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January 5, 2016

Honorable Kathleen Cardone, Chair
Ad Hoc Committee to Review the CJA Program
Thurgood Marshall Federal Judiciary Bldg.
One Columbus Circle, NE
Washington, D.C. 20544

Dear Judge Cardone and Honorable Committee Members:

I would like to thank you for this opportunity to appear and provide testimony at the Committee's public hearing. I am Steven L. Beauvais, an attorney in private practice in Savannah, Georgia, which is located in the Southern District of Georgia. I have practiced in Savannah for 23 years, almost exclusively in the area of criminal defense. Prior to that, I served for five years on active duty in the U. S. Marine Corps, as a Staff Judge Advocate, both prosecuting and defending military accused.

I have served as the Southern District's CJA Panel Representative for the last 10 years and as a member of our Court's Advisory Committee for approximately the last 14 years. I am one of three Resource Counsel within the Southern District.

The Southern District comprises 43 counties, stretching from Augusta in the north to the Florida border in the south (about a four-hour drive) and from Savannah in the east to Dublin in the west (about a two-hour drive). We are a large and diverse district with urban areas, agricultural areas, large stretches of timber land and significant maritime interests that include two large container ports and a shrimping/shellfish industry. The district is divided into six (6) divisions with three main divisions, located in Savannah, Augusta, and Brunswick, that house the district's judges. Three unstaffed division courthouses are located in Statesboro, Dublin, and Waycross. There are currently four district judges handling the district's case load having recently lost Senior Judge B. Avant Edenfield, who handled a full assignment of cases until months before his passing. There are three magistrates, one each, assigned to each main division.

The United States Attorney's Office has two offices within the district, Savannah and Augusta, and is staffed for 28 attorney positions to include the U. S. Attorney. Of this number, 17 are assigned to the criminal division (including the 1st Assistant) with 15 serving as trial attorneys and 2 in appellate positions. Geographically, 13 attorneys are assigned to the Savannah office and cover the Savannah, Statesboro, Brunswick, and Waycross divisions and 4 attorneys are assigned to the Augusta office and handle the Augusta and Dublin divisions. The attorneys assigned to the criminal division are hard-working, dedicated professionals with a majority being career prosecutors.

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There is no Federal Public Defender or Community Defender in the district. There is no organized CJA Panel in the district. All attorneys admitted to practice in the district are subject to appointment, regardless of their competence, knowledge, skill or experience in representing those accused of a crime. In my opinion, it is an antiquated and inadequate system that diminishes the legitimacy of the criminal justice system in our district.

We had a Federal Public Defender office for a short period during the 1980's. I have no personal knowledge of what occurred during that time but I have been told it was not a good experience. In less than two years, the office was abolished. Due to that experience, for the next 25 years, any effort to improve or change the CJA appointment system was doomed to failure.

Unfortunately, because there is no organized defense entity within the district much of what I can report is purely anecdotal. In my report, I am going to divide my comments into two (2) sections, the first covering the years 1992 through 2011 and the second covering 2011 to the present.

A. 1992 - 2011. Based on my contact with lawyers in the district appointed to represent indigent defendants, there was a great degree of dissatisfaction with the system. Of the lawyers appointed, the majority, if not the vast majority, did not practice criminal law in their private practice. They had no training, skill, knowledge or experience in substantive criminal law, handling a criminal case, or in sentencing advocacy. In their practices, if a client needed assistance on a criminal matter, they referred the client to an attorney who practiced criminal law. They did not want to be appointed to criminal cases but recognized they had no say in the matter.

These lawyers were being asked to defend an individual's liberty, often in cases where the stakes were 5-20 years of incarceration and their opponent was a career prosecutor with 15 years of experience, who had handled hundreds of cases, and who had been involved in the case from its earliest investigative phase. It was an inherently unfair and biased system.

B. 2011 - Present. Approximately five (5) years ago, the Court did move to improve the CJA Panel. While technically all attorneys admitted to practice before the Court remain subject to appointment, the Court sent out a questionnaire and allowed attorneys to indicate their preference of receiving or not receiving appointments. Of those who desired appointments, they were further allowed to indicate if they desired multiple appointments and to provide a geographic preference. The response was significant. Currently, approximately 200 lawyers in the District have volunteered to be appointed.

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The Court has also proposed, but not implemented, standing committees in each of the three main divisions to periodically review the attorneys on the CJA panels. The standing committees consist of the district judge, magistrate judge, CJA Resource Counsel, and a number of other attorneys selected by the Court to serve.

Another improvement, agreed to and implemented by the Court, was the appointment of three (3) Resource Counsel within the district. Resource Counsel operate under a small contract with the Defender Services Office to provide general guidance to CJA attorneys in their cases. Resource counsel are available to review cases and help with issue spotting, to answer procedural and substantive questions, to give general advice about client relationships and communication, to advise on plea negotiations, and to assist with sentencing guideline calculations.

Additionally, every two (2) years, we hold a one or two day CLE training program that is free to all attorneys in the district who wish to attend. Attendance at the programs has averaged about 130 attorneys. We would never be able to hold such comprehensive and well received training without the tremendous support and assistance provided by the Defender Services Office, Training Division. They routinely arrange for 4-6 speakers, from throughout the country, to make presentations and provide materials on current substantive issues.

While I believe the changes implemented in the last five (5) years have helped improve the panel, much more needs to be done to improve the representation of indigent defendants in the district. Criminal defense, in my opinion, is a specialized field that requires training and experience. I believe we need a professional and dedicated defender organization to counterbalance the U. S. Attorney's office. We need an organized CJA panel with standards for admission and retention. That panel program should also include a "sub-panel" to mentor younger attorneys so they can move up to the panel. Eventually, I believe that both the Public Defender and CJA panels should operate independently of the Court.

Again, because there is no oversight to the provision of indigent defense services in the district, asserting that the system is deficient is like trying to prove a negative. Being one of only two districts in the nation that has failed to institute a public defender is indicative that the district is lagging behind in providing quality defense. Statistics showing that the district is routinely amongst the lowest percentages across the nation in requests for and approval of expert and investigative assistance is another indicator. Lastly, our district's sentencing patterns, often leading the nation in punitiveness, is another. In short, the Southern District of Georgia is not leading the charge in providing competent counsel, but rather is slowly emerging from its past.

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2. Compensation and Vouchers

On the issue of the adequacy of compensation, I have received mixed feedback. Personally, and for attorneys I know who are routinely privately engaged in federal cases, the hourly compensation rate is one-third to one-half of what is normally charged and there are no case maximums. In other instances, for attorneys practicing in the rural areas of the district, the hourly compensation rate is not a disincentive. However, to attract and retain skilled and competent attorneys dedicated to the representation of criminal defendants and for efficacy of our system, attorneys need to be adequately compensated. While I accept that there will always be a *pro bono* element to such services, the current rates are skewed far too heavily toward *pro bono* representation rather than a realistic pay standard for the services performed.

In regard to vouchers, it has been routinely reported to me over the years that vouchers are summarily cut. I am also aware of vouchers going unpaid. The attorneys who reported this tended to simply accept the cuts as part of the system or just gave up trying to get an answer as to why they were not paid. It has likewise been reported to me by other attorneys that they had no issue with their vouchers and requests for payments over case maximums were approved with little difficulty. I have taken from this two lessons. First, that vouchers need to be prepared with attention to detail and set forth more than a one word description of the service performed. Secondly, the attorney's personal reputation with the Court is an important factor.

Recently, it appears the Court is implementing standards to follow the CJA guidelines for prior notice of a proposed reduction and an opportunity to be heard. I believe that such action by the Court will only strengthen the relationship between the Court and Panel.

I thank the Committee for this opportunity to address these issues.

Respectfully submitted,



Steven L. Beauvais