall out the low end and high end. If it falls within that, I’m somewhat satisfied. There are instances where the budget requests are double what I would expect in other cases. That sometimes, many times, is a reflection of the lawyers on the case. Some of our most expensive budgets are produced by our resource counsel when they get involved in cases. I view that as a reflection of their superior expertise that they see they’re more familiar with these cases. They are up to date on the most recent developments. The newest experts that could be available to them, in fact, one of the reasons that Bob and I have always fought to attend the capital case conference every year is for no other reason than we want to hear who are the new experts that have been come up with during the past year.

A few years ago it was the future dangerousness person and the year before that it was . . .

Bob Ranz: Victim outreach.

Jerry Tritz: Victim outreach, or life after life, someone who, Wilbert Rideau, who spent a large portion of his life in jail and then got out of jail and now he lectures and meets with clients who are being offered a life sentence and talks with them about the wisdom of maybe accepting that rather than facing the possible death penalty by trying their case.

Every year those change or the number of those increase so that the resource

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counsel are sometimes far more expensive because they are bringing in service providers that other lawyers may not yet be aware of.

Katherian Roe: Let me ask all of you a question and whoever feels comfortable answering this. This is a little bit of a follow-up on Judge Cardone's question. That is, one of the reasons, if not the main reason, that we have the case budgeting attorneys was because the courts were trying to get a handle if you will on the costs of some of these cases. It was a cost containment issue. The court is your boss, you're hired by the court, you work for the court, you're evaluated by the court you can be fired by the court. As much as I'm, if you will in a weird way, attracted to all these different positions and what they can do in the system, that is something that I keep coming back to.

I'd like you to speak as to the issue of how you feel about that. Do you feel pressure, do you feel that you should reduce a budget or that maybe, even though it's a great, great brief, Mr. Shaw that you receive. As you said it was an expert representation, the bill is excessive. Do you see that because it's just out of line with other bills that may not be, the person may not be as good of an appellate lawyer. More directed towards the issue of do you feel any pressure or inclination to contain costs when you know who it is, who your boss is, and why you were hired in the first place?

Bob Ranz: I've never felt that pressure. I can say when I interviewed for the job I told the people interviewing me that I was not interested in becoming a hatchet man or slashing the attorney's payments. I don't think, and again I don't want to speak for everybody, I don't think that any of us feel that pressure. I also think that it's our position was long overdue. I don't think that anybody can deny the fact that we have saved considerable amount of money for the CJA and some of that was just sort of common sense. Before we started, or at least in my circuit, there was kind of an open federal checkbook. It never occurred to the attorneys to negotiate with service providers or to, and part of this is coming from my own background as a criminal defense attorney as I talk about in my seminars, criminal defense attorneys didn't play well together. They would never call a codefendant's counsel in a case and say, "Hey, can we share this expert" or "How about you do the motion and I'll just join in?".

I have never, from the beginning, felt a pressure that we have to justify our job by hurting attorneys or slashing costs or that sort of thing, although I do think that was part of the fallout of our job was that quite a bit of costs were saved.

Kristine Fox: I'll follow up on that. I definitely don't feel any pressure. I think as court employees, we have an obligation to provide objective advice to the judges. I don't want to be a 'yes' person and I don't want to do whatever it is that the judge is expecting. I want to be forthright with my opinions and that's why they hired me. They don't need me to tell them what they want to hear, they

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need to just hear what I think and based on my expertise. To follow-up on the question that Jerry had talked about, when I speak with counsel about putting a budget together, my goal is to get us on the same page so that when a judge gets that budget, it's one that we have already worked out. So far, I would say 95% of the budgets I've worked on have been like that.

Then, when it goes to the judge, I'm literally just sending an email with a very short couple of sentences about counsel and I, we've worked on this together, I think this is reasonable and I recommend that it be approved. So far they all have been.

Jerry Tritz:

I feel absolutely no pressure. I am actually I guess an employee of the AO. I work up in the Second Circuit but if I traced where my money comes from it comes out of the budgets of the administrative office. When I was interviewed I was asked by the circuit executive in the Second Circuit whether I would be willing to argue with judges about issues related to budgets and I said I had no problem with that, that's what I've been doing for the last thirty seven years. What I find most interesting is because I took this job, all of a sudden they listen when they never seemed to listen for all those years previously.

I don't feel pressure at all. In fact, recently, I went to see a judge in the Eastern District because it had been reported to me that he had been consistently turning down applications for investigators in cases. I went to see him, planning on having a very difficult conversation. I explained to him that funding was not an issue because I believe that sequestration has had an impact on our court which will take years to completely dissipate and go away. There are judges who are still trying to balance their perceived problems in the budget on the back of the CJA program. I think we have to work vigilantly to nip that in the bud and to stop that because it's unnecessary.

Nonetheless, there are judges who their approach is not consistent with what we think, meaning those of us who are case budgeting attorneys and who are working with the CJA panel on a regular basis, if they're not approving what seem to be reasonable requests, there are times when we have to go have difficult conversations. That doesn't mean that we're going to prevail on all those issues, but I do believe it's important to have those conversations. In one of my districts there was a judge who seemed to be cutting vouchers on a somewhat regular basis so I suggested that they put together a peer review committee of lawyers and people who are familiar with the cases and where the judge has a problem with a voucher let it go to the peer review committee and let the colleagues of the lawyer who had produced the voucher review it and so forth.

They did, they made a recommendation to the judge that he shouldn't cut the

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voucher and that he should pay it in full, the judge rejected the recommendations and still cut the voucher. Because we put programs in place doesn't mean that they're actually going to work. I think we have to keep trying.

Peter Shaw: Before I started, our judges were all over the map with CJA voucher approvals. I think that they were unanimous in the view that it was important to have a uniform approach. I have really felt no pressure in terms of cutting vouchers or paying more than I do. I do the first certification on all vouchers whether they're below or above the statutory maximum amount. I've probably sent, I'm just guessing, ten thousand over statutory max vouchers to our second level approver judges, the circuit judges who have the delegated responsibility. I think of those, maybe five times I've had a judge come back to me with some question about it, but never any pressure that we are doing it all wrong or anything like that.

They also see the cases where I've made reductions so they know that I'm not a rubber stamp. It's been nice not to have that kind of pressure.

Katherian Roe: Thank you.

Judge Cardone: Dr. Rucker.

Dr. Rucker: Thank you, Judge Cardone. It's nice to see all of you. A question for the three case budgeting attorneys and for Ms. Weiss. One of the things that we've heard in all of the public hearings is the complaint that there's a disparity in the resources available between the AUSAs, the federal defenders and the panel attorneys, with the panel attorneys clearly not having as many resources available. Has a budgeting process that you're working on remedied that?

Let me start with Ms. Fox.

Kristine Fox: Thank you Dr. Rucker. I would say yes. That's one of the foremost things in our minds is that we do feel that there is a two tier system. Bob had already mentioned in his opening remarks the fact that only CJA panel attorneys are the only ones who have to go to the court to ask for permission for anything. I do think that the budgeting process, while not necessarily, it doesn't fix everything. We still have presumptive hourly rates for our circuit that apply to panel attorneys that I think are too low and that need to go up. I know that we're going to be hopefully addressing that issue, at least within our own circuit, but it's a step in the right direction. It helps level the playing field at least a little bit in my opinion.

Bob Ranz: I would agree with Kristine, I think it's done a wonderful job at leveling the playing field. Are there still problems? Yes. For instance I have districts or

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towns within districts where some people they're just not available. There might be one investigator in the whole town. I have paralegals are a problem in quite a few places where other than the large law firms there are no independent paralegals out there to be hired. There's no law student to be hired. That's something that we try and work on, but sometimes we also have new attorneys who are willing to do at a paralegal rate some of that work just to get experience in the field. I think we've leveled the playing field about as much as we can. I don't think we'll ever quite frankly get to the point where we pay what the AUSA pays experts.

On the other hand, speaking personally, some of these experts, I think their rates are outlandish. I'm sorry, I have a hard time believing anybody is work \$600 or \$700 an hour when their only recommendation is they were a police officer for twenty years or they teach at a university level. Every attorney has a Ph.D. equivalent also, we're certainly not paying the CJA attorneys \$600 or \$700 an hour and I'm not sure we ever will. I think we've done a good job of leveling the playing field. The only issue is still whereas case budgeting attorneys we can take away some of that you don't have to divulge to the judge what your trial strategy is. Tell us and what you tell us is confidential. That doesn't happen in cases that aren't budgeted and I do have concerns in non-budgeted cases that the attorneys still have to go in and justify the use of an investigator to the judge.

Jerry Tritz: The statement you made may be the perception, I don't necessarily agree that it is the reality. The people who are complaining that they don't have the resources that the government have, have no idea what the government actually expended on that case because the government will never reveal that. It's merely speculation. Whenever that comes up, I try to deal with it in two ways. One is that, let's not go there because if they spent less you wouldn't want me to cut your budget to match theirs. Whether they're spending more or not let's just leave that alone and let's talk about what you need to handle your case and how can I help you get what you need.

That's the way that I deal with it. Let's not compare he's spending more than me. You may not need that much. Let me talk with you about getting what you need and that's the way I try to deal with it. In that sense, budgeting has helped because the question is not what the government is spending it's what do you need and how much is it going to cost us and can we get it approved?. Let's just deal with it on that level.

Diana Weiss: I think that there's a couple of issues here. Just dovetailing on what Jerry said. Although it doesn't matter what the government has spent, we're still working, reacting to what they have spent because they've conducted all this investigation. They have pole cameras, they have audio, they have cell site data. They have all this information that they're throwing at the defense and we have to, or the defense lawyers have to figure out a way to process that

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information and use it and understand it so they can evaluate their case and properly represent their client as is required by the Constitution. I think that's a real concern.

Whether or not it levels the playing field, I think that it allows at least in our district folks to get what they need to do a good job and to properly represent their clients. I think that the statutory maximums, the \$2500 statutory maximum for service providers is way too low considering what needs to be done. Especially the types of cases that are being prosecuted in our district. We have many multi defendant. We've had thirty death cases in the last few years. We've had lots of multi-defendant cases where we need joint paralegals to enter the stuff into CaseMap. Getting a terabyte of data which I just found out each terabyte is fifty million pages is . . . you need someone to help sift through that stuff so counsel doesn't have to be spending all that time.

I also think the presumptive rates are too low for CJA lawyers. It is sometimes hard to find experts, I know we've taken over a couple of cases recently from the FPDs and the rates that they pay to the experts which we now have to pay is higher than our presumptive rates. In order to keep continuity with that expert and to actually conserve costs in the end, we've had to have paid a higher rate. We also have some of the DNA folks are saying we're not doing it for \$150 now. We all want \$200 an hour. We're boycotting. I think we have to take a look at that. I know the circuit has. I know, I'm on the capital case committee for the Ninth Circuit, I know we've looked at raising those rates that haven't been raised since the late 90's I believe. It's time.

Judge Cardone: Any other questions? All right, how about any others? Yes, Judge.

Judge Goldberg: My question is for Mr., is it Tritz or Tritz?

Jerry Tritz: Tritz.

Judge Goldberg: Tritz. Yes.

Jerry Tritz: Like the Ritz Hotel with a T in front.

Judge Goldberg: Okay.

Jerry Tritz: I've been saying that for a lot of years.

Judge Goldberg: We're not staying there in case you're wondering. I thought that your general premise was that judges, as far as funding, judges should not be involved, there has to be some independent entity or body. You listed off, you rattled off a bunch of reasons and I didn't get to write them all

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down, but you said the presumption is or the perception is. I just want to first make sure I have your thoughts right.

One of the things I did get to write down that you said is that the presumption is that if you go to the judge as a CJA lawyer and complain about funding, about voucher cutting funding investigative sources, the presumption is that that judge will take it out on the defendant at sentencing. Second part of my question is, if I understood that correctly, could you please provide us with specific data or information to support that position because it's a very troubling statement, if it's true.

Jerry Tritz: I understand what you're saying and I think you mixed a couple of things.

Judge Goldberg: Okay.

Jerry Tritz: Let me just go back.

The CJA lawyer is the only player in the system who has to ask permission. The government doesn't ask permission to retain anyone or to expend money. The defender doesn't have to ask permission. A privately retained lawyer doesn't have to ask permission. The only one who has to ask permission is the CJA lawyer. In making your argument to the judge, you may have to reveal information. For example, if you go in and you ask for money to retain a person to polygraph your client . . .

Judge Goldberg: I'm really sorry to interrupt you, we're really short on time. Let me ask a really quick question. Is it the perception, in your opinion, in your circuit, that if a CJA lawyer asks and annoys a judge over resources that that judge . . .

Jerry Tritz: I'm sorry, I didn't hear what you just said.

Judge Goldberg: Is it the perception in your circuit that if the CJA lawyer goes to a judge for resources and upsets or annoys that judge that it's possible or it's your perception or the perception in your circuit that that judge will take it out on the defendant in sentencing.

Jerry Tritz: No. I'm not saying that.

Judge Goldberg: Okay.

Jerry Tritz: All right? The point I'm getting at is if you go to a judge and you ask for funds to retain a polygraph person. You want to polygraph your client. Not because you think it's admissible at trial but because you want to use it in your negotiations with the government to get a better plea offer and the offer doesn't improve. The judge may perceive then that I guess your guy flunked it. He came to you, he lied to you to get you to get a polygraph, you did the

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polygraph he flunked the polygraph and so what was the benefit of all of this other than wasting time and wasting money? That is a possible scenario where the judge because of the information that was provided to him could come up with an adverse opinion of your client and he might possibly take that into consideration. That's what I'm talking about it.

It's not punishing you for making a service provider request, I don't think that happens at all. You need an investigator, you come and you ask for an investigator. It's just there are times in specific cases where, another example, we had a situation where there was somebody who was recorded on only four conversations and the defendant denied it was him recorded on the tape. They got, the lawyer found a voice print analyst person who was willing to listen and analyze the tapes to see whether or not it was the client or not, he wanted \$7500 a tape, four tapes, \$30,000. I get called, I need \$30,000 to do this. My approach was let's take it a step at a time, let's start with one tape. If you spent \$30,000 and the case is still going, the government has not dismissed the case, they are not convinced that the polygraph didn't show that it wasn't your guy. Could not the judge perceive that your client lied to you and forced us to spend \$30,000 unnecessarily because he didn't want to come to grips with the fact that it was him on the tape? It might very well happen.

It's a perception on the part of the lawyer that in doing this, on making the application, I may have to reveal information that could hurt my client at the end. I don't know, a judge takes many things into consideration when deciding what's an appropriate sentence and in fact whether or not the client was remorseful, contrite, accepting responsibility may be reflected in the conduct I just described to you.

Judge Goldberg: I'm glad I asked because I thought you said your perception judges were taking it out if lawyers asked for resources.

Jerry Tritz: No, not at all.

Judge Goldberg: Okay.

Jerry Tritz: Not at all.

Judge Goldberg: I'm glad I asked that.

Jerry Tritz: I'm glad we were able to straighten that out.

Judge Cardone: I have sort of a follow-up to that, because in a lot of places we've been, we repeatedly hear, "Who better to review the vouchers than the judge because the judge knows the case. The judge knows the work that's been done, the judge knows the difficulties. Who better than the judge." Yet, I hear from

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everyone, and you all work for the courts, but I almost hear from every one of you that, first of all, the work you do is in some ways very independent of the courts and so why do we need the judges involved? If it puts the judge in the place of sort of perhaps second guessing or not having the time or not really needing to know these things or perhaps creating these issues and you all are able to do it and your judges are happy with it. Why should we think that it has to be judge involved, can anybody answer that?

Kristine Fox: It shouldn't.

Bob Ranz: Shouldn't be that.

Jerry Tritz: We don't think it could only be the judge . . .

Kristine Fox: It's not like we want to exclude the judge altogether. The judge is obviously, as you said, the person who presided over that case and who had the interaction and so if, for example, we're reviewing a voucher and there's a question, we can consult with a judge and find out . . .

Judge Gerrard: But, the judge would be a resource for you.

Kristine Fox: Exactly.

Judge Cardone: But, I heard a number of you say, or at least one of you say and I think a couple of you say, but even after all of that work you have judges that say, "No, I'm not paying it", okay? My question is, in a perfect system where, and what we're trying to do is come up with solutions here, in a perfect system, should the judge after you've done all this work, is there a need for a judge to review what you are doing or what the attorneys have done or what the combination has done. How should that work?

Jerry Tritz: If you're referring that to me . . .

Judge Cardone: All of you.

Jerry Tritz: My position is that I don't believe that the judge needs to be involved if the case budgeting attorney or someone in authority who is someone who is familiar with the practice who practiced criminal law or so forth, I think they're in a much better position. The judge, he sees what happened in the courtroom. He sees the papers, but he doesn't necessarily see a picture beyond that.

I'll give you a quick example.

Judge Cardone: Let me ask you a follow-up before you do. Who would you be answerable to? If you're going to be budgeting and you're going to be approving vouchers

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and you're going to be saying, "Yes, you can spend this." Who would be your boss?

Jerry Tritz: I think it has to be an experienced professional person. A lawyer, someone who has practiced in the field and is familiar with the work. I think that person is in probably a better position than the judge to make these decisions. The example I'm going to give you will show that. I get an extremely large excess voucher that comes to the circuit. I send it up, I review it, I make some comments on it that I think this is an extremely large voucher. I have my questions about the reasonableness of it and I express that to the court of appeals judge, who was Judge Lynch, he's the chair of our CJA committee in the circuit. He says, "You know, I think I'm going to ask the district judge what her thoughts were", so he communicates to the district court judge. The response was, "I clerked for the supreme court, but I never handled a criminal case, I'm not comfortable making these evaluations."

That's a very smart person, but that person doesn't have the experience that someone who has practiced in the field for twenty eight years and who tried cases and dealt with clients has. Someone, I don't want to say such as me, but a professional lawyer who was in that position to make that decision.

Some judges are very qualified, but not all of them are. It's not a prerequisite. Here, if we hired a person who had to have the experience then we know it's a qualified person. The question then is, well, is there one person for the circuit or do we want a district level? Should they . . .

Judge Cardone: No, the bigger question is, who should those people work for? We have three branches of the government, we have a defender function. Should that entire process be under the courts, should it be under some sort of defender function separate from the courts?

Jerry Tritz: I'm of the belief, I would prefer to see it separate from the defender function. I don't think that the defender and the approving person, I don't want to call him the case budgeting attorney, whatever we decide to call that person. I don't think we're necessarily on the same page at all times. I think that there may be places where there is actually a conflict between the CJA lawyer and his position on certain issues and the defender. They may not be on the same page, so I would like to see them separate. I don't see why they have to be linked.

I know that in many districts around the country the defender runs the CJA program, but I think that's a matter of convenience and availability rather than necessarily the best way to do it.

Judge Cardone: Are you saying it should be under the courts then?

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Jerry Tritz: Excuse me?

Judge Cardone: Under the supervision of the courts.

Jerry Tritz: I have no problem with that. I envision something like a deputy circuit executive. Yes, you work for the court, but you really don't work for the judges, you work for the circuit executive's office. It's more an administrative position than it is a judicial type thing. That's kind of what my position is now. I see my boss as the circuit executive. She's the person I work under, but I have more contact with the clerk of court on a daily basis than I do with the circuit executive. I work for the circuit executive but she's not involved in the decision making process that I engage in. I'm left to do that on my own. I have no problem working for the court, but I think they should be independent.

Dr. Rucker: [INAUDIBLE]

Judge Cardone: Sure.

Dr. Rucker: Mr. Tritz, if we follow that model, let's say the attorney disagrees with how you rule. Who would he or she appeal to?

Jerry Tritz: Dr. Rucker, I'm glad you raised that point. I don't believe that the decision making process should not have the opportunity to consult with the court. In other words, there are going to be times when I'm going to see a voucher and I'm going to have difficulty deciding whether or not it's reasonable, whether this work was necessary whether these service providers were a good idea and productive for the client and worth the money we spent on them and so forth. I would want to be able to go to the judge and consult with him on it. I don't necessarily say the judge should have the last word on it, but I think the judge should always be available for a consultation to get the benefit of his wisdom and his judgement and his insight into the case based on the participation that he has had. I don't necessarily think that the decision making should be his because I think that the downside of that outweighs the benefit of him being involved in the decision.

Chip Frensley: You also used the peer committee that you described as a recommendation you made, isn't it also...

Jerry Tritz: I like the peer committee, but the peer committee only works if the court is willing to be guided by the peer committee.

Chip Frensley: Right, yeah.

Jerry Tritz: The example that I gave you, it didn't work, so what was the purpose of it?

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- Bob Ranz: I think what Judge Cardone asked earlier, if you're doing it at say a district court level then the circuit court level would be maybe the appellate process. To ask the question, "Who would be your boss?", is almost a chicken and egg thing. You can take that forever. How far up the food chain do you go with an appellate process on a decision or who is the ultimate boss. I guess technically circuit court judges might have the boss of the U.S. Supreme Court. You know how clients are, clients always want to keep going one step up the food chain to appeal their case or to fight their case. It has to stop somewhere. If it's a district court level making that decision then maybe the circuit court under a deputy circuit exec would be the final decision making. It can be challenged but at some point there has to be an end to it.
- Jerry Tritz: May I ask permission for something? Bob and Kristine and I spoke a lot just yesterday, because when we prepared to come here, the paperwork that we got only gave us a limited insight into what you would really be interested in hearing from us. Although I wrote in my written remarks about having a professional in charge other than the judiciary, I really didn't expect for that to be greeted very warmly here. If you are in fact interested in hearing more about this, we would like the opportunity to give a lot more thought to it before we gave you any kind of concrete proposal. If you would permit us, we would like over the next month or two because I understand you're going to still be doing these hearings for a while, we would like the opportunity to bring this back to our colleagues and share this with them and talk about what might be a good idea going forward and present that to you in some written fashion. If you would permit that we would be happy to do that.
- Judge Cardone: One of the things we were going to tell you at the end, I think there's a misperception that somehow this is it, you don't get to tell us anymore. I think a lot of times in these public hearings things come up that either you hadn't thought about or that you didn't have an opportunity to address and one of the things I was going to tell you at the end, feel free to submit anything.
- Jerry Tritz: Thank you very much.
- Judge Cardone: The more information we have the better it will be. I'm going to ask Judge Walton.
- Judge Walton: I had a brief question. I think what you do is laudable and it may be the best from a political perspective we can accomplish because I don't know if Congress is going to totally let us off the hook as much as we may want to be out of the process entirely.
- Jerry Tritz: Right.

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Judge Walton: If we were to recommend, and if it were adopted that this would be the model that would be universal throughout the country, how likely would it be that we'd be able to get people like yourselves to be willing to do this?

Jerry Tritz: When I applied for this position, the most common question was, "You're going to give up practice? How could you do this?" I give them my joke about not wanting to go to the MBC anymore. Now the question is, "How can I get one of those jobs?" It is now realized by the CJA panel generally that, they first of all, they love our position. They have someone to talk to for the first time in their careers. They don't call judges.

I heard Judge Moskowitz talk about his committee meets every Monday. In our circuit, the committees meet far less frequently and when they do meet they have very little to talk about because nobody calls a judge and says, "You hear what happened to me last Thursday in front of you know who?" They don't necessarily have their finger on the pulse of what's going on. That's why I think that they don't have as much need in their minds to meet because they don't really see the issues. I think there would be no problem in getting people such as myself. I think there are a lot of people who thought I was being crazy when I applied for the job and now they want to know how to get one.

Rueben Cahn: Just one question I'd like to ask . . .

Jerry Tritz: I'm afraid of that.

Rueben Cahn: I don't really understand something about the budgeting of attorney hours. I'm a federal defender, executive director and I approve lots of budgets and lots of expert requests and lots of plans for litigation. Understand, based on my experience how I do that. I've got to tell you, when I start a case, I'm looking at the beginning of the case, I don't have a clue how many hours I'm going to put into that case. I honestly can't tell you, sometimes I predict a case is going to be a bear and it's going to take me half of my time for the next six months and it turns out to get resolved in two weeks and another case that I thought was going to be nothing ends up being the most incredible drain on my time.

How do you, this is for all the budgeting attorneys, how do you budget hours and how accurate are your budgets? For attorney hours, not for experts, for attorney hours, when you start that process?

Kristine Fox: [CROSS-TALK]

Jerry Tritz: I thought you were going to ask a tough question.

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Bob Ranz: [CROSS-TALK] week into the case to predict what you're going to do.

Kristine Fox: There's a couple answers. The attorney hours, the initial consideration are the service providers, especially at the very beginning of a case. Then, budgeting in stages or in phases makes a huge difference, especially . . . we wouldn't put an attorney hour budget together for at least the first few months of the case for a brand new indicted case.

Jerry Tritz: What I always tell a practitioner is, "Don't worry about it."

Kristine Fox: Yeah.

Jerry Tritz: Of course he can always come back, "What's the judge going to say?" You need more interviews and conference time? Well, you've spoken with your client enough, you don't have to deal with your client anymore. As a judge going to say that?

Kristine Fox: Well, we

Reuben Cahn: There are circuits where that happens.

Jerry Tritz: I think there's times where you see, there may be times where a judge tries to say that. I was asked to go out to one of the circuits in the mid-west somewhere a couple of years ago to speak to a number of chief judges that were having a meeting, and they were concerned about the lawyers billing time for going to see their clients in jail too much. I told them, if that's what you're concerned with you already lost. You have no chance. The lawyers live in the cracks. All the law is opposed to them, the law doesn't help. That's why when you give them a rule they'd rather discuss the exception to the rule than the rule themselves because the rule isn't going to help them.

If you're going to tell them they can't do this they'll find another way to do it. You'll end up paying for it there. The approach is we're all in this together, I don't mind you going to jail, but when you go, maybe see two clients or three clients so you won't have to make additional trips on those other cases. Deal with it that way, rather than trying to tell him he can't go.

The number of hours they ask for is almost unimportant because if they need more they can come back. You need more legal research time? I can't tell you you went to the library enough, no more library for you. You may hope I say that but I'm not going to say that. If you come in low, come back and ask for more.

Kristine Fox: Mr. Cahn . . .

Jerry Tritz: We know it's a best guesstimate.

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Kristine Fox: Specifically, logistically, what I do is I say, “Look at your calendar. How many other cases do you have going on right now? For just the next three months how much time can you actually devote to this case?” We take this practical approach and we do break it up into smaller chunks to make it easier. We don’t want it to be an onerous process, I tell them that all the time. We want this to be as easy but beneficial as possible.

Diana Weiss: We also budget six months at a time. I think that it gives the lawyers, and they like it because it gives them sort of a game plan that they never had before, had to think about, how to manage their case. I have this much discovery, this is basically what I need. The hours are fungible between categories and I agree with Jerry if they need more, they get more hours, but we have to A, because of the eVoucher, we have to set the amount of money that’s authorized as their limit in eVoucher. They can’t submit a bill if they haven’t submitted a budget.

I also think that it just allows the lawyers to conserve resources, to case manage better which many of our panel lawyers or sole practitioners, they haven’t had to think about the long run in how they’re actually going to do the case. We’re reactionary in many respects and this allows them to not only do that but also as I think someone else mentioned, to pull resources of, we don’t all need to do CaseMap. Let’s get a joint paralegal. Who’s going to do the pole cameras? Okay, great, so one person will be in charge of getting the five paralegals that are going to review the three thousand hours.

It actually makes a lot more sense from our perspective and the lawyers, they like it.

Jerry Tritz: Attorney hours is not the area where we have an expectation of conserving costs. A lawyer’s got to do what a lawyer’s got to do. We’re more concerned with their service providers, are they being paid the correct presumptive rate, and did they try to get us the best price. Did they negotiate, did they shop around, did they do the things that I listed in my written statement.

Bob Ranz: Can they be shared?

Jerry Tritz: Yes, can they be shared? Attorney hours, in my view, is not the main focus of what you’re concentrating on with the goal of conserving costs.

Bob Ranz: The main time I mess around with attorney hours is when I get a proposed budget and I call the attorney and say, “If you just do the simple math you’ve got yourself working on this case over the next four months sixty hours a week. Did you close the rest of your practice or should we talk about where these hours are coming from?”

Reuben Cahn: Thank you.

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Bob Ranz: You'd be surprised at how often that happens. "I need five hundred hours to review discovery because five hundred hours, it's just a nice round number."

Reuben Cahn: Thank you.

Judge Cardone: All right, well, on behalf . . . yes. I'm sorry. I apologize, Professor Gould.

Prof. Gould: Thanks. Last but not least. It's good to see a couple of you again, and the others of you who I don't know, it's nice to meet you as well.

I want to turn, this is one question, maybe two depending on how you all answer it. There is a statement in Mr. Ranz's testimony where he says, "It's been brought to our attention that the use of service providers is very low in some of the nine districts in the Sixth Circuit.", and indeed that is not a concept limited only to the Sixth Circuit. That's also true of the Ninth, that's also true to a lesser extent in the Second.

The Committee is really trying to get their brains around what's driving this. Collectively, you've given the Committee at least two possible explanations in both your written and oral testimony. Mr. Ranz says, "That it is possible that the culture in some districts is such that the requests are no longer being made", so that in some districts, attorneys aren't asking for service providers. Mr. Tritz, I'm going to do something that no one ever does and that's put words in your mouth. One of the other possibilities I think, if I may paraphrase one of your earlier comments, is that you have a problem judge in at least one of your districts who isn't giving particular kinds of experts or other service providers.

What else are the possible explanations for this?

Diana Weiss: I'm kind of curious where that data is coming from. I have some issues with some of the data that I've seen regarding the funding requests in our circuit and specifically in our district. It's . . .

Prof. Gould: Your district is not one of the ones I'm actually referring to.

Diana Weiss: Oh, shucks.

Kristine Fox: There's also, and this is across the board, if you have the case of the shared service provider, it's only getting counted . . .

Prof. Gould: I'm sorry, if you . . .

Kristine Fox: If you have a case with multiple defendants . . .

Prof. Gould: Right.

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- Kristine Fox: But it's a shared service provider? Only one of those representations is being credited because the bill only goes through one attorney's billing, so I'm not sure how much of that impacts the statistics that you have.
- Prof. Gould: You're at the margins still. That doesn't describe tremendous disparities. Are there other things that the Committee should be thinking of?
- Bob Ranz: I think in some cases, and this hearkens back to my own experiences. If I get a case, or got a case in the past, and went in and saw my client and my client says, "Yeah, I did it, get me the best deal you can." I wouldn't go out and ask for an investigator.
- Kristine Fox: Right. I was going to follow that up. We did ask attorneys in one of the districts in our circuit that is on the very low side. We were told by the attorneys, "Our U.S. attorneys give us good deals right out of the gate." They have a fast track type of process.
- Bob Ranz: The federal system . . .
- Kristine Fox: There's really no reason to spend money on something when we already know where we're going with this case.
- Diana Weiss: I . . .
- Bob Ranz: Those of us in the state system always knew in the federal system, they tend to spend so much time investigating that case before they ever even issue an indictment. You don't really have a whole lot of chance to win in the federal system which is why there's so few trials I think. It doesn't mean that everybody is guilty, but if you do the stats on how many people are found not guilty I think it'd be a very large percentage.
- We recommend and tell all our people at our seminars, if you need an investigator or service provider, ask for it, but we're not out there saying, "You have to ask for an investigator in every case". It's still the attorney's decision.
- Diana Weiss: I know you don't have a problem in our district, but one remedy I did think of for those folks who are concerned about asking for funding is to raise that \$800 that you can get without having to ask the judge. You can't do much for \$800. Maybe you can have your interpreter go a couple of times to the jail with you, but other than that, that number really needs to be raised, especially for those districts that are having trouble getting the funding.
- Kristine Fox: Final two points I'll make on this are that, I have had conversations with especially sole practitioners who are not used to working with let's say a paralegal or investigator on a regular basis. They prefer to do the work

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themselves. They're going to do their own witness interviews. They're going to do their own tracking down investigating an informant and they want to do it themselves.

The second is, just left my brain. I had it in my head. I just forgot it. Jerry?

Jerry Tritz: it comes back.

Kristine Fox: It'll come back.

Jerry Tritz: I cannot think of anything that this Committee could do that would increase the use of service providers by our CJA panel.

Prof. Gould: Nothing.

Jerry Tritz: I cannot think of something that you could do. I think that it is a reflection of the lawyers' style of practice. I don't know, I may not be putting myself in the best light by admitting this, but when I was practicing as a CJA lawyer, I didn't make as much use of investigators and service providers as maybe I could have. I think of it is that I had a much more pragmatic approach. I look at a case, I evaluate a case, I see this is a plea, my client says no way, I'm going to trial. I understand. That's his position today, but as he learns more about what the evidence is, that's why we have things like reverse proffers. The defendant can be confronted with the evidence against him and it's a little easier for him to make a decision to dispose of the case.

I think lawyers know where the case is going much before their client does and they realize that maybe it really isn't necessary to start interviewing every possible witness that we could think of. The case is going to be disposed of. It's just a matter of time it's going to take to bring the client to that realization.

Prof. Gould: On that point, and I apologize for keeping us from lunch. Are you also saying that the level of representation, quality of representation is the same between the panel and between your public defenders?

Jerry Tritz: Are you asking me?

Prof. Gould: Yeah, I'm talking to you.

Jerry Tritz: I know that the statistics don't necessarily back that up, but I think beyond question that they are on par. I think the statistics are skewed by the cases that . . . for example, we have a district that has an airport. They get every mule case. They get good dispositions on those mule cases because there are knockdowns on those left and right that dispose of those cases. If you look at the statistics of how many good deals did the defender get as opposed to the

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CJA lawyer who doesn't get the mule cases, we get a lot more convictions without such good deals.

I don't necessarily think, and I'm saying this to a statistician, I don't necessarily believe that the statistics actually reflect the quality of the representation. I know of no panel members who plead cases out just to get rid of them, who throw a client to the dogs. Who don't try. You don't stay on the panel very long if that's your approach. Especially under our present leadership of David Patton who is our new federal defender and in the southern and eastern districts and doing a very good job.

That would be my answer.

Prof. Gould: Any of the rest of you want to weigh in on that?

Kristine Fox: The second thought I had was it's a training issue.

Prof. Gould: A training issue?

Kristine Fox: For a lot of these CJA attorneys.

Judge Cardone: Anybody else, I miss anybody? Okay. Thank you very much. Again, I want to encourage you, if you have a follow-up, do not hesitate to contact the staff. Again, we have the cjastudy.fd.org you can certainly submit it through there. You've all dealt with our staff and you can submit it through our staff. We appreciate your time. We may have questions for you that we may follow up with, but in the meantime, thank you.

Group: Thank you.

Judge Cardone: All right, we stand adjourned, and we will be back starting again at 2:15pm.