

Ad Hoc Committee to Review the Criminal Justice Act

Public Hearing # 1–Santa Fe, New Mexico

November 16-17, 2015

Transcript: Panel 3—Views of Defenders on Training

Judge Cardone: I am not going to make much of an opening statement. I did want to make sure and remind everyone about the public hearings we will be having. Again, these hearings, November 16th and 17th in Santa Fe, New Mexico, January 11th and 12th in Miami, Florida, February 3d and 4th in Portland, Oregon. Yesterday, I omitted February 18th and 19th, 2016 in Birmingham, Alabama, March 2d and 3d, 2016 in San Francisco, California, April 11th and 12th of 2016 in Philadelphia, Pennsylvania, and finally May 16th and 17th 2016 in Minneapolis, Minnesota.

This morning, our first panel is “Views of Defenders on Training.” Our Subcommittee members are Dr. Robert Rucker; the Honorable Mitchell Goldberg; the Honorable Dale Fischer; and Katherian Roe. And our panel participants are Ms. Tina Hunt, the Federal Public Defender from the Middle District of Georgia; Lisa Freeland, the Federal Public Defender from the Western District of Pennsylvania; Carlos Williams, the Federal Public Defender from the Southern District of Alabama; and Amy Sirignano, the panel attorney from the District of New Mexico. Um, we will go ahead and start with opening statements and we will start with you, Ms. Hunt.

Tina Hunt: Um, I think that as a group before we came, we all discussed what would be topics relevant to CJA training, and I would like to talk to the Committee about the difficulty of training the CJA panel in the rural areas. My district is a very rural area. We have two major cities, and the rest of the district is comprised of, although we have five divisions, the other three divisions are rural areas. Because of that, it is very difficult to reach out to the panel and train them, in any sort of meaningful way. We use a website. We use mailings. We use, we have a protected forum on our website to answer questions. We field phone calls on a daily basis but I feel that that is not enough to train the panel and the judges in my district don't feel that it's enough to train my panel.

Um, I also live in a district in which we actually have no model CJA plan, so that makes it even more difficult because in my district, you can be on the panel, you are technically on the panel, on the CJA panel, whether or not you're qualified. Every person who is admitted to the bar of the Middle District of Georgia is considered to be on the panel, and that includes whether or not you are dead because they don't strike your name off after you die. So as you can see, it is very difficult to get a meaningful list of those lawyers who are practicing routinely in the Middle District of Georgia.

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Um, with the five divisions, we have three magistrates who sit in three of the divisions who assign, who have the responsibility of assigning and managing the panel. My office does not manage the panel. Um, we have recently come to the point where, um, I think the judges have come to the realization that we have a problem with our panel, with the quality of our panel, with the training of our panel and they are working on setting up a program, at least picking up many of the areas of the, um, model CJA plan but I don't foresee that happening because it's Georgia and we're slow, um, for at least another eighteen months to begin with.

My office has only been open ten years, only been accepting cases nine years but what we have learned is that the quality of representation has gone up tremendously in the district because of the office because I think that the panel lawyers are now seeing here are some of the things that you can do to fight, um, in your cases and things you need to look for in your cases. And then of course, we do have a helpline you can call in and we do make regular appearances in court with them, so they see what we can do in terms of training.

One of the problems in a rural area with a lack of training also concerns a lack of resources, and the training that they need to learn how to get and use resources to assist their clients. So, that is something that we are working on as putting together a bank of resources they can use that the judges would approve, um, payments for so that they can do a better job representing their clients. We have some very good CJA lawyers in my district. We also have some very poor ones in my district and the magistrates don't just go down the list. They do try to, um, fit the lawyer to the case to the best of their ability but we have recently hit a number of cases in which we have thirty-five defendants or more and that has really created quite the strain on the court, um, because many of the lawyers coming in to take codefendants on these megacases do not have the training that they need in order to be able to deal with the cases that we are dealing with. So, this is a real struggle in my district as a rural district.

Judge Cardone: Thank you. Ms. Freeland, I believe you are next?

Lisa Freeland: Thank you, uh, Judge Cardone and I really thank all of you for inviting us and specifically focusing some of your attention during this study on training because it recognizes what an important part training is to providing quality representation under the Criminal Justice Act. In my personal statement, I focus in on a couple of what I consider to be one of the challenges that we are facing which is training with respect to race and ethnicity issues and bias in the criminal justice system. And I will talk a little bit about that this morning but I also wanted to talk more broadly about some other issues as well, um, knowing that we would have time to

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discuss maybe some questions that you might have later about those issues.

Um, you know, first I was a little bit skeptical of this study, um, when it came out having been a survivor of sequestration and a recent work measurement study. I thought, you know, how could we be studied anymore, um, and, and what would be the impact of this study but then thinking about, um, some of the impacts on the program including training and in some ways, particularly training, it seemed like the study came along at just the right time. Because I think we are still suffering under some of the issues that led both to the sequestration and to the budget, I mean and to the work measurement study which was the budget, and the budget has a huge impact on training. We can, we can train lawyers and we provided you in our background statement with some of the description and the goals of the program and all of the programs that we have offered and are delivered both to panel attorneys and federal defenders but if the lawyers aren't able to get the resources to carry out that training in the courtroom, the training itself, um, is ineffectual.

Um, I will give you an example from my district. Not too long ago, they released statistics about how often investigators were used in cases and I think in my district where the panel gets 25% of the cases which is hundreds of cases, there were twelve instances where panel attorneys retained an investigator, as compared to a federal defender office where every case is staffed with staff investigator and so, we can have trainings which highlight and try to urge panel attorneys to follow best practices to engage investigators, to engage experts, to put on mitigation at sentencing, but if they can't get the resources in the courtroom, it stalls. In particular, I think even defenders have been caught in something of a catch-22, um, following the sequester. In many offices where money was tight, training money was the first money to be put aside for something else and I am sure, Judge Fischer you are shaking your head, you are aware of that in your district. So, we found ourselves in something of a catch-22 and as long as this kind of, um, cloud of the budget crisis hangs over us, I think these are choices, difficult ones, that lawyers are having to make in their cases, um, and it, it's kind of the end of the line of the training.

In my personal statement, I did talk a little bit about one of the challenges. Tina has identified one of the challenges, um, and I think both Amy and Carlos are going to do the same which is really confronting issues of race and ethnicity both as it relates to our representation in our cases but also as it impacts our hiring and the diversity of our staff. And we had two training programs this year, one that was put on for federal defenders, capital and non-capital, a small program and another larger program, that was really targeted towards CJA attorneys but also defender staff was able to attend which is often the case with the training programs that are

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designed for panel attorneys when there space available, defender staff is able to attend those as well. And one of the things that I mean, I personally learned from the program that I attended was that we have a long way to go in this area and that if we want to make any headway, this is going to be training that we are going to have to offer, these same programs in the years to come and we are going to have to incorporate the issues that were covered in those programs and all of our training programs and I'm happy to say that there appears to be a commitment among defenders to do just that. Um, we are planning our federal defender and administrative officer training program for February and the issue of implicit bias as it relates to the hiring is front and center on that agenda and so I'm, I expect that as we moved forward with the advance defender training programs and others in the defender system that this type of training will be offered.

Training also impacts our ability to address a lack of diversity both on our panels and on our staffs because like again, example in my office, my office is relatively small, I mean we now have twelve assistant federal defenders but for most of the ten years that I have served as a chief defender, we were around seven or eight lawyers and so it is very difficult to take on lawyers with less experience, you know, for years, our ads ran with three plus years federal criminal justice experience and that's just awfully hard to find. Um, they're either in other defender offices and willing to move or you not going to find it and the same is true for recruiting attorneys to the CJA panel. So the ability to offer training continually, robust training, impacts our ability both in defender offices to bring on younger, perhaps lesser experienced and more diverse staff and likewise for the CJA panel.

Um, in our district, we do have a CJA plan. It's under revision right now, um, the final draft is before the circuit. It has been approved by the board of judges um but one of the things that we changed in our CJA plan is we added both a mentoring panel and a training panel. Um, and the mentoring panel is really for younger lawyers that don't, you know, maybe have some state criminal experience or don't have any experience in this area at all and they can come in and be mentored by one of our um, CJA panel lawyers and work as a second chair for I think it's um over a period of three cases however long that takes, I mean it could takes several years. And the training panel is for more experienced attorneys who might not want to be mentored but only need the experience in federal criminal practice and they can also work with the panel attorney to be trained in that area.

Um, in my opinion, if we are going to increase diversity either in our offices or um, on our panels, we are going to also need to increase um, the amount of money that we spend on training, likely would have to increase

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the staff of the training branch at Defender Services. I mean, we provided you with the programs that are offered, I mean that's just about all that the stuff that's available right now can do, we won't be able to provide additional training to panel attorneys or defender staff or in regional areas or in local areas where the defenders are not doing that without um, additional staff to plan those trainings and then additional money to spend on them.

Um, finally, I think you know, I give you an example from another example from, from my district, um, we do train our panel, but we recently as I said are amending our CJA plan and it took great effort to get in our plan requirements, training requirements, both for eligibility for admission to the panel, and for reappointment. And it currently stands that to be admitted to the panel in the Western District of Pennsylvania, within a year of your application, you have to have had one two-hour program on federal sentencing and one two-hour program on some other area of federal defense and if you have that, you could be admitted to the panel in the Western District of Pennsylvania. We did increase the, the requirement for reappointment and for reappointment, whether it's, it's kind of odd but for reappointment, you have to have eight hours of criminal defense training including two in sentencing and you have to attend the programs that are put on by the federal defender. It was purposely left a little bit vague. It doesn't say every program that we put on or one per year but in each year of your three-year-term in the Western District of Pennsylvania, you have to have this eight hours of training and oddly, there's, it's ruffled some feathers because I think that it, to be in the panel now requires more training than to be a lawyer in Pennsylvania. But you know, that's, that's another challenge that we face with making training requirements a part of the CJA plans is that you know, then you run up again some of the state requirements and attorneys are used to getting a number of CLEs and they got their plan and um, and it's going to cost our CJA panel lawyers more to get these credits um, and that, that's a hardship for them particularly under circumstances that they're practicing right now.

Judge Cardone: All right. Next is Mr. Williams.

Carlos Williams: Good morning and thank you all for the opportunity to speak to you today. I will focus my efforts, I assumed that, the Committee would have read my statement so I would focus my efforts on that aspect of training um, that I have essentially learned or become familiar with through my training of CJA lawyers and federal defenders throughout the country. As I said in my statement, I am involved every year in either the Santa Clara Death Penalty Sentencing Workshop or/and, and Andrea Taylor Sentencing Workshop and what I've experienced in, in both of those trainings is that generally, lawyers don't come to their cases with the good

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sense of who their clients is. They just don't them. They know the case, they know the Guidelines, they know the law, they know what the, what the sentencing ranges and they are very familiar with that but they don't know the client and whether you're doing it in capital or whether you're doing it in a non-capital sense as, as the court recently observed ours is a system of pleas, we'd know where we're going to end up, we know where we going to be at sentencing and, and in order to effectively represent somebody in sentencing, particularly when we consider the influence of the Guidelines, it is critical that the lawyers really get to know who their clients are.

The next reason for that is that we know that 50% or close to 50% of all defendants have mental health problems which may in fact impact how their cases resolved which require yet another set of specialties that many lawyers and many lawyer offices are not equipped to deal with including federal defenders. I know that we are moving in that direction uh, but we need uh, particularly because of the, the stakes in federal cases are so high, to really get people who can number one, identify those kinds of problems in our clients and number two, then begin to discuss how to deal with it, within the context of the case. That requires some specialized knowledge, that requires a different kind of approach, really it requires a shift, a cultural shift on the part of lawyers and will require a cultural shift on the part of the bench. It will require a cultural shift generally of all of those involved in dealing with these cases. And I say this because in my own experience, I have seen where this is effective and it is effective for very big reasons.

The federal Sentencing Guidelines had the effect as I say in my statement of flattening, of making the defendant one dimensional, of essentially creating an abstraction where judges would, would look down the Guidelines or consider the Guidelines but not necessarily the person and in that sense, it was a dehumanizing process. By focusing on the life and the circumstances of the clients, we, we inject back into the process, the humanity of the person coming before the court in its full sense so that when you judge the person, you don't judge the offense and the criminal history without consideration of the context in which this person came to that point in his life. That should be the goal and that should be where we, we, we should, we should focus our attention and it's a critical thing as I said because the anchoring effect of the guideline is pernicious on federal defenders, on lawyers of all ilk. It has the effect of essentially focusing people on the Guidelines to the exclusion of the person and, and, and dealing with the person is a hell of a lot more difficult than the Guidelines. You run to a number of things, cultural issues, racial issues, uh, uh, trauma that affects and, and really leads to, to many of the things that we see. I've mentioned the ACE reports, the ACE study rather, uh which, which teaches us that many, many of our clients really come to us with many

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traumas. And many of these traumas often lead to conflicts with law enforcement, often lead to what we eventually see in court and there's no reason why that history should not also be a factor that, that, that should be considered at sentencing. In fact, it is required by law. It is required by both statutory law and case law. That's the direction that I see us moving in. That's the direction that I see as being necessary but yet still, time and time again, when we, when we teach, we have difficulty, and we ask people to bring, they bring their cases and basically what we do in these seminars is we tell them leave the guideline book at home. We are not going to talk about the Guidelines at all, we want to talk about your client and we want to know what story you are going to tell at sentencing with your client and we help them through that process. We have seen the letters come back from judges, from the participants, who, who tell us what the results are, what the reaction was. Sometimes, the court don't want to hear it but sometimes in many, many instance, many more times, we get positive results back from, from that experience. It will also influence the rate of recidivism to the extent that we can confront the real problems that these people have and of course, it can lead to less, uh, the lowering rather of sentences which is of course, uh, our main goal in, in making sure that the sentence that the person receives is actually not only fits the client but the person and the circumstances that that person finds themselves in. Uh, I cannot overestimate the importance of this. For me, it's been a revealing process. It's been a learning process. I'm much more excited now in my twenty plus years of practice about what I'm doing because I've learned in teaching and in listening, and in learning what, what the process of mitigation is. You don't go to one seminar and you learn it once and for all. It's a process that matures as the lawyer matures. And there's a reason for that because, because each individual is unique and the court recognized that in *Koon* that each individual is unique. The human experience is different and so we learn as, as we accumulate knowledge about the different people that we, that we encounter and the different stories that we hear and the different stories that we tell. So, so, that's my focus.

That's what I want us to focus on and all I would say is, is that, that it is also more important because we see, uh, that race has been a factor both in terms of what the, the Guidelines have garnered which is the mass incarceration of many Americans. The mass incarceration of many African and other, other Americans of, of color and, and in many of those cases, it was simply their history and their offense level which led to that sentence and the Guidelines, the Guidelines saw as irrelevant, the kind of stories that I'm saying we have to tell. *Booker* has, has changed that and, and, and actually changed the direction of, of our sentencing laws in the right direction. And so, the life and circumstances of each individual is now back in play but you don't get that from many attorneys. They still, they still see the Guidelines as, as the, the, the, the primary thing that they

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have to address, the primary issue that they have to deal with and, and I think that that is wrong. I know that that is wrong. While, while we do have to address it, while we do have to calculate it, there's much more to each story than the Guidelines tell us and the only way to uh, to really address that is to tell the story. Once that happens, I get the feeling when I go before the court, I'm not just having a conversation of about numbers, I'm having a conversation about a person. And, and, and uh, and that's my goal in sentencing and that's what we hope to teach.

Now, I would like and, and ever since, you know, I learned early on what, what, what Justice Kennedy talked about that we all, that, that all of these cases end up at sentencing. I learned early on that that's what it was a about. And I learned early on, the law offices that hired MSWs, Masters in Social Works, uh, uh, into their office to identify some of the kind of mental health issues and to, to give us the kind of social histories we would then bring to the court. I've been hoping someday that I would hire such a person. I did hire somebody not with that degree but with those skills once and it has revolutionized the way we practice, the kind of information we bring to the court, and the results we see from our efforts in my districts and I'm in the Southern District of Alabama. And, and in the Southern District of Alabama, it is a very conservative district. They, they, hew very closely to the Guidelines but when we tell these stories, we see the results and we know that it works. It is going to be a challenging thing to train, uh, lawyers to do this because of the shift in culture that's required and many, many lawyers don't see this as part of their work. They'll say, "I am not a social worker," and we get that all the time as we teach. When they go through the process, they see differently that it is a part of what we need to be about and things we need to, to learn in order to represent our clients effectively.

So, that's really all I would like to, to say here, uh, today. I'm remiss, one more, one more point. Uh, I started talking about how race has been a factor in sentencing and the defendants being incarcerated. Race is also an issue when you come to, when you meet a defendant and you can see the difference between how say they respond to me because I come in and, and, and the lawyer who is not of the same culture or whose not of the same race. That happens. I speak Spanish. I was born in Panama, uh, so when I, when I, when I approach my clients who speak Spanish, it is the same, it's a very similar kind of effect. I can immediately, uh, have and reach them and earn their trust in a way that somebody who does not speak the language can't. But race in this history plays such a critical part in this country. Uh, but, but getting that conversation, uh, getting that conversation started is always difficult because it feels like opening old wounds, so the diversity issue that Lisa talked about both in terms of staff, uh, and being able to address some of these issues are some of the challenges that we face when we approach and when we have this cultural

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shift to talking about the client's life. You can't talk about the life and race, uh, uh, the life of African-Americans without discussing the impact of race on their lives. And that's also a challenge that we must face, uh, in, in approaching this way of, of telling client stories and, and being faithful to their stories as we tell them to you as judges. Thank you.

Judge Cardone: Ms. Sirignano.

Amy Sirignano: Thank you, Your Honor. Good morning. My name is Amy Sirignano and I'm a CJA panel attorney in the District of New Mexico. I'd like to thank the Committee for the invitation to be here and to speak about CJA panel training in our District. I'm a former FBI Forensic Laboratory technician, a former FBI agent, and a former federal prosecutor. I was hired as an Assistant United States Attorney in the District of New Mexico and I served in that role for approximately four years. For two years, I worked at the Department of Justice in the Gang Unit. I have been on the District of New Mexico CJA Panel since 2009 and I have also served on our CJA panel committee. I'm also a former board member of the New Mexico Criminal Defense Lawyers Association. I'm also a member of the National Criminal Defense Lawyers Association.

Our 2015 CJA Panel has approximately 101 members in Albuquerque and 35 members in Las Cruces. Members are appointed for a three-year term and can serve on, uh, any of the following panels: the General Felony Panel, the Complex Case Panel, the Appeals and Habeas Corpus Panel, and the Auxillary, or misdemeanor, panel. Many of our, um, panel members are Spanish speakers. Since 2009, on average, I have been appointed approximately eight to ten cases a year. My testimony was requested to advise the Committee about differences between training provided to government trial attorneys, assistant federal public defenders, and CJA panel attorneys.

In preparation for this hearing, I spoke to our first assistant federal defender, CJA panel committee members, representatives from the New Mexico Criminal Defense Lawyers Association, and current assistant United States attorneys in our own district. Comprehensive, ongoing, and readily available federal training is needed for all district of New Mexico CJA panel members. Our 2015 CJA plan requires four hours of mandatory CLE per calendar year in federal criminal practice at each CJA panel member's own expense. The plan outlines what kind of training meets those requirements including local seminars offered by the federal public defender, the New Mexico Criminal Defense Lawyers Association, the NACDL or national programs available to CJA lawyers. This four-hour requirement can also be satisfied by providing or receiving mentoring. However, our CJA plan only allows mentoring after a request for mentoring of a CJA panel attorney by a member of the CJA panel

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committee. Failure to comply with this four-hour training requirement is grounds for removal from the CJA panel.

So assuming today that the playing field is level for all federal practitioners, training for CJA panel attorneys, assistant federal public defenders, and assistant United States attorneys is not equally available. The National Advocacy Center provides a two-week training program for all new assistant United States attorneys and advanced training for all federal prosecutors. The National Advocacy Center is staffed full time with training professionals and recruits experienced AUSA and DOJ trial attorneys to teach. The District of New Mexico U.S. Attorney's Office also provides local training at least every six months so the Albuquerque and the Las Cruces' offices can meet and collaborate on our cases. The DOJ also provides blue book publications on substantive and procedural criminal law which is readily available to all trial attorneys.

During my six years as a federal prosecutor, I attended approximately eight classes at the NAC. Many District of New Mexico CJA panel attorneys obtain their federal training regionally through the Administrative Office of the Court's Defender Services Office or through the NACDL. The Defender Services Office does a great job providing regional in-person training, for example, the nuts and bolts of federal practice, winning strategies, the sentencing advocacy case Carlos has talked about, Train the Trainer that I just did in Santa Fe approximately two weeks ago and the Defender Services Office also provides a hotline for CJA panel attorneys. The NACDL provides regional training and an annual meeting on a variety of state and federal criminal law practice topics. NACDL also provides on-demand and self-study training programs and publications. Members have access to a substantial library and blog. However, the costs of NACDL regular membership is \$319 a year for criminal defense attorneys in private practice. The fee for participation in CLE seminars is separate from the annual membership fee. Presently, our federal public defender's office provides weekly emails from the defender services' office on Ninth and Tenth Circuit case updates, Ninth Circuit case of the week, information on certiorari grants, expert resources, and training opportunities from the defender services office's training division. One-on-one mentorship and assistance is always available from our federal defender's office if a CJA panel member requests it. The Federal Defender's Office routinely provides samples of motions and other general federal practice assistance and they often do moot courts for members arguing in front of the circuit or, uh, need help with, um, arguing motions and practice in the district court. The Federal Defender's Office in the District of New Mexico is very helpful especially when the CJA panel attorneys work with them on multiple defendant cases. However in the District of New Mexico, CJA panel attorneys do not get access to the federal defender's national listserv and

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the benefits of that listserv network. My federal law and practice questions are usually made on the NACDL listserv and my state practice questions are usually made on the NMCDLA list-serves. Many of the CJA practitioners in my district are not members of the NACDL or the NMCDLA. Our federal public defender's office works in cooperation with the NMCDLA to include some federal training in the local NMCDLA quarterly training programs throughout the state. The NMCDLA also provides an annual all-day summer CLE and award ceremony, a brief bank and library, and a listserv. Occasionally, the NMCDLA will provide a morning session on a federal practice issue. The cost for NMCDLA membership is \$50 a year for private attorneys practicing less than three years, \$95 for private attorneys practicing three to seven years, and \$155 for private attorneys practicing more than seven years.

So in an ideal world, the District of New Mexico could adopt a training approach that other jurisdictions follow presently. A dedicated CJA webpage with substantial legal and practice resources, announcements for monthly brownbag luncheons, fed talks, and an all-day spring or fall CLE training put on by the local federal public defender's office for CJA panel attorneys. The webpage could include formal guidance on practical issues such as service of subpoenas, commonly used forms in both English and Spanish, experts and expert transcripts from *Daubert* hearings, information on client services, location and directions to the county jails, and a blog addressing the district court opinions by judge or topics. A federal brief bank for, um, motions in our district that have already been filed would also be very helpful. Development of a true second chair mentoring program for new federal practitioners or states practitioners who want to transition into federal court is fundamental to bring new talent into federal court. And yesterday, you heard from Chief Judge Armijo who testified that she would like to start a mentoring program and to, um, bring more practitioners into federal court to raise the numbers of the CJA panel. Yesterday, Chief Judge Armijo also discussed our, um, the district court's free one-day training, um, for both federal and civil law practitioners. Um, the topics include evidence, experts, and discovery, training topics in criminal law, preservation of issues for appellate review, and sentencing issues.

There are real consequences when federal training is lacking in availability and substance. Needless trials, appeals, § 2255, wasted previous CJA resources, and client misunderstandings and ineffective assistance of counsel claims are some concerns. Many CJA practitioners work in rural communities in New Mexico and it is very difficult to leave New Mexico to attend regional training. It is estimated that each regional CLE credit costs approximately seventy-five dollars per credit which requires time, airfare, and hotel expense and meals. Moreover, the CJA attorney is not

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able to bill while attending training. Increased local CJA panel training can help resolve the following issues in New Mexico: The lack of availability of federal specific training, the lack of implementation of national training locally due to limited CJA funds for experts, mitigation videos, and specialists. Much of the training resources in the district of New Mexico is state-based through NMCDLA and not specific to federal practice. And the CJA panel attorneys are obligated by our District of New Mexico federal plan to self-pay for required CLE which often requires attendance of training outside of the district. Thank you very much.

Judge Cardone: Right. We will begin with the questions. Dr. Rucker?

Dr. Rucker: Thank you, Judge Cardone. Um, there is a number of things that came to mind but let me start out with something very basic. One of the things that really troubled me is I heard that some of the courts do not CJA plans, uh, and I would like you to respond to that about should we be requiring CJA plans and then I heard comments made from you and we heard, uh, from other people as well that, um, that as Lisa Freeland said you know, you are revising your plan right now and you had pushed back from having trained as part of the plan or issues with mentoring programs. This seems to me to be absolutely critical and the basic parts of that I would like to hear from all of you about how we should address this kind of issues.

Tina Hunt: If I can, um, speak to the issue of the lack of a model CJA plan in each district, um, I think it's critical that we have a model CJA plan implemented into each district. The state of Georgia, um, is a prime example of what happens if you don't. The Northern District of Georgia has implemented a model CJA plan and their panel works very well. The Middle District of Georgia has not implemented a plan and although now they are beginning to see I think in part because they see the difference in advocacy between a Federal Defender's Office and a CJA system that is clearly not working, that is clearly broken, um, that they are now willing to sit down and help write a plan. I am on the committee to assist the magistrates in writing that plan along with the panel rep, um, who serves in my district as well as local lawyers from each of the, where the courthouses are in each of the divisions, because we thought it was important to do that. We believe that there is a lot of talent in the Middle District of Georgia but it is not being tapped to come in to federal court because everyone has this idea that federal court is big and scary and, um, bad things might happen there. [LAUGHING] I, I don't know what they think. You know, to me, it is very similar to state court except it is a little bit more formal and we have a few more rules. Um, one of the things that we have discussed at least in developing our model CJA plan is that there will be required training and for every person who, um, is placed on the panel, they will do a two-day boot camp program on the nuts and bolts of

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federal criminal practice that our office will put on for them each year and, and there will be terms so that people will rotate on and off and it will become an honor to be on the panel, um, as it's an honor in the Northern District of Georgia to, to sit on the CJA panel. And then the third component that we have in Georgia of course is the Southern District of Georgia where we, there is no federal defender, where there is no, um, model plan, where they, um, have bankruptcy lawyers representing bank robbers who have no idea what is going on and, and what the rules are and how to implement the rules, how to even do the most basic things. I would like them to at least understand the Guidelines, much less moving past, you know, what we need to do to push through the Guidelines. I think it's critical that there is a national CJA model plan that each district has required to adhere to, um, especially in those districts where there is no defender and there are two districts left that do not have a defender. The defender can do so much. We field the calls and the Northern District fields calls from CJA panel lawyers that are in the Southern District to try to assist them, um, but that's a whole different ballgame there and we are not as familiar with the judges in that district as we are with our own. So, they are at a disadvantage and their clients are placed at an enormous, enormous disadvantage. Um, so I think that it needs to be written into the Criminal Justice Act.

Lisa Freeland:

And um, I will address your question specifically. I mean, this is, as far as I know, the revisions to our plan, it may be the first time that the plan was revised since we had a panel, so our plan was very old. Um, and I think that part of the initial, you know, the impetus to review the plan was maybe three or four years ago when indictment numbers were down, and panel attorneys weren't getting enough cases to keep current with federal law. And I think this is something that happened around the country. And so, we first set out on the revisions of the plan in an effort to have, um, CJA membership not be lifetime membership, um, and there would be removal procedures and reappointment procedures. And so, that was kind of the goal when we went into it and I think that, you know, that was still the goal even though the indictment numbers went up. But there was concern, um, among judges and others about the quality of representation, um, and frankly, I think that some of the concern was more about the money, um, that was being spent and that it wasn't so much that we were looking to remove lawyers that were not performing well in court but lawyers that were identified as problems from a financial perspective. And so, that also because a part of our revision process. Um, on the issue of whether I believe that every district should have a plan, I, I do personally believe that, because it provides a structure for admitting members to the CJA panel and removing them—I mean, how do you even determine? I think when our, um, when our panel first started, the chief judge said anybody and all, anybody who wants to come, we need people in federal court. Um, they were doing a service to the court to come and

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participate but now, we have the same people on the panel, um, and I think just kind of connecting it back to training, it's fine maybe if the same people are on the panel for thirty or forty years. That might be fine if they are able to keep up with the dramatic changes in, in federal law over the years. I have had instances where, um, attorneys that were appointed under the CJA were not aware that, um, the Fair Sentencing Act had been passed or were not aware of other things that clearly, they were getting the information from the federal defender offices and otherwise but still were unaware, um, in part because there wasn't, um, a robust training requirement to maintain membership on the panel. And so, that is one of the things that having a plan in every district—you can have qualifications, eligibility to get on the panel, remove all to maintain the panel to include training. I understand that the model plan is under review right now and that those may be some, there may be some ways to strengthen the model plan so that then the districts around the country that are looking to the model plan to adopt their own local plans that will be already built in and the current model plan, there is no training requirement. The eligibility requirements are sparse. There is no removal process. So, I think a model plan could serve, um, districts well in this area. And one final thing with respect to the pushback. I think, um, I think that it's just, you know, it's a cultural shift in a district where for thirty to forty years, there has been no requirement, to have CJA lawyers now have a requirement to maintain their status on the panel, an educational requirement, um, and as Amy pointed out, I mean this is training that they have to get at their own expense. Um, and so, there is also, there is a financial part to that as well. You know, we are increasing this requirement. Now, I understand as the federal defender in my district that by increasing the requirement, it also is going to mean that I am going to have to provide more local training, um, so that panel attorneys will not have to seek out national programs in order to get the basic requirements to stay on the panel and that is going to require an increased effort on my part as well.

Judge Cardone: Judge Fischer?

Judge Fischer: Yes, thank you. We are, and thank you all for, for being here. We are obviously looking at ways to improve the CJA and one of the things we are, um, we have been cautioned about is coming up with a one-size-fits-all recommendation. Ms. Sirignano gave us a list of, of her concrete suggestions and that is always very helpful. Um, what has your experience been with communicating with the Defender Services Office? You have all said very positive things, uh, about them in the training and we are glad to hear that and I am sure they are, but do you have concrete suggestions for additional things that the Defender Services Office could do, um, or, or a change in the way they provide things? I'm very interested to read each of your statements and see that, especially these

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three offices do something a little bit different. You had some excellent suggestions. Should there be sort of a model, um, plan for defender offices providing training, some, some basic fundamentals that nationwide, uh, lawyers need? Do you have any thoughts on those topics?

Lisa Freeland:

Um, I mean personally don't favor, um, the one-size-fits-all approach. Um, in our offices and in our districts and even, I mean, individuals are individuals and they need different things and so, really being able to, to focus on, um, you know, what's relevant in your district, um, we have different types of cases in our districts. And so, there are some training that just isn't relevant to the lawyers in my district. Um, and although there is a lot that we can and should do locally, I think there's a real benefit both for CJA lawyers and for federal defender staff to go to national trainings and to interact with their counterparts from other areas. I mean, we just learned so much, um, from what's happening in other districts, things that you might not think about in the culture of your district. I mean, you learn it from somewhere else and so if we kind of did away with some of those differences, I, I don't think that it would serve the practice, um, in a positive way. Um, you know, in, in my district, um, we do local trainings. Um, we have, I think our panel is only about seventy-eight or eighty lawyers which is large compared to other districts but very small yet compared to others and so, there are things that we are able to do. Um, you know, we do brown bags when there is so many webinars available now on important topics that, you know, we will order it for the office and anybody on the panel that wants to come in and watch it and have a discussion afterwards will do that. Um, you really need to find what best fits both your staff and their strengths and weaknesses, their experience level, what they are most susceptible to, and types of training, and do the same thing with the panel. And so, um, you know, many of things that Amy mentioned, the specifics, um, there are many districts that are doing those things. In my district, for example, we don't have a brief bank but any CJA lawyer at anytime can call and write and they'll get a brief [LAUGHING], you know, on the topic that they want and it would honestly be too much work for my staff given the size to develop a brief bank when we can handle this issue on an ad hoc basis. And so, I wouldn't want that to be a requirement. I do think though that we should have more training programs available through the defender program. There are offerings through NACDL and other organizations that require membership that cost a lot more money for the panel members, even for defenders when I want to send my staff to a NACDL, program, if they're a not members, you know, our cost is higher as well. And so, I do think that that is a concrete thing that could be recommended is an increase to the training branch staff so that they can provide more regional and national trainings for both defender staff and CJA attorneys because you've seen the, the plan. You offer something once a year, if you can't go, then it's

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unavailable again until the next year and it may be too late [LAUGHING] the next year, so I think that is one concrete recommendation.

Tina Hunt:

Um, I, the biggest problem that I see is the ability even when my two branch offices offer webinar trainings or going to, you know, letting them know what Defender Service Office is, the trainings that they are putting on, which are all excellent trainings, is the ability of my CJA lawyers to be able to get to those programs. It is a financial burden on them. So, they are living in a small town practice, many of them are solo practitioners. They will be gone for two or three days from that solo practice. Um, they will be learning things that they have never even thought about before in many cases. Um, and they will be traveling to a destination on their own dime for the most part. There are some limited financial resources available through DSO but they are limited. Um, so we have many lawyers who could benefit from those programs but because of the costs and the time and the fact that they are in, they are solo practitioners in these largely rural areas, um, it creates a huge burden on them to be able to receive the training. Even with the webinar, we have discovered it is very difficult to get the panel lawyers then to watch a webinar because they want to see a live presentation where they can participate in that and talk to the others and learn from the others there. Um, I am not a big fan of the webinar. Um, I think it is probably because my attention span is not long enough to sit there and, and listen to that for an hour to ninety minutes, um, but also simply because you don't have that interactive feel that goes on when you are at a live seminar. And, and that is a shame because there are some excellent webinars. Now, I have, many of those are embedded in, in, um, in the JNET or the DWeb, so unless they come to our office to see it, they don't have access to see it, so they could not sit in the comfort of their own office and attend a webinar to begin with because they don't have access to get on the particular network that is showing that. Um, to have some of those on open access or open streaming networks would be much better for those in the rural areas for them to be able to see those things. It still does not take away that live element which is so important but at least it gives them a foothold. I can tell you that one of the most shocking things that I heard when I first came to the Middle District of Georgia because I started my federal defender practice in the Eastern District of Washington under Judy Clark who was, as most people know, we had training, office training every other week. We had brown bags for the CJA lawyers once a month. We out on a once-a-year program, so it was an office that was very highly directed towards training. Um, one of the things that I have found to be discouraging in my district is, and, and one of things even that I have heard in my district when I first moved to the Middle District as a senior litigator, I made a lateral move from Eastern Washington to the middle district, was sitting in court one day and the CJA lawyer furiously flipping through his Guideline book and then turned to me said, "I cannot find § 3553(a) in here and the factors that

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everybody keeps talking about.” And I said, “That is because it’s in the statute, Mike, and you have to go to the statute because that is what they are now to concentrate on.” You know that, I mean that is the type of representation that some of the clients in my district are receiving, you know? And then we sat down with him later and went through all that and explained that to him, um, but that is a frightening thought that someone does not recognize the statute versus a Guideline. Um, and, and I think that that happens a great deal of time and the judges don’t know that it happens, you know, because many of them will just stick with I’m happy with the Guidelines. And I think as Mr. Williams pointed out, that should never be the goal, as to get the Guidelines sentence, never. That is never the goal with any lawyer in my office as to get a Guidelines sentence. In fact, we find that to be a failure, so because it means that we did not communicate properly to the judge, how this person got in this space of time. Um, so I, I don’t, I, I will tell you that, um, financial resources are necessary for those lawyers to be able to attend and receive training and not go to NACDL or their local criminal offense lawyer associations, those training are expensive. You know, at least DSO is able to offer the trainings, um, for free. It is just the travel becomes an issue for them.

Carlos Williams:

Um, I, I will be brief. I, I was under the impression that, that the, uh, CJA plan was required, already required by Act in all districts. So I’m sort of surprised to hear that some don’t have it. Of course, they don’t have to adopt the model plan in total but, but they are free to change and, and mix and match to match what the requirements in their district. Um, in the Southern District of Alabama, uh, uh, the, the court was really the impetus for our office and it came about because many of the lawyers then practicing simply were not knowledgeable enough. Federal law developed into a sort of specialty and they weren’t familiar with, they were doing enough federal cases to really understand those, those requirements. And so in our district, uh, once we came in to being, uh, we at first made it a voluntary thing that everybody could come and we would put on an event every year and they will get twelve hours of training every year in addition to whatever communication we gave and we used to do brown bags, we don’t do them anymore, but soon that became apparent that we needed to make it mandatory. And so, they, they are required every year to attend our seminar once a year and it’s actually engendered of sort of a culture. Now, we know that people, we have various committees where the CJA lawyers are part of that. We meet from time to time with the U.S. Attorney’s Office to see if there are things we can resolve. Sometimes, we go as a group, see the CJA representative and myself, to the court to see if we can resolve issues there and because we are small, we only have, our panel is only about thirty-five, between thirty-five and forty cases and has kept small because we want to make sure they get, a, a fair number of cases, uh, uh, to keep them interested in doing the things they need to do, uh, uh in those cases. If you don’t get a certain amount of cases, uh, you

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won't keep up. You simply won't keep up. It won't happen. You need to practice in order to do it. And for those that only get an occasional case here and there, you will always have a problem of them not fully knowing exactly which way to go, uh, in a particular case. Uh, from time to time, uh, we may get uh, when they had the union [INAUDIBLE] case, I think they arrested eighty-five people. We can only take one case and we had to reach beyond the panel to get people who really normally wouldn't practice federal law. So obviously, there were going to be problems there in big or large, uh, document-related cases, uh, and we don't get many of those. One, one, I got in late in the day, the case had been opened for about three years and I really couldn't imagine, uh, the normal defendant could really afford to litigate those cases once I started seeing, uh, the cost it would take the simply process the discovery, two million dollars, six million dollars. They don't have it. So when we came in, we were offering that service to act as a bank and to get the money to try to get that done but once, once I was out of the case, that's gone. Uh, these are some of the things that come into play. I don't, I don't favor a one-size-fit-all as well. I think each, each district, both because of the type of cases that we get, the geographical issues that we face, uh, and many other things, just the culture in, in, in the district, uh, requires that they tailor it to their district, uh, to be effective.

Katherian Roe:

I want to continue to talk about the national local regional training and what's clear from the comments that you folks have made today and also Ms. Hunt's comments about the difference between the jurisdictions when she worked in the Eastern District of Washington and Idaho and in the Northern, I'm sorry, in the Middle District of Georgia is that, there's a difference in quality and that's based on training, some of it is based on training between the CJA attorneys and the federal public defender attorneys. And at least from what I hear from the folks on the panel, the national training seems to be adequate, if you will, even though there needs to be more of it and it needs to be, um, probably better funded so more programs can be offered. The regional has been said to be pretty good training but the local training is what we need at least for some rural districts like New Mexico and the Middle District of Georgia and a number of folks we heard from yesterday. And all the things that Ms. Sirignano was talking about in her statement today, those would all be great. They were ideal, as I say, blue sky but the reality is that the federal defender offices and the community defender offices have limited funding. So the question I have for all of you is knowing that we need more local training and knowing that some folks can't, um, attend the regional trainings and can't attend the national trainings even if they would like to but it just doesn't work for their practice and knowing that we need more locals, what would you think of the concept of funding that through the federal defender offices? Having a person who is actually dedicated to be the CJA training attorney and recognizing obviously that you know, a lot

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of folks may think we can do that now but the reality is that, every attorney has to carry a certain caseload in order for that office to get funded, in order to literally pay the bills every year or every month, if you will. And so that doesn't work just saying they will do it because it is a lot more work to provide more trainings. But what do you think about that as a proposal?

Amy Sirignano: Can I start? Um, thank you. In preparation for um, this testimony, I spoke with the, one of the, um, the former CJA panel member who works now in the, um, Federal Defender's Office in Kansas and, um, she was hired to review all the vouchers, implement the new eVoucher training system and she is responsible for the, uh, one-stop shop website and the training also. Um, that's where I got a lot of my ideas from after talking with her. Um, I think it's a great idea since there is limited funding in all the districts. I also don't believe that there is a one-stop shop, um, because of geography but if there was a point person within the Federal Defender's Office who could say, um, let's recruit some more experienced CJA members and have them put a morning session on *Johnson* or the Armed Career Criminal Act or, um, sentencing issues, the minus two reduction of for the drug cases, uh, recently, um, since we're seeing a lot of those or immigration law. Uh, many of us, I don't really do other immigration cases because I don't speak Spanish but, but, um, a lot of the lawyers, um, get assigned these cases and they're not, um, just an easy case. Each individual, immigration case needs to be handled, um, individually so, so I think that with the point person within the Federal Defender's Office, that person can recruit those of us who have been on the panel for a while, um, and are happy to do the training, to train other members who might not have, um, the years of experience in federal court.

Carlos Williams: I'm open to the idea. I think, uh, that it, it may work. I certainly recognize that there is a, that there is, there is a difference in terms of perspective coming from the private lawyer to the federal defender and we may not always anticipate their problems and challenges. Um, my office, uh, I have an open door policy. They, they, our staff understands that we are there to serve them and, and to help them in whichever way we can and so, they know that they can come, they have an issue, we will talk about it, that's what we do right now. Maybe our office is, where, that's not possible or feasible but that, that's, that's our, we consider that part of our mission. And, and part of our mission was to raise the sort of quality of, of representation in our district and we do that. When we give the, the yearly training, we don't just invite, um, CJA panel members, we invite all lawyers in our district to attend who may want to attend, it's free. Uh, so, so we try to, to address that by doing it that way but there may be things that I don't see in that model, uh, that, that CJA lawyers may see as beneficial to them so I would be open to it, I don't have a problem with it.

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Judge Goldberg: Um, my first question is for, uh, Ms. Sirignano. So you, you have a unique background, FBI agent, AUSA, and CJA lawyer. So, um, sort of bottom-line—sort of bottom-line [LAUGHING]—is, is there difference in resources in training that you get at the NAC, and the NAC trains FBI agents well, I think, that you got as an AUSA? Are the resources in training you got through that program, was there a huge gap between that and what you get as a CJA lawyer? Because I did, I heard you list some good, decent resources in training. So is it a really big gap?

Amy Sirignano: I would say it is a, it is fairly big gap, yes, Judge. Um, the, the DOJ, they have mandatory training now, um, for both workplace issues and, and substantive criminal law training. Uh, again as an assistant United States attorney, you, you get your per diem pay, you get to travel, you stay at the NAC, um, the, the two-week new prosecutor training, um, and uh, there's always resources available, uh, for specific federal-based training. In New Mexico as a CJA panel member, we, we do have the opportunity to attend the, uh, the Defenders Services Office training but frequently, um, since we're out west, the emails go out and, uh, by the time we get the emails, the classes are already full and, um, you get put on a wait list and then you say, "Gosh, I sure do wish I could get that sentencing class." I'll be attending the sentencing class in San Diego in the spring and I got lucky because I, I got the email and I stopped what I was doing and signed up for it right away.

Judge Goldberg: Would everyone, would everyone on the panel here agree that and, and this is going to be sort of basic, that part of our recommendation should be more funding, a lot more funding from Defender Services?

Panel: Yes.

Judge Goldberg: An affirmative yes from everyone, okay. Um, switching, completely switching topics, I have a question for Ms. Freeland if, if I may. Part of our mission is to look into diversity and hiring amongst federal defender offices and you and I talked a little bit about that, uh, before. Could you tell us, um, I, I know you've done some work in, in that area for the Defender Services. Um, I don't know, I don't have a clue how we quantify that and, uh, if you could help us on, on how we address that issue and what, what data if there is any we, we could be looking at.

Lisa Freeland: Well, I think the only, the only data that is available for quantifying is going to be the number of people that currently exist on the panels or in the offices and as you and I discussed, that's a self-report. Um, and it, it doesn't exist for the panels, only for the defender offices. Um, and so people have the option not to do that, not to report. Um, if they don't want to fill out I think it's the AO78 or whatever form that is [LAUGHING]. Um, you know, they can, they can decide not to do that but in terms of

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quantifying, I think the only way we can really do it is on the backend and you and I discussed a little bit the difficulty of trying to quantify in terms of, um, your recruitment efforts or even the interview process because you are not allowed to ask people about their protected class statuses during, during an interview, um, and so that's difficult. Um, but I do think that what we've learned and are learning is that there are more effective ways of recruitment to get more diverse pools of individuals. Um, there are best practices that many offices already use and hopefully more will employ, um, for the review of applications to ensure that our biases don't impact as extremely as they could our selection of candidates for interviews and um, you know, one of those is having multiple people review resumes. Um, it's often good to have somebody on your committee reviewing resumes that's familiar with the local, um, culture, the city, the neighborhoods. Um, you know, I live in Pittsburgh and, um, for all intents and purposes, Pittsburgh is a still segregated city and so you can often tell, um, somebody's background from the address, um, where they live, so.

Judge Goldberg: Could each of you just say if you're satisfied with the diversity amongst, throughout the three of you, your staff, and then in your panel?

Carlos Williams: Yeah, we are quite diverse in my office.

Lisa Freeland: I am not. I mean, I'm not satisfied.

Tina Hunt: I'm not satisfied.

Judge Goldberg: How about Ms. Sirignano?

Amy Sirignano: We're diverse. We're very diverse. But, but um, but what we tend to see a lot of is we have 100 plus lawyers in Albuquerque and 35 CJA panel members in Las Cruces and really, we're one big district but our judges won't, um, appoint people for the most part from one part of the state to another, um, most likely due to, uh, to travel so you got um, many more Spanish speakers, I think, um, in the Las Cruces area than in Albuquerque and the only time that I would get appointed on a case down in the southern part of the state is if we get these uh, multiple defendant cases where they just ran out of CJA panel members.

Lisa Freeland: And Judge, if I could just add one final piece, um, is you know, I think obviously it depends on where you are. In Pittsburgh, our panel is about seventy people. Um, we have fewer than ten African-American attorneys on the panel, no Asians, no Latinos, and three women, in a city like Pittsburgh. So, we've got some serious recruitment challenges for our panel. Um, you know, I'm trying to be more aggressive in the office but I think again another thing that impacts this as I said in, in my opening remarks, is the ability of smaller offices to hire people with lesser

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experience because we're not going to get it if we continue to have the three plus year federal criminal experience. We've got to be able to have better supervision and training in our offices if we are going to diversify the program.

Katherian Roe: But isn't that also, um, affected or impacted by the fact that no matter what size the office, you have a certain number of cases that a person has to handle again in order to get funded. So, the problem is that you know, it's a great idea on changing the focus and saying, um, let's not just focus on people who are very experienced but let's open that up to a larger group so we can try and get and make sure that our offices are more diverse, but we're pushed up against as the federal defender, you're pushed up against the reality of having to make certain numbers in order to pay the bills. So how the . . .

Lisa Freeland: There is no question about that and I mean it's a, it's a huge sacrifice on behalf of the other people in the office when you bring in somebody who doesn't have the experience and attach them to another lawyer for maybe a year, um, working only as a second chair or as, you know, an assistant, um, assistant. Um, but you know, one thing that offices can do is they can offer fellowship positions and perhaps there is a way for there to be, um, some temporary fellowship training positions in offices that aren't included within our work measurement study total because that's, I mean, it's something that we have to do but the constraints that you identify are real. And so, if there's really a commitment to getting this done, it's going to have to be on a different track.

Katherian Roe: You know, I totally agree. Have you had any conversations with anyone about that concept? I know the Eastern District of Washington in Idaho has, um, a fellowship program and in fact, my office hired an individual from that program. Um, maybe Ms. Hunt, you could speak to that issue.

Tina Hunt: Um, I would like to be able to hire a fellowship lawyer because I would, I, in an ideal world, you know, to take a young lawyer and shape them in the culture that we are building, um, gives them a step-up into another office or to stay with mine and stay on track. I currently have a paralegal investigator who we are basically grooming for the next attorney position, an Asian woman, uh, simply to get the diversity. And because we wanted her to see things from all aspects, that seemed the best way to do that, um, at the current, where we were in terms of with our numbers, was to place her in a position where she would see everything sort of from the bottom up, which a fellowship lawyer a lot of times gets to do. Um, and I know in the Eastern District of Washington, they handle primarily the Thirteenth, the illegal reentry cases, um, although they did, I would second chair them or they would second chair me on some of the, you know, trials that I had. Um, but it's certainly something that we need to look at in terms of more

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flexibility in our hiring practices to be able to say I want a fellowship lawyer. I don't need another research and writing assistant. I need a fellowship lawyer, um, to give them a step into a career in federal criminal law or at least if they leave my office and they go out in the real world, then they begin to take CJA panel appointments, then they've had a firm base of what that feels like to practice in the defender office where things are, are done right. In terms of diversity, I want to go back to this. Um, it's very difficult in my district to find diverse employees, um, and, and the reason that I say that is because again, we are a very rural district. If you tell someone, "Hey, come live in Macon, Georgia," those people will go, "Where is that?" [LAUGHING] Um, and if you say it's in the heart of Georgia, then the next question is, "Why would I want to do that?" And the answer to that is because it's eighty-four miles to Atlanta and you go Atlanta and then come back at the same day. But it's very, [LAUGHING] it's very difficult to attract in some of these rural districts, you know, diverse applicants and of course, I think the defenders have all been having this discussion about how do we fix this, how do we attract diverse applicants to places where people don't want to go live, you know, in an ideal world. Um, and then the retention of those diverse applicants becomes even more difficult after they, you know, serve a battle term in Macon, Georgia or in Columbus, Georgia. Actually, Columbus is a little bit better because at least there is an airport, uh, army base there, Fort Benning. Um, but it, it is very difficult to do that. And although I think we share names of applicants, you know, that we have coming in when we've had this big sort of hiring going on right now, um, it's still difficult if someone gets an offer, you know, between three cities and, and one of them is Macon. They are more inclined to look at the other cities we found than Macon. We can get them to Macon, you kind of brainwash them a little bit which we try to do. Sometimes that works, but it is difficult, especially Spanish speakers, especially Latinos.

Lisa Freeland:

And I've had some conversations and you know, I think one of the, one of the reasons why the time might be right for this is also what's going on in law schools because, um, so many law schools now are offering these fellowships because their students can't get jobs. And so, there may be a way for us to do this even now on slightly reduced cost, um, because the law schools are paying the fellows to come and be in your office. And, um, some of them are a year, some of them are two years but it, and so I, but it, the commitment has to be there to doing the training both in house and outside, as Tina said, so that, you know, if we have somebody there for a two-year fellowship, even if my office does not have the ability, um, under our staffing formula to hire them, there are plenty of other offices in the country that will. Um, and we need to do better at really advertising our programs so that people know this is a great job. Um, you know, this is a quality of living, a living wage, great work, um, very fulfilling, and you could do it anywhere in the country if you got the skills and want to

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do it. And so, I think we need to, we need to be out in law schools selling our, selling our programs, selling the work, doing, putting the time that's needed into recruitment, and maybe being able to take advantage of you know, this timing with the law schools with these fellowships being available.

Tina Hunt: I think the Eastern District of Washington actually, um, turned their R & W positions or a couple of their R & W positions into this fellowship category which they did under Judy Clark because it's very difficult for anyone to say no to Judy, so I think she was able to get that done when she was in the Eastern District of Washington working with DSO.

Judge Goldberg: So, um, go ahead.

Judge Cardone: I was going to say . . .

Judge Goldberg: Sure, go ahead. Go ahead.

Judge Fischer: I wanted to, I guess, broaden it a little bit and it's, it's so obvious that people need training especially hearing some of the particular stories but are there any meaningful, uh, performance standards that you use or you think can be used? Uh, it's obvious when someone does not know where a § 3553(a) is that person is not performing, uh, as, as we would like but as a, as a whole in dealing maybe even within your offices but maybe more importantly because they have less immediate supervision, the panel lawyers, do you have suggestions as to what we can do on that topic?

Carlos Williams: Well, there are performance standards that the federal defenders now have. Uh, and uh, I don't know how widely distributed it is but there are performance standards in place already, and that that was developed primarily for federal defenders, um, I'm not sure if that answers your question with respect with CJA lawyers but uh, there are performance status.

Judge Fischer: And, and what kind, what kind of standards are you talking about?

Carlos Williams: For any sort of, anything that affects what we do as, as, as federal lawyers, uh, uh, there are standards developed uh, primarily in the AO's office. Uh, they were developed by PMWG, I'm a member of PMWG, the Performance Management, that I can't remember about the rest of the acronym meanings, I just say PMWG at this point. Um, but, but the standards were developed over a number of years and it's very detailed, uh, to, it goes to just about any aspect of the job. It does not attempt to say that this is, this is the only way you can do the work, uh, but it tries to set some standards uh, so that, that people can be aware of, of what the job requires.

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- Amy Sirignano: Our CJA plan doesn't have actual performance standards and that, it's more a higher, becoming a member of the panel, and then maintaining that membership and then, it's difficulties arise, um, the process to other appeal or, or, or, uh, have some mentoring, if there are some, some problems with uh, attorney's representation.
- Judge Fischer: I guess, there was, part of the question is who's minding the store? Is it common in your districts for say one CJA lawyer to say I just co-counseled with this other CJA lawyer and really, he does not fit here. He or she shouldn't be doing this kind of work at all. How do you deal with that?
- Carlos Williams: In my district, we have uh, CJA committee and, and, on the CJA committee it's the Chief Judge, uh, one of the magistrates, myself and the CJA panel representative on that. And, and, and we are the ones who either field complaints or, or, decide essentially who stays on the panel and who goes. And that's the way it's done in my district.
- Amy Sirignano: That's the way it's done in my district as well. And I think that um, now that we've got Chief Judge Armijo and one of the federal magistrate on our CJA committee, I believe that um, many of the other judges provide input to them to bring to the CJA uh, panel committee membership meetings, and, and, and every um, our applications are due in July and they normally meet in September and uh, the um, lawyers are reviewed by the committee and ones that are up for reappointment every three years, and uh, then if there's a problem like for example, we had a lawyer that um, uh, had a specific problems with their judge and then was later indicted, uh, he was removed off the panel, so the, our committee in general watches the quality of representation in our district.
- Tina Hunt: I have to say in my district, you do have to be breathing and that's even though you're qualified apparently to be on the panel, if you're not breathing, um, but where are performance standards come in for the CJA lawyers, is really from the judges who will tell the magistrate don't send this person back into my courtroom. Um, whereas many times those lawyers that the judges are saying that about um, are probably savable, salvageable. If they had the training, if they had the know-how, if they had the where-with-all to ask for that, instead, in a sort of secret meeting between the judges and the magistrate, they just magically don't get cases anymore, which doesn't improve the performance standards of anyone because there is no published standards performance standards for the CJA lawyers. How do you know what you're supposed to make if nobody tells you what it is? Um . . .

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Judge Cardone Ms. Hunt, I hate to interrupt but um, I have a question, I mean, doesn't, I have a bigger concern about that comment which is um, if you have a judge who doesn't like certain advocacy or you know, is upset with that lawyer, doesn't that put a lawyer in a position of "well, you're not practicing in my court anymore because you made a stupid motion, or you know, I, I, I just don't, why are we wasting my time with the kind of thing, um, is, isn't that a real danger if, if that's the standard we are using?"

Tina Hunt: I think that's very dangerous, you know, I, I will say the biggest complaint that has been voiced to me by the bench is that they don't go see their clients until maybe the day before a hearing or the day before a plea and that really is a problem, how are you supposed to know what the defenses are, you know, that means you're taking a first plea agreement put on the table which is never a great plea agreement. Not that any of them are terrific but you know that's certainly the first when you get which just as waive everything and plead to the indictment, um, is, is not doable and they're not having contact with their clients and that's the biggest complaint I hear coming from the bench. You know, every time I send out an email saying what do you want me to train the panel on, it's client relationships, you know, so. And I have seen judges get upset at what they believe are frivolous motions but I have not seen if the lawyers are good advocates, removal of those lawyers from the panel.

Lisa Freeland: And I could just add, I want to take, uh, slightly different perspective, I mean, we have had in our district, I mean usually the call comes to me don't send that lawyer, I mean, and we through the, um, CJA plan, hope to deal with that so it doesn't fall on me. It will fall to the committee devised under the plan, um, because I, you know, get calls from attorneys constantly with why am I haven't gotten any appointments and I can't say well judge, someone told me not to. Um, and so we have resolved that. But I think that as defenders, we also, um, you know, have to spend the substantial amount of time educating the bench about what is required in the federal criminal case, um, often times the complaints that come from the bench are because there's not an understanding of what needs to happen in a case. I think many of our judges can spot poor performance, you know, they know when somebody comes into their courtroom and they are not prepared or when they've given the directive, there will be no further continuance as the attorney keeps coming forward with excuses. Um, in my, um, district, we just, the board of judge, judges just approved district specific CJA guidelines which are really financial guidelines and, you know, one of the issues is that all of our detained clients are, I'd say 90% are now detained in Ohio, in Youngstown, Ohio which is about an hour and some minutes from Pittsburgh. While these guidelines require the attorneys to get court approval before traveling out of state and although I advocated for an exception to visit clients at NEOCC that was rejected, um, one of the guidelines is to have attorneys have to get

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permission from the court if they are one of the twelve people that hired an investigator and they wanted to take that investigator with them to the jail to interview the client and so there are some procedures that are in place that make it very difficult, um, I shouldn't say very difficult that's really overstating it but it's more cumbersome for the panel attorneys to do what the performance standards require, what anyone of us would be able to do in our offices without a blink of the eye, send an investigator out to meet with the client and an attorney, if we want to send two attorneys and the investigator, we could do that and there are good reasons to send an investigator out to visit the client with an attorney. But sometimes, we have to take the time to really help the judges bring them along, so that they understand what the performance standards require. The fact that we would be able to comply with them and it's not easy to comply with them even, uh, for the best of us, um, and then translate that into the CJA practice where money is on the line in a different way, although money is on the line with our offices and our budgets, it's very different when the individual judge in the case is approving the vouchers, approving the experts, approving the investigators. There's a different investment then in whether that attorney should undertake a procedure that we would all agree is the best practice and required under the performance standards and maybe one of the things that we are to be doing is sharing those performance standards with our judges so that our judges not only know by comparing what they see in the courtroom but what is really the best practices for our profession so that they have a better idea when people come to them with requests or when they see something in the court room whether it is or is not compliant with the performance standards that have been adapted.

Amy Sirignano: I'd like to echo that wholeheartedly, um, I, I do think that at times, um, there are lawyers in my district that, um, would like to hire a mitigation specialist at sentencing or to, like I said earlier, bring that regional training that we get into the courtroom in New Mexico but, um, we file the motion, the CJA ex parte motion and sometimes, it gets denied, uh, and sometimes, it gets denied with a hearing or a telephone conversation about why a judge wouldn't necessarily want to have these experts at sentencing. That's happened to me uh, a couple of times, but, but I also think that if we did maybe adopt the federal defenders performance standards, and have a baseline um, best practices for our panel members, the quality of representation would definitely go up. I was shocked yesterday to hear it from our federal defender that he sometimes gets calls from the assistant United States attorney's about our panel members not returning phone calls. That's shocking to me because I don't really see that quality of representation among my colleagues, but um, I, I also think that um, um, there are younger lawyers who are great lawyers in state court that with a little bit of um, mentoring, um on the misdemeanor panel could get in there and um, start second chairing cases and start doing motions to

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suppress, um with the senior lawyers at, to, to actually bring in members who really want to be there because being on the CJA Panel in the District of New Mexico is an honor and I think that most lawyers feel that way.

Judge Cardone: I have a follow-up question to your, um, issue of, uh mitigation experts or any kind of expert. Um, for the um, at the FPDs or the, the training that you do, do you train on the use of experts and then um, I would like to hear maybe or we would like to hear some, some stories about whether the judges once they go back to use those experts and file those motions, are the judges approving them or are they getting a lot of pushback and then, for you Ms. Sirignano, um, have you received that kind of training and um, I think you're saying that you have and then when you try to use those experts, you are told, you know, what, what are you trying to do? So, um, do you, do you give the training and then what feedback do you get about them trying to use the experts?

Tina Hunt: Well, first of all, in, at least in my district, I find that many of them don't realize that there is a set amount that you can use without first getting approval from the court. So it is the CJA lawyers who you know, we need to spend more time explaining to them. There is this amount of money that you can have that the judge can say no to. Now, it's never enough money and especially if you need an investigator or a mitigation specialist or whatever, um, but those, that money is available to you. The defenders of course, is built into our budgets, we don't have to ask permission to say, "I want to hire mitigation specialist. I need a psychiatric assessment done on my client. Um, for you know, uh, PTSD." I don't have to ask the court for that money because it's built to our budgets. Um, and while it's somewhat built into the CJA plan, it certainly not enough money to do that. The average in my district psychological assessment cost around \$3,000 which is well above what the CJA lawyers are authorized to spend before getting further authorization and that's just the average. So, and of course, the, many times um, when I was a CJA lawyer because I was one for eleven years before I joined the defender system, um, they would say "we will just send them to Buttner, or Springfield" or you know, and, and I'm thinking I really want to know if there's a problem before I send them off for forty-five days and then an additional forty-five days and then an additional forty-five days for them to get the report. Seems to me that that is a better use of resources and cheaper to give me \$3,000 to do it than to send them to BOP for ninety days.

Judge Cardone: But I, so are the CJA attorneys are using or trying to use experts and um, or are they not and do they get it?

Tina Hunt: Some are, the better ones will, and the better ones will push and make a good case in their ex parte motion explore motions as to why they need the

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funds for the experts. Um, the other ones, not so much especially when they come from the smaller towns, not as much.

Lisa Freeland: That's my experience as well. I mean, it's limited, I mean and those, those numbers are available just as the use of investigators among the CJA panel broken down, um, but I do, I mean I don't I don't want to overstate it but I do think that there, there, there's this budget cloud that hangs over and it does make people less likely to ask for the money, um, even those that are inclined to do so. Um, we do provide local training on the use of experts, um, we have had judges come and speak at our training programs and they want to see experts, I mean if we are going to come into sentencing, asking for something based on a diagnosis, they want, you know, they want to see from the, hear from the experts and so we try and encourage the panel lawyers both by using the judges and our own experience um, to encourage them to, to take the leap and, and use the experts but the numbers are relatively low.

Judge Goldberg: Are they coming to the, seminars that you are putting on?

Lisa Freeland: Yes.

Judge Goldberg: The panel lawyers, did, do you . . .

Carlos Williams: Like I said, mine is mandatory, so they, they are definitely there every year.

Lisa Freeland: Um, you know, there's I mean, there's, there's so much information out there, I mean, it's kind of it's, you know, it's difficult for us, I mean we get people to our training programs, I, you know, the website is another idea. We send out emails but the, you know, you guys get, you know, the emails that you get all day long, all day long, I mean we have to limit what we can communicate to the panel lawyers because there is a point at which is too much and they just hear nothing. Um, and, and our programs, our yearly programs are a good place, um, to do that kind of training and it is available in the more national and regional training programs that are offered through the training branch dealing with clients with mental illness. I have um, in my office, a non-capital mitigation investigator um, and another investigator, both of them that have Masters in Social Work. It's a tremendous use of resources in helping identify um, you know, what issues might be alive in the case and it's true that there is \$800 but we had an experience recently in our district where even to know what expert services you need, you might need to talk to an expert. [LAUGHING] and this case involved um, child phonography and a forensic examination and the panel attorney reached out to um, a company that could help to get information from the putative expert to provide to the judge in support of the request and in return, he was excoriated for having spoken to an expert

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in advance to getting permission to engage an expert and so when you have these kinds of experiences, it just um, you know, it makes the panel attorneys more hesitant to do what they know, many of them know, needs to be done. But the difficulties that they experienced when they try to do it is um, I think a detriment to, to the quality of the representation that people are getting in our district.

Carlos Williams: I, I think it's, it's, it's also a matter of shifting cultures. Uh, the more we do it and the more they see the results that we get in our small district, we, I find that there's more of an interest in, in hiring and many can hire in my district to get an evaluation below the cap. The question is above the cap and then that's uh, that's a whole different ball of wax but, but, but I can see in my district where, where the culture's beginning to shift to where more, more lawyers are doing it and I need to check the numbers to make sure that's the case. Well, I believe that's happening.

Amy Sirignano: I don't know if there are any experts in my district that are actually take a below the cap rate and, and what Tina said about um, uh, getting a local evaluation, my budgets generally, run \$2800 or \$3000 just to do a local evaluation prior to um, to really determining if there's any issue to put somebody uh, you know, in custody. I've had a little bit of pushback on that, I, I used experts frequently. I always use an investigator. We had those resources at the U.S. Attorney's Office and the federal defender has those resources. By the way, I, I sometimes call up the federal defender and say, hey um, we got a cap of um, I think it's \$500 for an investigator, um, before we submit up a budget for uh, additional fees, and so I can call in and say, hey you guys are on the same case, can you send your guy out and tell I get my order back from um my judge on my CJA budget and the Federal Defender's Office always very helpful with that. Um, in terms of experts, our New Mexico Criminal Defense Lawyers Association is having an all day expert training coming up in December. We do have uh expert training um, I have gotten some resources on experts uh, I went out of state to do a, a death penalty training in California to get some uh, death penalty experience but, but I just think that this budget cloud that Lisa talked about um, if, if a federal judge um, whose looking at our ex parte motions and our budget request deems that he or she doesn't need an expert mostly at sentencing then um, usually, it's um, discouraged and . . .

Judge Goldberg: Is voucher cutting sort of, is voucher cutting uh, making the cloud bigger?

Amy Sirignano: Um . . .

Judge Goldberg: With experts and, and attorney vouchers.

Amy Sirignano: So from my experience and the experience of my colleagues that I spoke to, most of us submit budgets at the beginning of the case because most of

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the cases that I handle exceeded \$9700 dollar cap so we put a budget in the beginning of the case to kind to give the court an idea of where we are going to head with this. And so what discourages a lot of our panel members I know is that once a budget has been put an authorized by the judge hearing the case, at the end of the case or even if there is interim billing allowed in the case, the budgets are cut and or excuse me the vouchers are cut um, once submitted, and so I understand though now from this new e-voucher system that there will be a mechanism where the, we could track what was submitted and what was actually awarded to panel member.

Judge Goldberg: The cutting now will just occur in a computer.

Amy Sirignano: [LAUGHING] Well, there is a way, a question was asked yesterday on how we get the metrics to understand how budgets were cut, um, at least in my district, um, we, we would submit the vouchers to our financial services office.

Judge Goldberg: You did, you did a lot of outreach I think to your panel members and I really, really appreciate that. What was the sense, what was their sense and your sense as to voucher cutting?

Amy Sirignano: I think it happens more often than within the last few years than I did before.

Judge Goldberg: Does everyone else agree?

Tina Hunt: Yes.

Lisa Freeland: That is our, that is our experience. I think you know, one of the things that maybe you all recognize is that um, particularly in our district now that we are going to have a removal and reappointment process as part of the CJA is the attorneys want to be viewed favorably by the judiciary. Um, if they think that, that the judges want an expert, we're going to put it on. If they think that something is going to be denied or that there going to be seen as frivolous they're not going put it on because there is this idea that maybe the cases that they're getting assigned is somehow related to their practice when in fact, that's a rotation, I mean they're going to get the cases as long as they are on the panel, they're going to get the cases in rotation just like everybody else but it's hard to break that perception, um, how do you train a lawyer not to care what the judge thinks about you. Um, you know, that, that's not training worth having so um, I think that also is part of the problem but the voucher cutting is more frequent. I got reports of all the vouchers that are paid in our district. I think it's probably on a bi-weekly or monthly basis and so I'm able to see the attorneys whose vouchers are being cut and the judges that are doing the cutting the amount and how

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often and I do think that it is something that is more frequent now than it was um, pre-sequestration for example.

Judge Fischer: Are they giving reasons? Are the judges giving reason?

Lisa Freeland: Well, on the sheet that I see, no. Um, we have had a couple of cases where attorneys have appealed, I mean I say appealed even though there is no appeal. They have asked the judge for reconsideration and there have been a couple of judges that have written opinions about why the vouchers were cut, and I thought and I, and many of those I think have been under seal. And I know that there was one recently where the CJA panel attorney requested that the judge put the opinion under seal because he was concerned about his reputation among his colleagues and um, with the bench. And I'll tell you that one of um, is a little bit off topic but I think it is relevant to the issues that you're considering, is that there have been a couple of instances in our district where the CJA lawyers had left their file with the judge for review in determining whether their voucher was appropriate, and not only is that the problem from the perspective [LAUGHING] of the CJA lawyer but for a judge to not hand the file back [LAUGHING] and say you know, this is the right, I can't, I can't have this and then in the opinions has been information written that was taken from the file um, as the judge explains why various things were not required for the representation in that case and why the voucher would not be paid for those things.

Judge Fischer: And, uh, do any of you, have you heard the explanations, uh, or seen them in writing and, do you, do you agree, yes this was too much or the judge, you know, does, doesn't, know how much it cost to the, what sentencing position for example?

Carlos Williams: We have not had voucher cutting in my district that I'm aware of.

Amy Sirignano: Judge, I think that, there's, uh, common thread or common thought in New Mexico that if you do that, you might not, you're, you're, um, biting the hands that feeds you so to speak, right? And yesterday, um, Chief Judge Armijo, um, said a few times that, um, that CJA cases are bread and butter for a lot of panel members, and personally, I think that's a good thing. I, I think that, um, we can have very qualified CJA panel members who focus specifically on federal criminal defense. Federal defenders do that everyday. I don't know, um, or I don't understand why that would be deemed as a negative, when a CJA panel member wants to become an expert in federal criminal cases or federal court either it be by CJA appointments or by privately retained cases. I think many of us on the panel do both. Um, I, I think that in terms of the solution for this voucher cutting problem, I would propose that, um, there be specific training on how to write a budget because when I came on the panel, I'd asked the

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senior lawyers, how do you do a budget? Well, uh, how do you figure out that you're going to need an investigator to work three hours a week for the next six months on this case and kind of map it out at the very beginning of the case when most times, you don't even have all the discovery, right? And so I think that, uh, that solution would be very helpful ask the judges what they would like to see in their budget obviously, you're not going to get have a consensus on that. Um, from the members of the bench but, but that would be very helpful, um, to have that and, um, uh, and then, then at that point have an opportunity to talk with the judge, uh, when the interim bill is filed or at the end of the case as to why, um, are, are, um, are funds where cut. Um, we only have one judge right now as far as I know, that will call and say, well we're going to cut your voucher by x amount, do you want us to process it and most of us, say yes, because the, the wait time sometimes it could take six weeks or six months to get a voucher, um, processed in my district. You know, uh, another solution that I thought I'd share with the panel is in the district of Kansas, um, they have just adapted a standing order for all CJA cases, allowing for interim billing and, and the parameters are, um, you can file interim billing if the case exceeds \$4000 or four months. I think that would be a great idea because, uh, many of the CJA lawyers, um, uh, find it very difficult especially if they're accepting a lot of CJA appointments to wait to the very end of the case to bill. And I usually have found that the judges don't like to wait to the end of the of the case to bill and the vouchers or cut, um, at that point because they think, oh, gosh, this bill, it's just tremendous. So I would support the interim billing, I think both for communication with the court on, on, um, on how much money is actually being spent and the lawyer will have a cash flow, um, into his or her solo practice,

Judge Fischer: What we're trying to figure out exactly what the nature of this issue is, if, uh, uh, I think we could all agree that sometimes lawyers bill for things that are not reasonable and sometimes judges cut things that shouldn't have been cut but where we are within that's spectrum and whether it's district by district or judge by judge, um, it, it, if I cut a voucher it's obviously because, you know, I'm going to go tell you that is because, what was done, wasn't reasonable. If the lawyer has a voucher cut, most of the time, the lawyer's going to say everything I did was reasonable, I put it, uh, all of that time and I should have been paid every dime, so I, I don't know what mechanism we can use to try to figure out, how big of the problem really is and then how do we address that so if you have any thoughts on [LAUGHING].

Lisa Freeland: I mean, I do judge. I think, um, you know, before you said that, I'm thinking of the instances where I know specifically what the reasons for the voucher cuts were and I can't say that there was one that I agreed with and, um, particularly the cases that have been written about and I think

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that, um, things could have been handled better. Um, you know, the CJA guidelines are an opportunity for lawyers to get the money that they need on the cases if they do it correctly. And so, we do provide training on how to use the guidelines, what's compensable what's not compensable. Um, but, but as we're focusing on some of the disparities between federal defender offices and CJA, um, I think, I bring that perspective when I'm looking at the reasons that are given for cutting vouchers because I know that my attorneys would do that, and then I would approve them doing that. And so, I think that if you could involve attorneys in the voucher review process, so that it's not just the judge um, you know, we have wonderful judges on the federal bench but the one thing that most of them aren't and never have been, is criminal defense lawyers. They've never been public defenders. What we do is very different than what most of you did in your practices before coming to the bench. And that doesn't may mean that your experience is irrelevant to the question but we know from our own experience in managing federal defender offices where we have budgets that we have to stay within, what are and are not reasonable expenses. I had a judge when I, um, and I often I called them roadshows, go on the road, which is really just to across the street to meet [LAUGHING] with all the judges to talk about issues and the budget has been a big one. And, um, one of the judges who is very familiar, has been senior judge, has been around for quite a while, he is familiar with defender services, um, had a trial where one of the CJA lawyers had obtained an acquittal, and he told me that he cut the voucher in that case um, because in the days leading up to the trial, the attorney had an investigator out at the prison and they were out there hanging out with the defendant and he, that the Sixth Amendment didn't require hand-holding. And so, I had to question him and say, do you think may be some of the conversations that were happening during those three to four days before the trial between the lawyer, the client, and investigator might have actually had an impact on the result. It didn't matter to him. He thought the attorney did a great job. The jury acquitted but he wasn't going to pay because he personally believed that, that was not reasonable. That's a problem.

Judge Fischer: I don't know whether you all know but we've talked about this before. Judges get absolutely no training [LAUGHING] on reviewing vouchers, would you recommend that perhaps some training be . . .

Panel: Yes

Amy Sirignano: I think a solution also is, is that point person within may be in the Federal Defenders Office. The case is budgeting person, whatever the, the title could be within the Federal Defenders Office. And I know that, you know, the Federal Defenders Office is completely overworked and that's not something, that, that our federal defender wants to be doing this,

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looking at all, of our budgets. But maybe somebody within the office to say, hey, this is great you know, or I have a question about this and then send it up to the judges. I think that CJA panel lawyers are at disadvantage in the sense that, that, um, the judge, judge will be trying our case, gets to preview our, um, defense strategy and, um, and our request for our defense um, prior to the case, actually, I want to say, going to suppression or trial. And so, um, maybe there should be somebody within each district to look at those request, the request for the budget and the vouchers independent from the court and have the court be the ultimate, um, decision maker on, on, um, say a ex parte motion or a payment on the voucher.

Tina Hunt:

And I think that, that would work fine in a district where the defender manages the panel, but where the defender does not manage the panel, which is the case in my district, um, I don't know how that would work. So, in, in, as another thing as to voucher cutting, we see very little voucher cutting in the middle district of Georgia, and I suspect that's because the lawyers don't put in enough hours that it needs to be cut, number one. Number two, what I have seen, where I have seen cutting is where a judge will say, well this is a frivolous motion and I'm not going to pay you for any of this. And yet in talking with both, you know, with me, with other experienced CJA lawyers, this lawyer was also an experienced CJA lawyer and had previously been in the defender's office. Um, he raised a conflict of interest between the judge, um, overseeing the case where at the beginning, it was, um, prisoner cruelty case where the guards were charged with violating civil rights of some prisoners at a prison, and the judge, right off the bat at the very beginning, um, said, well I have represented this prison on many occasions. And you know, we kind of saw that as a conflict of interest quite frankly. Um, so, you know, that issue was raised. He was very perturbed that it would be, that he would be called unethical by any standard, and cut that whole portion of the voucher, you know, which is a legitimate, was to me a legitimate motion to make for the record.

Katherian Roe:

I am somewhat confused by, by this conversation only because everything that has been said and then, um, Ms. Sirignano you just said, but the judge should ultimately be the person to decide. That it should go through all these levels of people who have experience in criminal defense to try to make determinations as to whether it is reasonable, but then the judge should ultimately be the person to decide, the person who has probably very little if any experience in criminal defense. Do all of you agree that it should be the judge to decide? Or. . .

Tina Hunt:

No, I don't think it should be the judge.

Katherian Roe:

A different, a different decider?

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- Tina Hunt: I think it should be a different decider.
- Carlos Williams: I agree with what Mr. McCue said yesterday and I think he, he, he went with that it should be an independent person apart from the judge. In terms of approving, say experts, that would immediately deal to some extent at least with the parity issue, we get our expert without asking the judge for it. The panel should be able to get an expert without doing that as well. But somebody who is experienced in, in looking at these things could do that and get that done. I am not so familiar with the problems of voucher cutting. Like I said, I, I don't have much experience with that in my district. I, I, but I do believe that that's also a function and reflected in, in when people don't ask for investigators and we have serious problems with that in the past. So, that may also reflect that they are deciding the cases based on what the guidelines suggest or how the guidelines would, would, would suggest a case should be resolved without actually doing the work, uh, and, and so, anyway. Um -
- Amy Sirignano: I guess I probably should clarify what, what I was thinking. Um, personally, I don't think that the judge that's hearing the case. . . if I would make a, a recommendation, it would be maybe a set . . . a different judge or say an executive director, uh, this case budgeting person within the district, um, be the final, um, approval of these vouchers and the budgets. But at least in my district, it's always been that way, that the court was the final, um, decision maker on the budgets and, and the vouchers. And so, um, perhaps my statement is knowing in practice and not theoretically that, that our bench would probably not want to give up that, um, function or that authority but, um, at a minimum have a judge independent of the case, um, looking at that or somebody from the Federal Defender's Office where this case budgeting person. That would be the, um, the best recommendation or the best situation.
- Judge Goldberg: Why do you think your judges don't want to give up that authority? Just speaking for myself, there are three other judges on the panel here, I would be delighted not to have to review vouchers.
- Amy Sirignano: Um, I just think that that's what's always been done and I think that it would require a change in the culture to, um, to move forward like that. And I am not saying that, um, it's an impossibility, I just think that, uh, that's just the way things have been done in my district.
- Katherian Roe: But that's the way things have been done everywhere. So the question really is before us is that the right way for things to be done or you folks being the experienced people, do you think it's a different way that things should be done?

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Tina Hunt: A different way.

Amy Sirignano: I, I would agree with a different way would probably be the better way.

Lisa Freeland: And I like, um, you know, we don't have it in our district, but districts that have committees, um, because there are conflicts all around. Having the federal defender do it isn't necessarily better when they might represent a codefendant in the case, and so, that wouldn't be available. So, to the extent that there is an opportunity to have, um, committees that deal with, uh, the vouchers and requests, I think that would be much better than the system that we have right now but I think I, I mean it's, you know, we are living in a world where we live where the options are limited [LAUGHING], um, and I do think, uh, Judge Goldberg that some of judges in my district might not want to get but this is, you know, I am projecting on to them what they might think or want or believe, but the vigor that they have shown in exercising their reasonableness review tells me that it is something that, um, they, they take quite seriously and, um, have a stake in. And you know, and, and that's the problem in my mind, really, because in a case that is being tried before you, um, your interest, that should not be such a force and such an interest in the litigation. It should be other matters.

Judge Cardone: I have a question about the concept of having a committee or, um, how that would work to have somebody reviewing budgets, uh, reviewing vouchers. Um, I'm in a world where I have had as many as 1,000, just as a single judge, 1,000 criminal cases a year, um, and there are places like that. So when you talk about a committee, how do you find a non-paid group of people that in, I have four district judges just in my district, um, that are going to want to review 4,000 vouchers a year, um, or, um, is there some, and I am just throwing this out, I, I certainly think and I heard of places where there are committees like that. I think there is one in New York City that, that may be workable but I just, it's, it's such a, it is a huge task to go through those vouchers and, um, to get somebody who wants to do that in an unpaid position, I just can't even imagine how, how you find people that want to spend that kind of time.

Lisa Freeland: Carlos said unpaid. He is asking me like, I don't know. [LAUGHING]

Carlos Williams: I can't imagine, I don't think, I don't think you can find somebody who will do it without pay.

Judge Cardone: All right, that's, I guess that's my question. I mean, because it's one thing whether you are an FPD or a judge, you, you are getting paid. To define some sort of committee that would say, oh okay, sure, we will review 4,000, you know, vouchers a year. I, I think that would be a lot more, or CJA committee like you were talking.

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Lisa Freeland: And the panels that I am aware of that exists have federal defenders and CJA lawyers. I know our panel rep has, has suggested bringing into the process somebody from the outside criminal defense bar that isn't doing CJA, um, and we have many fewer cases that you do in your district. And so, even if we were to stay with the model where judges continue to deal with the vouchers and I think that the committees that, that I am aware of, um, there may be one in Oregon or Seattle, somewhere out in, in the northwest, there is one, um, they may only deal with voucher cuts, okay? So, um, but that doesn't resolve the front end problem of attorneys feeling like they are under pressure not to do the work and so, I think a lot of this is an education process. It's an education process of judges. It's an education process of the panel lawyers so that we can raise the level of practice through the performance standards understood both by the panel lawyers and by the judges and have committees that are reviewing the vouchers that are problematic. I still think even the vouchers that aren't problematic probably should not be before, and the requests along the way for experts and investigators, probably should not be before the judge that is presiding in the case. Um, but I do think that we have mechanisms that are available so that other judges might be able to do that, um, and reserve the committee of unpaid, you know, the volunteers to cases that are really problematic where judges inclined, um, not to approve the voucher.

Judge Cardone: Mr. Williams, anything else you would like to tell us?

Carlos Williams: Nothing else. I think that's it.

Judge Cardone: Ms. Hunt, anything?

Tina Hunt: No, thank you, Judge.

Lisa Freeland: No, thanks for the opportunity to speak with you today.

Judge Cardone: Ms. Sirignano?

Amy Sirignano: No, thank you, your Honor.

Judge Cardone: All right. Well, we are going to wrap up, um, for now. I want to thank all of our panel for being here today. Um, again, the information is useful. If you get back home and you think of something that, you get back to your rooms and you think of something you wanted to add, again we have a website that is available, um, for you. Um, if you want to communicate with us, you can contact the Committee, our staff on the Committee, but we want to thank you very much. We are going to take a short break and we are going to resume in about fifteen minutes.