

JUDICIAL HOUSEKEEPING



HEARING
BEFORE THE
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,
AND THE ADMINISTRATION OF JUSTICE
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

JUDICIAL HOUSEKEEPING

MAY 4, 1978

Serial No. 67



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(II)

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JUDICIAL HOUSEKEEPING

THURSDAY, MAY 4, 1978

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, pursuant to notice, at 9:50 a.m., in room 2226, Rayburn House Office Building, Hon. Robert W. Kastenmeier (chairman of the subcommittee) presiding.

Present: Representatives Kastenmeier, Drinan, and Butler.

Also present: Michael J. Remington, counsel, and Thomas E. Mooney, assistant counsel.

Mr. KASTENMEIER. The committee will come to order.

The Subcommittee on Courts, Civil Liberties, and the Administration of Justice is meeting this morning to consider a packet of bills relating to various judicial housekeeping proposals.

At first glance, the bills before us are all similar in three respects: First, they do not propose drastic changes in the Federal judicial system. In this regard they do not rise to the level of proposals previously considered by this subcommittee to abolish diversity of citizenship jurisdiction or to increase the civil and criminal jurisdiction of U.S. magistrates. Second, they are all designed to better treat individuals who participate in the judicial process, whether these participants be jurors, witnesses, judges, marshals, or litigants. In this context, these bills are all conservation measures designed to make the functioning of the Federal courts more efficient. They provide the courts with the tools to fulfill their assigned task. Third, the proposals have all received consistent support and have generated little or no hostility.

I will now give a brief description of the pending bills.

H.R. 3327 conforms the judicial resignation section to the judicial retirement section and allows Federal judges with 15 years' service to resign at the age of 65.

H.R. 8492 provides the Attorney General with discretion to modify fees now set by law for the service of process by the U.S. Marshals Service.

H.R. 12394 authorizes payment of transportation expenses by U.S. marshals for persons released pending appearance in another district.

H.R. 8220 and H.R. 9122 increase the witness attendance fee from \$20 to \$30 per day and provide individuals who testify in court with more equitable travel and subsistence allowances.

H.R. 11276 provides the courts of appeals and district courts with increased power to transfer cases improperly filed in those courts to

the appropriate court in order to cure a defect in jurisdiction or venue.

H.R. 12389 contains several improvements to the Federal jury system. It eliminates the blanket mileage excuse for potential jurors and allows the excuse to be handled by the district judge on a case-by-case basis upon a showing of undue hardship or extreme inconvenience. It also clarifies an existing ambiguity about which individuals convicted of crimes may be qualified to serve on a jury, increases jury fees and subsistence allowance, provides for a civil penalty and injunctive relief in the event of a discharge or threatened discharge due to an employee's jury service or summons to serve, and extends the coverage of the Federal Employees' Compensation Act to all persons summoned to serve as jurors in the district courts.

At this time, without objection, I would ask that these bills and their respective letters of transmittal be included in the hearing record.

[The information follows:]

95TH CONGRESS
1ST SESSION

H. R. 3327

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 9, 1977

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

A BILL

To amend title 28 of the United States Code to permit the resignation with the right to continue receiving pay to certain Federal judges at age sixty-five who have completed fifteen years judicial service.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That subsection (a) of section 371 of title 28 of the United
4 States Code is amended by striking out "who resigns after
5 attaining the age of seventy years" and all that follows down
6 through the end of the subsection and inserting in lieu thereof
7 the following: "shall continue, after resignation and during
8 the remainder of such judge's lifetime, to receive the salary
9 such judge was receiving at the time of such resignation if
10 such judge resigns—

I

1 “(1) after attaining the age of seventy years and
2 after serving at least ten years continuously or other-
3 wise, or
4 “(2) after attaining the age of sixty-five years and
5 after serving at least fifteen years continuously or
6 otherwise.”.

95TH CONGRESS
1ST SESSION

H. R. 8492

IN THE HOUSE OF REPRESENTATIVES

JULY 22, 1977

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

A BILL

To establish fees for services performed by United States marshals.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 1921 of title 28, United States Code, is amended
4 to read as follows:

5 “The United States marshals shall collect and tax as
6 costs fees for the following:

7 “Serving a writ of possession, partition, execution,
8 attachment in rem, or libel in admiralty, warrant, attachment,
9 summons, capias, or any other writ, order or process in any
10 case or proceeding;

1 “Serving a subpoena or summons for a witness or
2 appraiser;

3 “Forwarding any writ, order, or process to another
4 judicial district for service;

5 “The preparation of any notice of sale, proclamation in
6 admiralty, or other public notice or bill of sale;

7 “The keeping of property attached (including boats,
8 vessels, or other property attached or libeled) actual expenses
9 incurred, such as storage, moving, boat hire, or other special
10 transportation, watchmen’s or keepers’ fees, insurance, and
11 an hourly rate for each deputy marshal required for special
12 services, such as guarding, inventorying, moving, and so
13 forth. The marshals shall collect, in advance, a deposit to
14 cover the initial expenses for such services and periodically
15 thereafter such amounts as may be necessary to pay such
16 expenses until the litigation is concluded;

17 “Copies of writs or other papers furnished at the request
18 of any party;

19 “Necessary travel in serving or endeavoring to serve
20 any process, writ, or order, except in the District of Columbia,
21 with mileage to be computed from the place where service
22 is returnable to the place of service endeavor shall be
23 collected and taxed by the marshal; or, where two or more
24 services or endeavors, or where an endeavor and a service,

1 are made in behalf of the same party in the same case on
2 the same trip, mileage shall be computed to the place of
3 service or endeavor which is most remote from the place
4 where service is returnable, adding thereto any additional
5 mileage traveled in serving or endeavoring to serve in behalf
6 of that party. When two or more writs of any kind, required
7 to be served in behalf of the same party, on the same person,
8 in the same case or proceeding, may be served at the same
9 time, mileage on only one such writ shall be collected;

10 "The fees to be collected and taxed for the above shall
11 be prescribed from time to time by regulation by the Attorney
12 General.

13 "For seizing or levying on property (including seizures
14 in admiralty), disposing of the same by sale, setoff, or other-
15 wise and receiving and paying over money, commissions of
16 3 per centum on the first \$1,000 collected and $1\frac{1}{2}$ per centum
17 on the excess of any sum over \$1,000 shall be charged by
18 United States marshals. If not disposed of by marshal's sale,
19 the commission shall be in such amount as may be allowed
20 by the court. In all cases in which the vessel or other
21 property is sold by a public auctioneer, or by some party
22 other than the marshal or his deputy, the commission herein
23 authorized to be paid to the marshal shall be reduced by the
24 amount paid to said auctioneer or other party.

1 “For all services in a criminal case except for the sum-
2 moning of witnesses, the United States marshals shall col-
3 lect and tax a sum to be fixed by the court.

4 “The marshal may require a deposit to cover all fees
5 and expenses herein prescribed.”.

L. R. 8492



Office of the Attorney General
Washington, D. C. 20530

JUL 13 1977

The Speaker
House of Representatives
Washington, D.C.

Dear Mr. Speaker:

Enclosed for your consideration and appropriate reference is a legislative proposal "To establish fees for services performed by United States Marshals."

The proposed legislation would allow the Attorney General to modify fees now set by law for the service of process by the United States Marshals Service (USMS), including writs, orders, and other related services specified in 28 U.S.C. § 1921. The fees to be set by the Attorney General would permit the recovery of the actual costs of providing such services to private litigants who currently receive this unique benefit when a party to civil litigation.

The costs of these services are not recovered through fees imposed by USMS but are paid from general Federal revenues. Establishment of fees based on annual USMS computations is the most effective method for meeting continually rising expenses and for determining appropriate user charges. This is consistent with the principle that Government programs having particular benefits for identifiable recipients should be self-sustaining to the extent practical.

Since 1969, there have been three audits of unrecovered costs for service of process. A study by the General Accounting Office (GAO), "Need to Revise Fees for Services Provided by the Immigration and Naturalization Service and United States Marshals," was released in October 1969 and concluded that expenses exceeded fees in fiscal year 1968 by \$470,000. A Department of Justice report was issued by the Internal Audit Staff in June 1973 entitled, "Determination, Collection and Recording of Fees for the Service of

Process, U.S. Marshals Service." The most recent audit, released July 1976, is also by GAO, "U.S. Marshals Service--Actions Needed to Enhance Effectiveness." All three reports recommend that the law be changed to revise the fees or to give the Attorney General discretion to revise the fees.

The loss of Federal revenues for service of civil process has continued at an accelerating rate since the fiscal year 1968 GAO estimate. In fiscal year 1975, GAO estimated that costs for private civil process exceeded revenues by more than \$3,800,000. Department analysis shows the service of 425,000 pieces of civil process in fiscal year 1975 at an estimated direct cost of \$4,250,000 and 238 work years. Based on the Marshals Service computations of \$10.50 and \$12.50 for service of writs and subpoenas and a low estimate of 400,000 pieces of private process, enactment of the proposed legislation would increase Federal revenues by approximately \$3,200,000.

The present USMS fees of \$3 for service of writs and summonses and \$2 for service of subpoenas were established August 31, 1962, by Public Law 87-621 (28 U.S.C. §1921). The law provides for the collection of 12 cents per mile for travel required to serve any process, except for service in the District of Columbia. According to Senate hearing testimony, the fees increase in 1962 was designed to have litigants bear a larger part of the expenses of litigation without excessively burdening such litigants. Other comments in the hearing report indicate that the revision was approved to permit fees to recover a greater share of the general increases of expenses during a period of relatively moderate inflation.

The service of process by USMS is not mandatory for litigants. It would be possible for private litigants to use commercial firms for this purpose; however, the fees of the Federal Government are comparatively very low. The result is that the USMS is requested to provide service in most instances. According to a GAO survey completed in 1975, the commercial process service fees in five USMS districts ranged from \$3 to \$35 for delivery of process, with an average of approximately \$11. Some of the commercial firms included in the survey charged additional amounts for services provided at no extra cost by USMS, e.g., priority service.

Accordingly, the enclosed legislative proposal is submitted to permit the Attorney General to modify these fees as well as the fees for all other services provided pursuant to 28 U.S.C. § 1921.

The Office of Management and Budget has advised that enactment of the proposed legislation would be consistent with the objectives of the Administration.

Sincerely,

SIGNED

Griffin B. Bell
Attorney General

95TH CONGRESS
2^D SESSION

H. R. 12394

IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 1978

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

A BILL

To amend chapter 315 of title 18, United States Code, to authorize payment of transportation expenses by United States marshals for persons released pending appearancees in another district.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That chapter 315 of title 18, United States Code, is amended
4 by adding at the end thereof the following new section:
5 "§ 4285. **Individuals released under chapter 207**

6 "A court of the United States ordering an individual
7 released pending his appearance before a court of the United
8 States in another district in which eriminal proceedings are
9 pending, when the interests of justice would be served

1 thereby, may direct the United States marshal to furnish
2 the defendant with the fare for transportation or with
3 passage to the place where the charges are pending, and in
4 addition may direct the United States marshal to furnish
5 the defendant with an amount of money not to exceed the
6 amount authorized as a per diem allowance for travel under
7 chapter 57 of title 5, United States Code, for subsistence
8 expenses to his destination. When so ordered, such expenses
9 shall be paid by the marshal out of funds available to the
10 Department of Justice for the payment of expenses for trans-
11 portation of prisoners.”.

12 SEC. 2. The analysis of chapter 315 is amended by
13 adding at the end thereof the following:

“4285. Individuals released under chapter 207.”.

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTSSUPREME COURT BUILDING
WASHINGTON, D.C. 20544ROWLAND F. KIRKS
DIRECTORWILLIAM E. FOLEY
DEPUTY DIRECTOR

October 11, 1977

Honorable Thomas P. O'Neill
Speaker, United States
House of Representatives
Washington, D. C. 20515

Dear Mr. Speaker:

At the direction of the Judicial Conference of the United States, I am forwarding a draft bill which would amend chapter 315 of title 18, United States Code, to authorize the payment by United States marshals of transportation expenses for persons released from custody pending their appearance to face criminal charges in another federal judicial district.

This bill would address the situation where a person is arrested in one judicial district on an arrest warrant from a different district upon a complaint issued, an indictment returned, or an information filed therein. Under Rule 40, Federal Rules of Criminal Procedure, such an arrestee shall be brought before the nearest available federal magistrate for removal proceedings and, if he is held to answer, a warrant of removal shall issue, removing the defendant to the district where the prosecution is pending. He may then be admitted to bail for the purpose of appearance in that district under the normal release provisions of 18 U.S.C. §§3146 and 3148.

Frequently defendants arrested upon federal criminal charges in a district other than that where the prosecution is pending, and required upon a warrant of removal to return to the district of prosecution for arraignment and trial, will obviously lack the necessary funds to provide their own transportation to the district where their appearance has been ordered. Since there is no provision at present for the expenditure of government funds to pay for the transportation of such persons under their own recognizance, it has been necessary to hold such defendants in the custody of the marshal so that he may have them escorted to their destination. Thus persons who would otherwise be entitled to release, on bail or otherwise, must be retained in custody in order to arrange for their transportation at the expense of the government.

This practice has resulted in great delay in criminal proceedings and has on occasion posed a threat to the ability of the courts to comply with the time limitations set by the Speedy Trial Act of 1974 on prosecution. */ It has further caused an unnecessary strain upon the manpower of the United States Marshals Service, which has been required to provide personnel to escort criminal defendants who are eligible for release on bail and would be capable of traveling under their own recognizance if their travel costs could be paid by the government on this basis. The strain upon the resources of the United States marshals has exacerbated the problem of delay in the disposition of criminal cases because the marshals have frequently taken a much longer time to transport these prisoners than they would consume in travel by themselves, particularly where the district of arrest is distant from that where the prosecution is pending.

The draft bill which is being submitted to you would add to title 18 of the United States Code a new section 4285 authorizing any court of the United States, in releasing an individual pending his appearance in another federal judicial district in which charges are pending against him, to direct the United States marshal to furnish such defendant with transportation to the place where the charges are pending and to provide him with money for necessary subsistence expenses en route thereto in an amount not exceeding the subsistence allowance to which a government employee in travel status would be entitled. Such travel and subsistence expenditures would be paid by the marshal out of funds available to the Department of Justice for the payment of expenses of transporting prisoners. See 28 U.S.C. §567(2).

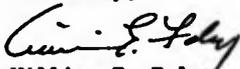
The problem of criminal defendants who are ordered removed from one judicial district to another and lack the personal funds to pay their transportation is a very common one. The Judicial Conference therefore believes that the enactment of the attached draft bill would expedite criminal proceedings in the federal courts by enabling a defendant being removed to a different judicial district, and who is otherwise eligible for release, to travel on his own recognizance, thus considerably reducing the travel time to the district of prosecution

*/Delays between arrest and indictment which are required for the transportation of a defendant in custody do not constitute time which is excludable in computing the time limitations of the Speedy Trial Act. See 18 U.S.C. §3161(h). In addition, the interim time limitations of 18 U.S.C. §3164 require the district court plans to assure priority in the trial of detained persons being held because they are awaiting trial.

which would be required if the defendant must be committed to the custody of the United States marshal for this purpose. The bill would have the further salutary effects of relieving the strain placed upon the United States Marshals Service in transporting removed criminal defendants and of permitting persons entitled to release under 18 U.S.C. §§3146 and 3148 pending their appearance in another district to remain on their own recognizance until such appearance.

Representatives of the Judiciary and the Administrative Office of the United States Courts will be pleased to assist in presenting any additional information which may be required in the consideration of this draft bill or to testify before the committee to which the bill may be referred.

Sincerely,



William E. Foley
Deputy Director

Enclosure

A B I L L

To amend chapter 315 of title 18, United States Code, to authorize payment of transportation expenses by United States Marshals for persons released pending appearance in another district.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 315 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§4285. Individuals released under chapter 207.

"A court of the United States ordering an individual released pending his appearance before a court of the United States in another district in which criminal proceedings are pending, when the interests of justice would be served thereby, may direct the United States Marshal to furnish the defendant with the fare for transportation or with passage to the place where the charges are pending, and in addition may direct the United States Marshal to furnish the defendant with an amount of money not to exceed the amount authorized as a per diem allowance for travel under chapter 57 of title 5, United States Code, for subsistence expenses to his destination. When so ordered, such expenses shall be paid by the marshal out of funds available to the Department of Justice for the payment of expenses for transportation of prisoners."

Sec. 2. The analysis of chapter 315 is amended by adding at the end thereof the following:

"4285. Individuals released under chapter 207."

95TH CONGRESS
1ST SESSION

H. R. 8220

IN THE HOUSE OF REPRESENTATIVES

JULY 12, 1977

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

A BILL

To amend section 1821 of title 28, United States Code, relating to per diem and mileage expenses for witnesses in United States courts.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That (a) the first paragraph of section 1821, United States
4 Code, is amended to read as follows:

5 “A witness attending in any court of the United States,
6 or before a United States magistrate, or before any person
7 authorized to take a deposition pursuant to any rule or order
8 of a court of the United States, shall receive \$30 for each
9 day’s attendance and for the time necessarily occupied in
10 going to and returning from the same and shall receive an

1 allowance for expenses of travel and of subsistence computed
2 in accordance with regulations adopted by the Attorney
3 General. Such regulations shall, as nearly as may be practi-
4 eable, provide that such computation shall be made in the
5 same manner as is required by section 5751 of title 5 with
6 respect to witnesses who are salaried employees of the
7 Government.”.

8 (b) The amendment made by subsection (a) shall take
9 effect October 1, 1978.

95TH CONGRESS
1ST SESSION

H. R. 9122

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 15, 1977

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

A BILL

To establish fees and allow per diem and mileage expenses for
witnesses before United States courts.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 1821 of title 28, United States Code, is
4 amended to read as follows:

5 “§ 1821. Per diem and mileage generally; subsistence

6 “(a) A witness in attendance at any court of the United
7 States, or before a United States magistrate, or before
8 any person authorized to take his deposition pursuant to
9 any rule or order of a court of the United States shall
10 receive the fees and allowances which this section pro-
11 vides, except as otherwise provided by law. The phrase

1 'any court of the United States' shall include, in addition to
2 the courts of the United States listed in section 451, the
3 district courts for the Canal Zone, Guam, and the Virgin
4 Islands. An alien who has been paroled into the United
5 States for prosecution, pursuant to section 212(d)(5)
6 of the Immigration and Nationality Act (8 U.S.C. 1182
7 (d)(5)), or an alien who either has admitted belonging
8 to a class of aliens who are deportable or has been
9 determined pursuant to section 242(b) of the Act
10 (8 U.S.C. 1252(b)) to be deportable shall be ineligible to
11 receive the fees or allowances which this section provides.

12 " (b) Witnesses shall receive \$30 for each day's attend-
13 ance and for the time necessarily occupied in going to and
14 returning from the place of attendance.

15 " (c) Witnesses shall receive compensation for the actual
16 expenses of travel on the basis of the means of transportation
17 reasonably utilized and the distances actually and necessarily
18 traveled. Witnesses who travel by common carrier shall
19 receive the costs of transportation at the most economical
20 rate available. A receipt or other evidence of actual cost shall
21 be furnished. Witnesses who travel by privately owned vehi-
22 cle (automobile, airplane, or motoreycle) shall receive a
23 travel allowance equal to the mileage allowance which the
24 Administrator of General Services prescribes pursuant to
25 section 5704 of title 5, United States Code, for official travel

1 by employees of the Government. Computation of mileage
2 under this section shall be made on the basis of a uniform
3 table of distances adopted by the Administrator. Witnesses
4 shall also receive reimbursement for incidental travel ex-
5 penses, such as toll roads, bridges, tunnels, and ferries; taxicab
6 fares between places of lodging and carrier terminals; and
7 parking fees, upon presentation of a valid parking receipt.
8 In the district of Alaska, whenever the use of a snowmobile,
9 dogteam, or boat is approved by the court, a magistrate, the
10 United States Attorney, or an Assistant United States At-
11 torney, witnesses shall be paid the actual rental cost or
12 reasonable estimate of necessary expenses.

13 “(d) Witnesses, other than those who are incarcerated,
14 who attend at points so far removed from their respective
15 residences as to prohibit return thereto from day to day shall
16 receive an additional allowance for subsistence expenses for
17 each night they must spend away from their residences.
18 Such witnesses who attend in areas which the Administrator
19 of General Services has designated as high-cost areas under
20 section 5702 (c) (B), title 5, United States Code, shall re-
21 ceive an allowance equal to the maximum actual subsistence
22 allowance which the Administrator prescribes for that area
23 for official travel by employees of the Government. Such
24 witnesses who attend in other areas shall receive an allow-
25 ance equal to the maximum per diem allowance which the

1 Administrator of General Services prescribes pursuant to sec-
2 tion 5702 (a) (1) of title 5, United States Code, for official
3 travel by employees of the Government.

4 “(e) When a witness is detained for want of security
5 for his appearance, he shall be entitled for each day of deten-
6 tion when not in attendance at court, in addition to his sub-
7 sistence, to the daily attendance fee which subsection (b) of
8 this section provides.”.



Office of the Attorney General
Washington, D. C. 20530

SEP 14 1977

The Speaker
House of Representatives
Washington, D.C. 20510

Dear Mr. Speaker:

Enclosed for your consideration and appropriate reference is a legislative proposal "To establish fees and allow per diem and mileage expenses for witnesses before United States courts."

The proposed legislation would revise fees and also travel and subsistence allowances established in 28 U.S.C. § 1821. Witness fees and allowances now provided pursuant to section 1821 no longer compensate the average witness for the actual costs which witness service entails, nor does section 1821 permit compensation for a variety of incidental travel expenses which witnesses routinely incur. The proposed legislation would alleviate these difficulties by increasing attendance fees and changing the method of computation for travel allowances and subsistence.

In 1968 the daily attendance fee was set at \$20. Since then the average daily income has increased by over 60 percent, while the witness fee has remained the same. We are recommending that the witness fee be increased to \$30 per day. This is the minimal level of compensation that constitutes a respectable remuneration for witness service today. It is not intended as reimbursement for lost income, witness service being a public obligation for which the government is not required to provide compensation. However, as a matter of public policy the government ought not to take the time of citizens, any more than their property, without reasonable compensation. Moreover, fair compensation should be provided in order to promote respect for the participation in our system of justice. It is the view of the Department of Justice that \$30 per day, which translates into an annual wage of \$7,500, is the minimally acceptable level for the daily attendance fee.

In 1956 the Department of Justice recommended computation of travel allowances for witnesses based on a uniform table of distances. Although the intent of the provision was to standardize payment to witnesses who travel equal distances, application of the provision has proved inequitable. Specifically, compensation to witnesses who travel by commercial airplane imposes financial burdens upon those who travel a one-way distance of 600 highway miles or less and grants financial windfalls to those who travel greater distances. Data which we obtained from the Civil Aeronautics Board indicate that the cost per mile for airline transportation, based upon shortest authorized mileages for airline travel rather than standard highway distances, declines steadily as flight distance increases. For example, round-trip air fare between Boston and Philadelphia exceeds by \$23.60 the travel allowance which a witness receives under 28 U.S.C. § 1821. However, a witness who travels from New York City to San Francisco receives \$198.80 in excess of his actual air fare. To eliminate these problems, we propose that 28 U.S.C. § 1821 be amended to provide compensation to witnesses for the actual expenses of travel and on the basis of the form of transportation actually used.

Under this proposal witnesses who travel by means of privately owned vehicles would continue to receive compensation in the form of mileage allowances. The present allowance of 10 cents a mile, however, is clearly inadequate. Witnesses who are employees of the Government and who testify on behalf of the United States or who testify on behalf of any party in their official capacities receive such mileage allowances as the Administrator of General Services prescribes for official travel under 5 U.S.C. § 5751. The rapid increases in transportation costs prompted Congress in 1974 to authorize the Administrator of General Services to establish mileage allowances for witnesses who are employees of the Government. Pursuant to 5 U.S.C. § 5704(a), these fees are to reflect current cost and are not to exceed 11 cents per mile for motorcycles, 20 cents per mile for automobiles, and 24 cents per mile for private planes.

Therefore, rather than increase the flat mileage allowance which 28 U.S.C. § 1821 provides, the Department proposes that section 1821 be amended to entitle witnesses generally to such allowances for travel by privately owned vehicles as Government employees receive for similar travel. This would eliminate the present inequities in compensation between two categories of witnesses and the need for legislation in the future in response to rising costs. In addition, the proposal

would permit compensation for incidental travel expenses such as parking fees, ferry fares, and bridge, road, and tunnel costs. Finally, the proposal would provide special allowances for travel by snowmobile, dog-team, or boat in Alaska.

Witnesses who must attend courts which are so far distant from their residences as to require overnight stays now receive \$16 per day for subsistence expenses. This amount is insufficient in view of recent increases in food and lodging costs. Since 1968, when Congress raised the subsistence allowance to its present level, the cost of "food away from home -- restaurant meals" has risen 52%. ^{1/} In addition, average lodging costs have increased from \$12.27 per night in 1968 ^{2/} to \$19.66 per night in 1975. ^{3/} In 1974, Congress enacted Pub. L. No. 92-22 (May 19, 1975) and thereby increased the per diem allowance for Government employees to a maximum of \$35 and increased the maximum reimbursement of actual expenses in high cost areas to \$50 per day. The Senate later passed S. Res. 172 (June 4, 1975) which increased the subsistence allowance for witnesses who appear before Senate committees to \$35 per day.

In lieu of the flat subsistence allowance which section 1821 provides, we are proposing an amendment which generally entitles witnesses to daily allowances equal to those which Government employees receive for official travel. This would eliminate both the present inequities in compensation between witnesses and the need for frequent revision of the witness statute. In recognition of variations in the cost of living in different locations, our proposal would also entitle witnesses to increased compensation when they must attend courts in areas which the Administrator of General Services has designated as high cost areas under 5 U.S.C. §5702(c)(B).

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- ^{1/} U.S. Bureau of Labor Statistics, Department of Labor, Handbook of Labor Statistics 318 (Ref. Ed. 1975).
- ^{2/} Laventhol, Krekstein, Horwath, and Horwath, Hotel Operations: 1968 20 (1968).
- ^{3/} Laventhol and Horwath, U.S. Lodging Industry: 1975 12 (1975).

Section 3149 of title 18, United States Code, permits detention of a witness whose testimony is material in a criminal proceeding, whose appearance it may be impracticable to secure by subpoena, and who cannot comply with the conditions of release which 18 U.S.C. § 3146 permits a court to impose. Pursuant to 28 U.S.C. § 1821, such a witness receives a fee of \$1 per day, in addition to subsistence, for each day of confinement. The Supreme Court in Hurtado v. United States, 410 U.S. 578 (1973) has ruled that section 1821 also entitles such a witness to an attendance fee (now \$20) for each day of confinement during which the pertinent trial or other proceeding is in session.

Although Congress has adjusted other witness fees and allowances to reflect increasing costs, it has made no change in the \$1.00 compensation for incarcerated witnesses. Under 18 U.S.C. § 3149, the detention of material witnesses whose testimony "can adequately be secured by deposition" and the further detention of whom "is not necessary to prevent a failure of justice" is prohibited. Ironically, present statutes restrict the category of witnesses upon whom courts may impose the burdens of incarceration but do not provide reasonable compensation to those upon whom such burdens fall.

The Department proposes to amend 28 U.S.C. § 1821 to provide that a material witness (other than an illegal alien) shall receive a daily attendance fee for each day of his confinement. This approach would not only provide more reasonable compensation for the inconvenience and financial hardships which detention entails but would eliminate the peculiarities of the system of compensation which the Supreme Court mandated by its decision in Hurtado.

The Department has estimated that this proposal would require an increase of approximately \$6,260,000 for fiscal year 1978. Our estimate is based on the following:

1. Attendance fees would increase by 50% which represents the percentage increase in the fee from \$20 to \$30.
2. Subsistence payments would double, since the \$35 per diem which Government employees now receive is approximately twice the \$16 which witnesses receive.

3. Travel costs would increase by 50% since the 15 cent mileage allowance which Government employees receive exceeds by 50% the 10 cent per mile allowance which witnesses receive.

We urge early consideration for this legislation in order to rectify the inequities and problems in the present system for providing funds to witnesses.

The Office of Management and Budget has advised that there is no objection to submission of this legislation from the standpoint of the Administration's program.

Sincerely,

SIGNED

Griffin B. Bell
Attorney General

95TH CONGRESS
2D SESSION**H. R. 11276**

IN THE HOUSE OF REPRESENTATIVES

MARCH 3, 1978

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

A BILL

To amend title 28, United States Code, to provide that the courts of appeals and district courts of the United States may transfer cases improperly filed in those courts to the appropriate court of appeals or district court in order to cure a defect of jurisdiction or venue.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That chapter 83 of title 28, United States Code, is amended
4 by adding at the end thereof the following new section:
5 **“§ 1295. Transfer to cure defect of jurisdiction**

6 “If a case within the exclusive jurisdiction of the dis-
7 trict courts is filed in a court of appeals, that court of ap-
8 peals shall, if it be in the interest of justice, transfer such

I

1 case to any district court in which it could have been
2 brought at the time such case was filed, where the case
3 shall proceed as if it had been filed in the district court on
4 the date upon which it was actually filed in the court of
5 appeals.”.

6 SEC. 2. The chapter analysis of chapter 83 of title 28,
7 United States Code, is amended by adding at the end thereof
8 the following new item:

“1295. Transfer to cure defect of jurisdiction.”

9 SEC. 3. Section 1406 of title 28, United States Code, is
10 amended by adding after subsection (b) thereof the
11 following:

12 “(c) If a case within the exclusive jurisdiction of the
13 courts of appeals is filed in a district court, that district
14 court shall, if it be in the interest of justice, transfer such
15 case to any court of appeals in which it could have been
16 brought at the time such case was filed, where the case shall
17 proceed as if it had been filed in the court of appeals on
18 the date upon which it was actually filed in the district
19 court.”.

20 SEC. 4. Subsections (e) and (d) of section 1406 of
21 title 28, United States Code, are redesignated as subsections
22 (d) and (e), respectively.

2

1 (1) by striking out paragraph (7) ; and

2 (2) by redesignating paragraphs (8) and (9), and
3 all references thereto, as paragraphs (7) and (8),
4 respectively.

5 (b) Section 1866 (e) of title 28, United States Code, is
6 amended by striking out “paragraph (5), (6), or (7)” and
7 inserting in lieu thereof “paragraph (5) or (6)”.

8 JURY SERVICE UPON RESTORATION OF CIVIL RIGHTS

9 SEC. 3. (a) Section 1865 (b) (5) of title 28, United
10 States Code, is amended by striking out “by pardon or
11 amnesty.” and inserting in lieu thereof a period.

12 (b) Section 1869 (h) of title 28, United States Code,
13 is amended by striking out “by pardon or amnesty.” and
14 inserting in lieu thereof a period.

15 DEFINITIONS

16 SEC. 4. Section 1869 of title 28, United States Code, is
17 amended—

18 (1) by striking out the period at the end of subsec-
19 tion (i) and inserting in lieu thereof a semicolon; and

20 (2) by adding at the end thereof the following new
21 subsections:

22 “(j) ‘undue hardship or extreme inconvenience’, as
23 a basis for excuse from immediate jury service under sec-
24 tion 1866 (c) (1) of this chapter, shall include undue
25 hardship or extreme inconvenience to the prospective

1 juror, such as grave illness in the family or any other
2 emergency which outweighs in immediacy and urgency
3 his obligation to serve as a juror when summoned; and
4 in addition, in situations where it is anticipated that a
5 trial or grand jury proceeding may require more than
6 thirty continuous days of service, the court may consider,
7 as a further basis for temporary excuse, severe economic
8 hardship to an employer which would result from the
9 absence of a key employee during the period of such
10 service;

11 “(k) ‘publicly draw’, as referred to in sections 1864
12 and 1866 of this chapter, shall mean a drawing which is
13 conducted within the district after reasonable public
14 notice and which is open to the public at large under the
15 supervision of the clerk or jury commission, except that
16 when a drawing is made by means of electric data proc-
17 essing, ‘publicly draw’ shall mean a drawing which is
18 conducted at a data processing center located in or out of
19 the district, after reasonable public notice given in the
20 district for which juror names are being drawn, and
21 which is open to the public at large under such super-
22 vision of the clerk or jury commission as the Judicial
23 Conference of the United States shall by regulation
24 require; and

5

1 “(2) A petit juror required to attend more than thirty
2 days in hearing one case may be paid in the discretion of
3 the trial judge an additional fee, not exceeding \$5 more
4 than the attendance fee, for each day in excess of thirty
5 days on which he is required to hear such case.

6 “(3) A grand juror required to attend more than forty-
7 five days of actual service may be paid in the discretion of
8 the district judge in charge of the particular grand jury an
9 additional fee, not exceeding \$5 more than the attendance
10 fee, for each day in excess of forty-five days of actual service.

11 “(4) Certification of additional attendance fees may be
12 ordered by the judge to be made effective commencing on the
13 first day of extended service, without reference to the date
14 of such certification.

15 “(c) (1) A travel allowance equal to the maximum rate
16 per mile that the Director of the Administrative Office of
17 the United States Courts has prescribed pursuant to section
18 604 (a) (7) of this title for payment to supporting court
19 personnel in travel status using privately owned automobiles
20 shall be paid to each juror, regardless of the mode of trans-
21 portation actually employed. The prescribed rate shall be
22 paid for the distance necessarily traveled to and from a juror’s
23 residence by the shortest practical route in going to and
24 returning from the place of service. Actual mileage in full

1 at the prescribed rate is payable at the beginning and at the
2 end of a juror's term of service.

3 “(2) The Director shall promulgate rules regulating
4 interim travel allowances to jurors. Distances traveled to and
5 from court should coincide with the shortest practical route.

6 “(3) Toll charges for toll roads, bridges, tunnels, and
7 ferries shall be paid in full to the juror incurring such
8 charges. In the discretion of the court, reasonable parking
9 fees may be paid to the juror incurring such fees upon
10 presentation of a valid parking receipt. Parking fees shall
11 not be included in any tabulation of mileage cost allowances.

12 “(4) Any juror who travels to district court pursuant
13 to summons in an area outside of the contiguous forty-eight
14 States of the United States shall be paid the travel expenses
15 provided under this section, or actual reasonable transporta-
16 tion expenses subject to the discretion of the district judge or
17 clerk of court as circumstances indicate, exercising due re-
18 gard for the mode of transportation, the availability of alter-
19 native modes, and the shortest practical route between
20 residence and court.

21 “(d) (1) A subsistence allowance covering meals and
22 lodging of jurors shall be established from time to time by
23 the Director of the Administrative Office of the United
24 States Courts pursuant to section 604 (a) (7) of this title,
25 except that such allowance shall not exceed the allowance

1 for supporting court personnel in travel status in the same
2 geographical area. Claims for such allowance shall not
3 require itemization.

4 “(2) A subsistence allowance shall be paid to a juror
5 when an overnight stay is required at the place of holding
6 court, and for the time necessarily spent in traveling to and
7 from the place of attendance if an overnight stay is required.

8 “(3) A subsistence allowance for jurors serving in dis-
9 trict courts outside of the contiguous forty-eight States of
10 the United States shall be allowed at a rate equal to that per
11 diem allowance which is paid to supporting court person-
12 nel in travel status in those areas where the Director of
13 the Administrative Office of the United States Courts has
14 prescribed an increased per diem fee pursuant to section
15 604 (a) (7) of this title.

16 “(e) During any period in which a jury is ordered to be
17 kept together and not to separate, the actual cost of sub-
18 sistence shall be paid upon the order of the court in lieu of
19 the subsistence allowances payable under subsection (d)
20 of this section. Such allowance for the jurors ordered to be
21 kept separate or sequestered shall include the cost of meals,
22 lodging, and other expenditures ordered in the discretion of
23 the court for their convenience and comfort.

24 “(f) A juror who must necessarily use public transpor-
25 tation in traveling to and from court, the full cost of which

1 is not met by the transportation expenses allowable under
2 subsection (c) of this section on account of the short distance
3 traveled in miles, may be paid in the discretion of the court
4 the actual reasonable expense of such public transportation,
5 pursuant to the methods of payment provided by this sec-
6 tion. Jurors who are required to remain at the court beyond
7 the normal business closing hour for deliberation or for any
8 other reason may be transported to their homes, or to tempo-
9 rary lodgings where such lodgings are ordered by the court,
10 in a manner directed by the clerk and paid from funds
11 authorized under this section.

12 “(g) The Director of the Administrative Office of the
13 United States Courts shall promulgate such regulations as
14 may be necessary to carry out his authority under this
15 section.”.

16 PROTECTION OF JURORS' EMPLOYMENT

17 SEC. 6. (a) (1) Chapter 121 of title 28, United States
18 Code, is amended by adding at the end thereof the following
19 new section:

20 “§ 1875. Protection of jurors' employment

21 “(a) No employer shall discharge, threaten to dis-
22 charge, intimidate, or coerce any employee by reason of
23 such employee's jury service, or the attendance or scheduled
24 attendance in connection with such service, in any district
25 court of the United States.

1 “(b) Any person who violates the provisions of this
2 section shall be subject to a civil penalty of not to exceed
3 \$10,000 for each violation as to each juror. Upon receipt of
4 a sworn written complaint of a prospective juror or a juror
5 who has served alleging a violation of this section, the United
6 States attorney may bring an action to recover such civil
7 penalty in the appropriate district court of the United States.

8 “(c) A prospective juror or a juror who has served, or
9 the United States attorney upon the sworn written com-
10 plaint of such a juror, may bring an action in the appropriate
11 district court of the United States to enjoin violations of this
12 section and for other appropriate relief, including but not
13 limited to the reinstatement of an employee discharged by
14 reason of his jury service, with or without back pay for
15 the time during which the employee was separated from em-
16 ployment but not including such time during which he re-
17 ceived fees for jury service.”.

18 (2) The chapter analysis of chapter 121 of title 28,
19 United States Code, is amended by adding at the end thereof
20 the following new item:

“1875. Protection of jurors' employment.”.

21 (b) (1) Chapter 85 of title 28, United States Code, is
22 amended by redesignating section 1363, and all references
23 thereto, as section 1364, and by inserting immediately after
24 section 1362 the following new section:

1 **“§ 1363. Jurors’ employment rights**

2 “The district courts shall have original jurisdiction of
3 any civil action brought for the protection of jurors’ employ-
4 ment under section 1875 of this title.”.

5 (2) The chapter analysis of chapter 85 of title 28,
6 United States Code, is amended by striking out the item re-
7 lating to section 1363 and inserting in lieu thereof the fol-
8 lowing:

“1363. Jurors’ employment rights.

“1364. Construction of references to laws of the United States or Acts of
Congress.”.

9 **COMPENSATION OF JURORS FOR SERVICE-RELATED**

10 **INJURIES**

11 **SEC. 7. (a)** Chapter 81 of title 5, United States Code,
12 is amended by inserting immediately after section 8142
13 thereof the following new section:

14 **“§ 8142a. Federal petit or grand jurors**

15 “(a) For the purpose of this section, ‘Federal petit
16 or grand juror’ means a person selected pursuant to chapter
17 121 of title 28 and summoned to serve as petit or grand
18 juror, who is in actual attendance in court such that he
19 would be entitled to the fees provided for his attendance
20 by section 1871 of title 28.

21 “(b) Subject to the provisions of this section, this
22 subchapter applies to a Federal petit or grand juror, except
23 that entitlement to disability compensation payments does

1 not commence until the day after the date of termination of
2 his service as a juror.

3 “(c) In administering the subchapter with respect to
4 a juror covered by this subsection—

5 “(1) a juror is deemed to receive monthly pay
6 at the minimum rate of GS-2 unless his actual pay as
7 a Government employce while serving on court leave is
8 higher, in which case his monthly pay is determined in
9 accordance with section 8114 of this title; and

10 “(2) performance of duty includes an act of a juror
11 while he is in attendance at court, pursuant to a sum-
12 mons, in deliberation or when sequestered by order of a
13 judge, except that performance of duty shall not include
14 his travel to and from the courthouse except under
15 sequestration order or as necessitated by order of court,
16 such as for the taking of a view.”.

17 (b) The chapter analysis of chapter 81 of title 5,
18 United States Code, is amended by inserting immediately
19 after the item relating to section 8142 the following new
20 item:

“8142a. Federal petit and grand jurors.”.

21

EFFECTIVE DATE

22 SEC. 8. (a) Except as provided in subsection (b) of
23 this section, the amendments made by this Act shall apply
24 with respect to any grand or petit juror summoned for serv-

1 ice or actually serving on or after the date of enactment of
2 this Act.

3 (b) The amendment made by section 5 of this Act shall
4 apply with respect to any grand or petit juror serving on
5 or after the sixtieth day following the date of enactment
6 of this Act.

H.R. 21389 is a composite of three proposals for Federal jury reform proposed by the Administrative Office of the U.S. Courts: H.R. 7809 (see S. 2075, as amended) ; H.R. 7813 (see S.2074, as amended). H.R. 12389 does not contain Title I (six-person civil juries and peremptory challenges) of H.R. 7813.

95TH CONGRESS
1ST SESSION

H. R. 7809

IN THE HOUSE OF REPRESENTATIVES

JUNE 15, 1977

Mr. RODINO (by request) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To make the excuse of prospective jurors from Federal jury service on the grounds of distance from the place of holding court contingent upon a showing of hardship on an individual basis.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That paragraph (7) of section 1863 (b) of title 28, United
4 States Code, is repealed:

5 SEC. 2. (a) Paragraphs (8) and (9) of section 1863
6 (b) of title 28, United States Code, are redesignated as
7 paragraphs (7) and (8), respectively.

8 (b) Section 1866 (c) of title 28, United States Code, is
9 amended by striking out "paragraph (5), (6), or (7)"
10 and inserting in lieu thereof "paragraph (5) or (6)".

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

ROWLAND F. KIRKS
DIRECTOR

WILLIAM E. FOLEY
DEPUTY DIRECTOR

March 31, 1977

Honorable Thomas P. O'Neill, Jr.
Speaker
U.S. House of Representatives
Washington, D. C. 20515

Dear Mr. Speaker:

In accordance with the recommendation of the Judicial Conference of the United States at its September, 1976 session, I am transmitting herewith a draft bill which would amend the Jury Selection and Service Act of 1968, as amended, to alter the method by which prospective jurors shall be excused from jury service in the United States district courts on account of hardship resulting from the distance between their residence and the place of holding court.

Specifically, this proposed legislation would amend section 1863 of title 28, United States Code, by eliminating therefrom subsection (b)(7), which provides as follows:

"(b) Among other things, such plan shall --

(7) fix the distance, either in miles or in travel time, from each place of holding court beyond which prospective jurors residing shall, on individual request therefor, be excused from jury service on the ground of undue hardship in traveling to the place where court is held."

This subsection has been the source of statutory authority for the district courts, in the jury selection plans which they are required by 28 U.S.C. §1863(a) to promulgate and follow, to provide an automatic excuse from jury service for any prospective juror residing beyond a fixed distance from the nearest place of holding court, upon the request of such prospective juror. As a matter of practice, this matter is normally handled through the juror qualification form which is mailed to persons whose names are selected from the master

jury wheel, as provided by 28 U.S.C. §§1864(a) and 1869(h). If the prospective juror indicates thereon that he requests to be excused on account of residing beyond the distance which is specified in the selection plan, then such person is automatically eliminated from further consideration for jury service, and his name is not placed into the qualified jury wheel.

The adoption of this proposed legislation and the consequent elimination from the jury selection plans of the "mileage excuse" under section 1863(b)(7) does not mean, of course, that persons may no longer be excused from jury service because of hardship in travel. Rather, such requests for excuse would have to be handled by the district judge on an individual case-by-case basis upon a showing of "undue hardship or extreme inconvenience" under 28 U.S.C. §1866(c)(1). It is the view of the Judicial Conference that this sort of request for excuse should be handled individually, avoiding the blanket elimination from jury service of all persons residing beyond a given geographical area surrounding the place where court is held. Experience has shown that most prospective jurors eligible for such a blanket mileage excuse will exercise their right to it, with the frequent result that only a relatively small portion of the geographical area of a judicial district is represented on the jury ultimately empanelled.

The Judicial Conference Committee on the Operation of the Jury System has had occasion to consider whether the mileage excuse provision of section 1863(b)(7) is inconsistent with the requirement of 28 U.S.C. §1861 that grand and petit juries in the United States district courts shall be "selected at random from a fair cross section of the community in the district or division wherein the court convenes." While we are not aware of any judicial decision holding that the elimination of prospective jurors on a geographical basis in this manner is violative of the "fair cross section of the community" guarantee of section 1861 or of the Sixth Amendment guarantees with respect to trial by jury, the Jury Committee and the Judicial Conference have concluded that it is unwise to permit the district courts in their jury selection plans to establish specific mileage or travel distances as the basis for an automatic excuse from service upon request, thus expressly singling out residents of certain geographical areas in this manner for prospective avoidance of jury service.

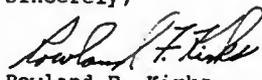
The Judicial Conference is of the view that the employment of a blanket mileage excuse in the jury selection plans appears to have the potential of skewing the representation of juries in a manner which is deemed undesirable from a policy viewpoint, and perhaps on a legal or constitutional basis as well. Since most places of holding court are relatively urbanized and densely populated as compared to the outlying portions of judicial districts, the implementation of a mileage excuse specifying a relatively short distance as the determinant for an excuse from service could obviously have a drastic effect on the demographic composition of the juries ultimately empanelled in that district.

While section 1863(b)(7) has provided authority for the district courts to maintain a mileage excuse from jury service ever since the 1968 enactment of the Jury Selection and Service Act, not all of the district courts have seen fit to implement such a provision. At present, about two-thirds of the district courts make provision for such a mileage excuse in their jury selection plans. Other courts have eschewed the policy of making available an automatic excuse based upon distance for the reasons stated above, among others. This has particularly been true in the Fifth Circuit, in which the circuit council has opposed the inclusion of this type of excuse in the jury selection plans of the district courts in the circuit. On the other hand, some district judges who are doubtful of the wisdom of the automatic excuse based on mileage have nevertheless taken the view that the language of section 1863(b)(7) is mandatory rather than permissive and that the district courts therefore have no discretion at present except to set in their selection plans a distance beyond which persons residing shall be automatically excused from jury service upon request.

The Judicial Conference believes therefore that the amendment which would be made by this proposed draft legislation would be desirable in establishing a uniform policy among the district courts of treating requests for excuse on account of hardship in travel in the same manner as any other request for excuse from jury service under 28 U.S.C. §1866(c)(1). Thus, such excuses would be granted only upon an individual showing of "undue hardship or extreme inconvenience" sufficient to satisfy a district judge that this statutory standard for the excuse of jurors has been met in each case. The wholesale exclusion of major geographical segments of a judicial district from jury service will be avoided, particularly in those judicial districts encompassing great distances and in which grand juries (or less commonly, petit juries) are selected on a districtwide basis rather than from each statutory or other division of the district (see 28 U.S.C. §§1863(a) and 1869(e)).

I shall be pleased to provide any further information which may be necessary in the consideration of this draft bill, and representatives of the Judiciary and the Administrative Office will be available to testify before the committee to which the bill may be referred.

Sincerely,



Rowland F. Kirks
Director

95TH CONGRESS
1ST SESSION

H. R. 7810

IN THE HOUSE OF REPRESENTATIVES

JUNE 15, 1977

Mr. RODINO (by request) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend chapter 121 of title 28, United States Code, by revising the section on fees of jurors and by providing for a civil penalty and injunctive relief in the event of a discharge or threatened discharge of an employee by reason of such employee's Federal jury service.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That section 1871 of title 28, United States Code, is amended
4 to read as follows:

5 “§ 1871. Fees

6 “(a) Grand and petit jurors in district courts appearing
7 pursuant to this chapter shall be paid the fees and allowances
8 provided by this section. The requisite fees and allowances

1 shall be disbursed on the certificate of the clerk of court in
2 accordance with the procedure established by the Director
3 of the Administrative Office of the United States Courts.
4 Attendance fees for extended service under subsection (b)
5 of this section shall be certified by the clerk only upon the
6 order of a district judge.

7 “(b) A juror shall be paid an attendance fee of \$30 per
8 day for actual attendance at the place of trial or hearing.
9 A juror shall also be paid the attendance fee for the time
10 necessarily occupied in going to and returning from such
11 place at the beginning and end of such service or at any time
12 during such service.

13 “A petit juror required to attend more than thirty
14 days in hearing one case may be paid in the discretion of
15 the trial judge an additional fee, not exceeding \$5 more
16 than the attendance fee, for each day in excess of thirty
17 days on which he is required to hear such case.

18 “A grand juror required to attend for more than forty-
19 five days of actual service may be paid in the discretion of
20 the district judge in charge of the particular grand jury an
21 additional fee, not exceeding \$5 more than the attendance fee,
22 for each day in excess of forty-five days of actual service.

23 “Certification of additional attendance fees may be or-
24 dered by the judge to be made effective commencing on the

1 first day of extended service, without reference to the date
2 of such certification.

3 “(c) A travel allowance equal to the maximum rate per
4 mile that the Director of the Administrative Office of the
5 United States Courts has prescribed pursuant to section 604
6 (a) (7) of this title for payment to supporting court per-
7 sonnel in travel status using privately owned automobiles
8 shall be paid to each juror, regardless of the mode of trans-
9 portation actually employed. The prescribed rate shall be
10 paid for the distance necessarily traveled to and from a juror’s
11 residence by the shortest practical route in going to and
12 returning from the place of service. Actual mileage in full
13 at the prescribed rate is payable at the beginning and at the
14 end of a juror’s term of service.

15 “The Director shall promulgate rules regulating interim
16 travel allowances to jurors. Distances traveled to and from
17 court should coincide with the shortest practical route.

18 “Toll charges for toll roads, bridges, tunnels, and ferries
19 shall be paid in full to the juror incurring such charges. In
20 the discretion of the court, reasonable parking fees may be
21 paid to the juror incurring such fees upon presentation of a
22 valid parking receipt. Parking fees shall not be included in
23 any tabulation of mileage cost allowances.

24 “Any juror who travels to district court pursuant to

4

1 summons in an area outside of the contiguous forty-eight
2 States of the United States shall be paid the travel expenses
3 provided under this section, or actual reasonable transporta-
4 tion expenses subject to the discretion of the district judge or
5 clerk of court as circumstances indicate, exercising due re-
6 gard for the mode of transportation, the availability of alter-
7 native modes, and the shortest practical route between
8 residence and court.

9 “(d) A subsistence allowance covering meals and lodg-
10 ing of jurors shall be established from time to time by the
11 Director of the Administrative Office of the United States
12 Courts pursuant to section 604 (a) (7) of this title, except
13 that such allowance shall not exceed the allowance for sup-
14 porting court personnel in travel status in the same geo-
15 graphical area. Claims for such allowance shall not require
16 itemization.

17 “Such subsistence allowance shall be paid to a juror
18 when an overnight stay is required at the place of holding
19 court, and for the time necessarily spent in traveling to and
20 from the place of attendance if an overnight stay is required.

21 “A subsistence allowance for jurors serving in district
22 courts outside of the contiguous forty-eight States of the
23 United States shall be allowed at a rate equal to that per
24 diem allowance which is paid to supporting court personnel
25 in travel status in those areas where the Director of the

1 Administrative Office of the United States Courts has pre-
2 scribed an increased per diem fee pursuant to section 604
3 (a) (7) of this title.

4 “(e) During any period in which a jury is ordered to be
5 kept together and not to separate, the actual cost of sub-
6 sistence shall be paid upon the order of the court in lieu of
7 the subsistence allowances payable under subsection (d)
8 of this section. Such allowance for the jurors ordered to be
9 kept separate or sequestered shall include the cost of meals,
10 lodging, and other expenditures ordered in the discretion of
11 the court for their convenience and comfort.

12 “(f) A juror who must necessarily use public transpor-
13 tation in traveling to and from court, the full cost of which
14 is not met by the transportation expenses allowable under
15 subsection (c) of this section on account of the short distance
16 traveled in miles, may be paid in the discretion of the court
17 the actual reasonable expense of such public transportation,
18 pursuant to the methods of payment provided by this sec-
19 tion. Jurors who are required to remain at the court beyond
20 the normal business closing hour for deliberation or for any
21 other reason may be transported to their homes, or to tempo-
22 rary lodgings where such lodgings are ordered by the court,
23 in a manner directed by the clerk and paid from funds
24 authorized under this section.

25 “(g) The Director of the Administrative Office of the

1 United States Courts shall promulgate such regulations as
2 may be necessary to carry out his authority under this
3 section.”.

4 SEC. 2. Chapter 121 of title 28, United States Code, is
5 amended by adding at the end thereof the following new
6 section :

7 **“§ 1875. Protection of jurors’ employment**

8 “(a) No employer shall discharge, threaten to dis-
9 charge, intimidate, or coerce any employee by reason of
10 such employee’s jury service, or the attendance or scheduled
11 attendance in connection with such service, in any district
12 court of the United States. Any person who violates this
13 provision shall be subject to a civil penalty of not to exceed
14 \$10,000 for each violation as to each juror. The United
15 States attorney, upon receipt of a sworn complaint in writing
16 and signed by a prospective juror or by a juror who has
17 served alleging a violation of this section, may bring an
18 action to enforce such civil penalty in the appropriate United
19 States district court.

20 “(b) Upon complaint filed by a prospective juror or
21 a juror who has served, or upon petition of the United States
22 attorney, the United States district courts shall have juris-
23 diction to prevent and restrain violations of this section by
24 issuing appropriate orders for relief, including but not limited
25 to the reinstatement of an employee discharged by reason of
26 his jury service, with or without back pay for the time during

1 which the employee was separated from employment but
2 not including such time during which he received fees for
3 jury service.”.

4 SEC. 3. The chapter analysis of chapter 121 of title 28,
5 United States Code, is amended by adding at the end thereof
6 the following new item:

“1875. Protection of jurors’ employment.”.

7 SEC. 4. Section 1869 of title 28, United States Code, is
8 amended—

9 (1) by striking out the period at the end of sub-
10 section (i) and inserting in lieu thereof “; and”; and

11 (2) by adding at the end thereof the following new
12 subsection:

13 “(j) ‘undue hardship or extreme inconvenience’
14 as a basis for excuse from immediate jury service under
15 section 1866 (c) (1) of this chapter shall include undue
16 hardship or extreme inconvenience to the prospective
17 juror, such as grave illness in the family or any other
18 emergency which outweighs in immediacy and urgency
19 his obligation to serve as a juror when summoned.
20 Additionally, in situations where it is anticipated that
21 a trial or grand jury proceeding may require more than
22 thirty continuous days of service, the court may con-
23 sider, as a further basis for temporary excuse, severe
24 economic hardship to an employer which would result

1 from the absence of a key employee during the period
2 of such service.”.

3 SEC. 5. The amendment made by the first section of
4 this Act shall take effect sixty days after the date of enact-
5 ment of this Act. The amendments made by sections 2,
6 3, and 4 of this Act shall take effect on such date of enact-
7 ment.

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTSSUPREME COURT BUILDING
WASHINGTON, D.C. 20544ROWLAND F. KIRKS
DIRECTORWILLIAM E. FOLEY
DEPUTY DIRECTOR

March 31, 1977

Honorable Thomas P. O'Neill, Jr.
Speaker of the House
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

At the direction of the Judicial Conference of the United States, I am transmitting herewith a draft bill providing for the amendment in its entirety of the jury fee section (28 U.S.C. §1871) of the Jury Selection and Service Act of 1968, as amended. This draft bill would also add to title 28 provisions for a civil penalty and for injunctive relief against an employer who discharges or coerces an employee as a result of the employee's federal jury service or summons for such service.

A bill covering these same topics and essentially similar to this draft bill passed the Senate on September 30, 1975, as S. 539 (see Senate Report No. 94-400). It should be noted that the attendance fee for jurors in the United States district courts proposed by the Judicial Conference is \$30 per day, whereas S. 539 as passed by the Senate would have provided an attendance fee of \$25 per day. The proposal of the Judicial Conference to protect the employment rights of federal jurors also varies in form and emphasis from the version adopted by the Senate in S. 539. The Conference proposal embodied in this draft bill would permit the application of a civil penalty up to \$10,000 against an employer found to be violating the statute by interfering with his employee's right under 28 U.S.C. §1861 to perform jury service. It would also give the district courts jurisdiction to restrain such violations by granting injunctive relief in the nature of orders for the reinstatement of the juror to his employment with or without back pay. The Judicial Conference proposals on the subjects of juror compensation and employment protection which are contained in the attached draft bill with minor technical changes were also transmitted to the 94th Congress and were introduced in the House of Representatives as H.R. 6048 and H.R. 6043, respectively.

This draft bill would provide needed and sizeable increases in the attendance fee, subsistence allowance and travel allowance payable to federal jurors. These increases are required in light of the inflationary spiral since the last amendment of section 1871 in 1968, particularly the escalating cost of energy. The Judicial Conference has long urged the changes in juror compensation which would be made by this bill, having first recommended such legislation at its session of March, 1974. The draft bill would also reorganize the present statute on jury fees, correct several problems in the present payment structure, clarify several ambiguous matters and remedy certain inequities resulting under the present system. The essential changes in the present jury fee structure which would be made by the draft bill are as follows:

(1) Proposed section 1871(a) clarifies the purpose for which federal jurors will be paid the fees authorized by this bill. Presently, the section provides for payment to grand and petit jurors "in district courts or before United States commissioners," which must necessarily be corrected since the office of commissioner has been abolished by the Federal Magistrates Act.

(2) Proposed section 1871(b) provides for an increase in the attendance fee for grand and petit jurors from \$20 to \$30 per day, based upon the cost-of-living increases since December of 1968.

(3) Proposed section 1871(b) also provides for the certification of enhanced attendance fees for both grand and petit jurors on account of extended service. At present, the statute does not clearly provide for these enhanced fees to grand jurors, nor does it provide for the time as of when such certification is possible for grand jurors. This clarifying amendment was stimulated by the statutory extension of the life of the original "Watergate" grand jury and the consequent economic hardships to those jurors after many months on call and actual days of service. The judge who certifies the increased fees has also been given the power in the proposed bill to survey the situation and grant increases retroactively as of the time when he could have first certified such an enhanced fee.

(4) At present, a juror is entitled to a commuted travel allowance (applicable to any means of transportation) of ten cents per mile, a figure which is clearly inadequate in today's economy. Because of the ever-increasing costs of transportation

by private and public means, the commuted travel allowance rate is raised by proposed section 1871(c). That revision would incorporate by reference the travel allowances authorized for supporting court personnel in travel status, thus eliminating the need to designate any specific statutory amount. At any time that the travel rate is increased by the Director of the Administrative Office of the United States Courts pursuant to 28 U.S.C. §604(a)(7) to parallel any increase in the general government rate under title 5, United States Code, jurors would then receive the benefit of such an increase.

(5) A parking allowance is added to the travel costs payable under section 1871(c), subject to the discretionary control on a local basis of the district courts, which have full knowledge of local parking conditions and of the availability of public transportation.

(6) The bill would authorize the Director to promulgate new regulations covering the interim travel of jurors, so as to make their travel between service days less disadvantageous than under present law.

(7) Proposed section 1871(c) also provides for enhanced travel allowances for places of holding court outside of the contiguous 48 states (e.g. Hawaii and Alaska), where higher costs are frequently incurred by jurors.

(8) Proposed section 1871(d) provides for the establishment of a fixed subsistence allowance (payable without the necessity of itemization) to be set by the Director of the Administrative Office at flexible rates no greater than those authorized for supporting court personnel. This change would increase the current subsistence allowance of \$16 specified in the present section 1871 to the same rate applicable to supporting court personnel. When government subsistence rates are increased, the Director could authorize such an increase for jurors as well as for supporting personnel.

(9) For travel in areas of costlier travel outside of the contiguous 48 states of the United States, the Director is authorized to grant higher subsistence rates by proposed section 1871(d).

(10) Section 1871(e) adds broader language to authorize expenditures for the convenience and comfort of jurors who are sequestered for long periods of time or who are required not to separate during midday recesses of the court.

(11) Section 1871(f) would grant the court discretion to allow jurors the actual cost of fares for public transportation taken over short distances to the courthouse and to arrange special transportation for jurors required to remain at the courthouse late at night.

(12) The Director is specifically authorized to establish regulations for the administration of the fee and expense payments to jurors.

(13) Proposed section 5 of the draft bill would provide a 60-day delay following enactment before this amendment to section 1871 would become effective. Necessary time would thus be allowed for the orderly implementation of the increased payments for juror fees and expenses and the obtaining of any necessary supplemental appropriations.

I am also attaching hereto a sectional analysis of the jury fee and expense provisions of the draft bill which was originally presented to the Judicial Conference by its Committee on the Operation of the Jury System in support of this needed remedial legislation.

The proposal of the Judicial Conference concerning the protection of jurors' employment is contained in section two of the proposed draft bill. For this purpose, a new section 1876 would be added to title 28 of the United States Code. This proposal was originally approved by the Conference at its March 1971 meeting with a variation in the form of the recommended penalty. The earlier proposal contained a criminal penalty, whereas the version transmitted herewith provides for a civil penalty. This change follows certain suggestions made during hearings on the earlier proposal before Subcommittee No. 5 of the House Committee on the Judiciary, 92nd Congress, 1st Session (November 10, 1971, Serial 16) and is made pursuant to the actions of the Conference at its sessions of September, 1973, 1974 and 1976.

The purpose of section two of the bill is to provide to the public and the prospective serving federal juror some clearly defined relief against employers who would discharge or threaten to discharge jurors by reason of jury service. Because the Jury Selection and Service Act requires that all citizens shall have an unfettered opportunity to be considered for jury service and to perform such service when selected, the draft bill provides for a civil penalty to be assessed for each actual or attempted violation of a prospective or serving juror's right to perform such service.

The proposal would place discretion in the United States attorney for the applicable judicial district to bring an action to enforce this civil penalty. The bill also provides for a right of action for injunctive relief, including reinstatement with or without back pay. The aggrieved juror or the United States attorney may sue for the above-described injunctive relief in the district courts of the United States.

It is contemplated that, with the first contact made between the court and a prospective juror through the mailing of a juror qualification questionnaire, the prospective juror will be notified of his right to render service free from fear of discharge or coercion. This bill is designed to effectuate the policy that no person should be coerced or threatened into relinquishing his responsibility as a citizen to serve as a juror if summoned and found qualified for that purpose.

Section four of the proposed draft bill is an amendment recommended by the Judicial Conference to add to 28 U.S.C. §1869, the definitional section of the Jury Selection and Service Act of 1968, a new subsection (1). This new subsection would define the term "undue hardship or extreme inconvenience," which is used in the Act as the basis for excuse of prospective jurors from immediate service (28 U.S.C. §1866(c)(1)).

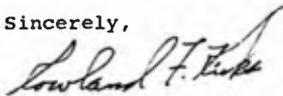
The proposed amendment would define this phrase (1) with respect to the prospective juror himself, by providing that such circumstances as grave family illness or other comparable emergency shall constitute grounds for a temporary excuse from service when summoned, and (2) with reference to the juror's employer, it would provide that severe economic hardship resulting from the temporary absence of a key or indispensable employee would likewise constitute a basis for the temporary excuse of the employee in circumstances where it is reasonably anticipated that a trial or grand jury proceeding may require more than 30 continuous days of service.

In the absence of a statutory definition of the "undue hardship or extreme inconvenience" criterion for excuse from jury service, it has been left to judicial discretion to resolve its meaning on an individual basis. This has inevitably resulted in a wide variance in practice between different courts and judges as to whether an excuse shall be granted in any particular set of circumstances. The adoption of the definitional amendment proposed by the Conference would help to make more uniform the policies and practices of the various federal district courts as to the granting of excuses from jury service.

At the hearings of the House Judiciary Committee held last year on a juror employment protection measure similar to section two of this bill and which was then included in the bill H.R. 6150, concern was expressed by several participants that this aspect of the bill might be unfair in its application to small businesses which are faced with the longterm loss of a key employee at a critical time in light of business conditions. The Conference therefore believes that the second sentence of section four would remedy any such possible unfairness by specifically providing that this sort of hardship to the employer may be considered by the court in passing upon a prospective juror's request for a temporary excuse from jury service.

Representatives of the Judiciary and of this office will be pleased to furnish any further information which may be requested regarding the proposals contained in this draft bill, and to cooperate in any way in furthering its favorable consideration by the Congress.

Sincerely,



Rowland F. Kirks
Director

Enclosures

95TH CONGRESS
1ST SESSION

H. R. 7813

IN THE HOUSE OF REPRESENTATIVES

JUNE 15, 1977

Mr. RODINO (by request) introduced the following bill; which was referred jointly to the Committees on the Judiciary and Education and Labor

A BILL

To amend chapter 121 of title 28, United States Code, to provide in civil cases for juries of six persons and to clarify the procedures for the selection and qualification of jurors, and to amend chapter 81 of title 5, United States Code, to extend the coverage of such chapter to all jurors in United States district courts.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **TITLE I—SIZE OF CIVIL JURIES**

4 SEC. 101. Chapter 121 of title 28, United States Code,
5 is amended by adding at the end thereof the following new
6 section:

7 **“§ 1875. Number of jurors in civil cases**

8 “(a) In a district court of the United States as defined

I

1 in section 1869 (f) of this title, the petit jury shall, in
2 a civil case at law, or in a noncriminal action in which a
3 right to trial by jury is otherwise granted by statute, con-
4 sist of six jurors unless the parties stipulate to a lesser
5 number.

6 “(b) In cases described in subsection (a) of this sec-
7 tion, the verdict of the jury shall be unanimous unless the
8 parties stipulate otherwise.”

9 SEC. 102. Section 1870 of title 28, United States Code,
10 is amended by striking out the first two sentences and insert-
11 ing in lieu thereof the following:

12 “In a district court of the United States as defined in
13 section 1869 (f) of this title, in a civil case at law, or in a
14 noncriminal action in which a right to trial by jury is other-
15 wise granted by statute, each party shall be entitled to two
16 peremptory challenges. Several defendants or several plain-
17 tiffs may be considered as a single party for the purpose of
18 making challenges if their interests are similar, or in any
19 such case the court may allow additional peremptory chal-
20 lenges and permit them to be exercised separately or
21 jointly.”

22 SEC. 103. Section 1869 (f) of title 28, United States
23 Code, is amended by striking out “and 1867” and inserting
24 in lieu thereof “1867, 1870, and 1875”.

25 SEC. 104. The chapter analysis of chapter 121 of title

1 28, United States Code, is amended by adding at the end
2 thereof the following new item:

“1875. Number of jurors in civil cases.”.

3 SEC. 105. The amendments made by this title shall take
4 effect thirty days after the date of enactment of this title.

5 TITLE II—USE OF VOTER LISTS IN JURY
6 SELECTION

7 SEC. 201. Section 1863 (b) (2) of title 28, United
8 States Code, is amended to read as follows:

9 “(2) specify that the names of prospective jurors
10 shall be selected from the voter registration lists or lists
11 of actual voters of the political subdivisions within the
12 district or division. There is a presumption that jurors
13 so selected represent a fair cross section of the commu-
14 nity in the district or division wherein the court con-
15 venes. The plan may prescribe some other source or
16 sources of names in addition to voter lists where the
17 court finds that voter lists do not represent a fair cross
18 section of the community.”.

19 TITLE III—JURY SERVICE UPON RESTORATION
20 OF CIVIL RIGHTS

21 SEC. 301. Section 1865 (b) (5) of title 28, United
22 States Code, is amended by striking out “by pardon or
23 amnesty.” and inserting in lieu thereof a period.

24 SEC. 302. Section 1869 (h) of title 28, United States

1 Code, is amended by striking out "by pardon or amnesty."
2 and inserting in lieu thereof a period.

3 TITLE IV—AUTOMATED JURY SELECTION

4 SEC. 401. Section 1869 of title 28, United States Code,
5 is amended—

6 (1) by striking out the period at the end of sub-
7 section (i) and inserting in lieu thereof a semicolon; and

8 (2) by adding at the end thereof the following new
9 subsection:

10 "(j) 'publicly draw' as referred to in sections 1864
11 and 1866 of this chapter shall mean a drawing which is
12 conducted within the district after reasonable public
13 notice and which is open to the public at large under
14 the supervision of the clerk or jury commission, except
15 that when a drawing is made by means of electric data
16 processing, 'publicly draw' shall mean a drawing which
17 is conducted at a data processing center located in or
18 out of the district, after reasonable public notice given
19 in the district for which juror names are being drawn,
20 and which is open to the public at large under such
21 supervision of the clerk or jury commission as the Judi-
22 cial Conference of the United States shall by regulation
23 require; and

24 "(k) 'jury summons' shall mean a summons issued
25 by a clerk of court, jury commission, or their duly

1 designated deputies, containing either a preprinted or
2 stamped seal of court, and containing the name of the
3 issuing clerk imprinted in preprinted, typed, or
4 facsimile manner on the summons or the envelopes
5 transmitting the summons.”.

6 TITLE V—COVERAGE OF JURORS UNDER
7 CHAPTER 81 OF TITLE 5

8 SEC. 501. Chapter 81 of title 5, United States Code,
9 is amended by inserting immediately after section 8142
10 thereof the following new section:

11 “§ 8142a. Federal petit or grand jurors

12 “(a) For the purpose of this section, ‘Federal petit
13 or grand juror’ means a person selected pursuant to chapter
14 121 of title 28 and summoned to serve as petit or grand
15 juror, who is an actual attendance in court such that he
16 would be entitled to the fees provided for his attendance
17 by section 1871 of title 28.

18 “(b) Subject to the provisions of this section, this
19 subchapter applies to a Federal petit or grand juror, except
20 that entitlement to disability compensation payments does
21 not commence until the day after the date of termination
22 of his service as a juror.

23 “(c) In administering this subchapter with respect
24 to a juror covered by this subsection—

25 “(1) a juror is deemed to receive monthly pay

6

1 at the minimum rate for GS-2 unless his actual pay as
2 a Government employee while serving on court leave is
3 higher, in which case his monthly pay is determined in
4 accordance with section 8114 of this title; and

5 “(2) performance of duty includes an act of a juror
6 while he is in attendance at court, pursuant to a sum-
7 mons, in deliberation or when sequestered by order of a
8 judge, except that performance of duty shall not include
9 his travel to and from the courthouse except under
10 sequestration order or as necessitated by order of court,
11 such as for the taking of a view.”

12 SEC. 502. The chapter analysis of chapter 81 of title 5,
13 United States Code, is amended by inserting immediately
14 after the item relating to section 8142 the following new
15 item:

“8142a. Federal petit and grand jurors.”

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

SUPREME COURT BUILDING
WASHINGTON, D.C. 20544

ROWLAND F. KIRKS
DIRECTOR

WILLIAM E. FOLEY
DEPUTY DIRECTOR

March 31, 1977

Honorable Thomas P. O'Neill, Jr.
Speaker of the House
U.S. House of Representatives
Washington, D. C. 20515

Dear Mr. Speaker:

At the direction of the Judicial Conference of the United States, I am forwarding a draft bill which would make several changes in existing law with respect to the administration of the jury system in the United States district courts. Each of the proposals contained in this bill has been previously recommended by the Judicial Conference, and each of them was submitted to the 94th Congress without being acted upon. This draft bill would make five separate changes in existing law:

1. The enactment of specific statutory authority for the use of six-person juries in civil cases in the district courts, and a reduction in the peremptory challenges available to each party in civil cases from three to two;
2. The establishment of a statutory presumption that the use of voter lists as the source of juror names is consistent with the requirement of the Jury Selection and Service Act of 1968, 28 U.S.C. §1861, for grand and petit juries to be "selected at random from a fair cross section of the community in the district or division wherein the court convenes";
3. The clarification of 28 U.S.C. §1865(b)(5) with respect to the qualification for jury service of persons who have been convicted of a crime and have subsequently had their civil rights restored;
4. The addition to the definitional section of the Jury Selection and Service Act of 1968, 28 U.S.C. §1869, of certain definitions respecting the jury selection and summoning process, in order to clarify the authority of district courts to employ automatic data processing in the selection of their juries; and

5. The extension of Federal Employees Compensation Act coverage to all persons serving as jurors in the United States district courts.

The Judicial Conference at its latest session in September, 1976, directed that these legislative proposals be joined together in the form of an omnibus bill to make changes with respect to jury administration and the service of jurors in the federal courts. Accordingly, I am transmitting the enclosed draft bill. A discussion follows of each of the separate proposals which would be effected thereby.

I. Six-Person Juries in Civil Cases

The Judicial Conference of the United States has since 1972 been recommending favorable consideration by the Congress for the amendment of title 28, United States Code, to provide in civil cases for juries of six persons.

A total of 82 out of the 94 federal judicial districts have by local rule adopted provisions for civil juries of less than twelve. The attached draft bill would make the use of the six-person civil jury uniform in all United States district courts. The use of juries of less than twelve persons by rule of court in civil cases has been sanctioned by the United States Supreme Court in Colgrove v. Battin, 413 U.S. 149 (1973).

Besides reducing the number of jurors sitting in civil cases to a uniform number in all Federal courts, the draft bill would also provide amending language reducing the number of peremptory challenges in civil cases from three to two per party. The bill further authorizes additional peremptory challenges and flexible treatment of peremptory challenges to cover multiple parties in light of varying circumstances.

This bill would expressly preserve the principle of unanimity of verdicts in civil cases; however, the statutory provision for unanimity would also allow for stipulation by the parties to a less than unanimous verdict.

Bills virtually identical to title I hereof were introduced in the 94th Congress as S. 237 and H. R. 6039. Earlier, two bills providing the essence of this draft bill, H. R. 8285 and S. 2057, had been introduced in the 93rd Congress. At its March, 1971 session, the Judicial Conference originally approved in principle a reduction in the size of civil juries (see the 1971 Report of the Proceedings of the Judicial Conference at page 5). Subsequently, the Conference proposed draft legislation which was introduced in the 92nd Congress and

later in the 93rd Congress as H. R. 8285. Hearings were held thereon by the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice on October 9 and 10, 1973 and January 23, 1974. Following the Judicial Conference re-endorsement of H. R. 8285, a counterpart bill, S. 2057, was introduced in the Senate. After study, the Judicial Conference voted (see the 1973 Conference Proceedings at page 54) to recommend S. 2057 because of its specific provisions preserving the principle of unanimity of verdicts and a more flexible treatment of peremptory challenges in multiple party cases. Title I of the attached draft bill incorporates these features of S. 2057.

II. Use of Voter Lists in Jury Selection

It is presently provided by section 1863(b) (2) of title 28, United States Code, that the plan for random selection of grand and petit jurors which is required to be maintained by each United States district court shall specify that the names of prospective jurors shall be selected from the voter registration lists or lists of actual voters of the political subdivisions within the judicial district or a division thereof, and that:

"The plan shall prescribe some other source or sources of names in addition to voter lists where necessary to foster the policy and protect the rights secured by sections 1861 and 1862 of this title."

Title II of the draft bill which is being submitted to you would amend this subsection to (1) establish a presumption that those jurors selected from voter registration lists or lists of actual voters do affirmatively represent a "fair cross section of the community" in the district or division, as required by 28 U.S.C. §1861, and (2) require the district court to find that voter lists do not represent such a fair cross section before it may prescribe any other source or sources of juror names.

Since the enactment of the Jury Selection and Service Act of 1968, an issue has emerged as to whether the selection of jurors exclusively from voter lists in each judicial district is sufficient to implement the mandate of the Act. Sections 1861 and 1862 of title 28, which were added by the Jury Selection and Service Act, provide that all litigants in federal courts are entitled to trial by grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes, that all citizens shall have the opportunity to be considered for jury service, and that no one shall be excluded from such service on account of race, color, religion, sex, national origin, or economic status.

Litigants, particularly criminal defendants seeking a basis on which to challenge their indictments or convictions, have persistently contended that juries selected exclusively from voter lists do not meet these requirements because of the limited constituency of the lists in some localities and the tendency of certain groups and segments of the population not to register or vote. Accordingly, they have asserted in numerous instances that the district courts have been derelict in not prescribing supplemental sources of juror names as authorized by 28 U.S.C. §1863(b)(2). These contentions have been raised with increasing frequency in recent years and in several different forms--as challenges to the jury selection process under 28 U.S.C. §1867, as pretrial motions, as points on appeal, and as allegations in petitions for postconviction relief.

When confronted by such challenges, the federal courts have consistently upheld the exclusive reliance on voter lists to supply the names of jurors, as sufficient on constitutional grounds and also as a permissible method of achieving the "fair cross section of the community" required by statute as the basis for jury selection. See, e.g., United States v. Whitley 491 F.2d 1248 (8th Cir. 1974), cert. denied, 416 U.S. 990, and United States v. Test, 399 F. Supp. 683 (D. Colo. 1975), affirmed, No. 73-1337 (10th Cir., decided Nov. 12, 1976). It has further been held that those persons who choose to exclude themselves from jury service by failing to register to vote do not constitute a cognizable class or group for the purpose of establishing systematic and intentional exclusion from the process of jury selection. Camp v. United States, 413 F.2d 419, 421 (5th Cir. 1969), cert. denied, 396 U.S. 968, and United States v. Lewis, 472 F.2d 252, 256 (3rd. Cir. 1973).

Useful summaries of the decisional law which has developed with respect to (1) permissible disparities for jury selection purposes between the proportion a particular class bears to the population at large as against those persons registered to vote and (2) the showing required to successfully challenge a court's jury selection plan are contained in An Analysis of Jury Selection Decisions by Judge Walter P. GeWIN, appendix to Foster v. Sparks, 506 F.2d 805 (5th Cir. 1975), and the Report of the District Court Panel on Jury Selection in the District of Massachusetts, 58 F.R.D. 501 (1973).

In light of the apparent judicial consensus which has developed in support of the exclusive use of voter lists for the selection of jurors, only two United States district courts, Colorado and the District of Columbia, have seen fit to supplement the voter lists with another source of juror names.

Both of these courts are now drawing names for their master jury wheels from the motor vehicle operators' license records within their jurisdictions, as well as from voter lists. The other 92 district and territorial courts, to the best of our knowledge, continue to use the voter lists exclusively for this purpose. Despite this consensus, however, challenges to the jury selection process on account of a lack of supplementation to the voter lists continue to be made and to consume substantial judicial time.

The Judicial Conference is therefore of the view that the enactment of the proposed legislation would assist the administration of justice by reducing the number of frivolous challenges made on this basis, and by providing greater certainty to the federal courts in the administration of their jury selection plans. At the present time many of the district courts, concerned by the growing number of challenges, are researching the efficacy and practicality of the various sources available to supplement voter lists. Motor vehicle operator records, automobile registration records, social security lists, welfare rolls, city directories, telephone directories and census records have, inter alia, been considered for this purpose.

It has proven difficult, however, to find a satisfactory supplemental list which incorporates with sufficient certainty the name, address, and age of the potential juror, is reasonably up-to-date, and provides an improvement over the voter lists in capturing some segment of the community which is under-represented in voter registration. As former Attorney General Ramsey Clark pointed out in his testimony on the legislation which became the Jury Selection and Service Act of 1968, the voter registration or actual voter lists are uniquely suited to the jury selection process, especially so because the process of registering and voting implies a certain orientation to the public interest and to public service:

"We looked at every type of list we could find. We looked at post office addresses, at Civil Service Commission lists, at social security lists, and we considered telephone books, and a city directory sort of list, and we couldn't find any list that would be across the country nearly as good as the voter list. We put a quite high priority on certainty as to where the individuals should be chosen from, and we found some relationship between the public interest that would cause a person to register to vote, and jury service." Hearings on Federal Jury Selection Before the Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary, 90th Congress, 1st. Sess. 43 (1967).

Additional support for the primacy of voter lists as the source of federal juror selection is readily found in the legislative history of the Jury Selection and Service Act. The Judiciary Committees of the Senate and the House of Representatives stated in their reports on this legislation that voter lists "provide the widest community cross section of any list readily available." Senate Rep. No. 891, 90th Cong., 1st Sess. 16 (1967) and H.R. Rep. No. 1076, 90th Cong., 2d Sess. 4 (1968). These reports also manifest a Congressional view that the use of voter lists should be adequate to satisfy constitutional requirements and to comply with the cross sectional requirements of the statute:

"The voting list requirement, together with the provision for supplementation, is therefore the primary technique for implementing the cross sectional goal of this legislation. The bill uses the term 'fair cross section of the community' in order to permit minor deviations from a fully accurate cross section. The voting list need not perfectly mirror the percentage structure of the community. But any substantial percentage deviations must be corrected by the use of supplemental sources. Your committee would leave the definition of 'substantial' to the process of judicial decision." S. Rep., supra, at 17 and H.R. Rep., supra, at 5.

The Judicial Conference through its Committee on the Operation of the Jury System has attempted to follow the course of judicial decisions construing the Jury Selection and Service Act ever since its enactment in 1968. Since that time, the Conference is unaware of any court decisions holding that a master jury wheel drawn wholly from voter registration lists is on that ground inadequate to represent a fair cross section of the community in the selection process. Accordingly, the Conference believes that, with rare exceptions, the need for supplementation of the voter lists simply has not been realized in actual practice, based upon eight years of experience since the enactment of the Jury Act.

While the draft legislation which is submitted would establish a statutory presumption that the selection of jurors from names contained on voter lists meets the requirements of 28 U.S.C. §1861, it would continue to permit district court jury selection plans to provide for other sources of names in addition to voter lists. Before prescribing such additional sources of names, however, the district court would have to expressly find that the state voter lists do not represent a fair cross section of the community.

The legislative history further indicates that the Congress very deliberately established voter lists as the source of federal jurors in full recognition that their use would narrow the universe of jury selection by eliminating from consideration persons who do not register to vote. The committee reports assert that this sort of discrimination among citizens is "not unfair," however, because "[n]o economic or social characteristics prevent one who wants to be considered for jury service from having his name placed in the pool from which jurors are selected." S. Rep. at 17 and H. R. Rep. at 5.

There is one additional compelling argument in support of this bill suggested by the legislative history. In his testimony before the Senate Subcommittee on Improvements in Judicial Machinery, Judge Irving R. Kaufman of the United States Court of Appeals for the Second Circuit, who then chaired the Conference Committee on the Operation of the Jury System, suggested that the provision now contained in section 1863(b)(2) for the supplementation of voter lists by other sources was essentially transitional in nature. Even at that time, Judge Kaufman stated, the voter lists failed to represent a fair cross section of their communities in only a "very few jurisdictions." He testified that his committee had been "advised by the Department of Justice that this situation is being corrected since the passage of the Voting Rights Act of 1965," but that "[w]here this condition still exists, our bill permits the use of other lists in addition to voter lists to obtain a representative cross-section." Hearings on Federal Jury Selection, *supra*, at 253.

Thus Judge Kaufman appeared to believe that the use of supplemental sources of juror names was primarily a stopgap measure, which would be desirable to have available until the full impact of the Voting Rights Act of 1965 had been felt and until its implementation had corrected the situation existing in a few isolated districts where the voter lists did not represent a fair cross section of the population. It is accordingly the view of the Judicial Conference that, since eleven years have now passed since the enactment of the Voting Rights Act, the primary need to resort to supplementation of voter lists for jury selection has expired, and the use of supplemental sources should be reserved for those extraordinary situations in which the district court expressly finds that the voter lists of the state do not encompass a sufficient constituency to satisfy the demands of the Jury Act.

III. Jury Service by Restored Convicts

This title would amend the Jury Selection and Service Act of 1968, as amended (28 U.S.C. §§1865(b)(5) and 1869(h)) to allow for a more flexible treatment of rehabilitated persons, previously convicted for crimes punishable by imprisonment for more than one year, whose qualifications are being considered for jury service in federal courts. This bill was introduced in the 93rd Congress as H. R. 17373 and in the 94th Congress as H. R. 6050.

The Jury Act presently provides in the qualification section at section 1865(b)(5), that the district courts:

". . . shall deem any person qualified to serve on grand and petit juries . . . unless he (5) has a charge pending against him for the commission of, or has been convicted in a state or Federal court of record of, a crime punishable by imprisonment for more than one year and his civil rights have not been restored by pardon or amnesty."
(Emphasis added.)

Since many state and federal statutes create by legislative action diverse procedures for rehabilitation and pose differing solutions for the restoration of civil rights, the language "by pardon or amnesty" is proposed to be stricken from the qualification section of the Jury Selection and Service Act to accommodate that statute to the varied state and federal restoration procedures. Moreover, the present formula, "pardon or amnesty," is thought to be underinclusive. Under federal law, for example, there are at least two statutes which have the effect of expunging criminal records, the Youth Corrections Act (18 U.S.C. §5021), and the Comprehensive Drug Abuse and Control Act of 1970 (21 U.S.C. §844(b)). Moreover, the words "pardon or amnesty" may be confusing in this context. For instance, amnesty does not act to restore civil rights, since it precludes prosecution in the first instance.

In light of the proposed amendment of section 1865(b)(5), title III of this bill also amends the statutory provisions with respect to the information called for in the juror qualification form, as defined by section 1869(h).

Attached hereto is a special report on this matter submitted to the Judicial Conference Committee on the Operation of the Jury System by Honorable Harold R. Tyler, former U.S. District Judge for the Southern District of New York, which explains in detail the background of this aspect of the proposed legislation.

IV. Facilitation of Automated Jury Selection

As noted, title IV of the attached draft bill would "provide for amendment of the Jury Selection and Service Act of 1968, as amended, adding further definitions relating to jury selection by electronic data processing." This bill was originally forwarded to both houses of Congress by resolution of the Judicial Conference at its September 1973 meeting and was subsequently introduced in the 93rd Congress as H.R. 10896, and in the 94th Congress as H.R. 6051.

One purpose of this portion of the bill is to define the requirements of the public drawing called for in the Jury Act with respect to the manual and automated computer data processing of the clerical work of jury selection. The bill would add subsection "j" to section 1869 of title 28, the definitional section of the Act. The purpose of subsection "j" would be to provide that, where juror selection procedures are manual, the public drawing provided for in sections 1864 and 1866 would be held within the judicial district affected after reasonable public notice and that such public drawing would be conducted in proceedings open to the public at large and under the supervision of the clerk of court. Subsection "j" would also provide that the selection of juror names may be accomplished by automated processing under the supervision of the clerk and could take place inside or outside of the judicial district affected, subject to the same public notice and participation requirements pertaining to manual selection. Since the computer facilities of the General Services Administration are maintained at regional headquarters, it is necessary from a practical standpoint to perform there the computer functions relating to the automated selection of jurors in the various United States district courts within such regions. It would not be economically feasible to maintain such costly equipment at each court center.

Automated computer data processing in the selection of jurors is authorized by the Jury Act at section 1869(g), and approximately 55 districts are presently using fully or partially automated systems for the selection of jurors. Selection with the help of computerized methods offers time and cost-saving benefits, but, equally important, it helps to assure the removal from jury selection of any possibility of discriminatory human interference.

This title of the bill would also add a definition of the juror summons at new subsection "k" of section 1869 to allow the seal of the court and the clerk's signature to be affixed

to the summons form by a broad range of techniques. Presently, juror summonses are commonly being issued in automated districts without the seal of the court and without a clerk's signature because there is no way to add these features manually to thousands of such documents without defeating the work-saving advantages of automation. On the other hand, some clerks spend hundreds of manhours signing and sealing such forms. The adoption of this bill will also benefit those district courts which manually process the summons forms, in that such forms could contain in preprinted form the seal and the signature of the clerk. Moreover, their preparation and handling will be facilitated by the techniques authorized by this proposed definition of the juror summons.

V. Coverage of Jurors by Federal Employees Compensation Act

In accordance with the resolution of the Judicial Conference of the United States adopted at its March 6, and 7, 1975 meeting, I am transmitting to the Congress for its consideration title V of this draft bill, which would provide Federal Employee Compensation Act coverage, not only for federal employees serving as federal jurors, but as well for all other persons performing jury duty in federal courts in fulfillment of one of their obligations of citizenship.

Although coverage for federal employees who are serving as federal jurors was provided in the Act of September 7, 1974, Public Law No. 93-416, 88 Stat. 1143, the extension of such benefits to private citizens who are injured while serving as federal jurors was not provided in that legislation. Nevertheless, Senate Report No. 93-1081 (to accompany H.R. 13871) evidenced agreement at that time with a similar resolution of the Judicial Conference adopted in March, 1974.

Serious problems can arise when federal jurors who do not happen to be employed by the United States Government are injured or disabled while in the performance of their jury service. On several occasions prior to and since the enactment of Pub. L. No. 93-416, the U. S. Department of Labor has rejected federal jurors' claims for injury compensation on the basis that jurors were not defined as "employees" of the federal government within the meaning of 5 U.S.C. §8101(1). Since the enactment of Pub. L. No. 93-416, nothing has happened to indicate a change in this position relating to persons, not federally employed, who are serving as jurors in federal courts. The purpose of this portion of the bill is to provide remedial legislation to specify that compensation benefits shall apply to all persons serving as federal jurors.

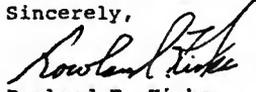
Strong policy reasons exist for bringing all federal jurors within the coverage of the Federal Employees Compensation Act. Jurors provide a valuable service to the government. While in actual service as a petit or grand juror, the citizen-juror should rationally be accorded the benefit of protection in case of a "job-related" mishap. What begins as the fulfillment of a high duty of citizenship through public service to the government could be turned into an economic catastrophe for the juror in the event of an accident or injury while serving. Presently a person injured while serving as a juror cannot recover compensation unless he can bring his case under the Federal Tort Claims Act by proving negligence in the government agent, a difficult burden. Moreover, this inequity is compounded by the fact that a federal employee is now covered by these compensation acts. It would also contribute to the juror's peace of mind, especially in a protracted case or in a situation where he must be transported to make a site inspection, to know that this benefit is available. This aspect of the proposal might be especially reassuring to the head of a family or to the timorous juror sitting in a sensational criminal case. While jurors are very seldom injured, we do have a record of several such cases.

The enclosed draft bill would add a new section, section 8142a, to chapter 81 of title 5. Proposed section 8142a(a) and (b) define the protected juror to be one who is in actual attendance upon court and specify when payments can commence. Proposed section 8142a(c)(1) defines the rate of pay that a federal juror is deemed to be receiving for purposes of the compensation scheme provided for in chapter 81. This subsection also takes into account and specifies the compensation of the federal employee who is receiving his normal rate of pay while on court leave pursuant to 5 U.S.C. §5537 and 6322 to be his actual rate of pay. Section 8142a(c)(2) limits and defines when the juror is deemed to be in the performance of duty, assuring that claims for compensation may not be granted except for duty-related mishaps. Federal jurors would not be made actual employees of the federal government. Nor should this amendment be construed to characterize jurors as employees for any other purpose than the compensation for injuries resulting from jury service. Section 8116(c) would make recovery under the Federal Employees' Compensation Act the exclusive remedy of the juror against the United States for such injuries.

It is the view of the Judicial Conference that the adoption of the various proposals contained in this draft bill would expedite the operation of the jury system and provide for a desirable certainty in its administration, as well as improving the conditions of service of the individual juror.

I will be pleased to provide any further information necessary in the consideration of this draft bill, and representatives of the Judiciary and of the Administrative Office will be available to testify before the committee to which the bill may be referred.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rowland F. Kirks".

Rowland F. Kirks
Director

Enclosures

Mr. KASTENMEIER. I would also like to note that six of these bills passed the Senate on April 27, 1 week ago, relating to witness fees, marshals' transportation expenses, marshals' fees and jury fees. Although these bills have not yet been technically referred to the subcommittee, they are pending before us. [See appendix 1 at p. 152, *infra*.]

Now today I would like to introduce our witnesses. First, Raymond S. Calamaro, Deputy Assistant Attorney General, Department of Justice, Office of Legislative Affairs. Mr. Calamaro is a familiar face around here and needs no further introduction.

Second, Carl H. Imlay, who is the General Counsel of the Administrative Office of the U.S. Courts, will testify. Mr. Imlay has appeared before us on several occasions and I welcome him back. I understand that Mr. Imlay is accompanied by Mr. William R. Burchill, Jr., counsel, Administrative Office of the U.S. Courts.

Several organizations have already submitted, or will submit, their written views on bills pending before us: The American Bar Association, the National Jury project, the American Civil Liberties Union, Prof. David Currie, the Honorable Harold Leventhal and the Honorable Edward T. Gignoux have all agreed to submit statements on several of the pending bills. [See additional statements at p. 128, *infra*.]

So with that I will say, Mr. Calamaro, you are most welcome and you may proceed.

TESTIMONY OF RAYMOND S. CALAMARO, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGISLATIVE AFFAIRS, U.S. DEPARTMENT OF JUSTICE, ACCOMPANIED BY JOHN BEAL, OFFICE FOR IMPROVEMENTS IN THE ADMINISTRATION OF JUSTICE; AND KAREN SIEGEL, OFFICE OF LEGISLATIVE AFFAIRS

Mr. CALAMARO. Thank you, Mr. Chairman.

Mr. KASTENMEIER. If you want to identify your colleagues—

Mr. CALAMARO. I shall. On my right is Karen Siegel, of the Office of Legislative Affairs; and also accompanying me today is John Beal of the Office for Improvement in the Administration of Justice, Mr. Meador's office.

Mr. Chairman and Father Drinan, it is a pleasure to appear before you today. Rather than reading the lengthy prepared statement covering all these bills, I will submit it for the record and summarize it as briefly as possible; but before doing that I will take this opportunity in this, my first formal appearance before the subcommittee—although it is my first formal appearance, I have worked with the subcommittee for about 1½ years now, and I want to just take this chance to express my appreciation, as well as the Attorney General's and the Assistant Attorney General's for Legislative Affairs, Patricia Wald, for the extraordinarily productive efforts of the subcommittee members and the staff.

I think the staff deserves special commendation for its work with our office. Hardly a day goes by when we don't call someone, majority or minority side, to ask for assistance, and we get very good and very speedy help.

Mr. KASTENMEIER. Thank you for those comments.

Without objection, your statement will be made part of the record and you may proceed.

[The information follows:]

STATEMENT OF RAYMOND S. CALAMARO, DEPUTY ASSISTANT ATTORNEY GENERAL,
OFFICE OF LEGISLATIVE AFFAIRS

Mr. Chairman and members of the subcommittee, my name is Raymond S. Calamaro. I am Deputy Assistant Attorney General in the Office of Legislative Affairs.

I am pleased to appear before you on behalf of the Attorney General to present the Department's views on several bills pertaining to court fees and administration.

DEPARTMENT OF JUSTICE LEGISLATIVE PROPOSALS

Two of the bills before you are Department of Justice proposals and we strongly urge their enactment. Both bills were passed by the Senate on April 27, 1978 as part of a six-bill court reform package. We hope that the House will give favorable consideration to the entire package, as well.

The first of the Department's bills, H.R. 8492, would delegate to the Attorney General the authority to determine and adjust the fees charged for service of civil process for private litigants. The need for an adjustment in these rates is clearly demonstrated by the fact that the estimated aggregate collections by the Government in fiscal year 1976 were approximately \$3.5 million below the estimated costs for providing service. If the Attorney General were given authority to adjust the rates annually, the Government's reimbursement would be more in line with the actual costs. Moreover, payment of fees for United States Marshals Service legal and judicial services are deposited in the General Fund of the United States Treasury and therefore do not accrue to the benefit of the Marshals Service.

The present rates of \$3 for the service of writs and summonses, and \$2 for the service of subpoenas were established by Public Law No. 87-621 (28 U.S.C. 1921) on August 31, 1962. This law also provides for the collection of 12 cents per mile for travel required in serving process, except within the District of Columbia.

Three audits, with findings that support the need to revise these rates, have been conducted over the past eight years. These include a 1969 audit by the General Accounting Office, a June 1973 audit by the Department of Justice's Internal Audit Staff, and a second GAO audit in 1975. All three audits have shown that service of process costs to the Government far exceed collections.

In establishing or revising rates for the service of process the Attorney General will act in compliance with Office of Management and Budget Circular A-25 guidelines. OMB Circular A-25 articulates the general policy of the Executive Branch to develop an equitable and uniform system of charges for selected Government services. The Circular provides that a reasonable charge be made to each identifiable recipient for a measurable unit or amount of Government service from which he derives a special benefit. The Circular further states that, when determining such charges, the agency shall apply accepted cost accounting principles and include in those charges salaries, benefits, travel, rent, postage, maintenance, and depreciation, as well as the cost of operating equipment and a reasonable proportionate share of the agency's management and supervisory costs.

The service of process by the Marshals Service is not mandatory for private litigants. It is possible for private litigants to use commercial firms for this purpose; however, since the fees of the Federal Government are much lower, the private litigants often prefer to use the Marshals Service. According to the GAO survey completed in 1975, the commercial process service fees in five Federal districts ranged from \$3 to \$35 for delivery of process, with an average of approximately \$11. Some commercial firms included in the survey charged additional amounts for services which are provided at no extra cost by the Marshals, such as priority service. To meet the standards set forth in Circular A-25, it would be necessary for the Marshals Service to charge an average rate of \$11 per item served. Accordingly, this bill will allow for annual adjustments in the rates for service of process.

As passed by the Senate last week, the bill has two additional modifications, both of which we favor and which we suggest be incorporated into H.R. 8492 as well. The first would resolve a conflict between the Second and Fifth Circuit

Courts of Appeals over whether a seaman proceeding in Federal court for wages or other benefits pursuant to 28 U.S.C. 1916 (which waives prepayment of "fees and costs") may have the Marshal attach a vessel on his behalf without advancing a sufficient deposit to cover the initial expense as required by present 28 U.S.C. 1921. Compare *Thielebeule v. M/S Nordsee Pilot*, 452 F. 2d 1230 (2d Cir. 1971) with *Araya v. McClelland*, 525 F. 2d 1194 (5th Cir. 1976). The Second Circuit held that the seaman may have the Marshal attach a vessel on his behalf without prepayment while the Fifth Circuit decision held the opposite. The Senate amendment resolves the conflict in favor of the Fifth Circuit and thus seamen would be treated like all other parties seeking the privilege of arresting vessels as security to satisfy any judgment they may obtain. We support the change.

In addition, the Senate version as amended would allow the Attorney General to provide a maximum fee chargeable as a statutory commission in marshal's sales. Compare *Travelers Insurance Co. v. Lawrence*, 509 F. 2d 83 (9th Cir. 1974) with *Hill v. Whitlock Oil Services, Inc.*, 450 F. 2d 170 (10th Cir. 1971). This would insure that the United States Marshal will receive a commission for all sales he conducts, including judicially ordered sales, and that that commission will not exceed a reasonable amount as prescribed from time to time by regulation of the Attorney General. We likewise support this change.

With regard to our second bill before your Subcommittee, H.R. 9122 would increase the attendance fee and revise the method of computing subsistence and travel allowances for Federal witnesses under 28 U.S.C. 1821. The present fees and allowances paid to witnesses, pursuant to section 1821, fail to compensate many Government witnesses for the actual costs which they routinely encounter while serving as witnesses. Only Federal Government employees who are authorized by their agencies to appear as Federal witnesses receive a reasonable rate of compensation under 5 U.S.C. 5702 and 5704. The proposed legislation would alleviate these difficulties by raising the attendance fee for all Federal witnesses and rendering subsistence and travel fees for witnesses who are not salaried employees of the Government commensurate with those provided to Federal employees.

While witness service is a civic obligation, it is important that the witness fee be sufficient to demonstrate that this is an essential public service and to encourage witnesses to render their services freely and fully. In 1968 the daily attendance fee for Federal witnesses was set at \$20. This fee was an approximation of the average daily income of \$22.80 for "production, non-supervisory, non-agricultural, private payroll" employees at that time.¹ Workers in that category now earn an average of \$38 a day.² In order that the witness fee may be at a level that provides fair compensation for a witness' time and efforts, we are recommending that the witness fee be increased to \$30 a day.

The Justice Department believes that witnesses in general should be entitled to the same allowances for travel by privately owned vehicles or common carriers as Government employees receive for similar travel. Presently, travel allowances under section 1821 are restricted to a flat fee of 10 cents per mile regardless of the mode of travel used by the witness. Rather than increase the mileage allowance for which this section now provides, we have proposed that section 1821 be amended to allow the computation of travel fees in a manner more closely attuned to the actual travel costs incurred by witnesses and the form of transportation employed.

In 1956 when the Department of Justice recommended that computation of travel allowances for witnesses be based solely on a uniform table of distances, the intent of this provision was to standardize payment among those witnesses who travel equal distances. Subsequent experience with this method of calculating travel fees for witnesses who use commercial carriers has shown that witnesses traveling one-way or over short distances frequently incur personal financial burdens, while those who travel greater distances often realize financial windfalls. To eliminate such problems resulting from the use of commercial carriers, we propose that section 1821 be amended to provide for the actual expenses of travel at the most economical rate available, as is currently provided for Federal employees in 5 U.S.C. 5704.

¹ U.S. Bureau of Labor Statistics, Department of Labor, 17 Employment and Earnings 146 (January 1971).

² U.S. Bureau of Labor Statistics, Department of Labor, 22 Employment and Earnings 74 (May 1976).

Under H.R. 9122, witnesses who travel by means of privately owned vehicles would continue to receive compensation in the form of mileage allowances. However, as noted above, the present allowance of 10 cents per mile is inadequate. Witnesses who are employees of the Government and testify on behalf of the United States or in their official capacity receive such mileage allowances as the Administrator of the General Services Administration prescribes for such travel under 5 U.S.C. 5751. Pursuant to 5 U.S.C. 5704(a), these fees are to reflect current costs as determined by the Administrator and are not to exceed a statutory ceiling of 11 cents per mile for motorcycles, 20 cents per mile for automobiles, and 24 cents per mile for private aircraft. Currently, the Administrator has set travel allowances at the maximum rate for motorcycles and airplanes, and 17 cents per mile for automobiles. The proposed legislation would place the disbursement of travel allowances for Federal witnesses who travel by private carrier under the authority of section 5704, as well.

Witnesses attending courts which are so far distant from their residences as to require overnight stays are presently limited to \$16 a day for subsistence expenses by section 1821. This fixed allowance of \$16 is clearly unrealistic in light of current food and lodging costs. Since 1968, when Congress raised the subsistence allowance to its present level, the cost of "food away from home—restaurant meals" has risen over 50 percent.³ In addition, average lodging costs have increased from \$12.27 per night in 1968⁴ to \$19.66 per night in 1975.⁵

In lieu of the flat subsistence allowance that section 1821 provides, the proposed bill would entitle witnesses to daily allowances equal to those which Government employees receive for official travel. This legislative proposal would change the regular per diem for witnesses to \$35 a day for travel within the continental United States, pursuant to 5 U.S.C. 5702(a) (1). Additionally, provision is made for reimbursement up to \$50 a day in those areas which the Administrator of General Services has designated as high-cost areas under section 5702(c) (B). As with the proposed changes in the computation of travel fees, this suggested alteration in the method of determining subsistence allowances would eliminate both the present inequities in compensation between witnesses and the need for frequent revision of witness fee statutes.

Section 3149 of title 18, United States Code, permits the detention of a witness whose testimony is material in a criminal proceeding, whose appearance it may be impracticable to secure by subpoena, and who cannot comply with the conditions of release which 18 U.S.C. 3146 permits a court to impose. Pursuant to the present section 1821 of title 28, a detained witness receives an incarceration fee of \$1 per day in addition to subsistence, during each day of confinement. In a 1973 decision, *Hurtado v. United States*, 410 U.S. 578 (1973), the Supreme Court ruled that section 1821 entitles such a witness to an attendance fee for each day of confinement during which the pertinent trial or other proceeding is in session. Despite past attempts to keep other witness fees abreast of increasing costs, there has been no change in the \$1 compensation for detained witnesses. H.R. 9122 would amend section 1821 to provide that a witness, detained for want of security for his appearance, shall receive the daily attendance fee for each day of his incarceration. This method of payment would more fairly compensate detained witnesses for the inconvenience and hardship of detention and comply with the decision of the Supreme Court in *Hurtado*.

The Department has estimated that this proposal would require an increase of approximately \$9,104,000 for fiscal year 1979. Our estimate is based on the following:

1. Attendance fees would increase by 50 percent which represents the percentage increase in the fee from \$20 to \$30.
2. Compensation for detained witnesses during non-court days would increase from \$1 to \$30.
3. Subsistence payments would more than double, since the \$35 regular per diem which Government employees now receive is more than twice the \$16 which other witnesses currently receive.
4. Travel costs by private automobile, the principal mode of witnesses travel, would increase by 70 percent since Government employees now receive an allowance of 17 cents per mile while other witnesses only receive 10 cents per mile.

³ U.S. Bureau of Labor Statistics, Department of Labor, Handbook of Labor Statistics 318 (ref. ed. 1975).

⁴ Laventhol, Kreksteln, Horwath, and Horwath, *Hotel Operations: 1968*, 20 (1968).

⁵ Laventhol and Horwath, *U.S. Lodging Industry: 1975*, 12 (1975).

PROPOSALS FOR JURY REFORM

H.R. 12389 is a composite of three Administrative Office of the United States Courts suggestions for Federal jury reform.

Section 2 of the bill would amend the Jury Selection and Service Act of 1968, as amended, to make the excuse of prospective jurors from Federal jury service on the grounds of distance from the place of holding court contingent upon a showing of hardship on an individual basis. We have no objection to enactment of this section.

Section 3 would revise the provisions that permits Federal jury service by a person convicted of a crime punishable by more than one year if his civil rights have been restored subsequent to a criminal conviction by pardon or amnesty. Under the amendment, jury service would be permitted for such a person whose civil rights had been restored by any legal process, and we support this change.

Section 4 would bring the jury selection statutes into the age of the computer by clarifying that machine selection and summons preparation are allowable. It should be adopted.

Section 5 would increase the daily juror fee and revise the provisions governing travel and subsistence expenses of jurors. We support enactment of section 5.

The juror fee increase would place the juror fee at the same level as that of the witness fee we support. It is appropriate that the two daily fees be the same and, for the reasons given earlier, \$30 is in our view the proper level. We have no objection to the \$5 escalator clause for petit jurors serving over 30 days and grand jurors serving over 45 days. We consider such terms to be "extraordinary service" justifying additional compensation. We do, however, believe that it would be simpler and more equitable if the increases were automatic, rather than requiring judicial certification. The bill as passed by the Senate last week incorporates this change; we would hope that this Subcommittee would do so as well.

In addition, the travel and subsistence allowance provisions provide fair and reasonable levels of compensation. This is important to prevent undue financial burdens being incurred as a result of jury service.

Section 6 protects employees from loss of employment because of Federal jury service. It is an addition to the Federal law that is needed and the Department strongly supports its adoption. Present remedies for employer retaliation against jurors are inadequate. A statute establishing explicit protection is overdue.

While we support section 6, there are several ways in which it could be strengthened. A section should be added establishing that an employee is on furlough or leave of absence while on jury duty.⁶ With such a provision, an employee would not lose seniority rights and could not be forced to forfeit accrued vacation time. On the other hand, an employer should not be required to pay the salary of such an employee; that could be too great a burden, particularly for many small employers.

We also believe that there should be provision for the appointment of private counsel for jurors who make a preliminary showing of probable merit in claims of violations of this section. Where a juror is successful in such an action, attorney's fees should be recoverable by the court for appointed counsel or by the juror for retained counsel. Further, there should be a prohibition against the taxing of court costs against a juror who brings an action under this section in good faith.⁷ The foregoing provisions would insure that representation will

⁶ Such a provision could read:

"Any individual who is covered by this section shall be considered as having been on furlough or leave of absence during his period of jury service, shall be restored to his position of employment without loss of seniority, and shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such individual entered upon jury service."

⁷ Such a provision could read:

"(1) An individual claiming entitlement to the benefits of this section may make application to the district court for the district in which the employer alleged to have violated such section maintains a place of business and the court shall, upon finding probable merit in such claim, appoint counsel to represent such individual in any action in the district court necessary to the resolution of such claim. Such counsel shall be compensated and necessary expenses repaid to the extent provided by the Criminal Justice Act of 1974 (78 Stat. 552; 18 U.S.C. 3006A). The court may tax a defendant employer, as costs, payable to the court, the attorney fees and expenses of a prevailing employee, where such costs were expended by the court pursuant to this subsection.

"(2) In any action or proceeding under this section the court shall award a prevailing juror who brings such action by retained counsel a reasonable attorney fee as part of the costs.

"(3) No fees or court costs may be taxed against any individual in good faith bringing any action under this section."

be available for jurors with meritorious claims without their having to risk a substantial personal sum or engage an attorney under a contingent fee arrangement. We believe that it is in the public interest that counsel be available to jurors who have bona fide claims of violations of this section. We also believe that jurors should not have to bear the cost of such counsel.

Finally, we would suggest that it may be desirable to recognize explicitly considerations of comity in this portion of the bill. We do not believe that State or local governments impede their employees from fulfilling Federal jury service. Consequently, inclusion of State and local government employees under this section of the bill is probably unnecessary and could be seen as a disparagement of local government operations and an unwarranted intrusion by the Federal Government into local affairs. We believe the best approach would be for this Subcommittee to consider including a sense of Congress provision to apply to State and local government employees, while limiting the mandatory coverage to private sector employees.⁸

Section 7 would extend the coverage of the Federal Employee Compensation Act to jurors. FECA provides that the United States shall pay compensation to Federal employees for disability or death resulting from personal injury sustained in the performance of their duties and not caused by their willful misconduct. We support the extension of FECA to all Federal jurors but would suggest that the provision be amended in certain respects. In the first place, the bill should be modified to contain an offset provision, similar to that contained in 5 U.S.C. 8102, providing that FECA benefits should be reduced by the non-contributory amount received under State or local disability compensation laws.⁹ Moreover, the cost-of-living adjustment provision of 5 U.S.C. 8142 should be applied to all Federal jurors. Finally, pay rates for benefits purposes should be determined on the basis of actual earnings rather than on the arbitrary GS-2 level; however, no juror—employed by the Federal Government or private industry or not employed at all—should be paid FECA benefits on the basis of pay below the GS-2 level.¹⁰

H.R. 12394, TRANSPORTATION EXPENSES

The bills which I have discussed above are part of the six-bill package on court reform which the Senate passed on April 27, 1978 and to which I have alluded previously. The final bill in the package is another Administrative Office proposal, H.R. 12394. This bill would authorize the payment by U.S. Marshals of transportation expenses for needy persons released from custody pending their appearance to face criminal charges before that court or any court of the United States in another Federal judicial district.

Many occasions have arisen where persons released on bond must appear before a court in a different district or a different division within the same district, or must reappear before the same court, but are without sufficient financial ability to incur the necessary transportation expenses on their own. In such cases, the only certain way to assure that the person appears in court as required has been for the court to remand the person to the custody of the United States Marshal to be transported to his destination in the custody of Deputy Marshals. Although, on occasion, a judge or magistrate has ordered the Marshal to provide the prisoner with transportation expenses in lieu of remanding him to custody, those orders have been without statutory foundation and have been resisted by the Department of Justice because they placed the Marshals in the position of obligating Government funds absent statutory authorization. Such circumstances have placed the Department in the anomalous position of resisting judicial orders which, if executed, would often save the Department the financial and manpower burdens associated with transporting those persons in the custody of

⁸ The bill that passed the Senate, S. 2075, contains such a provision in section 1875.

⁹ We would suggest the following language:

"Any benefits payable under this section to a juror who is not covered under paragraph (f) of section 8101(1) of this chapter shall be reduced by the amount received under a non-contributory State or local disability compensation or survivor benefit program. If a juror has contributed to a State or local disability compensation or survivor benefit program, any benefits payable under this section shall be reduced in an amount which bears the same proportion to the full amount of such benefits as the cost contribution paid by the juror's employer bears to the cost of disability or survivor benefits coverage for the juror."

¹⁰ FECA already contains an automatic cutoff at the upper end of the salary scale. See 5 U.S.C. 8114(d)(4).

Deputy Marshals. H.R. 12394 would remedy this undesirable result by providing statutory authorization in appropriate cases for the Marshal to expend Government funds for this purpose. We strongly support its enactment.

We do, however, suggest the following technical amendments to H.R. 12394.

First, we recommend that the words "A court" be changed to "Any judge or magistrate" in order to make the language more specific. We note, for example, that statutes such as 18 U.S.C. 3006A(b), 3401, and 3141 makes reference to "courts or magistrates". We support the inclusion of similar language here.

Second, the bill should reflect more clearly that its provisions also apply to necessary transportation between two divisions of the same judicial district. Although we assume that this result is intended, the present language of the bill itself appears somewhat ambiguous on this point.

Third, the bill's provisions should be limited to those cases where the judicial officer has established through specific inquiry that the intended beneficiary is financially unable to meet the necessary expenses on his own. In our view, a statutory requirement for such a specific inquiry would not only aid in assuring that only intended beneficiaries are accorded Government transportation funds but would also align this provision more closely with the well-established standards presently utilized in determining eligibility for appointment of counsel. Moreover, we believe that the bill should be carefully restricted to transportation expenses solely for the purpose of appearing in court and should not be extended to transportation expenses for any other purposes, such as visiting relatives or resolving financial affairs. The bill is simply not intended to apply to those cases and specifically should not do so because of the potential for abuse by defendants.¹¹

We anticipate that enactment of this bill, as amended, would result in some financial savings to the Government.¹² For example, we can foresee a savings in prisoner transportation expenses. Moreover, the conservation of manpower and Deputy Marshal time, which would then become available for priority assignments in serving the courts and the Attorney General, would alone justify this proposal. Lastly, we believe the provision, if properly applied, would allow defendants to appear more speedily in the required court, thereby promoting the goals of the Speedy Trial Act of 1974 and furthering the interests of justice.

Thus, the Department of Justice recommends enactment of H.R. 12394 if amended as suggested above.

TRANSFER OF JURISDICTION AND JUDICIAL RESIGNATION

You have requested our views today on two additional bills pending in the Subcommittee.

H.R. 11276 would amend title 28 to add a new section 1295, and would require the transfer, when in the interest of justice, of a case from the court of appeals to the district court when exclusive jurisdiction is in the lower court; it would also add a new subsection to 28 U.S.C. 1406 to require similar transfers by the district court to the court of appeals.

The forms of federal jurisdiction vary widely and for that reason constitute to some degree a trap for the unwary. For example, current law requires that some agency decisions be appealed to the courts of appeals while requiring others to be brought to the district courts. And, in some circumstances, certain tax cases are appropriately appealed from the Tax Court to a court of appeals, while others

¹¹ We would therefore suggest that the bill be amended to read as follows:

"§ 4285. Persons released pending further judicial proceedings:

"Any judge or magistrate of the United States when ordering a person released under chapter 207 on a condition of his subsequent appearance before the court, any division of that court, or any court of the United States in another judicial district in which criminal proceedings are pending, may, when the interests of justice would be served thereby and the United States judge or magistrate is satisfied after appropriate inquiry that the defendant is financially unable to provide the necessary transportation before the required court on his own, direct the United States marshal to arrange for that person's means of noncustodial transportation or furnish the fare for such transportation to the place where his appearance is required, and in addition may direct the United States marshal to furnish that person with an amount of money for subsistence expenses to his destination, not to exceed the amount authorized as a per diem allowance for travel under section 5702(a) of title 5, United States Code. When so ordered, such expenses shall be paid by the marshal out of funds authorized by the Attorney General for such expenses."

¹² It is, however, possible that the bill could result in unforeseen additional expenses to the United States if, for instance, the transportation expenditures realized under the bill outbalanced the Government's present expenses in transporting affected defendants in the custody of Deputy Marshals, or an unexpected number of defendants did not appear in court as required. We do not anticipate such results, however.

are directed to a district court from the Internal Revenue Service. In addition, there are statutes dealing with some administrative decisions which are unclear as to the appropriate court in which an appeal should be lodged.

Because of those variations, accidental misfilings do occur. Since many court deadlines are jurisdictional and cannot be disregarded, an improper filing can sound the death knell of a case.

H.R. 11276 permits correction of erroneous filings by allowing the court, in the case of an improper filing, to transfer the case to the appropriate court where it will be treated in all respects as though it had been filed there on the day it was filed in the incorrect court. The bill also guards against abuse of the privilege granted by requiring that such transfers be made only in the interest of justice. Thus an attorney who might consider deliberately filing in the wrong court as part of a strategy will not be able to benefit by the provisions of this legislation.

H.R. 11276 seeks in a reasonable manner to fill a gap in current law which has a potential for miscarriage of justice. The Department of Justice supports its enactment.

Finally, H.R. 3327 would amend title 28 to permit the resignation with the right to continue receiving pay to Federal judges at age 65 who have completed fifteen years of judicial service. 28 U.S.C. 371(a) would then correspond, in age and service requirements, to 28 U.S.C. 371(b), which deals with judicial retirement. After careful consideration of the retirement and resignation statutes as they relate to Federal judges, we have concluded that the Department supports the enactment of H.R. 3327.

That concludes my prepared remarks. I would be pleased to answer any questions from the members of the Subcommittee.

Mr. CALAMARO. These so-called housekeeping measures are important, Mr. Chairman, and they will contribute to the administration of justice in Federal courts. Only two are Justice Department sponsored bills, but we think they are all good measures and deserve to be passed, some with slight modifications.

Looking, first, at the Justice Department bills, the first is H.R. 8492, the marshals' fees bill. The primary effect of the bill would be to change the way fees are determined for service of process by U.S. marshals.

The present rates are fixed at \$2 for writs and summonses and \$3 for subpoenas; but it costs the U.S. Government considerably more to perform this service. In 1976 the Government lost about \$3.5 million providing such services.

This bill would permit the Attorney General to set fees that accurately reflect the Government's costs for process serving.

While we are on this bill, Mr. Chairman, I just thought I would point out a technical change that I don't think appears in my prepared statement. At the very beginning, the enacting clause—and we made this recommendation to the Senate and they accepted it—it presently reads: "The U.S. marshals shall collect and tax as costs fees for the following:" Preferably the way for it to read—and I will be glad to submit this for you in writing—is: "Only the following fees of United States marshals shall be collected and taxed as costs:" The problem is, the way it is written now, a marshal technically doesn't tax fees as costs, and the purpose would be just to get that down the right way. "Only the following fees or U.S. marshals shall be collected and taxed as costs except as otherwise provided:"

Mr. KASTENMEIER. Mr. Calamaro, that would be at line 5, page 1?

Mr. CALAMARO. Line 5 and line 6, page 1, yes, sir.

Mr. KASTENMEIER. So your recommendation is that rather than read: "The U.S. marshals shall collect and tax as costs fees for the following:" it should read: "Only the following fees of the U.S. marshals shall be collected and taxed as costs"?

Mr. CALAMARO. That is right, Mr. Chairman.

Mr. KASTENMEIER. Thank you.

Mr. CALAMARO. The second Justice Department bill is H.R. 9122, the witness fees bill. This one has two main purposes: One, to increase from \$20 to \$30 the daily fee paid to Federal witnesses, and, two, to change the method of computing travel and subsistence allowances, in order to eliminate inequities, and more fairly represent the actual cost. The witness fee increase to \$30 is in the nature of a cost-of-living increase, I think. It comes closer to meeting the average daily income in this country, and demonstrates the public policy that witness service is an essential civic obligation to be encouraged by the Government. That fee would also be paid to a witness in a criminal proceeding detained for want of security for his appearance, as provided under section 18 U.S.C. 3149.

Travel allowances are presently based on mileage. For witnesses who use their own vehicles, this method would continue, but the rates would be adjusted to reflect current costs. For witnesses who use commercial carriers, the bill would amend present law to provide actual expenses at the most economical rate available.

Per diem expenses—that is, food and lodging—for overnight stays, are now fixed by law at \$16 maximum. H.R. 9122 would raise it to \$35, or up to \$50 per day if it is in a designated high cost area. Each of these changes for travel and subsistence corresponds to the provisions presently applicable to Federal employees. The other bills before us today were proposed by the Administrative Office.

H.R. 12389 is a composite of several bills. They are proposals for jury reform and we, the Justice Department, endorse them.

Section 6 of 12389 protects an employee's right under 28 U.S.C. 1861, to sit on a jury by providing for civil fines of up to \$10,000, and civil injunctive relief against employers who interfere with this right.

Mr. Chairman, there is another proposed change that we do suggest in my prepared statement, but isn't highlighted, and I thought I would explain it.

Obviously, the U.S. attorney would be empowered to seek the civil fines, \$10,000 civil fines. We would think, however, that it would not be preferable for the U.S. attorney to seek the injunctive relief, in other words, to enjoin an employer either from discharging an employee, or to enjoin him to reinstate the employee.

The reason for this is that we think it may put the United States in a possible conflict of interest. A prospective juror, when he sits in a jury, if he is aware of his rights, may be sitting on a case where the Federal Government is a party. It is very likely that he will, in a case in Federal court, if he knows that that lawyer representing the Government might be his lawyer and representing him against his employer, be favorably disposed toward that lawyer, toward the arguments he makes. That is why what we propose would be for the party not to be represented by the U.S. attorney, but either to have court-appointed counsel or to get private counsel and be able to get attorneys' fees.

Another idea that has come up on this bill, is the notion that jurors should be notified of the protections under this bill. We think it might be useful, and we obviously would appreciate the views of the Administrative Office on this, when a prospective juror is notified of jury

service, to let him know what his rights are, at least generally let him know that an employer cannot deprive him of his rights.

Section 3 would permit a person whose civil rights have been restored by any legal process to serve on a jury. The present law allows jury service by persons whose rights have been restored by pardon or amnesty.

Other sections of the bill expand the excuse from jury service to any undue hardship rather than just from distance from the court, allow for machines to provide a list of names and prepare summons, raise daily jury fees to \$30, with an additional \$5 for lengthy service, revise the provisions governing the recovery of expenses, and extend the Federal Employee Compensation Act, FECA, to Federal jurors.

H.R. 12394 is a bill governing transportation expenses for needy persons. This measure authorizes U.S. marshals to pay the transportation expenses of needy persons released from custody, pending their appearance to face criminal charges before that court or another Federal court. In the past it has often been necessary for such a person to be placed in the marshal's custody and transported. It would be preferable, and more economical, to allow expenses instead.

H.R. 11276 wisely changes the law to permit a court to correct a filing erroneously made in the wrong Federal court. We agree with the point made in Judge Leventhal's April 26 letter to the chairman of this subcommittee, that the bill should not be restricted to transfers between district courts and courts of appeal, but should allow transfers between any two Federal courts.

Finally, H.R. 3327. The Justice Department also supports this measure which would permit judges who have reached 65 years of age and completed 15 years of judicial service, to resign. This corresponds to the rule for judicial retirement, and is a good change.

The Department of Justice, incidentally, Mr. Chairman, has supported the Rule of 80 as it applies to retirement. We think that is a good idea. We think it rationalizes the concept of 65 and 15, or 70 and 10. In fact, the Rule of 80 that we support would permit a judge who has reached the age of 60 with 20 years' service, to be able to avail himself of retirement benefits. We think it makes sense also to apply these to resignation, but we would want to see it applied to retirement first. This is going beyond just the H.R. 3327 65-15 approach, which does already apply to retirement. If further liberalizations are applied, it would make sense to apply them to retirement first, and then to resignation.

That concludes my oral comments, Mr. Chairman and Father Drinan.

I would be glad to answer any questions.

Mr. KASTENMEIER. Thank you, Mr. Calamaro.

I would like to clarify one point. In talking about juries, you are not presently pressing for the six-member jury by statute as a measure which would probably require fewer jurors, less number on the panel, and consequently, a little more efficient administration and lower costs. Although six-person juries sit in many districts on civil cases, I would like to know whether you are urging a statutory mandate for this practice.

Mr. CALAMARO. No, sir.

Mr. KASTENMEIER. Do you have any view about that?

Mr. CALAMARO. All I can say offhand is that the Department has opposed that. Frankly, I am not prepared to give a more comprehensive view. I would be glad to provide it, if you would like, Mr. Chairman.

Mr. KASTENMEIER. You mentioned notifying jurors, or prospective jurors, of their rights as jury members to bring suit against employers in case of discharge or threatened discharge from employment. What about employers? This is sort of a heavy-handed bill with respect to them. Do they have any rights in this? Supposing they are going to lose an absolutely essential employee for 60 or 90 days, and they have no recourse but to hire someone else and then have to tell that person, "We can only hire you for a limited period of time"—is there anything we do for employers in these bills?

Mr. CALAMARO. That is an important concern, Mr. Chairman. I note that the bill before you permits the excuse of undue hardship to be made available to an employer as well as an employee, and we think that is an important provision.

I note that the Senate put that provision in its bill and took cognizance of this subcommittee's hearings and the subcommittee's having raised that issue the last time this subcommittee had hearings on it. We think it is important.

We can envision situations where—particularly for a small employer at a particularly busy time—it might be inequitable to ask him at that time to forgo one of his best employees. So, we think that the undue hardship excuse should be available to employers. I don't think there is quite as much of a need to notify an employer, since, practically, it presents a more difficult problem than with respect to jurors. I think it is the kind of thing which isn't as necessary.

The notice idea, incidentally, is something we came up with rather recently and we suggest it for discussion, but just offhand I don't think it is quite as important for the notice to be given to an employer.

Mr. KASTENMEIER. H.R. 8492—and I guess the Senate bill as well—provides the Attorney General with blanket discretion to prescribe from time to time the fees to be collected pursuant to that section.

What limit, if any, is there on the Attorney General's authority in this connection? Could the Attorney General, if he decided he did not like writs of habeas corpus, set a prohibitively high cost of service of these writs? Does the Attorney General want to finance the marshals service with the collection of increased fees or make it self-sustaining? What guidelines, what rules, what limitations are there on this transfer of statutory authority to discretionary authority in the Attorney General with respect to these fees, particularly since we don't do this with witness fees? You propose that witness fees be \$30 rather than \$20. We apparently are not giving anyone discretion with respect to that. Why are marshals fees to be left to the discretion of the Attorney General?

Mr. CALAMARO. Well, Mr. Chairman, there are some guidelines. OMB has put out a circular. It is No. A-25. I don't have a copy of it here, but if the subcommittee would like, I will be glad to furnish one. Essentially, it articulates the general policy that the executive branch should develop an equitable and uniform system of charges.

Specifically, what that policy would do would be to reflect the costs involved in these marshal-service fees under accepted accounting

principles. We would take into account all of the doing business costs that are required and under accounting principles try to figure out a way to allocate them in determining what the fee should be.

It turns out that in estimating what the marshal fee would be, we have come up with about \$11 for each service and it also turns out, coincidentally, that \$11 is about the average fee charged by private process servers. We think that shows it is at least in line with reason and, of course, as the chairman knows, if the Attorney General were to exercise his discretion in a way that this committee questioned, it would always be subject to the oversight of this committee.

But I think we are constrained to making an attempt to reflect the reasonable costs that supplying the service costs us.

Mr. KASTENMEIER. I appreciate that answer and you understand, of course, my questions have to express the apprehension of what I impute to others who serve in Congress, and I am just speculating, but it may be that we might be more comfortable with a provision which would require the Attorney General to set down prospective fees to be effective at a future date, but before which time the Congress would have an opportunity to review and to reject these fees, or something of that sort.

Now I don't want to make a great deal of this, but I gather the temper of the Congress is at best skeptical, if not really cynical, about such matters.

Mr. CALAMARO. Mr. Chairman, I don't think that at all. I think it is an important concern and we welcome it, especially at this stage when we are developing a policy.

I might say with respect to the second point that you raised, we would be glad to cooperate in any way at all. The Department of Justice and the administration have expressed in a number of areas objection to the so-called "one-House veto" rule where the administration comes back with a proposed regulation to be vetoed by one House of the Congress. I am not suggesting that your idea runs afoul of it, but subject to constitutional considerations we would be glad to cooperate in any way at all with this committee, with the House, with the Congress, and I think it is an important concern.

Mr. KASTENMEIER. I agree with the thrust of this. Just as in copy-right legislation, increasingly, we are diverting from the necessity of future congressional action in the actual setting of rates and minor fees. It seems to me that it is appropriate for purposes of the Congress as well as efficient operation of the executive branch that we not be engaged in minor feesetting and ratesetting on every sort of issue.

I have a couple of other questions but I think I should yield to the gentleman from Massachusetts.

Mr. DRINAN. Thank you, Mr. Chairman.

Thank you, Mr. Calamaro. I read your statement last night and it is frustrating when you agree with everything that the Department of Justice says, so it is unlike times past. But following up on what the chairman said, can't we arrange a system by which we are not bothered by these things? You people could somehow through the judicial conference, administrative conference, make a rule and it will become effective within 30 days or 6 months unless we object to it. It seems to me some machinery should be worked out, and I was really kind of shocked at some of the abuses that have been going on.

I recall the *Hurtado* decision in 1973 and I had assumed, frankly, that the Department of Justice had recognized it, but apparently for 5 years the Department of Justice has been in noncompliance, really in defiance. The Supreme Court mandate has not been followed, and *Hurtado* said very clearly, unanimously, as I recall, that the daily attendance fee shall be given to all of those who are confined as witnesses or prospective witnesses and that the \$9 million which that will require has not, in fact, been paid out since 1973.

Mr. CALAMARO. Well, I think the problem, Father Drinan, is that we were caught between a Supreme Court decision and sometimes a judicial order and a failure of statutory authority to do that we often wanted to do. That is why we want this bill and that is why we hope it passes, so we have statutory authority to do it.

Mr. DRINAN. We didn't give you the statutory authority because I don't think we were ever asked. And who takes the rap? It is the Congress. Why haven't we done something about it? It is the previous administration. But am I correct, it is the first request to bring the Department of Justice into compliance with *Hurtado*?

Mr. CALAMARO. Mr. Beal has a comment to make.

Mr. BEAL. Father Drinan, *Hurtado* provides that the full fee be paid for every day that the case is actually being heard. Now we are saying we also think, as a matter of equity, it should be paid for any pretrial confinement. Up to *Hurtado*, the full fee had only been paid when a confined witness was actually in court testifying. The Supreme Court had an expectation, it appeared in the case, that what we are proposing here would be done but did not require it. We have been in technical compliance with *Hurtado* but now we are going to be in compliance with the spirit of the case as well under this bill.

Mr. DRINAN. On the substance of it, the Department of Justice keeps a lot of people in confinement. If it is going to cost over \$9 million a year, I just wonder and worry about the underlying premise, that is, how many detained witnesses are necessary. That is a substantive question beyond the hearing here. Do these people get some type of hearing or what happens if they protest, if they don't want to be detained witnesses?

Mr. CALAMARO. \$9 million is for the whole cost of the bill, including all the other provisions; it is not quite that expensive. The detained witness part is not quite \$9.1 million; that is for the entire bill.

Mr. DRINAN. Mr. Chairman, I have no additional questions at this time, but I would suggest that the Department, along with the House Judiciary Committee, evolve a system where these things would be automatic, that when quirks come up, so to speak, or anomalies, that we won't wait for months or years to correct them, that you people would have the power to run your own court, so to speak, run the administration of justice without waiting for the process of the legislature to operate.

Mr. CALAMARO. I think that is a constructive suggestion. Father Drinan. I think that the idea of working out such a system within the bounds of the law is an excellent idea and I personally would like to work on it.

Mr. DRINAN. One last comment: It seems anomalous that the administration can sell jets to various nations unless we disapprove, and yet

the Justice Department can't pay witnesses a certain fee without our expressed statutory authorization. So it seems strange.

Thank you very much.

Mr. KASTENMEIER. I have one or two more questions.

What about prospective criticism? Under present law, the fees of U.S. marshals are taxed as costs, and if we allow the Attorney General to increase these fees, won't we, in effect, be raising the costs of litigation and making it more difficult perhaps for a poor person to get justice?

Mr. CALAMARO. Well, Mr. Chairman, that concerned me too, and I think that the important thing to remember is that outside of proceeding in forma pauperis, which continues to be available, of the various costs of litigation this is one of the lowest ones. The difference involved here, just looking at the averages, is the difference of a few dollars, and our view is that this probably will not make a significant difference in the great majority of cases, and if it does make a significant difference, there is a real possibility that someone might qualify for an in forma pauperis petition.

Mr. KASTENMEIER. Would you restate something one more time, so I understand it more clearly? Originally, H.R. 12389 provided that the U.S. attorney may bring a civil penalty suit to punish an employer who discharged an employee from his job because of jury service. In this respect, of course, the Senate bill has now changed this to provide appointed counsel for the fired employee. You have indicated that this was done because of how either that attorney or the U.S. attorney is viewed in the juror's eyes?

Mr. CALAMARO. Yes, sir.

Mr. KASTENMEIER. I didn't quite understand that.

Mr. CALAMARO. I didn't understand it the first time I heard it either. Let's see if I can do a little better job explaining it.

Let's imagine a situation where a prospective juror is notified and let's say that even our idea is accepted and he is even notified that he has rights against an employer who wants to stop him from exercising his rights to be a juror. The prospective juror—if he also knows that the U.S. attorney, who may be the lawyer in the case that he is going to sit on—will also be the lawyer representing him against his employer, he may be favorably disposed toward that U.S. attorney.

To avoid that situation, we think it is appropriate to require the U.S. attorney to enforce the penalty section, the \$10,000 fine, but when it comes to representing the juror in an action against his employer, either to be reinstated or to prevent the employer from doing something that would—

Mr. KASTENMEIER. Is it only in that situation where the United States is a party to the suit?

Mr. CALAMARO. That is the only situation that I can imagine that the conflicts would occur.

Mr. KASTENMEIER. Does S. 2075 provide for a court-appointed counsel only in this situation where the United States is a party?

Mr. CALAMARO. No; in all situations, Mr. Chairman.

Mr. KASTENMEIER. In all situations, notwithstanding the fact that the U.S. attorney could have and would be in other cases?

Mr. CALAMARO. That is right. We don't think there is any harm by doing that. Certainly, from the point of view of resources, U.S. attor-

neys are extremely busy. It isn't as if it is a resource that is lying fallow, and under the type of structure that the Senate has adopted and that we suggested, that is, to appoint a court lawyer in a finding of probable merit, or awarding fees where the juror has prevailed, we think that that wisely conserves U.S. resources.

Mr. KASTENMEIER. Thank you.

One other question, for which you are not necessarily prepared and which is technically not before us:

I did want to say to you as an agent for the Justice Department, we will be looking at a number of other bills which might be considered housekeeping but deal more particularly with the courts in terms of authorized places of sitting, changes in the lines of district courts and possibly even creation of one or more new district courts.

I am not sure whether at this time you want to make any comment about such matters. If not, we will, of course, ask the Justice Department, I think, next week or so, when we go into that matter, to comment; but at least I did want to put you on notice that while we may treat these as housekeeping they may have some impact, and while the Justice Department is not centrally affected, it is peripherally affected by those matters as well.

Mr. CALAMARO. Mr. Chairman, your counsel has called my attention to some of those and while I haven't seen the text, he has explained the thrust to me. Particularly, the place of holding court bill and, obviously, subject to our being permitted to give a formal response, offhand we would probably defer to the Administrative Office and to the Congress on it, but even more offhand it seems like a good idea to us, and we would certainly have no problem with it.

Mr. KASTENMEIER. Thank you very much, Mr. Calamaro, for your presentation.

Mr. CALAMARO. Thank you, sir.

Mr. KASTENMEIER. I am glad to have your colleagues here as well.

Mr. KASTENMEIER. Now the Chair would like to call Mr. Carl H. Imlay, General Counsel, Administrative Office of the U.S. Courts.

TESTIMONY OF CARL H. IMLAY, GENERAL COUNSEL, ADMINISTRATIVE OFFICE OF U.S. COURTS, ACCOMPANIED BY WILLIAM R. BURCHILL, JR., ASSISTANT GENERAL COUNSEL, ADMINISTRATIVE OFFICE OF U.S. COURTS

Mr. IMLAY. Thank you, Mr. Chairman.

Mr. KASTENMEIER. We are very pleased to have you here this morning and we note that you have three statements, one on H.R. 12389, and the other on a series of other bills before us this morning.

You may proceed as you wish.

Mr. IMLAY. Mr. Chairman and Father Drinan, I am accompanied today by my Associate General Counsel, William R. Burchill, Jr., and I am here at the request of the subcommittee to present the views of the Judicial Conference on legislative proposals which we will discuss.

Mr. Burchill and I, in addition to our other duties, work with the Jury Committee of the Judicial Conference of the United States, which, incidentally, has representatives from each of the 11 judicial circuits in its constituency.

In the interest of time, I shall not reiterate the language of our full prepared statements on these bills, and I would request that the committee allow us to submit the statements for printing in the record.

Mr. KASTENMEIER. Without objection, that request is agreed to.
[The information follows:]

PREPARED STATEMENT OF CARL H. IMLAY, GENERAL COUNSEL, ADMINISTRATIVE OFFICE OF THE U.S. COURTS ON BEHALF OF THE JUDICIAL CONFERENCE OF THE UNITED STATES ON JUDICIAL RETIREMENT

Mr. Chairman, H. R. 3327 is a bill designed to achieve a single objective—the conformity of age and service criteria for judicial “resignation on salary” and judicial “retirement in senior status.” Today under subsection (a) of title 28, U.S.C. § 371, an article III Justice or judge may “resign on salary” only upon the attainment of age 70 after having served for at least 10 full years. A Justice or judge who has met those criteria and selects such resignation on salary is entitled to an annual salary, equivalent to that annual rate of salary which he was earning on the date of his “resignation,” for the rest of his life. Today, under subsection (h) of 28 U.S.C. § 371, an article III Justice or judge may “retire” from regular active service (in other words, take senior status), either at age 70 with 10 full years of service or at age 65 with 15 full years of service. A Justice or judge who has met those criteria and selects such senior status retirement is then entitled to an annual salary equivalent to “the salary of the office” from which he has “retired.” Therefore, unlike the Justice or judge who “resigns” under subsection (a) of § 371, a Justice or judge who “retires” under subsection (b) of § 371 is entitled to all future increases in salary approved by Congress until he dies. It should be noted that a judge retiring under subsection (b) is expected to continue to render judicial service whenever requested to do so. Today, “senior judges” are rendering increasingly more judicial service with each passing year, and that practice has been recognized by both the Senate and House Judiciary Committee during the processing of proposals for additional judgeships in this Congress, as well as in the 93d and 94th Congresses.

Fundamentally, there are only three differences between “senior status retirement” under subsection (b) of § 371, and “resignation on salary” under subsection (a) of § 371:

1. Senior status retirement becomes available at age 65 with 15 full years of service or at age 70 with 10 full years of service, while resignation on salary becomes available only at age 70, whether the years of service number 15, 18, 20, or 30—as long as they number at least 10.

2. Senior status retirement guarantees eligibility for all future judicial salary increases until death; resignation on salary “freezes” annual “retirement salary” at whatever rate is in effect on the date of “resignation.”

3. Senior status retirement entails no diminution of authority of office; resignation on salary vitiates all authority of office.

As I noted above, H.R. 3327 would merely conform the age and service criteria between the two subsections of § 371 (a). As enacted, this legislation would in essence permit a Justice or judge who has attained age 65 and rendered 15 full years of service to elect between resignation on salary and senior status retirement.

Upon receipt of Chairman Rodino's formal request of Judicial Conference views, by letter dated September 15, 1977, the Administrative Office referred H.R. 3327 to the Judicial Conference's Subcommittee on Judicial Improvements, chaired by Judge Elmo Hunter. On January 9, 1978, having evaluated the bill, Judge Hunter's Subcommittee formally recommended Judicial Conference approval, and referred the bill to the parent Court Administration Committee chaired by Judge Robert Ainsworth, for presentation to the Judicial Conference in March of 1978. Following the Court Administration Committee's unanimous agreement that the bill should be approved, Judge Ainsworth, presented that recommendation to the Conference on March 10, 1978, and H.R. 3327 was unanimously approved by that body.

Prior to 1954, Justices and judges were permitted only one form of “retirement,” that which we now describe as “resignation on salary.” The criteria then prevailing were identical to those now prevailing under subsection (a) of § 371. In 1954 Congress created “senior status retirement.” The legislative history of that Act of February 10, 1954, c.6 § 4 (a) 68 Stat 12 indicates that the one major

purpose was the encouragement of retirement before age 70. The legislative provision, now statutorily embodied in subsection (b) of § 371, was drawn to permit the receipt of all future salary increases in a deliberate effort to eliminate the major reason why Federal judges were then resisting "resignation on salary." The stipulation of age 65 with 15 years of service was designed to encourage those who had already "served for a reasonable period of time" to step aside at an age then widely accepted as "an appropriate retirement age." The legislative history does not explain why that "65 with 15" guideline was not simultaneously adopted for resignation on salary, but one frequently articulated presumed explanation, discussed in Senate hearings conducted by Senator Tydings earlier in this decade on judicial reform proposals, was that a judge meeting the "65 with 15" guideline would naturally choose senior status retirement, rather than resignation on salary or continued full-time active service.

In actual experience, since the mid-50's, only a very few judges have elected to resign on salary; the vast majority have taken senior status and continued to render valuable service to the courts as long as they have been capable of doing so. Certainly as this Subcommittee knows only too well, existing caseload congestion and mounting backlogs would be far worse than they are without the services of senior judges.

While it is possible to conclude that recent experience with senior status retirement could be interpreted as mitigating against enactment of H.R. 3327, because it might eliminate one incentive for the election of senior status retirement, we believe that view would be erroneous. Obviously, if the age and service requirements for the two "retirement" arrangements are brought into conformity, a certain number of judges may well choose to elect resignation on salary, thus giving up their authority of office and the entitlement to any increases in retirement salary, in order to resume the practice of law or to commence new careers providing additional sources of income. Conceivably, if enough judges were to do so, the availability of "senior judge" services would be appreciably diminished. We do not believe, however, that judges will elect resignation on salary in substantial enough numbers to seriously reduce senior judge services. Most Federal judges, having served for 15 years or more, are reluctant to completely abandon their careers; we believe most will continue to choose senior status in order to continue to render service, while simultaneously carrying a somewhat reduced workload. Indeed, very few individuals today deliberately enter into new careers at age 65, and those judges who would choose to do so would certainly provide valuable contributions to the practice of law, teaching, or other undertakings.

In evaluating H.R. 3327, Judge Hunter's Subcommittee concluded that most members of the Federal Judiciary, who have given 15 years or more of service, have already demonstrated a dedication to that service which would prejudice them toward the election of senior status. In those few instances in which a judge with 15 years of service feels more of a desire to undertake a different occupation than to continue in judicial service, it would seem that the system would be better served by permitting him to do so than by encouraging his less than enthusiastic and full dedication to senior status service.

STATEMENT OF CARL H. IMLAY, GENERAL COUNSEL, ADMINISTRATION OFFICE
OF THE U.S. COURTS ON IMPROVEMENTS TO THE FEDERAL JURY SYSTEM

Mr. Chairman and members of the Subcommittee, my name is Carl H. Imlay, and I am General Counsel of the Administrative Office of the United States Courts. I am here today at the request of the Subcommittee to present the views of the Judicial Conference of the United States on H.R. 12389, a consolidated legislative proposal relating to the administration of the jury system in the United States district courts. I should note initially that the provisions of this bill are similar to those introduced earlier in the present Congress, at the request of the Judicial Conference, in the form of three separate bills—H.R. 7809, 7810, and 7813. With your permission I should like to address myself specifically to each of the separate subject areas covered by this consolidated bill, and I shall then be pleased to try to respond to any questions which the Subcommittee may have.

JUROR COMPENSATION

I should first like to discuss the recommendation of the Judicial Conference to increase the compensation of persons serving as jurors in the federal courts, pro-

viding an augmented daily attendance fee and raising the rate of reimbursement for travel and subsistence expenses to more realistic monetary levels. This recommendation is virtually identical to the provisions of H.R. 12389 in this regard.

Section 5 of H.R. 12389 would amend section 1871 of title 28, United States Code, to provide an increase in the attendance fees payable to federal jurors and in the rate at which they may be reimbursed for their travel and subsistence expenses incurred in the performance of jury duty. Before describing these amendments in detail, I should provide some background information about the development and history of this proposal by the Judicial Conference.

The fees payable and expenses reimbursable to jurors in the federal district courts were last adjusted in 1968, when the Jury Selection and Service Act¹ of that year amended 28 U.S.C. § 1871 to set the compensation rates at their present levels. It has now been ten years since any alteration was made in these levels of payment. Clearly the rate of inflation in our economy during this time has greatly reduced the real value of these amounts of compensation in terms of their present worth and purchasing power in the marketplace. For example, the Consumer Price Index, as computed by the Department of Labor, has increased about 75 percent from an August, 1968 figure of 105.7 to 189.7 in April, 1978. This means that the \$20 daily attendance fee for jurors which was established in 1968 is now worth only about \$11.15 in terms of 1968 purchasing power. Likewise the rapidly escalating cost of energy, which has increased even faster than the overall price index, has rendered wholly inadequate the travel reimbursement rate to jurors of 10 cents per mile now provided by section 1871. By comparison, the authorized rate of reimbursement to government employees for official travel by automobile has now been set at 17 cents per mile after having been set at 15.5 cents per mile since October, 1976. This figure is based on the actual cost of automobile transportation.

The Judicial Conference reacted to these economic trends by recommending at its March, 1974 session that the Congress adopt legislation with respect to juror compensation which was virtually identical to that now contained in section 5 of H.R. 12389. In the intervening years such legislation has been passed on three different occasions by the United States Senate, most recently only last week as S. 2075. The Senate had previously approved S. 3285 in the 93rd Congress and S. 539 in the 94th Congress. In reporting S. 539 to the Senate prior to its passage on September 30, 1975, the Senate Judiciary Committee in Senate Report No. 94-400 stated the need for this legislation in pertinent part as follows:

"In the seven years which have passed since the adoption of that fee structure, inflation has rendered it inadequate. The costs of subsistence and travel, as well as the salary loss involved in jury service for those whose salary is suspended during that service, have increased dramatically.

"Not only has inflation made the daily fee inadequate, but in addition the daily subsistence expense of \$16.00 per day is inadequate in those circumstances where a juror lives a long distance from the place of holding court and is paid a subsistence allowance in lieu of mileage. In many cities that amount will obviously not adequately compensate the juror for the cost of a hotel room and meals. . . .

"Travel allowances mandated by the existing fee structure have also been outdated by the events of the past seven years, especially by the increased price of gasoline in the past eighteen months. Under existing law a juror receives only 10 cents per mile, regardless of the means of transportation used. . . . In view of the Government Services Administration [sic] studies, most jurors are today receiving between 4.4 and 10 cents per mile less than their actual travel costs." [Footnotes omitted.]

The financial circumstances attaching to federal jury service as described by the above excerpts from Senate Report No. 94-400 have grown yet more severe in the two and one-half years since those words were written. Accordingly, the need for immediate legislative action to augment the compensation payable by the government to persons on jury duty in federal courts is now more urgent than ever. Section 5 of the bill, H.R. 12389, which is pending before your Subcommittee, would meet this need by amending 28 U.S.C. § 1871 in the following respects:

First, this bill would provide in section 1871 for a 50 percent increase in the regular daily attendance fee paid to federal jurors, raising this amount from \$20 to \$30 per day. In view of the greatly altered economic circumstances of the

¹ Public Law No. 90-274, § 102(a), 82 Stat. 53, 62.

nation and the diminished value of the dollar since this fee was last adjusted in 1968, it is the position of the Judicial Conference that an increase of this dimension is the minimum which is necessary to carry out the purposes of the attendance fee as a device to afford basic financial compensation in recognition of the services rendered by jurors and to obviate undue financial hardship to them. This \$30 figure was part of the Judicial Conference's original proposal formulated in 1974 to increase the compensation of federal jurors. It is our view that the continuing inflationary spiral and decrease in the value of the dollar, which has persisted with the passage of time, has reinforced the case for increasing the daily jury fee in the full amount recommended by the Judicial Conference in 1974. Thirty dollars is not large in comparison to the average per-day income now being received by private non-farm payroll workers. When Rowland F. Kirks, the late Director of the Administrative Office of the United States Courts, testified in 1974 regarding jury compensation, he pointed out that the average daily income for such workers in May, 1974 was \$33.12. The Bureau of Labor Statistics now advises us that the average daily wage for private payroll workers in March of this year was \$39.99. It is stated in Senate Report No. 91-400 that juror fees have traditionally been considered as gratuity and are not necessarily to be treated as a wage substitute.² Nevertheless the daily attendance fee should logically bear some relationship to the prevailing standard of wages if it is to have any incentive value as a financial recognition by the government of the public service involved in performing jury service and as a device to alleviate financial hardship to those many jurors whose salary is not continued during their absence from employment.

H.R. 12389 would preserve the provision of the present section 1871 authorizing jurors to be paid an enhanced attendance fee of an additional \$5 per day at the discretion of the district judge in circumstances where they must render jury service for long duration. It is now provided that any juror required to attend court for more than 30 days in hearing one case may be paid a daily attendance fee of \$25 for each day in excess of 30 days that he is required to hear such case. This discretionary augmented attendance fee is applicable to petit jurors, and the Comptroller General of the United States in his decision at 54 Comp. Gen. 472 (1974) clarified with respect to the Watergate grand jury that this enhanced fee provision also applies to grand jurors when they are occupied in excess of 30 days in hearing one matter. H.R. 12389 would retain discretion in the trial judge to order the payment of an additional fee not exceeding \$5 per day for each additional day beyond 30 days on which jurors must actually attend court for service on a petit jury in a single case. With respect to grand juries, the bill places similar discretion in the district judge in charge of the grand jury to order payment of this augmented fee for each day beyond 45 days on which the grand jurors actually serve. Because it is difficult to apply the "one case" requirement to grand juries, which normally investigate numerous transactions involving multiple indictments during their term of service, the payment of an enhanced attendance fee to grand jurors would not be linked to a requirement of service in a single case. Rather they would become entitled to the augmented fee upon their completion of 45 days of actual service in lieu of the 30 days' service in a single case which is required of petit jurors in order for enhancement fee eligibility. I should add that these provisions echo the recommendation of the Conference in retaining for the district judge discretion as to whether the enhanced fee shall be paid. Nevertheless S. 2075 as passed by the Senate would eliminate this discretionary feature and would automatically increase the attendance fee to \$35 per day after the thirtieth day of petit jury service in the same case or the forty-fifth day of grand jury service. This change was made at the instance of the Department of Justice, which appears to take the position that the existence of Judicial discretion over the compensation of jurors might introduce an element of potential coercion into the relationship between judge and juror. We have no objection to making this augmented attendance fee automatic in recognition of the hardship and sacrifice imposed upon jurors who must be called upon to render service of such long duration.

As noted above, it is presently provided by 28 U.S.C. § 1871 that federal jurors shall be reimbursed for travel expenses between their residences and the place of holding court at the rate of 10 cents per mile plus the amount expended for

² It should nevertheless be noted that jury fees are considered under the Regulations of the Secretary of the Treasury as taxable income to the recipient unless excluded by law. See section 1.61-2(a)(1) of the Federal Tax Regulations, 26 C.F.R. § 1.61-2.

tolis. This rate of reimbursement applies without regard to the method of transportation actually employed by the juror. The rate of 10 cents per mile was established for jurors in 1957,³ and it has not been changed since that time. This rate of reimbursement has become grossly inadequate in recent years on account of the rapid increase in the price of gasoline for private automobiles and the concomitant increase in the cost of transportation by public conveyance or common carrier. The Congress three years ago recognized the need to reimburse government employees more generously for official travel in the light of these increased costs by passing the Travel Expense Amendments Act of 1975, which amended 5 U.S.C. § 5704 to grant regulatory authority for the reimbursement of employees in an amount not in excess of 20 cents per mile for use of a privately-owned automobile.

In addressing the problem of increased travel expense allowances for jurors, the Judicial Conference has recognized the need, not only for an immediate increase in the absolute rate of reimbursement payable, but also for added flexibility to provide additional such increases in the future without the need to continually amend section 1871 for this purpose. In view of uncertainties as to future availability of fossil fuels and the likelihood of additional dramatic price increases in gasoline and petroleum in the years to come, the reimbursable rate of travel expenses for jurors may require frequent adjustment in order to keep pace with growing travel costs. It is therefore recommended, and H.R. 12389 would provide, that section 1871 be amended to authorize the payment of a travel allowance to federal jurors equal to the maximum rate per mile that the Director of the Administrative Office of the United States Courts has prescribed for payment to supporting court personnel in travel status using privately-owned automobiles. The Director is empowered to prescribe this travel allowance for court employees by 28 U.S.C. § 604(a)(7), which provides that he shall regulate any pay necessary travel expenses incurred by judges and court personnel, and by 5 U.S.C. § 5707(a), which states that he shall prescribe regulations with respect to official travel by employees of the judicial branch of the government. His power under this latter statute corresponds to that of the Administrator of General Services with respect to government employees outside of the Judiciary.

As an illustration of the need for regulatory flexibility in prescribing travel allowances, the rate of reimbursement for official travel by private automobile has already been adjusted administratively on three occasions since the passage of the Travel Expense Amendments Act in May, 1975. As previously noted, the most recent adjustment established this rate at 17 cents per mile. If H.R. 12389 were to become law, this is the rate which would immediately become payable to jurors in compensation for their travel expenses between home and courthouse. Unless and until section 5704(a) of title 5 may be amended to increase the ceiling of 20 cents per mile upon reimbursement for official use of a privately-owned automobile, the Director of the Administrative Office would be precluded from setting the reimbursable rate for juror travel above this amount because the maximum rate which he could prescribe for supporting court personnel in travel status would be 20 cents. Clearly an urgent need exists for an immediate increase in the travel expenses payable to jurors, and there is an equivalent need for a streamlined mechanism by which future needed increases in the travel reimbursement rate may be made by administrative action without further legislation. H.R. 12389 would meet both of these needs. It would further establish the fair and desirable principle of equating the reimbursement to jurors for their transportation with that payable to court personnel generally for official travel.

Section 1871 as amended by H.R. 12389 would continue the present practice of linking the juror travel allowance to the mileage traveled without regard to the mode of transportation actually employed. With respect to jurors this method is sensible, since the distance they must travel is frequently such as to lend itself most readily to automobile transportation. This results from the fact that jurors are summoned from throughout a judicial district or division thereof,⁴ and they therefore must frequently travel to court from a greater distance than would be served by typical metropolitan bus routes or other forms of public transportation. On the other hand, the distance traveled will seldom be so great as to entail the use of trains or airplanes except perhaps in those judicial districts which are extremely large geographically.

³ Act of Sept. 7, 1957, Public Law No. 85-299, 71 Stat. 618.

⁴ The maintenance of separate jury selection plans for each statutory or other division of a judicial district is authorized in 28 U.S.C. § 1863(a). The district courts are given broad authority by 28 U.S.C. § 1869(e) to administratively establish divisions for jury selection purposes without regard to statutory divisions or where there are no statutory divisions.

Section 1871 as amended would further give the Director of the Administrative Office express statutory authority to adopt regulations governing interim travel allowances to jurors where daily travel between courthouse and residence is impractical and an overnight stay is necessitated. The present statute lacks such a regulatory provision and limits the payments for interim travel so as not to exceed the \$16 subsistence allowance presently authorized when an overnight stay is required. The proposed amendment would give the Director needed authority to define the circumstances where interim travel expenses shall be paid and to adopt limitations upon such payments which will reasonably accommodate the convenience of jurors facing lengthy commutes and long trials, while protecting against abuse through unnecessary expenditures for wasteful interim travel.

H.R. 12389 would retain in section 1871 the authority to pay in full the toll charges incurred by jurors in traveling to court. It would further add an important provision allowing reasonable parking fees to be paid to jurors at the discretion of the local district court in which they serve. There is presently no authority to reimburse jurors for parking expenses, and this is the source of frequent complaints to the clerks of court and to my office from jurors. This bill would allow the payment of parking fees in addition to mileage and toll charges. Discretion with respect to parking fees is placed in each district court in order that standing local policies may be established as to whether sufficient public transportation exists so that payment for parking would be unjustified, and if not, as to what would be a reasonable limitation upon allowable parking expenses in each geographical area.

This bill would add to section 1871 through proposed subsection (c) (4) a new provision to recognize the higher costs of travel in the territories and in Alaska and Hawaii. No provision is presently made in section 1871 for any additional travel allowance for jurors serving in these areas. With respect to Alaska, the Director has been able to pay jurors serving that court enhanced fees and allowances by virtue of the Alaska Omnibus Act.⁵ No similar enhancement is authorized by present law in the payments to jurors in Hawaii or in the territorial courts. This bill would therefore provide in proposed subsection 1871(c) that in a district court outside of the contiguous 48 states jurors may be paid in lieu of the travel expenses provided by this subsection their actual reasonable transportation expenses in the discretion of the district judge or clerk of court.

With respect to subsistence allowances, it is now provided that jurors shall be paid a flat subsistence rate of \$16 per day if daily travel appears impracticable or if an overnight stay is necessitated in going to or returning from the place of attendance. The \$16 amount was established in 1968 and is clearly inadequate to cover necessary expenses presently incurred during an overnight stay in a major metropolitan area. For instance, the Consumer Price Index category for restaurant meals, as computed by the Labor Department, has almost doubled in nine years from 105.1 in 1968 to a present level of 206.3. An increase of similar dimensions has occurred in the price of city hotel rooms. S. 2075 would respond to this problem by authorizing the Director of the Administrative Office to establish for jurors a subsistence allowance covering meals and lodging which shall not exceed the allowance applying to supporting court personnel in travel status in the same geographical area. (This is deemed to authorize the payment to jurors serving in designated high-rate geographical areas of an allowance not exceeding the amount fixed under 5 U.S.C. § 5702(c) as a limitation upon reimbursement for actual expenses⁶ to court personnel traveling to these areas.) The Director has presently prescribed a per diem allowance for court personnel of \$35, as authorized at 5 U.S.C. § 5702(a), and has authorized personnel on travel assignments in certain specified high-cost areas to claim actual expenses up to specified amounts not exceeding \$50, as authorized by section 5702(c). These are the rates which would be made applicable, upon the passage of H.R. 12389, to federal jurors when an overnight stay is required at the place of holding court or during the time necessarily spent in traveling to or from such place. Thus the bill would make possible the implementation of a needed increase in the subsistence allowance for jurors at this time, and in the interest of fairness it would permanently equate the allowance to jurors with that payable to court personnel on travel status in the same locality. It would further establish a mechanism for the orderly adjustment of this amount by administrative action in the future as

⁵ Public Law No. 86-70, § 23(c), 73 Stat. 141.

⁶ By the terms of the bill, jurors would receive a flat subsistence allowance and would not be required to itemize their claims in any locality.

further increases in the per diem allowance for government employees may be authorized legislatively through amendments to chapter 57 of title 5 governing travel.

I should also point out that proposed subsection 1871(e) maintains the present policy of paying from appropriated funds the actual costs of subsistence of juries ordered to be sequestered during their service. The individual jurors, of course, receive no separate subsistence allowances for these periods, but the cost of meals, lodging, and transportation for the entire jury is paid directly by the government. Additional language has been added in this proposed subsection to provide that other expenditures aside from meals and lodging may be ordered by the court for the "comfort and convenience" of sequestered jurors. The experience of sequestration for an extended trial of several months (such as the Watergate cases, or the recent trial of Governor Mandel in Maryland) can impose great psychological and emotional stress upon the jurors. Therefore, expenditures of funds for occasional outings, church attendance, or other diversions in the discretion of the trial judge and while the court is not in session have been authorized by the Administrative Office in the past. This bill would extend statutory recognition to this practice with the understanding that it would apply only in extraordinary circumstances. Think of the situation of a sequestered juror confined to a motel room for three months when not in court, removed from his family and friends. The bill would assist in this difficult situation.

With respect to arrangements for sequestered juries, there is one additional matter not covered by the existing bill which we should like to present for your consideration. When a jury is sequestered, it is necessary for the clerk, United States marshal, or other appropriate court official to arrange for accommodations and the provision of meals to the jurors for the duration of their confinement. In this regard section 3709 of the Revised Statute of the United States (41 U.S.C. § 5) provides that purchase contracts for supplies or services to the government amounting to more than \$10,000 may be made only after advertising for bids, unless otherwise provided in the appropriation or other law or unless only one source of supply is available. Since the sequestration of a jury must often be done quickly and immediately following its impanelment for reasons of security, we believe that the procurement of meals and lodging for sequestered jurors should be excepted from the usual regulations of this section, which impose procedures that could prove time-consuming and cumbersome in the face of a need to obtain immediate accommodations for jurors about to be sequestered. We therefore suggest that the Subcommittee consider inserting into H.R. 12389 an amendment providing that the Director of the Administrative Office may authorize the procurement of supplies and services for sequestered juries without regard to section 3709 of the Revised Statutes. While the amount of such procurement will not usually exceed \$10,000, it is conceivable that this might occur occasionally where a jury is sequestered for a long trial, such as the Mandel trial. We shall be glad to discuss with your staff proposed language of such an amendment which might be of assistance in this respect and which could further expressly empower the Director of the Administrative Office, as the procurement officer for the courts of the United States, to delegate to appropriate local court officials the function of procuring accommodations and meals for sequestered juries.

The remaining subsections of section 1871 as it would be amended would permit payment of the actual cost of public transportation of jurors in metropolitan areas where the fare would exceed the regular transportation reimbursement to them on account of a short mileage distance from their home to the courthouse and which is not in proportion to the fare charged. They would further empower the clerks of court to arrange at government expense special transportation home for jurors required to remain at the courthouse late into the evening. This provision is obviously intended to ensure secure transportation for jurors who must deliberate late in metropolitan areas where the neighborhood surrounding the courthouse might be dangerous after dark. Finally, the proposed subsection (g) would authorize the Director of the Administrative Office to promulgate regulations as necessary to carry out his authority under this section.

It should be emphasized that the presence in the courtroom of randomly selected jurors chosen from a fair cross section of the community is central to our republican form of government. It has clearly been mandated by the Congress through the Jury Selection and Service Act of 1968 at 28 U.S.C. § 1871. We can maintain this element of community representativeness only so long as the fees and expenses which we pay are adequate to offset the individual juror's cost of attending court. As soon as these payments become inadequate, the

economically disadvantaged prospective jurors, including minority representatives, become unable to afford to perform this civic duty and must seek hardship excuses in disproportionate numbers. If we in essence demand that jurors attend court essentially at their own expense, we lose the day workers, the commission salesmen, the mother who must pay for baby sitters, the small farmers, and many other ordinary citizens who should serve and would otherwise gladly serve. It is important to remember that jurors may be called for long trials or for a series of several trials, and that when they are called for grand jury service, they may be used for 18 months, the maximum term of a regular grand jury as provided by Rule 6(g) of the Federal Rules of Criminal Procedure. Thus the compensation provisions of this bill are relevant and vital to the effort to preserve the representative character of the federal jury, completely apart from their importance to the convenience and economic comfort of the individual jurors. This fact has been recognized, not only by the Judicial Conference, but also by the House of Delegates of the American Bar Association, which adopted a resolution at its meeting in February 1978, endorses the increase in juror compensation which would be enacted by this bill.

EMPLOYMENT PROTECTION

Section 6 of the bill, H.R. 12369, contains essentially the proposal of the Judicial Conference to provide statutory protection to the rights of federal jurors to continued employment without adverse consequences resulting from their summons for jury duty. In recent years it has come increasingly to the attention of the district courts and of my office that jurors are sometime coerced, threatened, or intimidated by their employers for the purpose of discouraging their performance of jury service or motivating them to seek an excuse from such service. On other occasions jurors who have served their term of duty, sometimes despite the threats posed by their employers, are subsequently dismissed from their employment for no announced or apparent reason and clearly as a result of their absence for jury service. It is the position of the Judicial Conference that federal jurors should not be subjected to this sort of harassment or retaliatory discharge by employers. It is provided at 28 U.S.C. § 1861 that all citizens summoned for jury duty in the United States district courts "shall have an obligation to serve as jurors when summoned for that purpose." As a consequence of imposing this obligation, it is submitted that the government has a corresponding duty to afford reasonable protection to federal jurors against adverse consequences in their daily lives as a result of their performance of this obligation imposed upon them by law.

In the absence of statutory protection to jurors' employment at present, instances of apparent employer misconduct in this regard have been handled in two different ways. First, several incidents involving the firing of a juror from his job have been referred to the Civil Rights Division of the Department of Justice for an investigation by the Federal Bureau of Investigation. While the Civil Rights Division has agreed to investigate such incidents when brought to their attention and to explore any available legal remedies to vindicate the civil rights of the aggrieved jurors, they have yet to find an incident of this sort which would come within the scope of any remedies which could be pursued by the Justice Department under existing law. Secondly, some district judges have responded to apparent instances of employer interference with the jury service of their employees by finding such employers or other agents in contempt of court and imposing penalties. As an example of this sort of judicial response, I would cite the memorandum opinion and order⁷ of United States District Judge Charles W. Joiner of the Eastern District of Michigan, in which he found the American Motors Corporation and one of its officials in contempt and imposed fines for pressuring an employee to seek excuse from jury service and implying that he would be dismissed from his job if an excuse were not obtained.

The above-described methods of responding to employer threats of unjustified discharges of jurors from employment are defective in that they cannot respond to the many threats or instances of coercion which never come formally to the attention of the court. Rather such instances frequently manifest themselves only through the action of the employee who has been summoned for jury service in seeking against his will to be excused by the court under 28 U.S.C. § 1866(c)(1). Such a request, of course, will normally be made for some announced reason which does not reveal to the court the actual role of the employer in motivating

⁷ *In re Dennis Adams and American Motors Corp.*, 421 F. Supp. 1027 (E.D. Mich. 1976).

the excuse request by a prospective juror who really desires to serve in that capacity but is afraid to do so. This sort of situation not only presents an interference with the opportunity of the employee to perform jury service as provided at 28 U.S.C. § 1861, but it likewise threatens the ability of the courts to obtain juries "selected at random from a fair cross section of the community," as further required by that section.

The Judicial Conference therefore submits that legislative action is necessary to place in the United States Code a law expressly subjecting this sort of employer conduct against a federal juror to the imposition of a civil penalty, injunctive relief, and to liability for damages. The American Bar Association's House of Delegates has likewise endorsed the provision of such statutory protection to jurors. The bill, H.R. 12389, would provide such a law by adding proposed new section 1875 to title 28 of the United States Code. I should note at this point that the phrasing of this section contained in S. 2075 as passed by the Senate has been slightly altered from the original Judicial Conference proposal at the suggestion of the Department of Justice. With the subcommittee's permission I would like to discuss in detail the Senate-passed version, which is in some ways more detailed and specific than the language originally submitted by my office and now contained in H.R. 12389. As enacted by the Senate, this new section would require that an individual who has been absent from his employment to perform federal jury service and who attempts thereafter to return to his job shall, if still qualified, be restored to the same position or to a position "of like seniority, status, and pay," unless the employer has experienced a demonstrable change of circumstances making it impossible or unreasonable to require him to rehire the returning jurors. It would further be declared as the sense of the Congress that an individual in the employ of any state or political subdivision thereof should be entitled to similar reemployment rights upon the termination of federal jury service. As passed by the Senate, proposed section 1875(d) would authorize the district courts, upon a finding of probable merit, to appoint counsel to represent a juror or former juror in any necessary legal action against an employer to vindicate the rights just described. Such counsel would be compensated from appropriated funds in the same amounts provided by the Criminal Justice Act of 1964, 18 U.S.C. § 3006A, for payment to court-appointed counsel in criminal cases where the defendant cannot afford an adequate defense. Express authority would be granted to the courts to award a prevailing juror in such an action a reasonable attorney's fee and to tax against an employer the attorney's fee and expenses expended from appropriated funds on behalf of a prevailing employee, but no such taxation could be made against a juror who brought suit against an employer under this section unsuccessfully but in good faith. This provision in S. 2075 for appointed counsel would avoid the necessity for the United States Attorney to be in the position of providing legal representation to jurors, which would occur under H.R. 12389 as it now exists.

The remedies which would be made available in the district courts to jurors who claim to have been aggrieved by their employers are enunciated in section 5(a) of S. 2075, which would add new section 1364 to title 28. This would be a jurisdictional section granting original jurisdiction to the district courts, without regard to amount in controversy, to require any private employer to comply with section 1875 and to award damages "for any loss of wages or other benefits suffered by reason of such employer's failure so to comply." Section 1875(e), as added by S. 2075, would further subject any private employer "who fails to reinstate, discharges, threatens to discharge, intimidates, or coerces any employee" by reason of such employee's jury service to a civil penalty of up to \$10,000 for each violation as to each juror. Action to enforce this civil penalty would be initiated by the United States Attorney upon the complaint of an aggrieved juror. I emphasize, however, that under this section no United States Attorney's office would ever represent a juror directly in a private action against an employer. The Department of Justice believes, and upon reflection we concur, that such representation of a juror by the United States Attorney would be inappropriate in view of the juror's possible participation in trials involving the United States.

Finally, section 4 of H.R. 12389 would add to the definitional section of the Jury Selection and Service Act, 28 U.S.C. § 1869, a statutory definition of the term, "undue hardship or extreme inconvenience," which is used in the Act as a basis for the excuse of prospective jurors from such service. In the absence of a statutory definition of this term, it has been left to judicial discretion to resolve its meaning on an individual basis. The enactment of a definition of this criterion

ion for excuse from jury service will be useful in bringing some uniformity to the interpretation of this term by judges in ruling upon requests for temporary excuse from such service under 28 U.S.C. § 1866(c) (1).⁹ The proposed definition would further extend to the courts the authority to excuse prospective jurors temporarily on the basis of severe economic hardship which would result to their employers from the loss of a key employee on account of jury service which is expected to last more than 30 days. In view of the responsibilities which would be imposed on employers by this bill to preserve the employment status of employees called for jury duty in federal courts, it is thought fair to provide that the courts in ruling upon excuse requests shall consider the short-term economic consequences to employers from the loss of vital employees at a particularly busy season. The granting of an excuse from jury service on account of hardship to an employer under this definitional section would be only temporary in nature and could not be used by an employer as a basis to keep an employee indefinitely from being called. Additionally, it would apply only where extended jury service is envisioned. It is felt nevertheless that some protection to the interests of employers is appropriate, particularly in the case of small employers who might be unable to hire a satisfactory temporary replacement for a key employee and who would be precluded by this bill from attempting to permanently replace such an employee on account of jury service or to interfere with his performance of such service in any other manner.

The employment protection sections urged by the Judicial Conference and contained in H.R. 12389 and S. 2075 would give the district courts a means to balance the scales of power between jurors and their employers in situations where retaliation has been threatened or exercised as a result of an employee having been summoned for or having rendered federal jury service. Every citizen has a duty to serve as a juror when called upon to do so. A juror should not be made to suffer serious economic consequence for performing this civic duty. He or she should also be able to perform this function objectively without the oppressive fear that there may be no job to return to upon the completion of jury service.

QUALIFICATION FOR JURY SERVICE

The qualifications for jury service in the federal courts are set forth at 28 U.S.C. § 1865(b), which provides that any person shall be deemed qualified unless, *inter alia*, he "has a charge pending against him for the commission of, or has been convicted in a State or Federal court of record of, a crime punishable by imprisonment of more than one year and his civil rights have not been restored by pardon or amnesty." Section 3 of H.R. 12389 would amend this subsection by eliminating the last four words, thus removing the enumeration of pardon and amnesty as methods of restoring civil rights. The Judicial Conference has recommended this amendment because these words have often been interpreted as words of limitation, resulting in a *ejusdem generis* construction by which some persons whose civil rights have been restored in another manner have been deemed as not qualified to be jurors under this subsection. This limiting interpretation seems inconsistent with the intent of the Congress to exempt from disqualification persons who have been convicted of a crime but have subsequently had their civil rights restored.

The use of the language "pardon or amnesty" is clearly under-inclusive as an enumeration of methods by which civil rights may be restored. For example, there are at least two federal statutes which have the effect of expunging criminal records and might therefore be deemed to constitute a restoration of civil rights within the meaning of this subsection: the Youth Corrections Act, 18 U.S.C. § 5021, and the Comprehensive Drug Abuse Control Act of 1970, 21 U.S.C. § 844 (b). Further, the laws of many states provide for the restoration of civil rights by a variety of methods. In addition, there is much confusion as to the exact meaning of the terms "pardon" and "amnesty" and as to the distinction between them. Some of this confusion was manifested last year when President Carter pardoned those persons who had been charged with or convicted of certain violations of the Selective Service laws. It may be further inaccurate to describe amnesty as a restoration of civil rights, since its actual effect is to preclude prosecution in the first instance.

⁹ The criterion of "undue hardship or extreme inconvenience" is also applicable to the granting of permanent excuses to prospective jurors under the district court selection plan, 28 U.S.C. § 1863(b) (5). Here the eligibility for excuse is determined by membership in a group or occupational class defined in the plan. Therefore the definition of this term is less meaningful here, since it has already been implicitly made by the courts through the specification of eligible groups and classes.

The Judicial Conference believes that the elimination of the limiting words, "pardon or amnesty," from this subsection will serve to clarify its meaning and to implement the legislative intent to restore eligibility for jury service to convicted persons upon the operation of any legally effective measure restoring their civil rights.

FACILITATION OF AUTOMATED JURY SELECTION

Section 4 of this bill would add to the definitional section of the Jury Selection and Service Act, 28 U.S.C. § 1869, two additional subsections (in addition to the one defining "undue hardship or extreme inconvenience," already discussed above) providing definitions of the terms, "publicly draw" and "juror summons." These definitions are being urged by the Judicial Conference in order to clarify in law that the use of computer selection and automated data processing methods to expedite the process of random juror selection is permissible⁹ and to take full advantage of its time-saving benefits. The Court of Appeals for the Fifth Circuit in *United States v. Davis*, 546 F. 2d 583 (1977), has resolved some of the questions arising under present law when computer selection of jurors is practiced. Particularly the Court of Appeals concluded in this case that the requirement of 28 U.S.C. § 1864(a) for juror names to be publicly drawn from the master jury wheel is met by a procedure whereby the actual drawing is conducted at a government regional computer center outside of the judicial district following the posting of notice within the district that the drawing will be open to the public and announcing its time and place. This is exactly the procedure which would be written into the law through this first proposed definition to be added by section 4.

The other proposed definition would clarify that the summonses issued to jurors under 28 U.S.C. § 1866(b) need not contain the actual signature of a clerk and seal of the court in the manner required for ordinary court process by 28 U.S.C. § 1601. In the larger district courts, which summon a large volume of jurors annually, many of the benefits of the automated selection process would be forfeited if each summons mailed to such jurors had to be signed by hand and have the seal affixed. Therefore this amendment would expressly provide that juror summonses may validly be sealed by a preprinted or stamped seal and may contain the name of the issuing clerk in typed or facsimile manner in lieu of an actual signature. Since juror summonses are of an entirely different character from ordinary court process requiring citizens to submit to the jurisdiction of the court as parties or witnesses, it is the view of the Judicial Conference that a facsimile signature and seal would be entirely sufficient to authenticate summonses to compel jury service.

FEDERAL EMPLOYEES' COMPENSATION ACT COVERAGE

Section 7 of H.R. 12389 would extend to all federal jurors the protection of the Federal Employees' Compensation Act, the provisions of which are found in chapter 81 of title 5, United States Code. In the past, serious problems have arisen when jurors have incurred injury or disability while performing their jury service. What begins as the fulfillment of a high duty of citizenship can be turned into an economic catastrophe or at least an inconvenience for the juror in the event of an accident or injury occurring within the scope of his jury service. The Federal Employees' Compensation Act provides with respect to government employees that the United States shall pay compensation to them for disability or death resulting from personal injury sustained in the performance of their duties and not caused by their willful misconduct.

The Congress has already acted to make the protection of the Federal Employees' Compensation Act applicable to federal employees during such time as they may be performing jury service.¹⁰ Nevertheless the Department of Labor has consistently rejected the claims of federal jurors not regularly employed by the government for injury compensation under this Act on the basis that they do not come within the definition of "employee" contained at 5 U.S.C. § 8101 (1). The Judicial Conference believes that strong policy reasons exist for bringing all federal jurors within the coverage of the Federal Employees' Compensation Act.

⁹ About two-thirds of the district courts now employ automated data processing machinery wholly or partially in their jury selection procedures. The use of such automated procedures is already expressly authorized via 28 U.S.C. § 1869(g).

¹⁰ Act of Sept. 7, 1974, Public Law No. 93-416, 88 Stat. 1143, Senate Report No. 93-1081 on that legislation evidenced agreement with the March, 1974 resolution of the Judicial Conference urging extension of this legislation to all federal jurors.

Jurors provide a valuable service to the government. While in actual service, the citizen-juror should rationally be accorded the benefit of protection in case of a service-related mishap. Presently a person injured while serving on jury duty could not recover compensation except by proceeding under the Federal Tort Claims Act, which would require that he bear the difficult burden of establishing negligence in a government agent.

The proposed amendment to chapter 81 of title 5 which would be made by section 7 of this bill would not place jurors in an employment relationship with the government or characterize them as employees for any other purpose than compensation for injuries resulting from their service. The coverage would apply to a petit or grand juror in actual attendance at court or sequestered by order of a judge such as to be entitled to attendance fees under 28 U.S.C. § 1871. The juror would not be covered by the Federal Employees' Compensation Act during his travel to and from the courthouse except when he is under sequestration order or otherwise traveling under order of the court for the purpose of the taking of a view. It is the position of the Judicial Conference that this amendment would improve the conditions of federal jury service by contributing to a juror's peace of mind, especially in the case of the timorous juror serving in a protracted case or in circumstances where he or she must be sequestered or transported for the taking of a view.

ABOLITION OF MILEAGE EXCUSE

This measure, which is contained in section 2 of H.R. 12389, is also supported by the Judicial Conference and was approved at its September, 1976 session upon the recommendation of its Committee on the Operation of the Jury System. It would amend section 1863 of title 28 by eliminating therefrom subsection (b) (7). This subsection now provides that the jury selection plans of the district courts shall, among other things, "fix the distance, either in miles or in travel time, from each place of holding court beyond which prospective jurors residing shall, on individual request therefor, be excused from jury service on the ground of undue hardship in traveling to the place where court is held." Under this subsection about two-thirds of the district courts have elected to provide in their selection plans for an automatic excuse from jury service to be available upon request by any prospective juror who resides beyond a given distance from the place of holding court. As a matter of practice, such a request is normally made via the juror qualification form which is mailed to persons whose names are selected from the master jury wheel.

The Judicial Conference Jury Committee has recently had occasion to consider whether the "mileage excuse" provision of section 1863 (b) (7) might be deemed inconsistent with the requirement of section 1861 that juries shall be "selected from a fair cross section of the community." This question arises because the employment of a blanket excuse based on mileage and available to all prospective jurors beyond a given radius from the courthouse might have the effect of skewing the representation of juries by automatically eliminating upon request the residents of particular geographical areas. Experience has shown that most prospective jurors eligible for the mileage excuse will exercise their right to it, with the frequent result that only a relatively small portion of the geographical area of a judicial district will be represented on juries.

We are not aware of any judicial decisions holding that the elimination of prospective jurors on a geographical basis in this manner is violative of the "fair cross section of the community" guarantee of section 1861 or of the Sixth Amendment guarantees respecting trial by jury in criminal cases. Nevertheless the Judicial Conference has concluded that it is unwise from a policy viewpoint, if not on a legal or constitutional basis, to permit the district courts in their selection plans to establish specific mileage or travel distances as the basis for an automatic excuse from jury service. The employment of such a practice might decisively influence the makeup of juries ultimately impaneled, for the reason that most places of holding court are in relatively urbanized metropolitan areas. Thus the mileage excuse will tend to eliminate those citizens residing in the less developed and more rural portions of judicial districts lying beyond the distance from the courthouse which is specified in the selection plan as the basis for a mileage excuse.

The repeal of section 1863 (b) (7) would not mean, of course, that excuses from service could no longer be granted to prospective jurors on account of hardship in travel resulting from the distance between home and courthouse. Rather the adoption of this amendment would require that requests for such excuses be

evaluated by the courts on an individual, case-by-case basis in the same manner as any other excuse request, requiring a determination by the court as to whether a showing of "undue hardship or extreme inconvenience" has been made in these circumstances under 28 U.S.C. § 1806(c). The Judicial Conference believes that this is the proper manner of handling requests for excuse from jury service based upon distance, and that it will avoid any negative implication for the representativeness and cross sectionality of juries, which might result from the employment of a blanket mileage excuse available upon demand to all residents of a given sector of the judicial district.

Mr. Chairman, that concludes my formal statement as to H.R. 12389. I can state that the Judicial Conference views the contents of this bill as vital to the Federal Judiciary and hopes for the prompt enactment of the bill. I shall certainly be pleased at this time to try to respond to your questions and to continue to work with your staff in the future to resolve any matters which may subsequently arise.

STATEMENT OF CARL H. IMLAY, GENERAL COUNSEL, ADMINISTRATIVE OFFICE
OF THE U.S. COURTS ON MARSHALS FEES AND TRANSPORTATION EXPENSES
AND WITNESS FEES

Mr. Chairman and members of the Subcommittee, my name is Carl H. Imlay, and I am General Counsel to the Administrative Office of the United States Courts. I am here today at the request of the Subcommittee to present the views of the Judicial Conference of the United States on four bills variously relating to the administration of the courts of the United States. The first of these bills, H.R. 12394, has been introduced at the request of the Judicial Conference and is intended to provide increased efficiency in the transportation of criminal defendants between judicial districts for the purpose of responding to federal criminal charges. The remaining bills, H.R. 8220, H.R. 8492, and H.R. 9122, would amend title 28 of the United States Code to increase the compensation payable to witnesses in the United States district courts and to raise the fees chargeable by the United States marshals for their official services. I shall separately discuss each of the bills under consideration, and I shall, of course, be pleased to respond to any questions which the members of the Subcommittee or the staff may have.

H.R. 12394—TRANSPORTATION OF CRIMINAL DEFENDANTS

This bill would amend chapter 315 of title 18, United States Code, to authorize the payment by United States marshals of transportation expenses for persons released from custody pending their appearance to face criminal charges in another federal judicial district. It would address the situation where a person is arrested in one judicial district on an arrest warrant from a different district upon a complaint issued, an indictment returned, or an information filed therein. Under Rule 40, Federal Rules of Criminal Procedure, such an arrestee shall be brought before the nearest available federal magistrate for removal proceedings and, if he is held to answer, a warrant of removal shall issue, removing the defendant to the district where the prosecution is pending. He may then be admitted to bail for the purpose of appearance in that district under the normal release provisions of 18 U.S.C. §§ 3146 and 3148.

Frequently defendants arrested upon federal criminal charges in a district other than that where the prosecution is pending, and required upon a warrant of removal to return to the district of prosecution for arraignment and trial, will lack the necessary funds to provide their own transportation to the district where their appearance has been ordered. Since there is no provision at present for the expenditure of government funds to pay for the transportation of such persons under their own recognizance, it has been necessary to hold such defendants in the custody of the marshal so that he may have them escorted to their destination. Thus persons who would otherwise be entitled to release, on bail or otherwise, must now be retained in custody in order to arrange for their transportation at the expense of the government, thus partially frustrating the intent of the Congress in enacting the Bail Reform Act of 1966.

This practice has also resulted in great delay in criminal proceedings and has on occasion posed a threat to the ability of the courts to comply with the time

limitations set by the Speedy Trial Act of 1974 on prosecution.¹ It has further caused an unnecessary strain upon the manpower of the United States marshals Service, which has been required to provide personnel to escort criminal defendants who are eligible for release on bail and would be capable of traveling under their own recognizance if their travel costs could be paid by the government on this basis. The strain upon the resources of the United States marshals has exacerbated the problem of delay in the disposition of criminal cases because the marshals have frequently had to transport these prisoners in a circuitous fashion, as manpower becomes available for escort purposes, thus consuming far more time than such defendants would take in travelling by themselves, particularly where the district of arrest is distant from that where the prosecution is pending.

H.R. 12394 would add to title 18 of the United States Code a new section 4285 authorizing any court of the United States, in releasing an individual pending his appearance in another federal judicial district in which charges are pending against him, to direct the United States marshal to furnish such defendant with transportation to the place where the charges are pending and to provide him with money for necessary subsistence expenses en route thereto in an amount not exceeding the subsistence allowance to which a government employee in travel status would be entitled. Such travel and subsistence expenditures would be paid by the marshal out of funds available to the Department of Justice for the payment of expenses of transporting prisoners. See 28 U.S.C. § 567(2).

H.R. 12394 as introduced contains the language originally recommended to the Congress by the Judicial Conference to accomplish these purposes. I would like to note in the record at this point, however, that the United States Senate last week passed a similar bill, S. 2411, which nevertheless contains an important modification made at our suggestion to take account of certain problems coming to our attention after the draft bill had already been submitted to the Congress. Our probation service indicates that the probation offices of the United States district courts are frequently confronted with the problem of defendants who require transportation within a judicial district in order to attend an arraignment or trial of a case to be conducted at a different divisional headquarters or place of holding court from that where the arrest took place or the initial appearance was held. Thus S. 2411 was amended at our request prior to its passage by the Senate to take account of this intra-district situation. We likewise urge this Subcommittee to consider a similar amendment to H.R. 12394 in order to address comprehensively the entire problem of transporting defendants who are required to appear elsewhere for further criminal proceedings and who lack the requisite funds for this purpose. While intra-district travel is not difficult or expensive within the more compact federal judicial districts, there are many districts, particularly in the West, spanning several hundred miles. Taking the Western District of Texas for an example, the distance between San Antonio and El Paso, two of the principal places of holding court in that district, is approximately 400 miles, about half as far as that from Washington, D.C. to Chicago.

The problem of criminal defendants whose cases are ordered removed from one judicial district to another or who are ordered to appear for arraignment and trial at another division or place of holding court within the same judicial district, and who lack the personal funds to pay their transportation, is a very common one. The Judicial Conference therefore believes that the enactment of H.R. 12394 would expedite criminal proceedings in the federal courts by enabling a defendant who is otherwise eligible for release to travel on his own recognizance, thus considerably reducing the travel time to the district of prosecution which would be required if the defendant must be committed to the custody of the United States marshal for this purpose. The bill would have the further salutary effects of relieving the strain placed upon the United States Marshals Service in transporting removed criminal defendants and of permitting persons entitled to release under 18 U.S.C. §§ 3146 and 3148 pending their appearance in another district to remain on their own recognizance until such appearance.

H.R. S220 and H.R. S492—WITNESS FEES

The Judicial Conference at its session of September 15-16, 1977, endorsed the concept of the bill H.R. 9122, which contains the proposals of the Department of

¹ Delays between arrest and indictment which are required for the transportation of a defendant in custody do not constitute time which is excludable in computing the time limitations of the Speedy Trial Act. See 18 U.S.C. § 3161(h). In addition, the interim time limitations of 18 U.S.C. § 3164 require the district court plans to assure priority in the trial of detained persons being held because they are awaiting trial.

Justice to increase the compensation payable to witnesses in the federal courts. For this purpose the bill would amend section 1821 of title 28. An attendance fee of \$30 would be provided for each day of attendance and for the time necessarily occupied in going to and from the court. This represents a 50 percent increase over the present \$20 attendance fee and is identical to the fee increase proposed for federal jurors by H.R. 12389. With respect to the travel and subsistence expenses payable to witnesses, this bill also adopts a similar approach to that of H.R. 12389 regarding the payment of such expenses to jurors. Section 1821 would be amended to delete the specific monetary amounts specified for these purposes and to provide instead that witnesses shall receive either the actual cost of travel by common carrier or a travel allowance for travel by privately owned vehicle equal to that which applies to official travel by government employees generally under 5 U.S.C. § 5704. Subsistence allowances to witnesses who must be away from their residences overnight would be payable in the same amount set for government employees in official travel status.

We believe that it is sensible and desirable to maintain parity between the compensation provided for jurors and that pertaining to witnesses under section 1821. Such parity has existed for some years, and in fact section 1821 was last amended by section 102(b) of the Jury Selection and Service Act of 1968 to set the compensation of witnesses at its current levels. The same economic arguments justifying increased compensation for jurors are clearly applicable to witnesses as well, as the Department of Justice has pointed out. Accordingly, we support this bill enthusiastically.

I should emphasize that the Administrative Office is not involved in the payment of witness fees and that we have no appropriated funds for this purpose. Such fees are paid by private parties to litigation or, in the case of witnesses subpoenaed on behalf of the government, by the Department of Justice. In criminal cases, besides paying the fees of witnesses for the prosecution, the Justice Department under Rules 15(c) and 17(b), Federal Rules of Criminal Procedure, also pays from its appropriated funds the fees of witnesses called on behalf of defendants unable to pay the fees therefor. See the decisions of the Comptroller General of the United States at 53 Comp. Gen. 638 (1974) and 39 Comp. Gen. 133 (1959). We therefore defer to the Justice Department as to the various questions of administering the payment of witness fees which are addressed by this bill.

I notice that H.R. 8220 has also been introduced on the subject of an increase in witness fees. While its provisions appear essentially similar in purpose and effect to those of H.R. 9122 and its concept has likewise been endorsed by the Judicial Conference, we defer to the Department of Justice in its announced preference for the wording of H.R. 9122.

I would at this time like to offer two minor suggestions with respect to H.R. 9122. These recommendations were adopted by the Senate last week in enacting a similar bill, S. 2049. First, we believe it would be desirable to amend the reference to territorial courts on page 2 of the bill (at lines 3 and 4), making it broad enough to cover the district court for the Northern Mariana Islands, which has been recently established.² Second, you may wish to consider adding at the end of subsection (c) of 28 U.S.C. § 1821, as it would be amended by H.R. 9122, language to the effect that, "All normal travel expenses within and outside the judicial district shall be taxable as costs pursuant to section 1920 of this title." Such a provision would be useful in resolving an anomaly which has developed in the case law, whereby a limitation has been imposed on the taxation as costs of travel expenses payable to witnesses. See *Sperry Rand Corp. v. A-T-O, Inc.*, 58 F.R.D. 132 (E.D. Va. 1973), and *Linneman Construction, Inc. v. Montana-Dakota Utilities, Co.*, 504 F.2d 1365 (8th Cir. 1974). Although fees and disbursements for witnesses under 28 U.S.C. § 1821 are normally taxable costs under 28 U.S.C. § 1920(3), it has been held that travel costs of witnesses are taxable only for travel performed within a judicial district or within a 100-mile radius from the courthouse, incorporating the territorial boundaries upon the effective service of a subpoena which are imposed by Rule 45(e), Federal Rules of Civil Procedure. We believe nevertheless that the better view would permit the taxation of all witness travel costs as of course in any civil action. This would be accomplished by this amendment, which has been made in the Senate-passed bill, S. 2049.

² See the Act of November 8, 1977, Public Law No. 95-157, 91 Stat. 1265.

H.R. 8492—UNITED STATES MARSHALS' FEES

This bill also addresses a subject which primarily concerns the Department of Justice rather than the Administrative Office. Although the United States marshals are the marshals of the district courts and perform various important duties respecting those courts and the judges thereof, they perform their work under the administrative supervision and direction of the Attorney General of the United States as provided at 28 U.S.C. § 569. Accordingly, the matter of their fees is within the jurisdiction of the Justice Department inasmuch as it is the appropriated funds of that department which pay the salaries and expenses of United States marshals.³ I should also point out that the Judicial Conference has not had the opportunity to consider this bill and express its position thereon.

The bill would amend section 1921 of title 28 with respect to the fees collectible by United States marshals and taxable as costs in litigation. Inasmuch as this statute has not been amended since 1962, it is apparent that the fees specified therein are undoubtedly in need of revision in view of the altered value of the dollar since that time. The amendment made by this bill would delete from section 1921 the specific dollar amounts specified as fees for the various services performed by the marshals. Instead it would delegate to the Attorney General the power to prescribe such amounts by regulation. For services in criminal cases the bill would extend the provision of present section 1921, which states that fees for such services may be fixed by the court.

The delegation of regulatory authority to the Attorney General to prescribe the marshals' fees seems to be a sound policy in that it would avoid the necessity for a statutory amendment whenever these amounts require adjustment. This approach is analogous in a sense to that of the juror and witness fee bills in providing for travel and subsistence allowances to be fixed by administrative action at amounts not exceeding the allowances payable to federal employees on official travel. Additionally the delegation of this sort of regulatory authority to the Attorney General raises no legal or procedural problems which we can envision. Beyond that, I am not in a position to comment further with respect to this bill.

Mr. Chairman, this concludes my formal statement. I would again express our appreciation for the opportunity to appear, and I shall at this time endeavor to respond to whatever questions there may be.

Mr. IMLAY. Thank you. I will briefly summarize.

The first bill which I address is H.R. 12389, a bill to increase the fees and expenses payable to Federal jurors, to provide a statutory statement of their right to continued employment following jury service, to extend to them the benefits of Federal Employees' Compensation Act coverage, and to make certain other technical changes in the Jury Selection and Service Act of 1968, as amended.

Now the fees and expenses payable to jurors have not been adjusted since the Jury Selection and Services Act was passed 10 years ago. Since 1968, there has been an increase of approximately 75 percent in the consumer price index and, of course, the price of gasoline has gone up as well as the cost of transportation generally.

The U.S. Senate has recognized this fact by passing last week S. 2075, which would rectify these problems. The provisions of S. 2075 with respect to juror compensation are virtually identical to those of H.R. 12389.

The economic situation of the citizen summoned for Federal jury service has seriously deteriorated in recent years. The juror receives an attendance fee of only \$20 per day, the same figure as 10 years ago. The juror is even more severely hurt by the inadequacy of his reimbursement for travel and subsistence expenses. Under existing law, he may be reimbursed for travel expenses at a rate of only 10 cents a mile.

³ See 28 U.S.C. § 567. See also the Department of Justice Appropriation Act, 1978, Public Law No. 95-86, title II, 91 Stat. 425.

Now this amount is considerably less than it actually costs him to travel. The General Services Administration has computed that the actual cost per mile is now 17 cents so that the juror, in other words, has to reach into his own pocket to make a trip to the court. This 10 cents per mile rate that we have now hasn't changed in 20 years.

I have talked to jury clerks in many places. I have found that in some cases the costs of transportation and subsistence are very high. In Hawaii, for example, the juror virtually subsidizes his own attendance at court. When the juror is held overnight in the place of holding court, he gets only \$16 in allowance for his subsistence. It doesn't take much explanation to illustrate that \$16 would hardly procure a hotel room and three meals today. You can imagine trying to get three meals a day and a hotel room for \$16 in places like Chicago, New York, Washington, and other high-cost cities.

By contrast, the Federal employee in travel status is now entitled under 5 U.S.C. 5702 to a per diem allowance for subsistence of \$35 and, in 22 designated high-cost areas, to much higher amounts of actual expenses, up to a statutory maximum of \$50 a day. There is a lot of difference between \$16 and \$50 a day, both applied to cover the same cost. Each year, of course, this situation further deteriorates.

I would like to summarize the changes which would be made by H.R. 12389 as follows:

One: A 50 percent increase in the daily attendance fee from \$20 to \$30. This \$30 must be used by the mother with children to pay for baby-sitters; it in small part is intended to compensate the worker for the loss of a day's wages. The Government takes its tax, incidentally, from this amount, so that it is not a net amount but rather a gross amount to the juror.

Two: Continued provision for the payment of an enhanced attendance fee of an additional \$5 per day for jury service of long duration, that is more than 30 days for petit jurors in hearing a single case and for grand jurors more than 45 days of actual attendance.

Under H.R. 12389 the payment of this enhanced fee would remain discretionary with the district judge. The Senate-passed bill, S. 2075, however, would make such payments automatic in the case of this sort of extended service. Incidentally, of course, if you are a grand juror and you are held more than 45 days, only then do you start getting the extra \$5 a day. You will recall that the Watergate grand jury here in Washington was held in session not only the normal 18 months but also another 6 months due to a congressional enactment which extended its life. So this enhanced fee is to recognize the more severe and increasing hardship of long grand jury and long trial service.

Three: A travel allowance for jurors which would no longer be set by statute at an absolute amount but would instead be equated to the rate of reimbursement set by the Director of the Administrative Office of the U.S. Courts for supporting court personnel in travel status. This authority to regulate travel expenses for judicial employees is exercised by the Director pursuant to 28 U.S.C. 604(a) and 5 U.S.C. 5707. The travel reimbursement rate for court personnel and all other employees is presently 17 cents a mile. For example, if the Government travel rate goes up to 20 cents a mile, which it could and probably will ac-

ording to anticipation, the juror travel reimbursement could then be increased by the Director to maintain parity with Government employee travel.

Four: Authority to reimburse jurors for necessary parking expenses at the discretion and with the approval of the local district court in which they serve. Parking is a major item of expense; it now has to come out of the very small allowance the jurors receive, and this provision would allow local discretion with the courts to provide for parking expenses. I was in St. Paul, Minn., during the Wounded Knee trial and I found out that the jurors had to go to considerable expense and had considerable difficulty in finding parking spaces so that they could attend the trial. This payment for parking would only take place where there is no existing parking space.

Five: A subsistence allowance which would be regulated in a manner similar to the travel allowance already discussed. As you know, section 1871 presently establishes an absolute subsistence amount of \$16 a day when an overnight stay is required at the place of holding court. This figure would be deleted, and the juror would be placed on the same basis as any other member of the judicial establishment in traveling. The juror subsistence allowance would be administratively adjusted by the Director in parity with the allowance given to the supporting personnel of the courts.

Six: Express authority would be given to expend funds at the discretion of the district judge for the comfort and convenience of jurors who must be sequestered for notorious and highly publicized trials. We have had the problem of keeping jurors during these long and often sensational trials. They are sequestered; they are in fact, civil prisoners, and there have to be certain accommodations made for them. They have to be taken to church on Sunday; they obviously can't be locked up in a hotel room for 3 months at a time. They have to be permitted periodically to go home and see to their laundry and all of the other necessities of life. This provision would authorize the use of appropriated funds to take care of these people who are sequestered and to permit sufficient diversions during their sequestration to preserve a sound mental and emotional state.

Seven: Authority would also be granted by this bill to pay to jurors the actual fare of public transportation, such as subways and municipal buses, when the distance covered in miles is not proportional to the fare and thus the normal travel reimbursement for jurors on a mileage basis would be inadequate to cover this expense. This would take care of those people who live downtown and for whom the normal mileage rate would be inappropriate when they are taking subways or buses back and forth to the courthouse.

Aside from its provision with respect to juror compensation, H.R. 12389 contains another major reform which would greatly improve the conditions of Federal jury service and protect the economic security of persons summoned for such service by explicitly providing statutory assurance of their continued employment thereafter. This would add to title 28 of the United States Code a new section 1875. This section was passed by the Senate with slightly different wording, and I should like, with your permission, to focus upon the Senate-passed version, which was changed at the recommendation of the Department of Justice. It would require that an individual who has been absent from

employment to serve as a juror in the courts of the United States and who attempts thereafter to return to his employment shall, if still qualified, be restored to position of like seniority, status and pay to that which he held before jury service. This section would further declare the sense of the Congress that an individual in the employ of any State or county thereof would be entitled to reemployment rights similar to those pertaining to persons in private employment upon the termination of Federal jury service.

Now these bills also attempt to provide a means to enforce the principle of statutory employment protection, and a new jurisdictional section would be added to title 28 giving the U.S. district courts jurisdiction without regard to the amount in controversy over any action to require a private employer to comply with section 1875, including an action for damages to the juror for any loss of wages or other benefits suffered on account of the employer's failure to comply. For jurors aggrieved by their employer and unable to afford representation, the Senate-passed bill would authorize the district court, upon a finding of probable merit, to appoint counsel in a manner similar to the system which we now administer for indigent defendants in criminal cases under the Criminal Justice Act, so that the juror would have a sanction available in the event that he is threatened or fired from his employment. Then there is a civil-penalty provision of \$10,000 for each such violation, which would be enforced by the U.S. attorney.

These provisions respond to a situation which we have found very gravely threatens the independence of Federal juries and their representativeness. This results from the fact that no employee who has to come to court and worry about whether he has a job when he returns could possibly render fair and dispassionate jury service if he has to sit there without knowing whether he is going to go back to a job or not. We have found—and there are many instances which we have introduced into the Senate record on the parallel bill, S. 2075—that employers sometimes threaten an employee with being fired if he goes to jury duty. The employee then has to come in and ask for an excuse, saying in effect, "I am threatened with being fired. It will work a catastrophe to me and my family if I have to serve as a juror."

Now this situation certainly, we think, needs some legislative correction, and this bill would provide that the juror could be assured that his employment rights would be protected.

Mr. KASTENMEIER. May I interrupt—

Mr. IMLAY. Yes, sir.

Mr. KASTENMEIER [continuing]. To ask a philosophical question?

If, really, the employment of the prospective juror is such a grave question, why don't we have as jurors those who are essentially unemployed—housewives and others who are not affected by the disability of employment?

Mr. IMLAY. I think, Mr. Chairman, we had this system before 1968. We had the old keyman system, as they called it. What we had for jurors were people who didn't have anything else to do, or who had enough funds so they didn't have to work. We frequently had volunteers, and that was found by the Congress not to comply with the constitutional—

Mr. KASTENMEIER. It didn't really give us a cross section of citizens?

Mr. IMLAY. Yes, that is right. We used to have a lot of elderly jurors

who were retired or not employed, and we would have other people who somehow or other didn't have to worry about a job, and these were the jurors being used by the courts of the United States at that time.

Now this bill would also, in section 4, add to title 28 a new definition of the basis for excuse from jury service. This definition of the term "undue hardship or extreme inconvenience," which was used by the Jury Selection and Service Act as the criterion for the granting of excuses, would be redefined to include hardship or extreme inconvenience to the prospective juror, as well as severe economic hardship to his employer resulting from the absence of a key employee at the time when he is summoned for jury service and where it is anticipated that such service will last more than 30 continuous days.

Mr. KASTENMEIER. Let me interrupt one more time in pursuance of the former question: Then one could make an adjustment to this section, that is to say, how liberal or how tightly controlled you want the excuse of employment to be exercised?

Mr. IMLAY. Yes.

Mr. KASTENMEIER. For example, if you really thought that having employed people was disadvantageous for a number of reasons most peculiar to them and to their employers, you could excuse them more easily, I suppose, through this section or through how you write the language in this section than would otherwise be the case?

Mr. IMLAY. Yes. Well, this is a temporary excuse. I should bring out the fact that under this act there are permanent excuses, excuses that will completely remove your name from consideration, and there are temporary excuses, whereby you will have to serve later, or at least your name will come up again in the qualified jury wheel. If you have another excuse at that time you can make it, but this is in an area which we propose to handle via temporary excuses, and we have found that there are a lot of ranchers and farmers, for example, who during harvest season can't afford to give up the one assistant who is helping the farmer at the time that the harvest is coming in. We find that there are many employees whose presence is so critical, especially at certain times of the year, that if they had to leave at that time the farmer would be severely hurt, or the rancher. This provision would permit the court to consider hardship to the employer at a particularly critical times during a year in ruling upon jury-excuse requests. Of course, this excuse would only be available where the service of the juror will last more than 30 continuous days.

So it is the position of the Judicial Conference that these two basic reforms which would be made in Federal jury administration—increased compensation and employment protection for jurors—are fully justified and urgently needed and would certainly help the morale of jurors. That is a difficult quality to describe, but it does exist. The morale of the jurors is most critical to their effective performance.

Mr. BUTLER. If the gentleman would yield here, Mr. Chairman—

Mr. KASTENMEIER. Yes.

Mr. BUTLER. Does the Judicial Conference address itself to unnecessarily prolonged trials as a morale factor of jurors?

Mr. IMLAY. Yes.

Mr. BUTLER. It seems to me that would be awfully frustrating to come in and spend all that time on trials which a diligent judge could speed up.

What does the Judicial Conference say about this?

Mr. IMLAY. Representative Butler, we are working on the problems of protracted cases. We have a handbook on protracted litigation that has been developed by the Judicial Conference to instruct the judges handling these cases on the most expeditious methods of working these things out, so that the time consumed can be reduced to the lowest common denominator.

Also, we have been studying—and with a great deal of success, as I think is brought out in our statistics—the proper utilization of jurors. We have jury pools, and we work on a cheaper-by-the-dozen basis in jury selection. We bring in panels. The first judge in a particular district court, for example, will start his case at 9:30 in the morning, and he will pick his jury from the pool. Then the jurors left over from that court sitting will go to courtroom No. 2, and the second judge, say, will start his case at 10 o'clock and he will use the leftovers from the first. So that we have been able over the last 6 years, I think, very successfully, to reduce the number of jurors who are left waiting around. That is a horrible experience, to sit in a juryroom and just wait for something to happen.

Mr. KASTENMEIER. May I say, I am glad the gentleman raised the question, because while it is a different question, that is a question I hope to reach. For example, what is the average juror's complaint about jury service? It is probably the indeterminate waiting around. They are called, rush down to the courthouse and then are forced to sit around in rooms in what appears to be a total waste of their time. It isn't so much the length of any given trial, although that may be a feature as the gentleman from Virginia has suggested, but just what appears to be a disregard for the utility of their time as a juror. They are not being used fully, they tend to be almost as long sitting around and just waiting for things to happen as to be called into actual participation in the case; this, I would think, would be a morale factor as well.

Mr. IMLAY. Yes, it certainly is. There is nothing more devastating than waiting hour after hour for something to happen and not being informed as to what might or will happen.

The Chief Justice mentioned this in his yearend report as something that we are working on very actively; we are publishing a box score now and every judge in our system—we have a jury utilization report—every judge in our system knows how he stands with respect to jury utilization. Now that we are in a goldfish bowl, the utilization factors have been vastly improved in the last 7 years.

Mr. KASTENMEIER. Probably what is needed is something like an American Federation of Federal Jurors, Local 1203, or something like that, to give some impetus to whatever the complaints may be.

Mr. BUTLER. Mr. Chairman, please explain to the gentleman from Massachusetts that that suggestion was made in jest.

Mr. DRINAN. Mr. Chairman, I think that is the most constructive thing to come out of the morning session.

Mr. KASTENMEIER. You may continue.

Mr. IMLAY. Section 3 of H.R. 12389 would amend 28 U.S.C. 1865(b) to clarify a matter respecting the qualifications for Federal jury service. This section presently provides that a citizen convicted of a criminal offense punishable by imprisonment for more than 1 year shall not

be qualified as a juror unless his civil rights have been restored by "pardon or amnesty."

The use of these terms "pardon" and "amnesty" is very confusing, since neither a Presidential pardon nor amnesty has the actual effect of restoring civil rights. Furthermore, a Presidential pardon has been held by the seventh circuit, in a case decided last year, not to remove the liability to disbarment. Amnesty is the forbearance of prosecution, so it doesn't restore any civil rights. What does restore civil rights are various statutes which by legislative enactment provide that a person who has no criminal record and who otherwise establishes a history of good behavior can have his rights restored by further administrative or judicial action.

Now there are numerous such State statutes, and here in our Federal system we have such statutes as the Youth Corrections Act, which provides for setting aside a criminal conviction after successful rehabilitation. This statute could be construed as restoring civil rights for the purpose of jury service. Our objective here is to take out two meaningless words and leave the rest of the statutory language to reach those situations where, by virtue of statute, a person has had his rights restored.

Mr. BUTLER. Mr. Chairman, may I inquire?

Mr. KASTENMEIER. The gentleman from Virginia.

Mr. BUTLER. The meaningless words you are going to take out are "pardon" or "amnesty"?

Mr. IMLAY. That is correct.

Mr. BUTLER. So you would have it read that he has been convicted of a crime punishable by imprisonment and so forth. How would it read? "The civil rights have been restored" is that right, or have not been restored, period?

Mr. IMLAY. It would read that a juror shall be deemed qualified unless he has been convicted of a crime punishable by imprisonment for more than 1 year and his civil rights have not been restored.

Mr. BUTLER. If his civil rights have not been restored?

Mr. IMLAY. That is right.

Mr. BUTLER. But you are saying by striking the word pardon we are saying his civil rights may be restored by the Youth Corrections Act or by the other—

Mr. IMLAY. That is right, or by State statute.

Mr. BUTLER. Or by State?

Mr. IMLAY. There are many State statutes which provide—

Mr. BUTLER. Which have a similar provision that, in effect, the record is expunged?

Mr. IMLAY. That is right.

Mr. BUTLER. But does the Youth Corrections Act—and I am asking this for information—specifically restore civil rights? Is that what it says?

Mr. IMLAY. What the Youth Corrections Act at section 5021 of title 18 says is, that a conviction will be set aside if the youth passes through a period of successful probation or undergoes treatment at a youth detention center, and if the court or the U.S. Parole Commission discharges him prior to the expiration of the maximum sentence or period of probation imposed, he gets a certificate which says that his conviction has been set aside. At least for Federal purposes, it has been held

that this will restore him to the situation of a person who has never been convicted, for certain purposes.

MR. BUTLER. Is it your view that under that state of facts that youth, that now mature youth, is not eligible for jury service?

MR. IMLAY. No; I would say that he is eligible.

MR. BUTLER. So this is really for clarification only; is that correct?

MR. IMLAY. Yes, sir.

MR. KASTENMEIER. If the gentleman would yield, is it correct then to say that what you are doing is simplifying, you are saying without resort to such terms as amnesty, et cetera, either your civil rights are restored or they are not? There are only those two classes, and you use no other modifying words? You go to the basis of statute in each case, whether it is for State or Federal purposes?

MR. IMLAY. That is correct, Mr. Chairman.

MR. KASTENMEIER. And rather than to use, really, what are obsolescent words or terms for these purposes, because you either have your civil rights restored, in which case you are susceptible to jury duty, or you are not, and you would not then qualify?

MR. BUTLER. I am trying to figure out what is the problem we are trying to solve here. Are we losing an opportunity to get a whole lot of jurors by this limitation in the statute?

MR. IMLAY. No.

MR. BUTLER. Do you think the quality of the jury is going to be improved if we can get these reforms on the juror?

MR. IMLAY. Certainly there will be an ambiguity cleared up. We get our names from voter lists. Somebody has determined in the State system that this person qualifies to be a voter, so, therefore, we start off with the notion that at least the State has deemed him a qualified voter.

What we are trying to do is to take out of the statute two terms that are just meaningless, and which give us problems because the juror doesn't understand them. I think that what we will have as jurors insofar as those persons who have been convicted, are those who have undergone a period of rehabilitation, and successful rehabilitation, and who have become thus qualified, either by State or Federal law, to resume their access to civil rights. That is all we will have, and I don't think there is any risk in that. I don't think we run the risk of getting a dangerous person on a jury.

MR. BUTLER. No, I am not concerned about that. Well, I guess it is nice to clean up the statutes every now and then. I guess that is what you are doing; but now what about this thing, the earlier criteria, the voter list, is that statutory? That is where you get that from?

MR. IMLAY. Yes; it is statutory. We get our lists of jurors either from the lists of registered voters—that is the most frequent technique—or from the list of actual voters.

MR. BUTLER. I understand that. Is that procedure blessed by statute or by practice?

MR. IMLAY. By statute.

MR. BUTLER. So why do we have this section at all if the prohibition is that you can't vote if you have been a convicted felon in most States? Of course, I realize the chairman wants to change that, but if that is the existing law, why do we need this section at all?

Mr. IMLAY. One of the reasons is this, that we refill these jury wheels every 4 years, and it might be that someone will be convicted 1 year and his name might already be in the list of qualified jurors, so that we have to question him at the time we send out our jury questionnaires as to whether he has been convicted or has a charge pending against him, because he might have been convicted after he qualified to be a voter on the voter list.

Mr. KASTENMEIER. The Chair will announce that there is a vote on and we will need to repair to the House floor to vote.

Accordingly, Mr. Imlay, we will recess for approximately 10 minutes and then resume.

But it does occur to me to say that if one wanted to avoid jury service, someone ought not register to vote.

Mr. BUTLER. Yes, I wonder, while we are at it, that is not a very good criterion, but I guess that is what we are stuck with.

Mr. KASTENMEIER. The best we have.

Mr. BUTLER. I guess back in the days when we had the poll tax, that really was one of the reasons we had such a limited panel in some areas of the country. It never occurred to me that was what the problem was.

Mr. KASTENMEIER. Accordingly, the committee will stand in recess at this time.

[Brief recess.]

Mr. KASTENMEIER. The committee will reconvene.

I hope other members will be joining us shortly.

Would you conclude your summary, Mr. Imlay, with respect to H.R. 12389?

Mr. IMLAY. Yes, Mr. Chairman.

Mr. Chairman, the then Judge Harold R. Tyler, Jr., later Deputy Attorney General, prepared a report on this subject of deleting the words pardon or amnesty for the Jury Committee of the Judicial Conference, and he explained that the primary intention here, or one important purpose at least, is to make this Federal law compatible with the law of about one-fourth of the 50 States which do have statutes effectively recognizing the expungement, or annulment, of various criminal convictions, so that one purpose is to conform the Federal law to make it compatible with the State law.

Another purpose is to delete ambiguous words for the benefit of jurors who have to read this language and make judgments based on these materials. This language that appears in the statute we have to carry over into the jury qualification form that the juror receives, and he often has difficulty, as we do, in understanding the meaning of these words.

At this time, Mr. Chairman, I would like to introduce Judge Tyler's report on this subject into the record, if I may.

Mr. KASTENMEIER. Without objection, that report will be received and made part of the record. [See Appendix 2(a) at p. 169.]

Mr. IMLAY. Section 4 of the bill would conform the act to take care of certain problems in the automation of the jury selection process. Jurors in most districts now are screened and selected by data computers located mainly in computer centers operated by the General Services Administration. This procedure has greatly simplified the

task of picking eligible jurors, and at the same time the data computers print out summonses, address questionnaires, and do all of the clerical jobs that formerly took hundreds of manhours for clerks to do. We wanted to make sure that one term which appears in 28 U.S.C. 1869, is clarified to conform to present administrative policy. The act now requires that there be public drawings of names. Now, obviously, the public drawing which is done now, increasingly takes place in these computer centers operated by GSA. We are asking the committee to clarify the term publicly draw so as to permit the drawing to be in the computer centers following a proper public announcement of the same, rather than in the courthouse itself.

Another provision in this section would define the term jury summons in such a manner as to permit the data computers to print out the names of the clerks and to print a facsimile seal of the court on each such summons. This saves hundreds of manhours of clerk time in signing these jury summonses, and our position is that this is presently a legal procedure. This amendment would just recognize existing law, we feel, on the subject and allow the summons to be printed out by computer.

Now section 7 of the bill would extend to all Federal jurors who might be personally injured, incident to their jury service, the same financial benefits which are presently enjoyed by Federal employees injured in the scope of their employment while performing jury service.

The Federal Employees' Compensation Act was extended in 1974, to cover Government employees during the period when they have to serve on jury duty. We think it is only fair that all jurors who are fulfilling the obligation imposed upon them by law, should be entitled to the same compensation in the event of personal injury which would be available to Federal employees under similar circumstances.

At present the only remedy a juror has who is injured while doing jury service, is to file a claim under the Federal Tort Claims Act, which gives him a difficult burden of proof in showing that there is negligence on the part of an agent of the Government. This would relieve him from that heavy burden and, if he is injured while on a bus going to view a scene, as jurors sometimes do, or falls over a bench, or something of that sort while in the juryroom, or is otherwise injured as a proximate result of performing jury duty, he would be able to make a claim under the Federal Employees' Compensation Act.

We are aware of very, very few of these situations having arisen. I think that a few of them have become dramatized because of the fact that jurors are in the public eye. We think that this would involve certainly no more than 200 claims a year, and the usual cost we estimate somewhere in the vicinity of \$100 per occurrence. These would not be anywhere near the serious occupation-related claims that arise under the Federal Employees Compensation Act generally, and we have introduced some material on this subject, at page 86 of the hearings, before the Senate Judiciary Committee on the parallel bills.

Section 2 of this bill contains a measure recently approved by the Judicial Conference to alter the means by which prospective jurors may obtain an excuse on account of the distance between their homes and the courthouse, when it would result in a hardship to them in the requisite travel to perform jury service.

At the present time, anybody who lives beyond a number of miles from the courthouse depending upon what the particular district court plan provides, when he is sent a questionnaire for jury service, can make a claim to be excused because of the distance from his home to the court center. This has worked certain difficulties. For one thing, the fifth circuit judicial council has disallowed its district courts from applying this distance or mileage excuse because it feels that it would askew the racial and demographic balances of the juries. In certain areas a person who lives some distance from the court in wintertime has a different problem than if it were summertime, and the distance from the court center is a variable. We think that this type of excuse should be converted from a permanent excuse to a temporary excuse for which the juror can apply on an individual basis when he receives the summons. Some people have different problems from others in this respect. There are different forms of transportation problems all over the country, and this sort of excuse claim should be adjudged on an individual basis rather than being made available wholesale to all residents beyond a given distance from the place of holding court.

I would like to turn quickly to H.R. 12394.

Mr. KASTENMEIER. Before you do, Mr. Imlay, may I ask a question or two about the bill you have been discussing?

Mr. IMLAY. Certainly.

Mr. KASTENMEIER. I would think that for some of the reasons given in connection with increasing the mileage allowance, namely an energy crunch and the highly escalating cost of mileage, and the like, that the long distance mileage excuse would be more valid today than in former times. Why is that not the case?

Mr. IMLAY. Right now it is certainly the case because we aren't giving these people enough transportation money to actually offset the transportation costs to come to court, and I think the excuse is being granted very liberally for this reason. Therefore, you are getting jury selection basically confined to the courthouse area, rather than including the outer environs of the judicial district where you may find pockets of minorities and other people who are being effectively disenfranchised from jury duty.

Mr. KASTENMEIER. You say disenfranchised, but that is an election they make, is it not?

Mr. IMLAY. Yes, it is, but sometimes based on the fact that they can't buy a railroad ticket or an airline ticket, or driving—

Mr. KASTENMEIER. What you are saying then is the dollar mathematical equation is going to go up even more drastically because people who asserted a mileage excuse and who were excused and whose expenses would be more substantial than average are put back into the system now. The Government would be paying them additional amounts as provided elsewhere in the section from 10 cents to perhaps 17 or 20 cents or something like that. Therefore, I think the cost for the administration of justice in connection with this bill is going to go up because we are building a lot of extra costs into it.

I am not suggesting that it is wrong to do so, but I think we have to recognize that we are not merely increasing, doubling perhaps, the cost to the Government as far as jury service; we may be tripling it, because of a number of factors you are building in by virtue of such provisions as this.

Mr. IMLAY. Mr. Chairman, I am confident that the mileage excuse still will be given by the courts. It will be given to the elderly who have difficulty in traveling. It will be given on an individual basis to those who don't have an adequate method of transportation, who don't have an automobile, people who live in snowbelts during the winter-time, and other people like that. However, I think that this would enable people to serve who presently would have great difficulty in serving.

Mr. KASTENMEIER. One other question, and that is on Federal Employees' Compensation Act coverage.

I don't know whether the Senate had any difficulty with this, but my guess is that we might in the House, partly because there is still some notion that jury service is essentially a citizen's duty and to the extent that we go that far in institutionalizing it we might have, as I say, some problems.

Under the 1974 extension to Federal employees who are engaged in jury service, have there been any number of claims? Is there any experience of claims under the Compensation Act?

Mr. IMLAY. We have heard of none, Mr. Chairman.

Mr. KASTENMEIER. Why do you think then that there might be 200 claims a year?

Mr. IMLAY. I think that is a very high estimate. We said no more than 200 at the outside. Frankly, I think it will be more like a dozen. We have heard of only very few of these cases. When they arise, the jurors write their Congressmen and then we hear about the gross injustice of having a person who is being held, kept in virtual confinement, and who is injured being treated on a very different basis from the Government employee and who, if he wants to claim reimbursement for expenses incident to his injury, has to prove that some Government agent was responsible for his injury.

Mr. KASTENMEIER. Without any need to be precise, but for the record, could you let us know what sort of injuries jurors might sustain? [See Appendix 2(b) at p. 178.]

You mentioned being on a bus to view a scene and then being injured while on that bus.

Mr. IMLAY. Yes.

Mr. KASTENMEIER. Are there any other cases? Because, normally, it would appear that jury service ought not entail any real hazard to a juror.

Mr. IMLAY. One of the cases that was most graphic, because it became sort of a cause celebre, involved a juror who tripped over a hatrack in a juryroom and who had severe bone injuries, and that juror had to be told that his only remedy was to prove that somebody was negligent in maintaining the hatrack, because his only remedy was under the Federal Tort Claims Act.

Mr. KASTENMEIER. Do you happen to know whether he did assert such a claim and with success?

Mr. IMLAY. I know in his behalf we contacted the Department of Labor and we thought there was enough breadth in the Federal Employees' Compensation Act perhaps to at least justify a claim. We were told that, while they recognized certain persons who aren't Government employees, such as Gray Ladies in hospitals, as being within their responsibility, the Labor Department will not recognize jurors for purposes of these claims.

Mr. KASTENMEIER. Conceptually, of course, what this might include, I think, might be a question. For example, let's say you have a difficult case, a lurid crime, a juror later complains of headaches, sleepless nights, et cetera, presumably arising out of that. Do you think that would give rise to a valid claim for compensation?

Mr. IMLAY. I would certainly hope that it wouldn't. There might be problems with the whole area of the Federal Employees' Compensation Act. As a matter of fact, Mr. Burehill here computed that the claims in the national administration of this act result in an average recovery of \$2,495 per occurrence and that the sum of \$477 million was paid out under this act in 1 year.

Mr. KASTENMEIER. I am sorry. What was the sum per occurrence?

Mr. IMLAY. Two thousand four hundred ninety-five dollars.

Mr. KASTENMEIER. I say that because earlier you said 200 claims a year, \$100 per occurrence.

Mr. IMLAY. That is what we estimate would be involved with jurors.

Mr. KASTENMEIER. I don't understand why there would be so much disparity.

Mr. IMLAY. What we did was, we took the number of national claims under this act made by Federal employees and divided the amount of money paid out under the act by the Department of Labor, and that gave us a figure of \$2,495 per occurrence. This is based on Department of Labor statistics. We anticipate that the problem with jurors would be de minimis in relation to the overall compensation of Federal employees for injuries. It wouldn't involve great expenditures of money. There are only a few cases, we are assured.

If there are problems in these cases where people make claims for subjective ailments of various kinds, mental problems and so forth, we submit that maybe they should be addressed systemwide, but we don't think that this is a reason for keeping jurors from receiving the financial protection of this act in those rare cases where they require it.

Remember, that jurors can be kept 18 months on a grand jury, and it is possible in a special grand jury to keep them up to 33 months, 3 years. Now are you going to deny to a juror who is injured during the course of that long period of Government service the same benefits that would be given to short-term Government employees? We think that it is only equitable to include jurors within the same coverage.

Mr. KASTENMEIER. Thank you. You may continue with your presentation, Mr. Imlay.

Mr. IMLAY. H.R. 12394 was introduced at the request of the Judicial Conference, and it is intended to provide increased efficiency in the transportation of criminal defendants between judicial districts for the purpose of facing criminal charges.

Now, what happens now is that if you want to move a prisoner from one place to another, he has to go with a marshal, and despite the fact that he might be aailable prisoner, a good bail risk, and he is already on bail at the place of arrest, he has to be shackled and carried by a deputy U.S. marshal who doesn't go directly to the place of delivery very frequently, but who shunts him from pillar to post and finally delivers him back to the district where he belongs. We strongly suggest that it would be a far better alternative to this procedure if the Marshall's Service could give him a ticket and put him on an airplane, rather than to incur the much greater expense of having a marshal personally accompany every prisoner.

We have even had the phenomenon of persons who have been charged with traffic offenses in Federal enclaves being delivered in shackles by marshals back to a court to answer traffic charges, and picking-the-daisies-type of charges, and there are other defendants who are obviously capable of safely delivering themselves.

This procedure, we believe would save a great deal of money. The Marshal's Service is strongly for it, and we think it would greatly enhance our ability to conform to the very rigid and sometimes onerous time limitations of the Speedy Trial Act which require that we hold an arraignment within 10 days after an indictment is returned or an information is filed.

Mr. KASTENMEIER. Could you restate what it provides for, in simple terms, that is to say, it permits such a transportation of defendants? It does not require?

Mr. IMLAY. That is correct.

Mr. KASTENMEIER. And in the discretion of whom, the U.S. Marshal Service?

Mr. IMLAY. A court of the United States in releasing a person to another district could so order where, in its discretion, it feels that such a procedure would be appropriate.

Mr. KASTENMEIER. Who advises the court on that point?

Mr. IMLAY. The U.S. attorney could advise the court, or the probation service, in some instances, could advise the court, and the court would then direct the marshal to furnish the defendant with an amount of money not to exceed the amount authorized as a per diem allowance for travel under title 5 of the Code.

Previously we have actually sought this sort of relief administratively, and the Marshals' Service feels that its appropriation for the transportation of prisoners will not presently allow it to do this.

We have been very successful in allowing prisoners to deliver themselves to penitentiaries. We have done this administratively. A court can allow a prisoner to deliver himself to a penitentiary, and we found that it has saved the Marshals' Service a great amount of money. The Marshals' Service is very enthusiastic about it. So are we. It would apply to the original stage of a criminal proceeding where a person is arrested in one district and is required to appear in another one.

Mr. KASTENMEIER. In this case, the court may not now so authorize transportation of the defendant?

Mr. IMLAY. No, because there are no authorized funds available to the Marshals' Service to comply with such a court order. There is no basis for appropriating moneys right now for this purpose.

Mr. KASTENMEIER. What options then would the court have? Could a court order a person delivered in the custody of a marshal, shackled?

Mr. IMLAY. Yes.

Mr. KASTENMEIER. A court could order a prisoner delivered in the custody of a marshal unshackled?

Mr. IMLAY. No, it can't.

Mr. KASTENMEIER. It cannot?

Mr. IMLAY. No. Internal procedures of this kind are subject to administrative discretion, and the Marshal's Service requires that all persons being transported in their custody must be shackled for security reasons.

Now there is one thing that a court can do: It can release the person on bail, and require as a condition of his bail, that he appear in another district. This procedure is fine, but it is only available as a practical matter for those persons who have money to buy their transportation, which few criminal defendants have, and then it works fine, but only in that minority of cases where the defendant has sufficient personal funds for this purpose.

Mr. KASTENMEIER. Let me ask you this then: The court will then have the discretion of ordering a prisoner transported in the custody of a marshal or on his own recognizance or—

Mr. IMLAY. Or order the marshal to pay for his transportation.

Mr. KASTENMEIER. Or order the marshal to pay for his transportation.

Now as a matter of procedure, if accompanied by a marshal, as a matter of executive procedure, the marshal will require the prisoner to be shackled under all circumstances in the Federal system?

Mr. IMLAY. That is my understanding, Mr. Chairman.

Mr. KASTENMEIER. Thank you.

Mr. IMLAY. H.R. 3327 relates to the resignation of Federal judges.

Now the Judicial Conference at its latest session has endorsed this bill, which would amend section 371(a) of title 28 to provide that a judge of the United States may resign on salary upon attaining the age of 65, and completing 15 years of judicial service, and also allow him to do so on attaining the age of 70 and completing 10 years of service—the present law.

Let me just explain briefly.

A judge can presently retire by assuming senior status at age 65 with 15 years' service, and he may then continue to try cases and to do the judicial business of his court. A replacement for him will be made through the appointment of a new active judge, but the retired judge, known as a senior judge, can go ahead and continue to perform judicial duties because he still holds office as a judge of the United States.

There are some judges, however, at age 65 with 15 years' service, which is a considerable period of judicial service considering the age at which a judge is normally appointed, who do not choose to continue to work as a judge, but who would nevertheless have to retain the office at the present time, in order to be entitled to a continued salary at that age.

This bill would give the judge the option of resigning with 15 years' service and being entitled to receive the salary, which he was receiving on the day that he resigned, for the rest of his life, very much as he can do now at age 70 with 10 years' service.

This would bring the resigned judge into conformity with the system we now have for the retired senior judge, and there doesn't seem to be any valid reason in our estimation for forcing a judge at age 65 with 15 years' service to retain the office, because at that age he is now entitled to work full time, part time, or just go fishing and not do any work. The obligation to work as a judge ends at age 65 with 15 years' service and there is presently entitlement to assume senior status at that time with the continued right to the judicial salary for life. This bill would let him resign rather than staying on as a senior judge holding the office. So the benefit of this bill for the judge is that he could then take another position.

We now, of course, have an Attorney General who is an ex-judge. The new Director of the FBI is a former Federal judge. This bill would allow a judge at age 65 with 15 years' service to assume another position in public life, or to practice law if that is what he wants to do, and still to receive the judicial salary that he was receiving on the day of his resignation.

We think that this provision would not be used very frequently because most judges, we find, continue with their judicial work long after any obligation to work has ceased. The vast majority of our senior judges continue to work full time or on a virtually full-time basis. Several such judges are now serving as chairmen of Judicial Conference committees, for example. But for the judge who wants to leave the system, we think that he should be allowed to resign at the same age as the senior judge can retire while retaining his office.

Mr. KASTENMEIER. Have you computed the cost for this retirement system?

Mr. IMLAY. Mr. Chairman, we have not. We will supply that for the record, if we may. We will supply an exhibit on that subject, if we may. [See Appendix 2(c) at p. 209.]

We don't really think there will be any additional cost because the judges who retire will not receive as high a salary as if they had taken senior status, since they will not be entitled to the future periodic increases in their salary which active and senior judges receive.

Mr. KASTENMEIER. Counsel suggests that the cost may be the appointment of a new judge.

Mr. IMLAY. A new judge will be appointed in either situation. Whether a judge goes into senior status or resigns, a vacancy is created for a new active judge, so this bill won't make any difference in that respect. A judge would be appointed to replace him in either event. We don't see that there will be a cost factor to this bill. There might even be a money saving. Instead of just doing nothing but continuing to hold the office, the judge who wants out of the system at age 65 with 15 years' service, could now get out at the price of having his salary frozen.

On the subject of witness' fees, we certainly support the position of the Department of Justice in equating the fees and travel allowances of witnesses to the same scale that would obtain for jurors. The fees and travel of witnesses and jurors have been traditionally kept in parity. We would support the maintenance of that parity through the Department of Justice's suggestion.

There are two minor suggestions we would make in the witness fee bill which has been designed by the Department of Justice and the concept of which has been approved by the Judicial Conference. We would amend it to extend its coverage to our new district court for the Northern Marianas Islands, which has recently become our 95th district court, and we would also address a technicality as to the taxation as costs of certain witness travel expenses. This would expressly allow the travel costs of witnesses to be taxed as costs by the courts, which is a matter not addressed by existing law. In our formal statement we have outlined the reasons that we believe this provision should be made.

As far as H.R. 8492 is concerned, providing for flexibility in the setting of fees chargeable by U.S. marshals. This bill has not been

before the Judicial Conference, and while we cannot foresee any particular problems arising from this proposal, since it has not been studied by the Conference we cannot address this issue further.

Mr. KASTENMEIER. I understand. That covers the legislation.

I should also ask you, as I asked Mr. Calamaro, about several other so-called housekeeping measures. Next week we will go into housekeeping matters with respect to district courts, with respect to the holding of court, places for sitting of the courts, possible district court lines, and the possible creation of one or more new district courts.

I assume that you will be prepared to make appropriate and detailed comments on these requests for those pieces of legislation.

Mr. IMLAY. Yes. I have with me today, Mr. William Weller, Chief of our Legislative Analysis Office. I am sure that Mr. Weller is well aware of this, and will make appropriate preparations for any positions that we have. We do have a Judicial Conference policy on establishing new places of holding court, and I am sure in preparation for the hearing we would be glad to submit it to counsel.

Mr. KASTENMEIER. We will be pleased to have that. Just for guidance, we are mindful that the places being authorized for the sitting of district courts has been, over the years, in the process of mushrooming, increasing, and it may be desirable to provide some mechanism for discontinuance of such authorization. On the other hand, maybe it isn't necessary to do so, but that is a possibility we would like to consider.

Mr. IMLAY. Yes.

Mr. KASTENMEIER. Mr. Imlay, I don't know that you mentioned anything with respect to H.R. 11272, the transfer bill.

Mr. IMLAY. Yes.

Mr. KASTENMEIER. Are you familiar with that so-called transfer bill?

Mr. IMLAY. Yes. My understanding of the matter is that Judge Gignoux of the district of Maine as Chairman of the Federal Jurisdiction Subcommittee of the Judicial Conference will submit a written letter explaining the position of the Judicial Conference on this, if that would be permissible.

Mr. KASTENMEIER. And we will be pleased to receive that letter and make it part of the record, and as you state, that will express the position of the Judicial Conference on this matter.

Mr. IMLAY. Yes. The Judicial Conference has in fact approved H.R. 11276 as it stands at its most recent session, but Judge Gignoux's submission will explain in detail, if that is permissible.

[The information follows:]

U.S. DISTRICT COURT,
Portland, Maine, November 3, 1978.

Re H.R. 11276.

HON. ROBERT W. KASTENMEIER,

Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN KASTENMEIER: I understand that you have requested my views, as Chairman of the Subcommittee on Federal Jurisdiction of the Committee on Court Administration of the United States Judicial Conference, on H.R. 11276, 95th Cong., 2d Sess., a bill introduced by you on March 3, 1978 to provide that the courts of appeals and the district courts of the United States may transfer cases improperly filed in those courts. I am pleased to respond.

H.R. 11276 is splendid, insofar as it would permit transfers between courts of appeals and district courts. The problems which the bill addresses is not limited,

however, to transfers between district courts and courts of appeals. For example, there have been instances in which cases have been filed in a district court which were within the exclusive jurisdiction of the Customs Court, and *vice versa*. Similarly, I understand that there have been cases filed in the courts of appeals which were within the exclusive jurisdiction of the Temporary Emergency Court of Appeals. Accordingly, we suggest that H.R. 11276 be broadened to permit transfer between *any* two federal courts of any case which is not properly filed in the first court. This proposal is in accord with the March 1978 Judicial Conference recommendation "that provision be made by statute for the transfer of a case from one federal court to another in the event the case was not properly filed in the first court."

At its June 1978 meeting, the Subcommittee on Federal Jurisdiction considered the problem of draftsmanship of such legislation and of its placement in the Judicial Code. As for draftsmanship, we suggest the following:

§—. TRANSFER TO CURE DEFECT OF JURISDICTION

If a case is filed in a court of the United States but is within the exclusive jurisdiction of any other court of the United States, the court in which it is filed shall, if it be in the interest of justice, transfer such case to the court having exclusive jurisdiction thereof, where the case shall proceed as if it had been filed in that court on the date it was originally filed.

This language is patterned on the proposed new section 1327(c) of Title 28 in the American Law Institute *Study of the Division of Jurisdiction Between State and Federal Courts* (1969). It also closely parallels 28 U.S.C. § 1406(c) and 28 U.S.C. § 1506 (Transfers between the Court of Claims and the District Courts). You will note that the proposed section does not treat of venue, as venue would appear to be adequately taken care of by other existing Code provisions. See 28 U.S.C. § 1406(a).

With respect to Code placement, because Part IV of Title 28 (Jurisdiction and Venue) presently has separate chapters for each court, we suggest adding a new section 1612 in a new chapter 98, which would be entitled "General Provisions."

If you have any questions, or if I can be of further assistance, please do not hesitate to call upon me.

Sincerely yours,

EDWARD T. GIGNOUX,
U.S. District Judge.

Mr. KASTENMEIER. Are you familiar with whether or not that concurs with the additional comments of Judge Leventhal? [See Appendix 5(d) at 372-390.]

Mr. IMLAY. Maybe Mr. Weller knows Judge Leventhal's position better than I do.

Mr. KASTENMEIER. Which, as I understand it, goes to also authorizing transfers between circuits, and districts, and other courts.

Mr. WELLER. That is correct.

Mr. KASTENMEIER. It broadens it somewhat in my understanding.

Mr. WELLER. At the time the Judicial Conference had approved the bill in March, when it was before them for consideration, that objective was clearly understood. There were questions raised at that time about the language in the bill achieving those objectives, and the Conference's approval was premised upon the understanding that further dialog with this subcommittee would be necessary to clarify what the objectives would be and what language was necessary. Judge Gignoux's letter will be covering that.

Mr. KASTENMEIER. Thank you.

That concludes my question.

Mr. Remington or Mr. Mooney, are there questions of the witness?

Mr. MOONEY. No questions.

Mr. REMINGTON. No questions.

Mr. KASTENMEIER. If not, we are very indebted to you for your necessarily long appearance. I feel there are scores of questions and

implications that can be drawn from what we had hoped would be merely simple housekeeping legislation. Nonetheless, we will have to be prepared for any eventuality in terms of discussion with our colleagues in full committee and the House. Undoubtedly some aspects of the several pieces of legislation before us will have to be further addressed with you. We will probably do so informally or by letter, but I suspect before these become law, that that will be the case.

Thank you very much for your appearance this morning.

Mr. IMLAY. Thank you, Mr. Chairman.

Mr. KASTENMEIER. The committee stands adjourned.

[Whereupon, at 12:15 p.m., the subcommittee was adjourned.]

ADDITIONAL STATEMENTS AND VIEWS

JAMES C. CORMAN, M.C.

Mr. Chairman, H.R. 3327, which I have introduced in the House of Representatives, deserves the attention and approval of the Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice. H.R. 3327 would amend Title 28 of the U.S. Code to permit the resignation with the right to continue receiving pay to certain Federal judges at age sixty-five who have completed fifteen years of judicial service. Thus, H.R. 3327 would conform the age and service criteria for federal bench judges who elect to "resign on salary" or accept "senior status retirement."

Existing law mandates that a justice or judge may elect to "resign on salary" only at age 70 with a minimum of 10 full years of service. Upon leaving the bench he is entitled to an annual salary, for the rest of his life, equal to the rate of compensation he was earning on the date of his resignation. The yearly compensation is frozen at the rate in effect on the date of termination. As an alternative a justice or judge may elect to "retire" from regular active service and assume "senior status", either at age 70 with 10 full years of service or at age 65 with 15 years of service. He is then entitled to an annual salary equal to that drawn before electing senior status. Unlike the justice or judge who has "resigned on salary", the judge who "retires" is entitled to all future increases in salary approved by Congress until he dies. Election of "retirement with senior status" implies that

the justice or judge is required to render service to the Federal bench when requested to do so. Thus "senior status" retirement imposes no diminution in authority of office.

Mr. Chairman, H.R. 3327 would enable a federal judge to resign when he is eligible for retirement by conforming the age and service requirements for either option. The present policy prevents federal judges under age 70 from resigning with resignation benefits and does not give full recognition to the increasing number of judges who are appointed to the federal bench at a relatively young age. Liberalization of the current law would allow these younger judges the option of resignation or retirement with senior status at an earlier age. Should a judge elect to resign he could then go on to pursue other fields of endeavor. The other choice, election of retirement with senior status, would leave a vacancy on the court that could be filled by a new active service judge.

When a judge elects senior status he or she may continue to perform judicial duties and help alleviate existing court backlogs, as he is willing and able to undertake. Thus, in this case the word retirement does not have its usual meaning for the "retired" judge means a bonus of increased manpower to the court that can help alleviate existing backlogs and avoid further crowding of the judicial calendar. Both the retired judge and his newly appointed successor can be employed in the disposing of the business of the court, where

previously only one could be so employed.

As Supreme Court Justice Warren E. Burger wrote to the former Chairman of this Committee, the Honorable Emanuel Celler, in 1970 when similar legislation was under consideration, "...If a judge elects to "retire" under section 371 (b) (of U.S.C. Title 28), he remains a judge and continues to serve. Retirement means only that after 20 years the amount of work expected from the judge will be reduced. There are a great variety of important judicial and quasi-judicial duties which can be performed by such judges. Specifically, such a judge will be available for assignments in circuits and districts in addition to his own where the condition of the calendar requires additional temporary help. Increasingly we have used and I contemplate expanded use of senior judges as special masters in complex litigation invoking the original jurisdiction of the Supreme Court. Such judges are also useful in helping to train newly appointed judges. Seminars for this purpose have been conducted for the past few years. We hope in the immediate future to increase their number and the scope of the training. In this way we hope to get maximum use out of a judge who feels that he has served his time as a full-time judge and wants a slight respite from a full schedule and some diversity in his judicial activity." 1/

1/ Committee on the Judiciary, U.S. House of Representatives, 91st Congress, 2nd Session, Report No. 91-1027, p.5.

Mr. Chairman, the Department of Justice and the Office of Management and Budget have reviewed this legislation and have no objection to its adoption. Further, it has received the unanimous endorsement of the Judicial Conference of the United States. I urge the Subcommittee's approval of H.R. 3327.

Thank you.

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June 20, 1978

Robert W. Kastenmeier
Chairman
Subcommittee on Courts, Civil Liberties
and the Administration of Justice
House of Representatives
Washington, D.C. 20515

EX-100 221070

Dear Representative Kastenmeier:

This is in response to your letter of May 2, 1978 asking for my views on H.R. 12389.

I am in general support of the provisions of H.R. 12389 regarding the pay for jurors, protection of jurors' employment and jury service upon restoration of civil rights. These are areas that have been long overlooked, and the proposed changes will have the effect of including a broader cross-section of the community in the federal jury system.

I would make two modifications of H.R. 12389 to more fully and adequately deal with the problem of pay for jurors.

First, \$30 per day, or \$35 per day pursuant to the discretionary provision in §1871(b)(2) and (3), is too close to, if not below, a subsistence level for many working people. Some will find jury service an impossible burden; others will be discouraged from serving. These amounts are less than most of the lawyers practicing before jurors make per hour. I would not want jury administrators to make decisions akin to those of welfare departments, but there is an alternative that can accommodate the needs of low and moderate income people and is not overly burdensome. There could be a minimum (say \$30 or \$35), a maximum (say \$45 or \$50), and discretion to increase the pay from the minimum based on a fraction (say two-thirds) of the juror's regular income as indicated by the juror's pay receipts. A sworn statement from the juror that the amount over the minimum is necessary to enable him or her to serve could be required.

This scheme could be applied to all jury service or only to service for longer than 30 days. Limiting it to periods of service in excess of 30 days, a distinction already recognized in §1871(b)(2) and (3), makes sense because a reduced level of income is more burdensome over a longer period. Such a limit would also minimize the costs while according low and moderate income people the means to enable them to serve in matters lasting more than

30 days.

Second, for cases for which service will last more than two weeks, the primary burden under the present system in many, if not most, district courts is that jurors are often paid only at the end of the case. There are many people for whom \$30 or \$35 per day is adequate but the burden of receiving no income for a month or more is intolerable.

I raised this issue in United States v. Anderson, et al., U.S.D.C. D.N.J., Crim. No. 602-71, when a juror who worked as a cab driver said he could serve at the rate provided but not if he were not paid until the end of what looked like a four month trial. The judge ordered that the juror be paid every two weeks (over the objection of the clerk, who said there was only one form for the payment of jurors and it was to be used at the end of the case).

I recently inquired of the Administrative Office of the U.S. Courts about this, and I was told that some district courts will make periodic payments but many will not.

I suggest the following provision be added to H.R. 12389 (perhaps after §1871(b)(3)):

A petit or grand juror required to serve more than two weeks shall be paid the appropriate fees at the end of the first two weeks and every two weeks thereafter.

I appreciate your inquiry and the opportunity to comment on this bill.

Sincerely,



David Kairys


AMERICAN BAR ASSOCIATION

SECRETARY
Herbert D. Sledd
200-203 W. State Street
Louisiana, KY 40207

ASSISTANT SECRETARY
F. Wm. MacCann
Room 1400
211 Olive Street
St. Louis, MO 63101

1100 EAST 60TH ST., CHICAGO, ILLINOIS 60607 TELEPHONE (312) 647-6000

March 7, 1978

Honorable Peter W. Rodino, Jr.
Chairman, Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

RE: Fees or Costs for Marshals,
Witnesses and Jurors

Dear Mr. Chairman:

At the meeting of the House of Delegates of the American Bar Association held February 13-15, 1978 the attached resolution was adopted upon recommendation of the Special Committee on Coordination of Federal Judicial Improvements.

This resolution is being transmitted for your information and whatever action you may deem appropriate. If hearings are scheduled on the subject of this resolution, we would appreciate your advising Herbert E. Hoffman, Director of the American Bar Association Governmental Relations Office, 1800 M Street, N.W., Washington, D.C. 20036, (202) 331-2210.

Please do not hesitate to let us know if you need any further information, have any questions or whether we can be of any assistance.

Sincerely yours,



Herbert D. Sledd

HDS/sj

Attachment

cc: Benjamin L. Zelenko, Esquire
Chairman, Special Committee on Coordination
of Federal Judicial Improvements
Herbert E. Hoffman, Esquire

BE IT RESOLVED, That the American Bar Association approves and supports the adoption by the Congress of legislation which would allow the Attorney General of the United States to prescribe by regulation fees now set by law for the service of summons, writs and other orders by the United States Marshals Service; and

BE IT FURTHER RESOLVED, That the American Bar Association approves and supports the adoption by the Congress of legislation to increase fees, travel expenses and subsistence allowances for witnesses before United States Courts and grand and petit jurors serving on Federal juries; and

BE IT FURTHER RESOLVED, That the American Bar Association approves and supports the adoption by the Congress of legislation to make the excuse of prospective jurors from Federal jury service on the grounds of distance from the place of holding court contingent upon a showing of hardship on an individual basis; and

BE IT FINALLY RESOLVED, That the American Bar Association approves and supports adoption by the Congress of legislation providing for a civil penalty and injunctive relief in the event of a discharge or threatened discharge of an employee by reason of such employee's Federal jury service.

AMERICAN BAR ASSOCIATION
REPORT TO
THE HOUSE OF DELEGATES

SPECIAL COMMITTEE ON COORDINATION
OF FEDERAL JUDICIAL IMPROVEMENTS

RECOMMENDATION

The Special Committee on Coordination of Federal Judicial Improvements recommends adoption of the following resolutions:

BE IT RESOLVED, that the American Bar Association approves and supports the adoption by the Congress of legislation which would allow the Attorney General of the United States to prescribe by regulation fees now set by law for the service of summons, writs and other orders by the United States Marshals Service; and

BE IT FURTHER RESOLVED, that the American Bar Association approves and supports the adoption by the Congress of legislation to increase fees,

travel expenses and subsistence allowances for witnesses before United States Courts and grand and petit jurors serving on Federal juries; and

BE IT FURTHER RESOLVED, that the American Bar Association approves and supports the adoption by the Congress of legislation to make the excuse of prospective jurors from Federal jury service on the grounds of distance from the place of holding court contingent upon a showing of hardship on an individual basis; and

BE IT FINALLY RESOLVED, that the American Bar Association approves and supports adoption by the Congress of legislation providing for a civil penalty and injunctive relief in the event of a discharge or threatened discharge of an employee by reason of such employee's Federal jury service.

REPORT

There are presently pending before the Congress the following bills:

I. S. 2016 - A Bill to establish fees for services performed by U. S. Marshals.

II. S. 2049 - A Bill to establish fees and allow per diem and mileage expenses for witnesses before United States Courts.

III. S. 2072 - A Bill to amend the Jury Selection and Service Act of 1968, as amended, to make the excuse of prospective jurors from Federal jury service on the grounds of distance from the place of holding court contingent upon a showing of hardship on an individual basis.

IV. S. 2075 - A Bill to amend the Jury Selection and Service Act of 1968, as amended, by revising the section on fees of jurors and by providing for a civil penalty and injunctive relief in the event of a discharge or threatened discharge of an employee by reason of such employee's Federal jury selection.

Each of the items of legislation is designed to increase the efficiency of the Federal judicial system and those who serve it. Their purpose is to remedy the effects of ten years of inflation and to eliminate certain inequities which exist under present law. Identical legislation has been introduced in the House of Representatives.

S. 2016 and S. 2049 originated with the Department of Justice. S. 2049 has been endorsed by the Judicial Conference of the United States. The Conference has expressed no view with respect to S. 2016, but it ordinarily expresses no view with respect to matters of this nature. S. 2072 and S. 2075 originated with the Judicial Conference. S. 2075 is supported by the Department of Justice and the Department defers to the Judicial Conference with respect to S. 2072.

BACKGROUND, ANALYSIS AND REASONS
FOR THE COMMITTEE'S RECOMMENDATIONS

I.

S. 2016 - A Bill to establish fees for services performed by United States Marshals.

The proposed legislation would allow the Attorney General to prescribe by regulation fees now set by law (28 U.S.C. §1921) for the service of summons, writs and other orders by the United States Marshals Service (U.S.M.S.). The fees set would presumably be based upon annual U.S.M.S. computations of the actual cost of providing the services to private litigants. The Committee understands that proposed changes in the Federal Rules of Civil Procedure contemplate service of process by certified

mail which should lessen somewhat the impact of this legislation.

The present fees were established August 31, 1962, and range from \$1.00 to \$3.00 depending upon the type of service involved. Since 1969, audits by the General Accounting Office (G.A.O.) and the Department of Justice reflect that actual expenses have exceeded the fees charged. The deficit has escalated from \$470,000 in fiscal 1968 to \$3,800,000 in fiscal 1975. Section 1921 also fixes commissions for the disposition of seized property (3% of the first \$1,000 collected and 1-1/2% of the excess). S.2016 would not alter this schedule.

Section 1921 schedules fees for services for identifiable recipients. The purpose of the legislation is to assure that more of the costs of these services are borne by the litigants. The delegation of authority to the Attorney General to prescribe fees by regulation provides needed flexibility in an inflationary economy. S.2016 encompasses these objectives.

II.

S.2049 - A Bill to establish fees and allow per diem and mileage expenses for witnesses before United States Courts.

The proposed legislation would (1) increase the daily witness attendance fee from \$20.00 (as provided by 29 U.S.C. §1821) to \$30.00, (2) allow compensation for "actual expenses of travel" rather than 10 cents per mile as presently provided for in 28 U.S.C. §1821, and (3) delete the present \$16.00 per day subsistence allowance. The travel and subsistence allowances would be equal to the allowances which the Administrator of General Services prescribes for official travel by Government employees.

The purpose of S.2049 is twofold - to make necessary adjustments for inflation which has occurred since Section 1821 was amended in March, 1968 and to remove inequities from the present method of computation. According to the Department of Justice, round-trip air fare between Boston and Philadelphia exceeds by \$23.60 the travel allowance which a witness receives under Section 1921. However, a witness traveling from New York City to San Francisco receives \$198.80 in excess of the actual air fare. S.2049 would seek to eliminate these inequities by providing compensation based upon actual expenses of travel

and the form of transportation actually used.

The Department of Justice, which originated this legislation, estimates that S. 2049 will result in cost increases for fiscal year 1978 of approximately \$6,260,000, but advises that there is no objection to submission of the legislation by the Office of Management and Budget. The proposed legislation has been endorsed by the Judicial Conference.

Section 1821 has been outdated by ten years of inflation. The provisions for mileage allowances contained therein have proved inequitable in actual practice.

III.

S. 2072 - A Bill to amend the Jury Selection and Service Act of 1968, as amended, to make the excuse of prospective jurors from Federal jury service on the grounds of distance from the place of holding court contingent upon a showing of hardship on an individual basis.

The proposed legislation would amend 28 U.S.C. §1863 by eliminating the "mileage excuse" provision (subsection (b) (7) thereof) from jury selection plans. Its adoption would mean that persons could not be excused "automatically" from jury service because of hardship in travel. Under S. 2072 excuses would be handled by the district judge on an individual case-by-case basis upon a showing of "undue hardship or extreme inconvenience" pursuant to 28 U.S.C. §1866(c)(1).

Since the enactment of the Jury Selection and Service Act in 1968, about two-thirds of the district courts have incorporated "mileage excuse" provisions in their jury selection plans. The Fifth Circuit Council has opposed the inclusion of such a provision in jury selection plans of the district courts in the Circuit. In short, some district judges have read 28 U.S.C. §1863(b)(7) as permissive, while others have concluded that it is mandatory. The net result is a lack of uniformity among the courts.

According to the Administrative Office of the United States Courts, experience has shown that most prospective jurors eligible for the excuse will exercise their right by checking the appropriate block on the juror qualification form. In some instances this has resulted in only a small portion of the geographical area of a judicial district being represented on the jury impanelled.

The proposed legislation originated with the Judicial Conference of the United States and the Department of Justice has deferred to the Conference with respect to this legislation.

S. 2072 should provide needed uniformity among the various district courts and result in a better geographical representation on juries impanelled. The Committee supports the goal of S. 2072 to eliminate the "automatic" mileage excuse so long as juror travel and subsistence allowances are increased as proposed in companion legislation, S. 2075 which the Committee strongly endorses and discusses below.

IV.

S. 2075 - A Bill to amend the Jury Selection and Service Act of 1968, as amended, by revising the section on fees of jurors and by providing for a civil penalty and injunctive relief in the event of a discharge or threatened discharge of an employee by reason of such employee's Federal jury service.

The proposed legislation would (1) amend in its entirety the jury fee section (28 U.S.C. §1871) of the Jury Selection and Service Act of 1968, as amended, (2) add a new Section 1876 providing for a civil penalty and injunctive relief against an employer who discharges or coerces an employee as a result of the employee's Federal jury service or summons for such service and (3) define the term "undue hardship or extreme inconvenience".

S. 2075 would (1) increase the daily attendance fee for grand and petit jurors from \$20.00 to \$30.00, (2) delete the 10 cents per mile travel allowance, and (3) delete the present \$16.00 per day subsistence allowance. The travel and subsistence allowances would be equal to those prescribed by the Director of the Administrative Office of the United States Courts for payment to supporting court personnel. Other provisions of S. 2075 include certification of enhanced attendance fees for jurors on account of extended service, the addition of a parking allowance to travel costs and broader authorization of expenditures for convenience and comfort of jurors who are sequestered for extended periods of time.

The legislation provides for a civil penalty up to \$10,000 against an employer found to be violating the statute by interfering with an employee's right (as provided for in 28 U.S.C. §1861) to perform jury service. S. 2075 also gives the district courts jurisdiction to restrain such violations

by granting injunctive relief in the nature of orders for the reinstatement of the juror to employment with or without back pay.

The definitional section (28 U.S.C. §1869) of the Jury Selection and Service Act would be amended to include a definition of the term "undue hardship or extreme inconvenience", which is the basis for excuse of prospective jurors from immediate service under 28 U.S.C. §1866(c)(1).

The purpose of S. 2075 is primarily twofold - to make necessary adjustments for ten years of inflation and to provide clearly defined relief for jurors against employers who would discharge them by reason of jury service.

The proposed legislation originated with the Judicial Conference of the United States and is supported by the Department of Justice. S. 2075 should provide both economic and other protection for those persons serving or called to serve on Federal juries.

CONCLUSION

Accordingly, without attempting to analyze the specific language used in each of the pending bills, the Association is requested to endorse in principle legislation by Congress which would:

- (1) allow the Attorney General to prescribe by regulation fees now set by law for the service of summons, writs and other orders by the United States Marshals Service; and
- (2) increase the daily attendance fees, travel expenses and subsistence allowances for witnesses appearing before United States Courts and grand and petit jurors serving on Federal juries; and
- (3) make the excuse of prospective jurors from

Federal jury service on the grounds of distance from the place of holding court contingent upon a showing of hardship on an individual basis; and

(4) provide for a civil penalty and injunctive relief in the event of a discharge or threatened discharge of an employee by reason of such employee's Federal jury service.

Respectfully submitted,

Neal Batson
Edward I. Cutler
W. Gibson Harris
Hon. Shirley M. Hufstedler
Johnny Hulan Killian
Hon. Louis F. Oberdorfer
James A. Urban
Benjamin L. Zelenko, Chairman

February, 1978

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

2120 L STREET, N.W., SUITE 500
 WASHINGTON, D.C. 20037
 (202) 254-7020

OFFICE OF
 THE CHAIRMAN

May 1, 1978

Honorable Peter W. Rodino, Jr.
 Chairman
 Committee on the Judiciary
 U.S. House of Representatives
 Washington, D.C. 20510

Dear Chairman Rodino:

This is to respond to your request for our comments on H.R. 11276, a bill to amend Title 28 of the United States Code to provide that the courts of appeals and the district courts of the United States may transfer cases improperly filed in those courts to the appropriate court of appeals or district court in order to cure a defect of jurisdiction or venue.*

The Administrative Conference supports the enactment of this bill. In its Recommendation 75-3, "The Choice of Forum for Judicial Review of Administrative Action," the Conference recommended:

"A federal court which determines that it does not have jurisdiction of a judicial review proceeding should be authorized to transfer the proceeding, in the interests of justice and expedition, to a federal court appearing to have jurisdiction." 1 CFR 305.75-3(8).

In 1976 the Conference reaffirmed this Recommendation in the particularized context of judicial review under the Clean Air Act and Federal Water Pollution Control Act (FWPCA). The Conference's study, conducted by Professor David Currie of the University of Chicago School of Law found disturbing uncertainty among federal courts in the review of actions under the Clean Air Act. Section 304 of that Act provides for the filing of citizen-suits in district courts to require the Administrator of the EPA to perform "any act or duty under this Act which is not discretionary." Section 307 of the Act provides for exclusive review in the courts of appeals of petitions challenging various EPA rulemaking actions and, moreover, gives petitioners only 60 days to file such petitions. (The time limit was increased from 30 to 60 days in the 1977 amendments to the Clean Air Act.) Because the promulgation of rules could, in some instances, be characterized as an action or duty which is not discretionary, confusion arose as to whether challenges to such rules could be filed in the district court, court of appeals, or both. The existence of strict time

*We note that nothing in the bill concerns venue. However, the Conference has made a recommendation that 28 U.S.C. 2112(e), which provides for transfer of proceedings between courts of appeals, be amended to "remove doubts about the authority of any court of appeals to transfer such cases to any other court of appeals to avoid undue duplication and in the interest of the administration of justice." 1 CFR 305.76-3(A)(4).

limits for petition to the courts of appeals means that careful litigants have to accompany a citizen-suit with a protective filing in the court of appeals or risk being barred from suit if the citizen-suit is dismissed after the 60 days run out. A similar problem can arise under the FWPCA as well. Judge Skelly Wright of the D.C. Circuit has pointed to this problem:

"[T]he courts have been of . . . little help to litigants attempting to discern the parameters of Sections 304 and 307. While the courts play jurisdictional badminton with these provisions, batting one case back to the District Court under Section 304 while taking another identical one under Section 307, litigants should not be denied substantial rights because of uncertainty created by courts and Congress." *NRDC v. EPA* 512 F.2d 1351, 1361 (D.C. Cir. 1975) (dissenting in part).

To obviate the need for duplicative protective filings and to end the risk of a harsh result caused by a mistake filing in the district court the Administrative Conference recommended:

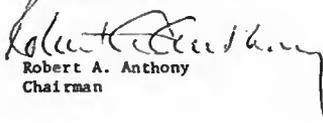
"Congress should provide, by analogy to 28 U.S.C. §1506, [the Court of Claims transfer provision] for transfer between the courts of appeals and district courts when a proceeding to review EPA action under the Clean Air Act or FWPCA is filed in the wrong forum." Recommendation 76-4 (B)(3).

It should be noted that the problems of double filing and misfiling are not limited to the pollution laws, but may arise any time there is uncertainty in the statutes specifying in which court review of administrative action is to be sought. Another recent example involved the Bank Holding Company Act of 1956, Section 9 of which provides for petitions for review of Federal Reserve Board "orders" in the courts of appeals, within 30 days of the order. Uncertainty as to what constitutes such a Board order led to a double filing/misfiling situation in *Investment Company Institute v. Board of Governors of the Federal Reserve System* 551 F.2d 1270 (D.C. Cir. 1977). The court saved the petitioner from his misfiling in the district court only by using the admittedly "artificial" approach of permitting review in the court of appeals on the basis that it was reviewing a subsequent denial of a petition for reconsideration to the Board within a new 30-day period. Judge Leventhal, concurring, cited the Administrative Conference Recommendation 76-4 and said,

"I take advantage of the freedom of a concurring opinion to express the hope that the core problem will be dealt with in the reasonable future by the enactment of a general statute permitting transfer between district courts and courts of appeals in the interest of justice, including specifically but not exclusively those instances when complaints are filed in what later proves to be the 'wrong' court." 551 F.2d at 1283.

The bill would fully implement the Conference recommendations and we therefore support its enactment.

Sincerely yours,


Robert A. Anthony
Chairman

AMERICAN CIVIL LIBERTIES UNION

Washington Office

May 9, 1978

The Hon. Robert W. Kastenmeier, Chairman
Subcommittee on Courts, Civil Liberties
and the Administration of Justice
Room 2137 Rayburn Office Building
Washington, DC 20515

Dear Chairman Kastenmeier:

Relative to your recent hearings on various judicial housekeeping bills (H.R. 7809, 7810, 7813, 8492, 8220, 9122, 3327, and 11276) pending before your subcommittee, we wish to inform you that the ACLU sees no objection to any of these measures from a civil liberties viewpoint.

We thank you and the subcommittee once again for your continuing efforts to improve the administration of justice.

Sincerely,


Pamela S. Horowitz
Legislative Counsel

nlada

National Legal Aid and Defender Association

Suite 801, 2100 M Street, N.W. / Washington, D.C. 20037 / 202/452-0620

May 8, 1978

Rep. Robert W. Kastenmeier,
Chairman
Subcommittee on Courts, Civil
Liberties and the Administration
of Justice
House of Representatives
Washington, D.C. 20515

Dear Representative Kastenmeier:

The National Legal Aid and Defender Association wishes to express its support for the series of bills that your subcommittee has designated as judicial housekeeping legislation. Functions addressed by these bills are indispensable to the federal justice system. The proposed amendments, particularly those contained in H.R. 9122 and H.R. 12389, will make the performing of those functions more economically feasible to persons of moderate or meager means. It is highly desirable that such persons actively participate in the system to which they are so often subjected.

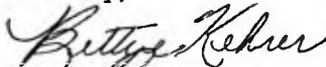
H.R. 9122 and H.R. 12389 accomplish the objective of making fees and allowable expenses sufficiently reasonable that the poor are not automatically precluded from participating as federal witnesses and jurors. Moreover, Section 6 of H.R. 12389 attacks another barrier that has operated discriminatorily in the past; that is, the threat, or the reality of employment termination for performing jury service. NLADA hopes that the states use this statute as a model, for retaliation of this kind is a problem peculiar to neither the federal nor the state court systems. Persons who have been affected by this generally hold unskilled positions that are easily replenishable and, given today's job market, easily replenished. Rather than viewing jury duty as an opportunity to play an affirmative role in a great American institution, many citizens have come to regard this "opportunity" as an unwelcome, unretractable breach of a relatively stable living pattern. The establishment of civil penalties for employers who "discharge, threaten to discharge, intimidate, or coerce any employee by reason of such employee's jury service" is long-overdue legislation. Its vigorous enforcement will have three obvious effects: 1) federal juries will represent a better cross-section of the population; 2) poorer members of such juries will be more attentive jurors,

inasmuch as their minds can concentrate more on the evidence before them and less on traumatic economic problems; and 3) gradually, the lower economic classes may find that their traditional cynicism toward the courts will attenuate due to increased participation in aspects other than the receiving end of the system.

Consistent with the rationale of the previous paragraph, I would recommend that your subcommittee amend H.R. 9122 to establish civil penalties for employers whose actions inhibit or punish persons who appear as witnesses in federal courts. Many a poor person has been victimized for a one- or two-day absence while fulfilling his or her duty as a witness. The kind of protection provided for in Section 6 of H.R. 12389 should be available to these individuals also.

Legislation that seeks, as a matter of public policy, to tear down economic barriers to participation in functions as essential to the federal justice system as jury and witness service is intrinsically meritorious. NLADA is pleased to support these bills.

Sincerely,



Bettye H. Kehrer
Executive Director



CHAIRMAN

UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON, D.C. 20415

April 20, 1978

Honorable Peter W. Rodino, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in further reply to your request for the Commission's views on H.R. 3327, a bill "To amend title 28 of the United States Code to permit the resignation with the right to continue receiving pay to certain Federal judges at age sixty-five who have completed fifteen years judicial service."

The bill would provide a greater measure of uniformity in the provisions for resignation and retirement from active service of those justices and judges of the United States who are appointed for life contingent upon good behavior. This would be accomplished by authorizing resignation with continued pay at age 65 with 15 years of service in addition to the current age 70 with 10 years of service, thus paralleling the age and service requirements for retirement from active service.

While we defer to Congress on this matter, this appears to be a reasonable proposal and the Commission has no objection to the enactment of H.R. 3327.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,

Julie Sugarman
Acting
Chairman

APPENDIXES

Appendix 1 - Senate bills

- a. S.2072
- b. S.2074
- c. S.2075

Appendix 2.- Additional Materials Submitted by Carl H. Imlay

- a. Report on Jury Disqualification because of Pending Felony Charges or Conviction of a Felony.
- b. Information on jurors injured during Jury Service.
- c. Computation of costs for H.R. 3327 (judicial retirement)

Appendix 3. - Additional Materials on the American Jury System

- a. Stanley, Federal Jury Selection and Service before and after 1968, 66 F.R.D. 375 (1975).
- b. American Bar Association Commission on Standards of Judicial Administration, Management of the Jury System (Supporting Studies).
- c. Higginbotham, Continuing the Dialogue: Civil Juries and the Allocation of Judicial Power, 56 TEX.L.REV. 47(1977).
- d. Wilson, Use of Jurors, 62 F.R.D. 211(1973).
- e. Q/A Compensation of Jurors
- f. Morgan, Employment Protection for Federal Jurors
- g. Kalb, Watergate Grand Jurors Hurt by Months away from Jobs, from Honolulu Star-Bulletin, January 15, 1974.
- h. Same Clemency for Jurors, from Washington Post, February 4, 1977.

Appendix 4. - Statistics on Jury Utilization.

Appendix 5. - Miscellaneous correspondence

- a. On Jury Service

1. Letter from Mrs. Leroy J. Zeringue to Honorable David C. Treen (January 12, 1977)
 2. Letter from Honorable Gene Taylor to Honorable Robert W. Kastenmeier (October 26, 1977)
 3. Letter from Ms. Pamela S. Pon to Honorable Phillip Burton (December 12, 1977)
 4. Memorandum from Ruth J. Rosenthal to Honorable Barbara Mikulski (February 15, 1978)
 5. Letter from Honorable Marjorie S. Holt to Honorable Robert W. Kastenmeier (March 10, 1978)
 6. Letter from Honorable Harold T. Johnson to Honorable Robert W. Kastenmeier (May 4, 1978)
 7. Letters from William R. Surchill, Jr., to Michael J. Remington (June 16 and September 25, 1978)
 8. Letter from Honorable Donald W. Riegler, Jr., to Marty Belsky (June 28, 1978)
 9. Letter from Honorable Otis G. Pike to Honorable Peter W. Rodino (June 29, 1978)
- b. On Witness Fees
1. Letter from Sharon J. Williams to Honorable Robert Cornell (May 17, 1977).
- c. On Judicial Retirement
1. Letter from William James Weller to Honorable George E. Danielson (February 22, 1978)
 2. Letter from Patricia M. Wald to Honorable Peter Rodino (April 25, 1978)
- d. On Transfer Powers of Federal Courts.
1. Letter from Honorable Robert W. Kastenmeier to Honorable Harold Leventhal (April 4, 1977)
 2. Letter from Honorable Harold Leventhal to Honorable Robert W. Kastenmeier (October 31, 1977)
 3. Letter from Professor David P. Currie to Honorable Robert W. Kastenmeier (June 6, 1977)
 4. Letter from Honorable Robert W. Kastenmeier to Honorable Harold Leventhal (April 13, 1978)
 5. Letter from Honorable Harold Leventhal to Honorable Robert W. Kastenmeier (April 26, 1978)
 6. Letter from Professor David P. Currie to Honorable Robert W. Kastenmeier (May 4, 1978)

APPENDIX 1—SENATE BILLS

95TH CONGRESS
2D SESSION**S. 2072**

IN THE HOUSE OF REPRESENTATIVES

MAY 1, 1978

Referred to the Committee on the Judiciary

AN ACT

To amend the Jury Selection and Service Act of 1968, as amended, to make the excuse of prospective jurors from Federal jury service on the grounds of distance from the place of holding court contingent upon a showing of hardship on an individual basis.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*
 3 That paragraph (7) of subsection (b), section 1863 of title
 4 28, United States Code, is repealed.

5 SEC. 2. Paragraphs (8) and (9) of subsection (b),
 6 section 1863 of title 28, United States Code, are redesignated
 7 as paragraphs (7) and (8).

8 SEC. 3. The amendments made by this Act shall take
 9 effect on October 1, 1978.

Passed the Senate April 27 (legislative day, April 24),
 1978.

Attest:

J. S. KIMMITT,

Secretary.

95TH CONGRESS
2D SESSION

S. 2074

IN THE HOUSE OF REPRESENTATIVES

MAY 1, 1978

Referred jointly to the Committees on the Judiciary and Education and Labor

AN ACT

To amend the Jury Selection and Service Act of 1968, as amended, with respect to the selection and qualification of jurors, and to extend to all jurors in the United States district courts the provisions of title 5, United States Code applicable to Federal employee service-related injuries.

1 *Be it enacted by the Senate and House of Representa*
2 *tives of the United States of America in Congress assembled,*

3 TITLE I—JURY SERVICE UPON RESTORATION
4 OF CIVIL RIGHTS

5 SEC. 101. Paragraph 5 of subsection (b) of section
6 1865, title 28, United States Code, is amended by striking
7 the phrase "by pardon or amnesty".

8 SEC. 102. Subsection (h) of section 1869 of title 28,

1 United States Code, is amended by striking the words "by
2 pardon or amnesty".

3 TITLE II—JURY SELECTION PROCEDURES,
4 RECORDS, AND DEFINITIONS

5 SEC. 201. Section 1867 (f) of title 28, United States
6 Code, is amended by striking "\$1,000" and inserting
7 "\$5,000" in lieu thereof.

8 SEC. 202. Section 1868 of title 28, United States Code,
9 is amended by striking the words "for public inspection" and
10 inserting the word "solely" in lieu thereof and by adding at
11 the end thereof the following, "Any person who discloses the
12 contents of any record or paper in violation of this section
13 may be fined not more than \$5,000 or imprisoned not more
14 than one year, or both."

15 SEC. 203. Section 1869 of title 28, United States Code,
16 is amended by adding at the end thereof the following:

17 "(j) 'publicly draw' as referred to in sections 1864
18 and 1866 of this chapter shall mean a drawing conducted
19 within the district, after reasonable public notice, which
20 is open to the public at large and under the supervision
21 of the clerk or jury commission: *Provided, however,*
22 That when a drawing is made by means of electronic
23 data processing, 'publicly draw' shall mean a drawing
24 conducted at a data processing center, located in or out
25 of the district, after reasonable public notice given within

1 the district for which juror names are being drawn,
2 which is open to the public at large and under such
3 supervision of the clerk or jury commission as the Judi-
4 cial Conference of the United States shall by regulation
5 require;

6 “(k) ‘juror summons’ shall mean a summons issued
7 by a clerk of court, jury commission, or their duly
8 designated deputies, containing either a preprinted or
9 stamped seal of court, and containing the name of the
10 issuing clerk imprinted in preprinted, typed, or facsimile
11 manner on the summons or the envelope transmitting
12 the summons.”.

13 TITLE III—COMPENSATION OF JURORS FOR
14 SERVICE-RELATED INJURIES

15 SEC. 301. Chapter 81 of title 5, United States Code, is
16 amended by the addition of the following new section:

17 “§ 8142a. Federal petit or grand jurors

18 “(a) For the purpose of this section, ‘Federal petit or
19 grand juror’ means a person selected pursuant to chapter 121
20 of title 28, United States Code, and summoned to serve as a
21 petit or grand juror, who is in actual attendance in court
22 such that he would be entitled to the fees provided for his
23 attendance by section 1871 of title 28.

24 “(b) Subject to the provisions of this section, this sub-
25 chapter applies to a Federal petit or grand juror, except that

1 entitlement to disability compensation payments does not
2 commence until the day after the date of termination of his
3 service as a juror.

4 “(c) In administering this subchapter for a juror cov-
5 ered by this section—

6 “(1) a juror is deemed to receive pay at a rate
7 equivalent to the monthly minimum pay of a GS-2
8 unless his actual pay as a Government employee while
9 serving on court leave is higher, in which case his
10 monthly pay is determined in accordance with section
11 8114 of this chapter.

12 “(2) any benefits payable under this section to a
13 juror who is not covered under paragraph (f) of sec-
14 tion 8101 (1) of this chapter shall be reduced by the
15 amount received under a noncontributory State or local
16 disability compensation or survivor benefit program. If
17 a juror has contributed to a State or local disability com-
18 pensation or survivor benefit program, any benefits pay-
19 able under this section shall be reduced in an amount
20 which bears the same proportion to the full amount of
21 such benefits as the cost or contribution paid by the
22 juror’s employer bears to the cost of disability or sur-
23 vivor benefits coverage for the juror.

24 “(3) performance of duty includes an act of a juror
25 while he is in attendance at court, pursuant to a sum-

95TH CONGRESS
2D SESSION

S. 2075

IN THE HOUSE OF REPRESENTATIVES

MAY 1, 1978

Referred to the Committee on the Judiciary

AN ACT

To amend the Jury Selection and Service Act of 1968, as amended, by revising the section on fees of jurors and by providing for a civil penalty and injunctive relief in the event of a discharge or threatened discharge of an employee by reason of such employee's Federal jury service.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Jury Fee and Juror
4 Employment Act of 1978".

5 SEC. 2. Section 1871 of title 28, United States Code, is
6 amended in its entirety to read as follows:

7 "§ 1871. Fees

8 "(a) GENERAL AUTHORITY.—Grand and petit jurors
9 in district courts appearing pursuant to this chapter shall be

1 paid the fees and allowances provided by this section. The
2 requisite fees and allowances shall be disbursed on the certifi-
3 cate of the clerk of court in accordance with the procedure
4 established by the Director of the Administrative Office of
5 the United States Courts.

6 “(b) ATTENDANCE FEE.—A juror shall be paid an
7 attendance fee of \$30 per day for actual attendance at the
8 place of trial or hearing. A juror shall also be paid the at-
9 tendance fee for the time necessarily occupied in going to and
10 returning from such place at the beginning and end of such
11 service or at any time during the same.

12 “A petit juror required to attend more than thirty days
13 in hearing one case shall be paid an additional attendance fee
14 of \$5 per day for each day in excess of thirty days in which
15 he is required to hear such case.

16 “A grand juror required to attend for more than forty-
17 five days of actual service shall be paid an additional at-
18 tendance fee of \$5 per day for each day in excess of forty-five
19 days of actual service.

20 “(c) TRAVEL ALLOWANCES; TOLL CHARGES; PARK-
21 ING FEES; TRAVEL IN AREAS OTHER THAN THE CON-
22 TIGUOUS STATES OF THE UNITED STATES.—A travel al-
23 lowance equal to the maximum rate per mile that the Director
24 of the Administrative Office of the United States Courts has
25 prescribed pursuant to section 604 (a) (7) of this title for

1 payment to supporting court personnel in travel status using
2 privately owned automobiles shall be paid to each juror,
3 regardless of the mode of transportation actually employed.
4 The prescribed rate shall be paid for the distance necessarily
5 traveled to and from a juror's residence by the shortest prac-
6 tical route in going to and returning from the place of service.
7 Actual mileage in full at the prescribed rate is payable at the
8 beginning and at the end of a juror's term of service.

9 "The Director shall promulgate rules regulating interim
10 travel allowances to jurors. Distances traveled to and from
11 court should coincide with the shortest practical route.

12 "Toll charges for toll roads, bridges, tunnels, and ferries
13 shall be paid in full to the juror incurring these charges.
14 In the discretion of the court, reasonable parking fees may be
15 paid to the juror incurring such charges upon presentation
16 of a valid parking receipt. Parking charges shall not be
17 included in any tabulation of mileage cost allowances.

18 "Any juror who travels to district court pursuant to
19 summons in an area outside of the contiguous forty-eight
20 States of the United States shall be paid the travel expenses
21 provided under this section, or actual reasonable transporta-
22 tion expenses subject to the discretion of the district judge or
23 clerk of court as circumstances indicate, exercising due regard
24 for the mode of transportation, the availability of alternative

‡

1 modes, and the shortest practical route from residence to
2 court.

3 “(d) SUBSISTENCE ALLOWANCES; SUBSISTENCE IN
4 AREAS OUTSIDE OF THE CONTIGUOUS UNITED STATES.—
5 A subsistence allowance covering meals and lodging shall be
6 established from time to time by the Director of the Admin-
7 istrative Office of the United States Courts pursuant to sec-
8 tion 604 (a) (7) of this title, except that such allowance shall
9 not exceed the allowance for supporting court personnel in
10 travel status in the same geographical area, and such claims
11 shall not require itemization.

12 “Such subsistence allowance shall be paid to a juror
13 when an overnight stay is required at the place of holding
14 court, and for the time necessarily spent in traveling to and
15 from the place of attendance if an overnight stay is required.

16 “A subsistence allowance for jurors serving in district
17 courts outside of the contiguous forty-eight States of the
18 United States shall be allowed at a rate equal to that per
19 diem allowance which is paid to supporting court personnel
20 in travel status in those areas where the Director of the
21 Administrative Office of the United States Courts has pre-
22 scribed an increased per diem fee pursuant to section 604
23 (a) (7) of this title.

24 “(e) SEQUESTERED JURORS.—Whenever in any situa-
25 tion a jury is ordered to be kept together and not to separate,

1 the actual cost of subsistence during such period shall be paid
2 upon the order of the court in lieu of the subsistence allow-
3 ances payable under subsection (d). Such allowance for the
4 jurors ordered to be kept separate or sequestered shall include
5 the cost of meals, lodging, and other expenditures ordered
6 in the discretion of the court for their convenience and
7 comfort.

8 “(f) PUBLIC TRANSPORTATION; TRANSPORTATION
9 AFTER HOURS.—A juror who uses public transportation in
10 traveling to and from the court, the reasonable cost of which
11 is not met by the transportation expenses allowable under
12 subsection (c) of this section on account of the short distance
13 traveled in miles, may be paid in the discretion of the court
14 the actual reasonable expense of such public transportation,
15 pursuant to the methods of payment provided by this section.
16 Jurors who are required to remain at the court beyond the
17 normal business closing hour for deliberation or for any
18 other reason may be transported to their homes, or to tem-
19 porary lodgings where such lodgings are ordered by the
20 court, in a manner directed by the clerk and paid from
21 funds authorized under this section.

22 “(g) REGULATIONS.—The Director of the Administra-
23 tive Office of the United States Courts shall promulgate such
24 regulations as may be necessary to carry out his authority
25 under this section.”

1 SEC. 3. (a) Chapter 121 of title 28, United States
2 Code, is amended by adding at the end thereof the following
3 new section:

4 **“§ 1875. Employment rights**

5 “(a) In the case of any individual who is absent from
6 a position (other than a temporary position as defined by the
7 Director of the Administrative Office of the United States
8 Courts) in the employ of any employer to perform jury
9 service, and who receives a certificate from the court verify-
10 ing such service, and makes application, promptly after he is
11 relieved from such service, to return to such position—

12 “(1) if such position was in the employ of a private
13 employer, such individual shall—

14 “(A) if still qualified to perform the duties of
15 such position, be restored by such employer or his
16 successor in interest to such position or to a position
17 of like seniority, status, and pay; or

18 “(B) if not qualified to perform the duties of
19 such position by reason of disability sustained dur-
20 ing the period of such service but qualified to per-
21 form the duties of any other position in the employ
22 of such employer or his successor in interest, be
23 restored by such employer or his successor in inter-
24 est to such other position the duties of which he is
25 qualified to perform as will provide him like senior-

1 ity, status, and pay, or the nearest approximation
2 thereof consistent with the circumstances in his case;
3 unless the employer's circumstances have so changed as to
4 make it impossible or unreasonable to do so; or

5 “(2) if such position was in the employ of any
6 State or political subdivision thereof, it is declared to be
7 the sense of the Congress that such individual should—

8 “(A) if still qualified to perform the duties of
9 such position, be restored to such position or to a
10 position of like seniority, status, and pay; or

11 “(B) if not qualified to perform the duties of
12 such position by reason of disability sustained during
13 the period of such service but qualified to perform
14 the duties of any other position in the employ of the
15 employer, be restored to such other position the
16 duties of which he is qualified to perform as will pro-
17 vide him like seniority, status, and pay, or the
18 nearest approximation thereof consistent with the
19 circumstances in his case.

20 “(b) (1) Any individual who is restored to a position in
21 accordance with the provisions of paragraph (1) of sub-
22 section (a) of this section shall be considered as having been
23 on furlough or leave of absence during his period of jury
24 service, shall be so restored without loss of seniority, and shall
25 be entitled to participate in insurance or other benefits offered

1 by the employer pursuant to established rules and practices
2 relating to employees on furlough or leave of absence in effect
3 with the employer at the time such individual entered upon
4 jury service.

5 “(2) It is declared to be the sense of the Congress that
6 any individual who is restored to a position in accordance
7 with the provisions of paragraph (2) of subsection (a) of
8 this section should be so restored as to give the individual such
9 status in his employment continuously from the time of his
10 entering upon jury service until the time of his restoration to
11 such employment.

12 “(c) In any case in which two or more individuals who
13 are entitled to be restored to a position under the provisions of
14 this section, or any other law relating to similar reemploy-
15 ment benefits, left the same position in order to enter upon
16 jury service, the individual who left such position first shall
17 have the prior right to be restored thereto, without prejudice
18 to the reemployment rights of any other individual to be
19 restored.

20 “(d) (1) An individual claiming entitlement to the
21 benefits of section 1875 of this title may make application to
22 the district court for the district in which the employer alleged
23 to have violated such section maintains a place of business
24 and the court shall, upon finding probable merit in such
25 claim, appoint counsel to represent such individual in any

1 action in the district court necessary to the resolution of
2 such claim. Such counsel shall be compensated and necessary
3 expenses paid to the extent provided by the Criminal Jus-
4 tice Act of 1964 (78 Stat. 552; 18 U.S.C. 3006A). The
5 court may tax a defendant employer, as costs payable to
6 the court, the attorney fees and expenses of a prevailing em-
7 ployee, where such costs were expended by the court pur-
8 suant to this subsection.

9 “(2) In any action or proceeding under this section the
10 court shall award a prevailing juror who brings such action
11 by retained counsel a reasonable attorney’s fee as part of
12 the costs.

13 “(3) No fees or court costs may be taxed against any
14 individual bringing any action in good faith under this
15 section.

16 “(e) Any private employer who fails to reinstate, dis-
17 charges, threatens to discharge, intimidates, or coerces any
18 employee by reason of such employee’s jury service, attend-
19 ance, or scheduled attendance in connection with such serv-
20 ice, in any court of the United States shall be subject to a
21 civil penalty of not more than \$10,000 for each violation
22 as to each juror.

23 “(f) For purposes of this section, the term ‘jury service’
24 includes attendance in any court of the United States in

1 connection with service upon any grand or petit jury of the
2 United States.”.

3 (b) The analysis of such chapter 121 of title 28, United
4 States Code, is amended by adding at the end thereof the fol-
5 lowing new item:

“1875. Employment rights.”.

6 SEC. 4. Section 1869 of title 28, United States Code, is
7 amended by adding at the end thereof the following:

8 “(j) ‘undue hardship or extreme inconvenience’ as
9 a basis for excuse from immediate jury service under
10 section 1866 (c) (1) of this chapter shall include undue
11 hardship or extreme inconvenience to the prospective
12 juror, such as grave illness in the family or any other
13 emergency which outweighs in immediacy and urgency
14 his obligation to serve as a juror when summoned. Addi-
15 tionally, in situations where it is anticipated that a trial
16 or grand jury proceeding may require more than thirty
17 continuous days of service, the court may consider, as a
18 further basis for temporary excuse, severe economic
19 hardship to an employer which would result from the
20 absence of a key employee at the time when he is sum-
21 moned for jury service.”.

22 SEC. 5. (a) Chapter 85 of title 28, United States Code,
23 is amended by adding at the end thereof the following new
24 section:

1 "§ 1364. Employment rights of jurors

2 "The district courts shall have original jurisdiction,
3 without regard to the amount in controversy, to require any
4 private employer to comply with the provisions of section
5 1875 of this title, and to award damages for any loss of
6 wages or other benefits suffered by reason of such employer's
7 failure so to comply."

8 (b) The analysis of such chapter is amended by adding
9 at the end thereof the following new item:

"1364. Employment rights of jurors."

10 SEC. 6. The amendments made by section 2 of this Act
11 shall apply in the case of any grand or petit juror serving
12 on or after October 1, 1978, and the amendments made by
13 sections 3, 4, and 5 of this Act shall apply to any grand or
14 petit juror summoned for service or actually serving on or
15 after the date of enactment of this Act.

Passed the Senate April 27 (legislative day, April 24),
1978.

Attest:

J. S. KIMMITT,

Secretary.

APPENDIX 2—ADDITIONAL MATERIALS SUBMITTED
BY CARL H. IMLAY

June 28, 1974

(a)

REPORT ON JURY DISQUALIFICATION
BECAUSE OF PENDING FELONY CHARGES
OR CONVICTION OF A FELONY

At the January, 1974 meeting of the Committee, Chairman Stanley appointed the undersigned as a subcommittee of one to inquire into current problems involving juror disqualification because of pending charges of a felony or felonies or conviction in a state or federal court for the commission of a felony.

As is familiar ground, § 1865(b)(5) of the Jury Selection and Service Act of 1968 (the "Act") provides as follows:

"...any person [is] qualified to serve on grand and petit juries...unless he

(5) has a charge pending against him for the commission of, or has been convicted in a State or Federal court of record of, a crime punishable by imprisonment for more than one year and his civil rights have not been restored by pardon or amnesty."

Thus, any person fitting within the statutory language is disqualified from serving upon a jury in a federal district court.

To effectuate this statutory disqualification language, the present Jury Qualification Questionnaire (JQQ) poses three questions:

1. Were you ever convicted of a State or Federal crime punishable by imprisonment for more than one year?
2. If "yes", were your civil rights restored by pardon or amnesty?
3. Are any such charges pending against you?

These questions and subdivision (5) pose conflicts among policies spelled out in the preamble and other portions of the Act. Further, these questions, and the subdivision on which they are based, are confusing on their face. Finally, they present legal and constitutional infirmities. Obviously, if all or some of these problems are valid and important, it may be necessary to recommend revision of the statutory section quoted hereinabove.

I

Assuming arguendo that the first question is legally permissible - i. e. that it is constitutional to exclude ex-felons from jury service, ^{1/} it nevertheless raises practical and policy considerations of significance. One portion of the legislative history of the Act suggests that probity

^{1/} See Richardson v. Ramirez, 418 U.S. _____, decided June 24, 1974.

of the jury, grand or petit, is a purpose thereof:

"The bill also contains some guarantee of 'probity', at least to the extent that persons are disqualified who have charges pending against them for, or have been convicted of, a crime punishable by imprisonment for more than one year...." S. Rep. No. 891, 90th Cong. 1st Sess., Improved Judicial Machinery for the Selection of Federal Juries, at 22.

At least one federal court, indeed, has agreed to the extent of upholding the constitutionality of the jury disqualification provisions on the ground of assuring the "probity" of the jury. United States v. Arnett, 342 F. Supp. 1255, 1261 (D. Mass. 1970).

But other legislative comments concerning the disqualification provisions of § 1865(b) strongly suggest that subjective qualification requirements may not be employed thereunder. See House Report at p. 313; see, also, Senate Report at p. 31. These portions of the legislative history emphasize that disqualification must be made on objective grounds by objective evidence. But probity, it is submitted, can be a slippery concept. Like beauty, it depends largely upon the eyes of the beholder. Of course, most courts have held or implied that felons and ex-felons lack probity. Common sense, if nothing else, should convince us that this in fact is not always the case.

Moreover, a plausible argument could be made that the first question offends not only our notions of fairness and common sense, but express purposes of the Act as set forth in its early provisions.

To illustrate, the second sentence of § 1861 of the Act provides:

"It is further the policy of the United States that all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States, and shall have an obligation to serve as jurors when summoned for that purpose."

Similarly, as is well known, § 1862 of the Act expressly prohibits discrimination in the federal grand and petit jury selection process. Thus, given the traditional notion that once a person has paid the penalty for criminal conduct by serving his sentence as imposed, it can be said that a simple affirmative answer to question "1" should not necessarily disqualify that person from jury service. Thus, we are led to consideration of the second question on the JQQ.

II

The second question, in the view of the writer, raises serious problems, some of which have been hinted at above. To illustrate, following the theme of the discussion so far, it can be argued that if the answer is "yes" to question "1", then question "2" should require the person filling out the form to state the date and nature of the conviction and whether or not he has served completely the sentence imposed - i.e. any commitment period plus parole, or a period of probation, or full payment of the fine. Assuming that one convicted of a felony has nevertheless served or disposed of his sentence in full, then it might be rational to regard such a person qualified for jury duty on the theory that he has "paid his debt to society."

Treating question "2" as it is presently written, there are additional serious problems. First, as counsel to the Committee has reported to us, United States Pardon Attorney Lawrence M. Traylor has noted that in our system there are four forms of clemency: pardon, reprieve, remission of fine, and commutation of sentence. Thus, limiting question "2" to only one of these four possibilities renders it obviously under-inclusive. Pardon, moreover, is rather obscure under existing practice and law in the federal system; certainly, it does not expunge the record of a conviction in modern federal practice. Rather, it merely relieves the recipient of legal disabilities that have resulted by virtue of federal law. Among other things, this means that it is uncertain whether a pardon for a federal conviction restores civil rights which may accrue to the pardoned person by virtue of state law - or, for that matter, by federal law! Finally, it is to be noted that, practically speaking, a pardon operates in a discretionary fashion. Put differently, obtaining a pardon in the federal system requires financial resources and perhaps political influence or support.

The word "amnesty" contained in the second question is almost totally devoid of any substantial legal content in modern times. As Mr. Traylor's observations underscore, the word "amnesty" is not to be found in any meaningful way in the federal statutes, and the same apparently can be said for the laws of most of the states. Literally,

amnesty, as interpreted by the courts, means the abolition or "forgetting" of an offense. Knote v. United States, 95 U.S. 149, 152 (1877). Thus, if the offense is "forgotten" or ignored, the beneficiary has no civil rights to be restored.

A further infirmity in question "2" is that, by its terms, it does not deal with expunction or certification, which indeed are specifically provided by certain federal statutes, most notably § 844 of Title 21 and the Federal Youth Offender Act. See 18 U.S.C. § 5021.

Worst of all, the second question narrowly confines restoration of civil rights to two methods; whereas, in fact, the laws of states have many and varied ways of restoration of rights of criminal offenders. In recent years, these state statutes have become increasingly subject to study and review. Today, some thirteen states have procedures whereby the civil rights of an offender are automatically restored upon fulfillment of certain conditions enumerated in the state constitutions or general statutes. See 23 *Vanderbilt L.R.* 929, at 1147 (1970); 11 *Am. Cr. L.R.* 727 (1974). In at least three states, New Hampshire, Oregon and Wisconsin, civil rights are restored automatically upon completion of the prison sentence, probation or parole. Kansas and Ohio require the offender to complete only his prison term or parole period in order to have his civil rights restored.

About one-quarter of the fifty states have some sort of other expungement or annulment procedures designed to effectively recognize

the stigmatization of a conviction but realistically restore the offender to society. It would be interesting to discuss further the various kinds of state laws in detail, but it is really unnecessary to make the obvious point that the second question on the JQQ is not only incomplete in respect to federal law, but more important, it turns upon the vagaries of the state laws without recognizing what they are. As stated above, question "2" is clearly under-inclusive in terms of federal law - and even more so in terms of state law. A plainer problem of denial of equal protection of the laws can scarcely be imagined.

III

Question number "3", "[A]re any such charges pending against you?", apparently has not been the subject of any criticism either in the courts or by commentators. In a sense, this is surprising in that one can view this question as cutting athwart the American presumption of innocence of all charges of criminal conduct. From another viewpoint, however, there are practical reasons - some reflected in the legislative history of § 1865(b) - in support of the proposition that persons facing criminal charges themselves should not sit on juries resolving criminal charges against others. Presumably, they would labor under pressure, and in many instances, their ability to be present for jury service would be affected by their own court commitments. Still, the nub of the problem here is whether or not persons who answer question

number "3" in the affirmative should be disqualified, without more, from service. The Congress has obviously answered that question in the affirmative.

Nonetheless, it is suggested that this Committee should ponder whether or not the pendency of charges against a citizen is a sound reason to absolutely disqualify him from jury service. It is possible that the Committee might prefer to have the information resulting from this question lead not to disqualification but merely to challenges by the parties in a given piece of litigation.

CONCLUSION

Brief and superficial as this paper necessarily is, it should be sufficient to demonstrate that § 1865(b)(5) and the related three JOO questions present a mélange of uncertainties and conflicting policy considerations. Although the recent decision of Richardson v. Ramirez removes the threat of immediate constitutional problems in this area, this is not to say that there will not be further litigation in the immediate future centering upon this part of the disqualification section of the Act.

To summarize, then, it is respectfully submitted that this Committee should ponder all three questions of the JOO with a view to recommending changes in subdivision 5:

1. Question number "1" may continue to be useful and appropriate, but thought should be given to what happens when the answer is "yes". Then consideration should

be given to allowing persons to serve if they have actually fully discharged their imposed sentences.

2. Question number "2" in many respects is totally unsatisfactory as a matter of common sense and law for reasons hereinabove stated. Most of the problems would be removed if, as already suggested, the law were changed to allow persons who have completely served their sentences to avoid disqualification under the Act.

3. Question number "3" and its statutory underpinning may be completely satisfactory as far as they go. Nonetheless, the Committee should ponder whether or not pending criminal charges against a potential juror are sufficient ground for absolute disqualification as opposed to challenge later during the voir dire.

Finally, if it would serve the interest of the Committee as a whole, a draft of a proposed change in the statute and the questions could be submitted and circulated in the near future.

Dated: New York, New York
June 28, 1974 "

(Signed)

Harold R. Tyler, Jr.

(b)

May 25, 1978

Honorable Robert Kastenmeier
Chairman, Subcommittee on Courts, Civil Liberties
and the Administration of Justice
House Judiciary Committee
2137 Rayburn House Office Building
Washington, D. C. 20515

Dear Mr. Kastenmeier:

This is in response to your request, at the recent hearing of your subcommittee, for certain information respecting the incidence of injuries to jurors in the United States district courts. This question arises in view of the recent Senate passage of S. 2074, which would extend to federal jurors the protection of the Federal Employees Compensation Act. A similar provision is contained in section 7 of H.R. 12389, also pending before your subcommittee at this time.

I should state at the outset that the Administrative Office of the U. S. Courts would not necessarily be informed of all or even most injuries incurred by jurors. I am certain that in many cases juror inquiries to court personnel in the particular court where they are serving regarding minor injuries are met with the response that there is presently no mechanism available for the United States to defray the medical expenses and other personal costs incurred by injured jurors unless the juror happens to be employed by the United States Government in his or her regular employment or unless the injury is such that official negligence can be shown, supporting recovery under the Federal Tort Claims Act.

Other such inquiries by jurors may be addressed directly to the Department of Labor, which administers the Federal Employees Compensation Act, and you may wish to contact that department to determine whether it would be in a position to categorize the number of inquiries received from injured jurors seeking to recover under the Act. Finally, in those situations where the injured

juror submits an administrative claim under the Federal Tort Claims Act (28 U.S.C. §2672), such claims will frequently be considered and disposed of by the General Services Administration, which has custody of most federal courthouses and is therefore the proper agency to act upon such claims for injuries resulting from the physical condition or maintenance of the premises outside of the immediate vicinity of the courtroom. The Administrative Office of the U. S. Courts receives and considers such administrative claims only in situations where negligence is alleged on the part of an officer or employee of the Judiciary or where the injury takes place within the immediate courtroom area under the direct control of the court.

I am pleased, nevertheless, to offer you what materials we have been able to locate in our files respecting incidents of juror injury. First, there is enclosed for general reference an exchange of correspondence between Mr. Herbert Doyle of the Department of Labor and me, which confirms the present position of the Department that federal jurors are not now considered eligible for Federal Employees Compensation Act coverage unless they also happen to be regular government employees. The second item is a memorandum of December 5, 1974, regarding a juror in the South Carolina district court who fell from the jury box and broke her arm as the jury was leaving the courtroom to deliberate. Third is a series of letters regarding an injury to a juror in the Los Angeles court, who was injured in a fall inside the courthouse in 1969. The fourth enclosure is a series of documents as to an Alabama federal juror who likewise fell from the jury box as the jury was leaving for a luncheon recess, lost her balance and struck her head against one of the counsel tables in the courtroom. In this 1976 incident, we authorized the payment from our appropriated funds of the immediate medical expenses incurred by the juror resulting from her fall in the amount of \$10 for the physician's fee and \$15 for emergency room treatment at a local hospital. Such disbursement was made by this office in recognition of the need for prompt medical treatment to avoid a delay in the trial and in view of the present unavailability of Federal Employees Compensation Act relief in situations of this kind, as explained in the attached letter from my Associate General Counsel, William R. Burchill, Jr. Finally, there is enclosed a letter of January 31, 1978, to Mrs. Ethel L. Taylor denying her administrative claim under the Federal Tort Claims Act for injuries sustained when she fell from the jury box during jury service in the Southern District of Texas.

For your further information I am enclosing a memorandum from Robert J. Pellicoro summarizing the results of a canvass of the clerks of all United States district courts which was recently undertaken by our Clerks Division at my request in order to develop additional information as to the incidence of juror injuries in response to your inquiry. These results indicate that several of the courts have experienced minor injuries to jurors incident to their service in addition to those described above. Most of these injuries seem to have resulted from falls. */ There have also been several instances of jurors suffering heart attacks during their service. In these situations our policy is to pay from the appropriated funds of the Judiciary the ambulance and immediate first aid expenses incident to the removal of the juror from the courthouse and the provision of emergency treatment. I should emphasize that under no circumstances do we construe our appropriated funds as being available to provide any further relief to jurors above and beyond the payment of medical expenses for treatment at the time of the immediate initial emergency and for transportation from courthouse to hospital. The extension of Federal Employees Compensation Act coverage would therefore be of great assistance to federal jurors in certain of these situations.

The above examples of injuries sustained by federal jurors in the scope of their jury service seem to point to the conclusion that the incidence of such injuries has been rare and their expense minor. There is every reason to believe that these conclusions will continue to apply in the future. This office has previously estimated for the Senate Judiciary Subcommittee on Improvements in Judicial Machinery that it would be reasonable to expect an absolute maximum of no more than 200 federal juror injuries per year for which compensation would be claimed under our proposed amendment to the Federal Employees Compensation Act, and that the average expense per occurrence for such juror injuries would be \$100. See the letter of

*/ It should be noted that several of the injuries catalogued in this memorandum, notably the juror injured in the automobile accident en route to the courthouse and the juror who fell in a restaurant during lunch, present examples of incidents occurring essentially outside of the scope of actual jury service and for which coverage under the amendment which we are proposing to the Federal Employees Compensation Act is not envisioned.

Mr. Burchill at page 86 of the printed hearing before the Subcommittee on Improvements in Judicial Machinery of the Senate Judiciary Committee, 95th Cong., 1st Sess. (1977) on S. 2074 and related bills.

While the problem being addressed by this proposal is of small numerical and financial dimensions, nevertheless it is the position of the Judicial Conference of the United States that it is vital as a matter of equity for federal jurors to receive the same financial protection against injuries incident to their service which would be available to federal employees who are injured either on the job or while on court leave to perform jury duty. In this regard it should be noted that section 1861 of title 28, United States Code, imposes upon all citizens the obligation to serve as jurors in the courts of the United States when summoned for that purpose.

Additionally, the Federal Employees Compensation Act has been previously amended by the Act of September 7, 1974, Public Law No. 93-416, §1(a), 88 Stat. 1143, to include within its coverage those persons who are otherwise defined as employees for purposes of the Act and who are serving as grand or petit jurors in the courts of the United States. At the time of this amendment the Senate Labor and Public Welfare Committee in Senate Report No. 93-1081 evidenced agreement with the position of the Judicial Conference that this same protection should be afforded to all federal jurors. It was urged that this question be considered in conjunction with the overall matter of juror compensation which is now before your subcommittee.

We therefore urge the Congress to offer all federal jurors the same financial protection under the Federal Employees Compensation Act which is now available to federal employees serving as jurors. While there is every reason to believe that such protection will not be frequently invoked in the form of claims by jurors, this does not lessen the need for the government to assume its rightful responsibility to those summoned for jury duty by agreeing to bear the financial responsibility for injuries proximately resulting from the performance of such duty as an obligation of citizenship.

Such protection is presently offered not only to jurors who happen to be federal employees, but also to certain volunteers rendering personal service to the United States similar to that of an officer or employee under circumstances where a statute authorizes the acceptance of such services. See 5 U.S.C. §2101(1)(B). Such volunteer workers as "gray ladies" in veterans hospitals have thus been construed to come within the scope of the Federal Employees Compensation Act. As a matter of logic, such coverage should certainly be extended to jurors, who must bear grave responsibilities and must sometimes experience onerous conditions of service.

I hope that the information here presented is sufficient in response to your questions. If the Administrative Office can be of any further assistance in respect to the consideration of this legislative proposal, please contact me or my Associate General Counsel, William R. Burchill, Jr., at 633-6127.

Sincerely,

Carl H. Imlay
General Counsel

Enclosures

cc: Michael Remington, Esq.
Subcommittee on Courts, Civil Liberties,
and the Administration of Justice
House Judiciary Committee

WRB:BOD
Foley
Daybooks
File: Injuries to Jurors

Page 5

October 14, 1975

Mr. Herbert A. Doyle, Jr.,
Director
Office of Federal Employees'
Compensation
Employment Standards Administration
United States Department of
Labor
Washington, D.C.

Dear Mr. Doyle:

It is my understanding that your office (formerly the Bureau of Employees' Compensation) has ruled consistently that a person injured while serving as a juror on a federal court jury is not a federal employee under 5 U.S.C. §8101 for purposes of receiving workmen's compensation benefits. A member of your staff, Mr. Triebaasse, suggested that I request from your office references of claim denials with respect to federal jurors.

Recent statutory language expressly brings persons who are otherwise federal employees and who are selected to serve on federal grand or petit juries within the protection of the Federal Employees' Compensation Act (FECA). 5 U.S.C. §8101(1)(F). The status of persons who do not work principally for the federal government is less clear. Section 8101 defines an "employee" as, among other things, the following:

"(B) an individual rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay, when a statute authorizes the acceptance or use of the service, or authorizes payment of travel or other expenses of the individual."

Since jurors perform the service of adjudicators, as do a number of federal personnel, for a nominal fee and receive reimbursement for travel and other expenses pursuant to statute, 28 U.S.C. §1861 et. seq., it seems that arguably they would qualify as "employees" under the definition

Mr. Herbert A. Doyle, Jr.

-2-

contained in §8101(B). For example, it has been held that a volunteer who donated refreshments which she then distributed to patients of a Veterans Administration hospital was an "employee" under the FECA. McNicholas v. United States, 226 F.Supp. 965, 968 (Dt. Ill. 1964). Moreover, part-time employees are likewise covered by the FECA. Waters v. United States 458 F.2d 20, 22 (8th Cir. 1972).

My question is whether your office has considered this section, §8101(B), in reference to claims presented by federal jurors. Because the decision of the Secretary of Labor is final with respect to FECA claims and not subject to judicial review, 5 U.S.C. §8128(b), and because the FECA is the exclusive remedy for an injured federal employee, 5 U.S.C. §8116(c), I would appreciate knowing your stance on this question. I can then advise the courts accordingly when they are confronted with injuries incurred by jurors. Likewise such injured individuals will be free to pursue remedies under the Federal Tort Claims Act, 28 U.S.C. §2671 et. seq. See Waters, supra; cf. Bailey v. United States, 451 F.2d 963, 965 (5th Cir. 1971).

Sincerely,

Carl H. Imlay
General Counsel

NOV 26 1975

File No.



Mr. Carl H. Imlay
General Counsel
Administrative Office of the
United States Courts
Supreme Court Building
Washington, D. C. 20544

Dear Mr. Imlay:

I am writing in reply to your letter of October 14, 1975, concerning the status of jurors in Federal courts as Federal employees within the meaning of the Federal Employees' Compensation Act (FECA).

Jurors are selected for jury duty in the Federal courts and are summoned to serve pursuant to statute. Their compensation for serving on the jury is likewise fixed by statute. The Government does not negotiate with a citizen for his services as a juror, nor does the citizen apply to the Government for such preferment. It is not by virtue of a contract that a juror performs jury duty, but by virtue of the requirements of the law. A juror selected in the manner prescribed by law is not "hired" to perform services on behalf of the Government. He is selected to perform a service as part of his duties as a citizen. Jury duty is an obligation of each qualified citizen and the juror's consent to serve is not essential. The juror's relationship to the Federal government does not stem from a contract of employment. Unlike employees, jurors are not subject to the direction and control of an employer, and what a juror determines in matters submitted for his attention is not subject to control from any source whatever.

The Employees' Compensation Appeals Board in O. W. Rawlings (24 ECAB 328) stated, "The unique responsibilities and position of a juror are such that they do not fall within the criteria that determine an employer-employee relationship for purposes of workmen's compensation. The reasoning is persuasive in those decisions discussed above which found that a juror's unique status precludes him from being regarded as an "employee" of the government while carrying out his jury duties."

A juror serving on a jury in a Federal court is not a civil employee of the United States within the meaning of the FECA. The 1974 Amendments to the FECA by Public Law 93-416 provided coverage to Federal employees who serve as Petit or Grand jurors. However, the status of jurors in Federal courts who are not otherwise employees of the United States remains unchanged.

Sincerely,

A handwritten signature in black ink, appearing to read "Herbert A. Doyle, Jr.", with a stylized flourish at the end.

HERBERT A. DOYLE, JR.
Director, Office of Workers'
Compensation Programs

Memorandum

TO : Miss Helen Childers, Deputy Clerk DATE: December 5, 1974
 Clerk of Court, Columbia, S. C.

FROM : Brian M. Murphy, U. S. Probation Officer
 Greenville, South Carolina

SUBJECT: Mrs. Lewelyn Pardue

Mrs. Edith Thomas of the Clerk's Office, Greenville, has requested that I write you and give you a statement concerning my part of the incident involving Mrs. Pardue's fall.

On December 3, 1974, at approximately 7:10 P.M. the jury was leaving the jury box to go to their room to deliberate the case of Howard Eugene Knight. As Mrs. Pardue stepped down from the jury box, she tripped. She extended her right hand in order to break her fall and from what I saw, she fell into the raised platform upon which the reporter and clerk sit.

As soon as the rest of the jury cleared the room and an alternate juror was appointed by Judge Hemphill, Judge Hemphill directed me and his baliff to take the woman to the hospital and then to deliver her to her room at the Poinsett Hotel. The Judge's driver and I took her to the emergency room of the Greenville General Hospital, where the right arm was x-rayed and was determined to be broken around the wrist. An orthopaedic resident was called and he set the bone and then re-x-rayed it to make sure that it was done properly. He then insisted that Mrs. Pardue see a doctor at the Piedmont Orthopaedic Clinic here in Greenville before she left the next morning for Rock Hill.

It might be pointed out that nurses and doctors alike at the hospital asked Mrs. Pardue whether or not she had any preference in terms of local physicians. In each instance, she replied that she did not.

Following the bone being set and the re-x-raying of it, Judge Hemphill's driver and I took her to the Poinsett Hotel where I delivered her to her husband.

The following morning at approximately 9:00 o'clock, I called her at the hotel to make sure that she understood

Miss Helen Childers
December 5, 1974
Page two

that she was to see a physician on a follow-up. The attending physician had emphasized that this was very important since Mrs. Pardue was a 66 year old woman and could conceivably develop cardiovascular difficulties in the first 24 hours. Mrs. Pardue told me over the phone that she and her husband, who had had two heart attacks previously, were making arrangements to get to the doctor and from there to their home in Rock Hill.

I assured her that the medical expenses involved would be taken care of and instructed her to submit bills from this injury to the United States Marshals Service, Greenville, South Carolina.

Brian M. Murphy

Brian M. Murphy
U. S. Probation Officer

BMM/a

cc: Mr. William C. Nau
Chief U. S. Probation Officer
Columbia, South Carolina

*Invoers - Ilay
 vs Federal
 employees*

19
 January 8, 1970

Mrs. Helen G. Bell
 6511 West 90th Street
 Los Angeles, California 90045

Dear Mrs. Bell:

This Office has received from the Bureau of Employees Compensation a letter, a copy of which is enclosed, concerning your claim for compensation. You will note that the last paragraph of Mr. Doyle's letter states that it is not a final decision, but you have the right to file your claim, together with supporting evidence for formal consideration. For your convenience, I enclose a copy of the forms necessary.

Inasmuch as your injury was sustained in the United States Courthouse in Los Angeles, California, if you believe that the fall may have been occasioned by the negligence of any Federal Employee, you may submit an administrative claim under the Federal Tort Claims Act. I enclose the necessary forms which should be submitted to the General Services Administration.

Sincerely yours,

Carl H. Imlay
 General Counsel

Enclosures

U. S. DEPARTMENT OF LABOR

WAGE AND LABOR STANDARDS
ADMINISTRATION

BUREAU OF EMPLOYEES' COMPENSATION

WASHINGTON, D.C. 20211

January 16, 1970

FILE NO. LF-214077

RE: (Mrs.) Helen G. Bell

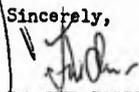
Mrs. Diane Cole
General Attorney
Administrative Office of the
United States Courts
Supreme Court Building
Washington, D. C. 20544

Dear Mrs. Cole:

In accordance with your request, I am enclosing three copies each of Forms CA-4 and CA-4a.

If Mrs. Bell intends to pursue her claim, she should complete and submit one copy of each of the forms to this office. She may retain a copy for her records and you may keep a copy for yourself.

Sincerely,



EMANUEL FRIEDMAN
Acting Chief
Division of Claims

6 Enclosures

U.S. DEPARTMENT OF LABOR

WAGE AND LABOR STANDARDS
ADMINISTRATION

BUREAU OF EMPLOYEES' COMPENSATION

WASHINGTON, D.C. 20211

December 17, 1969

FILE NO. LF-214077

Mr. Edward V. Garabedian
Assistant Chief of Business Administration
Administrative Office of the
United States Courts
Supreme Court Building
Washington, D.C. 20544

Dear Mr. Garabedian:

I am writing in reply to your recent undated letter concerning Mrs. Helen G. Bull who sustained an injury on April 24, 1967, while serving as a juror for the United States District Court in Los Angeles.

Prior to about 1960 the Bureau did approve several claims of persons who were injured while serving as jurors; however that approval was later rescinded. A former Director of the Bureau, after thoroughly reviewing the subject and obtaining legal counsel, determined that a juror serving in a Federal court is not a civil employee of the United States within the meaning of Section 8101(1)(B) of Title 5 of the United States Code.

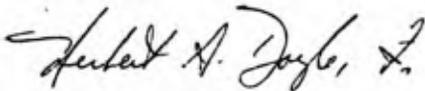
In reaching his decision the former Director stated that jurors are selected for jury duty in the Federal courts and are summoned to serve pursuant to statute and their compensation was likewise fixed by statute. The Government does not negotiate with a citizen for his services as a juror, nor does the citizen apply to the Government for such preferment. It is not by virtue of a contract that a juror performs jury duty, but by virtue of the requirements of the law. A juror selected in the manner prescribed by law is not "hired" to perform services on behalf of the Government. He is selected to perform a service as part of his duties as a citizen. Jury duty is an obligation of each qualified citizen and does not stem from a contract of employment. Jurors are not subject to the direction and control of an employer and what a juror determines in matters submitted for his attention is not subject to control from any source whatever.

2.

Accordingly, Mrs. Bell is not entitled to compensation benefits from this Bureau because at the time of injury she was not an employee of the Government within the meaning of the Federal Employees' Compensation Act.

This is not a final decision in this case. Mrs. Bell may file claim for compensation on form CA-4 and submit any available evidence in support of the claim. If the claim is then formally rejected she will have the right to appeal the decision to the Employees' Compensation Appeals Board.

Sincerely,



HERBERT A. DOYLE, JR.
Assistant Director for
Federal Employees' Compensation

Mr. P. J. Donovan
Deputy Director
Bureau of Employees Compensation
United States Department of Labor
Room 1110
1726 M Street, N. W.
Washington, D. C. 20211

Dear Mr. Donovan:

Pursuant to our phone conversation, I have enclosed copies of correspondence relating to the claim by Mrs. Helen G. Bell who was injured in a fall on the third floor of the United States Courthouse at Los Angeles, California, while serving on a jury. You will note that Mrs. Bell files a claim on Form CA-1 which was denied by your San Francisco office. Mr. E. B. Anderson, in his letter of October 15, 1969, to Mrs. Bell, stated that jurors are not entitled to Federal Employees Compensation Benefits, because they are not employees of the Federal Government. This would appear to be in conflict with the position taken by your office in the past.

Included in the file are several precedent letters relating to injuries sustained by jurors. You will note in your letter of June 16, 1955, to Mr. Connell, the statement that "We have been informed by telephone by the Department of Labor that jurors are covered under the Federal Employees Compensation Act***." It would appear that a juror is entitled to compensation for work injuries based on the definition of an employee contained in Section 8101(1)(B) of Title 5 of the United States Code.

I shall appreciate your giving this matter your prompt attention in view of the time that has elapsed since Mrs. Bell filed her claim.

Sincerely yours,

Edward V. Garabedian
Assistant Chief of
Business Administration

Enclosures

- EVGarabedian:pjr 11-21-69
- Records
- Daybook
- Further Attention

OPTIONAL FORM NO. 10
 JULY 1973 EDITION
 GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : M. Patricia Csrroll

DATE: September 17, 1976

FROM : *CHE*
 Carl H. Imlay

SUBJECT: Claim for minor medical expenses incurred by juror.

I am forwarding to you two bills submitted by the United States District Court for the Northern District of Alabama for emergency medical treatment rendered to a petit juror who was involved in a minor accident in the courthouse while serving. It is my recommendation that these minor expenses be defrayed from our appropriation for "Fees of Jurors".

This is a situation in which prompt emergency treatment was necessary, not only for the safety of the juror, but also for the timely continuation of the trial upon which she was serving. This fact and the manner in which the injury was incurred persuade me that these expenses in the total amount of \$25 were inherent in the performance of jury duty so as to make it appropriate to pay them from the jury appropriation rather than requiring the juror to claim under either the Federal Employees Compensation Act or the Federal Tort Claims Act. I am also transmitting an explanatory letter from Clerk Vandegrift to Mr. Burchill of this office regarding the circumstances involved. If you need any further information, please do not hesitate to contact me.

Enclosures

PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL

Disapproved September 1962 • 4 Treasury Form 2000 10-1-11-52	U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT AND LOCATION Administrative Office of the United States Courts Supreme Court Building Washington, D. C. 20544	VOUCHER NO. SCHEDULE NO. PAID BY PAID BY Herle W. Rayman Disbursing Officer D. O. Symbol 5697
DATE VOUCHER PREPARED November 8, 1976		DATE INVOICED DISCOUNT TERMS PAYEE'S ACCOUNT NUMBER GOVERNMENT S/A NUMBER
CONTRACT NUMBER AND DATE REQUISITION NUMBER AND DATE		

PAYEE'S NAME AND ADDRESS

**Jefferson Clinic, P.A.
 Mercy Hospital
 1515 Sixth Avenue South
 Birmingham, Alabama 35233**

ISSUED FROM _____ TO _____ WEIGHT _____

NUMBER AND DATE OF ORDER	DATE OF DELIVERY OR SERVICE	ARTICLES OR SERVICES <small>(Enter description, unit number of contract or Federal supply schedule and other information deemed necessary)</small>	QUANTITY	UNIT PRICE		AMOUNT
				COST	PER	
	7/26/76	Emergency room treatment rendered to Mrs. Lois M. Glenn, resulting from an accidental fall incurred while serving as petit juror for the Northern District of Alabama.				\$ 10.00
TOTAL						\$ 10.00

(Continuation sheet(s) if necessary) (Payee must NOT use the space below)

PAYMENTS: APPROVED FOR _____ EXCHANGE RATE = \$1.00	DIFFERENCES _____
COMPLETE BY _____	\$ 10.00
PARTIAL BY _____	\$ 15.76
FINAL BY _____	_____
PROGRESS TITLE _____ Amount verified, correct for _____	_____
ADVANCE _____ (Signature or initials)	_____

I warrant to authority vested in me, I certify that this voucher is correct and proper for payment.
 (see attached for signature)

(Date) _____ (Authorized Certifying Officer) _____ (Title) _____

ACCOUNTING CLASSIFICATION

1060925 NO. OBLIGATION

CHECK NUMBER	ON TREASURES OF THE UNITED STATES	CHECK NUMBER	ON (Name of bank)
CASH	DATE	PAYEE'S	
\$			
(When stated in foreign currency, insert name of currency. The ability to certify and authority to approve are combined in one person, one signature only is necessary, other than the approving officer who will sign in the space provided, over his official title. If a voucher is prepared in the name of a company or corporation, the name of the person making the company's name, as well as the capacity in which he signs, must appear. For example: "John Doe Company, per J. Smith, Secretary" or "Treasurer", as the case may be.)			PER TITLE

Standard Form 1034 September 1973 4 Treasury Form 2000 5010-108		PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL				VOUCHER NO.	
U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT AND LOCATION Administrative Office of the United States Courts Supreme Court Building Washington, D. C. 20544				DATE VOUCHER PREPARED November 8, 1976		SCHEDULE NO.	
PAYER'S NAME AND ADDRESS The Cooper Green Hospital 1515 Sixth Avenue South Birmingham, Alabama 35233				CONTRACT NUMBER AND DATE		PAID BY - PAID BY Merle W. Rayman Disbursing Officer D. C. Symbol 5697	
				REQUESTION NUMBER AND DATE		DATE VOUCHER RECEIVED	
				DISCOUNT TERMS		PAYER'S ACCOUNT NUMBER	
				SHIPPED FROM		TO		WEIGHT		GOVERNMENT B/L NUMBER
NUMBER AND DATE OF ORDER	DATE OF DELIVERY OR SERVICE	ARTICLES OR SERVICES <i>(Give description, show number of contract or Federal supply schedule, and other information deemed necessary)</i>	QUAN- TITY	UNIT PRICE		AMOUNT (*)	
				COST	PER		
	7/26/76	Emergency room service rendered to Mrs. Lois M. Glenn, resulting from an accidental fall incurred while serving as petit juror for the Northern District of Alabama.				\$ 15.00	
(sub continuation sheets if necessary) (Payee must NOT use the space below)						TOTAL	\$ 15.00
PAYMENT:		APPROVED FOR		EXCHANGE RATE		DIFFERENCES	
<input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> PROGRESS <input type="checkbox"/> ADVANCE		= \$		= \$1.00			
BY:		TITLE		Amount verified, correct for		(Signature or initials)	
Pursuant to authority vested in me, I certify that this voucher is correct and proper for payment.							
(Name) <u>(see attached for signature)</u> (Title)							
ACCOUNTING CLASSIFICATION							
1060925 NO OBLIGATION							
CHECK NUMBER		ON TREASURER OF THE UNITED STATES		CHECK NUMBER		ON (Name of bank)	
CASH		DATE		PAYEE'S			
\$							
* When stated in foreign currency, insert name of currency. * If the obligee, or creditor, and authority, or approve are combined in one person, one signature only is necessary, when the approving officer will sign in the space provided, over his official title. * When a voucher is received in the name of a company or corporation, the name of the person signing the company or corporate name, as well as the capacity in which he signs, must appear. For example: John Doe Company, by John Smith, Secretary. * The law may be						PER TITLE	

UNITED STATES DISTRICT COURT

OFFICE OF THE CLERK
NORTHERN DISTRICT OF ALABAMAROOM 201
FEDERAL COURT HOUSE
BIRMINGHAM, ALABAMA 35203

September 7, 1976

Mr. William R. Burchill
General Attorney
Administrative Office of the
United States Courts
Supreme Court Building
Washington, D. C. 20544

Dear Mr. Burchill:

On July 26, 1976, I had a telephone conversation with you regarding the injury of a petit juror in our court. You instructed me to forward the bills for the hospital examination and treatment to you upon receipt of same along with a brief explanation of the incident. We are now in receipt of the statements from Jefferson Clinic and The Cooper Green Hospital in the total amount of \$25.00, and the same are herewith enclosed.

Mrs. Lois M. Glenn was a petit juror serving in our court duly summoned. She was sitting on a case in Judge J. Foy Guin's court at the time of the accident. Upon being recessed for lunch, Mrs. Glenn stepped from the jury box, apparently, thinking the seat was on the same level with the floor, there being no rail in front of the jury. When she stood up and stepped forward, there was a six inch step-down and she lost her balance and fell forward hitting her head against one of the counsel tables. She was taken to the Cooper Green Hospital for examination by one of our deputy marshals. Fortunately, her injury was not serious, and she was released on the same date.

You indicated in our conversation that the charges for the services rendered by the hospital and doctor would be paid out of the juror appropriations since no provisions are available for the payment of charges out of any other fund.

Your prompt attention to this matter will be appreciated, and if you need any further information, please advise.

Very truly yours,



James E. Vandegrift
Clerk

JEV:es

Enclosures (2)

STATEMENT

JEFFERSON CLINIC, P.A. MERCY HOSPITAL 1515 Sixth Avenue South Birmingham, Alabama 35233	80415 <small>ACCOUNT NO.</small>	07 31 76 <small>DATE</small>	.933-1820 <small>OFFICE PHONE</small>
CLERK OF U.S. DISTRICT COURT FEDERAL BUILDING 1800 5th AVE NO BIRMINGHAM ALA 35203	JEFFERSON CLINIC, P.A. MERCY HOSPITAL 1515 Sixth Avenue South Birmingham, Alabama 35233		
LOIS MAE GLENN (PATIENT)	AMOUNT RECEIVED 		

PLEASE RETURN THIS PORTION OF STATEMENT WITH YOUR PAYMENT

DATE	PHYSICIAN	PROCEDURE	COMPLAINT	AMOUNT
07 26 76	ROBERTSON	EMERGENCY ROOM TREATMENT	910.0	10.00
07 31 76	JEFFERSON CLINIC, P.A.			10.00
<small>DATE</small>	<small>NAME</small>			<small>PAY THE AMOUNT</small>

THESE CHARGES REPRESENT THE PHYSICIAN'S FEE FOR SERVICES PERFORMED AT MERCY HOSPITAL.
YOU MAY RECEIVE A SEPARATE BILL FROM THE HOSPITAL.

1517 1/11 1976 ROOM
 00000000, 00000000 000000

00000000 000000

LOIS M. GLENN
 1000 518 3000
 0000 000 3000

07/25/76 07/25/76
 00000000 00000000

REGULAR

07/01/76 PAGE 1

DATE	GLENN LOIS MAE 00	AGE 63	PHY	
				DATE OF SERVICE 07/25/76
7/26	237	0000-1	EMERGENCY ROOM	10
			EMERGENCY ROOM	10
			BALANCE BILL	10
				ACCA TOTAL 000

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTSSUPREME COURT BUILDING
WASHINGTON, D. C. 20544ROWLAND F. KIRKS
DIRECTORWILLIAM E. FOLEY
DEPUTY DIRECTORCARL H. IMLAY
GENERAL COUNSEL

September 17, 1976

Mr. James E. Vandegrift
Clerk
United States District Court
Federal Courthouse, Room 104
Birmingham, Alabama 35203

Dear Mr. Vandegrift:

This is in response to your letter of September 7 transmitting bills for the emergency medical treatment of Mrs. Lois M. Glenn, who was serving as a juror in your court at the time these expenses were incurred. In accordance with our telephone conversation I have transmitted these bills in the total amount of \$25 to our Fiscal Operations Branch, Division of Financial Management, with the recommendation that they be paid.

As I explained to you over the telephone, my recommendation that these expenses be paid from the appropriation for "Fees of Jurors" is based upon the minor amount of these expenditures and the fact that they were incurred in a manner incidental to the performance of jury duty. Indeed, it appears that the emergency medical treatment accorded to Mrs. Glenn was essential and had to be performed immediately, both for her safety and also to permit a prompt continuation of the trial at which she was serving. As I am sure you will understand, any medical expenses incurred by a juror which are of substantial nature and involve treatment beyond immediate emergency care could not be paid from our appropriated funds but rather would have to be recovered, if at all, under the Federal Employees Compensation Act in the case of a government employee on jury duty, or by a claim under the Federal Tort Claims Act in the case of other jurors.

If you have any questions regarding this procedure or require any further information, please do not hesitate to contact me.

Sincerely,

William R. Burchill, Jr.
Associate General Counsel

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTORJOSEPH F. SPANIOL, JR.
DEPUTY DIRECTOR

JAN 31 1978

Mrs. Ethel L. Taylor
3011 Ave. N.
Galveston, Texas 77550

Dear Mrs. Taylor:

This is in reference to the claim for damages which you submitted to the Clerk of the United States District Court for the Southern District of Texas on October 31, 1977. I understand that this claim results from medical expenses incurred by you arising from a fall which you experienced while leaving the jury box during your service as a petit juror in that court pursuant to summons. It is my further information that you are not employed by the federal government and are not therefore covered by the Federal Employees Compensation Act. The Department of Labor has ruled that federal jurors do not by reason of their jury service come within the definition of "employees" at 5 U.S.C. §8101(1).

Your claim has been forwarded to this office, which has the function of administratively considering and determining claims under the Federal Tort Claims Act (28 U.S.C. §2672) which involve the federal judiciary. The Federal Tort Claims Act provides that the United States shall be liable for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant under the law of the place where the act or omission is alleged to have occurred.

The information which you have presented to us states that you slipped and fell while stepping down from the jury box as the jury was dismissed. You state further that as a result of this fall you incurred a broken cartilage in the left knee and subsequently underwent surgery to correct this condition. There is no allegation as to the existence within the courtroom of any physical cause for your fall.

Mrs. Ethel L. Taylor
Page 2

As indicated, the Federal Tort Claims Act permits recovery against the United States only upon a showing of negligence on the part of its employees. I do not find in your claim any such showing. On the basis of the information before me, I must therefore deny your claim for damages. I very much regret that you experienced this misfortune during your jury service, but I can act upon tort claims only under the terms set down by the Congress as to the circumstances under which the United States shall be liable in tort. I cannot find from the information which has been submitted that the incident which is the basis of your claim comes within the Federal Tort Claims Act and can support recovery against the United States.

Accordingly, your claim for damages is hereby denied. You have the right under 28 U.S.C. §§1346(b) and 2675(a) to pursue this claim by filing a civil action in a United States district court within six months following the mailing of this notification.

Sincerely,

William E. Foley
Director

cc: Mr. Jesse Clark
Chief Deputy Clerk

WRB:BOD
Foley
Daybooks
File - *Fed. Tort Claims*

WRB _____
CHI _____

UNITED STATES GOVERNMENT

memorandum

004715

DATE: May 17, 1978
 REPLY TO: [Signature]
 ATTN OF: Robert J. Pellicoro

SUBJECT: Your Request to Poll Clerks Re: the Incidence of Juror Injuries

TO: Carl H. Imlay

As a result of your telephone request of May 12, we contacted Wally Furstenau and asked that he set in motion his clerk representatives in each circuit to poll the district courts in their respective circuits with regard to the following:

- 1) Have you had any instances where jurors were injured while serving? and,
- 2) If so, were any claims filed against the Government?

The responses were as follows and they are listed by circuit.

FIRST CIRCUIT

Puerto Rico - Juror fell down flight of stairs, no claim was filed.

Massachusetts - Juror mugged, no claim was filed.

THIRD CIRCUIT

New Jersey - A juror had a tooth knocked out. A claim was submitted for full bridge work and was partially paid.

FOURTH CIRCUIT

Maryland - Three jurors injured. Claims paid by Judiciary in the amount of \$423.17. An additional \$89.50 was paid by the Marshal. There still exists a possibility of a claim re one of these jurors.

Virginia (W) - Two jurors injured. Judiciary paid claims of \$103.88.

South Carolina - Two jurors injured. The Judiciary paid expenses of \$235.80 and Medicare paid an additional \$163.20. A juror claim of \$2,000 was filed with the Administrative Office in 1976 on Form SF95.

FIFTH CIRCUIT

Georgia (N) - One juror who was a Federal employee was injured.

Alabama (N) - Four jurors were injured. Two jurors had heart attacks and the Judiciary paid ambulance costs.

Texas (S) - One juror was injured.

SEVENTH CIRCUIT

Illinois (N) - Two jurors were injured. No claim was filed.

EIGHTH CIRCUIT

Iowa (S) - One juror was injured. The Judiciary paid hospitalization costs.

Missouri (W) - One bankruptcy court witness was injured. A suit is pending.

NINTH CIRCUIT

California (C) - Four jurors were injured. One filed a claim and nothing happened.

California (S) - One juror was injured.

TENTH CIRCUIT

Kansas - One juror injured in auto accident enroute. No claim was filed.

Oklahoma (E) - One juror suffered a fall. Claim pending against GSA.

Oklahoma (W) - One juror fell in a restaurant. We paid hospitalization on an AO 19. She is suing the restaurant.

Wyoming - Illness of juror. We paid emergency room costs.

We have not yet heard from the Second and Sixth Circuits and although some of the information is sketchy, I hope that it is of some assistance. Let me know if you will want any more detailed information.

INJURIES BY JURIESJuly 25, 1977

Mildred Chaplin

Cause of InjuryGrand Juror who
was injured en
route to court
from work (Fall
from bus)DispositionFiled work
compensation
form & job
covered her
injuryJanuary 26, 1978

George Rommel

Injured en route
to court. (Fell
on ice near Subway
Station at Union
Station.Taken to VA
Hospital &
released.
(No forms
filed)March 20, 1978

Sarah Sward

Injured while hanging
coat in cloak room
in juror's lounge
(4214) Rack fell
from wall and injured
juror's shoulderExamined by
Doctor & had
bruised shoulder
(Sent a work
compensation
form although
non-governmental
we did not rec
completed for.

SEE ATTACHMENTS

V. Coverage of Jurors by Federal Employees Compensation Act

In accordance with the resolution of the Judicial Conference of the United States adopted at its March 6, and 7, 1975 meeting, I am transmitting to the Congress for its consideration title V of this draft bill, which would provide Federal Employee Compensation Act coverage, not only for federal employees serving as federal jurors, but as well for all other persons performing jury duty in federal courts in fulfillment of one of their obligations of citizenship.

Although coverage for federal employees who are serving as federal jurors was provided in the Act of September 7, 1974, Public Law No. 93-416, 88 Stat. 1143, the extension of such benefits to private citizens who are injured while serving as federal jurors was not provided in that legislation. Nevertheless, Senate Report No. 93-1081 (to accompany H.R. 13871) evidenced agreement at that time with a similar resolution of the Judicial Conference adopted in March, 1974.

Serious problems can arise when federal jurors who do not happen to be employed by the United States Government are injured or disabled while in the performance of their jury service. On several occasions prior to and since the enactment of Pub. L. No. 93-416, the U. S. Department of Labor has rejected federal jurors' claims for injury compensation on the basis that jurors were not defined as "employees" of the federal government within the meaning of 5 U.S.C. §8101(1). Since the enactment of Pub. L. No. 93-416, nothing has happened to indicate a change in this position relating to persons, not federally employed, who are serving as jurors in federal courts. The purpose of this portion of the bill is to provide remedial legislation to specify that compensation benefits shall apply to all persons serving as federal jurors.

Strong policy reasons exist for bringing all federal jurors within the coverage of the Federal Employees Compensation Act. Jurors provide a valuable service to the government. While in actual service as a petit or grand juror, the citizen-juror should rationally be accorded the benefit of protection in case of a "job-related" mishap. What begins as the fulfillment of a high duty of citizenship through public service to the government could be turned into an economic catastrophe for the juror in the event of an accident or injury while serving. Presently a person injured while serving as a juror cannot recover compensation unless he can bring his case under the Federal Tort Claims Act by proving negligence in the government agent, a difficult burden. Moreover, this inequity is compounded by the fact that a federal employee is now covered by these compensation acts. It would also contribute to the juror's peace of mind, especially in a protracted case or in a situation where he must be transported to make a site inspection, to know that this benefit is available. This aspect of the proposal might be especially reassuring to the head of a family or to the timorous juror sitting in a sensational criminal case. While jurors are very seldom injured, we do have a record of several such cases.

The enclosed draft bill would add a new section, section 8142a, to chapter 81 of title 5. Proposed section 8142a(a) and (b) define the protected juror to be one who is in actual attendance upon court and specify when payments can commence. Proposed section 8142a(c)(1) defines the rate of pay that a federal juror is deemed to be receiving for purposes of the compensation scheme provided for in chapter 81. This subsection also takes into account and specifies the compensation of the federal employee who is receiving his normal rate of pay while on court leave pursuant to 5 U.S.C. §§537 and 6322 to be his actual rate of pay. Section 8142a(c)(2) limits and defines when the juror is deemed to be in the performance of duty, assuring that claims for compensation may not be granted except for duty-related mishaps. Federal jurors would not be made actual employees of the federal government. Nor should this amendment be construed to characterize jurors as employees for any other purpose than the compensation for injuries resulting from jury service. Section 8116(c) would make recovery under the Federal Employees' Compensation Act the exclusive remedy of the juror against the United States for such injuries.

It is the view of the Judicial Conference that the adoption of the various proposals contained in this draft bill would expedite the operation of the jury system and provide for a desirable certainty in its administration, as well as improving the conditions of service of the individual juror.

(c)

June 6, 1978

Honorable Robert Kastenmeier
Chairman, Subcommittee on Courts, Civil Liberties
and the Administration of Justice
House Judiciary Committee
2137 Rayburn House Office Building
Washington, D. C. 20515

Dear Mr. Kastenmeier:

I am writing in reference to H.R. 3327, a bill to amend title 28 to permit the resignation of judges of the United States with the right to continue to receive pay at age 65 upon the completion of 15 years of judicial service. At the hearing on this and other bills before your subcommittee on May 4, 1978, it was requested that we supply additional information as to the prospective costs which would result from the enactment of H.R. 3327.

After due consideration of the effect of this bill, it is the opinion of the Administrative Office that no additional cost would accrue to the Government as a result of its enactment. Section 371(b) of title 28, United States Code, presently provides that any justice or judge of the United States who has been appointed to hold office during good behavior may retain his office but retire from regular active service (commonly known as the taking of "senior judge" status) after attaining the age of 70 and completing at least ten years of judicial service, or after attaining the age of 65 and completing at least 15 years of such service. Section 371(a) of title 28 further accords to such a justice or judge, who resigns his office after attaining the age of 70 and serving at least ten years, the continued right to receive for the remainder of his lifetime the judicial salary which he was receiving at the time of his resignation.

The sole purpose and effect of H.R. 3327 is to reconcile the age and service requirements of section 371(a) with those of section 371(b), thus providing that a judge may resign with the continued right to salary, as well as retain his office but retire from regular active service, upon attaining the age of 65 years and completing at least 15 years of judicial

service. Thus a judge in this age and service category, who would now have available only the option of retiring to senior status and continuing to hold the judicial office, thus precluding him from resuming the private practice of law or assuming any other public or private employment, would under this bill acquire the additional alternative of resigning his office with continued entitlement to salary, thereby freeing him to pursue other public service or private employment opportunities. In the case of both the resigned judge and the retired judge, a vacancy on his court would be created, requiring the appointment by the President of a successor.

To determine the cost consequences of H.R. 3327, it is necessary to compare the expenditure of the Government at present for a retired judge and for a judge who has resigned on salary under 28 U.S.C. §371. The resigned judge no longer holds the office and thus has no further entitlement to Government benefits except to receive for the duration of his lifetime the judicial salary which he has been receiving at the time of his resignation, as provided by section 371(a). 1/ The continued right to such salary payments has been described as a consideration for the relinquishment by the judge of his office. Johnson v. United States, 79 F. Supp. 208, 210 (Ct. Cl. 1948). It is important to recognize, however, that this continued right applies only to the judicial salary which was being paid at the time of the resignation, and it does not entitle the resigned judge to any increases in such salary which may subsequently take place.

The judge who retires by assuming senior status under section 371(b) is in a very different situation from the resigned judge because he continues to hold the office. See Booth v. United States, 291 U.S. 339 (1934). Thus he is fully entitled to continue to receive the salary of that office, including any increases in salary which become payable after the date of his retirement to the judges of the category of federal courts on which he has served. Because the retired judge retains his

1/ Certain resigned judges may also retain the right to some continued coverage under the Government Employees Life Insurance and Health Insurance Programs. These consequences are outlined in the attached memorandum as to the comparative benefits available to resigned and retired judges.

judicial office, he is eligible to continue to perform judicial duties upon designation and assignment by the appropriate authority as provided at 28 U.S.C. §294. When a retired judge continues to perform a full or substantial volume of judicial work in conformity with such a designation and assignment, the Judicial Conference has authorized that he may retain chambers in a federal courthouse and may continue to employ a staff to the extent necessary in the disposition of his judicial business. Our records indicate that there are presently on our rolls 179 retired federal judges, of whom 164 continue to perform sufficient judicial duties to entitle them to retain at least a partial staff. Thus it appears that, in the case of the great majority of the senior judges presently in our system, the expenditures of the Government on their behalf are identical or substantially as great as those on behalf of active judges.

It should be emphasized that the resignation and the retirement of a judge of the United States, while having different personal consequences in many respects for the individuals involved, have one important factor in common. Both of these personnel actions lead to the creation of a judicial vacancy which shall be filled by the appointment of a replacement judge. In the case of a judge who resigns on salary, his office becomes vacant in the same manner as that of any other judge who resigns. In respect to a judge who retires from regular active service, section 371(b) provides, "The President shall appoint, by and with the advice and consent of the Senate, a successor to a justice or judge who retires." Thus the Government is required to assume the additional costs associated with a replacement judge in the case of a federal judge who either retires or resigns on salary.

The only difference in the cost consequences of these two situations is in respect to the carryover costs which must be assumed by the Government to discharge its continuing obligations to the judge who has created the vacancy by either resigning or retiring. In this regard I hope to have demonstrated that such costs are lower in the situation of a judge who has resigned, since the obligation of the Government is limited in this instance to the continued payment to him for life of the salary which it was paying him at the time of his resignation. In the case of a retired judge the corresponding cost will necessarily be higher in future years by virtue of the fact that his retention of the office entitles him to continue to receive the salary of that office, as augmented by all future salary increases which

may be awarded to the Federal Judiciary. 2/ This increased salary cost associated with a retired judge over a resigned judge will be avoided only if no increases in judicial salaries are made between the date of the judge's retirement and the time of his death.

In comparing the cost consequences of these two types of judicial replacement, it must also be considered that senior judges who have retired from regular active service may continue to perform judicial duties, whereas resigned judges no longer hold the office and obviously may not do so. This continued service by retired judges has been of great benefit to the Judiciary in the face of sharply rising caseloads, but it also results in costs to the Government in the form of continued expense for space, staff, and support services for the senior judge. A senior judge who is still handling a virtually full caseload, as most of them are, is entitled to the full complement of staff support available to an active judge, which consists of a secretary and two law clerks. 3/ By way of illustration as to the expense to the Government of these staff salaries, there is established in our current appropriations act an aggregate staff salary limitation of \$67,119 for circuit judges and \$40,760 for district judges. 4/

-
- 2/ For example, a United States district judge who assumed senior status in 1976 would then have been receiving \$42,500 per year in salary. Beginning in March, 1977, however, he would have become entitled to the higher salary of \$54,500 which became payable to district judges at that time upon the recommendation of the President based upon a quadrennial review by the Commission on Executive, Legislative, and Judicial Salaries. Likewise a senior circuit judge who retired in 1976 at the salary of \$44,600 would now be receiving \$57,500, and a retired Associate Justice of the U. S. Supreme Court whose salary in 1976 was \$66,000 would now be paid \$72,000.
- 3/ A district judge also receives the services of a courtroom deputy clerk and a court reporter. While senior judges are not entitled to be assigned their own court reporters, reportorial services must nevertheless be provided for hearings and trial proceedings conducted by them.
- 4/ See the Judiciary Appropriation Act, 1978, Public Law No. 95-86, title IV, 91 Stat. 435.

We believe it may be concluded from the foregoing data that the enactment of H.R. 3327 might actually result in a cost savings to the Government. This conclusion derives from the fact that the bill may encourage some judges who plan to retire from regular active service to resign instead, thus alleviating the need to pay them any salary increases subsequently granted to federal judges and saving the cost of providing staff, space, and support in the event that they were to perform continued judicial service in senior status. There must, of course, be weighed against this cost savings the loss of any judicial services which these judges might have performed had they assumed senior status and retained their offices instead of resigning. It should be understood in this regard, however, that there is no requirement or obligation upon senior judges to continue to undertake judicial assignments. It is provided at 28 U.S.C. §294 that they may be designated and assigned to perform only such judicial duties as they are "willing and able to undertake." A senior judge who has become so disillusioned with the judicial function that he would seriously wish to resign his office and assume a different position is unlikely to be sufficiently motivated to continue to perform judicial duties in the event that he were to retire to senior status instead of resigning, which at the present time would be the only alternative open to him until he had attained the age of 70 years. I might add that such an attitude is in sharp contrast to that exhibited by the overwhelming majority of our present senior judges, as indicated by the fact that 164 out of 179 judges in senior status are now performing sufficient judicial business to continue to be allowed a staff.

In summary, H.R. 3327 can be expected to result in a cost savings to the Government to the extent that its enactment may motivate some federal judges, who have attained the age of 65, served at least 15 years, and no longer desire to be judges, to resign their offices instead of retiring to senior judge status. The enactment of this bill could result in increased cost factors only to the extent that it might cause some few federal judges who have attained its minimum age and service requirements to resign from the bench and who, in the absence of the resignation option offered by this bill, would have remained active judges instead of exercising the option presently available to them to retire to senior status under 28 U.S.C. §371(b). The loss of the experience and acumen possessed by judges in this age group would be unfortunate, and their resignation would result in increased costs to the Government in continuing to pay them the salary which they were receiving at their resignations while providing full salary and staff resources for their successors on the bench.

It seems obvious, nevertheless, that this effect will rarely if ever be experienced as a result of the enactment of H.R. 3327. Judges who have served 15 years in that capacity and attained the age of 65 will normally be sufficiently satisfied with their judicial office that they will not be tempted to resign and embark upon a new career. Indeed resignations by federal judges at any age have proved over the years to be a fairly unusual phenomenon. The records of this office indicate that in the past ten years only 21 federal judges have resigned, and only four of these judges have had the age and service qualifications presently imposed by 28 U.S.C. §371(a) to give them the right to the continued payment of their salary. This group of judges who have resigned has consisted predominantly of younger men who were at the stage of life to be confronted with the financial responsibility of raising and educating children. This will not normally be true of judges who have attained the age and service qualifications imposed by H.R. 3327 for resignation on salary. 5/

Thus any increased cost factor attributable to the effect of H.R. 3327 in causing judges to resign instead of retaining active judicial status is likely to be so rarely experienced as to be scarcely worthy of further consideration. In the very rare situation in which a judge in this age and service category would wish to resign, he is much more likely to be motivated by a desire to render continued public service in a different capacity than by the seeking of private profit. There have been several recent examples of federal judges who have left the bench to render meaningful service elsewhere in Government, including Attorney General Griffin Bell, Solicitor General Wade McCree, Director William Webster of the Federal Bureau of Investigation, and former Deputy Attorney General Harold Tyler. When a judge is deemed best qualified by the President or other appointing authorities to fill a certain position elsewhere in Government, it may be in the best interest of the public to offer him a means to rid himself of

5/ The number of sitting federal judges who would be affected by this bill is not large in proportion to the Judiciary as a whole. The records of our Division of Personnel indicate that only 44 out of 516 active judges have now attained the age of 65 and completed 15 years of judicial service. Only 32 of these judges are between the ages of 65 and 70.

the judicial office at the age of 65 with continued entitlement to the salary of that office for life, in order that he may be free to accept other opportunities for public service. This would be an additional salutary effect of H.R. 3327.

I hope that the foregoing observations may be of assistance to your committee in its consideration of this bill. If we can be of further assistance, we shall of course be pleased to do so.

Sincerely,

Carl L. Imlay
General Counsel

Enclosure

bcc: W. Weller

WRB:BOD

FOLEY

✓ DAYBOOKS

FILE: *Judge, William L. Kinross*

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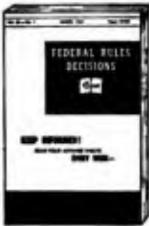
APPENDIX 3—ADDITIONAL MATERIALS ON THE
AMERICAN JURY SYSTEM

(a)

**FEDERAL JURY SELECTION AND SERVICE
BEFORE AND AFTER 1968**

by

HONORABLE ARTHUR J. STANLEY, JR.



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66 Federal Rules Decisions

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FEDERAL JURY SELECTION AND SERVICE BEFORE AND AFTER 1968

by

THE HONORABLE ARTHUR J. STANLEY, JR.*

The framers of our Constitution were thoroughly steeped in the traditions of the common law of England. They believed with Blackstone that "a right of trial by jury, or the country, is a trial by the peers of every Englishman, and is the grand bulwark of his liberties, and is secured to him by the Great Charter." They subscribed to the ideal expressed by Lord Justice Devlin, who stated at a later date that, "• • • trial by jury is more than an instrument of justice and more than one wheel of the Constitution: It is the lamp that shows that freedom lives."¹ Fully understanding that trial by jury was described by Blackstone only as a privilege, they transformed that privilege into a right by the adoption of the Bill of Rights. By the Sixth Amendment, the right to trial by an impartial jury was guaranteed to all defendants in criminal cases, and the right to trial by jury in suits at common law, where the value in controversy exceeds twenty dollars, was preserved by the Seventh Amendment.

The jury known to the Founders was the common law jury, described by the Supreme Court as "• • • a body of men composed of the peers or equals of the person whose rights it is selected or summoned to determine; that is, of his neighbors, fellows, associates, persons having the same legal status in society as that which he holds."²

For almost 170 years, and until the establishment by Congress of independent federal juror qualifications in 1957³ competency to serve on federal juries was determined by the statutory standards set up by the state in which the federal court was located.

* Senior Judge, United States District Court, District of Kansas; Chairman, Committee on Operation of the Jury System of the Judicial Conference of the United States.

1. Devlin, *Trial by Jury*, p. 164 (1956).

2. *Strauder v. West Virginia*, 100 U. S. 303, 308, 25 L.Ed. 664 (1879).

3. P.L. 85-515, 71 Stat. 638.

The standards differed widely from state to state. For example, in some states men and women served without distinction, in some women were completely disqualified from serving on state juries, while in others women called for jury service were required to be excused upon request.

Within the limits fixed by state law before the effective date of the 1957 statute, and after that date circumscribed only by the standards prescribed by that statute, the federal courts were free to adopt their own systems for the selection of prospective jurors. Some resorted to city directories or telephone books. Some utilized registration lists or lists of voters. In most of the districts the key man system was employed. In answers to questionnaires from the Committee on the Operation of the Jury System the reports of the Clerks of the District Courts revealed that in 1958, in procuring the names of prospective jurors, 21 districts used lists of voters in whole or in part, and 38 relied entirely or partially on the key man system.⁴ Others used telephone directories, local tax rolls, or state jury lists. Some enlisted the services of club officers, bankers, United States Commissioners, or acquaintances. One called upon "the president of the PTA," and one utilized "Negro college lists."⁵ Almost half of the clerks reported the acceptance of volunteers or unsolicited recommendations of the names of prospective jurors.

Queried, as to whether race or national origin was a factor in the selection process, the clerks of 68 districts answered with an unqualified "No." Four clerks answered, "No, except to insure representation." Asked whether any effort was made to secure adequate representation of various economic groups, 26 clerks did not answer, 14 said no effort was made, and 45 stated that this was left to their sources—the key men, club officers, etc.

These practices prevailed despite the fact that as early as 1946 the Supreme Court had said: " * * * The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury

4. The practice of asking individuals, known as "key men," to suggest the names of persons who were likely to be good jurors, that is, in the language of the Knox Report, possessed of a "high degree of intelligence, morality, integrity and common sense."

5. Summaries of Replies to Questionnaires Addressed to Clerks of the United States District Courts by the Committee on the Operation of the Jury System, compiled by the Institute of Judicial Administration.

drawn from a cross section of the community." ⁶ The Court, exercising its supervisory powers over the administration of justice in the federal courts, reversed the affirmation of a judgment based upon the verdict of a jury drawn from a panel admittedly not representative of the community. Mr. Justice Frankfurter, dissenting because no constitutional issue was at stake and because he believed that corrective measures, if required, should be taken by the legislative rather than the judicial branch, said:

" * * * [T]he jury system, that indispensable adjunct of the federal courts, calls for review to meet modern conditions. The object is to devise a system that is fairly representative of our variegated population, exacts the obligation of citizenship to share in the administration of justice without operating too harshly upon any section of the community, and is duly regardful of the public interest in matters outside the jury system. This means that the many factors entering into the manner of selection, with appropriate qualifications and exemptions, the length of service and the basis of compensation must be properly balanced. These are essentially problems in administration calling for appropriate standards flexibly adjusted." ⁷

I am not prepared to say that under the selection systems employed before 1968 the 12 men and women eventually drawn to sit in the jury box in our federal courts were not faithful to their oaths or as fair to the litigants as those selected today under the provisions of the 1968 Act. Nor do I believe that there were many instances, if any, where the judges, the clerks, the jury commissioners, or those from whom they sought assistance, intentionally brought into the courtroom for voir dire examination prospective jurors who were prejudiced and biased and who would violate their oaths as jurors.

I am sure that most would agree, however, that it cannot be demonstrated that the venire produced by the key man system, or by consulting with bankers or with the presidents of Parent-Teacher Associations, actually represented a fair cross section of the community. Regardless of the sources from which the names were obtained, those charged with the duty of preparing the final list of veniremen were compelled to apply subjective tests in deciding who should be retained and who rejected. Such action was encouraged, if not required, by the philosophy ex-

6. *Thiel v. Southern Pacific Co.*, 328 U.S. 217, 66 S.Ct. 984, 90 L.Ed. 1181 (1946).

7. Dissenting opinion of Justice Frankfurter, 328 U.S. at p. 232, 66 S.Ct. at p. 991.

pressed in a report of the Committee on the Operation of the Jury System approved by the Judicial Conference of the United States at its September, 1960, meeting. In that report, in commenting on the 1957 amendment to 28 U.S.C.A. § 1861 establishing independent qualifications of federal jurors, the Committee said:

“ * * * Large groups of intelligent, qualified citizens, including women and professional people, previously unavailable by reason of disqualification or exemption under state law have been rendered eligible for federal jury service.

“Thus substantial steps have been taken toward the ideal stated in the earlier report:

“It is the sense of the Committee that jurors to serve in the district courts of the United States should be drawn from every economic and social group of the community without regard to race, color, or politics, and that *those chosen to serve as jurors should possess as high a degree of intelligence, morality, integrity, and common sense, as can be found by the persons charged with the duty of making the selection.*”⁸ (Emphasis supplied)

The “earlier report” is that of the Knox Committee presented to the Judicial Conference in 1943. The “persons charged with the duty of making the selection” were the clerk or his deputy and a jury commissioner appointed by the court who was required to be “a well known member of the principal political party in the district, opposing that to which the clerk, or his deputy then acting, may belong.” It was the obligation of these two to keep the jury box filled to a minimum of 300 names by placing the names of qualified persons alternately in the box, “without reference to party affiliations,” until the box contained the required number of names.⁹ It should be noted that then, as now, 18 U.S.C.A. § 243 provided that:

“No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any State on account of race, color, or previous condition of servitude; and whoever, being an officer or other person charged with any duty in the selection or summoning of jurors excludes or fails to summon any citizen for such cause, shall be fined not more than \$5000,”

8. *The Jury System in the Federal Courts*, 26 F.R.D. 409, 425. 9. 39 Stat. 873.

JURY SELECTION AND SERVICE

379

Cite as 66 F.R.D. 375

and that 28 U.S.C.A. § 1863(c), as it then read, proscribed the exclusion of any citizen from service on a federal grand or petit jury on account of race or color.

The "qualified persons" whose names were placed in the jury box by the clerk and the jury commissioner were those whose names had been obtained from the sources utilized and who met the qualifications set forth in the 1957 Act; that is: were citizens of the United States at least 21 years of age; resident in the district for one year; had not been convicted of felony; were able to write, speak and understand the English language; and were laboring under no disabling mental or physical infirmity.¹⁰ The statutory scheme made women eligible for service on federal juries and prohibited disqualification of members of racial and ethnic minorities, but failed to provide for adequate representation of the various economic and social segments of society. In the 1960 Report of the Committee on the Operation of the Jury System it was recommended that care be taken to avoid the use of sources of names which were too limited in scope, thus avoiding the practice held bad in the *Thiel* case.

The Committee, at least until 1960, recommended that those selected for jury service "should possess as high a degree of intelligence, morality, integrity, and common sense as possible." The recommendations were approved by the Judicial Conference at its September, 1960, session.¹¹ Citing Supreme Court decisions dealing with racial discrimination in the selection of jurors,¹² the exclusion from the jury list of daily wage workers,¹³ and women,¹⁴ the 1960 Committee expressed its belief that "the choice of means by which all sections of society are to be reached * * * is one which must be entrusted to the sound discretion of the court of each district." It urged that the use of state jury lists as a source of names be discontinued because in some states black citizens were inadequately represented on the lists. It recommended that the key man system be supplemented by the use of questionnaires to each person whose name was suggested so that the jury commission might be satisfied that the nominee was qualified to act as a juror. In the 1960 report the Commit-

10. P.L. 85-315, 71 Stat. 638.

ton v. Mississippi, 332 U.S. 463, 68 S.Ct. 184, 92 L.Ed. 76 (1947).

11. *The Jury System in the Federal Courts, supra*, at p. 418.

13. *Thiel v. Southern Pacific Co., supra*.

12. *Avery v. Georgia*, 345 U.S. 559, 73 S.Ct. 891, 97 L.Ed. 1244 (1953); *Cassell v. Texas*, 339 U.S. 282, 70 S.Ct. 629, 94 L.Ed. 839 (1950); *Pat-*

14. *Ballard v. United States*, 329 U.S. 187, 67 S.Ct. 261, 91 L.Ed. 181 (1946).

tee, heeding the *Thiel* decision, emphasized that the lists of prospective jurors must include representatives of all social and economic groups in the community and that there could be no discrimination because of race, sex or political affiliation.

The key man system was mortally wounded in 1966, and, in the language of the old common law murder indictment, "languished, and languishing, died." The fatal wound was inflicted when the Court of Appeals for the Fifth Circuit reversed a conviction by a jury empaneled from an array in which Negroes were under-represented, even though the clerk and the jury commissioner did not specifically intend to exclude black citizens.¹⁵ The court also held that because the grand jury was similarly composed the indictment itself must be dismissed.

The Judicial Conference of the United States, by resolutions adopted at its September, 1966, meeting, endorsed "the principle of random selection of the jury venire in a manner that would produce a fair cross section of the community in the district or division in which court is held," and directed the Director of the Administrative Office to communicate with the chief judge of each district court then using the key man system to ascertain whether, in lieu thereof, there had been adopted a system of random selection of jurors that would produce a fair cross section of the community. From the wounds inflicted by the Fifth Circuit and by the Conference, the key man system expired with the enactment of the Jury Selection and Service Act of 1968.¹⁶ There perished with that system the notion that federal jurors must "possess as high a degree of intelligence, morality, integrity, and common sense as can be found."¹⁷ The elimination of this concept was deliberate. The Honorable Irving R. Kaufman, now Chief Judge of the United States Court of Appeals for the Second Circuit, then Chairman of the Committee on the Operation of the Jury System, testified before the Senate Subcommittee on Improvements in Judicial Machinery, that the bill which is now the Jury Selection and Service Act was designed to abolish the so-called blue ribbon jury, chosen for special "intelligence" or "common sense" qualifications. He expressed the consensus of his Committee that

" * * * the objective qualifications required in our bill are satisfactory to obtain jurors with sufficient intelligence to understand the usual trial and with adequate judgment

15. *Rabinowitz v. United States*, 366 F.2d 84 (5th Cir. 1966).

17. *The Jury System in the Federal Courts*, *supra*, at p. 418.

16. 28 U.S.C.A. §§ 1861-1871.

to render an appropriate verdict; second, long experience with subjective requirements such as 'intelligence' and 'common sense' has demonstrated beyond any doubt that these vague terms provide a fertile ground for discrimination and arbitrariness, even when the jury officials act in good faith.

"Moreover, the moment standards which permit subjective judgments are allowed, we create diversity and confusion instead of uniformity and clarity. This is too great a price to pay for the early elimination of the unsuited juror who will occasionally slip by (and I might add occasionally gets to serve as a juror even under present systems of screening)." ¹⁸

The stated purpose of the Act is twofold: "To assure all litigants that potential jurors will be selected at random from a representative cross section of the community and that all qualified citizens will have the opportunity to be considered for jury service." ¹⁹ The first purpose is achieved by the elimination of the key man system and by limiting the sources of the names of potential jurors to the lists of registered voters or the lists of those actually voting, with selection at random from those lists.²⁰ The second purpose—assuring all qualified citizens the opportunity to be considered for jury service—is insured by the requirement that the registration lists or lists of actual voters (with supplemental lists only where necessary) be the sole source of names of potential jurors so that any citizen by simply registering to vote or by voting thereby acquires the right to be "considered for jury service." When, by random selection, he is considered, he may not be rejected because he fails, subjectively, to meet the requirements deemed essential by the judge, the clerk, or the jury commissioner.

Spurred by the decisions of the Supreme Court and urged by the Judicial Conference of the United States, the Congress by passage of the Act has prohibited the systematic exclusion of identifiable segments of the community from jury panels. The Act does not guarantee that a litigant may always expect that the jury which decides his fate or considers his claim will contain persons of his own religion or race or sex or social or economic group or political affiliation. What it does is to insure that the jury, grand or petit, which passes upon his rights will be fairly

18. "The Jury System in the Federal Courts," Works of the Committee on the Operation of the Jury System, 1966-1973, West Publishing Co. pamphlet, 1973, p. 50.

19. U.S.Cong. & Admin. News 1968, p. 1792.

20. 28 U.S.C.A. § 1863.

selected from a universe comprising a fair cross section of the citizenry of the community, including those with whom he identifies.

While the Act is not perfect and further revision may be required as conditions change, the draftsmen of the Act and the Congress have achieved the objective outlined by Mr. Justice Frankfurter in 1946 when he said, in speaking of the need for review of the jury system to meet modern conditions: "The object is to devise a system that is fairly representative of our variegated population, exacts the obligation of citizenship to share in the administration of justice without operating too harshly upon any section of the community, and is duly regardful of the public interest in matters outside the jury system."²¹

21. *Thiel v. Southern Pacific Co.*, *supra*, at p. 232 (Dissenting Opinion), 66 S.Ct. at p. 991.

(b)

**AMERICAN BAR ASSOCIATION COMMISSION ON
STANDARDS OF JUDICIAL ADMINISTRATION**

SUPPORTING STUDIES—3

***Management of the
Jury System***

Maureen Solomon, Court Management Consultant

**Report and Recommendations to the ABA
Commission on Standards of Judicial Administration**

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Management of the Jury System

INTRODUCTION

Management of the jury system comprehends every aspect of selecting jurors and using their services, from defining the sources of names for prospective jurors and devising accurate techniques for forecasting the number of jurors who will be needed, to providing for the comfort and convenience of the jurors during their term of service.

The selection of jurors and their utilization must be thought of and managed as a unit. The two processes are heavily interdependent and both involve considerations of policy as well as matters of day-to-day administration. For example, the number of jurors to summon to court for a given period (a juror selection procedure) is determined not only by the number expected to be needed at court (a function of utilization techniques) but also by the method used to obtain juror names and the court's excuse and exemption policies. Effective management requires that these procedures be integrated in the context of efficient administration.

This report presents recommendations for effective management of the jury system. They are based on the experience of the author and others who have worked extensively on selection and utilization of jurors throughout the United States. It also relies on the conclusions reached by experts at a seminar on juror selection and management sponsored by the American Bar Association Commission on Standards of Judicial Administration in June, 1973. Court administrators, judges, and experts in jury management participated in this two-day seminar. They are listed below.

This report is intended to encourage courts to pursue management improvements in the selection and use of jurors and to assist them in that pursuit.

ABA COMMISSION ON STANDARDS
OF JUDICIAL ADMINISTRATION
WORKSHOP ON JUROR SELECTION
AND UTILIZATION

Conducted by Maureen Solomon

June 10-12, 1973

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SUMMARY OF RECOMMENDATIONS TO THE COMMISSION

JUROR SELECTION

Regulation and Administration of Juror Selection

Juror Selection Statute and Regulations

Each state should have a single juror selection statute applicable to all courts, governing all aspects of juror selection for all classes of cases.

Within the framework of the jury statute, the court system should prescribe regulations for operation of the selection system. Each unit of the trial court may adopt such supplemental regulations as are necessary to implement the statute and regulations.

Administration of the Juror Selection System

The juror selection system is an integral part of overall court and case-flow management and as such should be managed by a full-time employee of the court.

Eligibility for Jury Service

Qualifications

The only conditions of qualification for service should relate to a minimum age, U.S. citizenship, residency in the jurisdiction, the ability to read and speak English, and exclusion of those who have not completed their sentence for conviction of a felony.

Exemptions

No citizen should be exempt from his obligation for jury service; the concept of exempting certain classes (occupational or other) of citizens should be abandoned. Necessary elimination of individuals should occur either through disqualification or excuse.

Selection Procedures

Sources of Names for Jury Service

Names for petit and grand jury service should be selected from multiple lists whose combination yields as broad a current census of the

citizenry of the jurisdiction as practical and which minimizes duplication of names to the extent possible.

Method of Selecting Names

The process of selecting names should follow a pre-determined methodology that neutralizes any possibility of systematic inclusion or exclusion of identifiable segments of the population or specific individuals.

Frequency of Drawing Names

The frequency of drawing names from the source list and any subsequent drawings that may be made for actual service, should be determined according to the administrative convenience of the court and the importance of obtaining up-to-date information about the prospective jurors.

Screening Prospective Jurors

Information relevant to a citizen's qualification and availability for grand or petit jury service should be solicited in a manner immune from subjective judgment by anyone associated with the juror selection system.

Excuses from Service

Excuses should be sparingly granted, on the grounds of extreme personal hardship or inconvenience, public necessity, or physical or mental incapacity to participate effectively in the trial process (verified by a doctor's certification).

Except for verifiably permanent physical or mental incapacity, all excuses should be temporary, to a date certain.

Specific grounds for excuse, within the limitations defined above, should be specified by court rule and administration of the rules should be delegated by the court to the manager of the jury system.

JUROR UTILIZATION

Responsibility for Efficient Use of Jurors

The judges of the court have responsibility to see that jurors at court are utilized efficiently, that the cost of operating the jury system is minimized, and that jury service is seen by the citizen as a worthwhile experience. These goals should be implemented through court rules and administrative policies governing juror utilization.

Further, each judge has responsibility for being personally flexible and willing to comply with the policies and rules established by the court even though these may not always suit personal preferences or idiosyncracies.

The Management Function

Direct management of juror utilization should be delegated to the court administrator or, if none, to the chief clerk. Day-to-day operational responsibility may in turn be delegated to a full-time member of the administrator's professional staff, preferably the same one responsible for the juror selection system.

A necessary condition for efficient juror use is effective communication about expected jury trial activity between court personnel (judges, courtroom clerks, prosecutors, assignment clerks) and the supervisor of the jury system.

The juror selection and juror utilization systems should be re-evaluated periodically.

Length of Jury Service

The period of jury service should be as short as practically possible, preferably no more than one week.

The Jury Pool System

To maximize efficient use of jurors and conserve judicial time in a multi-judge court, a jury pool from which jurors are sent to voir dire should be used.

Anticipating Requirements for Jurors

The goal of the court should be to minimize the number of excess, unused jurors at court each day.

Toward this end, the manager of the jury system should maintain the proper records to allow accurate prediction of the number of jurors which must be summoned to meet future requirements.

Adjustments should be made, day-to-day, in the number of jurors required to report to court based on information received in advance from court personnel about the expected trial schedule.

By court rule, the judges should agree that an occasional wait of from 15-30 minutes for a jury will be acceptable in order to improve juror utilization without impeding caseload.

Panel Size for Voir Dire

The size of the jury panel sent to the courtroom for voir dire should be set by court rule. The rule should specify differential panel size as between civil and criminal cases, twelve-member and less-than-twelve-member juries, and for exceptional cases likely to need more jurors for voir dire.

The size of the panels fixed by rule should be based on pertinent data collected expressly for this determination.

Reception of Jurors and Waiting Facilities

A court should provide suitable, pleasant facilities for jurors who are waiting to be sent to voir dire and provide a cordial and dignified introduction to the court on the first day of jury service.

Juror Pay

Jurors should be promptly compensated for each day of attendance at court whether or not they actually serve on a jury.

A minimum of \$20 per day should be paid plus roundtrip mileage to and from court each day at \$.15 per mile plus the daily cost of parking if parking is not provided by the court.

Automation in the Jury System

Electronic data processing equipment should be used in any phase of jury management where it can be justified by volume, where the material to be processed is in (or can readily be placed in) machine compatible form, and where the cost will not significantly exceed the cost of comparable work done manually without significant compensatory benefits.

SELECTION OF JURORS

Over the past half century, throughout the United States, there has been a noticeable expansion in litigation challenging methods of selecting jurors. In ruling on the cases, courts have demonstrated a desire to eliminate bias and subjectivity from the selection process and to increase representativeness of juries. The procedural changes that have resulted, however, have often fallen short of realizing these objectives because of constraining features of the existing juror selection statutes not voided by the courts' rulings. Except in rare instances, the jury statutes themselves have not been invalidated, and administrative modifications in procedure alone have not been enough to remedy the basic defects. Revision of juror selection statutes is now occurring with increasing frequency, however.

In the federal system, the concerns expressed through the adjudicative process ultimately led to Congressional reform of the federal juror selection statutes. The basic feature of the reform was replacement of the "key man" system with a system based on random selection from a cross-section of the population. The key man system involved nomination of prospective jurors by leading members of the community (key men). It was intended to yield a cross-section of the community for jury duty. The intention of those who developed the system was that the key men polled for names would be drawn from all classes, races, and vocations and therefore those recommended for service would be likewise demographically representative. In practice, however, the key man system was, by nature, open to systematic and sometimes purposeful bias.

As reflected in the testimony of judges, attorneys, and researchers at Senate hearings, it became apparent over the years that the key man selection method tended to yield so-called "blue-ribbon" juries. The probable reason was a tendency, conscious or unconscious, not to select as key men members of minority or lower-income groups. Thus, the citizens suggested for jury service tended to mirror the characteristics of the key men, and the key men tended to be white, middle- or upper-class leaders in the community.¹

1. In testimony during hearings of the Senate Subcommittee on Judicial Machinery, to revise the federal juror selection statute, Dale W. Broeder, associated with the University of Chicago Jury Project, testified as follows:

The method in this particular court was to get PTA presidents and heads of various civic and social organizations to recommend persons for jury duty. The result was usually a largely homogeneous venire not so much perhaps, as regards occupational or economic status—though the occupational and income levels were considerably above average—but as to basic values. Thus, the veniremen practically all regularly attended church (when only one third of the local

After extensive study, exhaustive testimony, and several drafts of statutory proposals, a major revision of the federal juror selection system was accomplished in 1968 and is now codified in 28 U.S.C. Sections 1861 *et seq.* The federal law represents a fine effort to provide a fair and unbiased juror selection method. Many state jurisdictions could improve their statutes and systems simply by substantial incorporation of the provisions of the federal law.

At the time Congress was modifying the key man system, many states had already instituted similar improvements, but many states were using, and still use, out-of-date source lists and juror screening techniques susceptible to considerable subjective bias (*e.g.*, door-to-door interviews for prospective jurors). In one attempt to remedy those defects at the state level, shortly after passage of the new federal juror selection law, the National Conference of Commissioners on Uniform State Laws developed a Uniform Jury Selection and Service Act. The Uniform Act incorporated the safeguards of the federal law. It also went further toward ensuring the broadest possible community representation in the venire by prohibiting automatic exemption of any groups and by requiring that the registered voter list be supplemented by other lists to serve as the source list of prospective juror names.

Interest in improving juror selection in state jurisdictions is now rising rapidly. Innovations such as those of Harris County, Texas, (where a carefully developed formula yields a demographic cross-section based on the voter list) and the state of Colorado (which uses multiple lists to obtain prospective juror names) have sparked interest elsewhere.

The recommendations presented in the sections which follow are directed toward achieving a juror selection system which:

1. Reaches as many citizens as practically possible for prospective jury service;
2. Eliminates the possibility of influencing the selection or exclusion of names at each stage where a selection is made;
3. Embodies a policy with respect to screening and excusing jurors that is consistent with the attempt to achieve broad representation of the community;

adult community did so) and were active, commonly hyper-active, in their communities—PTA work, charity drives, and so forth. And virtually all voted Republican. These were solid, more than usually solid, citizens and, while a few exceptions appeared, the probability was great that if you changed one venire-man, one would get his "socioeconomic-basic-value structure" duplicate. Consequently, the lawyers seldom challenged and asked comparatively few questions. Let me be more specific. The data I have, which are supported by the jury project data as a whole, for example, unequivocally show that Negroes vote differently than businessmen, and that persons of differing national ancestry have statistically significant different voting patterns. Persons with German and British background, for example, were more likely to favor the government in criminal cases whereas Negroes and persons of Slavic and Italian descent were more likely to vote for acquittal.

4. Is in all its aspects, beginning with maintenance and supply of the source lists of names, subject to the direction of the court; and
5. Achieves the above objectives as efficiently as possible.

Regulation and Administration of Juror Selection

Juror Selection Statute and Regulations

Each state should have a single comprehensive statute governing selection of jurors in all courts. It should encompass all aspects of juror selection for all classes of cases. Within the framework of the jury statute, the court system should prescribe regulations for operation of the selection system. Each unit of the trial court should be permitted to adopt such supplemental regulations as are necessary to implement the statute and regulations.

In many states the extensive statutory provisions governing selection, screening, excuses, exemptions, and voir dire of jurors are inconsistent and widely dispersed throughout the statutes. In a few states there are entirely separate juror selection statutes for counties of different size. These seem sometimes to be the result of successful lobbying for local concessions from the legislature. It is perfectly feasible to have a single statute, uniformly applicable throughout the state. California, for example, despite its size and the diversity of its population, has a single jury law that adequately serves the needs of all its counties. A new, integrated statute has recently been drafted for Minnesota. It is reasonable to expect that other states can do the same. Lack of uniformity reduces the effectiveness of control by court administrative policy and judicial review, and thus makes it easier for confusion, bias and subjective judgment to enter the system.

Each court responsible for selecting jurors should adopt a comprehensive plan, consistent with the statute, specifying, step-by-step, how the juror selection system will operate, who is responsible for its day-to-day operation, how names will be drawn, and the specific conditions that qualify a citizen for excuse under the statutory guidelines. Approval of the plan by the Chief Justice or Supreme Court should be required. This helps ensure that courts will consider and analyze their juror selection system with care. Within this framework, ground rules and policies can be set by the judges upon the advice of the court administrative staff and the bar.

Administration of the Juror Selection System

The laws of many states and the federal juror selection statute provide

for management of juror selection by an independent jury commissioner or jury commission.² Around the country, it is common for a jury commission to be composed of as many as five or six members. The commissioners are not always directly responsible to the court. In some jurisdictions they are appointed by the governor; in others they are selected on the basis of political affiliation. Sometimes a County Board of Supervisors is statutorily charged with the responsibility of selecting names of prospective jurors. This autonomy from the court can lead to jury management procedures that are incompatible with the court's own management requirements and give the court no assurance as to the quality of the selection process.

In addition to being sometimes a political appointment, the position of jury commissioner is often part-time, held by someone who is already employed full-time elsewhere or is retired. The incumbent, in this situation, can rarely give continuing attention to the juror selection system as a whole and often engages in absentee management.

Creation of an independent jury commission was justified traditionally on the ground that it insulated juror selection from bias or political influence. But these results have not been necessarily or uniformly realized. In fact they are more readily achievable by sound management carried out directly by the court itself. Inefficiencies necessarily result when selection and utilization of jurors cannot be integrated under the supervision of a single authority.

The juror selection system is an integral part of overall court and caseload management; its management should receive as serious attention as is given to other management tasks within the court. The system should be managed by a qualified full-time member of the court's staff reporting to the court administrator or, if there is none, to the clerk of court. Such an employee could carry the title of jury commissioner as long as his duties and lines of authority conform to the recommendations of this report. However, a total break with this traditional title is desirable to emphasize the modern management approach contemplated. At least one metropolitan court has created the title Deputy Administrator for Juries.

Even in jurisdictions where selection of prospective juror names is performed for all trial courts by the state court administrator, each trial court should designate a member of its administrative staff responsible for overall jury management in that court, liaison with the state office, and efficient use of jurors.

2. 28 U.S.C. Sections 1861 *et seq.*

Eligibility for Jury Service

Qualifications

Except for those convicted of a felony who have not completed their sentence, qualifications for jury service should be conditioned only on age, U.S. citizenship, residency in the jurisdiction, and ability to read and speak English. Most jurisdictions conform their minimum age requirement to the age required for voting. Since that has generally been reduced to 18, eligibility for jury service should begin at age 18. The prospective juror should be a citizen of the United States and a resident of the jurisdiction, but there should be no requirement as to duration of citizenship or residency. Most states impose a length-of-residence condition on eligibility; but no persuasive reasoning has been uncovered to support such a condition in light of the goals of the juror selection system.

The prospective juror should be required to speak and read English. It should not be necessary for him to be able to write English because the ability to write is generally not necessary to understand what is taking place in the trial process or to deliberate properly after the conclusion of the trial. The provisions of some statutes that the prospective juror must "understand" English is omitted here since such a provision opens the way to subjective exclusion of potential jurors, depending on the interpretation of "understand."

If a prospective juror has been convicted of a felony, the only requirement should be that he must have completed his sentence. The requirement that a felon who has served his sentence apply for restoration of his civil rights before he can serve on a jury serves no useful purpose. It is inconsistent with the prevailing views on prisoner rehabilitation and reintegration into society.

Exemptions

Jury service should be recognized as an obligation of citizenship from which no citizen is exempt. The practice of exempting certain classes or professional groups has been greatly abused. In most states, public officials, doctors, members of the clergy, policemen, firemen, attorneys, judges, and members of the armed forces are exempt from service. In many states, additional exemptions have been created to the point that a substantial portion of the community is excluded from jury service. Until recently, in some states all women were exempt or disqualified from serving;³ in Alabama exemptions include embalmers, employees of two

3. In 1942, at the time of the Knox Commission study of the federal jury system, 21 states excluded women from service. The U.S. Supreme Court in *Taylor v. Louisiana* (1/21/75) struck down the Louisiana Constitutional provision excluding women from jury venues.

specific hospitals, radio announcers, people involved in operating railroad trains, and bus drivers;⁴ in Louisiana exemptions include school teachers, school bus drivers, and "persons who are required to travel regularly and routinely in the course and scope of their employment;"⁵ Nebraska exempts, among others, postmen, and retired firemen who served for at least ten years;⁶ in New Jersey, fish and game wardens are exempt;⁷ in Minnesota, embalmers, one grist miller per mill and one ferry boatman per ferry are exempt from service as jurors;⁸ New York exempts river-boat pilots and editors or editorial writers of daily, weekly, or semi-weekly newspapers.⁹ Until 1969, Massachusetts exempted "members of the Ancient and Honorable Artillery Company" and keepers of lighthouses;¹⁰ telegraphers are still exempt in the state of Washington.¹¹

Though exemptions are theoretically based on the public interest, these examples suggest that special interests as well as public necessity have been factors in establishing exemptions. A large number of exemptions may make it extremely difficult to obtain a jury array that approximates a cross-section of the community. Excluding certain groups of people from jury service also unfairly places a disproportionate burden on those who are not exempt.

There has been some discussion of the desirability of exempting judges, practicing lawyers, and other judicial officers, such as magistrates, from jury service. The reasoning behind proposals to exempt this group is that, because of their specialized training and experience, such individuals could, or might appear to, exercise overbearing influence in the deliberations of the jury. If it is deemed desirable to exclude judges from consideration for jury service, they should be considered as *disqualified* as they are in Missouri.¹²

The experience in Colorado has been that lawyers selected for jury duty do serve on juries though they are probably challenged more often than other jurors. There is, of course, no way to measure their influence on jury deliberations.

4. Section 3, Title 30, Code of Alabama.

5. Article 403, Title XI, Louisiana Code.

6. Section 25-1601, Nebraska Revised Statutes.

7. Section 2A:69-1.1 New Jersey Statutes Annotated.

8. Section 628.43, Minnesota Revised Statutes.

9. Section 599, New York Judiciary Law.

10. Massachusetts G.L. Chapter 234 Section 1.

11. Chapter 2.36.120, Revised Code of Washington Annotated.

12. Section 494.020, Missouri Revised Statutes.

Selection Procedures

Sources of Names for Jury Service

Names for prospective jury service should be selected from multiple lists whose combination yields as broad a current census of citizens of the jurisdiction as practical, and which minimizes duplication of names as far as possible.

In the past, names for jury service have been obtained by means that exclude certain groups of people, either intentionally or inadvertently. These methods are still used in some jurisdictions. One such method is a house-to-house canvass to find citizens "qualified" for jury service. Such a canvass may be carried out by members of the police force, part-time employees of the jury commission, or others. This procedure permits subjective, unreviewable judgments to be made by the canvasser about the potential jurors. One jurisdiction candidly states that they believe the ability of the interviewer to evaluate the character of the prospective juror is a benefit of house-to-house canvassing. Other drawbacks of this method include its expense, the likelihood that some residences or neighborhoods will be omitted from the canvass, and exclusion of people who are not found at home.

Most jurisdictions pick names from lists, the voter registration lists being most commonly used. The voter list may be the best single cross-sectional list available, but it obviously excludes non-voters. Since it has been estimated that fifty percent registration of eligible voters is about the best that can be expected on the average, the exclusive use of voter lists is highly selective.¹³ Furthermore, surveys have shown that people tend not to register until well into their twenties and that lower income and ethnic minority groups are usually underrepresented on voter registration lists.

Other lists used as a single source are still less representative. Some jurisdictions use property tax rolls, which in addition to being highly unrepresentative, are often out of date, omitting many names of people who are actually property owners, and containing names of people who have died or moved from the jurisdiction. City directories are used in some jurisdictions, but others do not consider them sufficiently accurate or up-to-date.

The sources of names for jury service have often been settled upon without adequate regard to their currency, accuracy, or whether they provide a broad cross-section of the community, substantially

13. U.S. Congress, Senate, Committee on the Judiciary, *Federal Jury Selection. Hearings before the subcommittee on improvements in judicial machinery*. 90th Cong., 1st sess., 1967, p.43.

representative as to sex, age, race, income level, and other characteristics. To fulfill the objective of reaching as many citizens as practically possible for potential jury service, the source or sources from which names will be selected must be carefully considered.

The most careful thinking on this question is expressed in the Uniform Jury Selection and Service Act promulgated by the National Conference of Commissioners on Uniform State Laws, and the Model Jury Selection and Service Act developed by the National Conference of Metropolitan Courts. Section 5 of the Model Act provides at page 36 that the source list shall consist of "the names of all persons from the voter's registration lists resident within the court district," supplemented with names from other lists of residents, such as lists of licensed drivers, motor vehicle registrants, utility customers, state income taxpayers, and property taxpayers. Colorado has adopted a juror selection statute conforming to this provision and uses the voter registration list supplemented by the driver's license list, and, where available, city directories. Until late 1974, the motor vehicle registration list was also used. It was abandoned due to the substantial overlap with the driver's license list and certain technical problems.

As explained in an unpublished 1973 report by the Colorado Judicial Department:

After considerable study it was decided that a combination of the motor vehicle list and the driver's license list would provide the names of many who do not appear on the voter registration list. An additional consideration was that motor vehicle registrations are the most current of all the lists used, because of the once-a-year registration. The driver's license list was expected to yield more 18-21 year olds.

City directories were expected to yield names of those who do not vote, drive or own a car and would also provide a source to deal with the mobility factor. An attempt was made to obtain the list of state income taxpayers from the Colorado State Department of Revenue, but was unsuccessful because of the confidentiality of these records.

The additional lists mentioned as possible sources in the Uniform Act and Model Act were not chosen in Colorado for the following reasons:

1. *Utility Customers.* The list contains an economic bias, also a sex bias, since most utilities are in the male name. The list also has a low probability of having the 18 through 21 year olds.
2. *Property Taxpayers.* This list, of course, has an economic bias toward the propertied. It also has a low probability of having the 18 through 21 year old group.
3. *Telephone Directories.* These have an economic bias and a sex bias, because of male listings; also there are few 18 through 21 year olds listed.

Considerable effort is involved in making up a jury service list from

multiple sources. The experience of the Colorado Judicial Department indicates why multiple lists and eliminating duplicate names is a major undertaking:

1. Because the judicial department is using prepared lists of names, errors created by the originator of the list are automatically incorporated. If the spelling of a name or an address was wrong when the list was originally created, it will continue to be wrong on jury questionnaires or summonses.
2. The Polk city directory computer tapes were ordered upon condition that business names would be purged. The motor vehicle registration computer tapes, however, contain numerous business names. Even though the judicial department purged names which included such things as "Co.," "Company," "Corp." and "Corporation," some questionnaires were sent to business and government agencies because of their automobile registrations.
3. Because the elimination of duplicate names has not been totally perfected, some prospective jurors receive more than one juror qualification form. The use of multiple source lists has a higher error factor than the use of one source list, yet desirable representation has been achieved on jury panels.

Statistics are unavailable at this time, but defense counsel who have challenged the Colorado jury array in the past seem to feel, on the basis of inspecting the records for the new system, that much better representation is now being achieved.

The principal argument against making the effort to establish a multiple-source list is that a demographic cross-section of the community can be achieved by using the list of registered voters alone. This of course assumes that the demographic composition of the voter registration list mirrors that of the community. Most jurisdictions do not know whether this is, in fact, the case; and many believe that it is not. Even if it were found to be true, the venire resulting from selection solely from the voter registration lists is not representative as between voters and non-voters. It is not enough to achieve a small but representative pool; to fulfill the objective of distributing jury service broadly throughout the community, it is necessary to supplement the voter registration list from other sources. In jurisdictions where the voter registration list does not approximate the profile of the population, the need to use multiple lists is urgent.

In choosing supplementary lists, close attention should be paid to the probability that the potential supplementary lists will yield additional names and not merely duplicates; combining two lists that contain a high proportion of the same names may be unnecessarily wasteful. Because elimination of duplicate names can be a major job in a large metropolitan area, the use of a computer is probably necessary in these

areas. In smaller jurisdictions, manual means may be adequate.

Method of Selecting Names

The process of selecting names should follow a predetermined methodology that neutralizes any possibility of systematic inclusion or exclusion of identifiable segments of the population or specific individuals. The method prescribed to insure an unbiased selection of names from the source list or other lists should be formally prescribed in the juror selection statute or the administrative regulations implementing the statute. They should define precisely, step-by-step, how the selection will be conducted.

Most juror selection statutes state that juror selection must be done in a random manner without consideration of such factors as sex, race, religion, creed, color or place of national origin. And most jurisdictions attempt to follow a selection method that is not only unguided by reference to demographic factors, but uses some form of random selection.¹⁴ (Random, in a statistical sense, means that each name has the same chance as every other of being chosen at each pick from the list.)

However a selection system may be *nominally* random and at the same time open to manipulation or unintentional but systematic bias. As an example, consider the jurisdiction where voter registration name cards are drawn at random by hand from filing cabinets. The jury commissioner cannot see the name or any other identifying information on the card, so he does not know whom he is drawing, and theoretically he cannot discriminate. However, the filing cabinets are organized by voter precincts and various ethnic groups tend to be concentrated in certain precincts. Omission of a file cabinet from the selection process, therefore, may exclude a substantial number of minority residents. This illustrates why the method of selection should be designed carefully to eliminate any possibility of passing over certain groups in the drawing. Simply saying that drawing must be "random," without attention to the actual selection process, does not necessarily assure absence of bias.

A related problem arises in the common process of iterative drawings to arrive at a jury venire. While the particular titles used to designate the various "wheels" and "lists" differ among jurisdictions, most readers will recognize the practice described here. In most jurisdictions,

14. The District of Columbia Superior Court selects every "Xth" (for example every 5th) name from the source list. Harris County, Texas, uses a random-number generator to select names; Los Angeles and the state of Colorado assign random numbers to each name on the list before making the selection. In other jurisdictions, name cards are randomly picked from card files, or slips of paper are blindly drawn from a box.

the jury venire is obtained by a process of creating successive subsets of preceding wheels or lists, beginning with the source list: first, a specific number of names is drawn from the source list to go onto a master list; then from time to time names are drawn from the master list and mailed qualification questionnaires; the names of those subsequently determined to be qualified are placed on the qualified list; finally, when jurors are needed, names are drawn from the qualified list and summoned for service. This totals three drawings. Each drawing entails the risk that errors or bias may be introduced. Successive drawings of this nature also involve duplication of clerical tasks.

Several simpler procedures may be used where other administrative considerations permit. One alternative is to eliminate the master list subset described above. This can be accomplished by periodic drawing of names directly from the source list shortly before the projected jury service date, mailing qualification questionnaires to all names drawn. Those determined to be qualified would be placed on the qualified list for subsequent summoning for service. An even more streamlined procedure is used by Harris County, Texas (Houston): shortly before the jury service date, names are drawn from the source list; a combined questionnaire and summons for service is mailed to each name drawn; those who are exempt or not qualified contact the court by phone or letter in advance of the service date to make the appropriate arrangements. The remainder report to court for service on the date specified by the summons. This system eliminates both the master list subset and the qualified list subset. Its operation is facilitated if exemptions and excuses are severely restricted.

Frequency of Drawing Names

The frequency of drawing names from the source list and any subsequent drawings that may be made for actual service should be determined according to the administrative convenience of the court and the importance of obtaining up-to-date information about the prospective jurors.

Since our population is highly mobile, with people continually moving in and out of jurisdictions and changing addresses within them, source lists become obsolete rapidly. It would be ideal if source lists could be purged and updated at least once a year. With minor exceptions, this does not occur since updating a source list is expensive and the agencies responsible are generally unable to purge and update frequently. This means that any drawing from the source list is likely to produce a significant number of "no-shows" and will fail to include persons who have become eligible for jury service since the list was made up.

Logically, then, juror lists can only be as current as the source from which they have been drawn. This being the case, if a master jury list is used, its currency cannot be improved by drawing names from the source list more often than the source list itself is updated (though the master list should be recreated whenever the source list is renewed).

Ensuring currency of the information obtained from the prospective juror via questionnaire is a different problem. The most up-to-date information will be obtained if the questionnaire (or combined questionnaire and summons) is mailed as close as practically possible to the expected date of jury service. Up-to-date information not only facilitates the work of the court in determining qualification and availability for service, but also ensures that the information on the questionnaire can be used by attorneys in voir dire with reasonable confidence of its accuracy.

Some courts have failed to recognize this problem. They draw names to create the master list annually and immediately draw from that list and mail out questionnaires to determine qualification for service. Some time later, summonses for service are issued. By that time many prospective jurors will have changed jobs or residences, etc., so that the information in the questionnaire does not reflect the prospective juror's current status. This problem could be substantially obviated by waiting until shortly before the jury service date to mail questionnaires.

Screening Prospective Jurors

Information relevant to a prospective juror's qualification and availability for service should be solicited in a manner immune from subjective judgment by anyone associated with the selection system.

The best way to screen prospective jurors is by use of a mailed questionnaire. Summoning jurors to court in person to be interviewed or requiring them to return a questionnaire in person is unnecessarily burdensome for the persons summoned, is expensive, and may inject an element of improper subjective judgment by those conducting the interviews. A mail questionnaire can elicit the information required for the court to apply rules concerning disqualification and excuse. It can also solicit items of information pertinent at voir dire, such as residence and occupation, saving some of the time otherwise required for interrogation; see the sample questionnaire below.

It is sometimes argued that it is necessary to have the prospective juror appear in person in order to determine his literacy firsthand. This approach is probably not cost beneficial. Courts should operate on the assumption that prospective jurors will be honest in filling out the questionnaire; no tangible evidence has been presented to indicate that

JUROR QUALIFICATION QUESTIONNAIRE <small>PLEASE READ LETTER ON OTHER SIDE - PRINT OR TYPE YOUR ANSWERS</small>			
<small>If your Name and Address is not correct please show corrections</small> TO: _____ _____ OFFICE _____ _____		RETURN THIS FORM IN SELF-ADDRESSED ENVELOPE TO: UNITED STATES DISTRICT COURT Jury Commission - Room 4118 United States Courthouse 3rd & Constitution Ave. Washington, D.C. 20001	
(1) HOME _____ (2) IN _____ (3) OFFICE _____ (4) _____		(5) HAVE YOU LIVED THE PAST FULL YEAR WITHIN THE DISTRICT OF COLUMBIA? YES <input type="checkbox"/> NO <input type="checkbox"/> IF "NO" GIVE NAMES OF OTHER STATES IN WHICH YOU LIVED DURING THE YEAR, AND SHOW DATES.	
A IDENTIFICATION (6) BIRTH DATE: month _____ day _____ year _____ (7) AGE _____ (8) U.S. CITIZEN: YES <input type="checkbox"/> NO <input type="checkbox"/> (9) MARRIAGE STATUS: MARRIED <input type="checkbox"/> SINGLE <input type="checkbox"/> WIDOWED <input type="checkbox"/> DIVORCED/SEPARATED <input type="checkbox"/> (10) PLEASE INDICATE YOUR RACE ON THE FOLLOWING LIST: () HISPANIC (American, Mexican, Puerto Rican, Cuban, etc.) () BLACK (or Negro) () WHITE () OTHER (Specify) _____		B OCCUPATION (11) ARE YOU NOW EMPLOYED? YES <input type="checkbox"/> NO <input type="checkbox"/> (12) YOUR EMPLOYER'S NAME _____ (13) YOUR OCCUPATION OR BUSINESS _____ (14) BUSINESS ADDRESS _____ Street _____ City _____ State _____	
EDUCATION AND HEALTH			
(15) CAN YOU READ, WRITE, SPEAK AND UNDERSTAND THE ENGLISH LANGUAGE? YES <input type="checkbox"/> NO <input type="checkbox"/> (16) DO YOU HAVE ANY PHYSICAL OR MENTAL INFIRMITY IMPAIRING YOUR CAPACITY TO SERVE AS JUROR? YES <input type="checkbox"/> NO <input type="checkbox"/>		(17) WHAT IS THE EXTENT OF YOUR EDUCATION? Grade School <input type="checkbox"/> High School <input type="checkbox"/> Postgraduate <input type="checkbox"/> No. of years beyond high school _____ (18) IF "YES" PLEASE EXPLAIN ON THE BACK OF FORM (and attach letter from a doctor if possible)	
D CRIMINAL RECORD			
(19) WERE YOU EVER CONVICTED OF A STATE OR FEDERAL CRIME PUNISHABLE BY IMPRISONMENT FOR MORE THAN ONE YEAR? NO <input type="checkbox"/> YES <input type="checkbox"/> (20) IF "YES" HAVE YOU BEEN PARDONED? YES <input type="checkbox"/> NO <input type="checkbox"/>		(21) IF YOU WERE PARDONED, WHO WAS YOUR PARDON ISSUED BY (E.G. THE PRESIDENT, GOVERNOR OF A STATE, ETC.) _____ (22) ARE ANY CHARGES SUCH AS HOMICIDE, BATTERY, OR OTHER CRIMES PENDING AGAINST YOU? YES <input type="checkbox"/> NO <input type="checkbox"/>	
E EXEMPTIONS			
CHECK IF YOU ARE EMPLOYED AS ONE OF THESE:		(23) PUBLIC OFFICIAL OF THE UNITED STATES OR DISTRICT OF COLUMBIA GOVERNMENT WHO IS EITHER ELECTED TO PUBLIC OFFICE OR DIRECTLY APPOINTED BY ONE ELECTED TO OFFICE. <input type="checkbox"/> (24) MEMBER IN ACTIVE SERVICE OF THE ARMED FORCES OF THE UNITED STATES. <input type="checkbox"/> (25) MEMBER OF ANY GOVERNMENTAL POLICE OR REGULAR FIRE DEPT. (NOT INCLUDING VOLUNTEER FIRE DEPTS.) <input type="checkbox"/> (26) AN ACTIVELY PRACTICING ATTORNEY, DOCTOR, OR DENTIST. <input type="checkbox"/> (27) JUROR. <input type="checkbox"/>	
F GROUNDS FOR EXCUSE			
YOU MAY BE EXCUSED FROM SERVICE AS A JUROR IF YOU FALL WITHIN A CATEGORY LISTED HERE. MARK THAT EXCUSE WHICH APPLIES TO YOU AND CHECK BELOW IF YOU DEMAND TO BE EXCUSED FOR THIS REASON.		(28) OVER 70 YEARS OF AGE. <input type="checkbox"/> (29) ACTIVELY TEACHING OR SUPERVISING IN PUBLIC, PRIVATE, OR PAROCHIAL SCHOOL OR COLLEGE DURING REGULAR SCHOOL TERM (GIVE NAME, ADDRESS, AND TERM OF THE SCHOOL, BELOW). <input type="checkbox"/> (30) A PERSON WHO HAS SERVED AS A GRAND OR PETTY JUROR IN DISTRICT OF COLUMBIA COURTS WITHIN THE LAST TWO YEARS (GIVE NAME OF COURT & DATES SERVED BELOW). <input type="checkbox"/> (31) AN ACTIVELY PRACTICING NURSE. <input type="checkbox"/> (32) AN ACTIVELY ENGAGED MEMBER OF A RELIGIOUS OR OLDMEN'S OF ANY DISCRIMINATION (IT IS NOT REQUIRED THAT YOU CERTIFY YOUR RELIGIOUS ORGANIZATION BUT, IF YOU WISH, YOU MAY DO SO BELOW). <input type="checkbox"/> (33) A WOMAN WITH LEGAL CUSTODY OF A CHILD OR CHILDREN (GIVE THEIR AGES BELOW). <input type="checkbox"/>	
I HAVE CHECKED MY ANSWERS TO WHICH I BELONG AND WHICH I DO NOT BELONG TO. I HAVE READ THE LETTER ON THE OTHER SIDE OF THIS QUESTIONNAIRE. I BEAR AND AFFIRM THAT ALL ANSWERS ARE TRUE TO THE BEST OF MY KNOWLEDGE & BELIEF.			
SIGN: _____ DATE SIGNED: _____		IF ANOTHER PERSON FILLED OUT THIS FORM FOR YOU, PLEASE INDICATE YOUR NAME, ADDRESS AND PHONE NUMBER ON OTHER SIDE OF FORM.	

this assumption is unwarranted.

In most courts that do mail questionnaires this has proven to be a most effective way of reaching prospective jurors. Eighty to ninety-five percent of mailed questionnaires have been found to reach the intended recipient in many jurisdictions. Personal service, on the other hand, was shown to be effective at a rate of only fifty-nine percent in one jurisdiction recently studied.

A personal interview may be required as a last resort for those who have not returned their questionnaires to the court as directed. Well publicized, selective use of the interview (which requires a trip to court) may deter persons from ignoring the questionnaire.

Excuses from Service

A narrow, strictly applied policy governing excuses prevents arbitrary and unequal excuse from jury service, reduces the number of jurors that must be summoned to serve, protects the court against charges of favoritism in granting excuses, and can reduce the time and effort involved in administering the selection system. As expressed in the Uniform Jury Selection and Service Act and in the Model Jury Selection and Service Act, excuses should be very sparingly granted and only on grounds of extreme inconvenience, undue hardship or public necessity, or physical or mental incapacity to participate effectively in the trial process. Court regulations should define as specifically as possible what conditions constitute inconvenience, personal hardship or public necessity.

Because of the element of discretion necessarily involved in applying these regulations it is important that they be applied according to established rules by a single deciding authority. Though there is some opinion that all requests for excuse should be decided by a judge, we advocate delegating this function to the manager of the jury system. If adequate rules have been promulgated governing excuses, if the court stands behind these rules and does not tolerate routine appeals from the ruling of the administrator, and if the system is periodically reviewed by the judges, there should be no need to devote judicial time to excusing jurors. In very large metropolitan courts it is an absolute necessity for excuses to be handled by an administrator. In the federal system, the applicable statute has been interpreted by some districts to require a judge to rule personally on each request for excuse, but in many federal District Courts the actual determination is delegated to the clerk of court or a member of his staff, subject to review by a judge.¹⁵

15. "... any person summoned for jury service may be (1) excused by the court . . . for such period as the court deems necessary . . ." 28 U.S.C. Sec. 1866(c).

Except for permanent physical or mental incapacity, all excuses should be temporary, to a date certain when the prospective juror will be available to serve. Care should be taken however, to ensure that deferrals do not result in overloading juries at certain times of the year with jurors whose work is of a seasonal nature, for example with teachers in the summer months. It should rarely be necessary to excuse a person indefinitely except those who must care for invalids or small children for whom no other care can easily be substituted. Those who are temporarily incapacitated, physically or mentally, might be excused to a date when the disability is expected to be resolved.

Shortening the period of jury service may reduce the number of excuses requested on hardship grounds. In many locations, jurors serve for one month. But some jurisdictions use a shorter period—two weeks, one week, or even one day. This matter is more fully discussed below in the section on Management of Jury Service and Efficient Juror Utilization. The shorter the time for jury service, the less plausible the grounds for hardship excuse.

MANAGEMENT OF JURY SERVICE AND EFFICIENT JUROR UTILIZATION

“Juror utilization” is a relatively new term in court administration. Only since the late 1960s has critical attention been given to improving the management elements of the jury system, for example, determining how many jurors to summon, how many to have in court on a day-to-day basis, and how to minimize costs.

The first study relating to the use of jurors was conducted by the American Bar Foundation at about the same time that the federal juror selection law was undergoing modification. Several years later, a study of juror utilization and ways to measure its efficiency on a continuing basis was conducted as part of the District of Columbia Court Management Study, sponsored by the District of Columbia Committee on the Administration of Justice. In 1971 and 1972, similar studies were conducted in the United States District Courts for the District of Columbia, the Southern and Eastern Districts of New York, and the Court of Common Pleas in Cleveland, Ohio. Significant cost savings were realized through implementation of the study recommendations (see bibliography).

Improvements in jury management have also been introduced in other jurisdictions, notably Houston, New Orleans, Minneapolis and Los Angeles. The Federal Judicial Center has published guidelines for improved use of jurors in the federal courts, and similar guidelines for

state courts have been developed by Bird Engineering-Research under an LEAA grant (see bibliography). However, much work remains to be done in this area throughout the country.

No one knows with certainty how much money is spent annually on the jury system in state courts. Also unknown is the proportion of the annual expenditure that is wasted in payments to jurors who are never used in voir dire or trial. In the federal courts, cost data are available: approximately \$17 million per year is spent on juries. Achieving economies in this expenditure is a persuasive reason why efficient use of jurors should receive careful attention in court administration.

Effective jury management involves three major considerations:

1. *Economy.* Though economy should be pursued in both the selection and utilization of jurors, it is a special problem in the latter because of the cost of bringing either too many or too few jurors to court each day. The jury management system should be operated in such a way that reasonably accurate predictions can be made about the number of jurors who will actually be needed. Failure to determine this figure accurately is the chief cause of waste in the jury system.
2. *Improving the Experience of Jury Service.* The jury management system should aim to make jury service as pleasant and meaningful an experience for the citizen as is reasonably possible. When jurors must sit for hours without being called for voir dire or serving on a trial, when the surroundings in which they must wait are unattractive, uncomfortable, and noisy, or when it is obvious that no effort is being made to conserve their time, resentment is a natural reaction. Serving on a jury is the only contact many citizens have with the court system, and their experiences while serving, form the basis for their attitude toward the court. Making jury service a positive experience may in the long run be more important even than achieving economy.
3. *Simplicity.* Day-to-day management of jury service should be simple, and the system should be easily understood by all in the court system. It should not encumber court staff with unnecessary paperwork and complicated calculations.

Efficient use of jurors consists of bringing to court the number of jurors that approximates as closely as possible the number who will actually be needed for voir dire and trials daily, minimizing the number of unused jurors while at the same time making it possible for jury trials to be commenced without undue delay. The management task is to determine and apply the necessary organization, manpower, planning, and record-keeping techniques to this problem. Solving it effectively helps to keep jury costs to a minimum and to improve the experience of jury service.

It is not necessarily true, as some judges believe, that efficient use of jurors' time results in inefficient use of the time of the judges. In fact, efficient use of jurors most often is part of overall sound court management policy, which includes making the best use of the time of judges. In the Circuit Court of Jefferson County, Alabama (Birmingham), one of the principal goals of recommended revisions to the jury management system was to conserve judicial time.

Responsibility for Efficient Use of Jurors

The responsibility for effective and economical use of jurors falls squarely on the shoulders of the judges of each court as the ultimate managers of the system. They can fulfill this responsibility only by making a commitment to efficient use of jurors just as they must be committed to effective caseload management. The court's administrative officer should, of course, be responsible for implementing policies, but as has been demonstrated repeatedly, court personnel will rarely propose or institute improvements when they perceive that the judges are not interested in them. In changing a system that has long operated the same way, the attitudes of the judges set the tone.

The court should promulgate rules and administrative policies for effective juror use. The rules should be formulated through the same consultative process—involving court staff, the bar, and other interested agencies—as is used in all court policy-making.

Judicial commitment must also be expressed in willingness to comply with established policies even when these policies do not suit personal preferences (*e.g.*, in the starting time of voir dire, keeping records of challenges, or advising the jury supervisor one-half day in advance of the expected need for a jury). Policies and procedures are worthless to the extent that judges fail to follow them.

The Management Function

Planning the number of jurors needed and the day-to-day management of their use have been viewed traditionally as a relatively inflexible function. "Management" has been limited to keeping the name cards in the wheel, taking attendance, and being sure that there are always sufficient jurors at court to supply a judge with a panel instantly. Management of the jury system has often been delegated to clerical personnel with minimal, if any, supervision or attention to innovation.

In many courts, management of the jury system is fragmented. A jury commission or board of supervisors may be in charge of the selection and processing of names, but the office of the clerk or court administrator has responsibility for managing juror service. Too often communication

and cooperation between these offices is absent and management suffers correspondingly. Centralized and effective management of the jury system (both selection and utilization) should be accorded high priority in court administration. There should be full-time administration of the system at the top managerial level of the court, with delegation of day-to-day operating responsibility to a competent administrative staff member. Operating responsibilities should include, but not be limited to the following:

1. Supervising all aspects of juror selection;
2. Setting up liaison between the jury management system and other court personnel to insure two-way information flow about:
 - (a) anticipated trial activities;
 - (b) the number of jurors available; and
 - (c) other matters affecting the supply of jurors needed (*e.g.*, if temporarily out of jurors during the day, the jury supervisor might advise the master calendar assignment clerk so that a non-jury case could be assigned out next);
3. Integrating management of juror selection and use so that the operation of each complements the other;
4. Maintaining statistical records on:
 - (a) response and qualification rates on persons sent questionnaires or summoned;
 - (b) numbers of jurors used (and not used) daily; and
 - (c) other statistics necessary to determine how many questionnaires to send out, how many jurors to summon, etc., in the future;
5. Predicting both on a long-range and day-to-day basis the number of jurors needed at court;
6. Managing the activities of jurors while at court;
7. Maintaining attendance records;
8. Notifying jurors to come to court;
9. Preparing panels of jurors to be sent for voir dire;
10. Planning for better management and recommending improvements when needed;
11. Arranging for payment of jurors.

Communication

Free and regular communication between the jury supervisor and those whose actions affect the need for jurors is essential to effective jury management. The judges and the appropriate members of their courtroom staff, assignment clerks, and, in some instances, the assistant

prosecutors must inform the jury supervisor regularly about projected trial activity. For example, notice of expected panel requirements is needed at least a day in advance for routine trials. Trials that are likely to require unusual numbers of jurors for voir dire must be forecast far enough in advance to allow summoning extra jurors so that the regular panel will not be depleted. Other necessary communications include prompt cancellation of a request for a panel if a case is continued or settled and advice to the jury supervisor when one trial is about to be completed and another one will commence shortly. Without this information, the jury supervisor is inevitably in the dark as to the demands he must meet; with it he can meet the requirements with high consistency and avoid calling jurors to court unnecessarily.

Review

The effectiveness of the juror utilization system, like all court management procedures, should be reviewed periodically. What is the rate of over-calling of jurors? Should unused jurors be released earlier in the day? Are jurors being paid as speedily as possible? The review process helps to keep the system abreast of current needs and gives it the benefit of the continuing commitment and concern by the judges.

Length of Jury Service

Several factors should be taken into consideration in fixing the length of jury service, including the hardship of long service, the logistics of drawing and processing new groups of jurors, the normal duration of jury trials, and the frequency with which jury trials occur. As a general rule, the period of service should be as short as will allow the court to summon prospective jurors for each jury period without having to re-use the same jurors before the source list is regenerated. A one-week period of jury service is recommended as likely to prove practical.

There are a number of advantages to shortening jury service:

1. Service is more widely distributed among the population;
2. The need for hardship excuses is reduced;
3. Juries will be fresher and less likely to be contaminated by experiences in previous trials; and
4. A short period of service permits quicker adjustments in the number of jurors summoned in response to changes in requirements (such as those caused by judicial absence, etc.).

Extended periods of service have been customary. Some federal and state courts currently summon jurors for a four-week period. Some courts, usually where jury trials occur only intermittently, summon jurors for longer periods, for example, three, four, or six months, but

call them to court only when a trial is scheduled. This allows flexibility for the court; hardship for the citizen may be minimized by giving adequate notice of the required appearance date.

By contrast, the District Courts of Harris County, Texas (Houston), have shortened the period of jury service to one day or one trial, whichever is longer. The court's daily requirements for jurors are amply satisfied using one-day service per juror. A jury period this short may be feasible only in large urban communities where the size of the population ensures that the same citizens will not be summoned repeatedly for service during the year. Further the ability to process the volume of paperwork associated with using more jurors under a "one-day" system may also depend on the availability of a computer to draw names and print summonses and lists. But one-day service permits adherence to a strict excuse policy, which tends to distribute jury service more evenly throughout the population. There is no doubt that serving only one day is preferable to most jurors.

The Jury Pool System

In an urban court with frequent and relatively continuous jury trials, the best technique for allocating jurors to courtrooms and minimizing the number needed to fill requests for panels is to have all jurors in a central pool. From the central pool a panel is sent to a courtroom only when voir dire is about to commence; challenged or unused jurors from any panel return to the jury pool (when they have been challenged or at the completion of the voir dire), and are made available for other voir dire.

Under this procedure the number of jurors actually needed is considerably less than the number which would be predicted by multiplying the number of scheduled trials by the number of jurors required for each panel. The size of the saving that can be made by pooling is much greater than is generally recognized. A striking example was seen in the Criminal District Court in New Orleans when a pool system was adopted: Instead of the 600-800 jurors that had formerly been at court each day because an individual panel was summoned for each judge, a pool of 150 was found satisfactory to meet the needs of the court's ten judges.¹⁶

Other methods of assigning jurors to courtrooms are often costly and inefficient. The following examples indicate the wastefulness of some common procedures:

— Jurors go to a central pool initially, but if they are not selected for

¹⁶. Maureen Solomon, *Study of the New Orleans Criminal District Court* (Denver: Institute for Court Management, 1973), pp. 3-41.

the jury after being sent to a voir dire, they are released for the day. More jurors must be at court each day than would be needed if these jurors returned to the pool after voir dire or trial and could be sent out in response to subsequent panel requests;

- The “wheel” of names of persons present in the jury pool is sent to the judge in response to his request for a panel. The judge personally picks names from the wheel which is then returned to the jury supervisor, who thereupon sends the selected jurors to the courtroom. This system wastes time in getting the jurors to the courtroom once voir dire is imminent, and also wastes judges’ time because only one judge at a time can pick names for a panel;
- The entire panel of jurors present at court is sent to a courtroom for voir dire; other judges must wait their turn for the panel before they can begin a voir dire. (This system is often used in courts that do not have a jury waiting facility);
- A separate group of jurors is summoned to court for each judge. Each judge rules on excuse requests and thereafter manages his group of jurors (for example 60-80 people) on a daily basis. Usually all the jurors come to court each day for the voir dire schedule in the courtroom; those not selected for the case are released if the judge does not anticipate beginning another case that day. This system unnecessarily consumes the time of each individual judge in hearing excuse requests and keeping daily juror records. It also requires exceedingly large number of jurors.

Anticipating Requirements for Jurors

In many courts, the number of jurors summoned to court is maintained at a static level regardless of fluctuations in demand caused by such factors as variations in the judicial manpower present or the number of scheduled trials, or the probability of pretrial settlement. For example, if 250 jurors a day have always been sufficient to fill all judges’ requests, 250 will continue to be summoned, regardless of how many jurors spend the entire day unengaged, except when a substantial decrease in trial activity is anticipated as in the case of planned judicial absence or vacation.

A major reason for excessive juror summonses is lack of adequate communication of the information needed to predict juror demands. Without being informed of such important facts as when a jury has been waived in a scheduled case, what cases have been terminated by settlement or a guilty plea, and the likelihood that a scheduled case will be reached during the course of a day, the jury staff tends to call enough jurors to allow for all possible contingencies.

An additional problem is a desire by court staff to avoid judicial displeasure if by chance the pool of jurors should prove temporarily insufficient. The surest way to do this is to call more jurors than are likely to be needed. Interviews with court personnel have shown that they fear having to advise a judge that he will have to wait, even briefly, for a jury. The environment and attitudes that foster this approach foreclose a court's achieving efficient use of jurors.

In the minds of many judges, the possibility that a judge may experience an occasional delay if the number of jurors at court is reduced seems to conjure the spectre of wasted judge-time. In fact, one chief judge was so concerned about the jury system wasting any judge time, "the most valuable resource in the court," that he declined to make even a modest reduction in jury pool size. But it has been observed around the country that in most courts the number of jurors summoned could be decreased by twenty-five to thirty percent with no resulting change in the availability of jurors for voir dire. In some courts a reduction of two-thirds would be possible. The consensus of the judges, administrators, and researchers at the ABA jury management workshop was that it is eminently reasonable to design a system with a pool size that may occasionally require a judge to wait fifteen to thirty minutes. This group of experts indeed felt that a maximum thirty minute wait in ten percent of the panel requests was reasonable.

A study by North American-Rockwell several years ago demonstrated that the cost of having enough jurors on hand to fill all panel requests immediately is unreasonably high compared to the cost of judge and counsel occasionally experiencing a brief delay.¹⁷ In some state courts, judges readily acknowledge that an occasional brief wait for jurors is a necessary component of efficient juror use. The waiting time is used to discuss settlement or handle short matters.

Judges should set standards for tolerable delays in receiving a panel and should incorporate the standard into the administrative rules. A suitable goal might be, for example, a pool of such a size that the probability of any judge having to wait after requesting a panel is five percent or less, with a maximum allowable delay of about thirty minutes. Such a standard would greatly reduce the numbers of jurors needed at court and result in a significant cost saving.

The method for predicting the number of jurors needed to be called should be straightforward and reasonably simple to apply. It requires intra-court communication about trial activity, historical statistics on numbers of jurors used, and common sense. Though some courts may

17. North American-Rockwell Information System Company, *A Management and Systems Survey of the U.S. Courts (1969)*, v.I. pp. xii-5.

feel the need for expert assistance to set up a forecasting system, this should not ordinarily be necessary. Once a long-term prediction technique has been established, adjustments will have to be made on a day-to-day basis, based on information received a day or so in advance from court personnel about each judge's expected trial schedule.

Long-Range Prediction

Long-range prediction is the process of predicting the number of jurors to summon for the overall period of jury service, whether it is one day, one week, one month, or more—that is, the number of jurors anticipated to be needed for juries during the designated period. This determination can be made by collecting and analyzing data for comparable past periods.

At the jury seminar sponsored by the ABA, the consensus seemed to be that the most important statistic to inspect over a period of time is the *maximum* number of jurors in *simultaneous use*, whether in voir dire, trial, or deliberation. This figure is not the maximum number of jurors sent to courtrooms, but the maximum number in use at any time. This can be taken to closely approximate the number of jurors required to satisfy court needs. The complement of this number—the lowest number of idle jurors at any given time—gives a gross indication of how many excess jurors have been summoned. Data to make this determination should be collected by the jury supervisor for at least six months before major changes are recommended. If, however, the data collection immediately suggests an extremely high over-call, downward adjustments can be begun early.

The most common way of collecting information for this purpose today is to record the number of jurors entering or leaving the pool *and* the resulting number of jurors in the lounge whenever jurors leave or return to the jury pool. (The example appearing at the end of this section shows the type of data which should be recorded.) The studies by Lasdon and Waren in Cleveland, McPeak (Solomon) in the District of Columbia Superior Court, Pabst in the U.S. District Court of the District of Columbia, Stoever in the New York federal courts, and Bird Engineering in development of their guidelines all followed a similar method.

Lasdon and Waren, in the Cleveland Court of Common Pleas, were able to collect all necessary data by using existing court forms, such as panel sheets, with a few items added by the jury supervisor and courtroom clerks. About \$16,000 in juror costs was saved in that court during the first quarter of 1973 as a result of analysis of the data and subsequent reduction in the number of jurors summoned. In one of the New York federal court studies by Stoever, an initial reduction of 70 jurors per day (247 as against 317) was recommended at a daily saving of about \$1,630.

Similar economies were realized in the U.S. District Court in Washington, D.C. Potential cost savings, in fees alone, are easy to demonstrate: A reduction of 20 jurors, in a court paying \$10 per day and conducting jury trials 20 days per month, would save \$4,000 monthly (20 jurors x 20 days x \$10 equals \$4,000).

Ideally, a jury supervisor should have a formula or table to use in making predictions. Such a predicative model has been tentatively worked out in the LEAA-sponsored study by Bird Engineering; but it appears that any such model must be tailored to the conditions in the individual court. The variables and constants that make accurate forecasts for Court A may not make accurate forecasts for Court B, due to differing caseload dynamics in that court. For example, Court A judges may never start more than one voir dire per judge per day; Court B judges may usually start two; the in-court settlement rates may differ between courts; voir dire challenging patterns may be substantially different. Thus, each court needs its own predictive model. However, the means of developing some reasonably simple prediction techniques can follow approximately the same pattern in all courts.

To foreclose the possibility that a notorious or major case which uses an unusually high number of jurors for voir dire will totally disrupt the jury pool, the jury supervisor must receive sufficient advance notice of such a trial to allow for additional names to be drawn at the regular drawing, or for a special drawing of names to supplement the jury pool during the voir dire. This kind of communication and planning though elementary, is absent in many courts. In courts which do employ it, the benefits are apparent.

Short-Range Prediction

Short-range prediction is needed to determine how many jurors to have present on any given day, or even at any given hour. The number of jurors actually needed has been shown repeatedly to vary from day to day. Forecasting short-range requirements for jurors and adjusting the daily call-in accordingly can help compensate for long-range prediction errors.¹⁸ Short-range forecasting is highly dependent on daily communication from court staff. For example, it is important to know how many judges will start a voir dire the next day, the number of defendants in a criminal case (which influences the number of challenges and, hence, panel size), and which scheduled cases have been settled.

18. Discussions of differential daily pool sizes are found in: Leon Lasdon and Alan Waren, *A Jury Study and Management Program* (Cleveland Court Management Project, 1972); W. Pabst, *Study of Juror Utilization in the U.S. District Court for the District of Columbia* (LEAA, 1971), and M. White, *Juror Management in the U.S. District Courts* (University of South Florida, 1972).

These facts may be much better indicators of juror need than subjective determinations made by the judges. In a study of the United States District Court in Washington, D.C. a highly predictable correlation was found between the number of courts expected to be in session and the number of voir dire s that would actually commence. Consistently, over a three-year period, only forty percent of the judges who said the day before that they would need a panel actually called for one the following day. Thus the jury supervisor could apply a probability factor to the panel requests of courts expecting to begin voir dire the next day. This yielded high accuracy in the daily "call-in."

Collection of other statistics can allow the jury supervisor to make *ad hoc* adjustments to the size of the pool throughout the day. For example, statistics about the time of day that peak use of jurors usually occurs, or the time after which few, if any, voir dire s commence, can allow the supervisor to stagger the time that jurors report to court or are released, with low risk of being caught short of jurors. It is also possible to have jurors on standby, at home or at work rather than at court, in case the number of jurors needed exceeds the number in the pool that day. This procedure, which is used in many courts throughout the country, adds flexibility.

Analysis of Juror Utilization Worksheet

This is an example of a worksheet that can be maintained by the jury pool supervisor. It shows jury pool activity for 9/20/74. At the end of the preceding day 60 jurors (of 131 at court) were occupied in voir dire or trial or deliberation as indicated by the entry just under the column headings. Accordingly, at 9:00 A.M. on 9/20, 71 jurors were in the waiting room available to be sent to voir dire ($131-60 = 71$).

During the day three kinds of significant events occurred: (1) jurors were sent out on panels for voir dire; (2) challenged and unused jurors returned to the waiting room after voir dire; and (3) trial jurors returned to the waiting room at trial completion.

Each time one of these activities occurred, an entry was made on the form. Column (1) shows the time the event occurred. The number of jurors leaving or returning is recorded in column (2). Column (3) shows the number of jurors in the waiting room as a result of this activity, e.g., at 9:13 A.M., 24 jurors went out to voir dire leaving 59 jurors in the waiting room ($83-24 = 59$). Column (4) shows the judge. Column (5) shows the type of case. And Column (6) shows what activity took place.

The key column for analyzing juror utilization is column (3). At no time were there less than 38 jurors (1:52 P.M.) sitting in the waiting room. This means that only 93 of the 131 jurors at court were needed to satisfy trial and voir dire requirements. Maintained daily over a period of months, these statistics will demonstrate whether consistently too many jurors are at court each day, under normal trial activity. They will further indicate the size of the reduction in pool size that may be made safely.

Total Jurors at Court Today 131 **JUROR UTILIZATION WORKSHEET** Date: 9/20/74

(1)	(2)	(3)	(4)	(5)	(6)
Time Jurors Leave or Return to Waiting Room*	Number of Jurors Leaving or Returning	Total Jurors In Waiting Room After This Activity	Judge's Name	Type of Case	Activity
60 jurors carried over in trial from 9/19 leaves: 71 at 9:00 A.M. in waiting room					
9:00 F	+ 12	83	Smith	Criminal	Jurors return—trial ends
9:13 T	- 24	59	Jones	Civil	Panel sent to voir dire
10:00 F	+ 12	71	Brown	Civil	Jurors return—trial ends
10:00 F	+ 12	83	Green	Criminal	Jurors return—trial ends
10:20 F	+ 12	95	Wilson	Civil	Jurors return—trial ends
10:22 T	- 28	67	Levy	Civil	Panel sent to voir dire
10:35 F	+ 12	79	Jones	Civil	Challenged jurors return
11:12 T	- 26	53	Johnson	Civil	Panel sent to voir dire
11:25 F	+ 16	69	Levy	Civil	Challenged jurors return
11:45 T	- 30	39	Brown	Civil	Panel sent to voir dire
11:59 F	+ 14	53	Johnson	Civil	Challenged jurors return
1:30 F	+ 12	65	Craig	Civil	Jurors return—trial ends
1:52 T	- 27	38	Green	Criminal	Panel sent to voir dire
2:00 F	+ 18	56	Brown	Civil	Challenged jurors return
3:30 F	+ 15	71	Green	Criminal	Challenged jurors return
4:00 F	+ 12	83	Jones	Civil	Jurors return—trial ends
4:00 F	+ 12	95	Johnson	Civil	Jurors return—trial ends
4:00 F	+ 12	107	Brown	Civil	Jurors return—trial ends

Carried Over In Trial = 24

*Use "T" after time (e.g., 10:00 T) to show jurors going to courtroom; Use "F" to show jurors returning from courtroom.

Panel Size for Voir Dire

The size of the jury panel sent to the courtroom for voir dire should be set by court rule; the rule should differentiate in size between civil and criminal cases and twelve-member and less-than-twelve-member juries, and make special provision for cases likely to involve an exceptional number of challenges. The rule should be based on data collected expressly for the purpose. Leaving it to each judge to determine for himself the size of the panel to be sent to his courtroom is less likely to result in efficient use of jurors than if the number is fixed by an accepted formula.

It has been demonstrated repeatedly in major metropolitan courts that it is practical to set panel size at a fixed number without impeding the voir dire process in the vast majority of cases. Fixing panel size, based on historical statistics on the number of jurors used in voir dire, nearly always results in a smaller number of jurors per panel than if the size of the panel is left up to the individual judge to decide. Panels fixed at 24 jurors for a civil case and 30 for most criminal cases have proved sufficient in many courts using twelve-member juries. Smaller panels would, of course, be appropriate where the jury is less than twelve.

Determining the appropriate panel size requires, first, collecting data on the number of jurors actually used in voir dire (including challenged jurors) to select a jury. Second, it requires the court to define an acceptable level of risk that the panel sent to the courtroom will be exhausted during voir dire, necessitating a call upon the pool for more jurors. It is wasteful to send to the courtroom many more jurors than are needed for voir dire. Providing an excessive number makes it necessary either to increase the size of the pool (thereby increasing costs) or to risk unavailability of jurors for other courtrooms.

The Federal Judicial Center Guidelines for the United States District Courts, at page 18, conclude: "It is not necessary to have a panel large enough to meet any conceivable demand in every case, although this is the practice in some courts. Rather, the court should determine an acceptable risk that the panel provided might not be large enough for the entire voir dire. The risk should be small (*e.g.*, 5 percent) but it should not be zero. In most instances, the needed extra jurors will be available in other courtrooms or the jury lounge. This small 'risk of delay' cost can bring about significant savings in juror time and cost." Acceptance by the court of a reasonable risk not only reduces the size of the panel, but reduces the size of the total jury pool necessary to supply the needed panels on any given day.

The appropriate size for a panel should be determined on the basis of the following facts:

1. The size of the jury that is to hear the case;
2. The type of case;
3. The number of parties;
4. The number of challenges (for cause and peremptory) most often exercised in the past in this type of case; and
5. The procedures used for exercising challenges.

Reception of Jurors and Waiting Facilities

A court should present a cordial and dignified introduction to the court when jury service commences. Welcoming remarks and an explanation of jury service may appropriately be made by a judge. The jurors should be briefed, probably by the jury supervisor, about how their names were selected and what they should expect during their period of service. Some courts use a movie to explain the function of the jury. Questionnaires filled out by the juror at the conclusion of jury service are a useful device to find out how the jurors felt about their term of service and to solicit their suggestions for improvement.

Suitable, pleasant facilities should be provided for jurors who are waiting to be sent to voir dire. A juror waiting room should contain, at a minimum, comfortable chairs and sofas, lamps, reading material and television. It might also have desks to enable jurors to work while waiting to be sent to voir dire. Acoustic ceilings and carpeting are desirable to deaden sound. If smoking is permitted, adequate ventilation is essential.

The adequacy of the juror waiting room affects other elements of the juror management system. If adequate facilities are not provided:

- A pooling system may be impracticable;
- The number of jurors that may be accommodated at court each day may be limited; and
- Uncomfortable, inadequate waiting facilities may give jurors an unfavorable impression of the court.

The effect of facilities on the feelings jurors develop about the court and jury service should not be minimized. Cramped, unattractive quarters for jurors imply a lack of concern or appreciation for the service jurors are rendering and the personal sacrifices it may entail. Jurors are citizens and taxpayers who may be strongly influenced by this apparent attitude. If the courts want public support for their programs they would do well to provide adequate facilities and thoughtful treatment for jurors.

Some readers may think that creation of an attractive juror waiting room is possible only in a new courthouse because of the shortage of space in many older courthouses. This problem is often exaggerated and can sometimes be overcome in consultation with a courthouse space planner. One court, for example, believed that it could not use a pool system because it lacked a suitable room, but found in the courthouse, with the help of an expert, five alternative spaces for a waiting room with capacity for 150-200 jurors. The consultant supplied an estimate of the cost of each alternative. The one selected by the court involved moving a non-court agency out of the courthouse to other city-owned space, enclosing some unused hallway space, and a nominal amount of refurbishing.

Juror Pay

Jurors should be compensated promptly for each day of attendance at court whether or not they actually serve on a jury; a juror should be paid for the service he has given, not the service the court has used. Some jurisdictions pay a juror only if he serves on a jury even though he has appeared at court; in other jurisdictions jurors are paid differential amounts depending on whether they have been selected for a jury. This is unfair and unequal treatment. Whether they served on a jury or not, these people have been required to give up their time and often a day's income to come to court on the chance that they will be needed.

A minimum of \$20 per day should be paid, plus roundtrip mileage to and from court each day at fifteen cents per mile, plus the daily cost of parking if parking is not provided by the court. Consideration should be given to providing lunch for jurors. A \$20 per day minimum would involve substantial increases in many states. The 1973 Metropolitan Courts Project survey of forty-six major metropolitan courts showed the average daily fee to be \$9, with a maximum of \$15; some jurisdictions pay only \$5 a day for jury service. Provision should be made for periodic upward adjustments as wages and the cost of living increase. It might be feasible to develop a formula which ties increases in juror pay to increases in the cost of living or minimum hourly wage.

While jury service is a duty of citizenship which a person should be willing to perform, this obligation should not pose an extreme financial hardship on jurors. Moreover, if an extremely low rate of compensation results in an excessive number of hardship excuses, the jury tends to become unrepresentative with respect to wage earners. Recent federal government statistics show that the average private non-farm payroll

worker earns about \$33 per day.¹⁹ There is considerable speculation among judges and laymen that legislation requiring employers to pay jurors their wages or the jury fee for all or part of their service may, in fact, be constitutional.

Jurors should be paid for service before they leave the courthouse or at least within a week of the end of their service. In some jurisdictions, it takes as much as a month for a juror to receive his pay. Delay adds unnecessarily to the hardship of jury service.

Automation in the Jury System

Whenever it can be justified by volume, and the material to be processed is in (or can readily be placed in) machine-compatible form, and the cost will not significantly exceed the cost of comparable work done manually, electronic data processing should be used to select names for jury service. This significantly reduces the possibility of bias, saves clerical time, and facilitates recordkeeping.

A computer can be used to draw names randomly from the source; to print notices, summonses, and lists; to maintain juror use records and other statistics on excuses and disqualification, etc.; and to issue juror paychecks. The number of such tasks to be performed on a computer will depend on the volume of names to be processed and the accessibility of a computer. Use of a computer can significantly increase speed, accuracy, and objectivity in processing.

The computerized juror selection procedure developed jointly by the District of Columbia Superior and U.S. District courts is an excellent model; and a useful discussion of automation in juror selection can be found in the publication of the Administrative Office of the U.S. Courts, *Automation of Jury Clerical Work in United States District Courts* by Norbert Halloran.

¹⁹ Source: Bureau of Labor Statistics as cited in a U.S. Senate Committee of the Judiciary report (No. 93-1188) entitled, *Amending the Jury Selection and Service Act of 1968*.

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Observation

Continuing the Dialogue: Civil Juries and the Allocation of Judicial Power†

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In an address to the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice in 1976, Chief Justice Burger urged the conferees to undertake a frank reexamination of the effectiveness of our methods of dispute resolution, stating "that as long as we are inquiring and probing, not proposing and deciding, . . . we [should] do it boldly, not timidly—candidly, not apologetically."¹ The Chief Justice

† This observation is the revised text of a speech delivered at The University of Texas School of Law on October 14, 1977, in conjunction with the Locke, Purnell, Boren, Laney & Neely Mock Trial Competition.

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1. *Burger Urges U.S. Justice System Revamp*, St. Paul Pioneer Press, Apr. 7, 1976, § 1, at 1, col. 1. The Chief Justice's views came as no surprise. The Chief Justice previously had questioned "whether automobile personal injury cases have any more place in the federal courts than overtime parking or speeding [violations]," and had observed that "[t]he next budget for the federal courts includes \$14 million for jury fees." Address by Chief Justice Burger, Testimonial Dinner for Pennsylvania Supreme Court Justice Bell (Nov. 14, 1970), reprinted in 54 *JUDICATURE* 232, 234-35 (1971). He noted the absence of the use of juries in England with the observation that "[t]he mere fact that the prolonged trials so common in the United States are virtually unknown in England suggests we ought to at least look more closely at their experience." *Id.* at 235. Chief Justice Burger has also noted that "[f]or thirty-five years the English courts have dispensed with juries entirely in virtually all cases. The public, judges and lawyers in England show no signs of wanting to return to the jury system." Burger, *The State of the Federal Judiciary—1971*, 57 *A.B.A. B.J.* 855, 858 (1971). The Chief Justice cited no support for his observation, and indeed, it is contrary to the sentiments expressed by the distinguished British barrister quoted by E. L. Haines in the following passage:

England surrendered the jury as a temporary measure in 1918 due to a shortage of manpower created by World War I. This situation became permanent in 1933. Edson L. Haines, Q.C., of Toronto, has written of the unfortunate demise of the civil jury trial in some nations of the British Commonwealth:

The effects of the jury system upon the law are no less remarkable and no less beneficial. It tends to make the law intelligible by keeping it in touch with the common facts of life . . . Rules of law must struggle for existence in the strong air of practical life. Rules which are so refined that they bear but a small relation to the world of sense will sooner or later be swept away. Sooner, if, like the criminal law or the commercial law, they touch nearly men's habits and conduct; later, if, like the law of real property, they affect a smaller class, and affect them less nearly. The jury system has for some hundreds of years been constantly bringing the rules of law to the touchstone of contemporary common sense.

The principal object of a court is to dispense justice, not to dispatch business. Those who would abolish the civil jury concede that in criminal matters the jury is the 'poor

suggested the continuing viability of civil juries as an appropriate subject for serious consideration and reminded his audience that England, "the fountainhead of all our legal institutions," abandoned use of the civil jury trial in most cases more than forty years ago.² Although the avowed purpose of the conference was to criticize freely even the most sacrosanct of our institutions, the eminence of the conferees and the closeness with which they scrutinized the utility of the jury prompt this effort to justify the role of the civil jury trial in the federal courts.³

Since the jury as an institution has long been considered an essential part of our constitutional liturgy, romanticism and sentimentality may have obscured important reasons for its introduction and retention. Although admittedly tendentious, these thoughts are offered as a continuation of the dialogue initiated by the Chief Justice rather than as definitive answers to questions concerning jury utility. I do not propose to undertake the defense of civil juries, but will merely suggest a number of roles fulfilled by the institution that may no longer immediately be apparent. I will begin by sketching the history of the seventh amendment to provide a perspective for the observations that follow. I will then review the recent history of the civil jury in England, examine the most commonly encountered criticisms of the use of juries in civil trials, and conclude by attempting to identify the implicit losses that would result from the elimination of civil juries.

I. The Seventh Amendment: A Historical Perspective

Although it is now well accepted that the Bill of Rights was adopted to assuage the fears of an anti-federalist minority who felt that the unamended Constitution inadequately protected their civil liberties, debates of the federal constitutional convention provide little evidence of the framers' attitude toward protection of civil juries.⁴ Messrs. Pickney and Gerry had formally

man's shield against oppression' and the accused's fundamental assurance of fair treatment. These critics fail to reconcile this with their contention that the lay jury is ignorant, inadequate and woefully insufficient in settling civil disputes. Does not the citizen litigating a civil dispute deserve this basic guarantee of fairness afforded by the deliberations of a jury?

Holtorf, *Improvement of the Jury System*, 12 FOR THE DEF. 26 (1971) (quoting Haines, *The Disappearance of Civil Juries in England, Canada and Australia*, 4 DEF. L.J. 118, 125-26 (1958)).

2. *Burger Urges U.S. Justice System Revamp*, *supra* note 1, at 2, col. 1.

3. The conferees included the chief justices of the fifty states, the chief judges of the ten federal circuits, and an assortment of professors, other judges, and practicing attorneys. I applaud the Chief Justice not only for his role in the organized and structured reexaminations of legal institutions, but also for his unstinting support of the lieutenants in the rifle platoons of the judicial war—the trial judges.

4. See Henderson, *The Background of the Seventh Amendment*, 80 HARV. L. REV. 289, 291-92, 294-95 (1966); Warren, *New Light on the History of the Federal Judiciary Act of 1789*, 37 HARV. L. REV. 49, 55-56 (1923). Much of the following discussion relies heavily on these two splendid articles.

Civil Juries

proposed the inclusion of a right to a civil jury trial with the article III guarantee of jury trial in criminal cases, but the motion failed.⁵ Thus, the Constitution that emerged from the convention did not expressly secure the right to civil jury trial. The absence of any provision for civil juries and the presence of the provision vesting appellate jurisdiction over matters of law and fact in the Supreme Court quickly fueled strong anti-federalist opposition to the proposed Constitution.⁶

During the ratification period proponents of the Constitution sought to dispel fears that the document would abolish jury trials and promote a system of civil-law appeals.⁷ The federalists argued that the civil practices in the various states were too diverse to be subjected to any general rule concerning juries—an argument later undercut by the adoption of the seventh amendment.⁸ The assertion also was made that in a document of enumerated powers, the failure to prohibit civil juries was tantamount to their retention—a position met with the rejoinder that the grant of judicial power to the Supreme Court to review matters of law and fact rendered the jury right meaningless, if indeed such a right survived at all.⁹

Debates of the first Congress concerning the extent of the federal equity jurisdiction provide more insight into the prevailing attitudes toward the civil jury than do the debates at the constitutional convention. The congressional debates over this hotly contested issue illustrate the interrelationship between the role of the civil jury and the scope of federal appellate jurisdiction to review matters of fact.¹⁰ Opponents of the extension of federal equity jurisdiction feared that it would deprive parties of jury trials, result in additional costs and delays, and permit innumerable reviews.¹¹ As originally introduced, section 16 of the Judiciary Act of 1789 provided "that suits in equity shall not be sustained in either of the Courts of the United States in any case where a remedy may be had at law."¹² Opponents unsuccessfully sought to eliminate the equity provisions entirely. Proponents succeeded in adding the word "complete" before the word "remedy," thereby enlarging the scope of the provision.¹³ The section ultimately was amended by inserting the phrase "plain, adequate and" before the phrase "complete remedy may be had at law," which narrowed the scope of federal equity jurisdiction

5. Henderson, *supra* note 4, at 293-94.

6. *Id.* at 295.

7. *Id.*; Warren, *supra* note 4, at 102.

8. Henderson, *supra* note 4, at 294.

9. *Id.* at 294, 296-97.

10. Warren, *supra* note 4, at 96-99.

11. *Id.* at 99.

12. *Id.* at 96.

13. *Id.*

to reflect the existing common law with respect to equity.¹⁴

A similar clash concerning the equity powers occurred over the wording of section 19 of the Act. As originally proposed and enacted, section 19 required the inclusion in the record of all facts upon which an equitable decree was entered by a Circuit Court in any equity, admiralty, or maritime case.¹⁵ The pro-equity forces unsuccessfully had sought an alternative provision requiring all the relevant evidence upon which a decree was based to be included in the record and transmitted to the appellate court.¹⁶ Senator Maclay, a powerful congressional figure and a leading opponent of the extension of equity jurisdiction, had argued forcefully that while he was "no professed admirer of the judicial system" he . . . thought . . . that this proposed amendment would render [the Circuit] Courts abortive [T]he purpose of the move was 'to try facts on civil law without the aid of a jury, and this [he promised], never will be submitted to.'"¹⁷

This quarrel over the equity jurisdiction of the federal courts not only suggests the limits envisioned for the jury, it also evinces the extent of early support for preservation of jury trials. More importantly, however, Maclay's argument illustrates the perceived relationship between the extent of appellate jurisdiction over matters of fact and the conduct of bench trials.¹⁸ The salient point is that the anti-federalists wanted not only to confine the Supreme Court's review to matters of law, they also wanted a secured right to a jury. The substance and fervor of the political debate suggest the concern that elimination of the jury would result in a shift of power, not to the trial judge, but to the appellate courts. This history naturally suggests the question: If the right to a civil jury trial was forged from a struggle for power, does it no longer serve this power-allocating function?

II. The Use of Civil Jury Trials: The British Experience

Modern critics of the jury often imply that Britain's virtual abandonment of juries constitutes evidence of their obsolescence. A brief look at the British experience, however, does not compel such a conclusion. The absence of a constitutionally mandated right to civil jury trial in England

14. *Id.* at 97.

15. *Id.* at 97-100.

16. *Id.* at 98.

17. *Id.* at 99.

18. During the debates concerning the Federal Judiciary Act of 1789, advocates of jury trials succeeded in restricting the appellate jurisdiction of the Supreme Court to matters of law. *Id.* at 102-03. At the time the seventh amendment was adopted, the British Court of Chancery "did not usually exercise authority to resolve contested issues of fact and seemingly did not regard itself as competent to do so." Chesnin & Hazard, *Chancery Procedure and the Seventh Amendment: Jury Trial of Issues in Equity Cases Before 1791*, 83 YALE L.J. 999, 1000 (1974). See also *Parsons v. Bedford*, 28 U.S. (3 Pet.) 433 (1830).

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rendered the institution's survival subject to significant parliamentary modification.¹⁹ The use of civil juries in England during the last century was punctuated by passage of three such acts: the Judicature Acts of 1873-75;²⁰ the Juries Act of 1918;²¹ and the Emergency Provisions of 1939.²²

Although the statistics are admittedly incomplete, it is estimated that more than ninety percent of all cases tried prior to 1873 were tried to juries.²³ The Judicature Acts of 1873-75 were not intended to change the rules governing jury trials, but they did facilitate non-jury trials by permitting the parties to waive a jury and by allowing the court to dispense with a jury in chancery cases, cases requiring review of voluminous documents, and cases requiring any scientific or other type of investigation not conveniently made with a jury.²⁴

Until World War I, no substantial inroads were made into the use of civil juries in England.²⁵ In response to the manpower shortage resulting from the war, Parliament passed the Juries Act of 1918, which provided that all cases in the High Court of Justice and in the County Courts were to be tried without juries except in cases of fraud, libel, slander, false imprisonment, seduction, malicious prosecution, breach of promise to marry, divorce, or probate.²⁶ Juries were not required in any other cases, although the court in its discretion could order otherwise.²⁷ The Juries Act of 1918, substantially reenacted in 1920, was repealed in 1925 and jury trials once again became prevalent.²⁸ Discontent with delays and costs attendant to civil jury trials apparently prompted passage of the Administration of Justice Act of 1933, which abolished the general right to a jury except in cases of fraud, libel, slander, malicious prosecution, false imprisonment, seduction, or breach of promise to marry.²⁹ As was true under the earlier Act, the court

19. Holtoff, *Modern Trends in Trial by Jury*, 16 WASH. & LEE L. REV. 27, 38 (1959).

20. Supreme Court of Judicature Act, 1873, 36 & 37 Vict., c. 66; Supreme Court of Judicature (Commencement) Act, 1874, 37 & 38 Vict., c. 81; Supreme Court of Judicature Act, 1875, 38 & 39 Vict., c. 77.

21. Juries Act, 1918, 8 & 9 Geo. 5, c. 23.

22. Administration of Justice (Emergency Provisions) Act, 1939, 2 & 3 Geo. 6, c. 78.

23. Jackson, *The Incidence of Jury Trial During the Past Century*, 1 MOD. L. REV. 132, 139 (1937).

24. Supreme Court of Judicature Act, 1873, 36 & 37 Vict., c. 66, § 57; Supreme Court of Judicature Act, 1875, 38 & 39 Vict., c. 77, §§ 20, 22. See Jackson, *supra* note 23, at 139-40.

25. Jackson, *supra* note 23, at 140-41; Nokes, *The English Jury and the Law of Evidence*, 31 TUL. L. REV. 153, 157 (1956); Memorandum from Alan Chaset of Federal Judicial Center to Judge Al Murrell (Sept. 2, 1970) (copy on file at *Texas Law Review* offices) [hereinafter cited as Chaset Memo]. In 1913 a report by the Departmental Committee on Juries recommended that civil jury use be restricted to cases in which it was requested by all of the parties, or when the personal character of a litigant was concerned. Jackson, *supra* note 23, at 140.

26. Juries Act, 1918, 8 & 9 Geo. 5, c. 23, §§ 1(b), (d), 3.

27. *Id.* at §§ 1(c), 3.

28. Jackson, *supra* note 23, at 141; Chaset Memo, *supra* note 25.

29. Administration of Justice (Miscellaneous Provisions) Act, 1933, 23 & 24 Geo. 5, c. 36, §

retained the discretion to order a jury trial in cases other than those in which it was available as a matter of right.

World War II, and the resulting Emergency Provisions of 1939, effectively put an end to the use of civil juries in England.³⁰ Although the Provisions, like the Juries Act of 1918, were passed in response to a wartime manpower shortage, they remained in effect for nearly twelve years.³¹ As a practical matter, use of the civil jury in England never returned.³² Whether the jury's disappearance resulted from dissatisfaction with its past performance or merely from habit and inertia is unclear. According to Sir William Diplock, the Lord Justice of Appeals of England, "[h]abit, that most potent force in procedural matters, which had previously operated to preserve the jury trial now operated against its revival."³³

Although the British experience is often cited as prosecution Exhibit Number 1 by those who seek the elimination of civil juries in this country, such a comparison is not wholly valid. The previously mentioned absence of constitutional protection for the civil jury trial right in England rendered the institution's survival subject to substantial parliamentary modification. Of course, this distinction merely reflects the relative institutional impediments to change. The more fundamental distinction stems from the American judiciary's assumption of a far different institutional role than the one undertaken by their English brethren. In our tripartite system of government, the power of judicial review is inextricably linked with the concept of an independent judiciary and its attendant risk of autocratic behavior. Judicial review inevitably results in a politically conscious judiciary, which helps to explain our unique need for the jury. Although I will address this issue later from a different perspective, I want to emphasize that the American federal courts, unlike their British counterparts, have a peculiar need for the democratizing influence of the jury because the success of judicial review ultimately depends upon the public's acceptance of judicial decisions. As Professor Cox has stated, "the power of the great constitutional decisions rests upon the accuracy of the Court's perception of this kind of common will and the Court's ability, by expressing its perception, ultimately to command a consensus."³⁴

6. See Diplock, *The Jury and Civil Actions in England*, 36 N.Y. St. B.J. 296, 298 (1964); Jackson, *supra* note 23, at 141; Chaset Memo, *supra* note 25.

30. Administration of Justice (Emergency Provisions) Act, 1939, 2 & 3 Geo. 6, c. 78, § 8.

31. Diplock, *supra* note 29, at 298; Chaset Memo, *supra* note 25.

32. One authority asserted that only 49 of the 70,000 civil cases tried in 1955 were tried to a jury. Nokes, *supra* note 25, at 160.

33. Diplock, *supra* note 29, at 298.

34. A. COX, *THE ROLE OF THE SUPREME COURT IN AMERICAN GOVERNMENT* 118 (1976).

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Thus, the demise of the British civil jury system cannot fairly be attributed to any profound conclusion that the institution had failed, although some apparently did quarrel with its inefficiency and cost. Instead, the jury disappeared because of the confluence of its vulnerability to parliamentary modification, the onset of two devastating world wars that deprived England of manpower, the existence of a bar habituated to the jury's absence, and the presence of a judiciary functioning without the need for the jury's legitimizing influence.

III. The Accusations

A. *The Jury Cannot Handle the "Big" or "Technical" Case*

Critics often assert that juries cannot intelligently deal with lengthy trials involving vast quantities of data or cases complicated by the complex nature of their facts. It is undeniable that some cases do turn on facts comprehensible only to highly trained individuals, though these instances are small in number. Apart from the occasional situation in which a judge possesses unique training, however, the assumption that a jury collectively has less ability to comprehend complex material than does a single judge is an unjustified conclusion. Whether a lay judge or lay jury serves as factfinder, complex cases must, as a practical matter, be presented through the mouths of experts whose function is to organize the mass of information into a comprehensible form.

The argument that juries are unable to handle protracted litigation is based on two assumptions. The first is that the gagging amount of data involved in these cases cannot be assimilated by a lay jury, a position which presumes the truth of the underlying premise that a single judge is brighter than the jurors collectively functioning together. The second assumption underlying this argument is that certain colossal cases are ill-suited to jury trial because they may take months or even years to conduct. Lengthy trials purportedly are too disruptive of jurors' private lives; indeed, the length of a trial may force many qualified persons to be excused from jury service at the outset, perhaps including those best equipped to hear the case. Although the truth of this assertion is self-evident, it actually expresses a belief that citizens deserve protection from such conscriptive jury service, not that a higher quality of justice can be achieved by eliminating the jury.

The problems of protracted litigation cannot readily be couched simply in terms of jury trial versus bench trial. Indeed, I will urge later that a bench trial may well foster even longer delays in complex cases than would a jury trial. The fundamental question presented is whether these mammoth dis-

putes ought to be resolved in a judicial forum at all. These "disputes" often approach the scale of internecine economic wars that may prove more appropriate subjects for legislative, rather than judicial, resolution. Advocates who believe that such behemoth cases are actually being tried to the court in any traditional sense are either naive, which I doubt, or are merely deluding themselves about the efficacy of a bench trial. Although bench trials would spare jurors some inconvenience and economic hardship, a bench trial hardly mitigates the strain that these cases impose on the judicial system. Moreover, one should not forget that many of these complicated cases seek to vindicate congressionally created causes of action in which the right of access to the jury is a matter of legislative, rather than constitutional, command.

Both the "technical" case and the "big" case arguments overlook an enormously valuable contribution made by the presence of a jury. The process of distilling complex material into a comprehensible form operates less effectively in bench trials than in jury trials. Although the rules of evidence purport to discipline an advocate's presentation, they are generally only loosely followed in bench trials, on the assumption that the trial judge will consider only admissible evidence. I have found that as counsel drop their evidentiary antennae they also tend to lose their sensitivity to questions of relevance; correspondingly, the marshalling of proof so essential to clarity suffers. Trial to a jury imposes a fierce discipline on the advocates. The virtue of forcing counsel to organize a complex mass of information into a form understandable by the uninitiated is that counsel ultimately must understand the issues and evidence in the case well enough to teach. If counsel cannot comprehensibly present their case to lay persons, is it likely that counsel do, in fact, understand the case? One need only view how trials of complicated matters are conducted by able counsel to appreciate the powerful contribution that the presence of a jury makes to clarity of argumentation. The jury's presence not only encourages the clear presentation of facts during a trial, but the process of drafting the charge also contributes to the clarification of the controlling legal issues. When properly designed and freed of obscure "legalese," the charge enhances understanding by the court and counsel, as well as by the jury.

In sum, I believe the argument that the "big" or "technical" case ought only be tried to the court is misdirected. The success of a jury trial depends upon counsel understanding their case and presenting it innovatively. The court must sufficiently understand the legal issues involved to be capable of stating them in clear, comprehensible terms to the jury. Moreover, successful use of juries requires the trial judge to run the court efficient-

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ly. The failure of judge or counsel to discharge their respective duties should not be blamed on failings emanating from use of the jury. Critics of the jury among both the bench and the bar should not confuse their own insecurity about successfully performing their respective tasks with inefficiencies in the jury system. Or, stated in another way, in response to the assertion that bench trials are easier, I reply—easier for whom? And if by force of war we, like England, had done without juries for twelve years, would not our own bench and bar, their knowledge of evidence grown rusty and accustomed to the more leisurely pace of the bench trial, have accepted the jury's demise with similar aplomb?

B. Expense and Delay Attendant to Jury Trials

Some critics argue that a jury is an unnecessary source of delay and expense. Despite claims by eminent jurists that jury trials are an important, if not the principal, cause of congested court calendars,³⁵ I remain unconvinced. My experience both at the bar and on the bench leave me with precisely the opposite conclusion. The time expended properly writing findings of fact and conclusions of law, for example, far exceeds the time consumed by the charge conference. Although some judges claim that a bench trial is more "flexible" since the trial can be interrupted to dispose of other pressing matters, my own experience suggests that such piecemeal trials actually consume much more judicial time than their jury trial counterparts. Although this type of personal jousting makes for lively luncheon fare, it is so affected by personal attitudes and experience with different local procedures that it is virtually useless as a source of reliable information about the time and expense of jury trial. Instead, we should examine the available data. A 1971 study by the Federal Judiciary Center revealed that only sixteen percent of a federal trial judge's time was devoted to jury trials.³⁶ This figure should at least suggest the maximum amount of time that could be saved by eliminating jury trials in the federal courts.

The dollar cost of juries is insufficient to support any argument for the elimination of jury trials. Nor does the cost argument suffice to justify six-person, instead of twelve-person, juries. It is unnecessary to deal with precise figures. Simply placing judicial expenditures in perspective with overall federal governmental expenditures is sufficient to make the point—

35. "I think it is fair to say that the backlog of cases in the federal courts, particularly in the metropolitan centers, is caused largely by the number of civil jury trials required by the Seventh Amendment." Devitt, *Federal Civil Jury Trials Should be Abolished*, 60 A. B. A. B. J. 570 (1974). See Peck, *Do Juries Delay Justice?*, 18 F.R.D. 455 (1956).

36. *United States District Court Time Study, THE THIRD BRANCH*, Sept. 1971, at 3-4.

the government devotes less than one tenth of one percent of its annual budget for support of the federal judiciary.³⁷

IV. Virtues of the Civil Jury

A. "Black Box Decisions" and Individualization of Justice

All judicial decisions ultimately reflect a certain arbitrariness. Although we often claim that our judicial decisions are more than mere attempts to justify a predetermined outcome and that they actually reflect reasoned analysis, this frequently belies reality. The process of judicial decisionmaking requires a complex balancing of the equities of a specific "just" result against the system's need for uniformity of decision. The modern trend has been to emphasize individualized justice at the expense of uniformity.³⁸ Several distinguished commentators warn that the American system of justice has begun to manifest an imbalance similar to that occurring at the turn of the century when Germany gravitated toward a system of wholly individualized justice that emphasized intuition over logic and result over uniformity.³⁹ It is important for us to remember that in our system justice is administered pursuant to law. We must become more cognizant of the need to preserve uniformity in our judicial decisions lest we allow unbridled judicial intuition to destroy completely the credibility of our judicial process.

The important contribution of juries in restoring the proper balance to the decisionmaking process is best illustrated by examining what are termed "black box decisions." By the term "black box decisions" I mean the difficult decisions that remain arbitrary in the sense that they can only be based on the specific equities of each individual case and cannot convincingly be explained on wholly logical or rational grounds. The jury has long been credited as "the chief reliance of the common law for individualizing the application of law,"⁴⁰ and it successfully performs a difficult function that judges are ill-equipped to handle. I have long suspected that an implicit ingredient in a judge's decision to formulate an issue as a question of fact for

37. D. Ross, *The Civil Jury System: An Essential of Justice—Preserve It* 15 (Defense Research Institute, Inc. Monograph No. 13, 1971) (quoting Hufstедler, *New Blocks for Old Pyramids—Reshaping the Judicial System*, 65 N.Y.L.J., Mar. 23, 1971).

38. Roscoe Pound described this approach as the "equitable school." "It insisted that application of law was not a purely mechanical process. It contended that the process involved not merely logic but intuition; that the cause was not to be fitted to the rule, but the rule to the cause." 4 R. POUND, *JURISPRUDENCE* § 115, at 20 (1959).

39. "Many courts today are suspected of ascertaining what the supposed equities of a controversy require and then citing adjudicated cases to justify the result desired." *Id.* § 116, at 26.

40. *Id.* § 116, at 25.

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the jury is the recognition that no criteria other than pure intuition are available as bases for the decision. I will not attempt to improve upon the language that Mr. Justice Holmes chose to describe this phenomena:

When he has discovered that a difference is a difference of degree, that distinguished extremes have between them a penumbra in which one gradually shades into the other, a tyro thinks to puzzle you by asking where you are going to draw the line, and an advocate of more experience will show the arbitrariness of the line proposed by putting cases very near to it on one side or the other. But the theory of the law is that such lines exist. . . . As that difference has no gradation about it, when applied to shades of conduct that are very near each other it has an arbitrary look. We like to disguise the arbitrariness, we like to save ourselves the trouble of nice and doubtful discriminations. . . . [A]nd so, as we get near the dividing point, we call in the jury.⁴¹

A jury trial is unavailable in a substantial number of cases now tried in federal court because Congress has not statutorily created the right and the action historically was an equitable one.⁴² By definition, actions in equity do not strain our faithfulness to uniformity of decision, but instead address the need for individualized justice. In non-equity actions such as those arising under the Federal Tort Claims Act, both our concerns about uniformity and individualized justice are present. One must ask what will be the consequences of conducting bench trials in these cases. After all, trial judges are discouraged from engaging in black box decisionmaking by the requirement that they carefully specify their findings of fact, as well as their conclusions of law. When the factual findings are not sufficiently specific, appellate courts will employ much more stringent review than would occur had a jury served as the factfinder. In light of the numerous black box decisions that must be made in these cases, the substitution of judge-made for jury-made decisions disserves the rule of law by engaging in a subterfuge that weakens the judiciary's credibility. For example, sentencing decisions by the federal court remain a classic situation of black box decisionmaking. There appear to be few logical justifications for differentiating among the punishments meted out to persons convicted of similar crimes. Yet, if Senate bill 1437 is enacted, we will be required to employ "standards" and articulate reasons for our sentencing decisions.⁴³ To the extent that a particular sentencing

41. Holmes, *Law in Science and Science in Law*, 12 HARV. L. REV. 443, 457 (1899).

42. See C. WRIGHT, *HANDBOOK OF THE LAW OF FEDERAL COURTS* § 92 (3d ed. 1976); Note, *Congressional Provision for Non-Jury Trial Under the Seventh Amendment*, 83 YALE L.J. 401 (1973).

43. S. 1437, 95th Cong., 1st Sess. §§ 2001-2008 (1977), calls for pre-sentencing reports to be presented to the court and sets out the factors for the judge to consider in sentencing. The bill further requires the judge to state the reasons for the sentence actually imposed.

decision is, in reality, a black box call, our sentencing practices are dishonest.

As I observed during my discussion of the seventh amendment, the risk of expanded appellate power increases with every encroachment on the jury; jury use and the scope of appellate power appear locked in a tandem relationship. The history of federal criminal sentencing practices is once again illustrative. To my knowledge no proposals for changing the sentencing procedure have included a requirement that the trial court articulate reasons for its sentencing decisions without also requiring appellate review over those decisions. I do not want to insinuate that attacks upon use of the civil jury represent a power quest by the appellate courts. I do suggest, however, that an interrelationship exists between the extent of jury trial use and the extent of appellate power. Although the notion that jury trials, which present a greater opportunity for error, are more productive of appeal than bench trials may be a popular one, it is inaccurate. A marked increase in the percentage of cases in which litigants have appealed decisions rendered by the trial judge after a bench trial is a contributing factor to the crushing increase in the workload of the appellate courts. Regardless of the relative number of appeals resulting from jury and bench trials, however, my point is that the absence of the jury will only denigrate the finality of factual decisions.

B. The Democratizing and "Public" Law Contributions

While reviewing the comparability of the British and American systems, I mentioned the unique need of the American federal courts for the lay influence of the jury. I now want to discuss a similar function of the civil jury from a different perspective. The jury serves as a check upon the judge's power in each case. More importantly, however, the jury's verdict provides the judicial process with a contemporaneous expression of the community values that bear on the issues in each case. The jury is a mechanism for expressing what I loosely refer to as "public law," because it is invested with the responsibility of representing "[i]ndividuals, groups, organizations of every type—all with varying activities, interests, desires, impulses, obligations, intelligence, powers, and other characteristics which condition the social order."⁴⁴ Because only a small percentage of the cases in the federal courts are tried to juries, however, their direct and immediate check upon judicial power is not large in a relative sense. Moreover, because a substantial percentage of jury trials in the federal courts are

44. Green, *Tort Law Public Law in Disguise*, 38 TEXAS L. REV. 1, 2 (1959), reprinted in L. GREEN, *THE LITIGATION PROCESS IN TORT LAW* 115, 116 (1977).

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diversity cases involving garden variety commercial and personal disputes, one can argue that this check upon power is minimal in an absolute sense as well. Elimination of diversity jurisdiction will further reduce the number of jury trials in federal court. Indeed, the abolition or alteration of diversity jurisdiction alone may diffuse current efforts to reduce civil jury use. But we should not leave this subject without first observing that the charge in even a typical products liability diversity case requires the jury to make basic policy judgments by weighing relative costs, product utility, and product hazards. My point is not that the jury performs a significant role in tort cases decided in the federal courts, because the elimination of diversity jurisdiction will largely eliminate these cases. What is significant is that one cannot consider even an ordinary tort case without acknowledging the important representative function served by the jury.

A growing number of important cases are appearing in the federal courts that draw upon the contributions made by the civil jury. For example, cases alleging a deprivation of constitutional rights under color of state law or the direct infringement of constitutional rights by private persons may well portend the evolution of a new constitutional tort.⁴⁵ These cases depend upon juries to judge the reasonableness of police conduct, to determine whether invasions of privacy in violation of the fourth amendment have occurred, and to safeguard prisoners' rights. The broad range of social questions presented in these cases seems to encompass every aspect of the government's relationship with the citizenry. These cases dramatically illustrate the need for a direct check upon judicial power, as well as the reciprocal infusion of community values into the judicial process and judicial standards into the community. Although some education results from the jury's participation in the judicial system, in my view it is the public's sense of participation in administering justice that has much greater significance. This sense of participation is felt not only by the jurors who actually participate in a particular trial, but also extends to the members of the public whom the jurors represent. I believe that the maintenance of public participation in the judicial process is essential to continued popular acceptance of judicial decisions. As Judge Irving Kaufman has observed:

[T]here can be no universal respect for law unless all Americans feel that it is their law—that they have a stake in making it work. When large classes of people are denied a role in the legal process—even if that denial is wholly unintentional or inadvertent—

45. See, e.g., *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). But cf. *Paul v. Davis*, 424 U.S. 693 (1976) (fourteenth amendment not intended as "font" of federal tort law).

tent—there is bound to be a sense of alienation from the legal order.⁴⁶

In summary, I have suggested that the right to a civil jury trial in the federal courts has, from its inception, represented an issue of power allocation. Although Britain's virtual abandonment of civil juries is often cited as evidence of the jury's inefficiency, the British experience has been shown to be inapposite in several respects: the British jury right is not constitutionally protected; elimination of the use of juries occurred in response to wartime manpower shortages; and the British judiciary lacks the need for the jury's legitimizing influence. In response to the criticism that the jury is ill-suited to handle the "big" or "technical" case, I have argued that there is no reason to presume that a judge is more adept at comprehending complex factual material than a jury; that bench trials may, in fact, engender more delays than jury trials; and that the presence of the jury imposes a valuable discipline on both the court and the advocates to analyze the case and to present the case clearly. I have seen no evidence sufficient to rebut my experience that jury trials are no more expensive or time consuming than are bench trials. The jury performs a valuable function by resolving black box, or arbitrary, factual issues and spares the judiciary from engaging in a subterfuge that weakens its credibility with the public. I have also noted that the absence of a jury generally results in a corresponding increase in the role and power of the appellate courts. Finally, I have suggested that the jury performs an essential role in our federal system by infusing a "public law" perspective into the judicial process. It is important that we not forget the jury's origin in the Constitution as a political institution, for ultimately, it still retains its power-allocating function today.

It would be a very narrow view to look upon the jury as a mere judicial institution; for however great its influence may be upon the decisions of the courts, it is still greater on the destinies of society at large. The jury is, above all, a political institution, and it must be regarded in this light in order to be duly appreciated.⁴⁷

46. Kaufman, *A Fair Jury—The Essence of Justice*, 51 *JUD.* 88, 91 (1967).

47. I. A. DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 282 (4th rev. trans. ed. New York 1948).

(d)

USE OF JURORS¹

by

HONORABLE FRANK W. WILSON
Chief Judge, United States District Court
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The subject of our attention for this portion of the program is the jury. It is not inappropriate, therefore, to recall that one of the most famous jury trials in the annals of Kentucky arose here at the place of our assembly today, for it was at the Galt House in 1838 that the events occurred which led to the most famous murder trial in the history of this State and to what was no doubt one of the greatest forensic duels in the literature of the law.

Upon that occasion three gentlemen from Mississippi, Judge Edward C. Wilkinson, his brother, who was a doctor, and a friend, who was a lawyer, all were guests at the Galt House. The purpose of the visit was in preparation for the marriage of Judge Wilkinson to a Kentucky belle. The happy occasion was marred, however, by an argument that arose between Judge Wilkinson's party and a tailor by the name of Redding over the fit of a wedding suit. The tailor shop was located just across the street from the Galt House. The argument spread to the Galt House when the tailor, with assembled friends and supporters, invaded this house of hospitality allegedly to obtain the names of his assailants for use in suing out legal process. Others claimed it was more of a vigilante movement. The two parties met in the bar of the hotel and it wasn't long until men were going down much faster than the drinks. Although Judge Wilkinson and his friends escaped with their lives, two of the Redding party were slain. Tremendous local feeling was aroused over the manner in which the proud Mississippians had treated the local townsfolk, so much so that the legislature was induced to change the

1. Delivered to the United States Judicial Conference for the Sixth Circuit at the Galt House, Louisville, Kentucky, on June 1, 1973.

venue of the murder trial that arose out of the fracas down to Harrodsburg in Mercer County. There, about this time of year in 1838 two forensic giants squared off against each other. For the prosecution was Ben Harden, Kentucky's greatest lawyer-ordinator of the age. For the defense was the incomparable Sergeant Prentiss of Mississippi, one of the great jury trial lawyers of that or any other age. The issue in the case was, of course, who were the aggressors.

Something of the flavor of Mr. Harden's jury speech can be gained from the following few lines:

"To be sure they come from the El Dorado of the South, with their thousands of bales of cotton condensed into their pockets • • • Climate, in a country of such vast extent at this, may have its influence on men, as it is known to have on the inferior race of animals. You may meet the lion, distinguished for his courage and his power, in the barbarity state, where, conscious of his strength, you may pass him unmolested if you are not the aggressor. As you descend to the more southerly latitudes, you meet the leopard and the panther, with whom treachery and ferocity are the substitutes for courage; and when you pass the equator, you meet the hyena, the emblem of uncompromising cruelty, without a redeeming quality. Men may, in like manner, be affected by climate and he who on the ironbound coast of the frozen north, or on the arid rocks of New Plymouth, will illustrate every noble virtue of his own nature, not less distinguished for his piety than his patriotism, for his endurance than his courage, and for his generosity than his bravery, when transplanted to the enervating regions of the south, may become different and degenerated, trusting more to his interests than his patriotism, his advantage than to courage, and to concealed weapons than to bravery."

Prentiss was equal to the occasion, however. Even his opponent described Prentiss' jury argument as "like a West India tornado sweeping through the courthouse carrying everything with it, even to the reason of those who heard it." Excerpts cannot do the speech but harm, but a small bit of the flavor of that speech may be gained from the following. Identifying Redding and his friends, including one Oldham, as the aggressors, Prentiss had this to say:

"That strangers should visit the Galt House is not wonderful; they do it every day • • • But surely Mr. Henry

Oldham must be the knight-errant of the age; the Don Quixote of the West; the paragon of modern chivalry. He fights, not from base desire of vengeance, nor from sordid love of gold; not even from patriotism or friendship; but from a higher and loftier sentiment; from his pure, ardent, disinterested, unsophisticated love of glorious strife. Like Job's war horse, he 'smelleth the battle afar off,' and to the sound of the trumpet he saith, ha! ha! • • •

"You have heard, gentlemen, of the bright, warm isles which gem the Oriental seas, and are kissed by the fiery sun of the tropics; where the clove, the cinnamon, and the nutmeg grow; where the torrid atmosphere is oppressed with a delicious, but fierce and intoxicating, influence. There the spirit of man partakes of the same spicy qualities which distinguish the productions of the soil. Even as the rinds of their fruits split open with nature's rich excess, so do the human passions burst forth with an overwhelming violence and prodigality unknown, till now, in our cold, ungentle clime. There, in the islands of Java, Sumatra, the Malaccas, and others of the same latitude, cases similar to that of Mr. Henry Oldham are of frequent occurrence. In those countries it is called 'running amuck.' • • •

"If Oldham tells the truth, he is an assassinating villain; if he does not, he is a perjured villain."

The result was the jury acquitted Judge Wilkinson and his Mississippi friends in less than 15 minutes of deliberation. Mr. Harden, in his chagrin at this miscarriage of justice, caused the legislature to split Mercer County, wherein Harrodsburg is located, and thus Boyle County, Kentucky, with Danville as its county seat, owes its origin in no small part to circumstances that arose right here in the Galt House.

So much for trial by jury as it was before the radio and television monopolized the public fancy. Now for the matters at hand.

You may wonder how it should be that I was given this assignment to discuss effective jury utilization. The answer is quite simple. Being aware that we learn from our failures and not from our successes, the Chief Judge of this Circuit called and gave me this assignment just one week to the day after Judge Peck and his associates on the Sixth Circuit reversed me for practicing a little efficiency in the selection of a jury. Had the Program Committee wanted a success story told here, they could

have gone to any one of the other 39 district judges in the Circuit, but preferring to trust the assignment only to one of the brethren whom the Sixth Circuit had recently chastised for his small, but yet too bold, effort to economize in the jury selection process, I was given the assignment. Having learned my lesson, you are going to get no revolutionary preachments on jury frugalities in this portion of the program.

The scope of the subject assigned reminds me that I have been in a ladies restroom upon three occasions in my life—twice by mistake and once by invitation, and that turned out to be a mistake. A large lady had fainted and I was invited in to assist in lifting her from the floor to a nearby sofa. Her size, together with her limp condition, prevented me from using any modesty in the manner in which I accomplished the assignment. Rather, I was compelled to grasp her in the manner of the wrestling arena. Being confronted with a subject of such scope, and being equally without finesse with words and ideas in the relevant area, I shall have to plunge wrestler fashion into my subject today.

So that all of you district judges may be at ease from any assault in which you might have to defend yourself, I will say at the outset that I am not going to cite any examples of jury mismanagement from the Sixth Circuit.

On the contrary, the courts of this Circuit are doing unusually well in the field of efficient jury management. In fact, the Western District of Michigan achieved a 91% efficiency in the use of jurors last year. The Western District of Tennessee and the Southern District of Ohio were close behind with 84% and 81% respectively. If success were the rule by which speakers were chosen, Judge Noel Fox, Judge Bailey Brown, Judge Joe Kinneary, or one of their associates, would now be on the program. I am giving them each fair warning that they may well be before this is over.

Efficient Jury Utilization

By way of introducing the subject of efficient jury utilization, there are five facts I would like to call to your attention. The first fact is that the total cost of juries in the federal courts last year was in the sum of \$16,617,100 as compared with one-fourth that much just ten years ago. The second fact is that 44%, or \$6,000,000 of that sum, was spent on jurors not serving on trials. The third fact is that the daily estimated jury cost in the federal

courts varied from a low of \$325.00 in Wyoming to more than \$4600 in the Southern District of New York. The fourth fact is that the efficiency with which jurors were used last year varied from as high as 96% in some courts to as low as 32% in other courts. By this I mean that of the jurors called for service, as high as 96% were used in trials or challenged in some courts, while in others as high as 68% were never used. The fifth fact is that if all federal courts used jurors as efficiently as the most efficient courts do, jury costs could be reduced from $\frac{1}{2}$ to $\frac{1}{3}$ of their present level.

I suppose that if you had to summarize the whole subject of jury management and efficiency into one basic rule, it would be to get a deputy jury clerk that is really on the ball, then let him run with the ball.

Rather than going down a miscellaneous catalogue of jury practices calculated to increase the efficiency with which jurors are used, let me state three basic propositions and then illustrate each with one or two illustrations. Efficiency in the use of jurors depends upon three basic factors: (1) effective scheduling and calendaring of trials, or "docket control" as it is sometimes referred to; (2) scheduling the optimum number of jurors to arrive at the courthouse at the proper time; and (3) proper management and conduct of the trial.

I

On the matter of docket control, it has been my observation that the judges who adopted the following practices have the more efficient jury use: (1) They set cases for trial as promptly as they are at issue. Nothing is so conducive to the settlement of cases or the entry of guilty pleas as a trial date and nothing reduces the need for jurors like settlements and pleas of guilty. (2) They establish procedures for determining settlements and changes of plea in advance of the trial and for avoiding last minute continuances. Few things are more inimicable to effective use of jurors than last minute continuances or civil settlements or changes of plea made on the courthouse steps.

I have a standing rule that my clerk is to call the attorneys in every case scheduled for jury trial, both two days and one day before the trial to confirm whether the case will go to trial or whether a settlement or change of plea is contemplated. If a change of plea is under consideration, I bring the defendant in

for arraignment a day or two before the trial and redetermine whether the former plea of not guilty is to stand. Unneeded jurors are called as late as the evening before the trial. In this regard I understand that some metropolitan courts have the practice that jurors are to call in by a stated hour to determine the need for them to report. Some courts use recorded messages for this purpose.

Although I have found no way to tax jury costs to the parties or the attorneys upon a delayed settlement of a civil case, I have on occasion added a fine in criminal cases commensurate with the increased jury costs where it appears that the defendant deliberately delayed his change of plea until the morning of the trial. Not only does that help the Government recoup a needless loss, but I find it has a cathartic effect upon lawyers disposed to advise delay the next time they represent an accused inclined to be dilatory in changing his plea.

It is with regard to settlements and changes of plea that members of the bar have a major role to play in the matter of jury utilization and efficiency.

Settlement is one of the highest arts of the advocate. For it rightfully should be the role of lawyers to be the peacemakers in our society, and not the apostles or authors of controversy. It rightfully should be the function of lawyers in our society to be the advocates of dialogue and reason and not the opposite of these. It rightfully should be the role of lawyers in our society to be the lubricant that makes civilization work and not the sand that slows or grinds the machinery of civilization to a halt. There is rarely, if ever, a legitimate reason why a case, if it can be settled on the morning of the trial, could not with equal justice have been settled 24 hours before the trial. The same is true of changes in plea. Every delayed settlement and every delayed plea costs the federal government somewhere between \$400 and \$1000 in needless jury costs.

Finally, it is most important to identify in advance the cases with special jury needs, the multiple party cases, the protracted cases, and the cases likely to require a sequestered jury.

So much for the matter of docket control. Any judge who develops better methods for doing these things has built a better mousetrap. As soon as we other judges learn about it, we will beat a path to your door.

II

So far we have been talking out pretrial practices calculated to increase the efficient use of jurors. Turning to the trial itself, the second basic factor determining the efficiency of juror use is the scheduling of the optimum number of jurors to arrive at the courthouse at the proper time. Here is where a capable and well trained jury clerk comes into his own. He will have informed himself both with regard to the trial work to be performed and with the Court's prior experience in regard to the number of jurors regularly found to be in reserve. If 51% of his jurors are never being used, as was the case in one of the New York Districts last year, he recognizes that he is calling too large a panel.

Across the Nation it appears that the average size of jury panels varies from 24 to 36 in a civil case and from 30 to 60 in criminal cases. Most of us tend to play it safe and overcall jurors. I have found from experience that in the ordinary civil case with one party on each side a panel of 20 is adequate, even for 12-member juries, and a panel of 25 or 26 is adequate in the ordinary criminal case.

In this regard, having alternate means of getting jurors on short notice enables you to operate with smaller panels with little risk of relay. Courts with jury pools have no problems in this regard. Federal employees, local housewives, and local business people on your panels make a good source of standby jurors in single-judge courts.

I have also found that rather than using a single jury panel for two or four weeks straight, it is less disruptive to the jurors and more efficient to the Court to use rotating panels whose period of service extends for six months or more, but with no panel being called more frequently than every third or fourth week. There is a certain amount of inefficiency in the impanelling of every new jury panel, try as best you may. Intermittent service over longer terms not only helps to minimize the impanelling inefficiencies, but even 20 or more days jury service spread over six months is generally less interruptive to the juror than is two, three or four weeks of straight jury service.

III

The proper management and conduct of the trial is the third basic factor in the effective use of jurors. Two or three illustrations perhaps will suffice here.

Stipulations and waivers in advance of trial can avoid the need for alternate jurors. Sometimes they are also available to meet the problem of the hung jury.

(1) Multiple voir dices at the outset of the jury term or at the beginning of the jury week or even the jury month can eliminate the need for a full panel each day a new jury trial is to commence. (2) The efficiency with which a jury pool operates can be increased by staggering the time for conducting the voir dire in multiple-judge courts.

To render jury verdicts less oracular and more reasonable, as well as reduce the hazard of error in the charge or otherwise, I am a strong believer in the use of special verdicts in civil cases. It is the possibility of hitting the jackpot, either by an exceedingly low or an exceedingly high verdict, that appeals to the gambling instinct of most lawyers and is an inducement not to settle cases that might otherwise be settled if jury verdicts were more consistent and predictable. It has been my experience that special verdicts contribute significantly to both consistency and predictability in jury verdicts.

Finally, the avoidance of trial interruptions and delays as well as the length of the trial day relate directly to the efficiency with which jurors are used. When the trial is interrupted by hearings on motions to suppress evidence or other proceedings that could or should have been resolved in pretrial proceedings, the time of jurors is needlessly wasted. Likewise, whether a normal trial day is three, four or six or more hours relates directly to the ultimate efficiency and ultimate cost of a jury trial. The last statistics I saw upon the subject, the average cost of each jury trial in federal court ranged from a low in some districts of \$600 to a high in other districts of \$3200.

Now of course lowering jury costs is not the only concern the courts must have and I want to address myself to that before I finish. But when it comes to the use of jurors, a lack of efficiency in using a juror's time is the single greatest criticism leveled at the courts by those who are called for jury service. In survey after survey it has been demonstrated that the two most frequent complaints made by jurors are (1) the endless waiting without being used and (2) the lack of any explanation why they must wait. Efficiency in the use of jurors will most certainly do two things. In the first place, it will save the United States a great deal of money. Every unneeded juror who is not called on any one day saves the United States an average of \$24.50.

In the second place, it will greatly increase the satisfaction jurors receive out of serving and will improve both the quality of their service and their respect for the courts.

Conclusion

In closing just a few words of caution. As I have just suggested, jury costs and jury efficiency are not the *sine qua non* of our system of justice. Jury trials were never intended to be the most efficient nor the least expensive method of trial. But then, neither is democracy particularly noted for possessing these qualities. As Winston Churchill once said, "Democracy is the worst form of government—except for all others." The same might be said of trial by jury.

Although I realize that what I am about to say places me in a minority of one, I cannot but be genuinely disturbed at certain restrictions and modifications imposed in recent years upon the jury system in the name of efficiency. I refer to such matters as (1) the restrictions being imposed upon the voir dire and the right to challenge, (2) the move to majority verdicts and the elimination of the unanimity rule, (3) the move to six-member [or less] juries and (4) the developing practice of fundamentally modifying the civil jury by local rules of court.

The effective use of jurors is one thing. Erosion of the right to trial by jury is another. The voluntary waiver of trial by jury is one thing. Modifying the essential size and nature of the jury is another. A stipulation for a majority verdict is one thing. Abolition of the rule of unanimity is another. Legislative modification of the jury as it has existed for hundreds of years is one thing. Fundamental alteration of the jury by local rule of court is, as I see it, an altogether different matter.

It may well be that the civil jury trial is on its way out, but that choice should be made with a proper respect for the lessons of history, and not by legal efficiency experts concerned only with time and dollars. It may well be that we are to follow the mother country, England, in the abandonment of the voir dire and the elimination of jury challenges, but it should not be without an awareness of the price we pay for an efficiency born of war time necessities in England. I have read somewhere that one English judge ruled a juror with sleeping sickness competent, just so that he could stay awake long enough to stand up to take the oath. It may well be that we are headed down the road of military justice, where juries consist of not more than five mem-

bers, two-thirds of whom can find a verdict, but we should at least be aware of the values that are being sacrificed for the sake of efficiency.

We are taught in the recent Supreme Court decisions of *Williams v. Florida*, 399 U.S. 78, 90 S.Ct. 1893, 26 L.Ed.2d 446 (1970); *Johnson v. Louisiana*, 406 U.S. 356, 92 S.Ct. 1620, 32 L.Ed.2d 152 (1972); and *Apodaca v. Oregon*, 406 U.S. 404, 92 S.Ct. 1628, 32 L.Ed.2d 184 (1972), that neither the jury's size nor its decisional majority has any constitutional dimensions, and this either in civil or in criminal practice. At least two circuits have held that each local court may by local rule vary the size of civil juries. I refer to *Colgrove v. Battin*, 456 F.2d 1379 (9th Cir.1972) and *Cooley v. Strickland Transportation Co.*, 459 F.2d 779 (5th Cir.1972). That same issue is now before the Supreme Court in the *Colgrove* case [cert. granted 409 U.S. 841, 93 S.Ct. 44, 34 L.Ed.2d 80] if in fact the case has not already been decided as I make this talk. Should the practice be approved, then presumably each district court could by local rule vary both the size and the decisional majority of the civil jury practice in its jurisdiction and we could potentially have 94 systems of civil jury practice in the federal courts.

With regard to where the line should be drawn as to the size or decisional majority of the jury, it is well to remember that every line drawn in the law could have been drawn one point to either side—with equal logic. But draw lines we must and I would suggest that lines drawn for hundreds of years, as has been the case with the common law jury, should not be tampered with lightly. The jury system was never designed to work. No efficiency expert would ever have dreamed it up. Rather it worked and then men began to work with it. Since no one really knows just how or why the jury system works as well as it does, it would be the better part of wisdom not to start modifying it in the name of efficiency until need for attention is shown to be overwhelming.

While only legal antiquarians ever bother to read Blackstone today, the following words from his *Commentaries* would seem to be timely:

"So that the liberties of England cannot but subsist so long as this palladium remains sacred and inviolate; not only from all open attacks (which none will be so hardy as to make), but also from all secret machinations, which may sap and undermine it; by introducing new and arbitrary meth-

ods of trial; [by justices of the peace, commissioners of the revenue, and courts of conscience.] And however convenient these may appear at first (as doubtless all arbitrary powers, well executed, are the most convenient), yet let it be again remembered, that delays and little inconveniences in the forms of justice, are the price that all free nations must pay for their liberty in more substantial matters; that these inroads upon this sacred bulwark of the nation are fundamentally opposite to the spirit of our constitution; and that, though begun in trifles, the precedent may gradually increase and spread, to the utter disuse of juries in questions of the most momentous concern."

While each judge who is a member of this Conference may rightly feel that he is the most honest and impartial, if not in fact the ablest, judicial officer known to history, history should also teach us that the availability of trial by jury is the single greatest assurance of both the independence and the quality of judges. History has shown us that the Executive has always found it much easier to find judges who will do its will than it has to find amenable juries. Furthermore, like all professions, judges tend to develop a view of themselves and their profession that is oftentimes far removed from that of the common man. For centuries now the institution of the jury has helped assure English speaking people all over the world that they got the kind of justice they wanted, and not just the sort of justice that experts thought was good for them.

It is well for all to remember, the present company not excepted, that when judges become too remote from the ordinary man, trial by jury is there to correct the situation. An unsatisfactory jury will be replaced shortly. An unsatisfactory judge is another matter.

As was said by a perceptive member of the judiciary some 200 years ago: "I am sure no danger of this sort is to be apprehended from the judges of the present age; but in our determinations it will be prudent to look forward into the futurity." Although in 1973 "futurity" may not have yet arrived, it still remains prudent to look forward to it.

When freedom is threatened in the world and when the power and influence of government becomes so all-pervasive and all-encompassing in our daily lives, I would suggest that no institution of government gives greater assurance of the continued preservation of freedom and individual rights than the historic

Anglo-American jury. For the jury is of the essence of democracy. The preservation of the jury is of the essence of the preservation of democracy. I cannot see one dying and the other surviving. No tyranny could long exist that leaves a citizen's freedom in the hands of twelve of his countrymen. So jury trial is more than an instrument of justice. It is the one sure symbol that freedom still lives.

As Sir William Holdsworth in his classic *History of English Law* has stated:

"The jury system has for some hundreds of years been constantly bringing the rules of the law to the touchstone of contemporary common sense."

The bench and the bar have no higher function than to see that the law continues to be brought to the touchstone of common sense.

(e)



Compensation of Jurors

In recent years, some attention has focused on the issue of juror compensation. Trial courts cannot function without jurors. They are deeply obligated to those citizens who respond to the jury commissioner's summons. Yet in many state and local courts jurors' pay is notoriously inadequate and may make jury service an economic hardship.

Per diem allowances of \$5.00 and less are not uncommon. In some fourteen states, the daily allowances for at least some jurors in some courts may be this low. Mileage allowances, when granted at all, can be as little as \$.05 per mile. In some areas, this "compensation" may not even cover the daily expenses of the jurors.

Since 1968, the federal government has paid its jurors \$20.00 per day and \$.10 per mile (U.S.C.A., 28 § 1871). Six states now authorize payment to jurors at the federal rate: Hawaii, Maine, Nebraska, New Hampshire, North Dakota and South Dakota. New Mexico pays its jurors the minimum wage, i.e., \$.2.30 per hour in travel, attendance and service. It is the only state to use such a formula rather than specifying a flat rate.

In 1974, a California bill to change per diem payment of jurors from a minimum of \$5.00 to a set \$25.00 was proposed. The bill was subsequently analyzed in *Guidelines for Determining the Impact of Legislation on the Courts*, by Ralph Andersen and Associates, for the Judicial Council of California. The analysis dealt with the fiscal impact of the bill and estimated it would raise the cost of the jury system by almost \$25 million. The measure was defeated.

William R. Pabst and G. Thomas Munsterman, in "Economic Hardship of Jury Duty" (58 *Judicature* 495, May 1975), estimate that it would cost \$200 million a year to raise state and local jury fees to the federal level. Whether by raising daily pay or shortening the juror's term or some other method, it seems the courts are obliged to make some effort to reduce the financial burden each juror must bear if they are to continue to operate with the support and confidence of the public they serve.

The following information was compiled by the National Center's Research and Information Service and appeared in the monograph entitled *Facets of the Jury System*.

State	Per Diem	Per Mile	Citation
Alabama	\$10	5¢ each way + ferrage and toll	Code of Ala., 1975 Supp., Tit. 11, § 98
Alaska	\$7.50 half-day \$15 full day	12¢ each way	Alaska Admin. Rule 17
Arizona	\$12 superior court \$4 justice court	Up to 20¢ one way (det. by judge)	Ariz. Rev. Stat. § 21-221 (1975)
Arkansas	\$5 before being sworn \$7.50 after being sworn	5¢ each way	Ark. Stat. §§ 39- 301, 303 (1975)
California	\$5 (may be incr. by county)	15¢ one way	Cal. Code Civ. Proc. § 196 (1976) <i>State Court Journal</i>

<i>State</i>	<i>Per Diem</i>	<i>Per Mile</i>	<i>Citation</i>
Colorado	\$3 in attendance \$6 serving	15¢ one way	Colo. Rev. Stat. § 13-33-101, 103 (1976)
Connecticut	\$10	10¢ each way	Conn. Gen. Stat. Ann. § 51-267 (1977)
Delaware	\$15	15¢ each way	Del. Code Ann., 1976 Cum. Supp., 10 § 4511
Florida	\$10	10¢ each way	Fla. Stat. § 40.24 (1977)
Georgia	\$5-25 (fixed by grand jury)		Ga. Code Ann. § 59-120 (1976)
Hawaii	\$20	20¢ one way	Hawaii Rev. Stat., 1975 Supp., § 612-8
Idaho	\$5 half-day \$10 more than half-day or if juror req. to travel 30+ miles	10¢ each way	Idaho Code, 1976 Cum. Supp., § 2-215
Illinois	\$4 counties of 1st class \$5 counties of 2nd class \$10 counties of 3rd class (fixed by county bd., max \$15.50/day)	10¢ each way in counties of 1st and 2nd class Fixed by county bd. in 3rd class	Ill. Ann. Stat., Chap. 53, § 62 (1977)
Indiana	\$7.50 until impanelled \$17.50 after impanelled (\$5 city courts)		Ind. Stat. Ann., § 33-4-5-8 (1976)
Iowa	\$10	15¢ each way plus parking	Iowa Code Ann., Cum. Ann. Pocket Part 1976, § 607.5
Kansas	\$10	12-15¢ each way (fixed by sec'y of administration)	Kans. Stat. Ann., § 43-171 (1973)
Kentucky	\$5 circuit courts \$1.50 per case inferior courts (so max. of \$3/day)		Ky. Rev. Stat., 1974 Cum. Supp., § 29.390
Louisiana	\$8 if juror serves \$3 if juror doesn't serve (ex- cept Orleans parish)	7¢ each way	La. Stat. Ann., § 13:3049
Maine	\$20	10¢ each way	Me. Rev. Stat., 14 § 1215 (1976-77)

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<i>State</i>	<i>Per Diem</i>	<i>Per Mile</i>	<i>Citation</i>
Maryland	\$10-15 (varies among counties)	0-15¢ each way (varies among counties)	Ann. Code Public Gen. Laws of Md., 1976 Cum. Supp., Courts and Judicial Proceedings, § 8-106
Massachusetts	1st degree murder \$16, or \$22 if under restraint. All other trials \$14, or \$20 if under restraint	8¢ each way	Mass. Gen. Laws Ann., 262 § 25 (1976-77)
Michigan	\$7.50 half-day \$15 full day	10¢ each way	Mich. Stat. Ann., § 600.1344 (1976-77)
Minnesota	\$15 (in counties with a city of the 1st class, established by bd. of county comm's)	13¢ each way	Minn. Stat. Ann., § 357.26 (1977)
Mississippi	\$15 chancery county circuit, and special eminent domain courts	5¢ each way	Miss. Code, 1976 Cum. Supp., §§ 25-7-61, 25-7-47
Missouri	\$6	7¢ each way	Mo. Rev. Stat., § 494.100 (1977)
Montana	\$12	Rate as allowed by fed. I.R.S.	Rev. Codes of Mont., 1975 Cum. Supp., §§ 25-401, 59-801
Nebraska	\$20	10¢ each way	Rev. Stat. Neb., 1976 Cum. Supp., §§ 33-138
Nevada	\$9 in attendance \$15 sworn and serving	15¢ each way	Nev. Rev. Stat., § 6.150 (1975)
New Hampshire	\$20	12¢ each way	N.H. Rev. Stat. Ann., 1975 Supp., §§ 300-14:16, 99-A:1
New Jersey	\$5 (can be reduced)	14¢ each way	N.J. Stat. Ann., § 22A:1-1 (1976)
New Mexico	\$2.30/hr. in travel, attendance and service	12¢ each way	N.M. Stat. Ann., § 19-1-15 (1976)
New York	Not above \$12 (set by county bd. of supervisors or NYC council)	Actual necessary fare (NYC). Not exceeding 10¢ each way (set by county board of supervisors)	McKinney's Cons. Laws of N.Y., Judiciary Law § 749-a
North Carolina	\$8	Same as state employees	Gen. Stat. N.C., 1975 Cum. Supp., § 7A-312 <i>State Court Journal</i>

<i>State</i>	<i>Per Diem</i>	<i>Per Mile</i>	<i>Citation</i>
North Dakota	\$20 district or county court \$8 justice court	10¢ each way	N.D. Century Code § 27-09, 1-14 (1974)
Ohio	Up to \$15 (after 10 days' service, not less than \$15/day)		Ohio Rev. Code, 1975 Supp., § 2313.34
Oklahoma	\$7.50	10¢ one way	Okla. Stat., 28, § 86 (1977)
Oregon	\$10	8¢ each way	Ore. Rev. Stat., § 10.060 (1977)
Pennsylvania	\$9	7¢ each way	Penn. Stat. 17 §§ 1121a, 1121al (1976-77)
Rhode Island	\$15	8¢ each way	R.I. Gen. Laws § 9-29-5 (1976)
South Carolina	\$2-12.50 (varies among counties)	5¢ each way	Code of Laws of S.C., 1975 Cum. Supp., § 38-308
South Dakota	\$10 until impanelled \$20 after impanelled	15¢ each way	S.D. Cod. Laws, 1976 Supp., § 16-13-46
Tennessee	\$10 min. (may be increased by county)	10¢ + ferrage and toll (may be provided county)	Tenn. Code Ann., 1976 Cum. Supp., § 22-401
Texas	\$5-30 (det. by county comm'rs)		Tex. Rev. Civ. Stat., 1976-77 Cum. Supp., Art. 2122
Utah	\$4 district court \$1.50 justice court	20¢ one way	Utah Code Ann., §§ 21-5-1, 21-5-9 (1976)
Vermont	\$15	8¢ each way	Ver. Stat. Rev., 32 § 1511 (1976-77)
Virginia	\$12	10¢ each way	Code of Va., 1976 Cum. Supp., §§ 8-208.33, 14.1-5
Washington	\$10	13¢ each way	Rev. Code of Wash., § 2.36.150 (1976)
West Virginia	\$15-25	15¢ each way	W.Va. Code, 1976 Cum. Supp., § 52-1-21
Wisconsin	Min. \$4 (fixed by county bd.)	Fixed by county board	Wis. Stat. Ann., 1976-77 Cum. Supp., § 255.25
Wyoming	\$6 half-day \$12 full day	15¢ each way	Wyo. Stat., 1975 Cum. Supp., §§ 1-136, 9-16

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(f)

Employment Protection for Federal Jurors

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EMPLOYMENT PROTECTION FOR FEDERAL JURORS**Background**

There apparently is a problem, of long standing, of jurors in the federal courts being discharged from their employment when they are selected for and subsequently serve on jury duty. Because of the number of instances in which federal grand and petit jurors had allegedly been discharged solely because of their service, the Judicial Conference of the United States at its March 15-16, 1971, meeting agreed to a proposal that would penalize employers found guilty of such action by fine of up to \$1,000 and imprisonment of up to one year or both. Report of the Proceedings of the Judicial Conference of the United States, March 15-16, 1971, House Document 92-124 at 6. This body has continued to voice its support for enactment of legislation protecting re-employment rights of jurors. Its most recent reaffirmation of this support was in recommending prompt action by the Congress on H.R. 7810, 95th Congress. Proceedings of the Judicial Conference, September 15-16, 1977, House Document No. 95-269 at 84.

Congressional Action

A bill, H.R. 1089, was introduced in the 92nd Congress which would have made discharging a federal juror from his employment a misdemeanor with a fine of not less than \$1,000 and not more than \$10,000. During hearings on this and other bills, the extent of the problem of jurors losing their jobs was discussed. Hearings on Federal Jury Service Before House Judiciary Subcommittee No. 5, 92nd Congress, 1st Session, (1971) Serial No. 16. Also, questions were raised as to the propriety of the United States receiving the

fine instead of the employee receiving compensation from the employer. Subsequent to the 1971 hearings, legislation to correct this practice of jurors being discharged from employment has included civil penalties only.

Other legislation introduced to protect the employment rights of jurors has been:

93rd Congress: H.R. 10897. Introduced by Mr. Rodino. Would have prohibited employers from discharging or threatening to discharge, intimidating, or coercing any employee by reason of federal jury service. Possible civil penalty of not more than \$10,000 for each violation as to each juror. District courts given jurisdiction to order reinstatement of discharged employee with or without back pay.

S. 3776. Introduced by Mr. Schweiker. Would generally have required private employers, absent a change of circumstances, to reemploy individuals who were not temporary employees and who left the position to perform jury service for any court. If the individual was disabled during the term of jury service, the employer would have been required to place the person in another position if available. It would have expressed the sense of Congress that States or political subdivisions thereof also comply with the provisions of the act. Individuals reemployed under the provisions of the act would have been considered to have been on furlough or leave of absence without loss of any benefits of employment and would have been ineligible for discharge for one year after restoration to employment. If two employees left the same position for jury duty, the first to leave would have had first right to reemployment.

District courts would have had jurisdiction in actions under this act and would have been required to give precedence to such actions. United States attorneys would have been required to appear and act as attorney for individuals bringing actions for restoration. Damages to have been loss of wages with employer deemed the only necessary party to the action.

The provisions of this bill were generally passed by the Senate as an amendment to other legislation, S. 3265, on October 2, 1974, which was not reported from the House Committee on the Judiciary.

94th Congress. H.R. 6043. Introduced by Mr. Rodino. Duplicate of H.R. 10897, 93rd Congress, supra.

H.R. 6150. Introduced by Mr. Railsback. Section 9 of this bill was a duplicate of H.R. 6043 and its predecessors. This bill also dealt with increased compensation of the judiciary and three judge courts and the principal topics of the hearings appeared to be these areas. Hearings on Improvement of Judicial Machinery Before the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice, 94th Congress, 1st Session (1975), Serial No. 55. As reported from the Committee on the Judiciary, the bill was amended to exclude the provisions dealing with employment rights of jurors. House Report No. 94-1379. It was felt that the area of employment rights, inter alia, needed further study. Id. at 3.

S. 539. Introduced by Mr. Burdick for himself and Mr. Schweiker. Sections 3 and 4 of this bill are generally the same as S. 3776, 93rd Congress, supra. This bill was reported from the Committee on the Judiciary, September 26, 1975 [Senate Report 94-400], and passed the Senate

September 30, 1975. It was not reported from the House Committee on the Judiciary.

95th Congress. H.R. 7810. Introduced by Mr. Rodino. Section 2 of this bill duplicates the language of H.R. 10897, 93rd Congress and H.R. 6043, 94th Congress, supra.

S. 2075. Introduced by Mr. DeConcini for himself and Mr. Wellop. As introduced, the bill was generally the same as previous recent Senate bills. Subsequent to hearings, Hearings on Marshals Service Fees, Witness Fees and Amendments to the Jury Selection and Service Act Before the Senate Judiciary Subcommittee on Improvements in Judicial Machinery, 95th Congress, 1st Session (1977), the bill was amended, reported out of the Committee on the Judiciary April 25, 1978, Senate Report 95-757, and passed the Senate without debate April 27, 1978. 124 Congressional Record S. 6543 (daily edition, Thursday, April 27, 1978). It is now pending before the House Committee on the Judiciary.

As passed the Senate, Section 3 of S. 2075 would add a new section, "1875. Employment rights," to title 28, United States Code. This section would allow an individual absent from a position, other than a temporary position as defined by the Director of the Administrative Office of the United States Courts, to return to the previous position if a court certificate verifying jury service has been received and application for return to employment is made promptly after jury service.

A private employer would be required to restore the employee to the previously held position or a position of like seniority, status, and

pay if the employee is still qualified to perform the duties of the position. If not still qualified by reason of disability sustained during the period of jury service but still qualified to perform the duties of any other position the person shall be restored by the employer to such position as the person is qualified to perform which will provide like seniority, status, and pay or the nearest approximation thereof consistent with the circumstances of the case. If the employer's circumstances have changed so as to make it impossible or unreasonable to do so, the employee need not be restored to a position.

If the employee was in the employ of any State or political subdivision thereof, the sense of Congress is that the same rules, supra, as to reemployment should apply.

An individual restored to a position in accordance with this act, if within the private sector, shall be considered as having been on furlough or leave of absence during his period of jury service and is to be restored without loss of seniority. Entitlement to insurance and other benefits should be the same as in other cases of furlough or leave of absence. It is the sense of Congress that individuals in the public sector be restored to give that person status in employment continuously from the time of entering upon jury service to restoration to employment.

Where two or more individuals are entitled to be restored to a position, the person who left first in order to enter jury service has the prior right to be restored to the position without prejudice to the reemployment rights of any other individuals to be restored.

Upon finding of probable merit to a claim by a former employee, the district court in the district where the employer maintains a place of business shall appoint counsel to represent the plaintiff. Such counsel shall be compensated and necessary expenses paid to the extent provided by the Criminal Justice Act of 1964, 18 United States Code 3006A. The court may tax a defendant employer, as court costs, the attorney fees and expenses when the employee prevails. The court shall award a prevailing plaintiff bringing an action with retained counsel a reasonable attorney's fee as part of the costs. No fees or court costs may be taxed against an individual bringing an action in good faith under this section.

Any private employer who fails to reinstate, discharges, threatens to discharge, intimidates, or coerces any employee by reason of such employee's jury service in any court of the United States shall be subject to a civil penalty of not more than \$10,000 for each violation as to each juror.

"Jury service" is defined to include attendance in any court of the United States in connection with service upon any grand or petit jury of the United States.

Section 5(a) of the proposed act would give the district courts original jurisdiction over cases allowed by the proposed section 1875, supra, without regard to the amount in controversy.

State Precedent

We have found 23 state statutes which appear to be designed to protect employees in the private sector by either requiring that they be excused for jury duty or prohibiting their discharge because of such services.

Employers who violate these prohibitions may be held in contempt of court, as in Massachusetts and New York, or punished, generally, as misdemeanants. Fines imposable under the statutes range from \$200 to \$1,000 and maximum jail terms are 6 months.

Section 17 of the Uniform Jury Selection and Service Act (1970) has been adopted, in some instances in a modified version, in Colorado, Idaho, Indiana, Maine, Minnesota, and North Dakota. It generally provides for a fine, up to 6 months in jail for employers who illegally discharge employees serving on a jury, award of attorneys fees, and up to 6 weeks pay to the employee.

The statutes found are:

Uniform Laws Annotated (Supp. 1978): Jury Selection and Service Act (1970)

§ 17. [Protection of Jurors' Employment]

(a) An employer shall not deprive an employee of his employment, or threaten or otherwise coerce him with respect thereto, because the employee receives a summons, responds thereto, serves as a juror, or attends court for prospective jury service.

(b) Any employer who violates subsection (a) is guilty of criminal contempt and upon conviction may be fined not more than [\$500] or imprisoned not more than [6] months, or both.

(c) If an employer discharges an employee in violation of subsection (a) the employee within [] days may bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for 6 weeks. If he prevails, the employee shall be allowed a reasonable attorney's fee fixed by the court.

Code of Alabama (Supp. 1977)**§ 12-16-8. Excusing of employees for jury service; compensation to which employees entitled during jury service; issuance to jurors of statement showing fee or compensation for jury service.**

(a) Upon receiving a summons to report for jury duty, any employee shall on the next day he is engaged in his employment exhibit the summons to his immediate superior, and the employee shall thereupon be excused from his employment for the day or days required of him in serving as a juror in any court created by the constitutions of the United States or of the state of Alabama or the laws of the United States or of the state of Alabama.

(b) Notwithstanding the excused absence provided in subsection (a) of this section, any full-time employee shall be entitled to his usual compensation received from such employment less the fee or compensation he received for serving as such juror.

(c) It shall be the duty of all persons paying jurors their fee or compensation for services to issue to each juror a statement showing the daily fee or compensation and the total fee or compensation received by the juror. (Acts 1969, No. 619, p. 1126.)

Arizona Revised Statutes (Supp. 1976-77)**§ 21-236. Absence from employment for jury duty; vacation and seniority rights; violation; penalty**

A. An employer shall not refuse to permit an employee to take a leave of absence from employment for the purpose of serving as a juror. No employer may dismiss or in any way penalize any employee because he serves as a grand or trial juror, provided, however, that an employer shall not be required to compensate an employee when the employee is absent from his employment because of his jury service. Any absences from employment shall not affect vacation rights which employees otherwise have.

B. An employee shall not lose seniority or precedence while absent from his employment due to his serving as a member of a grand jury. Upon return to employment the employee shall be returned to his previous position, or to a higher position commensurate with his ability and experience as seniority or precedence would ordinarily entitle him.

C. A person who violates any provision of subsections A or B of this section is guilty of a misdemeanor punishable by a fine of not more than three hundred dollars for each offense, by imprisonment not to exceed thirty days, or both.

Added laws 1971, Ch. 126, § 4.

California Labor Code (West, 1978)**§ 230. Jury duty; notice to employer; right to time off**

No employer shall discharge an employee for taking time off to serve as required by law on an inquest jury or trial jury, if such employee, prior to taking such time off, gives reasonable notice to the employer that he is required to serve.

(Added by Stats.1968, c. 1270, p. 2395, § 1.)

Colorado Revised Statutes(Supp. 1976)

13-71-118. Protection of jurors' employment. (1) An employer shall not deprive an employee of his employment, or threaten or otherwise coerce him with respect thereto, because the employee receives a summons, responds thereto, serves as a juror, or attends court for prospective jury service.

(2) Any employer who violates subsection (1) of this section is guilty of criminal contempt and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

(3) If an employer discharges an employee in violation of subsection (1) of this section, the employee may within thirty days bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for six weeks. If he prevails, the employee shall be allowed a reasonable attorney's fee fixed by the court.

Florida Statutes Annotated (Supp. 1977)**40.271 Jury service**

(1) No person summoned to serve on any grand or petit jury in this state, or accepted to serve on any grand or petit jury in this state, shall be dismissed from employment for any cause because of the nature or length of service upon such jury.

(2) A civil action by the individual who has been dismissed may be brought in the courts of this state for any violation of this section, and said individual shall be entitled to collect not only compensatory damages, but, in addition thereto, punitive damages and reasonable attorney fees for violation of this act.

Added by Laws 1974, c. 74-379, § 2, eff. Oct. 1, 1974.

Hawaii Revised Statutes (Supp. 1974)

[§612-25] Protection of jurors' employment. (a) An employer shall not deprive an employee of his employment, or threaten or otherwise coerce him with respect thereto, because the employee receives a summons, responds thereto, serves as a juror, or attends court for prospective jury service.

(b) Any employer who violates subsection (a) is guilty of a petty misdemeanor.

(c) If an employer discharges an employee in violation of subsection (a) the employee within ninety days from the date of discharge may bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for six weeks. If he prevails, the employee shall be allowed a reasonable attorney's fee fixed by the court. [L. 1973, c 191, pt of §1]

Idaho Code (Supp. 1977)

2-218. Employer prohibited from penalizing employee for jury service — Penalty — Action by discharged employee for lost wages. — (1) An employer shall not deprive an employee of his employment, or threaten or otherwise coerce him with respect thereto, because the employee receives a summons, responds thereto, serves as a juror, or attends court for prospective jury service.

(2) Any employer who violates subsection (1) of this section is guilty of criminal contempt and upon conviction may be fined not more than three hundred dollars (\$300) or imprisoned not more than six (6) months, or both.

(3) If an employer discharges an employee in violation of subsection (1) of this section the employee within sixty (60) days may bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for six (6) weeks. If he prevails, the employee shall be allowed a reasonable attorney's fee fixed by the court. [1971, ch. 169, § 17, p. 799.]

Indiana Statutes (Supp. 1977)

33-4-5.5-21 [4-7145]. Interference with employee called as a juror — Penalty — Civil action against employer. — (a) An employer shall not deprive an employee of his employment, or threaten or otherwise coerce him with respect thereto, because the employee receives a summons, responds thereto, serves as a juror, or attends court for prospective jury service.

(b) Any employer who violates subsection (a) of this section is guilty of criminal contempt and upon conviction may be fined not more than five hundred dollars [\$500] or imprisoned in the county jail not more than six [6] months or both.

(c) If any employer discharges an employee in violation of subsection (a) of this section the employee may within thirty [30] days bring a civil action for recovery of wages lost as a result of the violation and for an order requiring reinstatement of the employee. Damages recoverable shall not exceed lost wages for six [6] weeks. If he prevails, the employee shall be allowed a reasonable attorney's fee fixed by the court. [IC 1971, 33-4-5.5-21, as added by Acts 1973, P. L. 306, § 1, p. 1632.]

Louisiana Statutes Annotated (Supp. 1978)**23 § 985. Jury duty; dismissal forbidden; penalty**

No employer shall discharge, without cause, any employee called to serve or presently serving any jury duty and no employer shall make, adopt, or enforce any rule, regulation or policy providing for the discharge of any employee who has been called to serve, or who is presently serving on, any grand jury or on any jury at any criminal or civil trial.

Any employer violating the provisions of this section shall be required to reinstate all discharged employees at the same employment, wages, salary, benefits and other conditions of employment enjoyed by said employees before their discharge. The employer shall additionally be fined not less than one hundred nor more than one thousand dollars for each employee discharged.

Added by Acts 1974, No. 480, § 1.

Maine Revised Statutes Annotated (Supp. 1977)**14 § 1218. Protection of jurors' employment**

An employer shall not deprive an employee of his employment, or threaten or otherwise coerce him with respect thereto, because the employee receives a summons, responds thereto, serves as a juror or attends court for prospective jury service.

Any employer who violates this section is guilty of criminal contempt and upon conviction may be punished by a fine of not more than \$500 or by imprisonment for not more than 6 months, or both.

If an employer discharges an employee in violation of this section the employee within 90 days may bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for 6 weeks. If he prevails, the employee shall be allowed a reasonable attorney's fee fixed by the court.

1971, c. 391, § 1.

Annotated Code of Maryland (Supp. 1977)**§ 8-105. Protection of jurors' employment.**

An employer may not deprive an employee of his employment solely because of job time lost by the employee as a result of responding to a summons issued under this title, or as a result of attending court for service or prospective service as a petit or grand juror under the provisions of this title. (An. Code 1957, art. 51, § 13; 1973, 1st Sp. Sess., ch. 2, § 1.)

§ 8-401. Penalties.

(a) *Violations by employers.* — An employer who violates the provisions of § 8-105 of this title may be fined not more than \$1,000.

Massachusetts General Laws Annotated (Supp. 1977-78)

268 § 14A. Juror discharged from employment

No person shall be discharged from or deprived of his employment because of his attendance or service as a grand or traverse juror in any court. Violation of this section by an employer shall be a contempt of the court upon which such person is or has been in attendance or in which he is or has been serving as a grand or traverse juror, and such employer may be prosecuted upon complaint verified upon oath and be punished for such contempt.

Added by St.1936, c. 168.

Michigan Compiled Laws Annotated (Supp. 1978-79)

725.145a Jury service; employment relation

Sec. 45a. Any employer or his agent, who threatens to discharge or who discharges or causes to be discharged from employment any person by reason of his being summoned for jury duty, serving on a jury, or for having served on a jury under this act, is guilty of a misdemeanor. P.A.1923, No. 83, § 45a, added by P.A.1961, No. 100, § 1, Eff. Sept. 8, 1961.

Minnesota Statutes Annotated (Supp. 1978)

§33.50 Protection of jurors' employment

Subdivision 1. An employer shall not deprive an employee of his employment, or threaten or otherwise coerce him with respect thereto, because the employee receives a summons, responds thereto, serves as a juror, or attends court for prospective jury service.

Subd. 2. An employer who violates subdivision 1 is guilty of criminal contempt and upon conviction may be fined not more than \$500 or imprisoned not more than six months, or both.

Subd. 3. If an employer discharges an employee in violation of subdivision 1 the employee within 30 days may bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for six weeks. If he prevails, the employee shall be allowed a reasonable attorney's fee fixed by the court.

Added by Laws 1977, c. 286, § 20.

CHAPTER 150

AN ACT relating to juries; providing for the protection of a juror's employment following his term of service; providing for notice to an employer; providing penalties for violations; and providing other matters properly relating thereto.

(Approved April 12, 1977)

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Chapter 6 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. Any person, corporation, partnership, association or other entity who is:

(a) An employer; or

(b) The employee, agent or officer of an employer, vested with the power to terminate or recommend termination of employment, of a person who is a juror or who has received a summons to appear for jury duty, and who deprives the juror or person summoned of his employment, as a consequence of his service as a juror or prospective juror, or who asserts to such juror or person summoned that his service as a juror or prospective juror will result in termination of his employment, is guilty of a misdemeanor.

2. A person discharged from employment in violation of subsection 1 may commence a civil action against his employer and obtain:

(a) Wages and benefits lost as a result of the violation;

(b) An order of reinstatement without loss of position, seniority or benefits;

(c) Damages equal to the amount of the lost wages and benefits; and

(d) Reasonable attorney's fees fixed by the court.

3. Each summons to appear for jury duty shall be accompanied by a notice to the employer of the person summoned. The notice shall inform the employer that the person has been summoned for jury duty and shall include a copy of the provisions of subsections 1 and 2 of this section. The person summoned, if he is employed, shall give the notice to his employer at least 1 day before he is to appear for jury duty.

New York Judiciary Law (McKinney 1977-78)

§ 519. Right of juror to be absent from employment

Any person who is summoned to serve as a juror under the provisions of this article and who notifies his employer to that effect prior to the commencement of his term of service, shall not, on account of his absence from employment by reason of such jury service, be subject to discharge or penalty. An employer may, however, withhold wages of any such employee serving as a juror during the period of such service, and such withholding of wages shall not be deemed a penalty. Violation of this section shall constitute a criminal contempt of court punishable pursuant to section seven hundred fifty of this chapter.

Added L.1977, c. 316, § 2.

North Dakota Century Code (Supp. 1977)**27-09.1-17. Protection of jurors' employment.—**

1. An employer shall not deprive an employee of his employment, or threaten or otherwise coerce him with respect thereto, because the employee receives a summons, responds thereto, serves as a juror, or attends court for prospective jury service.
2. Any employer who violates subsection 1 is guilty of a class B misdemeanor.
3. If an employer discharges an employee in violation of subsection 1, the employee within ninety days may bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for six weeks. If he prevails, the employee shall be allowed a reasonable attorney's fee fixed by the court.

Source: S. L. 1971, ch. 304, § 17; S. L. 1975, ch. 106, § 305.

Oregon Revised Statutes (Supp. 1977)

10.090 Prohibited acts by employers against jurors; notice to jurors by sheriff; remedy for violations. (1) An employer shall not discharge or threaten to discharge, intimidate, or coerce any employe by reason of the employe's service or scheduled service as a juror on a grand jury, trial jury or jury of inquest.

(2) This section shall not be construed to alter or affect an employer's policies or agreements with his employes concerning employe's wages during times when an employe serves or is scheduled to serve as a juror.

(3) When summoning jurors, the sheriff shall notify each juror of his rights under this section.

(4) Upon complaint filed by a prospective juror or a juror who has served or upon petition of the district attorney, the circuit court shall have jurisdiction to prevent and restrain violations of this section by issuing appropriate orders, including but not limited to, reinstatement of an employe discharged by reason of his service as a juror, with back pay for the time the employe was discharged.

1975 c.160 §11

Purdon's Pennsylvania Legislative Service, Session of 1978

JURORS—ABSENCE FROM EMPLOYMENT

ACT NO. 1978-17

S.B.NO.598

An Act permitting any person required to serve as a juror to absent himself from any service or employment in which he is then engaged or employed; prohibiting employers from dismissing or threatening to dismiss such persons; granting such persons civil relief.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1.

Any person required to serve as a juror for any of the courts of the Commonwealth or the United States shall be entitled to absent himself from any service or employment in which he is then engaged or employed during the required period of jury service.

Section 2.

No employer shall dismiss nor threaten to dismiss any person in his employ or service because such person absented himself from his service or employment to serve as a juror.

Section 3.

Any person dismissed from any service or employment because he absented himself from such service or employment to serve as a juror shall have the right to bring an action against his employer for any damages he sustained because of such dismissal and he shall also have the right to seek injunctive relief for reinstatement to his service or employment.

Section 4.

This act shall take effect in 60 days.

Approved the 18th day of April A.D. 1978.

General Laws of Rhode Island (Supp. 1977)

9-9-28. Prohibition against loss of employment or longevity benefits.—No employer doing business within the state of Rhode Island or otherwise subject to the jurisdiction of the state of Rhode Island shall cause any of its employees to suffer the loss of said employee's position, wage increases, promotions, longevity benefit or any other emolument due to the employer-employee relationship because said employee has been called to serve jury duty, provided, however that no employer in the absence of a contract or collective bargaining agreement to the contrary shall be responsible to pay to said employee any compensation for the period of said jury duty. In addition to all civil rights available to the employee because of this section, a violation of this section upon conviction shall be punishable as a misdemeanor.

History of Section.

As enacted by P. L. 1975, ch. 186, § 1.

South Dakota Compiled Laws (Supp. 1976)

16-13-41.1. Discharge or suspension from employment for jury service as misdemeanor.—It shall be unlawful for any person to discharge any employee or suspend any employee from his employment for serving as a juror in any court in the state of South Dakota. Any person violating this section shall be guilty of a misdemeanor.

Source: SL 1974, ch 324, § 1.

16-13-41.2. Retention of employment status during jury status —Pay.—Any employee serving as provided in § 16-13-41.1 shall retain and be entitled to the same job status, pay, and seniority as he had prior to performing jury duty. Such temporary leave of absence while performing jury duty may be with or without pay within the discretion of the employer.

Source: SL 1974, ch 324, § 2.

Tennessee Code Annotated (Supp. 1977)

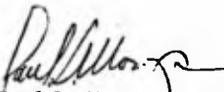
39-3115. Dismissal of employee because of jury service — Misdemeanor. — It shall be a misdemeanor for any employer to dismiss from employment any employee because of jury service by such employee. [Acts 1974 (Adj. S.), ch. 637, § 1.]

Title 21, *Subchapter 8. Rights of Jurors and Witnesses***§ 499. Jurors and witnesses**

(a) No employer may discharge an employee by reason of his service as a juror, or penalize such employee or deprive him of any right, privilege, or benefit on a basis which discriminates between such employee and other employees not serving as jurors. All employees shall be considered in the service of their employer during all times while serving as jurors in accordance with this section for purposes of determining seniority, fringe benefits, credit toward vacations and other rights, privileges, and benefits of employment.

(b) No employer may discharge an employee by reason of the employee's absence from work while in attendance as a witness pursuant to a summons duly issued and served in any proceeding, civil or criminal, in any court of competent jurisdiction within or without the state, or in any other proceeding before a board, commission, attorney, or other person or tribunal in the state authorized by law to hear testimony under oath; nor shall an employer penalize such employee or deprive him of any right, privilege, or benefit on a basis which discriminates between such employee and other employees not appearing as witnesses. All employees shall be considered in the service of their employer while appearing as witnesses in accordance with this section for purposes of determining seniority, fringe benefits, credit toward vacations, and other rights, privileges, and benefits of employment.

(c) A person who violates a provision of this section shall be fined not more than \$200.00.—Added 1969, No. 228 (Adj. Sess.), § 5, eff. March 31, 1970.



Paul L. Morgan
Legislative Attorney

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[From the Honolulu Star-Bulletin, Tuesday, Jan. 15, 1974]

WATERGATE GRAND JURORS HURT BY MONTHS AWAY FROM JOBS

(By Barry Knib, *Washington Star-News*)

WASHINGTON.—Nineteen months of toll has had a substantial impact on the lives of the original Watergate grand jurors and may force some of them to go to court to seek compensation they feel they have been wrongly denied.

According to correspondence between the office of Chief United States District Judge John J. Sirica, the administrative office of the U.S. courts, and the grand jury foreman, Vladimir N. Pregelj, two jurors have lost their jobs as a result of the Watergate investigation's demands on their time.

In addition, Pregelj told a reporter, others on the grand jury have been affected in a less dramatic manner.

"I've lost two weeks of leave," said Pregelj (pronounced pay-gul), a researcher for the Library of Congress. Because of time lost from work, he said, any promotion he may be entitled to will have been set back.

"One woman on the jury is a cleaning woman," he said "Who's going to hire her if they're not sure she can come to work?"

The dispute over compensation involves the daily rate paid to those grand jurors who are not government employees. The 11 government employees on the jury are paid their regular salaries in lieu of the court-paid compensation.

Pregelj, on behalf of the 12 jurors who are affected by the compensation rate, has been corresponding with Sirica's office since mid-October, when he discovered that federal law allows a judge to increase the daily rate from \$20 to \$25 for jurors who have sat on a case for more than 30 days.

The grand jury was sworn in on June 6, 1972, and it had been expected that the jurors would spend a routine month handling narcotics possession cases and then spend the remaining 17 months of the jury's life on call.

Instead, they were given the Watergate case. Between Sept. 15, 1972, the day they returned the original Watergate indictments, and the end of the resulting trial, after which they expected to hear more witnesses, they were also given the investigation into allegations of police corruption here.

The second case, which resulted in indictments charging District of Columbia police officers with taking payoffs from local gamblers, is now being tried.

As the Watergate cover-up investigation dragged on, the Watergate special prosecutor's office obtained special legislation extending the grand jury's life for six months, and another six months if necessary. Indictments are now expected within the next few weeks.

Pregelj first wrote to Sirica on Oct. 18 noting that "several non-government or self-employed grand jurors have been forced to bear . . . a direct financial loss," and asking him to provide for the higher rate retroactive to the date on which each grand juror passed 30 days of service.

Henry A. Gill Jr., Sirica's administrative assistance, said he was told by the office of Carl H. Imlay, general counsel to the administrative office of the U.S. courts, that grand jurors were not entitled to the higher rate.

Although grand jurors were specified in the federal statute, Imlay's office contended, the Congressional debate preceding enactment of the bill showed that it had been meant to apply only to petit jurors.

Sirica took the matter to an executive session of the district court judges here, and on Nov. 19 wrote to Pregelj that the judges had "voted to grant the request in its entirety, including the retroactivity."

Imlay's office then reconsidered and decided that the jurors were entitled to the higher rate—but only from the day of the decision, not retroactively.

Correspondence continued, with Sirica still supporting Pregelj's request. But on Nov. 30, Imlay wrote to Gill:

"We have not budgeted to pay grand jurors \$25 per diem as a matter of routine after they have completed 30 attendance days of service, and I regret that that impression may have been created." Imlay continued:

"Though as you state, 'this group of 23 citizens have rendered a truly remarkable service,' you will appreciate the fact that we cannot apply fiscal policy either on an ad hoc basis or on the basis of the importance of any particular inquiry."

On Dec. 5, Sirica wrote Pregelj to say that following Imlay's Nov. 30 letter, the judges "accepted this position with reluctance."

Last week, U.S. Attorney Earl J. Silbert, who was in charge of the original Watergate investigation, said that since the jury was primarily under the jurisdiction of the special Watergate prosecutor, Leon Jaworski, it would be more appropriate for Jaworski to handle the matter.

On Thursday, a spokesman for Jaworski said that while that office was aware of the situation, it did not believe it could do anything. "For all I can determine, it's just an administrative matter" between the jury and the administrative office, the spokesman said.

Meanwhile, Pregelj wrote Sirica on Jan. 4 to question Imlay's ruling and to say that the situation had become worse for some jurors.

One woman, he said, who had been forced "to resign her position several months ago, is still without employment and in a very precarious financial situation," Pregelj wrote.

"Recently," he continued, "another grand juror was dismissed from her job because of her absences due to her service on this grand jury."

Although not every juror sits every day, Pregelj has estimated that the retroactive payment, if granted could total \$365 for each affected juror. He said he would continue to press for the full payment.

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FRIDAY, FEBRUARY 4, 1977

The Washington Post

AN INDEPENDENT NEWSPAPER

Some Clemency for Jurors

ON DEC. 27 we published an article on the opposite page by a decidedly disgruntled veteran of jury duty, in the city's Superior Court. The author, Art Pine, emphasized that neither he nor the dozens of other jurors he talked with objected in any way to serving; they had simply reached a verdict that the system is haphazardly run, wasteful and unnecessarily hard on those called to duty. The article generated considerable response from sympathetic readers. Mr. Pine, who noted in the article that Chief Judge Harold H. Greene "didn't even answer the private letter I sent him in November," still hasn't heard from the judge, however. On the other hand, perhaps he has—in the famous John Mitchell sense of watch-what-we-do-not-what-we-say. In any case, pursuing our role as a communication channel in this matter, we are pleased to call Mr. Pine's attention to some things that Judge Greene is doing to ease some of the needless strains on citizens.

His moves are constructive, though merely a start on solving the problems. They were outlined in a letter last week to David A. Clarke, chairman of the city council's judiciary committee. The procedural changes are based on a court study of jury management practices that Judge Greene said has just been completed. To address one recurring complaint—that some people are called for jury duty repeatedly while others are never selected—Judge Greene is changing the selection procedures. From World War II until about five years ago, names were drawn from Polk's City Directory; since then, names have been drawn at random from the city's election rolls. Now, the source of names will be supplemented by the names of people who have drivers' licenses—putting about 167,000 additional people into the pool.

Mr. Pine also noted that the term of jury service—which was running four to five weeks—was far too long. Judge Greene says the court will experiment with terms of two or three weeks, although he's not ready, alas, to cut the term permanently. But some changes are being made to lower the number of peo-

ple called for each term, as well to give them more notice. Many jurors had been receiving their summons only a week or so before the start of their term and some had been receiving even shorter notice. Judge Greene says that from now on the notices will be mailed out four weeks before each proposed term.

As for the miseries of actual duty—including a general insensitivity to the feelings and needs of those who do wind up serving—the judge has ordered a few helpful adjustments. For example, the first-day orientation ordeal, which has involved the tedious processing of what has been 800 to 900 people in a group, is being speeded up; also, the daily roll call—another inefficient and unnecessary rite—is being eliminated. Another change is aimed at a common complaint that some jurors are rarely tapped for courtroom action while others are called far more often. From now on, authorities are supposed to check that every available juror has been sent out on at least one panel before others are sent out on their second panels. Moreover, Judge Greene has asked all judges not to request panels sent to their courtrooms until jurors are actually needed. There are to be mid-day checks on the judges' needs, too, so that many jurors can be excused for the afternoons. Judge Greene is also proposing legislation to reduce the allowed number of peremptory challenges and the number of jurors in all civil cases (from 12 to 6).

All of these adjustments should help to make life on jury duty a little more bearable. But the judge's 24-page letter doesn't focus adequately on the most exacerbating aspect of jury duty—the requirement that jurors remain at the court instead of on call. In Monroe County, New York (which includes Rochester), for example, a highly successful telephone-alert system has saved money as well as citizen time—in 1976, a total of 3,490 juror days, for a total (at \$12 a day) of \$41,880. Those jurors who prefer to be on call are required to be in court within one hour after they're called. We fail to see any good reason for not adopting a similar system in Superior Court.

APPENDIX 4.—STATISTICS ON JURY UTILIZATION

(Reprinted from the Annual Report of the Director of the Administrative Office of the United States Courts at 117-119, 278-284, 475-480 (1977))

JUROR UTILIZATION

Unlike any other agency in government, the courts have a window through which citizens can see their system at work. For the petit or grand juror, we believe those experiences are rewarding because judges and clerks of court are making every effort to ensure that jurors called to the court do serve on a trial or on the grand jury.

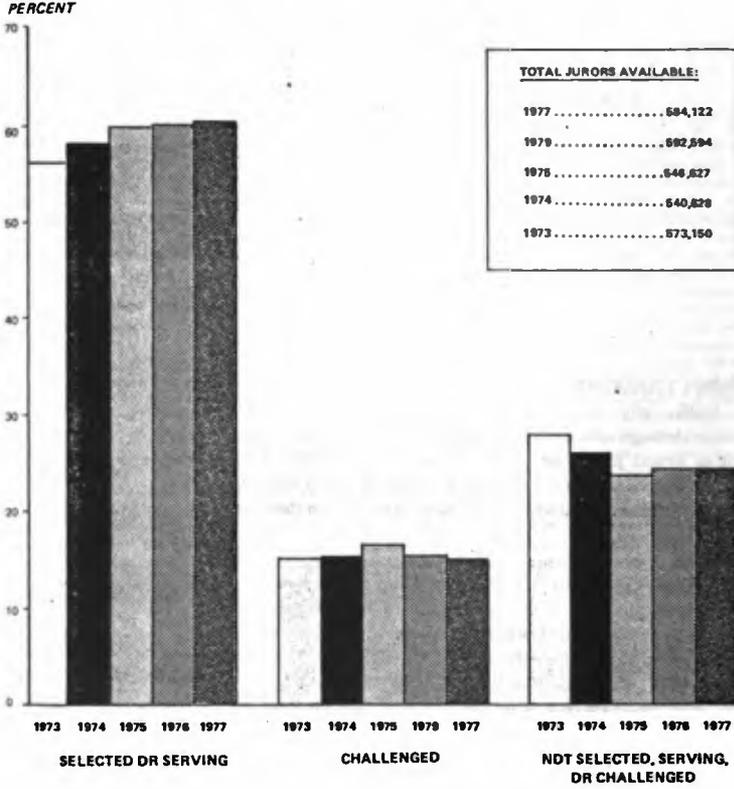
Petit Jury

Monthly reports on jury service have been collected since July 1, 1970. An examination of the seven years of data reveals the areas of improvement in juror utilization management. In 1977, slightly more than 19 prospective jurors were called for each trial. This is far fewer than in 1971. More importantly, the courts have increased the percentage of jurors serving on a petit jury to 60 percent compared to 54

UNITED STATES DISTRICT COURTS

PETIT JUROR USAGE

12 MONTHS ENDED JUNE 30, 1973-1977



percent in 1971. The figures below show that an average of 24 percent of prospective jurors called to the courthouse did not serve on a trial even though during a period of service an attempt is made to ensure that all jurors serve on at least one trial.

This year 584,122 jurors were called and were available for jury service. Last year 592,594 were called. The number of jury trial days decreased from 30,032 in 1976 to 29,875 in 1977.

The Juror Utilization Index, which is obtained by dividing total available juror days by the total number of jury trial days, is a judicial barometer reflecting how well the operation is working. The accompanying figures show this improvement.

Juror Utilization	1971	1976	1977	Percent Change	
				1971 over 1977	1977 over 1976
Juror Usage Index	23.31	19.73	19.55	-16.1	-0.9
Percent Selected or Serving	54.2	60.2	60.4	-	-
Percent Challenged	12.9	15.6	15.5	-	-
Percent not Selected Serving or Challenged	32.9	24.1	24.1	-	-

Grand Jury

The number of grand juries in existence for the 12 months period ended June 30, 1977 increased by 6.3 percent over 1976 and 12.5 percent over 1975 which was the first full year of this reporting program. Part of this increase could be attributed to the requirement that a defendant be indicted in a limited time period under provisions of the Speedy Trial Act of 1974. In all but five of the 19 courts which have adopted the maximum time limit of 30 days or less, the number of sessions convened increased. Overall, the number of sessions convened by these districts increased by 16.8 percent from 806 in 1975 to 941 in 1977.

In 1977, the number of sessions convened nationally increased by 5.3 percent, grand jurors in attendance rose by 5.1 percent and the number of hours in session was up by 5.2 percent over 1976. On the average, grand jury sessions last 5.3 hours.

Grand Jury	1975	1976	1977	Percent Change	
				1977 over 1975	1977 over 1976
Total Number in Existence in the 12 Month Period	570	603	641	12.5	6.3
Sessions Convened	7,846	8,404	8,849	12.8	5.3
Jurors in Session	156,167	167,185	175,687	12.5	5.1
Hours in Session	41,421	44,765	47,094	13.7	5.2

JUROR UTILIZATION

This section on Juror Utilization is divided into two parts, the first part deals with summary statistics on grand jurors and the second with the use of petit jurors in the federal court system. Included are national juror statistics for comparisons of 1977 data with that for previous years.

Final figures on payments to jurors in the 12 month period ended June 30, 1977 are not available at this printing, but will appear in the annual Juror Utilization Report which will be distributed in the fall of 1977.

GRAND JURY

The following pages present an overview of federal grand jury activity for the period July 1, 1976 through June 30, 1977. Statistical information on the individual districts is contained in Appendix Tables J-1 and J-2.

Figure 17, "Grand Juror Statistics—National Totals," compares data on total grand jury activity for the twelve-month periods ended June 30, 1975–1977. The total number of grand juries in existence (those in existence on July 1, 1976 plus those impaneled in the twelve-month period) increased by 6.3% from 603 in 1976 to 641 in 1977. Since 1975, the first year in which a full twelve months' data was collected, the total number of grand juries in existence has increased by 12.5%. The number of sessions convened rose 5.3% with 8,404 sessions convened in 1976 as compared to 8,849 in 1977. Correspondingly, the number of jurors in session and the number of hours in session increased by 5.1% and 5.2%, respectively.

On the district level, the total number of grand juries in existence ranged from a high of 53 in New York, Southern to a low of one in six of the 92 districts which reported grand jury activity during this twelve-month period. The Virgin Islands and the Canal Zone did not report any grand juries in existence during this time.

FIGURE 17
U.S. DISTRICT COURTS, GRAND JUROR
STATISTICS - NATIONAL TOTALS, STATISTICAL YEARS 1975 - 1977

Grand Jurors and Juries	1975	1976	1977	1977 over 1976	
				Increase (Decrease)	Percent Change
Total Number of:					
Sessions convened.....	7,846	8,404	8,849	445	5.3
Jurors in session.....	156,167	167,185	175,687	8,502	5.1
Hours in session.....	41,421	44,765	47,094	2,329	5.2
Average Number of:					
Jurors per session....	19.90	19.90	19.90	-	-
Hours per session.....	5.28	5.33	5.32	-	-
Total Number of Grand Juries:					
In existence.....	570	603 ^R	641	38	6.3
Impaneled.....	291	301	298	(3)	-1.0
Discharged.....	268 ^R	260 ^R	303	43	16.5

^RRevised to more accurately reflect the count of grand juries in the twelve month periods ended June 30, 1975 and 1976.

Nationally, 343 grand juries were in existence on July 1, 1976. During the succeeding twelve months, 298 grand juries were impaneled, while 303 were discharged resulting in a total of 338 grand juries in existence on June 30, 1977, a decrease of approximately 1.5%.

New York, Southern which had the greatest number of grand juries in existence also reported the greatest number of grand jury sessions convened with a total of 990. This district also reported the greatest number of jurors and hours in session with 19,905 and 4,210, respectively. At the other end of the range Wyoming, which reported only one grand jury in existence during this time, reported five sessions convened with a total of 99 jurors and 37 hours in session. Overall, 49 of the 92 districts having grand juries in existence reported an increase in grand jury activity as measured by an increase in the number of grand jury sessions convened.

Rule 6, Federal Rules of Criminal Procedure, requires that 16 to 23 jurors be present in order to conduct a grand jury session. Georgia, Southern recorded the lowest average number of jurors per session with 17.6 jurors, while Alabama, Middle recorded the highest average with 22.4 jurors per session. Nationally, the average for the past three years has been 19.9 jurors per session. The average number of hours per session, which is one indication of efficient or inefficient utilization of grand jurors' time, ranged from a high of 7.64 hours in Georgia, Middle to a low of 3.65 in California, Eastern. The national average remains stable at 5.32 hours per session.

Figure 18, "Proceedings by Indictment and Grand Juror Usage," indicates that 24,991 cases were commenced by indictment in 1977 as compared to 26,150 in 1976, a decrease of 1,159 cases, or 4.4%. The number of defendants for whom indictments were obtained also dropped from the recorded 38,753 in 1976 to 36,608 defendants in 1977, a decrease of 5.5%. This information, when compared to the number of grand jury sessions convened and the number of hours in session, gives an indication of what was produced by the federal grand jury system in the twelve-month periods

FIGURE 18
PROCEEDINGS BY INDICTMENT AND GRAND JUROR USAGE
U.S. DISTRICT COURTS, STATISTICAL YEARS 1975 - 1977

Year	Proceedings Commenced by Indictment		Grand Jury Sessions Convened	Hours in Session
	Cases	Defendants		
1975	26,775	40,038	7,846	41,421
1976	26,150	38,753	8,404	44,765
1977	24,991	36,608	8,849	47,094

ended June 30, 1975-1977. On the average, slightly more than four defendants were proceeded against and 2.8 cases were commenced as a result of each grand jury session in 1977. This represents a slight decrease over the 4.6 defendants proceeded against and 3.1 cases commenced as a result of each grand jury session convened in 1976.

PETIT JURY

The Juror Usage Index, obtained by dividing the number of total available juror days by the total number of jury trial days, is an indicator of efficient juror utilization management practices. The national Juror Usage Index or J.U.I. recorded in the 12 month period ended June 30, 1977 was 19.55. This is a slight decrease from the 19.73 J.U.I. reported for the comparable period in 1976.

In the seven years since the institution of the Petit Juror Usage (JS-11) reporting program on July 1, 1970, the national J.U.I. has decreased 16.1% from 23.31 on June 30, 1971 to the present J.U.I. of 19.55. This means that approximately three and one half fewer people are needed for every jury trial day due to the efforts of judges and court personnel to reduce the number of excess jurors called to the courthouse. The total available prospective jurors who reported to the courthouse is broken down into three categories to designate the status of jury service attained by each person each day. The three categories are jurors selected or serving; prospective jurors challenged by the court or counsel; and those persons not selected, serving or challenged. Figure 19, "National Petit Juror Usage," provides this breakdown of the total available jurors for the 94 districts for the years ended June 30, 1973 through 1977.

The total number of available jurors decreased from 592,594 in 1976 to 584,122 in 1977, a decrease of 8,472 or 1.4%. The number of jury trial days also decreased slightly from 30,032 in 1976 to 29,875 in 1977—a decrease of 157 days or 0.5%. This decline was the result of a 4.9% decrease in the number of criminal jury trial days which accounted for only 56.7% of all jury trial days in 1977 compared to nearly 60% in 1976. Correspondingly, the number of civil jury trial days increased 5.9% and represented 43.3% of the jury trial days this past year compared to 40.7% in 1976.

There has been a small but steady increase in the percentage of jurors selected for or serving on jury trials. Of the 584,122 total available jurors in 1977, 352,940, or 60.4%, were selected for or served on jury trials. This means that approximately 60 of every 100 persons who reported to the courthouse for jury duty were selected for or served on a trial jury. The number of prospective jurors challenged either peremptorily or for cause decreased slightly from 92,727 in 1976 to 90,693 in 1977; however, this is still an increase of 4,173 over the 86,520 challenged jurors reported in 1973. The percentage of jurors not selected, serving or challenged—the not used juror—remained unchanged at the 1976 level with 24.1% of all prospective jurors falling in this category in 1977. Nevertheless, the 24.1% is 4.3

percentage points lower than the 28.4% recorded for the same period in 1973. This decline can be attributed to improved management of the juror operations by the district courts in an effort to call only the jurors necessary for actual or anticipated needs.

Detailed statistics for the 94 districts appear in appendix table J-3 "Petit Juror Usage." The table provides information by district on the total available juror days for the 12 month period July 1, 1976 to June 30, 1977, as well as a percentage breakdown of the jurors into the categories of selected or serving; challenged; and not selected, serving or challenged. Also to be found in this table are the number of jury trial days with a breakdown into percent civil and percent criminal, and the Juror Usage Index which indicates the average number of jurors required by a district to conduct each jury trial day. An asterisk is used to denote those districts which have not yet adopted local rules reducing the size of the civil juries.

When reviewing the J-3 table the reader is cautioned to keep in mind that there is sometimes a special problem within a district or an unusual set of circumstances which would adversely affect the district's statistics. Such occurrences could include one or more notoriety trials requiring large jury panels for selection, a district's practices regarding challenges, a heavy criminal caseload requiring the use of alternate jurors or large numbers of jurors in travel status, any of which may affect a district's standing.

In 1977 the Juror Usage Indexes for the 94 districts ranged from a low of 12.24 in Wyoming to a high of 60.00 in Guam. Fifty-seven districts recorded indexes under 20 for the twelve month period, with 46 districts having improved their J.U.I.'s over 1976 figures. When comparing the 1977 J.U.I.'s with those of the previous year Indiana, Northern experienced a notable decline, reducing its J.U.I. by 10.33 index points from 31.26 in 1976 to 20.93 in 1977.

The percentage of jurors selected for or serving on jury trials ranged from a high of 81.9% in Michigan, Western to a low of 20.5% in the district of Guam. Of the 94 districts, thirty-three were able to report 65% or more of their prospective jurors in this category. Moreover, 48 districts recorded increases in the percentage of selected or serving jurors compared to 1976. West Virginia, Northern exhibited an improvement of 21.5 percentage points, increasing its percent selected or serving from 39.0% in 1976 to 60.5% in 1977. Jurors challenged for cause or peremptorily ranged from a low of 6.0% in the Canal Zone to highs of 36.8% and 37.3% in Virginia, Eastern and Virginia, Western, respectively. The national average of challenged jurors in 1977 was 15.5% of the total available jurors. The wide range in the category of challenged jurors is partially attributable to the various local court practices and traditions regarding the use of challenges and to the particular type of voir dire process in use.

Twenty of the 94 districts recorded 15% or less of their jurors in the not selected, serving or challenged category. This category of the not used juror

**FIGURE 19
NATIONAL PETIT JUROR USAGE - UNITED STATES DISTRICT COURTS
STATISTICAL YEARS 1973 - 1977**

	1973	1974	1975	1976	1977	1977 over 1976	
						Increase (Decrease)	Percent Change
<u>Petit Jurors</u>							
Total Available.....	573,150	540,628	546,627	592,594	584,122	(8,472)	-1.4
Selected or Serving.....	324,038	315,419	328,445	356,951	352,940	(4,011)	-1.1
Percent.....	56.5	58.3	60.1	60.2	60.4	-	-
Challenged.....	86,520	82,152	88,228	92,727	90,693	(2,034)	-2.2
Percent.....	15.1	15.2	16.1	15.6	15.5	-	-
Not Selected, Serving or Challenged.....	162,592	143,057	129,954	142,916	140,489	(2,427)	-1.7
Percent.....	28.4	26.5	23.8	24.1	24.1	-	-
<u>Jury Trial Days</u>	28,425	28,274	28,293	30,032	29,875	(157)	-0.5
Criminal.....	16,791	16,426	15,818	17,818	16,945	(873)	-4.9
Percent.....	59.1	58.1	55.9	59.3	56.7	-	-
Civil.....	11,634	11,848	12,475	12,214	12,930	716	5.9
Percent.....	40.9	41.9	44.1	40.7	43.3	-	-

is considered to be an important indicator of the efficient or inefficient use of available jurors revealing as it does how close a district is in making a realistic assessment of its juror needs. Wisconsin, Western recorded the lowest figure with only 4.7% of its available jurors falling in this category; while Guam with 63.1% recorded the highest percentage in the not used category. When 1977 figures are compared to those of 1976 forty-eight districts reduced their percentage of jurors not selected, serving or challenged. The District of West Virginia, Northern exhibited the greatest amount of improvement in this category by dropping 24.7 percentage points, from 39.5% in 1976 to 14.8% in 1977.

The information on jury trial days provided in the J-3 table should be used for a better understanding of the type of jury trial demands which the different districts must meet. It should be noted that a high percentage of criminal jury trials generally presents more problems to overcome in attempting to utilize jurors effectively. The criminal jury trial often requires a larger panel of prospective jurors in anticipation of a number of challenges, and the use of alternates. In 1977 the District of the Canal Zone reported 100% criminal jury trial days and in Arizona 94.8% of the jury trial days were criminal. Texas, Eastern and Virginia, Western fell at the opposite end of the range with only 17.2% and 18.2% criminal jury trial days, respectively.

TABLE J-1.—NUMBER OF GRAND JURIES UNITED STATES DISTRICT COURTS STATISTICAL YEAR 1977.

DISTRICT	NUMBER ON JULY 1, 1977	NUMBER IMPANELED IN THE 12 MONTH PERIOD	NUMBER DIS-CHARGED IN THE 12 MONTH PERIOD	NUMBER ON JUNE 30, 1977	TOTAL NUMBER IN EXISTENCE IN THE 12 MONTH PERIOD
TOTAL ALL DISTRICTS.....	343 R	298	303	338	641
DISTRICT OF COLUMBIA.....	12 R	11	9	14	23
FIRST CIRCUIT					
MAINE.....	2	2	2	2	4
MASSACHUSETTS.....	8 R	6	9	5	14
NEW HAMPSHIRE.....	1	.....	.....	1	1
RHODE ISLAND.....	1	2	1	2	3
PURTO RICO.....	2	1	1	2	3
SECOND CIRCUIT					
CONNECTICUT.....	5	6	5	6	11
NEW YORK:					
NORTHERN.....	2	5	6	1	7
EASTERN.....	18 R	17	21	14	35
SOUTHERN.....	32	21	21	32	53
WESTERN.....	3	2	3	2	5
VERMONT.....	2	2	2	4	2
THIRD CIRCUIT					
DELAWARE.....	2	1	1	2	3
NEW JERSEY.....	6	5	4	7	11
PENNSYLVANIA:					
EASTERN.....	8	3	4	7	11
MIDDLE.....	4	2	3	3	6
WESTERN.....	6	3	2	2	9
VIRGIN ISLANDS *.....	.....	.....	.....	.....	.....
FOURTH CIRCUIT					
MARYLAND.....	6	7	7	6	13
NORTH CAROLINA:					
EASTERN.....	1	2	2	1	3
MIDDLE.....	1	1	1	1	2
WESTERN.....	2	2	2	2	4
SOUTH CAROLINA.....	1	1	1	1	2
VIRGINIA:					
EASTERN.....	9	8	10	7	17
WESTERN.....	6	9	9	6	15
WEST VIRGINIA:					
NORTHERN.....	1	1	1	1	2
SOUTHERN.....	2	3	1	4	5
FIFTH CIRCUIT					
ALABAMA:					
NORTHERN.....	1	2	2	1	3
MIDDLE.....	.....	1	1	.....	1
SOUTHERN.....	1	2	1	2	3
FLORIDA:					
NORTHERN.....	2	2	2	2	4
MIDDLE.....	7	5	5	7	12
SOUTHERN.....	12	7	7	12	19
GEORGIA:					
NORTHERN.....	5 R	5	5	5	10
MIDDLE.....	3	2	3	2	5
SOUTHERN.....	2	1	1	2	3
LOUISIANA:					
EASTERN.....	4	4	2	6	8
MIDDLE.....	1	3	3	1	4
WESTERN.....	5	5	7	3	10
MISSISSIPPI:					
NORTHERN.....	1	1	1	1	2
SOUTHERN.....	1	1	1	1	2
TEXAS:					
NORTHERN.....	9	5	8	6	14
EASTERN.....	2	1	2	1	3
SOUTHERN.....	6 R	7	7	6	13
WESTERN.....	10	9	8	11	19
CANAL ZONE *.....	.....	.....	.....	.....	.....

TABLE J-1.--NUMBER OF GRAND JURIES UNITED STATES DISTRICT COURTS STATISTICAL YEAR 1977. -
CONTINUED

DISTRICT	NUMBER ON JULY 1, 1977	NUMBER PANELLED IN THE 12 MONTH PERIOD	NUMBER DIS- CHARGED IN THE 12 MONTH PERIOD	NUMBER ON JUNE 30, 1977	TOTAL NUMBER IN EXISTENCE IN THE 12 MONTH PERIOD
SIXTH CIRCUIT					
KENTUCKY:					
EASTERN.....	3	2	3	2	5
WESTERN.....	3	1	2	2	4
MICHIGAN:					
EASTERN.....	9	11	8	12	20
WESTERN.....	1	1	1	1	2
OHIO:					
NORTHERN.....	6	4	3	7	10
SOUTHERN.....	4	3	3	4	7
TENNESSEE:					
EASTERN.....	2	3	1	4	5
MIDDLE.....	1	1	1	1	2
WESTERN.....	1	2	1	2	3
SEVENTH CIRCUIT					
ILLINOIS:					
NORTHERN.....	8	14	15	7	22
EASTERN.....	1			1	1
SOUTHERN.....	3	2	2	3	5
INDIANA:					
NORTHERN.....	3	1	1	3	4
SOUTHERN.....	1	3	3	1	4
WISCONSIN:					
EASTERN.....	2	2	1	3	4
WESTERN.....	1	1	1	1	2
EIGHTH CIRCUIT					
ARKANSAS:					
EASTERN.....	2	1	1	2	3
WESTERN.....		1		1	1
IOWA:					
NORTHERN.....	2	2	2	2	4
SOUTHERN.....	2		1	1	2
MINNESOTA:	1	1	1	1	2
MISSOURI:					
EASTERN.....	4	2	3	3	6
WESTERN.....	3		1	2	3
NEBRASKA.....	1	1	1	1	2
NORTH DAKOTA.....	1	1	1	1	2
SOUTH DAKOTA.....	2	2	2	2	4
NINTH CIRCUIT					
ALASKA.....	1	1	1	1	2
ARIZONA.....	4	3	3	4	7
CALIFORNIA:					
NORTHERN.....	4	5	4	5	9
EASTERN.....	1	1		2	2
CENTRAL.....	18	15	21	12	33
SOUTHERN.....	8	5	5	8	13
HAWAII.....	2	1	1	2	3
IDaho.....	2	1	2	1	3
MONTANA.....		1		1	1
NEVADA.....	2	3	2	3	5
OREGON.....	3	2	3	2	5
WASHINGTON:					
EASTERN.....	1	1	1	1	2
WESTERN.....	2			2	2
GUAM.....	1	1	1	1	2
TENTH CIRCUIT					
COLORADO.....	1	1	1	1	2
KANSAS.....	3	3	3	3	6
NEW MEXICO.....	3	2	2	3	5
OKLAHOMA:					
NORTHERN.....	1	1	1	1	2
EASTERN.....	1	1	1	1	2
WESTERN.....	1	1	1	1	2
UTAH.....	2			2	2
WYOMING.....		1		1	1

¹ REVISED TO MORE ACCURATELY REFLECT THE NUMBER OF PENDING GRAND JURIES.

* THE DISTRICTS OF VIRGIN ISLANDS AND CANAL ZONE REPORTED NO GRAND JURIES IN EXISTENCE DURING THE 12 MONTH PERIOD, JULY 1, 1976--JUNE 30, 1977.

TABLE J-2.-GRAND JUROR USAGE UNITED STATES DISTRICT COURTS STATISTICAL YEAR 1977

DISTRICT	SESSIONS CONVENED	JURORS IN SESSION	HOURS IN SESSION	AVERAGE NUMBER OF JURORS PER SESSION	AVERAGE NUMBER OF HOURS PER SESSION
TOTAL ALL DISTRICTS.....	8,849	175,687	47,094	19.9	5.32
DISTRICT OF COLUMBIA.....	681	15,840	5,269	20.5	4.80
FIRST CIRCUIT					
MAINE.....	14	276	88	19.7	6.29
MASSACHUSETTS.....	230	4,488	1,082	19.5	4.70
NEW HAMPSHIRE.....	11	234	57	21.5	5.18
RHODES ISLAND.....	57	714	219	19.5	5.92
Puerto Rico.....	59	765	230	19.6	5.90
SECOND CIRCUIT					
CONNECTICUT.....	102	2,015	625	19.8	6.11
NEW YORK:					
NORTHERN.....	65	1,254	269	19.9	4.27
EASTERN.....	477	9,492	2,042	19.9	4.28
SOUTHERN.....	990	19,905	4,210	20.1	4.25
WESTERN.....	101	1,925	448	19.1	4.44
VERMONT.....	35	673	208	19.2	5.94
THIRD CIRCUIT					
DELAWARE.....	48	948	179	19.8	5.75
NEW JERSEY.....	270	5,054	1,483	18.7	5.49
PENNSYLVANIA:					
EASTERN.....	304	5,864	1,325	19.5	4.55
MIDDLE.....	57	1,090	276	19.1	4.84
WESTERN.....	106	1,994	657	18.8	6.20
VIRGIN ISLANDS*					
FOURTH CIRCUIT					
MARYLAND.....	167	5,346	685	20.0	6.10
NORTH CAROLINA:					
EASTERN.....	20	409	129	20.4	6.45
MIDDLE.....	16	529	90	20.6	5.62
WESTERN.....	25	441	149	19.2	6.48
SOUTH CAROLINA.....	27	519	190	19.2	7.04
VIRGINIA:					
EASTERN.....	116	2,294	720	19.8	6.21
WESTERN.....	29	570	179	19.7	6.17
WEST VIRGINIA:					
NORTHERN.....	8	178	49	22.2	6.12
SOUTHERN.....	28	565	191	20.2	6.82
FIFTH CIRCUIT					
ALABAMA:					
NORTHERN.....	26	569	194	21.9	7.46
MIDDLE.....	9	202	54	22.4	6.00
SOUTHERN.....	44	904	309	20.5	7.02
FLORIDA:					
NORTHERN.....	15	527	88	21.8	5.87
MIDDLE.....	154	5,018	941	19.6	6.11
SOUTHERN.....	281	5,579	1,628	19.9	5.79
GEORGIA:					
NORTHERN.....	130	2,524	855	19.4	6.42
MIDDLE.....	44	877	556	19.9	7.64
SOUTHERN.....	20	552	82	17.6	4.70
LOUISIANA:					
EASTERN.....	152	2,574	822	19.5	6.25
MIDDLE.....	48	978	255	20.4	5.27
WESTERN.....	51	1,087	534	21.5	6.55
MISSISSIPPI:					
NORTHERN.....	20	410	150	20.5	6.50
SOUTHERN.....	25	557	159	22.5	5.56
TEXAS:					
NORTHERN.....	134	2,671	584	19.9	6.60
EASTERN.....	52	609	190	19.0	5.94
SOUTHERN.....	144	2,891	861	20.1	5.98
WESTERN.....	147	2,991	744	20.3	5.06
CANAL ZONE*					

TABLE J-2.--GRAND JUROR USAGE UNITED STATES DISTRICT COURTS STATISTICAL YEAR 1977--CONTINUED

DISTRICT	SESSIONS CONVENED	JURORS IN SESSION	HOURS IN SESSION	AVERAGE NUMBER OF JURORS PER SESSION	AVERAGE NUMBER OF HOURS PER SESSION
SIXTH CIRCUIT					
KENTUCKY:					
EASTERN.....	16	327	79	20.4	4.94
WESTERN.....	101	1,961	581	19.4	5.75
MICHIGAN:					
EASTERN.....	302	6,063	1,697	20.1	5.62
WESTERN.....	15	286	82	19.1	5.47
OHIO:					
NORTHERN.....	145	2,932	796	20.2	5.49
SOUTHERN.....	67	1,336	459	19.9	6.85
TENNESSEE:					
EASTERN.....	17	339	98	19.9	5.76
MIDDLE.....	17	341	99	20.1	5.82
WESTERN.....	89	1,784	821	20.0	6.98
SEVENTH CIRCUIT					
ILLINOIS:					
NORTHERN.....	388	8,091	2,074	20.9	5.35
EASTERN.....	26	507	148	19.5	5.69
SOUTHERN.....	40	810	249	20.2	6.22
INDIANA:					
NORTHERN.....	80	1,197	364	20.0	6.07
SOUTHERN.....	57	1,154	349	20.2	6.12
WISCONSIN:					
EASTERN.....	84	1,661	524	19.8	6.24
WESTERN.....	20	393	115	19.6	5.75
EIGHTH CIRCUIT					
ARKANSAS:					
EASTERN.....	28	595	158	21.2	5.64
WESTERN.....	10	221	57	22.1	5.70
IOVA:					
NORTHERN.....	45	916	313	20.4	6.96
SOUTHERN.....	18	297	104	18.6	6.50
MINNESOTA.....	70	1,364	349	19.5	4.99
MISSOURI:					
EASTERN.....	102	1,922	514	18.8	5.04
WESTERN.....	53	945	374	17.8	7.06
NEBRASKA.....	18	348	112	21.8	7.00
NORTH DAKOTA.....	11	235	63	21.4	5.73
SOUTH DAKOTA.....	24	528	132	22.0	5.50
NINTH CIRCUIT					
ALASKA.....					
.....	25	538	135	21.4	5.40
ARIZONA.....	142	2,692	820	19.0	5.77
CALIFORNIA:					
NORTHERN.....	140	2,722	779	19.4	5.58
EASTERN.....	40	831	146	20.8	3.85
CENTRAL.....	405	7,799	2,083	19.3	5.14
SOUTHERN.....	168	3,335	827	19.9	4.92
HAWAII.....	60	1,144	371	19.1	6.18
IDAHO.....	32	610	240	19.1	7.50
MONTANA.....	8	184	55	20.5	6.88
NEVADA.....	139	2,491	780	19.4	5.47
OREGON.....	67	1,349	336	20.1	5.01
WASHINGTON:					
EASTERN.....	13	255	78	19.6	6.00
WESTERN.....	53	1,123	373	21.2	7.04
UTAH.....	15	308	59	20.5	3.93
TENTH CIRCUIT					
COLORADO.....					
.....	44	793	332	18.0	7.55
KANSAS.....	42	860	289	20.5	6.88
NEW MEXICO.....	43	877	228	20.4	5.30
OKLAHOMA:					
NORTHERN.....	25	483	165	19.3	6.60
EASTERN.....	23	485	151	21.1	6.57
WESTERN.....	21	432	150	20.6	7.14
UTAH.....	65	1,244	300	19.1	4.62
WYOMING.....	5	99	37	19.8	7.40

* THE DISTRICTS OF VIRGIN ISLANDS AND CANAL ZONE REPORTED NO GRAND JURIES IN EXISTENCE DURING THE 12 MONTH PERIOD, JULY 1, 1976--JUNE 30, 1977.

TABLE J-5.-PETIT JUROR USAGE REPORTS-TOTALS STATISTICAL YEAR 1977

DISTRICT	NUMBRS OF JUROR DAYS				JURY TRIAL DAYS			JUROR USAGE INDEX ¹
	TOTAL AVAILABLE	PERCENT SELECTED OR SERVING	PERCENT CHALLENGERS	PERCENT NOT SELECTED, SERVING OR CHALLENGED	TOTAL	PERCENT CIVIL	PERCENT CRIMINAL	
TOTAL ALL DISTRICTS.....	586,122	60.4	15.5	24.1	29,675	43.5	56.7	19.55
DISTRICT OF COLUMBIA.....	10,663	56.3	15.7	26.0	494	31.8	68.2	21.59
FIRST CIRCUIT								
MAINE.....	1,586	54.0	12.1	33.9	66	31.6	66.2	24.03
MASSACHUSETTS.....	9,016	71.0	12.7	16.3	561	39.6	60.4	16.07
NEW HAMPSHIRE.....	1,901	58.8	17.7	23.5	105	60.0	40.0	18.10
RHODE ISLAND.....	1,620	77.5	9.6	12.7	104	54.6	45.2	15.58
PUERTO RICO.....	5,192	43.3	13.7	43.0	207	44.9	55.1	25.08
SECOND CIRCUIT								
CONNECTICUT.....	5,679	70.7	20.6	8.7	263	38.0	62.0	21.59
NEW YORK:								
NORTHERN.....	2,672	46.3	8.1	45.6	121	47.9	52.1	23.74
EASTERN.....	23,366	53.7	13.4	32.9	1,100	31.1	66.9	23.04
SOUTHERN.....	47,125	54.2	15.6	30.2	2,196	41.7	58.3	21.46
*WESTERN.....	6,437	70.2	6.9	20.9	299	27.1	72.9	21.60
VERMONT.....	2,654	61.3	13.3	25.4	167	60.3	39.5	15.69
THIRD CIRCUIT								
DELAWARE.....	1,130	60.4	24.2	15.4	63	39.7	60.3	17.94
NEW JERSEY.....	19,304	68.9	10.9	20.2	1,023	33.9	66.1	16.67
PENNSYLVANIA:								
EASTERN.....	51,394	55.8	19.1	25.1	1,745	70.1	29.9	16.11
MIDDLE.....	4,342	76.0	15.2	8.8	244	63.9	36.1	17.80
WESTERN.....	13,273	56.6	16.3	27.1	676	48.5	51.5	19.63
VIRGIN ISLANDS.....	5,438	48.8	21.5	29.9	160	54.4	45.6	35.99
FOURTH CIRCUIT								
MARYLAND.....	15,041	54.6	14.1	31.3	648	55.2	44.6	23.21
NORTH CAROLINA:								
*EASTERN.....	2,215	59.2	9.1	31.7	90	36.7	63.5	24.61
MIDDLE.....	1,047	73.1	13.3	13.6	63	15.9	84.1	16.62
WESTERN.....	2,675	76.3	10.8	12.9	163	66.1	33.9	14.62
SOUTH CAROLINA.....	7,411	71.0	13.2	15.8	399	55.9	44.1	16.57
VIRGINIA:								
EASTERN.....	5,093	49.2	56.8	14.0	275	53.4	46.6	16.43
WESTERN.....	1,522	57.6	37.3	3.1	99	81.8	16.2	15.37
WEST VIRGINIA:								
NORTHERN.....	654	60.5	24.7	14.8	49	38.8	61.2	17.43
SOUTHERN.....	2,037	47.9	23.8	28.3	102	52.9	47.1	19.97
FIFTH CIRCUIT								
ALABAMA:								
NORTHERN.....	5,675	53.7	19.4	26.9	528	67.1	32.9	17.30
MIDDLE.....	3,209	75.0	11.1	13.9	161	49.7	50.3	17.73
SOUTHERN.....	2,041	80.8	13.0	6.2	128	50.8	49.2	15.93
FLORIDA:								
NORTHERN.....	2,053	69.7	14.5	13.8	103	25.2	74.6	19.93
MIDDLE.....	10,567	67.0	12.4	20.6	531	16.4	83.4	19.90
SOUTHERN.....	14,477	52.8	13.2	34.0	637	24.8	75.2	22.75
GEORGIA:								
NORTHERN.....	12,042	56.2	19.8	24.0	573	23.5	74.5	21.02
*MIDDLE.....	3,819	64.9	23.3	11.8	191	47.1	52.9	19.99
*SOUTHERN.....	3,102	76.8	17.6	5.6	153	71.9	28.1	20.27
LOUISIANA:								
EASTERN.....	9,099	59.0	23.2	17.8	561	76.6	23.4	15.66
MIDDLE.....	452	38.5	33.4	28.1	17	29.4	70.6	26.59
WESTERN.....	2,663	53.8	21.6	24.6	155	69.0	31.0	17.19
MISSISSIPPI:								
NORTHERN.....	3,983	64.2	19.2	16.4	200	46.0	54.0	19.92
*SOUTHERN.....	3,446	58.9	16.1	25.0	151	79.5	20.5	22.62
TEXAS:								
*NORTHERN.....	10,779	69.2	13.3	17.5	591	61.6	38.4	18.24
EASTERN.....	4,179	65.9	15.0	19.1	233	82.8	17.2	17.94
SOUTHERN.....	11,699	67.3	11.9	20.8	513	30.2	69.8	22.81
WESTERN.....	8,376	61.3	17.1	21.6	334	29.1	70.9	23.67
*CANAL ZONE.....	150	59.3	6.0	34.7	7	.....	100.0	21.43

TABLE J-3.--PETTY JUROR USAGE REPORTS--TOTALS STATISTICAL YEAR 1977--CONTINUED

DISTRICT	NUMBER OF JUROR DAYS				JURY TRIAL DAYS			JUROR USAGE INDEX ¹
	TOTAL AVAILABLE	PERCENT SELECTED OR SERVING	PERCENT CHALLENGED	PERCENT NOT SELECTED, SERVING OR CHALLENGED	TOTAL	PERCENT CIVIL	PERCENT CRIMINAL	
SIXTH CIRCUIT								
KENTUCKY:								
EASTERN.....	5,156	50.3	11.4	30.3	219	19.4	80.4	23.36
WESTERN.....	5,284	32.9	15.9	30.2	150	24.0	76.6	21.91
MICHIGAN:								
*EASTERN.....	21,379	87.4	9.6	22.6	1,088	34.7	63.5	19.83
WESTERN.....	2,813	81.9	8.3	9.6	164	47.8	52.4	17.15
OHIO:								
*NORTHERN.....	9,337	54.4	8.2	37.4	457	68.4	51.8	20.43
*SOUTHERN.....	5,458	68.1	13.2	16.7	294	36.2	41.6	16.50
TENNESSEE:								
EASTERN.....	8,198	82.3	14.2	23.5	272	68.2	35.6	13.63
MIDDLE.....	3,734	49.9	11.2	38.9	158	53.3	64.7	23.94
WESTERN.....	5,313	89.1	17.2	13.7	308	34.1	63.9	17.26
SEVENTH CIRCUIT								
ILLINOIS:								
NORTHERN.....	19,464	62.6	9.8	26.6	1,114	58.3	81.7	17.47
SOUTHERN.....	2,428	63.7	24.9	9.4	132	43.3	34.5	18.30
SOUTHERN.....	1,504	82.1	18.8	19.3	72	16.1	61.9	20.89
INDIANA:								
NORTHERN.....	6,634	39.1	18.3	24.8	317	28.8	73.2	20.95
SOUTHERN.....	5,358	68.6	17.7	21.7	191	40.3	59.7	17.58
WISCONSIN:								
EASTERN.....	4,871	68.0	13.9	18.1	308	49.7	50.3	13.81
WESTERN.....	316	71.2	24.0	4.7	27	14.6	63.2	19.11
EIGHTH CIRCUIT								
ARKANSAS:								
EASTERN.....	4,223	37.2	23.0	17.8	202	37.1	62.9	20.91
*WESTERN.....	2,292	58.7	24.1	17.2	94	79.8	20.4	23.39
IOWA:								
NORTHERN.....	1,672	63.1	13.4	19.3	117	38.4	31.8	14.29
SOUTHERN.....	2,832	69.3	17.9	12.8	178	31.1	48.9	13.91
MINNESOTA:								
EASTERN.....	8,045	60.4	18.3	21.1	343	41.7	58.3	17.62
MISSOURI:								
EASTERN.....	8,030	54.9	23.1	20.0	346	33.2	46.6	17.43
WESTERN.....	5,748	48.2	23.4	26.2	184	39.6	60.4	22.63
NEBRASKA:								
EASTERN.....	3,793	37.8	19.8	22.6	246	71.1	29.9	13.43
*NORTH DAKOTA.....	2,382	61.3	13.3	23.2	128	53.8	78.2	20.49
SOUTH DAKOTA.....	2,999	48.7	19.4	21.9	131	43.8	34.2	22.89
NINTH CIRCUIT								
ALABAMA:								
EASTERN.....	2,129	83.9	13.3	22.6	118	41.3	58.3	18.04
WESTERN.....	8,773	37.4	27.0	13.6	407	5.2	94.8	21.34
CALIFORNIA:								
NORTHERN.....	12,311	83.9	12.7	21.4	728	64.8	33.2	18.77
EASTERN.....	5,417	53.3	9.3	37.0	132	19.7	80.2	22.48
CENTRAL.....	28,933	61.3	10.2	28.4	1,060	59.3	70.3	19.77
SOUTHERN.....	10,433	40.1	17.0	22.9	459	13.3	86.7	22.73
HAWAII:								
EASTERN.....	1,727	58.1	33.8	8.3	81	33.3	78.5	20.32
IDaho:								
EASTERN.....	1,424	59.1	18.1	22.8	96	36.1	42.9	16.37
NEVADA:								
EASTERN.....	2,729	68.3	14.3	17.4	159	37.9	42.1	17.18
WESTERN.....	5,333	49.4	11.8	36.6	133	33.3	64.7	23.24
OREGON:								
EASTERN.....	3,813	34.9	22.4	22.7	238	64.7	33.3	18.02
WASHINGTON:								
EASTERN.....	1,143	58.4	20.6	21.0	59	40.7	39.3	19.41
WESTERN.....	4,740	39.1	18.6	22.1	230	37.8	72.4	18.94
GUAM:								
EASTERN.....	420	20.3	18.4	83.1	7	14.3	85.7	40.00
TENTH CIRCUIT								
COLORADO:								
EASTERN.....	3,031	64.3	18.9	18.6	300	39.3	70.7	16.77
WESTERN.....	5,982	83.2	13.4	21.4	218	33.1	64.9	16.67
NEW MEXICO:								
EASTERN.....	4,886	66.8	17.8	13.6	233	32.2	68.8	17.33
OKLAHOMA:								
NORTHERN.....	2,643	69.0	13.8	17.4	133	24.1	75.9	19.69
EASTERN.....	1,322	68.6	16.1	13.1	90	31.1	48.9	14.69
WESTERN.....	5,993	70.8	13.0	14.2	296	32.4	47.8	13.49
UTAH:								
EASTERN.....	5,370	32.1	11.1	38.8	144	39.7	40.2	23.40
WESTERN.....	1,449	69.2	10.8	21.2	120	73.8	24.2	12.24

* INDICATES THOSE DISTRICTS WHICH HAVE NOT YET ADOPTED LOCAL RULES REDUCING THE SIZE OF THE CIVIL JURIES.

¹ TOTAL AVAILABLE JURORS DIVIDED BY TOTAL JURY TRIAL DAYS GIVING THE AVERAGE NUMBER OF JURORS AVAILABLE PER JURY TRIAL PER DAY.

APPENDIX 5.—MISCELLANEOUS CORRESPONDENCE

(a) ON JURY SERVICE

(1)

138 Hollywood St.
 Thibodaux, La.
 70301

The Honorable David Green
 Congressman of Louisiana
 Washington, D. C.

My husband has received a Juror Qualification questionnaire from the United States District Court. He is very frustrated over this because he will not get paid by the company he works for ~~for~~ any days absent from his job. As a juror he would only get 20 a day plus mileage which wouldn't come near to his daily wages. Therefore he'd tend to lose a lot of money as seeing from former jurors they have had to go back & forth to New Orleans, where the court is held, twice a week for as long as 9 months. We would suffer financially due to the high cost of living and we are so mad about this, we will stop voting if he is summoned. Why can a bill be passed where if a person who is head of the family is called his place of employment must pay his day's work

or the United States district court
or wherever or whatever court they
may be called, pay that person the
money he gets when working. We don't
want to make any money if he is
summoned but we feel we shouldn't
have to lose money, either. Thank
you very much for any consideration
and understanding.

Mrs. Leroy J. Zerisque

(2)

GENE TAYLOR
7th District, Missouri

COMMITTEES
PUBLIC WORKS
AND TRANSPORTATION

SUBCOMMITTEES ON
AVIATION
ECONOMIC DEVELOPMENT
WATER RESOURCES

POST OFFICE
AND CIVIL SERVICE

SUBCOMMITTEES ON
CIVIL SERVICE
POSTAL PERSONNEL, AND
MODERNIZATION
(DANISH REPUBLICAN MEMBERS)
ASSISTANT REGIONAL WHIP

Congress of the United States
House of Representatives
Washington, D.C. 20515

October 26, 1977

OFFICE OFFICES:
2100 WALKER BUILDING
SPRINGFIELD, MISSOURI 65808
(417) 882-4317

302 FEDERAL BUILDING
JOPLIN, MISSOURI 64801
(417) 781-1041

WASHINGTON OFFICE:
1114 LEONWORTH HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-9536

The Honorable Robert W. Kastenmeier
Chairman
Subcommittee on Courts, Civil Liberties
& the Administration of Justice
House Judiciary Committee
2232 Rayburn H.O.B.
Washington, D.C. 20515

Dear Mr. Chairman:

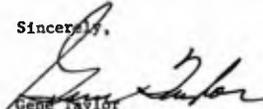
I am writing to urge you to give some consideration to the need to increase the level of compensation provided to individuals who perform jury service.

I appreciate that such service is a civic responsibility, however, I believe the current level of compensation should be reviewed to see whether it requires the private citizen to make too large a financial sacrifice.

Enclosed you will find a letter I have received from a constituent who is concerned about this issue.

Thank you for your attention to this matter.

Sincerely,


Gene Taylor
Member of Congress

GT:djs
enclosure

MISSOURI



SENATE

OCT 25 1977

JOHN T. RUSSELL
 3RD DISTRICT
 ROOM 4188
 CAPITOL BUILDING
 JEFFERSON CITY, MO. 64101
 (314) 761-4100

JEFFERSON CITY

BOX 93
 LEBANON, MO. 64536

October 21, 1977

Honorable Gene Taylor
 U. S. Representative
 1114 Longworth HOB
 Washington, D. C. 20515

Dear Gene:

A mutual friend and supporter of ours, Bruce Owen of Lebanon, expressed concern and distress over the fact that private citizens who are summoned to jury duty have to make considerable financial sacrifice. To add insult to injury the form which he received mentioned that federal employees would not receive any reduction in pay for their jury services.

As I recall he mentioned the jurors were reimbursed at the rate of \$20 per day plus mileage and, as you readily recognize, this is not sufficient in this day and time.

See you on November 4.

Sincerely,

A handwritten signature in cursive script that reads "John T. Russell".

John T. Russell

JTR:aj

cc: Mr. Bruce Owen
 Bruce Owen Motor Company
 160 E. Elm
 Lebanon, Missouri 64536

(3)

PHILLIP BURTON
8th DISTRICT, CALIFORNIA

2254 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
PHONE 225-525-4882

CONVENT OFFICE
420 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA 94102
PHONE 415-558-4842

Congress of the United States
House of Representatives
Washington, D.C. 20515

COMMITTEE
EDUCATION AND LABOR
INTERIOR AND INSULAR
AFFAIRS
CHAIRMAN, SUBCOMMITTEE ON
NATIONAL PARKS AND INSULAR AFFAIRS

December 12, 1977

Ms. Pamela S. Pon
355 Monticell St.
San Francisco, Ca. 94132

Dear Ms. Pon:

Thank you for your recent letter and for sharing your concerns with me regarding the reimbursement of citizens for jury duty.

Your concerns are very valid and I have taken the liberty of sharing your letter with Chairman Rodino of the House Judiciary Committee which has jurisdiction over such matters.

Please be assured that I am giving this matter my serious attention and I will certainly keep your very thoughtful recommendations in mind.

Kindest personal regards.

Sincerely,



PHILLIP BURTON
Member of Congress

PB:tn

November 23, 1977

Mr. Congressman;

I am a resident of San Francisco County (District 9) and would like to question our present justice system in the State of California. I was called to report to jury duty at the city hall on Wed. Nov. 16th and was selected on a jury panel the following morning. The proceedings for the trial lasted from Nov. 17th to Nov. 21st. The facilities for the jurors are nil and also the pay of \$6. a day are ridiculous. I want to know how in the world is a person expected to live on \$6. a day (at \$1. an hour, broken down); when your employer is not required to reimburse you for the time spent on serving your civic duty? I have spoken to the National Labor Relations at 450 Golden Gate Avenue (SF) and they have told me, they cannot reimburse employees for loss time & payment if you are not covered by a union or represented by one. Due to serving my civic duties, I have created a personal hardship of losing \$41.68 per day at \$5.96 @ hr. I am presently employed by the U.S. Postal Service and they have informed me that short-term employees do not receive any jury duty benefits. I ask you now, after hearing my story... is this justice? At \$6. a day, \$1. per hour; this is even below minimum wage requirements. Is there any state agency who will be able to check into this matter of reimbursement? Also, in the future, because I feel that this "salary" is unfair, like other residents, I have given up my right to vote, in order to avoid the summoning of any more jury duty. Have you another way to resolve my problem? I also would like to suggest to you, that, perhaps a bill, ~~was~~ requiring employers to reimburse employees for serving on a jury - be made mandatory, short-termed or not.

Return Address: 355 Monticello St.
SF Ca 94132

Sincerely yours, Pamela S. Pon

(4)

February 15, 1978

TO: *The Hon. Barbara Mikulski*
 FROM: Ruth J. Rosenthal
 SUBJECT: Allowances for U.S. District Court Jurors - Maryland

Enclosed is a petition signed by persons who are serving as jurors for the U.S. District Court in Baltimore, Maryland for the term from December 6, 1977 through March 6, 1978.

Although I feel it a civic duty to serve as a juror, I also feel the allowances for travel and per diem are both inadequate and unrealistic. Those of us who live outside of Baltimore city (insome cases as far as 120 miles) find the 10¢ per mile allowance for travel and \$16 per day subsistence do not cover costs. For example, on February 6th I was notified to appear in Baltimore to serve on a jury panel and then told to return on February 7th. Weather conditions required me to stay overnight in Baltimore. The costs for hotel lodging and meals substantially exceeded the \$16 allowed. As you know, the U.S. Government now allows 17¢ per mile for travel by car plus parking fees and far more than \$16 per diem.

I am sure that you will agree that the jury allowances are inequitable and I strongly urge you to increase the allowances through legislation.

Verly truly yours,

Ruth J. Rosenthal

Ruth J. Rosenthal

enclosure

*3602 Delamater St
 Silver Spring Md.
 20902*

February 7, 1978

We the undersigned are serving as jurors for the U.S. District Court in Belton Maryland. We are allowed 10¢ per mile travelling costs and \$16 per day for overnight lodging, and there is no allowance for parking fees. We feel this is grossly inadequate and unrealistic to cover present ^{costs} and urge that you support ~~any~~ any legislation to improve this situation.

Name (Signature)	Full Address
<u>Ruth J. Rosenthal</u>	<u>3602 Delens St. Silver Spring Md. 20902</u>
<u>Marvin Morgan</u>	<u>413 Laurel Way S. Ed. 2050</u>
<u>John F. Pijo</u>	<u>5906 Poley Road, Rockville, Md. 20851</u>
<u>Henry T. Arthur</u>	<u>6126 Polling View Dr. Sykesville, MD 21784</u>
<u>Thomas B. Pelen</u>	<u>1007 Linnicum Rd, Luthersville, Md 21092</u>
<u>George B. Bandy</u>	<u>466 Severnside Drive Severna Park Md. 21146</u>
<u>Thomas L. Conrad</u>	<u>603 Balto. Ave Balto. Md 21225</u>
<u>James P. Pizarro</u>	<u>5400 Pooks Hill Rd. Belts, Md</u>

Betty J. Auster 7601 Artois Rd., Kensington, Md. 20795
 Helen Hill 2160 Abundant Ave. Oxon Hill, Md. 21111
 Herbert Byrd 1788 Burman Ave. Baltimore, Md.
 Willie Bellin 21638
 Martin D. Bennett 805 St. Paul St., Baltimore 21202
 Len H. Samuels 19212 St. Louis St. - Northwood, Md. 20700
 Kim Leathery 11636 Park View, Elkin, Md.

(5)

MARJORIE S. HOLT
4th District-Maryland

COMMITTEE
ARMED SERVICES
BUDGET

Congress of the United States
House of Representatives
Washington, D.C. 20515

March 10, 1978

WASHINGTON OFFICE:
1510 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
202-225-6000

DISTRICT OFFICE:
25 ADMIRALTY FLOOR
OLSEN BUILDING, MARYLAND 21001
302-291-2200
301-769-0200

8100 CHESAPEAKE ROAD
CHESAPEAKE, MARYLAND 20521
301-987-9212

The Honorable Robert W. Kastenmeier
Chairman, Subcommittee on Courts,
Civil Liberties, and Administration of Justice
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

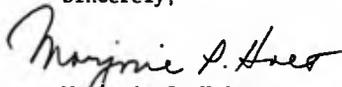
Dear Mr. Chairman:

Enclosed is a letter from one of my constituents regarding the present amount of mileage reimbursement for federal jurors.

I believe his concern to be a legitimate one, and urge you to schedule early hearings on legislation which has been introduced to raise the amount of mileage reimbursement.

Thank you for your consideration.

Sincerely,


Marjorie S. Holt
Member of Congress

Enclosure
MSH/vws

CC: The Honorable Tom Railsback

Wm

3503 Delancey St.
Clinton, MD 20735
January 27, 1978

The Honorable Marjorie S. Holt
U. S. House of Representatives
Washington, DC 20515

Dear Representative Holt:

I am currently serving on jury duty at the Federal Court in Baltimore. It is a 100 mile round trip. It costs \$1.75 to park at the least expensive lot which is a long, long walk to the courthouse.

I want to complain about the low mileage reimbursement of \$.10 per mile with no allowance for parking fees. Auto rental companies report that it costs \$.30 per mile to drive a car. My employer reimburses \$.155 and the IRS allows \$.17 per mile for business use of a personal vehicle. Clearly the \$.10 mileage allowance for jury duty is unrealistic and costly to jurors.

The court clerk's office advised me that it will take legislation to change the present reimbursement allowances. I urge your support to correct the inadequacy of the present authorization.

Sincerely,

Richard W. Novak
RICHARD W. NOVAK

(6)

HAROLD T. (BIZZ) JOHNSON
1st DISTRICT, CALIFORNIA

COMMITTEE
PUBLIC WORKS AND
TRANSPORTATION
CHAIRMAN

Congress of the United States
House of Representatives
Washington, D. C. 20515

OFFICE ADDRESS
2347 HOUSE OFFICE BUILDING
WASHINGTON, D. C. 20515

DISTRICT OFFICE
280 VIKING STREET
RIVERSIDE, CALIFORNIA 92577

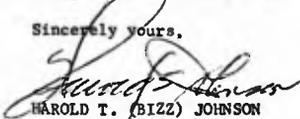
May 4, 1978

The Honorable Robert W. Kastenmeier
Chairman
Subcommittee on Courts, Civil Liberties,
and the Administration of Justice
Committee on Judiciary
U. S. House of Representatives
2137 Rayburn Office Building
Washington, D. C. 20515

Dear Mr. Chairman:

As your Subcommittee has begun hearings on the matter of jury fees and other issues affecting jurors, I thought perhaps you would be interested in correspondence I have received from Rosa L. D'Elia, a constituent from my Congressional District, regarding her personal experience relative to jury duty. I hope the enclosed will be helpful to you and to your staff during your consideration of legislation in this area.

Sincerely yours,


HAROLD T. (BIZZ) JOHNSON
Member of Congress

J:P
Enclosures - 3

Rosa Lee D'Elia
1 Mayfair Drive, #6
Chico, CA 95926

APR 20 1978

April 13, 1978

Representative Harold T. Johnson
House Office Building
Washington, D.C. 20515

Dear Representative Johnson:

Your assistance is needed by many citizens who are called to Jury Service in the United States District Courts. Revisions are necessary to Title 28, U.S.C.A., Section 1871, Jury Fees. (See copy of letter attached from Clerk of the Court, James Grindstaff, U.S. District Court, Sacramento.) According to Mr. Grindstaff, legislation is pending at the present time.

In March of this year, I was called to Jury Service in Sacramento (my residence is in Chico or 100 miles to travel), and I was surprised to find that, for financial reasons, I could not afford to fulfill my responsibilities as a citizen by serving on a jury. Attached is a letter I wrote to the Clerk of the Court along with supporting documents. It seems to me that in the interests of the jury system, every effort should be made to guarantee a panel of jurors reflecting the full range of citizens without penalizing certain citizens or their employers to do it. The Jury Fees are simply not enough to reimburse a juror or his employer for the actual expenses. I believe that employers, and employees who are called to jury service, should not be required by "the system" to subsidize the Courts.

I would greatly appreciate any assistance you may be able to give in the revision of the law by the Congress of the United States in your capacity as a representative of the Citizens of California. Thank you for your attention to my concern.

Sincerely,

Rosa Lee D'Elia

Rosa Lee D'Elia

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA
OFFICE OF THE CLERK
SACRAMENTO 95514JAMES R. GRINDSTAFF
CLERK

April 5, 1978

Rosa L. D'Elia
1 Mayfair Drive, #6
Chico, CA 95926

Dear Mrs. D'Elia:

In reply to your letter of March 21, please be advised that I am generally in agreement with the thoughts you expressed regarding inadequate juror fees and allowances; however, you were correct in the assumption that the fees are set as a matter of law by the Congress of the United States.

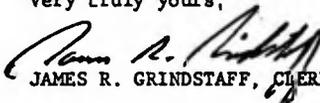
At the present time, there is legislation pending before the Congress to raise the existing rates paid jurors for attendance and mileage as well as cover the entire cost of parking. Indications are that the pending bills will be passed in the current session of Congress. It might be helpful to the pending legislation if you wrote your congressman and reiterate what you expressed in your letter to me.

As to the present options available to you; one, you can request an excuse because you live more than 75 miles and/or more than two hours driving time one-way to Sacramento; two, you may request the Court to excuse you due to the "financial hardship" referred to in your letter; or three, you may elect to serve the Court as a juror.

As you requested, I am enclosing a copy of the federal statute regarding fees.

If I may be of further assistance in this matter, please advise me.

Very truly yours,


JAMES R. GRINDSTAFF, CLERK

JRG/dmc

Enclosure

Rosa L. D'Elia
1 Mayfair Drive, #6
Chico, CA 95926

March 21, 1978

Office of the Jury Clerk
U.S. District Court
Room 2524
650 Capitol Mall
Sacramento, CA 95814

Dear Sir:

Re: Jurors Residing More Than
80 Miles From The Courthouse

I received a notice to report for Jury Duty on March 20, 1978. My Group Number 5 was subsequently informed not to appear until further notice. Your staff included with the Jury Duty Notice a "Juror's Instructions and Information," which I have reviewed. I am calling to your attention the section on "Jury Fees," which is the basis for my letter, and I am requesting assistance, information or suggestions on the problems I will pose to you in the following paragraphs:

First, I would like to be able to fulfill my responsibilities as a citizen by being available for jury service because I believe the jury system works. I also believe that a jury should reflect the broad range of citizenry and that artificial restrictions, such as financial considerations, should be removed, i.e., every eligible and able citizen should serve without being required to contend with excess out-of-pocket expenses.

My residence is in Chico, 100 miles from Sacramento; therefore, according to the Information Sheet, I am entitled to subsistence allowance plus mileage to and from Chico one time up to 160 miles. The reason is that my residence is more than 80 miles from the Courthouse.

In reviewing the "Jury Fees" allowances, the subsistence is placed at \$16.00 per day. This amount would not come anywhere near the costs of food and lodging in Sacramento. I estimate the difference in actual costs would amount to a minimum of \$20.00 per day. For 20 days jury service, this would total \$200 out-of-pocket expense. The mileage allowance is placed at 10¢ per mile up to 80 miles one way. This allowance requires that I give up a total of 40 miles not to mention that 10¢ a mile is unrealistic by any current standard. The generally accepted mileage allowances are between 15¢ and 20¢ at the present time. The Internal Revenue Service allows 17¢ per mile. Taking the IRS allowance as a standard, there is a difference of 7¢ per mile allowed for 80 miles and a difference of 40 additional miles at 17¢; thus, the additional costs to me would be \$12.40. Further, if my jury assignment were to extend for more than one week, the allowed mileage does not appear to cover going home over the weekends. I assume the additional 200 miles in such case would not be allowed, thus incurring more costs. In any event, for one week's service, my out-of-pocket expenses would be a minimum of \$112.40.

To: Office of the Jury Clerk
 Attention: James R. Grindstaff, Clerk
 March 21, 1978

-2-

I am employed by the Chico Unified School District as Secretary to the Superintendent. According to Education Code Section 44037, Statutes of 1977 (Copy Attached), and the School District's policy governing classified employees, I am required to turn over Jury Fees excluding subsistence and mileage to my employer, who in turn compensates me at my regular salary. As a result, although a juror receives \$20 per day for service, this amount is not available to offset real expenses. Further, in addition to paying me my regular salary less Jury Fees, my employer will be required to obtain the services of a substitute to fill my position for the term of jury service. A qualified substitute will cost the school district more than \$20 per day.

It is my understanding that out-of-pocket jury service expense is an allowed deduction for itemized income tax returns. Even so, I would not be able to recoup my expenses until 1979. In the meantime, the potential costs of extended jury service of over \$212 represents almost half my net salary for the month during which service is given. I would not be able to meet my living expenses for such a month and I suppose this would constitute a "personal hardship," but I am dismayed that because of "money" or lack thereof, I could be precluded from fulfilling my responsibilities as a citizen. Surely there must be some options open which would guarantee the parties in Court a panel of broadly based "peers" from which to select jurors and also equitably reimburse the real costs of jury service to the citizens called to serve. Jurors should not be required to subsidize the Courts.

I assume that Jury Fees and Allowances are set by law. If so, could you please send me a copy of those portions of Federal Law which cover these restrictions and any other relevant information used to establish these fees and allowances?

I would greatly appreciate any further information, options or suggestions you may have regarding the problems I have posed.

Sincerely,



Rosa L. D'Elia

Encl.

xc: E.C. 44037
 Notice of Jury Duty
 Juror's Instructions and Information

(7)

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

WILLIAM E. FOLEY
DIRECTOR

CARL H. IMLAY
GENERAL COUNSEL

JOSEPH F. SPANIOLO, JR.
DEPUTY DIRECTOR

June 16, 1978

Michael Remington, Esq.
Counsel, Subcommittee on Courts, Civil Liberties
and the Administration of Justice
House Judiciary Committee
2137 Rayburn House Office Building
Washington, D. C. 20515

Dear Mike:

I am writing to bring to your attention the attached statute recently enacted by the Pennsylvania General Assembly, providing that any person serving as a juror in the courts of that Commonwealth shall be entitled to be absent from employment and creating a cause of action for damages and injunctive relief against an employer who discharges or threatens to discharge such an employee for this reason.

I thought that the adoption of this state statute might be of interest to your subcommittee in connection with the jurors' employment protection provisions contained in H.R. 12389 and S. 2075.

If you need any further information which we could be helpful in providing, please do not hesitate to contact me.

With kindest personal regards.

Sincerely,



William R. Burchill, Jr.
Associate General Counsel

Attachment

Official Advance Copy of Statute Enacted at 1978 Session

No. 1978-17

AN ACT

SB 598

Permitting any person required to serve as a juror to absent himself from any service or employment in which he is then engaged or employed; prohibiting employers from dismissing or threatening to dismiss such persons; granting such persons civil relief.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Any person required to serve as a juror for any of the courts of the Commonwealth or the United States shall be entitled to absent himself from any service or employment in which he is then engaged or employed during the required period of jury service.

Section 2. No employer shall dismiss nor threaten to dismiss any person in his employ or service because such person absented himself from his service or employment to serve as a juror.

Section 3. Any person dismissed from any service or employment because he absented himself from such service or employment to serve as a juror shall have the right to bring an action against his employer for any damages he sustained because of such dismissal and he shall also have the right to seek injunctive relief for reinstatement to his service or employment.

Section 4. This act shall take effect in 60 days.

APPROVED—The 18th day of April, A. D. 1978.

MILTON J. SHAPP

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTOR

CARL H. IMLAY
GENERAL COUNSEL

JOSEPH F. SPANIOL, JR.
DEPUTY DIRECTOR

September 25, 1978

Michael Remington, Esq.
Subcommittee on Courts, Civil Liberties
and the Administration of Justice
House Judiciary Committee
2137 Rayburn House Office Bldg.
Washington, D. C. 20515

Dear Mike:

I am enclosing some material which was forwarded by Chief Judge William Steckler of the Southern District of Indiana with regard to the financial hardships presently being imposed upon many federal jurors. Judge Steckler had sent this material to the chairman of the Judicial Conference Committee on the Operation of the Jury System, who has passed it on to this office.

Since the subject of this correspondence concerns matters which would be remedied by the enactment of S. 2075, I thought that these enclosures might be useful to you in the event that this bill can be considered by the House Judiciary Committee at the markup session tomorrow morning. I know that the Subcommittee on Courts, Civil Liberties and the Administration of Justice has already recognized the need for this legislation, which is of course strongly supported by the Judicial Conference. We are certainly hopeful that passage of this bill by the House of Representatives can be achieved this year. I might add that your good efforts in connection with the consideration of this legislation in the subcommittee are very much appreciated.

With kindest regards.

Sincerely,

Bill Burchill
William R. Burchill, Jr.
Associate General Counsel

P.S. At the request of Mr. Ropes, one of the correspondents to Judge Steckler, we have deleted the name of his employer from his letter.

Enclosure

Walt

United States District Court
 Southern District of Indiana
 Indianapolis, Indiana 46204

OF THE UNITED STATES
 RECEIVED

Signature of
 William F. Stechler
 Chief Judge

September 11, 1978

SEP 14 1978

C. CLYDE ATKINS
 UNITED STATES DISTRICT JUDGE
 SOUTHERN DISTRICT OF FLORIDA

Honorable C. Clyde Atkins
 Chief Judge, U. S. District Court
 Southern District of Florida
 P. O. Box 013009
 Miami, Florida 33101

Dear Judge:

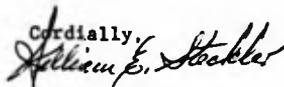
This morning I received a copy of your letter of September 7, 1978, addressed to Judge Arthur Stanley following his forwarding to you my letter regarding the grand juror who wrote concerning the expense she incurred while serving on the panel.

I apologize for my oversight in failing to recall that the Chief Justice had appointed you to succeed Judge Stanley as Chairman of the Committee on the Operation of the Jury System. I congratulate you on the honor and I know the Committee will perform well under your leadership.

Following the publicity regarding Mrs. Schauss' experience, another juror, a petit juror, Mr. Robert J. Ropes, sent me a letter regarding his experience while serving last winter in a trial in Judge Holder's court. It was a very lengthy trial lasting seventy-six days. The trial resulted in verdicts totaling \$19,936,325.15. I am enclosing a copy of Mr. Rope's letter for whatever use may be made of it in connection with legislation to increase the per diem allowance for jury services. I realize that every juror's problems must be treated on an individual basis, but we are encountering a growing number of requests to be excused from jury service solely on the basis of financial hardship.

The final report of the Annual Chief Justice Earl Warren Conference on Advocacy in the United States, June 24-25, 1977, (Cambridge, Mass.), on the American Jury System, among other "findings" on the treatment of jurors, found that to reduce resistance to service on juries, due consideration should be given to "reimbursement of out-of-pocket expenses, transportation, lunches, and a reasonable per diem." While that would be the optimum, and, realistically, with respect to reimbursement of out-of-pocket expenses difficult to achieve, still when we think of the cost of administering the Criminal Justice Act it does not seem to be without merit.

With warm regards, I remain

Cordially,


September 2, 1978
3009 Mayfair Drive
Kokomo, Indiana 46901

Hon. William E. Steckler
Chief Judge
U. S. District Court
Southern District of Indiana
Ohio and Meridian Sts.
Indianapolis, Indiana 46204

Dear Judge Steckler:

Thank you for your kind letter of September 1, 1978, just received.

Upon pondering the situation, I have decided that I do not wish to remain anonymous, but request that you forward my letter to the committee as you see fit. I would prefer that you delete the name of [REDACTED] in my letter, as they are most sensitive to publicity, except that cleared through Detroit offices.

Thank you once again. Please share this letter with Judge Cale Holder also.

Sincerely,

Robert J. Ropes
Robert J. Ropes

September 1, 1978

Mr. Robert J. Ropes
3009 Mayfair Drive
Kokomo, Indiana 46901

Dear Mr. Ropes:

Thank you for your letter of August 26, 1978, regarding the Indianapolis Star article on juror expense and per diem allowance and your experience in that regard while serving as a juror in the College Life case in Judge Holder's court.

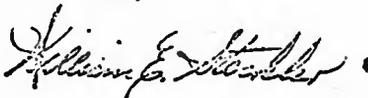
I have been in communication with the chairman of the Judicial Conference Committee on the Operation of the Jury System regarding the experience of the grand juror in my court, however, I did not include a copy of your letter. The Committee ordinarily will not rely on a letter or report if either the writer or persons mentioned remain anonymous.

You are indeed to be commended for your attitude and perseverance in performing jury service in the College Life case described in your letter. If only the Congress and the members of the public were made fully aware of the sacrifices jurors are put to, their attitude toward making a more reasonable allowance for jury service might very well be changed.

A copy of your letter was sent to Judge holder.

With thanks and kind regards, I remain

Sincerely,



August 26, 1978
3009 Mayfair Drive
Kokomo, Indiana 46901

Hon. William E. Steckler
Judge, (Chief) U. S. District Court
Southern District, Indiana
U. S. Federal Building
Ohio and Meridian Sts.
Indianapolis, Indiana 46204

RECEIVED

AUG 28 1978

WILLIAM E. STECKLER, JUDGE
INDIANAPOLIS, INDIANA 46204

Personal and Confidential

Dear Judge Steckler:

I read in this morning's Indianapolis Star about the Grand Juror who says she spent \$70 to "earn" \$20 as a federal juror, and also of your interest in the matter as a member of the Committee on Grand Jury Operation of the Judicial Conference of the United States.

I was a member of the federal jury in Judge Holder's court from August 23, 1977, through February 9, 1978, when I became ill and dehydrated for a number of days, and was excused by Judge Holder. I was Juror #2 (original juror) on the College Life Insurance Company of America vs. Libbey-Owens-Ford, et al. As you know, it was a very lengthy and complicated trial, and it continued up into May, 1978.

I experienced the same thing as regards expenses, living in the northern part of Howard County, the round trip to my home was 102 miles. Of course, I made many trips. My employer [REDACTED] was extremely good about the whole matter, sharing expenses, providing time off (I believe I was placed on leave four or five times during the period) for periods of one to three weeks at a time, for a period of about six months. My expenses were always more than the \$20 per day; 10¢/mile covered about one-half of the auto expenses, including parking, and ruining of a \$60 tire, and a \$65 carburetor repair bill incurred from purchase of gasoline on the Highway (U. S. 31) in an emergency during the blizzard, when the gasoline had water and other contaminants in it. I was stranded in Indianapolis three times during the two blizzards, I was stranded in Westfield for 24 hours during the first blizzard in December. I was really saved by the Indiana State Police helicopter, who came down over me on the highway, when I was completely closed off. State Police helped me to the schoolhouse and firehouse in Westfield. I was the second person stranded there; by midnight there was more than 160 people, mostly truck drivers. (I received a liberal education in diesel truck engines, rules of the road, complaints about the speed limit, etc., etc.)

I had two narrow escapes on the highway during the below-zero glare ice storms, and each time I thought that I was to be killed (or seriously injured), but escaped miraculously.

I spent consistently more than the \$20 plus the \$10.20 mileage allowance every day. Lunches, parking space, gasoline, repairs, breakfasts, dinners when I was too late on the road returning home. The normal drive was about 70 minutes; during the storm days it took three to four hours one way. If my company wasn't so generous in its jury policies for employees, I would not have been able to afford it as well as I did. I still lost money, of course, but not as much as an average citizen who did not get reimbursement from the employer, etc

Still, I would do it again. It is a duty; I learned much about patience, mental discipline, organization of facts, structure of the jury system in our country, and also had a feeling of contributing some small thing to our system of law and order. I am a patriot, I guess.

However, I felt that I was a very patient individual to begin with, but the frustration I felt with the interminable delays caused by the attorneys for the defense, particularly the attorney for LOP, was very intense. The money wasted by these maneuvers had to be very large amounts, when you consider the 23 attorneys and the six companies involved. (GLICA vs. LOP, et al). I resented that many times more than the loss of a few dollars each day, and the time away from home and family, etc.

Finally, I admired Judge Cale Holder. A wise, firm disciplinarian, but with a keen sense of humor. I learned much from his instructional sessions, and also by observing his handling of various difficult situations in the court.

As - said, I would do it again. As a suggestion, it would be better to have more jurors serve for shorter periods of time -- one trial or one week, or some such arrangement. Additional pay for jurors would assist many in serving their country.

Please share this letter with Judge Holder, if you will.

Respectfully,

Robert J. Ropds
Robert J. Ropds

Note: I do not wish publicity for various personal reasons (I get many "crank"-calls, letters, etc., being a plant superintendent for [redacted] for example), and I do not wish newspaper publicity. If you forward this letter to the committee, please delete references to [redacted] and [redacted] name.

Sincerely,

RJR

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

CHAMBERS OF
ARTHUR J. STANLEY, JR.
SENIOR JUDGE
FEDERAL BUILDING
LEAVENWORTH, KANSAS 66048

September 1, 1978

Honorable C. Clyde Atkins
Chief Judge
United States District Court
Southern District of Florida
P. O. Box 013009
Miami, Florida 33101

RECEIVED
SEP 15 1978
C. CLYDE ATKINS
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF FLORIDA

Dear Clyde:

Enclosed is a letter from Bill Steckler, formerly a valued member of the Committee on the Operation of the Jury System, with attachments which should be of interest to the Committee. It might also be of use by you if you should be called upon to testify in support of the long pending jury fee bill.

With my best personal regards.

Sincerely yours,

cc:
Honorable William E. Steckler

United States District Court
Southern District of Indiana
Indianapolis, Indiana 46204

Chambers of
William F. Steckler
Chief Judge

August 28, 1978

Honorable Arthur J. Stanley, Jr.
United States District Court
235 Federal Building
Leavenworth, Kansas 66043

Dear Judge:

Knowing from my role one time as a member of the Committee on the Operation of the Jury System that the Committee supported legislation to increase the per diem for jury service, I thought you and your Committee members might find interesting the copies of the enclosed letter and newspaper clipping regarding the experience of one of our grand jurors in respect to the expense to which she has been put in serving.

In the presence of the grand jury in open court I lauded Mrs. Schauss for her exemplary attitude and mentioned that I intended to send you a copy of her letter. The newspaper article appeared the following day.

Trusting that all is well with you, I remain

Cordially,

W.F.S.



Lisle Ramsey
PHOTOGRAPHY

August 3, 1978

William E. Steckler, Judge
UNITED STATES DISTRICT COURT
Ohio and Meridian Streets
Indianapolis, Indiana 46204

RECEIVED

AUG 18 1978

WILLIAM E. STECKLER, JUDGE
INDIANAPOLIS, INDIANA 46204

Dear Judge Steckler:

This letter is a confirmation of your opening remarks on August 2 to the newly sworn jury. When polled for mileage it was noted that the majority lived within 50 miles of Indianapolis, and only I stayed over night. Unless one is compensated for their expenses, most must be excused from the opportunity to serve. Yet, all citizens should feel the duty and responsibility of jury duty.

Those who can sleep and eat at home make money at the twenty dollar a day rate. My expenses for the one day were as follows:

Hotel (Indiana Hilton because it was the nearest and I am unfamiliar with the city..least expensive)....	32.00
Garage.....	2.88
Tax.....	2.00
Dinner..at hotel because I am alone.....	10.25
Breakfast..toast and coffee.....	1.25
Lunch..sandwich and drink.....	2.25
Gasoline...	21.60
Loss of salary and cost of hiring replacement....	<u>donation.</u>
Out of pocket....	70.23

This is not meant as a complaint, your Honor, nor a request for being excused from my responsibility; but verification for your argument that the cost of serving our courts eliminates all but the local and wealthy. Based on a twelve day per quarter duty, this tour will total six hundred dollars, not including my three week loss of income and 5 day travel time.

W. E. Steckler, Judge
U: S. District Court

I will be present each session, and will give the matter at hand my undivided attention, for I can ill afford to do less.

If you will be kind enough to return my receipts in the enclosed envelop (or hold for August 21 session), it will be appreciated.

Sincerely,



Dottie F. Schauss
Evansville, Indiana

ROOM: _____ NAME: _____ DATE: _____

TIME: _____

ROOM CLERK: _____

MEMO	DATE	REFERENCE	CHARGES	CREDITS	BALANCE DUE	PREVIOUS BALANCE FORWARD
	10-22				3.5	3.43
						40.31
						41.50

53152 3785 529

1120 JNB 10 78
OSCAR E SCHAUSS

HILTI HOTEL
313-000000
3000000
BVG 192-187

7 31 78

5278871

DATE	TAX
CLEAR	TIP
AUTH CODE	TOTAL 32.78

CARDHOLDER'S SIGNATURE: *Oscar E. Schauss*

1820

SALES SLIP

MERCHANT COPY

GUEST SIGNATURE _____

STATE _____ ZIP _____

E. APPROXIMATE
ADDITIONAL CHARGES

53152 3785 529

01185

110 ONB 10 79
OSCAR E SCHAUSS

COMPANY NO. *1185*
INVOICE NUMBER

DATE OF SALE

2450 01 080278 C4654655

OSCAR E IN

REG	UNLEADED	DIESEL	QUANT	PRICE	AMOUNT
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	77.2	11.89	11.85
			TAX		
			TOTAL		11.85

FEDERAL, STATE AND LOCAL TAXES, WHEN APPLICABLE, ARE TO BE PAID BY THE BUYER AND MUST BE PAID IN FULL AT THE TIME OF PURCHASE.

champlin c

P. O. BOX 552 ENID, OKLAHOMA

NOTICE TO BUYER: IT IS THE POLICY OF CHAMPLIN C TO SELL ONLY UNLEADED GASOLINE. UNLEADED GASOLINE IS REQUIRED FOR ALL AUTOMOBILES AND TRUCKS. UNLEADED GASOLINE IS AVAILABLE AT ALL CHAMPLIN C STATIONS. IF YOU ARE PURCHASING UNLEADED GASOLINE, PLEASE SEE IT TO PROTECT YOUR LEGAL RIGHTS.

IF YOU HAVE A CREDIT ACCOUNT WITH CHAMPLIN C, YOU MUST SIGN THIS AGREEMENT.

925 246 278

BUYER'S SIGNATURE

DRIVER'S LICENSE NO.

CREDIT AUTHORIZATION NO.

Oscar Schauss

53152 3785 529 \$ 00975

1120 ONB 10 79

OSCAR E SCHAUSS

NOT use this form for "Cash Payment Sales"

DATE

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WHITE PET CO NO 18 073078 708644

1335 SO LEBANON

LEBANON IN 46052

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PRODUCT	QUAN	PRICE	AMOUNT
UNLEADED GASOLINE	74.6	12.75	9.75
TOTAL			9.75

CUSTOMER SIGNATURE: *Oscar Schauss*

APPROVAL NO. *DL*

ALL APPLICABLE TAXES ARE INCLUDED IN TOTAL AMOUNT

EXCHANGE COMPANY: *mc*

MSH

THESE TOTALS MUST AGREE

03263

Schauss, Oscar E

SERVER	DATE	AMOUNT	
<i>5-17</i>	<i>11-19</i>	<i>11.85</i>	136507

PAGE 8

Grand Juror Spends \$70 To Earn \$20 Pay

By HOWARD SMULEVITZ

An Evansville photographer's observations about the cost of the civic duty of serving on a federal grand jury drew praise Friday from Federal Judge William E. Steckler and overshadowed the panel's return of 12 indictments.

The juror, Dottie F. Schaus, had declared in a letter to Steckler that the congressionally set grand jury stipend of \$20 a day for a grand jury — which in this instance is drawn from throughout the southern half of Indiana — means that only the wealthy or people who reside close to the site of the court can afford to serve.

She wrote following one day in Indianapolis, Aug. 1, when the jury was sworn in and stayed to hear evidence so it could return several indictments immediately.

ACCOMPANYING her letter to Steckler were receipts for one day of expenses totaling \$70, not including lost salary and cost of her replacement, which she listed as "donation."

She noted she was the only one of the 23 grand jurors who does not reside within 50 miles of the federal court, and must stay in a hotel overnight. Because of unfamiliarity with the city, she stayed across the street from the federal building in the Indianapolis Hilton for \$32 that night, she said.

The grand jury was in session all of this week, and will be here for three days next week to hear special testimony on an alleged sewer contract scandal at Muncie.

Mrs. Schaus estimated in her letter that expenses for the four-month term of the grand jury, which would not take special meetings such as next week's into consideration, would be \$600, not including lost salary.

"UNLESS ONE is compensated for their expenses, most must be excused from the opportunity to serve. Yet all citizens should feel the duty and responsibility" toward jury duty, she wrote.

"This is not meant as a complaint nor a request for being excused from my responsibility, but verification of remarks Steckler made about the daily pay

when he swore in the jurors Aug. 1) that the cost of serving our courts eliminates all but the local and the wealthy," Mrs. Schaus said in her letter. Besides praising her attitude, Steckler said he will send her letter to the Committee on Grand Jury Operation of the Judicial Conference of the United States. A member of the committee for several years, Steckler said it needs concrete examples to present to a Congressional committee as part of the effort to raise grand jurors' pay.

The U.S. attorney, Virginia Ditt McCarty, said she is considering expanding special grand juries to handle investigations which threaten to add the huron of a lengthy probe to the duties of the regularly scheduled panel.

IN FRIDAY'S report to Steckler, the jury named a father and son in separate indictments charging them with failure to file income tax returns. They were identified as Lucian L. Bates, 62, R.N. 1, Westport, who allegedly failed to report income for 1972 through 1975, and Edwin G. Bates, 57, Hope, accused of failing to report income for 1974 and 1975. Although the indictments are separate, the same income, \$50,892.79, is cited for each for 1974.

In addition to three sealed indictments, the jury issued these:

Dennis Tucker, 20, Brownsburg, taking \$5,000 in traveler's checks from an Indianapolis bank; Arvin E. Shepherd, 40, 3003 West Michigan Street, six counts of forgery of U.S. Treasury checks and one count of forgery of a Treasury check stolen from the mails; Shirley Ann Shepherd, 34, 2004 West Michigan Street, three counts of forgery of Treasury checks; Denise Daren Laman, 24, and James McCallum, 36, both of Las Vegas, Nev., conversion of two postal money orders with total value of \$125.

Also, Seth E. Smith, 45, Evansville, three counts of giving false information to obtain a home loan guarantee from the Veterans Administration in 1975; Douglas F. Johnston Jr., 23, 5148 Aubrey Avenue, obstructing correspondence by taking from the mails a government check for \$1,442 to the Veterans Administration, and forging a Treasury check for \$511.

(9)

OTIS G. PIKE
FIRST DISTRICT, New York

COMMITTEE
BUDGET
WAYS AND MEANS
JOINT ECONOMIC

Congress of the United States
House of Representatives
Washington, D.C. 20515

2308 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515

AREA CHIEF 302
TELEPHONE 225-3626
MRS. BETTY GUN
OFFICE MANAGER

DISTRICT OFFICE
209 WEST MAIN STREET
ROCHESTER, NEW YORK 11901
TELEPHONE 727-2332

June 29, 1978

Honorable Peter Rodino
Chairman
House Judiciary Committee
2137 Rayburn HOB
Washington, D.C. 20515

Dear Mr. Chairman:

The enclosed is forwarded as a courtesy to
my constituent, Mr. Robert W. Link. No reply
is necessary.

Cordially,


OTIS G. PIKE

OGP:vt
Enclosure

11 Maquette Dr.
 Smithtown N. Y. 11787
 June 20, 1978

Honorable Otis G. Pike
 U. S. House of Representatives
 Washington D. C. 20515

Dear Mr. Pike:

This concerns Jury Duty. I recently served on the Federal Jury in Brooklyn. As you can see I live in Smithtown L.I., which meant that I had to take the L.I.C. and Subway to get to the Federal Court at Cadman Plaza. This cost me \$8.00 per day. For two weeks of service I would have had to lay out \$80.00. It was difficult for me to get this money together just to get to the court. I am sure if I told the clerk/judge that I couldn't afford the carfare I would have been held in contempt.

I would like to suggest that the travel allowance be paid to jurors on a daily basis, so that jury duty does not become a hardship. When I mentioned this idea to the clerk in Brooklyn

she said that they just follow Washington
orders. Hence I am writing to you. If
there is nothing that you can do please
direct this letter to the Dept. and they can
look into the suggestion.

Thank you for your attention to this
matter.

Very truly yours,
Robert W. Lusk

201-2-19-5
Personality - check 8-44
6-12-78

MRS. POMERAI W. LUSK
11 Marquette Drive
Seabrook, L. I., N. Y. 11787

JUN 26 1978

(b) ON WITNESS FEES

May 10, 1977

Congressman Robert Cornell
House of Representatives
Washington, D. C. 20515

MAY 17 1977

Dear Congressman Cornell,

I recently received a subpoena to testify before the Grand Jury in the United States District Court in Milwaukee, Wisconsin. I had to testify in a case regarding my employer.

After I was done testifying the judge told me to go and fill out an expense report. I went to the room I was told to go to. They would not take my mileage or any of my expenses, but they told me I would receive a check in the mail the next week for my expenses.

I received my check in the mail yesterday. After I received the check I called to find out how they paid me. They paid me 10 cents a mile and \$20.00 for the day. They told me that everybody is paid 10 cents a mile.

It cost more than 10 cents a mile to operate your car, and I don't own a big air-conditioned car either. A recent article that appeared in the paper showed it cost 22 cents a mile to operate your car. I no longer have the article because I had it posted on my bulletin board at work, and my boss wouldn't let me have a bulletin board no more, so the article was thrown out. Also I was not paid for my lunch when I was there over my lunch hour. Also they said my parking fee was included in the 10 cents a mile. Now I know government employees if they use their own car are paid at least 15 cents a mile.

On top of losing money on my expenses, my boss wants to dock my wages for that day. If it wouldn't have been for the fact that my employer was being investigated I wouldn't have had to go to this grand jury in the first place. In expenses alone at figuring I would have got 15 cents a mile like I should have I lost \$33.46 and when my employer docks my wages I will have lost another \$18.88 bringing a total lost of \$52.34.

IS THIS JUSTICE????????? I don't think so, I think all of my expenses should be paid. I think the federal government should pick up all of my expenses when I have to appear before a federal grand jury. I think this is a disgrace for a poor working person to lose that kind of money because of the company they work for.

Now I will be waiting to see if anybody takes the time to answer this letter or if they just answer letters to the big bosses of companies.

Very truly yours,
Sharon J. Williams
Sharon J. Williams
1918 E. Glendale Avenue
Appleton, WI 54911

(c) ON JUDICIAL RETIREMENT

1.

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

WILLIAM E. FOLEY
DIRECTOR

February 22, 1978

WILLIAM JAMES WELLER
LEGISLATIVE LIAISON
OFFICER

JOSEPH F. SPANIOLO, JR.
DEPUTY DIRECTOR

Honorable George E. Danfelson
2447 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Danfelson:

The Director of the Administrative Office, Mr. Foley, has asked me to respond to your February 4, 1978, letter concerning H.R. 3327. Please excuse this delay in our reply. As Mr. Foley's secretary noted in her letter to you of February 8, the Director was out of the city when your letter arrived.

As you know, the Judicial Conference of the United States ordinarily only adopts formal views on proposed legislation during its semi-annual meetings in March and September of each year, after reviewing recommendations from the appropriate Judicial Conference Committees. In unusual situations, generally upon a special request from the Congress, formal views have been adopted by a mail vote of Conference members.

In 1977 the Conference's September Proceedings were held on September 15 and 16. Chairman Rodino's letter requesting views on H.R. 3327, dated September 15, did not arrive in our office until after the Conference Proceedings had been completed. After I had verified, in a telephone conversation with House subcommittee staff, the fact that special Conference consideration of the bill would not be necessary, because it then appeared that the House subcommittee would not be scheduling action on the bill until after the March 1978 Conference Proceedings, Mr. Foley informed Chairman Rodino, by letter of September 20, that H.R. 3327 had been referred to the appropriate Judicial Conference Committee for study. The bill was, on that same date, forwarded to the Court Administration Committee's Subcommittee on Judicial Improvements.

On January 9, 1978, that subcommittee reviewed H.R. 3327, in conjunction with two other similar proposals concerning 28 U.S.C. §371, which had also been referred, S. 1134, and Section 103 of Title I of H.R. 3971. The subcommittee unanimously approved all three proposals and recommended their approval to the Court Administration Committee.

On February 9, 1978, the Court Administration Committee reviewed the subcommittee's recommendations and unanimously agreed to refer them to the full Judicial Conference for approval at the March 9-10, 1978 Proceedings. I believe the Judicial Conference will formally approve H.R. 3327 during its March Proceedings and recommend favorable Congressional action on the bill.

If I may, I would like to bring to your attention the degree to which all three currently pending proposals are designed to achieve *substantially* similar objectives.

Today, under subsection (a) of 28 U.S.C. §371, an article III Justice or judge may "resign on salary" *only* at age 70 with at least 10 full years of service. He is then entitled to an annual salary equal to the rate of annual salary he was earning on the date of his "resignation." Today, under subsection (b) of 28 U.S.C. §371, an article III Justice or judge may "retire" from regular active service (i.e., "take senior status"), *either* at age 70 with 10 full years of service or at age 65 with 15 full years of service. He is then entitled to an annual salary equal to "the salary of the office" from which he has "retired." Therefore, unlike the Justice or judge who has "resigned on salary" under subsection (a), the Justice or judge who "retires" (takes senior status) under subsection (b) is entitled to all future increases in salary approved by Congress until he dies. He is, of course, also required to render service when requested to do so.

Realistically, there are only three differences between "senior status retirement" and "resignation on salary":

1. "Senior status retirement" is available at age 65 with 15 full years of service or at age 70, with 10 full years of service, while "resignation on salary" is *only* available at age 70, whether the years of service number 15, 18, 20, or 30 (as long as they number at least 10).
2. "Senior status retirement" guarantees receipt of *all* future judicial salary increases until death; "resignation on salary" effectively "freezes" annual salary at the rate in effect on the date of "resignation."
3. "Senior status retirement" imposes no diminution in authority of office; "resignation on salary" waives authority of office.

H.R. 3327 would merely "conform" the age and service criteria for both "resignation on salary" and "senior status retirement." There would appear to be no reason to permit a Justice or judge at age 65 with 15 years of service to elect "senior status" while precluding that same Justice or judge from electing "resignation on salary." Accordingly the Court Administration Committee has recommended Conference approval of H.R. 3327.

S. 1134 would accomplish the same objective and also authorize a concept referred to as "graduated retirement" or "the rule of 80." Essentially, any Justice or Judge who has attained at least age 62, and whose age plus years of service equal the number 80, could elect *either* "resignation on salary" or "senior status retirement."

Section 103 of Title I of H.R. 3971 would not conform the age and service criteria for "resignation on salary" and "senior status retirement." It would, however, authorize the "rule of 80" criteria for "senior status retirement" *only*, commencing at age 60 with 20 years of service, instead of at 62 with 18 years of service (as provided in S. 1134).

In reviewing all three proposals, the Court Administration Committee's members were in complete agreement that the total rewriting of 28 U.S.C. §371, as proposed by S. 1134 would be a very favorable development, and also agreed that commencement of "the rule of 80" at age 60, rather than at age 62, would be a valuable amendment to S. 1134. In only very rare cases would a Justice or Judge satisfy the "rule of 80" at such an early age, yet those rare cases might well be the ones in which the "rule" would be most beneficial to both the Justice or Judge and the Federal court system. Rather than formally recommend that the Judicial Conference advocate that approach, or any one bill over any other, the Committee merely recommended the expression of approval of each legislative proposal. Ultimately the degree to which 28 U.S.C. §371 is reformed is a policy question for Congressional resolution, and, although one approach may be more desirable than another, any of the currently pending suggested reforms would be an improvement.

As soon as the Judicial Conference has taken formal action in early March, I will notify you, Chairman Rodino, and Mr. Kastenmeier of that action by letter. If my office may be of further assistance to you, please have a member of your staff telephone me at 633-6040.

Sincerely,

William James Weller
Legislative Liaison Officer

cc: Honorable Peter W. Rodino, Chairman
Committee on the Judiciary

Honorable Robert W. Kastenmeier, Chairman ✓
Subcommittee on Courts, Civil Liberties,
and the Administration of Justice

(2)

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

APR 23 1973

Honorable Peter Rodino
Chairman, Committee on
the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Chairman Rodino:

This is in response to your request for comment from the Department on H.R. 3327, a bill to amend title 28 of the United States Code to permit the resignation with the right to continue receiving pay to certain Federal judges at age sixty-five who have completed fifteen years judicial service.

After careful consideration of the retirement and resignation statutes as they relate to Federal judges, we conclude that the Department has no objection to the enactment of H.R. 3327.

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

Sincerely,

Patricia M. Wald
Patricia M. Wald
Assistant Attorney General

(d) ON TRANSFER POWERS OF FEDERAL COURTS

(1)

April 4, 1977

The Honorable Harold Leventhal
Circuit Judge
United States Court of Appeals
Washington, D. C.

Dear Judge Leventhal:

Your concurring opinion in Investment Company Institute v. Board of Governors of the Federal Reserve System (No. 75-1822, D.C. Cir., January 14, 1977) was brought to the attention of my Subcommittee by Mr. Robert A. Anthony, Chairman of the Administrative Conference of the United States.

In Investment Company Institute you express your hope that the problem posed by litigant filings in the wrong court... will be dealt with in the reasonable future by the enactment of a general statute permitting transfer between district courts and courts of appeals in the interest of justice.... You then suggest 18 U.S.C. §1506 as a possible solution to this problem. In addition to this suggestion, the Administrative Conference has recommended legislation to allow transfers of cases between courts of appeals. I am interested in both of these recommendations, but have several questions concerning each of them. First, how significant a problem has misfiling and double filing been for the federal courts? Second, is the problem confined to situations involving review of administrative agency actions? Third, does the lack of a general transfer statute create an unfair risk to litigants (especially individuals) who file on the federal courts? Fourth, is the Court of Claims statutory scheme the "model" that you would propose if you were a member of Congress? Fifth, has the Judicial Conference considered this problem? Finally, are there any other aspects of transfer that you would like to bring to our attention?

Thank you for your time and cooperation in this matter. If my staff can be of any assistance to you, please feel free to contact Michael Remington (225-3926).

Sincerely yours,

Robert W. Kastenmeier
Chairman, Subcommittee on Courts,
Civil Liberties, and the
Administration of Justice

RWK:mrr

Notice: This opinion is subject to formal revision before publication in the Federal Reporter or U.S. App. D.C. Reports. Users are requested to notify the Clerk of any formal errors in order that corrections may be made before the bound volumes go to press.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 75-1822

INVESTMENT COMPANY INSTITUTE, APPELLANT

v.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM, ET AL

Appeal from the United States District Court
for the District of Columbia

(D.C. Civil Action 74-697)

Argued September 24, 1976

Decided January 14, 1977

G. Duane Vieth, with whom *James W. Jones* and *Leonard B. Simon* were on the brief, for appellant.

Anthony J. Steinmeyer, Attorney, Department of Justice, with whom *Rex E. Lee*, Assistant Attorney General, *Earl J. Silbert*, United States Attorney and *Ronald R. Glancz*, Attorney, Department of Justice were on the brief, for appellees.

LEVENTHAL, Circuit Judge, concurring: I entirely concur in Judge McGowan's excellent opinion for the court.

I take advantage of the freedom of a concurring opinion to express the hope that the core problem will be dealt with in the reasonable future by the enactment of a general statute permitting transfer between district courts and courts of appeals in the interest of justice, including specifically but not exclusively those instances when complaints are filed in what later proves to be the "wrong" court.

The Administrative Conference of the United States, by resolution adopted December 10, 1976, also entitled *Judicial Review Under the Clean Air Act and Federal Water Pollution Control Act*, approved a transfer recommendation, as follows:

To prevent unfairness from a litigant's choice of the wrong court, Congress should provide for transfer between district courts and courts of appeals of petitions and complaints filed under the Acts. The Court of Claims transfer provision provides a good model.¹

Reprinted at 41 Fed. Reg. 56767 (Dec. 30, 1976).

The ambiguities that now abound, and have sometimes led to what has been described as "jurisdictional badminton,"² are not edifying. Realistically, some ambigu-

¹ The Conference approved the recommendation made in a report by Professor David Currie of University of Chicago Law School. The "model" referred to is 28 U.S.C. § 1506:

If a case within the exclusive jurisdiction of the district courts is filed in the Court of Claims, the Court of Claims shall, if it be in the interest of justice, transfer such case to any district court in which it could have been brought at the time such case was filed, where the case shall proceed as if it had been filed in the district court on the date it was filed in the Court of Claims.

² *Natural Resources Defense Council, Inc. v. EPA*, 512 F.2d 1351, 1361 (D.C. Cir. 1975) (dissenting in part).

ties are likely to persist. The only lawyer-like remedy today, as Judge McGowan points out, is double filing. That is hardly a model. Today's opinion crafts a solution that avoids hardship in the case at hand. A more direct and sweeping approach is eminently desirable and eminently timely.

(2)

UNITED STATES COURT OF APPEALS

DISTRICT OF COLUMBIA CIRCUIT
WASHINGTON, D. C. 20001MAROLD LEVENTHAL
UNITED STATES CIRCUIT JUDGE

October 31, 1977

Hon. Robert W. Kastenmeier
Chairman, Subcommittee on Courts
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Congressman Kastenmeier:

This is first to express appreciation for your interest in the possibility of a proposed statutory transfer provision such as that suggested in my concurring opinion in Investment Company Institute, 551 F.2d 1270, 1283 (1977).

As my opinion indicates, I strongly favor a statutory provision that permits transfer of cases from one federal court to another in the interest of justice, even though it is determined that the case was not properly filed in the first court.

Let me proceed by responding to the specific questions in your letter of April 8.

1. How significant a problem has misfiling and double filing been for the federal courts?

I have no information as to numbers of cases. I can say that the question of jurisdiction arises often enough to be troublesome, and that the question is often most difficult of determination.

Our premise is, of course, that Congress does want to provide for judicial review of federal administrative action, to determine whether it is arbitrary or capricious or otherwise in derogation of statutory provision, and to provide appropriate relief if a person or group has experienced or is threatened by injury. Naturally, appropriate relief requires at the outset a proceeding in an appropriate Federal court for the rectifying mandate.

In actual practice, the "which court" question is one that does "vex practitioners," as a prominent attorney has recently stated. 1/

Judge McGowan's opinion for the court in Investment Company Institute reviews how court rulings have come to be modified and overruled on further consideration, as the courts have endeavored to reconcile the review provisions in pertinent statutes with the objective of furthering the ultimate Congressional intention of providing expeditious and meaningful judicial review. The complexity of the problem is brought out in the recently emerging scholarly literature on the subject. 2/

A problem of injustice arises if the statute is construed to require an appeal to the court of appeals within a short period after the administrative action and the complaint has been filed in district court. Even a timely proceeding will be useless if it is filed in a court without jurisdiction. Sometimes that can be retrieved, as in Investment Company Institute, which ruled that the district court did not have jurisdiction, but fashioned a procedure to give the industry an opportunity to obtain review in the court of appeals. Examples of the converse rulings in which the court held that the case was improperly brought to the circuit court, includes Judge McGowan's opinion in International Navigators Council v. Shaffer, 444 F.2d 904 (D.C.Cir. 1971) (holding that the case belonged in the district court, where a double-filing had been made) and Utah Power & Light v. EPA, 553 F.2d 215 (1977) (drawing a distinction between challenges to validity of regulations and challenge to interpretation of regulation).

A "which court" question presently pending before our court concerns the proper court for judicial review of certain determinations under Federal Coal Mine Health and Safety Act of 1969. 3/

1/ William H. Allen, of Covington & Burling, Washington, D.C., in a Book Review, of Linde and Bunn, Legislative and Administrative Processes, and of Mashaw and Merrill, Introduction to the American Public Law System, printed in Duke Law Journal, vol. 1977, p. 631, at 638 (note 33).

2/ Currie and Goodman, Judicial Review of Federal Administrative Action: Quest for the Optimum Forum, 75 Columbia Law Review 1 (1975); Verkuil, Judicial Review of Informal Rulemaking, 60 Va. L.Rev. 185, 200 (1974).

3/ Assn. of Bituminous Contractors Inc. v. Kleppe, #75-1931, D.C. Cir. The Fourth Circuit has ruled that while literal reading of § 816(a) of the Act indicates that review of enforcement actions lies in the court of appeals, it was apparent "from the context" of § 816(a) that it was not meant to preclude pre-enforcement review in the district court of the Secretary's interpretation. Bituminous Coal Operators' Ass'n v. Secretary of the Interior, 547 F.2d 240, 243 (4th Cir. 1977).

In other instances, the issue has been, district court or Customs Court. 4/

These citations are only illustrative, and reflect instances that happened to come to hand during the past few days as I began to formulate my thoughts. If a research project were begun, it would unquestionably yield a number of close judgments on jurisdictional issues.

* * * *

Over and above the instances of injustice in the past, are the occasions of unnecessary expenditure of much lawyer and judicial effort to avoid injustice.

While the situation is not precisely in point, I have fresh in my mind an instance of how a transfer provision eased the parties and judges out of a near-impasse recently, when multiple petitions to review an order of the Federal Power Commission (increasing the national price of natural gas) were filed simultaneously in the Fifth Circuit and the District of Columbia Circuit. The transfer provision of 28 U.S.C. § 2112(a) was implemented by direct telephone conversation between the pertinent panels of the two courts, and a procedure was evolved for handling the cases without dwelling on the resolution of the intractable question of where the first petition was filed. See *American Public Gas Association v. FPC*, 555 F.2d 852 (Dec. 30, 1976).

2. Is the problem confined to situations involving review of administrative agency actions?

Our court's jurisdiction and workload are such that the only situations that I recall are those involving review of agency actions -- although I think the term "administrative agency" should be defined broadly, as "agency" is defined in the Administrative Procedure Act.

3. Does the lack of a general transfer statute create an unfair risk to litigants (especially individuals) who file on the federal courts?

I think so, on the analysis set forth for item #1.

4/ *Consumers Union v. Committee for the Implementation of Textile Agreements*, D.C. Cir. April 20, 1977 (dismissing action brought in district court as one that should have been brought in Customs Court); *SCM Corporation v. International Trade Commission*, (D.C. Cir. Jan. 2, 1976) (remanding to district court to hold case on docket until Customs Court had opportunity to determine whether it had jurisdiction or could grant full relief).

4. Is the Court of Claims statutory scheme the "model" to be recommended to a member of Congress to propose?

In my view, 28 U.S.C. § 5106, is a useful model. There are other provisions in the Judicial Code for transfer between courts -- e.g., 28 U.S.C. § 1404(a) (transfer between district courts, for more convenient forum); 28 U.S.C. § 2112(a) (last sentence; transfer from one circuit court of appeals to another for the convenience of the parties in the interest of justice). However, section 5106 is the one section that addresses itself to the situation where the transferring court (Court of Claims) is without jurisdiction (for the case is one within the "exclusive" jurisdiction of the district courts). In effect the Court of Claims has been authorized by Congress to receive the case for the federal court system as a whole, so to speak, for the purpose, not of decision, but of transfer. And the provision giving authority to transfer "if it be in the interest of justice" is to guard against any vexatious or abusive misfiling.

5. Has the Judicial Conference considered the problem?

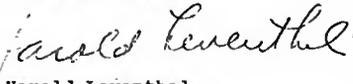
A good question, indeed, and one that I shall answer by saying -- I do not know of any such consideration but I am herewith bringing our correspondence to the attention of the appropriate committee of the Judicial Conference, by sending a copy to Judge Gignoux, Chairman of the Subcommittee on Federal Jurisdiction of the Committee on Court Administration.

* * *

I am convinced, as indicated in my Investment Company Institute opinion, that the many statutory provisions, and many ways in which they are inserted or amended, will inevitably yield cases where the "which court" question is doubtful. Sometimes the "which court" question involves a choice between district court and circuit court. In other cases, Professor Currie envisages, that the question may be, which circuit court. In other cases, it has been, district court or Customs Court. My ultimate conclusion is that Congress should permit transfer between any two Federal courts.

Again, thank you for your interest in this matter. I am available for further consultation with you or your staff at your convenience.

Sincerely yours,



Harold Leventhal

(3)

THE UNIVERSITY OF CHICAGO

THE LAW SCHOOL

1111 EAST 60TH STREET
CHICAGO · ILLINOIS 60637

June 6, 1977

Hon. Robert Kastenmeier
Subcommittee on Courts, Civil Liberties
and the Administration of Justice
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your request for additional information concerning the Administrative Conference recommendations regarding transfer provisions for the courts of appeals.

1) In my view misfiling and double filing have become significant problems at the court-of-appeals level because of the uncertainty of the statutes specifying in which court review of administrative action is to be sought.

First, both the Clean Air Act and the Water Pollution Control Act provide for review of certain actions directly in the courts of appeals. Whether a particular action falls within these provisions is not always clear. For example, courts of appeals divided over whether effluent guidelines promulgated under Sec. 304 of the FWPCA for the purpose of defining effluent limitations under Sec. 301 were "effluent limitations" for purposes of court-of-appeals review. Compare CPC International, Inc. v. Train, 515 F. 2d 1032 (8th Cir. 1975), with, e.g., E.I. duPont de Nemours & Co. v. Train, 528 F. 2d 1126 (4th Cir. 1975). While the Supreme Court has now resolved this particular conflict, other ambiguities keep cropping up. See, for example, United States v. Adamo Wrecking Co., 9 E.R.C. 1443 (6th Cir. 1976) (whether regulation limiting demolition practices is an "emission standard"); Lubrizol Corp. v. Train, 545 F. 2d 310 (6th Cir. 1976) (whether fuel registration requirements are "controls or prohibitions"); American Iron & Steel Inst. v. Train, 9 E.R.C. 1321 (3d Cir. 1976) (whether regulations specifying whether effluents are to be measured on net or gross basis are "effluent limitations"). My examples are drawn from the single field of pollution. With the proliferation of statutory provisions for direct court-of-appeals review, the potential for misfiling is multiplied.

Second, there is a growing tendency in the courts of appeals to interpret statutes providing for court-of-appeals review

of "orders" to include regulations, but only when no trial of the facts is necessary. See, e.g., *Deutsche Lufthansa A.G. v. CAB*, 479 F. 2d 912 (D.C. Cir. 1973). This case-by-case approach to the question of whether review lies in the district or appellate court further contributes to the danger of misfiling.

Third, the problem is compounded by the presence in both pollution statutes of provisions authorizing district courts to order the Administrator to perform non-discretionary duties. Several cases have already presented difficult questions of drawing the line between court-of-appeals review of erroneous action and district-court review of the failure to act. See, e.g., *Oljato Chapter of the Navajo Tribe v. Train*, 515 F. 2d 654 (D.C. Cir. 1975) (refusal of the Administrator to revise new-source performance standards); *Natural Resources Defense Council v. EPA*, 512 F. 2d 1351 (D.C. Cir. 1975) (omission of health-related lead limit from final fuel-control regulation); *Sierra Club v. Ruckelshaus*, 344 F. Supp. 253 (D.D.C. 1972) (failure of Administrator to require non-degradation provisions in implementation plans). Judge Wright has pungently described the uncertainty over which is the proper forum:

The courts have been of . . . little help to litigants attempting to discern the parameters of Sections 304 and 307. While the courts play jurisdictional badminton with those provisions, batting one case back to the District Court under Section 304 while taking another identical one under Section 307, litigants should not be denied substantial rights because of uncertainty created by courts and Congress. *Natural Resources Defense Council v. EPA*, supra.

Fourth, even when it is clear that the action in question is reviewable in a court of appeals, it is often unclear in which one. The Clean Air Act, for example, provides for review of implementation-plan approvals in "the appropriate circuit." The legislative history defining "appropriate" as the circuit containing the State whose plan is in issue has been ignored, the courts having an unpredictable, vague tendency to require review of questions of "national importance" in the District of Columbia Circuit. See, e.g., *Natural Resources Defense Council v. EPA*, 475 F. 2d 969 (D.C. Cir. 1973). Moreover, under the water-pollution statute venue lies in the circuit in which the petitioner "resides or transacts such business"; the law is unclear as to the meaning of corporate residence in this context, and there is no antecedent

in the statute for "such." See Peabody Coal Co. v. Train, 522 F. 2d 1152 (8th Cir. 1975).

In short, I see a considerable potential for filing in the wrong court. While I have elsewhere suggested specific statutory changes to eliminate some of this potential, I think the pattern of recent Congressional action respecting judicial-review provisions is such that we can expect more rather than less uncertainty in the future.

2) At the court-of appeals level, the problems of mis-filing is largely confined to review of administrative actions. Venue for review of district-court decisions is no problem. There remain a few cases in which it may be unclear whether jurisdiction to review a district-court judgment is in the Supreme Court or in a court of appeals, but this problem has been much alleviated by the virtual repeal of the three-judge district-court requirements over the past few years.

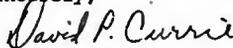
3) The uncertainty respecting which court has review authority creates an unnecessary risk that a litigant may find himself without remedy because of a technicality of procedure. Some statutes, such as those regulating pollution, impose strict time limitations on seeking judicial review. The Clean Air Act, for example, allows only thirty days when the action is reviewable in a court of appeals. The litigant's only defense, absent an adequate transfer statute, is the wasteful and costly one of filing in two or more courts at the same time. This has become fairly common practice, as illustrated by several of the cases cited above. It places burdens on the courts as well as on the parties.

4) 28 U.S.C. Sec.1506, which provides for transfer between the Court of Claims and the district court, provides an apt model for dealing with the problem of uncertainty whether jurisdiction lies in the district court or in the court of appeals. Of course the statute should provide for transfer in both directions: from district court to court of appeals and vice-versa. The last clause of Sec.1506 is important; without it the litigant might find himself time-barred despite transfer.

5) The problem of inter-circuit transfer is inadequately covered by Sec.2112 of title 28. To begin with, it applies only when judicial review of the same order is sought in two or more courts of appeals. Thus it is no help when the sole review petition is filed in the wrong circuit. To deal with this problem something like Sec.1406 or Sec.1506 is again needed: where a petition is filed in the wrong court of appeals, it may be transferred to one in which the petition could properly have been filed.

A second area of concern with Sec.2112 is that it may not be flexible enough to deal with the problem of consolidating related review proceedings filed in different circuits. Since Sec.2112 is limited to attacks upon "orders," there is some question whether it applies to regulations at all. Moreover, there may be a need for consolidation even when the actions under attack are not encompassed in a single order, as when the EPA separately rejects a number of state air-quality implementation plans on identical grounds. The present statute also fails to make clear whether venue must be proper either in the transferor or transferee forum. To avoid the necessity of double transfer or the hardship of dismissal, proper venue in the transferor court should not be required. To permit consolidation of related proceedings involving analytically separate orders (as in implementation plans), proper venue in the transferee forum should not be either. The Administrative Conference recommendation is a good start for this branch of the problem: In addition to an analog of 1406, the statute should authorize any court of appeals to transfer any administrative-review case to any other court of appeals to avoid undue duplication, or in the interest of justice.

Sincerely,



David P. Currie

DPC/mns

Jeffrey Lubbers, Esq.
Administrative Conference of the U.S.A.
2120 "L" Street, N.W.
Washington, D.C. 20037

(4)

April 13, 1978

Honorable Harold Leventhal
Circuit Judge
United States Court of Appeals
Washington, D.C. 20001

Dear Judge Leve thal:

I have enclosed a copy of H.R. 11276, the bill I introduced to provide the courts of appeals and district courts of the United States with power to transfer cases improperly filed in those courts to the appropriate court of appeals or district court in order to cure a defect of jurisdiction or venue.

If you have the time, I invite you to review the proposal and to convey pertinent comments, including suggested amendatory changes to me.

I am also sending you under separate cover a copy of the printed record of my subcommittee's hearings on the State of the Judiciary and Access to Justice.

With warm regards, I am

Sincerely,

Robert W. Kastenmeier
Chairman, Subcommittee on Courts,
Civil Liberties and the
Administration of Justice

RWK:mra
Enc.

95TH CONGRESS
2D SESSION

H. R. 11276

IN THE HOUSE OF REPRESENTATIVES

MARCH 3, 1978

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

A BILL

To amend title 28, United States Code, to provide that the courts of appeals and district courts of the United States may transfer cases improperly filed in those courts to the appropriate court of appeals or district court in order to cure a defect of jurisdiction or venue.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That chapter 83 of title 28, United States Code, is amended
4 by adding at the end thereof the following new section:

5 "§ 1295. Transfer to cure defect of jurisdiction

6 "If a case within the exclusive jurisdiction of the dis-
7 trict courts is filed in a court of appeals, that court of ap-
8 peals shall, if it be in the interest of justice, transfer such

1 case to any district court in which it could have been
2 brought at the time such case was filed, where the case
3 shall proceed as if it had been filed in the district court on
4 the date upon which it was actually filed in the court of
5 appeals.”.

6 SEC. 2. The chapter analysis of chapter 83 of title 28,
7 United States Code, is amended by adding at the end thereof
8 the following new item:

“1295. Transfer to cure defect of jurisdiction.”

9 SEC. 3. Section 1406 of title 28, United States Code, is
10 amended by adding after subsection (b) thereof the
11 following:

12 “(c) If a case within the exclusive jurisdiction of the
13 courts of appeals is filed in a district court, that district
14 court shall, if it be in the interest of justice, transfer such
15 case to any court of appeals in which it could have been
16 brought at the time such case was filed, where the case shall
17 proceed as if it had been filed in the court of appeals on
18 the date upon which it was actually filed in the district
19 court.”.

20 SEC. 4. Subsections (c) and (d) of section 1406 of
21 title 28, United States Code, are redesignated as subsections
22 (d) and (e), respectively.

(5)

UNITED STATES COURT OF APPEALS

DISTRICT OF COLUMBIA CIRCUIT
WASHINGTON, D. C. 20001HAROLD LEVENTHAL
UNITED STATES CIRCUIT JUDGE

April 26, 1978

Hon. Robert W. Kastenmeier
Chairman, Subcommittee on Courts
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Congressman Kastenmeier:

Thank you for your letter of April 13, concerning H.R. 11276, 95th Cong., 2d Sess.

H.R. 11276 is excellent -- so far as it goes. However, it is limited to transfers between district courts and courts of appeals.

In my view, as expressed in my letter to you of October 31, 1977, "Congress should permit transfer between any two Federal courts." That conclusion, along with the underlying correspondence, was transmitted to the United States Judicial Conference by its Committee on Court Administration. At its last meeting, the Judicial Conference broadly approved the transfer of cases "from one federal court to another." (I am so advised by Mr. Joseph Spaniol, the deputy director of the Federal Administrative Office, who has included this language in his draft of the report of the Judicial Conference meeting.)

Although most of the "which court" problems that have arisen relate to controversies involving the district court and the courts of appeals, there have also been cases involving the customs court, as indicated in my letter to you of October 31, 1977. Further, Judge Tamm advises me that there have been instances of cases filed in circuit courts of appeals that are within the exclusive jurisdiction of the Temporary Emergency Court of Appeals (TECA). (Notwithstanding its name, TECA was not established as either a district court or a court of appeals. Sec. 211(b)(1) of Pub. L. 91-379, merely provides: "There is hereby

created a court of the United States to be known as the Temporary Emergency Court of Appeals, ***." The Chief Justice is authorized to make designations to TECA from judges of the district courts and circuit courts of appeals. See 12 U.S.C. § 1904, note.)

Congress may provide in the future for other courts of specialized jurisdiction. These may be created as, say, district courts (as in the case of the special court established under the railroad legislation, 45 U.S.C. § 719). However, as in the case of TECA, they may not be anchored within an existing court, and it would be prudent to provide for that possibility. Such situations may present problems of justice, particularly if novel, and not generally known legislation, should provide strict deadlines for seeking judicial review.

There remains a problem of draftsmanship, and more particularly of code placement, since Part IV of Title 28 of the United States Code (IV - JURISDICTION AND VENUE) is now organized with separate chapters for the separate courts. I suggest adding a new chapter, entitled General Provisions (following the model of ch. 57, § 951). I have drafted for your consideration a provision that will effectuate the foregoing. While about it, I decided to try my hand at simplification, and at clarifying that the transfer procedure may be used "to cure a defect of jurisdiction and venue" (as set forth in the title of H.R. 11276).

chapter 97. General Provisions

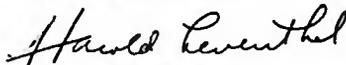
§ 1591. Transfer to cure defect of jurisdiction or venue

If a case is filed in a court of the United States, and that court concludes that there is a defect in jurisdiction or venue, the court shall, if it be within the interest of justice, transfer such case to any court of the United States in which it could have been brought at the time such case was filed, and the case shall proceed as if it had been filed in the transferee court on the date upon which it was actually filed in the transferor court.

To save time, I am sending a copy of this letter to a number of the persons within the Federal judicial system with whom I have discussed the matter, and also to professors who have evidenced a particular interest in the issue.

I am available at your convenience to discuss this matter further with you or any member of your staff.

Sincerely yours,



Harold Leventhal

cc: Judge Edward A. Tamm
Judge Edward T. Gignoux
Hon. Leo Levin, Director, Federal Judicial Center
Hon. Joseph Spaniol, Deputy Director, Admin. Office
Professor David Currie, U. of Chicago
Professor Frank Goodman, U. of Pa.
Professor Charles Alan Wright, U. of Texas

(6)

THE UNIVERSITY OF CHICAGO
THE LAW SCHOOL
1111 EAST 60TH STREET
CHICAGO - ILLINOIS 60637

May 4, 1978

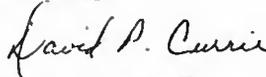
Hon. Robert W. Kastenmeier
Chairman, Subcommittee on Courts
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Congressman Kastenmeier:

I am writing in support of Judge Leventhal's proposed revision of H.R. 11276, 95th Cong., 2d Sess., which would broaden the transfer provision to embrace courts other than district courts and courts of appeals.

I share Judge Leventhal's view that filing a case in the wrong court should not lead to the harsh result of dismissal. I share his conviction that the problem is not limited to district courts and courts of appeals. Finally, I believe the language he has drafted is admirably suited to the purpose.

Sincerely,



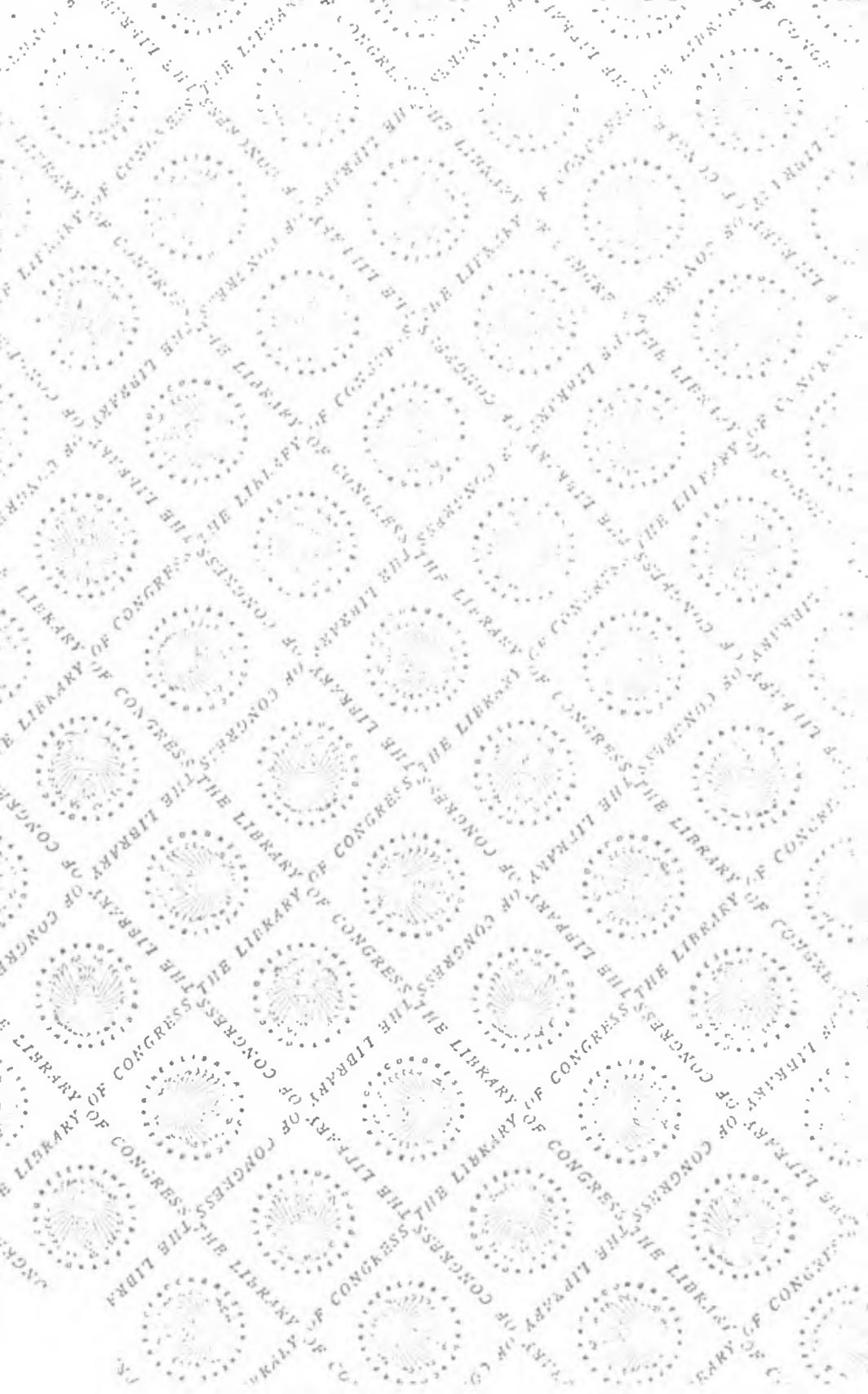
David P. Currie
Harry N. Wyatt Professor of Law

DPC/mns
cc: Judge Harold Leventhal

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