

AMERICAN BAR ASSOCIATION

CRIMINAL JUSTICE SECTION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, That the American Bar Association urges the Congress of the United States to fully fund the Criminal Justice Act, including sufficient money to fund the statutory increase to \$75 per hour and annual cost-of-living increases for CJA attorneys, so that the attorneys appointed under the Act receive full and fair compensation; and

FURTHER RESOLVED, That the American Bar Association urges the Judicial Conference of the United States to make every effort to obtain funding for and to fund an increase to \$75 per hour for the 77 districts currently authorized to receive that rate and to obtain funding for and to fund annual cost-of-living increases for CJA attorneys.

REPORT

The Criminal Justice Act (CJA)¹ was enacted to fulfill the promise of *Gideon v. Wainwright*². Last year, 37,837 persons³ accused of committing crimes ranging from delay of mail to acts of terrorism were the beneficiaries of *Gideon's* promise. The dedicated lawyers who were appointed under the Criminal Justice Act were compensated for their work at rates so low the rates did not even cover overhead costs. Without swift action to increase these rates, the delivery of justice in this country will soon reach crisis proportions.

Congress recognized the need for increased compensation twelve years ago when it amended the CJA to provide for alternative rates for panel attorneys of up to \$75 per hour. At that time it also authorized the Judicial Conference to increase the hourly rate annually to match cost-of-living increases received by federal employees. Yet although the Judicial Conference has approved alternative rates for 93 of the 94 federal judicial districts, only 16 of those districts have received funds to implement the increase.⁴ In addition, with the exception of one \$5 increase,⁵ no district has ever received a cost-of-living increase.

The ABA has long been committed to the goal of providing adequate funding for the defense of those who cannot afford to retain private counsel. Three times in the past twenty years, the ABA has formally urged congress and the states to appropriate adequate funding for the defense of those who cannot afford to retain private counsel. ABA House of Delegates, August 1981, January 1982 and August 1988. Most recently, the ABA selected the issue of indigent defense funding as one of its top ten priorities for 1998 and urged federal, state and local governments "to take immediate steps to insure the provision of sufficient funding for appropriate indigent defense services."

The compensation currently received by most CJA lawyers, \$45 for out-of-court time and \$65 for in-court time, is so low that it threatens to eviscerate the constitutional guarantee of effective representation to all regardless of economic circumstances. Unless these rates are increased to ensure that appointed lawyers earn a living wage, *Gideon's* trumpet may soon be sounding its own death knell.

The Right To Effective Assistance Of Counsel

In *Gideon*, the Court said: "[A]ny person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him." The Court reasoned: "From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him." *Id.* at 342-43. The right to counsel was soon interpreted to mean the right to effective assistance of counsel, *McMann v. Richardson*, 397 U.S. 759 (1970).

History Of The Criminal Justice Act

In the wake of *Gideon*, Congress grappled with the question of how to provide effective assistance of counsel to those in need. It held hearings and subsequently passed the Criminal Justice Act of 1964, 18 U.S.C. sec. 3006A. As the Supreme Court recounted in *Ferri v. Ackerman*, 444 U.S. 193, 199 (1979), testimony taken during the hearings indicated that unpaid counsel were not always as diligent or as thorough as retained counsel. As a result, "Congress concluded that reasonable compensation would improve the quality of the representation of indigents." *Id.* Back in 1964 rates were fixed at \$10 per hour for in-court time and \$20 per hour for out-of-court time.

In 1970, the rates were doubled to \$20 per hour for in-court time and \$30 per hour for out-of-court time. Increases were permitted independent of Congress, to be tied to rates approved by local bar associations. Unfortunately, just five years later the Supreme Court effectively nullified the power to increase rates when it decided Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975), which prohibited local bar associations for setting minimum fee schedules.

So when the plaintiff in Mills v. United States, 713 F.2d 1249 (7th Cir. 1983), argues that she was entitled to be paid at the rates of \$45 and \$55 per hour as recommended by the Judicial Council of the Seventh Circuit, the court of appeals held that the Judicial Council lacked authority to increase the statutory rates in the absence of a local bar association fee schedule (which could not exist in its view because of the Goldfarb decision). In 1984, congress, citing Mills, increased the then-14 year old rates to \$40 and \$60 per hour and removed the fee schedule requirement. It failed to provide an alternative mechanism independent of Congress for increasing the rates at that time.

In 1986, Congress did provide such an alternative mechanism, authorizing the Judicial Conference to increase CJA rates up to a maximum of \$75 per hour depending on local costs and other factors. Congress also authorized the Judicial Conference to provide annual cost-of-living increases to panel attorneys equal to those received by federal employees beginning three years after enactment of the amendments. This was responsible and much needed legislation.

The legislative history to the 1986 amendments indicates that the impetus for the increases was Congress' acceptance of the Judicial Conference's "concern that the compensation system presents a threat to the Congressional purpose of providing adequate representation under the Sixth Amendment to those individuals unable to reasonably afford defense services." 1986 U.S. Code Cong. & Admin. News 6165, H.R. 417, 99th Cong., 2d Sess. As the House Report states: "If counsel is not competent, the integrity of the justice system is jeopardized. Innocent defendants may be wrongly convicted, and defendants inadequately represented may have their cases retried or dismissed, regardless of their culpability. *It is therefore critical that qualified attorneys be encouraged to represent financially eligible defendants, and that adequate compensation be set to insure that those attorneys who accept appointments do not suffer economic hardship.*" Id. At 6166 (emphasis added).

Neither of these goals has been achieved. Because of a funding failure, qualified attorneys are not encouraged to accept CJA appointments and those attorneys who do accept appointments do so at great personal cost.

It is easier to explain what happened than why it happened. What happened is that only the first 16 districts to request an increase under the 1986 amendments actually received and continue to receive funding to pay for the increase. Of the remaining 78 judicial districts, 77 received approval to be compensated at the \$75 rate.⁶ Although the last five of these districts received approval in 1995,⁷ to date not one of the 77 has received any funding to pay for the increase.

Why this happened is less clear. After the first 16 judicial districts were funded, both Congress and the Judicial Conference repeatedly shied away from requesting funds to increase panel attorney compensation. For example, as early as 1988, the Report of the Judicial Conference warned: "In recognition of the possibility that the 'Defender Services' appropriation might be insufficient to fund fully the anticipated level of CJA activities, the Conference established . . . priorities for that appropriations account."⁸ In 1990, the Judicial

Conference amended the Guidelines for the Administration of the Criminal Justice Act to make the automatic annual increases in attorney compensation rates (previously authorized by Congress) "contingent upon . . . the availability of sufficient funds in the Defender Services appropriation."⁹

In 1992, the Appropriations Committees of Congress further discouraged implementing CJA panel attorney rate increases with the following language: "While the conferees are not attempting to second guess the judgement of the members of the Judicial Conference concerning the need for increases in panel attorney rates, the constraints facing the conferees precluded the Cong., 2d Sess. At 75 (Sept. 28 1992).

Similar language in subsequent reports from Congressional Appropriations committees¹⁰ apparently dissuaded the Judicial Conference from implementing the statutorily authorized rate and cost-of-living increases. The Judicial Conference's budget requests for 1995,¹¹ 1996,¹² 1997¹³ and 1998¹⁴ all contain language stating the judiciary is "not seeking . . . funds to implement the \$75 rate in the . . . districts for which that rate has been approved but not yet implemented." The Judiciary did, however, request another \$15 increase for FY 1998.¹⁵

Thus, when the \$5 increase authorized in 1996¹⁶ is added to the base compensation rates enacted in 1985, panel attorneys in 83% of the country are currently compensated at the rates of \$45 and \$65 per hour. As the Judiciary noted in requesting an additional \$5 increase in 1997:

If these increases are not approved [for FY 1998] in the 77 districts, panel attorney rates will have been increased only once since 1984. During those 14 years cost of living increases have totaled over 40%. The current panel attorney compensation rates are, understandably, proving too low to attract panel attorneys with the skill and knowledge required to provide defense services in a modern Federal criminal prosecution.¹⁷

In 1993, the "Report of the Committee to Review the Criminal Justice Act," used the Consumer Price Index to calculate what panel attorneys should be paid. The Committee determined that the cost of living had risen more than 350% since the first CJA increases to \$20 and \$30 in 1970 while the compensation rate in most districts had doubled (\$40 and \$60 per hour), resulting in a net loss of 250%. The Committee found: "If rates had kept pace with the CPI since 1970, panel attorneys would be receiving approximately \$108 per in-court hour and \$72 per out-of-court hour." 52 Crim. L. Rep. (BNA) 2265, 2284 n.13 (1993). These rates would be even higher today.

Current Compensation Is Not Enough

Not only has the cost of living increased; the cost of doing business has too. Yet, general office overhead is not reimbursable under the CJA.¹⁸ The problem is especially acute in large cities such as Atlanta, Boston, Chicago, Cleveland, Dallas, Miami and Philadelphia, where the \$75 rate has yet to be funded. Based on information received during the hearings it conducted on the state of the federal defender program in this country, the Judicial Conference found that the lower rates paid in these and other areas do not even cover overhead, causing "Many lawyers [to] accept assignments of cases from the federal courts at a financial sacrifice to their livelihood." Report of the Judicial Conference of the United States on the Federal Defender Program, 53 Crim. L. Rep. (BNA) 2003 (1993).

At the same time, the practice of federal criminal law has become increasingly more complex. In the past 16 years, "Congress has passed new, more complicated and harsher criminal laws[;] to highlight -- restitution reform in 1982, sweeping sentencing reform and other wholesale changes to the federal criminal

code in 1984, mandatory minimums in 1986 and 1988, the expansion of the death penalty in 1988 and 1994 and the evisceration of habeas corpus in 1996." Judy Clarke, President's Column, Vol. 20, No. 10, The Champion (NACDL) at 9 (December 1996). The sentencing guidelines have been amended 575 times in ten years and there are over 10,000 cases interpreting them. The most recent proposed amendments take up 131 pages of text. Just to keep current is a full time job. Prosecutions continue to increase in complexity. Multiple count indictments charging sophisticated RICO and conspiracy cases abound. More and more local crimes continue to be "federalized." To become - and to remain - competent under these conditions, one must do more than dapple in federal criminal law. It has become a full time job.

ABA Standards And Policies Recognize The Need for Adequate Compensation

The ABA has been in the forefront of recognizing the importance of providing effective assistance of counsel to those without the means to hire counsel. For example, Standard 5-1.1 of the ABA Standards for Criminal Justice, Providing Defense Services (3d ed. 1992) states: "The objective in providing counsel should be to assure that quality legal representation is afforded to all persons eligible for counsel pursuant to this chapter. The bar should educate the public to the importance of this objective."

Standard 2.20 of volume 2 of the ABA Standards of Judicial Administration, Standards Relating to Trial Courts (3d ed. 1992), states: "A litigant should be permitted to employ counsel in any judicial proceeding. The following litigants should be provided with counsel if they cannot afford to retain counsel themselves: (i) Criminal defendants and others with a right to appointment of counsel under existing law. . . ." The Commentary to this standard recognizes that "[a]ppointed counsel should be qualified lawyers capable of providing effective representation."

Similarly, the ABA has long-recognized that for this guarantee to have any meaning, counsel must be adequately compensated. Ten years ago, what has come to be known as the Dash Committee, issued a report entitled "Criminal Justice in Crisis." The Report was authored by the ABA Special Committee on Criminal Justice in a Free Society whose chair was Samuel Dash. The number one finding of the Dash Committee was: "As currently funded, the criminal justice system cannot provide the quality of justice that the public legitimately expects and that the people working within the system wish to deliver. Legislatures and Congress must devote far more money to all components of the criminal justice system if public expectations have any hope of becoming realities. Compromise will persist and necessarily limit the quality of the services that can be delivered as long as the criminal justice system must operate without adequate resources." Dash Committee Report at 39 (1988).

Standard 5-1.6 of providing Defense Services reflects a similar belief: "Government has the responsibility to fund the full cost of quality representation for all eligible persons, as defined in standard 5-7.1. It is the responsibility of the organized bar to be vigilant in supporting the provision of such funding."

The ABA Standards of Judicial Administration, Volume II, Standards Relating to Trial Courts (3d ed. 1992) also recognize the need for adequate funding. Standard 2.22 states: "Counsel for persons entitled to assistance of counsel should be provided through a systematic plan that is sufficiently funded to provide qualified and independent counsel, adequately compensated and supplied with necessary supporting services." The Commentary to Standard 2.22 notes: "The quality of representational services is very largely dependent on the level of funding provided for them. The judiciary should encourage legislatures to provide for needed authority, organization, and funding." The Commentary goes on to say: "Any system which provides representation for the indigent defendant or

needy person must comply with professional standards of competency and with the constitutional requirements of effective assistance of counsel and equal justice under the law."

Adequate Compensation Is A Necessary Component Of Quality

In 1967, the Judicial Conference and the Department of Justice jointly commissioned then-Professor Dallin H. Oaks of the University of Chicago Law School to prepare a study of the operations of the Criminal Justice Act. 1970 U.S. Code Cong. & Admin. News 3984-85, H.R. 91-1546, 91st Cong., 2d Sess. The findings in this report were a significant factor in Congress' decision to double the CJA rates in 1970. Professor Oaks found that "the single most important factor in determining the quality of service under the Criminal Justice Act is the degree of experience of the C.J.A. lawyers being appointed in the district." Oaks, "The Criminal Justice Act in the Federal District Courts - A Summary and Postscript," 7 Am. Crim. L. J. 210, 222 (1968-69). Although the report recognized that compensation alone would not guarantee quality, it found that "the availability of compensation and other resources under the Criminal Justice Act can be of great significance in aiding the district court in making better use of its own resources, including principally the experience of its Bar. . . ." Oaks Report at 222.

The Oaks Report findings have been replicated many times over the years. In his article, "The Eleventh Commandment: Thou Shalt Not Be Compelled to Render the Ineffective Assistance of Counsel," 68 Ind. L. J. 363, 364 (1993), Professor Richard Klein cited to study after study showing the perils of inadequately funding appointed lawyers. Most notably, Klein found that under-compensated lawyers who depend on appointments for the bulk of their practice sometimes compensate by representing more clients than they can effectively handle. *Id.* at 364. Klein also found, not surprisingly, that it is more difficult to attract qualified lawyers in areas where appointed rates do not even meet the lawyers' overhead. *Id.* As the Florida Supreme Court recognized: "The relationship between an attorney's compensation and the quality of his or her representation cannot be ignored." White v. Board of Commissioners, 537 So. 2d 1376 (Fla. 1989).

In 1990, a blue ribbon committee consisting of judges, lawyers and members of Congress, authorized by Congress and appointed by the Chief Justice of the United States, recommended that Congress "enact a more comprehensive compensation system for CJA attorneys that will include an amount to cover reasonable overhead and a reasonable hourly wage." Federal Courts Study Committee, Report of the Federal Reports Study Committee (1990) at 159. The Committee observed: "The notion that CJA representation is or should be a casual pro bono assignment has long been outmoded. While the committee does not anticipate that CJA representation will be compensated at the rates charged by leading retained counsel, the committee nonetheless believes that representation of indigent defendants should not involve a financial loss to counsel."

Three years later, the Judicial Conference, in a report issued in response to the 1990 Judicial Improvements Act, Public Law No. 101-650, found "the single most important problem to confront the CJA program in recent years is that sufficient funding has not been appropriated to meet the increasing costs of providing the Constitutionally mandated services that the program was created to provide." It went to say that this lack of funding and "inadequate compensation hamper many courts in their ability to recruit and retain experienced attorneys as members of their CJA panel. Accordingly, the lack of adequate funding for the CJA poses a potential threat to the effective assistance of counsel." Report of the Judicial Conference of the United States on the Federal Defender Program, 53 Crim. L. Rep. (BNA) 2003 (1993).

Based on these findings, the Judicial Conference's Recommendation states in part: "It is essential that the Congress provide full funding of the Criminal

Justice Act to ensure that the protection guaranteed by the Sixth Amendment of the United States Constitution continues to be provided to the people of the United States into the 21st Century. Funding should be provided at a level sufficient to: pay fair and reasonable compensation to panel attorneys. . . ."

Two years later, no further funding having been provided, the Judicial Conference repeated its advice in its Long Range Plan for the Federal Courts issued in December of 1995. Recommendation 84 forcefully states: "Highly qualified, fairly compensated, and optimally sized panels of private attorneys should be created to furnish representation in those cases not assigned to a defender organization."

To enforce this recommendation, the Judicial Conference developed Implementation Strategy 84d: "The Judicial Conference should continue its efforts to obtain sufficient funding to permit compensation rates to be adjusted up to the maximum amount authorized by law." The Comment to this recommendation candidly recognizes:

The single most important problem to confront the defense services program in recent years has been the judiciary's inability to secure appropriation of sufficient funding to meet the sharp cost increases attributable to rising criminal caseloads, substantial expansion of prosecutorial and law enforcement resources, and the impact of guideline sentencing and mandatory minimum sentences.

In many locations, the \$40 or \$60 per hour paid to panel attorneys does not even cover basic overhead costs of a law office. Thus, a lawyer who accepts a panel appointment may actually be making a financial sacrifice. Sufficient funding is needed to allow the Judicial Conference to adjust compensation rates to the maximum authorized by law.

Id. at 19.

All participants in the criminal justice process agree on the importance of adequate defense funding. In a speech to the ABA Criminal Justice Section on August 2, 1997 in San Francisco, Attorney General Janet Reno said: "The legitimacy of our justice system depends on our efforts to ensure the fairness of the system for everyone, regardless of wealth." She continued: "For 15 years as a prosecutor I became convinced that to achieve justice for defendants. . . we had to have adequate funding, adequate training and adequate resources for indigent defendants." Quoted in The Spangenberg Report, Volume IV, Issue 1 at 14 (1997).

More recently, to mark the 35th anniversary of Gideon, the Attorney General wrote an article for USA Today noting that indigent defendants "do not invariably receive effective assistance of counsel." Therefore, she concluded: "We need to stress the importance of Gideon. I have opened a dialogue with judges, prosecutors and defense attorneys, and I urge every state to take this occasion to review its indigent legal-defense services and recommit itself to the promise of Gideon. * * * [The Gideon decision] beckons us all to work to ensure that our justice system fully provides in both fact and spirit, liberty and justice to all, rich and poor alike." USA Today, March 18, 1998 at 13A.

In December of 1997, Ronald Goldstock (Chair of the Section of Criminal Justice of the ABA), Gerald Lefcourt (President of NACDL) and William Murphy (President of the National District Attorneys Assn) jointly authored an article entitled, "Justice That Makes Sense." In it they said, "despite our differing perspectives, it was clear to each that we -- and the entities we represent -- tend to agree on most criminal justice issues." One of those issues was the need for adequate defense funding. They wrote: "Adequate funding for indigent defense services at the federal, state, and local levels is, without question, essential

to the fair administration of criminal justice." So essential, in fact, that: "Starving *Gideon* not only threatens wrongful convictions and even executions; it starves America's sense of justice." "Justice That Makes Sense," Criminal Justice, vol. 12, no. 4 at 1 (ABA Section of Criminal Justice) (Winter 1998); The Champion at 20 (NACDL) (December 1997).

The Disparate Racial Impact of Inadequate Defense Compensation

The continued inadequate funding of appointed lawyers will have another, more pernicious effect on our system of justice:

[F]ailure to provide adequate assistance of counsel to accused indigents draws a line not only between rich and poor, but also between white and black. For the first time in our nation's history, the number of people who are incarcerated in jails and prisons surpasses one million. Recent reports indicate that unprecedented numbers of African-Americans, particularly young males, are involved in the criminal justice system. When discussing the inadequacies of the current system of providing counsel for the accused poor, one cannot ignore the correlation between race and poverty. If the criminal justice system deprives the poor generally of the right to a fair trial, that burden will fall disproportionately on communities of color because of the greater incidence of poverty in these communities and, hence, their greater reliance on public defender services.

Charles Ogletree, "Toward a More Effective Right to Assistance of Counsel, An Essay on the New Public Defender for the 21st Century," 58-WTR Law & Contemp. Probs. 81, 82 (1995).

The statistics more than bear out Professor Ogletree's prediction. Although African Americans comprised only about 12% of the country's population in 1991, they comprised 30% of the families living below what is considered to be the poverty line.¹⁹ Statistics for Hispanics were nearly identical - comprising only 9% of the population, they comprised 26% of families living below the poverty line.²⁰ Whites on the other hand, comprised about 80% of the population, but only 8.8% of the families living below the poverty line.²¹

One conclusion to be drawn from these harsh statistics is that people of color require appointed lawyers disproportionately more often than white people. Therefore, when the quality of representation provided by appointed lawyers is diminished by underfunding, the consequences will be disproportionately felt by people of color.

The statistics paint an equally grim picture of what those consequences will be. According to a Senior Research Associate in the Federal Judicial Center, the average mandatory minimum sentence for African Americans in 1990 was 49% higher than for whites.²² In that same year, under the Federal Sentencing Guidelines, the average sentence for African Americans was 93% higher than the average guideline sentence for whites.²³ The Sentencing Commission reports that: "A greater proportion of Black defendants received sentences at or above the indicated mandatory minimum (67.7%), followed by Hispanics (57.1%) and Whites (54%)."²⁴

Not only are people of color sentenced to longer prison terms than white defendants, they are also sentenced to prison more often. In 1995, Marc Mauer of The Sentencing Project, following up on an earlier study, determined that one out of every three African American males between the ages of 20 and 29 was involved in the criminal justice system (as opposed to one in four in 1989). Mauer, The Sentencing Project, "Young Black Americans and the Criminal Justice System -- Five Years Later (1995). And, although African Americans make up only 12% of the population, they comprise almost 50% of the prison population. Edna

McConnell Clark Foundation, "Americans Behind Bars," (1993) at 13. This disparity is not because the rate of crime is that much higher in the African American population. Indeed, the Bureau of Prisons itself recognizes that there is a strong link between drug use and crime²⁵ and that the percentage of white drug users using heroin, cocaine, crack cocaine and marijuana is much higher than the percentage of African Americans or Hispanics using those drugs.²⁶

Finally, as the ABA and numerous other organizations recognize, people of color are sentenced to death and executed in significantly higher proportions than whites when convicted of similar crimes. "G.A.O. Death Penalty Sentencing: Research Indicates Pattern of Racial Disparities" at 6 (1990), cited in "Achieving Justice in a Diverse America: A Summit on Racial and Ethnic Bias in the Justice System - A Preliminary Report and Plan for Action (ABA) (August 1994); Rose Matsui Ochi, "Race Discrimination in Criminal Sentencing," Judges Journal, Winter 1985 at 9.

Conclusion

In the end, as one commentator eloquently opined: "[T]he failure to provide adequate funding for the defense of the nation's poor can, in the end, only harm the society as a whole. Any diminution in the right of the indigent results in a proportional diminution and erosion of the rights of all persons." Comment, 29 Loy. L.A. L. Rev. 1895, 1925 (1996). The ABA cannot stand silent and witness this erosion of critical rights. It is time for us to speak:

The ABA is committed to the proposition that the constitutional rights of the accused are essential not only to ensure a fair justice system but also to ensure that we live in a free society. The ABA also recognizes that certain constitutional rights are vulnerable to crime initiatives and other political campaigns to get tough on crime. Although defense of these rights against such initiatives can be an unpopular task, the ABA has willingly taken it on because the stakes are so high and the need for a credible voice supporting these rights is vital. The ABA, because it is the voice of the entire bar, including prosecutors and judges, provides that voice, and it has no more important, albeit difficult, task.

An Agenda For Justice: ABA Perspectives on Criminal and Civil Justice Issues (July 1996) at 59.

Respectfully submitted,

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END NOTES

1. 18 U.S.C. sec. 3006A.
2. 372 U.S. 335 (1963).
3. *Judicial Business of the United States Courts, Annual Report of the Director, Leonidas Ralph Mecham (1997)* at 25.
4. In 1988, a \$75 rate was approved and implemented in the following locations: Alaska; California (Central, Eastern, Northern and Southern); District of Columbia; Detroit, Michigan; New Jersey; Las Cruces, New Mexico; New York (Eastern and Southern); and Seattle, Washington. A \$70 rate was approved and implemented for Arizona (Phoenix and Tucson) and for Hawaii. A \$50 rate was approved and implemented for Oregon and Nevada (Las Vegas and Reno). *Proceedings of the Judicial Conference of the United States* at 16, 46, 75, 111 (1988).
5. On January 1, 1996 the Judicial Conference partially implemented the long-delayed raises by increasing the rates by \$5, from \$40 per hour out-of-court and \$60 per hour in-court to \$45 and \$65, respectively, Memorandum, Leonidas Ralph Mecham, Administrative Office of the United States Courts (January 11, 1996).
6. *See Proceedings of the Judicial Conference of the United States* (1990) at 79, 108; (1991) at 18, 47, 56-57, 73; (1992) at 21-22, 39; and (1995) at 82.
7. *Proceedings of the Judicial Conference of the United States* at 82 (1995).
8. *Proceedings of the Judicial Conference of the United States* at 75 (1988).
9. VII Guide to Judiciary Policies, Chapter II, sec. 2.22A. (3) at 15.
10. *See, e.g.,* Senate Report No. 103-105, 103d Cong., 1st Sess. At 84 (July 22, 1993) (for FY 1994, the "Committee has not included , and does not approve. . . a 5-year catchup Federal pay comparability adjustment for panel attorneys. Similarly, the Committee continues to oppose expansion of the \$75 hourly out-of-court rate for panel attorneys in districts outside the 16 currently receiving this rate"); Senate Report No. 103-309, 103d Cong., 2d Sess. At 102 (July 14, 1994) (Committee "has not included. . . pay raise for panel attorneys in fiscal year 1994"); House Report No. 104-676, 104th Cong., 2d Sess. At 90 (July 16, 1996) ("Committee has not provided. . . for increases in the rate for panel attorneys" in FY 1997); House Report No. 105-207. 105th Cong., 1st Sess. At 101 (July, 1997) ("Committee has not provided for increases in the rate for panel attorneys" in FY 1998).
11. "[T]he Judiciary does not intend to implement the \$75 per hour rate in fiscal years 1994 and 1995 in the 72 districts for which that rate has been approved but not yet implemented and, therefore, is not seeking any fiscal year 1995 funds for this purpose." Hearings, House Appropriations subcommittee for FY 1995, Part 4, The Judiciary at 369 (emphasis in original).
12. "The Judiciary is not seeking fiscal year 1996 funds to implement the \$75 rate in the 73 districts for which that rate has been approved but not yet implemented." Hearings, House Appropriations Subcommittee for FY 1996, Part 3, Justification of the Budget Estimates at 1033.
13. "The Judiciary is not seeking fiscal year 1997 funds to implement the \$75 rate in the 93 districts for which that rate has been approved but not yet

- implemented." Hearings, House Appropriations Subcommittee for FY 1997, Part 3, Justification of the Budget Estimates at 1080.
14. "The Judiciary is not seeking fiscal year 1998 funds to implement the \$75 rate in the 93 districts for which that rate has been approved but not yet implemented." Hearings, House Appropriations Subcommittee for FY 1998, Part 3, Justification of the Budget Estimates at 1124.
 15. Hearings, House Appropriations Subcommittee for FY 1998, Part 3 Justification of the Budget Estimates at 1124.
 16. In 1996 the Appropriations Committee concentrated on closing the Death Penalty Resource Center and failed to include language canceling panel attorney rate increases. House Report No. 104-378, 104th Cong., 1st Sess. at 138 (Dec. 1, 1995).
 17. Hearings, House Appropriations Subcommittee for FY 1998, Part 3, Justification of the Budget Estimates at 1124.
 18. Administrative Office of the United States Courts, Volume VII of the guide to Judiciary Policies and Procedures, Appointment of Counsel in Criminal Cases, Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Chapter II at 2.28 A.
 19. Bureau of the Census, Dep't of Commerce, Statistical Abstract of the United States, National Data Book at 473 (1993), *cited in*, Note, "Racism in our Courts: The Underfunding of Public Defenders and the Disproportionate Impact upon Racial Minorities," 22 Hastings L.Q. 219, 234 (1994).
 20. Id.
 21. Id. at 235.
 22. Barbara S. Meierhoefer, "The Role of Offense and Offender Characteristics in Federal Sentencing," at 33. Research paper. Much of the material in the paper was taken from a Federal Judicial Center publication by the author entitled, "Longitudinal Study of Federal Sentences Imposed: The General Effect of Mandatory Minimum Prison Terms" (1992).
 23. Id.
 24. United States Sentencing Commission, Special Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System (August 1991) at 76.
 25. The Department of Justice, Bureau of Justice Statistics, "Drugs, Crime, and the Justice System," (December 1992) at 28.
 26. Id. at 2.