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

MARCH 16, 2004
WASHINGTON, D.C.

JUDICIAL CONFERENCE OF THE UNITED STATES
CHIEF JUSTICE WILLIAM H. REHNQUIST, PRESIDING
LEONIDAS RALPH MECHAM, SECRETARY

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Contents

Call of the Conference 1
Reports 3
Elections 4
Executive Committee 4
    Fiscal Year 2004 Financial Plans 4
    Miscellaneous Actions 5
Committee on the Administrative Office 6
    Committee Activities 6
Committee on the Administration of the Bankruptcy System 7
    Attendance at Judicial Conference Sessions 7
    Uniform Dollar Amounts in the Bankruptcy Code 7
    Committee Activities 7
Committee on the Budget 8
    Chapter 7 Trustee Payments 8
    Committee Activities 8
Committee on Codes of Conduct 9
    Committee Activities 9
Committee on Court Administration and Case Management 9
    Miscellaneous Fees 9
    Places of Holding Court 10
    Public Access to Electronic Criminal Case Files 10
    Remote Electronic Access to Transcripts 10
    Committee Activities 11
Committee on Criminal Law 11
    United States Sentencing Commission 11
    Fine and Restitution Statutes 12
    Federal Tort Claims Act 12
    Post-Conviction Supervision Monograph 12
    Presentence Investigation Report Monograph 13
    Judgments in a Criminal Case 13
    Committee Activities 13

Committee on Defender Services 14
Criminal Justice Act Resolution 14
Criminal Justice Act Payments for Paralegal Services 15
Committee Activities 16
Committee on Federal-State Jurisdiction 16
Committee Activities 16
Committee on Financial Disclosure 17
Committee Activities 17
Committee on Information Technology 17
Long Range Plan for Information Technology 17
Committee Activities 17
Committee on Intercircuit Assignments 18
Committee Activities 18
Committee on International Judicial Relations 18
Committee Activities 18
Committee on the Judicial Branch 18
Judges' Travel Regulations 18
Committee Activities 19
Committee on Judicial Resources 19
Elbow Law Clerk Compensation 19
Law Clerk Qualifications 20
Temporary Backfill of Chambers Staff 20
Type II Deputy 21
Reasonable Accommodations 21
Committee Activities 22
Committee on the Administration of the Magistrate Judges System 22
Attendance at Judicial Conference Sessions 22
Authority to Hold Proceedings Outside a District in an Emergency 22
Residency Requirement for Merit Selection Panel Members 23
Tax Court Legislation 23
Changes in Magistrate Judge Positions 23
Committee Activities 27
Committee to Review Circuit Council Conduct and Disability Orders 27
Committee Activities 27
Committee on Rules of Practice and Procedure 27
Committee Activities 27
Committee on Security and Facilities 28
Space Rental Costs 28
U.S. Courts Design Guide 28
Committee Activities 30
Funding 30

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March 16, 2004

The Judicial Conference of the United States convened in Washington, D.C., on March 16, 2004, 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
Chief Judge Hector M. Laffitte,
District of Puerto Rico

Second Circuit:

Chief Judge John M. Walker, Jr.
Chief Judge Frederick J. Scullin, Jr.,
Northern 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
Judge Martin L. C. Feldman,
Eastern District of Louisiana

Sixth Circuit:

Chief Judge Danny J. Boggs
Chief Judge Lawrence P. Zatkoff,
Eastern District of Michigan

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 Haldane Robert Mayer

Court of International Trade:

Chief Judge Jane A. Restani

Circuit Judges Edward E. Carnes, Dennis G. Jacobs, Marjorie O. Rendell, and Jane R. Roth, and District Judges Nina Gershon, John G. Heyburn II, Robert B. Kugler, Sim Lake, David F. Levi, John W. Lungstrum, James Robertson, Lee H. Rosenthal, Patti B. Saris, and Frederick P. Stamp, Jr. attended the Conference session. Karen Milton of the Second Circuit represented the circuit executives.

Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts (AO), 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; Karen K. Siegel, Assistant Director, Judicial Conference Executive Secretariat; Michael W. Blommer, Assistant Director, Legislative Affairs; David Sellers, Assistant Director, Public Affairs; and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat. Judge Barbara Jacobs Rothstein and Russell Wheeler, Director and Deputy Director of the Federal Judicial Center (FJC), also attended the session of the Conference, as did Sally Rider, Administrative Assistant to the Chief Justice; Timothy B. McGrath, Staff Director of the United States Sentencing Commission; and the 2003-2004 Judicial Fellows.

Representatives F. James Sensenbrenner and Lamar S. Smith spoke on matters pending in Congress of interest to the Conference. Deputy Attorney General James B. Comey, Jr. 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, and Judge Rothstein spoke to the Conference about Federal Judicial Center programs. Judge Heyburn, chair of the Committee on the Budget, briefed the members on

judiciary appropriations, and Judge Tacha, chair of the Committee on the Judicial Branch, reported on judicial compensation.

ELECTIONS

The Judicial Conference elected to membership on the Board of the Federal Judicial Center, each for a term of four years, Judge Terence T. Evans, United States Court of Appeals for the Seventh Circuit, to succeed Judge Pauline Newman, and Judge Bernice Bouie Donald, United States District Court, Western District of Tennessee, to succeed Judge Robert Bryan.

EXECUTIVE COMMITTEE

FISCAL YEAR 2004 FINANCIAL PLANS

At the time of the Executive Committee's December 2003 meeting, Congress had not yet enacted a final fiscal year 2004 appropriations bill for the judiciary. However, agreement by House and Senate conferees had been reached, as part of an omnibus appropriations bill, on funding levels for the judiciary. Using those agreed-upon levels, modified by two congressionally imposed across-the-board reductions, the Executive Committee adopted fiscal year 2004 financial plans for the Salaries and Expenses, Defender Services, Fees of Jurors and Commissioners, and Court Security accounts. The financial plans take into consideration limited resources in fiscal year 2004 and the likelihood that funding will become increasingly scarce in future years. The Committee also approved a recommended strategy for distribution of allotments to court units funded under the Salaries and Expenses account and methods for addressing shortfalls in other accounts. Anticipating that the Congress would recess for the year without enactment of an omnibus bill, the Executive Committee also unanimously approved guidance for operating under a continuing resolution until the end of January 2004. In addition, the Committee approved a proposal to seek supplemental funding that would restore the appropriation level for the Salaries and Expenses account to the amount approved by congressional conferees prior to the across-the-board reductions and that would also provide sufficient funds for Criminal Justice Act panel attorneys in fiscal year 2004.

MISCELLANEOUS ACTIONS

The Executive Committee—

- On recommendation of the Court Administration and Case Management Committee, opposed legislation (S. 1719, 108th Congress) that would amend 28 U.S.C. § 134 to prohibit the reassignment between divisions of any district judge in Texas whose duty station has three or fewer judges without the consent of all the district judges in the district;

- Approved technical adjustments to the fiscal year 2005 budget request associated with changes in the federal pay and benefits inflation rates, revised requirements in the Fees of Jurors and Court Security accounts, higher projected receipts from electronic public access charges, a decrease in anticipated benefits costs for court personnel, and a revised assumption regarding projected unobligated balances in fiscal year 2004 that can carry forward to finance requirements in fiscal year 2005;

- Agreed, on recommendation of the Committee on the Administration of the Magistrate Judges System, to seek removal from proposed legislation entitled the "Vital Interdiction of Criminal Terrorist Organizations Act of 2003" (VICTORY Act) of a provision that would strip magistrate judges of their existing trial authority in civil and criminal forfeiture proceedings and give them case-dispositive motions authority in such proceedings instead;

- Approved a recommendation of the Committee on Judicial Resources that the voluntary separation incentive ("buy-out") program approved by the Judicial Conference in September 2003 (JCUS-SEP 03, pp. 27-28) be amended to eliminate the financial incentive for court units to favor involuntary separations over voluntary buy-outs;

- On recommendation of the Committee on Criminal Law, approved technical changes to the Statement of Reasons that accompanies a judgment in a criminal case to comply with sentencing guideline amendments promulgated by the United States Sentencing Commission and to meet the data collection needs of the Commission;

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

- Approved release of a report by the Bankruptcy Committee's Subcommittee on Venue-Related Issues relating to large chapter 11 cases, with an appropriate disclaimer indicating that it is not Conference approved;

- Requested that the Committee on Defender Services, which is delegated budgetary responsibility for the defender services program, impose a rent control moratorium on all space requests below $2.29 million, with certain limited exceptions, similar to the moratorium recommended by the Security and Facilities Committee and approved by the Judicial Conference at this session with regard to non-defender judiciary space requests (*see infra*, "Space Rental Costs," p. 28), and report back to the Executive Committee on the actions taken in this regard; and

- In light of the anticipated dire budget situation for the foreseeable future, agreed to ask the Chief Justice whether he would charge a new ad hoc group of judges with the responsibility to develop an integrated strategy to deal with the probability of declining resources.[1]

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it discussed extensively the Administrative Office's management oversight and stewardship program for judges and unit executives, focusing particularly on AO assistance to the courts in strengthening internal controls for administrative decisions and operations. It unanimously passed a resolution commending the efforts of the Administrative Office to promote good stewardship in the federal courts, including improvements to chief judge orientations to put more focus on oversight and stewardship responsibilities. The Committee was briefed on the functions and activities of the AO's Article III Judges Division. It was also given a report on an ongoing study of alternatives for providing administrative services to courts and expressed its support for identifying more efficient ways to provide administrative services for the courts.

[1]The Chief Justice subsequently determined that the Executive Committee was the appropriate group to spearhead this strategic financial policy and planning effort; a mission statement describing the Committee's expanded role was approved by the Chief Justice.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

ATTENDANCE AT JUDICIAL CONFERENCE SESSIONS

The Committee on the Administration of the Bankruptcy System recommended that the Judicial Conference invite one bankruptcy judge, selected by the Chief Justice, to attend Judicial Conference sessions in a non-voting capacity. The Magistrate Judges Committee made a similar recommendation regarding attendance of a magistrate judge at Conference sessions (*see infra*, "Attendance at Judicial Conference Sessions," p. 22). After discussion, the Conference adopted the Committee's recommendation.

UNIFORM DOLLAR AMOUNTS IN THE BANKRUPTCY CODE

Section 104(a) of the Bankruptcy Code requires the Judicial Conference to transmit to Congress and to the President every six years a recommendation for a uniform percentage adjustment of each dollar amount in the Bankruptcy Code and in 28 U.S.C. § 1930 (which prescribes filing and other fees to be paid in bankruptcy cases). However, since § 104(a) was adopted, there have been several statutory changes relating to bankruptcy fee provisions, including authorization for periodic automatic adjustments of numerous specific dollar amounts in the Code (*see* § 104(b) of the Code, added by the Bankruptcy Reform Act of 1994, Public Law No. 103-94). These changes have made any across-the-board uniform percentage adjustment of all dollar amounts unnecessary and inappropriate. Moreover, the Conference has never endorsed a blanket adjustment of fees, preferring instead to adjust individual fees after balancing fiscal responsibilities with the need to keep the courts accessible to the public. The Conference therefore approved the Bankruptcy Committee's recommendation to seek repeal of 11 U.S.C. § 104(a) relating to uniform adjustments of filing and miscellaneous fees in the bankruptcy courts.

COMMITTEE ACTIVITIES

The Bankruptcy Committee reported that it approved a resolution requesting the assistance of the Committee on Information Technology in supporting certain locally developed calendaring and order-signing programs to address the urgent automation needs of bankruptcy judges. It also endorsed a cost-saving proposal for legislation to change the method of funding and

accounting for chapter 7 bankruptcy trustee fees; expressed support for certain proposals to facilitate law clerk assistance and to improve the collection and reporting of judicial statistics; and discussed, at the request of the Security and Facilities Committee, whether to recommend changes to the existing policy on courtrooms for recalled bankruptcy judges. The Committee received reports on a wide range of topics, including the status of pending bankruptcy reform legislation and legislative efforts to obtain authorization of additional bankruptcy judgeships.

COMMITTEE ON THE BUDGET

CHAPTER 7 TRUSTEE PAYMENTS

The Budget Committee, with the concurrence of the Bankruptcy Committee, recommended that the Judicial Conference seek legislation to change the process for paying chapter 7 bankruptcy trustees. Currently, a portion of the filing fee paid in a chapter 7 case is placed in a deposit fund with the Department of the Treasury, where it is held pending distribution to trustees. Under the new model, this portion of the fee would be deposited into the judiciary fee account, and chapter 7 trustees would be paid from the judiciary's Salaries and Expenses account. The Judicial Conference approved the recommendation, which would simplify the accounting associated with chapter 7 trustee payments.

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it focused its discussions on developing strategies for formulating future budget requests in a constrained budget environment. These strategies encompassed the committee's two priorities – acquiring additional resources from Congress and preparing the program committees for future budget constraints. Throughout these discussions, the Committee noted helpful actions already taken by program committees, expressed support for planned future actions by program committees, and reaffirmed the need to approach future budget cycles collaboratively with these committees.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Conference in September 2003, the Committee received 34 new written inquiries and issued 23 written advisory responses. (Several additional responses resolved at the Committee's January 2004 meeting were to be issued shortly thereafter.) During this period, the average response time for requests was 20 days. The Chairman received and responded to 29 telephone inquiries, and individual Committee members responded to 180 inquiries from their colleagues.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

MISCELLANEOUS FEES

Preambles. On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference amended the preambles to the miscellaneous fee schedules for the courts of appeals, the district courts, the Court of Federal Claims, the bankruptcy courts, and the Judicial Panel on Multidistrict Litigation (promulgated by the Judicial Conference pursuant to 28 U.S.C. §§ 1913, 1914, 1926, 1930, and 1932, respectively) to reflect that fees charged are for the totality of services provided by the court, including those provided through the court's electronic systems. The preambles, which are identical for all of these fee schedules, were amended so that the pertinent sentence reads as follows:

> Following are fees to be charged for services provided by the [appropriate court].

District Court Miscellaneous Fee Schedule. The Committee recommended that the attorney admission fee, Item 10 of the District Court Miscellaneous Fee Schedule, be raised from $50 to $150, noting the significant benefit attorneys derive from this one-time fee, which has not been raised in several years. The Judicial Conference, after discussion, adopted the recommendation.

PLACES OF HOLDING COURT

At the request of the District of Colorado and the Tenth Circuit Judicial Council, and on recommendation of the Court Administration and Case Management Committee, the Judicial Conference agreed to seek legislation to amend 28 U.S.C. § 85 to designate Colorado Springs as a place of holding court for the District of Colorado.

PUBLIC ACCESS TO ELECTRONIC CRIMINAL CASE FILES

In September 2003, the Judicial Conference adopted a policy permitting remote public access to electronic criminal case file documents to be the same as public access to criminal case file documents at the courthouse, with a requirement that filers redact personal data identifiers from documents filed electronically or in paper. The Conference delayed the effective date of this policy pending approval of specific guidance on the implementation and operation of the policy to be developed by the Committees on Court Administration and Case Management, Criminal Law and Defender Services (JCUS-SEP 03, pp. 15-16). At this session, the Committee on Court Administration and Case Management, in conjunction with the Committees on Criminal Law and Defender Services, after consulting with the Department of Homeland Security, recommended, and the Judicial Conference approved, guidance and a model local rule on privacy and public access to electronic criminal case files.

REMOTE ELECTRONIC ACCESS TO TRANSCRIPTS

In September 2003, the Judicial Conference agreed to adopt a policy requiring courts that make electronic documents remotely available to the public to make electronic transcripts of proceedings remotely available if such transcripts are otherwise prepared. The Conference deferred implementation of the policy, however, until March 2004, and requested that the Judicial Resources Committee study the impact of the policy on court reporter income and report back to the Conference. The Committee on Court Administration and Case Management was delegated the authority to develop and issue guidance to the courts on implementation of this policy (JCUS-SEP 03, pp. 16-17). These committees decided that the best approach to gathering data on court reporter income would be to conduct a pilot program whereby district

courts desiring to do so would voluntarily implement the policy on public electronic access to official transcripts. So that the pilot program could commence as soon as possible, the committees sought expedited Conference approval of the pilot program. They also requested that the Conference defer the date of the Judicial Resources Committee's report, and subsequent implementation of the policy, until the September 2004 Judicial Conference session to allow for collection and analysis of the data. The Conference approved these recommendations by mail ballot concluded on November 26, 2003.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it undertook an examination of petit juror utilization rates. Noting that the number of jurors called for service but not challenged or seated was continuing to rise, the Committee decided to send a letter to each court along with statistics indicating that court's pattern of jury usage and offering assistance for improving these statistics. The Committee also considered several issues relating to its responsibilities for the lawbooks and libraries program, including lawbook spending and space requirements for satellite libraries.

COMMITTEE ON CRIMINAL LAW

UNITED STATES SENTENCING COMMISSION

The Committee on Criminal Law, at the suggestion of the Committee on Defender Services, recommended that the Judicial Conference seek legislation that would authorize the Conference to appoint a federal defender to serve as an *ex-officio*, non-voting member of the United States Sentencing Commission. Currently, 28 U.S.C. § 994(o) requires a representative of the federal public defenders to submit an annual report to the Commission concerning the guidelines, and the Commission may invite a federal defender to testify at open Commission meetings. However, an *ex-officio* member can attend and provide input even at non-public meetings. The Attorney General or his or her designee, and the chair of the United States Parole Commission already serve as *ex-officio*, non-voting members of the Sentencing Commission (*see* 28 U.S.C. § 991(a) and § 235 of Public Law No. 98-473, respectively). The Conference adopted the Committee's recommendation.

FINE AND RESTITUTION STATUTES

In order to achieve greater flexibility in the establishment and adjustment of criminal fine and restitution payment schedules, the Committee recommended that the Judicial Conference seek legislation that would provide that all criminal monetary penalties be payable immediately and collected as non-dischargeable civil debts. This would essentially decriminalize debt collection and apply well-established and efficient civil debt collection techniques to the collection of criminal debts. The Conference adopted the Committee's recommendation.

FEDERAL TORT CLAIMS ACT

The Federal Tort Claims Act, 28 U.S.C. § 2671 *et seq*., excludes intentional torts from its coverage, with the exception of those committed by investigative or law enforcement officers, defined by statute as "any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law." While probation and pretrial services officers are considered law enforcement officers for most purposes, pretrial services officers are not authorized to make arrests, and probation officers are discouraged by Judicial Conference policy from exercising their search and arrest authority (JCUS-MAR 93, p. 13). To ensure that any intentional torts of these officers are covered by the Act, the Conference approved a recommendation of the Committee that it seek an amendment to the Federal Tort Claims Act, 28 U.S.C. § 2680(h), to establish explicitly that both probation and pretrial services officers are law enforcement officers for purposes of the Act.[2]

POST-CONVICTION SUPERVISION MONOGRAPH

The Judicial Conference approved revisions to *The Supervision of Federal Offenders*, Monograph 109, in March 2003 (JCUS-Mar 03, pp. 11-12). However there have been a number of additional changes in statutes, case law, and policy that warrant further substantive revisions to the monograph. On recommendation of the Committee on Criminal Law, the

[2]The Conference took a similar position with regard to pretrial services officers twice previously (JCUS-SEP 76, p. 52; JCUS-SEP 77, pp. 76-77).

Judicial Conference approved revisions to *The Supervision of Federal Offenders,* Monograph 109, for publication and distribution to the courts.

PRESENTENCE INVESTIGATION REPORT MONOGRAPH

The Presentence Investigation Report, Monograph 107, provides guidance to probation officers on the format and content of the presentence report. It also includes instructions on how the presentence investigation should be conducted and a model report. The Committee on Criminal Law recommended that the face sheet of the model report be revised to include a section setting forth restrictions on the use and redisclosure of presentence investigation reports that reflect their confidential nature. The face sheet would advise, among other things, that disclosure to the Bureau of Prisons and any redisclosure by the Bureau are authorized solely to assist in administering an offender's prison sentence and for certain other limited purposes. On recommendation of the Committee, the Conference adopted a revised model face sheet for presentence investigation reports to be included in *The Presentence Investigation Report*, Monograph 107.

JUDGMENTS IN A CRIMINAL CASE

The Judicial Conference adopted a recommendation of the Criminal Law Committee that authority to approve technical, non-controversial revisions to the forms for judgments in criminal cases (AO 245B-245I) be delegated to the Committee.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that it has asked the Committee on Judicial Resources to recommend pursuit of legislation that would amend 18 U.S.C. § 3152(c) to make the selection process for chief pretrial services officers the same as the selection process for chief probation officers under 18 U.S.C. § 3602(c). The Committee received a report from the United States Sentencing Commission on recently enacted sentencing guideline amendments required by the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 or "PROTECT Act" (Public Law No. 108-21). The Sentencing Commission also reported a sharp increase in the number of documents received from the courts since enactment of the PROTECT Act, which includes a provision requiring courts to submit certain documents to the Commission. In addition, the Committee

was briefed on the status of a joint AO-FJC study of the substance abuse treatment program for offenders and defendants and on an ongoing study of administrative services.

COMMITTEE ON DEFENDER SERVICES

CRIMINAL JUSTICE ACT RESOLUTION

On recommendation of the Committee on Defender Services, the Judicial Conference endorsed the following resolution in recognition of the 40th anniversary of the enactment of the Criminal Justice Act of 1964:

> The Judicial Conference of the United States recognizes the fortieth anniversary of the Criminal Justice Act of 1964, 18 U.S.C. § 3006A, which has created a nationally heralded program, administered by the judiciary, for the appointment and compensation of counsel to represent individuals who have been charged with a federal crime and cannot pay for their defense. The statute ensures that all defendants in federal court receive the effective assistance of counsel guaranteed by the Sixth Amendment.
>
> The Criminal Justice Act program has adapted to dramatic changes in the criminal justice system over the past 40 years. Today, due to the ever-burgeoning federal criminal caseload, federal defender organizations and private "CJA panel" attorneys furnish over 140,000 representations per year to financially eligible persons. The complexity of federal criminal practice has increased substantially since 1964, as have the time commitment and skill level required of defense counsel. Federal defender organizations, authorized by a 1970 amendment to the Criminal Justice Act, now serve 83 of the 94 federal judicial districts. The commitment of Congress to fund the Criminal Justice Act program, and of the judiciary to support it, together with the dedication of thousands of federal defender personnel and CJA panel attorneys, have produced an assigned counsel program that delivers professional, cost-effective representation.
>
> By ensuring the fair treatment and effective representation of all persons accused of federal crimes, the Criminal Justice Act

protects the rights and liberties of all citizens. The statute, and the defender program that it created, have become models for nations seeking to adopt the rule of law, including the right to the effective assistance of counsel, as part of their criminal justice systems.

The federal judiciary has been a proud steward over the Criminal Justice Act program, which has become a fundamental and critical component of the American criminal justice system.

CRIMINAL JUSTICE ACT PAYMENTS FOR PARALEGAL SERVICES

In March 1993, the Judicial Conference agreed to seek explicit legislative authority to pay compensation, at reduced hourly rates, to paralegals and law students who assist CJA panel attorneys (JCUS-MAR 93, p. 27). However, such explicit authority does not appear to be necessary, as courts permit paralegals and legal assistants, including law students, who assist CJA panel attorneys to be reimbursed using one of two methods, either under subsection (e) of the CJA, 18 U.S.C. § 3006A, as a "service other than counsel," or as an "expense" of counsel under subsection (d)(1) of the CJA. At this session, after determining that there should be a uniform method of payment as opposed to this dual system, and that the former method provides greater judicial oversight than the latter, the Committee recommended and the Judicial Conference agreed to—

a. Amend paragraph 3.16 ("Other Services and Computer Hardware and Software") of the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Volume VII, *Guide to Judiciary Policies and Procedures*, to provide explicit authorization and compensation (at rates less than those paid to appointed counsel) for paralegals, legal assistants (including law students), and other non-secretarial professional support personnel employed by appointed counsel, as services other than counsel under subsection (e) of the Criminal Justice Act; and

b. Delete subparagraph 2.31A ("Law Student"), which has permitted compensation paid to law students to be reimbursed as an expense of appointed counsel under subsection (d)(1) of the Criminal Justice Act.

The Conference further agreed to rescind, as no longer necessary, its 1993 policy of seeking explicit legislative authority for payment at reduced hourly rates for such services.

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it endorsed a set of core principles for the management and administration of CJA panel attorney programs, based on the December 2002 report by the Vera Institute of Justice entitled "Good Practices for Federal Panel Attorney Programs - A Preliminary Study of Plans and Practices." The Committee discussed an AO initiative to evaluate case weighting as a possible method of facilitating comparative analyses of federal defender organization workloads and refining projected resource needs. It reviewed a draft of "Guidelines for Implementation of the Judicial Conference Policy on Privacy and Public Access to Electronic Criminal Case Files." The Committee discussed the policy adopted by the Judicial Conference regarding the electronic availability of transcripts of court proceedings (JCUS-SEP 03, pp. 16-17), and expressed concerns about the policy's potential resource impact on the Defender Services program.

COMMITTEE ON FEDERAL-STATE JURISDICTION

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it was briefed by the Director of the Federal Judicial Center on past projects undertaken by the FJC, including the development of a website for state-federal judicial education programs, and on the FJC's continuing goal to increase cooperation between federal and state judges. The Committee was also briefed by the chair and a member of the Judicial Panel on Multidistrict Litigation on the work of the Panel and techniques for managing complex litigation. In addition, the Committee determined to continue further development of a proposal to confer discretion on the district courts to dismiss actions in cases where the amount in controversy drops below the statutory threshold. The Committee also conducted an informal review of its operations and projects, and discussed the status of asbestos, DNA, and class action legislation.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that as of December 31, 2003, the Committee had received 3,934 financial disclosure reports and certifications for the calendar year 2002, including 1,360 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 352 from bankruptcy judges; 537 from magistrate judges; and 1,685 from judicial employees.

COMMITTEE ON INFORMATION TECHNOLOGY

LONG RANGE PLAN FOR INFORMATION TECHNOLOGY

Pursuant to 28 U.S.C. § 612 and on recommendation of the Committee on Information Technology, the Judicial Conference approved a 2004 update to the *Long Range Plan for Information Technology in the Federal Judiciary*. Funds for the judiciary's information technology program will be spent in accordance with this plan.

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it is seeking "partner" relationships with each of the Judicial Conference program committees, inviting those committees to take a more active role in identifying their information technology (IT)-related business needs and prioritizing IT projects within their respective program areas. Committee members also suggested that the IT training curriculum be revised to emphasize work done in the courtroom and chambers and urged that training and IT awareness be provided through additional venues. The Committee discussed the PACER Archives project, which will ensure that the program complies with statutory requirements and that court data from closed case management/electronic case files (CM/ECF) system cases will continue to be available. The Committee expressed support for the Administrative Office's ongoing study of administrative services and for the availability of individual access to the judiciary's data communications network for official court reporters.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that during the period from July 1, 2003, to December 31, 2003, a total of 85 intercircuit assignments, undertaken by 53 Article III judges, were processed and recommended by the Committee on Intercircuit Assignments and approved by the Chief Justice. During calendar year 2003, a total of 147 intercircuit assignments were processed and approved, a 30 percent decrease from 2002, likely due to the creation of additional judgeships in three district courts that had frequently borrowed judges for intercircuit assignments. In addition, the Committee aided courts requesting assistance by identifying and obtaining judges willing to take assignments.

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 Bahrain, Croatia, Ecuador, Ghana, and the Russian Federation. The Committee continues to work closely on the rule-of-law component of the Open World Program, which brings Russian jurists and judicial officials to the United States to forge closer ties between the Russian and United States judiciaries. With funding from the U.S. Department of State, several United States judges were also able to make reciprocal visits to meet with Open World alumni.

COMMITTEE ON THE JUDICIAL BRANCH

JUDGES' TRAVEL REGULATIONS

Maximum Meals and Incidental Expenses Rate. Effective October 1, 2003, the General Services Administration (GSA) increased the maximum Meals & Incidental Expenses (M & IE) reimbursement rate from $50 to $51 for executive branch employees who travel to high-cost locations. In order to maintain parity with the executive branch, and to ensure that there will be no time lag between increases in the maximum M & IE rate promulgated by GSA

and the availability of increased travel reimbursement for judges' travel, the Judicial Branch Committee recommended that the Conference:

a. Approve an increase from $50 to $51 in the judges' Meals and Incidental Expenses reimbursement rate (where expenses are not itemized) provided for in sections E.4.a., E.4.b.(1), and E.4.c. of the Travel Regulations for United States Justices and Judges, *Guide to Judiciary Policies and Procedures*, Vol. III-A, ch. C-V.; and

b. Authorize the Director of the Administrative Office to incorporate future M & IE reimbursement rate increases promulgated by the General Services Administration automatically into the judges' travel regulations, without further approval of the Judicial Conference.

The Conference adopted the Committee's recommendations.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it continues to focus its priority attention on securing the enactment of a 16.5 percent increase in judicial salaries. While a significant portion of the Congress, the media, and the public understands the serious threat that inadequate judicial compensation presents to the United States system of justice, there is still a long way to go to obtain congressional approval. The Committee will continue to exert its utmost efforts to achieve this Judicial Conference objective.

COMMITTEE ON JUDICIAL RESOURCES

ELBOW LAW CLERK COMPENSATION

Noting a significant and accelerating growth in "elbow" law clerk salaries and benefits and a need to limit such growth in the face of a severe federal budgetary environment, the Committee on Judicial Resources undertook an analysis of elbow law clerk compensation and recommended that the Judicial Conference take the following actions:

a. Adopt a policy whereby judges may not designate an "elbow" law clerk as a "career" law clerk until the law clerk has completed four full

years of employment as a "term" law clerk, at which time a law clerk could be designated as career and thereby become eligible to participate in the Federal Employees' Retirement System and the Thrift Savings Plan;

b. Approve an amendment to the judiciary's salary matching/advanced in-step appointment policy to establish a salary matching cap of JSP-12, step five, for law clerk appointees coming from other than federal civil service jobs; and

c. Adopt a policy discouraging judges from placing term law clerks under the Leave Act.

After discussion, the Judicial Conference recommitted the recommendations to the Committee, with instructions that it reconsider any Conference policy that discourages the hiring of career law clerks.

LAW CLERK QUALIFICATIONS

In September 2003, the Judicial Conference agreed to expand the qualification standards for elbow law clerks to allow experience as a pro se law clerk to be considered as equivalent to elbow law clerk experience for purposes of establishing the grade level for elbow law clerks (JCUS-SEP 03, p. 28). At this session, on recommendation of the Committee on Judicial Resources, the Conference approved an expansion of the qualification standards for elbow law clerks to include staff attorney experience as creditable for purposes of establishing grade eligibility for elbow law clerks.

TEMPORARY BACKFILL OF CHAMBERS STAFF

Judicial Conference policy restricts "temporary employment of secretaries, law clerks, legal assistants, and clerical personnel for judges and magistrates to emergency situations or extraordinary circumstances, except for extended absences due to illness or maternity leave" (JCUS-SEP 86, pp. 64-65; JCUS-SEP 87, p. 77). In July 2003, the Director of the Administrative Office found that extended military duty constituted extraordinary circumstances for purposes of this policy and authorized the use of centralized funding to backfill three chambers staff called to active military duty. In light of the large number of reservists and members of the national guard now being called to extended active duty, the Committee on Judicial Resources

recommended that the Judicial Conference modify its policy to add extended active military service as a specific exception to the restriction on use of centralized funds for temporary chambers personnel. The Conference approved the recommendation, allowing chambers to "backfill" positions of employees called to extended active military service with temporary personnel, upon appropriate certification, using centralized funds.

TYPE II DEPUTY

Citing extraordinary circumstances in the District of Maryland, the Committee recommended, and the Judicial Conference approved, a second JSP-16 Type II chief deputy clerk position for the district clerk's office in the District of Maryland using existing decentralized funding available to the court.

REASONABLE ACCOMMODATIONS

Section 3102 of title 5, United States Code, authorizes the head of each agency in the judicial branch to provide personal assistants for disabled judges or employees, as determined necessary by the agency head. In March 2001, the Judicial Conference designated chief judges or their designees, court unit executives, and federal public defenders as the "agency heads" for employees of their respective chambers or units (JCUS-MAR 01, pp. 18-19, 25-26). The Conference also authorized the Administrative Office to develop guidelines for designated agency heads to use in determining when and under what circumstances the creation of a personal assistant position was appropriate. At this session, after discussion, the Conference declined to approve a recommendation of the Committee to amend the policy to give the Director of the Administrative Office the responsibility for approving personal assistant positions. The Conference did approve, however, a recommendation of the Committee to institute a reporting requirement for reasonable accommodations other than those involving personal assistants.[3]

[3] On April 20, 2004, the Executive Committee, acting on behalf of the Conference, amended the reporting requirement to include reasonable accommodations involving personal assistants.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it affirmed continued development of updated staffing formulae for district clerks, bankruptcy clerks, and probation and pretrial services offices for presentation at its June 2004 meeting. The Committee voiced strong support for developing new methodologies to gauge the impact of information technology on the work of the courts, to incorporate this impact into future staffing formulae, and to enhance the work measurement process by recognizing procedural and technological differences.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

ATTENDANCE AT JUDICIAL CONFERENCE SESSIONS

The Committee on the Administration of the Magistrate Judges System recommended that the Judicial Conference invite one magistrate judge, selected by the Chief Justice, to attend Judicial Conference sessions in a non-voting capacity. This recommendation was similar to one made by the Bankruptcy Committee (*see supra*, "Attendance at Judicial Conference Sessions," p. 7). After discussion, the Conference approved the Committee's recommendation.

AUTHORITY TO HOLD PROCEEDINGS OUTSIDE A DISTRICT IN AN EMERGENCY

In September 2003, the Judicial Conference agreed to seek legislation that would permit district, bankruptcy, and appellate courts, in times of emergency, to hold special court sessions outside their districts and/or circuits (JCUS-SEP 03, pp. 9-10, 15). Magistrate judges were not specifically included in this proposal although their activities are subject to certain territorial limitations imposed by the Federal Magistrates Act, 28 U.S.C. § 631 *et seq*. On recommendation of the Committee, the Judicial Conference agreed that in pursuing legislation to allow extraterritorial emergency special court sessions, it would seek inclusion of a provision that makes clear that magistrate judges can participate in such sessions.

RESIDENCY REQUIREMENT FOR MERIT SELECTION PANEL MEMBERS

Section 3.02(c) of the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges requires each member of a merit selection panel to be a resident of the district within which a magistrate judge appointment or reappointment is to be made. In recent years, waivers have been sought from this regulation to permit non-resident persons with significant ties to the community to serve on merit selection panels. On recommendation of the Committee, the Judicial Conference agreed to amend section 3.02(c) to allow courts to determine at a local level those individuals who should be allowed to serve on panels based on their ties to the community, without having to seek waivers. The regulation was amended to read as follows:

> 3.02 (c) Each member of the panel shall be a resident of the district within which the appointment is to be made, or, if a nonresident, have significant ties to the community of the district.

TAX COURT LEGISLATION

Section 318 of the proposed "Tax Administration Good Government Act," S. 882, 108th Congress, would change the title of the special trial judges in the Tax Court to "magistrate judges of the Tax Court." To avoid potential confusion with the position of United States magistrate judge, the Committee recommended that the Judicial Conference oppose use of the term "magistrate judge" in S. 882. 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 district courts, and the judicial councils of the circuits, the Judicial Conference approved the following changes in the number, salaries, and arrangements of full-time and part-time

magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

THIRD CIRCUIT

Eastern District of Pennsylvania

1. Authorized one additional full-time magistrate judge position at Philadelphia; and

2. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

FOURTH CIRCUIT

Eastern District of North Carolina

1. Increased the salary of the part-time magistrate judge position at Greenville from Level 2 ($61,071 per annum) to Level 1 ($67,178 per annum); and

2. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

Eastern District of Virginia

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Western District of Virginia

Authorized a part-time magistrate judge position at Harrisonburg at Level 4 ($36,642 per annum).

FIFTH CIRCUIT

Western District of Louisiana

1. Converted the part-time magistrate judge position at Monroe to full-time status;

2. Redesignated as Alexandria the full-time magistrate judge position previously designated as Alexandria or Monroe; and

3. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

Southern District of Texas

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

SIXTH CIRCUIT

Western District of Kentucky

Authorized the two full-time magistrate judge positions at Louisville to serve in the adjoining Southern District of Indiana.

SEVENTH CIRCUIT

Southern District of Indiana

Authorized the part-time magistrate judge position at New Albany to serve in the adjoining Western District of Kentucky.

Northern District of Illinois

1. Authorized one additional full-time magistrate judge position at Chicago; and

2. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

EIGHTH CIRCUIT

District of Minnesota

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

NINTH CIRCUIT

District of Hawaii

1. Discontinued the part-time magistrate judge position at Johnston Island; and

2. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

District of Montana

1. Increased the salary of the part-time magistrate judge position at Wolf Point from Level 7 ($6,105 per annum) to Level 6 ($12,213 per annum); and

2. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

District of Nevada

1. Authorized one additional full-time magistrate judge position at Las Vegas; and

2. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

TENTH CIRCUIT

Northern District of Oklahoma

Made no change in the number, location, or arrangements of the magistrate judge positions in the district.

ELEVENTH CIRCUIT

Southern District of Alabama

Made no change in the number, location, or arrangements of the magistrate judge positions in the district.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that it opposes elimination of the statutory authority of magistrate judges to vote on the selection of chief pretrial services officers, disagreeing with the Criminal Law Committee's recommendation to the Judicial Resources Committee that legislation be sought to amend 18 U.S.C. § 3152(c) to make the selection process for chief pretrial services officers the same as the selection process for chief probation officers under 18 U.S.C. § 3602(c). The Judicial Resources Committee will consider both committees' views at its June 2004 meeting. The Magistrate Judges Committee also agreed to include in all future survey reports that analyze requests for new magistrate judge positions information on the space implications of any new positions, and, if available, the related costs of such requests.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders reported that, in the absence of any petition before it for review of judicial council action under the Judicial Conduct and Disability Act, it has continued to monitor congressional activity in the area of judicial conduct and disability.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it approved for publication proposed amendments to Rules 5005 (Filing and Transmittal of Papers) and 9036 (Notice by Electronic Transmission) of the Federal Rules of Bankruptcy Procedure. The Committee also approved for later publication proposed style amendments to Civil Rules 16-37 and 45. Publication of these rules as well as proposed style amendments to Civil Rules

1-15 approved in September 2003 (JCUS-SEP 03, p. 37) have been deferred until all the civil rules have been revised, which is expected to occur early in 2005. The Advisory Committees on Appellate, Bankruptcy, Civil, and Criminal Rules are reviewing comments from the public submitted on amendments proposed in August 2003 to their respective sets of rules.

COMMITTEE ON SECURITY AND FACILITIES

SPACE RENTAL COSTS

In order to control rental costs, the Conference adopted a recommendation of the Committee on Security and Facilities to impose for one year a moratorium on all space requests of less than $2.29 million in construction costs, except requests for courtrooms, chambers, lease renewals, official parking, and recovery from natural disasters or terrorist attacks. The Conference authorized the Director of the Administrative Office to make limited exceptions in consultation with the circuit representative to the Security and Facilities Committee and in coordination with the circuit judicial council.

U. S. COURTS DESIGN GUIDE

Renovations and Alterations Manual. Noting the difficulty and costliness of applying *U.S. Courts Design Guide* space standards to the structure, circulation patterns, and systems of older, existing buildings, and after studying the issue, the Committee began development of a renovations and alterations supplement to the *Guide*. A draft chapter on courtrooms was completed and endorsed by the Committee. In light of the usefulness of this chapter for courts with renovation and alteration projects, the Committee recommended that the Judicial Conference approve Chapter 4, Courtrooms, for publication and distribution before completion of the entire *U.S. Courts Renovation and Alteration Project Manual*. The Conference adopted the Committee's recommendation.

Access Floors for Courthouses. "Raised" or "access" floors are terms used to describe flooring that is raised to a height that permits easy routing of audio, video, telecommunications, videocommunications, data security, and power cables under the floor, and allows for rerouting of wiring without costly procedures. Access flooring has been authorized in the *U.S. Courts Design*

Guide since 1997, but most new courthouse projects still do not have access flooring throughout the building. Since requiring access flooring throughout the courthouse would greatly reduce the costs and time involved in altering space in the future, the Committee recommended that the Conference approve amendments to the *Guide* that would:

a. Describe the purpose and importance of access flooring throughout the courthouse, and its functional and long-term benefits; and

b. Require access flooring at least four inches in height throughout the courthouse except in mechanical rooms, electric and communication closets, toilets, and other utility spaces.

The Conference adopted the Committee's recommendations.

Interagency Security Committee Guidelines. The *U.S. Courts Design Guide*, Chapter 14: Courthouse Security, currently requires that all courthouse security systems and equipment be consistent with GSA's *Security Criteria Manual*. However, security design and construction criteria are now published by the Interagency Security Committee[4] in a document entitled *Security Design Criteria*. To reflect this change, the Committee recommended, and the Conference agreed, that Chapter 14: Courthouse Security, of the *Design Guide* be amended to:

a. Strike the references on pages 14-1, 14-2, and 14-4 to GSA's *Security Criteria Manual* (Class C Buildings), and replace them with references to the Interagency Security Committee's *Security Design Criteria*; and

b. Include a statement in paragraph four, page 14-2, that all courthouses should be designed and constructed with the "medium" level of security provided in the Interagency Security Committee's *Security Design Criteria*.

[4]The Interagency Security Committee was created to provide a permanent body to address government-wide security for federal facilities. Federal executive agencies, including the U.S. Marshals Service, participate, and the Administrative Office is an associate member without voting rights.

COMMITTEE ACTIVITIES

The Committee on Security and Facilities reported that it discussed the status of two U.S. Marshals Service studies required by the FY 2003 Omnibus Appropriations Act, Public Law No. 108-7, a nationwide courthouse security survey and a management study of the nationwide court security program. The Committee also discussed court security officer medical standards issues that have prompted 12 lawsuits filed in federal court. In addition, the Committee was briefed on the emerging "smart" identification card technology and its implications for the judiciary; the publication of manuals, studies, and a website on best practices in courthouse space; a new General Accounting Office study of courthouse projects; the building management delegation program; a tenant alterations criteria study; and the judiciary's emergency preparedness program.

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

INDEX

Administrative Office, Committee on the, 6

Administrative Office of the United States Courts
- administrative services study, 6, 14, 17
- Interagency Security Committee, 29
- magistrate judge positions, 23-26
- reasonable accommodations, 21
- stewardship program, 6
- substance abuse treatment program study, 14

Appropriations
- budget request, FY 2005, 5
- Court Security account, 4, 5
- Criminal Justice Act panel attorney payments, 4
- Defender Services account, 4
- Fees of Jurors and Commissioners account, 4, 5
- financial plans, FY 2004, 4
- Salaries and Expenses account, 4, 8
- strategic planning, 6

Automation (*see* information technology)

Bankruptcy judges (*see* judges, bankruptcy)

Bankruptcy Reform Act of 1994, 7

Bankruptcy rules (*see* rules of practice and procedure)

Bankruptcy system (*see also* judges, bankruptcy)
- chapter 7 trustee payments, 7-8
- clerks, staffing formula, 22
- fees, uniform percentage adjustment, 7
- miscellaneous fees, 7, 9
- rules of practice and procedure, 27-28
- venue, chapter 11 cases, 6

Bankruptcy System, Committee on the Administration of the, 6, 7-8, 8, 22
- Subcommittee on Venue-Related Issues, 6

Benefits
elbow law clerks, 19-20

Bryan, Robert, 4

Budget (*see* appropriations)

Budget, Committee on the, 8

Case management (*see* court administration)

Case management/electronic case files (CM/ECF) system, 17

Chief judges (*see* judges, chief)

Chief Justice, 6, 7, 18, 22

Circuit councils (*see* circuit judicial councils)

Circuit judges (*see* judges, circuit)

Circuit judicial councils
changes in magistrate judge positions, 23-26
space request moratorium, 28

Civil rules (*see* rules of practice and procedure)

CM/ECF (*see* case management/electronic case files)

Codes of Conduct, Committee on, 9

Community defender organizations (*see* defender services)

Compensation
court reporter, 10-11
judicial, 19
Judicial Salary Plan, 20, 21
law clerk, 19-20
paralegal services for CJA panel attorneys, 15-16
salary matching/advanced in-step policy, 20

Conduct and Disability Orders, Committee to Review Circuit Council, 27

Congress (*see also* appropriations; legislation, pending)
- appropriations bill, FY 2004, 4
- bankruptcy fees, uniform percentage adjustment, 7
- continuing resolution, 4
- General Accounting Office, 30
- judicial compensation, 19
- tax court legislation, 23

Court administration (*see also* bankruptcy system; courts of appeals; district courts; fees; jury administration; magistrate judges system; records; staffing resources)
- administrative services study, 6, 14, 17
- case management/electronic case files (CM/ECF) system, 17
- electronic public access
  - criminal case files, 10
  - model local rule, 10
  - transcripts, 10-11
- petit juror utilization rates, 11
- places of holding court, 10
- privacy/public access to electronic criminal case files, 10
- staffing formulae, 22
- temporary backfill of chambers staff, 20-21
- voluntary separation incentive ("buy-out") program, 5

Court Administration and Case Management, Committee on, 5, 9-11,

Court of Federal Claims
- miscellaneous fee schedule, 9

Court reporters
- compensation, 10-11

Courthouses (*see* space and facilities)

Courtrooms (*see* space and facilities)

Courts of appeals (*see also* court administration)
- miscellaneous fee schedule, 9

Criminal Justice Act (CJA) (*see also* defender services; federal defenders)
compensation
law students, 15-16
paralegals, 15-16
"Good Practices for Federal Panel Attorney Programs – A Preliminary Study of Plans and Practices," 16
Guidelines for the Administration of the Criminal Justice Act, 15-16
resolution, 14-15

Criminal law (*see also* defender services; probation and pretrial services system)
effective assistance of counsel, 14-15
judgments in a criminal case, 5, 13
monetary penalties, 12
post-conviction supervision monograph, 12-13
presentence investigation report monograph, 13
privacy/public access to criminal case files
guidance, 10
model local rule, 10

Criminal Law, Committee on, 5, 10, 11-14, 27

Defender services *(see also* Criminal Justice Act; federal defenders)
assigned counsel program, 14-15
Criminal Justice Act resolution, 14-15
"Good Practices for Federal Panel Attorney Programs – A Preliminary Study of Plans and Practices," 16
rental cost controls, 6
space request moratorium, 6

Defender Services, Committee on, 6, 10, 11, 14-16

Department of Homeland Security, 10

Department of Justice,
Attorney General, 11
Bureau of Prisons, 13
United States Marshals Service, 29, 30
United States Parole Commission, 11

Department of State, 18

Department of the Treasury, 8

Design Guide (*see U.S. Courts Design Guide*)

Director, Administrative Office of the United States Courts, 19, 20, 21, 23, 28

Disabled employees
reasonable accommodations
approval authority, 21
reporting requirements, 21

District courts (*see also* bankruptcy system; court administration; jury administration; magistrate judges system; probation and pretrial services system)
attorney admission fee, 9
changes in magistrate judge positions, 23-26
electronic public access to transcripts, pilot program, 10-11
emergency court sessions outside district/circuit, 22
miscellaneous fees, 9
places of holding court, 10
rules of practice and procedure, 27-28
transcripts, electronic access, 10-11, 16
Type II chief deputy clerk, District of Maryland, 21

District judges (*see* judges, district)

Donald, Bernice Bouie, 4

Electronic public access (EPA)
case management/electronic case files (CM/ECF) system, 17
criminal case files, 10, 16
Guidelines for Implementation of the Judicial Conference Policy on Privacy and Public Access to Electronic Criminal Case Files, 16
privacy, 10
redaction of personal data identifiers, 10
transcripts, 10-11, 16

Evans, Terence T., 4

Executive branch
Department of Homeland Security, 10
Department of Justice,
Attorney General, 11
Bureau of Prisons, 13

Executive branch (continued)
United States Marshals Service, 29, 30
United States Parole Commission, 11
Department of State, 18
Department of the Treasury, 8
General Services Administration, 18, 19, 29
President of the United States, 7

Executive Committee, 4-6, 21

Federal defenders (*see also* Criminal Justice Act, defender services; personnel, judiciary)
case weighting, 16
Criminal Justice Act resolution, 14-15
disabled, personal assistants, 21
Sentencing Commission, *ex-officio* member, 11

Federal Employees' Retirement System, 20

Federal Judicial Center, 4, 14, 16

Federal Magistrates Act, 22

Federal public defender organizations (*see* defender services)

Federal rules (*see* rules of practice and procedure)

Federal-State Jurisdiction, Committee on, 16

Federal Tort Claims Act, 12

Fees
bankruptcy court
Bankruptcy Court Miscellaneous Fee Schedule, 9
chapter 7 trustee payments, 7-8
filing, 7, 8
miscellaneous, 7, 9
uniform percentage adjustment, 7
Court of Appeals Miscellaneous Fee Schedule, 9
district court
attorney admission fee, 9
District Court Miscellaneous Fee Schedule, 9

Fees (continued)
Judicial Panel on Multidistrict Litigation Fee Schedule, 9
miscellaneous, 7, 9
United States Court of Federal Claims Fee Schedule, 9

Financial Disclosure, Committee on, 17

Financial disclosure reports
filed, 17

General Accounting Office, 30

General Services Administration, 18, 19, 29

"Good Practices for Federal Panel Attorney Programs - A Preliminary Study of Plans and Practices," 16

Guide to Judiciary Policies and Procedures, 15, 19

Guidelines for Implementation of the Judicial Conference Policy on Privacy and Public Access to Electronic Criminal Case Files, 16

Guidelines for the Administration of the Criminal Justice Act and Related Statutes, 15-16

Information technology (*see also* electronic public access)
bankruptcy judges automation needs, 7
case management/electronic case files (CM/ECF) system, 17
Long Range Plan for Information Technology in the Federal Judiciary, 17

Information Technology, Committee on, 7, 17

Interagency Security Committee, 29

Intercircuit assignments, 18

Intercircuit Assignments, Committee on, 18

International Judicial Relations, Committee on, 18

Internet (*see* electronic public access; information technology)

Judges, Article III (*see also* judges, chief; judges, district; judges, federal)
intercircuit assignments, 18

Judges, bankruptcy (*see also* bankruptcy system; judges, chief; judges, federal)
attendance at Judicial Conference sessions, 7, 22
automation needs, 7
recalled, courtroom requirements, 8

Judges, chief
orientations, 6

Judges, circuit (*see* judges, Article III; judges, chief; judges, federal)

Judges, Court of Federal Claims (*see* judges, chief; judges, federal)

Judges, district (*see also*, judges, Article III; judges, chief; judges, federal)
reassignment, 5

Judges, federal (*see also* judges, Article III; judges, bankruptcy; judges, chief; judges, district; judges, magistrate)
compensation, 19
disabled, reasonable accommodations, 21
financial disclosure reports filed, 17
Meals and Incidental Expenses (M & IE) rate, 18-19
travel expenses, 5, 18-19
Travel Regulations for United States Justices and Judges, 18-19

Judges, magistrate (*see also* judges, federal; magistrate judges system)
appointment regulations, 23
attendance at Judicial Conference sessions, 7, 22
changes in positions, 23-26
emergency court sessions outside district/circuit, 22
Federal Magistrates Act, 22
forfeiture proceedings authority, 5
merit selection panel, residency requirement, 23
selection of chief pretrial services officers, 27
tax court legislation, 23

Judgments in criminal cases, 5, 13
Statement of Reasons, 5

Judicial Branch, Committee on the, 18-19

Judicial Conduct and Disability Act, 27

Judicial Conference of the United States
attendance at sessions
bankruptcy judge, 7, 22
magistrate judge, 7, 22
funding of actions, 30
mail ballot, 11

Judicial Panel on Multidistrict Litigation
complex litigation management, 16
miscellaneous fee schedule, 9

Judicial Resources, Committee on, 5, 10-11, 13, 19-22, 27

Judiciary Salary Plan (JSP) (*see also* personnel, judiciary), 20, 21

Jury administration
petit juror utilization rates, 11

Law clerks
elbow
compensation, 19-20
Federal Employees' Retirement System, 19-20
Leave Act, 19-20
qualification standards, 20
term/career, 19-20
Thrift Savings Plan, 19-20

Lawbooks and libraries program, 11

Leave Act, 20

Legislation, pending (108th Congress)
district judge reassignments, 5
Tax Administration Good Government Act (S. 882), 23

Local rules
privacy/public access to electronic criminal case files, 10

Long Range Plan for Information Technology in the Federal Judiciary, 17

Magistrate judges (*see* judges, magistrate)

Magistrate judges system (*see also* judges, magistrate)
changes in positions, 23-26
emergency court sessions outside district/circuit, 22
Federal Magistrates Act, 22
forfeiture proceedings authority, 5
merit selection panel, 23
new positions, space/cost implications, 27

Magistrate Judges System, Committee on the Administration of the, 5, 7, 22-27

Mail ballot of the Judicial Conference, 11

Miscellaneous fee schedules (*see* fees)

Newman, Pauline, 4

Omnibus Appropriations Act, 30

Open World Program, 18

PACER, 17

PACER Archives Project (*see* PACER)

Panel attorneys (*see also* Criminal Justice Act)
"Good Practices for Federal Panel Attorney Programs – A Preliminary Study of Plans and Practices," 16
management principles, 16
paralegal services, 15-16

Personnel, judiciary (*see also* federal defenders; law clerks; staffing resources)
compensation
court reporter, 10-11
elbow law clerk, 19-20
Criminal Justice Act resolution, 14-15
disabled, reasonable accommodations, 21
financial disclosure reports, 17
Judiciary Salary Plan (JSP), 20, 21
law clerk qualifications, 20

Personnel, judiciary (continued)
salary matching/advanced in-step appointment policy, 20
voluntary separation incentive ("buy-out") program, 5

Places of holding court, 10

President of the United States, 7

Privacy
electronic public access to criminal case files, 10
redaction of personal data identifiers, 10

Probation and pretrial services officers (*see also* personnel, judiciary; probation and pretrial services system)
Federal Tort Claims Act coverage, 12
selection process for chief pretrial services officers, 13, 27

Probation and pretrial services system (*see also* probation and pretrial services officers)
post-conviction supervision, 12-13
presentence investigation reports, 13
selection process, chief pretrial services officers, 13, 27
The Presentence Investigation Report, Monograph 107, 13
The Supervision of Federal Offenders, Monograph 109, 12-13

Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (PROTECT Act), 13

PROTECT Act (*see* Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003)

Public Access to Court Electronic Records (*see* PACER)

Records (*see also* electronic public access)
criminal cases, privacy/public access, 10
presentence investigation report disclosure, 13
redaction of personal data identifiers, 10
transcripts, electronic access, 10-11

Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges, 23

Retirement
elbow law clerk benefits, 19-20

Rule of law programs, 18

Rules of practice and procedure
bankruptcy rules, 27
civil rules, 27-28
local rules, model, 10

Rules of Practice and Procedure, Committee on, 27-28

Salaries (*see* compensation)

Security
Interagency Security Committee, 29
Security Criteria Manual, 29
Security Design Criteria, 29

Security and Facilities, Committee on, 6, 8, 28-30

Sentencing guidelines
amendments, 5

Space and facilities (*see also* security)
access/raised floors for courthouses, 28-29
moratorium on space requests, 6, 28
rental cost controls, 6, 28
security design criteria, 29
U.S. Courts Design Guide, 28-29
U.S. Courts Renovation and Alteration Project Manual, *28*

Staff attorneys, 20

Staffing formulae, 22

Staffing resources (*see also* personnel, judiciary)
staffing formulae, 22
temporary backfill of chambers staff, 20-21
Type II deputy position, 21
voluntary separation incentive (“buy-out”) program, 5

Supporting personnel (*see* personnel, judiciary)

Tax Court, 23

Technology (*see* information technology)

***The Presentence Investigation Report,* Monograph 107**, 13

***The Supervision of Federal Offenders,* Monograph 109**, 12-13

Thrift Savings Plan, 20

Transcripts
electronic public access, 10, 16

Travel, judges'
alternative subsistence rate, 5
Meals and Incidental Expenses (M & IE) rate, 18-19
Travel Regulations for United States Justices and Judges, 18-19

Travel Regulations for United States Justices and Judges, 18-19

Type II chief deputy clerk, 21

United States Marshals Service, 29, 30

United States Parole Commission, 11

United States Sentencing Commission, 5, 11, 13

U.S. Courts Design Guide, 28-29

U.S. Courts Renovation and Alteration Project Manual, *28*

Vera Institute of Justice, 16

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