

TO: TARA DA RE
FROM: DAVID BRIGGS
DATE: JUNE 29, 2019
RE: QUALIFICATIONS AND VISION FOR CACJ

1. Qualifications

I began representing indigent defendants in criminal cases on the first day I practiced law. I started my career in the Contra Costa County Public Defender's office in 1981. I opened a private solo practice in 1985 and have maintained it continuously through today. I have always emphasized criminal defense, and I have always carried a substantial number of appointed indigent cases. Currently I represent five clients charged with murder, including one charged with capital murder, pursuant to court appointments in Contra Costa and Alameda counties.

From February, 1997, to August, 2015, I administered the court-appointed attorneys program in Contra Costa County. This program was established by the Contra Costa County Bar Association pursuant to a contract with Contra Costa County, and the Bar Association employed me as Director of the program. I was directly responsible for budgeting and accounting, supervising case appointments, communicating with attorneys, judges, court staff, county administration, the Executive Director and Board of Directors of the Contra Costa County Bar Association, and the public, and supervising a staff of two or three full time and some temporary employees.

I was able to maintain a part-time law practice during this employment, and I went back to full-time practice when it ended.

Making a very long story very short, the Contra Costa County Bar Association was not a satisfactory contractor for indigent legal services. In March, 2019, the County of Contra Costa broke off negotiations for a contract extension and put the contract out for an RFP. Working with the current Director of the program, and with a group of panel attorneys, I led the effort to submit a bid for the indigent legal services contract. I established a nonprofit corporation, Independent Counsel, Inc., which required making the necessary corporate filings and recruiting a strong Board of Directors, and I responded to the RFP with a detailed budget, operating rules, organizational chart, and myriad other details,

Independent Counsel, Inc., was awarded the contract for indigent legal services in Contra Costa County, effective July 1, 2019. I now serve as Executive Director of the corporation, for a small salary. My duties mainly involve supervising Bill Green, the Director of the Conflict Program, who does not require much supervision. I am also the Secretary/Treasurer of the corporation, which requires me to handle accounting,

corporate filings, and preparation of agendas and minutes for the Board of Directors.

The ICI Board includes Kathleen Guneratne and Michael Risher, current and former staff attorneys at the ACLU Northern California office, and Richard Braucher of FDAP and the Pacific Juvenile Defense Center. The Board recently decided to begin advocacy work on behalf of indigent parties and their attorneys, and literally last week I began probing the local “Justice Partners” for information about their COVID-19 mitigation protocols.

2. Vision

CACJ inspires, educates, and provides a collective voice for a diverse group of attorneys who share a commitment to righting the wrongs in our criminal law enforcement system. It has performed these functions since it was founded, and I hope it never stops performing them.

These are exciting times. Racism has been lured from the shadows, only to face direct and broad-based attacks on its symbols, practices and practitioners. There is finally a strong movement for police reform and accountability throughout the country. Sentencing reform has tremendous momentum. CACJ has advocated for decades against racism, and for police and sentencing reform, and now we have cultural and political momentum on our side.

No one knows whether, or when, this window of opportunity will close, but while it is open we should exploit it. CACJ is already seizing the day, with its legislative efforts and public advocacy. We should push as hard as we can to find a sponsor and get the California Law Enforcement Accountability and Community Justice Act passed. We should do the same for our current sponsored bills, especially AB 3070, which would make real progress toward eliminating racial bias in jury selection. We should press for changes to the laws governing discovery, evidence, and criminal procedure so that they promote truth and fairness, not the interests of prosecutors. We should continue our efforts for sentencing reform, not only to shorten sentences, but to provide greater resources for reentry services. Prisoners are people, too, and when they rejoin society they should be supported and treated with dignity. And no prisoner should be on Death Row, because there should be no Death row. Capital punishment should be abolished, the sooner the better.

In addition to these changes at the macro level, I would like to see CACJ members getting better results in their individual cases. There are at least two areas where CACJ can help them in ways it is currently not.

First, CACJ can act as a research and information center in areas which have not been examined systematically. Judicial bias, for example, so common and yet never acknowledged, may be identifiable in a pattern of reversals on appeal. To my knowledge, no one actually tracks reversals statewide, identifying the trial judge and the nature of the trial judge’s errors. CACJ could prepare a database with this information.

It would not identify every biased judge, but it would catch some of them with evidence which would be hard to refute. We could do something similar for race-based bail determinations, as Jeff Adachi did in San Francisco.

Second, CACJ can work to improve the funding and pay structure for appointed counsel representing indigent defendants. This effort would involve more information-gathering, bringing to light the inadequate resources available in these cases, especially in rural areas. We should also a push for legislation requiring hourly-fee based pay schedules and adequate funding for ancillary services statewide.

The future is hard to predict. COVID-19 is disrupting the delivery of legal services, pushing fundamental rights aside, and its effects will likely be felt for years to come. Yet every crisis presents an opportunity. The current pandemic has already created *de facto* sentencing reform through early releases, and it motivated an emergency bail schedule which should become a model for permanent bail schedules after the pandemic. Remote technology can provide benefits to our clients and our practices, in addition to its obvious dangers. We may be seeing a change in our jury pools which works in favor of defendants, contrary to initial fears.

CACJ will need to be nimble and imaginative to cope with, and take advantage of, whatever the future may bring. Balanced on its core principles, and taking inspiration from its long history of outstanding legal work by outstanding lawyers, CACJ is well positioned to see the opportunities new challenges present. I expect CACJ to play a major role in making real improvements in the way criminal laws are enforced in California. I look forward to assisting in this work, in whatever capacity the Board of Governors chooses.