BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Inconsistencies In Administration Of The Criminal Justice Act

GAO's review in 10 Federal district courts showed that the Criminal Justice Act was being administered differently among and within the courts. The differences related to the courts' procedures for (1) selecting private court-appointed attorneys, (2) determining when defendants should be ordered to reimburse the Government for legal costs incurred, and (3) controlling and accounting for funds provided under the act. To improve the implementation of the act, the Judicial Conference of the United States, the policy-making body of the judiciary, needs to provide better guidance and establish appropriate procedures and policies for district courts to follow.

Also, the Judicial Conference has proposed that it be given the authority to increase court-appointed attorney compensation rates. Because of the impact increases may have on the judiciary's budget, GAO believes they should be subject to congressional review before being increased.

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

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To the President of the Senate and the
Speaker of the House of Representatives

This report discusses actions necessary to improve the administration of the Criminal Justice Act in Federal district courts. In chapters 2 and 3, we recommend that the Judicial Conference provide better guidance and establish appropriate policies and procedures to minimize the present inconsistencies in the administration of the act. Also, we have made recommendations to the Congress to assist the courts in enforcing court orders that require defendants to reimburse the Government for their legal fees and to ensure that the Congress retain oversight over any proposed increases in court-appointed attorney fees.

We conducted this review to determine the consistency with which the act was being implemented and the adequacy of financial controls over Criminal Justice Act funds. Developing and enforcing better guidelines and establishing appropriate procedures and policies will improve the implementation of the Criminal Justice Act in Federal district courts.

Copies of this report are being sent to the Director, Office of Management and Budget; the Chairmen, House and Senate Judiciary Committees; the Director, Administrative Office of the United States Courts; the Chairman, Judicial Conference of the United States; the Chairman, Judicial Conference Committee to Implement the Criminal Justice Act; and the chief judge of each Federal district court.

Milton J. Socolar

Acting Comptroller General
of the United States

COMPTROLLER GENERAL'S REPORT TO THE CONGRESS

INCONSISTENCIES IN ADMINISTRATION OF THE CRIMINAL JUSTICE ACT

D I G E S T

The Criminal Justice Act (Public Law 88-455), as amended, enables the Federal Government to provide legal representation for defendants in Federal criminal cases who are financially unable to obtain adequate representation. The Government provides and pays for this legal representation through either (1) a federally employed public defender, (2) a community defender organization, or (3) a private court-appointed attorney. During fiscal year 1981, about 43,500 defendants were represented pursuant to the act at an estimated cost of about $28 million.

NEED TO ENSURE CONSISTENT IMPLEMENTATION OF THE CRIMINAL JUSTICE ACT

Without clear Judicial Conference guidance, each judicial district and often individual judges have had to devise their own policies and procedures for administering the Criminal Justice Act. The differences in the administration of the act among and within the 10 Federal district courts reviewed have resulted in (1) no assurance that defendants are receiving adequate representation and (2) inconsistent treatment when determining financial ability to reimburse for attorneys' fees. Better Judicial Conference guidance to the district courts would help to alleviate the variations that exist.

--Attorney selection criteria varies. In the districts GAO reviewed there was a wide range of criteria used for selecting attorneys to serve on panels to represent criminal defendants. This range was from no criteria to requiring that attorneys have at least 10 years experience and have litigated more than 25 criminal trials. (See pp. 7 to 11.)

--Determination of financial ability to pay for legal counsel varies. In the courts GAO reviewed there were limited criteria for determining a convicted defendant's financial ability to repay legal expenses. As a result, convicted defendants who were not ordered to reimburse the Government for legal expenses were often in a similar or better financial condition than those convicted defendants ordered to reimburse. For example, a convicted defendant who had a salary of approximately $14,000 a year and who had liabilities in excess of assets of at least $100,000 was required to reimburse the court. In contrast, another convicted defendant in the same court, who earned $30,000 a year and who the court determined had a net worth of approximately $61,000 was not required to reimburse the court. (See pp. 11 to 17.)

BETTER FINANCIAL CONTROLS NEEDED OVER CRIMINAL JUSTICE ACT FUNDS

The Judicial Conference has not (1) provided the district courts with specific guidance concerning the reimbursement of panel attorney fees by defendants, (2) ensured that panel attorneys adhere to existing guidelines requiring them to submit well-documented claims for compensation, and (3) ensured that the most efficient system for disbursing grant funds to community defender organizations is used. Consequently, inconsistent and inefficient practices have occurred:

--Court-ordered reimbursements are not properly accounted for and collected. Most district courts were not routinely recording reimbursement orders and establishing effective accounting control over the amounts due. (See pp. 23 to 25.)

--Inconsistent interpretation of the legality of ordering reimbursements as a condition of probation. The courts could improve their enforcement of reimbursement orders if they required convicted defendants, where appropriate, to repay their legal expenses as a condition of their probation. However, legislation needs to be enacted to eliminate the inconsistent interpretations that exist surrounding such an action. (See p. 25.)

--Attorney reimbursement claims are not supported. None of the courts visited were strictly enforcing existing procedures regarding the submission of well-documented and supported compensation claims. For example, of the 369 cases in GAO's sample that required supporting documentation, only 30 percent had adequate supporting documentation in the case files. Thus, the courts cannot be assured that all attorney compensation claims are appropriate. (See pp. 25 and 26.)

--Unnecessary interest expenses are being incurred. Community defender organizations now receive in advance lump sum Federal grant funds on a quarterly basis to represent Federal criminal defendants. Because these groups do not need the entire lump sum at the beginning of the quarter, the Government is incurring unnecessary interest expense. (See pp. 26 and 27.)

ADEQUACY OF ATTORNEY FEES NEEDS CONSIDERATION

The act currently sets out the maximum fees and hourly rates that court-appointed attorneys may receive for representing criminal defendants. The fees currently paid court-appointed attorneys have remained unchanged since 1970 and their real value has obviously decreased substantially because of inflation. On this basis alone they deserve examination.

However, the Judicial Conference has proposed legislation, which was pending as of December 15, 1982, in the Congress, that would increase the maximum attorney fee levels. The legislation would further provide the Judicial Conference the authority to establish maximum hourly rates. GAO does not object to the Conference being given such authority; however, the Congress needs to retain oversight of such actions taken under it because of the budgetary impact a rise in the hourly rates could have. (See pp. 34 to 40.)

MATTER FOR CONSIDERATION BY THE CONGRESS

If the Congress decides to enact legislation giving the Judicial Conference the authority to establish the hourly rates attorneys could receive for representing defendants, GAO believes the Congress should consider requiring the Chief Justice to report any proposed hourly rate increases to the Congress at the beginning of a regular congressional session but not later than the first day of May, and that the proposed increases shall not take effect until 90 days after they have been reported. (See p. 40.)

RECOMMENDATION TO THE CONGRESS

GAO recommends that the Congress amend the Federal Probation Act (18 U.S.C 3651) to specifically allow reimbursements, where appropriate, to be made a condition of probation. This would eliminate the inconsistent interpretation regarding the legality of whether reimbursements can be made a condition of probation and enhance the collection of reimbursements from convicted defendants. (See p. 28 and app. I.)

RECOMMENDATIONS TO THE JUDICIAL CONFERENCE

To help alleviate the variations in the administration of the act and to improve financial control over the act's funds, GAO recommends that the Judicial Conference establish overall criteria to be used by the district courts in

developing screening procedures for court-appointed attorneys; encourage district courts to establish specific criteria when reimbursements for legal expenses should be ordered; establish procedures for recording, collecting, and monitoring the reimbursement of legal expenses; and institute procedures to disburse grant funds to community defender organizations in a more timely manner. (See pp. 17 and 29.)

AGENCY COMMENTS AND GAO'S EVALUATION

The Judicial Conference's Criminal Justice Act Committee, the Administrative Office of the U.S. Courts, 9 of the 10 Federal district courts visited, and the Department of the Treasury commented on the report. These entities generally agreed with the report's findings. GAO's recommendation that legislation be revised to allow reimbursement for legal expenses to be made a condition of probation created the greatest controversy.

The Criminal Justice Act Committee, the Administrative Office, and two district courts' chief judges disagreed because they believed making reimbursements a condition of probation would not be imposed on persons convicted and sentenced to imprisonment, thereby creating an inequity. Also, they believed GAO's suggested language to amend 18 U.S.C. 3651 would permit reimbursements as a condition of probation regardless of defendants' ability to pay.

The concern that inequities would be created because defendants imprisoned would not be required to pay is unfounded. If a convicted defendant is sentenced to prison without probation and ordered to reimburse for act expenses, the order cannot be made a condition of probation. However, existing law allows civil action to be taken against the individual to enforce the order. Consequently, GAO's recommendation by no means creates inequities. Regarding GAO's suggested language to amend 18 U.S.C. 3651, the report has been clarified to specifically state that only "financially able defendants" should be

ordered to pay for the costs of court-appointed counsel or other services. (See p. 28 and app. I.)

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GAO, because of its interest in improving the operations of the judiciary, reviewed the implementation of the act to determine (1) the adequacy of the guidelines and directives provided to the district courts to implement the act, (2) the consistency with which the act was being implemented, and (3) the adequacy of the financial controls over Criminal Justice Act funds. To accomplish this, GAO performed its work at 10 Federal district courts--the southern districts of Indiana, New York, and Ohio; the eastern districts of Michigan, Pennsylvania, and Virginia; the northern districts of Illinois and Ohio; and the districts of Maryland and New Jersey. (See pp. 5 and 6.)

Contents

ABBREVIATIONS

CDO	Community Defender Organization
CJA	Criminal Justice Act
FPD	Federal Public Defender
GAO	General Accounting Office
U.S.C.	United States Code

CHAPTER 1

INTRODUCTION

The Criminal Justice Act (CJA), 18 U.S.C. § 3006A, provides for the legal representation of defendants who are financially unable to obtain an adequate defense in criminal cases in Federal courts. The act, in part, implements the sixth amendment to the Constitution which guarantees the right of the accused to assistance of counsel by requiring each United States district court to create and implement a defender system for eligible persons who are (1) charged with a felony or misdemeanor (excluding a petty offense as defined in 18 U.S.C. § 1(3)) or with an act of juvenile delinquency which would constitute a felony or misdemeanor if committed by an adult; (2) under arrest, if representation is required by law; (3) subject to revocation of probation or parole, in custody as a material witness, or seeking collateral relief; or (4) entitled to appointment of counsel under the sixth amendment or by Federal law. The act also provides for the use of investigative, expert, or other services necessary for an adequate defense and requires each district to develop a plan which provides for representation by private attorneys. During fiscal year 1981, approximately 43,500 persons were represented pursuant to the act at an estimated cost of $28 million.

We reviewed the implementation of the Criminal Justice Act because of our continuing interest in improving the operations of the Federal judiciary. We performed our detailed review at 10 of the 95 1/ Federal district courts.

ADMINISTRATIVE STRUCTURE OF THE JUDICIARY

The judicial branch of the Government has three levels of administration--the Judicial Conference of the United States, the judicial councils of the 12 circuit courts of appeals, and the district courts. Associated with this structure is the Administrative Office of the United States Courts. All of these levels have management responsibilities for the implementation of the Criminal Justice Act.

Judicial Conference of the United States

The Judicial Conference, the policymaking body of the judiciary, is made up of judges from various levels of the Federal judiciary--the Supreme Court, the U.S. Courts of Appeals, the

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1/As of March 31, 1982, there were only 94 district courts because of the closing of the court for the Canal Zone.

U.S. District Courts, and the U.S. Bankruptcy Courts. Its areas of interest include court administration, assignment of judges, just determination of litigation, general rules of practice and procedures, promotion of simplicity in procedures, fairness in administration, and elimination of unjustifiable expense and delay. In addition, the Conference establishes the policies and procedures for the implementation of the Criminal Justice Act. Except for its direct authority over the Administrative Office, the Conference is not vested with the day-to-day administrative responsibility for the Federal judiciary.

Judicial councils

The United States is divided into 12 judicial circuits each containing a court of appeals (circuit court) and from 1 to 15 district courts. Each of the 12 judicial circuits has a judicial council consisting of both circuit court and district court judges. The councils are required to meet at least twice a year. During these meetings each judicial council considers the quarterly reports on district court activities prepared by the Administrative Office and takes appropriate action. The councils promulgate orders to promote the effective and expeditious administration of the courts within their circuits. This includes acting on such matters as approving a district court's plan for implementing the Criminal Justice Act.

U.S. district courts

There are 94 Federal district courts. The judges of each court formulate local rules and orders and generally determine how court activities, such as the implementation of the Criminal Justice Act, will be managed. Each court has a clerk of the court who has a wide range of responsibilities and is under the direction of the chief judge.

Administrative Office of the United States Courts

The Administrative Office is headed by a Director who is appointed by the Supreme Court of the United States. The Director is the administrative officer of the United States courts. Under the supervision and direction of the Judicial Conference, the Director informs district courts of various Judicial Conference policies and procedures.

In this regard, the administration of the Criminal Justice Act is under the purview of the Administrative Office. This responsibility entails (1) drafting, recommending, and promulgating Judicial Conference guidelines for the administration of

the act, (2) disbursing and accounting for the funds appropriated for the operation of the act, (3) evaluating the appointment of counsel in the Federal judicial system and improving the efficiency, effectiveness, and quality of representation of Federal defender operations, and (4) reviewing and evaluating proposed and existing legislation and regulations to ensure that they are consistent with policy and applicable laws and that they are economical and administratively sound.

THE CRIMINAL JUSTICE ACT

The sixth amendment to the Constitution requires that in all criminal prosecutions the accused shall have the assistance of counsel for his/her defense. To comply with the requirements of the sixth amendment as outlined in a wide range of court cases, attorneys have been appointed by the courts to represent defendants who were not able to afford counsel. However, prior to the passage of the Criminal Justice Act of 1964, these attorneys represented defendants free of charge. The Congress and the judiciary became concerned as to whether such a practice discouraged the more experienced attorneys from accepting such cases. The Congress and the judiciary believed that if reasonable compensation for in and out-of-court time plus expenses was paid by the Government, more experienced attorneys would be willing to accept these cases thus ensuring adequate legal representation. As a result, the Criminal Justice Act was enacted to provide the statutory authority for compensating attorneys appointed under the act. The act directed each Federal district court to implement a plan for furnishing representation for defendants charged with felonies or certain misdemeanors who were financially unable to obtain adequate defense counsel. The act further required that each plan be approved by the judicial council of the circuit court before being placed into operation.

Amendments to the Criminal Justice Act

In October 1970 the Congress amended the act as a direct result of a study 1/ jointly commissioned by the Department of Justice and the Judicial Conference of the United States. Although the study stated that the administration of the act was sound, it recommended several amendments primarily concerned with (1) expanding the coverage of the act, (2) establishing a mixed defender system, and (3) increasing the maximum fees and hourly rates attorneys could receive for representing CJA defendants.

1/Entitled "The Criminal Justice Act in Federal District Courts" published in November 1968.

Expansion of the act

In response to various Supreme Court rulings, the act's coverage as it pertains to the right to counsel, was expanded to include: (1) a person charged with an act of juvenile delinquency which if committed by an adult, could result in the loss of liberty; (2) a person under arrest who has not had an initial court appearance; (3) a person subject to revocation of parole or probation, or in custody as a material witness, or seeking collateral relief; or (4) a person entitled to appointment of counsel under the sixth amendment or by Federal law where the individual could be subject to the loss of liberty. This broad coverage was intended to provide flexibility so that the act would cover any judicial application of the sixth amendment's right to counsel.

Mixed defender system

The act was further amended to provide for a mixed defender system; that is, options were provided to appoint private attorneys (commonly referred to as panel attorneys) on an ad hoc basis along with the option of using a Federal public defender (FPD) 1/ or community defender organization (CDO) 2/. The Congress believed that providing for these options was advantageous because it would assist the court with the administration of the act and provide for more experienced defense counsel and more complete legal representation. This amendment limited the use of these options to district courts or adjoining Federal districts with heavy caseloads (over 200 CJA appointments per year). Further, the amendment also required participation by the private attorneys even if an FPD or CDO system was being used. This mixed defender system was believed necessary to retain active participation by the private bar.

Maximum fees and hourly rates

The act was also amended to increase the maximum fees and hourly rates attorneys could receive for representing CJA defendants. The Congress increased the hourly rates from $15 to $30 per hour for in-court time and from $10 to $20 for out-of-court time. The Congress also increased the maximum fees that an attorney could receive for representation before the district court from $500 to $1,000 for felony cases and from $300 to $400 for misdemeanors. The amendment also established a $1,000 maximum fee

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1/Federal salaried employees.

2/Nonprofit organizations who are generally supported by Federal grants.

for each attorney handling cases on appeal. It further provided a $250 maximum fee for each attorney representing defendants in probation revocation proceedings or discretionary cases covered by the act. The amendment required that these maximum fees could not be exceeded without the written approval of the chief judge of the circuit court.

With regard to establishing hourly rates the act was further amended to vest such authority within certain limitations with the judicial councils. The amendment (18 U.S.C. §3006A(d)(1)) specified that any hourly rate increase established by a judicial council could not exceed the minimum hourly scale established by the local bar association. The legislative history suggests that this authority was given to the judicial councils to permit an increase in rates without congressional action when the statutory rates become disproportionate to prevailing local rates. The only court which has addressed the matter ruled that judicial councils do not have the authority to increase CJA rates because of a Supreme Court decision (Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975)) that ruled the existence of bar association minimum hourly fee schedules is in violation of antitrust laws.

Proposed amendments to the Criminal Justice Act

On December 11, 1981, at the request of the Judicial Conference, legislation (H.R. 5190) was introduced in the Congress which would, among other matters, increase the maximum fees private attorneys receive for representing CJA defendants. The legislation proposes that the maximum fees be increased for felony cases from $1,000 to $10,000, for misdemeanors from $400 to $3,000, for appeals from $1,000 to $5,000 and other representation from $250 to $2,500. Also, the legislation would delete maximum hourly rates from the act and give the Judicial Conference the authority to establish maximum hourly rates. In justifying the proposed amendments the Judicial Conference contends that: (1) courts are experiencing difficulties in obtaining attorneys to accept appointments because of the present maximum fees and hourly rates and (2) the chief judges of the circuits are experiencing an administrative burden because of the large number of cases that exceed the existing maximum fees which require their written approval before attorneys can be paid by the Government.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our review was initiated to determine (1) the adequacy of the guidelines and directives provided to the district courts to implement the Criminal Justice Act, (2) the consistency with which the act was being implemented both within and among the district courts, and (3) the adequacy of the financial controls over Criminal Justice Act funds.

We selected the district courts to be reviewed on the basis of (1) the number of defendants that qualified for representation pursuant to the act and (2) the type of representation provided by the courts by means of a private court-appointed attorney and/or an FPD or a CDO. When addressing the court's determination of a defendant's financial ability to pay for his own counsel, we limited our analysis to convicted defendants because case files for acquitted defendants had little or no financial data on which to analyze a defendant's financial ability. In addition, to adequately assess the administration of the act, we selected 10 Federal district courts comprising 26 different court locations for review. The 10 district courts were the northern district of Illinois, southern district of Indiana, eastern district of Michigan, southern district of New York, northern and southern districts of Ohio, eastern district of Pennsylvania, eastern district of Virginia, and the districts of Maryland and New Jersey. To obtain an accurate understanding of how the selected courts administered the act, we randomly sampled 1,482 cases by type of legal representation. Of the 1,482 cases, panel attorneys handled 991 cases, FPDs handled 179, and CDOs handled 312.

In addition to our detailed audit work, we sent questionnaires to 114 court locations in the remaining 85 district courts to determine the extent to which the courts were experiencing problems obtaining attorneys to accept cases because of the present hourly rates. Of the 114 questionnaires sent, 84 were returned, for a response rate of 74 percent. (A synopsis of the responses to the questionnaire is contained on page 48.) For a more detailed discussion of our scope and methodology see page 43.

Our review was conducted in accordance with generally accepted Government auditing standards.

CHAPTER 2

THE CRIMINAL JUSTICE ACT SHOULD BE IMPLEMENTED MORE UNIFORMLY

The Judicial Conference should provide better guidance to the district courts to improve the implementation of the Criminal Justice Act. Some judges and magistrates have indicated that additional guidance would be beneficial in such areas as (1) how to select attorneys to serve on panels so that defendants receive adequate representation and (2) when defendants should be ordered to reimburse the Federal Government for legal expenses.

In the absence of clear guidance from the Judicial Conference, implementation of the Criminal Justice Act has been left generally to each judicial district. Consequently, the differing practices, among and within the 10 judicial districts we reviewed, have resulted in some courts having no basis for determining whether court-appointed counsel always have suitable experience or when convicted defendants should be ordered to reimburse for legal expenses. Better Judicial Conference guidance could help to alleviate the current differences.

INCONSISTENCIES EXIST IN SELECTING PANEL ATTORNEYS

The Attorney General's Committee on Poverty and the Administration of Federal Criminal Justice reported in 1963 that a severe lack of uniformity existed in the adequacy of representation for those unable to afford counsel. Although the report stressed that some element of inequality is inevitable under any system, it was, however, prevalent to an unnecessary degree. According to the CJA legislative sponsor, the act was predicated on the precept of "equal justice for all." Although the act intended to narrow the problems reported by the Attorney General's Committee in 1963, there still exists today in the courts wide ranging criteria for selecting private court-appointed attorneys. In the 10 courts we reviewed, the criteria for selecting attorneys to serve on CJA panels differed in both their requirements and procedures. For example, the criteria for selecting attorneys ranged from no criteria to requiring 10 years of experience and more than 25 criminal trials.

The differences noted above can be attributed to the lack of guidance provided to the district courts pertaining to the selection of panel attorneys. To assist the district courts in developing plans to implement the act as required, the Judicial Conference developed six model plans. Although the model plans addressed the legal requirements of the act, they contained little

guidance on how to best select attorneys to serve on CJA panels. The only other formal guidance the district courts received was from the Administrative Office, with the concurrence of the Judicial Conference, which issued a procedures manual to implement the act. Again, these guidelines in most instances were very general especially as they relate to the best methods for selecting counsel to serve on CJA panels.

Selection of CJA panel attorneys

Due to differing practices in the panel attorney selection procedures, there is no basis for determining whether court-appointed counsel always have suitable experience and/or training to represent defendants in Federal criminal cases. Selection criteria and screening procedures which include a formal review process would enable the courts to ensure adequate representation for CJA defendants. Of the 10 district courts we reviewed, only the eastern district of Pennsylvania included specific requirements for attorney qualifications and screening procedures in its CJA plan.

The eastern district of Pennsylvania used the most effective and comprehensive selection process of the courts we reviewed. The process included a formal review by a committee of attorneys and judges and a multitier panel system based on the attorney's qualifications. The court devised a two-tier private attorney panel along with a CDO to represent CJA defendants. The first private attorney panel consists of 100 experienced lawyers who, at a minimum, must have been regularly engaged for 3 years prior to applying for the panel as trial counsel in any Federal district court or in the State court. The second private attorney panel consists of 25 less experienced lawyers who (1) are members of both the Federal and State bar associations; (2) have appeared as attorney of record in the State or Federal courts on behalf of a client; and (3) on two occasions have made a presentation or examined witnesses at a trial or adversary proceeding while engaged as attorney of record. Members of both panels serve 3-year staggered terms. Members of the first panel are appointed to represent clients in felony or serious misdemeanor cases while members of the second panel represent clients in nonfelony cases and cases requiring less legal experience.

The court's selection committee is comprised of the chief attorney of the CDO, four private attorneys selected by a committee of judges, and two private attorneys selected by the U.S. magistrates. Four of the private attorneys on the selection committee must be members of the local bar association and the other two private attorneys must be members of bar associations in neighboring counties. The selection committee reviews all applications, conducts the necessary interviews, and forwards its recommendations to a committee of judges (referred to as the

Criminal Business Committee) that approves the final selections. Annually, a third of the panel members are reviewed, and panel membership is revised when necessary.

According to the chairman of the Criminal Business Committee, this court's selection process has been very effective in obtaining a sufficient number of qualified attorneys willing to accept CJA cases. This system has some of the following advantages:

--The selection committee, and therefore the court, constantly receives advice from the organized bar and has access to the organized bar's information and reports concerning an attorney's qualifications for panel membership.

--The fixed term for panel service permits the court to periodically review the attorney's service on the panel and permits attorneys who so desire to retire gracefully from panel membership.

--This process adds an element of prestige for those selected to serve on the panel, particularly when the panel size is limited to a specific number of attorneys.

The selection process varied among and within the other nine district courts reviewed. For example, of the three court locations in the southern district of Ohio, only the Dayton court location established stringent requirements that attorneys must meet for the court's three-tier panel system (consisting of complex, regular, and easy cases). In order to be selected for the complex case panel, an attorney must have 10 years of experience and have tried more than 25 criminal jury trials. The regular case panel attorneys must have 2 years of experience, have passed a specialized instruction program on representing indigent defendants, and have participated in several criminal jury trials. The attorneys selected for the easy case panel are usually recent law school graduates who may or may not have any actual experience. The other two court locations in Cincinnati and Columbus have no formal eligibility standards or screening processes.

In the eastern district of Michigan the selection procedures differed among the three court locations. The Detroit court location had a screening committee comprised of the chief attorney of the CDO and local bar association presidents. This committee rated the CJA applicants and submitted its recommendations to the district court's Criminal Justice Act Committee comprised of three district judges. This latter committee obtained comments from all the district judges and then made the final selections. In Flint, the FPD assisted the presiding judge in rating the attorneys'

applications and formed the court's CJA panel. In Bay City, the attorneys willing to accept CJA cases simply submitted their names to the court clerk who maintained the names in a card file.

Further, different factors considered in selecting attorneys was evidenced by the results of responses to questionnaires that we sent to 114 court locations. The table below shows the extent to which certain requirements are imposed in the selection process in the 84 court locations that responded. For example, as shown by the table, 54 percent of the court locations responding required attorneys to submit a written application and 45 percent required attorneys to have criminal trial experience.

Requirement	Percent
Formal (written) application	a/ 54.2
Oral application	a/ 24.6
Formal review of application by panel of judges	28.3
Formal review of application by committee of attorneys	18.8
Formal review by Federal public defenders	9.0
Formal test or examination	3.6
State Bar Membership	97.1
Criminal trial experience	45.0
Federal trial experience	32.9
Familiarity with local court rules	86.4
Familiarity with Federal Rules of Criminal Procedure	81.3

a/Does not total 100 percent because some district courts automatically include all attorneys who practice before the district on their list of CJA panel attorneys.

Several courts which did not have formal selection criteria or screening procedures complained about the quality of attorneys on their CJA panels. For example, in the New Jersey district which did not have a screening process, seven judges and magistrates stated they routinely did not use the list of attorneys maintained by the clerk of the court for the following reasons:

--One judge was dissatisfied with the qualifications of some attorneys on the list.

--One magistrate said that he was getting too much "heat" from the district judges over the caliber of attorneys he was appointing. Consequently, he now maintains his own list of attorneys.

--Another magistrate said if he appoints an attorney and he performs satisfactorily, he places the attorney on his own list for future appointments.

--A judge told us that he was "running a court, not a school" and inexperienced attorneys took up too much of his time with "frivolous" motions. Consequently, he has a pool of 6 to 12 attorneys he always appoints.

--One judge told us she appointed local attorneys whom she was familiar with. Another judge told us he sometimes consults with the prior judge to obtain attorneys' names because he was not familiar with the local attorneys.

--One judge told us that he only appoints attorneys from the panel list to "run of the mill" cases. Otherwise, he uses his own list.

To ensure adequate representation for CJA defendants the Judicial Conference needs to provide the district courts with criteria and screening procedures for selecting CJA panel attorneys. The criteria should include qualifications such as criminal trial experience, and participation in a specialized program pertaining to the representation of indigent defendants.

DETERMINATION OF A DEFENDANT'S FINANCIAL ABILITY TO PAY VARIES AMONG AND WITHIN DISTRICTS

The court's discretion to determine a defendant's ability to reimburse the court for defense expenses has been applied inconsistently both within and among court districts. The Criminal Justice Act specifically provides that courts (1) appoint counsel if the defendant is financially unable to obtain counsel and (2) direct defendants to pay the cost of representation whenever it is determined that the funds are available for payment from or on behalf of a defendant. Some judges and magistrates told us that they regularly consider issuing court orders for reimbursements while others told us that they never issue orders for reimbursements regardless of the defendant's financial capability. More specific guidance from the Judicial Conference is needed to clarify when reimbursements should be ordered.

On the basis of our case analysis and interviews with judges and magistrates, the initial determination of financial eligibility for court-appointed counsel is not difficult because the defendant is given the benefit of the doubt to avoid delaying the movement of cases and to prevent further litigation dealing with

the court's reluctance to appoint counsel. Although we did find cases in which the court denied court-appointed legal representation and the defendant obtained his/her own counsel, these instances were rare. However, the determination to order reimbursement is more complex and subjective and has resulted in greater disparities within and among the district courts. This happens because at the time such a subsequent decision is made, the court has available financial information that was not available when the initial determination was made.

Limited guidance available to determine reimbursement potential

The limited criteria and guidance available to the courts for determining a defendant's ability to reimburse the court for CJA expenses have contributed to the inconsistencies within and among district courts. We found in the courts visited that

--the method of determining a defendant's financial status varied and

--some convicted defendants not ordered to reimburse the court were in a similar or better financial position than those ordered to repay.

The only guidance available to the courts concerning a defendant's financial eligibility and ability to reimburse the court is included in the Administrative Office's CJA guidelines:

> "Standards for Eligibility. A person is "financially unable to obtain counsel" within the meaning of subsection (b) of the Act if his net financial resources and income are insufficient to enable him to obtain qualified counsel. In determining whether such insufficiency exists, consideration should be given to (a) the cost of providing the person and his dependents with the necessities of life, and (b) the cost of a defendant's bail bond if financial conditions are imposed, or the amount of the cash deposit defendant is required to make to secure his release on bond.
>
> Any doubts as to the person's eligibility should be resolved in his favor; erroneous determinations of eligibility may be corrected at a later time. At the time of determining eligibility, the judge or magistrate should inform the person of the penalties for making a false statement and of his obligation to inform the court and his attorney of any change in financial status.

Partial Eligibility. If a person's net financial resources and income anticipated prior to trial are in excess of the amount needed to provide him and his dependents with the necessities of life and to provide the defendant's release on bond, but are insufficient to pay fully for retained counsel, the judicial officer should find the person eligible for the appointment of counsel under the Act and should direct him to pay the available excess funds to the Clerk of the Court at the time of such appointment or from time to time thereafter. Such funds shall be held subject to the provisions of Subsection (f). The judicial officer may increase or decrease the amount of such payments, and impose such other conditions from time to time as may be appropriate."

Our review of 10 district courts showed the limited use being made of reimbursement orders. Only the eastern district of Michigan ordered reimbursements with any consistency. The following table shows the extent to which the 10 district courts ordered reimbursement for our sampled cases.

District court	Percent of cases ordered to reimburse
northern Illinois	2.5
southern Indiana	2.9
Maryland	2.4
eastern Michigan	10.1
New Jersey	.8
southern New York	0
northern Ohio	3.8
southern Ohio	0
eastern Pennsylvania	.9
eastern Virginia	3.4

Further, we found differences within district courts reviewed. For example, our discussions with judges and magistrates from the southern district of New York showed that orders to reimburse were seldom considered and even more seldom ordered because

--defendants are indigent to begin with, and therefore, have no means available to pay;

--the legality of ordering reimbursement is questionable;

--court officials are unfamiliar with reimbursement procedures;

--once the decision is made that the defendant is eligible for CJA counsel, the Government should not pursue reimbursement unless it receives information that the defendant lied; and

--responsibility for collecting reimbursements by court personnel has not been clearly defined.

Although the judges that did order reimbursements often stated that they used their "best judgment" in making these determinations, some judges gave specific examples of criteria that could be used to determine reimbursement potential. For example, some judges in the eastern district of Michigan stated that they require reimbursement when the defendant has some income but not enough to pay a retainer fee for a private attorney in the private market. Also, other judges stated that if the court discovers a defendant's financial position is better than originally reported, reimbursement will be required. A magistrate in the eastern district of Virginia explained that he will require reimbursement if the defendant has income earning potential.

On the basis of our review of financial information in defendants' case files, we identified 130 convicted defendants, who were not required to reimburse the court for CJA expenses that were in a similar or better financial position than those who were required to reimburse the court. Several examples follow.

--In the New Jersey district court a convicted defendant who had a salary of approximately $14,000 a year and who had liabilities in excess of assets of at least $100,000 was required to reimburse the court. Another convicted defendant who earned $30,000 a year and who the court determined had a net worth of approximately $60,724 was not required to reimburse the court.

--In the northern district of Ohio a convicted defendant whose income consisted of $2,500 a year in welfare payments and approximately $4,800 a year from a part-time job and whose net worth was zero was required to reimburse the court. On the other hand, a convicted defendant earning $21,000 a year and whose net worth was valued by the court at approximately $3,700 was not required to reimburse the court.

--A convicted defendant in the eastern district of Virginia who earned $6,000 a year and whose net worth was determined by the court to be between $500 and $600 was

required to reimburse the court. At the same time a convicted defendant who earned $19,000 a year and whose net worth was determined by the court to be zero was not required to reimburse the court.

Information to determine a defendant's reimbursement potential is not adequate

Another problem in determining a defendant's ability to pay is the availability and quality of information provided to the court. The courts' procedures for determining financial ability to pay are based primarily on unverified financial information collected prior to the defendant's arraignment. Furthermore, little attention is devoted to examining information gathered following arraignment and prior to sentencing for determining reimbursement potential. In addition, determinations of eligibility for court-appointed counsel and ability to pay are sometimes made by different people in the court, namely magistrates and judges. Often the information available to make these decisions is different. Thus, limited criteria and information and different individuals involved in determining financial eligibility all contribute to inconsistencies in the administration of the act.

In many district courts the U.S. magistrates handle pretrial matters such as initial appearances, bail hearings, and arraignments for criminal cases. The magistrates usually determine whether a defendant is qualified for a court-appointed attorney at a defendant's first court appearance. This decision is based on financial information obtained from the defendant either in a written affidavit or through oral testimony. They may also obtain and verify financial information provided by the pretrial services agency 1/ if one is located in their district. However, affidavits and reports are not prepared in all cases, and if prepared, are not always complete.

In addition to the above sources, the district court judges also obtain information from (1) documents collected during the

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1/The Pretrial Services Act of 1981, Public Law 97-267, was signed into law on September 27, 1982, and authorizes the establishment of a pretrial services agency in each district court.

court proceedings and (2) the presentence investigation report prepared prior to the sentencing hearing if the defendant is convicted. In courts where written affidavits are not used, the trial judge does not have the financial information necessary to determine a defendant's reimbursement capability unless the court has a pretrial services agency or the defendant is convicted and a presentence report is prepared.

To complicate the situation further, the court is often faced with conflicting financial information between what it gathers and the information provided by the defendant in either written affidavits or in oral testimony. For example, we found the following inconsistencies in financial information provided to the courts:

--A defendant from Maryland reported earnings of $12,000 per year, assets of $58,545 and liabilities of $42,000. The pretrial services agency reported earnings of $22,000 per year, assets of $95,000 and liabilities of $35,000. The probation officer reported earnings of $24,000 per year, assets of $88,000, and did not specify total liabilities. The defendant was not required to reimburse the court for CJA expenses.

--A defendant from Detroit reported he had $600 in cash and earned $700 a month through Federal employment. The probation officer reported the defendant earned $94 a week at a tool shop, received $412 a month in retirement benefits, earned $19,800 a year ($1,650 a month) as a letter carrier, and had $2,200 in cash. The defendant was not required to reimburse for CJA expenses.

--Another defendant from Detroit reported he was unemployed but had $4,000 to $5,000 in travelers checks, two race horses worth $20,000, 2 Mercedes worth $65,000, and a motor home worth $26,500. The probation officer reported the defendant had $10,000 in watches, $5,000 to $6,000 in land, and $9,500 to $17,500 in cash being held by a friend. He was ordered to reimburse the court for some of the CJA expenses.

Better information would provide the courts with a sounder basis for determining reimbursement potential. The pretrial services agency reports and the presentence investigation reports prepared by the probation officer should be used by the courts because these organizations attempt to verify all financial information. Pretrial services agency officials in two courts told us

they could provide a better service to the courts by including recommendations for court-appointed defense counsel in their pretrial reports without increasing their current workload. The probation officer assigned to prepare the presentence investigation report is responsible for documenting and verifying all employment and financial information. On the basis of the information gathered in each case, the probation officer could determine the feasibility of ordering a convicted defendant to reimburse and make the appropriate recommendation to the court prior to sentencing. In fact, the northern district of Ohio has recently implemented such a procedure whereby the probation officers suggest reimbursement be made in appropriate cases. Greater use by the courts of these organizations' reports and defendants' written affidavits could improve the basis used to determine a defendant's financial ability to reimburse the court for CJA expenses.

CONCLUSIONS

A lack of guidance for the selection of attorneys to serve on CJA panels and the determination of a convicted defendant's ability to pay for legal expenses has contributed to differing practices in the administration of the act. In the 10 Federal district courts we reviewed, the criteria and screening procedures for selecting attorneys to serve on CJA panels differed both within and among the district courts. Specifically, the requirements for selecting attorneys varied from no criteria to a minimum of 10 years of experience and more than 25 criminal trials. Such a wide range in criteria impacts on the adequacy of representation for those unable to afford counsel. To ensure adequate representation for CJA defendants, the judiciary needs to adopt criteria and screening procedures for selecting attorneys to serve on CJA panels.

Differences in the administration of the act also arise because courts are using different criteria to determine a convicted defendant's ability to reimburse it for CJA expenses. Practices within and among the district courts vary thus creating inconsistent treatment of these defendants, including those whose financial circumstances are similar. The judiciary needs to provide better guidance to the district courts, and the courts need more complete financial information to eliminate the variation in determining the financial ability of convicted defendants to reimburse the court for CJA expenses.

RECOMMENDATIONS TO THE JUDICIAL CONFERENCE OF THE UNITED STATES

We recommend that the Judicial Conference, through the Administrative Office and judicial councils, improve the implementation of the Criminal Justice Act by:

--Establishing overall criteria for use by the district courts in developing specific screening procedures for selecting attorneys to serve on panels, and where practical, institute multitier panel systems to match attorney qualifications with case complexity.

--Encouraging district courts to establish specific criteria when reimbursement of Criminal Justice Act expenses should be ordered.

--Requiring district courts to assure that financial information is obtained on defendants and resolve inconsistencies where the financial data provided by the defendant differs from that otherwise obtained by the court.

--Instructing district courts to require probation officers and pretrial services agencies to include in their reports recommendations on a defendant's financial ability to reimburse the court's CJA expenses.

AGENCY COMMENTS AND OUR EVALUATION

The Judicial Conference CJA Committee Chairman, the Administrative Office, and the nine district courts which responded to the report, while generally agreeing with our conclusions and recommendations, did express reservations with portions of our recommendations. Their reservations and our rebuttal follow.

Selection criteria

Regarding the selection of attorneys to serve on CJA panels, the Administrative Office stated that the Judicial Conference CJA Committee has been addressing this issue since June 1980. The Administrative Office said the committee considered various aspects of our recommendations but decided against specific uniform qualification criteria and the multitier panel system. Instead, the committee favored more detailed attorney screening procedures. The committee believes that a formal screening or panel applicant review system should be established in each district and recommended the formation of Panel Selection Committees whose primary function would be to consider applications of attorneys, evaluate their qualifications, and make recommendations to the

court regarding appointment to the panel. In fact, the Judicial Conference CJA Committee has developed a model plan for establishing these screening panels. The model plan is included in appendix VIII.

Even though the Judicial Conference CJA Committee recognizes that establishing criteria would ensure that only the most qualified attorneys would become panel members, it decided against establishing national standards. This decision was reached because of the diversity of experience levels and qualifications of the attorneys in the 94 judicial districts and because of the variation in the complexity of cases. Therefore, the committee believes that if national standards for selecting attorneys were developed, certain districts would find it difficult, if not impossible, to find a sufficient number of attorneys to serve on CJA panels. Considering this rationale, we agree that national standards may not be practical. However, we still believe that standards of some nature should be developed.

In lieu of national standards, each district court should develop its own standards that attorneys must meet before serving on the CJA panel. We believe the development of local standards is both important and practical because without them the judiciary cannot ensure itself that CJA defendants are receiving adequate representation. In its comments, the Administrative Office also recognized that establishing standards lends a degree of assurance that only the most qualified attorneys become members of CJA panels.

Recognizing the importance of establishing some form of selection criteria at the district court level, we have revised, rather than eliminated, our proposed recommendation. We are now recommending that the Judicial Conference establish criteria that can be used by each district court for developing specific screening procedures for selecting CJA panel attorneys. We believe this recommendation is workable and will ensure the judiciary that the attorneys serving on the district courts' CJA panels are capable of adequately representing CJA defendants.

Only one court responding to our report disagreed with the need for selection criteria. This court stated that because attorneys within its district, by tradition, devote a certain amount of effort to help indigent defendants, they should not be subjected to a screening process. Although we were not in a position to determine whether indigent defendants in this district

were receiving adequate representation, including all members of the bar on the panel attorney list creates a difficult task for the Clerk's Office. We believe our recommendation will assure the court that CJA defendants are receiving adequate counsel while at the same time reduce the workload of the Clerk's Office.

Multitier panel system

The Administrative Office stated that the Judicial Conference CJA Committee rejected the multitier panel system for the following reasons: (1) doubts as to the reliability of experience alone as the decisive factor in determining qualifications; (2) the fact that many districts do not have a sufficient volume of misdemeanor cases to warrant a separate panel; (3) certain misdemeanor cases may be very complex and require highly qualified counsel; and (4) a desire to avoid situations where clients believe they are getting second-rate representation because their court-appointed attorney is on a misdemeanor panel. It is important to note that we did not recommend the multitier panel be divided into felony and misdemeanor panels. Rather, we proposed that the district courts distinguish between the qualifications of their panel attorneys where appropriate. We believe that this would allow the court to readily identify the more qualified attorneys when a complex case arises and are therefore maintaining our position regarding multitier panel systems.

In addressing the committee's first reason for rejecting the multitier system, the courts we identified on pages 8 and 9 of the report that used a multitier panel used other factors in addition to experience when assigning attorneys to their various panels. As for a court's workload not justifying a multitier system, our recommendation recognizes this factor by emphasizing that such a system should only be used where practical. Thirdly, the committee believes that certain misdemeanor cases are quite complex and require highly qualified attorneys. It is again important to mention that we did not recommend that the multitier system be labeled felony and misdemeanor panels. As discussed on page 8 of the report, the eastern district of Pennsylvania uses the multitier system but does not label panels "felony" and "misdemeanor." Instead, they are referred to as the "first" and "second" panels. Further, this district addresses the committee's concern by assigning the most qualified attorneys from its first panel to complex misdemeanor cases. Finally, if a district court develops standards for selecting attorneys to its panel, the defendants' basis for complaining that they are not receiving adequate legal counsel is reduced.

Determination of ability to reimburse for CJA expenses

Although the CJA Committee Chairman, the Administrative Office, and five district courts expressed reservations, all agreed that criteria are needed to resolve the inconsistencies that presently exist in determining a defendant's ability to reimburse for CJA expenses. The Chairman and the Administrative Office pointed out that because each defendant's financial status is unique, establishing firm quantitative standards or dollar limitations would be unworkable. The Administrative Office further stated that developing inflexible standards would result in the inequities that we all seek to avoid. The courts' concerns related primarily to the costs and time associated with making determinations that defendants have the ability to pay. Specifically, the courts were concerned that attempting to determine a defendant's ability to pay prior to the appointment of counsel would interfere with the time constraints imposed by the Speedy Trial Act. Also, the courts questioned the cost-effectiveness of making such determinations.

The report does not recommend firm quantitative standards or dollar limitations as the Administrative Office implies. We have discussed this issue with the chief of the Administrative Office's CJA Division and have emphasized that any criteria to determine financial ability to reimburse for CJA expenses should be flexible. Such flexibility would allow for the different financial conditions of each defendant while at the same time allow the judges to utilize their discretion. Further, we recognize the inconsistencies we identified cannot be totally eliminated, but the wide inconsistencies that presently exist can be narrowed. In addition, the Administrative Office said it would continue to develop more useful criteria to resolve the inconsistencies. The Administrative Office should be commended for its efforts.

We do not believe that our recommendation for determining a defendant's financial ability to pay will either slow the criminal process or be costly. The points raised by the district courts are valid. However, we considered them prior to arriving at our recommendation. First and foremost, our recommendation will not hinder the judicial process. We recognize the time constraints placed on the courts by the Speedy Trial Act and agree that the courts should appoint attorneys for defendants who claim they are unable to afford private counsel. Our recommendation is not directed toward denying anyone counsel but rather toward determining whether the defendant can reimburse CJA expenses while going through, or upon completion of, the judicial process. Further, such an effort would not be costly because both the pretrial services agencies and the probation offices already gather financial data on the defendants but use

the data for purposes other than determining the defendants' ability to reimburse for court-appointed counsel. We are recommending that the quality of the data be improved and that the courts use this information for determining whether defendants are financially capable of reimbursing the court for CJA expenses. Rather than incurring additional costs, the courts would be making better use of data that has already been gathered during the judicial process.

CHAPTER 3

FINANCIAL CONTROLS NEEDED OVER THE EXPENDITURE AND REIMBURSEMENT OF CRIMINAL JUSTICE ACT FUNDS

The district courts we visited have not established effective systems to monitor the collection of reimbursements from defendants or adequately monitor the submission, approval, and payment of attorneys' vouchers. As a result, the courts are not collecting reimbursements from defendants for CJA expenses, and many attorneys' claims for compensation are incomplete and unsupported. Thus, judges and magistrates do not know if the claims are appropriate. The Judicial Conference needs to provide the courts with more specific guidance regarding the reimbursement of panel attorney fees by defendants and needs to ensure that panel attorneys adhere to existing guidelines requiring them to submit well-documented claims for compensation. In addition, the Administrative Office's community defender organization (CDO) grant disbursement procedures are not financially advantageous to the Government because lump sum amounts are disbursed to these organizations on a quarterly basis. The judiciary could improve the system for disbursing grant funds to CDOs by either using the letter-of-credit method or distributing grant funds more frequently, thereby saving interest expense while not hampering the operation of CDOs.

NEED TO IMPROVE PROCEDURES FOR COLLECTING REIMBURSEMENTS

The Criminal Justice Act authorizes judges and magistrates to order reimbursement when the court determines a defendant who has received court-appointed counsel has funds available to reimburse the court for CJA expenses incurred. Of the courts we visited, only two locations within one district court had a system to record and monitor CJA reimbursements effectively. In the remaining districts, reimbursements are not strictly accounted for and many remain uncollected.

The Administrative Office's guidelines state that when a judicial officer orders a defendant to reimburse for CJA expenses the defendant should be directed to pay the clerk of the court. The funds reimbursed are then transmitted to the Administrative Office for deposit to the credit of the CJA appropriation. However, the Administrative Office has not established specific guidance and procedures regarding the courts' responsibility for ordering, recording, collecting, and monitoring reimbursements or initiating followup action when defendants become delinquent in their payments.

Our review showed that 9 of the 10 district courts visited did not have effective procedures for monitoring or collecting court-ordered reimbursements. This situation exists because the Clerks' Offices are not routinely recording all reimbursement orders issued by the judges or magistrates. For example,

--the Clerks' Offices in three district courts did not record reimbursement orders issued by the judges and magistrates and did not establish accounts receivable ledgers for the amounts owed even when a defendant made an initial payment;

--the Clerks' Offices in five district courts did not record all reimbursement orders and established an account receivable only after the defendant had made the initial reimbursement payment; and

--the remaining district court had no procedures for ordering or recording reimbursements.

In addition, these courts did not have effective procedures to notify judges or magistrates of defendants' failure to pay the amounts owed in order that followup action could be initiated. As a result, many reimbursements remain uncollected. Our case review showed 21 defendants in four of these courts were ordered to reimburse a total of $17,984. At the time of our review $8,431 was delinquent for periods ranging from 17 to 36 months.

To alleviate this situation the Clerk's Office should establish accounts receivable for all reimbursements to ensure accountability and notify the appropriate court officials when payments become delinquent. Further, judges and magistrates who determine that defendants acquitted or sentenced to incarceration or probation should reimburse for CJA expenses should specify the reimbursement on the Judgment and Probation/Commitment Order. 1/ This would provide the Clerk's Office with the documentation necessary to establish an account receivable.

As a result of our work, the district court for northern Ohio recently implemented procedures to improve its collection of reimbursements. The Clerk's Office will establish an account receivable for each reimbursement order and will be responsible for monitoring payments made by defendants ordered to reimburse for CJA expenses through formal court orders.

1/The Judgment and Probation/Commitment Order is prepared for all criminal cases which are not dismissed. The order specifies the defendant's guilt or innocence, the sentence imposed, and any special conditions applicable to the sentence.

The southern district of Indiana was the one district court with two court locations that had a system to record and monitor CJA reimbursements. The Clerk's Offices in the district's Evansville and Terre Haute locations establish an account receivable for each defendant ordered to reimburse and prepare monthly reports indicating which defendants are delinquent in their payments. This report is made available to the Probation Office and to the U.S. Attorney's Office for followup action. The judges and magistrates in these court locations include the reimbursement provision in the Judgment and Probation/Commitment Order prepared at the time of sentencing.

The courts could more effectively monitor and collect reimbursement payments by implementing procedures whereby the Clerk's Office establishes accounts receivable for all court-ordered reimbursements including those made as a condition of probation. The Clerk's Office should then notify the Probation Office or the U.S. attorney when payments become delinquent. These procedures would enable each court to readily determine the total amount of reimbursements outstanding and provide a means for followup action.

Also, the courts could more effectively monitor and collect reimbursement payments by ordering convicted defendants, who the court has determined to be financially able to reimburse for CJA expenses, to reimburse as a condition of probation. This is the predominate method used in the southern district of Indiana. However, one circuit ruled making reimbursement a condition of probation illegal, in part, because it was not among the specific types of payments which may be imposed as a condition of probation under 18 U.S.C. 3651 and several judges in the courts we visited believed likewise. Due to the inconsistent interpretation within the judiciary regarding the legality of ordering reimbursements as a condition of probation, the Federal Probation Act (18 U.S.C. 3651) needs to be amended to specifically allow reimbursements, where appropriate, to be made as a condition of probation. (This issue is further discussed on pages 30 to 32.)

GUIDELINES FOR REVIEWING ATTORNEYS' VOUCHERS NOT BEING FOLLOWED

Although the Administrative Office has established procedures regarding the submission and payment of attorneys' claims for compensation, not all courts were strictly enforcing the procedures. Our review of sample cases indicated that attorneys did not routinely submit supporting documentation for claims exceeding the standards contained in the CJA guidelines.

Under the Administrative Office's procedures, CJA panel attorneys submit preprinted vouchers to the Administrative Office through the judge or magistrate who presided over the case. These vouchers claim compensation for the time and expenses incurred in

representing defendants under the act. The act provides that attorneys receive a maximum $30 per hour for time spent in-court and $20 per hour for time spent out-of-court. In addition, attorneys receive reimbursement for allowable expenses (for example, postage and mileage) incurred in representing defendants. The procedures require attorneys to indicate on vouchers submitted for payment the number of hours spent in-court (for example, during arraignment, trial, or sentencing) and the number of hours spent out-of-court (for example, conducting interviews and conferences, obtaining and reviewing pertinent records, or researching the legal issues involved in the case).

The Administrative Office procedures specify that an attorney claiming more than $400 must submit a completed voucher apportioning his or her in-court and out-of-court time among the various categories listed on the form. In addition the attorney must submit an accompanying memorandum with the voucher detailing the services provided in the case. Of the 369 cases in our sample that required supporting documentation, only 30 percent had the required support in the case file. Because the courts are not strictly enforcing existing guidelines, there is no assurance that all attorney compensation claims are appropriate.

NEED TO IMPROVE PROCEDURES FOR DISBURSING FUNDS TO COMMUNITY DEFENDER ORGANIZATIONS

The judiciary should improve the system by which CDOs receive Federal grant funds. Because the Federal Government must pay interest on the funds it borrows to finance CDO operations, the timing of Federal payments to the CDOs has an impact on the Department of the Treasury's interest expense. The quarterly cash advance process now used to provide funds to CDOs results in unnecessary interest expense to the Federal Government. Using the letter-of-credit method 1/ or more frequently advancing funds would enable CDOs to readily obtain cash to promptly meet their obligations and would reduce the Federal Government's interest expense.

In accordance with present grant conditions, CDOs receive grant funds in quarterly installments. The CDOs are required to deposit the funds in interest-bearing accounts. According to Federal grant requirements, interest earned on Federal grant funds is to be returned to the U.S. Treasury. The four CDOs we reviewed received $2,492,000 in grant funds during fiscal year 1980 and

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1/The letter-of-credit method enables the recipient organization to withdraw cash from the Treasury in a manner more closely timed to disbursement needs thereby reducing the interest expense incurred by the Treasury.

$2,864,169 during fiscal year 1981. With the approval of the Administrative Office, one CDO used over $21,000 of interest income in fiscal year 1980 and two CDOs used over $30,000 of interest income in fiscal year 1981 to offset operating deficits incurred during those years. 1/ During the same fiscal years, another CDO returned all interest income to the Administrative Office for deposit to the Treasury. The fourth CDO we reviewed earned no interest on the grant funds it received. In fact, this CDO had never deposited its grant funds in an interest-bearing account during fiscal years 1972 through 1981.

In order to minimize interest expense, Federal policy dictates that funds should not be advanced to grantees until the funds are actually needed to meet the expenses incurred in carrying out the Federal programs. In this regard, Treasury Department Circular 1075, dated December 14, 1977, states that "the timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization * * *." The circular further states that, "* * * if a program agency has, or expects to have, a continuing relationship with a recipient organization for at least 1 year, involving annual advances aggregating at least $120,000, the agency shall use the letter-of-credit method." According to this criteria, all seven CDOs now in operation would be eligible to use the letter-of-credit method. Simply stated, the letter-of-credit financing method permits a recipient of a grant to quickly obtain Federal funds when actually needed, as often as needed, and in whatever amounts needed within the limits established by the administering Federal agency or department.

In commenting on our draft report and our proposed recommendation to adopt solely the letter-of-credit method, the Administrative Office and the Department of the Treasury both agreed that action needs to be taken to reduce Government interest expense associated with the present method of disbursing funds and proposed a more frequent distribution of funds in lieu of the letter-of-credit method. In this regard we modified our recommendation to direct the judiciary to revise its present procedures for disbursing grant funds to CDOs by either distributing grant funds more frequently or by using the letter-of-credit method.

1/The Administrative Office has subsequently changed this procedure. Beginning in fiscal year 1982, all CDOs were required to return interest income to the Treasury.

CONCLUSIONS

The judiciary has not provided the courts specific guidance concerning the procedures to use when collecting reimbursements from defendants. As a result, only two court locations we visited had established effective procedures. The judiciary should establish procedures requiring each Clerk's Office in each court to

--record all reimbursement orders, whether through formal court order or as a condition of probation, by establishing an account receivable indicating the amount owed and the frequency with which payments must be made; and

--bring delinquent payments to the attention of the judges, magistrates, probation officers, and U.S. attorneys in order that followup action can be initiated.

Also, the judiciary could enhance the collection of reimbursements by establishing procedures whereby convicted defendants are required to repay CJA expenses as a condition of their probation. However, because of the inconsistent interpretation within the judiciary regarding the legality of making CJA reimbursement a condition of probation, an amendment to the Federal Probation Act (18 U.S.C. 3651) is needed.

Further, not all courts we reviewed are strictly enforcing existing procedures requiring well-documented and supported compensation claims from attorneys who represent CJA defendants. As a result, the courts have no assurance when approving attorneys' vouchers that all claims are appropriate.

The judiciary could reduce Government interest expense if it disbursed grant funds to CDOs in accordance with Department of the Treasury fiscal requirements. Using the letter-of-credit method or disbursing grant funds more frequently to CDOs, the judiciary would minimize the Government's interest expense. These methods would not hamper CDO operations because CDOs could quickly obtain Federal funds as needed within the limits established by the Administrative Office.

RECOMMENDATION TO THE CONGRESS

To eliminate the inconsistent interpretation regarding the legality of making reimbursements a condition of probation and to enhance the collection of reimbursements from convicted defendants, we recommend that the Congress amend the Federal Probation Act (18 U.S.C. 3651) to specifically allow reimbursements, when the court has determined that a defendant has the ability to repay

court-appointed counsel, to be made a condition of probation. (See app. I.)

RECOMMENDATIONS TO THE JUDICIAL CONFERENCE OF THE UNITED STATES

To control the expenditure and reimbursement of Criminal Justice Act funds, we recommend that the Judicial Conference, through the Administrative Office and judicial councils:

--Encourage judges and magistrates who determine that defendants should reimburse for CJA expenses to specify the reimbursement requirement in the Judgment and Probation/Commitment Order.

--Establish procedures requiring the Clerk's Office to record each defendant's reimbursement order by establishing an account receivable to identify the amount owed and the frequency with which payments must be made.

--Establish procedures requiring the Clerk's Office to prepare monthly reports indicating delinquent payments to enable judges, magistrates, probation officers, or U.S. attorneys to initiate appropriate followup action.

--Instruct district courts to require attorneys to submit well-documented claims for compensation so that the district courts have assurance of the appropriateness of the claims.

--Replace the current quarterly disbursement procedure for disbursing grant funds to CDOs and replace it with the use of letters-of-credit or more frequent distribution of grant funds.

AGENCY COMMENTS AND OUR EVALUATION

The Judicial Conference CJA Committee Chairman, the Administrative Office, and the nine district courts which responded to the report, while generally agreeing with our conclusions, expressed reservations concerning our recommendations. Their reservations and our rebuttal follow.

Controls over reimbursements

The Administrative Office and the district courts agreed that financial controls were needed over court-ordered reimbursements.

The Administrative Office said it plans to establish more uniform procedures for the establishment of accounts receivable, and the recording, collecting, and monitoring of payments for defense services ordered by judicial officers. The CJA Committee Chairman said the issue regarding controls over reimbursement would be placed on the agenda for the committee's next meeting in January 1983. However, the Judicial Conference CJA Committee Chairman and one district court expressed some reservations.

The Chairman believes our recommendations may not be cost effective because of the potential need for additional staff to implement them. We do not believe that additional staff would be needed. The financial controls we are recommending would not require additional staff because the number of court-ordered reimbursements are not of such magnitude that the Clerk's Office, Probation Office, or the Administrative Office would be overburdened. Our recommendation would establish sound financial controls over court-ordered reimbursements and require minimal effort on the part of the existing court staff. This is evidenced by the fact that the northern district of Ohio has, as a result of our work in that district, already taken action consistent with the recommendations in question and has not required additional staff resources.

The one district that expressed reservations did not disagree with our recommendation but feared the creation of an elaborate system to collect court-ordered reimbursements. Our recommendation does not propose an elaborate procedure but calls for the establishment of records to track the payments made by defendants ordered to reimburse and better communication between the judges, magistrates, probation officers, and U.S. attorneys to enhance the collection process.

Court-ordered reimbursements as a condition of probation

The Judicial Conference CJA Committee Chairman, the Administrative Office, and two district courts disagreed with the recommendation that convicted defendants, who the court determines are financially able to reimburse for CJA expenses, should be ordered to do so as a condition of probation. The primary concerns expressed were that (1) this condition would presumably not be imposed on those persons convicted and sentenced to imprisonment, thereby creating an inequity and (2) the language proposed would permit reimbursement as a condition of probation regardless of a defendant's ability

to pay, thereby raising serious constitutional issues. Further, the Administrative Office contends that our recommendation will have a chilling effect on the exercise of right to counsel and interfere with long-term rehabilitation of defendants. Although two courts objected to our recommendation, two courts specifically endorsed it. The remaining five courts did not specifically comment on this recommendation.

We do not believe that inequities would be created under this reimbursement system. If a defendant is sentenced to prison without probation and ordered to reimburse for CJA expenses, the order cannot be a condition of probation. However, civil action can be taken against the individual to enforce the order. In this regard, the Administrative Office suggested in its comments that, instead of our proposed recommendation, 28 U.S.C. 1918(b) be amended to provide that CJA expenses may be taxed as a cost and that a court order to that effect be given the status of a civil judgment. The Administrative Office points out that, in contrast to our proposed recommendation, such a provision would be applicable to defendants who are not placed on probation and would place the responsibility for pursuing cases of noncompliance with court-ordered repayment with the Department of Justice. While we do not take issue with the Administrative Office's suggestion, it should be recognized that present law already provides for a court to order the repayment of CJA expenses, the enforcement of which presumably would be the responsibility of the Department of Justice. In any event, we do not believe that an amendment to 28 U.S.C. 1918(b) would obviate the benefits to be derived from our recommendation. For those defendants placed on probation who the court determines have the ability to reimburse for CJA expenses, we believe that making compliance with the court order a condition of that probation would be an effective and relatively expedient tool in encouraging defendants to comply with the court-ordered reimbursement.

As for the Administrative Office's concerns that our recommendation would have a chilling effect on the exercise of the right to counsel and interfere with the long-term rehabilitation of defendants, we do not believe that either of these two results would occur. Our recommendation and, in fact, the order of the court to reimburse for CJA expenses, would result only if a court determines that the defendant is financially able to pay for his/her representation. Consequently, to the extent there is a chilling effect, it would only affect those defendants who are not entitled to CJA representation. This is not inconsistent with the statutory scheme established by the Congress providing that CJA attorneys will be furnished only to defendants who are financially

unable to obtain representation and that the court may order defendants who are determined to have been able to afford their own representation to pay for that representation. As for interference with the long-term rehabilitation of defendants, it should be recognized that the probation laws already authorize the court to require as a condition of probation that the defendant pay fines, make restitution, and provide for the support of persons for whose support he/she is legally responsible (18 U.S.C. 3651). We see no reason why making the reimbursement of CJA expenses a condition of probation affects the rehabilitation of the defendant any more than do the other probationary conditions presently authorized by section 3651. In response to one district court's concern with the propriety of conditioning probation on a matter unrelated to the penalty for the criminal act, such a situation already exists in section 3651 relating to requiring support payments as a condition of probation.

To clarify any possible confusion as to when a defendant should be ordered to reimburse the court as a condition of probation, the report has been revised. On page 25 we state that only those defendants the court has determined to be financially able to reimburse for CJA expenses should be required to do so as a condition of probation.

Support for attorneys' reimbursement claims

On pages 25 and 26 we pointed out that district courts are not obtaining the required supporting documentation for attorneys' claims exceeding $400 as required by the CJA guidelines. The Administrative Office stated that it obtains all required documentation and that the guideline pertaining to the approval of CJA vouchers was intended to assist the court in evaluating claims. Therefore, according to the Administrative Office the vouchers we identified as being paid without the supporting documentation were not in violation of the guidelines. In this regard, only one of the nine courts responding expressed any reservations concerning this issue. This court said it believes it already receives adequate support for attorneys' compensation claims.

The CJA guidelines requiring supporting documentation for attorneys' claims read as follows:

> "In each district, counsel claiming in excess of $400 shall attach to a CJA voucher a memorandum detailing the services provided. The memorandum shall be in both narrative and statistical form and provide justification

> for hours spent. Each circuit court may, whenever warranted by the circumstances of the case, require the submission of a memorandum supporting and justifying the compensation claimed by an attorney providing representation." (Underscoring added.)

In further discussions with the chief of the Administrative Office's CJA Division, he told us that the Judicial Conference never intended for these guidelines to be a mandate, even though one could interpret the language to be a requirement. We believe this information is essential to ensure all attorney compensation claims are appropriate. We believe the Judicial Conference should clarify its policy and require the attorneys to submit supporting documentation to justify their claims.

CHAPTER 4

ADEQUACY OF ATTORNEYS' FEES NEEDS CONSIDERATION

Legislation (H.R. 5190) to amend the Criminal Justice Act (18 U.S.C. §3006A) has been introduced in the Congress for the purpose of updating the act and streamlining its implementation and operations. Proposed amendments would increase the maximum fees attorneys receive for rendering services under the act and would allow the Judicial Conference to establish maximum hourly rates. The Judicial Conference has stated that the present maximum fees and hourly rates, which were established over 10 years ago, have created two major problems: (1) courts are encountering difficulties obtaining attorneys willing to accept CJA cases and (2) the chief judges of the circuit courts are experiencing an administrative burden.

Our review showed that chief judges of the circuit courts were not experiencing an administrative burden, that district courts are experiencing little difficulty obtaining attorneys willing to accept appointments at the present rates, and that the judiciary has very little data to support its contentions. However, any rate that has not been increased during a period of high inflation supports a need for reexamination. Our review did not attempt to evaluate the quality of representation but merely whether the defendants were provided counsel. This is because neither the judiciary nor experts in the field agree on a generally accepted definition of quality representation.

APPROVAL OF FEES IS NOT OVERBURDENING CIRCUIT COURT CHIEF JUDGES

The Judicial Conference contends that the proposed maximum fees contained in the pending legislation are needed to relieve chief judges of the circuit courts of an administrative burden. According to the Conference the administrative burden results from the substantial number of vouchers that exceed the present fees and therefore require the written approval of the chief judges of the circuit courts. However, we do not believe that the fee increases can be justified on this basis because the number of attorneys' vouchers exceeding the present maximums is not substantial, and the circuits' review of vouchers is limited and not a burden on the court.

To relieve the administrative burden on the chief judges of the circuit courts, the pending legislation contains significant increases in the maximum fees court-appointed attorneys could receive for handling various types of CJA cases. If passed, the legislation would raise the ceilings from

--$1,000 to $10,000 for a felony case,

--$400 to $3,000 for a misdemeanor case,

--$1,000 to $5,000 for an appeals case, and

--$250 to $2,500 for any other representation authorized under the act (for example, petty offenses and parole and probation revocation hearings).

Limited administrative burden

Of the 12 circuit courts we contacted, officials from only 3 stated that they were experiencing an administrative burden due to the large number of vouchers exceeding the maximum fees. However, the chief judges of the circuit courts or the circuit court executives of all 12 circuits told us the review performed on the vouchers at the circuit level is limited because they depend primarily on the district court judges and magistrates to determine the validity of the vouchers. The following describes the methods used by several circuits when reviewing vouchers exceeding the maximums.

--One chief judge has a policy of not reducing the amount of a voucher that has already been approved by a district court judge.

--Another chief judge stated that he relies on the district court judges to scrutinize and verify the attorneys' vouchers. However, when reviewing the vouchers, the judge focuses on out-of-court hours and makes reductions when he believes the hours are excessive. Occasionally he requests additional information to support the claim.

--The chief judge of another circuit stated he believes the presiding judge or magistrate is in a better position to determine the validity of the voucher, therefore, he approves most vouchers as submitted.

Thus, it becomes difficult to classify the review performed at the circuit level as one that creates an administrative burden. The following table lists the number of vouchers by circuit that required approval during fiscal year 1981. These statistics were gathered by the Administrative Office's Criminal Justice Act Division.

Circuit court (note a)	Vouchers: Felony or appeal cases in excess of $1,000	Vouchers: Misdemeanor cases in excess of $400	Vouchers: Other representation in excess of $250 (note b)	Total
District of Columbia	19	0	4	23
First	39	1	17	57
Second	154	8	44	206
Third	92	4	26	122
Fourth	84	2	15	101
Fifth	213	2	57	272
Sixth	81	3	25	109
Seventh	103	7	15	125
Eighth	81	2	66	149
Ninth	439	21	236	696
Tenth	41	2	16	59
Total	1,346	52	521	1,919

a/No data was available for the eleventh circuit for fiscal year 1981 because it was recently established. Prior to its creation it was part of the fifth circuit.

b/Includes petty offenses, parole and probation revocation hearings, material witnesses in custody, and habeas corpus and 2255 petitions.

The 1,919 cases exceeding the maximum fees represents only 14 percent of the 13,466 cases handled by private attorneys for fiscal year 1981. Considering the circuits' reliance on the district courts' review, the number of cases requiring circuit approval, and the fact that only 3 of the 12 circuit courts believe they are presently experiencing an administrative burden, we believe that fee increases could not be justified on the basis of administrative burden alone.

ATTORNEYS ARE WILLING TO ACCEPT APPOINTMENTS AT THE PRESENT HOURLY RATES

In addition to increasing the maximum fees the pending legislation would also authorize the Judicial Conference to establish maximum hourly rates. The Conference believes the ratesetting authority should be a regulatory function of the judiciary rather than a legislative function of the Congress. The Conference also contends that the rates should be increased because district courts are experiencing difficulties obtaining attorneys willing to accept CJA cases at the present rates which have not been

increased since 1970. However, on the basis of our review of 991 criminal cases involving private court-appointed attorneys, opinions of various court officials, and responses to a nationwide questionnaire sent to 114 court locations, the judiciary has little difficulty obtaining attorneys willing to accept CJA cases at the current hourly rates.

We contacted the chief of the Administrative Office's CJA Division to determine the extent to which this issue has been studied. He informed us that no formal studies were ever performed and that the judiciary's contention that district courts were having a difficult time finding attorneys at the present hourly rates was based on reports received from district court judges and Federal public defenders. In addition, we contacted members of the Judicial Conference CJA Committee to determine if any studies existed. Although we were informed no study existed, the committee members stated that they were receiving reports that attorneys were refusing to accept cases at the present rates. Lastly, we contacted the Chairman of the Federal Defender Advisory Committee to determine if this committee had performed any formal study. Again we were told that no study had been performed. Although a rate increase may be needed, we believe it should be properly documented and demonstrated.

Courts visited have little or no difficulty obtaining attorneys

Of the 26 district court locations included in our detailed review, only 3 were experiencing some degree of difficulty finding attorneys willing to accept CJA cases. The court officials for the three locations in question attributed their problems to the present hourly rates. However, we found that their problems may be attributable to other variables such as the inconvenient geographic location of the courts, outdated lists of panel attorneys, and the attorneys' dislike for Federal criminal cases.

Although the judges and magistrates interviewed from the remaining 23 locations explained that they were having little difficulty obtaining attorneys at the present hourly rates, they believe the rates should be increased for the following reasons:

--The rates are unrealistic when compared with rates received in private practice.

--There has been no increase in the rates since 1970, and they should be increased to keep up with inflation.

--The current rates do not cover the overhead cost of a law office.

--The current rates encourage dishonesty when claiming compensation for CJA expenses.

--Defendants are being denied the most qualified defense counsel available.

These statements support an increase in the present rates based on equitable attorney compensation but do not support the contention that district courts are experiencing difficulties obtaining attorneys willing to accept CJA cases.

Questionnaire results indicate attorneys are accepting appointments at present rates at most courts

To further determine whether attorneys are willing to accept CJA cases at the present hourly rates, we sent a questionnaire to 114 court locations, exclusive of the 26 court locations we reviewed. The 114 court locations were randomly selected from a universe of 214 court locations. The results of the questionnaire showed that 23 court locations out of the 84 court locations responding were experiencing substantial problems obtaining attorneys to accept CJA cases due to the present rates. However, when we contacted the 23 court locations to discuss their problems further, only 11 were actually experiencing substantial problems because of the present hourly rates. The following are the responses from the 23 court locations.

--At nine court locations the hourly rates are affecting their ability to attract attorneys to serve on CJA panels.

--At three court locations attorneys complain about the present rates but still accept appointments.

--At eight court locations, they believe the hourly rates should be increased even though there is no problem getting attorneys.

--At one court location the present rates have no effect on the willingness of attorneys to accept cases but could in the future.

--At one court location several attorneys have resigned from its panel because of the present rates; however many subsequently reapply.

--At one court location factors other than the present hourly rates, such as untimely reimbursement for services rendered and the delays caused by the service of process by U.S. marshals, are affecting the availability of attorneys to accept appointments.

After considering the additional comments, we believe that it is fair to say that 11 of these 23 court locations have experienced problems in attracting attorneys at the present hourly rates. These 11 include the 9 courts that definitely have problems because of the hourly rates and the last 2 locations discussed above.

Of the nine court locations that were definitely experiencing difficulty obtaining attorneys to accept CJA cases because of the present hourly rates, only two frequently updated their panel lists. Therefore, the remaining seven court locations may have panel lists that are outdated or inaccurate requiring the courts to make several inquiries before finding an attorney willing to accept an appointment. The other two court locations that were experiencing difficulties updated their panel lists frequently but limited their panel size to 60 and 40 attorneys respectively. Such a small number of attorneys can create an undue hardship on these attorneys because of the number of appointments each must accept during a given year. For example, during fiscal year 1981, each attorney on these courts' panels was required to handle an average of 40 and 14 CJA cases respectively. These courts may find that if they increased the size of their panels, attorneys would be more willing to accept cases because the workload for each attorney would be reduced.

NEED TO RETAIN CONGRESSIONAL OVERSIGHT

Proposed legislation (H.R. 5190) contains a provision that would authorize the Judicial Conference to establish, as a regulatory function, the hourly rates. This authority presently rests with the Congress which last approved an hourly rate increase when the act was amended in 1970. Although we do not disagree that the Conference should have the authority to establish the rates, the Congress should retain oversight of the ratesetting function because of the budgetary impact an hourly rate increase could have on the appropriations for CJA activities.

To demonstrate the budgetary effect that an hourly rate increase could have, assume that the Judicial Conference accepted a proposal recently made by the seventh circuit that would increase the hourly rates from $30 to $55 per hour for in-court time and from $20 to $45 per hour for out-of-court time. Multiplying these rates by the actual in-court and out-of-court hours for fiscal year 1981, the total increase would be about $4.8 million or a 110 percent increase over the actual expenditures incurred during fiscal year 1981 at the current rates.

Because an hourly rate increase can have a significant budgetary impact, the Congress should not authorize the Conference to establish any rates until appropriate explanations are provided to the Congress by the Conference and certain provisions are

included in the pending legislation. The Conference should explain to the Congress the frequency with which rates will be reviewed and the methods it will use to establish new rates. Further, the pending legislation should contain a provision that a proposed hourly rate increase cannot become effective until the Congress has had sufficient time to review the proposal. Such a provision should also require the Chief Justice to submit proposed rate increases to the Congress within time frames that will allow the Congress adequate time to determine the reasonableness of any such increases. This is the same process used by the judiciary when making changes to the Civil and Criminal Rules of Federal Procedures.

CONCLUSIONS

The Judicial Conference has supported legislation because the present maximum fees and hourly rates have not been increased in over 10 years. It is the contention of the Judicial Conference that this has created two major problems: (1) the chief judges of the circuit courts are experiencing an administrative burden and (2) courts are encountering difficulties obtaining attorneys willing to accept CJA cases. In addition, the legislation contains a provision that would authorize the Judicial Conference to establish hourly rates.

Our review showed that the chief judges of the circuit courts are not experiencing an administrative burden due to the substantial number of claims exceeding the present maximum fees. This is primarily because they rely heavily on the district courts' review of the claims. Also, we found that overall the judicial system is not experiencing a great deal of difficulty finding counsel for CJA defendants. However, we believe that the fee structure needs to be reexamined because it has remained unchanged since 1970.

We do not object to the Conference being given the authority to establish maximum hourly rates, however, we believe the Congress should retain oversight because of the budgetary impact an hourly rate increase could have on the appropriation for CJA activities. Therefore, we believe a process similar to the one used to make changes to the Federal Rules of Civil and Criminal Procedures should also be used to establish attorney rates.

MATTER FOR CONSIDERATION BY THE CONGRESS

If the Congress decides to enact legislation giving the Judicial Conference the authority to establish the hourly rates attorneys could receive for representing CJA defendants, the following provision should be added to the legislation because of the potential budgetary impact that will be caused by raising the hourly rates.

generally accepted definition of quality representation existed or could be developed. No standard definition presently exists and the experts' opinions of quality varied. Hence, we were not in a position to measure the quality of representation.

As stated on page 40 of the report, we recognized that the CJA rates need to be reexamined because they have remained unchanged since 1970. Although a rate increase may be needed, we believe it should be properly documented and demonstrated.

Need for congressional oversight

The Administrative Office said that our suggestion that the Congress retain oversight over the hourly ratesetting function is an additional procedure which would delay the implementation of new rates and be redundant and unnecessary. As stated on page 39 of the report, an hourly rate increase can have a significant budgetary impact, and therefore we believe congressional oversight is needed if the Judicial Conference is given the authority to establish hourly rates. Further, it is difficult to comprehend the adverse effect delaying any rate increase the maximum of 90 days would have on the CJA program. If the need for the rate increase is well-documented and justified, then any rate increase should have little difficulty receiving congressional approval.

Lastly, the Administrative Office believes our suggested revision to the legislation is not needed because of the scrutiny already given the judiciary's budget through the appropriation process. We do not disagree that the judiciary's budget receives close scrutiny. However, if the Judicial Conference increases the rates after congressional passage of an appropriation bill for the judiciary which did not contemplate such an increase, the appropriation might be insufficient to fund the entire fiscal year. The Congress would be put in the awkward position of granting supplemental funding or curtailing CJA operations. Our recommendation would provide for a flexible and timely period during which the Judicial Conference could propose and the Congress could consider proposed rate increases. The Congress then would be aware--before the time the rate increase went into effect--of the potential budgetary impact of the proposed increase.

"Any hourly rate increase shall not take effect until it has been reported to the Congress by the Chief Justice at or after the beginning of a regular session thereof but not later than the first day of May, and shall not take effect until 90 days after the rate increase has been reported."

Such a provision will provide the Congress the opportunity to evaluate the proposed rates and disapprove them if they are not adequately justified.

AGENCY COMMENTS AND OUR EVALUATION

The Administrative Office and the Judicial Conference CJA Committee Chairman disagreed with our conclusions and our suggested revision to the pending legislation. Of the nine courts responding, one court objected, five agreed, and three did not specifically address this issue. Their objections and our rebuttal follow.

Adequacy of hourly rates

Our report does not state nor imply that the present hourly rates attorneys receive for representing CJA defendants are adequate. The concern we are addressing is the contention being presented by the judiciary to the Congress that district courts are unable to find attorneys willing to accept CJA cases due to the present rate structure. Neither the Judicial Conference's CJA Committee nor the Administrative Office have studied or documented the district courts' difficulties in obtaining attorneys to accept CJA cases. Although the committee and the Administrative Office have received a variety of comments from district courts on difficulties in attracting attorneys, they have not yet determined either the magnitude of the problem or if the present rate structure is the sole factor.

In contrast our work showed that a number of factors other than attorney remuneration affected a court's ability to attract and maintain attorneys for the CJA panels. For example, on page 37 of the report we pointed out that factors such as outdated panel attorney lists, inconvenient court locations, and attorneys' personal dislike for Federal criminal cases contribute to the problem.

The CJA Committee and the Administrative Office also believe the report failed to address the issue of quality of representation. When this assignment was initially undertaken, we contacted several experts in the legal community to determine if a

SELECTION OF SAMPLE

Our sample cases (1,482) were drawn from a universe of 4,204 terminated cases and vouchers paid during fiscal year 1980. We had to distinguish between cases terminated and vouchers paid because the Administrative Office does not compile precise figures on the number of CJA cases terminated for a given fiscal year. The universe of terminated cases represents those handled by the FPDs and CDOs while the universe of vouchers paid represents those cases handled by private court-appointed attorneys. To obtain an accurate understanding of how the courts administered the act, we randomly sampled 1,482 cases by type of representation for a confidence level of 90 percent. The table on the following page shows the universe and sample size for each district court visited.

CHAPTER 5

SCOPE AND METHODOLOGY

We reviewed the implementation of the Criminal Justice Act of 1964, as amended, because of our continuing interest in improving the operations of the Federal judiciary. The review was initiated to determine (1) the adequacy of the guidelines and directives provided to the district courts to implement the act, (2) the consistency with which the act is being implemented both within and among the district courts, and (3) the adequacy of the financial controls over the expenditure of Criminal Justice Act funds.

During the scoping and planning phase of this assignment, a literature search was performed. We identified various studies on the issue of providing representation for those unable to afford counsel. From the results of previous studies, interviewing known experts in the field, and our own work, an audit approach and work program were developed to accomplish our objectives.

SELECTION OF LOCATIONS

We selected the districts to be reviewed on the basis of (1) the number of defendants that qualified for representation pursuant to the act and (2) the type of representation provided by the courts. This latter basis was used because a Federal district court has the option of providing legal representation either by means of a private court-appointed attorney and/or a FPD or a CDO. Using this basis we selected 10 Federal district courts comprising 26 different court locations to assess the administration of the act.

Of the 10 district courts selected for review, 3 provided representation solely by private court-appointed attorneys, 3 provided representation by a combination of FPDs and private court-appointed attorneys, and the remaining 4 utilized a combination of CDOs and private court-appointed attorneys. These 10 district courts accounted for approximately 15 percent of all cases terminated during fiscal year 1980.

Our detailed audit work was performed between October 1981 and April 1982 and included a review of the district courts' procedures to administer the act and a review of 1,482 defendant cases randomly sampled.

We analyzed each court's operations to identify the procedures used to implement the act. At each court visited we interviewed judges, magistrates, and the clerk of the court. We also interviewed circuit court judges and executives, FPDs and members of CDOs on such topics as: the selection of private attorneys, the need for guidance to explain how the act should be administered, how a defendant's financial ability to pay should be determined, and their opinions on the proposed legislation to increase the maximum fees for private court-appointed attorneys. When addressing the court's determination of a defendant's financial ability to pay for his own counsel, we limited our analysis to convicted defendants because case files for acquitted defendants had little or no financial data on which to analyze a defendant's financial ability.

QUESTIONNAIRE SAMPLE

In addition to our detailed audit work, we sent questionnaires to 114 court locations to determine the extent to which the courts were experiencing problems obtaining attorneys to accept cases because of the present hourly rates. Of the 114 questionnaires sent, 84 were returned for a response rate of 74 percent. The 114 court locations were selected from a universe of 240 court locations comprised of 45 large 1/ and 195 small locations 2/.

Due to the limited size of the universe for large court locations, we included the entire universe. It was further decided that from the universe of large court locations we would eliminate the 11 large court locations included in our detailed review because officials at these court locations had already provided us with their opinions regarding the proposed legislation; therefore, we sent questionnaires to 34 large court locations. From the universe of 195 small court locations, we eliminated 15 for the same reason. Out of a universe of 180, we randomly sampled 80. This sample size provided us with a confidence level of 95 percent. Overall, the 114 questionnaires were sent to 80 small court locations and 34 large court locations.

1/Consisting of more than four judicial officials.

2/Consisting of four or fewer judicial officials.

District courts and locations	Court appointed attorneys		FPD attorney (note b)		CDO attorney (note b)		Totals	
	Universe (note a)	Sample size	Universe (note a)	Sample size	Universe (note a)	Sample size	Universe	Sample
Southern Indiana								
Indianapolis	147	54	-	-	-	-	147	54
Evansville	15	15	-	-	-	-	15	15
New Albany	9	9	-	-	-	-	9	9
Terre Haute	15	15	-	-	-	-	15	15
Northern Illinois								
Chicago	293	74	-	-	254	75	547	149
Rockford (note c)	-	-	-	-	-	-	-	-
Eastern Michigan								
Detroit	128	63	-	-	331	85	459	148
Bay City	26	26	-	-	-	-	26	26
Flint	34	34	-	-	-	-	34	34
New Jersey								
Newark	124	72	159	64	-	-	283	136
Trenton	5	5	-	-	-	-	5	5
Camden	19	19	-	-	-	-	19	19
Southern New York								
New York City	237	80	-	-	311	83	548	163
Maryland								
Baltimore	601	95	288	60	-	-	889	155
Northern Ohio								
Cleveland	33	33	99	45	-	-	132	78
Toledo	57	28	-	-	-	-	57	28
Akron	28	28	-	-	-	-	28	28
Southern Ohio								
Cincinnati	64	32	-	-	-	-	64	32
Columbus	66	37	-	-	-	-	66	37
Dayton	39	39	-	-	-	-	39	39
Eastern Pennsylvania								
Philadelphia	133	64	-	-	225	69	358	133
Reading (note c)	-	-	-	-	-	-	-	-
Eastern Virginia								
Alexandria	249	76	-	-	-	-	249	76
Norfolk	115	55	-	-	-	-	115	55
Richmond	100	48	-	-	-	-	100	48
Newport News (note c)	-	-	-	-	-	-	-	-
TOTAL	2,537	991	546	179	1,121	312	4,204	1,482

a/We eliminated from our universe the following types of representation; appellants, probation and parole violators, habeas corpus petitions, section 2255 petitions and material witnesses in custody. We believe this approach provided us with a more accurate assessment of how the districts were implementing the act. The Administrative Office's Criminal Justice Act Division concurred with the elimination of these types of representation.

b/FPDs and CDOs are only located in the above mentioned district courts where cases were sampled.

c/There were no cases sampled from these court locations because the determination of financial ability to pay and the appointment of counsel generally occurred at other locations within the district court.

SUMMARY OF RESPONSES TO GAO'S QUESTIONNAIRE

1. Number of attorneys on CJA panel.

   --Median 112

2. CJA panel composition.

   --88.2 percent have only one panel
   --10.5 percent have two panels
   --1.3 percent have other types of arrangements

3. Requirements needed before serving on a CJA panel.

Requirement	Required by (percent)
--Formal (written) application/resume in file	a/ 54.2
--Oral application	a/ 24.6
--Formal review by panel of judges	28.3
--Formal review by committee of attorneys	18.8
--Formal review by Federal public defender	9.0
--Formal test or examination	3.6
--State Bar Membership	97.1
--Criminal trial experience	45.0
--Federal trial experience	32.9
--Familiarity with local court rules	86.4
--Familiarity with Federal Rules of Criminal Procedure	81.3
--Other	26.5

a/Does not total 100 percent because some district courts automatically include all attorneys who practice before the district court on their list of CJA panel attorneys.

4. Courts in which the attorneys serve on the panel for a specified period of time.

   --15.5 percent
   --Mode 2 years

APPENDIX I

SUGGESTED REVISION TO SECTION 3651 OF TITLE 18 UNITED STATES CODE

We suggest that 18 U.S.C. 3651 be amended as follows:

To authorize courts having jurisdiction to try offenses against the United States to require financially able defendants on probation to pay for the costs of court-appointed counsel or other services rendered on their behalf as a condition of probation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the sixth unnumbered paragraph of Section 3651 of title 18, United States Code (Supp. III 1979) is amended to read as follows:

"While on probation and among the conditions thereof, the defendant--

May be required to pay a fine in one of several sums; and

May be required to make restitution or reparation to aggrieved parties for actual damages or loss caused by the offense for which conviction was had; and

May be required to provide for the support of any persons, for whose support he is legally responsible; and

May be required to pay for costs of legal representation and other services rendered on his behalf, in accordance with the provisions of 18 U.S.C. §3006A (f)."

This provision shall take effect upon enactment.

APPENDIX III

UNITED STATES DISTRICT COURT
Northern District of Illinois
219 SOUTH DEARBORN STREET
CHICAGO, ILLINOIS 60604

FRANK J. McGARR
CHIEF JUDGE
(312) 435-5600

September 13, 1982

Mr. William J. Anderson
Director
United States General Accounting Office
Washington, D. C. 20548

Dear Mr. Anderson:

I have received a draft of a proposed report on the Criminal Justice Act and appreciate an opportunity to comment on the draft before it becomes a final report.

I think your staff did a thorough and excellent job, and I find nothing in the report that upsets me or with which I take serious issue.

The report confirms what I have generally believed with regard to the functioning of the Federal Defender's Office in Chicago. It, in fact, functions better than most government operations do, and the criticisms of the Criminal Justice Act and the administration thereof in the several cities are for the most part minor. I noted no particular criticism of Chicago which gives me any concern.

I agree with your suggestion that some appropriate steps should be taken to collect reimbursement from defendants for the legal service provided them, where this is possible. I do not recommend any elaborate procedures either by way of statute, judicial conference regulations, or administrative office programs, because it is my conclusion that the amount generated by such procedures will not justify the time expended on it. In simple essence, virtually all convicted defendants represented by court-appointed attorneys under the Criminal Justice Act are judgment proof. To attempt to collect money from them is futile. To order the payment of sums by way of reimbursement for their legal representation as a condition of their probation, turns the probation office into a collection agency, a function which it is not equipped to sufficiently handle. To make the payment of such sums a condition of probation really imposes an impossible condition which results in extension of probation terms, the court hearings necessarily incident thereto, and the entry of futile orders, which will result not in the production of cash but merely in more unproductive probationary supervision.

5. Procedures used to maintain panel of attorneys.

	Percent
--Attorneys kept on panel until they formally request removal	60.1
--Attorneys removed from panel at any time unavailability is determined	35.0
--Attorneys on panel contacted periodically to determine availability	18.7
--Other	25.5

6. Positive or negative impact of following factors on availability of attorneys for CJA cases.

	Substantial positive impact	Some positive impact	Little or no impact	Some negative impact (note a)	Substantial negative impact (note b)
	----------Percent----------				
--Hourly rate	15.1	9.5	26.8	24.6	24.0
--Geographic location of the Federal court	17.7	14.0	51.9	12.6	3.8
--Number of attorneys in district	10.6	16.5	62.1	3.1	7.7

a/When performing our analysis these courts were excluded because the seriousness of their problems fails to justify national legislation.

b/For additional information concerning the problems being experienced by these courts see pages 38 and 39 of this report.

APPENDIX V

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA
16613 UNITED STATES COURTHOUSE
INDEPENDENCE MALL WEST
SIXTH AND MARKET STREETS
PHILADELPHIA, PENNSYLVANIA, 19106

ALFRED L. LUONGO
Chief Judge

(215) 597-0736

September 22, 1982

Mr. William J. Anderson, Director
United States General Accounting Office
Washington, D.C. 20548

Attention Mr. Daniel F. Stanton

Re: Proposed Report on the Administration of the Criminal Justice Act

Dear Mr. Stanton:

This is in response to your letter dated September 1, 1982 soliciting comments on your Proposed Report to the Congress concerning the administration of the Criminal Justice Act.

My comments will be fairly limited and will be set forth in this letter. In addition I am forwarding to you a copy of a memorandum submitted to me by Judge Louis C. Bechtle, Chairman of this Court's Criminal Business Committee. The views expressed in this letter and in Judge Bechtle's memorandum represent our personal views and not necessarily those of the Court.

Attorney reimbursement claims

It is my view that the documentation which we receive in support of attorneys' claims for compensation are adequate. The Judges are in the position to assess the accuracy of the claims made for time spent in court, and by their experience with the items for which claims are made for out of court time, and by reason of the Judges' familiarity with the lawyers, by and large, the Judges are able to assess with a reasonable degree of certainty the accuracy of the claims being made.

Need to ensure consistent implementation of the Criminal Justice Act

As your Report notes, the Judges of this District have adopted what we regard as an effective screening procedure for the inclusion of attorneys on our Criminal Justice Act list. We

APPENDIX IV

rather than trying to make a living off this type work. We believe that a modest raise in the hourly rate from $30 to $40 for in-court work and $20 to $30 for out-of-court work would be sufficient.

I hope that these comments have been helpful to you and we appreciate the thoroughness with which your people looked into the questions covered in your draft report.

Very truly yours,

J. Calvitt Clarke, Jr.

JCCJr/rke

APPENDIX IV

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK, VIRGINIA 23510

CHAMBERS OF
J. CALVITT CLARKE, JR.
DISTRICT JUDGE

September 22, 1982

Mr. William J. Anderson, Director
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

I am responding to your letter of September 1, 1982, for Judge MacKenzie as he will be out of town until after the deadline for response suggested in your letter. I have reviewed the draft of the Comptroller General's Report to the Congress and have these comments.

I would disagree with an attempt to set up a detailed selection criteria for counsel appointed for indigent defendants. Each district in this country has different conditions and attitudes in its local bar. While the very detailed selection process which you have described as being in use in the Eastern District of Pennsylvania is undoubtedly suitable for that district but it would not be suitable for this district. In the Eastern District of Virginia, there is a tradition in the bar that all lawyers have a responsibility to the courts and society to devote a certain amount of effort without compensation to helping indigent defendants. The lawyers like to feel that they accept appointments by the court as a matter of public duty. I don't think that any lawyer of any experience would want to solicit business from the federal court by submitting himself for interviews or for screening as to ability by a committee. Human nature is such that lawyers of experience would not want to admit that they needed business bad enough to solicit it from the court. They are perfectly happy, however, to comply with a request by the court that they represent a defendant at existing rates. In summation, I would say that we believe that indigent defendants in this district get good representation and we would urge that we be permitted to continue handling this problem as we have been.

2. Determination of defendant's financial ability to pay -- We have no quarrel with any guidelines that

I would leave this matter, therefore, to the judgment of individual judges in cooperation with their probation offices. The program to remind judges that it is their obligation to look for and in appropriate instances collect reimbursement for the government would certainly be a good idea; an elaborate system to achieve this would not.

I am satisfied with the caliber of the attorneys in the Federal Defender Program in the Northern District of Illinois and see no need to tighten our selection procedures. However, we would view with an open mind any specific suggestions from the administrative office for the judicial conference designed to improve the quality of representation.

I would be glad to answer any questions you have concerning this matter and I commend you once again for the thoroughness and objectivity of your report.

Sincerely,

Frank J. McGarr

FJM:ltm

APPENDIX IV

might be adopted to help us determine a defendant's financial ability to pay his own counsel or to reimburse the court for court-appointed counsel. I doubt the validity of too elaborate efforts to investigate the financial background of prisoners requesting court-appointed counsel. In the first place, counsel must be appointed immediately upon arrest. It is true that if an investigation by a probation officer into an indigent defendant's background discloses wealth not revealed by the defendant, the court can then require reimbursement by the defendant or can vacate its appointment of counsel. As a practical matter, however, probation officers are busy with other tasks and I doubt that the appointment of additional probation officers to make the investigations into a defendant's financial background could justify their pay in terms of results. If a defendant declares on oath before a judge that he does not have a job and that he does not own any real estate, automobiles, bank accounts or stocks and bonds or money in 99 cases out of 100, he will be telling the truth. If he is convicted, a detailed report on his background will be made by the probation officer at which time, presumably, assets will be discovered. At that time, the court can take steps to secure reimbursement for the funds expended for defense counsel.

I am also concerned that too stringent a standard as to income and net worth may be set. A defendant may have no dependents or he may have a dozen dependents. If he makes $100 a week with no dependents and is free on bond while awaiting trial, I might well require him to pay $10 or $20 a week towards counsel fees; whereas, the situation would be entirely different if he had a number of dependents. Consideration must also be given to his cost of living. In addition, if he is single and owns a house, I might well require him to sell the house to reimburse the Government for the costs of that attorney, but if he has a wife and six kids living in that house, I could hardly do so.

3. Need to improve procedures for collecting reimbursements -- I certainly endorse your suggestion

that legislation be adopted permitting the court to impose as a condition of probation the reimbursement of the Government for the cost of appointed counsel. Without having researched the matter, I would have thought the court already had that power and while I can recall no specific instances, I am confident that I have imposed such a condition of probation in the past.

Frankly, short of making reimbursement a condition of probation, there may be little else that can be done as a practical matter. Even if the Clerk's Office should set up an accounts receivable in each case where the court orders reimbursement and even though the court be notified of delinquencies, there is little that will be done to collect the delinquencies. I daresay there are literally millions of dollars in uncollected fines on the books of the district courts in this country. If the United States Attorneys do not have the manpower to collect these fines, they are hardly likely to have the manpower to collect reimbursement accounts. As a practical matter, the only viable answer is to use a condition of probation as a means of collection.

4. Guidelines for reviewing attorneys' vouchers -- We believe that this court does follow the guidelines in reviewing attorneys' vouchers.

5. Need to improve procedures for disbursing funds to community defender organizations -- This district does not use community defender organizations and I have no comment on this category.

6. Adequacy of attorney's fees -- It is my opinion that a modest raise in the hourly allowance to appointed counsel may be in order. I do not think that the amounts suggested on pages 34 and 35 of the report are justified, as far as this district is concerned. As previously stated, the defense counsel that we appoint feel that they are performing a public service

market value" of the time of lawyers of the caliber that we have on the CJA list.

I trust that these comments will serve your purposes. I am available to answer any further questions, if you desire.

I am returning to you the draft of the proposed Report which you forwarded to me. I have taken the liberty to make a copy of it which I am retaining in my files. If you would prefer that I not retain the copy, please let me know and I will either destroy it or forward it to you, as you wish.

Sincerely,

Alfred L. Luongo

L/abv

Encs.

APPENDIX V

are in agreement with your Report that criteria should be established.

Financial ability to pay for legal counsel

I cannot quarrel with the suggestion contained in the Report that guidelines should be adopted for determination of ability to pay for counsel appointed under the Criminal Justice Act. This is a vexing problem for the Judges who are guided primarily by the obligation to see to it that counsel is appointed where the defendant has not retained his own attorney. If we are to go beyond accepting the statements, under oath, by the applicant as to his financial ability, this could create an administrative burden, the cost of which might be out of proportion to the benefit to be gained.

In those rare occasions when it is determined that the defendant should pay some part of the cost of his defense, I agree that adequate procedures have not been set up to follow up on the collection of such amounts. The Report has highlighted this deficiency and I intend to give the problem some attention for this Court.

Letter of credit

This deals with a fiscal matter as to which I claim no competence. The matter of the financing of the budget of the community defender organization is, in my view, better left to those who concern themselves with money problems.

Adequacy of attorney fees

I agree that the present hourly rates have not prevented us from having an adequate number of attorneys on our Criminal Justice Act list. I can say with assurance that many attorneys have not applied for inclusion on the CJA list because their time is already overcommitted to criminal cases in which they earn extremely high fees. To that extent, there has been some limitation on the makeup of the membership of the list.

I think it is clear that in this District most of the attorneys do approach this as a partial pro bono commitment and would continue to serve at the present rates. It is a simple matter of fairness that, in today's economy, there should be a upward adjustment in what will still be rates far below the "fair

MEMORANDUM

TO: Chief Judge Alfred L. Luongo
FROM: Judge Louis C. Bechtle
RE: General Accounting Office Report on the Administration of the Criminal Justice Act

Increase of Attorneys' Fees

I am probably in the minority on this. I believe that the philosophy of the Criminal Justice Act Plan is to furnish some reasonable compensation to attorneys who, in most cases, are worth far more than what they are being paid. It has a flavor of "pro bono" with it and I think everybody knows that. With that as our starting point, obviously, any more than the hourly rate would be certainly deserved and I am sure gratefully accepted. This is strictly a matter of budget; not a matter of equity as I see it. The attorneys who are on our panel understand that this temporary assignment is necessary to the system and in order to get really good attorneys, must be a sacrifice. Any attorney who serves on the panel and who really believes that the hourly rate is what he is entitled to receive probably doesn't have the qualifications that he should have to serve on the panel and it is our selection process that has failed, not the hourly rate process. I really don't know of any attorneys in our area who, in effect, have said: "I'm qualified to serve, I have the time to serve, but I will not serve because it doesn't pay enough." This is very similar to our arbitration system where we have superior attorneys serving for a pittance, but they know it and they are contributing to the overall system. Accordingly, I am neutral about the compensation increase. If higher authority thinks they should have it, the attorneys deserve it, but I don't think we should try to get it increased under some illusion that it is going to represent compensation on a parity with private practice. I don't believe, with high type attorneys, adequacy of representation is affected.

Ability of Defendants to Pay Some of the Costs

Again, what we are caught in here is what is the cost of creating a system that will more accurately detect the defendant who should be paying some of his costs when, in fact, he may be feigning indigency in order to get free service. There must be a middle ground here. If a quick name check on tax records or real estate records or car registration records would disclose the presence of assets, a modest investment to determine that could be helpful, but some sort of audit or deep financial investigation is going to be very costly, especially when most of the indigents are truly indigent. Accordingly, I favor getting more defendants who are able to pay to, in fact, pay, but I worry about the cost of the means of bringing that about. Possibly in-depth spot checking or in-depth investigation of those

APPENDIX V

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

LOUIS C. BECHTLE
JUDGE

17613 UNITED STATES COURTHOUSE
INDEPENDENCE MALL WEST
PHILADELPHIA, PENNSYLVANIA 19106

(215) 597-0581

MEMORANDUM

September 21, 1982

TO: Chief Judge Alfred L. Luongo

FROM: Judge Louis C. Bechtle

RE: General Accounting Office Report on the Administration of the Criminal Justice Act

Dear Al:

I return herewith to you the draft (which I understand must be returned intact to the GAO) and I have reviewed your comments and my views as Chairman of the Criminal Business Committee are as follows:

Lack of Documentation Supporting Attorneys' Claims for Compensation

I am satisfied with the documentation in our district generally. First of all, all court hours can be verified and it is my practice to have them verified by my Court Room Deputy. Secondly, the attorneys' representations, I believe, are weighty considerations and are in most cases reliable because these attorneys have been screened by our committee and are attorneys with reputations of integrity and, in addition, the trial judge, in comparing the court hours and the attorneys' representations with the knowledge of the case, can usually detect any gross disparities. I don't think minor disparities, which often times may simply be an honest difference of opinion, would be worth the establishment of yet another layer of bureaucracy in our court system to verify something that probably cannot be verified in the typical case. Obviously, extraordinary numbers of hours should cause the judge to insist upon greater reliability in the supporting material furnished by the attorney, but that's on a case-by-case basis and on a judge-by-judge basis. I see no need for an additional obligation of paperwork that will simply add more expense with questionable results.

Letter of Credit - Defenders' Office

I have no comment on this because I agree that it is strictly a fiscal control matter where others are more expert than I am.

APPENDIX VI

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

FISCAL ASSISTANT SECRETARY

28 SEP 1982

Dear Mr. Anderson:

The Department of the Treasury has reviewed the Draft Report "The Judiciary's Administration of the Criminal Justice Act Fosters Inequities", and is pleased to provide you with our comments pertaining to the use of the letter-of-credit system recommended in the Report.

Currently, the recipients of the Judiciary grants, the Community Defender Organizations (CDOs), are funded on a quarterly basis by check. From a technical point of view, the CDOs could be funded by letter-of-credit so that federal funds would be drawn down in a manner to meet actual immediate cash requirements. However, the Department of the Treasury is now in the process of converting all letters-of-credit from the FRB and RDO systems mentioned in the Report to a new electronic funds transfer system. Considering the size of funding arrangements, both in amount of money and number of recipients as well as the CDOs close working relationship with the Judiciary, we feel that if the CDOs were funded by check, but more frequently e.g., monthly or bi-weekly with adequate monitoring, the result in CDOs holding large unnecessary balances would be largely eliminated.

In light of the above, we recommend that the Judiciary continue to fund the CDOs using its current check funding system but on a more frequent basis. We also recommend that tight monitoring be performed by the Judiciary on those disbursements.

We appreciate the opportunity to provide these comments. If you have any questions, please contact Mr. Irving Kesser, Assistant Director, Cash Management Operations Staff, on 634-5745.

Sincerely,

Gerald Murphy

Gerald Murphy
Acting Fiscal Assistant Secretary

Mr. William J. Anderson
Director
United States General Accounting Office
Washington, DC 20548

APPENDIX V

MEMORANDUM

TO: Chief Judge Alfred L. Luongo
FROM: Judge Louis C. Bechtle
RE: General Accounting Office Report on the Administration of the Criminal Justice Act

defendants where somebody has a "hunch" that assets are somewhere could be useful, but a broad-based inquiry when there is only a raw suspicion of assets may cost too much for what would be ultimately, in fact, recovered. Again, it would be an additional diversion of our already overburdened judicial resources with doubtful results.

Attorney Selection for CJA Plan

Obviously, I agree with the report to the extent that it recommends that systems like ours be considered concerning the establishment of criteria and screening for panel members.

The foregoing represents my comments and I am hopeful they are in time for you to report to the General Accounting Office.

pa

attachment

APPENDIX VIII

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTOR

JOSEPH F. SPANIOL, JR
DEPUTY DIRECTOR

September 29, 1982

Mr. William J. Anderson
Director
General Government Division
United States General Accounting Office
Washington, D. C. 20548

Dear Mr. Anderson:

Thank you for providing copies of your proposed report on the Administration of the Criminal Justice Act (CJA) and for offering me the opportunity to respond to your findings and recommendations.

For the purpose of this reply I have grouped your findings and recommendations into the following categories and will comment on each one:

I. The United States Judicial Conference claim of inadequacy of rates and administrative burden to the Chief Judges of the Circuits is unsupported.

II. Attorney selection criteria varies and should be made more uniform.

III. Financial eligibility determinations vary and should be made more uniform.

IV. Controls over reimbursement vary and should be made more uniform.

V. Attorney reimbursement claims lack supporting documentation.

VI. Use of letters of credit for Community Defender Organizations would reduce financing cost.

I. CJA RATES

The results of the GAO survey of district and circuit courts with respect to the adequacy of current CJA rates of compensation are not consistent with the reports which we have received during our interviews with judicial officers throughout the country and our discussions with members of the United States Judicial Conference CJA Committee. We note, however, that on pages 5, 36, and 37, your draft report refers to "obtain[ing] attorneys" willing to accept CJA cases. On page 3 of your draft report you state:

APPENDIX VII

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
255 UNITED STATES COURTHOUSE
46 EAST OHIO STREET
INDIANAPOLIS, INDIANA 46204

CHAMBERS OF
JUDGE S. HUGH DILLIN
CHIEF JUDGE

September 28, 1982

Mr. William J. Anderson, Director
General Government Division
United States General Accounting Office
Washington, D. C. 20548

Dear Mr. Anderson:

Reference is made to the draft of your proposed report to the Congress on the judiciary's administration of the Criminal Justice Act.

I have read the proposed report and believe that it is accurate, at least as it is applied to the Southern District of Indiana. Therefore, I have no objections or suggestions as to the proposed report.

As you may know, the Judicial Conference Committee to Implement the Criminal Justice Act, at its June 1982 meeting, formulated a Model Plan for the Composition, Administration, and Management of the Panel of Private Attorneys Under the Criminal Justice Act. I assume that the recommendation of the CJA Committee will be adopted by the Judicial Conference (or perhaps was adopted at the meeting of the Conference last week), and may serve to meet some of the suggestions contained in your report.

It seems to me that your staff did a thorough and competent job and is to be commended.

Yours very truly,

S. Hugh Dillin

SHD/bb

The subject of the composition, management, and administration of the CJA panels has been under active consideration by the Judicial Conference's CJA Committee since June of 1980. The product of the Committee's efforts in this regard is the "Model Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act," which was distributed to the chief judges of all the district and circuit courts in August of this year.

In developing the Model Plan, the Committee surveyed all chief district and circuit judges concerning local practices relating to the administration of CJA panels and, in addition, received the views and recommendations of Federal Defenders. The plan also incorporates existing provisions on CJA panel administration found in the Guidelines for the Administration of the Criminal Justice Act, promulgated by the Judicial Conference. During its consideration and discussion of the Plan, the CJA Committee addressed, among other factors, each of the three issues included in the GAO draft report's recommendation on panel management, i.e., selection criteria, screening procedures, and multi-tier systems. For the reasons which follow, the Committee decided against recommending specific uniform qualifications criteria, in favor of recommending detailed screening procedures for the selection of panel members, and against recommending a multi-tier panel system.

1.) Selection Criteria

While the Committee was not opposed to the establishment of detailed eligibility requirements by each district, it was of the view that the development of uniform criteria would be impractical and unworkable. Although strict standards might ensure that only the most qualified attorneys became members of the panel in some districts, in other districts, where the experience level of local attorneys is lower, these same strict standards would render it difficult or impossible to find a sufficient number of attorneys to serve on the panel. The diversity in experience levels and qualifications of the bars of the 94 judicial districts and variations in the compexity of cases therein precludes the adoption of national standards.

2.) Screening Procedures

The Committee was of the view that a formal screening or panel applicant review system should be established in each district and recommended the formation of Panel Selection Committees whose primary function would be to consider applications, evaluate the qualifications of applicants, and to make recommendations to the court regarding appointments to the panel. The Panel Selection Committee would consist of a judge, magistrate, an attorney who is a senior member of the CJA panel, and if the district has one, a Federal Public Defender or Community Defender. In addition to screening applicants, the Panel Selection Committee would: (1) conduct an annual review of the operation and administration of the CJA Panel and make recommendations to the court regarding suggested improvements for the program; and (2) ascertain the continued availability and willingness of panel members to accept appointments.

APPENDIX VIII

> However, prior to the passage of the Criminal Justice Act of 1964, these attorneys represented defendants free of charge. The Congress and the Judiciary became concerned as to whether such a practice discouraged the more experienced attorneys from accepting such cases. The Congress and the Judiciary believed that if reasonable compensation for in-and-out-of-court time plus expenses was paid by the government more experienced attorneys would be willing to accept these cases thus insuring adequate legal representation.

To your observation, we would add that the Congress and the Judiciary were concerned that the failure to compensate attorneys at reasonable rates for time reasonably expended might foster compromises in the quality of the defense effort and that in all appointments adequate legal representation should be more reasonably assured. We therefore believe that the critical omission which could account for the discrepancy between your findings and our own is that while yours relate to the ability of the courts to obtain attorneys, our findings relate to the court's difficulties in obtaining "qualified" attorneys. We think the distinction is critical and therefore appreciate your support for a review of the adequacy of CJA rates even though your reason is based upon your view that "a payment rate that has remained unchanged since 1970 is of necessity suspect."

With respect to your concern over the need to retain congressional oversight in the matter of setting maximum hourly rates of compensation, we would point out that all matters relating to the appropriation for defense services are reviewed by the Criminal Justice Act Division and the Financial Management Division of the Administrative Office of the United States Courts, the United States Judicial Conference Committee to Implement the Criminal Justice Act, (CJA Committee), the Budget Committee of the United States Judicial Conference, the United States Judicial Conference, the Office of Management and Budget, the Appropriations Committees of the House and Senate, the United States Congress, and the President. Given this degree of scrutiny and oversight with respect to the appropriation for defense services provided under the CJA, we believe that an additional procedure which would delay the implementation of new rates in order to allow the Congress time "to determine the reasonableness of any such increases" would be redundant and unnecessary.

II. ATTORNEY SELECTION CRITERIA

The draft report states that "the Judicial Conference has not established guidelines or policies for use by the district courts in selecting attorneys."

On page 17 of the draft report, it is recommended that the Judicial Conference take steps to improve the effectiveness of the panel systems by:

1.) establishing criteria for selecting panel members;
2.) establishing screening procedures for selecting panel members; and
3.) instituting multi-tier panel systems to match attorney qualifications with case complexity.

APPENDIX VIII

IV. CONTROLS OVER REIMBURSEMENT

We agree that controls pertaining to orders for reimbursement of the appropriation vary widely and should be made more uniform. Toward that end we will establish more uniform procedures for the establishment of accounts receivable, and the recording, collecting and monitoring of payments for defense services ordered by judicial officers.

We take no position, for now, with respect to the recommendation that probation officers and, where available, pre-trial services agencies, verify financial information and include in their reports recommendations on a defendant's ability to reimburse CJA expenses. Rather, we intend to present this matter to appropriate committees of the Judicial Conference for consideration and study.

With respect to the GAO position that the Federal Probation Act be amended to specifically provide for reimbursements as a condition of probation, we strongly disagree.

The proposal to add to 18 U.S.C. §3651, a provision that a probationer, "may be required to pay for the cost of legal representation and other services required on his behalf, in accordance with the provisions of 18 U.S.C. §3006A (f)", would establish a condition which presumably would not be imposed on those persons convicted and sentenced to imprisonment. This, we believe, would constitute an inequity and would be inconsistent with rehabilitative objectives. Probationers have often experienced an inability to obtain employment and much of the activities of the probation office are directed toward re-introducing them into the mainstream of society and establishing their economic stability. The requirement that legal expenses be assumed as an obligation would constitute an additional hurdle in this process.

The view that requiring reimbursement of the cost of representation should not, as a policy matter, be made a condition of probation is shared by many who have considered the issue. Professor Dallin H. Oaks, in his report on "The CJA in the Federal District Courts", (1967), stated that "the Judicial Conference Committee to Implement the Criminal Justice Act should recommend that defendants otherwise determined financially unable to pay for their defense should not be required to reimburse the government for the costs of legal representation as a condition of their probation." Both the CJA Committee and the Committee on the Administration of the Probation System of the Judicial Conference have in the past adopted this position. In addition, commentary in the ABA Standards for Criminal Justice Chapter 5, Providing Defense Services, observes that problems attendant to requiring reimbursement for the cost of representation, such as the chilling effect on the exercise of the right to counsel, and interference with the long-term rehabilitation of defendants, are exacerbated when the requirement is made a condition of probation. (Commentary to Standard 5-6.2, page 5-65)

The Model Plan addresses several other factors such as the length of service on the panel, the size of the panel, the procedures for assigning counsel to particular cases, and the submission and review of claims for compensation. A copy of the Model Plan, which contains the explanatory notes of the CJA Committee, is attached as Exhibit A.

3.) Multi-tier Panel

The Committee considered, but did not include in the Model Plan, a multi-tier panel. Specifically, the Committee discussed the two-tier system in which the more experienced members would be assigned to the "felony panel" and the less experienced members to the "misdemeanor panel." The reasons for rejecting this concept included (1) doubts as to the reliability of experience alone as the decisive factor in determining qualifications to handle serious cases, (2) the fact that many districts do not have a sufficient volume of misdemeanor cases to warrant a separate panel, (3) the belief that certain misdemeanor cases may be quite complex and thus the requirements for highly qualified counsel would not differ from the requirements for attorneys in felony cases, and (4) a desire to avoid situations where clients feel they are getting second-rate representation because their court-appointed attorney is on the "second" (misdemeanor) panel.

The Model Plan does, however, provide for the establishment of a "Training Panel" consisting of attorneys who do not yet have the experience or skills deemed necessary for membership on the CJA Panel -- these attorneys would assist regular panel members but would not receive their own appointments, nor would they receive compensation.

III. FINANCIAL ELIGIBILITY DETERMINATIONS

We share the GAO's concern about the possibility for inequities with respect to orders to contribute to the cost of defense services or pay for representation and services provided under the CJA. While we will continue our efforts to assist in the development of more useful guidelines in this regard, we are basically of the view that firm quantitative standards and dollar limitations are unworkable.

The difficulty of developing effective and practical detailed financial eligibility standards is illustrated by the fact that the draft report, which criticizes the judiciary for providing only general guidelines on the problem, contains, on pages 13-14, three "specific examples of criteria that could be used to determine reimbursement potential", two of which are practically identical to provisions presently found in the CJA Guidelines.[1]

The determination of a defendant's financial ability to contribute to the cost of defense must inevitably be based upon such individual considerations as resources, family responsibilities, obligations, employment potential, health, and bail status. In this regard, the determination of financial eligibility is analogous to the determination of an appropriate sentence upon conviction. While an overall consistency is desirable, the application of inflexible standards in the eligibility determination process would result in the very inequities which we all seek to avoid.

1/The criteria presented on page 14 were suggested by district court judges and not GAO. We agree that two of the three are practically identical to provisions presently found in the guidelines.

divided among seven grantees) it was suggested that instead we might consider more frequent distributions of grant funds and an improved reporting procedure. We are in the process of analyzing these alternatives to seek that solution which achieves the basic objective of the recommendation to reduce financing costs by matching withdrawals more closely to actual disbursement needs.

CONCLUSION

Our strongest objection to the report relates to its title, "The Judiciary's Administration of the Criminal Justice Act Fosters Inequities", which we believe is misleading, inappropriate, unjust, and simply not supported by the material contained therein.[1] This sweeping indictment is based only upon two findings: (1) the need for guidelines and more consistency in the selection of attorneys, and (2) the few instances cited where defendants financially able to make reimbursement were not required to do so while defendants less financially able were required to reimburse for the cost of counsel.

With respect to the selection of attorneys, the draft report merely points out variations among districts in their selection criteria and makes no finding that attorneys appointed under the CJA are providing substandard or inadequate representation, or that inadequate representation is directly related to the lack of uniform selection criteria or procedures.

The second "inequity" found in the report relates to the reimbursement process. The draft report states that there is "limited guidance available [to the courts] to determine reimbursement potential" and asserts that the absence of detailed criteria for determining reimbursement potential results in disparities in treatment of persons who are similarly situated. As noted previously, we, too, are concerned about the possibility of such inequities, but question whether more detailed criteria than are provided in the present guidelines would afford a remedy or compound the possibility for inequity. While we do not dispute that there may exist instances of unequal treatment, we are not convinced that these cases result from the absence of hard and fast eligibility standards. Moreover, as in sentencing, what may be perceived as disparate treatment often reflects careful consideration of a large number of factors and attempts to "individualize".

In sum, we do not believe, as the proposed report and its title suggest, that variations in administration are synonymous with inequitable administration. Acknowledging that variations among and even within the districts will occasionally produce inequities, or the appearance of inequities, we remain firmly convinced that flexibility is essential to the just administration which the drafters of the CJA envisioned. The ability of the judiciary to provide a just administration in the ensuing years is jeopardized not by the lack of uniform standards, but by the threatened decline in the quality of representation provided under the CJA as inflation erodes the already inadequate compensation.

1/Title of report has been changed.

APPENDIX VIII

Beyond disagreeing with the concept of requiring reimbursement as a condition of probation, we are concerned about the language of the proposed amendment to the probation statute, which appears to permit reimbursement as a condition of probation regardless of the ability of the defendant to pay. We believe that such a condition would present serious constitutional problems. See United States v. Jimenez, 600 F.2d 1172 (5th Cir. 1979), cert. denied, 444 U.S. 903 (1979); United States v. Santarpio, 560 F.2d 448 (1st Cir. 1977), cert. denied, 434 U.S. 984 (1977); cf. Fuller v. Oregon, 417 U.S. 40 (1974) (upholds state statute conditioning probation on repayment of court appointed attorneys, specifically noting statute excepted indigents.)

We would suggest that instead of an amendment to the probation law, which would not, in any event, cover those individuals subject to a sentence of imprisonment, language might be added to 28 U.S.C. §1918 (b) which would allow the cost of representation to be taxed as a cost in a proper case, and that such order of taxation be given the status of a civil judgment. That would allow a judge to tax costs of representation against any defendant. We would also recommend, however, that some allowance for remission of such cost be provided so that persons who are indigent could, at some point, be free of the burdens of compliance. We believe that such a procedure would impact upon and require coordination with and the support of the Department of Justice. Whether the recoupment of costs associated with defense services is based upon a change in the current law or the enhancement of existing accounting methods, the responsibility for pursuing cases of non-compliance with court-ordered repayment would appropriately rest with the Department of Justice.

V. ATTORNEY REIMBURSEMENT CLAIMS

We believe that the GAO review of vouchers overlooked the fact that: 1) the guideline suggesting a detailed memorandum from counsel was intended to assist the judicial officer in evaluating claims; and 2) all vouchers and supporting documentation associated with the payment of fees to counsel and experts and for services provided under the CJA are forwarded to the Administrative Office of the United States Courts for audit and payment. The CJA Claims Section of the Financial Management Division has established procedures for the accomplishment of this review, and advises that required supporting documentation is obtained before payments of claims are processed by the Administrative Office. If a judicial officer has sufficient information upon which to evaluate a claim without a memorandum from counsel, we have thus far not insisted upon compliance with this suggestion.

VI. USE OF LETTERS OF CREDIT

We have reviewed the GAO's recommendations concerning the use of letters of credit and have contacted the Treasury Department for detailed instructions regarding the establishment of such a system. In our initial contact with Treasury, we were informed that new letter of credit processes were being set up through an electronic fund transfer system. Due to the administrative costs related to this procedure and the small size of this operation ($4.6 million

APPENDIX VIII

EXHIBIT A

MODEL PLAN FOR THE COMPOSITION, ADMINISTRATION, AND MANAGEMENT OF THE PANEL OF PRIVATE ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT

[CJA Committee Comment: This "Model Plan" is intended to provide guidance in the establishment and operation of the Panel of private attorneys required under subsection (b) of the Criminal Justice Act, 18 U.S.C. §3006A. The "Model Plan" may either be incorporated into the existing District Plan for the Implementation of the Criminal Justice Act or promulgated as a supplement to that Plan by local rule. If the "Model Plan" is issued as a local rule, care should be taken to insure that no provision of the "Model Plan" is inconsistent with the District Plan for the Implementation of the Criminal Justice Act.]

I. COMPOSITION OF PANEL OF PRIVATE ATTORNEYS

A. CJA PANEL

1.) Approval. The Court shall establish a panel of private attorneys (hereinafter referred to as the "CJA Panel") who are eligible and willing to be appointed to provide representation under the Criminal Justice Act. The Court shall approve attorneys for membership on the panel after receiving recommendations from the "Panel Selection Committee," established pursuant to paragraph B. of this Plan. Members of the CJA Panel shall serve at the pleasure of the Court.

2.) Size. The Court shall fix, periodically, the size of the CJA Panel. The panel shall be large enough to provide a sufficient number of experienced attorneys to handle the Criminal Justice Act caseload, yet small enough so that panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work, and thereby provide a high quality of representation.

[CJA Committee Comment: This provision reflects the policy statement regarding the size of CJA Panels contained in paragraph 2.01 D of the Guidelines for the Administration of the Criminal Justice Act adopted by the United States Judicial Conference.]

APPENDIX VIII

Mr. William J. Anderson
Page Eight

I again thank you for the opportunity to comment on your draft report. Much of the report merits continued study by the Administrative Office and the Judicial Conference, and will be the subject of proposed matters for consideration by the Judicial Conference in the future.

Sincerely,

William E. Foley
Director

Enclosure

MODEL PLAN FOR THE COMPOSITION, ADMINISTRATION, AND MANAGEMENT OF THE PANEL OF PRIVATE ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT

Page 3

5.) Reappointment. A member of the CJA Panel shall not be eligible for reappointment to the panel for the one year period immediately following expiration of his or her term, unless waiver of this restriction is certified by the Court.

[CJA Committee Comment: As with the preceding paragraph, if a court should elect to have indeterminate membership on the panel rather than fixed terms, this paragraph should be deleted.]

6.) Application. Application forms for membership on the CJA Panel shall be made available, upon request, by the Clerk of the Court. Completed applications shall be submitted to the Clerk of the Court who will transmit the applications to the Chairperson of the Panel Selection Committee.

B. PANEL SELECTION COMMITTEE

1.) Membership. A Panel Selection Committee shall be established by the Court. The Committee shall consist of one district judge, one magistrate, one attorney who is entering the third year of his or her term as a member of the CJA Panel [, and the Federal Public or Community Defender]. The Committee shall select its own Chairperson.

[CJA Committee Comment: The "Model Plan" provides for the screening and reviewing of the qualifications of applicants by a Panel Selection Committee consisting of one district judge, one magistrate, one attorney who is a senior member of the CJA Panel and, if there is a Federal Defender Organization in the district, the Federal Defender. The primary function of the Committee would be to consider applications, evaluate the qualifications of the applicants, and to make recommendations to the Court regarding appointments to the CJA Panel. The "Model Plan" calls for the Committee to meet at least annually, and leaves to the Committee the development of its own procedures, subject to any guidelines that may be established by the Court.

The composition of the Panel Selection Committee can be adjusted to reflect the degree of judicial, Federal Defender, or Panel attorney involvement in the screening process that is desired by each district court.

Nothing in this "Model Plan" is intended to impinge upon the authority of a presiding judicial official to appoint an attorney who is not a member of the CJA Panel, in an appropriate case, to insure adequate representation.]

MODEL PLAN FOR THE COMPOSITION, ADMINISTRATION, AND MANAGEMENT OF THE PANEL OF PRIVATE ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT

3.) Eligibility. Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this district, and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure and the Federal Rules of Evidence.

[CJA Committee Comment: The CJA Committee considered the question of whether detailed eligibility standards and minimum experience standards should be included. The Committee was of the view that while imposing specific qualification and experience requirements might insure that only the most qualified attorneys become members of the panel in some district, in other districts such specific requirements might render it difficult or impossible to find a sufficient number of attorneys to serve on the panel.

The "Model Plan" thus contains only the very general eligibility requirement of membership in good standing of the federal bar of the district and demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure and the Federal Rules of Evidence. More detailed and specific qualifications standards can, if desired, be developed and substituted locally by each district.]

4.) Terms. The initial CJA Panel established pursuant to this Plan will be divided into three groups, equal in number. Members will be assigned to one of the three groups on a random basis. Members of the first group will serve on the panel for a term of one year, members of the second group will serve on the panel for a term of two years, and members of the third group will serve on the panel for a term of three years. Thereafter, attorneys admitted to membership on the CJA Panel will each serve for a term of three years.

[CJA Committee Comment: In view of the provision in paragraph 1 above, and that of paragraph 2.01 D of the Guidelines for the Administration of the Criminal Justice Act that members of the CJA Panel shall serve at the pleasure of the court, some courts may not wish to have fixed terms for panel membership but rather have members of the panel serve continuously until they resign or are removed. If the above paragraph regarding terms of membership is deleted, the following paragraph pertaining to reappointment should also be deleted.]

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for their services in assisting CJA Panel members. Prior service on the CJA Training Panel is not a requirement for membership on the CJA Panel, nor will service on the Training Panel guarantee admission of an attorney to the CJA Panel.

[CJA Committee Comment: The "Model Plan" does not provide for a two-tier panel, i.e., one in which the more experienced members would be assigned to a felony panel and less experienced members to a misdemeanor panel. There are several reasons for rejecting this concept:

(a) Many districts have a very small number of misdemeanor or petty offense cases, therefore there would be no need for a separate panel.

(b) Experience alone, whether in terms of years in practice, or number of trials, is not a reliable enough factor to serve as a standard or criteria in determining qualifications to handle serious cases.

(c) Certain misdemeanor and petty offense cases may be quite complex, and entail serious consequences if a conviction is obtained. Thus requirements for highly qualified counsel in these cases would not differ from the requirements for attorneys in felony cases.

(d) Avoiding a two-tier panel system precludes the possibility that attorneys might be viewed as more or less competent.

The "Model Plan" also provides that the Panel Selection Committee may establish a "CJA Training Panel" consisting of attorneys who have not acquired the experience deemed necessary for membership on the CJA Panel. These attorneys could be assigned by the Court to assist members of the CJA Panel in a voluntary, "second chair," capacity. Training Panel members would not be eligible for independent appointments, nor for compensation. Training Panel membership would be neither a condition precedent to CJA Panel membership nor would service on the Training Panel guarantee admission to the CJA Panel. Training Panel members would be approved by the Panel Selection Committee, rather than by the Court.]

II. SELECTION FOR APPOINTMENT

A. MAINTENANCE OF LIST AND DISTRIBUTION OF APPOINTMENTS

The Clerk of the Court [Federal Public or Community Defender] shall maintain a current list of all attorneys included on the CJA Panel, with current office addresses and telephone numbers, as well as a statement of qualifications and experience. The Clerk [Federal Public or

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2.) Duties.

a) The Panel Selection Committee shall meet at least once a year to consider applications for the vacancies created by the terms expiring each year. The Committee shall review the qualifications of applicants and recommend, for approval by the Court, those applicants best qualified to fill the vacancies.

At its annual meeting, the Committee shall also review the operation and administration of the panel over the preceding year, and recommend to the Court any changes deemed necessary or appropriate by the Committee regarding the appointment process and panel management.

The Committee shall also inquire annually as to the continued availability and willingness of each panel member to accept appointments.

b) If, at any time during the course of a year, the number of vacancies due to resignation, removal, or death significantly decreases the size of the panel, the Committee shall solicit applications for the vacancies, convene a special meeting to review the qualifications of the applicants, and select prospective members for recommendation to the Court for approval. Members approved by the Court to fill mid-term vacancies shall serve until the expiration of the term that was vacated, and shall be immediately eligible for reappointment notwithstanding the one-year restriction imposed by paragraph A(5) above, provided that the portion of the expired term actually served by the member did not exceed eighteen months.

C. CJA TRAINING PANEL

The Panel Selection Committee may establish a "CJA Training Panel," consisting of attorneys who do not have the experience required for membership on the CJA Panel. Training Panel members may be assigned, by the Court, to assist members of the CJA Panel in a "second chair" capacity. Training Panel members are not eligible to receive appointments independently, and shall not be eligible to receive compensation

the next panel member on the list who has handled, or assisted in, a case of equal or greater complexity than the case for which appointment of counsel is required, and who is available for appointment, and shall provide the name to the appointing judge or magistrate.

In the event of an emergency, i.e., weekends, holidays, or other non-working hours of the Clerk of Court's office, the presiding judge or magistrate may appoint any attorney from the list. In all cases where members of the CJA Panel are appointed out of sequence, the appointing judge or magistrate shall notify the Clerk of Court [Federal Public or Community Defender] as to the name of the attorney appointed and the date of the appointment.

[CJA Committee Comment: The "Model Plan" provides for an individual analysis of an attorney's qualifications with respect to each appointment, to ensure that the attorney selected has the experience and ability required to handle the particular case.

As with the preceding paragraph, discretion is left to individual courts to determine the degree to which, if at all, Federal Public or Community Defenders shall be involved in the management of the CJA Panel. The Federal Public or Community Defender, as indicated in brackets, can be substituted for the Clerk of the Court.]

III. COMPENSATION - FILING OF VOUCHERS

Claims for compensation shall be submitted, on the appropriate CJA form, to the office of the Clerk of the Court [Federal Public or Community Defender]. The Clerk of the Court [Federal Public or Community Defender] shall review the claim form for mathematical and technical accuracy, and for conformity with the Guidelines for the Administration of the Criminal Justice Act (Volume VII, Guide to Judiciary Policies and Procedures) and, if correct, shall forward the claim form for the consideration and action of the presiding judge or magistrate.

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Community Defender] shall furnish a copy of this list to each judge and magistrate. The Clerk [Federal Public or Community Defender] shall also maintain a public record of assignments to private counsel, and, when appropriate, statistical data reflecting the proration of appointments between attorneys from the Federal Public or Community Defender office and private attorneys, according to the formula described in the CJA Plan for the District.

[CJA Committee Comment: The Committee takes no specific position at to whether or not, and to what degree, Federal Public or Community Defender Organization should be involved in the management and administration of the CJA Panel. In those districts in which the Court wishes the Federal Public or Community Defender Organization to undertake the responsibility for the maintenance of appropriate records regarding the CJA Panel and the distribution of cases, the Federal Public or Community Defender Organization, as shown in brackets, can be substituted for the Clerk of the Court.]

B. METHOD OF SELECTION

Appointments from the list of private attorneys should be made on a rotational basis, subject to the Court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, and geographical considerations. This procedure should result in a balanced distribution of appointments and compensation among the members of the CJA Panel, and quality representation for each CJA defendant.

Upon the determination of a need for the appointment of counsel, the judge or magistrate shall notify the Clerk of Court [Federal Public or Community Defender] of the need for counsel and the nature of the case.

The Clerk of Court [Federal Public or Community Defender] shall advise the judge or magistrate as to the status of distribution of cases, where appropriate, as between the Federal Public or Community Defender and the panel of private attorneys. If the magistrate or judge decides to appoint an attorney from the panel, the Clerk [Federal Public or Community Defender] shall determine the name of

As Chairman of the Criminal Justice Act Committee I constantly receive calls from Chief Judges throughout the country asking me when and if the rates will be increased. They recount to me the resistance they are encountering in obtaining the qualified attorneys they need for certain cases. The resistance is based almost entirely on the present low rates.

Moreover, Circuit Courts are getting restless under the pressure from their bar associations. As I am sure you are aware, the Seventh Circuit Council felt that they had the power to raise the rates under the provisions of the Act. The action of that court was brought to issue in Mills v. United States of America, 82 C. 1057 (United States District Court for the Northern District of Illinois, Eastern Division). Judge Flaum held that the Circuit Council lacked the power to take such action, but I am sure the case will be appealed. I know that both the Ninth Circuit and Eighth Circuit Councils are contemplating similar action to that of the Seventh Circuit on the chance that the Mills decision may be reversed on appeal.

Finally, the rates are simply out of step with "the times and with what is fair." The salaries of all United States Attorneys, Federal Defenders, Federal Judges and all other court personnel have been increased in the last ten years. Private attorneys should not be asked to subsidize the salaries of those who serve the Federal Judiciary and the United States Department of Justice.

I have no comment on Mr. Foley's discussion of your suggestion of the need for Congressional oversight other than that I agree with his observation.

II. ATTORNEY SELECTION CRITERIA

In his letter, Mr. Foley has reported to you the most recent action of our Committee on this subject. I hope that it is sufficient to satisfy your concern.

III. FINANCIAL ELIGIBILITY DETERMINATIONS

As Mr. Foley has pointed out in his response, the Committee is not unaware of the problem, but conversely we

APPENDIX IX

United States District Court
Eastern District of California
Sacramento, California 95814

Chambers of
Thomas J. MacBride
Senior Judge

September 29, 1982

Mr. William J. Anderson
Director
General Government Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

I appreciate your offering me the opportunity to comment on your proposed report concerning the Administration of the Criminal Justice Act (CJA). I note that you have extended to Mr. Foley, Director of the Administrative Office of the United States Courts, the same courtesy.

I have read and completely subscribe to Mr. Foley's response to your report. Further detailed response from me as Chairman of the Criminal Justice Act Committee of the United States Judicial Conference would be redundant. There are, however, some portions of his response to which I would like to add my own emphasis. I will use the same grouping that Mr. Foley has employed in his letter.

I. CJA RATES

Your finding that there is little resistance among private attorneys to accept assignments at the present rates is simply invalid--especially in the larger cities. We have 33 Federal Defenders and 8 Community Defenders in the system. Many of them assist the court in obtaining private attorneys for defendants that, for valid reasons, their own offices are unable to represent. Our Committee receives constant reports from these defenders that they receive "turn downs" from qualified private attorneys whose services they were previously able to obtain under the old rates. One of the main reasons for refusing the cases is that the present overhead of the private attorneys exceeds the present rates, and the concept of pure "pro bono" representation is no longer a valid concept in the eyes of the private attorneys whose services are seriously needed.

APPENDIX IX

I have nothing to add to the observations expressed by Mr. Foley in Paragraphs V and VI of his aforementioned letter.

Thank you again for the opportunity to comment on your proposal.

Yours very truly,

Thomas J. MacBride
Chairman
Judicial Conference Committee
to Implement the Criminal
Justice Act

TJM/srs

cc: Mr. William E. Foley
Director, Administrative Office of
the United States Courts

Mr. Theodore J. Lidz
Chief, Criminal Justice Act Division

APPENDIX IX

are aware that each case has to be dealt with on an individual basis. Judges must be permitted to embrace the idea that a defendant should be entitled to the bare necessities of food, housing and clothing for himself and family while the question of his guilt or innocence is still before the court. The personal circumstances of each defendant are different and must be weighed by the Judge to determine the extent that he is entitled to benefits under the Act.

IV. CONTROLS OVER REIMBURSEMENT

I agree with Mr. Foley that this area needs study both by his office and our Committee. It will be placed on the agenda for our next meeting in January, 1983.

I also, for the same reasons expressed by Mr. Foley, join in his opposition to making reimbursement a condition of probation where the defendant was validly entitled to Criminal Justice Act representation throughout the processing of his case from the time of his being taken into custody until his appellate rights are exhausted. I would add two additional reasons that occur to me now:

Considering the additional staff that will be required by the Clerk of the Court, the Probation Office and possibly the Administrative Office, the operation of such a plan, in my opinion, would not be cost effective.

My second reason is an expansion of Mr. Foley's "equity" argument. In a vast number of cases we District Judges give "split sentences" under Title 18 United States Code § 3651. Under this section we are empowered to sentence the defendant to a term of imprisonment in excess of six months but at the same time only cause him to be confined initially for up to the first six months of the sentence and then place him on probation for the remainder of the sentence. If, after release from his initial confinement, he violates the conditions of probation, then he can be reimprisoned for up to the balance of his original sentence. I won't attempt to unravel this one for you where reimbursement might be a condition of probation, but I suggest that it presents an almost impossible problem if your proposal is accepted by Congress.

APPENDIX X

18 U.S.C. § 3651 be amended to permit court-ordered reimbursement as a condition of probation.

Concerning the letter of credit method of payment of counsel, we have no objection to such a program. We do recommend that the amount of attorney fees should be reconsidered. The statute should be amended to authorize the Judicial Conference to set rates subject to congressional approval (or veto). We will make the Judges of this Court aware that they should uniformly require attorneys to keep time records and to submit itemized statements of time expended.

Also, we recognize the lack of consistency in determining indigency and ability to repay, and we are taking steps to be certain that all U.S. Magistrates in this District operate in the same way. We will work with the Pretrial Services Agency, the Probation Department and the U.S. Magistrates to develop a procedure so that any appointment of counsel is subject to reimbursement if it appears at any time during the course of the proceedings that a defendant is able to repay part or all of the cost of appointed counsel.

Concerning financial controls in Chapter 3, we will direct the Clerk of Court to take action to notify the Probation Department or the U.S. Attorney when reimbursement payments have not been made as required.

We appreciate the opportunity to comment on this report and find that there are many useful suggestions contained therein. Perhaps because the report was assembled from the work of a number of people, we note a considerable amount of repetition. With careful editing, your report could make the same valid points in half as many words.

Very truly yours,

John Feikens
Chief Judge

v
copy to John P. Mayer, Court Executive
Robert A. Mossing, Clerk of Court

Honorable Philip Pratt
Honorable Anna Diggs Taylor

APPENDIX X

United States District Court
For the Eastern District of Michigan
730 Federal Building
Detroit 48226

CHAMBERS OF
JOHN FEIKENS
CHIEF JUDGE

September 30, 1982

William J. Anderson
Director
General Government Division
General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

This is in further response to your letter of September 1, 1982 enclosing a copy of your proposed report to the Congress concerning the administration of the Criminal Justice Act in Federal District Courts.

A committee of this Court, consisting of Judges Pratt, Taylor and myself, has met and has considered your proposed report.

Herewith, perhaps not necessarily in the order of their importance, are our reactions:

We really have no interest in a multi-tier panel system. While facially this is attractive, it is more trouble than it is worth. Making judgments as to what attorneys may be able to handle certain matters is difficult, at best.

We are interested in the suggestion that there be a termination date with regard to each panel and we propose to reconstitute our panel approximately every three years. Attorneys who have performed well will be invited to reapply.

Even though you indicate on page 13 of your report that our Court has more consistently ordered reimbursement than other courts surveyed, we are taking additional steps to improve our reimbursement process. In this connection we would also join with you in recommending that

APPENDIX XI

Three primary areas covered by the Report on which I obtained comments from personnel of this Court are discussed below.

Selection of Panel Attorneys

All the individuals canvassed expressed recognition of the need for some criteria for selecting attorneys for the CJA panel. Special note was made of the need to establish standards for providing "adequate representation". Due to practical constraints, and as the Report recognizes, that requirement must, in this context, be translated essentially as "experienced counsel". See pp. 3, 4, 8. The Federal Public Defender's Office viewed this point as acknowledgment of the need for services of the quality it provides.

The Report later asserts that, in spite of fees which have not increased since 1970, ". . . the judiciary is experiencing little difficulty obtaining attorneys willing to accept CJA cases at the current hourly rates." p. 29. No mention is made of the qualifications of such attorneys. It is more than a little paradoxical that the perceived importance of experience as a selection criterion for providing adequate representation conveniently diminishes upon discussion of rates. The very willingness of private court-appointed attorneys to accept CJA cases at the current hourly rates suggests some questions about the qualifications and alternative opportunities of such attorneys. The Report's recommendations on fees should reflect, in substance as well as form, its concern over standards for selection of attorneys to insure adequate representation.[1] Disparate emphases on these topics seems unrealistic if not duplicitous.

Determination of Ability to Pay

The Report correctly identifies the need to establish uniform criteria for determining which defendants should have counsel appointed for them and which should later be ordered to reimburse the Court for CJA expenses. As a corollary, it also points out the need to establish guidelines for the gathering of information by which such determinations should be made. Again, however, some deference should be paid to the possible value of local variations.

1/This report contains no recommendations as to the appropriate level of attorneys fees.

APPENDIX XI

FRANK J. BATTISTI
CHIEF JUDGE

United States District Court
Northern District of Ohio
Cleveland, 44114

October 4, 1982

Mr. William J. Anderson, Director
United States General Accounting Office
General Government Division
Washington, D.C. 20548

Dear Mr.Anderson:

After reviewing the GAO report entitled, "The Judiciary's Administration of the Criminal Justice Act Fosters Inequities" ("the Report"), and receiving input from other interested parties in this Court, I include the following comments for your use in preparing the final version of the Report.

At the outset, I want to note my agreement with what I take to be the general conclusion of the Report, namely: "The Criminal Justice Act Should be Implemented More Uniformly." p. 7. The establishment of uniform standards and techniques leading to the equal dispensation of justice under the Criminal Justice Act ("the CJA") is, obviously , a most desirable goal.

The need for some flexibility and variation according to local conditions should not be overlooked, however. The assertion of the Report title that such flexibility and variation affirmatively promote inequity is true, if at all, only in the most abstract literal sense. Moreover, the title, like much of the Report, ignores what has been accomplished in implementing the Criminal Justice Act under uniform guidelines promulgated by the Judicial Conference. If unrevised, the title itself will foster serious public misunderstanding which can only inure to the undeserved detriment of the judiciary and the entire federal government. Therefore, I would suggest that the title, and Report as a whole, should be formulated somewhat more positively to reflect the need for <u>additional</u> uniform standards and guidelines.

Enforcement of Reimbursement Orders

Finally, I am rather troubled by the proposed legislation to amend 18 U.S.C. 3651 to make reimbursement by financially-able defendants a condition of probation. This proposal dangerously confuses the Court's power to impose a penalty for criminal transgression and the government's interest in efficiently and equitably allocating its judicial resources. The amendment would create highly suspect distinctions between financially-able defendants who are or are not convicted, as well as between convicted defendants who are or are not found financially able. The former case threatens one group with criminal sanctions for non-payment but not the other; the latter case would permit imposition of different sanctions solely as a function of financial status. Both distinctions are improper and quite possibly unconstitutional.

As the Report noted, the Clerk's Office for this Court has made commendable progress in improving its collection procedures, p. 24. If necessary, enforcement of reimbursement orders should be the responsibility of U. S. Attorneys, as is the case for fines. A related concern is that the ability to pay determination should, at some point, be made final. Since the Report suggests inclusion of any reimbursement order in the final judgment, p. 29, it seems that the ability to pay determination should be made final at that time.

I hope that these observations will be useful to you in preparation of the final report. I will look forward to its publication.

Sincerely,

Frank J. Battisti

fjbffk

Frank J. Battisti
Chief Judge

The Probation Office in this Court has suggested that the initial decision on a defendant's eligibility for Court-appointed counsel, made at the pre-trial hearing, should be based on the defendant's financial affidavit (Form CJA 23). Because of the often-severe time constraints, it is implausible to expect that the Pre-trial Services Agency is going to be able to provide detailed information on defendants' financial situations on anything approaching a systematic basis. The Probation Office proposal was to have the judge or magistrate review the initial appointment decision at the time of sentencing, based on information gathered during the Probation Office's investigation and included in its pre-sentence report to the Court. Absent information which contradicts that in the defendant's financial affidavit, there would be a presumption in favor of adhering to the initial decision. Significant contradictions could lead to reimbursement orders to defendants enjoying the services of court-appointed counsel, or even decisions to reimburse defendants for legal expenses they had incurred.

For different reasons, both the Federal Public Defender and the Probation Office expressed opposition to the idea of having probation officers make a recommendation to the Court on ordering a defendant to pay for appointed counsel. The Public Defender feared that this practice could influence the relationship between panel attorneys and the probation officers who would then be in a position to recommend or not recommend them.[1] The Probation Office feared probation officers would sometimes be placed in the difficult position of either disputing the initial determination of a judge or magistrate, or rubber-stamping it in a way which would not really constitute a recommendation.[2] (The Probation Office denied the Report's claim about its practice in this District. p.17)[3] Both of these fears seem well-founded, and the more objective task of simply highlighting discrepancies between the defendant's financial affidavit and information disclosed by a probation officer's investigation seems a preferable one for such officers.

1/We disagree, because we are recommending making reimbursements a condition of probation where it has been determined that the defendant is financially capable of paying.

2/The probation officer would not be disputing the initial determination of a judge or magistrate because the probation officer would have financial data that was not available to the court at the time the original decision was made.

3/The disclaimer is based on a grammatical problem because the court does not believe that a probation officer can recommend something to a judge, he can merely suggest an action, which is what the probation officers do in this court. Therefore, we have used the word "suggests" on page 17 of the report.

application reflects sufficient training and experience, the individual is added to our panel. Of course, a showing of good moral character is also required. Ordinarily, substantial experience in criminal jury trial work for a minimum of one year is a prerequisite for an attorney to be added to our panel. On the other hand, exceptions may be made for individuals who are personally well-known to the Court, such as former law clerks or attorneys who have other special qualifications. Attached is a copy of the court-approved form application for membership on our panel.

(b) Re: Criteria to specify when reimbursement should be ordered.

It will certainly be helpful to develop criteria relating to when reimbursement should be ordered. Obviously, however, circumstances vary greatly from case to case. Accordingly, any criteria which are developed should not create a situation in which the cost, in manpower, time and dollars, to attempt to collect money might well exceed the actual dollars and cents which can be expected to be collected. An additional problem to consider in this area is that, initially, when there is any doubt as to whether or not a person qualifies for CJA assistance and court-appointed counsel, that doubt must be resolved in favor of the defendant in order:

(i) to ensure that legal representation is obtained immediately in order to comply with the Speedy Trial Act and other time limitations; and

(ii) to enable the Court to manage its trial calendar in an efficient and practical way.

(c) Re: Requiring probation officers, etc. to verify all financial information.

This is obviously a desirable goal--one which should always be kept in mind. Before a magistrate of this Court makes a determination concerning a defendant's indigency, he obtains from the defendant and through the resources of the pretrial services officer all available information. It is rare that a judge of this Court sentences a defendant without a presentence report. Each presentence report contains detailed financial information about the defendant. Accordingly, at the time of sentencing, each judge has an opportunity to form an opinion as to whether or not counsel should have been afforded to the defendant under the CJA and, if so, under what terms. For the most part, we find that the original determinations made by the magistrates are well-founded. Nevertheless, we are continuing our efforts to effect improvements in that area.

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

October 7, 1982

FRANK A. KAUFMAN
Chief Judge
Baltimore, Maryland 21201

Mr. William J. Anderson
Director
United States General Accounting Office
Washington, D. C. 20548

Dear Mr. Anderson:

I write in response to your letter dated September 1, 1982 in connection with your proposed report to the Congress concerning the administration of the Criminal Justice Act in federal district courts. In your letter, you suggested that if I would not be able to respond by September 30, 1982, I should contact Mr. Ols to arrange for an extension. I did in fact attempt to contact Mr. Ols, was unable to reach him, but spoke with Mr. Kenneth Huber who, after checking within your agency, orally informed me that it would be okay for me to respond up to October 15, 1982.

The judges of our Court have reviewed your report and make the following comments, particularly with reference to the specific recommendations which are set out on pages 18, 25, and 29 of the report:

1. Recommendations on Page 18

(a) Re: Panel Systems.

We agree that the aim should be to have a broad-based, representative panel of competent trial attorneys with criminal experience as members of the CJA panels. However, because conditions vary from district to district, we think that each district court should possess sufficient flexibility so that it can utilize a procedure and method which it finds is most likely to result in the achievement of the goal in the most cost and time efficient manner.

Our Court has not adopted any formal eligibility standards or requirements for one to become a member of the Criminal Justice Defense Panel. Rather, our Court has approved a form application which, upon submission by an applicant, is reviewed by our Criminal Justice Act Committee, which consists of three judges who confer as needed with the magistrates. The committee chairman reports as needed to our weekly bench lunch meeting and/or our monthly extended meeting which includes the magistrates. If an individual's

4. Recommendations on Page 35

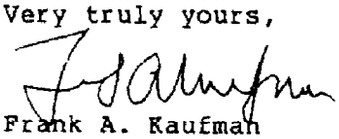
In principle, we strongly support the proposal to increase the upper limits of attorneys' fees. In all probability, that would enable us to obtain more competent counsel, particularly in complicated and protracted cases. In addition, the increases in such upper limits would permit individual district judges to exercise their discretion to award fees in excess of the present maximums without requiring them to make recommenations to the Chief Judge of our Circuit and without requiring the Chief Judge to involve himself in such matters. Without in any way desiring to impede the proposed increases in the upper limits, we do have some question as to whether the pending legislation goes too far in increasing the ceiling on the maximum amounts which may be charged for various types of representation.

* * * *

The above comments are the only ones which we desire to make at this time. As indicated above, a committee of three judges of this Court, working with the chief probation officer, the chief pretrial services officer, and the clerk of our Court, as well as with magistrates of our Court, attempts to review our procedures relating to appointment of attorneys under the Criminal Justice Act on an ongoing basis. The fact that this letter does not contain comments as to each and every part of your report does not mean that we will not carefully, within our Court, consider all aspects of your report. Rather, our failure to comment in certain instances is simply due to the magnitude of the report, the number of issues discussed in it, and the time available to us since I received your September 1, 1982 letter.

If there are additional areas which are not covered by this letter in connection with which you would like to have our comments, please let me know and we will respond as promptly as we can.

Very truly yours,



Frank A. Kaufman

cc: Honorable Joseph C. Howard, Chairman
Honorable James R. Miller, Jr.
Honorable Herbert F. Murray
Paul R. Schlitz, Esq., Clerk

(d) Re: Requiring recommendations from probation officers, etc.

Our probation officers and pretrial service officers do in fact make recommendations concerning a defendant's financial ability to reimburse our Court's CJA expenses. Again, we will continue to attempt to effect improvements in that area.

2. Recommendation on Page 25

We agree that it would be advisable to amend the Federal Probation Act, 18 U.S.C. § 3651, to make it clear that the Court has the power, as a condition of probation, to require reimbursements to be made in connection with CJA expenses.

3. Recommendations on Page 29

(a) Where reimbursement by a defendant of CJA expenses is made a condition of probation, judges should be encouraged so to specify in the Judgment and Probation/Commitment Order.

(b) We agree that procedures should be developed for monitoring compliance by defendants with reimbursement orders. Each probation officer, in each case in which there is such an order, does monitor performance by a defendant on a continuing basis. Accordingly, we believe that whatever controls exist in the Clerk's Office should not be duplicative of those in force and effect in the probation office. Many Clerk's Offices--and certainly our own--are greatly overworked. Attached hereto is a list of reports currently filed on a monthly basis by our Clerk's Office.[1] We would be reluctant to impose additional record-keeping and reporting duties on our Clerk's Office without very valid reasons. We are, however, as a result of the discussions in your report, exploring the monitoring of compliance by defendants with reimbursement orders and, in so doing, will give full attention to the second and third recommendations set forth on page 29 of your report.

(c) We are fully in accord with enforcing existing procedures which require attorneys to submit well-documented claims for compensation. However, in our opinion, we have sufficient information on the CJA voucher where the amount claimed by the attorney is within the maximum fixed for either misdemeanors or felonies. Where the fee claimed exceeds the maximum, the Clerk's Office automatically requires the lawyer involved to submit a detailed breakdown of time spent and amounts charged. Therefore, we believe that all that is needed is for us to continue our present system.

1/List of reports not included.

APPENDIX XIII

United States District Court
Southern District of Ohio
Cincinnati, Ohio 45202

Chambers of
Carl B. Rubin
Chief Judge

October 22, 1982

Mr. William J. Anderson, Director
General Government Division
Government Accounting Office
441 G. Street N.W.
Washington, D.C. 20548

Re: Draft Report - The Judiciary's
Administration of the Criminal Justice Act

Dear Mr. Anderson:

I have had occasion to review a draft of the above-mentioned report. I believe that the rates paid to attorneys should be reviewed. In ten years the price of almost everything has doubled. I have experienced no difficulty in obtaining attorneys to represent defendants, but I am convinced that proper compensation would result in better representation.

The report is a first-class job and in keeping with the high level of inquiry that your department customarily makes.

Very sincerely yours,

Carl B Rubin

Carl B. Rubin, Chief Judge
United States District Court

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