Ad Hoc Committee to Review the Criminal Justice Act
Public Hearing #5–San Francisco, California
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Transcript: Panel 6—Views from CJA Panel District Representatives

Judge Fischer: Good afternoon.

All Panelists: Good afternoon.

Judge Fischer: Thank you all for being with us. This is our second day of hearings in San Francisco, as you know. Many of you have watched some of the earlier proceedings, either here in San Francisco or on our website. This proceeding will be archived as well. I'm Judge Dale Fischer from the Central District of California and I'll be chairing this hearing. We'd like to ask you to give a brief opening statement, if you'd like to do that, no more than five minutes. We have read all of your testimony carefully. As you've seen, if you've been here, our Committee members have a lot of questions that we'd like to ask and get information from you. Come on down. We'll start off with our panel members here with the questions and then I'll ask all of the Committee to join in with some questions.

With us today we have Marilyn Bednarski, our co-panel rep from the Central District of California. Victoria Bonilla-Argudo . . .

Victoria Bonilla-Argudo: Argudo

Judge Fischer: Thank you . . . a panel rep and Wendy Curtis Palen, another district representative, and Mary McNamara from here in the Northern District. Your bookends, Anthony Solis, our co-panel rep from the Central District of California. Welcome and thank you for being here.

Mr. Solis, why don't we start with you?

Anthony Solis: Thank you, your Honor. Real briefly, Marilyn and I testified as a unit together with co-panel representatives from the Central District of California. We're both active members of our own panel. We laid out some of the chief problems that we see. One of which is the panel's dependence on the court for reviewing our vouchers and for payment. We think that there should be some kind of independence from that, because when the court controls all of our payments, they control our function.

We think that the presiding judge should not have so much control over the funding we get, the services we provide. In that regard, most of what we want to talk about today is laid out in our testimony. I did hear the previous panel and sat through Judge Carter's testimony. I couldn't disagree with it more. I'm happy to take and talk about it in terms of questions that are focused

toward the things that this Committee wants to talk about.

Judge Goldberg: On what point?

Anthony Solis: I'm sorry?

Judge Goldberg: On what point do you disagree with him?

Anthony Solis: On almost every point. Almost every point. But I'd be happy to talk about it, specific to what the concerns of this Committee are. I do think . . . I don't want to interrupt anyone's introduction, but for example, when you ask me what do I disagree with Judge Carter about, specifically. Number one, I don't think district judges have enough of a . . . there's an inherent conflict that someone that is presiding over a case, that I'm asking you for services or I want to make particular motion. There's some inherent judgements when a judge is going to think is this too much litigation? Is this service really necessary? Someone who's independent from that doesn't have that same calculus.

At the same time, the person sitting on the other end of the table for me, not this one, but the counsel table, the government never has to think about I have to submit this to this judge and he or she is going to be able to evaluate whether or not this service is appropriate. You heard the testimony of Mark Windsor. Hopefully, some of you did yesterday. In that case, a judge cut his voucher after determining in a written opinion that his defense of a particular defendant for whom the government is trying to take away his entire life, was a scorched earth policy. I don't know any defender that would come to that same calculation.

I understand that when you get an Article III Judgeships, you think that you can make independent decisions and they're always going to be fair. But in the judicial system, there's judges above you and above that. I don't think that just because a judge is fair . . . many judges that I appeared before are fair. That doesn't mean that every decision they make in that case is going to fair. With regard to funding, if I'm appearing before that case, that same judge is going to rule on the motion and is going to decide whether or not . . . and how much I should be paid for that motion. There's an inherent conflict that interferes with my defense function. That is probably one of the core disagreements that I have with Judge Carter. There are more, but . . .

Judge Fischer: Let's move onto Miss McNamara. I'm sure you'll have more questions, Mr. Solis.

Mary McNamara: Good afternoon, Judge Fisher, Judge Cardone, honorable Committee members. I'm delighted to be here. I have sat through much of the testimony. It's clear, this Committee is curious, engaged and focused on solutions. I'd

like to try and help. I think we have an excellent program in this district. In answer to the questions that many of you raised, I do believe it's reproducible. I don't think it's easy, but if you want to hear from us about what we think about the program that works, we're delighted to tell you. Briefly, I think, it comes onto two things.

One is we have a CJA supervising attorney here and it's very important to note that she is a very, very well respected member of the defense bar, has been a CJA lawyer for over two decades. We all know her. When she says a voucher is unreasonable, it's unreasonable and none of us complains about it. She comes with inherent credibility. The court took pains to select her using our input. That's the second big part of our program that I think works. We, as the CJA and criminal defense community are involved in every aspect of court governance. Judge Gonzalez Rogers has us sit on the CJA Administration Committee. We have a huge say in who gets selected. We have a huge say in who gets disciplined. We have a huge say in court policy. A funny thing happens when you have stakeholders actually participate meaningfully. We then become responsible. We are responsible to the court. We're responsible for attorneys. We're responsible for ourselves.

I think one big concern that you have and we acknowledge, is if there is some sort of more independent root here for a voucher review for CJA matters in general, are we going to abuse that as CJA counsel? Is there going to be any fiscal discipline in the system? I'm here to tell you that the more you involve the CJA lawyers themselves in the process, the more we self-police, the more we're anxious to have over-billers off the panel, the more competent, good attorneys we want on the panel, the more the judges call us and say, "Mary, this person's a problem, can you peer counsel that person?" That's why our system works. We are involved.

I would like to evangelize on that point. I think it's the sole reason that we're involved and we're involved in every aspect. We have a fee review committee here in this district, which we have not needed ever since Diana Weiss has been our CJA supervising attorney. We didn't need it in her predecessors tenure either. It's because those two CJA supervising attorneys are and were respected members of the panel.

I would like to also pick one other thing you haven't really focused on. I'd like to bring it up because it affects the quality and the happiness of the panel and our overall advocacy. That is when lawyers get in trouble with a court, as they do sometimes, even in a well running system, there is no ability to have counsel for that lawyer. We don't have an ability to hire counsel for that lawyer. What we have done in this district is we, members of the bar, pull together and represent our colleagues pro bono. It shouldn't have to be that way. I want to make a pitch to you, to try and fix that problem.

The other problem which you have focused on is rate. I'll just say two things about San Francisco. We all know it, it is an extraordinarily expensive place to live. For the past nine months, it has been the highest rent paying area in the country, eclipsing New York by a very large degree. The estimate here is if you want to live in a two bedroom rental, you have to earn $155,000 a year, minimum, and at $129 an hour, that's just not a sustainable hourly rate. The same goes for experts. The same goes for the case maximum. They're ridiculous to be blunt, especially here in San Francisco.

We cannot hire experts that match up with the U.S. Attorney's Office. They can hire experts at $600, $700, $800 an hour. For a good psychiatrist, we have a ceiling of $350. We get outclassed constantly. Those things are inequities in the system that need to be addressed. For fear that we're going to run rampant and wild and all of this, I come back to our structure. I think structure is everything. I think it is reproducible. I would have said before it's culture, but culture comes from structure. We're very proud of our culture here, but it's because we've developed the structure over two decades of trial and error. Thank you.

Judge Fischer: Ms. Curtis Palen.

Wendy Curtis Palen: Thank you, members of the Committee. It's a great honor to appear here in front of you today and represent the district of Wyoming. This is my third year as the panel rep from Wyoming and my tenth year as a CJA attorney, which after listening too many of my colleagues, I feel like a newbie after ten years. But I wanted to give you the perspective from Wyoming because we are such a rural district. It's easy for me to put that on paper, but I wanted to give you some examples, to maybe put some better perspective on just what I mean when I talk about how Wyoming is rural.

The city of San Francisco has 838,000 people. The city of San Francisco is forty-six square miles. In Wyoming, we only have 500,000 people in our entire state and our state consists of 98,000 square miles. Our CJA attorneys are expected to cover our entire state. Even amongst our CJA attorneys, I'm somewhat unique in that I practice from my family's ranch, which is about 7 miles away from a town of only 200 people. I live thirty miles away from a grocery store. I live about an hour and a half one way to either of the court houses in our district. The fortunate part of that is that for the majority of it, I'm able to drive eighty miles an hour to get there. When I took a cab from the Hyatt, about a mile or so down here, it took me a half an hour, whereas I would have made it probably forty miles in Wyoming, being able to drive eighty miles an hour.

I'm not the only thing that goes eighty miles an hour in Wyoming. The wind blows eighty miles an hour. On my way to the airport yesterday, it was indeed, blowing eighty miles an hour in Cheyenne, Wyoming, which makes

it hard for me to stand up. It also makes it difficult for semi-trucks and trailers to drive down the same interstate that our attorneys drive down to access the courts. One of them tipped over a few minutes after . . . or was blown over a few minutes after I got by, which caused the roads to be closed for several hours. My child attends the fifth grade and there are six children in her class. There are no children in the third grade.

We have three judges in the district of Wyoming. We have two court houses that have the physical ability to have a criminal jury trial, have the proper holding facilities. They're located about 200 miles apart. We have one Federal Defender Office that houses just three attorneys. That's located in Cheyenne, which is in the far southeast corner. But even that Federal Defender is a branch office of the Colorado office. Virginia Grady who is in Colorado is our federal defender. I can't say enough good things about her, but we don't have a federal defender of our own. We have eighteen CJA panel members who make up, what we call our core panel. Those are attorneys that we feel need to get enough cases to maintain their practice, but no one is able to make a living of CJA work in Wyoming, but it's equally hard to have a retained federal criminal practice. The very vast majority of our attorneys are sole practitioners. The one who belongs to the largest firm, I think, there are six attorneys. That's a remarkably big firm in Wyoming to have six attorneys in your office.

Our life in Wyoming and the types of cases we have is also governed by our boom and bust economy. We are an oil, gas and coal state. It was booming and now it's busting. There are criminal trends that go along with that. We also have the Wind River Indian Reservation. It's located three hours from our court house in Casper and five hours from the one in Cheyenne. It alone is the size of Rhode Island and Delaware combined. You could probably throw Massachusetts in there as well. It has a 50% poverty rate, a 49% unemployment rate, compared to the 6% unemployment rate that Wyoming has as whole. It has a seven times higher crime rate than the nation. The Department of Justice has singled it out to enforce and try to minimize violent crime that happens on the reservation. Many of our attorneys are representing people on the reservation and they're located along ways from their clients, from where the crime occurred.

Why does this make a difference? Why should it matter? It just increases our windshield time. That somewhat skews our rates. It skews the statutory maximum. It makes it difficult for us to budget. I know that's something that Committee is concerned about these days. When I talk to the court or file an ex parte motion to the court to ask for an expert witness, I often have to consider that at least half of what I'm asking for is travel time, to get that expert to my client. Whether it'd be simply because there are not those types of professionals available in Wyoming and I have to look to Colorado or California or Michigan to find a forensic pathologist to evaluate. When I ask

the court, we have to ask for twice as much as someone who lived in Denver and who had that ability. It skews the numbers and it skews how the court looks at it.

Wyoming has tried many different ways to make that happen. Trying to get our clients closer to experts. It's harder than it sounds. We have to work with the Marshal's office who has to work with detention centers and logistics of moving our clients around is almost as difficult as moving us around. A few years ago, the court that determined that it would not allow us to travel, that vouchers would be cut for travel cost. The most disheartening phone calls I have ever received as a panel representative is from one of our colleagues calling me and saying, "Am I going to get paid to visit my client?" That happened over and over again. However, after hard work, the court has reversed that policy. In the last couple of months, sent us a memorandum that says that is no longer. The court now understands the fact that we need face to face time with our clients and meeting with your client through a screen and trying to hold up their discovery through a screen just doesn't work.

It makes it difficult for us to have training. We rely on our federal defenders greatly in Colorado to help us provide training. Our standing committee received a grant, but we're about out of money. Our small numbers makes to difficult to even have a brown bag lunch when we have nine attorneys geographically close to each other and only a few of them can come. Because they're sole practitioners, the lights have to be off in their office for them to come to training. We really heavily upon our federal defenders to help us provide training at a yearly seminar. They also provide us with a great amount of guidance. However, Wyoming has recently transitioned from administration by the federal defender to a court-administered panel. We are still working on the details on that, it's relatively new, but we have recently transitioned to court administration.

Overall, things are good in Wyoming. We have a good, quality panel. Part of it it's because we're so small. We have to see each other every day. Since we're geographically located, I see the same judge almost on every time. We have to have a good, quality relationship and we have to be able to have that balance. What I want you to remember when we were talking about policy is, please, don't forget the people. The boots on the ground, the people who are avoiding getting smashed by a tipping over semi, while they're on their way to visit their client. They're the boots on the ground and that's what makes this program work is the hearts of our defenders and that's a lot of what we've got. Thank you.

Judge Fischer: Miss Bonilla-Argudo.

Victoria Bonilla-Argudo: Good afternoon, Committee members. I have the wonderful joy to work in the district of Massachusetts, their panel representative. I also represent the

first and second circuit in DSAG. Massachusetts has always been known for its wealth of intellectuals and wonderful practitioners. Our panel is composed of the most wonderful attorneys that one can meet. They're not filled with heart and the joy of practicing as criminal defense attorneys, they're extremely well trained, highly educated, extremely hard working, extremely competent. In the end, all of their work, I'm sure, saves a lot of money by getting reduced sentences or getting acquittals, negotiating. The reality is that that takes time and it takes skill.

All of these attorneys that work on this panel, they are vetted by a committee that's composed of ten attorneys. Some within the panel, the federal defender as well as some attorneys, up until this year, outside of the CJA panel. It is a vetting process that really goes into looking at what that attorney has accomplished or has done. Are there any issues with the attorney? Once the committee decides that that attorney should move forward, whether it's a re-up or it's a brand new attorney applying, then it goes to the judges for them to look and give an opinion and decide whether they're going to accept them or not. We have very, very good attorneys representing the criminal defendants in the district of Massachusetts and I'm proud of all of them.

However, in the recent past, in the past couple of years in Massachusetts, as I've written to you in my letter to this honorable Committee, we've encountered some issues that in Massachusetts, really, were never heard of. That's voucher cutting. Not just voucher cutting, but limiting the amount of money that will be allocated to the defense bar to pay for their experts, be it an investigator. I have provided the Committee with the guidelines that back in 2013, were promulgated in Massachusetts and are to be followed by all panel members in Massachusetts.

What I've come to find out, though, is that within those guidelines that's called in judicial policy, if a judge is going to be cutting an attorney or not providing the funds that the attorney is requesting, there should be some conversation or some dialogue as to why that cutting is being made and some explanation and opportunity from the attorney to be heard by the judge who may be doing the cutting. That's called for in the guidelines, but it's not always observed. We have attorneys in Massachusetts that, right now, they get cut but they really don't know why or they simply receive a blanket message of you took too long. Those guidelines also call for the review of our bills to be looked at by the judge and for the judge to determine what is the reasonableness of this bill?

Well, I suggest to you, that in lot of instances, the judge sees us in court, you see us how we perform, you see what we write, you see what was written, how it was written and you can say, "This person wrote a rather well memorandum, made an excellent argument." You see that aspect of it. That's what the judges see, but the judges normally don't see what is in the

background. How long it took? How many times did you have to meet with your client? A judge telling any of the attorneys, you took too long meeting with the client. Sometimes it takes a really long time and many meetings to meet with that one client. Number one, to explain what the case is about. To explain how the Guidelines are applicable to their particular circumstance. It doesn't just happen. You have to be there for that client. You have to explain, because in the end, it's their liberty that is at stake. I get to go home, they don't. They're incarcerated and they may be incarcerated for quite some time. In order for them to understand, it takes an attorney to explain to them and guide them and help them. Not just them, but their families as well.

So how can a judge determine what is the reasonableness of how often you met with your client or what is the reasonableness of you, attorney, meeting with the family members. They're only supposed to meet with those family members if it's important to the case. Sometimes you have to meet with family members and you're not just having a cup of coffee with them. You're actually explaining to them what is happening to their son or to their daughter and what's to come and how they can help or what defenses, if any, you can talk to them. I certainly don't want to be disclosing in my bill what I'm talking to those family members is about, so that the judge can determine whether it's reasonable or not.

In my view, that part of the practice should be removed from the judiciary. It should be either an independent person or an independent committee. I know that some areas like San Francisco work very well. They have committee set up for their reviews and have federal defenders who do all the work, all the review. I'm not sure that federal defenders really want to be doing all of that extra work, but there are other alternatives other than having the judge determine, what is the reasonableness of the bill? It's unreasonable to expect to have excellent representation by an experienced, competent counsel without paying a reasonable rate for their services.

Judge Fischer: Thank you very much. Ms. Bednarski, would you like to make a statement as well?

Marilyn Bednarski: Both of us, Anthony and I really advocate for the CJA billing and authorizations and the CJA panel selection to be independent and separate from the judiciary. We believe that things don't work well in our district, in part because the CJA supervising attorney that we have and I realize a lot of districts don't have that, is a former Assistant United States Attorney and not someone who really understands the defense function. We think that, essentially, that person needs to have more independence from the bench, because we really have no advocate in the CJA office or on the district court. Our roles as CJA panel representatives are very limited. We essentially have access to some information and, I think, the court is good about communicating with us. New rules and things that the panel needs to learn

about, but we're pretty much just communicators with the panel. We don't have any role in actually affecting change or affecting rules or having anything to do, let's say, with a new Form 26 that comes out.

We also, because we work with the court and are both on the CJA District Court Oversight Committee, I think, we have an appreciation for the job that court is trying to do in our district that got handed to the court, really, and reaction to a huge problem that happened years ago. Like so many things that are trying to get fixed in the state of emergency, sometimes it's not the best structure that gets set up or the best organization. The court has reacted to some over-billers and to some, what I understand to be outlier costs, just outrageous costs, maybe vis à vis the whole county. I think the court has tried to come up with rules as an answer to that and tried to get the panel to follow those rules as an answer to that.

Instead of affecting more zealous representation or better representation or more effective representation, I think, what's happened is the panel has felt disrespected, the morale of the panel is terrible. I disagree completely what Judge Carter said about the morale of the panel or whether it's better or whether it was better about a year ago. We're not statisticians, but we've done a survey of the panel. Seventy percent to eighty percent of the panel on a scale of one to ten, with one being awful and ten being the best, seventy percent of the panel say three or less as to the morale of their panel. Eighty percent of the panel say four or less as to their personal morale in being a panel attorney. Fifty percent say they've considered quitting the panel.

We care a lot and I think our district court does too about zealous representation and good lawyering, but it's a toxic environment that's created the kind of comments that we see about what the panel thinks the district court wants from that is to cut costs more than to provide zealous representation. To deliver those costs more cheaply and efficiently, but not to do everything that needs to be done in a case to give the best representation to the client. Our answer, I think, is that we think if there was independence from the court, so that people when they submitted their bills, submitted them to an office independent of the court, that there would be more trust there and we could get past a lot of the problems that exist now.

I've been in the federal system for thirty-one years. I started there as a young lawyer. I was a federal defender for sixteen of those thirty-one years. I've been on the panel for ten. I'm in a law firm that has three other partners and two other associates, so I can absorb a lot of the painful billing practices, because I have some people who can help me and I have computer systems in place that sometimes help with those things. I would say in Los Angeles, our overhead is probably about $70 an hour. In my law firm it's higher, but I'd say for a sole practitioner, which most of the panel is, it's probably about $70 an hour. Once you subtract out what people pay on their taxes, they're

probably left with about $30 an hour.

I don't think people are using the panel as a cash cow, but I do think that some people are dependent on the panel and there's reasons for that. I sympathize with the job that's been handed to our judges to try to rein in costs, but I don't think the fix is more rules or more onerous forms. I think we need to have a system, something like San Francisco has sound good. I know that Portland has a system that also is independent of the individual judges deciding vouchers and bills and authorizations. I'd like to answer any other questions of the panel, but that's all I have to say right now.

Judge Fischer: Thanks very much. Miss Roe, would you like to start?

Katherian Roe: Miss Bednarski, I think I want to start with you. Can you hear me okay? Okay. You said that the morale of your panel is very low. You also indicated in your written statement that folks are asked to not only record their time on cases, but they're required to record their time on cases by the minute, like from 9:13 to 9:24 this is what I did. Did I read that accurately?

Marilyn Bednarski: Right.

Katherian Roe: Okay. My understanding also is that time is not compensated. Is that correct?

Marilyn Bednarski: We're not allowed to bill for billing.

Katherian Roe: Okay. Can you give us a better idea? I understand the morale is low, I understand that people are considering leaving the panel. You said that there's been a chilling effect on the panel. Can you explain to us what the atmosphere is, what the culture is, what, from your perspective as the panel rep, you see is going on with your panel members?

Marilyn Bednarski: Sure. Essentially, people feel like the rules and procedures that have a pretty much continuously been poured down over the last . . . I would say, Anthony, two or three years? We've been panel reps for two years and it started before that. Is chilling their representation and their ability to be zealous. A common response that we've got to what do you think about that? How do the rules and forms affect your zealous representation, is I have to think about whether I'm going to get paid for something before I do it. I have to think about whether or not a district court judge reviewing this for a reasonableness, where people don't differentiate between that word and extended or complex. Because I'm not sure they really understand those two separate issues, but they just think generally in terms of whether someone reviewing it will dock their pay or cut their voucher, thinking that it wasn't necessary or they spent too much time researching it, or they spent too much time talking with their

client. Or the issue raised by Victoria, time talking with a person's family.

I think there's a general feeling that these cuts are arbitrary and these decisions are arbitrary and that someone other than them, who are charged with the duty of the effective and zealous representation of that client, is interfering with what that lawyer thinks is necessary to do for that client. Nobody is reading discovery for their health. Nobody is not going home to diner with your family because they want to have one more conversation with a client's family over why that's the best plea offer you're going to get or why the Sentencing Guidelines means someone's talking about hundreds of months. Nobody's doing that for their health.

I think people feel really disrespected when they get these voucher cuts saying we think 600 hours reviewing discovery and there's wiretap audio video recording hundred thousand page case wasn't necessary but three hundred was. What kind of arbitrariness is that? Nobody wants to spend their time writing down what date stamp number page they reviewed from 9:12 to 9:18, because they think someone won't trust them later on that they really reviewed the discovery. I think it's a combination of things that makes people feel like someone's trying to micromanage their judgement and what service to give someone.

Katherian Roe: Mr. Solis, I want to ask you the next question. Is it the same for the issue of seeking expert services, investigators or paralegals or forensic experts?

Anthony Solis: I don't think so in my experience. I think, in our district we do routinely get provided expert services, ancillary services. I don't think there is as much of a problem with that. I don't as much have experience with whether or not those bills are reviewed or cut, because I don't see those bills. I approve them and they go off and, I guess, I don't hear any complaints from those third party vendor, so I don't have a problem. I know we do have some issues with the ability to obtain experts for a couple of reasons.

One is we can't pay them as much as the government can pay the experts. Number two, in our district we've had . . . it's less of a problem of obtaining the authorization to get the expert than to get that expert paid. In our district, CJA payments have been slowed down so much that there's vendors that won't work with CJA anymore. There's interpreters that have dropped off the CJA panel. I personally have had interpreters that I've contacted, I worked with for years that I thought were excellent. They said, "CJA? No way. I don't have time for all those papers and all of the justifications and waiting forever for payment."

There's also some . . . obviously, we have a lot of drug cases. Every other day, someone refer a drug expert to review this drug and do a drug analysis, because several of the labs that we used to work with won't do it anymore.

They won't get paid. They get their vouchers kicked back. That is a problem, but as far as whether or not we're getting authorized from our district, the authorizations come quickly, the payments come slowly. That has an effect on the ability of our panel to receive services from third party vendors who'd rather just say, "Hey, the county pays us, the government pays us, the Federal Defender pays us. Everyone pays us but CJA, so no, thank you."

Katherian Roe: Have you done any follow up to try and figure out where the voucher gets stuck? What's taking so long?

Anthony Solis: CJA office won't pay them. It takes a long time for them to get paid, so they don't want to wait. Then, there will be some minor errors, so they'll reject it. A large lab, they don't even want to deal with it. They're like, "We have enough private clients or other public entities that will pay us quickly, so we don't care, so we don't need your work." The minor, the solo, like an interpreter or someone like that, they'll just say, "I don't want to do it. I can't risk the whole day of work to then get paid in a few months from CJA." It's just not worth their time. That's a problem we do have.

Katherian Roe: You mentioned the . . . I think it's Mr. Windsor who testified yesterday.

Anthony Solis: Yes, Mark Windsor.

Katherian Roe: Mark Windsor and his . . .

Anthony Solis: He's probably watching this right now.

Katherian Roe: and his situation. My understanding, and correct me if I'm wrong about this, but my understanding is that the topic that Judge Carter was talking about this morning was completely different than the topic involving Mr. Windsor. That what he was talking about this morning was . . . he said a handful. At one point he said three to four people who had been overbilling.

Anthony Solis: Yes, those are . . .

Katherian Roe: That happened a number of years ago.

Anthony Solis: Those are totally separate issues. Mr. Windsor's issue is completely different from what happened a few years ago and the people that were scrutinized the few years ago. Those are different issues.

Katherian Roe: All right. My question is this, that we've seen these forms that you have to fill out, I think it's a nine page form . . .

Anthony Solis: I'm sorry. Let me just clarify why I think those are different issues. I think with Mark Windsor's issue, it had to do with the reasonableness of the

amount of work that he did. With those other people it had to do with they're either overbilling or sloppy billing or fraudulent billing. They are different issues.

Katherian Roe: I understand and I'm trying to differentiate. My question really goes to the issue of this incremental time billing that you have to do now. Where you have to actually say from this minute to this minute, I was doing this. Where you have to fill out a nine page form that says this is what's been going on in this case. Did those procedures come after the overbilling scheme, if you will?

Anthony Solis: Yes.

Katherian Roe: Okay.

Anthony Solis: Yes, they did.

Katherian Roe: All right. They have nothing to do with what happened on the reasonableness review?

Anthony Solis: No.

Marilyn Bednarski: My understanding is that, on the two examples of the reasonableness review we raised, neither person . . . nobody thought they didn't do the work. Nobody thought they hadn't spent that time, or that there was anything inaccurate about the bill, it had more to do with whether judge thought it was worth that.

Katherian Roe: Right.

Anthony Solis: But our new nine page form, I think, that was born out of one of the billing issues we've had where we had a panel attorney who was on a multi-defendant case. For his case, it was declared not extended or complex, so his $57,000 bill gets cut to $9800. Whereas some people on the same case, for those people who pled their clients out, it was determined to be extended or complex. That was a problem. Now we have a new form that has us detail why we think our case is extended or complex. We have to have nine pages of justification every quarterly bill after the maximum is hit. That's what I think happened.

Katherian Roe: Thank you. I'm going to the Miss Curtis Palen. I just want to ask you a few questions. You indicated that recently the CJA function has been moved back to the court or moved to the court from the Federal Defender's Office, I don't know if it ever was in the court before. Could you tell us why that happened? If you know.

Wendy Curtis Palen: I don't a 100% know for sure. I think, the panel rep prior to myself had come to conferences, had met people, had looked at other people's plans and seen the detail in a plan and had seen other districts developing these more detailed reviews of attorneys and working on quality of representation. I think that was an issue. We had a larger panel at that time. We didn't have it divided into what we now call the core panel and the supplemental panel, so that attorneys who were trying to stay on top of the practice of federal defense felt like that they weren't getting as many cases to assist them in doing that. I think there were concerns about how the cases were being distributed and that part of it was an effort to create a more written plan and court review of distribution of the cases to consider which attorneys got the cases.

Katherian Roe: Essentially, you set up more of a structure?

Wendy Curtis Palen: Set up more of a structure, yes.

Katherian Roe: Have the panel attorneys in your district been happier with that structure?

Wendy Curtis Palen: As far as I know. There's the inherent conflict that we've been talking about, in that it brings in additional judicial review of our panel members. One of the things we still struggle with, with this plan is there's now a committee that consists of a federal defender, myself and three other members who are appointed by the court. When it comes time for us to review the panel members, that's difficult for all of us. It's difficult for the court, it's difficult for us to review our peers. That's one of the things that we continue to struggle with, is how to do panel member review and on what we base that. We're still working out the details and how to balance that amongst the committee and the court and who wants to step up and take that responsibility or communicate that to attorneys and how we do that and how an appeal process would work. Those are the kind of things that we're still working on.

Luckily, we have a pretty open relationship, but I think that our plan, the devil is in the details, that it's easy to have a nice, fancy plan language, but putting it into practical work is difficult. I admire districts that have CJA administrators. The problem is that Wyoming will probably never get its own CJA administrator. We don't even have our own federal defender. To some extent, I fear creating our own separate branch, because I'm afraid it won't really be our own, it'll be us as a part of Colorado and we'll lose that local control and that locality that Wyoming likes so much. That's part of our culture is the smallness.

Katherian Roe: Except for the area, right?

Wendy Curtis Palen: Yes.

Katherian Roe: Geography. You told us about all the windshield time that you spend and the court trying to limit that by saying they wouldn't pay you for travel and then reversing on that. Have you seen issues with the bills? Since the bills are, as you say sometimes, I think you said 50% travel. Have you seen issues with the court cutting your vouchers because of that?

Wendy Curtis Palen: Initially, yes. There was that concern and that vouchers were cut. Then, the court explained why they were doing that and that the court felt that the attorneys were traveling too much. The Marshal's Service in Wyoming has a contract with Scotts Bluff County, Nebraska. Our Cheyenne attorneys and the majority of the clients handled in the Cheyenne court . . . in fact, almost all of them are housed in Scotts Bluff, Nebraska, which is two hours. It was determined that you didn't need to go to Scotts Bluff more than once or twice to meet with your client or that you could meet with them, you can have the Marshal's Service transport them to Cheyenne and have the Marshal's Service pick that up.

The problem with that is that there's not a place where you could have a face to face meeting, the security as such, is that you couldn't have a meeting with a client except for through the screen. I think what vouchers were being cut, attorneys were upset, some attorneys left the panel for that reason, but I think we continually push that issue, we continue to try to work with the Marshal's office. We continue to try to explain to the court why face to face meetings were important and why we needed to go to Scotts Bluff.

I think there were instances when a client got to a change of plea and when the judge asked if he was happy with his attorney, the client flat out said, "I haven't seen him except for today and maybe at my initial appearance. We've talked on the phone on a secure line." I think time and experience helped us all to realize and maybe more of an understanding of the CJA panel attorney's role and then understanding of what our relationship with our clients have to be, but it took time to make that happen. Now, I don't believe I haven't heard in the last six months or so that vouchers have been cut because of travel. The court did produce a formal memo to distribute, because there was still that fear among attorneys. Even though the court hadn't been doing it nearly as much, there was still that fear among attorneys about do I have to justify this? Do I have to explain? How much explaining is enough?

Katherian Roe: Thank you.

Reuben Cahn: I'll just follow with you, Miss Curtis Palen. That policy set was instituted a couple of years ago?

Wendy Curtis Palen: About the same time as the transfer of the administration of the panel to the court.

Reuben Cahn: Okay.

Wendy Curtis Palen: About three years ago.

Reuben Cahn: Roughly the same time as sequestration as well?

Wendy Curtis Palen: Yes.

Reuben Cahn: Do you know, did that policy, the limitation of visitation with your clients, originate with the District Court or with the Circuit Court?

Wendy Curtis Palen: It was the District Court, sir.

Reuben Cahn: Was there any consultation with the panel before instituting that policy?

Wendy Curtis Palen: Not that I am aware of.

Reuben Cahn: Do any of your judges on the district . . . I assume this was the district judges who decided upon the policy?

Wendy Curtis Palen: Yes. I think it was more prevalent among certain judges than others.

Reuben Cahn: Do any of those judges have experience as criminal defense attorneys?

Wendy Curtis Palen: Not that I am aware of.

Reuben Cahn: Thank you. Miss Bednarski, I'd like to ask you about a choice of language you used a little while ago, because that was rein in cost. I think Judge Carter might have used similar language when he was testifying. I'd like to know if when you were using that language, if that comes from any particular place, if there's a reason that that language is being repeated in testimony? Can you give me any insight into that?

Marilyn Bednarski: In trying to understand from the court's perspective in our district the need for all these incredibly minute rules and what all of the lawyers think of is micromanaging their decisions in the cases and their billing. In trying to put

into context why the court felt like it needed to impose those rules, of course, I have access to information because I'm on the District Court Oversight Committee and the Circuit Court, CJA Oversight Committee. I know that they were very concerned about costs in our circuit. In part, because of these extraordinarily huge cases we have, involving 50 defendants, 100 defendants. Unbelievable amounts of discovery.

It's not just those cases. I think someone mentioned earlier this morning, it's hard to define what's a mega case. I had a six defendant case where mine was the only client who went to trial. It clearly was a mega case by virtue of the amount of audio and visual recordings and the amount of work it took to get it ready, but it wasn't a fifty defendant case. It wasn't a three terabyte case or anything else, but clearly, huge.

I'm just trying to understand from the perspective of the court why it feels all these rules are necessary because, because of course, our perspectives are so different. Anthony and I, our blood was boiling when we heard Judge Carter testifying to his opinions about the morale in the panel and the reason for the rules and the effect of the rules and basically saying, "People are adjusting and the new lawyers think they're adjusting and it's fine." Well, they're not. They are amongst the people who we've surveyed. Their morale and their criticism of these rules and these billing practices are just as vociferous.

I always think that it's a good idea to try to understand where things are coming from and not just react to them and say, they're vindictive or punitive or they hate the defense lawyers or whatever. That's why I chose that language. I do not think that the rules and policies and procedures are making representation better. I do not think that it's going to stop fraudulent billing . . . there's always going to be people . . . because we're human, I think there's always going to be people amongst any group of people who don't do things right. None of us want that. The problem that we have with, say, the rules, requiring you to keep track of these minute time periods or the rule that you have to document what page number you've looked at or the rule that you have to now, on the CJA-26 form, write down the cases you've read. Nobody, nobody will remember the cases they've read, unless maybe it's one of the ones that ended up in your brief that was one of your best cases that you felt was going to help you win your motion. You're going to read fifty cases that never make it into a brief.

People feel like these things are punitive, they are not helping defend a client. They're only causing people to not want to submit their bills or not hassle with it. I filled out the CJA-26, which just came out a couple of weeks ago, I think, or three weeks ago. I filled it out on one of my cases that just ended. I put my timer on my phone to see how long it took. When I got to 108 minutes and I realized that I couldn't do anymore without looking at my actual files and materials back in my office. Probably to complete the form, it

was probably going to take about another two hours. I thought this isn't fair. I'm being asked to repeat information that I have put in all of my vouchers, but I'm being asked now, at the end of the case to recall . . .

In my case, it was only eight months ago. Mostly, these cases last years. Even in that eight month basis, I'm not able to recall why did I need to spend that much time reviewing this certain batch discovery as opposed to that? Why did I need to spend so much time researching this motion, which I might have rejected in the end and not even filed? You move on to other things. To ask me to go back and spend hours, essentially, justifying what after thirty-one years I thought was a good use of my time is frustrating, at best.

Reuben Cahn: I have a follow up on that for you and for Mr. Solis. Are you able to provide us with any sort of estimate in relationship to your overall billings, your overall CJA billings? The amount of time spent upon administrative requirements necessary to bill 2%, 5%, 7%?

Anthony Solis: Way, way, way too much time!

Reuben Cahn: And I gather that . . . and remember, we've got to write a report, we've got to make recommendations, so that's why I'm asking for it to be a little more specific.

Anthony Solis: I would probably estimate it to be about 10% to 15%. Because there are so many layers we have to do. We have to first log our time on a written sheet that has to be marked by the minute that we start it and the minute that we ended. It's got to all be on a sheet, continuous throughout the day, so that CJA can check to make sure that those items were possible to do in a day. Then, once we do the vouchers, even though all the vouchers and the worksheets, we input all the information, we then have to still do this every quarter. This nine page sheet and list all the cases that we looked at, whether we used them or not, because the CJA office clearly wants to check to make sure we're billing for something that we actually looked at. I really hope they're not looking at all the cases that we looked at to make sure they're relevant.

Reuben Cahn: What's happening to those contemporaneous billing records, those minute by minute records, where do those go?

Anthony Solis: They go in a file where they are audited by Judge Fischer every period of time. I think it's either a month or a quarter. Three attorneys will get audited and there's an effort to make sure that the time is being kept in the manner that the court expects it to be kept and that they're legible and they're actually contemporaneous time notes. However, I will say that I have seen some examples of some of them that are abysmal, but for the most part, we have to keep them and they're subject to audit.

Reuben Cahn: Do you maintain or retain practice at all?

Anthony Solis: Yes, I do.

Reuben Cahn: Can you tell me what are your billing records like in your retain cases?

Anthony Solis: They consist of a few notes that I scribble in my file and the bill that I generate for my client. But I will tell you, in seventeen years of practice, I've never had a client ask me to list which cases I looked at, whether or not I put them in my motions or brief or whether or not I filed the motion or not. I will also say, my bills are fairly explicit in my retain practice. Many of them are flat fees, so I don't even deal with that. My bills are such that I can't remember ever having a significant billing dispute or someone asking me to justify the type of billing in almost any way and certainly, not the way that the CJA requires me to do it. Though I do recognize it's different when you're dealing with private funds and public funds and I do appreciate that.

Reuben Cahn: Miss McNamara and Miss Bonilla-Argudo, my recollection is that both of you maintain significant retain practices. Could you describe for me the way in which you maintain records for your billing in the retain cases?

Mary McNamara: Yes. I think that's a great question, thank you. I do work for corporate clients, privately retained individuals, CJA, different types of civil representation. I can tell you even for our . . . it seems like less onerous billing, sort of protocols here in the Northern District. What we do in our CJA cases is much more onerous than I do for a Fortune 500 company that's very bottom line oriented, very audit prone. I have had the experience commonly from Fortune 500 companies of getting a thick wad of documents telling me what I can and cannot bill for. They're very clear, but I do not have to submit the kind of CJA-26 that the Central District has. Nor am I told that I can only hire an expert within a certain fraction of the market rate. Nor do I have to submit vouchers and the detail that I'm required to hear. I can just say that here in the Northern District we do all of these things. We do it gladly, but it is at a standard higher than it is generally the case in corporate America. That's number one.

Number two, can I just say again, the billing rate that we are paid is a fraction of what I get paid from my corporate clients. The amount of work that we do do in billing, non-compensable is a lot. It should be enough to permit a reasonable audit. The standard is higher in terms of the detail and specificity than we have in any private practice. For an individual client, I do what I do will all of my clients. I keep contemporaneous, typed records in my timekeeping system. I bill with six minute increment, that's my personal standard. It's what we do at CJA. I budget for clients when they ask for it. I do all of that, and still, what we're asked to do in CJA is more onerous.

Reuben Cahn: Miss Bonilla, would you mind speaking of that?

Victoria Bonilla-Argudo: Both in my private practice as well as in my practice, where I accept appointments whether from the state or the CJA panel, I keep the same billing records. That is a contemporaneous record of the time that I have spent, whether it's in court or out of court. I write in it what I have done, research or investigation. I'll write some notes as to what was it I was researching or interested, perhaps a motion to suppress or a motion to dismiss. I do not go into length or detail as to each and every case that I research. I do bill my clients, whether I bring the motion to suppress forward or not. I do bill them for the motion to dismiss, whether I bring it or not. I sit with my client and I explain to him why I do the research or why I thought that they had a potential, viable motion. I get paid for my time and my work. It is a contemporaneous record what I'm doing.

Reuben Cahn: Miss McNamara, just one last area before I move on. I want to ask you about a statement you made in your opening statement because it's an area that I'm very interested in. You talked about the interrelationship between culture and structure, which you can image, is sort of chicken/egg problem. We're concerned with things that we can scale, that we can transplant to other places, that we can make work. While I heard you talk a lot about structure and I heard your chief judge talk about that as well, I also heard you talk about things like culture and respect and particular people in particular positions. I wanted to know if you could just give me a little more detailed answer on how you think that structure can move from the Northern District of California to, let's say, the Northern District of Alabama and function well?

Mary McNamara: It's something I've thought about a lot. I think culture comes after structure. I don't think you can get a good culture without a good structure. I think it comes here from the fact that it is written in our CJA plan document and in our general order fifty, that the CJA representative is on the key committees of the court, on the CJA Administration Committee, as is the Federal Defender, as are other members of the defense bar who are experienced. We have a fee review committee that comprises solely criminal defense practitioners who are CJA members chaired by me, as the CJA representative. We are on as a matter of course the CJA Supervising Attorney Selection Committee. We are on as a matter of course the panel committee that screens, investigates, does due diligence on every single panel applicant to our district. We are invited by the court to discipline lawyers when and if the need arises. Those are structural elements, they're in documents, they're transparent, our panel knows.

The second part which comes from that is what does that structure beget? That structure begets a hiring a CJA supervising attorney who is one of us, who people have confidence in. I understand that there may be a dearth of

applicants for that job. I think that's a big problem. I think it can be fixed. I think there are outreach efforts you can do for recruiting. We have ideas about that, but I think it's key that the person who holds that position is not a former prosecutor. Somebody who holds that position should be somebody who can speak truth to the panel and will be accepted. I think the other thing that comes from that structure is an open door policy on the part of the court. I know that if I have an issue, I can call up Judge Gonzalez Rogers or Chief Judge Hamilton and they will take my call. Those things come from familiarity with us.

The other component of it is and this is something I do want to stress, is when you have that structure, the court expects us on these committees to discipline our peers. That's a really key element. I can give you a concrete example of how that worked in our district. There was an attorney, a very, very valuable member of our panel. Many of the judges thought he overbilled, thought his bills were excessive, unreasonable. Instead of simply arbitrarily cutting him from the panel, they came to us and they said, "We have a problem with this person. We want you to look at it, tell us, do we have a real problem here or not?" We looked at the issue. We could see where the judges were having the issue. We peer counseled that person. The person changed his billing practices. That person is now a fully respected, happy member of our panel, the judges enjoy his work. He turns in excellent work.

I think without our structure, that sort of situation could have been combustible, it could have led to rancor. It could have led to somebody being summarily dismissed from the panel and then infecting the attitude in the panel towards the judiciary. If there's one thing I could say to this Committee, I think that having us involved early in committees, heading off those problems translates to a culture of collaboration. Where we, on the CJA panel, trust what the bench says, because we know where it's coming from. We've been there when those things have been decided. On the other side, the judges come to us and say, "Here is an issue. Help us." It is a feedback mechanism that works.

And I've seen it . . . just to give you an analogy in private practice, we talk to management consultants, Vader analysis people all the time on our cases. We ask them, there's an accident or an incident, it's bigger than that particular issue, how did this happen? How can we tell the company to prevent it? How can we educate the company and how to handle things in the future? What every single professional will tell you is having a feedback mechanism where you have buy in from the stakeholders is the only way to do it. You cannot hand down policy from on high and not involve the stakeholders in the resolution or the policing of the program, it just doesn't work. When Judge Gonzales Rogers talks about collaboration, it's real, we feel it. The system is never perfect. Sometimes we do have over-billers, but we're not in an oppositional relationship with the court when that happens.

Reuben Cahn: Do we have time to talk about one more thing? Something that you just said spurred me to ask this question, but I really want to address it to everybody. That's the question of reasonableness. As somebody who's never been a panel lawyer, I frankly don't know what that means. I think if I do some work on a case, that I've done it as an exercise of my reasonable, professional judgement. I don't really understand what's going on beyond that. I'd like to know if you could explain what you understand, what you believe is going on when that level of reasonableness review is happening, because I don't understand.

Mary McNamara: If I could take the first crack at that. Not to be profane, but I think it's like pornography, you know it when you see it. It's very hard to define and I think it comes down to pretty broad strokes. I can tell, there may be differences in how I personally practice as compared to somebody else. But I think within certain broad boundaries, I recognize that somebody who does, perhaps, more in a particular area than I is still behaving reasonably, but we can see at a minute's glance what's unreasonable. We can see when people are billing hours upon hours upon hours for reviewing transcripts, day in, day out. That's a red flag. That requires us to say what exactly were you doing?

What's what Diana Weiss does a lot. She will come to a lawyer and say, "I see you, you, spent three days reviewing transcripts. Tell me what you did, why it was necessary? How it affected your case? Why you needed to do it?" If she doesn't hear a compelling explanation for that, she'll judge it to be unreasonable. This comes, I think, from a certain taxonomy of reviewing vouchers. Jerry Tritz, Bob Ranz, these people are professionals who do this day in, day out; they see patterns, they can tell you instantly what is a red flag. A person who does .1, .1, .1, .1, for reviewing vouchers, that's somebody you need to investigate. The endless stream of reviewing, that's someone you need to investigate. There may be explanations, oftentimes there aren't. That's the kind of thing, I think, that you can judge to be reasonable versus unreasonable.

What Marilyn was talking about, going to see your client too much, that is never judged as unreasonable in our district. That's what we're supposed to do, the court expects that of us. Judge Boulware this morning, I was applauding what he was saying. In order to take on these heavy criminal cases, reasonableness demands that you build a relationship of trust with your client, because you're going to be telling your client, at some point if you go to trial, it could be a life sentence or I could get you eighteen years, be happy with that. If you haven't visited that client and established a relationship with trust, you're going to go to trial, which guess what? Will cost the court a lot more than having somebody who's invested the time upfront. It's a long-winded answer, but I do think professional people can easily spot the danger areas in bills.

Reuben Cahn: Maybe I'm being unfair, I'm being overly reductive, it almost sounds to me like what you're saying is on the one side there's churning, on the other side, there's real work being done to advance the case, is that what you're telling me?

Mary McNamara: Yeah, that's what I'm telling you.

Reuben Cahn: Mr. Solis, do you agree with that?

Anthony Solis: I don't know what kind of standards are present to determine the reasonableness of a particular bill. I know that I've never had a bill that has been reduced for being unreasonable. Maybe I'm lucky, maybe I just don't waste my time doing certain tasks that are going to cause red flags, but I do know that there's certain things that our court will set or determine that is unreasonable. For example, talking to a client's family. If a particular development happens in a case and you want to tell the client's wife, you won't get compensated for that because the court will consider that handholding. Even though that relationship with the client's wife or mother is going to go back and increase confidence in your client. That's a core function of our ability to communicate with our client, build trust with our client. It's something that the Public Defender's Office in the Central District does routinely. We're discouraged, we're chilled from doing it; that would be unreasonable because we're just giving information that's not for the case.

The court is also discouraging us from traveling to see a client. If that would create a burden on a client, we would have to have extra justification to travel to a client who's at a custody. We have to make sure they come to us, even though, in our giant district, they will have to come very far, maybe spend two hours on a bus and it'll cause all kinds of problems in their life. If I want to develop a relationship with my client, I say, "I need to come and talk to you about the case. Don't travel two and a half hours on a bus, I will come to you."

That's going to be unreasonable because the court wants that person who's receiving public funds to expend every possible dollar before we have to spend any money. I think that deteriorates attorney client relationship to some degree. Yes, we could justify it if my client's in a wheelchair, I can say yes. I can't make this person do it, the court will probably pay it. But to dictate that is unreasonable, unless you tell me why it's not. They don't have those calculations in the Federal Public Defender's Office, so it's different if the calculus is different

Reuben Cahn: Miss Curtis Palen, could you talk about that same issue? I'm just trying to get a grip on this, I really don't . . .

Wendy Curtis Palen: I agree with Ms. McNamara that there is somewhat of a line in determining reasonableness between written materials and legal research and dealing with clients. What's reasonable in dealing with a client oftentimes depends on how reasonable your client is. You have to gauge each client differently. Whereas some clients can have a meaningful discussion with you about the sentence and guideline and your next client is screaming at you and beating their head on the table. It really varies and your communication with your client depends simply a lot on their personality. It's very hard to judge that without looking at a case by case basis.

There's a clerk of court in our district who works with us on vouchers and prepares them for the court. We turn in our vouchers to him and he puts them together, reviews them briefly and then passes them to the court for approval. He always tells me that he defines our attorneys as there are research attorneys and there are non-research attorneys. After reviewing the bills, he has a feel of which attorneys feel like they need to do research and that that is a reasonable part of their practice and which attorneys rely less upon on research and book work.

I think that's just a practical manner of getting to know attorneys and their personalities and how they practice and what they feel is reasonable within a case. It is very difficult to judge, you know it when you see it. Part of it is, you know it when you see that person standing next to their client and how the court proceedings go. In that, there is some value to judicial review because I don't see my colleagues or my peers in the courtroom very often, but the judge does have the ability to look at the client and the attorney in the eye and kind of get a feel from a plea colloquy or sentencing, of that relationship and the reasonableness of the case.

Reuben Cahn: Miss Bonilla, what do you understand to be happening when your voucher is reviewed?

Victoria Bonilla-Argudo: I can only speak as to myself. I do not review vouchers or the panel attorney vouchers. But . . .

Reuben Cahn: I mean when you send your voucher up, what do you think is happening to it?

Victoria Bonilla-Argudo: I think that is a very reasonable voucher, but obviously, sometimes the judges may not think so. Reasonableness to me is that you're doing your job and that you're doing your job in a competent manner. The issue also comes that the reality is we're not just expected to do a competent job, we're expected to do it at a cost saving. I'm just asking the court not to ask us for the China price, we're not Walmart. We're professionals, we're doing our work, we should be—in my view—trusted to decide what is in the best interest of our client, how to best represent that client and what is needed to represent that client. All of those things, to me, are reasonable. If the attorneys are doing those

things as well as investigating, meeting with people, getting a feel for what kind of a trial I may or may not have and explaining it to the client. All of that is reasonable.

Reuben Cahn: The question I've got is that what you think your judges are doing right now, are they doing something different?

Victoria Bonilla-Argudo: I can tell you. There's a line item. Perhaps the attorney didn't explain the line item very well. I believe that it is unreasonable for a judge to take the position that that line item will be diminished 15% because the attorney did not write a good description of how they have spent their time doing. I think, from my perspective, that the judges believe that a case has a value in their mind and when it exceeds that value, then it becomes a questionable voucher. I think that's wrong for a judge to do that. Each case is different, each client is different. Attorneys should be researching; attorneys should be investigating; attorneys should be meeting with their clients. I don't think the judges should be in the position of saying how long to meet with a client or what to meet with or to micromanage or to shut down a database a few months before trial; those are wrong things.

Judge Goldberg: We take a look at the other side of this. I'm talking about, in specifics, the CJA-26, nine page form that's causing so much discussion, but the broader picture. Before I ask my questions, I want you to know I'm not unsympathetic at all to having your client question a bill. Last civil case I was involved in last trial, I left a pint of blood on the floor like you folks do, and the client questioned my bill for three days, cut it. I've been through it, it's devastating. I'm not unsympathetic to what you're saying. It's devastating mostly to your morale.

I'm from Philadelphia, but I live north of Philadelphia, it's smaller area. A lot of my lawyer friends represent small clients, not corporate clients. Individuals, let's say, in custody cases, small businesses. Important litigation, maybe not comparable to the liberty staff that you folks deal with, but custody cases are important, the lifeblood of a small business is important. I have a lot of friends in Philadelphia area who represented Fortune 500 companies, like you, Miss McNamara. All of them, and this was my experience in civil practice, all of them is an overstatement. A lot of them constantly complain to me that their clients are micromanaging their billing, that they're having to go to their clients office and sit there for hours and hours and hours. By the way, they can't bill for this and justify what they've done.

They have to write reports, Fortune 500 companies—that was certainly my experience—and a parent who's in a custody dispute, they are in constant battles, even to the point of litigation, where they had to sue their clients because there have been such extreme cuts. So, my question is, understanding

your fee is a lot less than theirs, but you're dealing with public money, so that may balance it out. Why are you folks different? Yes?

Mary McNamara: I don't think we are. I don't want anything that I've said to imply that we're different. I think there are two . . .

Judge Goldberg: Why shouldn't you be held of the same standards as other lawyers who work for a fee?

Mary McNamara: I think we should. I say I think our district does that. I will say I think CJA billing is at the more searching extreme of what we see in the private sector. I can tell you I've had to justify my bills just in the manner you've described to a corporate counsel. They said, "What the heck is this?" I think the key distinction is who we are as lawyers. We deal with criminal cases. Many of the panel members are in and out of court the entire time. It's not just that they have a federal CJA practice. They have practices in State Court, they have practices all over the place. They are solo practitioners, many of them. For them to go through the bureaucracy and it is that . . .

Judge Goldberg: You just described most domestic lawyers in small counties. They run from courtroom to courtroom, they represent clients who are in struggles. I'm over dramatizing a little bit, in struggles who maintain custody of their children.

Mary McNamara: Right. I've been in those kinds of courts too. I tell you that I think what the CJA is requiring us to do is at the more extreme end of what happens in the private sector. I don't complain about that. I think what we do here is appropriate and we're really sympathetic to the benches need to, say, you're spending public money, be responsible for it. But I think it's gone beyond that in Northern District. I think it is beyond that by a considerable degree in the Central District from what I'm told. I think yes, we need to be rigorous and defend what we're doing, but when it gets down to you have to put in your precise time minute by minute, I don't know of any private client who would require that, nor do I know of any private client who would ask me what cases I reviewed in the nine page form at the end of the case. Those things, I think, are too far.

I come back to what Miss Bednarski said. I think the solution to the issue is not more rules that alienate people, but more of a sense of inclusiveness, so that we self-police. When we submit a voucher in the Northern District, we talk to Diana Weiss and we say, "Diana, here is what we would like to ask for. Do you think that's reasonable?" She'll either say, "No." Or, "Put item A into item B." Or she'll say, "Yeah, I think it's reasonable and I will advocate for it." That is a beautiful system because it answers another question you've asked, which is uniformity. Diana sees all of the vouchers in the district. She talks to all of the judges. She knows what's what and she knows that from her experience. We have a feedback loop in our district that inculcates best

practices, so that we don't run into the problems you're describing. We don't run into the thundering corporate counsel saying, "What the heck is this?" All of that is headed off at the pass early on because of our CJA supervisor attorney.

Judge Goldberg: It seems to me, there's a bigger problem in their district, so let's hear from Miss Bednarski and Mr. Solis.

Marilyn Bednarski: Sure. I have private clients and I have CJA clients. Some of my private clients question bills and want to make sure, for instance, if there's codefendants that the lawyers aren't duplicating their time, that they're working efficiently and they're not getting double billed by this office and that office. We defend our bills and we work things out, if we can. Sometimes it's just easier to work things out, especially, if you're going to continue with that client. What I think exists, though, is a trusting relationship. What I think what exists is this kind of communication and collaboration. What I hear is really different in the Northern District is there is someone who comes to the lawyer, to have a discussion about why is this reasonable and asks for an explanation.

I've done some reasonableness reviews myself as a courtesy to the court over the past several years and did it with other groups of people. It takes an extraordinary amount of time. What I learned from that process is that I have my own opinions of the way I would litigate the case, but someone else might well litigate it differently and that after I remove myself from my judgement about how I would have done something, but still find a way to make an estimate of what's fair, what's not fair. What we came up with in the several reasonableness reviews we did, is there's a range of time within which something could have taken place, if you worked on a motion. Maybe it was two hours or maybe it was six, but nobody could say this was worth 3.2 hours. I think the important thing is the sense of trust and the sense of independence from the strategy and litigation of the case. That's what's so different about having an office like theirs that's independent, really, from the bench and why it works, I think.

Anthony Solis: Thank you. I don't know anyone on our panel, on this panel in this room who doesn't see oversight as a critical function when you're dealing with public money or even private money. There should be. There should be a vigorous oversight. The question from our district is how much? How many layers of record keeping and bookkeeping and minute by minute and not . . . by the way, this CJA-26, every quarter, every case, cumulative and it requires case law. If you haven't looked at it, look at it in detail.

Judge Goldberg: I have looked at it.

Anthony Solis: The question isn't whether or not you need oversight. It's how much. How

much before it becomes such a burden? We're starting to lose panel members to say, "I don't want to deal with all this paperwork. I don't want to deal with all these burdens." Because I hear and I share all these stories because I come to these conferences that we're having, the district conference tomorrow. People are saying, "We only do a two page thing. We don't have to do half of those things."

Then the question comes back to what Miss Bednarski said, it seems it is in our district, the trust that the court has for its own panel members is at its worst ebb, because if there was a greater degree of trust, this would not be nine pages in every case in every quarter. We wouldn't have the avalanche of paperwork just to justify work that, by the way, we've already put on worksheets and vouchers and it's available to anyone who wants to look at it within the court reviewing our system. It's not a matter of whether we think we're better or whether we think we should be beyond review. It's how much is enough to determine that our work is reasonable and how much becomes a burden to us.

Judge Goldberg: Like most problems, maybe the answer is somewhere in the middle, where the sweet spot is. I have one more quick question, and then I'll turn over to my colleague here. In your submissions and I'm sorry to just focus on the Central District, but you say on page five, point three, in our district in 2015 we had two celebrated instances of significant voucher cutting. Were there instances that you are aware of where significant vouchers, for whatever time period you folks want to pick, where significant vouchers were submitted and weren't cut, when you've cited two problems, what about the rest of them?

Marilyn Bednarski: Absolutely.

Judge Goldberg: Yes.

Marilyn Bednarski: Absolutely people . . .

Judge Goldberg: No cuts?

Marilyn Bednarski: People submit vouchers and get no cuts.

Anthony Solis I get no cuts?

Judge Goldberg: Okay, thank you.

Anthony Solis: Can I just follow up that?

Judge Goldberg: Sure, sure.

Anthony Solis: The issue is not cuts. If you look back on the page five, number three. It's arbitrary voucher cutting. Those two examples have to do with arbitrary voucher cutting, where the judges don't have to explain why they're cutting someone's bill by a third. There's no review process.

Dr. Rucker: Thank you. I'd like to ask a series of real quick questions and hopefully get very quick responses from you, if I may. Miss McNamara, initially you've mentioned several times in all sorts of written material, but we'd like to hear from everybody on this. Hourly rates, you said they're not enough. We've heard this repeatedly. I'd like to know what all of you think hourly rate should be and should there be some kind of locality adjustment for that?

Mary McNamara: Yes, definitely locality adjustment, I think. I think that is how the Department of Justice handles people who get seconded to San Francisco or New York or some other high cost of living, metropolitan area. If you were to ask me what the hourly rate should be, I would say let's do a study on it. I'll just throw out a couple of figures. For civil representation of federal defenders, which I sometimes do, the hourly rate for that is $200 an hour. It's for civil representation. That's telling, it's a figure I'm just throwing out.

Here in San Francisco, a person with my level of trial experience, complex case experience, we get complex cases here. The rate is anything from $500 to $750 an hour. I'm not saying it should be anywhere near that, but those are two benchmarks that, I think, are telling. I think there should be a study on it and I think we should figure out what's appropriate and maybe model ourselves somewhat on what DOJ does when it sends folks out here to handle cases.

Anthony Solis: I think some study has been done because the congressionally authorized rate is higher than the current right now. I believe it's $144, why is it not that for us, I don't know, but somewhere that number $144 came about, so it should definitely be higher. Whether or not it should have a locality, of course it should. San Francisco and New York and Los Angeles are just qualitatively different than Wyoming. Why should the rate be the exact same? Because the cost, the overhead costs, the cost to do business, the cost to be a lawyer in those places are just not the same, so they shouldn't be the same, the rates.

Dr. Rucker: Miss Curtis Palen.

Wendy Curtis Palen: Our overhead is lower but we're providing the same quality of work. We have the same education, we are the same caliber of attorneys as an attorney in New York or California. We may have lower overhead, our cost of living may not be as much, but we are just as powerful of advocates for our clients as any attorney in the nation.

Dr. Rucker: Was $129 an hour okay or does it need to be higher even in Wyoming?

Wendy Curtis Palen: I believe it needs to be higher even in Wyoming. Civil practice custody attorneys. I do a lot of custody work myself, my rates are higher for a custody case. It's about the same for state appointed work in juvenile court, for example or state appointed work, it's about $125. For private cases or DUI cases, a county DUI case, it's higher than what I receive for my CJA work.

Dr. Rucker: Okay. How about Massachusetts?

Victoria Bonilla-Argudo: Massachusetts has some expensive attorneys, so very similar to San Francisco. You have attorneys in Massachusetts that are charging $600, $700 an hour. You have attorneys charging $200 to $400 an hour. I do believe that our hourly rate for the CJA panel should be what has been mandated or granted by Congress, $144 dollars an hour. I do believe in locality changes due to where the offices are located, the states that those offices are located in. I believe that 18 U.S.C., I've mentioned it in my submission, I think it's 18 U.S.C. 3006a(d)(1) allows that, for there to be different rates in different localities similar to what federal defenders have, similar to what U.S. attorneys have. It could also be done for the CJA panel, if what we're looking for is a cost containment measure as to what attorneys are getting paid.

Dr. Rucker: Miss Bednarski, do you want to weigh in on this?

Marilyn Bednarski: I think even if it was $144, it would be too low, but I still think you would get really good people who are really committed to this work as long as the job satisfaction is there.

Dr. Rucker: Okay. Let me talk about hourly rates on a different . . .

Judge Goldberg: I'll be back to that, don't worry. [LAUGHTER].

Dr. Rucker: Service providers. Miss McNamara, you said $350 an hour is not enough here in San Francisco.

Mary McNamara: No, it's not.

Dr. Rucker: What should it be?

Mary McNamara: I think it should be for psychiatrists who are forensic psychiatrists and expected to testify, it should be what the Department of Justice pays. That's, what I understand is $600 to $700 an hour. Let me just tell you, walking into court with a poorly written report, poorly researched with somebody you cannot testify is really difficult, and it is automatically going to lose you your point. It's useless to us. We've had people say to us, "Your expert is a hack."

"We can only afford a hack." I'm sorry to be so blunt, but that's the way it is.

Again, the cases where that kind of expertise is necessary and where somebody has to testify are relatively rare, but they're very important cases. For mental health experts, it absolutely needs to be higher. We rely right now on sort of the goodwill of people who are willing to donate some of their time, it's not okay. For investigators, it needs to be higher. Our highest rate for investigators is $75 dollars an hour. The usual rate here in the market is $175, $200, $250 for good investigators. You get what you pay for. You get people who are more efficient, who are ethical, who can testify, who advance cases. I say you invest in people, what that will produce is a quicker resolution to cases that should be resolved, and a better trial for those that can't be.

Dr. Rucker: I'm going to go around with everybody else because I want to ask two more questions and give the rest of the Committee time. Real quickly, changing totally on you. Does anybody think the court of appeals judges should be involved in reviewing excess vouchers? Anybody?

Mary McNamara: No.

Dr. Rucker: Okay. I didn't think so.

Anthony Solis: I'm sorry, I wasn't sure you heard me . . . No!

Judge Goldberg: Okay you've been very quiet, so . . . [LAUGHTER] . . . We weren't sure?

Dr. Rucker: I want to direct a question to Miss Bednarski. If I understood you correctly, you said that some of the attorneys are so disenchanted that they're not submitting their vouchers, they're not submitting bills, is that you, did I hear you say that?

Marilyn Bednarski: We have people who definitely aren't submitting certain areas of billing, because they think it's going to be docked and they think the vouchers are going to be kicked back and they think it's just going to slow things down, even though they really believe it was essential work and important work. I know of a couple of people in our district that just don't submit bills at all. I think that happens in every district. I think there's people who just don't want to deal with the hassle of it.

Dr. Rucker: That was going to be my follow up question, because I just see a show of hands, are you aware of that happening in your district? People are self-cutting their vouchers?

Anthony Solis: Yes, I've had. Anecdotally, as the panel rep, a lot of attorneys call me and tell

me what happened. One panel rep cut his bill by a third, thinking if I cut it by a third, it'll be so palatable that it will then immediately get paid. Then, it was cut further and it didn't get paid. Then a battle and sued. I encourage now don't do that, just bill the full amount because then a court knows how much these services cost. Don't self-edit. There are attorneys in our district, there's one I know that Marilyn knows as well, doesn't submit the bill at all. She takes as few cases as she can, doesn't submit the bill because she just doesn't want the hassle.

Dr. Rucker: All right, thank you. Thank you, Judge Fischer.

Judge Fischer: Thank you. Judge Cardone.

Judge Cardone: I have a question. When the last study was done, I think, we don't have the exact numbers, or don't quote me on these numbers, but let's say 30% of clients were indigent in the federal system and needed some form of representation, either through the FPD or through CJA attorneys. It appears now that those numbers are extremely different, that a vast portion of defendants in the federal system are needing appointed counsel or FPD representation or CDO representation. You are all in private practice, all of you practice in federal court. I want to go one by one and ask each of you, Miss Bednarski, what portion of your practice, in the federal, is retained versus appointed?

Marilyn Bednarski: Probably 40% appointed, 60% retained in federal court. All my work in state court is retained. All of our civil work, of course, is retained. I'm in a firm, so I'm not a sole practitioner.

Judge Cardone: Okay. How big a firm are you in?

Marilyn Bednarski: We have four partners and three associates.

Judge Cardone: All right.

Marilyn Bednarski: But we also have a staff of paralegals.

Judge Cardone: Okay. How about you, Miss Bonilla?

Victoria Bonilla-Argudo: My state work, I would say it's half and half. My federal work, of the work that I do get, I would say 80% of the work that I do get in federal court would come from the CJA. If I got three cases total that year, two and one private for that particular year.

Judge Cardone: How many cases would you say you get, federally a year?

Victoria Bonilla-Argudo: Appointed cases? We have a duty day system, so within the duty day system it's something comes in, then you're asked to get it, but not always something comes in on your duty day. For example, I haven't received any appointed cases this year at all.

Judge Cardone: Okay. How about you, Miss Curtis Palen?

Wendy Curtis Palen: I would say 95% of my federal cases are appointed cases. Same for my husband and law partner, probably 95% of his federal cases. We are somewhat geographically distant from the federal courts, but a very large percent of our CJA cases . . .

Judge Goldberg: Your husband is 95% . . .

Wendy Curtis Palen: As well.

Judge Goldberg: Okay, appointed?

Wendy Curtis Palen: Appointed, yes. State cases, probably half and half. Again, I have to make an exception for my husband because he is a contracted state public defender, so he is a state employee and has a large number of state public defender cases, but we also maintain our private practice and take retained state cases. But the vast majority of the federal case are almost all appointed.

Judge Cardone: Miss McNamara.

Mary McNamara: For us, I have a small firm, three of us are partners, one associate, one contract attorney. I would say 75% to 80% is private retained, the remaining 20%, 25% is federal panel work. We do no state panel work.

Judge Cardone: Okay. Mr Solis.

Anthony Solis: Yes. I'm solo as well. I would say my federal work is probably, at any given time, either 60% or 50% retained and the balance is appointed. I don't do any state appointed work, because I do have a lot of state work, but none of it's appointed. The rest of it it's retained.

Judge Cardone: All right. So in each of the . . . everyone who answered the question and has some portion of state practice, it seems that the state clients seem better able to pay fees that the federal clients are in some ways . . . there is a higher percentage that need appointed counsel. Does anybody have any sense why that might be?

Anthony Solis: Oh, sure.

Judge Cardone: Okay.

Anthony Solis: The federal work is much more expensive. The fees that I would charge in a state case for just pick the crime, it's exponentially more in federal court. The cases are going to take longer. I tell clients if you go into court, which won't happen, but if you go into court at the initial appearance and plead guilty, it's still going to take four months for you to get sentenced. The cases just take longer. If you're talking about any multi-defendant or a large discovery or RICO case, forget it. Most of those people are priced at of hiring a private counsel. On a multi-defendant RICO case, maybe you'll get one or two private counsel. Usually those private counsel will drop out of the case and some of that panel attorney will have to pick it up at some point.

Mary McNamara: There's another big reason and that's the forfeiture laws. Federal forfeiture laws make it impossible if you're charged with a drug offense to retain private counsel, the money is gone. Forfeiture is increasingly a priority of the Department of Justice in every case in which they can charge it. In this district, we see a lot of white collar cases that now carry very punitive, forfeiture allegations. In addition to complexity, length of time, there is forfeiture.

Judge Cardone: Anybody else have any thoughts?

Marilyn Bednarski: There's another reason which is that in state court, there's a natural point at which you can get out of the case if the client doesn't have any further money. When you first get into the case, like pre-prelim, there's an opportunity to review the discovery, do investigation, establish that relationship with the client and possibly settle a case for a lot less than it would cost if you were retained to do a trial. In federal court, we don't have that natural division. When you retain, you need to have enough money to stay in the case, because you can't count on a judge letting you out because a client ran out of money.

Judge Cardone: Would it be logical for this Committee to assume that the majority or a great majority of defendants in the federal system are going to need some type of representation that does not come from the client? That's not going to be able to be paid by the client because of forfeiture, because of the cost, because of the sheer disability to pay those kinds of fees?

Anthony Solis: I think also the nature of the crimes in the state system and the federal system are very different. In the system, you can have maybe a random drug case. The police just sees that in a traffic stop, that's the whole investigation. In a federal drug case, you have months of wire taps and lengthy investigation that you then need to, as the attorney, go do investigation, wait through all the wire taps and calls. It's just much more extensive because of the lead time. In

federal criminal investigations, there's so much more and so much more involved than in state cases, where most of the crimes are fairly reactive.

Judge Cardone: All right. Anybody else?

Victoria Bonilla-Argudo: Your Honor, you also have a situation where you do have a private client. The private client may not have the sufficient funds to get forensic experts such as fingerprint analysis or DNA. Then, you go to the court and ask the court for money as if it would have been given to a CJA panel attorney. I tend to agree with your statement that yes, most of the clients, if not all of the federal clients, will need some sort of support financially.

Judge Cardone: Last question. Is the concept of pro bono work realistic?

Anthony Solis: No. I'll tell you why. Because in our district, we have multi-defendant gang RICO cases. There is no firm that can handle . . . for example, I can think of three cases off the top of my head, actually two that Judge Fischer presided over. They were years long. They were serious, hardcore gang cases with gigabytes of discovery and data. One of them I was involved in, the trial was three months long. I don't know any small firms or even any firms, big firms, that want to assign a person to say, "You just disappear for three months for this gang banger who killed another gang banger." They're just not going to do it. You need dedicated people who are going to provide continuous representation for the entire case.

The two cases that I'm thinking of Alfaro and Hawaiian Gardens, these are four year-long cases that I was able to represent the client wire to wire. Meaning, from the initial appearance to the conclusion of the case. That's important because if you get fired, if there's the change of counsel, for whatever reason, these cases have to be written out . . . kinda like a bucking bronco because these cases and these clients are very difficult. If you can do that, you're saving the system a lot of money because changes in counsel cost a lot of money, especially late in the process when someone late in the process, if they're not going to get severed, you're going to cause a delay in the trial and all these people get moved. Then, all those panel attorneys have to go and see their clients again and look at new discovery. Then, new discovery comes out.

Pro bono, maybe great for your one off, mail fraud case, for the junior associate that wants to get some experience in trial. But for the majority of cases in our district, in the Central District of California, I don't see someone getting involved in gigabytes of discovery with tens of thousands of phone calls that you have to listen to and have some big firm get an associate that they're paying a couple of hundred thousand dollars to say, "Go off and provide competent representation in this case and don't worry about your billable hours."

Judge Cardone: Anybody else have any thought? Okay.

Chip Frensley: Miss Palen, you eluded something early in your testimony that I wanted to follow up on. I appreciate you being here because your situation in Wyoming is unique in terms of the panel size and geography and other aspects of what's happening there. We've heard a lot of testimony from different places about the role of panel administrators or supervisor attorneys or case budgeting attorneys and things like that. Earlier in your testimony you eluded to the, I guess, rugged individualism of the western states and the idea of maintaining the local control. I think, rightfully so, acknowledge that it probably wouldn't be the kind of thing that you could create this brand new position to take responsibility for the district of Wyoming and probably other districts across the country.

I'm wondering if given your experiences with judge involvement and juridical involvement and vouchers and experts and the things that you've provided in your written submission as well as your testimony, as well as what you've heard from other places, regarding that the impact of juridical involvement on those particular issues. If you would feel more comfortable with a judicial officer being the final decision maker on experts and vouchers. If the alternative was to have someone like a supervisory attorney who had criminal defense experience and background was appointed or selected by the involvement of all the players in the system, including criminal defense panel lawyers, defenders and the court systems, but that individual had to be in Colorado or somewhere else. Because just the logistics of the size of the panel and those kind of things meant that you couldn't have your own person, so to speak. Which would you choose?

Wendy Curtis Palen: That's a hard question, because of course, it would depend upon . . . the problem would be is that a person in Colorado that had our defender attitude or the defender spirit, it would depend on if they wanted to come to Wyoming and travel through the conditions we travel to and go all over our state and meet with our attorneys and develop that kind of personal relationship that, honestly, we do have with the courts. It's almost the devil you know is better than the devil you don't. At least, we do have that local . . . but I have to appear in front of Judge Skavdahl tomorrow.

Sometimes, my job is . . . it's my job to not make Judge Skavdahl happy on some dates. It's my job to tell him that I disagree with what he said. I guess, again, you look at balance. I hate to see Wyoming lose its independence to Colorado just because even though we're both western states, we're vastly different than Colorado in the way our attorneys practice and in the troubles we face in our geography. There is some amount of value, I can't deny, in having a judge who you're familiar with, who you practice with to see that as opposed to someone who's at the Tenth Circuit Courthouse in Denver, that

you don't know on a personal level or you wouldn't recognize on the street.

Judge Gerrard: I know Judge Skavdahl, he'll appreciate being referenced as the devil that you know. I'm enjoying that. I want you to know that the back row has been listening intently, I just have a brief question or two. Miss McNamara, your point is well taken about the quality of experts and ancillary services. A poorly written or unsupported report is worse than useless in my court. I think I speak for a lot of other judges. You know that it hurts your client in the court more so than not having one at all. That point is well taken. I do have a question. Even in the Northern District, in a well-functioning, a well intention CJA Panel Selection Committee. I think you serve on it, do you not?

Mary McNamara: I do. Yes.

Judge Gerrard: All right. Correct me if I'm wrong, there's four judges, two magistrates, two Article III's?

Mary McNamara: Correct, yes.

Judge Gerrard: Then, two . . . a panel attorney and an FPD, is that correct?

Mary McNamara: On the Selection Committee it's expanded, so it's the federal defender, myself, we are permanent members of the administration committee. Then, there are four other CJA attorneys who represent different geographical venues in the district.

Judge Gerrard: All right. Then, you are perfect. My question is going to . . .

Mary McNamara: That's my opinion, yes. Thank you very much.

Judge Gerrard: My question was going to be even a panel like that, whether you felt it was skewed toward judges or whether that was an intimidation factor. I trust that your answer is no then.

Mary McNamara: No, but our judges are plenty intimidating. I do want to say that. I appreciate the question because I think that is a concern that we have.

Judge Gerrard: That is, in some districts it certainly is. I think we need to be cognizant.

Mary McNamara: Yes. I've heard this many times, I've attended now, I think, six national CJA conferences and people tell me that all the time. They say, "In my district, I

couldn't possibly say X, Y and Z to our judge, he would get offended or she would have me off the panel." I come back to the sort of note I've been harping on. That is when we as a community of CJA lawyers see that we're there in force, six of us, that we're in every committee that makes decisions. That the judges consult us first when they have an issue with a lawyer, we feel like we can actually say truth to power. I really think that's the solution. It's just a structure that encourages participation at every level. If it were just once a year that we were invited in, I think we would have a real problem.

The other thing, I can tell you, is in instances where we have said to the court, "You know we disagree with you on your view of a particular attorney." We see that they pay attention to that. They may not always agree, but nine times out of ten they agree. It goes back to what Judge Gonzalez Rogers says, the ultimate thing we feel in our district is that the court respects us and understands that we provide something valuable.

One other thing before I leave it, if I may. The people on our panel who provide services are dedicated people and there's a sense of vocation. There are people who go to the jail after hours, to make sure their clients are released. They don't charge the program for that. They just want to do it because they want to make sure a human being gets out of jail. There are people who after a case is over find jobs for their clients. They don't do that for pay, they do it for a sense of vocation. There are people who make sure their clients get their drivers licenses back. We provide all manner of what might be considered social services because we care. We really care about the work. All of us here on this panel don't need the work. Many of us are former public defenders, we want to do this work, we feel strongly about it. The court here recognizes the value of that.

Judge Gerrard: Very well, thank you. I appreciate that.

Judge Walton: I think we haven't heard from the Professor . . .

Prof. Gould: How much longer do we have?

Judge Fischer: We're passed . . . briefly

Prof. Gould: We're passed? All right then, two questions. For those of you who have mentioned arbitrary voucher cuts, not voucher cuts, but arbitrary voucher cuts, what's the extent of the problem? Are we talking about a few judges in your district or we're talking about a pattern in practice across the entire district?

Marilyn Bednarski: Our concern is, really, it's a growing trend because what we've seen in the last year is more and more cases being referred to the presiding judge for the reasonableness review. Out of that has come these two extreme cases. We see

it reverting to the system that used to be many years ago where one district court judge would just slash a bill 50% or another district court judge would just slash a bill 30%. The real concern we have is that increasing more and more, we hope these two things never get repeated. But it does seem like more and more Judge Smith is revering things for reasonableness reviews to the district courts. We expect to see more and more sort of half of these hours are gone and half of these are gone.

Anthony Solis: They're arbitrary because there's no meaningful explanation. I think you heard in the last panel the judge said, "Well, it was just a gut feeling." If you have a judge who cuts your bill by a certain amount of money and said, "Well, it was just a gut feeling." How is a panel attorney supposed to take that? What was it about my bill? What line item did you have a problem with? Then, there's no review because in our district, the review process was go to the circuit judge and he will determine whether the district judge abused his discretion. No, he didn't, don't worry. That's it. It's over. There's no other meaningful review and there's no explanation. You cannot demand an accounting or saying, "What was it about my bill? What line item? What did I do that was unreasonable?" I don't know any people in our panel that just say, "I'd love to spend hours on end with this guy who I've never met in the Metropolitan Detention Center because I want to generate up a big bill at $129 an hour.

Prof. Gould: Okay. One last question. I am struck by the disconnect between many of you saying that the hourly rate needs to go up or you're going to lose people off your panel and at the same time saying that there is self-cutting going on across your panel, and yet, people are staying on the panel. Is this a situation where you have people on the panel who shouldn't be on the panel and or is this a situation in which there's a great deal of pro bono service going on by those who are on the panel?

Anthony Solis: I'll just say from the Central District, we have a couple of people who are excellent attorneys that just came out of the Federal Public Defender's Office, that got out and thought they would take a certain number of panel cases and then they had so many problems with their bills, they don't want to bill and they want to get off the panel.

Prof. Gould: But they're not.

Anthony Solis: They've stayed on, but I will tell you, they give away their duty days, they're declining, they're taking fewer cases. They're effectively getting off the panel because they're, even though they were recently on the panel, they're whittling away their panel cases to the point where they're very few. They want to maintain the connection with the panel because there's a lot of comradery. They want to do something for the court but they're taking fewer and fewer cases and giving away their duty days.

Prof. Gould: Okay. The rest of you?

Victoria Bonilla-Argudo: I believe there is cutting, self-cutting. It is a form of pro bono. It is done because we're actually encouraged to really look at our bill and treat is as a private client. You should cut your bill a little bit, so you're already with that mindset and I discourage that.

Prof. Gould: Who's doing that encouraging?

Victoria Bonilla-Argudo: It's right in the plan in our guidelines.

Prof. Gould: It's part of the plan?

Victoria Bonilla-Argudo: It's in our guidelines, yes, in our guidelines.

Prof. Gould: Okay.

Victoria Bonilla-Argudo: Yes.

Prof. Gould: All right.

Victoria Bonilla-Argudo: I disagree with that. I think we should bill for every minute.

Prof. Gould: Okay. I know we're over time. Thank you very much.

Judge Fischer: Thank you very much and please, remember that if you think of something else or anybody that you talked to has anything else that they'd like to present to the Committee, that we continue to take written testimony by submitting it to our website. We'll also take testimony submitted confidentially. Thank you.