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February 17, 2016

Judge Kathleen Cardone, Chair
Committee to Review the CJA Program
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Washington, DC 20544

Re: San Francisco Hearing: Background and Comment Regarding Intended Testimony

Dear Judge Cardone and Committee Members:

Thank you for your review of the Criminal Justice Act Program, and for your invitation to participate in the upcoming hearing in San Francisco. I am honored to participate.

My Professional Background

I have been practicing law since 1988, after graduating, *cum laude*, from the Georgetown University Law Center. I have devoted almost my entire career to the practice of federal criminal law. During law school, I interned in the United States Attorney's Office, District of Columbia and worked as a Summer Associate at the Washington, DC law firm of Dunells, Duvall, Bennett, and Porter. After graduation, I joined Dunnells, Duvall as an Associate, where I worked in the white collar criminal defense practice group for two years (1988-1990), until the firm split up. During that time, I worked under the supervision of Robert S. Bennett, Esq., and others, representing defense contractors who were targets of Federal Grand Jury and Department of Defense Inspector General investigations for fraud offenses. Next, I served for thirteen years (1990-2003) as a Trial Attorney with the United States Department of Justice, Criminal Division, Organized Crime and Racketeering Section, during which time I prosecuted cases in the Eastern District of Pennsylvania, the District of Nevada, and the District of Hawaii. These cases included charges of racketeering, extortion, embezzling assets from a labor union, receiving kickbacks to influence the operation of an employee welfare benefit plan, honest services fraud, mail/wire fraud, health care fraud, crimes by persons engaged in the business of insurance, bankruptcy fraud, and tax fraud. Since 2003, I have been working as a solo practitioner in Honolulu, Hawaii, where I am a member of the CJA Panel. I have been serving as the District of Hawaii Panel Attorney District Representative since January 2015. In 2009, I also received a CJA appointment on a mega-case in the District of Nevada, and in 2007, I was privately retained on a mega-case in the District of Nevada in which several co-defendants were presented by CJA Panel Attorneys and one co-defendant was represented by the Federal Public Defender's Office.

District of Hawaii CJA Panel

Our CJA Panel is currently comprised of 43 attorneys. The Court fixes, annually, the size of the CJA Panel. In order to be eligible to serve on the CJA Panel, an attorney must have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the United States Sentencing Guidelines. Application for membership on the CJA Panel is made by submission of a letter containing a statement of interest and qualifications to the Panel Selection Committee, which is comprised of one United States Magistrate Judge, the Federal Public Defender, and the CJA Panel District Representative. The Court selects the attorneys to be included on the panel after receiving recommendations from the Panel Selection Committee. In addition to reviewing applications, the Panel Selection Committee also meets at least once a year to review the operation and administration of the panel and to recommend to the Court any changes deemed necessary or appropriate to the appointment process and panel management.

Each year, the Court issues an Order constituting the CJA Panel for that year. Shortly after the Order is issued, the Federal Public Defender's Office and the CJA Panel Representative meet with the new members to provide basic orientation and training, and to make clear that the Federal Public Defender's Office and the Panel Representative are resources that panel members can contact with any questions. In addition, the Federal Public Defender regularly emails summaries of current US Supreme Court and Ninth Circuit decisions to all panel members. The Federal Public Defender and the Panel Representative also promptly provide email notice of all Defender Services Organization training opportunities to all panel members. The Federal Public Defender's Office also presents an annual day-long conference. This year's conference will be held on February 20, 2016, and has been approved by the Hawaii State Bar Association for a total of 5.0 CLE credits, including 1.0 Ethics credit. Topics include: (1) 2015 appellate year review – Supreme Court and Ninth Circuit cases; (2) *Johnson v. US*: Its Impact on the Armed Career Criminal Act, Career Offender Guideline, 18 U.S.C. 16(b), 18 U.S.C. 924(c) and More; (3) the Categorical and Modified Categorical Approach after *Descamps v. U.S.*; (4) Due Diligence in DNA cases; (5) Cell Phone Forensics; and (6) Historical Cell Site Analysis.

Mega-Case Issues

Appointments are generally made on a rotational basis. However, the Court has discretion to make exceptions due to the nature and complexity of the case and an attorney's experience. This discretion works to ensure that indigent defendants receive quality representation in particularly complex cases.

I see the lack of parity of resources in relation to the prosecution as a significant issue in complex cases. The government is able to issue a trial subpoena to any witness the party deems appropriate. Fed.R.Crim.P. 17(a). By contrast, a defendant who is unable to pay must demonstrate the necessity of the witness's presence for an adequate defense in order to obtain a

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Order issuing the subpoena and authorizing the payment of witness fees and costs. Fed.R.Crim.P. 17(b). Thus, while the government can call any witness who has relevant and admissible evidence, the defendant must meet a higher standard of demonstrating that the witness's presence is necessary for an adequate defense.


The government routinely staffs complex cases with two prosecutors, two special agents, a paralegal, a victim/witness coordinator, and other agents and analysts from law enforcement agencies as needed. When an indigent defendant obtains Court authorization to incur costs for paralegals, investigators, etc., the authorizations limit the number of hours and therefore require panel attorneys to exercise substantial restraint in the use of these resources. I believe it is important for Courts to authorize sufficient litigation support hours to allow for pretrial and trial support. In addition, with the advent of electronic discovery and computerized courtroom presentation of trial exhibits, it is important to authorize litigation support services to allow indigent defendants to make effective use of this technology in the Courtroom.

Finally, I believe that in cases involving expert witnesses, it is important to make efforts to afford indigent defendants parity of resources in relation to the government. The government often has expert witnesses available on staff in its agencies. For example, I was recently appointed to a case post-trial, pre-sentencing. At trial, the government called three expert witnesses, including a CPA who is employed by the FBI. Based on the testimony and work product of the CPA, it appears that she spent hundreds of hours on the case. Similarly, in criminal tax cases, the government has access to IRS Revenue Agents who routinely devote many hours to these cases, sit through the entire trial, and then testify as an expert witness based on the trial evidence. These and other experts are routinely available to U.S. Attorney's Offices at no extra cost to the prosecution. I think it is important that Courts evaluate indigent defendants' requests for authorization to incur costs for expert services with the issue of parity of resources in mind.

As a Panel Attorney, I have handled complex cases where I believe that adequate authorization for subpoenas and third party provider services was provided. I have also handled one case where I believe I was not afforded sufficient resources. From my perspective, this made a huge difference in my ability to provide quality representation.

Again, thank you for your review of the CJA Program, and for inviting me to participate. I am looking forward to the upcoming San Francisco hearing.

Very truly yours,


Lynn E. Panagakos