CRIMINAL JUSTICE ACT AMENDMENTS

HEARINGS

BEFORE

SUBCOMMITTEE NO. 3

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

NINETY-FIRST CONGRESS

SECOND SESSION

ON

S. 1461, H.R. 9687, H.R. 9856, and H.R. 11450

TO AMEND SECTION 3006A OF TITLE 18, UNITED STATES CODE, RELATING TO REPRESENTATION OF DEFENDANTS WHO ARE FINANCIALLY UNABLE TO OBTAIN AN ADEQUATE DEFENSE IN CRIMINAL CASES IN THE COURTS OF THE UNITED STATES

JUNE 18 AND 25, 1970

Serial No. 26

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
49-130 O WASHINGTON : 1970

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CRIMINAL JUSTICE ACT AMENDMENTS

THURSDAY, JUNE 18, 1970

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 3 OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to call, in room 2226, Rayburn House Office Building, Hon. Robert W. Kastenmeier presiding.

Present: Representatives Kastenmeier, Mikva, Edwards of California, Poff, Hutchinson, and Biester.

Staff members present: Herbert Fuchs, counsel; Thomas E. Mooney, associate counsel.

Mr. KASTENMEIER. The hearing will come to order.

Today, the subcommittee will receive testimony on two different pieces of legislation.

Our first subject is S. 1461, to amend section 3006A of title 18, United States Code, relating to representation of defendants who are financially unable to obtain an adequate defense in criminal cases in the courts of the United States, and related House bills, H.R. 9856, H.R. 9687 and H.R. 11450. The authorship of these measures is distinguished indeed.

H.R. 9856 was introduced by the ranking minority member of the full Judiciary Committee, Mr. McCulloch; H.R. 11450 was introduced by our subcommittee colleague, Mr. Edwards of California; H.R. 9687 was the product of Mr. Minshall. In addition, eight members of the Judiciary Committee, including our subcommittee colleagues Messrs. Poff, Biester and MacGregor, have cosponsored the legislation.

These bills make a number of constructive amendments to the Criminal Justice Act of 1964, a Federal statute that provides for the appointment and compensation of counsel to represent persons accused of Federal crimes who are financially unable to obtain an adequate defense. The act has been in effect since 1965 and experience over that period has indicated the desirability of certain amendments. These consist primarily of three major changes:

1. The legislation would expand the coverage of the act;

2. It would provide authority for the appointment of Federal public defender and community defender organizations; and

3. It would increase the hourly and per case maximum amounts that might be paid to attorneys appointed under the act.

S. 1461 has been the subject of intensive hearings in the other body at which 18 witnesses possessed of a broad background of experience with the Criminal Justice Act or of extensive study of its operation unanimously supported the objectives of S. 1461.

Public Law 88–455, which is the Criminal Justice Act of 1964, and the bills S. 1461, H.R. 9856, H.R. 11450 and H.R. 9687 will be placed in the record at this point.

(The documents referred to follow:)

Public Law 88-455
88th Congress, S. 1057
August 20, 1964

An Act

78 STAT. 552.

To promote the cause of criminal justice by providing for the representation of defendants who are financially unable to obtain an adequate defense in criminal cases in the courts of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Criminal Justice Act of 1964." Criminal Justice Act of 1964.

SEC. 2. Title 18 of the United States Code is amended by adding immediately after section 3006 the following new section:

"§ 3006A. Adequate representation of defendants

"(a) CHOICE OF PLAN.—Each United States district court, with the approval of the judicial council of the circuit, shall place in operation throughout the district a plan for furnishing representation for defendants charged with felonies or misdemeanors, other than petty offenses as defined in section 1 of this title, who are financially unable to obtain an adequate defense. Representation under each plan shall include counsel and investigative, expert, and other services necessary to an adequate defense. The provision for counsel under each plan shall conform to one of the following: 62 Stat. 684.

"(1) Representation by private attorneys;

"(2) Representation by attorneys furnished by a bar association or a legal aid agency; or

"(3) Representation according to a plan containing a combination of the foregoing.

Prior to approving the plan for a district, the judicial council of the circuit shall supplement the plan with provisions for the representation on appeal of defendants financially unable to obtain representation. Consistent with the provisions of this section, the district court may modify a plan at any time with the approval of the judicial council of the circuit; it shall modify the plan when directed by the judicial council of the circuit. The district court shall notify the Administrative Office of the United States Courts of modifications in its plan.

"(b) APPOINTMENT OF COUNSEL.—In every criminal case in which the defendant is charged with a felony or a misdemeanor, other than a petty offense, and appears without counsel, the United States commissioner or the court shall advise the defendant that he has the right to be represented by counsel and that counsel will be appointed to represent him if he is financially unable to obtain counsel. Unless the defendant waives the appointment of counsel, the United States commissioner or the court, if satisfied after appropriate inquiry that the defendant is financially unable to obtain counsel, shall appoint counsel to represent him. The United States commissioner or the court shall appoint separate counsel for defendants who have such conflicting interests that they cannot properly be represented by the same counsel, or when other good cause is shown. Counsel appointed by the United States commissioner or a judge of the district court shall be selected from a panel of attorneys designated or approved by the district court.

"(c) DURATION AND SUBSTITUTION OF APPOINTMENTS.—A defendant for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before the United States commissioner or court through appeal. If at any time after the appointment of counsel the court having jurisdiction of the case finds that the defendant is financially able to obtain counsel or to make partial payment for the representation, he may terminate the appointment of counsel or authorize payment as provided in subsection (f),

as the interests of justice may dictate. If at any stage of the proceedings, including an appeal, the court having jurisdiction of the case finds that the defendant is financially unable to pay counsel whom he had retained, the court may appoint counsel as provided in subsection (b) and authorize payment as provided in subsection (d), as the interests of justice may dictate. The United States commissioner or the court may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings.

Substitution of counsel.

"(d) PAYMENT FOR REPRESENTATION.—An attorney appointed pursuant to this section, or a bar association or legal aid agency which made an attorney available for appointment, shall, at the conclusion of the representation or any segment thereof, be compensated at a rate not exceeding $15 per hour for time expended in court or before a United States commissioner, and $10 per hour for time reasonably expended out of court, and shall be reimbursed for expenses reasonably incurred. A separate claim for compensation and reimbursement shall be made to the district court for representation before the United States commissioner or that court, and to each appellate court before which the attorney represented the defendant. Each claim shall be supported by a written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the United States commissioner or court, and the compensation and reimbursement applied for or received in the same case from any other source. The court shall, in each instance, fix the compensation and reimbursement to be paid to the attorney, bar association or legal aid agency. For representation of a defendant before the United States commissioner and the district court, the compensation to be paid to an attorney, or to a bar association or legal aid agency for the services of an attorney, shall not exceed $500 in a case in which one or more felonies are charged, and $300 in a case in which only misdemeanors are charged. In extraordinary circumstances, payment in excess of the limits stated herein may be made if the district court certifies that such payment is necessary to provide fair compensation for protracted representation, and the amount of the excess payment is approved by the chief judge of the circuit. For representation of a defendant in an appellate court, the compensation to be paid to an attorney, or to a bar association or legal aid agency for the services of an attorney, shall in no event exceed $500 in a felony case and $300 in a case involving only misdemeanors.

Payments in excess.

Representation in appellant cases.

"(e) SERVICES OTHER THAN COUNSEL.—Counsel for a defendant who is financially unable to obtain investigative, expert, or other services necessary to an adequate defense in his case may request them in an ex parte application. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the defendant is financially unable to obtain them, the court shall authorize counsel to obtain the services on behalf of the defendant. The court may, in the interests of justice, and upon a finding that timely procurement of necessary services could not await prior authorization, ratify such services after they have been obtained. The court shall determine reasonable compensation for the services and direct payment to the organization or person who rendered them upon the filing of a claim for compensation supported by an affidavit specifying the time expended, services rendered, and expenses incurred on behalf of the defendant, and the compensation received in the same case or for the same services from any other source. The compensation to be paid to a person for such service rendered by him to a defendant under this subsection, or to be paid to an organization for such services rendered by an employee thereof, shall not exceed $300, exclusive of reimbursement for expenses reasonably incurred.

"(f) RECEIPT OF OTHER PAYMENTS.—Whenever the court finds that funds are available for payment from or on behalf of a defendant, the court may authorize or direct that such funds be paid to the appointed attorney, to the bar association or legal aid agency which made the attorney available for appointment, to any person or organization authorized pursuant to subsection (e) to render investigative, expert, or other services, or to the court for deposit in the Treasury as a reimbursement to the appropriation, current at the time of payment, to carry out the provisions of this section. Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for assisting in the representation of a defendant.

"(g) RULES AND REPORTS.—Each district court and judicial council of a circuit shall submit a report on the appointment of counsel within its jurisdiction to the Administrative Office of the United States Courts in such form and at such times as the Judicial Conference of the United States may specify. The Judicial Conference of the United States may, from time to time, issue rules and regulations governing the operation of plans formulated under this section. Reports.

"(h) APPROPRIATIONS.—There are authorized to be appropriated to the United States courts, out of any money in the Treasury not otherwise appropriated, sums necessary to carry out the provisions of this section. When so specified in appropriation acts, such appropriations shall remain available until expended. Payments from such appropriations shall be made under the supervision of the Director of the Administrative Office of the United States Courts.

"(i) DISTRICTS INCLUDED.—The term 'district court' as used in this section includes the District Court of the Virgin Islands, the District Court of Guam, and the district courts of the United States created by chapter 5 of title 28, United States Code." "District court."

28 USC 81-144.

SEC. 3. Each district court shall within six months from the date of this enactment submit to the judicial council of the circuit a plan formulated in accordance with section 2 and any rules and regulations issued thereunder by the Judicial Conference of the United States. Each judicial council shall within nine months from the date of this enactment approve and transmit to the Administrative Office of the United States Courts a plan for each district in its circuit. Each district court and court of appeals shall place its approved plan in operation within one year from the date of this enactment. Submission of plans.

SEC. 4. The table of sections at the head of chapter 201 of title 18 of the United States Code is amended by adding immediately after item 3006 the following:

"3006A. Adequate representation of defendants."

Approved August 20, 1964.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 864 accompanying H. R. 7457 (Comm. on the Judiciary).
SENATE REPORT No. 346 (Comm. on the Judiciary).
CONGRESSIONAL RECORD:
Vol. 109 (1963): Aug. 6, considered and passed Senate.
Vol. 110 (1964): Jan. 15, considered and passed House, amended, in lieu of H. R. 7457.
Aug. 7, House and Senate agreed to conference report.

91ST CONGRESS
2D SESSION

S. 1461

IN THE HOUSE OF REPRESENTATIVES

MAY 4, 1970
Referred to the Committee on the Judiciary

AN ACT

To amend section 3006A of title 18, United States Code, relating to representation of defendants who are financially unable to obtain an adequate defense in criminal cases in the courts of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. That (a) subsections (a)-(f) of section 3006A of title 18, United States Code, are amended to read as follows:

"(a) CHOICE OF PLAN.—Each United States district court, with the approval of the judicial council of the circuit, shall place in operation throughout the district a plan for furnishing representation for any person financially unable

to obtain adequate representation (1) who is charged with a felony or misdemeanor (other than a petty offense as defined in section 1 of this title) or with a violation of probation, (2) who is under arrest, (3) who is subject to revocation of parole, in custody as a material witness, or seeking collateral relief, as provided in subsection (g), or, (4) for whom the Sixth Amendment to the Constitution or any Federal law requires the appointment of counsel. Representation under each plan shall include counsel and investigative, expert, and other services necessary for an adequate defense. Each plan shall include a provision for private attorneys. The plan may include, in addition to a provision for private attorneys in a substantial proportion of cases, either of the following or both:

(1) attorneys furnished by a bar association or a legal aid agency; or

(2) attorneys furnished by a defender organization established in accordance with the provisions of subsection (h).

Prior to approving the plan for a district, the judicial council of the circuit shall supplement the plan with provisions for representation on appeal. The district court may modify the plan at any time with the approval of the judicial council of the circuit. It shall modify the plan when directed by the judicial council of the circuit. The district court shall notify

the Administrative Office of the United States Courts of any modification of its plan.

"(b) APPOINTMENT OF COUNSEL.—Counsel furnishing representation under the plan shall be selected from a panel of attorneys designated or approved by the court, or from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the plan. In every criminal case in which the defendant is charged with a felony or a misdemeanor (other than a petty offense as defined in section 1 of this title) or with a violation of probation and appears without counsel, the United States magistrate or the court shall advise the defendant that he has the right to be represented by counsel and that counsel will be appointed to represent him if he is financially unable to obtain counsel. Unless the defendant waives representation by counsel, the United States magistrate or the court, if satisfied after appropriate inquiry that the defendant is financially unable to obtain counsel, shall appoint counsel to represent him. Such appointment may be made retroactive to include any representation furnished pursuant to the plan prior to appointment. The United States magistrate or the court shall appoint separate counsel for defendants having interests that cannot properly be represented by the same counsel, or when other good cause is shown.

"(c) DURATION AND SUBSTITUTION OF APPOINT-

MENTS.—A person for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before the United States magistrate or the court through appeal, including ancillary matters appropriate to the proceedings. If at any time after the appointment of counsel the United States magistrate or the court finds that the person is financially able to obtain counsel or to make partial payment for the representation, it may terminate the appointment of counsel or authorize payment as provided in subsection (f), as the interests of justice may dictate. If at any stage of the proceedings, including an appeal, the United States magistrate or the court finds that the person is financially unable to pay counsel whom he had retained, it may appoint counsel as provided in subsection (b) and authorize payment as provided in subsection (d), as the interests of justice may dictate. The United States magistrate or the court may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings.

"(d) PAYMENT FOR REPRESENTATION.—

"(1) HOURLY RATE.—Any attorney appointed pursuant to this section or a bar association or legal aid agency or community defender organization which has provided the appointed attorney shall, at the conclusion of the representation or any segment thereof, be compensated at a rate not exceeding $30 per hour for time reasonably expended and

shall be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the United States magistrate or the court.

"(2) MAXIMUM AMOUNTS.—For representation of a defendant before the United States magistrate or the district court, or both, the compensation to be paid to an attorney or to a bar association or legal aid agency or community defender organization shall not exceed $1,000 for each attorney in a case in which one or more felonies are charged, and $400 for each attorney in a case in which only misdemeanors are charged. For representation of a defendant in an appellate court, the compensation to be paid to an attorney or to a bar association or legal aid agency or community defender organization shall not exceed $1,000 for each attorney in each court. For representation in connection with a post-trial motion made after the entry of judgment or in a probation revocation proceeding or for representation provided under subsection (g) the compensation shall not exceed $250 for each attorney in each proceeding in each court.

"(3) WAIVING MAXIMUM AMOUNTS.—Payment in excess of any maximum amount provided in paragraph (2) of this subsection may be made for extended or complex representation whenever the court in which the representa-

tion was rendered, or the United States magistrate if the representation was furnished exclusively before him, certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the chief judge of the circuit.

"(4) FILING CLAIMS.—A separate claim for compensation and reimbursement shall be made to the district court for representation before the United States magistrate and the court, and to each appellate court before which the attorney represented the defendant. Each claim shall be supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the United States magistrate and the court, and the compensation and reimbursement applied for or received in the same case from any other source. The court shall fix the compensation and reimbursement to be paid to the attorney or to the bar association or legal aid agency or community defender organization which provided the appointed attorney. In cases where representation is furnished exclusively before a United States magistrate, the claim shall be submitted to him and he shall fix the compensation and reimbursement to be paid. In cases where representation is furnished other than before the United States magistrate, the district court, or an appellate court, claims shall be submitted to the district court which shall fix the compensation and reimbursement to be paid.

"(5) NEW TRIALS.—For purposes of compensation and other payments authorized by this section, an order by a court granting a new trial shall be deemed to initiate a new case.

"(6) PROCEEDINGS BEFORE APPELLATE COURTS.—If a person for whom counsel is appointed under this section appeals to an appellate court or petitions for a writ of certiorari, he may do so without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915(a) of title 28.

"(e) SERVICES OTHER THAN COUNSEL.—

"(1) UPON REQUEST.—Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request them in an ex parte application. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the person is financially unable to obtain them, the court, or the United States magistrate if the services are required in connection with a matter over which he has jurisdiction, shall authorize counsel to obtain the services.

"(2) WITHOUT PRIOR REQUEST.—Counsel appointed under this section may obtain, subject to later review, investigative, expert, or other services without prior authorization if necessary for an adequate defense. The total cost of services obtained without prior authorization may not exceed $150 and expenses reasonably incurred.

"(3) MAXIMUM AMOUNTS.—Compensation to be paid to a person for services rendered by him to a person under this subsection, or to be paid to an organization for services rendered by an employee thereof, shall not exceed $300, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the court, or by the United States magistrate if the services were rendered in connection with a case disposed of entirely before him, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the chief judge of the circuit.

"(f) RECEIPT OF OTHER PAYMENTS.—Whenever the United States magistrate or the court finds that funds are available for payment from or on behalf of a person furnished representation, it may authorize or direct that such funds be paid to the appointed attorney, to the bar association or legal aid agency or community defender organization which provided the appointed attorney, to any person or organization authorized pursuant to subsection (e) to render investigative, expert, or other services, or to the court for deposit in the Treasury as a reimbursement to the appropriation, current at the time of payment, to carry out the provisions of this section. Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for representing a defendant."

(b) Subsections (g), (h), and (i) of such section are redesignated as subsections (i), (j), and (k), respectively, and the following new subsections (g) and (h) are inserted before subsection (i) as redesignated by this subsection:

"(g) DISCRETIONARY APPOINTMENTS.—Any person subject to revocation of parole, in custody as a material witness, or seeking relief under section 2241, 2254, or 2255 of title 28 or section 4245 of title 18 may be furnished representation pursuant to the plan whenever the United States magistrate or the court determines that the interests of justice so require and such person is financially unable to obtain representation. Payment for such representation may be as provided in subsections (d) and (e).

"(h) DEFENDER ORGANIZATION.—

"(1) QUALIFICATIONS.—A district or a part of a district in which at least two hundred persons annually require the appointment of counsel may establish a defender organization as provided for either under subparagraphs (A) or (B) of paragraph (2) of this subsection or both. Two adjacent districts or parts of districts may aggregate the number of persons required to be represented to establish eligibility for a defender organization to serve both areas. In the event that adjacent districts or parts of districts are located in different circuits, the plan for furnishing representation shall be approved by the judicial council of each circuit.

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"(2) TYPES OF DEFENDER ORGANIZATIONS.—

"(A) FEDERAL PUBLIC DEFENDER ORGANIZATION.—A Federal Public Defender Organization shall consist of one or more full-time salaried attorneys. The organization shall be supervised by a Federal Public Defender appointed by the judicial council of the circuit, without regard to the provisions of title 5 governing appointments in the competitive service, after considering recommendations from the district court or courts to be served. The Federal Public Defender shall be appointed for a term of four years, unless sooner removed by the judicial council of the circuit for incompetency, misconduct in office, or neglect of duty. The compensation of the Federal Public Defender shall be fixed by the judicial council of the circuit at a rate not to exceed the compensation received by the United States attorney for the district where representation is furnished or, if two districts or parts of districts are involved, the compensation of the higher paid United States attorney of the districts. The Federal Public Defender may appoint, without regard to the provisions of title 5 governing appointments in the competitive service, such full-time attorneys and other personnel as may be necessary. Compensation paid to such attorneys and other personnel of the organization shall be fixed by the Federal Public Defender at a rate not to exceed that paid to attorneys and other personnel of similar qualifications and experience in the office of the United States

attorney in the district where representation is furnished or, if two district or parts of districts are involved, the higher compensation paid to persons of similar qualifications and experience in the districts. Each organization shall submit to the Director of the Administrative Office of the United States Courts, at the time and in the form prescribed by him, reports of its activities and financial position and its proposed budget. The Director of the Administrative Office shall submit to the President a budget for each organization for each fiscal year and shall out of the appropriations therefor make payments to and on behalf of each organization. Payments under this subparagraph to an organization shall be in lieu of payments under subsection (d) or (e).

"(B) COMMUNITY DEFENDER ORGANIZATION.—A Community Defender Organization shall be a nonprofit defense counsel service established and administered by any group authorized by the plan to provide representation. The organization shall be eligible to furnish attorneys and receive payments under this section if its bylaws are set forth in the plan of the district or districts in which it will serve. Each organization shall submit to the Judicial Conference of the United States an annual report setting forth its activities and financial position and the anticipated caseload and expenses for the coming year. Upon application an organization may,

to the extent approved by the Judicial Conference of the United States:

"(i) receive an initial grant for expenses necessary to establish the organization; and

"(ii) in lieu of payments under subsection (d) or (e), receive periodic sustaining grants to provide representation and other expenses pursuant to this section."

SEC. 2. A United States commissioner for a district may exercise any power, function, or duty authorized to be performed by a United States magistrate under the amendments made by the first section of this Act if such commissioner had authority to perform such power, function, or duty prior to the enactment of such amendments.

SEC. 3. The provisions of this Act shall be applicable in the District of Columbia. The plan for the District of Columbia shall be approved jointly by the District of Columbia Court of Appeals, and the Judicial Council of the District of Columbia Circuit.

Passed the Senate May 1, 1970.

Attest: FRANCIS R. VALEO,

Secretary.

91ST CONGRESS
1ST SESSION

H. R. 9856

IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 1969

Mr. MCCULLOCH (for himself, Mr. GERALD R. FORD, Mr. POFF, Mr. CAHILL, Mr. MACGREGOR, Mr. MCCLORY, Mr. SMITH of New York, Mr. SANDMAN, Mr. RAILSBACK, Mr. BIESTER, Mr. DENNIS, Mr. BETTS, Mr. CLANCY, Mr. MINSHALL, and Mr. TAFT) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend section 3006A of title 18, United States Code, relating to representation of defendants who are financially unable to obtain an adequate defense in criminal cases in the courts of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subsections (a)-(f) of section 3006A of title 18, United States Code, are amended to read as follows:

"(a) CHOICE OF PLAN.—Each United States district court, with the approval of the judicial council of the circuit, shall place in operation throughout the district a plan for furnishing representation for (1) any defendant financially unable to obtain an adequate defense who is charged

with a felony or misdemeanor (other than a petty offense as defined in section 1 of this title) or with a violation of probation, (2) any person under arrest, and (3) any material witness in custody, or any person seeking collateral relief, as provided in subsection (g). Representation under each plan shall include counsel and investigative, expert, and other services necessary for an adequate defense. Each plan shall include a provision for private attorneys. The plan may include, in addition to a provision for private attorneys in a substantial number of cases, either of the following or both:

(1) attorneys furnished by a bar association or a legal agency; or

(2) attorneys furnished by a defender organization established in accordance with the provisions of subsection (h).

Prior to approving the plan for a district, the judicial council of the circuit shall supplement the plan with provisions for representation on appeal. The district court may modify the plan at any time with the approval of the judicial council of the circuit. It shall modify the plan when directed by the judicial council of the circuit. The district court shall notify the Administrative Office of the United States Courts of any modification of its plan.

"(b) APPOINTMENT OF COUNSEL.—In every criminal

case in which the defendant is charged with a felony or a misdemeanor (other than a petty offense as defined in section 1 of this title), or with a violation of probation and appears without counsel, the United States magistrate or the court shall advise the defendant that he has the right to be represented by counsel and that counsel will be appointed to represent him if he is financially unable to obtain counsel. Unless the defendant waives representation by counsel, the United States magistrate or the court, if satisfied after appropriate inquiry that the defendant is financially unable to obtain counsel, shall appoint counsel to represent him. Such appointment may be made retroactive to include any representation furnished pursuant to the plan prior to appointment. The United States magistrate or the court shall appoint separate counsel for defendants having interests that cannot properly be represented by the same counsel, or when other good cause is shown. Counsel appointed by the United States magistrate or the court shall be selected from a panel of attorneys designated or approved by the court.

"(c) DURATION AND SUBSTITUTION OF APPOINTMENTS.—A defendant for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before the United States magistrate or the court through appeal, including ancillary matters appropriate to the proceedings. If at any time after the appointment of counsel

the United States magistrate or the court finds that the defendant is financially able to obtain counsel or to make partial payment for the representation, it may terminate the appointment of counsel or authorize payment as provided in subsection (f), as the interests of justice may dictate. If at any stage of the proceedings, including an appeal, the United States magistrate or the court finds that the defendant is financially unable to pay counsel whom he had retained, it may appoint counsel as provided in subsection (b) and authorize payment as provided in subsection (d), as the interests of justice may dictate. The United States magistrate or the court may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings.

"(d) PAYMENT FOR REPRESENTATION.—

"(1) HOURLY RATE.—Any attorney appointed pursuant to this section or a bar association or legal aid agency which has provided the appointed attorney shall, at the conclusion of the representation or any segment thereof, be compensated at a rate not exceeding $20 per hour for time reasonably expended and shall be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the United States magistrate or the court.

"(2) MAXIMUM AMOUNTS.—For representation of a defendant before the United States magistrate or the district court, or both, the compensation to be paid to an attorney or

to a bar association or legal aid agency shall not exceed $1,000 for each attorney in a case in which one or more felonies are charged, and $400 for each attorney in a case in which only misdemeanors are charged. For representation of a defendant in an appellate court, the compensation to be paid to an attorney or to a bar association or legal aid agency shall not exceed $1,000 for each attorney in each court. For representation in connection with a post-trial motion made after the entry of judgment or in a probation revocation proceeding or for representation provided under subsection (g) the compensation shall not exceed $250 for each attorney in each court.

"(3) WAIVING MAXIMUM AMOUNTS.—Payment in excess of any maximum amount provided in paragraph (2) of this subsection may be made for extended or complex representation whenever the court in which the representation was rendered, or the United States magistrate if the representation was furnished exclusively before him, certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the chief judge of the circuit.

"(4) FILING CLAIMS.—A separate claim for compensation and reimbursement shall be made to the district court for representation before the United States magistrate and

the court, and to each appellate court before which the attorney represented the defendant. Each claim shall be supported by a written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the United States magistrate and the court, and the compensation and reimbursement applied for or received in the same case from any other source. The court shall fix the compensation and reimbursement to be paid to the attorney or to the bar association or legal aid agency which provided the appointed attorney. In cases where representation is furnished exclusively before a United States magistrate, the claim shall be submitted to him and he shall fix the compensation and reimbursement to be paid.

"(5) NEW TRIALS.—For purposes of compensation and other payments authorized by this section, an order by a court granting a new trial shall be deemed to initiate a new case.

"(6) PROCEEDINGS BEFORE APPELLATE COURTS.—If a defendant for whom counsel is appointed under this section appeals to an appellate court or petitions for a writ of certiorari, he may do so without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915 (a) of title 28.

"(e) SERVICES OTHER THAN COUNSEL.—

"(1) UPON REQUEST.—Counsel for a defendant who

is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request them in an ex parte application. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the defendant is financially unable to obtain them, the court, or the United States magistrate if the services are required in connection with a matter over which he has jurisdiction, may authorize counsel to obtain the services.

"(2) WITHOUT PRIOR REQUEST.—Counsel appointed under this section may obtain, subject to later review, investigative, expert, or other services without prior authorization. The total cost of services obtained without prior authorization may not exceed $150 and expenses reasonably incurred.

"(3) MAXIMUM AMOUNTS.—Compensation to be paid to a person for services rendered by him to a defendant under this subsection, or to be paid to an organization for services rendered by an employee thereof, shall not exceed $300, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the court, or by the Unitd States magistrate if the services were rendered in connection with a case disposed of entirely before him, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the chief judge of the circuit.

"(f) RECEIPT OF OTHER PAYMENTS.—Whenever the

United States magistrate or the court finds that funds are available for payment from or on behalf of a defendant, or other person for whom counsel may be appointed under subsection (g), it may authorize or direct that such funds be paid to the appointed attorney, to the bar association or legal aid agency which provided the appointed attorney, to any person or organization authorized pursuant to subsection (e) to render investigative, expert, or other services, or to the court for deposit in the Treasury as a reimbursement to the appropriation, current at the time of payment, to carry out the provisions of this section. Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for representing a defendant."

(b) Subsections (g), (h), and (i) of such section are redesignated as subsections (i), (j), and (k), respectively, and the following new subsections (g) and (h) are inserted before subsection (i) as redesignated by this subsection:

"(g) DISCRETIONARY APPOINTMENTS.—An attorney may be appointed to represent a material witness in custody or a person who has filed for relief under sections 2241, 2254, or 2255 of title 28, whenever the United States magistrate or the court determines that the interests of justice so require and that the witness or person is financially unable to obtain representation. An attorney appointed pursuant to

this subsection may be compensated as specified in subsection (d) and may obtain services under the provisions of subsection (e).

"(h) DEFENDER ORGANIZATION.—

"(1) QUALIFICATIONS.—A district or a part of a district in which at least two hundred persons annually require the appointment of counsel may establish a defender organization as provided for either under subparagraphs (A) or (B) of paragraph (2) of this subsection or both. Two adjacent districts or parts of districts within the same circuit may aggregate the number of persons required to be represented to establish eligibility for a defender organization to serve both areas.

"(2) TYPES OF DEFENDER ORGANIZATIONS.—

"(A) FEDERAL PUBLIC DEFENDER ORGANIZATION.—A Federal Public Defender Organization shall consist of one or more full-time salaried attorneys. The organization shall be supervised by a Federal Public Defender appointed by the judicial council of the circuit, without regard to the provisions of title 5 governing appointments in the competitive service, after considering recommendations from the district court or courts to be served. The Federal Public Defender shall be appointed for a term of four years, unless sooner removed by the judicial council of the circuit for incompetency,

misconduct in office, or neglect of duty. The compensation of the Federal Public Defender shall be fixed by the judicial council of the circuit at a rate not to exceed the compensation received by the United States attorney for the district where representation is furnished or, if two districts or parts of districts are involved, the compensation of the higher paid United States attorney of the district. The Federal Public Defender may appoint, without regard to the provisions of title 5 governing appointments in the competitive service, such full-time attorneys and other personnel as may be necessary. Compensation paid to such attorneys and other personnel of the organization shall be fixed by the Federal Public Defender at a rate not to exceed that paid to attorneys and other personnel of similar qualifications and experience in the office of the United States attorney in the district where representation is furnished or, if two districts or parts of districts are involved, the higher compensation paid to persons of similar qualifications and experience in the districts. Each organization shall submit to the Director of the Administrative Office of the United States Courts, at the time and in the form prescribed by him, reports of its activities and financial position and its proposed budget. The Director of the Administrative Office shall submit to the President a budget for each organization

for each fiscal year and shall out of the appropriations therefor make payments to and on behalf of each organization. Payments under this subparagraph to an organization shall be in lieu of payments under subsection (d) or (e).

"(B) COMMUNITY DEFENDER ORGANIZATION.—A Community Defender Organization shall be a nonprofit defense counsel service established and administered by the private bar. The organization shall be eligible to furnish attorneys and receive payments under this section if its bylaws are set forth in the plan of the district or districts in which it will serve. Each organization shall submit to the Judicial Conference of the United States an annual report setting forth its activities and financial position and the anticipated caseload and expenses for the coming year. Upon application an organization may, to the extent approved by the Judicial Conference of the United States, receive the following payments in lieu of payments under subsection (d) or (e):

"(i) an initial grant for expenses necessary to establish the organization; and

"(ii) periodic sustaining grants to provide representation and other expenses pursuant to this section."

91ST CONGRESS
1ST SESSION

H. R. 11450

IN THE HOUSE OF REPRESENTATIVES

MAY 20, 1969

Mr. EDWARDS of California introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend section 3006A of title 18, United States Code, relating to representation of defendants who are financially unable to obtain an adequate defense in criminal cases in the courts of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subsections (a)-(f) of section 3006A of title 18, United States Code, are amended to read as follows:

"(a) CHOICE OF PLAN.—Each United States district court, with the approval of the judicial council of the circuit, shall place in operation throughout the district a plan for furnishing representation for (1) any defendant financially unable to obtain an adequate defense who is charged

with a felony or misdemeanor (other than a petty offense as defined in section 1 of this title) or with a violation of probation, (2) any person under arrest, and (3) any material witness in custody, or any person seeking collateral relief, as provided in subsection (g). Representation under each plan shall include counsel and investigative, expert, and other services necessary for an adequate defense. Each plan shall include a provision for private attorneys. The plan may include, in addition to a provision for private attorneys in a substantial number of cases, either of the following or both:

(1) attorneys furnished by a bar association or a legal agency; or

(2) attorneys furnished by a defender organization established in accordance with the provisions of subsection (h).

Prior to approving the plan for a district, the judicial council of the circuit shall supplement the plan with provisions for representation on appeal. The district court may modify the plan at any time with the approval of the judicial council of the circuit. It shall modify the plan when directed by the judicial council of the circuit. The district court shall notify the Administrative Office of the United States Courts of any modification of its plan.

"(b) APPOINTMENT OF COUNSEL.—In every criminal

case in which the defendant is charged with a felony or a misdemcanor (other than a petty offense as defined in section 1 of this title), or with a violation of probation and appears without counsel, the United States magistrate or the court shall advise the defendant that he has the right to be represented by counsel and that counsel will be appointed to represent him if he is financially unable to obtain counsel. Unless the defendant waives representation by counsel, the United States magistrate or the court, if satisfied after appropriate inquiry that the defendant is financially unable to obtain counsel, shall appoint counsel to represent him. Such appointment may be made retroactive to include any representation furnished pursuant to the plan prior to appointment. The United States magistrate or the court shall appoint separate counsel for defendants having interests that cannot properly be represented by the same counsel, or when other good cause is shown. Counsel appointed by the United States magistrate or the court shall be selected from a panel of attorneys designated or approved by the court.

"(c) DURATION AND SUBSTITUTION OF APPOINTMENTS.—A defendant for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before the United States magistrate or the court through appeal, including ancillary matters appropriate to the proceedings. If at any time after the appointment of counsel

the United States magistrate or the court finds that the defendant is financially able to obtain counsel or to make partial payment for the representation, it may terminate the appointment of counsel or authorize payment as provided in subsection (f), as the interests of justice may dictate. If at any stage of the proceedings, including an appeal, the United States magistrate or the court finds that the defendant is financially unable to pay counsel whom he had retained, it may appoint counsel as provided in subsection (b) and authorize payment as provided in subsection (d), as the interests of justice may dictate. The United States magistrate or the court may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings.

"(d) PAYMENT FOR REPRESENTATION.—

"(1) HOURLY RATE.—Any attorney appointed pursuant to this section or a bar association or legal aid agency which has provided the appointed attorney shall, at the conclusion of the representation or any segment thereof, be compensated at a rate not exceeding $20 per hour for time reasonably expended and shall be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the United States magistrate or the court.

"(2) MAXIMUM AMOUNTS.—For representation of a defendant before the United States magistrate or the district court, or both, the compensation to be paid to an attorney or

to a bar association or legal aid agency shall not exceed $1,000 for each attorney in a case in which one or more felonies are charged, and $400 for each attorney in a case in which only misdemeanors are charged. For representation of a defendant in an appellate court, the compensation to be paid to an attorney or to a bar association or legal aid agency shall not exceed $1,000 for each attorney in each court. For representation in connection with a post-trial motion made after the entry of judgment or in a probation revocation proceeding or for representation provided under subsection (g) the compensation shall not exceed $250 for each attorney in each court.

"(3) WAIVING MAXIMUM AMOUNTS.—Payment in excess of any maximum amount provided in paragraph (2) of this subsection may be made for extended or complex representation whenever the court in which the representation was rendered, or the United States magistrate if the representation was furnished exclusively before him, certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the chief judge of the circuit.

"(4) FILING CLAIMS.—A separate claim for compensation and reimbursement shall be made to the district court for representation before the United States magistrate and

the court, and to each appellate court before which the attorney represented the defendant. Each claim shall be supported by a written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the United States magistrate and the court, and the compensation and reimbursement applied for or received in the same case from any other source. The court shall fix the compensation and reimbursement to be paid to the attorney or to the bar association or legal aid agency which provided the appointed attorney. In cases where representation is furnished exclusively before a United States magistrate, the claim shall be submitted to him and he shall fix the compensation and reimbursement to be paid.

"(5) NEW TRIALS.—For purposes of compensation and other payments authorized by this section, an order by a court granting a new trial shall be deemed to initiate a new case.

"(6) PROCEEDINGS BEFORE APPELLATE COURTS.—If a defendant for whom counsel is appointed under this section appeals to an appellate court or petitions for a writ of certiorari, he may do so without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915(a) of title 28.

"(e) SERVICES OTHER THAN COUNSEL.—

"(1) UPON REQUEST.—Counsel for a defendant who

is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request them in an ex parte application. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the defendant is financially unable to obtain them, the court, or the United States magistrate if the services are required in connection with a matter over which he has jurisdiction, may authorize counsel to obtain the services.

"(2) WITHOUT PRIOR REQUEST.—Counsel appointed under this section may obtain, subject to later review, investigative, expert, or other services without prior authorization. The total cost of services obtained without prior authorization may not exceed $150 and expenses reasonably incurred.

"(3) MAXIMUM AMOUNTS.—Compensation to be paid to a person for services rendered by him to a defendant under this subsection, or to be paid to an organization for services rendered by an employee thereof, shall not exceed $300, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the court, or by the Unitd States magistrate if the services were rendered in connection with a case disposed of entirely before him, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the chief judge of the circuit.

"(f) RECEIPT OF OTHER PAYMENTS.—Whenever the

United States magistrate or the court finds that funds are available for payment from or on behalf of a defendant, or other person for whom counsel may be appointed under subsection (g), it may authorize or direct that such funds be paid to the appointed attorney, to the bar association or legal aid agency which provided the appointed attorney, to any person or organization authorized pursuant to subsection (e) to render investigative, expert, or other services, or to the court for deposit in the Treasury as a reimbursement to the appropriation, current at the time of payment, to carry out the provisions of this section. Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for representing a defendant."

(b) Subsections (g), (h), and (i) of such section are redesignated as subsections (i), (j), and (k), respectively, and the following new subsections (g) and (h) are inserted before subsection (i) as redesignated by this subsection:

"(g) DISCRETIONARY APPOINTMENTS.—An attorney may be appointed to represent a material witness in custody or a person who has filed for relief under sections 2241, 2254, or 2255 of title 28, whenever the United States magistrate or the court determines that the interests of justice so require and that the witness or person is financially unable to obtain representation. An attorney appointed pursuant to

this subsection may be compensated as specified in subsection (d) and may obtain services under the provisions of subsection (e).

"(h) DEFENDER ORGANIZATION.—

"(1) QUALIFICATIONS.—A district or a part of a district in which at least two hundred persons annually require the appointment of counsel may establish a defender organization as provided for either under subparagraphs (A) or (B) of paragraph (2) of this subsection or both. Two adjacent districts or parts of districts within the same circuit may aggregate the number of persons required to be represented to establish eligibility for a defender organization to serve both areas.

"(2) TYPES OF DEFENDER ORGANIZATIONS.—

"(A) FEDERAL PUBLIC DEFENDER ORGANIZATION.—A Federal Public Defender Organization shall consist of one or more full-time salaried attorneys. The organization shall be supervised by a Federal Public Defender appointed by the judicial council of the circuit, without regard to the provisions of title 5 governing appointments in the competitive service, after considering recommendations from the district court or courts to be served. The Federal Public Defender shall be appointed for a term of four years, unless sooner removed by the judicial council of the circuit for incompetency,

misconduct in office, or neglect of duty. The compensation of the Federal Public Defender shall be fixed by the judicial council of the circuit at a rate not to exceed the compensation received by the United States attorney for the district where representation is furnished or, if two districts or parts of districts are involved, the compensation of the higher paid United States attorney of the district. The Federal Public Defender may appoint, without regard to the provisions of title 5 governing appointments in the competitive service, such full-time attorneys and other personnel as may be necessary. Compensation paid to such attorneys and other personnel of the organization shall be fixed by the Federal Public Defender at a rate not to exceed that paid to attorneys and other personnel of similar qualifications and experience in the office of the United States attorney in the district where representation is furnished or, if two districts or parts of districts are involved, the higher compensation paid to persons of similar qualifications and experience in the districts. Each organization shall submit to the Director of the Administrative Office of the United States Courts, at the time and in the form prescribed by him, reports of its activities and financial position and its proposed budget. The Director of the Administrative Office shall submit to the President a budget for each organization

for each fiscal year and shall out of the appropriations therefor make payments to and on behalf of each organization. Payments under this subparagraph to an organization shall be in lieu of payments under subsection (d) or (e).

"(B) COMMUNITY DEFENDER ORGANIZATION.—A Community Defender Organization shall be a nonprofit defense counsel service established and administered by the private bar. The organization shall be eligible to furnish attorneys and receive payments under this section if its bylaws are set forth in the plan of the district or districts in which it will serve. Each organization shall submit to the Judicial Conference of the United States an annual report setting forth its activities and financial position and the anticipated caseload and expenses for the coming year. Upon application an organization may, to the extent approved by the Judicial Conference of the United States, receive the following payments in lieu of payments under subsection (d) or (e):

"(i) an initial grant for expenses necessary to establish the organization; and

"(ii) periodic sustaining grants to provide representation and other expenses pursuant to this section."

91ST CONGRESS
1ST SESSION

H. R. 9687

IN THE HOUSE OF REPRESENTATIVES

MARCH 31, 1969

Mr. MINSHALL introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend section 3006A of title 18, United States Code, relating to representation of defendants who are financially unable to obtain an adequate defense in criminal cases in the courts of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subsections (a)-(f) of section 3006A of title 18, United States Code, are amended to read as follows:

"(a) CHOICE OF PLAN.—Each United States district court, with the approval of the judicial council of the circuit, shall place in operation throughout the district a plan for furnishing representation for (1) any defendant financially unable to obtain an adequate defense who is charged

with a felony or misdemeanor (other than a petty offense as defined in section 1 of this title) or with a violation of probation, (2) any person under arrest, and (3) any material witness in custody, or any person seeking collateral relief, as provided in subsection (g). Representation under each plan shall include counsel and investigative, expert, and other services necessary for an adequate defense. Each plan shall include a provision for private attorneys. The plan may include, in addition to a provision for private attorneys in a substantial number of cases, either of the following or both:

(1) attorneys furnished by a bar association or a legal agency; or

(2) attorneys furnished by a defender organization established in accordance with the provisions of subsection (h).

Prior to approving the plan for a district, the judicial council of the circuit shall supplement the plan with provisions for representation on appeal. The district court may modify the plan at any time with the approval of the judicial council of the circuit. It shall modify the plan when directed by the judicial council of the circuit. The district court shall notify the Administrative Office of the United States Courts of any modification of its plan.

"(b) APPOINTMENT OF COUNSEL.—In every criminal

case in which the defendant is charged with a felony or a misdemeanor (other than a petty offense as defined in section 1 of this title), or with a violation of probation and appears without counsel, the United States magistrate or the court shall advise the defendant that he has the right to be represented by counsel and that counsel will be appointed to represent him if he is financially unable to obtain counsel. Unless the defendant waives representation by counsel, the United States magistrate or the court, if satisfied after appropriate inquiry that the defendant is financially unable to obtain counsel, shall appoint counsel to represent him. Such appointment may be made retroactive to include any representation furnished pursuant to the plan prior to appointment. The United States magistrate or the court shall appoint separate counsel for defendants having interests that cannot properly be represented by the same counsel, or when other good cause is shown. Counsel appointed by the United States magistrate or the court shall be selected from a panel of attorneys designated or approved by the court.

"(c) DURATION AND SUBSTITUTION OF APPOINTMENTS.—A defendant for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before the United States magistrate or the court through appeal, including ancillary matters appropriate to the proceedings. If at any time after the appointment of counsel

the United States magistrate or the court finds that the defendant is financially able to obtain counsel or to make partial payment for the representation, it may terminate the appointment of counsel or authorize payment as provided in subsection (f), as the interests of justice may dictate. If at any stage of the proceedings, including an appeal, the United States magistrate or the court finds that the defendant is financially unable to pay counsel whom he had retained, it may appoint counsel as provided in subsection (b) and authorize payment as provided in subsection (d), as the interests of justice may dictate. The United States magistrate or the court may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings.

"(d) PAYMENT FOR REPRESENTATION.—

"(1) HOURLY RATE.—Any attorney appointed pursuant to this section or a bar association or legal aid agency which has provided the appointed attorney shall, at the conclusion of the representation or any segment thereof, be compensated at a rate not exceeding $20 per hour for time reasonably expended and shall be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the United States magistrate or the court.

"(2) MAXIMUM AMOUNTS.—For representation of a defendant before the United States magistrate or the district court, or both, the compensation to be paid to an attorney or

to a bar association or legal aid agency shall not exceed $1,000 for each attorney in a case in which one or more felonies are charged, and $400 for each attorney in a case in which only misdemeanors are charged. For representation of a defendant in an appellate court, the compensation to be paid to an attorney or to a bar association or legal aid agency shall not exceed $1,000 for each attorney in each court. For representation in connection with a post-trial motion made after the entry of judgment or in a probation revocation proceeding or for representation provided under subsection (g) the compensation shall not exceed $250 for each attorney in each court.

"(3) WAIVING MAXIMUM AMOUNTS.—Payment in excess of any maximum amount provided in paragraph (2) of this subsection may be made for extended or complex representation whenever the court in which the representation was rendered, or the United States magistrate if the representation was furnished exclusively before him, certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the chief judge of the circuit.

"(4) FILING CLAIMS.—A separate claim for compensation and reimbursement shall be made to the district court for representation before the United States magistrate and

the court, and to each appellate court before which the attorney represented the defendant. Each claim shall be supported by a written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the United States magistrate and the court, and the compensation and reimbursement applied for or received in the same case from any other source. The court shall fix the compensation and reimbursement to be paid to the attorney or to the bar association or legal aid agency which provided the appointed attorney. In cases where representation is furnished exclusively before a United States magistrate, the claim shall be submitted to him and he shall fix the compensation and reimbursement to be paid.

"(5) NEW TRIALS.—For purposes of compensation and other payments authorized by this section, an order by a court granting a new trial shall be deemed to initiate a new case.

"(6) PROCEEDINGS BEFORE APPELLATE COURTS.—If a defendant for whom counsel is appointed under this section appeals to an appellate court or petitions for a writ of certiorari, he may do so without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915(a) of title 28.

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"(1) UPON REQUEST.—Counsel for a defendant who

is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request them in an ex parte application. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the defendant is financially unable to obtain them, the court, or the United States magistrate if the services are required in connection with a matter over which he has jurisdiction, may authorize counsel to obtain the services.

"(2) WITHOUT PRIOR REQUEST.—Counsel appointed under this section may obtain, subject to later review, investigative, expert, or other services without prior authorization. The total cost of services obtained without prior authorization may not exceed $150 and expenses reasonably incurred.

"(3) MAXIMUM AMOUNTS.—Compensation to be paid to a person for services rendered by him to a defendant under this subsection, or to be paid to an organization for services rendered by an employee thereof, shall not exceed $300, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the court, or by the Unitd States magistrate if the services were rendered in connection with a case disposed of entirely before him, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the chief judge of the circuit.

"(f) RECEIPT OF OTHER PAYMENTS.—Whenever the

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United States magistrate or the court finds that funds are available for payment from or on behalf of a defendant, or other person for whom counsel may be appointed under subsection (g), it may authorize or direct that such funds be paid to the appointed attorney, to the bar association or legal aid agency which provided the appointed attorney, to any person or organization authorized pursuant to subsection (e) to render investigative, expert, or other services, or to the court for deposit in the Treasury as a reimbursement to the appropriation, current at the time of payment, to carry out the provisions of this section. Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for representing a defendant."

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this subsection may be compensated as specified in subsection (d) and may obtain services under the provisions of subsection (e).

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"(1) QUALIFICATIONS.—A district or a part of a district in which at least two hundred persons annually require the appointment of counsel may establish a defender organization as provided for either under subparagraphs (A) or (B) of paragraph (2) of this subsection or both. Two adjacent districts or parts of districts within the same circuit may aggregate the number of persons required to be represented to establish eligibility for a defender organization to serve both areas.

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misconduct in office, or neglect of duty. The compensation of the Federal Public Defender shall be fixed by the judicial council of the circuit at a rate not to exceed the compensation received by the United States attorney for the district where representation is furnished or, if two districts or parts of districts are involved, the compensation of the higher paid United States attorney of the district. The Federal Public Defender may appoint, without regard to the provisions of title 5 governing appointments in the competitive service, such full-time attorneys and other personnel as may be necessary. Compensation paid to such attorneys and other personnel of the organization shall be fixed by the Federal Public Defender at a rate not to exceed that paid to attorneys and other personnel of similar qualifications and experience in the office of the United States attorney in the district where representation is furnished or, if two districts or parts of districts are involved, the higher compensation paid to persons of similar qualifications and experience in the districts. Each organization shall submit to the Director of the Administrative Office of the United States Courts, at the time and in the form prescribed by him, reports of its activities and financial position and its proposed budget. The Director of the Administrative Office shall submit to the President a budget for each organization

for each fiscal year and shall out of the appropriations therefor make payments to and on behalf of each organization. Payments under this subparagraph to an organization shall be in lieu of payments under subsection (d) or (e).

"(B) COMMUNITY DEFENDER ORGANIZATION.—A Community Defender Organization shall be a nonprofit defense counsel service established and administered by the private bar. The organization shall be eligible to furnish attorneys and receive payments under this section if its bylaws are set forth in the plan of the district or districts in which it will serve. Each organization shall submit to the Judicial Conference of the United States an annual report setting forth its activities and financial position and the anticipated caseload and expenses for the coming year. Upon application an organization may, to the extent approved by the Judicial Conference of the United States, receive the following payments in lieu of payments under subsection (d) or (e):

"(i) an initial grant for expenses necessary to establish the organization; and

"(ii) periodic sustaining grants to provide representation and other expenses pursuant to this section."

After receiving Mr. McCulloch's statement, the subcommittee will hear testimony of Judge John S. Hastings, Chairman of the Judicial Conference Committee on the Implementation of the Criminal Justice Act, accompanied by Acting Director of the Administrative Office of the U.S. Courts, Mr. William E. Foley, on behalf of the Judicial Conference of the United States, and Hon. Donald E. Santarelli, Associate Deputy Attorney General for the Administration of Criminal Justice, on behalf of the Department of Justice.

I would like now to recognize my colleague Mr. Poff for an opening statement.

Mr. POFF. Thank you, Mr. Chairman.

In order that the record might reflect the procedural problem which faces the subcommittee, unexpectedly the House is scheduled to convene at 11 o'clock this morning. This rather constricts the time interim to something less than 50 minutes. In the interest of economy of time and out of deference to our host of most distinguished witnesses, I will not make the formal statement which I prepared, but rather Mr. Chairman, I will ask unanimous consent to insert it at this point in the record.

Mr. KASTENMEIER. Without objection, that statement will be accepted and made a part of the record.

(The statement referred to follows:)

STATEMENT OF HON. RICHARD H. POFF, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA, JUNE 18, 1970

The Criminal Justice Act of 1964 (18 U.S.C. 3006A) which became effective in August, 1965, grew out of a study conducted by the Attorney General's Committee on Poverty and the Administration of Federal Criminal Justice. The legislation recommended by this special committee and which originally passed the Senate in 1964, included a public defender system. The House version of the bill omitted this provision and the Conference Committee recommended passage of a bill without the public defender option (H. Rept. 1709). However, the Conferees also recommended that the Department of Justice revive its research and study further the need for a federal public defender.

To give effect to this request of the 88th Congress, the Department of Justice and the Judicial Conference of the United States in 1967 commissioned Professor Dallin H. Oaks, of the University of Chicago Law School, to undertake a review of the operation of Criminal Justice Act with particular attention to the need for Federal public defenders. This study, entitled "The Criminal Justice Act in the Federal District Courts" was commenced in the summer of 1967 and completed in January, 1968.

Passage of the Criminal Justice Act of 1964 recognized a right fundamental to our system of criminal justice, that is, the right to be provided counsel. This right is desirable in criminal cases both from the viewpoint of the accused and of society. This right was recognized in 1932 by the U.S. Supreme Court as part of the due process of law which every state owes to its citizens (*Powell* v. *Alabama*, 287, U.S. 45). The Court first defined the dimensions of this constitutional right for the federal government in *Johnson* v. *Zerbst*, 304 U.S. 458 (1938) and most recently for the states in *Gideon* v. *Wainwright*, 372 U.S. 335 (1963).

The law does not yet hold nor does the Criminal Justice Act intend that a particular lawyer representing one side will be as professionally equal as the one representing the other side. No law could make such a guarantee. However, what is more important and what is intended by the Criminal Justice Act of 1964 is that our system for providing representation and facilities for the defense be as good as the system which society provides for the prosecution.

The maximum hourly compensation paid assigned counsel under the present Act is $10.00 per hour for time spent on the case out of court and $15.00 per hour for time spent in court. In 1963, the Allen Committee suggested that $15.00 per hour was "the lowest statutory limit consistent with the objectives of reasonable compensation for the assigned lawyer and adequate representation for his client." Professor Oaks concluded that "it simply is not possible to pay experienced

criminal lawyers a decent salary, and support an office on the $10.00 and $15.00 per hour Criminal Justice Act fee scale." Mr. McCulloch's bill, which I co-sponsored along with a number of other Republicans, would raise the maximum hourly compensation to $20.00 per hour and the Senate-passed bill, S. 1461, would increase it to $30.00 per hour.

H. R. 9856, and the Senate-passed bill would expand the coverage of the 1964 Act to cover criminal procedure from the arrest stage to appeals, postconviction proceedings and ancillary proceedings relating to the criminal trial. Thereby, the legislation updates the Act and makes it coextensive with the Sixth Amendment's right to counsel as it is now interpreted.

A basic change in the present law is contained in subsection (h) of this bill. This new addition to the Criminal Justice Act of 1964 would authorize the creation of public defender organizations. This provision would permit a district or part of a district in which 200 or more defendants are required to be represented annually by appointed counsel to create one of two types of defender organizations; Federal Public Defender or a Community Defender Organization. The judicial council would then appoint one or more full-time attorneys for a four-year term and salaries paid to the defenders would be comparable to those paid the U.S. attorney's office in the district. Fiscal supervision of such public defenders would be in the hands of the Administrative Office of the U.S. Courts.

The purpose of the Criminal Justice Act of 1964 is to secure an adequate defense for impoverished defendants. Since its effective date, August 20, 1965, more than 100,000 defendants have received assistance from its provisions. Annually, there are about 20,000 defendants represented by counsel appointed under the Act with a total cost of approximately $3.5 million per year. The average cost per defendant is less than $100.00. The addition of the public defender organizations would certainly complement our present system by increasing its effectiveness from the standpoint of efficiency and the quality of representation.

A public defender, for example, would reduce the Criminal Justice Act administrative burden on courts, magistrates, clerks, and other court personnel. It would provide highly experienced defense counsel who would promote the efficiency of the federal criminal justice system. A public defender could render more complete and more comprehensive service because he would be available to assist a needy defendant and commence preparation of his case prior to his appearance before a U.S. Magistrate.

There are a few questions which need to be explored such as the level of compensation necessary to reimburse both private counsel and defender systems, the ability of a defender system to maintain a vigorous system without becoming routine, how much abuse, if any, has there been with attorneys filing excessive or frivolous motions in order to increase their compensation.

I am sure that these questions and others will be resolved and this subcommittee will move promptly in processing this important piece of legislation.

Mr. POFF. Then too, Mr. Chairman, recognizing because of the time problem it may be impossible to reach all of the witnesses and to ask all of the questions that ought to be asked of each, I think it might be well for me to indicate at this point some questions which, I hope can be answered by the witnesses. If they are unable to do so, I hope the chairman will permit them later to furnish the detailed responses for the record.

Mr. KASTENMEIER. I think that is a procedure we can certainly agree to.

Mr. POFF. Then, Mr. Chairman, because this subcommittee will be obliged to defend the bill on the floor, we can anticipate that a number of questions will be put to use. I would like to lay a proper predicate for one of the grounds that is undoubtedly likely to be accentuated in floor debate, and that is the cost comparison between the present system and the system this legislation envisions. And in that connection, I hope witnesses will be able to give us, as best they can, the costs of the present system since the enactment of the 1964 act, on an annual basis, and, as best they can, estimate the cost of the new system on an annual basis.

In estimating those future costs, I believe particular attention should be given to such questions as these: How much was spent in the last fiscal year under the present system for appointed counsel and for the same period how much for investigators? What is the present salary range of U.S. attorneys, Assistant U.S. attorneys, and secretarial help in the offices of the U.S. attorneys?

What is the plan under subsection (h) of H.R. 9856 with respect to facilities for public defenders, specifically, what additional library facilities may be required, what additional office space may be involved, what additional office equipment might have to be acquired?

Then, in order to understand the estimates for the future, I think you would want to indicate how many districts in the United States last year met the test of 200 or more cases and, in the same context, how many parts of districts adjacent to other parts of districts would meet the 200 test.

Now, aside from the cost estimates problem, I would also want to have witnesses address themselves to the language on page 9, beginning on line 5, which permits the appointment of a defender for a district or a part of a district and, in that regard, to inquire how many public defenders might be appointed for each district under that language and how many might be appointed for each circuit.

I have some question about the functional aspects of the language and its impact. I believe perhaps one thing is intended but another is likely to entail. I think, too, that we will be asked on the floor about the wisdom of authorizing the public defender, on his own initiative and subject to his own discretion and that of none other to appoint assistants in his office.

May I ask rhetorically if, in order to meet that potential criticism, it might be wise to consider making those appointments subject to the confirmation of the Judicial Council in the circuit?

Now, Mr. Chairman, I am through with my catalog at the moment, but doubtless other questions will come to mind as the witnesses testify.

Mr. KASTENMEIER. Does any other member desire to be recognized for opening remarks?

If not, the subcommittee is very pleased to receive the statement of our colleague from Ohio, Mr. McCulloch.

STATEMENT OF HON. WILLIAM M. McCULLOCH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. MCCULLOCH. Mr. Chairman, I am pleased that this subcommittee has begun its consideration of what I feel is very important and significant legislation. H.R. 9856, which I introduced on April 2, 1969, embodies the recommendations of a study conducted by Prof. Dallin H. Oaks, of the University of Chicago Law School. The Department of Justice and the Judicial Conference of the United States in 1967, commissioned Professor Oaks to undertake a review of the operation of the Criminal Justice Act of 1964, with particular attention to the need for a system of Federal public defenders.

A bill identical to H.R. 9856 was introduced in the other body by Senators Hruska and Ervin, and, with minor amendments passed that body by unanimous consent on April 30, 1970.

As members of this subcommittee are well aware, the Criminal Justice Act of 1964 grew out of a study and draft bill submitted by the Attorney General's Committee on Poverty and the Administration of Federal Criminal Justice chaired by Prof. Francis A. Allen. This act became effective August 20, 1965, and is a great tribute to American jurisprudence.

This act gave credence to three fundamental principles of justice:

1. That a person accused of a crime who was financially unable to secure representation could acquire the assistance of an attorney;
2. That the interest of justice and adequate representation requires that appointed counsel be compensated for their services, and
3. That in order to assure an adequate defense, eligible defendants should also be provided with necessary services other than counsel.

In my opinion, this act has done more for our system of criminal justice than any law passed in the last quarter of a century. "Equal justice under the law" is becoming a reality rather than a hope. It was Judge Learned Hand who said:

> If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice.

This law was enacted to provide adequate representation for the poor. However, it is our adversary system of justice, rather than benevolence or gratuity to the poor that requires professional spokesmen for both sides.

Under the present law, the maximum hourly compensation paid assigned counsel is $10 per hour for time spent on the case out of court and $15 per hour for time spent in court. My bill increases this to $20 with no distinction between time spent in court and out of court. The Senate passed bill increased the amount to $30 per hour with no distinction between time spent in or out of court.

At its midyear meeting in Atlanta, last February, the House of Delegates of the American Bar Association adopted a resolution urging the figure be increased to $35 per hour. The Judicial Conference of the United States, while approving a $20 fee for services of attorneys outside the courtroom, believed that a distinction should be recognized between services rendered by attorneys in court and out of the courtroom and recommended that a higher ceiling be provided in my bill for services in court.

As to which is the better approach, I wish to defer to this subcommittee's studied judgment and will support its recommendation in this instance. I trust that this subcommittee's action will be consistent with the basic theory of the act, that is, that the interest of justice and adequate representation requires that appointed counsel be fairly and reasonably compensated for their efforts.

A basic change in the present law is contained in subsection (h) of my bill. This new addition to the Criminal Justice Act of 1964, would authorize the creation, in busy Federal districts, of public defender organizations. This provision would permit, but not require, a district in which 200 or more defendants are required to be represented annually by appointed counsel to create one of two types of defender organizations; a Federal Public Defender or a Community Defender organization. The main difference between the two is that the Federal defender plan would be drawn up by the district court furnishing the representation with the approval of the judicial council of the circuit.

The plan for a community defender on the other hand, would be drafted and administered by the local bar. This plan would have to be approved by both the district court wherein services are rendered and the judicial council of the circuit.

It is important to note that these two plans are optional and their purpose is to supplement the appointment of private counsel that now takes place under the present law, thereby providing a "mixed" defender system. That is to say, that the use of private counsel is supplemented with and not replaced by an organizational defender plan. Exhaustive research and study indicate that it is essential to maintain the interest and participation of the local attorneys and, at the same time, provide a full-time defender organization that would augment resources and efforts of the assigned counsel system in heavily burdened jurisdictions.

This legislation has the support of the administration, American Bar Association, Judicial Conference of the United States, and the Department of Justice. I know that this distinguished subcommittee will act with its usual excellence in processing this legislation. I hope that your report to the full committee will be favorable and that this legislation will be enacted without delay. Thank you.

Mr. KASTENMEIER. The subcommittee will find this statement extremely helpful in its consideration of this important legislation.

The Chair will now call as a witness, the Honorable John S. Hastings, Senior Judge of the U.S. Court of Appeals, Seventh Circuit, which encompasses my district and that of the gentleman from Illinois, Mr. Mikva. You do represent a significant part of the Midwest. We do welcome Judge Hastings, who is accompanied by the Honorable William E. Foley, Acting Director of the Administrative Office of the U.S. Courts.

Gentlemen, will you come forward, please?

We greet you most warmly and we hope that you will be able to enlighten us on the nature of this bill, its desirability and its function.

STATEMENT OF HON. JOHN S. HASTINGS, SENIOR JUDGE, U.S. COURT OF APPEALS, SEVENTH CIRCUIT, AND CHAIRMAN, COMMITTEE ON IMPLEMENTATION OF THE CRIMINAL JUSTICE ACT, JUDICIAL CONFERENCE OF THE UNITED STATES, ACCOMPANIED BY HON. WILLIAM E. FOLEY, ACTING DIRECTOR, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Judge HASTINGS. Thank you, Mr. Chairman, and gentlemen of the committee.

It is my pleasure to be here and represent the Judicial Conference as well as the Judicial Conference Committee to implement the Criminal Justice Act of 1964.

It has been my pleasure to serve as chairman of that committee since it was first instituted and authorized by the Conference in 1964. In fact, we even started an ad hoc committee in anticipation of the enactment of the original legislation, and it was when the bill was passed and signed by the President in 1964 that the committee was appointed and has served ever since. There has been some change in personnel of the committee, but unfortunately they have been stuck with me ever since.

The bill S. 1461, insofar as it expands the coverage of the act, complies in almost every respect with the recommendations of our committee to the Judicial Conference and as approved by the Judicial Conference. I speak now of the expanded coverage of the act, not the additional services to which Mr. Poff addressed his questions.

I should say parenthetically that the act has never been amended since it was originally passed.

Generally speaking, the expanded coverage arises out of our experience with the use of the act now for something approaching 5 years. It was enacted almost 6 years ago. These expanded coverages meet the suggestions of the rather exhaustive survey that we had made by Prof. Dallin Oaks at the University of Chicago School of Law. I am sure you all have in your files a copy of Professor Oaks' report, which has been printed as a congressional document. They meet with his suggestions. They meet primarily with the suggestions of the judges who have worked with this act.

It all began on pretty much an experimental basis because the act was purposely loosely drawn and had functioned really as was implemented, and that, of course, has been the responsibility of our committee.

With the chairman's permission, I have prepared a written statement of my testimony, and I ask leave that it be filed and I think you all now have a copy of it.

Mr. KASTENMEIER. Without objection, Judge Hastings' statement will be received, together with Mr. Foley's statement.

Mr. FOLEY. That is the Administrative Office summary of the annual expenses since the act became operable.

Mr. KASTENMEIER. These two documents will be made a part of the record.

(The two statements referred to follow:)

STATEMENT OF JUDGE JOHN S. HASTINGS, JUNE 18, 1970

Mr. Chairman, I am John S. Hastings, a judge in senior status of the United States Court of Appeals for the Seventh Circuit. I appear before your Committee today in my capacity as Chairman of the Committee to Implement the Criminal Justice Act of the Judicial Conference of the United States, a post I have held since the Committee was formed in 1964.

S. 1461 in large measure carries out recommendations which have heretofore been made by the Judicial Conference of the United States. Before commenting on specific provisions contained in the bill, I should like to submit for the consideration of your Subcommittee certain factors which led to the recommendations for amendment of the Criminal Justice Act.

You will recall, Mr. Chairman, that at the time of the passage of the Criminal Justice Act, the Conference Committee of the Senate and the House which agreed upon the final form of the bill directed the Department of Justice, in collaboration with the Judicial Conference of the United States, to report back to the Congress on the merits of an assigned-counsel system as compared with a public defender system. In the succeeding years, the Committee of which I am the Chairman and the representatives of the Department of Justice have met on several occasions in furtherance of the Congressional mandate. Together we obtained the services of Professor Dallin Oaks of the University of Chicago School of Law to study the administration of the Criminal Justice Act. Professor Oaks undertook such a study, in depth, in five selected districts and prepared a report which was submitted to the Congress and ordered printed by the Congress. I am sure your Subcommittee has had the benefit of Professor Oaks' study. It was on the basis of the findings in the Oaks' report, as well as the continuing review which my Committee has given to the administration of the Act, which led to the series of recommendations for amendment which were approved by the Judicial Conference of the United States in September 1968 and then transmitted to the Congress.

One of the first problems which we faced in the operation of the Criminal Justice Act was the question of the applicability of the Act in revocation of probation proceedings. Because of conflicting decisions by district judges, we presented this question to the Comptroller General of the United States requesting to be advised whether vouchers for services rendered pursuant to representations in such proceedings could be paid. You will recall that the Criminal Justice Act applies, by its language, to criminal proceedings, other than petty offense cases, "at every stage of the proceedings from his (the defendant's) initial appearance before the United States commissioner or court through appeal." The Comptroller General on June 13, 1966 ruled that the "inherent differences between probation revocation proceedings and criminal trials militated against permitting Criminal Justice Act payments for the former." (45 Decisions of the Comptroller General 780). The next year the Supreme Court in the case of *Mempa* v. *Rhav*, 389 U.S. 128, upheld the right to counsel in probation proceedings. While the opinion is silent on the question of payment to counsel, nonetheless, that opinion did, in the view of the Judicial Conference, make more pressing the need to amend the Criminal Justice Act to extend its application to revocation of probation proceedings. S. 1461 clearly extends the coverage of the Act to revocation proceedings.

Several other incidents have come to the attention of my Committee in which representation of defendants under the Act in other post-conviction and ancillary matters, including habeas corpus and Section 2255 proceedings, would be in the best interests of the defendant. I may point out that Professor Oaks in his survey found overwhelming sentiment in favor of compensation to assigned attorneys in collateral attack proceedings. The Judicial Conference has taken the position that in situations where a full-scale evidentiary hearing is required by a federal judge and counsel is appointed to represent the defendant in such a hearing, some payment should be made to counsel within the discretion of the court. Subsection (g) of S. 1461 carries out this recommendation of the Conference.

You will note that this subsection (g) applies as well to any person subject to revocation of parole. This is in recognition of a decision of the Tenth Circuit Court of Appeals in the case of *Earnest* v. *Willingham* decided in 1969 (406 F. 2d 681), which requires counsel to be assigned if the parolee so requests in Parole Board proceedings. Admittedly, this introduces a complicating factor in the administration of the Criminal Justice Act but, if adopted, I am confident that in collaboration with the Department of Justice a system can be worked out for the provision of assigned counsel in what are essentially executive branch proceedings.

Subsection (a) of Section 1 of S. 1461 provides that the plan of each district court may expand the coverage of the Act to a person who is under arrest. This provision also carries out a recommendation of the Judicial Conference and is in recognition of the fact that under the present Act there is a gap between the point at which the defendant is now entitled to counsel under existing court decisions and the point at which counsel may receive a fee under the Act. The Conference has taken the position that if the attorney who furnishes representation to a defendant upon arrest and prior to his first appearance before the court or magistrate is subsequently appointed, he should be able to claim compensation for the services rendered upon arrest.

The present Act provides for compensation to counsel at a rate not exceeding $15.00 per hour for time expended in court or before a commissioner or magistrate and $10.00 per hour for time reasonably expended out of court. S. 1461 would increase this hourly rate to $30.00 per hour for time spent in court or out of court in preparation of a case. The Judicial Conference had recommended to the Congress an increase in hourly rates to $20.00 for in-court time and $15.00 for out-of-court time. While I believe that my Committee would defer to the Congress on the amount for which counsel should be compensated, the members of the Judicial Conference are strongly of the view that the historic and practical distinction between compensation for an attorney's time in court and his time spent in preparation should be maintained.

I note that the bill further carries out the recommendations of the Conference in increasing the total compensation for representation in a felony case from $500 to $1,000 and in a misdemeanor from $300 to $400. Such an increase in the maximum fee allowable under normal circumstances is certainly necessary with the increase in hourly rates. Our statistical information indicates that there is little likelihood of abuse in increasing this maximum. The average cost per case in the district courts in the first half of the current fiscal year, for example, was less than $100.

The Judicial Conference recommended an increase in the total which may be paid for representation in an appellate court to $750. It is noted that S. 1461

raises this ceiling to $1,000 except, of course, for representation in connection with post-trial motions or in revocation of probation proceedings where the maximum is $250.

S. 1461 changes the standard upon which maximum payments may be increased. The present statute provides the test that in extraordinary circumstances payment in excess of the limits stated may be made if the district court certifies that such payment is necessary to provide fair compensation for protracted representation. Professor Oaks has described this as the most litigated provision of the Act. In each instance, at the present, in which a judge of a district court certifies that a payment in excess is warranted under the present standard the chief judge of the circuit must make a finding in support, in modification or in denial of this excess payment. S. 1461 sets up a new standard providing for payment in excess of the maximum amount either in the district court or in the appellate court for extended or complex representation. Wherever the court or the United States magistrate, if the representation was furnished exclusively before him, certifies that the amount of the excess payment is necessary to provide fair compensation, the chief judge of the circuit must still approve the payment. I note also that this excess payment is permitted for the furnishing of services other than counsel in an area in which under the present statute the $300 limitation has often proved a hardship.

Another factor which should be called to your attention is the provision for the payment of costs of transcripts authorized by the magistrate or the court. This is in furtherance of a Conference recommendation that the costs of transcripts be included as a reimbursable expense on the part of assigned counsel. This makes for much better administration, particularly in situations where a transcript of a magistrate's hearing is desired for trial.

Section (d)(5), providing that an order granting a new trial shall be deemed to initiate a new case for purposes of compensation, is intended to clarify a situation that has been troublesome under the Act as it now stands. At present, the decision as to whether the same attorney shall be paid again for the second trial of the case rests in the discretion of the trial judge and in all cases has not worked fairly for assigned counsel.

Subsection (e) relating to services other than counsel has also been amended in furtherance of the recommendations of the Judicial Conference. It will permit the obtaining of investigative, expert or other services without prior authorization, if necessary for an adequate defense, up to the sum of $150, subject, of course, to later review. Often the exigencies of a situation require immediate action when it is not feasible or possible to obtain the prior consent of the court or the magistrate. This amendment is designed to alleviate hardships which have occurred and has in it the safeguards of subsequent review and the limitation on the total amount which can be expended without prior authorization.

When S. 1461 was the subject of hearings before the Committee on the Judiciary of the United States Senate, the Judicial Conference had not had an opportunity to study the provisions of subsection (h) providing for defender organizations. At its meeting in October 1969 the Conference considered these two alternative proposals for a public defender organization and a community defender organization and approved, in principle, the establishment of these two types of defender organizations.

The Conference did, however, take exception to certain of the provisions of subsection (h), particularly as they relate to the federal public defender organization. The Conference was of the view that these provisions as they now stand, are not administratively sound in that they do not provide for sufficient controls or lines of authority and responsibility. Further, they require separate budgets to be submitted for each defender organization in the country. The Conference is of the view that control over the budget of the federal public defender organization should be vested in the Judicial Conference without the necessity of submitting separate budgetary requests and justification for each public defender organization. The budget justification for the over-all organization will amply reflect separate expenditures of the member organizations but to require that there be a separate budget request and justification submitted for each would, I suggest, result in unnecessary paper work and duplication of effort and at the same time not provide the type of administrative control which should be exercised over the entire system.

Secondly, the Conference is of the view that the appointment of assistants and supporting personnel, as well as the requirements of space and supplies, should be in accordance with rules and regulations promulgated by the Judicial Conference. The proposed legislation, as now drawn, vests entire authority in the public defender for the district. Although the Act is apprentlay patterned on the

concept of the United States Attorney's Office, the United States Attorney, as your Committee is well aware does not have such comparable arbitrary authority without any central controls.

Thirdly, and in line with the foregoing, the Conference is of the view that all appointments of assistants to the public defender should be approved by the chief judges of the districts.

In short, as to the federal public defender organization, the recommendations of the Judicial Conference for amendment of the bill as it has passed the Senate are in the interest of sound administration and are deemed necessary to provide more responsible action.

Lastly, in regard to the community defender organization, the Conference recommends that the language of the first sentence be qualified. It now reads that a community defender organization shall be a non-profit defense counsel service established and administered "by any group authorized by the plan to provide representation." This broad language does not limit representations to groups of attorneys and can, by the very breadth of the language, lead to unnecessary conflict and potentially unfortunate consequences. It is believed that language should be adopted which will more nearly relate the organization to the aims and purposes of the Act.

With the exceptions which I have noted in regard to subsection (h) and with regard to the failure of the bill to provide for a distinction in the fees for services rendered in court and out of court the Conference supports S. 1461 and recommends its passage.

I am attaching, as of interest to the Committee, the last statistical report prepared by the Administrative Office of the United States Courts, which is a cumulative report showing expenditures and assignments under the Criminal Justice Act from the operative date of the statute, August 20, 1965, through the close of business, December 31, 1969.

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
Washington, D.C., January 28, 1970.

To the chairman and members of the judicial conference committee to implement the Criminal Justice Act.

The following is a report of activities relating to the Criminal Justice Act of 1964, through December 31, 1969:

EXPENDITURES

Payments under the Act from August 20, 1965, through December 31, 1969, aggregated $12,762,665. During fiscal year 1969, the sum of $4,027,671 was disbursed compared with $3,157,821 in 1968 and $2,298,705 in 1967. During the first half of fiscal year 1970, $2,549,040 was disbursed in the settlement of claims for services rendered on behalf of criminal defendants and appellants. Payments have increased due to a greater number of defendants and appellants being represented by counsel. Also, this increase is due, in part, to the more expeditious settlement of claims by the Administrative Office. The settlement of claims appears to have reached the optimum point. The following table reflects the increase in the number of defendants and appellants being represented under the Criminal Justice Act:

Fiscal year	Number of appellants	Number of defendants	Total
1966	648	15,684	[1] 16,332
1967	1,014	21,537	22,551
1968	1,321	25,363	26,684
1969	1,401	28,269	29,670
1970	522	14,031	[2] 14,553

[1] 9 months.
[2] 6 months.

The increase in the number of defendants being represented in large measure is attributable to appointments of counsel under the Criminal Justice Act by the Court of General Sessions for the District of Columbia. During fiscal year 1969, that Court appointed attorneys for 6,135 defendants compared with 4,740 in 1968 and 2,319 in 1967. Attached are statements showing in detail pay

representation in each of the Judicial Circuits and Districts. Also attached are charts and graphs reflecting the average cost per case, the nature of services rendered and time expended by attorneys in and out of Court.

STATUS OF APPROPRIATIONS

As of December 31, 1969, there were 20,727 outstanding claims, of which 10,760 are payable out of prior fiscal year appropriations. Funds in reserve for the settlement of these outstanding claims for fiscal years 1966 through 1969 hopefully will prove adequate. The appropriation for fiscal year 1960, however, based on the projected volume of appointments and average cost per case will be deficient to the extent of approximately $1,150,000. A request for a supplemental appropriation in this amount has been submitted. A statement of expenditures and reserves for fiscal years 1966 through 1970 is attached. Also attached is a statement reflecting the status of claims for representation by court-appointed counsel.

INVESTIGATIVE, EXPERT AND OTHER SERVICES

The District Courts during the first half of fiscal year 1970 have authorized investigative, expert and other services estimated to cost $50,672 of which, as of December 31, 1969, $15,810 was paid. A statement of the number of authorizations, the nature of services authorized and the estimated cost is attached. Expenditures for such services have increased substantially over the years. The following is a comparison of the cost of these services during fiscal years 1966 through 1969:

	Fiscal year 1966	Fiscal year 1967	Fiscal year 1968	Fiscal year 1969
Investigators	$8,610	$20,368	$25,906	$35,283
Psychiatrists	11,498	15,322	22,844	22,256
Interpreters	516	3,302	5,296	9,212
Other	5,663	7,547	11,251	11,465
Grand Totals	26,287	46,539	65,297	78,216

TRANSCRIPTS

Payments for transcripts also have increased over the years. In large measure, this was due to higher fees authorized by the Judicial Conference at the September 1966 session. Transcript costs during the past four years were as follows:

Fiscal year 1966	$189,379
Fiscal year 1967	264,864
Fiscal year 1968	439,190
Fiscal year 1969	495,594

Transcripts authorized during the first half of fiscal year 1970 were in the total amount of $218,358 of which $123,467 has been paid.

PROTRACTED REPRESENTATION

The Chief Judges of the Courts of Appeals have approved 144 claims for protracted representation payable out of the appropriation for fiscal year 1969. These claims, which aggregated $162,016 have averaged $1,125 per case. A statement showing the amounts approved by the Chief Judges of the Courts of Appeals is attached. Thus far, only four claims have been approved for payment out of the 1970 appropriation in the total amount of $5,744.

WILLIAM E. FOLEY.

Attachments.

STATEMENT OF EXPENDITURES—CRIMINAL JUSTICE ACT OF 1964

	Fiscal year 1966	Fiscal year 1967	Fiscal year 1968	Fiscal year 1969	Fiscal year 1970 (6 months)	Total
Aug. 20, 1965 to June 30, 1966	$729,428					$729,428
July 1, 1966 to June 30, 1967	1,268,837	$1,029,868				2,298,705
July 1, 1967 to June 30, 1968	204,681	1,547,172	$1,405,968			3,157,821
July 1, 1968 to June 30, 1969	64,122	351,413	1,751,935	$1,860,201		4,027,671
July 1, 1969 to Dec. 31, 1969	16,654	34,913	470,457	1,524,068	$502,948	[1] 2,549,040
TOTAL EXPENDITURES	2,283,722	2,963,366	3,628,360	3,384,269	502,948	12,762,665
Reserves for outstanding claims	26,278	36,634	371,640	615,731	[2] 2,647,052	3,697,335
Total estimated obligations	2,310,000	3,000,000	4,000,000	4,000,000	[2] 3,150,000	16,460,000

[1] 6 months.
[2] Supplemental appropriation request in the sum of $1,150,000 has been submitted.

STATUS OF CLAIMS FOR REPRESENTATION OF COURT APPOINTED COUNSEL

Fiscal year	Cases	Waivers	Terminations	Paid	Outstanding
1966 (9 months)	16,338	1,784	281	14,031	24,[2]
1967	22,551	2,232	498	19,010	81,[1]
1968	26,685	1,821	217	22,111	2,53[6]
1969	29,671	285	369	21,846	7,17[1]
1970 (6 months)	14,556	27	48	4,514	9,967
Totals	109,801	6,149	1,413	81,512	20,727

CUMULATIVE PAYMENTS OUT OF THE APPROPRIATION FEES AND EXPENSES OF COURT-APPOINTED COUNSEL FOR FISCAL YEAR 1970, AS OF DEC. 31, 1969

Circuit or district	Number of defendants represented by counsel	Number of cases in which attorneys paid	Attorneys		Investigative, expert, and other services	Reimbursements	Net disbursements	Average cost per case
			Compensation	Expenses				
COURTS OF APPEALS								
District of Columbia circuit	106		$.00	$.00			$.00	$.00
1st circuit	5							
2d circuit	33	3	1,380.49	922.86			2,303.35	767.78
3d circuit	22							
4th circuit	75	3	155.00	9.51			164.51	54.84
5th circuit	82	3	1,182.00	376.47			1,558.47	519.49
6th circuit	33							
7th circuit	28							
8th circuit	37							
9th circuit	77	51	17,114.25	2,792.73			19,906.98	390.33
10th circuit	24							
Total	522	60	19,831.74	4,101.57			23,933.31	398.89
DISTRICT COURTS (INCLUDING U.S. COMMISSIONER CASES)								
District of Columbia Circuit								
U.S. District Court	1,031	56	3,992.00	100.80	$2,688.00		6,780.80	121.09
Juvenile Court	544	137	9,032.25	180.90			9,213.15	67.25
District of Columbia Court of General Sessions	3,280	1,393	62,828.90	299.23			63,128.13	45.32
District of Columbia Court of Appeals	50	1	29.58	2.40			31.98	31.98
1st circuit								
Maine	13	8	487.50	4.46			491.96	61.50
Massachusetts	31	9	542.50	10.34	289.00		841.84	93.54
New Hampshire	15	2	87.50	8.85			96.35	48.18
Rhode Island	11	3	622.50	2.50			625.00	208.33
Puerto Rico	33	4	540.00				540.00	135.00
Second circuit								
Connecticut	59	4	430.00	27.25			457.25	114.31
New York, northern	39	7	515.50	4.00			519.50	74.21
New York, eastern	350	33	1,276.25		146.25		1,422.50	43.11
New York, southern	156	28	1,945.00	2.00	200.00		2,147.00	76.68
New York, western	31	3	566.25	5.99			572.24	190.75
Vermont	15	4	300.00	67.00			367.00	91.75
Third circuit								
Delaware	14							
New Jersey	99	11	1,737.50	85.22	79.85		1,902.57	172.96
Pennsylvania, eastern	129	7	465.00				465.00	66.43
Pennsylvania, middle	42	6	627.50	3.85			631.35	105.23
Pennsylvania, western	75	13	1,468.00	3.60			1,471.60	113.20
Virgin Islands	7	7	1,175.00				1,175.00	167.86

CUMULATIVE PAYMENTS OUT OF THE APPROPRIATION FEES AND EXPENSES OF COURT-APPOINTED COUNSEL FOR FISCAL YEAR 1970, AS OF DEC. 31, 1969—Continued

Circuit or district	Number of defendants represented by counsel	Number of cases in which attorneys paid	Attorneys		Investigative, expert, and other services	Reimbursements	Net disbursements	Average cost per case
			Compensation	Expenses				
DISTRICT COURTS (INCLUDING U.S. COMMISSIONER CASES)—Continued								
4th circuit								
Maryland	123	17	$1,974.25	$28.40	$80.00		$2,082.65	$122.51
North Carolina, eastern	67	50	4,959.00	189.27			5,148.27	102.97
North Carolina, middle	74	43	4,548.25	154.01			4,702.26	109.35
North Carolina, western	74	29	2,124.50	139.04			2,263.54	78.05
South Carolina	84	35	2,536.38	41.28			2,577.66	73.65
Virginia, eastern	201	56	5,772.55	244.76	100.00		6,117.31	109.24
Virginia, western	52	33	2,053.50	51.30			2,104.80	63.78
West Virginia, northern	21	21	1,495.00	27.04	350.00		1,872.04	89.14
West Virginia, southern	84	34	2,811.00	66.72	225.00		3,102.72	91.26
5th circuit								
Alabama, northern	76	38	2,850.00	109.60			2,959.60	77.88
Alabama, middle	81	12	611.00	8.41	25.00		644.41	53.70
Alabama, southern	25	9	940.60	73.36			1,013.96	112.66
Florida, northern	73	26	2,423.25	144.47	44.00		2,611.72	100.45
Florida, middle	134	27	1,905.95	20.22	1,013.32		2,939.49	108.87
Florida, southern	92	24	3,928.43	51.24	820.02		4,799.69	199.99
Georgia, northern	109	23	2,208.67	20.90	750.00		2,979.57	129.55
Georgia, middle	72	36	3,627.75	3.20			3,630.95	100.86
Georgia, southern	114	42	4,157.75	287.21	125.00		4,569.96	108.81
Louisiana, eastern	137	21	2,066.91	71.40			2,138.31	101.82
Louisiana, western	38	10	685.35	4.55			689.90	68.99
Mississippi, northern	46	16	2,099.50	393.95			2,493.45	155.84
Mississippi, southern	46	9	1,011.25	17.80			1,029.05	114.34
Texas, northern	196	43	4,634.67	76.79			4,711.46	109.57
Texas, eastern	33	19	1,373.50	9.89			1,383.39	72.81
Texas, southern	171	48	4,545.30	78.20			4,623.50	96.32
Texas, western	286	81	4,672.18	188.46	112.50		4,973.14	61.40
6th circuit								
Kentucky, Eastern	82	57	4,901.33	75.60			4,976.93	87.31
Kentucky, Western	96	57	1,862.35	10.13			1,872.48	32.85
Michigan, Eastern	171	26	2,300.75	20.05	360.00		2,680.80	103.11
Michigan, Western	16	5	339.05	12.35			351.40	70.28
Ohio, Northern	182	43	4,520.75	52.96			4,573.71	106.37
Ohio, Southern	72	25	3,490.25	101.86			3,592.11	143.68
Tennessee, Eastern	105	25	1,769.25	27.10	508.32		2,304.67	92.19
Tennessee, Middle	97	43	2,853.45	57.55			2,911.00	67.70
Tennessee, Western	99	27	1,919.25	12.38			1,931.63	71.54

7th circuit								
Illinois, Northern	196	32	1,769.25	3.71	285.00		2,057.96	64.31
Illinois, Eastern	45	9	674.50	23.67			698.17	77.57
Illinois, Southern	41	12	814.50	20			814.70	67.89
Indiana, Northern	54	18	1,636.75	35.15			1,671.90	92.88
Indiana, Southern	99	9	876.50	16.55			893.05	99.23
Wisconsin, Eastern	44	9	1,150.50	22.46			1,172.96	130.33
Wisconsin, Western	14	3	471.25	6.72			477.97	159.32
8th circuit								
Arkansas, eastern	41	27	1,960.50	66.11			2,026.61	75.06
Arkansas, western	35	10	886.25	69.91			956.16	95.62
Iowa, northern	13	4	797.50	3.02	250.00		1,050.52	262.63
Iowa, southern	31	6	973.25	3.50			976.75	162.79
Minnesota	35	13	933.75	10.50	5.00		949.25	73.02
Missouri, eastern	85	33	3,985.90	126.01			4,111.91	124.60
Missouri, western	145	53	5,174.15	45.59	333.20		5,552.94	104.77
Nebraska	75	17	2,463.25	101.24	235.95		2,800.44	164.73
North Dakota	50	9	1,246.75	2.65	200.00		1,449.40	161.04
South Dakota	37	14	943.75	92.41	134.00		1,170.16	83.58
9th circuit								
Alaska	32	4	290.00		211.83		501.83	125.46
Arizona	351	141	14,840.40	918.76	100.00		15,859.16	112.48
California, northern	243	21	2,565.00	26.15	455.75		3,046.90	145.09
California, eastern	121	116	11,658.79	697.25	1,205.85		13,561.89	116.91
California, central	906	583	40,064.60	2,041.04	358.50		42,464.14	72.84
California, southern	516	81	6,947.50	32.77	1,612.46		8,592.73	106.08
Hawaii	63	21	2,814.00	3.00			2,817.00	134.14
Idaho	47	23	1,716.13	156.47			1,872.60	81.42
Montana	125	64	6,413.80	570.44			6,984.24	109.13
Nevada	110	23	1,904.64	40			1,905.04	82.83
Oregon	119	10	711.50	11.45	200.00		922.95	92.30
Washington, eastern	38	15	719.50	4.10			723.60	48.24
Washington, western	117	27	2,687.00	40.11	197.50		2,924.61	108.32
Guam	21	3	145.00				145.00	48.33
10th circuit								
Colorado	117	26	2,985.90	121.49	886.75		3,994.14	153.62
Kansas	158	29	2,482.50	35.78			2,518.28	86.84
New Mexico	149	41	6,247.67	161.65	1,222.25		7,631.57	186.14
Oklahoma, northern	39	17	2,871.50	42.08			2,913.58	171.39
Oklahoma, eastern	15	4	365.00				365.00	91.25
Oklahoma, western	120	43	4,752.79	89.95			4,842.74	112.62
Utah	77	13	1,623.75	11.55			1,635.30	125.79
Wyoming	57	25	1,125.25	4.25		$125.00	1,004.50	40.18
Total	14,034	4,454	327,332.17	9,277.93	15,810.30	125.00	352,295.40	79.10
Subtotal	14,556	4,514	347,163.91	13,379.50	15,810.30	125.00	376,228.71	83.35
Transcripts					123,467.48		123,467.48	
Printing of records on appeal to Supreme Court					3,252.22		3,252.22	
Grand total					142,530.00		502,948.41	

CUMULATIVE PAYMENTS OUT OF THE APPROPRIATION FEES AND EXPENSES OF COURT-APPOINTED COUNSEL FOR FISCAL YEAR 1969, AS OF DEC. 31, 1969

Circuit or district	Number of defendants represented by counsel	Number of cases in which attorneys paid	Attorneys		Investigative, expert, and other services	Reimbursements	Net disbursements	Average cost per case
			Compensation	Expenses				
Supreme Court	3	3	$1,420.00	$422.62			$1,842.62	$614.21
COURTS OF APPEALS								
District of Columbia circuit	431	104	23,509.33	943.43			24,452.76	235.12
1st circuit	16	10	3,407.50	878.15			4,285.65	428.57
2d circuit	98	29	9,774.05	1,440.10			11,214.15	386.69
3d circuit	55	6	1,640.50	277.26			1,917.76	319.63
4th circuit	138	72	24,007.50	3,453.76			27,461.26	381.41
5th circuit	160	72	25,346.30	5,251.27			30,597.57	424.97
6th circuit	114	57	20,517.86	4,007.63			25,525.49	430.27
7th circuit	48	14	5,522.50	907.73			6,430.23	459.30
8th circuit	57	22	7,693.68	1,357.58			9,051.26	411.42
9th circuit	155	117	41,766.92	6,600.61			48,367.53	413.40
10th circuit	110	53	17,957.46	3,305.04			21,262.50	401.18
Total	1,385	559	182,563.60	28,845.18			211,408.78	378.19
DISTRICT COURTS (INCLUDING U.S. COMMISSIONER CASES)—Continued								
District of Columbia Circuit								
U.S. District court	2,379	1,118	251,605.34	5,861.04	$9,454.07	$120.00	266,800.45	238.64
Juvenile Court	1	1	140.00	2.00			142.00	142.00
District of Columbia Court of General Sessions	6,135	5,164	264,047.00	1,771.12	488.00	30.00	266,276.12	51.56
District of Columbia Court of Appeals	51	37	5,115.40	113.32			5,228.72	141.32
1st circuit								
Maine	30	28	3,673.75	202.14			3,875.89	138.42
Massachusetts	147	85	13,864.86	252.73	1,298.20		15,415.79	181.36
New Hampshire	17	12	2,308.33	183.52	210.00		2,701.85	225.15
Rhode Island	19	19	2,514.50	60.70			2,575.20	135.54
Puerto Rico	59	23	3,826.75	221.35	425.00		4,473.10	194.48
2d circuit								
Connecticut	128	85	15,435.75	552.77	797.09		16,785.61	197.48
New York, northern	57	39	8,578.90	483.99	635.00		9,697.89	248.66
New York, eastern	626	407	43,071.25	47.13	624.30		43,742.68	107.48
New York, southern	581	471	46,748.75	176.46	1,846.26		48,771.47	103.55
New York, western	78	39	6,627.31	52.02	35.00		6,714.33	172.16
Vermont	19	17	6,045.25	705.11	400.00		7,150.36	420.61

3d circuit								
Delaware	44	27	14,383.50	298.45	953.64	----------	15,635.59	579.10
New Jersey	234	129	24,403.52	1,092.30	2,384.90	----------	27,880.72	216.13
Pennsylvania eastern	288	149	19,341.72	270.95	1,301.55	----------	20,914.22	140.36
Pennsylvania, middle	101	65	9,048.00	656.24	305.50	----------	10,009.74	154.00
Pennsylvania, western	152	115	20,434.39	416.35	1,894.30	----------	22,745.04	197.78
Virgin Islands	32	32	4,198.50	3.00	----------	----------	4,201.50	131.30
4th circuit								
Maryland	286	177	37,571.57	675.47	862.30	555.50	38,553.84	217.82
North Carolina, eastern	149	127	16,651.39	1,262.70	430.10	1,149.83	17,194.36	135.39
North Carolina, middle	193	170	17,058.75	521.80	----------	----------	17,580.55	103.42
North Carolina, western	161	143	16,401.30	897.14	----------	----------	17,298.44	120.97
South Carolina	159	119	12,188.40	877.25	----------	----------	13,065.65	109.80
Virginia, eastern	379	330	51,647.06	2,912.13	946.20	1,501.85	54,003.54	163.65
Virginia, western	102	92	8,504.34	242.84	----------	----------	8,747.18	95.08
West Virginia, northern	58	38	6,080.50	169.83	----------	----------	6,250.33	164.48
West Virginia, southern	94	75	6,762.41	19.25	100.00	----------	6,881.66	81.76
5th circuit								
Alabama, northern	189	150	17,099.45	610.47	----------	----------	17,709.92	118.07
Alabama, middle	158	110	11,837.49	301.78	----------	----------	12,139.27	110.36
Alabama, southern	116	87	12,213.13	344.21	50.00	----------	12,607.34	144.91
Florida, northern	140	104	12,758.49	155.40	1,056.86	228.45	13,742.30	132.14
Florida, middle	353	247	39,630.03	1,133.94	2,045.21	487.50	42,321.68	171.34
Florida, southern	264	178	31,995.50	1,157.36	500.88	----------	33,653.74	189.07
Georgia, northern	224	171	26,229.58	400.87	815.57	----------	27,446.02	160.50
Georgia, middle	87	82	9,928.98	20.17	----------	217.50	9,731.65	118.68
Georgia, southern	191	180	19,301.75	1,274.62	----------	----------	20,576.37	114.31
Louisiana, eastern	208	149	23,974.25	629.37	----------	320.00	24,283.62	162.98
Louisiana, western	68	43	5,457.75	132.14	----------	----------	5,589.89	130.00
Mississippi, northern	106	84	21,665.35	4,194.52	1,000.55	----------	26,860.42	319.77
Mississippi, southern	51	35	4,142.85	114.41	----------	----------	4,257.26	121.64
Texas, northern	321	194	26,086.54	938.84	655.00	----------	27,680.38	142.68
Texas, eastern	65	49	3,905.50	140.81	----------	----------	4,046.31	82.58
Texas, southern	306	232	30,930.87	1,547.09	200.00	----------	32,677.96	140.85
Texas, western	579	390	45,249.20	2,238.25	891.45	75.00	48,303.90	123.86
6th circuit								
Kentucky, Eastern	135	119	11,306.05	310.09	50.00	----------	11,666.14	98.03
Kentucky, Western	202	176	8,323.62	90.53	65.00	----------	8,479.15	48.18
Michigan, Eastern	355	143	23,878.20	400.14	1,050.00	----------	25,328.34	177.12
Michigan, Western	45	31	4,301.00	271.31	----------	----------	4,572.31	147.49
Ohio, Northern	288	159	23,166.29	448.95	360.00	200.00	23,775.24	149.53
Ohio, Southern	244	213	26,125.30	489.96	----------	----------	26,615.26	124.95
Tennessee, Eastern	178	135	15,774.44	811.19	----------	----------	16,585.63	122.86
Tennessee, Middle	158	116	14,608.29	249.65	----------	----------	14,857.94	128.09
Tennessee, Western	186	154	17,017.25	337.62	----------	200.00	17,154.87	111.40
7th circuit								
Illinois, Northern	598	323	27,339.70	63.62	1,299.76	----------	28,703.08	88.86
Illinois, Eastern	62	41	15,956.25	2,974.61	320.80	----------	19,251.66	469.55
Illinois, Southern	71	64	9,785.70	220.26	255.00	----------	10,260.96	160.33
Indiana, Northern	86	67	11,056.65	283.94	693.35	505.00	11,528.94	172.07
Indiana, Southern	273	199	32,862.40	1,070.22	----------	----------	33,932.62	170.52
Wisconsin, Eastern	63	45	10,917.13	295.67	100.00	----------	11,312.80	251.40
Wisconsin, Western	30	15	2,816.55	198.57	514.72	----------	3,529.84	235.32

CUMULATIVE PAYMENTS OUT OF THE APPROPRIATION FEES AND EXPENSES OF COURT-APPOINTED COUNSEL FOR FISCAL YEAR 1970, AS OF DEC. 31, 1969—Continued

Circuit or district	Number of defendants represented by counsel	Number of cases in which attorneys paid	Attorneys		Investigative, expert, and other services	Reimbursements	Net disbursements	Average cost per case
			Compensation	Expenses				
DISTRICT COURTS (INCLUDING U.S. COMMISSIONER CASES)—Continued								
8th circuit								
Arkansas, eastern	101	91	$7,120.00	$88.56	$20.00		$7,228.56	$79.43
Arkansas, western	88	73	7,065.87	466.34			7,532.21	103.18
Iowa, northern	42	40	8,898.25	2,286.43	1,186.42		12,371.10	309.28
Iowa, southern	53	49	9,162.37	220.01	337.65	$10.00	9,710.03	198.16
Minnesota	124	83	15,292.61	569.57	749.57		16,611.75	200.14
Missouri, eastern	163	138	17,343.60	464.92			17,808.52	129.05
Missouri, western	279	208	23,590.64	451.40		10.00	24,032.04	115.54
Nebraska	121	75	12,060.49	893.09	225.00	131.40	13,047.18	173.96
North Dakota	76	68	9,483.30	1,325.42			10,808.72	158.95
South Dakota	102	88	15,421.38	2,395.85	974.13		18,791.36	213.54
9th circuit								
Alaska	76	52	9,328.98	79.01	482.82		9,890.81	190.21
Arizona	687	612	77,485.77	4,787.52	3,518.32	77.77	85,713.84	140.06
California, northern	566	414	82,223.90	1,060.24	1,644.62	7.82	84,920.94	205.12
California, eastern	287	279	28,320.16	1,197.84	2,250.09		31,768.09	113.86
California, central	2,158	2,018	192,124.95	9,782.78	4,713.34	365.90	206,258.97	102.21
California, southern	1,834	1,388	216,715.72	3,251.25	15,255.30	320.32	234,901.95	169.24
Hawaii	59	41	6,402.64	29.40	150.00		6,582.04	160.54
Idaho	95	76	5,997.58	370.16			6,367.74	83.79
Montana	227	190	14,304.70	901.75	2,385.60		17,592.05	92.59
Nevada	255	197	26,622.84	913.01	1,905.23		29,441.08	149.45
Oregon	156	125	15,206.42	666.47	900.00		16,772.89	134.18
Washington, eastern	49	45	5,313.50	88.86		100.00	5,302.36	117.83
Washington, western	177	141	24,299.39	214.26	225.00	973.80	23,764.85	168.55
Guam	22	11	1,194.75	2.00			1,196.75	108.80
10th circuit								
Colorado	251	201	26,655.70	1,119.57	1,295.30		29,070.57	144.63
Kansas	286	200	25,218.42	563.22	788.75		26,570.39	132.85
New Mexico	335	270	36,423.32	925.77	1,424.00	100.00	38,673.09	143.23
Oklahoma, northern	79	58	7,727.88	170.35			7,898.23	136.18
Oklahoma, eastern	52	45	5,835.50	184.86			6,020.36	133.79
Oklahoma, western	150	121	21,730.79	566.99	419.72		22,717.50	187.75
Utah	134	66	10,479.50	87.64			10,567.14	160.11
Wyoming	43	43	3,335.36	71.64	50.00		3,457.00	80.40
Total	28,286	21,287	2,504,306.30	81,047.86	78,216.42	7,687.64	2,655,886.74	124.77
Subtotal	29,671	21,846	2,686,869.90	109,893.04	78,216.42	7,687.64	2,867,295.52	131.25
Transcripts					495,593.88		495,593.88	
Printing of records on appeal to Supreme Court					21,379.76		21,379.76	
Grand total					595,190.06		3,384,269.16	

CUMULATIVE PAYMENTS OUT OF THE APPROPRIATION FEES AND EXPENSES OF COURT-APPOINTED COUNSEL FOR FISCAL YEAR 1968, AS OF DEC. 31, 1969

Circuit or district	Number of defendants represented by counsel	Number of cases in which attorneys paid	Attorneys		Investigative, expert, and other services	Reimbursements	Net disbursements	Average cost per case
			Compensation	Expenses				
Supreme Court	3	2	$1,000.00	$254.00			$1,254.00	$627.00
COURTS OF APPEALS								
District of Columbia circuit	476	229	64,542.32	3,002.47			67,544.79	294.96
1st circuit	12	8	3,562.50	313.70			3,876.20	484.53
2d circuit	116	63	24,834.63	3,586.42			28,421.05	451.13
3d circuit	25	20	8,626.00	1,570.40			10,196.40	509.82
4th circuit	84	64	22,218.75	4,105.18			26,323.93	411.31
5th circuit	162	127	47,902.17	8,388.88			56,291.05	443.24
6th circuit	91	52	19,953.85	2,768.90			22,722.75	436.98
7th circuit	59	31	13,318.00	2,867.12			16,185.12	522.10
8th circuit	67	44	15,794.12	2,848.21			18,642.33	423.69
9th circuit	127	106	40,886.80	5,561.83			46,448.63	438.19
10th circuit	99	79	27,569.17	4,587.59			32,156.76	407.05
Total	1,321	825	290,208.31	39,854.70			330,063.01	400.08
DISTRICT COURTS (INCLUDING U.S. COMMISSIONER CASES)								
District of Columbia circuit								
U.S. District Court	1,205	841	241,839.28	6,759.68	$4,662.40	$889.00	252,372.36	300.09
District of Columbia Court of General Sessions	4,740	4,080	203,163.19	2,139.35			205,302.54	50.32
District of Columbia Court of Appeals	46	40	3,261.57	114.71			3,376.28	84.41
1st circuit								
Maine	31	29	4,453.00	201.13			4,654.13	160.49
Massachusetts	139	112	20,483.15	733.87	1,621.75		22,838.77	203.92
New Hampshire	24	20	4,702.00	568.93	262.50		5,533.43	276.67
Rhode Island	38	26	5,142.71	24.20			5,166.91	198.73
Puerto Rico	52	24	3,720.00	174.11		453.60	3,440.51	143.35
2d circuit								
Connecticut	137	118	26,272.01	1,389.41	1,324.50		28,985.92	245.64
New York, northern	90	82	11,237.00	867.61	151.00		12,255.61	149.46
New York, eastern	454	382	30,105.85	106.06	1,125.00		31,336.91	82.03
New York, southern	623	541	65,842.04	129.68	2,116.75	281.25	67,807.22	125.34
New York, western	79	57	12,184.23	155.04	187.00		12,562.27	219.76
Vermont	21	16	6,276.00	1,066.72			7,342.72	458.92
3d circuit								
Delaware	45	33	5,699.75	273.66			5,973.41	181.01
New Jersey	251	169	34,663.87	1,301.40	1,508.70		37,473.97	221.74
Pennsylvania, eastern	360	277	32,061.48	334.90			32,396.38	116.95
Pennsylvania, middle	86	70	13,931.70	634.42	380.50		14,946.62	213.52
Pennsylvania, western	153	129	20,244.22	552.22	1,498.48		22,294.92	172.83
Virgin Islands	39	39	7,009.00	76.25			7,085.25	181.67

CUMULATIVE PAYMENTS OUT OF THE APPROPRIATION FEES AND EXPENSES OF COURT-APPOINTED COUNSEL FOR FISCAL YEAR 1970, AS OF DEC. 31, 1969—Continued

Circuit or district	Number of defendants represented by counsel	Number of cases in which attorneys paid	Attorneys		Investigative, expert, and other services	Reimbursements	Net disbursements	Average cost per case
			Compensation	Expenses				
DISTRICT COURTS (INCLUDING U.S. COMMISSIONER CASES)—Continued								
4th circuit								
Maryland	222	177	$34,301.03	$640.56	$135.00		$35,076.59	$198.17
North Carolina, eastern	194	178	17,308.50	846.89		$1,507.71	16,647.68	93.53
North Carolina, middle	226	203	23,059.50	654.00			23,713.50	116.82
North Carolina, western	184	165	19,940.33	1,226.24	430.00		21,596.57	130.89
South Carolina	300	262	24,956.10	1,542.37	500.00	42.50	26,955.97	102.89
Virginia, eastern	372	327	50,209.62	1,940.02	1,191.10	1,653.07	51,687.67	158.07
Virginia, western	124	119	14,572.75	745.68		383.00	14,935.43	125.51
West Virginia, northern	34	22	4,059.50	268.16			4,327.66	196.71
West Virginia, southern	108	94	9,811.42	114.61			9,926.03	105.60
5th circuit								
Alabama, northern	213	201	24,585.68	1,313.22		55.00	25,843.90	128.58
Alabama, middle	158	138	14,095.88	392.89			14,488.77	104.99
Alabama, southern	76	68	7,258.41	72.28	135.00		7,465.69	109.79
Florida, northern	140	112	9,608.75	204.73			9,813.48	87.62
Florida, middle	373	309	50,063.15	1,685.60	3,419.31	215.00	54,945.06	177.82
Florida, southern	248	204	48,565.71	2,100.66	576.54		51,242.91	251.19
Georgia, northern	265	239	26,615.27	376.34			26,991.61	112.94
Georgia, middle	143	134	18,420.92	346.55		199.60	18,567.87	138.57
Georgia, southern	184	169	17,949.50	1,631.57	40.00		19,621.07	116.10
Louisiana, eastern	196	124	14,740.81	275.95	486.00		15,502.76	125.02
Louisiana, western	61	49	6,620.21	392.06		115.00	6,897.27	140.76
Mississippi, northern	95	88	21,463.35	4,190.30			25,653.65	291.52
Mississippi, southern	72	40	5,906.07	161.10			6,067.17	151.68
Texas, northern	343	251	35,562.07	742.93	256.00		36,561.00	145.66
Texas, eastern	61	46	4,516.25	142.07			4,658.32	101.27
Texas, southern	264	207	26,941.22	456.11	99.75		27,497.08	132.84
Texas, western	507	365	77,134.19	9,460.04	1,778.60	115.00	88,257.83	241.80
6th circuit								
Kentucky, eastern	182	143	12,801.74	489.36	59.00		13,350.10	93.36
Kentucky, western	185	174	8,331.11	110.85			8,441.96	48.52
Michigan, eastern	383	246	38,614.48	283.95	1,792.45	55.00	40,635.88	165.19
Michigan, western	54	49	8,118.68	582.71	175.00		8,876.39	181.15
Ohio, northern	301	224	34,678.99	241.03		194.85	34,725.17	155.02
Ohio, southern	319	254	29,115.06	750.31		785.50	29,079.87	114.49
Tennessee, eastern	188	159	20,683.10	735.05	99.00	14.40	21,502.75	135.24
Tennessee, middle	187	143	28,254.23	988.91	1,195.90		30,439.04	212.86
Tennessee, western	167	157	26,310.25	846.13	100.00		27,256.38	173.61

7th circuit								
Illinois, northern	600	407	49,242.75	219.96	2,557.76	325.00	51,695.47	127.02
Illinois, eastern	84	49	5,386.25	105.87	200.00		5,692.12	116.17
Illinois, southern	89	86	12,409.00	390.87	145.00		12,944.87	150.52
Indiana, northern	103	89	34,749.41	941.72	1,427.45	370.00	36,748.58	412.91
Indiana, southern	251	226	47,596.56	1,010.27	684.96		49,291.79	218.11
Wisconsin, eastern	58	53	9,658.83	369.24	1,155.30		11,183.37	211.01
Wisconsin, western	29	26	3,727.20	378.91			4,106.11	157.93
8th circuit								
Arkansas, eastern	126	114	8,111.82	93.22		62.50	8,142.54	71.43
Arkansas, western	79	66	5,188.80	101.94			5,290.74	80.16
Iowa, northern	29	24	4,447.09	468.49			4,915.58	204.82
Iowa, southern	45	36	5,470.08	266.63		60.00	5,676.71	157.69
Minnesota	98	76	13,642.58	164.49	45.00	25.00	13,827.07	181.94
Missouri, eastern	201	154	23,737.98	765.93	12.00		24,515.91	159.19
Missouri, western	283	220	19,350.51	541.94	25.00	520.00	19,397.45	88.17
Nebraska	97	83	12,874.37	404.90	185.00		13,464.27	162.22
North Dakota	63	57	8,859.94	936.82	491.68	107.67	10,180.77	178.61
South Dakota	113	97	17,546.47	2,850.37	1,254.90		21,651.74	223.21
9th circuit								
Alaska	59	49	6,547.22	504.94	118.75		7,170.91	146.35
Arizona	700	647	92,755.51	5,937.52	3,886.66	450.50	102,129.19	157.85
California, northern	471	425	66,988.54	1,068.14	923.00		68,979.68	162.31
California, eastern	292	282	30,026.39	955.23	1,452.50		32,434.12	115.01
California, central	1,794	1,740	173,975.80	9,901.56	1,847.05		185,724.41	106.74
California, southern	1,689	1,482	211,575.53	3,924.35	11,827.12	87.85	227,239.15	153.33
Hawaii	45	45	7,480.72	68.38			7,549.10	167.76
Idaho	97	87	10,364.20	421.10	429.00		11,214.30	128.90
Montana	178	159	13,250.07	783.24	2,596.70		16,630.01	104.59
Nevada	235	190	33,130.24	774.09	1,411.90		35,316.23	185.87
Oregon	177	126	16,638.82	376.29	1,432.97		18,448.08	146.41
Washington, eastern	50	46	7,364.12	1,090.05		60.00	8,394.17	182.48
Washington, western	159	126	20,360.66	257.75	439.20		21,057.61	167.12
Guam	36	21	3,720.83	28.78			3,749.61	178.55
10th circuit								
Colorado	192	177	24,237.11	1,583.04	908.80	17.25	26,711.70	150.91
Kansas	283	227	37,277.71	1,054.49	417.85		38,750.05	170.71
New Mexico	309	271	35,039.78	597.47	1,380.40		37,017.65	136.60
Oklahoma, Northern	86	65	9,959.73	270.63			10,230.36	157.39
Oklahoma, Eastern	76	69	11,286.99	54.84			11,341.83	164.37
Oklahoma, western	152	131	20,680.34	402.65	325.00	117.50	21,290.49	162.52
Utah	187	128	13,348.70	283.01	246.54		13,878.25	108.42
Wyoming	47	45	3,841.23	15.72	163.14		4,020.09	89.34
Total	25,364	21,286	2,699,315.76	94,919.42	65,297.86	9,162.75	2,850,362.29	133.91
Subtotal	26,685	22,111	2,989,524.07	134,774.12	65,297.86	9,162.75	3,180,425.30	143.84
Transcripts					439,189.92		439,189.92	
Printing of records on appeal to supreme court					8,744.52		8,744.52	
Grand total					513,232.30		3,628,359.74	

CUMULATIVE PAYMENTS OUT OF THE APPROPRIATION FEES AND EXPENSES OF COURT-APPOINTED COUNSEL FOR FISCAL YEAR 1967, AS OF DEC. 31, 1969

Circuit or district	Number of defendants represented by counsel	Number of cases in which attorneys paid	Attorneys		Investigative, expert, and other services	Reimbursements	Net disbursements	Average cost per case
			Compensation	Expenses				
COURTS OF APPEALS								
District of Columbia circuit	305	168	$47,516.73	$2,478.20	$.00	$.00	$49,994.93	$297.59
1st circuit	20	17	6,590.05	742.47			7,332.52	431.32
2d circuit	91	74	22,263.26	3,486.74			25,750.00	347.97
3d circuit	21	12	4,847.50	1,416.72			6,264.22	522.02
4th circuit	74	56	19,700.08	4,408.96			24,109.04	430.52
5th circuit	108	85	32,558.00	5,513.13			38,071.13	447.90
6th circuit	66	59	20,376.92	3,359.53			23,736.45	402.31
7th circuit	33	31	12,339.00	1,804.60			14,143.60	456.25
8th circuit	56	48	14,925.95	2,617.94			17,543.89	365.50
9th circuit	146	132	51,321.68	5,938.95			57,260.63	433.79
10th circuit	94	69	20,447.89	3,413.00		156.00	23,704.89	343.55
Total	1,014	751	252,887.06	35,180.24		156.00	287,911.30	383.37
DISTRICT COURTS (INCLUDING U.S. COMMISSIONER CASES)								
District of Columbia circuit								
U.S. District Court	1,130	830	246,344.89	7,017.13	2,135.60	746.60	254,751.02	306.93
District of Columbia, Court of General Sessions	2,319	1,881	81,329.41	598.67		65.00	81,863.08	43.52
District of Columbia, Court of Appeals								
1st circuit								
Maine	51	46	4,804.33	189.20		123.00	4,870.53	105.88
Massachusetts	95	79	18,083.53	484.48	62.30	85.00	18,545.31	234.75
New Hampshire	25	25	6,003.33	645.15			6,648.48	265.94
Rhode Island	37	34	5,570.42	90.16			5,660.58	166.49
Puerto Rico	39	19	2,912.75	18.34			2,931.09	154.27
2d circuit								
Connecticut	170	152	33,024.49	1,380.98	1,714.80	100.00	36,020.27	236.98
New York, northern	67	57	11,795.95	1,611.82	250.00		13,657.77	239.61
New York, eastern	458	419	40,237.03	521.90	200.00		40,958.93	97.75
New York, southern	692	619	67,504.00	3,166.02	449.00		71,119.02	114.89
New York, western	86	64	12,541.11	495.99	250.00		13,287.10	207.61
Vermont	25	23	8,735.00	455.67			9,190.67	399.59
3d circuit								
Delaware	30	20	4,073.75	53.99	125.00		4,252.74	212.64
New Jersey	209	173	37,181.50	1,403.25	1,192.70		39,777.45	229.93
Pennsylvania, eastern	211	193	14,794.63	39.28	505.62		15,339.53	79.48
Pennsylvania, middle	81	73	10,027.24	523.52			10,550.76	144.53
Pennsylvania, western	144	132	20,917.52	757.79	807.60		22,482.91	170.33
Virgin Islands	35	35	4,369.24	41.00			4,410.24	126.01

4th circuit								
Maryland	165	146	36,342.05	562.81	2,019.35	80.00	38,844.21	266.06
North Carolina, eastern	183	171	18,248.75	741.38	313.45	1,621.60	17,681.98	103.40
North Carolina, middle	204	193	20,057.33	603.31	120.00	615.00	20,165.64	104.49
North Carolina, western	192	177	18,982.75	912.20	300.00		20,194.95	114.10
South Carolina	283	237	19,673.04	1,434.09		237.50	20,869.63	88.06
Virginia, eastern	283	250	36,620.03	1,095.02	661.80	1,260.30	37,116.55	148.47
Virginia, western	102	99	8,986.71	535.12	747.25		10,269.08	103.73
West Virginia, northern	55	45	6,150.50	217.38			6,367.88	141.51
West Virginia, southern	147	101	8,150.68	110.58	71.75	177.00	8,156.01	80.75
5th circuit								
Alabama, northern	119	95	9,557.50	434.73			9,992.23	105.18
Alabama, middle	163	131	10,221.58	246.29			10,467.87	79.91
Alabama, southern	96	87	10,502.77	74.21			10,576.98	121.57
Florida, northern	172	102	9,947.35	191.18			10,138.53	99.40
Florida, middle	333	281	39,929.07	804.18	1,524.52	485.00	41,772.77	148.66
Florida, southern	306	269	48,132.35	826.42	530.00	163.25	49,325.52	183.37
Georgia, northern	241	221	25,521.10	280.36		25.00	25,776.46	116.64
Georgia, middle	122	109	13,900.83	363.72		463.75	13,800.80	126.61
Georgia, southern	174	160	17,168.00	1,316.15			18,484.15	115.53
Louisiana, eastern	256	161	21,782.51	316.91	55.00		22,154.42	137.61
Louisiana, western	48	36	3,724.00	79.77	107.55		3,911.32	108.65
Mississippi, northern	60	53	15,051.76	2,277.06	926.74		18,255.56	344.44
Mississippi, southern	94	57	7,285.75	75.29			7,361.04	129.14
Texas, northern	286	233	31,124.63	472.35		150.00	31,446.98	134.97
Texas, eastern	70	67	5,512.00	378.88	263.50		6,154.38	91.86
Texas, southern	250	206	26,111.13	772.86	30.00	90.00	26,823.99	130.21
Texas, western	568	437	47,776.53	2,022.93	666.25	1,932.30	48,533.41	111.06
6th circuit								
Kentucky, eastern	128	96	10,361.45	407.61	677.40		11,446.46	119.23
Kentucky, western	165	136	10,166.87	241.30			10,408.17	76.53
Michigan, eastern	347	258	41,726.55	567.42	430.00		42,723.97	165.60
Michigan, western	40	35	5,247.58	385.61	295.00		5,928.19	169.38
Ohio, northern	332	282	41,053.63	599.96		185.50	41,468.09	147.05
Ohio, southern	259	207	26,316.71	628.95	50.00		26,995.66	130.41
Tennessee, eastern	172	132	14,798.32	450.29	450.00	25.00	15,673.61	118.74
Tennessee, middle	177	152	10,610.18	390.93		294.75	10,706.36	70.44
Tennessee, western	141	129	13,207.46	79.15			13,286.61	103.00
7th circuit								
Illinois, northern	648	517	53,126.75	349.11	1,699.60		55,175.46	106.72
Illinois, eastern	81	67	7,687.88	338.33			8,026.21	119.79
Illinois, southern	60	50	20,708.75	694.78	172.00		21,575.53	431.51
Indiana, northern	101	79	12,445.00	492.27	571.50	270.00	13,238.77	167.58
Indiana, southern	245	227	49,732.69	673.51	500.00		50,906.20	224.26
Wisconsin, eastern	121	115	17,019.59	470.16	305.00		17,794.75	154.74
Wisconsin, western	34	27	3,170.55	390.45	215.00		3,776.00	139.85
8th circuit								
Arkansas, eastern	78	75	3,500.42	126.38			3,626.80	48.36
Arkansas, western	54	46	6,749.91	191.19			6,941.10	150.89
Iowa, northern	46	42	7,267.83	578.25			7,846.08	186.81
Iowa, southern	27	22	3,793.59	154.81	200.00		4,148.40	188.56
Minnesota	99	85	13,136.63	429.76	427.25	100.00	13,893.64	163.45

CUMULATIVE PAYMENTS OUT OF THE APPROPRIATION FEES AND EXPENSES OF COURT-APPOINTED COUNSEL FOR FISCAL YEAR 1966, AS OF DEC. 31, 1969—Continued

Circuit or district	Number of defendants represented by counsel	Number of cases in which attorneys paid	Attorneys		Investigative, expert, and other services	Reimbursements	Net disbursements	Average cost per case
			Compensation	Expenses				
DISTRICT COURTS (INCLUDING U.S. COMMISSIONER CASES)—Continued								
Missouri, eastern	208	172	$24,641.97	$533.33	$30.00		$25,205.30	$146.54
Missouri, western	304	245	23,000.01	951.57	425.00		24,376.58	99.50
Nebraska	84	71	11,700.37	1,024.64	1,257.00		13,982.01	196.93
North Dakota	45	42	5,869.75	953.81		$2.50	6,821.06	162.41
South Dakota	81	71	16,939.12	2,416.51	528.08		19,883.71	280.05
9th circuit								
Alaska	59	44	5,041.20	115.95			5,157.15	117.21
Arizona	655	605	64,226.25	4,252.98	1,562.50	67.50	69,974.23	115.66
California, northern	345	329	46,281.50	74.95	545.25		46,901.70	142.56
California, eastern	236	224	22,097.48	510.94	1,192.50		23,800.92	106.25
California, central	1,494	1,442	152,665.26	8,192.42	1,399.70		162,257.38	112.52
California, southern	1,543	1,297	135,185.74	2,201.43	9,572.00	112.50	146,846.67	113.22
Hawaii	56	53	9,836.95	138.71	175.00		10,150.66	191.52
Idaho	108	97	9,443.28	607.51	232.00	805.46	9,477.33	97.70
Montana	201	195	16,675.54	1,467.91	1,000.33		19,143.78	98.17
Nevada	267	190	26,105.94	277.63	350.00		26,733.57	140.70
Oregon	250	203	26,297.99	1,721.91	469.60		28,489.50	140.34
Washington, eastern	43	42	12,576.85	1,073.06	2,209.75		15,859.66	377.61
Washington, western	115	101	15,402.75	108.97	234.00	60.00	15,685.72	155.30
Guam	19	15	1,828.75	18.00			1,846.75	123.12
10th circuit								
Colorado	184	166	24,209.03	867.87	617.97	86.80	25,608.07	154.27
Kansas	220	185	33,858.14	666.53			34,524.67	186.62
New Mexico	342	303	29,828.59	496.57	1,918.41		32,243.57	106.41
Oklahoma, Northern	77	62	5,925.11	87.80			6,012.91	96.98
Oklahoma, Eastern	51	49	4,438.75	174.59			4,613.34	94.15
Oklahoma, Western	143	129	17,482.96	319.87	752.59		18,555.42	143.84
Utah	98	79	10,617.66	199.19	44.80		10,861.65	137.49
Wyoming	78	71	5,405.65	84.79			5,490.44	77.33
Total	21,537	18,259	2,276,121.75	74,819.18	46,539.01	10,430.31	2,387,049.63	130.73
Subtotal	22,551	19,010	2,529,003.81	109,999.42	46,539.01	10,586.31	2,674,960.93	140.71
Transcripts					264,863.91		264,863.91	
Printing of records on appeal to Supreme Court					23,540.70		23,540.70	
Grand total					334,943.62		2,963,365.54	

CUMULATIVE PAYMENTS OUT OF THE APPROPRIATION FEES AND EXPENSES OF COURT-APPOINTED COUNSEL FOR FISCAL YEAR 1966, AS OF DEC. 31, 1969

Circuit or district	Number of defendants represented by counsel	Number of cases in which attorneys paid	Attorneys		Investigative, expert, and other services	Reimbursements	Net disbursements	Average cost per case
			Compensation	Expenses				
COURTS OF APPEALS								
District of Columbia circuit	214	149	$51,098.86	$2,840.63			$53,939.49	$362.01
1st circuit	2	2	322.50	25.00			347.50	173.75
2d circuit	52	50	15,588.00	1,651.40			17,239.40	344.79
3d circuit	14	14	4,033.90	561.49			4,595.39	328.24
4th circuit	34	29	11,456.97	1,381.31			12,838.28	442.70
5th circuit	72	70	26,118.22	3,415.17		$25.00	29,508.39	421.55
6th circuit	40	35	9,542.67	1,475.54			11,018.21	314.81
7th circuit	25	19	7,635.00	1,145.39			8,780.39	462.13
8th circuit	36	33	10,136.25	2,293.87			12,430.12	376.67
9th circuit	113	102	39,501.65	3,805.72			43,307.37	424.58
10th circuit	46	45	11,946.38	1,207.27			13,153.65	292.30
Total	648	548	187,380.40	19,802.79		25.00	207,158.19	378.03
DISTRICT COURTS (INCLUDING U.S. COMMISSIONER CASES)								
District of Columbia circuit								
U.S. District court	1,019	637	212,056.97	6,406.55	$3,923.78	400.00	221,987.30	348.49
District of Columbia Court of General Sessions								
1st circuit								
Maine	36	36	4,592.50	33.82		27.50	4,598.82	127.75
Massachusetts	76	70	13,354.58	244.38	564.50		14,163.46	202.34
New Hampshire	20	20	2,569.15	95.47			2,664.62	133.23
Rhode Island	14	13	1,997.50	19.54			2,017.04	155.16
Puerto Rico	32	16	2,222.50	44.25			2,266.75	141.67
2d circuit								
Connecticut	120	108	21,711.72	895.75	25.00		22,632.47	209.56
New York, northern	67	56	7,479.18	637.27	186.31	50.00	8,252.76	147.37
New York, eastern	407	386	34,827.50	183.02		7.50	35,003.02	90.68
New York, southern	590	532	66,708.75	217.74	150.00	686.25	66,390.24	124.79
New York, western	50	42	6,505.00	19.13			6,524.13	155.34
Vermont	23	21	2,090.00	297.31		47.50	2,339.81	111.42
3d circuit								
Delaware	32	28	5,282.08	154.41			5,436.49	194.16
New Jersey	242	212	45,057.47	1,656.85	2,099.25	75.00	48,738.57	229.90
Pennsylvania, eastern	165	148	12,596.25	344.14	164.00		13,104.39	88.54
Pennsylvania, middle	68	63	6,975.64	297.91			7,273.55	115.45
Pennsylvania, western	135	119	19,666.80	721.27	552.45	30.00	20,910.52	175.72
Virgin Islands	37	37	6,541.25	8.00			6,549.25	177.01

CUMULATIVE PAYMENTS OUT OF THE APPROPRIATION FEES AND EXPENSES OF COURT-APPOINTED COUNSEL FOR FISCAL YEAR 1970, AS OF DEC. 31, 1969—Continued

Circuit or district	Number of defendants represented by counsel	Number of cases in which attorneys paid	Attorneys		Investigative, expert, and other services	Reimbursements	Net disbursements	Average cost per case
			Compensation	Expenses				
DISTRICT COURTS (INCLUDING U.S. COMMISSIONER CASES)—Continued								
4th circuit								
Maryland	210	182	$36,233.77	$685.93		$145.00	$36,774.70	$202.06
North Carolina, eastern	178	168	15,858.03	582.79		2,956.70	13,484.12	80.26
North Carolina, middle	178	169	17,913.78	468.35		696.28	17,685.85	104.65
North Carolina, western	192	185	15,552.00	536.81			16,088.81	86.97
South Carolina	260	225	24,580.07	508.79		3,152.25	21,936.61	97.50
Virginia, eastern	183	152	20,640.07	427.26	$768.52	55.00	21,780.85	143.30
Virginia, western	73	73	6,417.31	184.43			6,601.74	90.43
West Virginia, northern	27	25	3,351.25	138.85			3,490.10	139.60
West Virginia, southern	122	106	9,642.88	172.33	35.00		9,850.21	92.93
5th circuit								
Alabama, northern	153	137	11,409.00	169.70	100.00		11,678.70	85.25
Alabama, middle	107	95	8,223.83	247.29	55.20		8,526.32	89.75
Alabama, southern	30	28	2,985.83	36.20			3,022.03	107.93
Florida, northern	145	110	10,003.69	124.71			10,128.40	92.08
Florida, middle	251	210	31,189.19	768.46	363.15		32,320.80	153.91
Florida, southern	211	186	32,019.48	492.80	826.55		33,338.83	179.24
Georgia, northern	173	147	12,020.33	281.34	200.00	1.55	12,500.12	85.03
Georgia, middle	97	90	12,603.51	448.77	401.95	697.50	12,756.73	141.74
Georgia, southern	115	95	9,070.33	747.16			9,817.49	103.34
Louisiana, eastern	157	96	9,325.24	44.33		500.00	8,869.57	92.39
Louisiana, western	38	34	4,480.00	298.77	250.00		5,028.77	147.91
Mississippi, northern	66	63	13,880.41	1,873.77	1,798.01		17,552.19	278.61
Mississippi, southern	38	35	4,034.52	322.62		191.00	4,166.14	119.03
Texas, northern	228	189	30,521.68	796.52	25.00	215.00	31,128.20	164.70
Texas, eastern	42	39	2,951.42	139.74	275.00		3,366.16	86.31
Texas, southern	234	189	28,010.28	500.03	170.10	20.00	28,660.41	151.64
Texas, western	570	418	48,421.64	1,323.56	496.45	282.50	49,959.15	119.52
6th circuit								
Kentucky, eastern	213	181	10,806.67	241.12	47.04	230.00	10,864.83	60.03
Kentucky, western	115	106	6,535.76	154.72	65.00		6,755.48	63.73
Michigan, eastern	186	147	22,245.95	560.38	554.50	170.00	23,190.83	157.76
Michigan, western	46	44	7,342.17	268.49	867.47		8,478.13	192.68
Ohio, northern	244	228	31,264.34	239.35	158.50	150.00	21,512.19	138.21
Ohio, southern	199	194	14,932.23	367.29		20.00	15,279.52	78.76
Tennessee, eastern	197	169	15,423.49	604.86			16,028.35	94.84
Tennessee, middle	125	111	8,460.43	265.34			8,725.77	78.61
Tennessee, western	191	108	12,221.71	119.23		525.00	11,815.94	109.41

7th circuit								
Illinois, northern	602	482	56,235.03	309.26	365.00	65.00	56,844.29	117.93
Illinois, eastern	74	57	5,703.25	147.10	----	100.00	5,750.35	100.88
Illinois, southern	64	62	8,146.75	287.41	----	60.00	8,374.16	135.07
Indiana, northern	70	66	11,594.41	229.14	1,187.50	261.00	12,750.05	193.18
Indiana, southern	182	162	23,107.75	290.99	35.00	----	23,433.74	144.65
Wisconsin, eastern	72	65	11,516.60	353.66	400.96	----	12,271.22	188.79
Wisconsin, western	22	21	2,650.42	158.04	----	----	2,808.46	133.74
8th circuit								
Arkansas, eastern	76	68	3,507.00	237.79	----	----	3,744.79	55.07
Arkansas, western	53	46	3,033.16	90.36	----	----	3,123.52	67.90
Iowa, northern	29	25	5,510.58	247.03	50.00	----	5,807.61	232.30
Iowa, southern	28	25	3,266.12	48.17	17.50	----	3,331.79	133.27
Minnesota	75	66	16,845.07	556.97	88.45	450.00	17,040.49	258.19
Missouri, eastern	109	99	16,197.16	305.50	15.92	----	16,518.58	166.85
Missouri, western	304	267	23,294.97	438.65	20.00	40.00	23,713.62	88.82
Nebraska	79	70	20,060.38	1,259.35	1,973.55	----	23,293.28	332.76
North Dakota	42	37	4,051.25	315.78	438.60	----	4,805.63	129.88
South Dakota	120	104	23,659.41	2,444.31	----	----	26,103.72	251.00
9th circuit								
Alaska	49	37	12,000.63	432.46	404.88	----	12,837.97	346.97
Arizona	534	495	56,442.95	2,416.23	132.68	----	58,991.86	119.18
California, northern	498	483	64,159.33	686.27	698.61	----	65,544.21	135.70
California, eastern	----	----	200.00	----	----	----	200.00	----
California, southern	2,118	1,840	212,649.95	5,798.59	2,944.33	340.00	221,052.87	120.14
Hawaii	74	70	9,948.32	18.24	----	970.72	8,995.84	128.51
Idaho	101	92	8,646.96	375.31	100.00	164.00	8,958.27	97.37
Montana	185	176	13,100.95	407.91	171.88	465.00	13,215.74	75.09
Nevada	156	132	17,309.00	218.04	186.80	----	17,713.84	134.20
Oregon	193	159	17,069.42	512.13	168.50	563.51	17,186.54	108.09
Washington, eastern	69	68	14,128.69	1,027.28	----	----	15,155.97	222.88
Washington, western	108	101	14,589.50	174.27	90.00	----	14,853.77	147.07
Guam	13	6	205.00	----	----	----	205.00	34.17
10th circuit								
Colorado	123	117	16,308.18	301.89	177.10	20.00	16,767.17	143.31
Kansas	226	187	37,046.83	1,098.28	160.00	300.00	38,005.11	203.24
New Mexico	284	267	29,033.41	385.86	890.31	182.50	30,127.08	112.84
Oklahoma, northern	83	66	6,025.26	215.11	----	----	6,240.37	94.55
Oklahoma, eastern	50	48	4,360.08	291.51	----	12.50	4,639.09	96.65
Oklahoma, western	73	64	11,274.47	191.86	329.47	----	11,795.80	184.31
Utah	68	50	9,043.49	218.03	116.74	----	9,378.26	187.57
Wyoming	29	25	2,695.00	29.30	----	498.00	2,226.30	89.05
Total	15,690	13,483	1,817,423.86	49,936.98	26,286.51	15,823.76	1,877,823.59	139.27
Subtotal	16,338	14,031	2,004,804.26	69,739.77	26,286.51	15,848.76	2,084,981.78	148.60
Transcripts					189,379.17		189,379.17	
Printing of records on appeal to Supreme Court					9,361.15		9,361.15	
Grand total					225,026.83		2,283,722.10	

CLAIMS FOR PROTRACTED REPRESENTATION, FISCAL YEAR 1969 AS OF DEC. 31, 1969

District	Charge	Amount paid
District of Columbia:		
District of Columbia	Grand larceny	$610.00
Do	Rape, assault	700.00
Do	Kidnaping	1,200.00
1st circuit: Massachusetts	Murder	1,332.00
2d circuit:		
New York "N"	Conspiracy	920.00
Do	do	1,131.40
New York "E"	Theft from interstate commerce	910.00
Do	Conspiracy	1,000.00
Do	Bank robbery	1,027.50
Do	do	1,056.25
Do	Assault	1,685.00
Do	Conspiracy	2,195.00
New York "S"	Grand larceny	849.24
Do	Air piracy, kidnaping	1,362.89
New York "W"	Conspiracy	1,200.00
Vermont	Conspiracy, perjury	799.10
Do	do	1,027.17
Do	do	1,047.93
Do	do	1,413.46
3d circuit:		
Delaware	Assault	765.00
Do	do	780.00
Do	do	945.00
Do	do	945.00
Do	do	980.00
Do	do	1,025.00
Do	do	1,049.20
Do	do	1,138.00
Do	do	1,368.39
Do	do	1,453.23
Do	do	1,510.00
Virgin Islands	Rape	600.00
4th circuit:		
Maryland	Kidnaping	780.00
Do	Bank robbery	850.00
Do	do	850.00
Do	do	850.00
Do	do	950.00
5th circuit:		
Florida "N"	Stolen vehicles, interstate	547.50
Do	Marihuana	672.50
Do	I. R. liquor law violation	686.17
Do	Murder	793.75
Florida "M"	Mail assault	847.50
Do	Failure to submit to induction	851.75
Do	Mail assault	859.53
Do	Bank robbery	1,219.40
Florida "S"	Air piracy, kidnaping	1,000.00
Do	do	1,147.57
Georgia "N"	Assault	658.19
Do	Murder	1,120.00
Georgia "S"	do	1,131.25
Do	do	1,502.00
Louisiana "E"	Stolen vehicles, interstate	542.50
Do	Bank robbery	590.00
Do	Counterfeiting	665.00
Do	Harboring a deserter	928.40
Texas "N"	Illegal entry	1,086.78
6th circuit:		
Michigan "E"	Conspriacy	2,447.50
Michigan "W"	Bank robbery	925.19
Ohio "N"	do	799.05
7th circuit:		
Illinois "N"	Conspiracy, counterfeiting	1,184.60
Illinois "E"	Murder	1,174.38
Do	do	2,313.40
Do	do	2,315.18
Do	do	2,507.56
Do	do	2,606.51
Do	do	2,611.84
Do	do	2,629.68
Indiana "S"	Stolen vehicles, interstate	685.00
Wisconsin "E"	Counterfeiting	545.00
Do	Bank robbery	1,215.46
Do	Mail fraud	1,453.40
8th circuit:		
Iowa "N"	Bank robbery	1,204.00
Minnesota	Income tax evasion	1,404.04
Do	Mail fraud	2,552.00
Missouri "E"	Assault	1,250.00

See footnotes at end of table p. 77.

CLAIMS FOR PROTRACTED REPRESENTATION, FISCAL YEAR 1969 AS OF DEC. 31, 1969—Continued

District	Charge	Amount paid
9th circuit:		
Arizona	Narcotics	715.50
Do	do	807.50
Do	do	818.50
Do	Marihuana	946.56
California "N"	Conspiracy	695.00
Do	Refusing induction	807.50
Do	do	831.89
Do	Failure to register	847.50
Do	Bank robbery	858.88
Do	Refusing induction	915.00
Do	do	921.00
Do	Bank robbery	1,228.00
Do	Refusing induction	1,386.70
Do	Conspiracy, mail theft	1,465.25
Do	Embezzlement	3,346.00
California "E"	Bank robbery	678.70
Do	Stolen vehicles, interstate	750.00
Do	Bank robbery	863.03
California "C"	Misapplication of union funds	[1] 497.50
Do	Bank robbery	585.70
Do	Robbery Federal credit union	593.30
Do	Narcotics	631.50
Do	Bank robbery	642.50
Do	Counterfeiting	667.50
Do	Stolen vehicles, interstate	700.00
Do	Bank robbery	766.50
Do	Stolen vehicles, interstate	853.85
Do	Uttering a forged writing	881.75
Do	Bank robbery	915.50
Do	Robbery Federal credit union	951.10
Do	Narcotics	1,014.10
Do	Bank robbery	1,029.50
California "S"	Narcotics	613.92
Do	Marihuana	638.50
Do	Narcotics	640.00
Do	do	705.58
Do	do	765.00
Do	Harboring aliens	805.60
Do	Marihuana	818.12
Do	do	857.25
Do	do	904.85
Do	do	905.00
Do	do	915.00
Do	Narcotics	942.50
Do	do	950.20
Do	Marihuana	961.20
Do	Harboring aliens	1,047.29
Do	Narcotics	1,051.95
Do	Marihuana	1,085.00
Do	Narcotics	1,149.40
Do	Marihuana	1,272.50
Do	do	1,290.00
Do	do	1,384.13
Do	Narcotics	1,574.40
Do	Marihuana	1,606.80
Do	Narcotics	2,470.65
Do	do	2,521.55
Do	do	2,605.02
Do	do	3,246.84
Do	do	3,511.50
Nevada	Bank robbery	1,065.00
Washington "W"	do	1,000.00
10th circuit:		
Kansas	Possession and sale of drugs	[1] 410.00
Do	Theft Government property	697.50
Do	Postal forgery	1,250.00
New Mexico	Murder	547.30
Do	do	744.85
Do	Rape, murder	1,150.00
Oklahoma "W"	Assault	645.00
Do	do	683.40
Total (144 claims)		162,015.95

[1] Misdemeanor.

Note: Claims filed by 231 attorneys for compensation in excess of the statutory limitation were denied by the district courts. These claims ranged from a low of $509.50 to a high of $3,058.60.

OBLIGATIONS FOR INVESTIGATIVE, EXPERT, OR OTHER SERVICES RECEIVED BY THE ADMINISTRATIVE OFFICE FOR FISCAL YEAR 1970 THROUGH DEC. 31, 1969

Number of authorizations	Type of service	Paid	Unliquidated	Total obligation
1	Appraiser		$105	$105.00
1	Audiologist		200	200.00
1	Chemist		75	75.00
3	Depositions	$272.95	159	431.95
6	Fact witnesses	108.20	625	733.20
7	Fingerprint experts	75.00	970	1,045.00
1	Geneticist	150.00		150.00
15	Handwriting experts	1,160.00	2,310	3,470.00
132	Interpreters	1,422.50	4,066	5,488.50
68	Investigators	4,674.23	12,085	16,759.23
1	Laboratory expert	75.00		75.00
1	Medical doctor		30	30.00
4	Neurologists	135.00	950	1,085.00
1	Pathologist	210.00		210.00
1	Photographer	200.00		200.00
3	Physicians	393.00	150	543.00
67	Psychiatrists	5,919.42	10,370	16,289.42
19	Psychologists	985.00	2,767	3,752.00
1	Toxicologist	30.00		30.00
	Totals	15,810.30	34,862	50,672.30

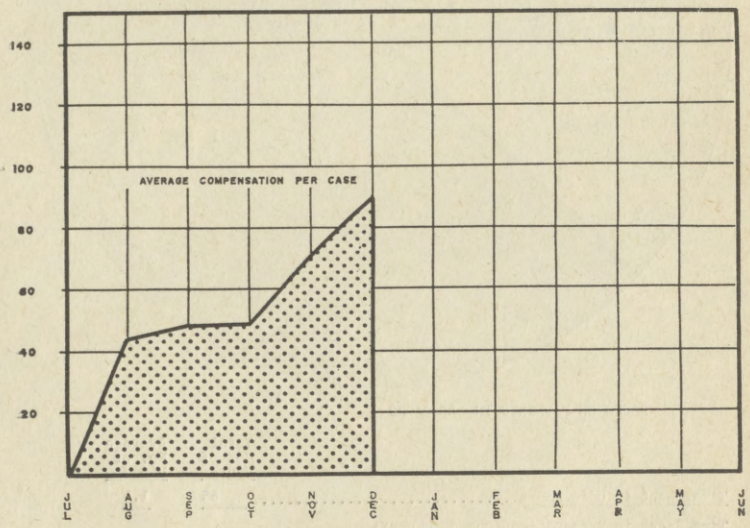
CRIMINAL JUSTICE ACT

Average Compensation Paid Attorneys for Representation of Defendants Before U. S. Commissioners and in the District Courts

FISCAL YEAR 1970

(THRU DECEMBER 31, 1969)

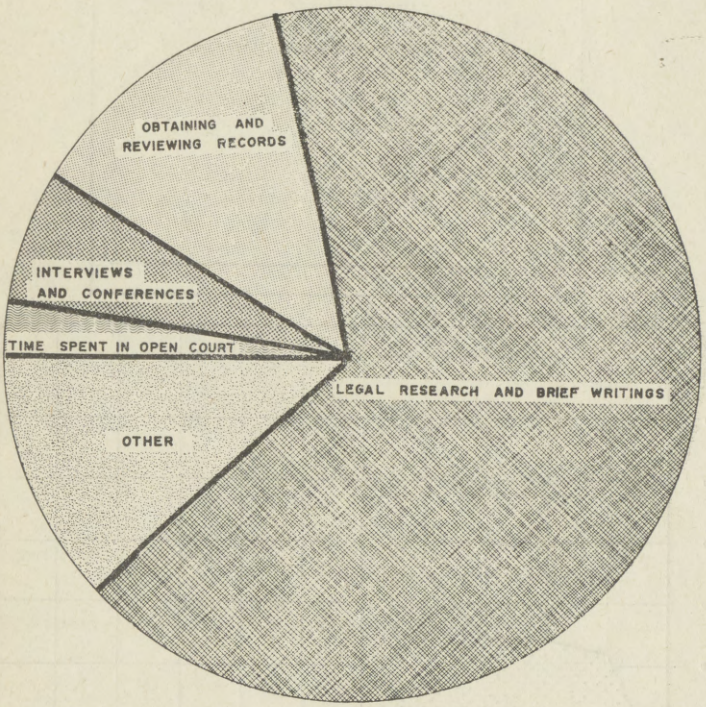
	NO. OF CASES	COMPENSATION Amt. Paid	COMPENSATION Avg. Pmt.	OUT-OF-POCKET EXPENSES Amt. Paid	OUT-OF-POCKET EXPENSES Avg. Pmt.
July	-------	$---------	$------	$------	$----
August	113	5,002	44.27	84	.74
September	435	21,071	48.44	562	1.29
October	1,250	87,566	48.70	2,158	1.73
November	1,341	96,002	71.59	3,218	2.40
December	1,315	117,691	89.50	3,256	2.48
January					
February					
March					
April					
May					
June					
TOTALS	4,454	$ 327,332	$ 73.49	$ 9,278	$2.08



CRIMINAL JUSTICE ACT

Services Performed By Court-Appointed Counsel In The United States Courts Of Appeals

FISCAL YEAR 1970



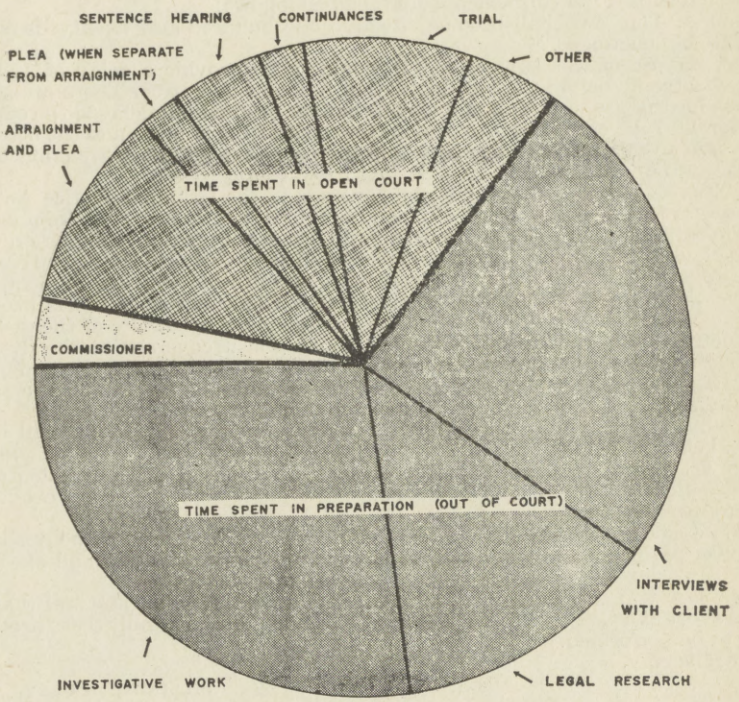
BASED ON PAYMENTS IN 50 CASES

	Total No. of Hours	Average No. of Hours
Time Spent in Open Court	65	1.1
Time Spent in Preparation (Out of Court):		
Interviews and conferences	153	
Obtaining and reviewing records	334	
Legal research and brief writing	1,698	
Other	306	
Total time spent in preparation (out of court)	2,491	41.5
Grand Total Time Spent	2,556	42.6
Total compensation paid		$19,832
Average compensation per case		$ 331
Total out-of-pocket expenses (travel, etc.)		$ 4,102
Average out-of-pocket expenses per case (12 cases)		$ 68

CRIMINAL JUSTICE ACT

Services Performed By Court-Appointed Counsel Before U. S. Commissioners And District Courts

FISCAL YEAR 1970



BASED ON PAYMENTS IN 4,454 CASES

	Total No. of Hours	Average No. of Hours
Time Spent Before U. S. Commissioners	1,023	.2
Time Spent in Open Court:		
Arraignment and plea	3,09,	
Plea (when separate from arraignment)	659	
Sentence Hearing	1,396	
Continuances	648	
Trial	2,616	
Other	1,263	
Total Time Spent in Open Court	9,653	2.2
Time Spent in Preparation (Out of Court):		
Interviews with client	7,751	
Legal Research	4,080	
Investigative work:		
Interviews with witnesses 1,429		
Consultation with witnesses 2,274		
Consultation with probation officers 721		
Other 4,003		
Total investigative work	8,427	
Total Time Spent in Preparation (Out of Court	20,258	4.5
GRAND TOTAL TIME SPENT	30,934	6.9

(Subsequently the following letter was received from Mr. Foley:)

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
Washington, D.C., June 22, 1970.

Hon. ROBERT W. KASTENMEIER,
Chairman, Subcommittee No. 3, House Judiciary Committee,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN KASTENMEIER: I am writing you at the request of Judge John S. Hastings who testified before your Committee on June 18 concerning the provisions of S. 1461, the bill which amends the Criminal Justice Act. Judge Hastings had intended to recommend to your Subcommittee the inclusion of an additional subsection (4), which would read as follows:

"SEC. 4. This Act shall become effective one hundred and twenty days after the date of enactment."

The purpose of this subsection (4) would be to provide a delay of 120 days after enactment before the new legislation becomes operative. There are several reasons for this request. You may recall that the original bill delayed the effective date for one full year in order to provide for the drafting of plans and the necessary forms and to permit this office to set up the necessary administrative machinery to process the vouchers.

S. 1461, as you know, expands the coverage of the Criminal Justice Act considerably. It changes the fee schedule and provides for two new types of organizations in subsection (h). These provisions will necessarily require complete revision of the plans in each of the district courts, as well as the plans in the eleven circuits. Revising the plans will undoubtedly require consultation with the Judicial Conference Committee of which Judge Hastings is Chairman since it has been our experience that the requirements for the districts vary by nature of the districts, i.e., metropolitan and rural, and by the geographical coverage of the districts. Further, it will require the Conference Committee completely to revise and reissue the guidelines under which the clerks of court, the magistrates and the judges operate in carrying out the provisions of the Criminal Justice Act.

Thirdly, it will require this office to prepare and secure the approval of the Judicial Conference Committee of new forms to take care of the expanded coverage of the Act and revised forms for the present provisions of the Act. Such of the forms as involve the expenditure of money will, pursuant to statutory provisions, have to receive prior approval of the General Accounting Office.

The impact of the new statute on the Administrative Office will be not inconsiderable, requiring additions to staff in the accounting, auditing and statistical areas.

I am sure you appreciate that all of these factors will take time and that any period short of at least 120 days will hardly be adequate to permit these necessary tasks to be performed.

Sincerely,

WILLIAM E. FOLEY,
Acting Director.

Judge HASTINGS. Having in mind your stricture of time, I know you don't want to hear me read the statement.

Very quickly, the expanded coverage provides for representation of those who need the representation for financial reasons to cover proceedings in the revocation of probation, to cover the appointment of counsel for persons under arrest, meeting *Miranda*, of course, to cover revocation of parole proceedings, although that is obviously an administrative matter through the Department of Justice. I won't attempt to speak for the Department of Justice, but I think we all concede it is a related matter.

Persons who are material witnesses and who are held in custody sometimes very definitely need the appointment of a lawyer, and persons seeking collateral relief, and this is perhaps the broader aspect of it, because this collateral relief would go to those who question after trial their competency to have stood trial in the first place where that question was not raised.

Second is Federal habeas corpus proceedings. Habeas corpus, being a civil proceeding, was never covered by the act, and we are appointing lawyers on almost every case now; we have to, and we can't compensate them. So it covers Federal habeas corpus proceedings. It covers habeas corpus proceedings on behalf of State prisoners who come in and seek Federal relief because of the alleged violation of the Federal constitution. We have always had many, many under title 28, section 2255, which are the proceedings filed by prisoners attempting to change or vacate their sentences, claiming some irregularity there.

So that, in essence, the act does bring within the terms of the act those representation matters which are now being done by counsel under appointment by the court, but which are not authorized to be compensated or have the benefits of the Criminal Justice Act. You can see that, on the one hand we appoint a lawyer under the act to do certain things. He is compensated, has the benefits of the act. On the other hand, here is a man that comes in with just as much of another bitterly litigated matter, and these things are increasing all the time, and we can do nothing about it except to tell him to please do it and he does it almost always because of his feeling of responsibility as a member of the bar.

Now that, in substance, is the expanded coverage. Unless there be questions, I will not burden you further with that.

In connection with that, there is one change I would like to mention. It relates in part, Mr. Poff, to one question you asked. The act does provide for an increase in compensation of an hourly rate to $30 an hour. The present act provides for $15 for in-court service, $10 an hour for out-of-court service. The committee recommends, and the Judicial Conference in accepting our recommendation recommended that it be increased to $20 and $15. In other words, the $5 an hour increase.

The Senate, on its own, raised that to $30 an hour. I wish to be understood as saying this. We consider that a prerogative of the Congress. We have no objection to $30 an hour as a minimum, if that be the will of the Congress.

Mr. POFF. Mr. Chairman, would you permit me and would the witness pardon me if I interrupt at this point?

Neither the Senate bill nor the House bill makes any distinction between in-court service and out-of-court service.

Judge HASTINGS. That was my next point. The Judicial Conference is adamantly on record as saying there should be a recognition of the difference between these services. Our committee thinks, the Conference thinks that in-court service, trial work, justifies a higher rate than out-of-court service, investigative research, and what have you.

Mr. KASTENMEIER. To interrupt, you stated that the Judicial Conference's recommendation was $20 and $15?

Judge HASTINGS. Yes. That recommendation, I might say, was made 2 years ago and there have been some obvious changes, I take it.

Mr. POFF. What does ABA recommend?

Judge HASTINGS. I can't answer that question.

Mr. FUCHS. The ABA filed a statement recommending the adoption of the Senate bill on this, that is, a $30 hourly maximum.

Judge HASTINGS. So, as I say, we will not quarrel as a committee or as a conference if this is established as a minimum. But we do suggest to you that it is our own veiw that there should be a disparity in the fees allowed for services, and we think the work in trial should receive more than work out of trial.

Mr. POFF. I believe you misspoke yourself. It is not a $30 minimum as I understand it, but a $30 maximum.

Judge HASTINGS. It is $30 an hour. Oh, the court could allow less, obviously.

Mr. POFF. The $30 is maximum.

Judge HASTINGS. That is right, the court could allow less, I don't think lawyers would ask for less, to be perfectly frank with you, nor do I think the average judge would reduce it unless some good reasonwas shown.

Mr. KASTENMEIER. The maximum tends to become the minimum as well.

Judge HASTINGS. The financial report for the last fiscal year, which I have attached also, answers in a measure only a few of your questions, and I shall ask leave to ask Mr. Foley to prepare a written statement in answer specifically to your questions.

Very generally, in fiscal 1969 we spent a little over $4 million. The coverage of the act has brought in the Court of General Sessions in the District of Columbia and that has materially increased our expenditures. There is a deficiency request this year of something about $1,100,000, I believe, that we are going to have to ask for here over and above our appropriation. Appropriation has been about $3.1 million in the past. Please don't hold me to it, I can give you a rough guess that as best we can estimate—and this is purely a guess—if this act is enacted as now proposed as it now stands I think it would double the cost of the appropriation, double the cost of the service.

We are approaching rapidly $3 million annually now under the act. I think it would go to 10 or 12, because of the increase in the hourly rates, because of the expanded coverage, and everything else. Now, I am only speaking off the record as a guess, and Mr. Foley will substantiate that as best it can be done.

Now the two new things that are in the act which were not recommended by the judicial conference—and I am not indicating we are opposed to them—were the two provisions in subsection (h), I believe it is, which provided for a public defenders organization and a community defender organization. The public defender organization, the conference approved in principle. However, as proposed here, the conference is disturbed by several things, We think, No. 1, that it needs to be tightened up a bit, if it is passed. As it stands under the bill the public defender in a proposed district—and incidentally, there are 31 districts—the public defender for a district would be appointed by the circuit council of the circuit. From then on, the public defender has, as we read the bill, complete charge and control, without any controls, on additional staff, salaries (except certain guidelines are given), office space, equipment, clerical help, and what have you.

Now, obviously the thing must have been patterned generally after the normal district attorney's office, but certainly the district attorney is subject to many internal regulations with which you obviously must be familiar. So we do approve that in principle, yet we think it needs to be tightened up so that somebody other than the

public defender himself has some control over the staff that is going to be appointed, the money that is going to be spent, the space to be occupied, and that sort of thing.

The committee did give consideration in trying to analyze who might control the thing. The first question that pops in your mind would be the Justice Department and, with deference to them, we don't think the prosecuting side of the criminal justice should control the defense side of it. Another suggestion was Health, Education, and Welfare and generally speaking—not disrespectfully, I hope—but it has become such a large organization that we doubt that its burdens should be increased. So for the lack of a better suggestion, may I say to you we would suggest that at the moment at least the control should be lodged, subject to the rules and regulations adopted by the Judicial Conference.

I recognize that is giving the judiciary a say, but at the same time the judiciary, of course, acts as the group which enforces the act, which, of course, is an umpire, so to speak, between defense and prosecution. It has no particular interest in either side as such, and only because I can't come up with a better idea at the moment it perhaps should be lodged, if it is to be lodged anywhere at this time, in the Judicial Conference of the United States, which, of course, would be compelled then to adopt the necessary guidelines, rules, and regulations.

Now there is one other key point in this same connection that I wish to mention. The act provides, as it is drawn, that there will be submitted to the President a separate budget for each public defender organization, so that if there were public defenders set up in the 31 districts that are now eligible for them you would have 31 separate budgets. Now, gentlemen, that is an almost intolerable budgetary situation. We would respectfully suggest that perhaps that could better be handled if there is one budget submitted for all defender organizations, as might be eventually approved by the Judicial Conference and recommended through its budget committee to the Congress for consideration, rather than having 31 separate budgets. Because you can see instantly the problems that arise there purely from housekeeping.

Now having said all of that, in principle I think the Conference and I think the judiciary generally would be in favor of a public defender system of some kind. There are two or three reasons for that. No. 1, it has worked well in the States. No. 2, when an appointment is made and a service is rendered through the public defender, we immediately eliminate all housekeeping problems on the part of the judiciary. You have no claims to file, no audits to make, nothing to be processed by the Administrative Office. They have all of the facilities available that private lawyers would have available if appointed under the act, or a defender organization.

So from that standpoint it has much to commend it, because it really gets away from a lot of tedious work on the part of the courts and the part of the Administrative Office, because there is one organization that is handling it and taking care of it. As I say, it has worked very well in a good many of the States.

This—again, I repeat—this suggestion, this incorporation in the act comes from the Senate Judiciary Committee, and we are not opposing it at all in principle. In fact, we do approve it in principle, subject to these various rambling suggestions that I have made here.

The other type of organization which is provided for in subsection (*h*) is called a Community Defender Organization. This comes into being because under a nonprofit organization called the National Defender Project, which was funded by a private foundation under which my good friend General Decker here was the very distinguished chairman and head of for, I think it lasted 5 years, and their money now has been exhausted. The foundation that previously underwrote it is no longer contributing any money. But, not only did General Decker set up these organizations in many State courts, which he did, but a number in Federal courts at the request of the judiciary and the lawyers; and they worked wonderfully well.

Now I would like to be heard here as commending General Decker for having done what he did. This provision in this act concerted by the Senate Judiciary Committee—and it certanly meets with our complete approval—would enable this same sort of Federal community defender organization to go forward, whereas it may lapse in many instances unless they can get private money to keep going what they have already started. It is serving a great purpose and a worthwhile function.

I only have one suggestion to make, and our Conference does, in that connection. The act provides that this community defender organization may be organized and operated, so to speak, by any group. We think that is a little too broad. We think it probably should be narrowed to lawyer groups, which is where it presently is functioning. The present community defender organizations have all been set up either at the request of the judiciary or bar associations or interested lawyers in those communities, and we rather think that it might avoid some problems, certainly unknown at the moment, if it was more or less restricted to lawyer groups, judicial groups, what have you. Other than that, we are in hearty accord with the whole concept of the community defender organization.

Now the community defender organization, I might point out to you, would be in the appointments that are made to it, the recipient of allowances under the act and, hopefully, from that would be able to finance itself. There is some question whether it could or not. There is also another question, and that is whether or not they could ever get started without seed money, so to speak. And this does provide the availability of seed money, if approved for that purpose. It also provides the opportunity if it is ever done and ever requested and approved—of, in lieu of allowing fees, make a blanket grant and let it carry on that basis in a budgetary way, which has a good deal to commend itself, too.

Now I have spoken very hurriedly and very briefly about the public defender aspect, the community defender aspect. I wish to be heard as saying we do approve them in principle. We are heartily in favor of either one if these safeguards are made, the safeguards primarily relating to the public defender organization, the expanded coverage of the act meets with the suggestions we have previously made. The Senate adopted them almost without change.

As to the maximum or minimum fees, that is for your determination. I have expressed my views on that and the views of the conference. I will be happy to answer any questions.

Mr. KASTENMEIER. Thank you, Judge Hastings. Perhaps we might have Mr. Foley make his statement or any additions, and then we will have questions for you both.

Mr. FOLEY. Mr. Chairman, I have only one request to make. I think we can answer Mr. Poff's questions with one exception, which I might suggest, if I may, that you direct to the Department of Justice. We have no information on either the salaries or expenses of the U.S. attorneys. Otherwise, we shall try to submit the answers.

Mr. KASTENMEIER. I would think that question would have better been directed to the Justice Department.

Mr. POFF. Yes, and in order that it may be understood what I have in mind, I would like that information in detail for each district. It would not be sufficient for our purpose to have the broad nationwide salary range, because this legislation gears the compensation of the public defender to the highest paid U.S. attorney in the district or in the adjacent part of a district, and gears the compensation for his assistants to the U.S. attorney's assistants.

(Subsequently the Department of Justice submitted the requested information which appears at page 110.)

Mr. FOLEY. That is all I have to say, sir.

Judge HASTINGS. If I may make one gratuitous statement in closing, I am proud of the Federal Judiciary Association's administration of this act. It has been administered economically. Compare OEO appropriations for legal services, if you will, please, we are talking about presently $5 million; it might be expanded to 10 or 12. Just make that comparison in your own mind. But the thing I am more than proud of is that in the 5 years it has been in operation we have never had one question raised as to favoritism, nepotism, unfair expenditure of money. And I think my brethren generally in the judiciary are entitled to that expression of confidence.

Thank you, gentlemen.

Mr. KASTENMEIER. Thank you. I must say I have had no complaint about the judiciary's administration of this act and I think you should be complimented on it. I will say that OEO has had some very interesting experiments. In Wisconsin we have had a judicare program which is not inexpensive. On the other hand, there are many people, and I rather join them, who think it is at least a worthwhile experiment.

Judge HASTINGS. Please don't misunderstand me as indicating that I think otherwise. I share your views.

Mr. KASTENMEIER. First of all, I assume that apart from the criticism you have made you approve of S. 1461 in its present form, or, if you do not, what further change would you recommend?

Judge HASTINGS. I think I can respond to your question generally, that we do approve it in general subject to the exceptions that I have mentioned. In fact, we would urge its passage.

Mr. KASTENMEIER. You asked not to be held to your prediction that the cost of the program could double. But if we are doubling the hourly rate from a $20 and $15 basis to $30 and then on top of that extending the services as noted within the act, plus creating both a Federal public defender organization and a community defender organization, would it not likely triple or quadruple, than merely double?

Mr. FOLEY. I think that is very likely the case, Mr. Chairman. The area in which we find it very difficult to make any estimate is the area to be affected by the additional coverage of the act. We have very little statistical data to go on, on which to predicate the

costs. As far as the increase in the hourly rate is concerned, this is fairly easy. As you say, it may well triple, at least.

Mr. KASTENMEIER. The arguments about who shall be responsible for the public defender go back a long time. As I remember my first term on this committee in the 86th Congress in 1959 and 1960 this subject was debated, and I was trying to remember the date. I remember it because we had a member of the committee who only served in the 86th Congress who was the only person junior to me, Mr. Kasem from Los Angeles, who gave eloquent testimony in behalf of the local public defender system at that time. So I do know that the dialog on this whole question goes back within this committee for many, many years.

If, in fact, the Congress decided on any other organization than the Judicial Conference, if it decided to make Federal public defender organization responsible to an entity, what other groups or organizations could also serve that function, if not the Department of Justice?

Judge HASTINGS. I think the Senate report indicates one alternative, for whatever it means, and that would be the eventual creation of a superpublic defender agency which would have the control over all public defender agencies.

Mr. KASTENMEIER. Would that agency be responsible to anyone?

Judge HASTINGS. I don't know. If it is an independent agency, it would depend. What they are suggesting, I think, is you might wind up with an independent agency which would avoid many things, and it would also create many problems, too.

Mr. KASTENMEIER. One of the fears about community defender organizations years ago in the committee, I recall, was very much tied to the then existing civil rights fights. I think the fear in some areas, whether the fears still exist or not I cannot say, was that the legal defense fund for the NAACP, and so forth and so on, would in fact be in some areas operating the community defense organization.

Indeed, such organizations, if in your view they were comprised of lawyers admitted to practice, would be entitled to recognition under the proposed bill, would they not, no matter what their other purpose might be?

Judge HASTINGS. I would think so; yes. That was one of the things that prompted the remark that I made. Of course, the core of the act, the whole philosophy of the act originally was that there should always be a provision for representation by private members of the bar, private attorneys. This act continues to recognize that. There have been various estimates as to how that division should be. Some say no less than 25 percent appointments should be by private lawyers, others go so far as to say 50 percent. So you wind up with a mix, and we think it is good.

Because the act now, you see, in its present form utilizes legal aid agencies. The Southern District of New York, the largest single district in the whole Federal judiciary, does almost all of its work through the local legal aid agency there. They are set up, they are organized, they are staffed, they are equipped, they appoint them. Their fees are such, apparently, to at least help keep them going, and that is a legal aid agency, not a public defender organization.

Mr. KASTENMEIER. In that respect you mentioned the possible creation of new organizations for community defense, including grants

and seed money, as you put it. If there are in fact a great many local legal aid societies operating today, and similar existing organizations, would the need to create new organizations to serve this function be great?

Judge HASTINGS. Probably so, sir, in view of this fact. As I understand it, most local legal aid societies are not particularly interested in the criminal phase of the practice. They are interested in the civil side of it. It is the need to get this kind of representation on the criminal side that we are concerned with.

Fortunately, in New York—I think Philadelphia is another one—they are interested in the criminal side of it. But many of them are not and don't want it.

Mr. KASTENMEIER. I appreciate your testimony.

In the interest of time, I would like now to call on my friend Mr. Mikva.

Mr. MIKVA. First of all, let me say how pleased I am to see Judge Hastings.

I hope you do as well before this panel as I did last time before your panel.

Judge, I have only two questions about your statement and your comments. I am troubled about your concern that you feel the assistants to the public defender should be approved by the chief judges of the district. While I agree that the defender organization ought to be under somebody's supervision, and certainly until such time as some kind of a super agency is formed, it ought to be the Judicial Conference and I have no quarrel about that. I think, though, that it just doesn't look right for assistants to the public defender to be appointed by the judge and the chief judge in the circuits before whom those defendants will be appearing.

Judge HASTINGS. We recognize your points.

Mr. MIKVA. What would be wrong with the public defender himself being free to hire his own assistants without specific supervision on those appointments? The salaries and all other conditions, and budgetary items, would still be subject to supervision.

I am thinking, suppose the public defender gets a nice, feisty assistant that the chief judge doesn't like, but who happens to be a good defense attorney, why shouldn't the public defender be free to hire him?

Judge HASTINGS. There, of course, you are dealing in personalities. Always, unless you have an unfortunate personality present, you have no problem under what you are talking about. If you do, you do have a problem. I suppose it could arise under any system. We are only suggesting here the chief judge of the district, for the lack of somebody else. I think our overall suggestions would probably be better phrased if I said we really believe that we made it subject to rules and regulations adopted by the Judicial Conference of the United States.

Really that is where it ought to be. I would certainly agree with you that is far preferable to letting any chief judge of a district make an appointment; yes, sir.

Mr. MIKVA. The other point has to do with the amount of fees. I realize that these maximums tend to become minimums, and I think my colleague Mr. Poff's comments to you are more substantive than I like to admit, but it is a fact that the hourly scales, if you are going to

use that as the measuring stick, vary so differently, not only between circuits, but within the circuit. The hourly rate in Chicago currently is over $50 for an experienced defense attorney. So $30 is below what the market would bear. On the other hand, in some of the other parts of the district, of the circuit, $30 is a very fair figure. Especially if we are going to vary the rates between court time and noncourt time, is there not some way of trying to make it clear that we expect a judge to take geographical differences into account?

Judge HASTINGS. Certainly the Congress can make any such expressions of intent, and it would be well taken. I would make this observation with reference to the $30, or any other arbitrary figure. The original conception of the act—and it is the way it has been administered up until today—is that whatever compensation was allowed was not intended to compare with the professional fee charged in private practice.

In fact, we have said many times, I have in talking about this act over the years, that any lawyer who thinks he can make a living professionally by fees received under the Criminal Justice Act isn't worthy of appointment. I think maybe it was that sense of frugality that inclined us to make only the recommendation of $20 and $15. The only danger I see in the $30 figure, if it is a danger—and I recognize that times have changed since we even thought about it 2 years ago—the only danger I recognize, and I feel it is undergirded by the philosophy of the act, is to keep people from getting the idea that they can do well financially, lawyers, by appointments under this act.

This was to help the poor devil who was giving his time, office overhead and everything, for nothing; could not even get expenses. We hoped to get him something so he would not be completely out-of-pocket for everything.

Mr. MIKVA. I appreciate that and I am not unhappy with the $30 maximum, because that is about the overhead figure in a place like Chicago and New York, and I agree with you.

Judge HASTINGS. I agree with you entirely about what you say about the disparity in districts, because it is there. How to urge judges to recognize it, I don't know.

Mr. MIKVA. Those are my only questions, except to reassure the chairman that in terms of the total costs of this program when we are through passing all of the anticrime legislation out of the committee, the amount of crime in the country will be so diminished that I am sure this won't be too high.

Mr. KASTENMEIER. On the other hand, I am afraid that our enforcement facilities will be so effective that they will rake in so many people for trial that it may be even more.

Mr. MIKVA. There is that possibility.

Mr. KASTENMEIER. The gentleman from California.

Mr. EDWARDS. In California we have a very good public defender system in the various counties. What would be the objection to expanding the local public defender system in a State like California to include Federal cases?

Judge HASTINGS. Of course, I don't suppose the State would have authority to underwrite legal assistance in Federal cases. I would question that, speaking very offhand now, in answer to your question.

Mr. EDWARDS. It is an offhand question.

Judge HASTINGS. By the same token, I suppose the Federal Government does have authority to underwrite State expenditures. So where you get into a cross mix, that can be resolved or not, I would question the State's constitutional authority to underwrite Federal programs. I don't know, it is just a quick guess.

Mr. KASTENMEIER. The gentleman from Virginia.

Mr. POFF. I think the judge has given us most intelligent and illuminating testimony and I am grateful for it.

You spoke of a mixed defender system which prompts me to nquire that if a council decides to set up in a particular district a public defender system, to what extent would the utilization of that system diminish the demand for payments under subsections (d) and (e) for counsel and other expenses?

Judge HASTINGS. Well, to the extent of every appointment that was made to the public defender. By that, I mean on claim. Now his overhead, of course, comes into counterbalance certainly, and I don't know where one would exceed the other or not.

Mr. POFF. Are you saying in those districts it would not be necessary to use subsections (d) and (e) any longer?

Judge HASTINGS. You mean if you had a public defender?

Mr. POFF. Yes.

Judge HASTINGS. Indeed, because the whole act itself requires that private counsel be appointed. It doesn't specify the percentage of appointments, but I think if we went to a 100-percent public defender system, then you have to rewrite the philosophy of the act. Maybe that is what you want to do, I don't know.

Mr. POFF. Surely in those districts where a public defender system was authorized you could anticipate there would be less expense associated with subsections (d) and (e)?

Judge HASTINGS. I would think so.

Mr. POFF. I am very anxious about the language on page 9. I would appreciate it if you would reason with me as I read it to the record. I am talking about H.R. 9856, page 9, beginning on line 4, subsection (h), Defender Organization—

"(1) Qualifications. A district or a part of a district in which at least two hundred persons annually require the appointment of counsel may establish a defender organization as provided for either under subparagraphs (A) or (B) of paragraph 2 of this subsection, or both. Two districts or parts of districts within the same circuit may aggregate the number of persons required to be represented to establish eligibility for a defender organization to serve both areas."

Now my question, is whether that language is so loose and so broad, even though not intentionally so, as to make it possible to appoint more than one public defender in an individual district or in part of an individual district which is adjacent to another district?

Judge HASTINGS. It might be. I have not thought it through at all. Again, this is not our language, as you well know.

Mr. POFF. I can hypothesize a case, I believe, to illustrate my point. I can think of a State in which there are two districts and in one of those districts there are three major metropolitan areas, one of which is adjacent to the other district. And under the language, as I have read it, I think it would be possible that there would be a public defender organization established for each of the two metropolitan areas, each of which meets the 200 test, and a third for the metropolitan area which adjoins the second district within that State.

As a matter of fact, I believe you could almost extend the hypothetical to include a metropolitan area in one State adjacent to another State or adjacent to another metropolitan area of another State. So I beleive you are going to have to give some careful attention to this language.

Judge HASTINGS. I agree with you. Of course, in defense I can only say it is not the language of the committee of the conference. In trying in my own mind to figure out why they wanted to combine parts of two districts adjacent to each other I assumed the reason for it was in the one instance you had a district, let us say, that could not qualify, and if it took in part of its neighbor it could qualify. That was my own assumption.

Mr. POFF. I am sure that was what this language is intended to convey. But I am fearful that it is not so limited in its thrust and its impact.

Judge HASTINGS. That is another complicating factor in the next sentence there. When they are in different circuits the Judicial Council of each circuit has got to approve the combined plan.

Mr. POFF. That is true, and this further complicates the problem raised by my colleague, Mr. Mikva. If we were to decide that supervisory power over the appointment of assistants to the public defenders should be lodged in the council, then I assume we would have to lodge it in both councils involved. I am convinced, from just the cursory reading which I have given that language, that it must be given more careful consideration.

Now laymen, you know, are for testing the legal profession and we can expect some questions, I am sure, in floor debate such as these. To what extent has the use of the 1964 act increased the number of guilty pleas that have been filed? Do you have any information covering that question?

Mr. FOLEY. Not directly relating to the question, sir. The data we have show the number of guilty pleas district by district, year by year. Of course, we have the number of appointments of counsel in the attachment you have for each year. A comparison can be made, but whether that is a fair relation is another question.

Mr. POFF. It is arguable in every case.

Judge HASTINGS. We have the general offhand view I hear talked about that we do have more trials, we do have more appeals. When we get through, hopefully, we have closed the door on most ancillary questions and the postconviction may not drag out forever, as sometimes seems to be the case.

Mr. POFF. Our laymen colleagues are also likely to ask if, in the administration of the act, you have observed any effort on the part of appointed counsel to file frivolous motions or demand ancillary hearings as a vehicle for increasing their own compensation.

Judge HASTINGS. When you phrase it in terms of increasing their compensation, I would say no.

Mr. POFF. I am glad to have that in the record.

Judge HASTINGS. Because within the limits that we already have, if the trial amounts to anything they are going to reach the maximum anyhow.

Incidentally, I might say now in passing, Mr. Poff, that the record shows the average cost per case in the District Courts in the first half of this fiscal year, was a hundred dollars, about that. So the average case is not a large case.

Mr. POFF. Mr. Chairman, I have not exhausted my inquiry but I yield to my colleagues so they may deal with the subject.

Mr. KASTENMEIER. The gentleman from Michigan.

Mr. HUTCHINSON. Thank you, Mr. Chairman.

Judge, you raise a question in my mind that if we create a public defender system under what agency of the Government should we place it? You indicated that many States have public defender systems. Under what agency of government have the States placed their public defender systems?

Judge HASTINGS. I expect General Decker does have the answer better than I. I would say there is not necessarily any uniformity there. It would probably vary State by State.

Mr. HUTCHINSON. I think that it would be helpful for the record to have some kind of a submission along that line.

Mr. KASTENMEIER. If the gentleman would yield, the Chair hoped to call on General Decker a bit later, and he might then be prepared to comment on your question.

Mr. HUTCHINSON. I will withhold that question then.

Judge HASTINGS. He has had far more experience with State systems than I have.

Mr. HUTCHINSON. I simply made that inquiry as a predicate to my initial feeling that such a system should be placed in the Justice Department. My mind is not closed on it, and I presume I could be persuaded otherwise. You know that criminal justice is not only prosecution, but it is also defense. And if we have a Department of Justice under an Attorney General, it would seem as though the responsibility of the Government for defense and prosecution could very properly be under the same executive department. Because the executive departments in our Government are big, broad, and almost conglomerate things.

You suggest HEW, You know they have put an awful lot of things together under HEW. Some of them would seem to be almost inconsistent. I mean, just speaking for myself, I would think that I would have no trouble in thinking of the Department of Justice as having one great defensive arm, just as it has a prosecutive arm. I am just interested as to how the States have resolved that problem.

Mr. KASTENMEIER. The gentleman from Pennsylvania.

Mr. BIESTER. We have other witnesses, and I don't want to tax everyone's time with the number of questions which I have. I am concerned, as the judge is, that there be a continuing mix of operations in this area. There ought to be a generalized development of expertise in the criminal law across the bar, more generally than it presently is distributed. And steps which would diminish the mix, I think, have a danger in also focusing that expertise in only one locus and I think that would be a mistake to try to promote.

I am encouraged by the judge's observations with respect to keeping a mixed, defender system, alive. That is the only comment I want to make. I enjoyed his testimony very much.

Judge HASTINGS. Thank you, sir.

Mr. KASTENMEIER. The Chair also expresses its appreciation to you both for your testimony this morning.

(Subsequently, the following was received from the Administrative Office of the United States Courts:)

Pursuant to the request of Congressman Poff, the following are submitted:

1. Payments to assigned counsel (compensation and out-of-pocket expenses):

Fiscal year:	*Amount*
1966 (Aug. 20, 1965–June 30, 1966)	$2, 079, 547
1967	2, 940, 450
1968	3, 208, 774
1969	3, 307, 325
1970 (July 1, 1969–Apr. 30, 1970)	1, 223, 579
Total	12, 759, 675

2. Payments for investigative, expert or other services:

Fiscal year:	*Amount*
1966 (Aug. 20, 1965–June 30, 1966)	$26, 571
1967	46, 898
1968	66, 102
1969	82, 877
1970 (July 1, 1969–Apr. 30, 1970)	44, 209
Total	266, 657

3. The estimated cost of establishing Federal public defender offices naturally will vary depending on the volume of business. For budgetary purposes, we have established unit costs as follows:

	Defender organization	
	Initial Cost	Recurring Annual cost
Category A (over 800 defendants)	$371, 000	$352, 600
Category B (600 to 800 defendants)	195, 000	184, 600
Category C (400 to 600 defendants)	137, 800	129, 400
Category D (200 to 400 defendants)	92, 900	86, 500

A statement showing the proposed staffing patterns and details with respect to the amounts required for office space, equipment, lawbooks, etc., is attached.

4. The December 31, 1969, report does not provide a firm basis upon which we would recommend changes in the list of districts having 200 or more criminal defendants.

5. It is difficult to forecast how many adjacent districts might be combined for the purposes of subsection (h), because this is not merely a question of numbers but also involves many variables, as for example, differences in state law and local rules.

6. Our current estimate of the cost of the amendments contained in the bill, S. 1461, is $9.8 million. Exclusive of expenses of administration, this will bring the total cost of representation to $14 million. A statement showing the details of our estimate is attached.

Budgetary requirements relating to proposed Criminal Justice Act amendments (S. 1461)—Continued

Increases in rates of compensation:	
Time in court ($15 to $30 per hour) 100,000 hours at $15	$1, 500, 000
Time out of court ($10 to $30 per hour) 200,000 hours at $20	4, 000, 000
Total	5, 500, 000
Increases in limitations:	
District courts:	
Felonies ($500 to $1,000 per case)	[1] 1, 200, 000
Misdemeanors ($300 to $400 per case)	[2]
Courts of Appeals:	
Felonies ($500 to $1,000 per case)	[1] 600, 000
Misdemeanors ($300 to $400 per case)	[2]
Total	1, 800, 000

See footnotes at end of table.

Representation in ancillary proceedings:	
Mandamus proceedings	[3]
Habeas Corpus proceedings (estimated 500 per year at an average cost of $360)	180,000
Proceedings under 28 U.S.C. 2255 (estimated 1,000 per year at an average cost of $360)	360,000
Total	540,000
Probation revocation proceedings: Estimated 2,500 appointments per year at an average cost of $360	900,000
Parole revocation proceedings: Estimated 500 appointments per year at an average cost of $120	60,000
Representation of material witnesses	[3]
Representation of persons under arrest: Estimated 2,500 persons at at $60	[4] 150,000
Other budgetary considerations:	
Anticipated reduction in the number of attorneys serving without compensation (2,500 cases at $300)	750,000
Personnel, equipment and other expenses of the Administrative Office, United States Courts, in performing the budgetary, accounting and other administerial functions	100,000
Total	9,800,000

[1] Based on actual time expended by attorneys as reported on their vouchers.
[2] The amount required would be nominal in view of small percentage of attorneys claiming maximum allowance in misdemeanor cases.
[3] Relatively few appointments of counsel are expected.
[4] No provision has been made for representation of persons under arrest in the District of Columbia Court of General Sessions. It is expected that the District of Columbia Legal Aid Agency will provide such representation.

ESTIMATED COST OF ESTABLISHING FEDERAL PUBLIC DEFENDER OFFICES

	Category A (16 positions)	Category B (8 positions)	Category C (6 positions)	Category D (4 positions)
Personnel compensation:				
Public defender	$32,000	$28,000	$25,000	$22,500
Deputy public defender	28,000	25,000	22,500	20,000
Attorney	25,000	22,500	20,000	----
Attorney	22,500	20,000	----	----
Attorney	20,000	----	----	----
Attorney (3 at $18,000)	54,000	----	----	----
Chief investigator, GS-12	14,192	14,192	----	----
Investigator, GS-11	11,905	11,905	11,905	11,905
Assistant investigator, GS-9 (2 at $9,881)	19,762	----	----	----
Secretary, GS-9	9,881	----	----	----
Clerk-stenographer, GS-7	8,098	8,098	8,098	8,098
Clerk-stenographer, GS-5	6,548	6,548	6,548	----
Clerk-typist, GS-4	5,853	----	----	----
Total compensation	257,739	136,243	94,051	62,503
Agency contributions for retirement and insurance (approximately 8.5 percent of gross compensation)	21,861	11,557	7,999	5,297
Travel ($800 per attorney and investigator)	9,600	4,800	3,200	2,400
Rent (200 square feet at $5 per square foot each)	16,000	8,000	6,000	4,000
Communications, including postage ($300 each)	4,800	2,400	1,800	1,200
Expert witnesses and mental examinations	40,000	20,000	15,000	10,000
Other contractual services ($25 each)	400	200	150	100
Supplies ($100 each)	1,600	800	600	400
Furniture and furnishings, nonrecurring expense ($400 each)	[1] 6,400	[1] 3,200	[1] 2,400	[1] 1,600
General office equipment, nonrecurring expense ($600 each)	9,600	4,800	3,600	2,400
Library:				
Initial cost	3,000	3,000	3,000	3,000
2d and succeeding years	(600)	(600)	(600)	(600)
Total (initial cost)	371,000	195,000	137,800	92,900
Recurring annual cost	352,600	184,600	129,400	86,500

[1] To be included in appropriation estimates of GSA for "Expenses, U.S. court facilities."

Mr. KASTENMEIER. Now the Chair would like to call the Honorable Donald E. Santarelli, Associate Deputy Attorney General for the Administration of Criminal Justice, to represent the Justice Department.

Mr. Santarelli is, of course, well known to the members of this committee.

STATEMENT OF HON. DONALD E. SANTARELLI, ASSOCIATE DEPUTY ATTORNEY GENERAL FOR THE ADMINISTRATION OF CRIMINAL JUSTICE, DEPARTMENT OF JUSTICE; ACCOMPANIED BY EARL SILBERT, OFFICE OF CRIMINAL JUSTICE

Mr. SANTARELLI. Mr. Chairman, good morning. I have with me Mr. Earl Silbert of the Office of Criminal Justice, if he may join me at the counsel table.

Mr. KASTENMEIER. He is also most welcome.

In the interest of time, would you like to read your statement or summarize it, or how would you like to proceed?

Mr. SANTARELLI. I will expeditiously proceed with this statement by selectively going through it, Mr. Chairman, on the issues that I am sure will be of greater interest.

Mr. KASTENMEIER. In that event, your statement in its entirety will be made part of the record.

(The prepared statement referred to follows:)

STATEMENT OF HON. DONALD E. SANTARELLI, ASSOCIATE DEPUTY ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

S. 1461 CRIMINAL JUSTICE ACT AMENDMENTS

Mr. Chairman and Distinguished Members of the Subcommittee, I appreciate this opportunity to appear before you to present the views of the Department of Justice on S. 1461, proposed amendments to the Criminal Justice Act of 1964, as passed by the Senate on April 30, 1970.

The Department of Justice has previously provided the House Committee on the Judiciary by letter with its comments on H.R. 9856, a bill identical to S. 1461 as introduced in the Senate. In this letter, we stated our strong approval of the three basic goals of the proposed amendments to the Criminal Justice Act of 1964 contained in S. 1461 and H.R. 9856. These are (1) to expand the coverage of the Act, (2) to increase the compensation for attorneys and other services, and (3) to grant judicial districts with heavy caseloads the option of adopting plans which would permit the use of defender organizations.

Instead of repeating to you our reasons for supporting these basic goals of the amendments, goals which have virtually unanimous support, I shall confine my testimony to specific provisions of S. 1461 as passed by the Senate which are of particular concern to the Department.

I. EXPANDED COVERAGE OF THE ACT

When enacted in 1964, the Criminal Justice Act represented the initial major experience of the Federal Government with compensating attorneys in criminal cases on a somewhat comprehensive basis. The coverage of the Act was, therefore, understandably narrow, confined to representation at trial and on appeal.

It quickly became apparent, however, that the Criminal Justice Act lacked the flexibility to permit compensation to counsel appointed as a result of new Supreme Court cases extending the Sixth Amendment right to counsel or to permit compensation of counsel appointed in other areas to which the Sixth Amendment has not yet been held applicable. These lawyers could not be compensated despite the fact that their representation contributes as much to the integrity and fairness of the criminal justice system as does representation at trial and on appeal.

Thus the decision to expand the coverage of the Criminal Justice Act of 1964 is both wise and desirable. The only question to be discussed is the nature of the expansion.

S. 1461 authorizes district courts to provide a plan for furnishing representation for all persons financially unable to obtain adequate representation in four different categories.

The first category provides for furnishing representation to persons charged with felonies and misdemeanors, other than petty offenses. This is basically the same as existing law. S. 1461 would also extend representation to persons charged with violation of probation pursuant to the Supreme Court decision in *Mempa* v. *Rhay* (389 U.S. 128 (1967)).

The second category provides for furnishing representation to any person "under arrest". The Supreme Court decisions such as *Miranda* and *Wade*, which extend the right to counsel prior to presentment in court, do not require counsel for all persons arrested. Counsel is necessary only if law enforcement authorities propose to do something to the person, such as place him in a lineup. There is no reason, accordingly, for the Government to undergo the needless expense of compensating counsel for representation which will not provide a useful service. Counsel should be appointed for persons "under arrest" only in those situations in which it is required by law. This will guarantee that counsel will be furnished, and subsequently compensated under the Act, for persons arrested prior to initial court appearance only if the police propose to take some action with them which by existing law requires the presence of counsel.

The third category of persons for whom counsel could be appointed and compensated under S. 1461 are those subject to revocation of parole, those who are in custody as material witnesses, and those seeking collateral relief. Appointment would be discretionary with the court. We have previously testified in favor of this provision insofar as it affects material witnesses and those seeking collateral relief. The appointment of counsel for those subject to parole revocation was not originally included in S. 1461. The provision of counsel to persons subject to revocation of parole would present an administrative problem because the parolee is not before the Court making the appointment but is before an agency of the executive branch. It would also present a problem as to when counsel should be appointed, since recent court decisions have made it clear that counsel is not needed in all cases. (See *Cotner* v. *United States*, 409 F. 2d 853 (10th Cir., 1969)); *Halprin* v. *Parker*, 418 F. 2d 313 (3rd Cir., 1969)). Nevertheless, there are some circumstances in which a parolee who is subject to revocation and without adequate funds, needs counsel. In these limited circumstances, counsel should be appointed and then compensated. (*Earnest* v. *Willingham*, 406 F. 2d 681 (10th Cir., 1969)). By providing that such appointments be discretionary with the courts, we assume that they would be made only when the facts of the individual case so require.

The fourth category provides for furnishing counsel for persons "for whom the Sixth Amendment to the Constitution or any Federal law requires the appointment of counsel." Authorizing appointment of counsel whenever the Sixth Amendment right to counsel in criminal cases so requires would provide a desirable flexibility in the statute. This would avoid the necessity of amending the statute whenever the judicial application of the Sixth Amendment right to counsel is expanded or contracted.

We do, however, object to the fourth category insofar as it would require counsel whenever any federal law requires the appointment of counsel. Statutes may require appointment of counsel in situations wholly unrelated to the criminal justice system. For example, as the Senate Committee report itself states (S. Rep. No. 790, 91st Cong., 2d Sess., p. 8), this section would authorize compensation for counsel appointed to represent persons civilly committed under Title III of the Narcotic Addict Rehabilitation Act of 1966. Were Congress to pass a statute providing for civil commitment of the mentally ill or of those suffering from tuberculosis, and require appointment of counsel for those unable to afford counsel, this section would necessitate their compensation under S. 1461. Indeed, if Congress were to require counsel for indigents in federal tort or other similar civil cases, the language of S. 1461 as passed by the Senate would necessitate their compensation under the Criminal Justice Act.

Compensation under the Criminal Justice Act should be limited to cases within the criminal justice system. This would include collateral attacks on conviction and parole proceedings, which are technically civil proceedings. Appointment and compensation of counsel by the Government in cases completely unrelated to the criminal justice system raise different questions of policy

and therefore merit separate study and evaluation. The Department of Justice, therefore, recommends the deletion of this provision from S. 1461 as passed by the Senate, or its limitation to criminal cases.

II. INCREASED COMPENSATION

S. 1461 as passed by the Senate increases the maximum amounts payable attorneys under the Act from $500 to $1,000 for a felony case and from $300 to $400 for a misdemeanor. On appeal the maximum payable has been raised to $1,000 from $500 in felony cases and $300 in misdemeanor cases. The Department strongly supports these increases.

S. 1461 as passed by the Senate would increase the hourly compensation for attorneys to $30. The present act provides compensation of $15 an hour for court work, $10 an hour for out of court work. The inadequacy of these rates is generally recognized. In testimony before the Senate, Judge Harvey M. Johnsen, representing the Judicial Conference of the United States, recommended $20 an hour for court work, $15 for out of court work. The Department of Justice recommended $20 an hour for both in court and out of court work, the compensation provided for in S. 1461 as introduced. Whether or not one agrees with the retention of the traditional distinction between in court and out of court work for lawyers' fees, the Department is convinced that payment of $30 an hour is in excess of what is appropriate.

As Professor Dallin Oaks pointed out in his thorough study of the operation of the Criminal Justice Act, the Act was not intended to compensate lawyers at prevailing rates. (Oaks, *The Criminal Justice Act in the Federal District Court*, VII–4, hereinafter referred to as Oaks). Despite general agreement that the present hourly rates are too low, Professor Oaks discovered that the greatest financial hardship on lawyers appointed under the Act was the maximum amounts permitted even for protracted representation. (Oaks, VII–11). The substantial increases in the authorized maximum payment should help greatly to alleviate this hardship. Consequently, it should not be necessary to increase the hourly payment beyond the original $20 figure included in both S. 1461 and H.R. 9856 as introduced. Under the proposed $30 an hour compensation, if an attorney were to take only appointed cases under the Criminal Justice Act, and work only five hours a day for five days a week, he would earn nearly $40,000 a year.

III. DEFENDER ORGANIZATIONS

Districts with particularly heavy caseloads may need a defender organization to assist the private bar in providing high quality representation and the court in efficiently administering the Act. S. 1461 as passed by the Senate grants to districts, parts of districts, or combinations of adjacent districts with at least 200 court appointments of attorneys annually the option of instituting a public defender organization or a community defender organization. In our testimony before the Senate and in our letter to the House Judiciary Committee, the Department has supported this provision. We do have the following brief comments to make on this provision, as enacted by the Senate.

S. 1461 requires each public defender organization to submit a proposed budget to the Director of the Administrative Office of the United States Courts with the Director then to submit to the President a budget for each organization. It would, in our view, be much less cumbersome for the Director, after evaluating the needs of each defender organization, to submit a single budget to the President.

S. 1461 as presently drafted is somewhat vague with respect to the management and control of the public defender organizations. The Judicial Conference has overall control of these organizations by virtue of its budgetary and removal power. It should, in our view, also be authorized to promulgate rules and regulations for these organizations concerning such matters as minimum qualifications for employees of the defender organization. The day-to-day needs of the public defender organizations, however, should be determined by the public defender himself rather than by the judiciary.

We also suggest that S. 1461 be amended to prohibit a public defender or any attorney appointed by him from engaging in the private practice of law. The District of Columbia Code (Sec. 2–2208) contains such a prohibition for the District of Columbia Legal Aid Agency and there is a similar prohibition in the public defender provisions of the District of Columbia court bill recently passed by both the House and Senate and presently pending in conference.

IV. APPLICABILITY TO THE DISTRICT OF COLUMBIA

S. 1461 contains a section making its provision applicable in the District of Columbia. Although the Department has urged inclusion of a provision clarifying the applicability of the Criminal Justice Act to the local courts in the District of Columbia, the provision adopted by the Senate is inadequate for two principal reasons:

First, the Senate provision does not make clear that the defender organization provisions of S. 1461 are not applicable to the District of Columbia. As I have previously mentioned, both the House and Senate have enacted legislation providing the District with a full-fledged public defender office, legislation which is presently pending in conference. There is no need, accordingly, for legislation authorizing the District of Columbia to establish another defender organization.

Second, under the Senate provision, it is not clear whether counsel appointed to represent juveniles are to be compensated and, if so, whether such compensation is to be limited to counsel who represent juveniles alleged to be delinquent or also juveniles alleged to be neglected or in need of supervision.

In our letter to the Chairman of the Judiciary Committee to which I have previously referred, the Department suggested language designed to clarify the applicability of the Criminal Justice Act to the local courts in the District of Columbia. This suggested language specifically made the defender organization provisions of the Act inapplicable to the District and specifically limited the application of the Act to juveniles charged with acts which if committed by adults would be criminal offenses. We suggest that this language be substituted for the language in section 3 of S. 1461 as it passed the Senate.

S. 1461, amended as we have suggested, has the strong support of the Department of Justice because it would guarantee that persons financially unable to obtain adequate representation within the criminal justice system would be represented by counsel adequately compensated for their public services.

This concludes my statement. I would be pleased to answer any questions you may have.

OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., February 6, 1970.

Hon. EMANUEL CELLER,
Chairman, House Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 9856, a bill "To amend section 3006A of title 18, United States Code, relating to representation of defendants who are financially unable to obtain an adequate defense in criminal cases in the courts of the United States."

The Criminal Justice Act of 1964 was enacted to provide compensation for attorneys appointed in Federal criminal cases to represent defendants financially unable to obtain an adequate defense. Prior to its enactment, attorneys appointed to represent such defendants were not compensated at all, a situation detrimental both to the attorneys and defendants in particular, and to the administration of criminal justice in general. Because the Criminal Justice Act of 1964 represented the initial experience of the Federal Government with compensating appointed attorneys in criminal cases on a somewhat comprehensive basis, the amount or rate of compensation provided by the act was low and the coverage of the act as to the specific types of cases in which appointed counsel were eligible for compensation was narrow.

During the five years since its enactment in 1964, the operation of the Criminal Justice Act has been exhaustively studied by the Judicial Conference of the United States and the Department of Justice. H.R. 9856 embodies our joint recommendations to provide more adequate payment to court-appointed counsel and to provide payment to court-appointed counsel in certain categories of cases which were not covered in the original Criminal Justice Act. It also contains a provision permitting Federal districts with large numbers of appointments of counsel in criminal cases to establish defender organizations to provide representation in criminal and related cases.

Since the Act was passed in 1964, the Supreme Court has extended the right to counsel. *Miranda* v. *Arizona*, 384 U.S. 436 (1966), and *United States* v. *Wade*, 388 U.S. 218 (1967), extended the right to counsel to persons in custody prior

to initial presentment in certain situations. The Supreme Court decision in *Mempa* v. *Rhay*, 389 U.S. 128 (1967), requires counsel at probation revocation proceedings at which a defendant is sentenced. H.R. 9856 would make the right to compensation under the Criminal Justice Act co-extensive with the right to counsel as required by the Supreme Court. This is an obviously desirable amendment.

Collateral proceedings such as habeas corpus and section 2255 motions frequently involve hearings and briefs and therefore appointment of counsel. The Criminal Justice Act does not now authorize compensation for counsel appointed for these proceedings. H.R. 9856 would permit compensation in the discretion of the court, not to exceed $250. Not every habeas corpus petition or section 2255 motion requires appointment of counsel since experience has shown that many of these motions are repetitive or frivolous. Compensation for counsel is therefore limited to those collateral proceedings in which the court in the exercise of its discretion, for instance where a hearing or legal memorandum is required, appoints counsel and determines that compensation is warranted. The Department of Justice supports this amendment.

The fee rates presently authorized, $10 and $15 per hour with limitations of $500 for felonies and $300 for misdemeanors, have been found to be outdated and inadequate to afford fair competition for services. H.R. 9856 would increase the hourly fee rate to $20 and the limitations to $1,000 for felonies and $400 for misdemeanors. The Department considers this fee plan fair and reasonable.

One of the most significant proposals contained in H.R. 9856 is subsection (h), providing for a public defender organization. Over thirty years ago, in 1937, the Judicial Conference of the United States recommended the enactment of a public defender system in those districts with a high volume of criminal cases. In 1963 the Attorney General's Committee on Poverty and the Administration of Federal Criminal Justice (Allen Committee) recommended that a federal public defender system be included among the options available to individual districts. As introduced in 1963 by Senator Hruska, S. 1057, which became the Criminal Justice Act of 1964, provided for a public defender. Although this provision was deleted in the legislative process, the Conference Report strongly urged the Department of Justice to "revive its recent study on the need for a Federal public defender system throughout the entire Federal judicial system". Such a study was made and, noting that the overwhelming majority of Federal District Court Judges and United States Attorneys favored a public defender system option, concluded:

> There is a demonstrated need for full-time salaried federal defender lawyers on an optional basis in certain districts, and that measures should be taken to establish the full-time federal defender as a financially stable option under the Criminal Justice Act.

This conclusion is consistent with both the 1967 recommendations of the American Bar Association Project on Minimum Standards for Criminal Justice (contained in its publication *Providing Defense Services*) and the President's Commission on Law Enforcement and Administration of Justice (*The Challenge of Crime in a Free Society*, 151–153).

Three aspects of H.R. 9856's provision for defender organizations are especially worthy of note. First, the option to institute a defender organization is limited to those districts, parts of districts, or combinations of adjacent districts in which at least two hundred persons annually require appointment of counsel under the Act. It is these districts with their heavy caseloads which are most likely to need a public defender to assist the private bar to provide high quality representation and to assist the court in efficiently administering the Act.

Second, no district is required to institute a defender organization; the decision to do so is entirely optional. For those districts which do decide to set up a defender organization, maximum flexibility is provided to permit each district to tailor its arrangements for representation to its own needs. Accordingly, a district may decide under H.R. 9856 to set up a federal public defender organization, supervised by a Federal Public Defender appointed by the Judicial Council of the circuit for a term of four years. His compensation will be determined by the Judicial Council, but in no event can it exceed that of the local United States Attorney. The Federal Public Defender is authorized to appoint other full-time attorneys and personnel as may be necessary. A district may choose not to have a Federal Public Defender but may rely on a "community defender organization", a nonprofit defender service which is established and administered by the private bar and which is supported by grants approved by the Judicial Conference of the United States.

The third point worth noting is that, regardless of the kind of defender organization set up by a district, H.R. 9856 requires that private attorneys be appointed under the Act "in a substantial number of cases". The purpose of this provision, one which the Department strongly supports, is to assure continued participation of the private bar in the administration of criminal justice.

The Department of Justice recommends enactment of H.R. 9856, subject to consideration of the following suggestions:

1. We suggest that the first sentence of proposed subsection (a) of 18 U.S.C. 3006A be separated into two sentences to read:

"Each United States district court, with the approval of the judicial council of the circuit, shall place in operation throughout the district a plan for furnishing representation for any defendant financially unable to obtain an adequate defense who is charged with a felony or misdemeanor (other than a petty offense as defined in section 1 of this title) or with a violation of probation. Each plan shall include a provision for representation, pursuant to subsection (g), of (1) persons under arrest, when required by law, and (2) material witnesses in custody or persons seeking collateral relief."

The first sentence of subsection (2) as presently worded in H.R. 9856 appears to require that counsel be furnished for "any person under arrest". The phrase "any person under arrest" was inserted in H.R. 9856 to enable counsel who represent arrested persons prior to their initial court appearance, pursuant to requirements of the *Miranda* and *Wade* Supreme Court decisions, to be compensated. As drafted, however, there is no requirement, as there should be, that the arrested person be financially unable to obtain adequate representation. In addition, the Supreme Court decisions extending the right to counsel do not require counsel for all persons arrested, but only if, for instance, the police want to place an arrested person in a lineup. Accordingly, the phrase "any person under arrest" has been limited in our proposed amendment by the phrase "when required by law". This makes it clear that counsel will be furnished, and subsequently compensated under the Act, for persons under arrest and prior to initial court appearance only if the police propose to take some action with them which requires the presence of counsel.

2. As is clear from the above recommendation, we have included in a separate sentence those situations in which counsel may, but need not, be furnished persons unable to obtain adequate representation, with a cross-reference to subsection (g). We suggest that subsection (g) be modified to read as follows:

"(g) Discretionary appointments; representation of arrested persons.—

"(1) *Discretionary appointments.*—An attorney may be appointed to represent a material witness in custody or a person who has filed for relief under sections 2241, 2254, or 2255 of title 28, whenever the United States magistrate or the court determines that the interests of justice so require and that the witness or person is financially unable to obtain adequate representation. An attorney appointed pursuant to this subsection may be compensated as specified in subsection (d) and may obtain services under the provisions of subsection (e).

"(2) *Representation of arrested persons.*—An attorney may represent a person under arrest who is financially unable to obtain adequate representation, prior to initial appearance before a United States magistrate or the court, when such representation is required by law. An attorney who represents a person under arrest pursuant to this subsection and the plan approved by the judicial council pursuant to subsection (a), shall be compensated as specified in subsection (d)."

Proposed subsection (g)(2) provides the requirement that counsel be furnished arrested persons prior to initial court appearance only if they are financially unable to obtain adequate representation. Since an attorney is not appointed by the court or magistrate at the time he furnishes this representation, the proposed subsection (g)(2) authorizes compensation only if his representation was pursuant to the subsection (a) plan approved by the judicial council. Attorneys who are qualified under the plan and who do furnish representation can be compensated even if they are not subsequently appointed to represent the arrested person when he appears in court. If they are appointed, their appointments can be made retroactive to include representation prior to court appearance pursuant to subsection (b). Finally, no provision is made for services other than counsel because such services would be unnecessary at that stage.

3. In H.R. 9856 as printed, on line 13, page 2, the word "aid" is omitted from the phrase "legal aid agency".

4. Proposed subsection (e) provides for necessary services other than counsel. We suggest that at the end of the first sentence of (e)(2) a comma be added, followed by the words "if necessary for an adequate defense". This addition would guarantee that only the procedural burden for obtaining such services will be lightened, not the authorization standards. The addition repeats the language of (e)(1), but since the (e)(2) provision for ex parte services up to $150 without prior authorization is new, the proposed added language will avoid any possible ambiguity on the standard to be applied on review.

5. We suggest that at the end of H.R. 9856 a new subsection (c) be added as follows:

"(c) A new subsection (*1*) is added as follows:

"(*1*) Applicability in the District of Columbia.—In the District of Columbia all provisions of this Act, except subsection (h), shall be applicable to (1) defendants prosecuted by the United States Attorney in any court having jurisdiction of offenses against the United States and (2) children charged by the District of Columbia with an act which, if committed by an adult, would be a criminal offense prosecuted by the United States Attorney. The plan of the District of Columbia shall be approved jointly by the Judicial Council of the District of Columbia Circuit and the District of Columbia Court of Appeals."

The Criminal Justice Act of 1964, as originally enacted, omits any reference to the District of Columbia Court of General Sessions or the Juvenile Court. On June 15, 1966, the Comptroller General ruled that the Criminal Justice Act of 1964 does extend to certain classes of criminal cases prosecuted in the District of Columbia Court of General Sessions. 45 Comp. Gen. Reports 785. The Judicial Conference of the United States has only recently authorized compensation for attorneys representing juveniles in Juvenile Court in certain limited classes of cases.

The above amendment has been proposed, however, to eliminate whatever uncertainty may remain, an uncertainty which may become more acute should there be, as is presently under legislative consideration, a substantial transfer of jurisdiction of local criminal cases from the United States District Court for the District of Columbia to a new court of local jurisdiction to be called the Superior Court of the District of Columbia. It is settled law that an Act of Congress which makes certain conduct a crime only in the District of Columbia sets forth an offense against the United States. Accordingly, the proposed amendment would apply to the Court of General Sessions since it has jurisdiction of certain offenses against the United States. The statute is limited to defendants prosecuted by the United States Attorney to avoid making the Act applicable to defendants charged with certain traffic offenses such as reckless driving which are not petty but are prosecuted by the Corporation Counsel. Subsection (h) is not made applicable to the District since Congress has by statute previously provided it with a public defender organization.

The amendment extending the Act to juveniles in the District of Columbia does so only for juveniles or children charged with acts which if committed by an adult would be serious criminal offenses. Children charged as beyond control or in need of supervision are excluded.

Instead of having each court system in the District establish a separate plan, the amendment provides that one plan for furnishing representation in all courts will be approved jointly by the Judicial Council of the District of Columbia and the District of Columbia Court of Appeals.

The Department of Justice strongly recommends enactment of this legislation, amended as suggested.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RICHARD G. KLEINDIENST,
Deputy Attorney General.

Mr. SANTARELLI. Thank you.

Beginning on page 2 of my statement, we have some matters we would like to comment on in the bill. At the bottom of the page, "Thus the decision to expand the coverage of the Criminal Justice Act of 1964 is both wise and desirable. The only question to be discussed is the nature of this expansion."

We have geared this statement to S. 1461 as we were instructed; that is the bill that passed the Senate. So my comments are restricted to that version of the bill.

Mr. KASTENMEIER. That is understood, and that will be the primary bill we will be working with.

Mr. SANTARELLI. S. 1461 authorizes the district courts to provide a plan for funishing representation for all persons financially unable to obtain adequate representation, in four different categories.

The first category provides for furnishing representation to persons charged with felonies and misdemeanors, other than petty offenses. This basically is the same as the existing law. S. 1461 would also extend representation to persons in violation of probation.

The second category provides for furnishing representation to any person under arrest. This gives us some problem. The Supreme Court decisions such as *Miranda* and *Wade*, which extended the right to counsel prior to presentment in court, do not require counsel for all persons arrested. Counsel is necessary only if law enforcement authorities propose to do something to the person, such as place him in a lineup. There is no reason, accordingly, for the Government to undergo the needless expense of compensating counsel for representation which will not provide a useful service. Counsel should be appointed for persons under arrest only in those situations in which it is required by law.

This will guarantee that counsel will be furnished and subsequently compensated under the act for persons arrested prior to initial court appearance only if the police propose to do something for which the law requires the presence of counsel.

Let me expand on that just a moment. I am looking at page 12 of the Senate version of the bill.

Mr. POFF. We have copies of the Senate bill. It is the report print, calendar No. 808.

Mr. SANTARELLI. We can easily find it. It is section 1 of the bill, (a) Choice of Plan. When one reads the Choice of Plan section of the bill, it says each U.S. district court with the approval of the council of the circuit shall place in operation throughout the district a plan for furnishing representation.

Now that is something different from just compensation. That is a plan for furnishing representation to the persons in the enumerated categories, for example, a person under arrest. Now that seems to imply a right to counsel to all persons under arrest. That is not now the law. That is what troubles us. Whether to compensate counsel who were appointed by the court in cases prior to presentment, in which there was perhaps no real need for a lawyer, is a different question. But the way this bill is drafted, it may imply a right to counsel in cases where they are not now required by law and where, in general, no useful purpose is provided by counsel.

The net result of such an implication would be that a lawyer would have to literally accompany a police officer every time a defendant is arrested, to accord him the newly expanded right when arrested. Now that is how we read that language, and it troubles us. I am not sure what you want to do in the Criminal Justice Act to provide a right to counsel in categories where they do not now exist and where there does not seem to be a compelling need to do so.

We would caution you that, in drafting such a law, you should make it clear it is either a compensation law for counsel appointed by courts, or that it is a law which establishes or affords a new right to counsel in categories not previously recognized.

The real question to consider, gentlemen, is what useful function does counsel provide for a defendant from the moment of arrest, if the police do nothing with him. If he is taken to the precinct and immediately admitted to whatever collateral bail may be pertinent or the bondsman takes him out immediately, there is no function of a useful nature for the lawyer to perform.

For example, counsel do not have the right to attend upon a defendant in a police station if he is not being interrogated. For example, at fingerprinting and mugging, counsel do not now have a right to force their way into a precinct station while that is going on. The rights have been extended in the *Miranda* case to where the questioning is going on or in cases where there is a lineup with witnesses going on. That troubles us and we call it to your attention.

Mr. POFF. Will you have language to suggest which would clarify the purpose? I don't believe there is much difference between the purpose of those who drafted the language and the purpose you have expressed. But there may be some difference in the language. I think it would be helpful if we could have your views now or later on language that would achieve the desired purpose of the law.

Mr. SANTARELLI. Mr. Poff, we communicated with the Chairman of this committee, Mr. Celler, in a letter of February 6, in which we spelled out some specific recommendations. As I say at the end of the prepared statement, we would like an opportunity to consult with counsel of the Subcommittee and the Subcommittee to work out the proposed language changes, rather than take the Subcommittee's time at the hearing.

Mr. POFF. I see specifically the recommendation that is made in this context and the clause "persons under arrest" is modified by the clause "when required by law"?

Mr. SANTARELLI. Right. The third category of the persons for whom counsel could be appointed and compensated under S. 1461 are those subject to revocation of parole, those who are in custody as material witnesses, and those seeking collateral relief. Here the appointment is discretionary with the court. We have previously testified in favor of this provision insofar as it affects material witnesses and those seeking collateral relief. Appointment for those subject to parole revocation was not originally included in the Senate bill. The provision of counsel to persons subject to revocation of parole would represent an administrative problem, because the parolee is not before the court making the appointment, but is before an agency of the executive branch. This gives rise to substantial problems. It also presents a problem as to when counsel should be appointed, since recent court decisions have made it clear that counsel is not needed in all revocation cases.

These two cases cited in my testimony, *Cotner* and *Halprin*, are cases which indicate occasions when the courts in two circuits felt counsel was not required to be appointed because there was nothing being contested in terms of a legal question. The only thing being contested in those cases was whether or not the parole board should, in its discretion, take action. The facts had been admitted.

But there are some circumstances when a parolee who is subject to revocation and without adequate funds needs counsel. In these limited circumstances, counsel should be appointed and compensated. By providing that such appointment be discretionary with the courts, we assume they would be made only when the facts in an individual case require. Now that is a matter left to the discretion of the courts, because we have seen that the courts have reached different conclusions in different cases in this regard.

The bill's language is discretionary, and that makes it desirable in our estimation. But this fourth category overlaps into this area that I have just discussed, namely, the possible establishment of a right where one does not now exist.

The fourth category provides for furnishing counsel for persons for whom the Sixth Amendment to the Constitution, or any Federal law, requires the appointment of counsel. Authorizing the appointment of counsel whenever the sixth amendment right to counsel in criminal cases requires would provide a desirable flexibility in the statute that does not now exist. This would avoid the necessity of amending the statute whenever the judicial application of the sixth amendment right to counsel is expanded or contracted.

We do object to the fourth category insofar as it would require counsel whenever any Federal law requires the appointment of counsel. Statutes may require the appointment of counsel in situations wholly unrelated to the criminal justice system. We have cited some examples from the Senate committee report, such as the Narcotic Addict Rehabilitation Act. Were Congress to provide a statute providing for civil commitment for the mentally ill, or for those suffering from tuberculosis, and require appointment for those unable to afford counsel in other areas, this section would necessitate their compensation under the law as written.

Indeed, if Congress were to require counsel for indigents in Federal tort or similar civil cases, the language of this bill would be broad enough to require their compensation. Compensation under the Criminal Justice Act should be limited to occasions within the criminal justice system; collateral attacks on conviction and parole proceedings are technically civil proceedings but they are in the criminal justice system.

Mr. POFF. Do you mean that they should not be available in habeas corpus proceedings?

Mr. SANTARELLI. No. Although civil in nature, they are part of the criminal justice process.

Appointment and compensation of counsel by the Government in cases completely unrelated to the criminal justice system raise different questions of policy, and therefore merit separate study and evaluation. We would recommend that this section either be deleted or be amended to limit it to criminal cases.

By way of example, the thing that troubles us is the breadth of that statement. If, for example, the Congress should later determine to establish a right to counsel in a civil case, the fees and the system in which it would be administered may necessarily be entirely different from those established when we are thinking in terms of criminal justice crimes and the loss of liberty.

We would simply say if you are going to give additional rights to counsel later, then you should consider at that time what machinery

should be created to implement them, namely, how counsel should be appointed, what kind of compensation would be available. We are now talking in terms of criminal law cases.

Mr. POFF. I beg your pardon, but in order that the record may continue in a logical vein a question is pertinent at this point. How do you look on the Narcotic Addict Rehabilitation Act which permits preconviction commitment?

Mr. SANTARELLI. Mr. Silbert makes a distinction that would be wise for the record. Titles I and II relate to criminal cases where commitment can occur, but title III, to which I was referring, is purely a civil commitment proceeding; persons are not charged with crime.

Mr. KASTENMEIER. Proceed, sir.

Mr. SANTARELLI. As to increased compensation, this is an area of some small controversy, too, it appears. The bill passed by the Senate increases the maximum from $500 to $1,000 for a felony case and from $300 to $400 for a misdemeanor. On appeal, the maximum has been raised to $1,000. We support these increases of the total amount. But we are troubled by the $30-an-hour figure. The present act, as you know, provides for $15 for in-court and $10 for out-of-court, and we recognize these rates are inadequate. Whether the retention of traditional distinction between in- and out-of-court work for lawyer fees is desirable is a matter as to which we don't offer a suggestion. But we are troubled that the $30 an hour may be excessive and we point to Prof. Dallin Oaks study, a thorough study of the operation of this act. And he concluded that, although the present rates were too low, that $30 an hour would be too high.

Let me rephrase this and quote myself. Despite general agreement that the present hourly rates are too low, Professor Oaks discovered that the greatest financial hardship on lawyers appointed under the act was the maximum amount permitted even for protracted representation. The substantial increase in the authorized maximum payment should help greatly to alleviate this hardship, consequently it should not be necessary to increase the hourly payment beyond the original $20 figure included in both bills.

Under the proposed $30-an-hour compensation, if an attorney were to take only appointed cases under the act and work only 5 hours a day for 5 days a week, he would earn nearly $40,000 annually.

I recognize what Mr. Mikva has said, in some circuits or jurisdictions the rate of compensation may indeed be in the area of $30 a day or greater. But the problem presented is that one must contrast private counsel with public counsel in the same circumstances, that is, an assistant U.S. attorney, an attorney from the Department of Justice, or in fact the U.S. Attorney himself. Only in rare instances is the U.S. Attorney paid in salaries approaching that of a U.S. district judge.

U.S. attorneys are in the $20,000 to $25,000 bracket. Most Government trial lawyers are at less than that, GS–15 being the highest rate of nonexecutive officials in the Department of Justice. We are troubled that we would see defense counsel, and perhaps not very experienced defense counsel, paid substantially more than experienced career Government prosecutors, including the chief prosecutor of the District, the U.S. attorney.

Mr. KASTENMEIER. I hate to interrupt you, but aren't you comparing hourly gross fees, with a salary, which are two different things,

really? The gross fee is not net income at the end of the year to the individual practicing.

Mr. SANTARELLI. That is correct, and that is, in fact, a consideration, Mr. Kastenmeier. And for that reason I make no absolute statement here. We just say we are troubled that this rate is substantially greater than the typical assistant U.S. attorney, who starts at about $12,000 a year, and after 4 or 5 years has not reached $20,000. And this is almost twice that.

Many lawyers who take these Criminal Justice Act cases are young lawyers who do not have substantial overhead and who are not part of an office with substantial overhead.

With respect to defender organizations, districts with particularly heavy case loads may need a defender organization to assist the private bar in providing high quality representation, and the court, in efficiently administering the act. The bill as passed by the Senate grants to districts or parts of districts or combinations of adjacent districts with at least 200 court appointments of attorneys annually the option of instituting a public defender organization or a community defender organization.

In our testimony before the Senate and in our letter to the House Judiciary Committee, we support this provision. We do have these brief comments.

The bill requires each public defender organization to submit a proposed budget to the Director of the Administrative Office of the U.S. Courts, with the Director then to submit to the President a budget for each organization. It would be, in our view, much less cumbersome for the Director, after evaluating the needs of each defender organization, to submit a single budget to the President.

By way of comment, this is how we operate our U.S. attorney's office. We don't submit 92 separate budgets. The Department submits a single budget worked out at the administrative level. The bill as presently drafted is somewhat vague with respect to the management and control of public defender organizations, and this was alluded to a little earlier in your colloquy.

The Judicial Conference has overall control by virtue of its budgetary and removal power. It should, in our view, be authorized to promulgate rules and regulations for these organizations concerning such matters as minimum qualifications for employment, et cetera. You look at the language of the proposal, and it is very vague. It does not deal with this question at all, and it might be wise for the Congress to spell out its intent and to clarify what the role of the Judicial Conference should be with respect to these defender organizations.

The day-to-day needs, however, of the public defender organization should be determined by the public defender himself, rather than the judiciary.

We also suggest that the bill be amended to prohibit a public defender or any attorney appointed by him from engaging in the private practice of law. The Senate report says that is what they intended. The statute does not make any reference to it. It simply says there should be appointed full-time people. Presumably that means what it says, but to clarify that—and we have provided that in the District of Columbia—the bill should provide against outside compensation. You know that always raises areas of conflict of interest for public defenders and private lawyers.

In some districts it can't be avoided, but any place you are dealing with a full-time public defender you might want to specify congressional intent.

Very important to us is the application of this proposal to the District of Columbia. The bill has a section making it applicable in the District and, although the Department has urged the inclusion of a provision clarifying the applicability of the act to the local courts of the District of Columbia, the provision adopted by the Senate is inadequate for two principal reasons.

First, the Senate provision does not make clear that the defender organization provisions of the bill are not applicable to the District of Columbia. As I have previously mentioned, both the House and Senate have enacted legislation providing the District with a full-fledged public defender office, legislation which is presently pending in a conference committee. There is no need, accordingly, for legislation authorizing the District of Columbia to establish another or perhaps different public defender organization.

Second, it is not clear whether counsel appointed to represent juveniles are to be compensated, and, if so, whether such compensation is to be limited to counsel who represent juveniles alleged to be delinquent or also juveniles alleged to be neglected or in need of supervision.

There are three categories of jurisdiction in a juvenile court. The delinquent is the criminal actor; if he had been an adult, his act would have been a criminal act. The other two are not criminal; neglected children or children in need of supervision other than through a conviction process. So that should be clarified.

In our letter to the chairman of the committee, the Department suggested language to clarify the applicability of the act to the local courts of the District. This language specifically made the defender organization provisions of the act inapplicable to the District and specifically limited the application of the act to juveniles charged with acts that, if committed by adults would be criminal offenses.

The bill, amended as we have suggested, has the strong support of the Department of Justice, because it would guarantee that persons financially unable to obtain adequate representation within the system would be represented by counsel adequately compensated for their public service.

Now I understand, Mr. Chairman, that we had also been asked to comment on residential community treatment centers at the same time.

Mr. KASTENMEIER. The subcommittee must suspend at this time. We shall postpone General Decker's statement and further questions to Mr. Santarelli to a later date.

Also, Mr. Santarelli, representing the Justice Department, will return on that date to discuss the further subject of residential community treatment centers.

Until the resumption, then, of hearings on these subjects, the committee will adjourn.

(Whereupon, at 11:35 a.m., the committee adjourned, to reconvene at the call of the Chair.)

CRIMINAL JUSTICE ACT AMENDMENTS

THURSDAY, JUNE 25, 1970

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 3
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:10 a.m. in room 2237, Rayburn House Office Building, Hon. Robert W. Kastenmeier (chairman of the subcommittee) presiding.

Present: Representatives Kastenmeier, Mikva, Edwards, Poff, Hutchinson, and Biester.

Also present: Herbert Fuchs, counsel; and Thomas E. Mooney, associate counsel.

Mr. KASTENMEIER. The hearing will come to order.

This morning the subcommittee will complete its public hearing on S. 1461, Criminal Justice Act amendments, and related House bills. We shall also receive testimony on H.R. 2175, dealing with residential community treatment centers.

When quorum calls forced our adjournment last week, Mr. Santarelli had completed his statement on behalf of the Department of Justice on S. 1461, but had not been questioned by the members. He has been good enough to return for questioning on that legislation.

General Decker, director of the National Defender project, has also been good enough to return and we shall be very glad to hear his statement.

At this time the Chair will call our first witness. Mr. Santarelli, is there anything you would like to add to your statement last week before the committee commences questioning?

FURTHER STATEMENT OF HON. DONALD E. SANTARELLI, ASSOCIATE DEPUTY ATTORNEY GENERAL FOR THE ADMINISTRATION OF CRIMINAL JUSTICE, DEPARTMENT OF JUSTICE, ACCOMPANIED BY EARL SILBERT

Mr. SANTARELLI. Not to add, Mr. Chairman, but to submit to the committee as per its request last time, some information concerning the relative pay scale of U.S. attorneys in our 93 judicial districts, and assistant U.S. attorneys.

I would, at this time, submit those to the subcommittee.

Mr. KASTENMEIER. The committee welcomes that information and without objection it will be made a part of the record.

(The information follows:)

49-130—70——8

Assistant United States Attorneys are hired under the following pay scale:

Pay scale of Assistant United States Attorneys

With legal experience of:	Salary
0 years	$9,900–11,900
1 year	11,900–13,800
2 years	14,300
3 years	15,500–16,200
4 years	16,200–17,000
5 years	17,000–18,000
6 and more years	18,000

In exceptional circumstances, a particularly outstanding applicant with six or more years' experience can be hired at a salary of up to $19,600 or higher, but only with the prior approval of the Deputy Attorney General.

An Assistant United States Attorney is eligible for a salary increase once a year of up to $2,000 until he reaches an annual salary of $16,100, after which he may receive an increase each year up to $800 until he reaches an annual salary of $21,200. An outstanding Assistant United States Attorney may receive annual increases of up to $2,000 until he reaches a salary of $18,500, then up to $1,000 per year until he reaches $23,300. After an Assistant United States Attorney reaches the salary indicated, he may receive an increase up to $500 a year until he reaches a salary which is $1,000 less than the salary of the United States Attorney in his district.

U.S. ATTORNEYS' OFFICES

District	Salary of U.S. attorney	Number of assistant U.S. attorneys allocated
Alabama, northern	$30,850	7
Alabama, middle	25,050	3
Alabama, southern	25,050	3
Alaska	[1] 25,050	3
Arizona	30,850	10
Arkansas, eastern	26,325	6
Arkansas, western	25,050	3
California, northern	34,125	25
California, eastern	26,325	7
California, central	36,000	52
California, southern	30,850	15
Canal Zone	[2] 23,325	1
Colorado	30,850	7
Connecticut	30,850	7
Delaware	25,050	2
District of Columbia	38,000	98
Florida, northern	25,050	3
Florida, middle	34,125	14
Florida, southern	34,125	14
Georgia, northern	30,850	8
Georgia, middle	28,200	4
Georgia, southern	26,325	3
Guam	[1] 23,325	1
Hawaii	[2] 25,050	3
Idaho	25,050	3
Illinois, northern	36,000	32
Illinois, eastern	26,325	3
Illinois, southern	25,050	3
Indiana, northern	26,975	4
Indiana, southern	30,850	7
Iowa, northern	25,050	2
Iowa, southern	25,050	3
Kansas	30,850	10
Kentucky, eastern	26,975	6
Kentucky, western	26,975	4
Louisiana, eastern	30,850	14
Louisiana, western	26,975	5
Maine	25,050	1
Maryland	30,850	13
Massachusetts	34,125	14
Michigan, eastern	34,125	15
Michigan, western	25,050	3
Minnesota	30,850	6
Mississippi, northern	25,050	4
Mississippi, southern	26,975	4
Missouri, eastern	30,850	10
Missouri, western	30,850	9
Montana	26,325	4
Nebraska	26,975	5
Nevada	25,050	4
New Hampshire	25,050	1
New Jersey	34,125	26
New Mexico	30,850	5
New York, northern	30,850	5
New York, eastern	34,125	34
New York, southern	38,000	73
New York, western	26,975	7
North Carolina, eastern	30,850	6
North Carolina, middle	30,200	3
North Carolina, western	30,200	3
North Dakota	26,325	3
Ohio, northern	32,550	11
Ohio, southern	30,850	7
Oklahoma, northern	25,050	4
Oklahoma, eastern	25,050	3
Oklahoma, western	30,850	6
Oregon	30,850	9
Pennsylvania, eastern	34,125	19
Pennsylvania, middle	26,975	4
Pennsylvania, western	30,850	9
Puerto Rico	[3] 25,050	4
Rhode Island	25,050	3
South Carolina	30,850	11
South Dakota	25,050	3
Tennessee, eastern	30,850	6
Tennessee, middle	26,975	5
Tennessee, western	26,975	6
Texas, northern	34,125	15
Texas, eastern	26,975	7
Texas, southern	34,125	20
Texas, western	34,125	13
Utah	26,975	4
Vermont	28,200	2
Virginia, eastern	30,850	10
Virginia, western	26,975	3
Virgin Islands	23,325	1+1
Washington, eastern	26,325	4
Washington, western	30,850	10
West Virginia, northern	25,050	2
West Virginia, southern	25,050	3
Wisconsin, eastern	26,975	5
Wisconsin, western	25,050	2
Wyoming	25,050	1

[1] Plus 25 percent cost of living differential.
[2] Plus 15 percent tropical differential.
[3] Plus 5 percent cost of living differential.

Mr. KASTENMEIER. If you have nothing further to add, I have several questions.

In your testimony last week you stressed your objection to subsection 1(a)(2), which extends the benefits of the bill to a person financially unable to obtain adequate representation "who is under arrest."

As I understood you, your objection is that under existing law not all persons under arrest are entitled to counsel. I gather you wish to avoid financing legal counsel for persons not legally entitled. Is that right?

Mr. SANTARELLI. Not quite, Mr. Kastenmeier.

The problem is not with financing counsel appointed by the court; the problem is that the language of subsection (a) seems to create a right to counsel rather than simply to deal with the question of compensating counsel when counsel is appointed.

The concern we had is that, since this is a compensatory kind of legislation, we ought to be sure that we are not going beyond that and establishing a right to counsel where none has heretofore been held to exist, something which we did not consider and something which hasn't in this bill been subjected to the necessary analysis.

Mr. KASTENMEIER. Could you give some instances of persons under arrest who would not be entitled to counsel?

Mr. SANTARELLI. By law so far there is no authority, for example, for counsel to attend upon a defendant the moment he is arrested. When the arrest occurs on the streets outside of the police precinct house, there is no understanding of the law that he is entitled to counsel at that moment. He is not entitled to counsel even at the precinct when he is being photographed or fingerprinted or run through their so-called booking processes or having handwriting samples taken.

So far, the only time he is entitled to counsel as a matter of law after arrest and prior to initial court appearance is when the police department intends either to submit him to a lineup, an identification procedure with live witnesses looking at him, or when they subject him to questioning at the precinct in an interrogation situation, an incustodial interrogation.

Miranda, as you remember, said when the defendant's freedom of movement is significantly restricted and interrogation begins, the right to counsel attaches.

The problem here is that the courts have not laid down, nor has law, a blanket right to counsel from the moment of arrest. There are circumstances, some of which I have just described, where it is not required.

The practical problem is that, if you lay down such a blanket rule, implementation of it really presents a right without a remedy. How you provide a defendant with counsel to afford him that right from the moment of his arrest is very difficult. We haven't worked that out yet.

Mr. KASTENMEIER. If a man were arrested and held for a period of hours without any explanation, and then released; and rearrested and subsequently released and this process were repeated two or three times, under existing law that person would not necessarily be entitled to counsel?

Mr. SANTARELLI. That is right.

Mr. KASTENMEIER. Do you think he should be?

Mr. SANTARELLI. I am not sure I can make a policy judgment of that broad a nature here, Mr. Kastenmeier. The question of right to counsel is a very serious one and one which we may wish to go into indepth. All I am saying is that this is probably not the forum in which to examine and establish new rights to counsel since the whole consideration of this bill by all of its proponents has been only as a compensatory measure and not as a measure establishing a new right to counsel.

Mr. KASTENMEIER. In any event then, stated another way, you would make the eligibility for counsel under the existing law a prerequisite for entitlement to counsel for a person under arrest? That is under existing laws.

Mr. SANTARELLI. Or whatever law should be subsequently found to expand the right to counsel. That kind of language is flexible to take into consideration further interpretations or further broadening the right to counsel.

Mr. KASTENMEIER. You do not make present eligibility for counsel an absolute prerequisite?

Mr. SANTARELLI. No; under the theory that whenever the court appoints counsel, compensation may duly be afforded. This would leave it flexible but not establish new rights that have not been thoroughly analyzed.

Mr. KASTENMEIER. Turning to a different subject, you also, as I recall, object to the provision of section 3 of the bill which contains Senator Hruska's floor amendment making the legislation applicable to the District of Columbia.

Part of your objection appears to be based on the pendency in conference of the two proposals, H.R. 16196 and S. 2602, to give the District of Columbia a public defender.

Let me just ask, do you find the provisions of S. 1461, the bill we are dealing with, inconsistent in any respect with existing District of Columbia law?

Mr. SANTARELLI. Law and interpretation perhaps is the better way to say that. The problem is twofold: We want the act to be applicable to the courts of the District of Columbia for the purpose of compensation of counsel who are appointed to represent indigent defendants.

And the problem is that the courts of the District of Columbia are not all Federal courts. They are legislative courts, nonarticle 3 courts created specially by Congress, and the language has to be broad enough to include all of the courts of the District of Columbia and not just the classic Federal courts. We want it applicable there.

The other half of the problem with the Hruska amendment is that it does make the distinction that the provision for establishment of defender service agencies ought not to be applicable to the District of Columbia because the Congress has separately considered the problem of defender services in the District of Columbia and enacted a rather specific and elaborate scheme to set up a specified defender service much different from the kind of services that are being suggested in this proposal.

The House has passed it and the Senate has passed it. It is presently residing in conference. There is no disagreement with any section of the defender part of the bill and that undoubtedly should come out.

The point here is that the Congress spent some time considering a special specified kind of a defender service for the District of Columbia, enumerating all of its functions, responsibilities, and structure.

Lengthy hearings were held on it, a lot of evidence was adduced, and all parties in the District, the judges, the defender people, the prosecutors, are agreed that because such matters as the amount of crime and the needs of indigents are well known, we should adopt legislation establishing a defender service with specified responsibilities.

The problem with the Hruska amendment is it would provide an overlapping authority by permitting the judicial council to adopt an additional or another kind of defender service. It may not become a real problem. But because the possibility is there, we prefer to amend the bill as we have previously recommended.

Mr. KASTENMEIER. It may not necessarily be a problem.

Mr. SANTARELLI. That is right.

Mr. KASTENMEIER. But it is an overlapping.

Mr. SANTARELLI. That is correct. It would be conflicting.

Mr. KASTENMEIER. You are rather sanguine that the conference will produce legislation for the District of Columbia.

Mr. SANTARELLI. I am, sir, that they will and if the bill for one reason or another gets hung up there is plenty of talk about separating the sections that are not controversial and they would pass, I am sure, in a flash.

Mr. KASTENMEIER. On this point, there is some precedent for acting because the present Criminal Justice Act that went through this committee some years back was enacted and made applicable to the District of Columbia when then existing we had a Legal Aid Agency we had established in 1960.

Mr. SANTARELLI. We had a problem, Mr. Kastenmeier, I think the result was different from what you suggest, that is, it took substantial pulling and tugging and a ruling by the Comptroller General that the 1964 act was in fact applicable to the general sessions court.

All parties concerned agreed that as enacted in 1964 there was a strong argument that the Criminal Justice Act was not applicable to the nonarticle 3 courts of the District of Columbia. We had to go through the back door.

Mr. KASTENMEIER. Thank you.

The gentleman from Illinois.

Mr. MIKVA. One question, Mr. Santarelli, on your statement about at what point the act becomes applicable. We are talking now about a public defender, for example. If at the time the defendant is arrested, even though we haven't reached what is called the critical point, if the defendant at that point says, "I want a lawyer," aren't the normal instructions to the police or whoever the agency is to get him a public defender?

Mr. SANTARELLI. I don t think that is the case, Mr. Mikva. The problem of how you go about getting him a lawyer in every instance when he wants one, when there is no police action against him that would require the courts' saying he should have had a lawyer, has just not been grappled with by the courts.

As I said, in specific instances of handwriting cases, booking cases and photographic mug shots in the precinct he has no right to a lawyer present for those activities.

In *Schmerber* v. *California*, 384 U.S. 757 (1966), the Supreme Court held that the sixth amendment right to counsel did not probibit taking an involuntary blood sample from the defendant over the objection of counsel. In other words, for all practical purposes, there was no right to counsel at that procedure after arrest. The Department of Justice is not opposing the establishment of a statutory right to counsel in areas to which it has not been held to be required. We just don't think this bill should be used as a vehicle without in-depth, thoughtful consideration of a different set of questions.

Mr. MIKVA. What troubles me is that I really think, as I understand most local law enforcement, that if they are going to do anything with the defendant—obviously if they are going to turn him loose he would not call on a public defender.

Mr. SANTARELLI. If they do nothing.

Mr. MIKVA. If he requests a lawyer they usually will try to get a public defender for him.

My point is, if we really want to have alternate sources of lawyers available, why can't he at that point request a private lawyer. You said you don't see the mechanism for how that lawyer gets appointed.

Mr. SANTARELLI. Nothing would prohibit that from happening under this bill.

Mr. MIKVA. How would that lawyer be compensated for the time he spent prior to his official designation by the court?

Mr. SANTARELLI. If the court would designate him on a retroactive basis, if the court felt he had performed adequate or valuable services at that time, the court could do so, and, in fact, does do so in some cases.

The question is one of when does the counsel provide valuable service or who should decide that. We would leave it flexible so the court could allow compensation in every case where the defendant actually gets an appointed counsel sanctioned by the court.

Mr. MIKVA. Including retroactive services?

Mr. SANTARELLI. Correct.

Mr. KASTENMEIER. The gentleman from California.

Mr. EDWARDS. No questions.

Mr. KASTENMEIER. The gentleman from Virginia.

Mr. POFF. Thank you, Mr. Chairman.

Let me see if I can summarize what I regard as the present status of the law and the proposal to change the law with respect to the point in the process at which counsel constitutionally is required.

First of all, the act we are amending says:

> A defendant for whom counsel is appointed shall be represented in every stage of the proceeding from his initial appearance before the United States Commissioner or court through appeal.

The American Bar Association Minimum Standards Committee in a report entitled, "Providing Defense Services," section 5.1, says as follows: "Counsel should be provided to the accused as soon as feasible after he is taken into custody when he appears before a committing magistrate or when he is formally charged, whichever occurs earliest."

The Supreme Court in the *Miranda* decision said, and I quote in pertinent part: "Our adversary system of criminal proceedings commences when an individual is taken into custody or otherwise deprived of his freedom by the authorities."

Only this week, on Tuesday, the Supreme Court in the case of *Coleman* v. *Alabama*, held precisely that a preliminary hearing is a "critical stage" of the proceeding. And pitches its decision, as I understand the case, on a constitutional predicate.

The Chief Justice in his dissent indicated that he felt the predicate should not be a constitutional provision but the rulemaking supervisory power of the Supreme Court over the lower courts, and in pertinent part I quote from his decision: "As a matter of sound policy, counsel should be made available to all persons subjected to a preliminary hearing * * * but this should be provided either by statute or by the rulemaking process."

As a matter of policy, do you feel that the requirement of counsel at a preliminary hearing should be pitched upon the rulemaking power or statute or that it should be interpreted as constitutionally grounded?

Mr. SANTARELLI. That is a very large question for me to answer.

Mr. POFF. It may be unfair. I don't mean to be unfair.

Mr. SANTARELLI. That is also a philosophical question, to which I have not addressed myself, nor has the Department addressed itself to the question in order to be able to take a formal public position.

I can say I am sure we have no problem with the right to counsel at a preliminary hearing. I think we could all agree that is a critical stage of the proceeding at which time evidence is adduced showing probable cause of the defendant's guilt from which he can be bound over to the grand jury and be released under various kinds of conditions of release or bail.

So there is no problem about a right to counsel there. This proposal does not in any way conflict with that because wherever counsel would be appointed by the court he would be compensated.

Mr. POFF. Your proposal then, as I understand it, is to make certain that in whatever we do in amending the Criminal Justice Act of 1964 we are careful to provide counsel, where the accused himself is unable to provide it, only in those cases where the law specifically and carefully requires it.

Mr. SANTARELLI. And where the court appoints counsel. The court may appoint counsel where the law does not require it in the interest of justice.

Mr. POFF. It is in the court's discretion that if the interest of justice requires it, it can appoint counsel.

Mr. SANTARELLI. It has never been held there is a right to counsel in the 2255 proceeding, but courts frequently appoint counsel, and we would say when they do, he should be compensated, and that is the flexible language we like without wading into the question as to when counsel is required, and what new rights we should establish, and what should be the parameters of the right to counsel.

Mr. POFF. Returning to a line of questioning I opened at the last hearing, have you had an opportunity to examine the language of section (h) on page 9 of H.R. 9856, lines 5 through 13?

Mr. SANTARELLI. Yes, sir.

Mr. POFF. Would you agree that this language lends itself to an interpretation which might permit the appointment of several public defenders within a judicial district or among two adjacent districts?

Mr. SANTARELLI. Judicial districts.

Mr. POFF. Yes; or part of a judicial district.

Mr. SANTARELLI. Yes; it does lend itself to that interpretation.

Mr. POFF. Can it be so interpreted?

Mr. SANTARELLI. We have researched this to the extent we could and apparently it was intended it be so interpreted. Our departmental records show that the drafters of the original proposal intended that in some jurisdictions, in some districts where there may be a disparate large city at either end of the district that two defenders might be considered by a judicial council to be desirable, under the general theory that a defender function works best when it is closely related to the community in which it has to operate, that a roving defender for a very large district might be an undesirable or unwise kind of a proposal.

Mr. POFF. Let me interrupt you.

Don't you have somewhat the same consideration in connection with the U.S. Attorney's office?

Mr. SANTARELLI. Correct.

Mr. POFF. As far as I know, you have only one U.S. attorney for each district. In the U.S. Attorney's office the problem you have defined is met by the use of assistant U.S. attorneys. And so far as I am advised there has been no criticism that this is unworkable. And if it is functional, it certainly would be less costly, would it not, than to appoint multiple U.S. attorneys for the judicial district or for multiple districts?

Mr. SANTARELLI. You are quite right. The argument made by our predecessors, who constructed the first draft of this bill, was that the U.S. attorney was in a different posture from the defender in terms of resources available to him through the overall Department of Justice and through the Federal Bureau of Investigation, whereas a defender organization in a large district probably would not be so resourcefully structured with ample investigative power and backup from a Federal department in Washington, et cetera, and that for this reason he should be looked at differently from the U.S. attorney.

I do not make this as an argument for the Department of Justice. We simply take the view that we don't feel strongly one way or the other that we should require only one defender per district or that we should require multiple defenders.

We think the flexible language herein provided allows the judicial council of the circuit to decide exactly what the unique problems of each district may be and to tailor defender services however they like them.

Flexibility seemed desirable. There didn't seem to be an overriding reason against the multiple defender services in a large district or an overriding reason in favor of the single defender where there is a single U.S. attorney, and we just don't feel strongly.

Mr. POFF. I recognize the need for maximum flexibility, but to say that does not concede we must structure the personnel apparatus in such a way as to permit the appointment of more than one top administrator within any jurisdiction.

I repeat, I believe that you can achieve the same goal by having one defender for each district who would be the opposite of the U.S. attorney and then have as many assistant defenders deployed throughout the district as the judicial council sees fit.

They would be well paid people, and they will have access to the same sources as a defender himself and the defender himself will have the same access as the U.S. attorney. I believe we would not want to prejudice the prospects of the approval of this legislation on the floor of the House of Representatives by erecting a needlessly elaborate personnel structure.

Mr. SANTARELLI. Mr. Poff, since we do not take a hard position on this, if the Congress and the House feel that amendment in this area is desirable, we are certainly not objecting.

Mr. POFF. As I understand it, here in the District of Columbia the Legal Aid Agency represents not more than 60 percent of the defendants who are unable to afford counsel, and that, of course, is to make functional the policies of involving the local bar at large in all facets of the legal aid system.

Do you think it would be useful in this legislation to make some similar requirement in the Criminal Justice Act?

Mr. SANTARELLI. Let me respond in two facets, Mr. Poff.

The Department hasn't issued a directive to the Legal Aid Agency. It functions independently of the Department of Justice, under its own board of directors appointed by a panel of judges.

There is no limitation in the present Legal Aid Agency as to its scope of representation.

Mr. POFF. It is in the bill that the House passed.

Mr. SANTARELLI. That is right. The present Legal Aid Agency is limited only by its appropriation.

In the proposal we submitted to Congress that has passed both Houses, we limited the scope of its representation, a limitation approved by Congress. It was generally agreed by all parties that a limitation of that nature was wise to assure continued involvement of the private bar in the defense of criminal cases.

For various reasons it was felt undesirable for a defender service to dominate the defense of criminal cases to the exclusion of the private bar and I think we can all see lots of good reasons for that. That is however, a very different proposition from the one establishing defender services throughout the other Federal circuits and districts.

Here in the District of Columbia all of the quantum are known: We know the number of indigent defendants on an average yearly basis; we know the number of common law crimes in which indigent defendants are involved. There is an overriding Federal responsibility here. The courts are largely Federal.

The U.S. attorney is the prosecutor in all serious criminal cases here of common law and typical Federal nature. That is very different from the other circuits.

What the needs may be in Montana or in Wisconsin or in Virginia may be very varied in terms of the numbers of indigents and the kind of crimes that come before the court.

To establish an arbitrary limitation or mix between private and Federal for each district in the United States would seem to us unreasonable and unpredictable.

Mr. POFF. That sounds persuasive to me.

I thank the gentleman.

Mr. KASTENMEIER. The gentleman from Pennsylvania.

Mr. BIESTER. I think your answer to Mr. Poff's question is quite satisfactory and persuasive. Isn't one of the things we are talking about here the marking out of the pattern of the practice of criminal law in the future?

Ought we not take steps to see to it that the practice is not dominated or exclusively offered by a defender organization, but also to see to it, to the extent it is a function of the private bar, that it be a highly qualitative function on the part of that private bar, and not have "dock brief" kind of lawyers engaged so far as private law is concerned?

I wonder what your thoughts are and how we can guarantee that.

Mr. SANTARELLI. That is a very difficult question, Mr. Biester. One way maybe is to make clear in the legislative history that there is no intent that defender services should become the dominant influence and that we also want a suitable mix of private lawyers in both indigent and paid cases.

The real machinery for implementing that is going to be the Judicial Conference, and since they are performing the overall supervisory and policymaking functions as to what the scope and dimension of the defender services should be, I guess the Congress telling them strongly what the intent of the legislation is would probably be the most effective way to see to it that their interpretation of the statute and its evolution would be in that spirit.

On the other hand, to put in a statutory limitation might be another way to do it. I am not sure it is as wise as depending on the sound discretion of the Conference and the judicial councils in the various circuits and districts.

Mr. BIESTER. I would rather rely upon the Conference.

Mr. SANTARELLI. Perhaps a strong statement on the part of the Congress to that effect would serve that purpose.

Mr. POFF. Together with a little dialog on the floor.

Mr. BIESTER. Right. That is the only point I wanted to pursue. Thank you.

Mr. SANTARELLI. That concerns us, too, Mr. Biester.

Mr. KASTENMEIER. Thank you, Mr. Santarelli.

Mr. SANTARELLI. Thank you.

Mr. KASTENMEIER. The Chair would like to call Gen. Charles L. Decker, director of the national defender project.

You don't have a prepared statement?

General DECKER. No, I do not. I have just tried to prepare some comments on the testimony that was presented the other day.

STATEMENT OF GEN. CHARLES L. DECKER, DIRECTOR, NATIONAL DEFENDER PROJECT

General DECKER. I appreciate the opportunity to testify before this committee. I appear as an individual; I don't represent any other person or organization. I will, of course, refer to our experience in the National Defender Project. I have always tried to stay away from the press. I have found that advisable, particularly for defense counsel.

Because I might be considered an unknown and anonymous individual, I am going to take about 50 seconds to give you a little background to help you evaluate what I might have to say.

I don't think there is any such thing as an expert in criminal justice, but since 1932 I have applied myself to the subject. I have defended hundreds of men accused of felonies; I have also prosecuted hundreds of men.

I have had experience in review of judicial activities in some thousands of cases over a period of some 38 years. My practice has been in the United States and NATO countries and Japan.

Because this committee is known as a scholarly committee, perhaps I should mention that, although many years ago, I did graduate from Georgetown Law School with an above "A" average, and if I recall, several points ahead of the No. 2 man.

I didn't work on the Law Review while I was in law school but I did coauthor a book that went through six editions. I have been the chairman of two of the 20 sections of the bar association, elected chairman of the section of criminal law and the section of legal education and admissions to the bar.

For the past 6½ years my time has been spent in budgeting and planning and organizing defender services throughout the United States. We have actually given funds and assistance in 32 States. When I use the word "we" I refer to our National Defender Project which terminated December 31, 1969.

We have given substantial assistance by way of advice and help in some five States, additionally. This little colored chart will show the area of our activity. I will turn it over to the reporter, if I may.

If the members of the committee are interested they may examine it.

Mr. KASTENMEIER. Without objection, the chart will be received.

General DECKER. I would now like to go to the salient features or the salient problems that are involved, I would suggest to the committee, in this bill.

In the first place, I would offer the thought that this bill is not a compensatory bill. This bill provides a marginal payment, not compensation, to counsel and by so doing, I submit to you, we can vastly improve the administration of criminal justice.

Parenthetically, and in order to set the record straight, I would like to note in passing that the American Bar Association recommended up to $35 an hour, not up to $30 an hour, and observe that this is still less than the minimum bar fee throughout most of the United States.

As far as cost goes, and there have been some questions raised on that, the defenders' systems in our experience have been more efficient than random assignment. It is my estimate, if you pass this bill, that in the 31 heavy jurisdictions using organized services, it will cost from one-half to three-fourths of the estimate that was given to you heretofore and we can still keep the attorneys in the defender offices at a pay scale as prescribed in the bill as now written.

I might also say that it is our experience that there are far more guilty pleas submitted by the well organized defender services, but they also appear to get more not guilty findings on average, and they also appear to do a much better job on sentences.

In other words, they come in with sentence plans. This is one of the things we have stressed.

I was very pleased to hear Mr. Santarelli praise the District of Columbia Legal Aid Agency.

Speaking of costs, we have some splendid defender organizations in California. We have splendid organizations elsewhere.

Mr. Biester, I think your Defender Association of Philadelphia is one of the finest in the country.

Mr. BIESTER. I am pleased to hear you say that. In fact, as you may know, our own Bucks County Defender Association, which our bar association initiated and paid for on its own, received a citation from the American Bar in St. Louis several years ago. We are very proud of that.

General DECKER. I would like to use as a cost example the public defender office in Santa Clara County, which I believe is a county well known to one of your committee.

Their 1969 budget was $620,000. They had 21 attorneys, six investigators, seven clerical, one interviewer. Santa Clara County has over a million people.

In 1968, it cost about $50 a case for the representation of those handled by the public defender and it cost about $150 a case for those handled by other lawyers. I wouldn't distinguish between the competence of an assigned counsel and retained counsel necessarily.

In 1969, the cost per case in the public defender office was $56, compared to $243. Prior to the adoption of the public defender system they had jury trials in 11 percent of the felony cases. Jury trials have now fallen to 6 percent. And it costs about $300 a day for a jury trial in Santa Clara County.

The present salaries under the California system range from about $10,000 for a grade 1 attorney to $21,500 for a grade 4 attorney.

The rate of dismissals and acquittals between the public defender and private assigned counsel was about the same. The public defender had 3 percent less trials, 3 percent less convictions, and 3 percent more pleas, resulting in more settlements and less trials.

This result reflects the fact that there is a reasonable amount of experience in that particular office. I hope Mr. Edwards will vouch for my assertion it is a good and efficient office.

Mr. EDWARDS. If I may interrupt, I can vouch for everything you said, especially since my oldest son is one of the attorneys in the public defender's office.

General DECKER. Thank you, sir.

That I didn't know, gentlemen.

I might add that the youngest son of the chief justice of Minnesota works in the public defender office of the State system up there.

One of the fine things about the public defender system and this business of having just and reasonable financing is this: It has been a rare thing for a public defender ever to step into the better jobs. The defense side is a rough go, gentlemen, if you have to take the cases as they come.

The point I would like to make is that Santa Clara County's first public defender is now a judge. For their second public defender, they brought over an experienced man from Alameda County and he is good. In Texas, a defender has moved up to the court of appeals.

Another one of our defenders is now a U.S. attorney. In certain sections of the country that have been described as backward, they are doing a tremendously good job in coming along on these organized defender services.

By way of interpolation, Mr. Hutchinson, in answer to your question at the last hearing, most defender organizations are controlled by the county commissioners of the county in which they operate, and many of them have now adopted the system of using an advisory council or a board of trustees who supervise the defender and pass on his employment of personnel.

Congressman Poff mentioned the Standards Committee. The Standards Committee on Providing Defense Services, gentlemen, was not an undistinguished committee.

The working committee part of it, the advisory group, was headed by Warren E. Burger, now our Chief Justice, and the head of the reviewing group was J. Edward Lumbard; there were five or six other distinguished judges and some very distinguished prosecutors and defense counsel in the group.

I would like to mention the control of defenders. I read now—it takes only a moment—the standards set down by the foregoing committee and approved by the American Bar Association.

> The plan should be designed to guarantee the integrity of the relationship between lawyer and client. The plan and the lawyers serving under it should be free from political influence and should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice. One means for assuring this independence, regardless of the type of system adopted, is to place the ultimate authority and responsibility for the operation of the plan in the Board of Trustees.

I believe that the Senate bill as drawn will permit this within the district plan, and I think that would take care of some of the objections stressed the other day.

Mr. KASTENMEIER. If I might interrupt, it permits it but not in the sense of requiring it, does it?

General DECKER. No, sir, and I don't think it should. I just mentioned it. I don't think we should say you should have all lawyers or all lawyers and judges on any board of trustees either because the Defender Association of Philadelphia and other highly rated defender services have no such requirement.

I admit this is perhaps heresy, but I am one that does not think all judges and lawyers are necessarily top notch administrators. As you know, the judges are spending $850,000 of Ford Foundation money to train 40 administrators in each of three classes, and I think that having a good man on systems analysis and management on a board of trustees is a good thing, having a man who is an expert in prevention or a man who is an expert in rehabilitation, having a good businessman on the board is fine, and we do have such people on our boards and it works well.

Mr. HUTCHINSON. Who appoints the board of trustees?

General DECKER. Let us take the Defender Association of Philadelphia. Half are appointed by the city council which furnishes $1,200,000 for the support of that organization each year. The other half are named by the old, what was then the old Philadelphia Defenders Organization. To review, 10 from the city council, 10 from the private sector, and then they choose 10 more to make a total of 30 trustees.

This is the way they are selected there. It is a fine group of men. It all depends on the locality. The one thing I would say is I think the judges who try to control this thing directly are very likely to

run into substantial difficulty. You know even the joking remark made by a judge, for instance, to a defender when he says, "No more pencils and pads for you, Joe, not after 15 motions on that last case"—hits wrong and the judges should keep a buffer between themselves and the defender organization.

I sat not too long ago in a meeting with a fine judge who is a very strong man, and his public defender was sitting beside him, and this was a public defender appointed by the judge.

During a 3-hour conference the only words that defender said were, "Yes, Judge" or "That is right, Judge." The defender can be too close to the judges.

In California, in Florida, in many other States, handling the defender services at the local level has worked splendidly for many years. It is true that the tendency now is to have a State appellate defender.

In some five or six States we already have the equivalent of a State defender general who takes care of the coordination, training and the continuing legal education of the defenders. In fact, in Minnesota, the defenders and the prosecutors train together, and that is the best of all. They also bring in the police for their training sessions.

But I don't think that the time is here yet for the federal system and I would suggest that we leave supervision at the level at which it is.

I would certainly hope that the day wouldn't come when we would have to hire too many clerks in Washington to figure out tables of organization and square feet per person for a group of top-notch lawyers out in the Federal courthouse in San Diego or San Francisco or Phoenix, or wherever it may be.

Gentlemen, I know that you are pressed for time. One of the things that really bothers me is that it seems you are getting suggestions that in many ways get pretty far into minutiae. This bill provides that the Federal district judges can draw their plans to be approved by the appropriate judicial conference. They are good men and I think we can depend on them.

If we foresee a thousand difficulties, it may be that one will come to pass within our lifetime.

I would suggest to you that if we try to nail every small item down in legislation or if we try to nail supervision down in Washington at this time it would certainly be a mistake. There should come a time when there will be a man who will be a coordinator and a man who will help these people, but they will go along all right for a short while without central control.

Incidentally, I would like to make an observation. If this bill is too much manicured we may find ourselves right where Lord Campbell would have found himself had he lived long enough. Lord Campbell presented the proposed statute of frauds to Parliament and said he had polished it for 7 years and could assure them it would never give rise to litigation.

I suggest to you, you have a pretty substantial piece of legislation as drawn in the Senate.

Mr. KASTENMEIER. Do you support it in its present form then?

General DECKER. Yes, sir; I certainly do.

Turning to providing counsel to persons who are arrested, I would also like to observe that there is one arrested man—let us put the law and everything other than moral considerations aside—there is one arrested man that I don't believe was mentioned this morning.

Mr. Poff brought up the standards which make it clear that once a man is taken into custody he should have access to counsel or should have a counsel. You know the man that needs a counsel the most, and the man who shouldn't have to pay for a counsel, is the man who is illegally arrested, and, gentlemen, there are hundreds of people who are illegally arrested every day, and it is no fun to spend a night in jail.

Believe me, I have gone down and fished too many out just by pointing out to the desk sergeant there was no chargeable offense when somebody landed in jail because he had irritated a marshall or a policeman.

I would say that, any time that you deprive a man of his liberty, making a counsel available is morally required.

Incidentally, in passing, in Salt Lake City, they had one old wobbly that got lost in the jail. They had him in there for over a hundred days before one of the defender office people—they had established a defender system—went through and found the man.

I would be glad to answer any questions on the efficiency of defender services or on the cost of defender services.

I must add one other item. Judge Hastings mentioned the tremendous problem of the 2255's. I did have time to call two of our Federal defenders who have been in operation for 5 years under our grants. I called the Federal defender in Phoenix and in 5 years, out of some 1,200 cases which that office has handled, there have been only 10 section 2255 cases.

I called Mr. Conant, the Federal defender in San Diego. If I am not mistaken San Diego, in volume, is second only to the Southern District of New York and District of Columbia. They, in 5 years, have had not one 2255 case.

Mr. HUTCHINSON. What is a 2255 case?

General DECKER. A 2255 case could be described as an expanded habeas corpus proceeding. That would be the best way I could describe it. It stands half way between habeas corpus and coram nobis.

Mr. KASTENMEIER. Thank you, General Decker.

I have a couple of questions. One is a general one.

Since the enactment of the Criminal Justice Act in 1964, would you say that as far as privately assigned counsel goes, we had qualitatively any better criminal justice by virtue of compensating assigned counsel than we had before that time?

General DECKER. Yes, sir.

Mr. KASTENMEIER. Why would that be?

General DECKER. In my opinion, because even though the act hasn't compensated, a man hasn't been out as much money as he was out prior to the time of the enactment of the Criminal Justice Act.

Mr. KASTENMEIER. You are talking about the attorney?

General DECKER. That is right.

Mr. KASTENMEIER. I am talking about the quality of justice the defendants receive.

General DECKER. Yes, sir, and the attorneys do better work. Mr. Kastenmeier, at $30 an hour the average criminal case, based on our experience in the Federal courts, is going to—the average case, and this is the case we ought to think about, takes about 10 or 11 hours. It is going to be someplace around $300. The attorney can afford to do the work required for an efficient defense.

Even so, that 10 or 11 hours spent on an average $60,000 estate for probate work would bring in about $1,000 or $1,100 based on most State statutes. So you can see probate work and all the rest get priority in the law offices.

Unfortunately, it is my opinion that one of the reasons for our delay in justice is that in the smaller law firms in particular, and surely for the solo practitioners, many assigned counsel will go over and see the defendant in jail or make contact with him, but they are going to take care of the Doakes estate and these matters that pay enough to keep the office open before they get around to the Federal criminal defense case.

For $17,500 per year—I believe I mentioned I had submitted a little budget.

Mr. KASTENMEIER. Yes, and without objection, it will be made a part of the record. I think it is very useful.

(The budget follows:)

Budget

Clerical:	
Secretary	$7, 200. 00
Clerk	5, 800. 00
Library	1, 200. 00
Rental ($6 per sq. ft.) for 725 sq. ft. of space	4, 350. 00
Telephone	500. 00
Supplies and postage	800. 00
Fringe benefits (20 percent)[1]	2, 600. 00
Dues and contributions	200. 00
Maintenance	75. 00
Insurance (liability and office contents)	200. 00
Lawyer's self-employment tax (6.4 percent on $7,800)	499. 20
Total	23, 444. 20
Lawyer's income (30 billable hours per week for 50 weeks at rate of $30 per hour	45, 000
Less estimated office expenses	−23, 444
Lawyer's retirement (under the 1966 amendments to the Self-Employed Retirement Act (5 percent or $2,500, whichever is less)	−2, 178
Net income for lawyer	19, 398

[1] This is a conservative estimate for employer's share of social security tax (4.8 percent), workman's compensation (1 percent) unemployment insurance (D.C., 2.7 percent of first $3,000; Federal, not liable until there are four or more employees), major medical (6 percent—could be greater if plan calls for individual billing due to small number of participants), either bonus (10 percent) or retirement plan (5 percent) or profit sharing (would depend upon amount of net income).

This is an annual budget for the one-year operation of the office of a respectable and competent lawyer practicing alone. The budget is made for an office already in operation and does not take into consideration initial capital investment. The figures do not take into consideration any projected changes in the consumer price index nor increased payments for social security.

In my opinion, the foregoing estimate of budget is optimistic. By the time the lawyer has paid taxicab fares, driven to and from his office to the courthouse and to the jail, he will be most fortunate if he does, in fact, net $17,500.

General DECKER. By the way, this was done by my office manager and I said, "Make that lawyer's income as big as you can on your budget," and the last paragraph is mine.

I think the lawyer is going to come nearer to a net of $17,000 per year. For that you can get a lot of lawyers that have had 5 or 10 years of practice and who will do a good, sound job.

Most of the lawyers with 5 years practice who are good at trial work in any part of the country are averaging—well, in North Carolina the

best guess is someplace around $21,000 a year, South Carolina around $22,000 a year. They make more than most of us realize.

And, of course, the Wall Street firms are paying $18,000 to new law graduates. So criminal practice is still not going to turn people into millionaires unless an attorney can get hold of a millionaire who is accused of some very serious crime.

Mr. KASTENMEIER. You would then argue for the highest rate that we might reasonably put in the bill. I think it is presently $30. It shouldn't be, in your estimation, less than that but the quality of justice may depreciate accordingly?

General DECKER. Yes, sir. I think we can even paraphrase Shakespeare there and say quality of justice should not be bargain saled.

Incidentally, again, remember that $30 is a maximum. Judge Hastings, if I may respectfully depart from the judge on one small item, said he thought the judges would just take the maximum figure. This hasn't been our experience. It would be most amusing to get the chief judges of the circuits in here and find out how many vouchers they had actually approved in unusual cases that went over $500.

And I have been advised of judges that won't allow more than 4 hours' pay on a Dyer Act case. Their position is that if a fellow can't handle a Dyer Act case in 4 hours, it means he is a law student and not a lawyer.

And, of course, that is what we are getting as assigned counsel to a great extent—law students—because of the rate of pay. I think this is tremendously important.

The judges can cut the rate down as far as they want and then they can learn from one another. I think this is a very fine provision—not more than. It doesn't say they will pay $30.

Mr. KASTENMEIER. I take it as far as the mix of private counsel and defender organizations is concerned, you would certainly not want the defender organizations minimizing the mix. You would want, depending on the size of the jurisdiction and the caseload, to have organizations well represented because of the efficiency.

General DECKER. Yes, sir, and it also depends on the availability of counsel in the particular area, Mr. Chairman. I think the word "substantial" is just about right there because there are some areas in which you may want to go as high as 60 percent assignments to private counsel and have an exceedingly small organized defender service.

But there are other areas in which one would be most fortunate to get on the assigned counsel list representation for 30 percent of the indigent defendants. I would suppose that you would have a more efficient administration with 70 percent handled by the organized office.

And defense attorneys flow back and forth from the defender office to private practice. As soon as an attorney figures that he can make more outside than he makes in the defender office, it will be just like it is in the prosecutor's office—he will go out and take a whack at private practice. There is this flow in and out.

There is a lateral feed-in at all times, gentlemen.

Mr. KASTENMEIER. The gentleman from California.

Mr. EDWARDS. No question.

Mr. KASTENMEIER. The gentleman from Virginia.

Mr. POFF. Thank you, Mr. Chairman.

Congestion in the courts, particularly in the criminal courts, has never been before what it is today, and many people knowledgeable about our system of criminal justice recognize the urgency of expediting the process, speeding up the trial, with the realization that justice delayed is justice denied.

Do you believe that this new structure will help achieve those goals?

General DECKER. Yes, sir, and I would like to tell you why, Mr. Poff, if I may advert to my own experience.

In 1957, I took over the administration of military justice in the U.S. Army. I gave it up in 1963. To my best recollection we cut the court-martial rate about 60 percent and at the same time we were cutting the court-martial rate 60 percent the administrative discharge rate was going down, and we weren't getting any better quality of soldier through recruitment channels. As you know, the ages of most of our people run from 17 to 26. This is how I think we did it.

(1) We established the school at Charlottesville and we took all of these very fine young law students, put their noses to the grindstone, and we taught facts, facts, facts. This is what they don't learn in law school now unless they get a clinical course.

(2) I said we are going to rotate defense counsel and prosecution, then there will be no question about the average quality on either side and it will make counsel far more objective.

This worked. We had no prima donnas on defense, we had no prima donnas on prosecution. The idea was to see every man got a fair trial and to try him fairly the first time. We cut the time delay, I would say, roughly 50 percent, and I think an organized system, if you will raise the number of people with experience both in the prosecutor's office and in the defender's office and have more people, let us say, up to a third with 5 years' experience, that is not asking too much.

If you can do that there will be some guidance and help for the new men, and in the defender's office they furnish that guidance and help to the assigned counsel. I think we can do the same thing that we did in the Army—cut the time delay substantially.

The other thing we did to cut the court-martial rate, if I may use the vernacular, we kicked the small stuff down into the right forum. And that again has to do with the experience of counsel.

You know when you take a case before a grand jury to ask for an indictment, you sometimes have a boy just out of law school making those decisions. And, gentlemen, it is happening in our country every day.

One Federal judge very recently complained to me because their legal aid service could only hire a former insurance adjuster to provide defense services. He said that the fellow didn't even pick up the fact that the prosecution had a faulty indictment and had no proof for one essential element of the offense.

I said to the judge, "Well you might take a look at your first line of defense—which is your prosecutor's office. How about that assistant U.S. attorney that took evidence that didn't constitute a prima facie case to the grand jury to get a true bill?"

Mr. POFF. Thank you. In the present District of Columbia Court Reform bill there is a prohibition against the District of Columbia Legal Aid Agency lawyer practicing law privately. The U.S. attorneys are not permitted to practice law outside their official duties.

Do you think it would be well as a policy matter in order to insure that all of the talent and time and resources of the Public Defender

be applied to public trust which is his when he is appointed to the job that similar prohibition should be written into this act?

General DECKER. I don't feel too strongly about this, Mr. Poff, because you know as long as an attorney can't pay to keep the children in school he will moonlight. If he doesn't do it in the legal work for which he is best qualified he will do it someplace else, ghostwrite or something of that kind. You also miss a good source of talent that we need in the legal service.

There are many older lawyers who would be willing to take a half-time job with the defender's office but they are usually men who are comfortably situated and they wouldn't be too interested in a full-time job or having proscriptions placed on them.

Mr. POFF. They don't seem to have any trouble in recruiting U.S. attorneys. I think it is vitally important that U.S. attorneys be prohibited from practicing law privately.

If we can recruit them for that job I don't see why you couldn't properly control the public defender. I think maybe the same reasons that dictate the policy in the former case justify the policy in the latter case.

General DECKER. I have no strong feelings on it, Mr. Poff. You could either do it as a matter of law, or it could be handled as a local matter. You are not going to feel it in Minneapolis or Richmond or Philadelphia or Detroit. The place where you may feel it is in Wyoming or Montana or Utah or Nevada.

Mr. POFF. On another point, but related, you have heard the exchange concerning section (h) of the bill. Do you think it is necessary to have more than one public defender? I am speaking of the top public defender, not the assistants and not the attorneys in the office but one public defender for each district?

General DECKER. I would make this observation. They wanted the public defender in Los Angeles, for instance, to take over the Federal defender's load as well, and, of course, he told the Federal judges that there would be a horrible morale situation in his office with a Federal defender section that made about one-third of what the State defender section made, and he didn't do it. In many localities, and particularly where you have a good part of a metropolitan area on one side in one district, and a good part of a metropolitan area on the other, it might well be that they will have a very fine local defender service in each district, and that they would want to make the county defender the Federal defender also, or on an assigned counsel plan. Again, I have no strong feeling on it.

Mr. POFF. A public defender appointed under this statute would not be eligible to hold a State office. The Federal law prevents that. He would not be able to wear two hats. This man is going to be very similar, as I understand the thrust of this language, to the U.S. attorney.

General DECKER. Then I see no reason why you shouldn't put it in your statute that he couldn't have any private practice, because as I said, I don't feel strongly on it.

Mr. POFF. I can see, as I said earlier, how it might be important to have more assistant public defenders in highly congested areas, and more to serve combinations or parts of two districts, but I cannot see how this committee could merchandise a bill on the floor of the House which would call for the establishment of a public defender

system, the personnel structure of which would be more elaborate than the prosecution office in the criminal justice system, and I may as well say at this point for the record that I want someone to prepare language as an alternative to section (h), because I expect to offer it in the subcommittee, if I fail here, in the full committee and if I fail there, on the floor of the House. I do so among other things simply because I am fearful that this might be the boobytrap that will sink the whole ship.

General DECKER. By all means then let's make that change, and I will undertake to send you up a suggested change to accomplish your purpose.

Mr. KASTENMEIER. Will you yield on that question?

Mr. POFF. Yes; I will.

Mr. KASTENMEIER. Not to get into debate on anything, but I think it is fair to state and the witness must agree that the public defender's system and the U.S. Attorney's Office are not similar in many respects. Structurally they do not pyramid at the Department of Justice as do the U.S. Attorney's Office, or with the Small Business Administration. There is plenty of reason for an organization so structured not to have more than one, say, community department or subdepartment, but I don't know whether the same thing applies here, unless we structure it in the same way that we do the U.S. Attorney's Office, make responsible a central Federal agency or department head. Then I think really the argument comes closer to being compelling, but if we are interested in having boards of trustees operate these offices locally, we may be interested in retaining the language presently in the bill. In any event would you not agree that this is worthy of further discussion?

General DECKER. I think so, but the big thing is this, Mr. Kastenmeier. I think we are going to take a tremendous step backward in the administration of criminal justice in our Federal courts, if we don't get some kind of legislation through in this session of the Congress. In many areas of this country in which we have established fine services, coordinated assigned counsel systems and defender services, with which everyone is tremendously pleased, the attorneys are drifting away now because they are afraid the money may not be there. If it is not forthcoming, I believe that we will wipe out 6 years of effort by thousands of lawyers and judges to improve the administration of criminal justice. The committee knows what is acceptable to the House and so forth. I personally, of course, favor putting the maximum flexibility out into the local communities, and giving them the maximum choice.

Mr. POFF. I must say I agree with what the witness has just said, and I hope what I said earlier will not be misconstrued. I believe that we are obliged to use the U.S. attorney's establishment as a pattern for the public defender's organization, but recognizing that this is intended to be a mixed defender system, which will involve the private bar as well as the public defenders. I believe it would be difficult to justify more personnel than that authorized for the prosecution of crime. I just believe that we had better be realistic about what we take to the floor. That is my only point.

Now if I may ask one final question, and I am prompted to ask it by the dialogue between the chairman and you a moment ago concerning the $30 figure or the $35 figure, do you believe that it would be well to

differentiate between time spent in court and time spent in the office as the present act does, or do you think that we ought to fix the one figure and allow the court to make the determination?

General DECKER. Mr. Congressman, I cogitated on this. Now this practical and historical concept of two rates of payment for the representation in a criminal trial is questionable in my opinion. I think that somebody has confused practice in the defense of criminal cases with antitrust and corporate work.

I can see where there is a real difference in the work in the antitrust field in preparation for trial and in the period in court. You go from one beautifully carpeted office or one office decorated with antiques to another in the largest law firms we have in the country, and a couple of associates go along to care for the partner; they take their depositions in a leisurely manner and tell the secretary to bring coffee whenever they like, and I can see where it would be quite strenuous for those gentlemen to walk into the linoleum floored Federal courtroom with a flag and a black-robed judge, and, also, there may be millions at stake.

Now, we people who defend in criminal cases, and gentlemen, I have been in the jails so often over these past 40 years, in fact I was in your San Jose jail not long ago, Congressman Edwards, and it is a good one——

Mr. POFF. As a voluntary visitor? [Laughter.]

General DECKER. Yes, sir, but a lot of my friends whom I admire very much have been involuntary visitors in some of these jails, and some of them improperly so.

Let's take this in court and out of court practice. In the first place, I am not sure that the 3 years of Federal history are compelling on the problem of in court and out of court. This is the overuse of stare decisis. Here is how you fix a fee in a criminal case.

In most of the cases where you can get the money out of the client, you don't get it from the client. You get it from his mother and father or you get it from his grand parents or you get it from his brother-in-law, and really the best place to hit for a good piece of money is to get grandpa to mortgage his house, and you charge all the traffic will bear, because you are going to have a lot that you are going to work for who will pay nothing—where the judge will force you to go to trial before you collect your fee. Another one of our reasons for the great delay in criminal trial work is that a man tries to get his money before he goes into court. Contrary to the antitrust lawyer, we prepare our case for trial down in the jail, in the interview room—or in the marshal holding tank, for instance, when it comes to Federal courts—and we have to chase down our defense witnesses wherever we can find them, and usually it is not in the country club area of the town, so that when we go into court, you know it is pretty nice to walk in there and find a nice clean courtroom and black-robed judge and see the American flag.

I submit to you that this is a distinction that from a practical standpoint simply does not hold water, and that from a historical standpoint it is subject to question.

Mr. KASTENMEIER. General Decker, I must ask you to abbreviate your answers to questions. We are keeping Mr. Santarelli here to testify on a different bill and I dare not ask him to come again. He will follow you. I would hope that you could respond to questions.

General DECKER. Yes, sir.

Mr. KASTENMEIER. The gentleman from Michigan.

Mr. HUTCHINSON. I have only one question which is very brief, and that is this: I was interested in General Decker's comparison in the military justice system of rotating lawyers between the defense and the prosecution. You didn't suggest that the same system be undertaken in our Federal justice system? You are not suggesting, are you, that we have a situation where a man works for the prosecution one term and works for the defense the next term, and so on, all out of one pool?

General DECKER. Mr. Hutchinson, I think that is 25 to 50 years away. We have had some experimental exchanges already. They have been very successful, particularly the ones up in Minnesota, but I don't think the legal profession or the judiciary is ready to accept that. I think it is 25 to 50 years away.

Mr. HUTCHINSON. Thank you, General.

Mr. KASTENMEIER. The gentleman from Pennsylvania.

Mr. BIESTER. One small point and it has to do with an observation with respect to arrest and the availability of counsel at that point. It strikes me, and I wonder whether the General would agree, that a by-product of having representation at that point might clarify somewhat the law of arrest which is one of the murkiest areas of our law, at least it is in Pennsylvania. There hasn't been much attention paid to this area because counsel has not been generally available at that point. As a result an awful lot of law has either gone unwritten or uncomposed or unreconciled. I wonder whether it would not be an additional advantage to all citizens if we have representation at that level?

General DECKER. I agree with you completely in principle, Mr. Congressman.

Mr. KASTENMEIER. Thank you. If there are no further questions the committee is deeply grateful to you, General Decker, for your comments and testimony this morning.

General DECKER. Thank you very much, Mr. Chairman.

Mr. KASTENMEIER. I would like to recognize for an additional question the gentleman from Michigan.

Mr. HUTCHINSON. Thank you, Mr. Chairman.

With regard to this bill, S. 1461, and its House counterpart, the deputy attorney general wrote the chairman of the full committee a letter back in February, and he said that the Department suggested that at the end of the bill a new subsection be added to read as follows:

> Applicability in the District of Columbia. In the District of Columbia all provisions of this act except subsection (h) shall be applicable to defendants prosecuted by the United States Attorney in any court having jurisdiction of offenses against the United States, and to children charged by the District of Columbia with an act if committed by an adult would be a criminal offense prosecuted by the United States Attorney

And so forth.

Does this mean that the Department of Justice wants to make the program of representation of indigent defendants applicable in juvenile court?

Mr. SANTARELLI. Yes, Mr. Hutchinson, applicable in case of the juvenile branch of the local court here, where the juvenile is charged with an offense. The magic language in the District of Columbia is delinquent act as I understand it, and that is as opposed to a number of other kinds of proceedings which occur in the juvenile court which do not deal with delinquent acts.

Mr. HUTCHINSON. Do I understand that the bill as it passed the Senate does not include any reference to the District of Columbia?

Mr. SANTARELLI. There is a reference to it.

Mr. HUTCHINSON. Does it have anything to do with the juvenile?

Mr. SANTARELLI. It may be interpreted to be blanket application, which is the problem. "The provisions of this act"—this is section 3—"shall be applicable in the District of Columbia", and that is a blanket application of the whole act, which doesn't take care of a number of points that I raised earlier, the defendant portion of the act, duplication of the defender service aspects, and the application blanketly in all of the courts of the District of Columbia, including the juvenile court.

Mr. HUTCHINSON. Now then, what is the present law in the District of Columbia relative to the compensation of attorneys who are appointed to represent defendants in juvenile court? Are they compensated?

Mr. SANTARELLI. Yes, sir; they are now compensated, based on a ruling by the Judicial Conference of the United States that the Criminal Justice Act authorizes such compensation in cases which if in the district court would be prosecuted by the United States.

Mr. HUTCHINSON. Their inclusion in this bill would permit them to be compensated. Would they be compensated at the same rate, for instance, $30 an hour?

Mr. SANTARELLI. We make no distinction in our proposed amendment between the rates of compensation for adult or juvenile offenders. They are all people charged with criminal acts. They all require competent counsel, and we don't think that there is a reasonable basis for distinguishing between the amount paid to a lawyer who represents a person under 18 as to one who represents a person over 18.

Mr. HUTCHINSON. Assuming that the offense is of the same gravity, the time required would be about the same to defend an adult as it would be to defend a juvenile, would it not?

Mr. SANTARELLI. The juvenile is charged in essence with violation of the same act that an adult would be charged with, the treatment of the juvenile is different from the treatment of the adult and we use different language, but the language here makes it quite clear in saying that the child charged with an act, that if commited by an adult would be a criminal offense prosecuted by the U.S. attorney.

Mr. HUTCHINSON. I understand that, but I guess what I am trying to get at is that the procedures in juvenile court are different, and the question is, does it require the same amount of time on the attorney's part and the same amount of skill, the same amount of effort and so on to defend in juvenile court as it would if he were in the regular court?

Mr. SANTARELLI. With respect to time, Mr. Hutchinson, that wouldn't be a factor because this is an hourly compensation. However little time or however much time it takes he would be compensated on an hourly basis. In terms of skill I would expect it takes a little bit different kind of a skill in the juvenile court, but I don't think we could distinguish it as less than or more than the skills required to defend an adult case. The essential purpose of a juvenile hearing and adjudication is a rehabilitative process.

Mr. HUTCHINSON. A lawyer would then generally feel that an attorney acting in juvenile court should be paid as much as an attorney acting in the adult court.

Mr. SANTARELLI. In view of the *Gault* case where the Supreme Court is suggesting that there should be not much distinction between the procedure followed in a juvenile case and an adult case, I don't suspect there is a great deal of difference required in terms of pure legl talent.

Mr. HUTCHINSON. Do you suppose that the bar generally would look upon it that way?

Mr. SANTARELLI. I think so.

Mr. HUTCHINSON. Thank you very much.

Mr. KASTENMEIER. That concludes testimony on the bill S. 1461.

(Whereupon, the subcommittee proceeded to other business.)

JOINT STATEMENT OF AMERICAN BAR ASSOCIATION AND NATIONAL LEGAL AID AND DEFENDER ASSOCIATION

The American Bar Association and the National Legal Aid and Defender Association (NLADA) strongly support the enactment of S. 1461, as passed by the Senate, and urge prompt and favorable action by the House of Representatives. The enactment of the bill will vastly improve the operation of the Criminal Justice Act of 1964 and provide more meaningful and effective representation for defendants charged in Federal Criminal cases thereby making a substantial improvement in the administration of criminal justice in the Federal Courts.

The legislation before the Subcommittee has evolved from the experience gained since the enactment of the Criminal Justice Act which was strongly supported by ABA and NLADA; the outstanding, in-depth study entitled "The Criminal Justice Act in the Federal District Courts" authored by Professor Dallin H. Oaks, jointly commissioned by the Department of Justice and the Judicial Conference of the United States through the National Defender Project of the NLADA; and the experimentation and innovation made possible by the $6.1 million in grants by the National Defender Project with funds provided by the Ford Foundation.

With specific regard to S. 1461, as passed by the Senate, ABA and NLADA support the inclusion of Federal defender organizations in the options available to the judicial districts in meeting the needs for defense services in a given community. Experience indicates that the defender system most likely to be successful is that which reflects the particular requirements and preferences of the particular locality in which it must operate. The public defender office concept has effectively proven itself in practice for more than fifty years. Of the 321 defender offices now existing, 230 are "public offices" and this concept has been incorporated on a state-wide basis in approximately nine states. Experience with these programs has indicated that the fears of possible conflicts of interest and threats to the independence of lawyers employed by such programs are groundless. Both associations similarly endorse the proposed mandatory requirement for participation by the private bar.

The broadened scope of representation in criminal proceedings provided in S. 1461 is both necessary and desirable. Judicial and legislative expansion of Sixth Amendment rights since the enactment of the Criminal Justice Act in 1964 require that the scope of proceedings covered by the provisions of the Act be broadened. The expansion of proceedings for which counsel may be compensated is also consistent with the NLADA Standards for a Defender System adopted by NLADA in 1965 and by the ABA in 1966 which specify that a defender system "provide representation immediately after the taking into custody or arrest, at the first and every subsequent court appearance, and at every stage in the proceeding, including appeal or other post-conviction proceedings to remedy error or injustice. The representation should extend to parole and probation violation proceedings, extradition proceedings and proceedings involving possible detention or commitment of minors or alleged mentally ill persons." (NLADA Standard No. 3)

Finally, ABA and NLADA strongly support the increase in compensation for attorneys to $30 per hour, the elimination of the distinction between so-called "in-court" and "out-of-court" time, and the increase in the maximum compensation allowed in the various categories of proceedings.

For the information of the Subcommittee, there is attached to this statement copies of a resolution unanimously adopted by the NLADA Executive Committee

on May 14, 1969; a resolution adopted by the House of Delegates of the ABA in February 1970; and an informative report to the ABA House of Delegates from the Special Committee on Availability of Legal Services, all of which support the enactment of S. 1461.

RESOLUTION

Whereas, the National Legal Aid and Defender Association advocated and endorsed the passage of the Criminal Justice Act of 1964 and urged that such act provide as a plan available to a federal district for furnishing counsel under the Criminal Justice Act the option of a Public Defender for those unable to employ counsel in federal criminal cases, and

Whereas, the Criminal Justice Act as passed did not provide for such option, and

Whereas, the National Legal Aid and Defender Association has since the passage of the Criminal Justice Act consistently advocated that such act be amended to provide for a Public Defender at the option of a district or districts and further,

Whereas, the Executive Committee of this Association have been advised that Senate Bill 1461, amending the Criminal Justice Act of 1964 (18 USC 3006 A) has been introduced into the United States Senate and an identical bill, H.R. 9856, has been introduced into the House of Representatives, and

Whereas, such proposed legislation will expand the options available to a federal district for furnishing counsel under the Criminal Justice Act to provide and include as a choice of plans a Federal Public Defender organization or a non-profit Community Defender organization, and

Whereas, such proposed legislation also provides for increases in hourly rates for services of counsel under the Criminal Justice Act to $20 per hour as opposed to the prior rates of $15 and $10 respectively for time spent in and out of court, and further provides for raising the maximum total rate of compensation to $1,000 per attorney per case for a felony and $400 for a misdemeanor and $1,000 on appeal, and

Whereas, the pending legislation provides for expanded representation of defendants unable to employ counsel in the federal courts to include representation at pre-arraignment proceedings, probation revocation proceedings and post-conviction hearings, and

Whereas, this proposed legislation makes other substantial improvements in the Criminal Justice Act,

Now therefore be it resolved that the Executive Committee of the Association endorses, supports and urges the passage of Senate Bill 1461 and House Bill H.R. 9856 amending the Criminal Justice Act of 1964, now pending in the United States Senate and House of Representatives.

RESOLUTION ADOPTED BY HOUSE OF DELEGATES AMERICAN BAR ASSOCIATION, FEBRUARY 1970

Resolved, That the concept of the Office of Public Defender has proved to be an effective institution for providing legal services to defendants charged with the commission of a crime who cannot afford adequate representation;

That in many areas of the country the assigned counsel system remains the more practical method for providing legal services to defendants charged with the commission of a crime but who cannot afford adequate representation; but wherever that system is employed, it should be strengthened by the following requirements:

(*a*) Counsel should be appointed as soon as possible following arrest to provide representation at all pre-arraignment stages and certainly before the preliminary hearing;

(*b*) The assignment of counsel system should be coordinated by an administrator, with such deputies or assistants as may prove necessary, to insure that competent counsel are assigned in each case and that counsel are furnished such research, expert witness, investigative and other assistance as the necessity of each case may require;

(*c*) Assignments should be made only to a panel of qualified lawyers each of whom has agreed to represent eligible defendants when their cases are assigned to them and the practice of automatic rotation of assignments among all members of a local or state bar is disapproved and should be discontinued;

(*d*) Counsel should in all cases be adequately compensated by the state or its subdivision;

That each state and the appropriate political subdivisions in each state including metropolitan areas, which at the present time lack an organized system for providing defense services to defendants charged with the commission of a crime who cannot afford adequate representation, should without delay establish a Public Defender service or a coordinated, assigned counsel system or a combination thereof.

Resolved, That the House recommend to the Congress that it amend the Criminal Justice Act of 1964 to expand the options available to a Federal District Court for furnishing counsel under the Act to include as choices a Public Defender or a non-profit community defender organization to render services in defense of persons accused of crime who cannot afford adequate representation, and that when such services are performed by a Public Defender or a community defender organization they be compensated in the same manner as other persons under the Act.

Resolved, That the House likewise recommend to the Congress that the Criminal Justice Act of 1964 be amended to provide for compensation to counsel at a rate of up to $35 per hour for services rendered with a maximum of $1,000 to be paid for representation in a felony case, $400 for a misdemeanor case, and $1,000 for an appeal, with reasonable provisions for exceeding those limits in a difficult or protracted case.

REPORT OF AMERICAN BAR ASSOCIATION SPECIAL COMMITTEE ON AVAILABILITY OF LEGAL SERVICES, FEBRUARY 1970

During the last five years, great strides have been made in procuring satisfactory representation in our criminal courts for persons who cannot afford to pay private counsel. Five separate developments may be singled out as of primary significance in the effort of the legal profession to make its services more available in this regard. These are:

(*a*) The growing acceptance of the Public Defender concept,

(*b*) The emergence of the coordinated assigned counsel system,

(*c*) The federal plan for representation as provided in the Criminal Justice Act of 1964,

(*d*) The promotion of improvements in all forms of defense services by the National Defender Project, and

(*e*) The promised changes in criminal procedures resulting from the adoption by this House of the Minimum Standards for the Administration of Criminal Justice.

Contemporary preoccupation with the subject of law and order makes evident the fact that few people are satisfied with the administration of law in the criminal field. Many are inclined to dwell upon alleged judicial leniency. There has been in the past serious apprehension as to whether American justice does in fact guarantee a fair trial for the indigent and more particularly whether they were being supplied competent counsel. The developments of the last few years have been the cause for considerable reassurance.

We are entering into a period when there should be complete availability of competent counsel for all persons who are charged with the commission of crime. That became the stated policy of the American Bar Association when this House adopted Recommendation 4.1 of the Advisory Committee on the Prosecution and Defense Functions, reported under the heading of "Standards Relating to Providing Defense Services", that counsel should be provided in all criminal proceedings for offenses punishable by loss of liberty, except those types of offenses for which such penalty is not likely to be imposed, regardless of their denomination as felonies, misdemeanors or otherwise.

Some of the trends and developments that are reviewed below are of course generally familiar to members of the House of Delegates. We believe that the endorsement by the American Bar Association of the more important ones would constitute a strengthening step in the current effort to improve the administration of criminal justice, and urge that the House record its approval of them.

A. THE GROWING ACCEPTANCE OF THE PUBLIC DEFENDER SYSTEM

Only a few years ago, controversy was rife within the profession as to the relative merits of the Voluntary Defender supported by community funds, and the Public Defender, who drew his salary from the state. A third system, known as the "Mixed Defender System", which combined some financial support from

both public and private sources, had the advantage of insuring supervision and control by a non-political board of directors, and thus was often favored as potentially the best method of providing defense for the indigent.

But the decision in *Gideon* v. *Wainwright*, 372 U.S. 335 (1963) placed squarely upon the states the duty to provide representation for all persons charged with serious crime, and the days of voluntary supported defender services soon appeared to be numbered. The decision was followed by the establishment of many new Public Defender services, some of them on a state-wide basis, as for example in Connecticut, Massachusetts, Minnesota, New Jersey, Alaska, Colorado and Hawaii. In other states the pattern has been to set up local or regional Defender services which operate on a loosely independent basis. California, Florida, Illinois, South Carolina and Nebraska provide Defender services virtually throughout their states, but the Defenders are local officials.

In New York, where the Legal Aid Society handles criminal defense actions and has historically been largely and generously supported by private contributions, its criminal work is now substantially financed by funds supplied by the city. The service in Philadelphia changed its name from "The Voluntary Defender" to the "Defender Association" and now receives $1.2 million a year, which is substantially all of its budget, from the city. In spite of these developments, it is still too early to conclude that all of the Voluntary Defenders, which now number approximately 24, will find themselves turned into publicly supported agencies.

The Public Defender is either an elected or an appointed official and runs his law office in essentially the same way the district attorney does. Although he may not have a board of directors, he often has the guidance of an advisory council or a similar body. The Public Defender is of course fully responsible for his own actions and those of his staff. Ten years ago, the fear was often expressed that the Public Defender, being on the same payroll as the district attorney and the judge, would succumb to the power of his employer, the state, and lack independence in the defense of his clients. Observation of the operation of the Defender's office has tended to quiet that fear and it is now infrequently expressed. From all over the country, reports indicate that most Public Defenders are doing an imaginative, hard-hitting, courageous job. Law school students are strongly attracted to volunteer work in the Defender's office, and high caliber lawyers are seeking Defender positions. The Public Defender is rapidly becoming an accepted institution in this country with a status fully comparable to that of the prosecuting attorney.

An expression of confidence by this Association in the Public Defender as an institution should aid materially in persuading Congress to liberalize the Criminal Justice Act to permit Defenders to participate in the federal court program. For the reasons set forth in a later section of this report we believe that amendment of that Act is essential at this time, and we strongly recommend that the House of Delegates adopt a resolution giving voice to its confidence in the Public Defender system.

B. THE COORDINATED ASSIGNED COUNSEL SYSTEM

In rural communities, small towns and sparsely populated counties, a Public Defender employed full time is generally impractical. A statewide Defender system may work if the State is compact as is the case in Massachusetts, Connecticut and New Jersey, or even where it is not, as in Minnesota, but the assigned counsel system remains the accepted pattern for defense of persons who cannot pay a private attorney in the vast majority of judicial districts. Assignment of counsel by the court on a case by case basis has been the traditional method of providing criminal representation for the poor.

In many jurisdictions the assignment process has too often been haphazard, with counsel appointed, even in homicide cases, very shortly before the commencement of trial. Judges have frequently singled out attorneys sitting in the back of the courtroom and assigned felony cases to them regardless of their competency to handle the matter. In New Jersey until recently, assignments were rotated among all members of the bar, and office lawyers who never otherwise went into court were obliged to take their turn. New Jersey has switched its allegiance and has gone over to the Public Defender, but the practice continues in other areas of the country. All too frequently the indigent client is the victim of a system that was not designed primarily for his benefit.

There is nonetheless much to be said for the assigned counsel system if it is properly organized and operated; and even if a Defender system were practical in all communities, many reasons could be advanced for adhering to the practice of assigned counsel. Three may be singled out.

First, it is essential to maintain a strong, independent, private bar trained and experienced in criminal law practice and procedure. Total reliance on a Defender system may tend to detract from this principle.

Second, the Defender encounters conflicts of interest in many multi-defendant cases, and there has to be some panel or assigned counsel system from which other counsel may be obtained to serve those who cannot be represented by the Defender.

Third, if an assigned counsel system can be made to work on a basis which can compare in efficiency with that of the Defender, the client may gain a direct and continuing individual relationship with his attorney which is frequently absent in the large Defender's office, where the indigent client may be interviewed by one attorney, represented by another at arraignment, taken over a trial by a third and represented by still another lawyer in the office at sentencing, probation hearings or on appeal.

It is now becoming apparent that even in the larger communities the assignment of counsel can be operated in a manner to compare favorably with a Public Defender. This is accomplished by a system known as the "coordinated assigned counsel system", which is being tried out as a result of funds and encouragement that several local bar associations, notably Houston and San Diego, have received from the National Defender Project, discussed below.

Under this system, the bar association sets up a foundation or other organization to assume full responsibility for the defense of indigents. This agency employs a staff which, among other things, organizes a panel of lawyers to whom cases may be assigned, selects the panel member for the handling of each case according to his competence and experience and assists the trial attorneys through research, investigative assistance and the utilization of expert witnesses.

In Houston, where under rule of court the whole bar serves on the panel, the coordinator sees to it that in every serious case two lawyers serve, one of them being a trial lawyer of experience. The caliber of representation is much higher than could possibly be expected from the old fashioned, automatically rotated assignment practice which is still prevalent in a great many communities.

In San Diego, another refinement has been added. The staff itself defends about forty percent of the cases with the balance assigned to criminal trial lawyers who serve on the panel. In effect, the service is a combination of Defender and assigned counsel with the panel participation greatly strengthened by staff assistance in research and other areas and by selectivity in the making of assignments.

There is obviously room for considerable experimentation and adaptation on the part of any community which prefers a broad bar participation rather than concentration of all indigent cases in the hands of a Public Defender. Yet the latter will always have an advantage until the communities that adhere to assignment of counsel refine and coordinate their system.

The refinements that have been introduced into the assigned counsel system have led to a much higher quality of defense. It has become increasingly apparent that counsel should be supplied as soon after arrest as possible and always before arraignment. Such appointments are rarely made under the old haphazard system. The belief shared by many members of the judiciary that lawyers have plenty of spare time and are delighted to accept assignment without compensation, is completely out of date. The Supreme Court has declared that the state must furnish counsel for the indigent in serious criminal cases and that ruling cannot validly be interpreted to mean that the state can commandeer the services of the bar on a basis of involuntary servitude.

We recommend that the House express approval of the coordinated assigned counsel system and that it urge those communities which rely on assignment to strengthen that method by adopting the following safeguards or requirements:

(a) Counsel should be appointed as soon as possible following arrest to provide representation at all pre-arraignment stages and certainly before the preliminary hearing;

(b) The assignment of counsel system should be coordinated by an administrator, with such deputies or assistants as may prove necessary, to insure that competent counsel are assigned in each case and that counsel are furnished such research, expert witness, investigative and other assistance as the necessity of each case may require;

(c) Assignments should be made only to a panel of lawyers each of whom has agreed to represent eligible defendants when their cases are assigned to them and the practice of automatic rotation of assignments among all members of a local or state bar is disapproved and should be discontinued;

(d) Counsel should in all cases be adequately compensated by the state or its subdivision.

C. STATE DEFENDERS GENERAL

Experience has shown that the most effective method for provision of Defender services locally is the guarantee of adequate financing by the state. Some states have passed legislation providing for financing, and allowing local option as to the type of organized system to be installed. Such an approach allows the flexibility necessitated by geographic, population and political differences at the local level, while, at the same time, insuring adequate funding on a continuing basis.

Unusual problems growing out of prison riots, exceptionally difficult murder and kidnap cases and other high cost criminal trials require that the state, rather than the county, assume the financing of Defender services so that no single county is unduly or inequitably burdened.

To insure continuous funding from the state and to coordinate the activities of local defenders, as well as to represent the defendant's point of view before the legislature and other offices of state government, the office of the State Defender General should be established at the seat of government. The Defender General should be a man who by reason of his personal prestige and official position is able to appear effectively before the Legislature to present a statewide budget for defense services, after consultation with local defenders, as well as legislation for the reform of the criminal law. This state official saves money in the long run by insuring the efficiency of defense services generally and assisting and guiding local counsel.

In addition to these important functions, the Defender General should be in charge of setting uniform policy for the local defenders concerning such areas as defendant eligibility, case loads, time of appointment, accounting, record keeping, special projects and the like.

The Defender General also should fulfill the necessary function of providing a central clearing house for information as to recent developments in the criminal law and advice in handling unusual cases. Moreover, the Defender General should be responsible for the continuing education of those assigned to represent the indigent. He could work closely with the Attorney General in solving policy questions concerning the whole area of criminal law and also in suggesting legislation to improve judicial machinery and penal institutions. In fact, State Public Defenders are now performing these functions in several states and many other states are considering the establishment of such an office. The effectiveness of such an office, from the standpoint of efficiency and economy, has been well demonstrated in the State of Minnesota.

D. AMENDMENT OF THE CRIMINAL JUSTICE ACT OF 1964

There can be no question that the Criminal Justice Act constituted a great step forward in rendering defense services more available to the indigent. The chief significance of the Act has rested on three developments:

First, it provided compensation for members of the bar to whom defense cases in the federal courts were assigned and who, prior to the Criminal Justice Act, served without compensation;

Second, it provided for compensation to Legal Aid agencies which provided counsel for the indigent in the federal courts. Before 1964, such agencies provided the services in a number of jurisdictions but without compensation from the federal government.

Third, it established a modest rate of compensation: ten dollars per hour for services outside the courtroom and fifteen dollars for services in court with, however, maximum dollar limits of compensation.

Proposals to amend the Act are presently pending before the Congress. It is generally conceded that it was a mistake to exclude Public Defenders from participation in the federal court service and the omission should now be rectified. In many districts an existing Public Defender is far better equipped to handle the defense in the federal courts of a person charged with crime who cannot afford adequate representation than any other agency in the community. To exclude such a Defender from handling the cases denies the local community the opportunity to make its own choice as to the best method of providing the service, and the federal courts are deprived of an important element of flexibility.

A second area in which the Act should be amended is that of the rate of compensation. There was no valid reason to make a distinction as between services in court and services rendered out of court. There is wide recognition of the fact that more cases are won or lost in the preparation than in the actual trial. Furthermore, both the rates of compensation and the maximum limitations were unreasonably low. On the basis of general prevailing rates for legal services in the

United States today, $35.00 per hour for a lawyer's services is reasonable compensation. We believe that the maximum rates should be fixed at not less than $400.00 for defense of a misdemeanor, $1,000.00 for defense of a felony and $1,000.00 for an appeal with liberal provision for exceeding those limits in a difficult or protracted case. The total appropriations for administration of the Act for the fiscal year 1968 were a little less than $4 million. Treating the legal profession fairly in the matter of compensation would have a minute impact on the federal budget.

The Act also should be amended with respect to the span of service for which compensation is granted. The Supreme Court in *Miranda* v. *Arizona*, 384 U.S. 436 (1966) and *U.S.* v. *Wade*, 388 U.S. 218 (1967) has provided that an accused is entitled to counsel immediately after arrest. All services of counsel from that time through appeal should fall within the Act and the court should be authorized to compensate for services iu probation and parole revocation hearings as well as habeas corpus and other ancillary proceedings.

E. REPRESENTATION IN JUVENILE PROCEEDINGS

The problem of providing counsel in juvenile courts for persons not able to afford adequate representation is a separate but related problem. In *Re Gault*, 387 U.S. 1, 41 (1967), the Supreme Court held:

"We conclude that the Due Process Clause of the Fourteenth Amendment requires that in respect of proceedings to determine delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed, the child and his parents must be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child."

Obviously this holding opens up a vast new area of required representation, the dimension of which may now be only dimly perceived.

In its opinion the Court was careful to point out that it was not dealing with the totality of the relationship between the juvenile and the state or even the entire process relating to juvenile delinquents stating at 387 U.S. 1, 13, "For example, we are not here concerned with the procedures or constitutional rights applicable to the pre-judicial stages of the juvenile process, nor do we direct our attention to the post-ajudicative or dispositional process." This language was seized upon in *Stantey* v. *Peyton*, 292 F Supp 209 (W.D. Va., 1968) as not requiring counsel at a hearing to determine whether a juvenile should be bound over for trial as an adult and in *Sas* v. *Maryland*, 295 F Supp 389, 409–10 (D. Md., 1969) as not requiring counsel during various proceedings preliminary to a recommendation with respect to delinquency either as to an initial determination or a subsequent redetermination. It remains to be seen whether the Supreme Court will agree with these interpretations of its pronouncement.

Even within the carefully delineated limits of the Supreme Court decision, there remain such questions as to the relationship between a juvenile's tender years and his knowing waiver of a right to counsel. See *West* v. *U.S.*, 399 F 2d 467 (C.A. 5, 1968).

Quite clearly the problem of representation in juvenile proceedings is in a state of new and uncertain development requiring careful and continuing study which may ultimately lead to and require solutions quite different from those applicable in conventional criminal proceedings. Pending development of better solutions, however, representation in juvenile delinquency adjudicatory proceedings at least must be provided and should be furnished by specialized units or panels operating within existing systems for the provision of legal services such as Public Defender coordinated assigned counsel or legal aid societies.

F. THE NATIONAL DEFENDER PROJECT

No report on the subject of the defense of persons charged with crime would be complete if it did not contain at least a brief summary of the accomplishments of the National Defender Project. Under a grant of $6.1 million from the Ford Foundation, the National Legal Aid and Defender Association has been responsible for a six year program under the capable administration of a staff headed by General C. L. Decker, former Judge Advocate General of the Army, and his associates, working with an Advisory Council chaired by Orison S. Marden. The National Defender Project has encouraged experimentation and innovation all over the country through a series of more than sixty grants to Defender Services and bar-organized agencies that operate assigned counsel systems. Forty-seven law schools are participating in the program.

The accomplishments have been far reaching. The Project has assisted in the preparation of new defender legislation in a number of states, notably Minnesota, New Jersey and Hawaii. Those states now have Defender services that are completely modern and embrace many new concepts providing protection for the interests of society as well as the constitutional rights of the accused. Of equal significance, the Project has helped develop an entirely novel method of handling the assignment of cases among members of the bar for those communities which wish to retain the assigned counsel system.

Without attempting to itemize all of the accomplishments of the Defender Project, certain vital ones deserve mention.

The Vera Foundation bail program has been grafted on to all new Defender services that have been assisted by National Defender Project funds. A pre-trial rehabilitation program has been tried out successfully and this often leads to the restoration of the defendant to society, with complete rehabilitation and without the expense and stigma of trial. Complete representation starting at the police interrogation following arrest and running through appeal is becoming the rule, whereas prior to the Project most indigents were lucky if they had counsel to assist them at the trial alone. Coverage has broadened to include indigent bail cases (those who could scrape together enough money to get bail but then could go no further and pay a retainer for counsel), respondents in lunacy proceedings, defendants in support cases, petitioners for habeas corpus, and other collateral actions. Counselling of prisoners has been inaugurated in the prisons and this has led to great savings of court time by dissuading the filing of petitions lacking any validity. The defenders have been encouraged to provide a series of lectures for the police, another program that should lead ultimately to considerable savings in court time.

Perhaps the greatest contribution of the Project has been the introduction of expanded facilities for furnishing assisting services: legal research, expert witnesses and investigators. The use of law student assistants has been encouraged and their help to defenders is proving invaluable. The result of the program as a whole has been to lift defender services up to a point where they can compete on an equal basis with the powerful office of the district attorney. Despite any notions that exist to the contrary in a country that is rapidly becoming obsessed with law enforcement, equal justice for the accused is not merely a constitutionally protected right, it is the lodestar of our system of criminal justice. The profession stands deeply indebted to the Ford Foundation for the financial support which has made the National Defender Project possible, and has caused a strengthening within the whole realm of defender services.

G. THE ABA STANDARDS FOR THE ADMINISTRATION OF CRIMINAL JUSTICE

In closing it is important that we acknowledge the outstandingly important work of the so-called Lumbard Committee. The carefully considered recommendations of that Committee have by action of the House become the policy of this Association. We expect that the Association through appropriate sections and committees will strive toward attainment of the goals sought.

Availability—in the sense of providing competent representation that will meet constitutional requirements—obviously means more than just the setting up of a service that will produce a lawyer when the occasion demands. To insure the effective performance of the function of the advocate requires the selection of skilled counsel, an increasing efficiency on the part of the prosecution and defense and the strengthening of the whole criminal law enforcement process. The ultimate acceptance by the various states of the recommendations of the Committee on Minimum Standards of Criminal Justice will promote the accomplishment of those goals and help in the solution of the overall problem of greater availability of counsel in the criminal law field.

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