REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

March 15, 2005

The Judicial Conference of the United States convened in Washington, D.C., on March 15, 2005, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Michael Boudin
Judge Hector M. Laffitte,
District of Puerto Rico

Second Circuit:

Chief Judge John M. Walker, Jr.
Chief Judge Michael B. Mukasey,
Southern District of New York

Third Circuit:

Chief Judge Anthony J. Scirica
Chief Judge Thomas I. Vanaskie,
Middle District of Pennsylvania

Fourth Circuit:

Chief Judge William W. Wilkins
Judge David C. Norton,
District of South Carolina

Fifth Circuit:

Chief Judge Carolyn Dineen King
Chief Judge Glen H. Davidson,
Northern District of Mississippi

Sixth Circuit:

Chief Judge Danny J. Boggs
Judge William O. Bertelsman,
Eastern District of Kentucky

Seventh Circuit:

Chief Judge Joel M. Flaum
Judge J.P. Stadtmueller,
Eastern District of Wisconsin

Eighth Circuit:

Chief Judge James B. Loken
Chief Judge James M. Rosenbaum,
District of Minnesota

Ninth Circuit:

Chief Judge Mary M. Schroeder
Chief Judge David Alan Ezra,
District of Hawaii

Tenth Circuit:

Chief Judge Deanell R. Tacha
Judge David L. Russell,
Western District of Oklahoma

Eleventh Circuit:

Chief Judge J. L. Edmondson
Judge J. Owen Forrester,
Northern District of Georgia

District of Columbia Circuit:

Chief Judge Douglas H. Ginsburg
Chief Judge Thomas F. Hogan,
District of Columbia

Federal Circuit:

Chief Judge Paul R. Michel

Court of International Trade:

Chief Judge Jane A. Restani

The following Judicial Conference committee chairs attended the Conference session: Circuit Judges Julia S. Gibbons, Marjorie O. Rendell, and Jane R. Roth and District Judges Susan C. Bucklew, W. Royal Furgeson, Jr., Nina Gershon, Robert B. Kugler, Sim Lake, David F. Levi, John W. Lungstrum, Howard D. McKibben, James Robertson, Lee H. Rosenthal, and Patti B. Saris. Bankruptcy Judge A. Thomas Small and Magistrate Judge John M. Roper, Sr., were also in attendance. James A. Higgins of the Sixth Circuit represented the circuit executives.

Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director for Management and Operations; William R. Burchill, Jr., Associate Director and General Counsel; Laura C. Minor, Assistant Director, and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat; Michael W. Blommer, Assistant Director, Legislative Affairs; and David Sellers, Assistant Director, Public Affairs. Judge Barbara Jacobs Rothstein and Russell Wheeler, Director and Deputy Director of the Federal Judicial Center, and Judge Ricardo H. Hinojosa and Timothy B. McGrath, Chair and Staff Director of the United States Sentencing Commission, were in attendance at the session of the Conference, as was Sally Rider, Administrative Assistant to the Chief Justice. Scott Harris, Supreme Court Counsel, and the 2004-2005 Judicial Fellows also observed the Conference proceedings.

Senators Arlen Specter and Patrick J. Leahy and Representatives F. James Sensenbrenner and John Conyers, Jr., spoke on matters pending in Congress of interest to the Conference. Attorney General Alberto Gonzales addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice.

REPORTS

Mr. Mecham reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office (AO). Judge Rothstein spoke to the Conference about Federal Judicial Center (FJC) programs, Judge Hinojosa reported on Sentencing Commission activities, and Judge Gibbons reported on judiciary appropriations.

ELECTIONS

The Judicial Conference elected to membership on the Board of the Federal Judicial Center, each for a term of four years, Magistrate Judge Karen Klein of the District of North Dakota to succeed Magistrate Judge Robert B. Collings of the District of Massachusetts, and Bankruptcy Judge Stephen Raslavich of the Eastern District of Pennsylvania to succeed Chief Bankruptcy Judge Robert F. Hershner, Jr., of the Middle District of Georgia.

EXECUTIVE COMMITTEE

RESOLUTION

The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution recognizing the substantial contributions made by Chief Judge John G. Heyburn II, whose term of service as chair of the Committee on the Budget ended in December 2004:

> The Judicial Conference of the United States recognizes with appreciation, respect and admiration the
>
> **HONORABLE JOHN G. HEYBURN II**
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> Chair of the Budget Committee from 1994 to 2004. Appointed to the Committee by Chief Justice William H. Rehnquist in 1994, Chief Judge Heyburn has played a vital role in the administration of the federal court system. He served with distinction as a member and leader of the Budget Committee while, at the same time, continuing to perform his duties as Chief Judge of the United States District Court for the Western District of Kentucky. Judge Heyburn has set a standard

> of skilled leadership and earned our deep respect and sincere gratitude for his innumerable contributions. We acknowledge with appreciation his commitment and dedicated service to the Judicial Conference and to the entire federal judiciary.

CIRCUIT JUDICIAL CONFERENCES

Under 28 U.S.C. § 333, "[t]he chief judge of each circuit may summon biennially, and may summon annually, the circuit, district, and bankruptcy judges of the circuit, in active service, to a conference at a time and place that he designates, for the purpose of considering the business of the courts and advising means of improving the administration of justice within such circuit." Nearly all circuits convene annual or biennial conferences, sometimes with members of the bar and sometimes without. Circuits are provided allotments from centrally held appropriated funds for conference expenses (other than judges' travel expenses, which are paid from a separate centrally held fund), but some circuits pay for certain expenses with non-appropriated funds, such as conference registration fees and attorney admission fees. In an effort to contain costs, the Judicial Conference adopted an Executive Committee recommendation that insofar as funding of such conferences is concerned, the Conference (a) encourage the circuits to look to alternative funding sources for non-travel-related expenses to the extent advisable and permissible, including non-appropriated funds (such as attorney admission fees if the bar participates in a conference) and (b) authorize use of appropriated funds for non-travel-related expenses only in alternate years. This action does not apply to circuit judicial conferences for which binding commitments have already been made.

FEDERAL COURTS IMPROVEMENT BILL

Every two years, each Conference committee considers legislative initiatives within its jurisdiction that were approved by the Conference but not yet enacted to decide whether those provisions should be pursued in the upcoming federal courts improvement bill or another legislative vehicle, and notifies the Executive Committee of its determinations. The Executive Committee reviewed the decisions of the committees on whether pending Conference positions should be pursued in the 109th Congress and concurred in the determinations of the committees, with one exception. The exception, dealing with judges carrying firearms, was due to intervening circumstances, and the Security and Facilities Committee concurred with the Executive Committee's determination (*see infra*, "Security Issues," pp. 6-7). The

Executive Committee also reviewed legislative provisions within its own jurisdiction that had not yet been enacted.

SECURITY ISSUES

In response to recent violence against judges and their families and staff and on recommendation of the Executive Committee, the Judicial Conference adopted the following resolution, which was introduced as new business on the Conference floor:

> The brutal murders of the husband and mother of United States Judge Joan Humphrey Lefkow of the Northern District of Illinois on February 28, 2005, are an attack against the rule of law in the United States. This tragedy suffered by a member of our judicial family, as well as the horrific events that occurred on March 11, 2005, in the courthouse in Fulton County, Georgia, strike at the core of our system of government. A fair and impartial judiciary is the backbone of a democracy. These tragic events cannot and will not undermine the judiciary's essential role in our society.
>
> We, the members of the Judicial Conference, call upon leaders of the United States Department of Justice and of the United States Marshals Service (whose primary responsibility is the security of members of the federal judiciary and their families) to review fully and expeditiously all aspects of judicial security and, in particular, security at judges' homes and other locations away from the courthouse. We also call upon both the legislative and executive branches to provide adequate funding for this essential function.
>
> Accordingly, the Judicial Conference of the United States declares that (1) the crisis in off-site judicial security evidenced in part by the recent deaths of Judge Lefkow's husband and mother is of the gravest concern to the federal judiciary, and (2) addressing this matter is of the highest urgency to the Conference and will be the top priority in the judiciary's discussions with the Attorney General of the United States and other Justice Department representatives, including the Director of the United States Marshals Service.

The Executive Committee took the following additional steps to enhance judicial security. It directed the Administrative Office to work with commercial information providers, such as computer-assisted legal research firms and credit bureaus, to block unjustified access to personal information of judges and their families. It directed the Committee on Security and Facilities and other relevant Conference committees and the Administrative Office to conduct a comprehensive review of the judiciary's security requirements to determine what further actions are needed to improve off-site judicial security, and it asked the Security and Facilities Committee to continue its efforts to work with the United States Marshals Service on this issue. In addition, it revisited whether the judiciary should pursue a longstanding Conference-approved proposal to authorize federal judges to carry firearms in certain circumstances and establish a firearms training program for judges (JCUS-SEP 90, p. 69) and concluded that, in light of current circumstances, the proposal should be pursued in the 109th Congress (*see supra*, "Federal Courts Improvement Bill," pp. 5-6).

MISCELLANEOUS ACTIONS

The Executive Committee—

- Approved final fiscal year (FY) 2005 financial plans for the Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners accounts following the enactment of an omnibus appropriations bill that included the judiciary's fiscal year 2005 appropriation;

- Approved, on recommendation of the Court Administration and Case Management and Information Technology Committees, guidance to the courts regarding the definition of "written opinion" and addressing issues of "text searchability" needed to implement the E-Government Act of 2002 (Public Law No. 107-347);

- Continued to monitor the status of various ongoing cost-containment initiatives, particularly with respect to the major projects, such as the compensation study, the study of administrative services, and the courthouse construction moratorium, and convened a working group comprised of members from the Executive, Budget, and Security and Facilities Committees to review alternatives for dealing with future rental costs;

- Determined to defer, until the September 2005 session of the Judicial Conference, implementation of an increase in the bankruptcy adversary proceeding filing fee that occurred when an increase in the civil action filing fee, to which the adversary proceeding fee is linked, was authorized by Congress in the omnibus appropriations act;

- On recommendation of the Rules Committee, approved the withdrawal of a proposed amendment to Criminal Rule 32 (*see* JCUS-SEP 04, p. 33), prior to its transmittal to the Supreme Court, that addresses a victim's right to allocution in the district court, to avoid conflict with the recently enacted Justice for All Act of 2004, Public Law No. 108-405, which also addresses a victim's right to be heard at public proceedings in the district courts;

- Allowed to take effect the annual automatic adjustment to the alternative subsistence rate for judges' travel expenses; and

- Made referrals to appropriate Conference committees as follows: asked the Judicial Resources Committee to review its standards for recommending new Article III judgeships; asked the Court Administration and Case Management and the Judicial Resources Committees to make recommendations to the September 2005 Judicial Conference on whether the Judicial Conference should take a position regarding the proposed split of the Ninth Circuit, and if so, what considerations should inform that position; asked the Magistrate Judges Committee to update its earlier report on the growth of the magistrate judges system and forward it to the Judicial Resources Committee; and asked the Budget Committee to provide advice on a recommendation of the Security and Facilities Committee regarding the courthouse construction project plan for FY 2007 from the perspective of the judiciary's overall budget and to consider and make recommendations to the Security and Facilities Committee and the Executive Committee regarding affordability of pending courthouse construction projects not already approved for construction by the Judicial Conference.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it undertook a comprehensive review of the statutory duties, organization, resources, and

activities of the various components of the Administrative Office, with primary emphasis on budget restrictions and cost-containment initiatives within the Administrative Office and judiciary wide. Noting that AO staffing has not grown in ten years, the Committee observed that the AO has continued to provide a wide range of essential services and quality support to the Judicial Conference and its committees and to the courts despite resource shortages. The Committee expressed its satisfaction with the efficient manner in which the AO manages its limited resources and other funds on behalf of the courts, and it concluded that the AO does everything within its capability to expend resources economically.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

ADDITIONAL BANKRUPTCY JUDGESHIPS

Pursuant to 28 U.S.C. § 152(b)(2), the Judicial Conference submits periodic recommendations for new bankruptcy judgeships to Congress, which establishes the number of such judgeships for each judicial district. In March 1991, the Conference adopted a policy that provides for a national survey of judgeship needs every two years and establishes criteria for evaluating requests for additional bankruptcy judgeships (JCUS-MAR 91, pp. 12-13). Based on the 2004-2005 biennial survey of judgeship needs, the Committee recommended that the Judicial Conference transmit to Congress proposed legislation to create 47 additional bankruptcy judgeship positions, convert three existing temporary bankruptcy judgeship positions to permanent status, extend for an additional five-year period the temporary bankruptcy judgeship in one district, and convert the bankruptcy judgeship shared by two districts to a full-time position for one of them. The Committee asked the Judicial Conference to approve the request on an expedited basis so that the most up-to-date recommendation could be included in bankruptcy legislation (S. 256, 109th Congress) that was moving quickly in Congress. Congress has not approved new bankruptcy judgeships since 1992, although bankruptcy filings and judicial workloads have risen dramatically in that period. By mail ballot concluded on February 16, 2005, the Conference approved the Committee's recommendation.[1]

[1]The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Public Law No. 109-8, was signed into law on April 20, 2005. It did not include the updated recommendation for new judgeships.

OFFICIAL DUTY STATION

On the recommendation of the Bankruptcy Committee, and in accordance with 28 U.S.C. § 152(b)(1), the Judicial Conference approved a request of the Eleventh Circuit Judicial Council to transfer the official duty station of Bankruptcy Judge Paul G. Hyman, Jr., from Fort Lauderdale to West Palm Beach in the Southern District of Florida.

COMMITTEE ACTIVITIES

The Bankruptcy Committee reported that it devoted most of its meeting to discussing how best to further the judiciary's cost-containment effort and develop innovative ways for bankruptcy courts to work even more efficiently and economically in the future. The Committee also endorsed two suggestions to educate judges on the subject of attorney discipline in bankruptcy courts; reviewed all pending Conference-approved legislative positions within its jurisdiction at the request of the Executive Committee; endorsed a recommendation that the Federal Judicial Center develop and maintain an on-line judicial performance survey for use by bankruptcy judges, subject to certain conditions; and received reports on a wide range of topics.

COMMITTEE ON THE BUDGET

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it expects the judiciary's budget outlook to continue to be challenging for the next several years due to fiscal constraints faced by Congress. Much of the Committee's discussions focused on developing strategies for obtaining from Congress the funding necessary for the judiciary to do its work. To that end, the Budget Committee established a Congressional Outreach Subcommittee to focus and coordinate all of the judiciary's efforts to acquire additional resources. The Committee also expressed its support of the efforts of the program committees in implementing the cost-containment strategy that was approved by the Judicial Conference in September 2004 (JCUS-SEP 04, pp. 5-7). Finally, the Committee adopted a resolution re-affirming its support for the budget decentralization program in these uncertain budgetary times.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Conference in September 2004, the Committee received 29 new written inquiries and issued 28 written advisory responses (one inquiry was withdrawn). During this period, the average response time for requests was 15 days. The Chairman received and responded to 19 oral inquiries, and the other Committee members responded individually to 159 oral inquiries from their colleagues.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

REFUNDING FEES PAID ELECTRONICALLY

The Judicial Conference has a longstanding policy prohibiting the refund of fees, with narrow exceptions, e.g., when fees are collected without authority or as a result of administrative error on the part of the clerk's office. However, the introduction of the Case Management/Electronic Case Files (CM/ECF) system, which allows parties to pay fees electronically with a credit card, has created many more opportunities for error on the part of filers. On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference approved, in principle, guidance for the courts regarding the refunding of fees paid electronically. The guidance provides, among other things, that courts should develop procedures for addressing refunds of electronic payments, that refunds should be requested by motion or application, that the decision whether to refund is a judicial determination, but may be delegated to the clerk as long as procedures clearly address the types of refunds clerks may authorize, and that refunds should be processed electronically, not through checks.

DISPOSAL OF SCANNED RECORDS

On recommendation of the Committee, the Judicial Conference endorsed a proposed agreement between the National Archives and Records Administration (NARA) and the Administrative Office that paper case files in bankruptcy and district courts utilizing the national CM/ECF system need not

be retained for archival purposes after they have been scanned in their entirety into the CM/ECF system. The agreement, along with a proposed disposition schedule, will be transmitted to NARA for its formal clearance process.

DIGITAL AUDIO COURT RECORDING

In September 1999, the Judicial Conference approved the use of digital audio recording equipment as an additional method of taking the official record of court proceedings with a funding limitation that any additional costs for such equipment over the cost of analog equipment would be defrayed from decentralized funds (JCUS-SEP 99, p. 56). In the intervening years, the cost of digital audio equipment has become more competitive, the technology has improved, and analog equipment has started to become obsolete. The Committee therefore recommended, and the Conference approved, removal of this funding limitation for courts seeking procurement of digital audio recording systems.

MODEL GRAND JURY CHARGE

At the request of the American College of Trial Lawyers, the Court Administration and Case Management Committee undertook a comprehensive review of the current Model Grand Jury Charge approved by the Judicial Conference in March 1986 (JCUS-MAR 86, p. 33). Noting that the Conference-approved charge differed from the model charge included in the *Benchbook for U.S. District Judges* (*Benchbook*) published by the Federal Judicial Center, the Committee worked with the Federal Judicial Center's *Benchbook* Committee to come up with a single revised model charge to be approved by the Conference and included in the FJC's *Benchbook*. After obtaining input from a number of sources, including the Department of Justice and the Committees on Criminal Law and Defender Services, the Committee on Court Administration and Case Management recommended a revised Model Grand Jury Charge for the Conference's approval. The Conference adopted the Committee's recommendation.

FILING FEE FOR THE U.S. COURT OF FEDERAL CLAIMS

The Consolidated Appropriations Act of 2005, Public Law No. 108-447, enacted on December 8, 2004, raised the district court filing fee from $150 to $250. The filing fee for the Court of Federal Claims, which the

Judicial Conference has authority to amend pursuant to 28 U.S.C. § 1926(a), has traditionally tracked the district court filing fee. On recommendation of the Committee, the Conference agreed to amend the fee schedule for the U.S. Court of Federal Claims to increase the filing fee from $150 to $250.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it is continuing work on several cost-containment initiatives, such as the delivery of administrative services in the courts and cost savings associated with use of the CM/ECF system. The Committee is also reevaluating its current fee principles to ensure that they accurately reflect the recommendations made by the Committee and adopted by the Conference that have resulted in an estimated $80 million in additional annual revenue. The Committee reviewed all outstanding Conference-approved legislative provisions under its jurisdiction in order to determine if they should be included in the courts improvement bill or other legislative vehicles that will be introduced in the 109th Congress.

COMMITTEE ON CRIMINAL LAW

PRESENTENCE INVESTIGATION REPORT MONOGRAPH

On recommendation of the Committee on Criminal Law, the Judicial Conference approved revisions to *The Presentence Investigation Report for Defendants Sentenced Under the Sentencing Reform Act of 1984*, Publication 107, for publication and distribution to the courts. The revisions incorporate program changes that implement cost-containment measures approved by the Judicial Conference in September 2004, including revisions to reduce the program requirements for presentence investigation reports and to reduce the circumstances in which post-conviction supervision is recommended (JCUS-SEP 04, pp. 14-15). Language discouraging the practice of adding conditions of supervision to the 13 standard conditions included in the "Judgment in a Criminal Case" form, as well as technical changes, was also included.

POST-CONVICTION SUPERVISION MONOGRAPH

The Committee recommended that the Judicial Conference approve revisions to *The Supervision of Federal Offenders*, Monograph 109, for publication and distribution to the courts. The revisions incorporate program changes that implement cost-containment measures approved by the Judicial Conference in September 2004 (JCUS-SEP 04, pp. 14-15), as well as new cost-containment measures and technical changes. The revisions are designed to limit the growth in the number of offenders under post-conviction supervision, reduce post-conviction supervision program requirements, and contain costs in substance abuse treatment services paid for by the judiciary. The Conference approved the Committee's recommendation.

PRETRIAL SERVICES INVESTIGATION AND REPORT MONOGRAPH

On recommendation of the Committee on Criminal Law, the Judicial Conference approved revisions to *The Pretrial Services Investigation and Report*, Monograph 112, for publication and distribution to the courts. The revisions included those that implement cost-containment program changes approved by the Conference in September 2004 (JCUS-SEP 04, pp. 14-15), as well as new cost-containment and technical changes. The changes are intended to, among other things, reduce or eliminate the practice of conducting pretrial services investigations for certain cases, create new model pretrial services reports, and reduce or eliminate the practice of recommending pretrial services supervision in certain cases.

CONSOLIDATION OF PROBATION AND PRETRIAL SERVICES OFFICES

On several occasions, the Committee on Criminal Law has considered whether potential cost savings could be achieved by the consolidation of probation and pretrial services offices. In September 1997, the Judicial Conference affirmed the principle that the form of organization for providing pretrial services should be determined by the individual district courts and their respective judicial councils (JCUS-SEP 97, p. 66). The Committee was again asked to consider whether savings could be achieved by consolidating any remaining separate probation and pretrial services offices as part of the

judiciary's comprehensive cost-containment strategy approved by the Judicial Conference in September 2004 (JCUS-SEP 04, pp. 5-7). After an exhaustive study, the Committee recommended that the Conference maintain the policy that the form of organization for providing pretrial services should be determined by individual district courts and their respective circuit councils, but districts that have not considered the issue of consolidation of their separate probation and pretrial services offices should do so when—

a. a chief probation or pretrial services officer is scheduled to retire or transfer; and

b. consolidation may serve as a means to achieve additional economies and efficiencies without compromising the mission of pretrial services.

The Conference approved the Committee's recommendation.

SENTENCING ISSUES

The Committee on Criminal Law considered, and discussed extensively, sentencing issues in the wake of the Supreme Court decision in the consolidated cases, *United States v. Booker/United States v. Fanfan*, 125 S.Ct. 738 (2005). On recommendation of the Committee, the Conference agreed to take the following actions:

a. Resolve that the federal judiciary is committed to a sentencing guideline system that is fair, workable, transparent, predictable, and flexible;

b. Urge Congress to take no immediate legislative action and instead to maintain an advisory sentencing guideline system;

c. Delegate to the Committee on Criminal Law the authority to—

   1. develop educational programs, forms, and other similar guidance for judges and probation officers;

   2. work with the Sentencing Commission to improve the Statement of Reasons form and evaluate additional methods to ensure accurate and complete reporting of sentencing decisions;

3. work with the Commission to improve the Commission's data collection, analyses, and reporting to ensure that sentencing data meet the needs of the Commission, Congress, and the judiciary; and

4. develop various strategies to pursue and promote the above-described Conference positions in discussion with the Commission, Department of Justice, and Congress; and

d. Oppose legislation that would respond to the Supreme Court's decision by (1) raising directly the upper limit of each guideline range or (2) expanding the use of mandatory minimum sentences.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported its suggestion to the Judicial Resources Committee that that Committee recommend to the Conference adoption of a resolution encouraging courts in a position to hire to consider hiring highly qualified and well-trained probation and pretrial services officers from those federal courts that are forced to make involuntary reductions to staff (*see infra*, "Inter-District Transfer Policy," p. 26). In addition, in response to an Executive Committee request, the Committee considered whether certain law enforcement responsibilities should continue to reside within the judiciary. The Committee unanimously agreed that the probation and pretrial services system provides valuable services to the judiciary, but requested additional information that would help determine whether there are compelling reasons, including significant cost savings, for transferring post-conviction supervision functions to an outside agency.

COMMITTEE ON DEFENDER SERVICES

COUNSEL IN CASES NO LONGER DEATH ELIGIBLE

Section 3005 of title 18, United States Code, entitles a defendant, upon indictment for a federal death-eligible offense, to obtain the appointment of two counsel, at least one of whom is learned in the law applicable to capital cases. The maximum panel attorney hourly compensation rate in capital cases, which is set pursuant to 21 U.S.C. § 848(q)(10)(A), is significantly higher than the noncapital rate, which is established under the Criminal Justice Act, 18 U.S.C. § 3006A(d)(1). Where it is determined some time after

indictment that the death penalty will not be sought, paragraph 6.02B(2) of the Guidelines for the Administration of the Criminal Justice Act (CJA Guidelines), Volume 7, *Guide to Judiciary Policies and Procedures*, provides that the court may reconsider whether the number of counsel initially appointed and the higher rate of compensation initially authorized is necessary for the duration of the proceeding. On recommendation of the Committee on Defender Services, the Conference agreed to strengthen the language of CJA Guideline 6.02B(2) to discourage courts, absent extenuating circumstances, from continuing more than one counsel and/or the maximum capital compensation rate in those cases in which it is determined that the death penalty will not be sought. The amended guideline lists a number of factors for the courts to consider in determining whether extenuating circumstances exist.

REPRESENTATION OF FEDERAL JURORS

Pursuant to 28 U.S.C. § 1875, jurors are protected against discharge, intimidation, or coercion by their employers as a result of being summoned for jury service in a federal court. Any juror claiming a violation of this provision is, upon a district court's finding of probable merit, entitled to appointment of counsel to represent him or her in any action in the district court necessary to the resolution of such claim. On recommendation of the Committee, the Judicial Conference approved revisions to paragraphs 2.01E(4) and 2.22B(2) of the CJA Guidelines to clarify that appointments to represent federal jurors for the protection of their employment are compensable with Defender Services funds, that private attorneys (rather than federal defenders) should receive such appointments, and that the Criminal Justice Act's felony case compensation maximum applies to such representations.

COMPUTER-ASSISTED LEGAL RESEARCH

In March 2003, the Judicial Conference approved a pilot program in which up to six courts were authorized to utilize simplified and expedited procedures for reimbursing CJA panel attorneys for expenses incurred in conducting computer-assisted legal research (JCUS-MAR 03, pp. 12-13). The purpose of the pilot was to assess the budgetary impact of the proposed new procedures. On recommendation of the Committee, which found minimal budgetary impact, the Judicial Conference terminated the pilot program and approved revisions to paragraphs 2.27, 2.31, and 3.15 of the CJA Guidelines,

Volume 7, *Guide to Judiciary Policies and Procedures,* to simplify and expedite reimbursement procedures for computer-assisted legal research.

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it approved project plans for four major Defender Services cost-containment initiatives. To advance its goal of limiting costs of CJA representations in capital cases and large, non-capital "mega-cases," the Committee approved a proposal to request an Administrative Office reimbursable position to provide objective case-budgeting advice for judges. The Committee also authorized one capital § 2255 counsel position, in view of the growing need for qualified and cost-effective representation in post-conviction federal death penalty cases; funding for a mitigation coordinator, in light of increased demand for capital mitigation expertise following the Supreme Court's decision in *Wiggins v. Smith*, 539 U.S. 510 (2003); and establishment of two federal defender sentencing counsel positions, needed to address the obligation of federal defenders to provide comments to the United States Sentencing Commission pursuant to 28 U.S.C. § 994(o). In addition, under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), the Committee approved (subject to the availability of funds and authorization by Congress) FY 2005 funding totaling $644,900 for federal defender offices to serve three new districts.

COMMITTEE ON FEDERAL-STATE JURISDICTION

SOCIAL SECURITY DISABILITY CLAIMS PROCESS

The Social Security Administration (SSA) has indicated an intent to propose regulations that would eliminate a claimant's right to request review by the SSA's Appeals Council of an adverse decision of an administrative law judge (ALJ). The Appeals Council would be abolished and the ALJ's decision would become the agency's final decision, unless it was chosen for a further discretionary review. The Federal-State Jurisdiction Committee was concerned that the proposed changes would significantly increase the number of Social Security cases filed in federal court, and also had the potential for increasing costs and delays for dissatisfied claimants. On recommendation of the Committee, the Judicial Conference agreed to support efforts to improve the efficiency and effectiveness of the process by which the Social Security Administration considers Disability Insurance and Supplemental Security

Income claims, but oppose the elimination of a claimant's right to request review of an administrative law judge's adverse decision by the Appeals Council, or another administrative reviewing unit with comparable authority, prior to seeking relief in federal district court.

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it is considering two proposals to clarify the treatment of stipulations as to the amount in controversy in diversity of citizenship actions when such actions are removed to federal court, as well as several proposals for amendments to the venue statute. The Committee also discussed a number of other legislative issues, including bills that seek to eliminate the jurisdiction of the federal courts to decide constitutional challenges related to certain issues and the jurisdictional provisions in a draft asbestos bill. In addition, the Committee reviewed outstanding Conference-approved legislative positions within its jurisdiction to determine whether they should be pursued in the 109th Congress. The Committee received a report on the work of the Pacific Islands Committee of the Ninth Circuit Judicial Council and heard a presentation on the concept of federalism.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that as of December 31, 2004, the Committee had received 3,942 financial disclosure reports and certifications for the calendar year 2003, including 1,314 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 353 from bankruptcy judges; 553 from magistrate judges; and 1,722 from judicial employees. The Committee also reported that it continues to pursue amendment of the Ethics in Government Act of 1978 to change the reporting requirements for judicial officers and employees and ensure continuation of the redaction authority that has been granted to the judiciary, but is scheduled to expire on December 31, 2005.

COMMITTEE ON INFORMATION TECHNOLOGY

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it discussed a general approach to identifying and implementing more cost-effective service delivery models, and that it is refining the content and purposes of information technology training, especially that pertaining to judges. With respect to privacy and security of the judiciary's data communications network, the Committee will prepare an overall strategy and provide ample opportunity for comment in advance of making future policy recommendations. The Committee resolved that courts should use non-appropriated funds to provide public access to the Internet and encouraged courts to share non-appropriated funds among all court units within the district for that purpose. The Committee also received updates on various initiatives, including the Edwin L. Nelson Local Initiatives Program and implementation of the E-Government Act.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that during the period from July 1, 2004, to December 31, 2004, a total of 92 intercircuit assignments, undertaken by 57 Article III judges, were processed and recommended by the Committee on Intercircuit Assignments and approved by the Chief Justice. During calendar year 2004, a total of 148 intercircuit assignments were processed and approved. In addition, the Committee aided courts requesting assistance by both identifying and obtaining judges willing to take assignments. The Committee also reported that it was updated on the Administrative Office's efforts to collect data on visiting judges and accompanying chambers staff for the purpose of evaluating the costs and benefits of the intercircuit assignment program.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its involvement in rule-of-law and judicial reform activities throughout the world, highlighting those in Croatia, Slovenia, Ecuador, Liberia, Mexico, and the Russian Federation. The Committee will be working closely with the U.S. Agency for International Development and its contractor in Mexico over the next five years to support that country's judicial reform and rule-of-law efforts.

COMMITTEE ON THE JUDICIAL BRANCH

"FEGLI FIX"

Retired Article III Judges. Pursuant to Public Law No. 106-113, in September 2000, the Judicial Conference authorized the Director of the Administrative Office to pay any increases in the cost of Federal Employees Group Life Insurance (FEGLI) imposed after April 24, 1999, including any expenses generated by such payments, to all active Article III judges aged 65 and above, senior judges retired under 28 U.S.C. § 371(b) or § 372(a), and judges retired under 28 U.S.C. § 371(a) who were enrolled in the program (JCUS-SEP 00, pp. 54-55). The purpose of the "FEGLI fix" was to maintain stability in FEGLI premium payments of Article III judges (many of whom had come to rely on FEGLI benefits as the centerpiece of their estate plans) in the face of substantial Office of Personnel Management rate increases. At this session, the Committee on the Judicial Branch recommended that the Judicial Conference amend its policy prospectively to exclude payments on behalf of judicial officers who retire from office under 28 U.S.C. § 371(a), noting that such payments could serve as an incentive for Article III judges to retire from the judicial office. The policy, as amended, would provide that the judiciary will pay the increases in the cost and associated expenses of the judges' insurance imposed after April 24, 1999, except that for any Article III judge appointed after March 15, 2005, the judiciary will pay these increases only while the judge remains in active service or where the judge retains the judicial office in senior status under § 371(b) or § 372(a) of title 28, U.S. Code. The Conference adopted the Committee's recommendation.

Fixed-Term Judges. In September 2000, upon first learning that Congress was considering extending the FEGLI fix to bankruptcy and

magistrate judges, the Executive Committee, acting on behalf of the Conference, asked Congress to defer action until a complete review could be accomplished (JCUS-SEP 00, pp. 39-40). Since that time, Congress, over the objection of the Judicial Conference (JCUS-MAR 00, p. 19), extended the FEGLI fix to judges on the Court of Federal Claims as part of the Federal Courts Improvement Act of 2000, Public Law No. 106-518, and has been receptive to extending it to United States Tax Court judges as well (*see* section 314 of H.R. 1528, which passed both houses of the 108th Congress in different forms). Based on this and other considerations, the Committee on the Judicial Branch, with the concurrence of the Committees on the Administration of the Bankruptcy System and the Administration of the Magistrate Judges System, recommended that the Judicial Conference endorse the concept of extending the FEGLI fix to bankruptcy and magistrate judges (those who are in active status or are retired under the Judicial Retirement System, 28 U.S.C. § 377) and territorial district court judges (those who are in active status or are retired under 28 U.S.C. § 373), exclusive of those judges who elect to engage in the practice of law after retirement under 28 U.S.C. § 377(m) or § 373(d). Bankruptcy, magistrate, and territorial judges who elect to practice law after retirement become ineligible for recall and, therefore, consistent with the exclusion of Article III judges who retire from office under 28 U.S.C. § 371(a), are also ineligible for benefits under the FEGLI fix. Finally, parity requires applying a similar limitation to retired Court of Federal Claims judges. Therefore, the Committee recommended that the Conference adopt a policy excepting from the FEGLI fix Court of Federal Claims judges who elect to engage in the practice of law under 28 U.S.C. § 178(j)(4). The Conference adopted the Committee's recommendations.

TRAVEL REGULATIONS FOR UNITED STATES JUSTICES AND JUDGES

Judges' Use of Special Lower Airfares. On recommendation of the Committee, the Judicial Conference approved an amendment to section D.2.a.(6) of the Travel Regulations for United States Justices and Judges (*Guide to Judiciary Policies and Procedures*, Vol. 3, Ch. C-5, Exh. A) to—

a. Encourage judges to use discounted airfares, including penalty and non-refundable tickets, as well as tickets requiring Saturday night stay-overs, in the interest of economy when it is prudent to do so;

b. Authorize a judge's reimbursement from appropriated funds for penalties or additional costs assessed for cancellations or changes in reservations; and

c. Expressly authorize a judge's reimbursement from appropriated funds for the additional cost of meals and lodging incurred in connection with a Saturday night stay-over, when such an arrangement represents a savings to the government.

The Committee was of the view that the savings the judiciary could obtain from discount airfares would more than offset any charges assessed for cancellations or changes in reservations.

Home-to-Work Transportation for Disabled Judges. In order to authorize government-provided home-to-work transportation for temporarily disabled judges, a chief judge must comply with technical requirements and restrictions provided in 31 U.S.C. § 1344 and section D.4 of the judges' travel regulations (*Guide to Judiciary Policies and Procedures*, Vol. 3, Ch. C-5, Exh. A, § D.4), some of which have been misinterpreted by the courts. In order to clarify the time limits established in those provisions, the Committee recommended, and the Conference approved, an amendment to section D.4. of the travel regulations to specifically state that an initial determination that compelling operational considerations exist to justify home-to-work transportation for disabled judges is limited to a period of 15 days, with extensions of not more than 90 calendar days where it is determined that compelling operational considerations continue to exist. On recommendation of the Committee, the Conference also updated the name of the House Committee on Government Reform referenced in section D.4. of the judges' travel regulations.

JUDICIAL COMPENSATION

Pursuant to the Federal Employees Pay Comparability Act of 1990, the mechanism for annually adjusting General Schedule employee pay includes two components, an across-the-board pay adjustment based upon changes in the Employment Cost Index (ECI) over a 12-month period, minus one half of one percent, plus a comparability pay adjustment that is based on comparisons of federal and nonfederal salaries in local areas and varies by pay locality region. By contrast, the mechanism for annually adjusting salaries of judges, members of Congress, Executive Schedule officials, and the Vice President, set forth in the Ethics Reform Act, section 704 of Public Law No. 101-94, includes only the ECI portion of the salary adjustment applicable to General

Schedule employees. As a result, since 1994, the rates of pay of General Schedule employees have risen by over 52 percent while the salaries of judges and other senior government officials have only increased by just over 21 percent. On recommendation of the Committee on the Judicial Branch, the Judicial Conference agreed to seek legislation to replace the Ethics Reform Act's ECI salary adjustment mechanism with a provision that would authorize judges, members of Congress, Executive Schedule officials, and the Vice President to receive an enhanced annual pay adjustment in an amount equivalent to the overall average pay increase authorized for the General Schedule under the Federal Employees Pay Comparability Act of 1990.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it continues to pursue possible avenues of improving judicial compensation and benefits, notwithstanding the constrained budget climate. The Committee is also vigorously examining ways to improve judicial-legislative communications. Education of the public, especially the media, on the judiciary and the role of judges in society remains a priority of the Committee. The Committee hopes that progress on each of these fronts will lead to the objective of maintaining and enhancing the independence and dignity of the federal judicial office.

COMMITTEE ON JUDICIAL RESOURCES

ARTICLE III JUDGESHIP NEEDS

The Committee on Judicial Resources considered requests and justifications for additional judgeships in the courts of appeals and the district courts as part of its 2005 biennial judgeship survey process. For the district court request, the Committee revised slightly the starting point for recommending additional judgeships from weighted filings in excess of 430 per judgeship, to weighted filings in excess of 430 per judgeship with an additional judgeship(s) and utilized new district court case weights. Based on its review, and after considering the comments of the courts and the circuit councils, the Committee recommended that the Judicial Conference authorize transmittal to Congress of a request for an additional nine permanent and three temporary judgeships in the courts of appeals, and in the district courts, an additional 44 permanent and 12 temporary judgeships, conversion to permanent status of three existing temporary judgeships, and the extension of one existing temporary judgeship for an additional five years. The

Conference approved the recommendations, agreeing to transmit the following request to Congress in lieu of any previously submitted Article III judgeship requests ("P" denotes permanent; "T" denotes temporary):

COURTS OF APPEALS

First Circuit	1P
Second Circuit	2P
Sixth Circuit	1P
Eighth Circuit	1T
Ninth Circuit	5P, 2T

DISTRICT COURTS

New York (Eastern)	3P
New York (Western)	1P
New Jersey	1T
South Carolina	1P
Virginia (Eastern)	2P
Texas (Southern)	3P
Ohio (Northern)	Extend T
Ohio (Southern)	1T
Illinois (Northern)	1P
Indiana (Southern)	1P
Arkansas (Eastern)	0
Iowa (Northern)	1T
Minnesota	1T
Missouri (Eastern)*	Convert T to P
Missouri (Western)	1P
Nebraska	1P
Arizona	4P, 1T
California (Northern)	3P, 1T
California (Eastern)	4P
California (Central)	4P
California (Southern)	1P
Hawaii*	Convert T to P
Idaho	1P
Nevada	1P
Oregon	1P, 1T
Washington (Western)	1P
Colorado	1P, 1T
Kansas*	Convert T to P
New Mexico	1P, 1T

Utah	1T
Alabama (Northern)	1P
Alabama (Middle)	1T
Florida (Middle)	4P, 1T
Florida (Southern)	3P

* If the temporary judgeship lapses, the Conference's recommendation would be amended to one additional permanent judgeship.

INTER-DISTRICT TRANSFER POLICY

Cost-containment measures recommended by the Committee on Criminal Law and adopted by the Conference at its September 2004 session (JCUS-SEP 04, pp. 14-15) have resulted in the elimination of, or substantial reduction in, specific categories of work performed by probation and pretrial services offices. As these changes may impact staffing levels in some districts more than in others, the Committee recommended, and the Judicial Conference approved, adoption of the following resolution to acknowledge the value of trained and experienced officers and to make clear that the judiciary values its personnel:

> Courts in a position to hire new probation and pretrial services officers are strongly encouraged to consider hiring highly qualified and well-trained officers from those federal courts that are forced to make involuntary reductions in staff.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it endorsed project plans presented by the Administrative Office for two initiatives: (a) a study of compensation policies for all biweekly court employees in both chambers and non-chambers positions; and (b) the development and implementation of a process redesign program that would enhance the effectiveness and quality of court unit functions, while defining measurable procedures to be included in staffing formula development. Both of these initiatives are included in the long-term cost-containment strategy approved by the Judicial Conference in September 2004 (JCUS-SEP 04, pp. 5-7).

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

RECALL REGULATIONS

The Committee on the Administration of the Magistrate Judges System recommended that the Conference approve technical and clarifying amendments to the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Recall of United States Magistrate Judges (the ad hoc recall regulations) and the Regulations of the Judicial Conference of the United States Governing the Extended Service Recall of Retired United States Magistrate Judges (the extended service recall regulations) to (a) standardize the information that should be specified in the order of recall, (b) provide explicitly that the Magistrate Judges Committee has authority to approve or disapprove requests for staff for recalled magistrate judges (whose recall is subject to the Committee's approval), and (c) change the title of the ad hoc recall regulations to "Regulations of the Judicial Conference of the United States Governing the Ad Hoc Recall of Retired United States Magistrate Judges," to make it more accurate and consistent with the title for the extended service recall regulations. The Conference adopted the Committee's recommendation.

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee on the Administration of the Magistrate Judges System and the recommendations of the Director of the Administrative Office, the respective district courts and judicial councils of the circuits, the Judicial Conference made no changes in the number, locations, salaries, or arrangements of the full-time and part-time magistrate judge positions in the following districts: the District of New Hampshire, the Eastern District of Louisiana, the Northern District of Iowa, the District of Nebraska, the District of North Dakota, the Northern District of California, the Southern District of California, and the Middle District of Alabama. In addition, on the Committee's recommendation, the Judicial Conference determined not to authorize at this time filling a magistrate judge position in the District of Alaska at Anchorage when it becomes vacant in May 2005, with the understanding that the Magistrate Judges Committee will reconsider the court's request to fill the vacancy at its December 2005 meeting. The Judicial Conference made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the District of Alaska.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that as part of its cost-containment effort it did not consider any requests for new positions at its December 2004 meeting. In addition, pursuant to a new Judicial Conference policy adopted in September 2004 (JCUS-SEP 04, p. 25), it conducted an enhanced review of magistrate judge position vacancies to determine whether to authorize filling specific positions (*see supra*, "Changes in Magistrate Judge Positions," p. 28). The Committee also discussed a forthcoming proposal of the Social Security Administration to overhaul its disability claims process, and resolved that, "[c]onsistent with its long-standing view that magistrate judge adjudication of civil cases with litigant consent improves efficiency and should be encouraged, the Magistrate Judges Committee recommends that parties consider consenting to magistrate judge adjudication of social security appeals in any district court in which such appeals are referred to magistrate judges."

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF BANKRUPTCY PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 2002 (Notices to Creditors, Equity Security Holders, United States, and United States Trustee), 9001 (General Definitions), and 9036 (Notice by Electronic Transmission), together with Committee notes explaining their purpose and intent. The Judicial Conference approved the amendments – which were processed on an expedited schedule because of expected cost savings for the federal judiciary – and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with law.

FEDERAL RULES OF CIVIL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed new Civil Rule 5.1 (Constitutional Challenge to a Statute – Notice, Certification, and Intervention) and proposed conforming amendments to Civil Rule 24 (Intervention), together with Committee notes explaining their purpose and intent. The Judicial Conference approved the

new rule and amendments and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with law.

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure approved for publication proposed style amendments to Civil Rules 23 and 64-86, completing its style revision of the Civil Rules. (The Committee had earlier approved proposed style amendments to Civil Rules 1-63 for publication once all revisions under consideration were completed.) The Committee also approved for publication a small number of minor style/substance amendments that make modest, non-controversial changes to the Civil Rules, as well as amendments intended to resolve "global issues" in the Civil Rules. The entire package of proposed amendments to the Federal Rules of Civil Procedure (Civil Rules 1-86) were published in February 2005, with the public comment period to end on December 15, 2005. The Committee also approved for publication proposed amendments to Bankruptcy Rules 1014, 3007, and 7007.1. The Advisory Committees on Appellate, Bankruptcy, Civil, Criminal, and Evidence Rules are reviewing comments from the public submitted on amendments to their respective sets of rules proposed in August and November 2004.

COMMITTEE ON SECURITY AND FACILITIES

NON-PROSPECTUS SPACE MORATORIUM

In order to control rental costs, in March 2004, the Committee on Security and Facilities approved a one-year moratorium, until March 2005, on all non-prospectus space requests (projects costing less than $2.36 million in FY 2005), except requests for courtrooms, chambers, lease renewals, official parking, and recovery from natural disasters or terrorist attacks (JCUS-MAR 04, p. 28).[2] At this session, on recommendation of the Committee, the Conference extended the moratorium to March 2006, to allow additional time for the development of space cost-control mechanisms. The Director of the

[2]In September 2004, the Conference approved a similar moratorium on all non-prospectus space requests for federal defender organizations (JCUS-SEP 04, pp. 15-16).

Administrative Office is authorized to make limited exceptions to the moratorium in consultation with the circuit representative to the Security and Facilities Committee and in coordination with the circuit judicial council, the Budget Committee, and the Executive Committee.

CLOSING COURT FACILITIES

Using criteria established in March 1997 (JCUS-MAR 97, pp. 17-20), the Committee conducted its biennial review of nationwide space assignments to determine the need for non-resident visiting judge facilities. Courts were asked to release all space that was not absolutely necessary in light of the budgetary constraints facing the judiciary. Based on this review, the Committee recommended, and the Conference approved, the release of space and closure of the non-resident court facility in Dubuque, Iowa, and the release of space in Houma, Louisiana.

COMMITTEE ACTIVITIES

The Committee on Security and Facilities reported that, in order to achieve necessary Federal Protective Service (FPS) cost reductions, it determined to survey courts about the possibility of reducing or eliminating 24-hours-a-day/seven-days-a-week FPS contract guard posts, including weekend and holiday coverage (when buildings are largely empty); 9:00 p.m to 6:00 a.m. weekday posts; and any weekday daytime posts when court security officers (CSOs) are also working. In addition, to examine the CSO staffing formula and hearing standards, the Committee determined to acquire the assistance of two experts: one who would evaluate CSO duties and the staffing formula and the other who would advise the Committee on whether to change the hearing standards. The Committee also approved a resolution recommending that rent, which is currently paid from the Salaries and Expenses account, be funded through a separate appropriation within the judiciary's budget. The Security and Facilities Committee forwarded the resolution to the Budget Committee for its consideration, which determined to take the matter under advisement.

MEMORIAL RESOLUTION

The Judicial Conference approved the following resolution noting the death of the Honorable Richard S. Arnold of the Eighth Circuit Court of Appeals:

> With profound sadness, the Judicial Conference of the United States notes the death of the Honorable Richard S. Arnold of the United States Court of Appeals for the Eighth Circuit, on September 23, 2004, in Rochester, Minnesota.
>
> Judge Arnold served with preeminent distinction as a jurist for nearly 26 years, beginning on the federal district courts in Arkansas and continuing on the Eighth Circuit appellate bench. He was chief judge of his circuit from January 1992 until April 1998, and he continued to perform valuable judicial service until right before his death, having assumed senior judge status in April 2001.
>
> Judge Arnold was a pillar of the federal judiciary, both within the Eighth Circuit and on the national scene. A recipient of the Edward J. Devitt Distinguished Service to Justice Award in 1999, he made significant, enduring contributions to the administration of justice, the rule of law, and the improvement of society.
>
> Judge Arnold's invaluable support of the work of the Judicial Conference began shortly after he took the bench and continued for the remainder of his life. He served initially on the Ad Hoc Committee on Regulatory Reform Legislation from 1981 to 1984, and on the Judicial Improvements Subcommittee of the Committee on Court Administration from 1983 to 1987. In late 1987, the Chief Justice selected him to chair the Committee on the Budget, a position he went on to hold for nine years. As budget chairman, he presided over important changes in the judiciary's budgetary processes and was a highly effective advocate for the needs and accomplishments of the third branch during times of increasing fiscal austerity in the federal government.
>
> During his six years as chief circuit judge, Judge Arnold was also a member of this body and, by appointment of

the Chief Justice, the Conference's Executive Committee. In recent years, he was called upon again to serve the judiciary at the national level—as vice chair of the Committee on the Judicial Branch, where he labored tirelessly to improve the adequacy of judicial compensation. Throughout his Conference and committee service, Judge Arnold was an outstanding judicial leader and ambassador who rightly earned the esteem of his fellow judges and all others with whom he dealt.

Judge Arnold represented the best qualities seen in federal judges. Though blessed with rare intellectual gifts, unquestioned integrity, and a statesmanlike bearing, he was also a modest, gracious and warmhearted man, with great sensitivity for human freedom and dignity. Possessed of a keen, dry wit, he challenged and inspired his colleagues. America has lost a superior jurist, the judiciary has lost a great colleague, and all of us have lost a good friend.

As a sign of their affection and respect, the members of the Judicial Conference convey their deepest sympathies to Judge Arnold's widow, Kay, and to his family.

FUNDING

All of the foregoing recommendations that require the expenditure of funds for implementation were approved by the Judicial Conference subject to the availability of funds and to whatever priorities the Conference might establish for the use of available resources.

Chief Justice of the United States
Presiding