GENERAL OVERSIGHT ON JUSTICE RELATED AGENCIES

HEARINGS

BEFORE THE

SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES, AND THE ADMINISTRATION OF JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

GENERAL OVERSIGHT ON JUSTICE RELATED AGENCIES INCLUDING: U.S. PAROLE COMMISSION, PROBATION DIVISION U.S. ATTORNEYS, U.S. MARSHALS, ADMINISTRATIVE OFFICE OF U.S. COURTS, AND THE FEDERAL JUDICIAL CENTER

APRIL 10, MAY 2, AND 16, 1979

Serial No. 13

ıted for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1979

COMMITTEE ON THE JUDICIARY

PETER W. RODINO, Jr., New Jersey, *Chairman*

JACK BROOKS, Texas
ROBERT W. KASTENMEIER, Wisconsin
DON EDWARDS, California
JOHN CONYERS, Jr., Michigan
JOHN F. SEIBERLING, Ohio
GEORGE E. DANIELSON, California
ROBERT F. DRINAN, Massachusetts
ELIZABETH HOLTZMAN, New York
ROMANO L. MAZZOLI, Kentucky
WILLIAM J. HUGHES, New Jersey
SAM B. HALL, Jr., Texas
LAMAR GUDGER, North Carolina
HAROLD L. VOLKMER, Missouri
HERBERT E. HARRIS II, Virginia
MICHAEL LYNN SYNAR, Oklahoma
ROBERT T. MATSUI, California
ABNER J. MIKVA, Illinois
MICHAEL D. BARNES, Maryland
RICHARD C. SHELBY, Alabama

ROBERT McCLORY, Illinois
TOM RAILSBACK, Illinois
HAMILTON FISH, Jr., New York
M. CALDWELL BUTLER, Virginia
CARLOS J. MOORHEAD, California
JOHN M. ASHBROOK, Ohio
HENRY J. HYDE, Illinois
THOMAS N. KINDNESS, Ohio
HAROLD S. SAWYER, Michigan
DAN LUNGREN, California
F. JAMES SENSENBRENNER, Jr., Wisconsin

JOSEPH L. NELLIS, *General Counsel*
GARNER J. CLINE, *Staff Director*
FRANKLIN G. POLK, *Associate Counsel*

SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES, AND THE ADMINISTRATION OF JUSTICE

ROBERT W. KASTENMEIER, Wisconsin, *Chairman*

GEORGE E. DANIELSON, California
ROMANO L. MAZZOLI, Kentucky
LAMAR GUDGER, North Carolina
ROBERT T. MATSUI, California
ABNER J. MIKVA, Illinois

TOM RAILSBACK, Illinois
CARLOS J. MOORHEAD, California
HAROLD S. SAWYER, Michigan

BRUCE A. LEHMAN, *Chief Counsel*
TIMOTHY A. BOGGS, *Professional Staff Member*
GAIL HIGGINS FOGARTY, *Counsel*
MICHAEL J. REMINGTON, *Counsel*
THOMAS E. MOONEY, *Associate Counsel*
JOSEPH V. WOLFE, *Associate Counsel*

CONTENTS

HEARINGS HELD

WITNESSES

GENERAL OVERSIGHT ON JUSTICE RELATED AGENCIES

TUESDAY, APRIL 10, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,
AND THE ADMINISTRATION OF JUSTICE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 9:45 a.m. in room 2237, Rayburn House Office Building, Hon. Robert W. Kastenmeier (chairman of the subcommittee) presiding.

Present: Representatives Kastenmeier, Gudger, and Railsback.

Staff present: Timothy A. Boggs, professional staff member; Joseph Wolfe, associate counsel; and Audrey Marcus, clerk.

Mr. KASTENMEIER. The hearing will come to order.

Today we continue the oversight hearings on Federal agencies pursuant to our legislative authority.

This morning we are very pleased to have as our first witness, the Honorable Cecil McCall, who is the Chairman of the U.S. Parole Commission, a commission which was in recent years reconstituted, both procedurally and structurally. We are very interested in the excellent work of the Commission.

So, I am pleased to call upon you.

TESTIMONY OF HON. CECIL C. McCALL, CHAIRMAN, U.S. PAROLE COMMISSION; ACCOMPANIED BY BENJAMIN MALCOLM, VICE CHAIRMAN, PETER HOFFMAN, DIRECTOR OF RESEARCH, AND JOSEPH BARRY, GENERAL COUNSEL

Mr. MCCALL. Mr. Chairman, I am very pleased to appear before your committee concerning the operations of the U.S. Parole Commission.

Appearing with me today is Vice Chairman of the Commission, Benjamin Malcolm, and also, Dr. Peter Hoffman, Director of our Research Section; and sitting behind me is Joseph Barry, our General Counsel.

In the 2 years since the last Oversight Committee hearings in February 1977, the Parole Commission has moved forward in a number of program areas which I am pleased to highlight for you.

In keeping with the intent of the Parole Commission and Reorganization Act to reduce unnecessary uncertainty in the setting of release dates without removing the opportunity to consider significant changes in circumstances affecting the inmate, the Parole Commission has adopted what is called a presumptive parole date plan.

After wide and extensive comment from a number of sources, the Parole Commission, in September 1977, began to notify prisoners of presumptive release dates up to 4 years away. We began to offer all prisoners with sentences of less than 7 years the opportunity to be interviewed within 120 days and told of their presumptive release dates.

This program has met with such favorable response from prisoners, from institutional staff, the academic community, from the Parole Commission itself, and others that it has recently been expanded to provide for an early initial hearing and the setting of a presumptive release date for almost all prisoners.

Under this expanded procedure, every prisoner, except those serving a 10-year minimum term, is offered the opportunity for an early parole hearing and the setting of a presumptive parole date. Of course, once set, subsequent proceedings at every 18 or 24 months, as mandated by the Parole Commission Reorganization Act, are conducted to determine if there are any significant changes which would warrant advancement of their presumptive release dates or, of course, in the case of institutional misbehavior, to determine whether postponement of the presumptive release date is warranted.

I should not here, parenthetically, that Congressman Mann's Subcommittee on Criminal Justice last year adopted the Parole Commission's recommendation that this expanded presumptive parole date plan be specifically included in the statute.

Mr. Chairman, the Parole Commission has recently published, for public comment, standards to govern the postponement or rescission of the presumptive parole date, based upon the seriousness of the disciplinary infraction following the setting of that date. Furthermore, a task force of the Commission has been established to consider the issue of establishing standards to govern the advancement of presumptive parole dates in cases of superior institutional program achievement. A report of this task force will be presented to the Commission at a scheduled business meeting next week.

Mr. Chairman, the Parole Commission and Reorganization Act provides for the periodic consideration of revision of the decision guidelines. This year, in addition to soliciting public comment through the normal vehicle of publishing a notice of the revision and the proposed changes in the Federal Register, the Parole Commission conducted guideline revision hearings in Atlanta, Ga., Denver, Colo., and Washington, D.C. Testimony concerning the revision was taken from Federal judges, prosecutors, defense attorneys, academics, and other interested parties.

Personally, of more importance to me, the Commission conducted hearings on the proposed guideline revision inside the penitentiary in Atlanta and also at the Federal Correctional Institution at Englewood, Colo., at which testimony from numerous prisoners, as well as institutional representatives, was also taken.

All of the testimony, as well as written comment received, has been analyzed and a proposal for the revision of our current guidelines is being presented at the regularly scheduled Commission business meeting next week.

During this period our research section has completed a number of studies, copies of which I would be happy to provide to the committee.

These include an analysis of the relationship between time on parole and the likelihood of parole violation. From this analysis, the Commission has tentatively adopted criteria to govern the exercise of discretion under the early termination provisions of the Parole Commission and Reorganization Act. The criteria for this early termination provision are currently being field tested.

Other research efforts during this period have concerned themselves with the issue of defining recidivism; a revalidation of the salient factor score used by the Commission; the issue of the application of guidelines to sentencing, and the relationship between the sentencing and parole authority. As time has permitted, the research staff has assisted several other jurisdictions in the country in the development of parole guidelines. It should be noted here that the States of Oregon, New York, and Florida have legislatively mandated parole decision guidelines systems based on the structure of the Parole Commission and Reorganization Act. A number of other States have administratively developed, or are developing, parole guideline systems.

During the period covering this report, Mr. Chairman, the Parole Commission has participated with the Bureau of Prisons, Department of Justice, and the Department of State, in various treaties concerned with the transfer and parole consideration of U.S. citizens from prisons in those countries. These include, of course, Mexico, Bolivia, Canada, and some others.

We expect our workload to remain somewhat about the same during the upcoming fiscal year. There will be between 22,000 and 23,000 parole consideration decisions, and I might point out to the committee that our parole rate, which this last year was 54.3 percent, is an increase of 10 percent over fiscal year 1977. I should also note that in the last 2 years there have been six new appointments to the Commission, and we appear to be adequately staffed to carry out our work under the law.

The Parole Commission and Reorganization Act is now close to 3 years old. In some areas there has been some misunderstanding of the act among some of the judiciary. The Parole Commission has worked very diligently at trying to reduce that level of misunderstanding. We have maintained constant written communication with the judiciary, and we have participated in a number of sentencing institutes and seminars for Federal judges.

There is one feature of the act concerning the mandatory forfeiture of "street time" by a parole violator that is personally somewhat troublesome, and that I would like to bring to the committee's attention. The act provides, Mr. Chairman, that if a parolee commits any offense punishable by any term of imprisonment or detention or incarceration in any type of penal institution, he shall receive no credit for service of his sentence from the day he has been released on parole until he is either returned to Federal custody or our warrant is executed, permitting concurrent service with any new term. In either case, a parolee, even with a minor new offense, looses all street-time credit.

I'm of the opinion that it would be better to allow a parolee to receive credit for all street time until the time of his violation. The effect of the law as it is currently written permits the Commission to continue jurisdiction over those minor violators who are going to stumble along in life for, perhaps, an infinite number of years.

Finally, Mr. Chairman, I wish to thank you for the opportunity to appear before the committee and make these general statements, and I would be pleased to respond to any questions that you might have.

[Prepared statement of Mr. McCall follows:]

PREPARED STATEMENT OF CECIL C. MCCALL, CHAIRMAN, U.S. PAROLE COMMISSION

Mr. Chairman, I am very pleased to apepar before your Committee concerning the operations of the United States Parole Commission. Appearing with me today is the Vice Chairman of the Parole Commission, Benjamin Malcolm, and also Dr. Peter Hoffman, Director of our Research Section, and Joseph Barry, our General Counsel.

In the two years since the last Oversight Committee Hearings in February of 1977, the Parole Commission has moved forward in a number of program areas which I am pleased to highlight for you.

1. PRESUMPTIVE PAROLE DATES

In keeping with the intent of the Parole Commission and Reorganization Act to reduce unnecessary uncertainty in the setting of release dates without removing the opportunity to consider significant changes in circumstances, the Parole Commission has adopted what is called a Presumptive Parole Date Plan. After wide and extensive comment from a number of sources, the Parole Commission in September of 1977 began to notify prisoners of presumptive release dates up to four years away. We began to offer all prisoners with sentences of less than seven years the opportunity to be interviewed within 120 days and told of their presumptive release dates. This program has met with such favorable response from prisoners, from institutional staff, the academic community, the Parole Commission itself, and others that it has recently been expanded to provide for an early initial hearing and the setting of a presumptive release date for almost all prisoners. Under this expanded procedure, every prisoners, except those serving a ten year minimum term, is offered the opportunity for an early parole hearing and the setting of a presumptive parole date. Of course, once set, subsequent proceedings at every 18 or 24 months are conducted to determine if there are any significant changes which would warrant advancement of this presumptive release date or, of course, in the case of institutional misbehavior, to determine whether postponement of the presumptive release date is warranted. I should note here, parenthetically, that Congressman Mann's Subcommittee on Criminal Justice last year adopted the Parole Commission's recommendation that this expanded presumptive parole date plan be specifically included in the statute.

2. CHANGING THE PRESUMPTIVE PAROLE DATE ONCE SET

Mr. Chairman, the Parole Commission has recently published, for public comment, standards to govern the postponement or rescission of a presumptive parole date based upon the seriousness of the disciplinary infraction following the setting of that date. Furthermore, a task force of the Commission has been established to consider the issue of establishing standards to govern the advancement of presumptive parole dates in cases of superior institutional program achievement. A report of this task force will be presented at the Commission business meeting next week.

3. GUIDELINE REVISION HEARINGS

Mr. Chairman, the Parole Commission and Reorganization Act provides for the periodic consideration of revision of the decision guidelines. This year, in addition to soliciting public comment through the normal vehicle of publishing a notice of the revision and the proposed changes in the Federal Register, the Parole Commission conducted guideline revision hearings in Atlanta, Georgia, Denver, Colorado, and Washington, D.C. Testimony concerning the guidelines and their revision was taken from Federal judges, prosecutors, defense attorneys, academics, and other interested parties. Personally of more importance to me, the Commission conducted hearings on the proposed guideline revision inside the penitentiary in Atlanta and also at the Federal Correctional Institution at Englewood, Colorado, at which testimony from numerous prisoners, as well as institutional representatives, was also taken. All of the testimony, as well as

written comment received, has been analyzed and a proposal for the revision of our current guidelines is being presented at the regularly scheduled Commission business meeting next week.

4. RESEARCH EFFORTS

During this period our Research Section has completed a number of studies, copies of which I would be happy to provide to the Committee. These include an analysis of the relationship between time on parole and the likelihood of parole violation. From this analysis, the Commission has tentatively adopted criteria to govern the exercise discretion under the early termination provisions of the Parole Commission and Reorganization Act. The criteria for this early termination provision are currently being field tested.

Other research efforts during this period have concerned themselves with the issue of defining recidivism; a revalidation of the salient factor score used by the Commission; the issue of the application of guidelines to sentencing, and the relationship betwen the sentencing and parole authority. As time has permitted, the research staff has assisted several other jurisdictions in the country in the development of parole guidelines. It should be noted here that the states of Oregon, New York, and Florida have legislatively mandated parole guidelines systems based on the structure of the Parole Commission and Reorganization Act. A number of other states have administratively developed or are developing parole guideline systems.

5. WORKLOAD

During the period covering this report, Mr. Chairman, the Parole Commission has participated with the Bureau of Prisons, Department of Justice, and the Department of State in various treaties concerned with the transfer and parole consideration of U.S. citizens from prisons in those countries. These include, of course, Mexico, Bolivia, Canada and others.

We expect our workload to remain somewhat about the same during the upcoming fiscal year. There will be between 22 and 23 thousand parole consideration decisions, and I might point out that our parole rate, which this last year was 54.3 percent, is an increase of 10 percent over fiscal year 1977. I should also note that in the last two years there have been six new appointments to the Commission, and we appear to be adequately staffed to carry out our work.

6. PROBLEM AREAS

The Parole Commission and Reorganization Act is now close to three years old. In some areas there has been some misunderstanding of the Act among some of the Judiciary. The Parole Commission has worked very diligently at trying to reduce that level of misunderstanding. We have maintained constant written communication with the Judiciary, and we have participated in a number of sentencing institutes and seminars for federal judges.

There is one feature of the Act concerning the mandatory forfeiture of 'street time' by a parole violator that is personally somewhat troublesome and that I would like to bring to the Committee's attention. The Act provides, Mr. Chairman, that if a parolee commits any offense punishable by any term of imprisonment or detention or incarceration in any type of penal institution, he shall receive no credit for service of his sentence from the day he has been released on parole until he is either returned to federal custody of our warrant is executed permitting concurrent service with any new term. In either case, a parolee, even with a minor new offense, looses all street time credit. I'm of the opinion that it would be better to allow a parolee to receive credit for all street time until the time of his violation. The effect of the law as it is currently written permits the Commission to continue jurisdiction over those minor violators who are going to stumble along in life for perhaps an infinite number of years.

Finally, Mr. Chairman, I wish to thank you for the opportunity to appear before the Committee and make these general statements. I would be very pleased to respond to any questions that you might have.

Mr. KASTENMEIER. Thank you very much, Chairman McCall.

I would like, first of all, to yield to the gentleman from North Carolina since he has a conflict, if he has any questions at this time.

The gentleman from North Carolina.

Mr. GUDGER. Thank you, Mr. Chairman.

Chairman McCall, I believe several States do have credit for good behavior, good time, within the parole; that is, "free time" as it is referred to in here——

Mr. MCCALL. Yes.

Mr. GUDGER [continuing]. Against the sentence imposed.

Mr. MCCALL. Yes, sir.

Mr. GUDGER. And, thus, what you are suggesting does have some precedent in State experience.

Mr. MCCALL. Yes, sir.

Mr. GUDGER. Can you give me any enlightenment as to what the States which have tried this have to say about it? Do you find that they are confident in the experiment that they are undertaking? Because this is a fairly new concept.

Mr. MCCALL. Congressman Gudger, I can comment on the State that I came from, and served as parole chairman in that State, in which it was, in fact, invested time until the alleged violation occurred. If a man had been out on parole for 3 years, and he had been earning time off of the sentence originally imposed, he would continue to earn up until the time it was alleged he violated the conditions of his parole.

As it is now, of course, if he's out 3 years, and he has a minor violation, as I indicated, punishable by 10 days, or 30 days, or whatever, he looses that 3 years and he starts over again.

Mr. GUDGER. And this, of course, has the effect of total revocation of his parole, as of the date he walks out of the prison he still has all the remaining time to make up as well as serve under the new sentence——

Mr. MCCALL. That's right.

Mr. GUDGER [continuing]. Of the new offense.

Mr. MCCALL. That's correct.

Mr. GUDGER. And what you are suggesting is the trial judge can deal with the new offense and give credit for this against the balance of parole?

Mr. MCCALL. I'm suggesting that, in my opinion, it ought to be discretionary with the Parole Commission when they violate an individual, that he would, in fact, be granted the time that he has earned on that sentence up until the time of the violation.

Mr. GUDGER. You conceive of it best as the discretionary power in the Parole Commission?

Mr. MCCALL. Yes, sir.

Mr. GUDGER. And the Parole Commission could then take what sentence the judge had imposed on the new offense, also, into consideration in arriving at a decision?

Mr. MCCALL. Yes, sir.

Mr. GUDGER. One other question, some States have one-fourth the sentence as eligibility date for parole consideration, the Federal system has one-third. Are other States in different format on this, some of them requiring as much, say, as 40 or 50 percent?

Mr. MCCALL. I'm not familiar with any, Congresman Gudger, that go beyond one-third, perhaps there are some. By far the majority are one-third. Of course, the Federal statute, most inmates in the Federal system are sentenced under the regular adult sentence which requires one-third. I believe between 1,500 and 2,000 a year are sentenced from the indeterminate sentence provision.

Mr. GUDGER. Do you think there would be some advantage if all the States were uniform in their advocation of the minimum rule?

For instance, North Carolina has one-fourth, and yet you're convicted in the Federal system even for an offense identical in definition to the State offense, the eligibility date one-third.

Mr. MCCALL. Congressman Gudger, I'm not sure that I can comment on North Carolina. I, personally, feel that perhaps the best mechanism is for the court to impose 1-year ineligibility; for example, we do not consider people sentenced to 1 year or less—for all offenders, and make those individuals sentenced above 1 year eligible for parole at the discretion of the Parole Commission, with the court imposing the maximum.

Mr. GUDGER. As a matter of fact, the functioning of the Parole Commission, I believe, in most States does not become available until after the serving of 1 year; but it may be of interest to you to know that in my own State of North Carolina, because of a prison population problem, we mandated parole for anyone having less than 1 year of sentence after one-third of time served, unless there had been an infraction, as a result of which the Parole Board considered that the granting of that dispensation would not be just.

So, some States deal with these problems in different ways. I merely point that out because I think that, by and large, most of the States now do not expect the Parole Board to function except in a prohibitive sense such as I have indicated——

Mr. MCCALL. Yes, sir.

Mr. GUDGER [continuing]. Until after 1 year of service.

Mr. MCCALL. Yes, sir.

Mr. GUDGER. Do you think this is valid?

Mr. MCCALL. Yes. I see nothing wrong with the court imposing a minimum parole ineligibility; I would not want to see it get terribly great. I think that 1 year is sufficient, and then permit the Parole Commission discretion after that period of time.

Mr. GUDGER. Thank you very much. I compliment you on your testimony.

Mr. MCCALL. Thank you, sir.

Mr. GUDGER. Thank you, Mr. Chairman.

Mr. KASTENMEIER. Commissioner McCall, in your statement you indicate that the amount of increase, 10-percent increase, in the parole rate last year.

To what do you attribute this?

You speak of it in the context of workload. Is it because your commission is at full strength? Is that why this increase in the percentage of parole?

Mr. MCCALL. Mr. Chairman, perhaps I had that under the heading of workload. I'm not certain why there's been more parole; I could only speculate, over the previous year. It could have something to do with type of offenders that are coming into the prison system, the prosecution for white-collar offenders who, one would expect, would have a very good parole-risk prospect.

Mr. KASTENMEIER. I'm trying to figure what it has to do with workload. It is an increase in percentage of considerations or decisions——

Mr. MCCALL. Yes, sir.

Mr. KASTENMEIER [continuing]. Rather than in total numbers?

Mr. McCALL. Yes, sir. It really has nothing to do with the workload, the workload itself, in a number of cases, being considered remaining substantially about the same. I merely placed it in this testimony under that major heading.

Mr. KASTENMEIER. You would not agree that the philosophic incremental adjustment should be any more liberal evaluation of these cases?

Mr. McCALL. I'm sure that has something to do with it. Perhaps it's just a more reasoned approach in each case.

Mr. KASTENMEIER. In that sense it may have something to do with workload to the extent that you have more time for each case, and there may be a tendency to empathize with the individual whose application for parole—I don't know, I'm just seeking an answer if you have one.

Mr. McCALL. An area I wish to point out that appeared, I had noticed previously myself, that when I first came to the Commission there were more decisions percentagewise than there are now being made above the guidelines. There seems to be an equal distribution of decisions being made below the guidelines as there are above the guidelines.

Mr. KASTENMEIER. Commissioner Malcolm, do you have any view of that 10 percent increase in the parole rate?

Mr. MALCOLM. No; none other than the Chairman's comments. I would imagine that philosophy may have something to do with it; I'm not too sure. We all bring different philosophies to the board from our backgrounds and what not, and it may have something to with it.

It may also be the fact that last year, in 1978, we, for the most part, had almost a full complement of commissioners then, with the exception of a short period of time. And, of course, that could have had something to do with it.

Mr. KASTENMEIER. There have been, historically, periods when the Commission has alternately been tough and at other times not so tough with respect to parole decisions. Of course, the Commission is supposed to be an insulated—supposed to be independent, to be able to reach those conclusions itself. As a matter of fact, one of the complaints about the old board was that the Attorney General—I remember a case cited here, Attorney General Mitchell wanted the board to be tougher in terms of releases, and this had some impact. We try to make the board a commission, an independent commission, so that outside influence in terms of reaching its own pursuance of law, reaching its own conclusions. So, this is obviously not a critical question, but it is one out of curiosity, as to what a change would determine.

Going on with the questions, you allude to judiciary misunderstandings. You said that the judiciary had occasional misunderstandings about the 1976 act.

Could you elaborate on that? As someone who initiated the writing of the act, I would be curious to know what difficulties or misunderstandings, explicitly, have taken place.

Mr. McCALL. Mr. Chairman, I think that one of areas in which there are some misunderstandings has to do with what we refer to as the "one-third myth." Some judges felt that under the old statute that prisoners were, in fact, paroled at one-third, and that somehow or the other they attribute to the guidelines system as having done away with that. Of course, they were merely considered at one-third. Some

were, in fact, paroled at one-third, as they are now; some were not paroled at one-third. The data simply would not support any idea that inmates were, in fact, being paroled at one-third, but there are some judges that do feel that they used to be paroled at one-third and they're not now. It's not terribly widespread, but it is felt very strongly by some.

One of the other areas has to do with the disclosure of the presentence investigation. Some of the judges do not wish for their presentence investigation to be disclosed to the inmate; and that has led to some difficulty under the disclosure requirements of the Parole Commission Act.

Mr. KASTENMEIER. Well, if there are, indeed, areas which might indicate modifications of the statute we would invite your comments, your bringing these matters to our attention, such as that point. That is a very explicit point.

The other point is more difficult insofar as you remember from legislative history in this act, we wrestled with the notion of placing the burden, the shifting of the burden from the parolee, or from the inmate to the Commission or to the institution to demonstrate why the prisoner might not be subject to parole. The shifting of the burden was a major question in the decision of the act. We were not able to be absolutely clear about it; in fact, there was compromise. A close reading of the bill suggests the extended shifting of the burden was compromised from earlier versions of it so that while I think it can be administrated, nevertheless that aspect of it was somewhat obscured in the final analysis. I don't know, what the legislative problem with the shifting of the burden from the prisoner, in terms of what the paroles eventuate under the law and under the title in a given case. That was one of the difficulties we had in the writing of the act.

Mr. MCCALL. My impression is that it is their document in the sense of investigation; and even though, of course, if there are portions of the document to be excised or summarized, as the privacy provisions, but some courts are just reluctant to give up that document and share it. We are working on it.

Mr. KASTENMEIER. We also have that question, what should be public and what should not be public in the application of other acts of disclosure, even as to the Commission's own proceedings.

Were there any other areas of misunderstanding by the judiciary?

Mr. MCCALL. Mr. Chairman, there may be, if I might ask General Counsel, who worked more closely with these areas.

[Pause.]

Mr. BARRY. No; I think that the misapprehension of the one-third parole has given us litigation that we recently argued, had argued, with the Solicitor General of the Supreme Court, to iron out the apprehension in one-third of being overriding, of having been, historically.

There had been questions of the ex post facto effect with guidelines after sentence. They have been almost uniformly resolved in favor of the act.

There has been some challenge in the third circuit to be a possible illegality in the guidelines as invading the legislative function or a judicial function, but that was only suggested and sent back.

Mr. KASTENMEIER. You also raised a question of the credit for so-called street time in parole; and, again, this was a question. Well, I share your view, which we were not able to reconcile fully in terms of the House version to our satisfaction.

Mr. MCCALL. Yes, I understood that.

Mr. KASTENMEIER. In your testimony before the other subcommittee on criminal justice on the revision of the Federal Criminal Code, did you relate to them your view about the credit for street time?

Mr. MCCALL. No; I did not, Mr. Chairman.

Mr. KASTENMEIER. But you did have a discussion with them on the expanded presumptive parole date plan, is that correct?

Mr. MCCALL. Yes, sir.

Mr. KASTENMEIER. Did they—if you know—adopt your recommendation that this be included in the statute? Did they have it in their statute, that is their proposed bill?

Mr. MCCALL. Yes, sir; it is in the proposed bill. We were, in fact, going to the expanded presumptive parole date. The authority rests to do that with the Commission, although it was felt that it would, in fact, be nice if the Congress would support even though the Commission itself had the authority to expand the presumptive parole date under the statute. And the committee agreed with that, and included it in their proposal.

Mr. KASTENMEIER. Let me ask you a general question, the last question I have, if you can answer it in a nut shell for us, and we could probably find out the sources.

I would be curious, how is your function modified, and what alterations are proposed, in the provision of the Federal Criminal Code imposed by the Senate last year as S. 1437, and the subcommittee bill as reported out; in a nut shell, what changes, major changes with respect to the Commission and to the Commission's role as you see it are imbedded in those two bills?

Mr. MCCALL. The difference between the two?

Mr. KASTENMEIER. Yes, as contrasted to present law.

Mr. MCCALL. The Parole Commission would, in fact, remain as current, as it does currently under the Parole Commission Reorganization Act under that subcommittee's proposal. I believe the——

Mr. KASTENMEIER. Through the Mann subcommittee proposal there is not substantive change, organizational change, with respect to parole.

Mr. MCCALL. No, sir; not relating to parole, there's some relating to——

Mr. KASTENMEIER. Sentencing?

Mr. MCCALL [continuing]. Sentencing and to the judiciary, I think. Essentially, parole remains the same, and the structure of sentencing.

Mr. KASTENMEIER. And under the Senate bill, S. 1437, the bill that passed the Senate last year, is the Commission dealt with in that bill, or its function?

Mr. MCCALL. Yes. As I recall, Congressman Kastenmeier, it would reduce the number of parolable inmates drastically, parole eligible inmates. It has, of course, the intent of abolishing the parole. It would not affect the Parole Commission currently.

Mr. KASTENMEIER. It would not affect the structure; it would continue to exist, but your workload would be diminished?

Mr. McCALL. Yes; perhaps not right away. It would, in fact, begin to have an effect, I think, rather quickly as new inmates are sentenced under that particular bill.

Mr. KASTENMEIER. Thank you very much.

I yield to my colleague from Illinois.

Mr. RAILSBACK. Thank you, Mr. Chairman.

It's good to see you again.

Mr. McCALL. It's good to see you.

Mr. RAILSBACK. I have a number of questions that should be fairly easy for you to handle.

How many examiners are there now?

Mr. McCALL. About 35, I believe, Congressman Railsback.

Mr. RAILSBACK. Thirty-five.

How many regions have you set up?

Mr. McCALL. Five.

Mr. RAILSBACK. And is there one member of the Parole Commission assigned to each region, or how does that work?

Mr. McCALL. One Commissioner is physically located in that region; yes, sir.

Mr. RAILSBACK. And then, at a parole hearing, is there always one Commissioner present at the parole——

Mr. McCALL. No Commissioner is present, two hearing examiners.

Mr. RAILSBACK. So, it is actually work that is actually done—or at least at parole hearings there are two examiners, at each one?

Mr. McCALL. Yes, sir.

Mr. RAILSBACK. And then what happens if they don't agree, et cetera; do they always agree?

Mr. McCALL. Oh, no. They disagree frequently.

This is a recorded hearing with the inmate, and a summary of the hearing is prepared for the benefit of the Commissioner in that region, and the divergent views are given to the Commission.

Mr. RAILSBACK. I see.

Is the ultimate decision made by the Commissioner assigned to that particular region?

Mr. McCALL. Yes.

Mr. RAILSBACK. So, the hearing examiners actually bring recommendations to the Commissioner?

Mr. McCALL. Yes.

Mr. RAILSBACK. And the Commissioner makes the decision?

Mr. McCALL. He makes the initial decision; I would not consider it an ultimate because, of course, under the act, if there is a negative decision, he may give that decision to the National Appeals Board here in Washington.

Mr. RAILSBACK. Right.

And are the inmates counseled prior to their parole hearing? In other words, do we have counselors now that are not associated with the Parole Board? How does that work?

Mr. McCALL. Yes; they are permitted to have representation at the parole hearing.

Mr. RAILSBACK. What I meant was I remember one time visiting San Quentin. I know that is not a Federal facility, but the inmates expressed concern that they would, maybe, have 5 minutes at a parole

hearing, and that they had no time, or at least very seldom were they ever counseled prior to going before the—that's in California—parole board.

I'm just wondering if our Federal offenders receive any kind of counseling prior to going before the parole board?

Mr. McCall. Under the act, of course, they get their file 30 days in advance of the hearing, and they are frequently discussed with the case managers. And I believe the case manager sits in the parole hearing.

Mr. Railsback. I see.

Now, when parole is denied, we're giving the reasons for denial; is that correct?

Mr. McCall. Yes.

Mr. Railsback. And is that done with the use of forms, or are there expressed reasons given? In other words, in each individual case, is there any standard reason, or standard reasons, given? How does that work?

Mr. McCall. It is a notice of action that the inmate receives an individualized notice of action. And, of course, the Commission operates under a guideline system.

Mr. Railsback. I'm just curious.

So, as a reason of denial, you can say, "It is the opinion of the board that you pose a threat to the community," or something?

I know you wouldn't say it that way, but——

Give me some examples for reasons given to inmates.

Mr. McCall. I'll defer to Mr. Hoffman.

Mr. Hoffman. Let's assume you have an individual being heard. The Commission, under the statute, must rate severity of the offense. Now, let's assume it's a larceny of $25,000, and that's rated as "high severity." And then you have to look at the other background characteristics of the inmate—prior convictions, prior incarcerations, the salient factor score.

Let's assume the individual scores a six, which is right in the middle, a fair parole risk. Now, the guideline range is 20 to 26 months for that offense, so if a panel and a regional commissioner concur——

Mr. Railsback. Who sets up the guidelines?

Mr. Hoffman. The Commission, under section 4206.

If the decision—so, the prisoner will be notified. "You've been rated as a 'high severity offense' because your offense involved larceny of $25,000. You have a salient factor score of six." Then he gets the item-by-item breakdown of how he scored the points. That's gone over with him at the hearing, and he gets that in writing after.

Then it indicates the guideline range, for people with good institutional behaviors, 20 to 26 months, 20 to 24 months, whatever the guideline range might give. Now, if the decision is between 20 to 24 months, the reason is that good cause for going outside the guidelines is not found warranted. However, if a decision is made which departs from the 20- to 24-month guideline range, then the individual has to be given specific reasons. For example, a decision below was warranted because of his superior program achievement over a substantial period of time in this program; or a decision above the guidelines is warranted because of repetitious history of assaultive offenses.

It won't occur in this case if it's for a larceny but you might if it's a robbery and there are three prior robberies.

The advantage of that reason over what is generally thought of as narrative reasons is that if you told an individual a narrative reason which says, "you've committed a serious offense, an armed robbery," you know, "you're not a fit candidate for probation or parole because you have three prior offenses; you have a narcotic history and you are on probation at the time." now those are what customarily are thought of as narrative reasons, but you get one panel that says 18 months, and another panel says 96 months for the same thing. The way the act is set up is that once the Commission sets the guidelines, and you inform the person of the guideline range, then you give your specific reasons where you depart from the guidelines.

Mr. RAILSBACK. Yes. Does our subcommittee have a copy of your guidelines?

Mr. HOFFMAN. Yes; we have seen that Mr. Boggs was provided with all of the revisions in the rules.

Mr. RAILSBACK. Then how many appeals have there been? How many appeals were there in the last year?

Mr. MCCALL. About 2,200, I believe.

Mr. Malcolm is Chairman of the National Appellate Board.

Mr. RAILSBACK. All right, how many members sit on the appellate?

Mr. MCCALL. Three members.

Mr. RAILSBACK. So three of the Parole Commission members are assigned?

Mr. MCCALL. Yes, sir.

Mr. RAILSBACK. And how many appeal to the court, if you know, in the same period? In other words, do they have a right to judicial review?

Mr. MCCALL. No, sir.

Mr. RAILSBACK. There is no right to judicial review?

Mr. HOFFMAN. There is a two-level appeal process, reconsideration at the regional level, and then an appeal to the three-commissioner National Appeal Board in Washington.

Mr. RAILSBACK. I see.

Now, I ask how many employees are there of your operation altogether; how many employees work for the——

Mr. MCCALL. We're authorized at 175.

Mr. RAILSBACK. Pardon me?

Mr. MCCALL. 175.

Mr. RAILSBACK. 175.

Does that include the examiners that you mentioned, 30-something examiners?

Mr. MCCALL. I'm sorry, that is just for—we're currently staffed, I believe, at 163; I believe we're authorized to go up to 175.

Mr. RAILSBACK. And do you feel that you have sufficient personnel to give the offenders, the inmates, a fair hearing?

Mr. MCCALL. Yes, sir, I believe so.

Mr. RAILSBACK. Thank you.

Mr. KASTENMEIER. Well, thank you very much, gentlemen, for your appearance this morning.

Mr. MCCALL. Thank you, Mr. Chairman.

Mr. KASTENMEIER. And, furthermore, I would urge that if you have any legislative recommendations of change that you might communicate them to us.

Mr. MCCALL. Thank you.

Mr. KASTENMEIER. Next the chair would like to call Mr. Wayne Jackson who is Director of the Probation Division, Administrative Office of U.S. Courts.

Mr. JACKSON. Good morning, Mr. Chairman.

With your leave, I'd like to offer my written testimony for inclusion in the record and, perhaps, I could highlight it and then respond to questions following that.

Mr. KASTENMEIER. Your prepared statement will be made part of the record.

Mr. JACKSON. Thank you very much.

TESTIMONY OF WAYNE JACKSON, DIRECTOR, PROBATION DIVISION, ADMINISTRATIVE OFFICE OF U.S. COURTS

Mr. JACKSON. The Administrative Office is responsible for the administrative functions of the U.S. courts and performs such duties as financial management, personnel recordkeeping, and program management responsibilities for bankruptcy, court clerks, public defenders, magistrates, and, more importantly, probation officers. This is performed by approximately 500 employees in 13 divisions in the Administrative Office.

The Division of Probation is the primary agency responsible for the carrying out of the duties set forth in 18 U.S.C. 3656, that the Director of the Administrative Office is responsible for under those statutes.

The 27 members of the Probation Division include: a chief, 3 branch chiefs, 5 regional probation administrators, 4 probation program specialists, an editor, 3 pretrial services specialists, 3 data processors, and 7 secretaries. With the exception of the editor, all of the professionals in the Division came to the Division from field services in the Probation System.

The Division investigates, evaluates, and enforces performance standards and makes recommendations concerning the work of the U.S. probation officers. The office further assesses the budgetary and personnel needs of the System, recommends and reviews legislation affecting criminal law and corrections, and coordinates training and research programs with the Federal Judicial Center. It also administers the operation of 10 pretrial services agencies as established under title II of the Speedy Trial Act, and edits Federal Probation, a professional correctional journal with a controlled circulation of 24,000, and is sent to 50 foreign countries. This publication, is printed in cooperation with the Federal Bureau of Prisons.

The Division also provides staff support for sentencing institutes and for the Judicial Conference Committee on the Administration of the Probation System. It is also responsible for the coordination of institutional release procedures and policies with the Federal Bureau of Prisons and the U.S. Parole Commission. To facilitate this we have five regional probation administrators whose areas of responsibilities parallel the regional organization of the Federal Bureau of Prisons and the U.S. Parole Commission.

Unlike most Federal agencies, the Probation System is not centralized. The employees work directly for the courts in which they serve. The System is comprised of 1,697 probation officers in 93 of the 95 judicial districts. Personnel also include 40 probation officer assistants and a clerical staff of 1,080. Pretrial services agencies currently employ 158 people in the 10 demonstration districts.

The staff of the Probation System is well qualified and very competent. Minimum qualifications include a bachelor's degree and 2 years of professional experience. Approximately 40 percent of the field staff at this point hold advance degrees.

The central goal of the System is to enhance the safety of the community by reducing the incidence of criminal acts by persons under supervision. This is achieved through counseling, guidance, assistance, surveillance, and restraint of offenders to facilitate their reintegration into society as law abiding and productive members.

Probation officers fulfill two major functions to the court, preparing the presentence investigation report and providing supervision for probationers and parolees. In this manner they also act as agents of the Attorney General and are responsible to the Parole Commission for supervision of individuals released on parole.

As of December 31, 1978, the Federal Probation System had a total of 66,641 persons under supervision. Of this total, 47,789 were probationers, 18,852 were parolees. During fiscal year 1978 probation officers completed 103,155 investigative reports for the courts, the Parole Commission, the Bureau of Prisons, and U.S. attorneys. Of these reports, 29,403 were presentence investigations.

Despite the large numbers of cases in the last 2 years, due to the increase in personnel authorized by the Congress, we've been able, as a service, to devote a substantially higher amount of our time to supervision of probationers and parolees than we have in the past.

Training for probation officers is provided by the Federal Judicial Center; however, we play a significant role in the designing and the conduct of these training programs. Our goal is to provide 40 hours of training per officer per year as recommended by the National Advisory Commission on Criminal Justice Standards and Goals and the American Correctional Association. In fiscal year 1979, we will have reached this goal for at least one-half of the field staff. Nine advanced seminars of 1-week duration have been scheduled to reach a total of 900 probation officers or more than half of the total probation officer field complement.

These seminars emphasize skill improvement in case management and presentence investigation techniques. In addition to these seminars we also have specialized courses in management, pretrial services, drug aftercare, and orientation programs for newly appointed probation officers.

The Probation Division has entered into a series of new areas of interest, and of primary consideration at this point is publication No. 105, "The Presentence Investigation Monograph." In January 1978, we issued this publication which deals with the conduct of presentence investigations and preparation of presentence reports. A committee which was chaired by a chief U.S. district court judge, with representatives from the field probation service, U.S. Parole Commission, Federal Bureau of Prisons, General Counsel's office of the Administrative

Office, and members of the Probation Division. They generated this monograph, and the Probation Committee submitted it for the Judicial Council approval, and this then constitutes the primary model for the preparation of presentence reports.

Basically, the new document called for a core concept of central information supplemented by additional pertinent data. The monograph requires the development of supervision plans, and sets out goals and objectives to achieve these goals in the supervision process and the establishment of deadlines for the delivery of needed services. It also includes an anticipated level of supervision and sets out the frequency of contact, at least in the initial period of supervision.

More importantly at this point, monograph 105 introduces the use of the Parole Commission's offense severity and salient factor score. This, as a result, eliminates some of the confusion that the courts might have had in terms of arriving at a sentence which they expect will be served as opposed to what the Parole Commission, in reality, will exact.

A number of changes in corrections law also have impacted heavily, and this has resulted in increased attention to disclosure practices and prior information, information used in the sentencing process. The benefits of the monograph, include to greater uniformity and the development of shorter, more concise reports for the courts and other users. As was indicated by Mr. McCall's testimony, the Parole Commission uses a presentence report as a key document in arriving at a parole eligibility determination, and the Bureau of Prisons uses it as the basis of the classification material on inmates after they are received at Federal institutions.

Also in line with newly conceived documents is publication 106, and we have formed a task group to develop a monograph on supervision standards. The general goals and objectives of supervision will be addressed as basically to protect society through close supervision and monitoring, as well as to offer rehabilitation service to those offenders who are willing to participate in these programs.

We are developing a better method for assessing case risk, case needs, and developing case plans. Of course, as well as we did with 105, we are working in close coordination with the Parole Commission, and, in this case, the Federal Judicial Center, regarding the utilization of predictive devices which will aid in setting levels of supervision. Also, they will identify certain social needs such as drug and alcohol problems, and assure maximum use of local rehabilitation resources.

The probation management information system was the result of urging the probation committee, and at the September 1977 meeting of the Judicial Conference, the committee—or actually the Conference—did endorse the need for a modern probation management information ssytem. Four goals were established to be met by this system; and I'll read those at this point:

One: Establish a modern information system for field managers—chiefs, deputy chiefs, supervisors, and probation officers. The system is to provide a current data base with immediate feedback to users.

Two: Provide up-to-date information to guide sentencing courts in selecting sentences for convicted defendants.

Three: Generate national statistics for budget, planning, and management control purposes.

Four: Create a data base for research.

Actually, the first step to come up with this was to determine and describe existing probation information service, and at present we are in a second and final stage of field validation of the system documentation. A report will be prepared by May 15, 1979, to indicate what efforts we've maintained at this point. The next step will be to conduct a cost analysis of the operating probation systems and determine whether or not computer applications are feasible at this point in the probation system.

Pretrial service agencies are the next thing I'll comment on. Title II of the Speedy Trial Act set up 10 demonstration districts, 10 representative districts, in the United States. During the period from October 1975, through April 1976, these agencies began operations under two administrative models. One administrative model was operated by the Probation Division, the others were operated under boards of trustees.

The 10 demonstration agencies have a total of 158 employees, of which 110 are professional and 48 are clerical. These agencies were established to maintain effective supervision and control over, and provide supportive services to defendants released pending trial. Their primary functions are to, one, collect, verify, and report promptly to the judicial officer information pertaining to the pretrial release of persons charged with an offense and recommend appropriate release conditions; second, review and modify the reports and recommedations; third, to supervise and provide supportive services to persons released to their custody; and fourth, to inform the court of violations of conditions of release.

As of March 31, 1979, the agencies had been in operation for 38 months. They had interviewed over 30,000 defendants and supervised 16,000 of those who were released. Extensive data are being collected on these cases to examine and determine the impact these agencies have had in reducing unnecessary detention and new crime while on bail.

Title II requires that we submit a comprehensive report to the Congress on or before July 1, 1979, regarding the administration and operation of these agencies. A preliminary report has been prepared, and the data is being examined at this point.

A survey of the court employees who have been involved in, or worked in a tangential relationship with the pretrial service agency people, namely judges, magistrates, prosecutors, and public defenders, reveals an overwhelming support for these activities of the pretrial service agencies, and they believe they should be continued and expanded to the other 85 district courts.

In accordance with the act, also, we're going to compare the accomplishments of the Federal pretrial services agencies with programs that were used in the State courts. And this study that we have completed indicates that the pretrial service agencies under the operation of the Probation Division compare favorably with the State court programs, and are meeting or exceeding the standards that have been developed over the past 2 years by organizations with primary concern on pretrial release.

The act also calls for a comparison of the accomplishments of those agencies operated by boards of trustees as opposed to those under the Federal probation offices. And, again, comparisons are being drawn on the rate of prebail interviews and recommendations, pretrial crimes,

failures to appear, initial release rates, and reduction of detention days. While the differences between the two types of agencies have been observed, the reasons for them have yet to be identified and documented. Further analysis will be necessary to complete this phase of the study.

Collection of data for the final report was completed as of March 31, 1979, and we are now in the process of completing the analysis and will submit our final report to Congress as of July 1, 1979.

The witness protection program is another area that the Probation Division has been involved in. This program was authorized under the Organized Control Act of 1980. Its purpose, of course, was to induce reluctant witnesses to testify, and, thereby, they could receive personal protection, financial assistance, relocation, and limited documentation of an assumed identity.

Although the courts were aware of the witness protection program, many courts were reluctant to use probation as a sentencing alternative because supervision of some of these offenders was found to be inadequate. During the earlier days of the implementation of the program, the Marshals Service, which assigned new identities to the witnesses and moved them around, was also responsible for supervising the witnesses who were placed on probation. However, this level of supervision was not always consistent with what the court expected. Special conditions from the court were not always properly monitored, and the probationer-witnesses moved about without approval or knowledge of the court, and oftentimes became involved in new offenses. The supportive services and counseling usually provided probationers under this scheme also were not readily available to these offenders.

In 1977, we became involved in the program, learned of the difficulties some of the districts were having in supervising the persons in the witness protection program. Some officers maintained these cases in an inactive status because they did not want to compromise the new locations and identify the people in the witness protection program. This created a serious dilemma for us, because we were unable to carry out our statutory duties required by the court in terms of keeping the court informed of the conduct and condition of each probationer without risk to the probationer in this instance.

We got in contact with the Department of Justice, and we came up with a program which we feel, at the present time, is helpful in motivating and assisting the probationers to find employment and, hopefully, reducing or terminating the risk for financial assistance.

The policies and plan that we've worked up have been greatly reduced in terms of the number of people involved in the program, and we operate this on a need-to-know basis. Basically, what we want to do is to reduce the risk of accidental disclosure and true identity and location for a protected witness.

The development and implementation of these procedures, we feel, has increased the degree of control and the quality of services afforded probationers in the witness protection program.

Another area we recently got involved with was the employment placement problems. Earlier the Federal Bureau of Prisons had the responsibility for developing employment resources and making job referrals to all the persons under their supervision. The Federal Probation System, on March 16, 1977, assumed this responsibility, which

includes all those paroled or manditorily released from Federal institutions.

The Probation Division has recommended that each district review existing caseloads to determine what types of employment problems exist, set forth plans to address the identified problems, review and maintain information regarding current resources, and implement operational methods to bring together the offender and available community resources.

In conjunction with the Federal Judicial Center, in 1978, we conducted three training seminars that involved over 100 probation officers. These week-long seminars included training in many of the areas that we feel are necessary to enhance the satisfactory vocational employment potential placement for persons under supervision.

Drug aftercare is another area that we recently got involved with. The Narcotic Addict Rehabilitation Act of 1966 first authorized supervisory aftercare as a portion of the formal sentencing alternative. In 1972, Public Law 92–293 extended the availability of aftercare services to all Federal probationers and parolees with drug dependence problems.

In 1978, we conducted a study to identify the drug abuse treatment needs of persons under supervision of the Federal Probation Service. This study identified 15,800 persons with a history of drug abuse for 25 percent of all persons under the supervision of the Federal Probation System. Of this number, 10,457 were not in need of current treatment. 463 had refused treatment, and 376 were not in treatment because a treatment program was not available. The remaining 4,504 cases were identified as being in treatment; 2,688 of those were in treatment programs funded by the Federal Bureau of Prisons. While only 5,343 persons out of the total of 15,800 were either in treatment or in need of treatment, the remaining two-thirds of the persons with drug abuse histories still required a greater degree of supervision than the normal or nondrug abuse case.

Throughout the history of drug aftercare, the management of the contract treatment program and the supervision of the persons receiving treatment has been split with authority for contracting, monitoring, and funding the programs resting with the Federal Bureau of Prisons, and supervision of the persons in the program being the responsibility of the Federal Probation Service.

In October 1978, Congress passed Public Law 95–537, which transfers the contract authority for aftercare from the Attorney General to the Director of the Administrative Office. The Probation Division is currently developing new operational and contracting procedures for drug aftercare placement and treatment. In this regard we're consulting with NIDA, and LEAA, and the Bureau of Prisons for advice and assistance in developing these new procedures.

We anticipate the aftercare procedures will be distributed by May 1, 1979, and contracting process set to begin on June 15, 1979. We've initiated an imaginative and thorough training for Federal probation officers in this new area, and we're looking forward to accepting this new responsibility, and with the active involvement of the probation officer in the contracting and treatment process we anticipate that we will be able to administer a comprehensive and fiscally responsible aftercare treatment program.

At this point I would like to shift to comments concerning the current status and addressing issues that we feel might be of interest to you.

We in the Probation System share with the Congress the desire to implement programs and procedures which support the greatest benefits to the offender and the community while conserving scarce financial and manpower resources. We have been particularly involved in two programs, pretrial diversion and voluntary surrender of convicted offenders for service of sentence. Experience has shown both programs to be very successful, but they lack statutory authority, and, therefore, we feel that they are underutilized.

Pretrial diversion has been in effect for many years through administrative agreement between the judiciary and the Department of Justice. As of December 31, 1978, a toal of 2,317 persons were in pretrial diversion, or a total of only 3.4 percent of the total 66,641 persons under supervision.

Pretrial diversion is actually used to identify those offenders who pose little risk to the community and who have a potential for accepting and benefiting from the assistance of probation officers. We screen these individuals for diversion programs, and offer assistance to them in improving their conduct and condition in the community, and a degree of control is maintained to insure that they responsibly comply with the condition of their diversion agreement.

Analysis of data maintained by the Administrative Office indicates that only 3.4 percent of these people were terminated for violation of the conditions of the diversion agreement during the 12-month period ending June 30, 1978. These data alone indicate a degree of success sufficient to justify expansion of this program.

Voluntary surrender is another program we feel should be greatly expanded by statutory authorization. At the current time the sentencing court has the option of having selected convicted offenders to report voluntarily to an appointed place and designated place of confinement. This program provides for substantial saving to the Government by reducing or eliminating the cost of local detention and significant cost of the transporting of these offenders to designated institutions.

While voluntary surrender seems an appropriate course of action, probation officers are instructed to make specific recommendations to the court based on information developed during the presentence report.

The Bureau of Prisons conducted a 6-month study in 1978 of 199 offenders in the Northeast region who were allowed to voluntarily surrender at the place of confinement. Only three offenders failed to report and they were subsequently arrested.

The estimated financial savings to the Government in the 6-month period was $136,458. In addition to the financial savings, the program eliminate the need for these low-risk offenders to be detained in local jails where, oftentimes, local facilities are well below the standards of Federal institutions.

The program is endorsed by the Judicial Conference, the Bureau of Prisons, and the U.S. Marshals Service. Again, as in the case of pretrial diversion, the program is underutilized because of a lack of specific statutory authority.

The protection of probation officers is another concern of the Probation System at this point. The Judicial Conference has indicated a concern in this area dating back to 1952. At its March 1979 meeting, the Judicial Conference approved, again, a legislative proposal to amend 18 U.S.C. 1114 to provide for the protection of probation officers. This is a matter of serious concern to all of the employees of the Federal Probation System. During 1978, our officers were involved in 63 reported hazardous incidents. These incidents were recorded in three main categories—threats, dangerous situations, and assaults. A total of 28 of our officers received threats and were victims of assaults on 11 occasions, and were involved in 24 dangerous situation, 9 of which involved weapons.

Our officers work under conditions of hazard equal to or exceeding those of many Federal officers covered by this statute, yet they lack the same protection. State and local prosecutorial agencies often are hesitant to pursue cases of assault or threatened violence against our officers because they feel it should be a matter for Federal prosecution. Thus, our officers are placed in hazardous situations by virtue of the nature of their duties without the same type of protection afforded to other Federal officers and, in some cases, less protection than covered by law for an ordinary citizen.

Mr. Chairman, this concludes my formal remarks. I'll be happy to answer any questions you might have, and I appreciate the opportunity to appear before the committee.

[Complete statement follows:]

PREPARED STATEMENT OF WAYNE P. JACKSON, CHIEF, DIVISION OF PROBATION, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Mr. Chairman and Members of the Subcommittee, I am Wayne P. Jackson, chief of the Division of Probation, Administrative Office of the United States Courts. I began my career in corrections in Tulsa, Oklahoma, where I was a police officer from 1954 to 1957. In 1957 I became a probation counselor for the Tulsa County Juvenile Court and in 1959 I was appointed as a United States probation officer in the Northern District of Illinois where I served until 1967. I then joined the Administrative Office as an assistant chief of the Probation Division and became chief of the Division in 1972. As chief of the Probation Division I am a member of the Advisory Corrections Council, authorized by Section 5002 of Title 18 of the United States Code. I serve on boards of the American Correctional Association, the American Probation and Parole Association, and several other professional correctional organizations. I appreciate the opportunity to appear before you today to report on the current status of the Federal Probation System and to review with you some of our current concerns.

First, let me briefly describe the role of the Administrative Office and the Probation Division and our unique relationship to the Federal Probation System.

The Administrative Office is responsible for the administrative functions of the United States courts. Duties such as financial management, personnel, record-keeping, and program management responsibilities for bankruptcy, court clerks, public defenders, magistrates, and probation officers are performed by approximately 500 employees in 13 separate divisions.

The Division of Probation discharges the probation-related responsibilities assigned by statute at 18 U.S.C. 3656 to the Director of the Administrative Office. The 27 staff members of the Division include a chief, 3 branch chiefs, 5 regional probation administrators, 4 probation program specialists, 1 editor, 3 pretrial services specialists, 3 data processors, and 7 secretaries. With the exception of the editor, all of the professionals in the Probation Division served as United States probation officers before joining the staff of the Probation Division. The Division investigates, evaluates, and enforces performance standards and makes recommendations concerning the work of the United States probation officers. The office

assesses personnel and budget needs of the Probation System, recommends and reviews legislation affecting criminal law and corrections, coordinates training and research programs with the Federal Judicial Center, and administers the operation of 10 pretrial services agencies as part of a demonstration project established by Title II of the Speedy Trial Act. The Division edits Federal Probation Quarterly—a professional journal of correctional philosophy and practice which is published with the cooperation of the Bureau of Prisons. The controlled circulation is 24,000 in the United States and 50 foreign countries. The Division also provides staff support for sentencing institutes and for the Judicial Conference Committee on the Administration of the Probation System. The Division is responsible for coordination of institutional and release programs and policies with the Federal Bureau of Prisons and the United States Parole Commission. To facilitate this coordination the five regional probation administrators are assigned areas of the country which parallel the regional organization of the Federal Bureau of Prisons and the United States Parole Commission.

Unlike most Federal agencies, the Probation System is not centralized. The employees are directly responsible to the courts they serve. The system is composed of 1,697 probation officers serving in approximately 300 field offices throughout 93 of the 95 judicial districts of the United States. Personnel also include 40 probation officer assistants and a clerical staff of 1,080. Pretrial services agency employees number 158 in the 10 demonstration districts. The professional staff of the Probation System is well trained and highly qualified. Minimum qualifications for appointment include a bachelor's degree and not less than 2 years' professional experience. Approximately 40 percent of the officers hold advanced degrees.

The central goal of the Probation System is to enhance the safety of the community by reducing the incidence of criminal acts by persons under supervision. This is achieved through counseling, guidance, assistance, surveillance, and restraint of offenders to facilitate their reintegration into society as law abiding and productive members.

United States probation officers fulfill two principal responsibilities—preparing presentence investigation reports for the United States district courts and providing supervision services for probationers and, as the official representatives of the United States Parole Commission, for individuals released from Federal institutions.

As of December 31, 1978, the Federal Probation System had a total of 66,641 persons under supervision (47,789 probationers and 18,852 parolees). During fiscal year 1978 probation officers completed 103,155 investigative reports for the courts, the Parole Commission, the Bureau of Prisons, and United States attorneys. Of these reports, 29,403 were presentence investigation reports. Despite the large numbers of cases and investigative reports, the Probation System, as a result of increases in personnel authorized by Congress in recent years, now devotes a greater amount of time to the supervision of probationers and parolees than ever before.

As you know, training for probation officers is provided by the Federal Judicial Center. The Probation Division plays a substantial role in designing and conducting that training. Our goal is to provide probation officers 40 hours of training per year as recommended by the National Advisory Commission on Criminal Justice Standards and Goals and the American Correctional Association. In fiscal year 1979 we will have reached this goal for at least one-half of the probation officer staff. Nine advanced seminars of 1-week duration have been scheduled to reach a total of 900 probation officers or more than half the officer complement. These seminars emphasize skill improvement in case management and presentence investigation techniques. In addition to the advanced seminars the training scheduled for 1979 includes specialized courses in management, pretrial services, drug aftercare, and orientation programs for newly appointed officers.

I would like to acquaint you with some of our recent and current activities.

ADMINISTRATIVE OFFICE PUBLICATION 105—THE PRESENTENCE INVESTIGATION REPORT

In January 1978 the Probation Division issued Publication 105—*The Presentence Investigation Report*. This is a revised statement of standards to guide all probation officers in the conduct of presentence investigations and the preparation of reports. A committee, chaired by a chief United States district court judge, with representatives from field probation offices, the United States Parole Commission, Federal Bureau of Prisons, General Counsel's office of the Administrative Office, and the Probation Division developed the monograph. The Probation Committee of the Judicial Conference has approved this document as the standard

guide for all United States probation officers. Publication 105 introduces a flexible model for preparing presentence investigation reports which requires the probation officer to develop a core of essential information supplemented by additional pertinent data.

The monograph requires the development of supervision plans for defendants eligible for probation. The supervision plan indicates goals, objectives to achieve these goals, and deadlines for delivery of needed services. The plan also includes the anticipated level of supervision—maximum, medium, or minimum—and anticipated frequency of contacts during the initial period of supervision.

Monograph 105 introduces the use of the Parole Commission's Offense Severity and Salient Factor Score. From these scales, estimates can be made as to the likely period of time to be served, if a defendant is committed. This enables the courts to structure informed sentences and avoids unpleasant surprises later when a judge finds that a sentence is going to be executed far differently from what he had intended. Additionally, we now call for the inclusion of national and local data on sentences imposed for similar types of offenses.

A number of changes in corrections law affect the presentence investigation and sentencing processes. This monograph sets new standards for probation practice with special attention to how current law governs disclosure of the presentence report and the use of prior record information in sentencing. The benefits of the monograph are greater uniformity in report writing; shorter, more concise reports for courts and other users; closer observation of the latest standards of law with respect to contents and disclosure.

MONOGRAPH ON SUPERVISION—PROPOSED PUBLICATION 106

The Probation Division has found a task group responsible for producing a monograph on supervision standards similar to that which we have on the presentence report. The general goals and objectives of supervision will address the need to protect society through close supervision and monitoring as well as offer rehabilitation services to those offenders willing to change. We are developing a better method for assessing case risk, case needs, and developing case plans. We are working closely with the U.S. Parole Commission and the Federal Judicial Center regarding the utilization of a predictive device which will aid in setting levels of supervision to be provided various offenders. We also intend to establish a systematic method of identifying and meeting various social needs common to offenders such as drug and alcohol problems and insuring maximum use of local rehabilitation resources. Finally we will establish means to evaluate the effectiveness of the various programs and resources we utilize. This monograph will represent proven practice and define the direction Federal probation should take in meeting its supervision responsibilities. We plan to have the monograph completed for publication by the end of this year.

PROBATION MANAGEMENT INFORMATION SYSTEM

At the September 1977 meeting of the Judicial Conference, the Probation Committee reported on the need for an improved information system for probation that would provide more comprehensive and current data on the operations of the Federal Probation System. The Judicial Conference endorsed the Probation Committee's report and adopted four goals to be met by a modern probation information system:

1. Establish a modern information system for field managers—chiefs, deputy chiefs, supervisors, and probation officers. The system is to provide a current data base with immediate feedback to users.

2. Provide up-to-date information to guide sentencing courts in selecting sentences for convicted defendents.

3. Generate national statistics for budget, planning, and management control purposes.

4. Create a data base for research.

The first step of this project has been to describe the existing probation information system; that is, the maintenance, accumulation, flow and retrieval of information necessary to the realization of the probation office's mission. This required the complete description of the day-to-day operations of a probation office.

A task group has collected and examined forms and documents used by four large probation offices, developed a detailed listing of probation office functions, and conducted further studies to assure the validity of the system documentation. At present, the project staff members are undertaking the second and final stage

of field validation of the system documentation. A report will be prepared on this effort by May 15, 1979. The next steps in the project are a cost analysis of operating the probation information systems presently in the district offices, and a study to determine whether computer applications are feasible in the probation system.

PRETRIAL SERVICES AGENCIES

Title II of the Speedy Trial Act of 1974 authorized the Director of the Administrative Office to establish pretrial services agencies on a demonstration basis in 10 representative districts. During the period from October 1975 through April 1976 the 10 agencies began operations under two administrative models. Five have been administered by Federal probation offices and five by boards of trustees. The five probation agencies are Central California, Northern Georgia, Northern Illinois, Southern New York, and Northern Texas. Those administered by boards of trustees are Maryland, Eastern Michigan, Western Missouri, Eastern New York, and Eastern Pennsylvania. The 10 agencies have 158 employees of which 110 are professional and 48 are clerical.

These agencies were established to maintain effective supervision and control over, and provide supportive services to, defendants released pending trial. Their primary functions are to (1) collect, verify, and report promptly to the judicial officer information pertaining to the pretrial release of persons charged with an offense and recommend appropriate release conditions; (2) review and modify the reports and recommendations; (3) supervise and provide supportive services to persons released to their custody; and (4) inform the court of violations of conditions of release.

By March 31, 1979, these agencies had been in operation an average of 38 months. The staff had interviewed over 30,000 defendants and supervised over 16,000 of those who were released. Extensive data are being collected on these cases and examined to determine the impact these agencies have had in reducing unnecessary detention and new crime on bail.

Title II requires that the Director of the Administrative Office make a comprehensive report to the Congress on or before July 1, 1979, regarding the administration and operation of the pretrial services agencies. A preliminary report on the data collected to date has been prepared. At this point it is our impression that the function of providing verified information to judicial officers for the purpose of setting bail improves the quality of justice by making for more informed decisions. Examination of the data is necessary before final conclusions can be drawn and recommendations presented.

A survey of key court personnel in the demonstration districts—judges, magistrates, prosecutors, and public defenders—reveals an overwhelming support for the activities of the pretrial services agencies and the belief that they should be continued.

In accordance with the Act a study was undertaken to compare the accomplishments of the Federal pretrial services agencies with those programs generally used in state courts to guarantee presence at trial. This study indicates that the Federal pretrial services agencies compare favorably with the programs in state courts and are meeting or exceeding standards that have been developed over the past few years by organizations concerned with pretrial release.

The Act also calls for a comparison of the accomplishments of those agencies operated by boards of trustees with those administered by Federal probation offices. Comparisons are being drawn on the rate of prebail interviews and recommendations, pretrial crimes (rearrests on new offenses), failures to appear, initial release rates, and reduction of detention days. While differences between the two types of agencies have been observed, the reasons for them have yet to be identified and documented. Further analysis will be necessary to complete this phase of the study.

Collection of data for the final report was completed March 31, 1979. We are now in the process of completing the analysis and will submit to Congress the final comprehensive report as required by the Act by July 1, 1979.

WITNESSES PROTECTION PROGRAM

The witness protection program was authorized by the Organized Crime Control Act of 1970. Its purpose was to induce reluctant witnesses to testify for the Government in major organized crime cases by offering them a range of services including personal protection, financial assistance, relocation, and limited docu-

mentation of an assumed identity. When deemed necessary, these services could extend to members of the witness' immediate family.

Although the district courts were aware of the witness protection program, many were reluctant to use probation as a sentencing alternative to incarceration since supervision for such offenders was often inadequate. During the earlier days of the implementation of the program, the U.S. Marshals Service, which assigned new identities to witnesses and moved them from the district of jurisdiction to some other location, was also responsible for supervising witnesses who were on probation. However, the level of supervision was not always consistent with what the court expected. Special conditions imposed by the court could not be properly monitored and probationer-witnesses moved about without approval or knowledge of the court and on occasion became involved in new offenses. Equally as important, the supportive services and counseling usually provided probationers were not readily available to these offenders.

In 1977 the Probation Division learned that probation officers were having difficulty in supervising probation cases that were in the witness protection program. Some officers maintained these cases in an inactive status since they did not want to attempt to locate them for fear of exposing their new locations and identities. This obviously created a dilemma since the probation officer was unable to carry out his statutory duties to keep the court informed concerning the conduct and condition of each probationer under his supervision without risk to the probationer.

These problems were discussed with representatives of the Department of Justice who agreed that individuals in the witness protection program who are on probation should be supervised by a probation officer. They believed, and we concurred, that probation officers could be helpful in motivating and assisting the probationer to find employment thereby terminating the need for financial assistance.

As an outgrowth of those discussions the Probation Division and the U.S. Marshals Service drafted a policy statement recognizing each other's responsibilities. In August 1978 guidelines for supervising protected witnesses/probationers were distributed to the field offices. Under these guidelines the Probation Division coordinates the transfer of supervision of probationers who are participants in the program. Special procedures have been developed to statistically account for these cases as well as address special needs which arise during the supervision period.

In order to reduce the risk of accidental disclosure of the true identity or the location of a protected witness, special efforts have been made to limit the number of persons with access to this information. The U.S. Marshals Service has assigned key or contact persons to work closely with the Probation Division. Probation officers assigned responsibility for supervising these individuals in their respective districts are journeymen officers who have demonstrated an ability to deal with sophisticated offenders.

The development and implementation of these procedures have increased the degree of control and the quality of services afforded probationers in the witness

EMPLOYMENT PLACEMENT

The objective of probation and parole supervision is the protection of the community through the rehabilitation of the offender. Employment is certainly a significant factor in the offender's rehabilitation. Employment provides the offender with a personal stake in society and a sense of dignity and personal success.

To facilitate the adjustment of persons under supervision the probation officer has the responsibility to utilize all available resources. Until March 1977 one of those resources had been the employment assistance offered by the Federal Bureau of Prisons' employment placement program. On March 16, 1977, the Probation Division and the Federal Bureau of Prisons entered into an agreement that the Federal Probation System would assume responsibility for developing employment resources and making job referrals for all persons under supervision including those paroled or mandatorily released from Federal institutions. All districts were encouraged to initiate or expand programs of employment placement.

The Probation Division recommended that each district (1) review caseloads to determine what types of employment problems exists; (2) set forth plans to address the identified problems; (3) review and maintain information regarding

current local resources; and (4) implement operational methods to bring together the offender and available community resources.

In conjunction with the Federal Judicial Center the Probation Division, during 1978, conducted three training seminars for over 100 U.S. probation officers involved in employment placement activities. The weeklong seminars included training in legal issues; the development and use of community resources; job readiness training; and brokerage and direct placement techniques.

The Probation Division is continuing its involvement in employment placement and will monitor the employment placement activities of our officers. A survey of employment placement needs and activities is being designed to identify necessary areas of future involvement. This continued study will provide probation officers with the proper tools to assist persons under supervision in meaningful employment.

DRUG AFTERCARE

For years the drug abusing offender has presented a special sentencing problem for the courts. In 1966 with passage of the Narcotic Addict Rehabilitation Act Congress authorized supervisory aftercare as part of a formal sentencing alternative. In 1972, Public Law 92-293 extended availability of aftercare services to all Federal probationers and parolees with drug dependence problems.

In 1978 the Probation Division conducted a survey to identify the drug abuse treatment needs of persons under supervision. The survey identified 15,800 persons with a history of drug abuse, 25 percent of all persons under supervision. Of this number 10,457 were not in need of current treatment, 463 had refused treatment, and 376 were not in treatment because a treatment program was not available. The remaining 4,504 persons were identified as being in treatment—2,688 of those were in treatment programs funded by the Federal Bureau of Prisons. While only 5,343 persons out of the total of 15,800 were either in treatment or in need of treatment, the remaining two-thirds of the persons with drug abuse history still required a greater degree of supervision than nondrug abusers.

Throughout the history of drug aftercare the management of the contract treatment program and the supervision of the persons receiving treatment has been split with authority for contracting, monitoring, and funding of programs resting with the Federal Bureau of Prisons and supervision of the offenders in programs resting with the Federal Probation System. In a move to consolidate the fiscal and supervisory responsibilities under one agency, the Federal Bureau of Prisons advocated legislation to effect that consolidation.

In October of 1978 Congress passed Public Law 95-537, the Contract Services for Drug Dependent Federal Offenders Act of 1978. This Act provided for the transfer of contract authority for aftercare from the Attorney General to the Director of the Administrative Office of the United States Courts, effective October 1, 1979.

The Probation Division is developing new operational and contracting procedures for drug aftercare placement and treatment. We are consulting with the National Institute on Drug Abuse, the Law Enforcement Assistance Administration, and the Bureau of Prisons for advice and assistance in the development of these procedures. The Probation System has many officers with a wide range of expertise in drug treatment who have been asked to review drafts of the procedures and forward their comments to the Probation Division.

We anticipate that the aftercare procedures will be distributed by May 1 1979, with the contracting process set to begin on June 15, 1979. Training programs for 150 probation officers will be held early this summer. Each chief probation officer, acting as the authorized representative of the Director of the Administrative Office in drug aftercare contracting, will be responsible for the solicitation, negotiation, and monitoring of all drug aftercare programs in his district. This major responsibility will be monitored in the Probation Division by the five regional probation administrators.

We are looking forward to this new responsibility. With the active involvement of the probation officer in the contracting and treatment process we anticipate that we will be able to administer a comprehensive and fiscally responsible aftercare treatment program.

At this point I would like to conclude my comments on the current status of the Federal Probation System and shift to a discussion of concerns that may be of interest to you.

The Probation System shares with the Congress the desire to implement programs and procedures which offer the greatest benefit to the offender and the community while conserving scarce financial and manpower resources. We have been participating in two such programs during recent years—pretrial diversion and voluntary surrender of convicted offenders for service of sentence. Experience has shown both programs to be very successful but they tend to be underutilized because of the lack of specific statutory authority.

PRETRIAL DIVERSION

Pretrial diversion programs have been implemented for many years through administrative agreement between the judiciary and the Department of Justice. As of December 31, 1978, the Probation System was supervising 2,317 persons on pretrial diversion, only 3.4 percent of the total of 66,641 persons under supervision. The goals of pretrial diversion are to identify those accused offenders who pose relatively little risk to the community and who have the potential for accepting and benefiting from the assistance offered by the probation officer. Those individuals screened for diversion are offered assistance in improving their conduct and condition in the community and a degree of control is maintained to insure they responsibly comply with the condition of their diversion agreement. The participation of the accused offender is voluntary and the program is based on the prosecutorial discretion of the U.S. Attorney's office and the agreement of the individual court for the probation office to provide supervision.

Analysis of data maintained by the Administrative Office reveals that only 3.4 percent of the persons terminated from pretrial diversion supervision were terminated for violation of the conditions of the diversion agreement during the 12-month period ending on June 30, 1978. These data alone indicated a degree of success sufficient to justify expansion of this program. When we consider the additional benefits of reduction of the workload of the courts and elimination of certain disabilities resulting from criminal convictions, the program is even more desirable. Some courts are reluctant to authorize their probation office to participate in pretrial diversion programs in the absence of statutory provisions for this dispositional alternative. The Judicial Conference at its September 1977 meeting endorsed H.R. 5792—a bill to establish a pretrial diversion program in the judiciary—introduced by Mr. Railsback in the 95th Congress. We request your support for such legislation authorizing pretrial diversion so the practice may be formally and legally expanded.

VOLUNTARY SURRENDER

The voluntary surrender program was implemented by the Bureau of Prisons with the cooperation of the Probation System and the U.S. Marshals Service in 1975. At the discretion of the sentencing court, selected convicted offenders are permitted to surrender voluntarily on an appointed date at the designated place of confinement. This program provides for substantial savings to the Government by reducing or eliminating the cost of detention of committed offenders in local jails pending transfer and reduction of the cost of transporting offenders to the designated institutions. When voluntary surrender seems an appropriate course of action probation officers are instructed to make specific recommendations to the court based on information developed during the presentence investigation.

A recent study by the Bureau of Prisons revealed that during a 6-month period in 1978, 199 offenders in the Northeast region were allowed to voluntarily surrender at the place of confinement. Only three offenders failed to report and they were subsequently arrested. The estimated financial savings to the Government in this region during this 6-month period was $136,458. In addition to the financial savings, this program eliminated the need for these low risk offenders to be detained in local jails where conditions of confinement are frequently on a level well below most Federal institutions.

This program is endorsed by the Judicial Conference, the Bureau of Prisons, and the U.S. Marshals Service. As in the case of pretrial diversion, in my opinion, this program is underutilized because of a lack of specific statutory authority. The Judicial Conference has recommended amendment to Federal release statutes to provide for this type of release after conviction and for specific penalties for failure to surrender as directed. The only sanction now available to the courts for failure to report to the institution is contempt of court. Consequently, some

courts are reluctant to use this program even though they support its principles. Specific statutory authority will encourage sentencing judges to make greater use of this program which benefits the Government and the individual without any significant threat to the community.

PROTECTION OF PROBATION OFFICERS

The Judicial Conference has indicated its desire for legislation to afford protection for U.S. probation officers on a number of occasions dating back to 1952. At its March 1979 meeting the Judicial Conference approved a legislative proposal to amend 18 U.S.C. 1114 to provide for the protection of probation officers. This is a matter of serious concern to the employees of the Probation System. During 1978 our officers were involved in 63 reported hazardous incidents. These incidents were recorded in three main categories—threats, dangerous situations, and assaults. Our officers received 28 threats, were victims of assaults on 11 occasions, and were involved in 24 dangerous situations, nine of which involved weapons.

Our officers work under conditions of hazard equal to or exceeding those of many officers presently covered by the Federal protection statute yet they lack the same protection. State and local prosecutorial agencies often are hesitant to pursue cases of assault or threatened violence against our officers because they feel it should be a matter for Federal prosecution. Thus our officers are placed in hazardous situations by virtue of the nature of their duties without the protection afforded to other Federal officers and in some cases with even less protection under law than the ordinary citizen. We urge your support of legislation to correct this situation.

Mr. Chairman, this concludes my formal remarks. I thank you for the opportunity to appear before you today and I shall be happy to answer any questions you or a member of the subcommittee might have.

Mr. KASTENMEIER. Thank you, Mr. Jackson, for a very thorough discussion of the services and the Division's responsibilities.

Really, at the present time you do more than exercise the function of probation as such. Have you ever thought of changing the name of your division to something broader, more descriptive of your duties?

Mr. JACKSON. Well, that has never really been a factor; although, as you suggest, we do cover a wide range of activities in the field. And, again, the concept of working for the 95 district courts might impact on the desirability of effecting a name change.

Mr. KASTENMEIER. To some extent you indicate that there is an overlapping, you exercise similar functions as the Marshals Service in handling offenders. You mention a witness protection agency, and the witness protection program, and certain other areas, and voluntary surrender, are essentially under the Marshals Service presently, but you do have a partial responsibility to these cases.

Has that ever been a problem with the Marshals Service?

Mr. JACKSON. Actually, despite the importance that you subscribe to these two areas, we actually interact more thoroughly, more essentially, with the Bureau of Prisons and Parole Commission. However, to answer your question more specifically, no, the degree of cooperation we have received from the Marshals Service has been very good, and although there is a bifurcation of duties so to speak, or assignment, what we try to do is preclude any overlap. And this is what we have done in terms of the new witness protection program that we have come up with so that we do not overlap in terms of what the marshals responsibilities. We do, however, provide for the supervision of those people, and we have provided for a system where we can track these individuals, actually through our division in Washington, therefore not comprising the identity of the protected witnesses.

We do provide, and have the facility to provide, a more expansive service to these people than the Marshals Service can, due to our extensive roots in the community. For example, one of the problems the Marshals Service outlined to us initially was the securing of employment for these cases in the witness protection program. The Marshals Service, of course, really had scarce resources in terms of employment placement concepts, whereas our probation officers perform this function as an integral part of their normal duties. Therefore, the assumption of these services, I think, greatly expands and enlarges upon finding suitable employment for these people that the Marshals Service just was not able to provide at that point.

So, like I say, with this sort of division of duties, I think it is a natural split, and we have never had any trouble interfacing with anybody in the Department of Justice with our responsibilities to persons on probation and parole.

Mr. KASTENMEIER. How involved is the provision in terms of concerning the debate as to whether rehabilitation of offenders is possible or can be effective?

In recent years the so-called rehabilitation model has been under attack, and there is some feeling that remaining incarceration for those in prison may be the goal affording an opportunity to be sure, but the presumption that people would be cured or rehabilitated is really not a valid one any longer.

Do you have any view on this particular situation?

Mr. JACKSON. I don't know if the Probation Service has endorsed such a pessimistic attitude toward the remolding of people. Rehabilitation, I know, is somewhat of a nebulous term. I feel, however, that we might look at it in terms of habilitation instead of rehabilitation. I think our people do an excellent job of impressing upon those persons under our supervision their responsibility as citizens to work under the law. I think in many instances we get individuals, who from the first, have really been faced with a real valid accountability of their actions. The presentence investigation process is much more than just providing a report for the court. At this time our officers enter into a very, very significant degree of rapport with the client. Some information that they might have erroneously put forth as constituting their background is uncovered. I think that in resolving these variances, the establishment of a responsible attitude of the Government with a person under its supervision sets up a relationship that is just hard to describe.

I have been in Washington now since 1967, and it's not at all unusual to get three or four calls a month from people that I had under supervision when I was a probation officer in Chicago from 1959 until 1967. And I submit that this might only be a negligible portion of the caseload: but these people still contact me, and I'm sure the same is true of other members of the Federal Probation system, since our officers have formed a relationship with these people and often the clients still look to us as responsible people to give them advice in terms of their behavior following their period of supervision.

So, I think that probation does have a significant role to play in rehabilitation, not necessarily as difficult as Mr. Carlson in the Bureau of Prisons, because we have a whole plethora of services available in the community. And, again, I think that if the person's risk to society is not substantial, as in the case of deferred prosecution, I feel that we

can accept a larger risk in the community, particularly since our field staff has been increased where we can devote a greater amount of time to supervision than we have in the last few years.

I don't know if that's a circuitous route to answer your question, but I think that, basically, we do feel that we have a significant impact in redirecting the roles of the people, at least a significant portion of the people, directed to us for our custody and care.

Mr. KASTENMEIER. I think many people are surprised to learn from prisoners, particularly from prisoners, that relatively little has been done for them in terms of employment. I think many people assume that, you know, the obvious job of the Bureau of Prisons placement system, or Parole Commission, or Probation Service, that these people, the agencies, individually or collectively, the priorities ought to be when a person leaves prison to be sure that that person has gainful employment; and yet we learn in many cases that that really is not true.

I note, in your statement, you indicated it was only 2 years ago that your service undertook the employment system program that formerly was offered by the Federal Bureau of Prisons employment placement program.

Would you explain a little more specifically the history of that, what that means, who really is responsible for the gainful employment of a person on parole?

Mr. JACKSON. Well, prior to the assumption of this responsibility, the community program officers, or placement officers, in the Bureau of Prisons were the people who were designed or designated with the responsibility to locate employment opportunities within the community. I would have to say that prior to that date we were ill equipped in terms of personnel to embark on some of the programs that we felt that we had particular expertise to work with.

Again, I harken back to the time when I became Chief of the Division, in 1972, we had 640 probation officers in the entire system. Although our workload was much less at that point, we found out that our probation officers had very little time to devote to supervision practices because they were basically employed with taking care of the primary responsibility at that time in preparing the presentence investigations for the court.

So, for us to delude ourselves that we could get into a full range of other type of supportive services such as narcotic aftercare, which we are about to embark upon, employment services, or the witness-protection program, we really could not, in good conscience, address any group and say that we had adequate personnel to perform these functions.

As I said, in 1972 we had 640 officers; we now have 1,697. And, I think that in our representation to Congress in terms of what our needs realistically were has resulted in this growth. We are thankful to Congress for providing these necessary needs. We think now, with our adequate staff, that we can get involved in these programs and provide these services; but, again, I think that prior to the acquisition of these personnel resources we would have been ill advised to tell anyone that we could have taken on the additional responsibilities and have done the type of job that we in the probation service would have wanted to be done in the provision of these types of programs.

I think this is a natural outgrowth, again, with Mr. Carlson and his people basically operating out of 50 institutions and his regional offices, we have some 300 offices in the Federal Probation System—far more saturation within the United States, more familiarity with the communities, which would enable us to do a better job employmentwise. One example of this is our probation office in San Jose, which has entered into agreement with the Ford Motor Co. whereby they have five positions at the plant that are designated for Federal probation. And if one person gets laid off, or transferred, it's an unwritten agreement that there is another position for one of our persons at this plant. It would be very difficult, I think, for the scarce resources of the Bureau of Prisons to obtain the same type of contact or saturation within the community that we can with our people, in the over 300 offices throughout the United States. So, this is, I think, a direct result from the extensive, or additional, programs we were able to embark upon which, quite frankly, we should have done before, but we simply were unable within the constraints of personnel to address these needs.

Mr. KASTENMEIER. I think we've been under the illusion that your division has been primarily concerned with the supervision of persons on probation or parole; that would be the primary job that you have. Maybe report making and other things would be secondary, but, of course, you serve the courts, and presentence investigation. And this comes first.

Mr. JACKSON. I think the average probation officer has little difficulty determining what his priority would be if the judge said, "This report should be to me in 3 days." We've done some preliminary study to indicate how our personnel resources have been used. We completed a study in 1973, for example, which showed that on an average of only 13 minutes a month of face-to-face contact was available per client. And less than 2 years after that study, with additional augmentation of probation officers to our service, that 13-minutes-a-month average went up to 30 minutes a month, and so we do have in fact a significant, greater, degree of time devoted to the area of supervision.

As I indicated earlier, in the early days, or, say, 10 years ago, we were providing what we would consider crisis supervision, only cases that required immediate attention because of arrest or some other critical element. I think we're much more in line with the therapeutic form of supervision now, or rehabilitative services, than we were able to perform at that time.

Mr. KASTENMEIER. I certainly agree with this realinement of responsibilities. I think, at least in practice, the Federal Bureau of Prisons, or even the Parole Commission, is less able as an institution to atttempt to meet the needs of individuals in society as opposed to instituting these in prison, and, I think, the Probation Division.

In terms of one of these programs that you are indicating, the treatment for drug aftercare, are you satisfied that you have the resources and expertise to administer this program?

Mr. JACKSON. Yes, sir, we are at the present time. There are some variables that are hard to really describe at this point. While the initial funding of $3.5 million for the first year seems to be adequate, I think, as our officers receive additional training, I feel that we will identify more people in need of these services in our caseloads. As

they develop expertise to determine who needs these services, we're probably going to see a significant increase in a number of people going through the programs.

However, at the other end of the scale, due to the competency of the people that we have, I would say that the Federal Probation System probably has the most competent, qualified, and professional staff of any entity within the Federal Government. I don't have any qualifications in terms of their ability to perform services. Therefore, many of the contracts that were let before, say counseling, I think we would be able to compete in-house, and, also, due to the efficiency of our field offices in locating local community resources, I think that many existing community resources will be brought into play that will not require the dollar outlay of professional contracting services.

So, I think that there is a spinoff. As we get deeper into the program in terms of more people being involved in narcotic aftercare, more drug abuse people will be identified and become involved in the program. However, I think that we will be able to pick up a significant portion of the counseling load since the quality of our offices will allow for this, and, at the same time, locate community resources that would preclude, perhaps, contracting for the services on a formal basis.

Mr. KASTENMEIER. Both with respect to voluntary surrender authority and pretrial diversion, since the practice is being followed presently, why do we require specific statutory authority?

Mr. JACKSON. Well, as for voluntary surrender, at this point some of the judges feel that without the penalty, for failing to report there is a certain reluctance to use the program. What happens if a person fails to report? At present our only option is to initiate contempt of court proceeding which some courts feel is a very shallow response.

So, we feel with statutory authority to impose a penalty for failing to report, a little teeth would be put into programs with a greater acceptance and use by the courts. I think with such a statute the program would be utilized more extensively.

There are significant administrative factors, some very humorous, for example, if you don't understand or carefully plan the concept of voluntary surrender.

We had one person report to an institution on the west coast. He walked up to the gate and said, "Here I am."

And they said, "Who are you?"

Since the institution hadn't received a formal commitment order, Mr. Carlson's office was contacted, and they had to arrange to put this person in a local motel and provide subsistance until they could get the statutory authority or legal authorization to get him into the institution.

There are a lot of administrative problems that need to be worked out, but I think the statutory responsibility would ease some current concerns and cause the program to be used more.

Mr. KASTENMEIER. In terms of protection of probation officers, you indicate that in 1978 there were 63 hazardous incidents.

How does that compare to 10 years prior? Does this indicate some new development?

Mr. JACKSON. I guess I'd have to be forthright and say that I think there probably are more hazardous situations in the community now

than have existed before; and I'd have to go back to my earlier comment that we really didn't have the exposure to the hazardous incidents a few years ago, because we really weren't in the community as much as we could have been because we were sort of office bound generating presentence reports. So, with our increased emphasis in supervision, we find our people getting out much more, and this, perhaps, has increased the risk of the probation officer in terms of exposure.

We really had some difficulty sometimes, too, in determining whether or not these were job-related type assaults in some cases, with the hamstringing of the Federal authorities to investigate and look into our assault cases. For example, one of our officers was shot and killed in Laredo in December of last year, but since the Federal authorities couldn't investigate the case, we don't know if that was, in fact, a job-related assault. It was known that this officer who was killed worked with a very high number of sophisticated drug cases. We don't know if his assailant was a person who might have killed him because of an involvement in a drug case, or whether it might have been another issue that generated the assault.

The factors involved in the other shootings we've had in Tennessee and in the District of Columbia in recent years, again, are likewise clouded by a lack of details.

Mr. KASTENMEIER. Well, why do you suggest that these cases could not be investigated?

Mr. JACKSON. Because the Federal authorities have—in this case the FBI—has no authority, statutory responsibility, to investigate a case of a Federal probation officer because we're not covered by 18 U.S.C. 1114.

Mr. KASTENMEIER. It is a local crime?

Mr. JACKSON. Yes, sir.

And then again, as I said in my statement, the local authorities are sometimes hesitant; they say, "Why should we investigate this?" Because they feel it more appropriately should be investigated by Federal authorities.

Mr. KASTENMEIER. Well, that's all the questions I have.

We'll share your statement with them, presentence investigation report as well as your excellent magazine that comes out periodically. And we'll have an opportunity to catch up on whether the Judicial Conference or the—I'm not sure that the U.S. court or anyone else will, in due course, propose legislation, for example, on the latter question of probation officers. We will be receptive to those proposals coming down to us.

Mr. JACKSON. We in the Probation Division, I'm sure those in the field in the Probation System, really appreciate your efforts in our behalf.

Mr. KASTENMEIER. Well, thank you again, Mr. Jackson, for a very complete and thorough statement of the functions and problems of the future situation involving your division, the Division of Probation.

That, then, concludes this morning's hearing.

[Whereupon, at 11:15 a.m., the hearing was adjourned.]

GENERAL OVERSIGHT ON JUSTICE RELATED AGENCIES

WEDNESDAY, MAY 2, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,
AND THE ADMINISTRATION OF JUSTICE,
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10:20 a.m. in room B352 of the Rayburn House Office Building; Hon. Robert W. Kastenmeier (chairman of the subcommittee) presiding.

Present: Representatives Kastenmeier and Sawyer.

Staff present: Bruce Lehman, chief counsel.

Mr. KASTENMEIER. The hearing will come to order. This morning the Subcommittee on Courts, Civil Liberties, and the Administration of Justice is pleased to continue its oversight function, particularly this morning in connection with the Executive Office of the U.S. Attorney and U.S. Marshals Service.

In that connection, I am pleased to welcome Mr. William P. Tyson, acting director, Executive Office for the U.S. Attorneys as our first witness this morning. Mr. Tyson appears with his colleagues.

You might care to identify them for the record, Mr. Tyson, and you may proceed as you wish.

TESTIMONY OF WILLIAM P. TYSON, ACTING DIRECTOR, EXECUTIVE OFFICE FOR U.S. ATTORNEYS, ACCOMPANIED BY FRANCIS X. MALLGRAVE AND EDWARD MOYER

Mr. TYSON. Thank you, Mr. Chairman.

It's my pleasure to appear this morning for the first time in my current capacity as acting head of the Executive Office. I think this is the second time this office has appeared before the committee. A few years ago Mr. William Gray appeared, and I was his deputy at that time.

I have with me this morning Mr. Frank Mallgrave, who is an assistant director in our office, head of the Administrative Services Division; and Mr. Moyer on my right, who is the budget officer for the Executive Office, responsible for the needs of budget formulation for all of the U.S. attorneys throughout the country.

Mr. Chairman, I have submitted a rather lengthy and detailed statement that reviews the activities of the U.S. attorneys, the Executive Office, and the various subfunctions. I prepared it believing that there would be new members on the committee that you would want to become familiar with the activities of our office.

I know that you personally have heard a lot of this before in our previous testimony before you a few years ago.

I would like to submit my written statement for the record. I'm prepared to give you about a 10-minute overview, a summary of what is contained in that statement.

Mr. KASTENMEIER. Without objection, your statement will be received for the record.

[The complete statement follows:]

PREPARED STATEMENT OF WILLIAM P. TYSON, ACTING DIRECTOR, EXECUTIVE OFFICE FOR U.S. ATTORNEYS

Mr. Chairman, I am William P. Tyson, Acting Director of the Executive Office for United States Attorneys and United States Trustees. The invitation of the Subcommittee today is most welcome, and I appreciate the opportunity to explain to the committee the functions and responsibilities of the organization which I head and to discuss the role of U.S. Attorneys in the Department of Justice.

UNITED STATES ATTORNEYS—HISTORICAL PERSPECTIVE

The functions of U.S. Attorneys are so fundamental to the legal system of the United States that the origins of the office can be traced back to the first year of the federal government's existence. In the Judiciary Act of 1789 which created the federal judicial system and the Office of Attorney General, the first Congress provided for the appointment of an "Attorney for the United States" in each judicial district. The principal duties of the office were, as they are today, to conduct the prosecution of criminal offenses and to represent the federal government in civil litigation. The Office of United States Attorney has thus been established since the beginning of our nation as a vital mechanism in the enforcement of federal criminal statutes and in the resolution of litigious disputes between citizens and the federal government.[1]

U.S. Attorneys are still appointed by the President—with the advice and consent of the Senate; however, they no longer report directly to the President as they did in the early years of our country. In 1861, the Congress enacted legislation giving the Attorney General authority to direct U.S. Attorneys in the discharge of their duties,[2] and when the Department of Justice came into existence in 1870, U.S. Attorneys became an integral element in its organization. There are today 95 judicial districts staffed by 94 U.S. Attorneys, 1,693 Assistant U.S. Attorneys, 160 paralegal specialists, and 1,755 support positions. The Executive Office which is responsible for the management, support, and professional education and development of U.S. Attorneys and their staffs is staffed by 11 attorneys and 44 support personnel, or less than 2% of the total personnel resources in the U.S. Attorneys' appropriation.

CONTROL AND SUPERVISION OF UNITED STATES ATTORNEYS

Although U.S. Attorneys are formally appointed by the President, the Attorney General maintains statutory authority to supervise them and to require them to report to him on their activities. The Attorney General's authority over U.S. Attorneys is exercised chiefly through the Deputy and Associate Attorneys General; however, the next level of supervisory authority is diffused among Assistant Attorneys General of the legal divisions and the head of the Executive Office for U.S. Attorneys. Control over certain matters relative to the conduct of litigation has been delegated to the various legal divisions while the responsibility for the management of non-litigative functions is assigned to the Executive Office.

Each of the six legal divisions has, with the concurrence of the Deputy Attorney General or Associate Attorney General, established policies and procedures for the guidance of U.S. Attorneys. The regulations of the legal divisions are compiled in the *United States Attorneys' Manual* which contains a separate title for the subject matter over which each division has responsibility. The divisions exercise control over the U.S. Attorneys in several ways: by reserving

[1] For a current delineation of the statutory authority for the Office of United States Attorney, see Title 28, Chapter 35 of the United States Code.
[2] Now codified in 28 U.S.C. 519.

certain decision-making authority;[3] by requiring reports on specific events;[4] by intervening in the U.S. Attorneys' relations with agencies outside the Department of Justice;[5] and by conducting selected cases directly. Although the legal divisions maintain considerable control over the U.S. Attorneys through these techniques, it should be noted that at least 95 percent of all criminal cases and approximately 60 percent of all civil cases are referred directly to U.S. Attorneys from investigative and client agencies.[6] U.S. Attorneys are necessarily allowed substantial latitude to conduct litigation within their districts as it would be physically impossible for the divisions to participate actively in the over 170,000 cases handled each year.

While the legal divisions are responsible for the supervision of litigation conducted by U.S. Attorneys, the Executive Office for U.S. Attorneys possesses authority over them with regard to their non-litigative functions including general administration, personnel, funds, and training. The Executive Office exercises final authority over the classification of support positions, and it is responsible for the appointment, promotion, and discipline of support employees.[7] Although the Deputy Attorney General possesses final authority for the hiring, firing, and discipline of attorney staff, the Executive Office occupies a key position as the chief staff advisor to the Deputy on such matters. With regard to the development of budget requests, the Executive Office collects and evaluates the forecasts of individual U.S. Attorneys and then assembles a succession of budget submissions which represent its estimate of the U.S. Attorneys' collective needs. Once an appropriation is established, the Executive Office is responsible for the management of available funds. Financial management is accomplished through direct control over the number of staff positions allocated to each district, the assignment of space, and the procurement of office equipment. U.S. Attorneys may, without the specific approval of the Executive Office, incur other types of expenses; however, the Executive Office closely monitors accounting reports on these areas of expenditure.

NATURE OF UNITED STATES ATTORNEYS WORKLOAD

About twice as much of the resources available to U.S. Attorneys are devoted to the prosecution of criminal offenses as are devoted to the conduct of civil litigation. In recent years, the U.S. Attorneys have focused their attention on the prosecution of white collar criminals, corrupt public officials, organized crime figures, and major drug traffickers.

Estimates of the nationwide cost of white collar crime range in the billions of dollars. It is estimated, for instance, that federally insured banks lose three times as much money from white collar crime as from bank robberies, and fraud against the government could reach as much as ten percent of total expenditures.[8] The Inspector General for the Department of Health, Education, and Welfare has estimated that fraud, abuse, and waste cost his agency alone between $6.3 and $7.4 billion. The U.S. Attorneys' response to this frankly overwhelming problem is reflected in the fact that while the total number of annual criminal case filings has declined by 21 percent in the last five years, the number of annual white collar crime cases initiated in the same period has increased by 13 percent. To extend further the drive against white collar crime, U.S. Attorneys have embarked on a joint effort with the Criminal Division to establish seven new regional Economic Crime Enforcement Units throughout the nation. These units will be supplemented by the special fraud and corruption sections that already exist in sixteen U.S. Attorney Offices. Together, they will concentrate their efforts on major cases of fraud and will seek to improve the government's ability to detect, investigate, and prosecute white collar crime.

A second criminal litigation priority of U.S. Attorneys has been the prosecution of corrupt public officials. These efforts are aimed at restoring trust in public

---

[3] *C.f.*, Criminal Division restrictions on the initiation of prosecutions for certain offenses USAM9–2.131 *et. seq.* and Civil Division limitations on the value of claims against the Government which U.S. Attorneys may compromise, USAM4–2.120(b).

[4] *C.f.*, The Solicitor General's requirement that all judicial decisions adverse to the government be reported promptly.

[5] *C.f.*, Most criminal tax investigations concluded by the IRS are referred to the Tax Division for review and are transmitted to the U.S. Attorney only after the Division has made a determination to institute a prosecution.

[6] *Justice Litigation Management*, "A Review of the Process, Policy, Authority, Direction," April 1975, p. 17.

[7] 28 C.F.R. 139.

[8] Report of the Comptroller General "Federal Agencies Can, and Should, Do More to Combat Fraud in Government Programs."

officials and confidence in government institutions by subjecting profligate office holders to the obloquy of a public trial and punishment. In the last year, U.S. Attorney efforts in this regard have produced the convictions of public officials ranging from local police officers to governors and congressmen.

With regard to organized crime prosecutions, the efforts of U.S. Attorneys are shifting from the case by case prosecution of individual members of organized crime enterprises to a coordinated prosecutorial attack on the structure of those enterprises. Although traditional organized crime offenses, such as loansharking, gambling, and extortion are still being prosecuted, the primary focus of U.S. Attorney prosecutions is on the infiltration and abuse of legitimate business, labor-management racketeering, and political influence.

The enforcement of controlled substances laws is a fourth major focus of U.S. Attorney prosecutions. Drug abuse destroys the lives of hundreds of thousands of Americans and spawns street crime affecting millions more. Rather than prosecuting the multitude of individual users and dealers, U.S. Attorneys have directed their attention at the major narcotics traffickers who are reaping huge profits from the misery of others.

Among the many lower priority offenses over which the federal government has jurisdiction, there are many over which state and local authorities also possess jurisdiction. About 90% of the criminal violations reported to U.S. Attorneys are concurrent jurisdiction crimes, meaning that both the State and federal governments have jurisdiction to prosecute. When appropriate, federal prosecution is declined in favor of the local authorities. There remain, however, a significant number of offenses which merit federal prosecution because they fall within exclusive federal jurisdiction. These have a direct effect on the operation of the federal government. They include income tax evasion, obstruction of justice, misuse of the mail, currency counterfeiting, and fraud against government programs and agencies. The last category in particular has become an increasing source of U.S. Attorney work as more and more cases involving Medicare, Medicaid, loan programs, food stamps, and fraud by government contractors are referred for prosecution. In the last fiscal year the total number of new criminal case filings declined by over 3,000 cases but the number of cases brought for fraud against the government increased by more than 150 cases. Many other federal programs covering such matters as occupational safety, pollution control, and consumer protection carry criminal sanctions which are enforced by U.S. Attorney prosecutions.

SPEEDY TRIAL ACT

Along with the expansion of the U.S. Attorneys' prosecutive program have come requirements for the acceleration of the criminal justice process. Under the mandate of the Speedy Trial Act of 1974, U.S. Attorneys have had to increase the level of resources applied to the average case in order to insure that the government does not delay the judicial process. They have had to assign multiple attorneys to more cases; they have had to spend more time in grand jury sessions; and they have had to devote more time to speedy trial matters including travel to outlying court locations. As a result of the Speedy Trial Act and the shift to complicated priority cases, U.S. Attorneys have had to concentrate their attention on fewer and fewer cases.

BACKLOG IN CIVIL CASES

The increased attention demanded by the criminal caseload in recent years has produced a severe adverse effect on the disposition of civil cases. Since the interim phases of the Speedy Trial Act went into effect in July 1975, the pending criminal caseload has declined by nearly 30 percent; but, at the same time, the number of civil cases pending before the courts has increased by nearly 40 percent (cases in which the United States is a party account for about one-half of this increase.[9] The pressing demands of the criminal caseload have caused court dates for the civil docket to be delayed, and as a consequence the termination of the cases already pending has not kept pace with the new filings. Relief for this situation is anticipated with the appointment of the additional judges authorized by the Omnibus Judgeship Act of 1978. As the capacity of the courts increases, the pace of civil litigation will pick up, and the U.S. Attorneys will require personnel increases—as requested in the Fiscal Year 1980 budget submission—to insure that the government is adequately represented in litigation stimulated by the new judges.

[9] This data is taken from the Annual Report of the Director of the Administrative Office of U.S. Courts for the years 1975 and 1978.

The impact of the new judges on the civil workload of U.S. Attorneys is critical because U.S. Attorneys have very little control over the number of cases which are presented to the court. Unlike criminal cases which can only be initiated with the consent of the U.S. Attorney, the civil caseload consists mainly of cases which are filed by private parties against the government.[10] These include prisoner petitions, tort claims, claims under the Social Security laws, and a variety of other litigation arising out of federal programs. Cases in which the United States typically assumes the position of plaintiff[11] include land acquisitions, suits for the recovery of money (such as for the recovery of the proceeds of a fraud perpetrated on the government), suits for injunctive relief against violators of federal civil programs, and a host of other actions. Another aspect of the U.S. Attorneys' civil litigation workload is the collection of fines, forfeitures, penalties, foreclosures, and other judgments owed to the United States. The amounts actually collected, however, lag behind the judgments imposed.[12]

The availability of adequate resources for the civil workload of U.S. Attorneys can produce substantial financial benefit for the government. The benefit accrues in two ways: first by reducing the level of monetary liability in cases in which the government is subject to suits; and, second, by vigorously prosecuting government claims against private parties. Of the suits closed in Fiscal Year 1978, for example, initial claims against the government were reduced from nearly $690 million to actual impositions of less than $18 million, and over $400 million in judgments in favor of the government were imposed.

THE EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS

The Executive Office for U.S. Attorneys was established in 1953 to provide general executive assistance and supervision to the offices of the United States Attorneys and to coordinate and direct the relationship of other organizational units of the Department with the U.S. Attorneys. Thus constituted, the Executive Office must mediate between the alternate objectives of promoting the collective interests of U.S. Attorneys and regulating the application of external requirements upon the U.S. Attorneys. It is often cast in the role of advocate, mediator, or conciliator and sometimes functions as disciplinarian.

Specifically, the functions performed by the Executive Office include the management of appointments, promotions, and training for all U.S. Attorney staff; the classification of administrative positions; the formulation and execution of the U.S. Attorney's budget; the development of information systems; the publications of the *United States Attorneys' Bulletin* and revisions to the *United States Attorneys' Manual;* the conducting of U.S. Attorney's conferences; the production of records in response to FOIA/Privacy Act inquiries; and the acquisition and management of office space assigned to U.S. Attorneys. These activities are discharged by a staff of nine attorneys, two paralegal specialists, and 37 administrative personnel. The remaining Executive Office staff are devoted to the Attorney General's Advocacy Institute which is discussed below. Less than 2% of the appropriated personnel resources are assigned headquarters functions.

THE ATTORNEY GENERAL'S ADVOCACY INSTITUTE

The Attorney General's Advocacy Institute was first established in 1974 out of a concern for the competence of courtroom presentations conducted by Department of Justice attorneys. A basic course was then instituted for inexperienced attorneys in trial and appellate advocacy. The courses—which have recently been revised to incorporate the best features of the National Institute of Trial Advocacy and expanded into separate three week courses in criminal trial advocacy, civil trial advocacy, and a one week course in appellate advocacy—consist of lecture, discussion, and practical sessions conducted by experienced trial attorneys and district court judges. The response from participants as well as the feedback from U.S. Attorneys and judges has been overwhelmingly positive.

In addition to the basic trial advocacy instruction, the Attorney General's Advocacy Institute is responsible for organizing and presenting periodic seminars on specialized topics such as white collar crime, controlled substances, environ-

[10] Of 71,552 cases pending at the end of FY 1978, the United States was defendant in 47,083.

[11] There were 10,747 cases pending at the end of FY 1978 in which the United States was plaintiff.

[12] In Fiscal Year 1978, for example, there were $450,271,750 in impositions compared with $215,195,910 in collections.

mental litigation, Indian matters, and others. The Institute is staffed by two attorneys, one paralegal specialist, and four administrative personnel. Instructors and judges come in from the field to present the instruction and to preside over mock trials.

UNITED STATES TRUSTEES

The Office of U.S. Trustee has come into existence as a result of the Bankruptcy Reform Act of 1978 which created a pilot program for the administration of bankruptcy cases in 18 judicial districts. Effective October 1, 1979, the administration of new bankruptcy cases will be assigned to a U.S. Trustee appointed by the Attorney General to serve in each of ten designated districts or groups of districts. The Trustees will be locally based and generally autonomous, but will be supervised and assisted by the Executive Office for U.S. Attorneys and U.S. Trustees.

For the most part, U.S. Trustees will not replace private trustees in bankruptcy cases; rather, they will perform the appointment and supervisory functions now handled by bankruptcy judges. They will also monitor private trustee performance in more detail than is now practicable. The primary responsibilities of the U.S. Trustees will be to establish, maintain, and supervise panels of private trustees to serve in liquidation cases under Chapter 7 of the bankruptcy code, and to serve as, or appoint standing trustees to serve as, trustees in individual repayment cases under Chapter 13 of the code. The Executive Office in the Department of Justice will prescribe qualifications for panel membership and qualifications for standing trustees in Chapter 13 cases; however, the actual creation of panels, the examination of candidates for membership of panels, and the selection of standing Chapter 13 trustees will be done locally by the U.S. Trustees. The U.S. Trustee will also monitor the performance of panel members and standing Chapter 13 trustees in order to determine whether they should be continued in or be removed from panel membership or office.

For Fiscal Year 1980, 90 positions and $3,347,000 are requested for the activities of the U.S. Trustees: seven positions are requested for the Executive Office, and 83 positions will be distributed among the ten districts or groups of districts designated by the Act.

As requested by the subcommittee staff, some comments on legislative proposals of interest to the Executive Office for U.S. Attorneys and U.S. Trustees is appended to my statement.

This concludes my statement, Mr. Chairman. I will be happy to answer any questions which you or other members of the committee may have.

APPENDIX TO STATEMENT CONCERNING OVERSIGHT OF EXECUTIVE OFFICE FOR U.S. ATTORNEYS AND U.S. TRUSTEES

COMMENTS ON PROPOSED LEGISLATION OF INTEREST TO U.S. ATTORNEYS AND U.S. TRUSTEES

The Speedy Trial Act

Of primary importance is the Department's proposed amendments to the Speedy Trial Act. The most stringent time limits and sanctions presented by the Act are scheduled to become effective on July 1, 1979. Experience with the more generous interim time limits has caused most United States Attorneys to doubt the ability of the Federal courts to meet the final restrictions. Others have questioned the cost to the judicial system of meeting the 100 day goal.

Nearly one-fifth, or 20%, of all the federal criminal cases presently fail to meet the 100 day limit. Projections based on that figure show that if no steps are taken after July 1, 1979, more than 5,000 cases would be subject to dismissal for noncompliance. While it is unlikely that the Department, or the courts, would allow such wholesale dismissals to occur, the cost of avoiding them will be high. Serious disruptions of the civil calendar (already in its fourth record year of backlog and delay) can be expected as courts struggle to become current with the 100 day limit. The declination of more prosecutable cases will produce a continued decline in the number of indictments (also at a four year low). Many other system distortions can be expected as prosecutors, defense attorneys and judges seek to circumvent oppressive aspects of the 100 day limit.

The Department's proposed amendments will not alter the basic structure of the Speedy Trial Act, but will serve to protect interests (including a defendant's interest in an adequate preparation) threatened by the prescribed time limits. Congress approval of extended time limits is needed to avoid significant hardships in the judicial system, the loss to society of effective criminal prosecutions, and access to viable federal civil litigation.

Magistrates

The expanded civil jurisdiction provided for in this bill comes at a very necessary time. The federal civil case backlog has grown by over 100% in the last five years. The average age of the cases pending has grown almost equally as fast. The resolution of civil disputes involving the future and fortunes of thousands of individuals and business entities has been repeatedly delayed. Likewise, environmental, civil rights, land use and other public litigation has suffered. Passage of the Department's proposal in this area will greatly aid United States Attorneys in disposing of their massive civil backlog.

Likewise, legislation involving: (1) Arbitration, designed to speedily resolve certain types of civil cases, (2) Diversity, which would move civil cases that involve issues of state law to state courts, thereby easing the burden on Federal courts, and (3) The Dispute Resolution Act, designed to improve the means for resolving every day disputes; will as a whole, free up more District and Circuit court time.

The newly created judge time will allow the courts to call those many cases in backlog forward for action. While that is a most agreeable result, it will require the time—both before the court and in preparation thereof—of many Assistant United States Attorneys and support personnel.

Transfer of D.C. Superior Court

At the direction of the Office of Management and Budget, an inter-departmental task force has been formed to assist the D.C. Mayor and Corporation Counsel's Office in the preparation of a detailed plan for the orderly transfer of the Superior Court—including United States Attorney, United States Marshal and other agencies—from Federal to District of Columbia government operation.

No effect outside of the District of Columbia is anticipated among other United States Attorneys. However, in the initial stages of gathering information, amending various codes (D.C. and Federal), regulations and otherwise effecting the transfer, will consume the time of several members of the United States Attorneys office will be substantially devoted to the necessary work, as well as several members of this office.

Judicial Redistricting

Three similar bills are pending before Congress to change divisions or districts in Texas, Ohio and New Jersey. The Department has not yet submitted a formal evaluation of the bills. These bills are intended to more equitably distribute the case load among courts that are geographically remote, reduce litigants travel and other expenses, and provide the citizens in those areas with more convenient and prompt judicial service.

Ethics in government

This Act requires all United States Attorneys and certain supervisory Assistant United States Attorneys to complete and file certain disclosure forms and to further limit their involvement in government cases upon leaving the United States Attorneys office for private practice. United States Attorneys are seriously concerned about the effect of this Act upon their future ability to practice law, and they strongly support the Administration's proposed amendments to more closely define the coverage of the Act.

United States Trustees

S. 658 has been introduced in the Senate and is presently under consideration. Many of the technical amendments are necessary and should be passed. However, we are concerned with certain of the amendments which seem more substantive in nature.

S. 658 contains a proposed amendment which would specifically authorize the court to convene the first meeting. We believe that the United States Trustee in the pilot districts should have the necessary flexibility to convene such meetings thereby furthering the statutory purpose of freeing the bankruptcy judge from administrative duties.

S. 658 also contains a provision that would reinstate automatic immunity for testimony at the meeting. We are strongly opposed to putting automatic immunity back into the Bankruptcy Act.

Mr. KASTENMEIER. My colleagues on the committee will read it so that they are familiar with the thrust of the statement, and you may proceed.

Mr. Sawyer is now present. He's a new member of the subcommittee who might like to hear your 10 minute review of what the situation is with respect to the Office of U.S. Attorneys.

Mr. TYSON. All right, sir.

My testimony will be divided into seven parts. I'll give you a very brief historical perspective of the U.S. attorneys. I'll speak a little bit about the control and supervision of U.S. attorneys; the nature of the U.S. attorneys workload; the impact of the Speedy Trial Act on that workload; and then I'll focus on the Executive Office itself and what it does, and two of its major subparts, the Attorney General's Advocacy Institute and the U.S. trustee function that was recently assigned to our office.

Historically, the Judiciary Act of 1789 created an Attorney General but did not create a Department of Justice, so it was almost 100 years later before a Department of Justice was created.

The Judiciary Act of 1789 also created an attorney for the United States in each judicial district; these attorneys were first called district attorneys, which later was changed to the terminology of U.S. attorneys.

Their duties were then as now, to handle criminal prosecutions and civil litigation for the United States in the U.S. courts at the district and appellate court levels. In 1861 Congress gave the Attorney General authority to direct the U.S. attorneys; up until that time, U.S. attorneys reported directly to the President.

In 1870, when the Department of Justice was created, the U.S. attorneys were made a part of the Department of Justice.

We now have 95 judicial districts. There are 94 U.S. attorneys; there is 1 U.S. attorney who serves two districts, and that is Guam and the Northern Mariana Islands out in the Pacific.

There are 1,693 assistant U.S. attorneys and 160 paralegals and 1,755 clerical support personnel serving the U.S. attorneys in the district courts throughout the 94 districts.

The Executive Office, of which I'm acting head, was created in 1953. I'll speak a little bit more about it later, but it was created to serve as an arm of the Deputy Attorney General in the management of the U.S. attorney's resources and supervising and managing their performance.

We're also responsible for their education, professional development, and recently we were given the responsibility for the U.S. trustee program created by the Congress last year. The Executive Office is manned by 11 attorneys and 44 support personnel, which we are proud to say is less than 2 percent of the total strength that is assigned to the so-called headquarters activities.

As to control and supervision of U.S. attorneys, as you know, the U.S. attorneys are appointed by the President. They're supervised under the responsibility of the Attorney General. The Attorney General's authority over the U.S. attorneys is exercised through the Deputy Attorney General and the Associate Attorney General at the first level of supervision.

The Deputy Attorney General by organization of the Department is the day to day boss of the U.S. attorneys. They regard the Deputy as their boss, so to speak.

The Department is divided into a criminal litigation and criminal justice responsibility and civil litigation responsibility. The Deputy is

in charge of criminal justice, and he supervises the litigation in that area, investigations and so forth.

And the Associate Attorney General supervises civil litigation. At the next level of supervision, the Assistant Attorneys General in charge of the litigating Division really have the closest supervision of litigation in the district courts around the country.

The U.S. attorneys' workload in their respective areas of responsibility—criminal, civil, civil rights, taxes, as the case may be——

Mr. KASTENMEIER. In that connection, I'm wondering what would be the difference between the Deputy Attorney General and the Assistant Attorney General for the Criminal Division.

They both would be directing U.S. attorneys for purposes of criminal prosecution.

Mr. TYSON. The organization of the Department, the Deputy is really their boss in the sense of a direct kind of supervision of their activities and policy matters; the Assistant Attorney General for the Criminal Division is more a day-to-day manager of the criminal case load.

However, there is no hands-on supervision. The U.S. attorneys, as you may know, have a great deal of independence in terms of making prosecutorial decisions and in making the judgments that they have to make to handle their case load. The Deputy Attorney General is of course more at a higher policy level in setting criminal justice policy.

Any policies promulgated or suggested by the Assistant Attorney General for the Criminal Division are of course subject to the policy approval of the Deputy Attorney General; so he oversees the activities of the Assistant Attorney General. He also has responsibility for supervising the investigative agencies and the Marshals Service, so that the Deputy's charter is for the total criminal justice field, not just prosecutions.

The Assistant Attorneys General supervise the litigative activities in a very loose sense, particularly in the criminal field. The Executive Office supervises and manages the nonlitigative activities of the U.S. attorneys: The resource allocation, budgetary matters, training, education, and things of that sort. The hiring and firing of attorneys, including assistant U.S. attorneys, is assigned to the Deputy Attorney General within the Department.

The Executive Office is the principal adviser to the Deputy Attorney General on such matters as they relate to assistant U.S. attorneys' hiring, firing——

Mr. KASTENMEIER. How long has that been so?

Mr. TYSON. That has been—that was true from 1953, I believe, until—for a brief period at the beginning of this administration when the responsibility was assigned to the Associate Attorney General—until Mr. Civiletti became Deputy Attorney General: that responsibility was reassigned to the Deputy Attorney General.

Mr. KASTENMEIER. And that could be altered really almost at any time by the Attorney General.

Mr. TYSON. The Attorney General could reassign that responsibility: that's correct, yes, sir. Hiring, firing, promotion, personnel matters relating to the nonattorney staff, the paralegal and support personnel, are assigned to the head of the Executive Office for the U.S. Attorneys.

And in addition, we have financial management responsibility, allocation of resources.

As to the nature of the workload of the U.S. attorneys, criminal prosecutions occupy about 58 to 60 percent of the assistant U.S. attorneys.

Civil litigation occupies around 30 percent of the attorney's time and appellate activity around 10 percent. Of the 58 to 60 percent of attorney time that is devoted to criminal prosecution, about 37 percent of this attorney time is devoted to the four priority areas established by Attorney General Bell, and those are: White collar crime, including fraud and abuse of Government programs; organized crime and racketeering; controlled substances or major narcotics traffickers cases; and political corruption cases.

In recent years the shift to the so-called quality versus quantity by the Department and the FBI during the last years of the previous administration has shown a rise in these heavyweight cases and a decline in the so-called routine cases or nonpriority cases.

There's been around a 13-percent increase in white collar crime prosecutions and around a 21-percent decline in the overall criminal filings in the past 5 years.

There's been some attention drawn to the fact that U.S. attorneys are declining a significant number of routine cases within the past few years. The decline in criminal prosecutions, however, has not brought about a need for a reduction in resources.

These heavyweight cases that I have mentioned are extremely attorney-resource consuming cases. For example, one attorney can handle about 3.8—on an average—political corruption cases per year. The same attorney could handle around 73.8 judgment enforcement cases. And the workload ranges within those examples.

All of these heavyweight cases do consume significant attorney time. We are now in conjunction with the criminal division establishing a number of economic crime units in various U.S. attorneys' offices throughout the country.

These units would devote full time to particularly fraud and abuse of Government programs; about 90 percent of the criminal violations that are reported to the U.S. attorneys by the investigative agencies are concurrent jurisdictional crimes, meaning that the State and local authorities also have jurisdiction to prosecute.

It is in this category that there is a relatively high declination rate as they shift their focus to major priority programs of the Attorney General. There is an effort to get the State and local authorities to prosecute more of the crimes over which they have jurisdiction along with the Federal Government.

The impact of the Speedy Trial Act on the workload of U.S. attorneys has shown up in several ways over the last several years. In order to attempt to meet the time constraints of the Speedy Trial Act that did develop during the tentative stages several years ago up to what would become mandatory time limits this July, U.S. attorneys then found it necessary to shift more of their attorney resources from the civil side of the docket to the criminal side of the docket in order to address the criminal cases and to process them within the time limits.

The judges have apparently found it necessary to do the same thing; judges have devoted their energy and time to the criminal cases also,

and this has resulted in a lack of attention on the civil side of the docket.

U.S. attorneys have found it necessary to assign more than one attorney to a case so that there would be several attorneys familiar with each case and so that either one of them could pick up and take the case to court, or to hearing, motions, things of that sort, to keep the case moving.

There have been more and frequent grand jury sessions to have indictments within the required time. This has required more travel on the part of U.S. attorneys and their assistants, particularly in rural areas where grand juries are held in several different locations.

And it has been necessary for them to decline some additional prosecutions in order to keep their inventories manageable within the time limits of the Speedy Trial Act. This has all created a significant backlog on the civil side of the docket.

Since 1975, the criminal workload has gone down by some 30 percent as a result of the factors I've mentioned, while the civil backlog has gone up 40 percent.

Judges have given more time to criminal cases, and this has just resulted in a warping of the inventory within the court system. The new judges that are going on the bench as a result of the omnibus judge bill last year are expected to begin to devote more time to the civil side of the docket and to move civil cases through the system. As they do that, as they begin to move the civil cases through the system, we of course need the attorneys to look out for the interests of the United States in those civil cases that will begin to flow through the docket, hopefully by the end of this year, as the new judges take over.

U.S. attorneys have no control over the civil side of the docket. The only control they have over their inventory is on the criminal side where they can in the exercise of their discretion authorize or decline prosecution. The United States is the defendant in over 50 percent of the cases, and these cases are of course filed by members of the private bar on behalf of their clients.

They are tort cases, social security claims, and a variety of other kinds of litigation that we have to react to and in defense represent the interests of the United States.

Mr. KASTENMEIER. Perhaps you don't know the answer to this, but maybe you can hazard a guess. What percentage of the civil load of a Federal district judge is likely to involve the United States or a U.S. attorney.

Mr. TYSON. We do have that information by district, Mr. Chairman. We could provide it.

Mr. KASTENMEIER. What is it on the national level?

Mr. TYSON. It ranges from around 17 percent—70 percent, right.

Mr. MOYER. I think nationwide it's an average of about 35 percent of the civil case load concerning U.S. cases—that are U.S. cases.

Mr. KASTENMEIER. All right.

Mr. SAWYER. Is that counting a lot of these prison petition cases?

Mr. TYSON. Those would be cases involving the United States. The cases that do not involve the United States would be purely private parties: One private citizen suing another; a corporation suing another or something like that. There are some districts where that is a very high percentage of cases.

We have one district where it's phenomenal, the number of private litigation cases as opposed to the cases in which the United States is actually involved.

Mr. KASTENMEIER. I'm surprised it would be that high, 35 percent. Diversity cases, by and large, would not involve the United States.

Mr. TYSON. Now, the balance of my presentation will focus a little more on the Executive Office and its two major subcomponents: The Advocacy Institute and the U.S. Trustees.

As I mentioned before, the Office was established in 1953 to assist the Deputy Attorney General is coordinating and supervising the activities of the U.S. attorneys. We frequently find ourselves in the position of a mediator of disputes between U.S. attorneys and other elements of the department, conciliators.

Sometimes we find ourselves as advocates of the U.S. attorneys' positions when we think they're right. We're advocates in the department. When we think they're wrong or partially wrong, we attempt to negotiate a reasonable solution to the problem. We sometimes find ourselves as disciplinarians, particularly of the assistant U.S. attorneys and of the support staff.

The management of appointments of assistant U.S. attorneys, their promotion, their training is done through our office as the principal adviser to the Deputy Attorney General.

As I mentioned before, we do all of the budget work for the U.S. attorneys in terms of budget formulation and development and the oversight and supervision of the budget, with of course a very heavy input from the U.S. attorneys during the budget formulation process.

We are also responsible in a way for keeping their books for them through the operation of the docket and reporting system which we are striving very hard to improve and to get more and more into automated kinds of bookkeeping for case tracking and the bookkeeping requirements that are necessary for keeping track of the inventory that we have out there.

And then we are responsible for allocating and reallocating the resources. We publish Department of Justice policies through the U.S. attorney's bulletin and the U.S. attorney's manual.

We have a very small field activity unit that travels around as troubleshooters. They're very senior, experienced people in the Department who can help out in solving—putting out brush fires in the field, in the offices, and also to some extent, a performance evaluation function for us where we need to——

Mr. KASTENMEIER. In that regard, this was a question I was going to ask: Does the Deputy Attorney General or the U.S. Office of the U.S. Attorneys conduct a grading of U.S. attorneys; grade or rate their performance on an annual or other basis?

Mr. TYSON. We, right now, to be perfectly candid with you, Mr. Chairman, that particular function is not up to full speed right now. We do have the function: it frankly is waiting for the appointment of a full head of the Office to get this thing back up to full speed.

We do have a few people in that unit. It is one of their functions to do exactly what you're saying, but the problem right now is that it's down in staff so that we're not able to do the full performance

evaluation. We do have a goal and up until the last couple of years we were able to make at least one visit to each office each year for the purposes of performance evaluation.

We have a very detailed checklist of things to be reviewed when these visits are made.

Mr. KASTENMEIER. I saw that because in your presentation you say that the Institute was established 5 years ago in 1974, out of concern for the competence of, in this case, courtroom presentations. And you discuss the computer analysis and other resources you have available in recent years. I'm just wondering how the performance rating is conducted and to what end—for whom is it conducted? For the Deputy Attorney General?

Mr. TYSON. The reports are made to the head of the Executive Office and we're doing some of it now; it's just that we're not doing as much as I would like to see us doing. We're doing it where we might have reason to believe there may be problems, and we get reasons to believe that because of citizen complaints or judges.

We are exposed to an awful lot of Federal judges who come in to assist us in the Attorney General's Advocacy Institute. Some of them notify us personally. We've had a number of judges who have called to tell us they thought we had problems in the district, so we have ways of intelligence, and we're in a way responding to those situations.

The reports are made to the head of the Executive Office, and when I see a problem—some of these have come to the Attorney General's attention; some of these have come to the Deputy Attorney General's attention—where there really does appear to be a problem that has to go above my level, I have brought it to the attention of the Deputy Attorney General and the Attorney General himself.

In one particular instance, which has resulted in rather strong suggestions and guidance being given to at least one U.S. attorney at the Attorney General's direction, it resulted in the firing or resignation of a U.S. attorney.

Mr. KASTENMEIER. It is the hope then that in the future in the upgrading of your office that there would be a performance evaluation conducted on some regular basis of all units?

Mr. TYSON. Yes, sir.

There's a plan prepared with a number of options that has already been presented to the Deputy, and it's been studied and discussed a number of times, and his feeling is that we should wait until the new head of the office comes on board.

But there are several options in place ready to go when that day comes.

And, finally—no, let's see—the Attorney General's Advocacy Institute, very briefly, we're very proud of this department-wide, not just my office. We were proud because we were directed to begin the program, and it's now become a department-wide program.

In 1974, it was created on a very small basis to provide training and advocacy skills for courtroom performance for attorneys. As I'm sure you know, law schools are resisting providing courtroom advocacy skill training for students. We get a significant number of people relatively fresh out of law school; this was part in response to the Chief Justice's criticism of courtroom performance.

The program was successfully used on a small scale and continued from 1974 with a 1-week advocacy program for—a criminal program and a civil program that concentrated on learning by doing, getting on your feet, and actually engaging in mock trials and exercises, courtroom situations, direct, cross-examination, handling of experts, introduction of documents, and through a workshop format.

Judge Bell did several things when he got interested in the program. One, he insisted that the program be expanded so that it would be offered to all of the attorneys in the Department of Justice and not just those who are assistant U.S. attorneys.

And, second, he had us study a number of advocacy programs in the private sector, such as the National Institute for Trial Advocacy, with the instructions that he wanted us to be at least as good as, of not better, than any other programs going on in the private sector.

We closed down late last year and completely revamped the program starting in March with a new program which is a 2-week program that parallels closely the National Institute of Trial Advocacy. We feel that it's at least as good as, if not better, and it will be followed by a third week in which the students would be brought back in about 6 months for a slightly more advanced program. We're doing basically the same thing; we're just doing more of it.

The students now come in for 2 weeks, and they participate in four trials during a 2-week period. They spend very concentrated time with senior prosecutors and experienced litigators of the Department, as well as with the judges who come in and assist with the program.

We train about 6,700 lawyers per year. That is roughly the turnover of new attorneys that come into the Department during that period of time.

We also conduct continuing legal education programs and more senior, advanced subjects for the more senior attorneys, narcotics officials, and a whole array of different kinds of continuing legal education problems.

And finally, the U.S. trustee program was created by the Bankruptcy Reform Act, that set up the 5-year program in 18 districts to be overseen or supervised by 10 trustees. These U.S. trustees will perform appointment and supervisory functions over the private trustees that are now handled by the bankruptcy judges.

We are currently in the process of recruiting and hiring the trustees, and it will be necessary to get them hired, get them onduty as soon as we can so that they can in turn hire their assistants and their staffs and be ready to go on October 1 when this new act takes effect.

I have submitted with my statement, at the request of the counsel, a list of certain legislative issues that are either pending before the Congress or that we would expect to come before the Congress that have impact upon the U.S. attorneys and the workload in the district courts.

And finally, I have given the counsel a copy of the statistical report of the U.S. attroneys, which the committee expressed an interest in when we were over here a couple of years ago.

So I thought I would leave that with you. And that concludes my statement, Mr. Chairman.

I welcome your questions.

Mr. KASTENMEIER. Thank you very much for that very complete statement, Mr. Tyson.

I have a series of questions; I'm going to, however, defer to my colleague from Michigan, Mr. Sawyer.

Mr. SAWYER. Yes. I've been curious; on occasion the Department of Justice will send out a litigator in, let's say, an antitrust case, a criminal prosecution, or in a tax case—particularly I've seen them do it in tax cases. Who makes the decision whether the U.S. attorney is going to handle the matter in fact they're going to send a litigator out from the Department?

Mr. TYSON. Mr. Congressman, most of those decisions are really made in advance by virtue of the policy stated in the U.S. attorney's manual and the delegation of authority by the Attorney General. I think probably about 85 to 95 percent of the criminal prosecution responsibility is in fact delegated to the U.S. attorneys.

Some, such as antitrust cases—most antitrust cases—although Judge Bell and John Shenefield, the Assistant Attorney General for Antitrust, have been delegating more price-fixing cases and attempting to get U.S. attorneys more involved in handling their own price-fixing cases.

Except in that category, most of the antitrust cases have—it's been decided it's in the national interest to retain the decisionmaking authority at the Department of Justice level; tax litigation is the same thing, as I understand it. It's a long history of decisions that it's in the national interest for a uniformity of the administration of the Internal Revenue Code to retain those cases at the Assistant Attorney General level. There are some categories of tax litigation that are delegated.

And then even on the cases that are retained at the Department level, there are decisions made in the Tax Division as to whether it's a case they really want to handle themselves or whether they would like to refer it to the U.S. attorney.

But as a broad matter, the delegations have already been established.

Mr. SAWYER. I've noticed the same thing occurs too in, let's say, the Interstate Commerce Commission prosecution for violations of the Common Carrier Act.

Quite often they'll send out an attorney—I don't know whether they're from the ICC or from the Department of Justice. I'm inclined to think they're from the Department of Justice.

Who decides that?

Mr. TYSON. There are certain independent agencies in the Government that have been given litigation authority by the Congress, and as the Congressman probably knows, other independent agencies are seeking litigation authority to handle their own cases.

I believe that the ICC is one of the agencies that has been given its own litigation authority. There are those the U.S. attorneys really have no control. I understand that some district court judges, however, insist that even if the agency has been given litigation authority by the Congress, that the U.S. attorney appear as local counsel in their cases because the district judges tend to work day to day with U.S. attorneys and rely upon them and like for them to be there.

Mr. SAWYER. That's true of the antitrust cases.

Mr. TYSON. That is correct; there are district judges who really prefer, even when the Department sends authority from Washington, that a U.S. attorney be there, and that sometimes the U.S. attorney be the counsel for the Government in that case.

There are cases—you will see a number of cases in which agency attorneys, SEC, and other attorneys, appear as special assistants to the U.S. attorney.

We—at any given time—we probably have 35 to 50 of that type attorney who is appointed to work with the U.S. attorney because of his or her expertise in that particular case. But it's on a request basis.

Usually, the U.S. attorney requests it, that he needs that expertise. The U.S. attorney is the lead attorney, or the assistant U.S. attorney is the lead attorney, but the agency attorney appears with them to help with the case.

Mr. SAWYER. Does the U.S. attorney normally hire his own assistant U.S. attorneys?

Mr. TYSON. The U.S. attorneys screen applicants, to accept applications under very detailed guidelines that we provide to them as to the qualifications that we're looking for.

The U.S. attorneys do the screening and submit nominations to our office. They are reviewed by our office and by the employment review committee of the Department that was established by Judge Bell. And having passed muster with our office and the employment review committee, the person is then offered a job, provided that the background investigation conducted by the FBI comes out positive.

That's generally the process that is involved.

Mr. SAWYER. Do you do the same thing with staff personnel too?

Mr. TYSON. Staff personnel, except for the chief administrative person in the Office, the U.S. attorneys are allowed—of course, they have to work through civil service procedures, so it's much more complicated. They have to comply with all the civil service regulations, but they—subject to going through those civil service procedures, they do select the administrative staffs in their office, subject to approval of Mr. Mallgrave's personnel office.

As to the chief administrative people and the personnel office, because it's so important that we have good people in those jobs, we take a very heavy hand in selecting those people. They're like chief clerks or office managers in the large offices, and that kind of role.

Mr. SAWYER. Does the U.S. attorney make the decision locally out in the field when he wants to convene a grand jury or for what subject matters? Is that directed by the Department?

Mr. TYSON. It's not—it's all done in the field by the U.S. attorney and the court. Of course the grand jury can really only be convened by the court. The U.S. attorney requests the court for grand jury time. In some districts, in some very busy districts, the grand jury is in session all the time.

But in the less populated areas, in the less busy districts, the U.S. attorney has to go to the court and request that a grand jury be convened, and as I indicated, the Speedy Trial Act has required more of that because several years ago they would have only two grand juries a year.

They would just save matters up until they had enough to have a grand jury, and then they would have a grand jury. But now they have

to request a grand jury once a month or once every 45 days in order to make the Speed Trial Act time limits.

Sometimes they only have one or two matters to present.

Mr. SAWYER. That's all I have. Thank you, Mr. Chairman.

Mr. KASTENMEIER. Mr. Tyson, would you describe, if you can, whatever plans may exist to upgrade the position of Director of the Executive Office of U.S. Attorneys.

Mr. TYSON. Mr. Chairman, as you're probably aware, the position—it was almost 1 year ago when the position was first designated as an Assistant Attorney General position, and the authority was received from the OMB for that. And then subsequently when the Bankruptcy Reform Act was passed creating an Assistant Attorney General for that job, Judge Bell decided to assign that Assistant Attorney General slot to this office, and during that entire period of time there has been a recruiting effort underway to find somebody to take the position.

I'm authorized to tell the committee by the Deputy Attorney General's office that they expect to have someone selected within the next 2 months.

Mr. KASTENMEIER. Do I understand that there is such a vacancy? That is to say, there is a statutory vacancy?

Mr. TYSON. There is; yes, sir.

Mr. KASTENMEIER. Because you indicated——

Mr. TYSON. The Bankruptcy Reform Act created an Assistant Attorney Generalship for the bankruptcy program.

Mr. KASTENMEIER. Yes.

Mr. TYSON. And that——

Mr. KASTENMEIER. That did not displace the other.

Mr. TYSON. No; it did not. The new slot—and that function and that slot was assigned so that we really would be—now, the Executive Office for U.S. Attorneys and U.S. Trustees, once the Assistant Attorney General is on duty, we would expect this to become perhaps a division of the Department.

But prior to—prior to the enactment of the Bankruptcy Reform Act, the Assistant Attorney General position had been advanced from the White House out of the executive pool, and it would have been an interim kind of Assistant Attorney General until the matter could be presented to Congress. That's the background of it.

Mr. KASTENMEIER. Well, is it likely then in the future at some point for—well, there will be an Assistant Attorney General for U.S. Attorneys——

Mr. TYSON. And U.S. trustees.

Mr. KASTENMEIER. Well, wouldn't the U.S. trustees remain under the Attorney General, Assistant Attorney General for Bankruptcy? Wouldn't it be deferred to that?

Mr. TYSON. It's anticipated that the Assistant Attorney General would have the entire operation that is now the Executive Office for U.S. Attorneys, but this new Assistant Attorney General would be in charge of U.S. attorneys, U.S. trustees, and the trial advocacy program, which is currently part of the Office.

Mr. KASTENMEIER. Well, I was just wondering, since the U.S. trustees seems to be a bankruptcy function why it would be—I can understand why temporarily it might be in the Office of U.S. Attorneys, but why it would be permanently under the U.S. Assistant Attorney General

for U.S. Attorneys rather than Assistant—the Assistant Attorney General for Bankruptcy or whatever he's denominated.

Why would the trustees be under the other program?

Mr. TYSON. I was not present when the functions were made or participated in the discussions that led to that decision. I know this was made by the Attorney General early on when the Bankruptcy Act was passed.

It appeared to him the right thing to do, to give that person the responsibility for both the U.S. attorneys and the U.S. trustees, and—well, of course, one thing, the trustee function, at least during the—and this is just me talking, if I may—the trustee function, at least during the 5-year pilot program, while important, will not be very large or be relatively small.

There will only be 10 trustees in 18 districts, and with a relatively small staff at both headquarters and in the field. If that is all there is, it would have a relatively small function.

Mr. KASTENMEIER. Mr. Tyson, if you could determine further the rationalization, I would like to know. But in so far as someone else made that determination, what is intended. I would have thought that the trustee function would fall under the Assistant Attorney General for Bankruptcy, rather than Assistant Attorney General for U.S. Attorneys.

Why it is temporarily in your office, I can understand that; I can't understand why it wouldn't be rational or logical under the other U.S. attorney.

Have you done more thinking about—maybe I should ask this of the Deputy Attorney General—has your office done any more thinking about merit selection of U.S. attorneys in the intervening year or 6 months; because there was an active proposal in the last Congress.

Mr. TYSON. I know what you're talking about, and I'm not aware of any recent discussions or proposals or anything of that sort. I know you're speaking to the——

Mr. KASTENMEIER. That would be a question I think I ought to direct to the Attorney General or the Deputy Attorney General.

Mr. TYSON. There was or has been a merit retention program of U.S. attorneys and assistant U.S. attorneys that was placed into effect formally by Judge Bell when he took over, and it had a very visible and significant impact on assistant U.S. attorneys and the retention of assistant U.S. attorneys that came over from the previous administration.

And it had an impact—it did have an impact on U.S. attorneys that stayed over, but not apparently as great as some people would have thought, or would have liked, according to the press at least. [Laughter.]

Mr. KASTENMEIER. What relationship, if you can determine it, is there between the number of U.S. judges, court judges, and appellate judges, and the number of attorneys? What effect, quantitatively, should that have or would have on the U.S. courts?

Mr. TYSON. It will impact into two basic areas.

Mr. KASTENMEIER. And why?

Mr. TYSON. OK. It will impact on the civil side of the docket. It will impact on the civil side of the docket by giving judge time that has been missing to the civil side of the docket.

The judges have not been handling civil cases because of the Speedy Trial Act and their perceived shortage and actual shortages. So the judges, as I understand it, the backlog in civil cases was a large part of the predication for the new judges.

So they will begin to move the civil cases—when they begin to move the civil cases through the dockets, then of course we—meaning the U.S. attorneys—are responsible for looking out for the interests of the United States in those cases.

We will help them to assign attorneys to those cases; we don't have attorneys to assign to those cases because they are devoted almost full time to the criminal side of the docket. And that's been the case for several years. So that—we will have the need to service the civil side of the docket.

We will also—the new judges undoubtedly will create an additional judicial capacity within the courts to handle a larger inventory of all kinds of litigation. We would expect there to be some increase on the criminal side of the docket as a result of the new judges.

This would be partially because the U.S. attorneys—to the extent that U.S. attorneys have been declining criminal cases that some people think should be prosecuted, there has been some criticism in some parts of the country because U.S. attorneys have been declining more cases. And the State and locals—there won't be a turn around because we're headed in the right direction.

We think that the State and local people should do more and should do their part, but there will undoubtedly be some additional criminal cases that U.S. attorneys will authorize prosecution on as a result of having judges available to try those cases.

And the numbers vary from district to district as to how many additional attorneys we will need to meet the increased workload of the judges. We do—we have completed that, and it ranges anywhere from zero additional attorneys in some districts—very few, but where we feel the current staff is adequate—to perhaps as many as four attorneys per judge in some districts where we feel that the district is significantly short staffed right now.

Mr. KASTENMEIER. You're speaking of the whole system, all 95 districts? You've projected—offhand, I don't know what. You must have projected U.S. attorneys needs in terms of personnel, professional personnel particularly for the next, for the coming fiscal year, 1980.

And it must have been projected in part on certain assumptions with respect to new judicial manpower coming aboard. What are you projecting in terms of increase overall in attorneys, attorney personnel?

Mr. TYSON. For the next year?

Mr. KASTENMEIER. For the next year.

Mr. TYSON. For the next year we are projecting a need for 267 additional attorneys, 84 additional paralegals, and 279 clerical support personnel, which would be 630 additional positions.

Mr. KASTENMEIER. And is that—is this 267 a very substantial increase? I assume that's substantial compared to other past fiscal years; let's say the past 10 years.

Would that be the largest incremental increase?

Mr. TYSON. This would be the largest increase since the early seventies sometime—1971 is the largest increase. It's the largest increase since 1971 when we actually requested and received 306 additional attorneys.

Mr. KASTENMEIER. Was that also in connection with—or was that a factor——

Mr. MALLGRAVE. At the same time, yes. Mr. Chairman, there was also an increase in judgeships at that time.

Mr. KASTENMEIER. Is that the principal reason for that?

Mr. TYSON. That is the principal reason, yes, sir. There is factored in additionally some increase in workload so even if there were not additional judges—but it is principally predicated on the new judges, yes, sir.

Mr. KASTENMEIER. Are you—is their reliance on paralegal personnel relatively new?

Mr. TYSON. It is relatively new; yes, sir. It's been very successful, too. The year that we're currently in is the first year that Congress has actually allocated or given to us or appropriated paralegals. We received 56 paralegals in this current year's budget.

We had been trying it on a test basis even before we came to the Congress and asked for the resources, and we've been testing by using the clerical support positions, legal technicians, and attempting to develop it to see if this thing would work, and it really is working well for us. That's why we're asking for some additional paralegals in the forthcoming year's budget.

Mr. KASTENMEIER. During the last Congress, members of this subcommittee—certainly of the Judiciary Committee—had expressed concern that some 75 percent of criminal matters referred to the U.S. attorneys were never prosecuted by the Justice Department.

Whether that's justified or not, that percentage, I think, impressed a number of members. As a result, there was a requirement that the Attorney General study the extent to which complaints are not prosecuted and analyze such cases, and such a study, I understand, is underway and will be due for completion by October 1 of this year.

Mr. TYSON. October 1. That study was assigned to the criminal division. We, of course, are working closely with them; it is due in October, yes, sir.

Again, if I might remind you, 90 percent of the criminal violations that are reported to the U.S. attorneys are concurrent jurisdiction crimes, and what these previous comments have, I think, failed to take into account is that the declinations are within that category of crimes in which State and local authorities also have jurisdiction.

Mr. KASTENMEIER. Certainly in connection with this I would regard it as good reason, if the U.S. attorney declined to accept a case in which a concurrent jurisdiction existed with the local authorities, and they had a willingness to pursue that prosecution.

As a matter of fact, in terms of the equation of work, we cannot necessarily assume the same criminal caseload by the U.S. attorneys or by the Justice Department because increasingly the concurrent jurisdiction crimes are being declined—bank robberies, auto thefts, and so forth—we are told as a matter of policy.

While there will be a step-up in white collar crime, there will be a decrease—presumably a decrease in some of these other areas in terms

of activity followed through by U.S. attorneys. So we don't know just where that equation will lead us, but I assume that it will be—that those are components of the factors in the equation of criminal caseload, and also to what extent the Speedy Trial Act requires immediate attention to these criminal matters.

As I understand your position on the Speedy Trial Act, it is reflecting the views of U.S. attorneys in the field that some amendment is necessary, but it need not be totally repealed.

Mr. TYSON. That's correct.

Mr. KASTENMEIER. The element of urgency for criminal matters still ought to be maintained, but it ought to be made workable.

Mr. TYSON. That's correct. Our position is not that the act should be repealed, but there is some obvious justification for speedy trial, but also speedy trial does not necessarily equate with speedy justice. I think the defense counsel and the accused would be the first to come forward and say that expeditious trial does not necessarily always mean justice.

So our position is really for a relaxation of the time limitations and not for a repeal of the act.

Mr. KASTENMEIER. Thank you very much, Mr. Tyson.

Mr. Sawyer, do you have any further questions?

Mr. SAWYER. No. I just wanted to say that I think the Attorney General's priorities, general lineup for handling out of the districts this type of case is eminently correct. The investigative arms of the U.S. attorney's office, namely the FBI, accounting expertise that's available in IRS, and the various other agencies, particularly intelligence units, puts them in a much better position to develop expertise on white collar crime and in organized crime compared to the local prosecutorial authorities who are really better at street crime than most U.S. attorneys are.

I mean, most investigative people and their attorneys deal in robberies and that sort of thing, including bank robberies. I think that's a very intelligent program because notoriously local prosecutorial authorities and their investigative arms are not qualified in white collar crime areas nor things like security frauds, and certainly—and they don't want to put the man-hours investigatively into organized crime.

As you probably know, our police agencies grade themselves on felony arrests per man-hour; they have a system, and of course they spend much time—if they spend much time in organized crime, they ruin their statistics completely.

Mr. TYSON. That hurt us for the first year or two because statistics started going down.

Mr. SAWYER. These things desperately need attention, and it's a nice balance of expertise, not particularly in the quality of the attorneys on either side, but the quality of experience and expertise of their investigative arms that makes it nice.

I'm happy to see that the Attorney General has organized that.

Mr. TYSON. Thank you, sir.

Mr. SAWYER. That's all I have.

Mr. KASTENMEIER. Thank you, Mr. Tyson and colleagues, for appearing before us this morning.

Mr. TYSON. Thank you, sir.

Mr. KASTENMEIER. Next the Chair would like to call Mr. William Hall, Director of the U.S. Marshals Service.

Mr. Hall, you are most welcome here; if you would like to introduce your colleagues.

TESTIMONY OF WILLIAM E. HALL, DIRECTOR, U.S. MARSHALS SERVICE, ACCOMPANIED BY JOHN TWOMEY, DEPUTY DIRECTOR; HOWARD SAFIR, ASSISTANT DIRECTOR FOR OPERATIONS; AND JULIE DUBICK, CHIEF LEGAL COUNSEL

Mr. HALL. Mr. Chairman, it's my privilege to introduce on my left, Mr. John Twomey, my deputy director, and on my right, Mr. Howard Safir, who is the assistant director for operations, and to my immediate right rear is my chief legal counsel, Ms. Julie Dubick.

Mr. Chairman, I have a fairly short prepared statement which I think I would like to read, if you would indulge me.

Mr. Chairman and members of the subcommittee, I am pleased to have this opportunity to appear before you to briefly describe the duties and responsibilities of the U.S. Marshals Service. I will briefly cover the major programs that we are involved in and the direction that these programs are taking.

Our 1980 budget authorization requested 2,375 positions and $79,706,000 for salaries and expenses of the U.S. Marshals Service. This is an increase of 47 positions and $4,625,000 above the amount authorized for 1979 and $25,100,000 for support of U.S. prisoners which is the same amount authorized in 1979.

The specific responsibilities involved in the charter of the U.S. Marshals Service are multifaceted: Among these activities are the service of civil and criminal process, the execution of arrest warrants, the movement and custody of unsentenced Federal prisoners, the protection of Government witnesses involved in organized crime prosecutions, and security of Federal court facilities, judges, jurors, and other trial participants.

We are also involved in the prevention of civil disturbances and restoration of order in riot or mob violence situations, the security and protection in the movement of nuclear warheads for the Strategic Air Command and other law enforcement special functions at the direction of the Attorney General.

The witness security program was authorized by the Organized Crime Control Act of 1970. As a result of this legislation, the Attorney General was authorized to provide protection for Government witnesses. The Marshals Service was designated as the agency that would have responsibility for carrying out this program.

During the past 9 years the program has increased at a tremendous rate; whereas it was originally anticipated that there would be only 30 to 50 witnesses per year, the annual rate has exceeded 400.

Since its inception, there have been approximately 3,000 principal witnesses provided protection services by this agency. Each principal has an average of 2.5 family members which means 7,500 individuals have been provided protective services.

As with most Government programs, resources did not keep pace with growth, and because of this, many of the social services were not performed as well as they should have been.

However, the principal reason for this program, which is the protection of the witness and his family, has been performed exceptionally well by this service. No witnesses under the active protection of the U.S. Marshals Service have lost their lives as a result of their testimony.

Last spring the program came under considerable criticism and controversy. As a result of this criticism and interest by the Congress, the Deputy Attorney General appointed a witness review committee. The report of that committee recommended approximately 28 program changes on the part of both the Criminal Division, Department of Justice, and U.S. Marshals Service.

I am pleased to report that most of the recommendations of this committee have been implemented or are in the process of being implemented. We have increased our staff by 53 field positions and 18 support positions. It is my feeling that the program has significantly improved during the past year.

The U.S. Marshals Service is authorized to execute all lawful writs, process, or orders issued under the authority of U.S. courts, including criminal arrest warrants. During fiscal year 1978 this service investigated 78,842 arrest warrants leading to the arrest of 27,871. Federal fugitives; executed 9,306 Federal traffic warrants resulting in the collection of fines in the amount of $465,000; and served 677,280 pieces of process expending a total of 731,700 hours.

In reference to the service of process, the Department has submitted to the Congress a legislative proposal to amend title 28, United States Code, to allow the service to discontinue service of private process.

This would be of a tremendous benefit to us in enabling our personnel to perform more adequately what we consider to be our law enforcement responsibilities, such as the execution of criminal arrest warrants.

In fulfilling the service of process, this service has often become involved in enforcing orders of the Federal courts in various endeavors, including labor strikes, illegal demonstrations, and providing security for Federal property.

During the past year we have appointed 94 enforcement specialists who will coordinate the execution of criminal arrest warrants and apprehension of Federal fugitives. We intend to expand our investigations of fugitive cases in the coming year.

Since 1975, the U.S. Marshals Service has, through contractual agreement, provided security for the movement of nuclear warheads when requested by the Strategic Air Command. This service is provided during off-base movements of these weapons. We provide a civilian law enforcement presence and authority during missile transport on nonmilitary property. Prior to our involvement, the military experienced unnecessary delays due to the lack of law enforcement authority in civilian areas.

The Marshals Service is responsible for the protection of the Federal judiciary, Federal jurors, and other court officers. Maintaining the integrity of the Federal judicial system requires the prevention of intimidation and harassment by persons intent on disruption and obstructing the lawful trial process and other judicial business.

We have noted an alarming increase in overt acts of violence that are directed against the Federal judiciary and other trial participants.

We also provide security for U.S. attorneys and their assistants who are the subjects of threats. Often this involves around the clock security.

Our court security program also provides security to sequestered juries and to grand juries in 34 districts.

The responsibility for court security has been shared with the General Services Administration, Federal Protective Service, the Administrative Office of U.S. Courts, and the U.S. Postal Service. An interagency task force composed of staff representatives of these agencies has made recommendations to improve this important area. These recommendations will be reviewed by the administration and the Administrative Office of U.S. Courts.

The Marshals Service is responsible for the receipt, custody, coordination, and transportation of Federal prisoners from the time they are apprehended until they are delivered to a prison facility for services of sentence.

In fiscal 1978 the Service received and processed over 90,000 prisoners and transported 61,670 prisoners at a cost of $28,055,000. In addition, we provided facilities for the housing of Federal prisoners at 850 jails with whom we have contracts.

In the coming year we intend to expand our recently initiated National Prisoner Transportation System which we are conducting in concert with the Bureau of Prisons. This system utilizes charter aircraft to move large numbers of U.S. Marshals Service and Bureau of Prisons prisoners to institutions throughout the country. We have found this system to be extremely cost effective in reducing both dollar and manpower expenditures.

In support of prisoners area, we intend in the coming year to expand our jail inspection program to assure that the contract facilities meet minimum Federal standards for housing of Federal prisoners.

Gentlemen, that is a very brief overview of the many responsibilities of the U.S. Marshals Service. With the increase of 117 judgeships in the next year and the requirements of the Speedy Trial Act, our resources will require effective and efficient management to meet our many responsibilities.

This concludes my statement, Mr. Chairman. Of course, I will be happy to answer any questions you or Mr. Sawyer of the subcommittee have at this time.

Mr. KASTENMEIER. Thank you very much, Mr. Hall. That was brief and to the point.

Let me yield to my colleague, Mr. Sawyer, first.

Mr. SAWYER. Thank you, Mr. Chairman.

Well, first of all, I congratulate you on making an overture to get rid of the serving of civil process. I think that really denigrates the Marshals Service to a degree. It's kind of a constable sort of a function, and almost all of our law enforcement agencies have gotten rid of the service of private process, delegating it either to a process service or another category of people.

So I think that's an excellent move, and I imagine it would be well received here. I also want to compliment you on your prisoner protection service. I served here on the Select Assassinations Committee, and that service handled the movement of James Earl Ray from Brushy Mountain here and arranged his security while he was here, and back;

and I watched it very carefully, since I had had a brief stint at law enforcement. I had seen some of it.

But I was very impressed at the professional way they handled themselves and made the arrangements and discharged them.

Mr. HALL. Thank you very much; your observations are much appreciated.

Mr. SAWYER. That's all I have, Mr. Chairman.

Mr. KASTENMEIER. I'd like to join my colleague, too, in commending you. I think, while as you concede in your testimony, the Marshals Service has had problems, I think you are confronting those problems and definitely are presently being able to point to successes.

I note that your relatively few increases in positions—you've said you asked for 2,375 positions; it's an increase of only 47 positions. I'm not here as the Appropriations Committee, but I'm just curious; insofar as you conclude that the increase of 117 judgeships, the requirements of the Speedy Trial Act, all resources that will be required, et cetera, et cetera, to meet the many responsibilities, that you not ask for very much of an incremental increase in your overall personnel strength.

Mr. HALL. Well, of course, these figures are predicated upon the assumption that the service of process legislation will be successful, and also predicated upon the assumption that some of our responsibilities in the superior court transfer in the District of Columbia will be transferred.

And hopefully if these two situations become effective, then we will be sufficiently staffed to meet our responsibility.

Mr. KASTENMEIER. I also want to join Mr. Sawyer in saying that I too agree that this continuing service of private process is a correct move.

The number of hours devoted to that is obviously, nationwide—it would save a great deal in both personnel and time.

Mr. HALL. Mr. Chairman, it would save a great deal of time. In fiscal year 1975, GAO estimated the cost for private civil process exceeded revenues by more than $3,800,000, and departmental analysis shows the service of 425,000 pieces of civil process in that year 1975, at an estimated direct cost of $4,250,000 and 238 work years.

So you can see that we're talking about a sizable portion of our budget and our manpower resources.

Mr. KASTENMEIER. Who would serve private process?

Mr. HALL. We anticipate that in general, private process will be served by private process agencies. The legislation, as I understand it, will still allow in unique circumstances for deputy marshals to serve certain types of processes, of course, for indigents that cannot afford payment of fees to private processors.

I understand that there is provision which will allow deputy marshals to continue to support these people.

Mr. KASTENMEIER. I see. Can you describe the problems, if any, that result from the present method of appointment of U.S. Marshals?

Mr. HALL. Well, the appointment process of U.S. marshals is an intriguing concept. We are the only agency that I know of that really is required to serve three masters: Both the Department of Justice and the members of the executive branch, which is, of course, the U.S. Marshals Service is a member of.

Additionally, we are required by statute to support the Federal judiciary, and of course U.S. marshals are appointed in large measure on the recommendation of the U.S. Senate.

Today's present system is, I think a carryover from the past. Today's service mission is significantly different from what it was just 20 years ago. When I consider the appointment process, I look at three particular areas, three goals, if you will.

One is professionalizing the Service; I think we need to have standards for the U.S. marshals. I think these standards should be evenly and uniformly applied.

Also, we are talking about a very sophisticated mission in today's Service.

Mr. KASTENMEIER. If I can interrupt you; there's no reason I can see why the U.S. Marshals Service should be any less professional than the U.S. Probation and Parole Service in terms of the personnel and functions. And they're not political. They're totally professional.

Mr. HALL. Well, I certainly agree with that, Mr. Chairman. I know that the Department is considering at this time proposing certain legislation to promulgate a change in the appointment process.

I don't know that any decision has been made as to what the change will be, but in addition, of course, we're looking for managers that all have law enforcement experience, that all have proven managerial experience, and that all have proven through merit their abilities for these positions.

Now, I'm not saying that we don't have a fine cadre of U.S. marshals, because we do. I think all of us must look to improving the situation.

Mr. SAWYER. May I just ask a question, Mr. Chairman. Actually, I think I knew this, but I forget now. Who actually appoints a U.S. marshal, say, for the western district of Michigan? Who does that?

Mr. HALL. Of course these are Presidential appointments. The appointments are usually predicated upon the recommendation of the senior U.S. Senator of the party that's presently in office.

Mr. SAWYER. The same as a district judge is.

Mr. HALL. And of course they undergo background investigations, which I'm privileged to review and make recommendations upon.

My recommendations are considered by the Attorney General. He makes recommendations to the White House, and they in turn submit the nomination which is confirmed by the Senate. And these are all built-in safeguards.

But what we're talking about is yet just another way to improve our organizational structure.

Mr. KASTENMEIER. As a matter of fact, I guess there's a safeguard because you don't necessarily give a positive report on the name that comes down from, let's say, a Senator, because, if I'm not mistaken, there have been a number of nominees or people suggested who have not been cleared.

Mr. HALL. That's correct.

Mr. KASTENMEIER. Because they lacked something necessary in terms of professional capability.

Mr. HALL. That's correct.

Mr. KASTENMEIER. You discussed very briefly the court security, and you suggest that an interagency task force composed of several agencies has made recommendations to improve this important area.

These recommendations will be reviewed by the administration and the Administrative Office of the U.S. Courts, and of course you probably do not want to anticipate precisely what their recommendations are or will be, but what was the purpose of this? To consolidate security or why was the review undertaken?

Mr. HALL. Security is a very difficult task and a very important one, and those of us in the Marshals Service—and I think our views were shared by all that were participating in the program—was that the program was too diversified. There were too many people involved.

And when you have a mission as difficult as security, you should have one agency or one person who is ultimately responsible for that security, and when the authority is so divested, you lack a degree of control, and when you lack control in security, you are failing, I think in some measure to achieve the goals which you are trying assure, when you're trying to insure the safety and integrity of the people you're guarding.

So this is what brought about the task force with the idea of considering the functions that each of the agencies were doing, performing, with the idea of consolidating them under one particular agency.

And we feel of course that the U.S. Marshals Service is that agency; it's our statutory responsibility provided by the United States Code. I think we have in large measure the support of the Federal judiciary whom we're asked to protect.

And these are the reasons the task force has met and made recommendations.

Mr. KASTENMEIER. You at the outset spoke of a wide range of responsibilities presently undertaken by the U.S. Marshals Service, and while I am not a detractor of the U.S. Marshals Service, it does seem to me on just casual review that you are—you're working for a number of other agencies. That is to say that your duties might well have been undertaken by others, but somehow you've picked up the responsibilities rather than the armed services for transporting nuclear warheads; and you're helping the Bureau of Prisons by transferring their prisoners from time to time.

You're called on, as you point out, to serve private process, and in a number of other respects your function might well—might well be, as I say, undertaken by another agency of the Government, possibly the principal agency involved, rather than yourselves.

While I'm not opposed to it, I do think that in that regard you may be vulnerable to certain, say, administrative overhauls and rectifications in the Federal system. As the years go on, you might tend to lose some of the functions. It isn't that you don't do them well, but somebody in an organizational chart will wonder why, as I say, the U.S. prisons shouldn't be undertaking certain things and—the Bureau of Prisons, rather—and perhaps certain other agencies take certain other responsibilities for security purposes.

We have many—the FBI, the Secret Service, and others who have somewhat similar functions in terms of security, and while I suspect that in the final analysis the security of the courts will always rest at your door. I'm not sure when I see that, the assessment that there is a review going on or the intimation that there is a review going on, as to the responsibility for court security.

That's just an overall comment. It is not really much, something to which you can respond, but my feeling is, for example, the handling of unsentenced Federal prisoners might ultimately well rest with the Bureau of Prisons, although they haven't at present undertaken it.

You have to provide for facilities for the housing of Federal prisoners in 850 jails. I wonder why the Bureau of Prisons shouldn't have that responsibility since they are in the job professionally of housing prisoners.

I do agree that the charter aircraft, though it would not appear so on the surface, but probably in the longrun would be an economic move and further than merely cost effective in terms of the rights of the prisoner.

I think sometimes we have abuses when we find prisoners in local jails that have been there rather a long period of time. These are Federal prisoners who, for one reason or another, have been neglected. They've just been sort of dropped off, and they tend to be at these jails for rather long periods of time under conditions less favorable than if they were institutionalized where they could have been at a Federal Bureau of Prisons institution.

That's just a comment. As far as the multifaceted responsibilities, I don't have at this time any particular questions on the witness security program.

I assume that you are making progress in terms of some of the complaints that surfaced a year or two ago, and I assume that's extremely difficult to handle and rather costly for you to undertake that.

In that connection, perhaps—is it Mr. Safir who has really been handling that part of it for you for the Marshals Service?

Will the cost of this tend to build up each year as we add additional people. In terms of giving this continued security for people, we've been in that program for 6 or 8 or 10 years.

Mr. SAFIR. That's correct; our responsibility to a witness is a continuing responsibility; although we may stop his funding subsistence after he's relocated and he has been employed, our protective responsibility and our mail forwarding and other services that we provide for the witness continues for the rest of his life as long as he requests them or wants them.

So as we develop a backlog—right now we're at about 3,000 witnesses—as we develop this backlog, the costs increase; the documentation requirements increase; the communications with the previous area, which has to be—for security reasons, go through as increases.

So, yes, the program costs will increase, even though the witnesses may be held to the level of the report.

Mr. KASTENMEIER. I take it it's difficult for you to ascertain what peril really does exist for a witness, whether in the case of the 3,000—one really does wonder whether 3,000 or more entities are around that could be at all times pervasively threatened as individuals.

That's a lot of people to be threatened, it seems, in a sense.

Mr. SAFIR. We assume that when the Department authorizes somebody into the program that the danger is real. The assessment has been made by the investigative agency and the Criminal Division at Justice that there is in fact a threat.

So from the point they enter the program, we assume it is a real and continuing threat until someone advises that it has ceased.

Mr. KASTENMEIER. Who might advise you that it has ceased?

Mr. SAFIR. It would be the investigative agency through the Department; for instance, all of the defendants——

Mr. KASTENMEIER. The U.S. attorney?

Mr. SAFIR. The office of enforcement operations at the Department of Justice.

Mr. KASTENMEIER. Do they keep—in addition to yourselves, do they keep tabs on the witnesses? What could come to their attention to cause them to contact you?

Mr. SAFIR. They are provided by intelligence by the investigative agencies that put the witness in the program. Also, we have a cooperative agreement with the Federal Bureau of Investigation in keeping record relative to recidivism, if they get involved with criminal activity again.

Mr. KASTENMEIER. All right, thank you.

Mr. HALL. Mr. Chairman, if I might just a moment allude to your observations of potential absorption of the Marshals Service at some future date; this is something that my staff and I have always discussed, the theoretical aspects, if nothing else. I think from a personal observation that the Marshals Service provides one of the more quieter and subtle aspects to the concept of separation of the judiciary and the executive branch and the Congress because I think one of the—from my perspective, one of the worst things that would happen would be for the courts to have their own police force, so to speak, and I think that this puts us—while we are in the middle between the judiciary and the executive branch—that this does give some balance to the system of Federal justice, which I think we're all concerned with, and I think there are other reasons. But I thought I would like to bring it up to your attention.

Mr. KASTENMEIER. Yes. I assume there always will be a role for the U.S. Marshals Service. But, as I say, I think its reorganization, potentially in the future, stands vulnerable, at least to some extent, certainly.

Mr. SAWYER. It's kind of interesting, Mr. Chairman. Getting the James Earl Ray thing was a very serious public meeting that lasted several days, and of course you know he might well be a target for any number of groups, including just kooks, but there could also be quite a few people involved.

And they just did a superb job. Apparently, they are equally available not just to the judicial and the executive, but to us too on rare occasions, if we have occasion.

Mr. TWOMEY. If I might comment on that, Mr. Chairman; it's been said many times that the U.S. marshals are the handymen of the Federal administration when it comes to law enforcement activities, and in part that's due to the fact that we have the broadest law enforcement authority of any Federal agency.

And we very often find ourselves in the position of being called upon to do a myriad of things that are not within the scope of the very narrowly defined statutory authority of the other agencies.

We, in a very real sense, are the law enforcement arm for an unbelievably wide range of things that the Attorney General or the Congress or the judiciary would like to have done but that no one else has the authority to do.

Mr. KASTENMEIER. Thank you, Mr. Hall.

Mr. HALL. Thank you very much.

Mr. KASTENMEIER. Thank you for your appearance this morning. Thank you. The committee stands adjourned.

[Whereupon, at 11:51 a.m., the hearing was adjourned.]

GENERAL OVERSIGHT ON JUSTICE RELATED AGENCIES

WEDNESDAY, MAY 16, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,
AND THE ADMINISTRATION OF JUSTICE
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 2:40 p.m., in room 2226, Rayburn House Office Building, Hon. Robert W. Kastenmeier (chairman of the subcommittee) presiding.

Present: Representative Kastenmeier.

Also present: Michael J. Remington, counsel; Thomas E. Mooney, associate counsel; and Audrey Marcus, clerk.

Mr. KASTENMEIER. The committee will come to order.

We are facing a time problem this afternoon because we will have votes shortly on the House floor.

I expect to be joined by other colleagues shortly before then.

This afternoon, we are pleased to continue our oversight hearings to familiarize the subcommittee with the nature of the problems relating to various offices, agencies, bureaus, and departments, with which this subcommittee deals on a daily basis. These hearings were designed to allow the chief officers to describe their duties, problems, and goals, for the future. Specific legislative proposals may also be discussed.

I am very pleased to greet our two witnesses today. I would like to greet the distinguished Director of the Administrative Office of the U.S. Courts, the Honorable William E. Foley. He is accompanied by a number of people with whom he works. I will let him introduce those people.

Mr. Foley has four Harvard degrees. He served in the U.S. Navy, held high positions in the U.S. Department of Justice, served as Deputy Director of the Administrative Office from 1964 to 1977, was Secretary to the Advisory Committees on Federal Rules during this time and finally became Director of the Administrative Office on November 21, 1977. We are fortunate to have a director with his experience.

Also, I would like to greet and have come forward if he would, the Honorable A. Leo Levin, Director of the Federal Judicial Center. Mr. Levin has had a very distinguished career in the law as professor of law at the University of Pennsylvania, as consultant to the Pound Conference, as executive director of the Hruska Commission, and as author of numerous articles and books.

We also are fortunate to have a man of his ability in public service.

Before I call on both of you, I would like to add, parenthetically, that insofar as we are dealing with the Judiciary Committee and because, indeed, in the news this morning is a story which relates to the Federal judiciary in terms of their compliance with the recent Federal law and the actions they have taken, at least some of them, to frustrate that, I intend to ask some questions related to that issue.

And I would be happy to have your response.

In the meantime, we have a statement of Mr. Foley and the statement of Mr. Levin. Without objection, I would be pleased to receive those statements, and they will be made part of the record.

And if you care to summarize, any way you wish.

[The complete statements of Mr. Foley and Mr. Levin follow:]

PREPARED STATEMENT OF WILLIAM E. FOLEY, DIRECTOR, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Mr. Chairman, I am here today, at your request, to describe the functions performed by the Administrative Office of the United States Courts, and to discuss several of those activities in which that office is now engaged.

Just over two years ago I accompanied the late Director, Rowland F. Kirks, when he appeared before this subcommittee for a similar oversight hearing. General Kirks then noted the extent to which this subcommittee's activities influence the everyday conduct of business in each federal court, and expressed, on behalf of the federal judiciary, our genuine appreciation of the help and assistance which has been provided the courts by this subcommittee under your leadership. I would like to note that your record of responsiveness to the courts' needs has only been greatly enhanced since General Kirks' appearance in early 1977.

Few Congresses in history have been as sensitive to the judiciary's needs as was the Ninety-fifth Congress; and even fewer have actually processed as much legislation designed to help the courts meet their obligations to the nation. That record, in large part, was made possible by this subcommittee's continued efforts. Mr. Chairman, the officers and employees of our federal courts recognize those efforts. On their behalf, let me thank you personally, your colleagues on the subcommittee, and your dedicated and competent staff members. Your collective achievements in the last Congress were of great value, and your continued support for objectives not quite fully achieved last year is just as much appreciated.

In responding to your concerns in this Hearing I should initially observe that the Director and Deputy Director of the Administrative Office are appointed to their positions by the Supreme Court of the United States, while all other employees of the office are appointed by the Director. At the present time the authorized permanent personnel strength of the office is 465. All 465 employees are stationed here in Washington in four widely dispersed locations.

They provide administrative direction and services for the 12,500 officers and employees of the federal judiciary who serve in the eleven judicial circuits and ninety-five judicial districts nationwide, including those who serve the "territorial courts" located in the Canal Zone, Guam, the Northern Marianas and the Virgin Islands.

In an "institutional" context, we serve the courts of appeals, the district courts, the bankruptcy courts, the Court of Claims, the Court of Customs and Patent Appeals and the Customs Court—as well as the Temporary Emergency Court of Appeals, the court established under the Railroad Reorganization Act, and the recently created, not-yet-fully-organized, Foreign Intelligence Surveillance Court. As you know, we have no responsibility for the administrative affairs of the Supreme Court.

Given the purpose to be served by this Hearing, I believe I should also briefly summarize the Administrative Office's history. Recognizing that much of that history is already well-known to the members of this subcommittee, however, I will indeed keep the summary brief.

Created by the Act of August 7, 1939, the Administrative Office was established to serve as the executive arm of the Judicial Conference of the United States, the policy formulating body of the federal judiciary, which had been created by Congress only seventeen years earlier. The Conference has often been compared to a corporate "board of directors," and I believe that analogy is appropriate.

Between 1922 and 1939 the Attorney General of the United States had served as the "administrative agent" of the Conference. That arrangement had raised serious separation of powers questions, which Congress sought to resolve by creating the Administrative Office.

In 1977 General Kirks filed a basic history of the federal judicial system as an appendix to his prepared statement before this subcommittee which I would merely incorporate by reference.

Under the 1939 "enabling act" the Director of the Administrative Office was given a spectrum of duties and responsibilities. Ensuing statutes have conferred additional specific duties and responsibilties. Many of them are embodied in Section 604 of title 28, United States Code. Many others are imposed by the recently enacted Bankruptcy Reform Act, the probation laws, the wiretap statute, the Rules of Civil, Criminal and Appellate Procedure, the Speedy Trial Act, and a host of other statutes, some of which are applicable to all agencies of the federal government.

For your purposes today, I will simply group those duties into several major categories:

1. *Financial Affairs.*—The Director is required by law to prepare the budget for the judiciary, to disburse appropriated funds and to audit vouchers. The budget for the federal judiciary is currently approximately $430,000,000 per year (1/13th of one percent of the national budget). Most of those funds are disbursed directly by our office, although jury fees, reimbursement of travel expenses and certain other miscellaneous items are currently disbursed for us by United States marshals. Just recently, we have been authorized to delegate to clerks of court adequate discretion to purchase routinely needed supplies and furnishings locally.

2. *Personnel.*—The Administrative Office Act authorizes the Director of the Administrative Office to "fix the compensation of clerks of court, deputies, librarians, criers, messengers, law clerks, secretaries, stenographers, clerical assistants, and other employees of the courts whose compensation is not otherwise fixed by law." Pay schedules which are comparable to the General Schedule for all government employees have been established and positions within the judiciary are created and classified under this schedule.

3. *Procurement.*—Supplies, equipment, furniture and furnishings—other than those now purchased locally—and all lawbooks are purchased by the Administrative Office for all judicial officers and employees. The custody of furniture, equipment and lawbooks is assigned, and inventory records and equipment repair records are maintained by our office. Within the past year we have hired a professional librarian to provide assistance and managerial advice to court personnel working in libraries nationwide and to advise our office on how to most efficiently and economically meet the judges' needs for library facilities and services.

4. *Judicial Survivors Annuities.*—The Director of the Administrative Office regulates and pays annuities to widows and surviving dependent children of justices and judges of the United States and supervises the special fund established by law from which annuity payments are made.

5. *Reports and Statistics.*—The Administrative Office Act requires the Director to submit an annual report to the Judicial Conference containing information concerning the courts' need for assistance, statistical data, analyses of the business of the courts, and the Director's recommendations. Copies of those reports are submitted to the Congress and to the Attorney General and are classified as public documents.

In addition, the Director is required to compile statistical and analytical information and submit reports concerning the work of the bankruptcy courts, probation officers, United States magistrates, public defenders and appointments of counsel under the Criminal Justice Act. The Speedy Trial Act requires a special report to the Congress, and the wiretap statute similarly requires the compilation of information on wiretaps orders, approved by both state and federal courts, to be included in a special annual report to the Congress. This subcommittee is, of course, very familiar with most of those reports, and also cognizant of the many special analyses and tabulations of data which we prepare in response to Congressional and Executive requests.

6. *Accommodations.*—The Director is required to provide accommodations for the courts, the Federal Judicial Center, Pretrial Services Agencies and their clerical and administrative personnel. That function, of course, is actually implemented in cooperation with the General Services Administration, which has the responsibility for the construction and maintenance of government facilities. By statute, the courts are, in a sense, "tenants," and the General Services Administra-

tion is a figurative "landlord." Although that arrangement occasionally creates problems for individual courts—many of which are brought to the attention of Members of Congress—I believe the arrangement is, *in general*, an asset rather than a liability. Because Members generally hear only about the problems, I feel it appropriate to note that the full-time administration of such functions for the judiciary by the Administrative Office would be an immense task, involving full duplication of many functions which, generally, should not be duplicated.

7. *Management Responsibilities.*—The management responsibilities for the Director are numerous and diverse. He prescribes the books and records to be kept by clerks of court and judicial officers and designs and provides the forms to be used in recordkeeping. He is required by law to issue operating and procedural manuals for various court offices, to issue information bulletins, and to keep officers and employees of the judiciary currently informed on matters pertaining to the discharge of their responsibilities. He distributes opinions of courts and contracts for the printing of slip opinions. In addition he audits the registry and deposit fund accounts maintained by clerks of court and examines court offices to determine compliance by court officers with Judicial Conference established rules and regulations. He also makes recommendations to the courts to improve the efficiency of their daily operations.

In addition to those supportive functions, of course, there are the duties which are derived from the Administrative Office's responsibility to provide full staff support for the Judicial Conference of the United States and its twenty-five separate committees and subcommittees. The Conference's committee structure and current membership are provided as appendices to this statement. By statute, *all* duties of the Director are performed under the supervision of the Judicial Conference. The Administrative Office serves as the secretariat for the Judicial Conference and provides staff assistance to its committees. The Deputy Director, Mr. Spaniol, acts as secretary to the Judicial Conference and prepares the preliminary agenda for and drafts the report of its biannual meetings. He also serves as secretary to the Standing Committee on Rules of Practice and Procedure and its several advisory committees. The senior members of the Administrative Office serve as secretaries to the various Conference committees and perform similar functions for them. At the request of the Conference, or its committees, the Administrative Office conducts studies, makes investigations, and drafts legislation.

When General Kirks testified two years ago, he submitted for the record copies of a manual entitled *Organization and Functions of the Administrative Office, March 1976*, describing the allocation of duties and responsibilities within the office. That manual will soon be rewritten to reflect organizational changes which have been made within the past eighteen months and new functions which have been added within the past three years. Because the 1976 edition is both already on file with you and in need of revision I am not submitting additional copies today. A chart attached to my statement as an appendix presents the current organizational arrangement of the Administrative Office's units, and I will only briefly summarize related functions.

Two Assistant Directors supervise our three administrative support and five program divisions. The Deputy Director supervises our three management and information systems divisions. The Legislative Affairs and General Counsel's Offices function under my personal supervision. Each of the eleven divisions and both offices are headed by a senior staff member and, of course, each Assistant Director is a senior staff member. Generally, the responsibilities of each division can be summarized as follows:

The *Bankruptcy Division* serves all offices of the United States Bankruptcy Court system. In light of the Reform Act passed by the Ninety-fifth Congress, the range of this division's duties and responsibilities is presently being revised to conform with the requirements of that Act.

The *Clerks Division* maintains liaison with clerks of court, allocates positions and generally provides supervisory advice and assistance to the clerks in the performance of their duties.

The *Criminal Justice Act Division* discharges the responsibilities placed upon the Director of the Administrative Office by the Criminal Justice Act. The division consults with courts on the establishment of federal public defender offices, evaluates the need for public defenders and provides professional and supervisory assistance to public defender offices and to the courts.

The *Magistrates Division* conducts surveys to determine the need for full-time and part-time magistrate positions in the district courts, makes recom-

mendations on salaries, issues operating manuals and instructions, and analyzes the work of magistrates.

The *Probation Division* conducts studies, makes recommendations pertaining to the conduct of presentence investigations and supervision of persons placed on probation, parole and mandatory release, allocates positions in the probation service, and works to improve the professional competency of probation officers.

The *Information Systems Division* develops and designs information retrieval and processing programs, all related forms, and computer utilization programs for all federal courts and their supportive offices.

The *Statistical Analysis and Reports Division* compiles all statistical data, prepares related analyses and produces related individual reports or sections of reports published by the Administrative Office.

The *Management Review Division* conducts the examination of court offices, audits the accounts of clerks of court, and prepares managerial and analytical reports for the consideration of each court and the judicial councils of the circuits.

The *Administrative Services Division* processes all business related to procurement, court quarters and services, records management, and internal printing requirements.

The *Financial Management Division* prepares the federal judiciary's budget, maintains all centralized accounts, disburses funds, audits vouchers, and administers the Judicial Survivors Annuity System.

The *Personnel Division* classifies positions in the judiciary, institutes personnel changes and maintains personnel records for all 12,500 judicial officers and employees.

Mr. Chairman, our activities are related to every aspect of the functioning of the national system of federal courts created by Congress. Our duties and responsibilities are thus directly or indirectly effected by the Congress as much as they are by the Judicial Conference of the United States and individual courts. When General Kirks appeared two years ago he provided a list of ninety-nine new responsibilities imposed upon the Director between 1956 and 1976. As you know, the Ninety-fifth Congress inevitably extended that list. We are now responding to the recent enactment of the following twenty-one public laws which have a direct impact upon the federal courts, as well as others which indirectly influence judicial process and caseloads:

Popular name	Public Law No.	Date signed
Federal rules of criminal procedure	95-78	July 30, 1977.
Offenders transfer treaties	95-144	Oct 28, 1977.
Northern Mariana District Court Act	95-157	Nov 8, 1977.
Circuit Court Accommodations Act	95-196	Nov 19, 1977.
Hempstead (Long Island) location bill	95-271	Apr 28, 1978.
Clerks office deconsolidation	95-383	Sep 22, 1978.
District court reorganization bill (No. 1)	95-408	Oct 2, 1978.
Pretrial services funding extension	95-431	Oct 10, 1978.
Omnibus judgeship bill	95-486	Oct 20, 1978.
Transportation expenses for related persons	95-503	Oct 24, 1978.
Foreign Intelligence Surveillance Act	95-511	Oct 25, 1978.
1978 Ethics (Financial Disclosure) Act	95-521	Oct 26, 1978.
Witness fees bill	95-535	Oct 27, 1978.
Contract services—Drug dependent offenders	95-537	Do.
Court Interpreters Act	95-539	Oct 28, 1978.
Protection of rape victims bill	95-540	Do.
Contract Disputes Act	95-563	Nov 1, 1978.
Jury Reform Act (3 bills)	95-572	Nov 2, 1978.
District court reoranization bill (No. 2)	95-573	Do.
Nationwide subpoena service bill	95-582	Do.
Bankruptcy Reform Act	95-598	Nov 6, 1978.

As you may imagine, bills such as the Omnibus Judgeship Bill—which increased the number of federal judges by thirty percent—and the Bankruptcy Reform Act—which literally reorganized an entire systems of courts—have an enormous impact upon the Administrative Office's workload, as well as that of the courts. Other bills, many of which this subcommittee made possible, ease our burden and facilitate the performance of our duties. The recent Jury Reform Act is an ideal example of the latter type of legislation.

I hope you will not interpret my preceding comments as a complaint. They are merely factual. The Administrative Office was created to serve the judicial system, and it will be managed to perform that service. When all else has been said, the fundamental fact is that the Congress and the Judicial Conference for-

mulate policy and define purposes; the Administrative Office merely implements the policy and serves the purposes as directed to do so by statute and Conference directive.

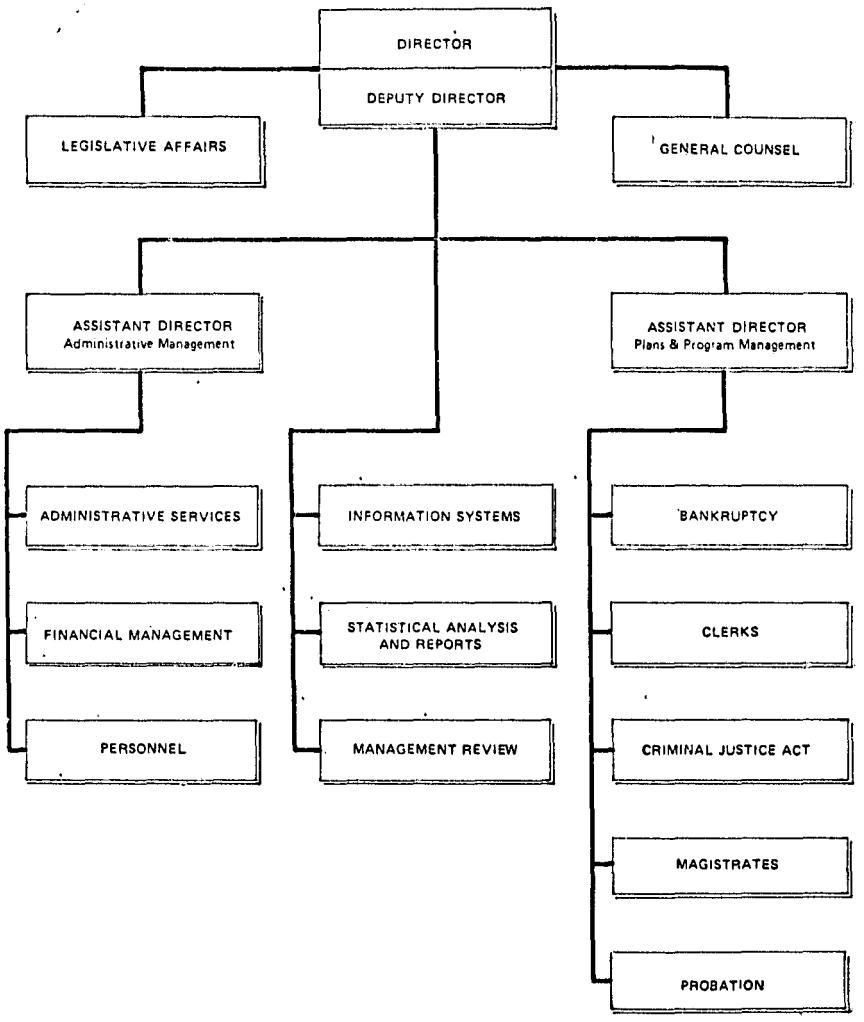
Thank you for this opportunity to explain our role to you today, and for the many instances in which you have helped us to perform that role.

MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

Honorable Warren E. Burger, Chief Justice, Presiding.
Chief Judge Frank M. Coffin, Chief Judge Andrew A. Caffrey, First Circuit, Massachusetts.
Chief Judge Irving R. Kaufman, Chief Judge T. Emmet Clarie, Second Circuit, Connecticut.
Chief Judge Collins J. Seitz, Judge Alfred L. Luongo, Third Circuit, Pennsylvania, Eastern.
Chief Judge Clement F. Haynsworth, Jr., Judge Charles E. Simons, Jr., Fourth Circuit, South Carolina.
Chief Judge John R. Brown, Chief Judge William C. Keady, First Circuit, Mississippi, Northern.
Chief Judge George C. Edwards, Chief Judge Charles M. Allen, Sixth Circuit, Kentucky, Western.
Chief Judge Thomas E. Fairchild, Judge S. Hugh Dillin, Seventh Circuit, Indiana, Southern.
Chief Judge Floyd R. Gibson, Chief Judge James H. Meredith, Eighth Circuit, Missouri, Eastern.
Chief Judge James R. Browning, Judge Morell E. Sharp, Ninth Circuit, Washington, Western.
Chief Judge Oliver Seth, Judge Wesley Brown, Tenth Circuit, Kansas.
Chief Judge J. Skelly Wright, Chief Judge William B. Bryant, Dist. of Columbia Circuit, District of Columbia.
Chief Judge Daniel M. Friedman, Court of Claims.
Chief Judge Howard T. Markey, Court of Customs and Patent Appeals.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

ORGANIZATION CHART



PREPARED STATEMENT OF A. LEO LEVIN, DIRECTOR, FEDERAL JUDICIAL CENTER

Mr. Chairman, I am grateful for the privilege of appearing before you as Director of the Federal Judicial Center, the federal judiciary's agency for research, development, and continuing education. From our standpoint, we appreciate the opportunity that these hearings provide for the Center to comply with its statutory mandate to "keep the Committees on the Judiciary * * * fully and currently informed with respect to the activities of the Center."

CREATION AND MISSION OF THE FEDERAL JUDICIAL CENTER

It may be well at the outset to emphasize the underlying goal of the Center: to improve the ability of the federal courts to provide justice of a high quality, not only to litigants, but in a broader sense, to the public, which is affected in numerous ways by what the federal judiciary does. Everything we do, from computerized information systems to empirical research, is simply a means to that goal, and we recognize that our activities must be evaluated with that goal always in view.

Congress created the Center by P.L. 90–219, signed by President Johnson on December 20, 1967. The statute established the Center "within the judicial branch of the Government," and provided, for its overall direction, a Board chaired by the Chief Justice of the United States, and including two circuit and three district judges, elected by the Judicial Conference of the United States for four-year terms, and the Director of the Administrative Office of the United States Courts. (Pursuant to the Bankruptcy Reform Act of 1978, the Conference this fall will elect a bankruptcy judge as the eighth member of the Board.)

The Board selects the Director of the Center. I count it a special privilege to follow, in this office, the late Mr. Justice Clark, who directed the Center from 1968 to 1970; the late Judge Alfred P. Murrah, who served from 1970 to 1974, and the Director Emeritus of the Center, Judge Walter E. Hoffman, who succeeded Judge Murrah and served until July, 1977 when he reached the age of 70, the mandatory retirement age set by statute.

The decision of the Congress to establish the Center as a separate entity, albeit within the federal judicial system, is noteworthy. The late Warren Olney III, Director of the Administrative Office during most of Chief Justice Earl Warren's tenure, and an important figure in developing the concept of the Center, expressed the view that it is almost impossible to "have research and development function effectively if it is either under or a part of the regular on-going, day-to-day operation of the company. When that happens, the research and development is always absorbed * * *. We felt that in this area the great need was to have the research and development separate from the regular run of the federal judiciary so that it would not be controlled by them and so that it would have its own budget and have its own people and make its decisions as to what was worth studying and what was not, and so that it could also undertake long-term studies over a period of five or six years, however long as it might be necessary. And that is the reason the committee [of the Judicial Conference that proposed the Center] recommended the kind of organization it did, with a Board functioning like a corporate Board with its own budget, its own finances, with its own Director and staff * * *."

The Congress assigned the Center a range of duties, which can be summarized as follows:

(1) *Policy Research.*—The first of the specific statutory duties assigned to the Federal Judicial Center is "to conduct research and study of the operation of the courts of the United States, and to stimulate and coordinate such research and study on the part of other public and private persons and agencies."

(2) *Continuing Education.*—The Center is directed to provide continuing education programs for all judges and employees of the third branch.

(3) *Systems Development.*—The Congress was especially concerned that the federal courts be provided with the latest tools of computer technology and systems development.

(4) *Formulation of Recommendations for Improved Judicial Administration.*—Several statutory duties assigned to the Center and its Board make clear Congress's expectation that the Center would be a source of recommendations for improved judicial administration to the Conference, to the Congress, to the federal courts in general, indeed to the legal and judicial communities in a very broad sense.

For the Center's operations in fiscal year 1979 the Congress approved a budget of $8,025,000. The Center currently has an authorized personnel complement of 113, including secretarial and clerical personnel. The Center today has four divisions and I turn to describe briefly the work of each.

The Division of Innovation sand Systems Development.—This division, which expends roughly 40 percent of the Center's budget and includes roughly 40 percent of its personnel, is responsible for the development and the application of computer and systems technology to the operations of the federal courts. "Courtran" is the umbrella term for the range of technological applications that I shall describe in more detail below.

Courtran is designed to achieve four major purposes:

(1) *Case Management.*—Helping court personnel monitor the status of individual cases; this is especially significant with respect to the Speedy Trial Act of 1974.

(2) *Court Management.*—Including financial and personnel management.

(3) *Statistical Reporting.*—Making it possible for the courts to gather and report data more accurately and more efficiently than by the traditional "hand" systems.

(4) *Research and Planning.*—Providing the federal courts improved capabilities for analysis of federal judicial activity and planning to meet problems of the future.

The Center is giving first priority in Courtran development to systems for the management of criminal cases, because of the special reporting requirements imposed on the courts under the Speedy Trial Act. The criminal system is in pilot operation in eleven district courts, which handle about a third of the nation's pending criminal caseload and is currently expanding to four more courts. Furthermore, we have this month offered the basic Speedy Trial portion of the case docketing system to all other federal courts with felony defendants of 250 or more annually. Altogether, this would service approximately 80 percent of the country's federal criminal caseload.

Courtran also includes related systems for the indexing of all civil and criminal cases according to parties, judge, date of action and so forth. We are testing a Central Violations Bureau support system to enable courts to keep account of fines imposed for violation of the several hundred thousand petty criminal federal offenses that occur each year. The traditional image of the federal judicial system hardly includes traffic offenses or other similar petty offenses, but these are important in terms of their numbers, the money involved and the need for systematic enforcement.

Other Courtran applications are in various stages of development to provide docketing systems for the civil caseload in the district courts and, of great potential importance, docketing systems for the appellate courts as well. There are also more discrete Courtran applications, such as a word processing and electronic mail system, recently tested in the Third Circuit, that cuts substantially the time involved in appellate opinion preparation.

Division of Research.—The Research Division accounts for roughly one-sixth of the Center's budget and personnel. Its size of course is clearly not reflective of the importance of its mission.

The Center's research is primarily "policy research," which is to say research on problems that personnel in the federal courts identify as needing solution, and which can provide the basis for recommendations for improvement. Typically, we respond to research requests not only from individual courts, but, as provided in the governing statute, to requests from committees of the Judicial Conference as well. Major projects, whatever the source, are subject to Board approval.

We currently have in progress—and this includes the design stage—more than 50 discrete research projects. I list below a variety of examples of some research to give you an idea of the types of studies we undertake.

In the criminal area, the Center is best known for its research on federal judicial sentencing practices. The Second Circuit sentencing study, undertaken at the request of the district judges of the Second Circuit, illuminated the problems of sentencing disparity. The Center currently has in the final stages an examination of sentencing councils. Within the Research Division, the Center also provides continuing advice, pursuant to statute, to the various planning groups established under the Speedy Trial Act.

The Center has provided support to a special committee of the Center, chaired by Judge Ruggero J. Aldisert, which is devising recommended procedures for federal judges to use in handling the vast number of prisoner petitions filed with

them in a manner that is both expeditious and that insures that the occasionally meritorious petition will not be missed. The Center is, again at the request of the court involved, observing the work of a special master appointed by a federal district judge to oversee the implementation of that judge's decree in a case involving a state penal institution. The rise of these so-called "extended impact cases" is a point of major professional and public interest. We hope to develop recommended procedures for other federal judges faced with the peculiar judicial responsibility of the implementation of a reform in a complex institutional setting.

Much of our current interest is focused on the costs and complexity of civil litigation; the burdens of such costs and complexity are ultimately borne by the taxpayers and the litigants, and indeed the public. The Center's recent report on discovery activity in six federal district courts, covering 3,000 cases and over 7,000 docketed discovery requests, was the first comparative empirical analysis of actual discovery behavior in the courts. One of its findings, that extensive discovery is confined to a relatively small proportion of cases, has helped reshape the professional debate over the possible extent and nature of discovery abuse and thus of the kind of remedial action that would be proper. We now have in progress a wide variety of projects on various aspects of civil litigation. These range from detailed analyses of the use of sanctions to control abusive pretrial activity, to two major studies of attorneys fees.

On the appellate level, we have utilized controlled experiments in two circuit courts (the Second and the Seventh), to evaluate screening procedures devised by the courts to help appellate cases settle before hearing. Our work in the Second Circuit led the Seventh Circuit Court of Appeals to devise a somewhat different procedure, which we are currently evaluating.

Several other areas of inquiry should be mentioned. The Center is engaged in a variety of studies related to jury trials, both to develop computer programs to help insure the representativeness of jury panels, to assure effective voir dire examination, and most recently, to improve jury instructions.

We conducted a thorough survey of federal judges' evaluations of attorneys' competency in advocacy, in support of a Judicial Conference committee investigating that topic. Recently we completed studies of the circuit councils and of the circuit executives, areas of significance in court management as distinguished from case management.

Division of Continuing Education and Training.—This division comprises approxmately 30% of the Center's budget and personnel and provides a range of educational and training programs to all members of the third branch. These range from a recently completed seminar for federal appellate judges on various jurisprudential and appellate procedural matters, to local training seminars for court clerks on procurement policy. Last year, about half of the personnel in the judicial system participated in 129 separate programs—as well as in other specialized programs, such as correspondence courses.

Perhaps the most well-known Center educational function is the program of Orientation Seminars for Newly Appointed District Judges. They provide newly-appointed judges, who usually come to the bench from a specialized law practice, with an exposure to the broad range of responsibilities that the concept of a generalist judge imposes upon them. They also emphasize techniques of case management. In addition, the Center provides the judges an opportunity to attend at least one workship for district judges each year.

Seminars for other personnel of the federal judicial system—probation officers, clerks, magistrates, court librarians and bankruptcy judges—are also held. In addition, we frequently provide specialized training in subjects of particular local need, such as, for example, a program for the probation officers in large metropolitan districts, dealing with drug dependency and drug offenders. These programs are conducted in the district involved.

Division of Inter-Judicial Affairs and Information Services.—The Inter-Judicial Affairs Division, with the Administrative Office, publishes *The Third Branch*, the official bulletin of the federal courts, and undertakes a variety of other liaison activities to provide whatever services we can to achieve coordination in the work with various groups charged with the mission of improving the delivery of justice. The Center's Office of Information Services provides the Center itself with library services, but also responds to requests from judges, academicians, students and others who need specific information on the operation of the federal courts. Often we are able to provide this information where others cannot because of a unique collection of unpublished materials (e.g., speeches and reports) that we maintain at the Center. This Division plays an important role in briefing foreign visitors, many of them referred by the State Department, other agencies, and the United Nations, concerning the federal judicial system.

CONCLUSION

Further details on the Center's work are available in our Annual Report, our Catalog of Publications and in the publications themselves, all of which are available to you. Moreover, we at the Center stand ready and eager at any time to provide whatever information we can to the Members of Congress and their staffs and would be pleased to be of service whenever we can.

Thank you.

Mr. KASTENMEIER. Mr. Foley, first, if you would, sir.

TESTIMONY OF HON. WILLIAM E. FOLEY, DIRECTOR, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Mr. FOLEY. Thank you, Mr. Chairman.

First, may I say that we appreciate very much this opportunity to present to your subcommittee an oversight as it were of the operations of the Administrative Office since we last testified more than 2 years ago on this general subject.

Since that time, the workload of the Federal courts has continued to grow. I have submitted to counsel an analysis of the general changes in the statistical pattern, which reflects an increase of over 70 percent in case filings in the courts of appeals, and a similar increase in civil filings in the district courts, in the past 8 years.

The Administrative Office itself has also grown, to 465 persons at this time. This is a development, I think, that has to be attributed largely to the increase of the work in the Federal courts. The increase has come in our service areas—namely, personnel, the Division of Finance and Auditing which handles all judicial accounts, and in the administrative support area—furnishing space and procurement in general—for the needs of the Federal courts.

These are the areas which reflect the growth in the number of personnel in the Administrative Office.

We have added a new division which was just getting underway at the time of our last appearance here. When we assumed from the Department of Justice the function of inspecting the books and records of the courts, particularly of the clerk's offices, we created a management review division. It is now, I think, beginning to prove its worth, particularly in the last few months. We have been able to assemble a staff which is competent and doing a very good job.

As you know, Mr. Chairman, we in the Administrative Office, by statute, receive our policy guidance in all matters affecting the courts from the Judicial Conference. We do not ourselves make policy. We serve the Judicial Conference and its committees in a staff capacity, across the board, as it were.

This is a very important function of the office, although it requires very few of our personnel—chiefly, the Director, and Deputy Director, and the Assistant Directors.

I will be happy to go into any phase of my prepared statement that might be of interest, if you have any questions, sir.

Mr. KASTENMEIER. Thank you, Mr. Foley.

Let me take up the question I first raised, and we will go into other questions.

I personally am concerned about it because I was the principal author of H.R. 1 on financial disclosure in the House. My ranking majority member of the subcommittee, Mr. Danielson, and the sub-

committee actually processed the Financial Disclosure Act. And at this late moment, we find that it has been challenged independently by some members of the Federal judiciary.

I am concerned, not that people have not the right to challenge it, but indeed whether this reflects general attitudes among the Federal judiciary whether they see a separation of powers as insulating the judiciary from laws that affect other Federal officers of the United States, including the legislation and executive branch.

Whether we may in fact see a pattern of suits in legal activity within the Federal courts instituted by Federal judges, Federal judicial officers for their own benefit, that is to say, such as a suit which uniquely suggested that the Congress was in fact diminishing the pay of Federal judges by failing to grant an increase in compensation by virtue of inflation. Whether these are unique or not, I do not know, nor have I in fact read the briefs in the matter.

But the news stories reaching us as of this morning suggest that old arguments that had already been disposed of wouldn't affect other officers as well as judicial officers—namely, might judicial officers be kidnapped by offended defendants in a trial because of their knowledge of the assets of judges. Really, that was an argument that I think was disposed of in congressional debates as affecting all of the officers who may be called on to file in whatever capacity.

And, in fact, it is not unique as I understand it, Mr. Foley. Up to 1979, the judges were required among themselves as a result of action in Judicial Conference to file some form of financial disclosure.

Mr. FOLEY. Yes, sir.

Mr. KASTENMEIER. Although there were no penalties, of course, for it, nor were the Supreme Court Justices required to so file and so did not file, some in protest for the latter fact and for perhaps other reasons.

So this is not a unique requirement.

I am very chagrined. And one of the reasons I am is—I would say even shocked—because of the implications that this might have in terms of questions, other legislative questions, relating to judicial tenure which is a contemporary question before the Congress. And I hope that this particular suit restraining order is not allowed to distort a wise and appropriate disposition of the question, public question, of judicial tenure.

But, nonetheless, I think it is appropriate to discuss it. And I wondered how you view this in terms of whether this represents a large number of the judiciary or whether this is isolated among several of the judicial officers within the South as was described in the story and whether indeed, if one could say whether the Supreme Court and others will comply with this order, if you are able to comment.

Mr. FOLEY. Well, so far as I can comment on it, I can only say that it took us all by surprise. We have no information that anyone else is going to file any similar suit.

As you know, the Judicial Conference endorsed the financial disclosure legislation once it became clear that it would apply across the board and that the judiciary would not be singled out separately.

Mr. KASTENMEIER. Exactly.

Mr. FOLEY. And that remains the policy of the Judicial Conference. The litigation—we did not know the details last night—but we re-

ceive a copy of the order over the telephone this morning, and I have made that available here locally.

That is about all we know about it at this point. We were contacted through our clerk's division about sending the order to all clerks of court, and we declined to do that because this is a judicial proceeding. The Administrative Office has no business doing anything in implementation of judicial proceedings; that is up to the court which has the proceedings—to find a way of serving the affected parties.

As I say, we have no reason to think that other suits will be filed. I know that the feeling has run high among some judges. From what I have heard, some aspects of the filing—not the filing itself so much as the fact that a litigant who does not prevail in the court may want to take some punitive action against the judge by way of what is disclosed in his report—are matters of great concern.

We have never encouraged any thinking along those lines, but, of course, the judges do talk among themselves about these things.

The only other phase that has come to our attention has been some concern about a spouse's income when the spouse has a business of her own or his own. And they have felt that there might be some invasion of privacy in that regard.

Mr. KASTENMEIER. Let me ask you this, Mr. Foley. Are not the judges aware that there is another suit, as I understand it, before Judge Oberdorfer, which I think challenges more generally some of the questions raised. Why the Federal judiciary can seek to challenge this law separately on behalf of several judges apparently not in defiance literally of at least the official attitude to the Judicial Conference is a very good question, it seems to me.

And I wonder what authority the Judicial Conference has really over its judges in terms of its policies.

Mr. FOLEY. Well, the Judicial Conference, of course, has no sanctions available to enforce its policies.

Mr. KASTENMEIER. Let me ask you this, then: What authority does a Federal judicial officer's restraining order have on the Supreme Court of the United States?

Mr. FOLEY. Basically, I assume that is a legal question which will be litigated. I personally question the fact that such authority exists. But this will have to be judicially decided now, I presume.

Mr. KASTENMEIER. Could the Judicial Conference file an amicus brief on one side or the other of this case?

Mr. FOLEY. Theoretically, I suppose it could. It has never before entered any proceedings of any kind.

As you know, there were some proceedings a couple of years ago relating to salary, and I don't even recall that that was ever discussed by the Judicial Conference.

Mr. KASTENMEIER. Well, I will only conclude by saying I think it was ill advised probably on every level. I specifically think it is more unsettling in terms of public confidence in the Federal judiciary. It serves no beneficial purpose. And to the extent that in hearings on judicial tenure and other matters, certain issues will be raised, I sense this only perhaps would add fuel to the fire.

And I am very sorry to see it even though they may exercise their rights in terms of litigation as any other citizen or affected official.

Nonetheless, it would seem that some prudence in this matter is called for on the part of the judiciary.

Mr. FOLEY. Well, as I said at the beginning, I have no reason to think that this is anything but a unilateral action on the part of the five or six parties to that action.

Mr. KASTENMEIER. Thank you, Mr. Foley.

Let me before proceeding further with other questions call on Mr. Levin, who has been very patient and whom I want to compliment for his good service and, indeed, Mr. Levin, do you have any comments on the question I just raised with Mr. Foley?

TESTIMONY OF HON. A. LEO LEVIN, DIRECTOR, FEDERAL JUDICIAL CENTER

Mr. LEVIN. I would just underscore that we have here perhaps 6 judges out of a complement of 600 who are exercising their individual rights to have a matter made justiciable.

I can say that I have heard of other judges who believe that there are legal problems involved in the legislation, but, precisely because of the kind of prudence that you mentioned, said they would not bring suit, even if they were convinced they were legally right, because it would not be a service to the judiciary. And I think that is the more widely held view. Such is the hearsay that has come to me.

Mr. KASTENMEIER. Wouldn't you agree, though, that had the judiciary been singled out for disclosure by statute on a compulsory basis and not in a similar degree than other branches, that that would be a perhaps more compelling case?

Mr. LEVIN. Oh, yes; that would be a totally different kind of issue.

Did you wish me to proceed with the same kind of summary?

Mr. KASTENMEIER. Would you?

In fact, we are confronted now with a recorded vote on the floor, but I would ask you to summarize this briefly if you could.

Mr. LEVIN. I will make it exceedingly brief and at your pleasure. Primarily, I am here to answer any questions that may come up, to supplement what has been said in the statement.

I will simply review the work of our four divisions. First is our Research Division. I find quite exciting the diversity of projects that we deal with in research. They range from disparity in sentencing to problems of civil litigation, particularly in the discovery area. Much of this work is part of the effort to make access to the courts realistic and meaningful.

The Innovations and Systems Development Division is testing a management information system known as Courtran, which has great significance in the effort to bring to the courts management ability with respect to the Speedy Trial Act particularly. We have just moved to make computerized Speedy Trial Act reporting and accounting available to 45 courts, by offering it to another 30 beyond our 15 pilot courts. We are pleased also with systems that we are developing on the appellate level, and we are gradually moving into the civil area. Our best information is that these programs are most helpful to the courts in meeting their responsibilities. This is what the courts tell us.

Our Continuing Education and Training Division sponsored 129 seminars and workshops in the past year plus offering much local training. Those served range from appellate and district judges in various

seminars and workshops, to deputy clearks of courts, as well as probation officers and others.

Finally, our Division of Interjudicial Affairs and Information Services provides library services in areas of judicial administration, serves foreign visitors, and maintains coordination with other agencies and groups that are involved in this same general field for exchange of information and so on.

This basically is the summary, and I would be very pleased to respond to any questions you would like to put.

Mr. KASTENMEIER. Thank you.

How can you decide what questions to research?

Mr. LEVIN. Basically, we have a procedure to enable us to be responsive to requests from courts and others, within and without the judiciary. The Eighth Circuit Judicial Council came to us recently, for example, and said, "You can help us with a study of what we are doing in our procedures to expedite criminal appeals." The second circuit, then the seventh circuit, each asked us to evaluate their own procedures for improving the effectiveness of their procedures for civil appeals. Judicial Conference committees come to us and ask: "Can you research this or that issue?" Sometimes, the staf, suggests things.

If these are major proposals, we take them to our board for discussion and approval. And, of course, the board suggests areas.

We have recently had one case where a member of Congress came to us and said, "Here is a particular problem. Can you be of some help?" What was required there was a methodology study to advise him on how the matter he had in mind might be researched.

We are delighted to be of service in ways like this, subject always to the statute, the board, the funds, and so on. But these are the basic ways things come to us, and, as I said, the staff also suggests various things that could be useful, frequently, in connection with other ongoing projects.

Mr. KASTENMEIER. Actually, we do have a number of other questions, principally of Mr. Foley, but I am going to defer those questions.

In fact, rather than presume to merely recess, I think we will adjourn today.

The absence of my colleagues attests to their involvement on issues on the floor; what I think will be the first of a series of votes now.

The fact is that we have two Judiciary Committee bills on the floor. Mr. Danielson has a bill as does this subcommittee, on civil rights of institutionalized persons.

For that reason, I will defer further questioning until perhaps another more convenient time when we will have legislative issues before us, and we can take the opportunity to raise questions that were not raised today. And other members will have a chance, some for the first time, to meet you both and go into the matter more deeply.

I apologize for being caught in this time warp, but that is one of the risks, I guess, in being in your business and mine.

Thank you, Mr. Levin.

Thank you, Mr. Foley, very much.

Mr. FOLEY. We will come back when you say.

Mr. KASTENMEIER. Thank you.

[Whereupon, at 3 p.m., the hearing was adjourned.]

○

END