

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

September 14, 1988

The Judicial Conference of the United States convened on September 14, 1988, 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 Levin H. Campbell  
Chief Judge Frank H. Freedman, District of  
Massachusetts

**Second Circuit:**

Chief Judge Wilfred Feinberg  
Chief Judge John T. Curtin, Western District of  
New York

**Third Circuit:**

Chief Judge John J. Gibbons  
Chief Judge William J. Nealon, Jr., Middle District of  
Pennsylvania

**Fourth Circuit:**

Chief Judge Harrison L. Winter  
Judge Frank A. Kaufman, District of Maryland

**Fifth Circuit:**

Chief Judge Charles Clark  
Chief Judge L. T. Senter, Jr., Northern District of  
Mississippi

**Sixth Circuit:**

Chief Judge Albert J. Engel  
Chief Judge Philip Pratt, Eastern District of Michigan

**Seventh Circuit:**

Chief Judge William J. Bauer  
Judge Sarah Evans Barker, Southern District of Indiana

**Eighth Circuit:**

Chief Judge Donald P. Lay  
Chief Judge John F. Nangle, Eastern District of  
Missouri

**Ninth Circuit:**

Chief Judge Alfred T. Goodwin  
Chief Judge Robert F. Peckham, Northern District of  
California

**Tenth Circuit:**

Chief Judge William J. Holloway  
Chief Judge Earl E. O'Connor, District of Kansas

**Eleventh Circuit:**

Chief Judge Paul H. Roney  
Chief Judge Sam C. Pointer, Jr., Northern District of  
Alabama

**District of Columbia Circuit:**

Chief Judge Patricia M. Wald  
Chief Judge Aubrey E. Robinson, Jr., District of  
Columbia

Federal Circuit:

Chief Judge Howard T. Markey

Court of International Trade

Chief Judge Edward D. Re

Circuit Judges Richard S. Arnold, Stephanie K. Seymour, and Harlington Wood, Jr.; District Judges Richard M. Bilby, Juan M. Perez-Gimenez, William W. Schwarzer, and Morey L. Sear; Senior District Judge Walter T. McGovern; and Claims Court Judge Loren A. Smith attended all or some of the sessions of the Conference. Circuit Executives Steven Flanders (Second Circuit), John Hehman (Third Circuit), Samuel W. Phillips (Fourth Circuit), Lydia Comberrel (Fifth Circuit), James A. Higgins (Sixth Circuit), Collins T. Fitzpatrick (Seventh Circuit), June L. Boadwine (Eighth Circuit), Francis L. Bremson (Ninth Circuit), Eugene Murret (Tenth Circuit), Norman E. Zoller (Eleventh Circuit), and Linda Finkelstein (District of Columbia Circuit), and Circuit Executive-designate Vincent Flanagan (First Circuit) were also present.

The Attorney General of the United States, Dick Thornburgh, and Solicitor General Charles Fried addressed the Conference on matters of mutual interest to the Department of Justice and the Conference.

L. Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the sessions of the Conference, as did James E. Macklin, Jr., Deputy Director; William R. Burchill, Jr., General Counsel; Robert E. Feidler, Legislative and Public Affairs Officer; Karen K. Siegel, Chief, Office of the Judicial Conference Secretariat; and David A. Sellers, Public Information Officer. Judge John C. Godbold and Charles W. Nihan, Director and Deputy Director of the Federal Judicial Center, also attended the sessions of the Conference, as did Noel Augustyn (Administrative Assistant to the Chief Justice) and Richard Schickele (Staff Counsel to the United States Supreme Court).

**REPORT OF THE DIRECTOR  
OF THE ADMINISTRATIVE OFFICE  
OF THE UNITED STATES COURTS**

The Director of the Administrative Office of the United States Courts, L. Ralph Mecham, submitted to the Conference the Annual Report of the Director for the year ended June 30, 1988. The Conference authorized the Director to release the Annual Report immediately in preliminary form and to revise and supplement the final printed edition.

**JUDICIAL BUSINESS OF THE COURTS**

Mr. Mecham reported that during the year ended June 30, 1988, the number of cases appealed to the 12 regional courts of appeals rose almost seven percent to 37,524, due to increases in all sources of appeals except civil cases involving the U.S. government. Dispositions, while increasing by four percent, still did not reach the level of filings, so pending cases increased by six percent to 27,644 on June 30, 1988. Filings in the United States Court of Appeals for the Federal Circuit fell four percent to 1,296, due primarily to a decrease in Merit Systems Protection Board appeals. Dispositions declined 15 percent, but still outnumbered filings. As a consequence, the pending caseload fell six percent during the year, to 658.

In the United States district courts, the number of civil filings increased after two years of declines in filings. The year's increase, which was less than one percent, reflected a level of 239,634 new civil cases. The largest increases were in social security disability cases and recovery of defaulted student loans. The number of civil cases disposed of almost equaled filings this year, resulting in an increase in the pending caseload of less than one-half of one percent. On June 30, 1988, there were 244,242 civil cases pending in the district courts.

Criminal case filings continued the increase begun in 1981 with a three percent increase. Case filings rose to 44,585, which is an average of 78 new criminal cases for each district court judgeship. Criminal case terminations, which had been on the rise for the last seven years, decreased less than one percent this year. As a result, the pending caseload increased almost 10 percent to 27,733 on June 30, 1988.

Bankruptcy petitions filed increased almost six percent to 594,567. This is substantially less than last year's 17 percent increase and the record increase of 31 percent in 1986. Nonbusiness filings rose 10 percent this year while business filings fell by nearly 17 percent. Terminations increased over 22 percent, but fell short of filings by almost 7,000 petitions. On June 30, 1988, the pending bankruptcy caseload increased one percent over the previous year, to 815,497.

Mr. Mecham also reported that as of September 14, 1988, there were 10 vacancies among the 168 judgeship positions authorized for the United States courts of appeals, and 27 vacancies among the 575 authorized judgeship positions in the United States district courts.

### **REPORT OF THE DIRECTOR OF THE FEDERAL JUDICIAL CENTER**

The Director of the Federal Judicial Center, Judge John C. Godbold, reported to the Conference on behalf of the Judicial Center on the following matters:

- o The Annual Report of the Center is in a new format, designed to be more readable and to serve as a better means of communicating information to the members of the Conference and to other readers.
- o Training for guideline sentencing is on hold until the Supreme Court decides the guideline sentencing case pending before it (United States v. Mistretta, 682 F. Supp. 1033 (W.D. Mo. 1988), cert. granted, 43 Cr.L. 4065, No. 87-1904, June 13, 1988); after that decision, there will be a reassessment of what additional training, if any, is needed.
- o The weighted caseload study of district courts is under way in 29 courts. A time and weighted caseload study of bankruptcy courts has been requested by Congress, and in turn requested of the Judicial Center by the Judicial Conference Committee on the Administration of the Bankruptcy System. The design of the study is completed and has been pilot tested by six judges. The first wave of testing is expected to begin in October.

- c With respect to small computers, the Judicial Center is pursuing ways to acquaint judges and their staffs with the capacity of computers obtained for in-chambers use, ways to assist judges in determining what services they want from their in-chambers computers, ways to list software available to accomplish purposes desired by judges, and ways to assist judges in their acquisition of software.

#### **JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

A written statement filed with the Conference by the Judicial Panel on Multidistrict Litigation indicated that during the period July 1, 1987 through June 30, 1988, the Panel centralized 862 civil actions pursuant to 28 U.S.C. 1407. Of that number, 358 were transferred for coordinated or consolidated pretrial proceedings with 504 actions originally filed in the transferee districts. The Panel denied transfer of 25 actions.

Since its creation in 1968, the Panel has centralized 16,788 civil actions in pretrial proceedings in carrying out its statutory mandate.

#### **EXECUTIVE COMMITTEE**

The Executive Committee of the Judicial Conference reported that, since the last session of the Conference in March, 1988, the Executive Committee had addressed the following matters on the Conference's behalf:

#### **APPROPRIATIONS FOR THE FISCAL YEAR 1988**

On April 15, 1988, the Executive Committee approved a spending plan for the appropriation "Salaries and Expenses" for the third quarter of the fiscal year 1988, and a revised listing of supplemental appropriations requests for certain judicial accounts. Language-only supplementals (no new appropriations) were also authorized for submission to Congress (a) to provide for reimbursement of administrative expenses of the National Childhood Vaccine Injury Act of 1986 by the United States Claims Court from the special fund established to pay judgments awarded under the Act; (b) to provide the judiciary with authority to transfer funds between the "Salaries and Expenses" appropriation for the courts and the appropriation for the Administrative

Office for services performed on behalf of the courts by the Administrative Office; and (c) to provide for salary increases for the Deputy Director of the Federal Judicial Center and the circuit executives to Level IV of the Executive Schedule. The Executive Committee also agreed to implement during the fiscal year 1988 Conference-approved recommendations to establish four death penalty resource centers (subject to congressional approval of a reprogramming request) and, effective April 15, 1988, to provide for the payment under the Criminal Justice Act of \$75 per hour for in- and out-of court attorney time in death penalty habeas corpus cases.

Subsequent events relating to non-CJA funding necessitated Executive Committee or Judicial Conference reconsideration of the funding levels for each of the four resource centers whose implementation had been authorized by the Executive Committee in April, 1988. Two of the centers (Mississippi and North Carolina) chose to delay their start-up dates until the fiscal year 1989 and to present revised funding requests for regular Judicial Conference consideration in September, 1988. See "Death Penalty Resource Centers", *infra* pp. 73-74.

On July 19, 1988, the Executive Committee approved a spending plan for the "Salaries and Expenses" appropriation for the fourth quarter of the fiscal year 1988, and approved the fourth quarter FY 1988 expenditure from the "Defender Services" appropriation of approximately \$130,000 to fund the remaining two death penalty resource centers whose implementation previously had been authorized (Georgia and Tennessee), and an additional death penalty resource center (Louisiana). The \$130,000 authorization was contingent upon congressional approval, subsequently granted, of a request for reprogramming of the necessary funds.

On August 24, 1988, the Executive Committee reallocated certain fourth quarter automation expenditures, and authorized the expenditure of an additional \$1,700,000 in FY 1988 funds, previously intended to be carried over into the fiscal year 1989, for the purchase of Unisys computer hardware.

#### APPROPRIATIONS FOR THE FISCAL YEARS 1989 AND 1990

In July, 1988, in accordance with its usual practice, the Committee on the Budget compiled budget estimates for the fiscal year 1990 to include all judiciary requirements. However, taking into account congressional realities in a period of severe fiscal restraints, the Budget Committee voted to present for Judicial Conference approval an

"alternative" budget, below the total level of funding requested by elements within the judiciary, to increase chances of a successful presentation of the request to the Congress.

At its August 24, 1988 meeting, the Executive Committee addressed the question of whether the Budget Committee had exceeded its jurisdictional mandate in proposing the alternative budget, and concluded that while the Budget Committee should advise the Conference on the level of appropriations that should be sought, the recommendation on where actual cuts should occur should be made by the Executive Committee, pending further consideration of the matter by the full Judicial Conference. The Executive Committee requested that the chairman of the Budget Committee meet with the chairs of the committees affected by a less than fully funded budget (the "line" chairs), to agree on an alternative submission for presentation to the Executive Committee and the Conference. Such a consensus was reached, and approved by the Executive Committee on September 13, 1988 and the Conference on September 14, 1988. See "Appropriations for the Fiscal Year 1990", infra p. 64.

The Executive Committee requested that a similar process to that followed with respect to the FY 1990 budget submission (i.e., "line" chairs and the Budget Committee fashioning a consensus for presentation to the Executive Committee) be followed for spending plan decisions on execution of the fiscal year 1989 budget.

#### UNITED STATES CLAIMS COURT

In March, 1988 (Conf. Rpt., p. 29), the Judicial Conference voted to refer S. 1608, 100th Congress, the "United States Claims Court Improvement Act of 1987", to the Executive Committee, for further referral to the appropriate Conference committee(s) to determine whether the legislation would allow the Claims Court to be independent of the Judicial Conference and the Administrative Office for administrative purposes without adversely affecting the availability of resources to the judiciary. See also September 1987 Session, Conf. Rpt., p. 68. The Executive Committee referred S. 1608 jointly to the Budget Committee for a review of budgetary considerations, and to the Committee on Federal-State Jurisdiction for a review of the appropriate place of the Claims Court in the federal system. See also "United States Claims Court", infra pp. 67, 76.

The Executive Committee declined a request from the Chief Judge of the Claims Court for full membership on the Judicial Conference pending final Conference resolution of this matter.



## MISCELLANEOUS ACTIONS

The Executive Committee agreed to the appointment of a subcommittee of the Executive Committee to study increases in fees as a means of increasing funds available for judiciary needs; referred to the Committee on the Judicial Branch an American Bar Association resolution on evaluation of federal judges; approved a recommendation of the Committee on the Administration of the Bankruptcy System for the creation of an additional bankruptcy judgeship in the District of Alaska, and authorized transmittal of implementing legislation to the Congress; advised the Chief Justice of its consensus that, as a policy matter, circuits should have the option of electing either active or senior district judges to membership on the Judicial Conference; authorized the Administrative Office to seek amendments to leave-sharing legislation to provide for judicial branch administration of a leave-sharing program for judiciary employees; and recommended that the Chief Justice appoint an ad hoc committee to review recommendations from other Judicial Conference committees concerning the introduction of "cameras in the courtroom".

### COMMITTEE ON THE ADMINISTRATIVE OFFICE

#### INVESTIGATIVE SERVICES BY THE ADMINISTRATIVE OFFICE

In the last few years, the Administrative Office has received an average of seven complaints per year from court employees, the General Accounting Office, and others, alleging waste, fraud, or abuse by judicial branch employees. The matters in question have been forwarded to the appropriate court of appeals or district court with an offer of agency assistance. The Director of the Administrative Office asked the Committee to consider whether this investigative assistance should continue.

On the recommendation of the Committee, the Judicial Conference authorized the Director to continue to provide investigative assistance, with available resources, to a circuit judicial council or court, upon request of the council or chief judge of the court in which the services are to be performed. The delivery of these investigative services will be under the direct supervision of the Director or Deputy Director, and does not affect any services required to be provided by statute.

INDEMNIFICATION OF JUDICIAL OFFICERS  
AND EMPLOYEES SUED IN THEIR  
OFFICIAL CAPACITIES

After studying the problems of judicial liability and indemnification in the wake of Forrester v. White, 484 U.S. \_\_\_, 108 S.Ct. 538 (1988), and Westfall v. Erwin, 484 U.S. \_\_\_, 108 S.Ct. 580 (1988), the Committee recommended and the Judicial Conference approved the following guidelines for indemnification of judicial officers and employees to be published in Volume I-C of the Guide to Judiciary Policies and Procedures:

Section V

Indemnification

5.1 The Administrative Office may indemnify the defendant judiciary officer or employee for any verdict, judgment, or other monetary award which is rendered against such officer or employee, provided that the conduct giving rise to the verdict, judgment, or award was taken within the scope of employment and that such indemnification is in the interest of the United States, as determined by the Director or his or her designee.

5.2 The Administrative Office may settle or compromise a personal damages claim against a judiciary officer or employee by the payment of available funds at any time, provided the alleged conduct giving rise to the personal damages claim was taken within the scope of employment and that such settlement or compromise is in the interest of the United States, as determined by the Director or his or her designee.

5.3 Absent exceptional circumstances as determined by the Director or his or her designee, the Administrative Office will not entertain a request either to agree to indemnify or to settle a personal damages claim before entry of an adverse verdict, judgment, or award.

5.4 To request indemnification to satisfy a verdict, judgment, or award entered against an officer or employee, the officer or employee shall submit a written request, with appropriate documentation including copies

of the verdict, judgment, award, or settlement proposal if on appeal, to the General Counsel, who shall thereupon submit the request with a recommended disposition to the Director for decision.

5.5 Any payment under this section either to indemnify an officer or employee or to settle a personal damages claim shall be contingent upon the existence of adequate appropriated funds available for the operations of the employing court or office.

The Conference also voted to support H.R. 4358, 100th Congress, and its successor, H.R. 4612, bills to make the Federal Tort Claims Act the exclusive remedy for common law tort claims against federal officers and employees.

#### **COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM**

##### **INTERCIRCUIT ASSIGNMENTS OF BANKRUPTCY JUDGES**

The Bankruptcy Amendments and Federal Judgeship Act of 1984 (Public Law 98-353) authorizes the temporary transfer of an active bankruptcy judge to any other judicial district upon the approval of the judicial council(s) of the circuit(s) involved. 28 U.S.C. 155(a). To facilitate the assignment of bankruptcy judges across circuit lines and to provide accurate statistical information on the effectiveness of intercourt assignments in the bankruptcy system, the Judicial Conference approved the following guidelines for intercourt assignments of bankruptcy judges:

1. A bankruptcy judge has responsibility to provide assistance, first, to the district in which the judge is appointed, second, to the other judicial districts within the judge's own circuit, and third, to judicial districts outside the judge's circuit.
2. The assignment of bankruptcy judges from their official duty stations determined by the Judicial Conference shall be on the basis of the need of the borrowing court as certified by the chief judge of the borrowing circuit.

3. The chief judge of the borrowing circuit shall be entitled to full access to all pertinent information concerning the borrowed bankruptcy judge and to discuss the assignment with the judges of the lending district or circuit.
4. A circuit lending a bankruptcy judge on an inter-circuit assignment may not concurrently borrow a bankruptcy judge from another circuit.
5. A circuit borrowing a bankruptcy judge on an inter-circuit assignment may not concurrently lend a bankruptcy judge to another circuit.
6. The "lender-borrower" rules may be relaxed in situations in which a bankruptcy judge has been disqualified, of retired bankruptcy judges who have been recalled into active service pursuant to 28 U.S.C. 155(b), or in other situations if approved by the affected circuit councils.
7. On an inter-circuit assignment, bankruptcy judges may take either a law clerk or a secretary; reimbursement for additional supporting personnel is not permitted. The judicial district to which a bankruptcy judge is temporarily assigned is expected to furnish any additional supporting personnel needed.
8. The circuit borrowing a bankruptcy judge from a district in another circuit shall forward a copy of the certificate of need, the consent of the lending circuit to inter-circuit assignment, and an order setting forth the term of the temporary assignment to the chief district and bankruptcy judges of the lending district and to the Director of the Administrative Office who shall compile statistics on inter-circuit assignments.

#### SELECTION AND APPOINTMENT OF BANKRUPTCY JUDGES

At its September 1984 session (Conf. Rpt., pp. 70-71), the Judicial Conference approved regulations for the selection and appoint-

ment of bankruptcy judges. At this session, to reflect a change in the law made by the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Public Law 99-554), the Conference amended section 1.01 of the regulations ("Minimum Qualifications") to provide that admission to the bar of the Commonwealth of Puerto Rico constitutes eligibility for service as a bankruptcy judge.

#### RECALL TO SERVICE OF RETIRED BANKRUPTCY JUDGES

Regulations governing the ad hoc recall to service of retired bankruptcy judges were adopted by the Judicial Conference in March, 1985 (Conf. Rpt., p. 22), and amended in September, 1987 (Conf. Rpt., p. 82).

At the suggestion of a chief circuit judge, the Judicial Conference amended section 7 of the regulations to provide that a chief circuit judge considering the recall of a retired bankruptcy judge from another circuit is permitted to have full access to all pertinent information concerning the retired bankruptcy judge, and to discuss the recall assignment with the judges of the circuit and district where the retired bankruptcy judge had served. The Conference also approved a technical amendment to section 8 of the recall regulations to correct an internal inconsistency arising from the September, 1987 amendment.

#### BANKRUPTCY ADMINISTRATOR REGULATIONS

On recommendation of the Committee, the Judicial Conference amended the Regulations Governing the Establishment, Duties, and Functions of Bankruptcy Administrators, approved by the Conference in September, 1987 (Conf. Rpt., p. 81), (a) to confirm that a bankruptcy administrator's oversight responsibility, as it relates to monitoring the activities of creditors' and equity security holders' committees, is not dependent on prior court authorization, except as to convening and presiding at creditors' committee meetings (section 2.01(d)(3)); and (b) to authorize the bankruptcy administrator to monitor the sufficiency of applications for interim compensation and reimbursement of actual, necessary expenses (section 2.01(i)(5)).

#### ADDITIONAL JUDGESHIPS

Due to unusual increases in bankruptcy filings, the Conference voted to recommend that Congress authorize one additional bankruptcy judgeship for the Western District of Texas, and to ratify the Executive

Committee's recommendation that Congress authorize one additional bankruptcy judgeship for the District of Alaska. See also "Miscellaneous Actions", supra p. 57.

#### MEMORIAL RESOLUTION

Noting the death of Bankruptcy Judge G. William Brown, a member of the Bankruptcy Committee, the Conference adopted the following resolution:

The Judicial Conference of the United States with great sadness notes the death of Chief Bankruptcy Judge G. William Brown on August 13, 1988.

During his six years on the bench of the United States Bankruptcy Court for the Western District of Kentucky, Judge Brown was greatly admired by judges and attorneys alike. In addition to his duties as the Chief Judge of a busy court, he assumed many important responsibilities on behalf of the national bankruptcy system. He had served with uncommon distinction since 1984 on the Committee on the Administration of the Bankruptcy System. An active and dedicated member, Judge Brown was serving as Chairman of two subcommittees and was a member of two others at the time of his death. He performed additional service as a member of a special task force to improve the efficiency of the bankruptcy courts. In all these undertakings, he exhibited an unerring perceptiveness, a quiet dedication to duty, and consistently wise judgment.

Judge Brown, a native of Louisville, served for two years in the United States Marine Corps. He received both a Bachelor of Science in Law and a Juris Doctor degree from the University of Louisville. Prior to his appointment as a bankruptcy judge in 1982, Judge Brown practiced law for nineteen years, during seventeen of which he also served as an exemplary standing chapter 13 trustee.

Judge Brown was the embodiment of integrity, dedication, and excellence. On the bench, he was always in control of the courtroom but was unfailingly courteous and open minded. These qualities were recognized

recently by the Louisville Bar Association which honored his contribution to the judicial system by naming him Judge of the Year for 1987.

The judges of the Judicial Conference of the United States convey their deepest sympathy to Judge Brown's children, Julie, Stephen, and Christina, and request that this resolution be sent to them in recognition of our profound respect and abiding esteem.

#### **COMMITTEE ON THE BICENTENNIAL OF THE CONSTITUTION**

##### **PARTIAL FUNDING OF INTERNATIONAL APPELLATE JUDGES CONFERENCE**

The Conference approved a proposal of the Bicentennial of the Constitution and International Appellate Judges Conference Committees, to allocate \$300,000 from the judiciary's bicentennial appropriation to the International Appellate Judges Conference Committee. These funds will be used toward the expenses of the Fifth International Appellate Judges Conference, scheduled to be held in Washington, D.C., in September, 1990.

#### **COMMITTEE ON THE BUDGET**

##### **SUPPLEMENTAL APPROPRIATIONS FOR THE FISCAL YEAR 1989**

As of the Judicial Conference session on September 14, 1988, the judiciary's appropriations act for the fiscal year 1989 had not yet been approved. However, based upon House and Senate Appropriations Committee actions to date, it was apparent that appropriations would fall considerably short of the minimal funding levels identified by the Executive Committee as required to maintain current services. Accordingly, the Conference authorized the Director of the Administrative Office to submit to the Congress a request for supplemental appropriations for the fiscal year 1989 for "pay costs", and program supplementals for "Salaries and Expenses", "Defender Services", "Fees of Jurors and Commissioners", and "Court Security". The Conference also authorized the Director to amend the requests because of any new legislation, action taken by the Judicial Conference, or any other reason the Director considers necessary and appropriate.

## APPROPRIATIONS FOR THE FISCAL YEAR 1990

As noted at pages 55-56 ("Appropriations for the Fiscal Years 1989 and 1990"), the Executive Committee concurred in the Budget Committee's judgment that submission of a less than fully funded budget request for the fiscal year 1990 could increase the judiciary's chances of a successful presentation of that request to the Congress. Consequently, it was agreed that both total requirements, and an "alternative" level, would be presented. The Executive Committee further agreed that the recommendation to the Conference on where actual cuts should occur should be made by the Executive Committee, pending Conference establishment of a priority-setting mechanism within the judiciary.

With regard to the FY 1990 submission, the Executive Committee requested that the Budget Committee and the "line" committee chairs affected by a less than fully funded budget, fashion an alternative submission for presentation to the Executive Committee and the Conference. Such a consensus was fashioned and, by unanimous vote, the Executive Committee and the Conference concurred in a revised alternative budget submission for the fiscal year 1990. This alternative budget would fully fund all activities at least at the fiscal year 1988 level and, in addition, include all additional positions requested but funded at 25 percent, anticipating delays in hiring. New program initiatives which are included are also funded at 25 percent of annual costs. This budget does defer requesting funds to implement an ungraded salary system for law clerks (see also "Implementing Judiciary Salary Plan Modifications in the Fiscal Year 1989", *infra* pp. 65-66).

The Director of the Administrative Office was authorized to amend the budget estimates because of new legislation, action taken by the Judicial Conference, or for any other reason the Director considers necessary and appropriate.

## REGISTRY FEES

On the recommendations of the Budget, Bankruptcy, and Judicial Improvements Committees, the Judicial Conference amended the miscellaneous fee schedules for the appellate, district, and bankruptcy courts to assess a charge of up to three percent for the handling of registry funds, contingent upon language being included in legislation to make these fee revenues available directly for use by the judiciary.\* Such charges will be assessed from interest earnings, and in

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\*Such authority was subsequently granted in Public Law 100-459, the judiciary's appropriations act for the fiscal year 1989.



accordance with a detailed fee schedule to be issued by the Director of the Administrative Office after consultation with the Clerks' Advisory Committee and the Chairmen of the Judicial Conference Committees on Judicial Improvements and Bankruptcy Administration. The Director was empowered to exempt certain registry items from any fees altogether and to assess charges at any level lower than three percent should he deem a higher charge inappropriate.

#### IMPLEMENTING JUDICIARY SALARY PLAN MODIFICATIONS IN THE FISCAL YEAR 1989

A. The Judicial Conference agreed to implement in the fiscal year 1989 the following Judiciary Salary Plan (JSP) modifications approved by the Conference at its September 1987 (Conf. Rpt., pp. 62-65) and March 1988 (Conf. Rpt., pp. 32-33) sessions:

- o increases to JSP-12 for principal secretaries to chief circuit judges after three years as secretary to the chief, and upon a showing of exceptional circuit-wide duties;
- o reclassification of secretarial positions in senior staff attorneys' offices to JSP-7 and JSP-9, court recorder operator positions to JSP-8, intake positions in clerks' offices to JSP-8, probation and pretrial services clerical positions to JSP-7, deputy circuit librarians to JSP-13, and magistrates' secretaries to JSP-11;
- o substitution of one year for the three-year service requirement at the next lower salary level for promotion of career law clerks to grade JSP-13, and increase in the target grade level of career law clerks to JSP-14; and
- o modification to the quality step increase plan to provide that such increases may be approved annually (provided that such increases require exceptional performance of all major duties in a sustained manner that substantially exceeds the normal requirements of the position and gives promise of continuing).

Reprogramming authority will be requested from Congress, as necessary.

B. At its March 1987 (Conf. Rpt., p. 8) and September 1987 sessions (Conf. Rpt., pp. 62-63), the Conference voted to remove the present JSP-9, JSP-11, and JSP-12 salaries for "elbow" law clerks, pro se law clerks, and staff attorneys from the graded JSP, and pay new appointees to these positions \$25,400, \$33,000, and \$36,500, respectively, subject automatically to any future comparability increases. As is customary with Conference approval of matters requiring the expenditure of additional resources, approval was "subject to the availability of funds", and the September 1987 Conference (Conf. Rpt., p. 63) specifically noted that the ungraded system would be funded in the fiscal year 1989 "only to the extent that these increases are included in the fiscal year 1989 budget for this purpose." Since Congress will not fund the system in FY 1989, and since the projected cost of the ungraded system exceeds \$13,000,000 -- an amount far too great to be absorbed, given the current budgetary constraints -- the Conference declined to implement the ungraded system during the fiscal year 1989.

#### BUDGET DECENTRALIZATION

In September, 1987 (Conf. Rpt., p. 77), the Judicial Conference approved implementation of a five-court, three-year pilot budget execution decentralization project. At this session, the Conference continued its expansion of the role of local courts in managing their operating budgets by approving two complementary budget decentralization proposals. The first, a pilot project authorizing appellate and district courts to formulate annual financial plans utilizing balances in annual allocations and 75 percent of the savings from positions held vacant in order to purchase equipment or make other necessary expenditures, was approved for the remainder of the fiscal year 1988 and the fiscal year 1989, for Eleventh Circuit courts only. The second proposal would allow any court organization to elect to keep a position or positions vacant for the time required to accumulate from foregone salary payments sufficient funds to purchase personal computers. Effective October 1, 1988, this "Personal Computer Purchases with Personnel Lapses Program", as approved, establishes a salary level of \$20,700 to calculate the savings regardless of the grade of the unfilled position, and reserves 25 percent of the savings for a contingency fund for the judiciary's emergency requirements.

## UNITED STATES CLAIMS COURT

In September, 1987 (Conf. Rpt., p. 68), the Judicial Conference determined not to object to the creation of an Article I United States Claims Court outside of the judicial branch. However, as noted *supra* p. 56 ("United States Claims Court"), the March 1988 Conference (Conf. Rpt., p. 29) referred S. 1608, 100th Congress, a bill intended to establish an independent Claims Court, to the Executive Committee, for further referral to determine whether the legislation would allow the Claims Court to be independent of the Judicial Conference and the Administrative Office without adversely affecting the availability of resources to the judiciary. The Executive Committee referred the legislation jointly to the Budget and Federal-State Jurisdiction Committees.

On recommendation of the Budget Committee, the Judicial Conference voted to recommend that there be no change in the United States Claims Court budget process, and that the Claims Court's budget should remain in the judiciary's "Salaries and Expenses" appropriation. The Conference also agreed that the Claims Court should have more representation in the Judicial Conference system than it has at present. See also "United States Claims Court", *infra* p. 76.

## COMMITTEE ON CODES OF CONDUCT

The Committee on Codes of Conduct reported that since its last report, the Committee had received 32 written inquiries and issued 28 advisory responses. The Chairman also responded to 59 telephone inquiries that did not require reference to the Committee.

## CODES OF CONDUCT

In September, 1986 (Conf. Rpt., pp. 66-67), the Judicial Conference revised the Code of Conduct for United States Judges to remove gender-specific language. At this session, the Conference struck additional gender-specific references in the Code for Judges and in the "Commentary" and "Compliance" sections, and made other technical changes to the Code. The Conference also approved revisions to the Codes of Conduct for Clerks of Court, Probation Officers, Circuit Executives, Staff Attorneys, and Law Clerks, to eliminate gender-specific language, and to make "practice of law" and "participation in professional organizations" provisions uniform. All Codes of Conduct will henceforth appear in a new Volume II of the Guide to Judiciary Policies and Procedures retitled, "Codes of Conduct for Judges and Judicial Employees".

Certain Judicial Conference resolutions are published in the binder containing the Code of Conduct for United States Judges (Vol. II of the Guide, noted above). The Conference rescinded resolutions "B" (relating to judges serving as officers or directors of educational, religious, civic, and charitable organizations; see October 1971 Session, Conf. Rpt., p. 68) and "G" (relating to the taking of photographs and the broadcasting of judicial proceedings; see March 1979 Session, Conf. Rpt., pp. 24-25), on the basis that such matters are more comprehensively covered by Canons 4, 5, and 3A(7) of the Code of Conduct for United States Judges.

#### **COMMITTEE ON COURT SECURITY**

##### **ELECTRONIC MONITORING OF COURTROOMS FOR SECURITY PURPOSES**

At the request of the United States Marshals Service, and on recommendation of the Committee, the Judicial Conference approved a proposal to improve judicial security substantially by allowing the Marshals Service to monitor courtroom proceedings by closed circuit video equipment. No tape recordings may be made.

The Conference considered, and declined to approve, a suggested amendment to Canon 3A(7) of the Code of Conduct for United States Judges, to add a fourth exception "for security surveillance" to the prohibition on cameras in the courtroom.

##### **WEAPONS IN COURTROOMS**

In order to improve court security, the Judicial Conference voted to recommend that each court issue an order regulating the possession of firearms or weapons in the courtroom.

#### **COMMITTEE ON CRIMINAL LAW AND PROBATION ADMINISTRATION**

##### **HIV GUIDELINES**

The Judicial Conference authorized the Committee to promulgate to probation and pretrial services officers guidelines for investigating and supervising offenders who have been exposed to the human immunodeficiency virus (HIV). The guidelines call for case plans for supervision of individuals exposed to HIV; supervision standards; instructions concerning self-disclosure of HIV infection to third parties;

use of public health auspices and an individual's consent to disclose infection status to third parties; notification to the U.S. Marshal when a violator's warrant is issued and to the health care provider or the halfway house or jail facility; use of consent forms; disclosure of HIV exposure to the court during the pretrial and presentence investigation phases; dissemination of educational material on HIV; and development of an HIV resource officer in each probation and pretrial services office.

#### DRUG TESTING FOR PROBATIONERS

H.R. 4406, 100th Congress, would amend title 18, United States Code, to provide for mandatory random drug testing of federal probationers. On the Committee's recommendation, the Conference voted to recommend against enactment of the bill, on the ground that existing law is adequate to permit testing of probationers where there is a reasonable suspicion or previous history of drug abuse.

#### SENTENCING GUIDELINES REPORT

28 U.S.C. 994(o) provides that certain organizations, including the Judicial Conference, must at least annually submit to the United States Sentencing Commission "a written report commenting on the operation of the Commission's guidelines, suggesting changes in the guidelines that appear to be warranted and otherwise assessing the Commission's work." It would appear that the first of these reports is due on November 1, 1988. However, in view of the uncertainty of the constitutionality of the guidelines, and the judiciary's relatively little experience with guideline sentencing to date, the Judicial Conference endorsed the filing of a limited annual report to the Commission.

#### COMMITTEE ON DEFENDER SERVICES

##### APPOINTMENTS AND PAYMENTS

The Committee reported that in the first half of the fiscal year 1988, approximately 30,000 persons were represented under the Criminal Justice Act, compared to approximately 28,000 in the first half of the fiscal year 1987, an increase of 7.1 percent. Of these 30,000 persons represented, 16,956, or 56.5 percent, were represented by federal public and community defender organizations. This represents a 7.6 percent increase over the 15,765 cases received during the same period in the fiscal year 1987.

**BUDGET REQUESTS -  
FEDERAL PUBLIC DEFENDER ORGANIZATIONS**

The Conference approved supplemental budget requests for federal public defender organizations for the fiscal year 1989 as follows:

California, Eastern .....	\$ 217,194
Colorado .....	53,513
Connecticut .....	34,218
Florida, Northern .....	155,296
Florida, Middle .....	231,185
Kansas .....	81,156
Maryland .....	121,856 *
Minnesota .....	66,574
New Jersey .....	74,270
New Mexico .....	52,041
North Carolina, Eastern .....	112,234
Oregon .....	72,126
Pennsylvania, Middle (proposed separate organization) .....	114,957
Tennessee, Middle .....	86,088
Texas, Southern .....	45,425
Washington, Western/Alaska .....	103,109
West Virginia, Southern .....	<u>18,300</u>
 TOTAL .....	 \$1,639,542

The Conference also approved budget requests for the fiscal year 1990 for the federal public defender organizations as follows:

Arizona .....	\$1,442,773
California, Northern .....	1,894,555
California, Eastern .....	1,547,413
California, Central .....	2,593,699
Colorado .....	873,242
Connecticut .....	597,702
Florida, Northern .....	582,614
Florida, Middle .....	1,627,567
Florida, Southern .....	2,869,010
Hawaii .....	866,762

\*Of this amount, \$103,452 is for costs associated with the establishment of a branch office in Hyattsville,

Illinois, Central & Southern/	
Missouri, Eastern .....	844,244
Kansas .....	679,051
Louisiana, Eastern .....	661,030
Maryland .....	1,310,120 *
Massachusetts .....	530,439
Minnesota .....	516,366
Missouri, Western .....	736,091
Nevada .....	1,019,454
New Jersey .....	1,218,345
New Mexico .....	896,683
North Carolina, Eastern .....	840,562
Ohio, Northern .....	528,928
Oklahoma, Eastern, Northern,	
& Western .....	745,582
Oregon .....	1,021,682
Pennsylvania, Middle .....	645,603
Pennsylvania, Western .....	631,879
Puerto Rico .....	594,562
South Carolina .....	428,699
Tennessee, Middle .....	599,931
Tennessee, Western .....	342,394
Texas, Southern .....	1,697,895
Texas, Western .....	1,494,015
Virgin Islands .....	762,635
Washington, Western/Alaska .....	1,342,964
West Virginia, Southern .....	<u>310,538</u>
 TOTAL .....	 \$35,295,029

Observing that the Fifth Circuit Judicial Council had approved the establishment of a federal public defender organization for the Northern District of Texas, the Conference also approved funding for this proposed organization for the fiscal years 1989 and 1990 in the amounts of \$973,545 and \$873,037, respectively.

The Committee will entertain requests for supplemental funding if workload increases or other factors warrant reconsideration of funding needs.

\*Of this amount, \$101,737 is for costs associated with the establishment of a branch office in Hyattsville.

NOTE: As a result of the Conference's approval of the submission of a less than fully funded budget request for the fiscal year 1990, the Defender Services appropriations request for FY 1990 was reduced by \$3,000,000. The projected savings will be generated through savings in personnel compensation and transcript costs.

**GRANT REQUESTS -  
COMMUNITY DEFENDER ORGANIZATIONS**

The Conference approved supplemental sustaining grants for the fiscal year 1989 for the following community defender organizations:

Federal Defenders of San Diego, Inc., California, Southern .....	\$175,195
Federal Defender Program, Inc., Georgia, Northern .....	116,827
Legal Aid & Defender Assn. of Detroit, Federal Defender Division, Michigan, Eastern .....	77,746
The Legal Aid Society of New York, Federal Defender Services Unit, New York, Eastern & Southern .....	<u>265,530</u>
<b>TOTAL .....</b>	<b>\$ 635,298</b>

The Conference also approved sustaining grants for the fiscal year 1990 for the six community defender organizations as follows:

Federal Defenders of San Diego, Inc., California, Southern .....	\$2,372,147
Federal Defender Program, Inc., Georgia, Northern .....	921,560
Federal Defender Program, Inc., Illinois, Northern .....	1,159,793
Legal Aid & Defender Assn. of Detroit, Federal Defender Division, Michigan, Eastern .....	1,107,382



The Legal Aid Society of New York, Fedl. Defender Services Unit, New York, Eastern & Southern . . . . .	3,731,855
Defender Assn. of Philadelphia, Federal Court Division, Pennsylvania, Eastern . . . . .	<u>1,061,061</u>
TOTAL . . . . .	\$10,353,798

The Committee will consider requests for supplemental sustaining grants if workload increases or other factors warrant reconsideration of the approved sustaining grants.

#### DEATH PENALTY RESOURCE CENTERS

The Conference approved sustaining grants for the fiscal year 1989 for 12 death penalty resource center/community defender organizations as follows:

Alabama Capital Representation Resource Center [Alabama] . . . . .	\$235,840
Arizona Death Penalty Resource Center [Arizona] . . . . .	180,000
California Appellate Project [California (N), (E), (C), & (S)] . . . . .	545,693 *
Volunteer Lawyers Resource Center of Florida, Inc. [Florida (N), (M), & (S)] . . . . .	827,500
Georgia Appellate Practice and Educational Resource Center [Georgia (N), (M), & (S)] . . . . .	267,275
Kentucky Capital Litigation Center [Kentucky (E) & (W)] . . . . .	212,760

\*This funding level was approved subject to resolution of details relating to the structure of the organization in a manner deemed satisfactory to the Defender Services Committee.

Loyola Death Penalty Resource Center [Louisiana (E), (M), & (W)] .....	147,730
Mississippi Capital Death Penalty Center [Mississippi (N) & (S)] .....	223,950
North Carolina Death Penalty Resource Center [North Carolina (E), (M), & (W)] .....	100,060
Capital Post-Conviction Project [Oklahoma (N), (E), & (W)] .....	588,823
South Carolina Death Penalty Resource Center [South Carolina] .....	112,740
Texas Appellate Practice and Educational Resource Center [Texas (N), (E), (W), & (S)] .....	<u>912,600</u>
TOTAL .....	\$4,354,971

The requests were approved contingent upon each organization securing the state and other non-CJA funds\* which it had indicated were necessary to finance the state component of its activities, and also contingent upon final approval of all necessary CJA plan amendments. The Conference also (a) delegated to the Defender Services Committee the authority to approve revised grant requests of resource centers in amounts not to exceed the amount originally approved by the Judicial Conference for a particular fiscal year plus the amount of "start-up" costs, if any, approved for an earlier fiscal year; (b) approved an amendment to clause 16 of the "Grant and Conditions for Death Penalty Resource Center/Community Defender Organizations" concerning the expenditure of funds for expert services; and (c) approved for incorporation into the Guidelines for Administration of the Criminal Justice Act (CJA Guidelines), at paragraph 2.01 G, several measures contained in an American Bar Association resolution concerning representation in death penalty federal habeas corpus cases.

\*With respect to the majority of such organizations, the proportion of CJA to non-CJA funding is approximately 60/40.

## FUNDING PRIORITIES

In recognition of the possibility that the "Defender Services" appropriation might be insufficient to fund fully the anticipated level of CJA activities, the Conference established the following priorities for that appropriations account:

First priority category: Federal defender organizations, including traditional federal public and community defender organizations, as well as death penalty resource center/community defender organizations.

Second priority category: Panel attorney compensation.

Third priority category: Special alternative attorney compensation rates for death penalty cases.

Fourth priority category: General alternative attorney compensation rates.

## ALTERNATIVE HOURLY COMPENSATION RATES

Subsection (d)(1) of the Criminal Justice Act, as amended (18 U.S.C. 3006A(d)(1)), establishes hourly maximum rates of attorney compensation of \$60 per hour for time expended in court, and \$40 per hour for time reasonably expended out of court. The subsection also authorizes the Judicial Conference to establish an alternative hourly compensation rate, not to exceed \$75 per hour, if the Conference determines that a higher rate is justified for a circuit or for particular districts within a circuit.

Effective with services performed on or after the date funds are available for implementation, the Conference (a) established a special alternative rate of \$75, for both in- and out-of-court time, for representation in federal habeas corpus death penalty cases only, at all court locations in the Northern District of Ohio, and the Middle and Southern Districts of Florida; and (b) extended the general alternative attorney compensation rate of \$60 per hour for in- and out-of-court time which it had previously established for Portland, Oregon (March 1988 Session, Conf. Rpt., p. 16), to all court locations in the District of Oregon.

## GUIDELINES

The Conference approved the following amendments to the Guidelines for the Administration of the Criminal Justice Act:

1. Amendments to paragraphs 2.30 and 3.06, and Appendices E and F, regarding interim payment of compensation under the CJA.
2. An amendment to paragraph 4.03 concerning federal defenders' discretionary authority to obtain investigative, expert and other services.

The Conference also disapproved a proposed amendment to paragraph 4.02 of the Guidelines recommending that the courts of appeals consider salary parity between federal public defenders and United States attorneys.

### COMMITTEE ON FEDERAL-STATE JURISDICTION

#### UNITED STATES CLAIMS COURT

As noted supra pp. 56 and 67, the Executive Committee referred to the Federal-State Jurisdiction Committee the question of the appropriate place of the United States Claims Court in the federal system. On the Committee's recommendation, the Conference unanimously voted to recommend to the Congress that the Claims Court remain as a part of the judiciary within the policy structure of the Judicial Conference and the existing administrative structure.

The Conference deferred action until its March meeting on two specific recommendations to increase the Claims Court's participation in the Judicial Conference system, i.e., to designate the Chief Judge of the Federal Circuit to represent the Claims Court on the Conference, and to recommend that the Chief Justice consider the appointment of a Claims Court judge to the Committee on Judicial Resources.

#### DIVERSITY OF CITIZENSHIP JURISDICTION

28 U.S.C. 1332(a)(2) gives the district courts diversity jurisdiction over actions between citizens of a state and citizens or subjects of a foreign state; 28 U.S.C. 1332(a)(3) covers actions between citizens of different states in which citizens or subjects of a foreign state are parties.

Diversity jurisdiction exists under these provisions even though the alien may have been admitted to the United States as a permanent resident.

There is no reason why actions involving persons who are permanent residents of the United States should be heard by federal courts merely because one of them remains a citizen or subject of a foreign state or has not yet become a citizen of the United States. Accordingly, the Conference agreed to recommend that Congress amend 28 U.S.C. 1332(a) to treat a permanent resident alien as a citizen of the state of his or her domicile.

#### FOREIGN PRODUCT LIABILITY

S. 1996 and H.R. 3662, 100th Congress, would, among other things, enlarge the jurisdiction of the federal courts by modifying the complete diversity removal requirement of 28 U.S.C. 1441(b) to a minimal diversity removal requirement, for cases brought by a foreign claimant against a domestic defendant for injuries sustained abroad relating to the manufacture, purchase, sale, or use of a product outside the United States. Since there is no demonstrated need that justifies departure from existing diversity rules in such cases, the Conference opposed this aspect of the bills. The Conference also voted to advise Congress of its concern that the choice of law rule set out in the bills -- the law of the place of injury, in this case a foreign country -- would be impractical and difficult to administer.

#### PRODUCT LIABILITY

H.R. 115, 100th Congress, as reported by the House Committee on Energy and Commerce, would amend the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*) by adding, *inter alia*, provisions establishing standards for manufacturer and product seller liability, standards for punitive damages, periods of limitations, workers compensation offsets, and mandatory mediation. While most of the matters addressed in the legislation raise questions of legislative policy, some bear on judicial workload and the ability of trial judges to manage litigation, upon which comment by the judiciary would be appropriate.

On the recommendation of the Committee, the Conference agreed to recommend that Congress amend H.R. 1115 to give trial judges discretion to forego mediation in appropriate cases and to bifurcate a trial for the determination of punitive damages; to clarify that the same jury may be used in both phases of a bifurcated proceeding; and to bar removal of claims under the Act from state to federal court.

## AVIATION ACCIDENTS

S. 473, 100th Congress, would regulate interstate commerce by providing for uniform standards of liability applicable to general aviation accidents. The bill, and its House companion, generally raise questions of legislative policy for the Congress. Of concern to the judiciary, however, is the fact that the legislation would extend federal jurisdiction to all general aviation accidents without reference to diversity of citizenship and without regard to the amount in controversy, and with an unlimited right of removal from state to federal court. Since this expansion is both unwarranted and unnecessary, the Conference opposed this enlargement of federal jurisdiction. In addition, to reduce the burden on federal courts and to preserve plaintiffs' choice of forum, the Conference voted to recommend that the bills be amended to bar removal of claims under the Act from state to federal court.

## JURISDICTION OF THE FEDERAL CIRCUIT

The Judicial Conference endorsed an amendment to 28 U.S.C. 1292(d), proposed by the Department of Justice, to give the Court of Appeals for the Federal Circuit exclusive jurisdiction to entertain an appeal from an interlocutory order of a district court granting or denying, in whole or in part, a motion to transfer an action to the United States Claims Court pursuant to 28 U.S.C. 1631.

## JUDICIAL REVIEW OF VETERANS CLAIMS

The Judicial Conference has consistently voted to recommend that review of decisions on veterans' claims for benefits should be conferred exclusively upon the Board of Veterans' Appeals or upon a new executive branch Article I court, noting that appellate review of the decisions of the Board of Veterans' Appeals, or a new executive branch court, by the district courts, courts of appeals and the Supreme Court, is most undesirable in view of the potential impact on the caseloads of these courts. The Conference has also noted that if Article III judicial review were deemed to be appropriate, it should be limited to constitutional issues and questions of statutory interpretation. E.g., September 1982 Session, Conf. Rpt., p. 65.

S. 2292, 100th Congress, focuses on review of regulations promulgated by the Veterans Administration and would provide review in the courts of appeals only of the validity of VA regulations governing loans, grants, or benefits. The regulations could be reviewed directly under the Administrative Procedure Act or by a claimant in a benefit

proceeding; in the latter case, the validity of the regulation could be reviewed by a court of appeals, but court review would not extend to the claimant's entitlement to benefits and factual issues would not be subject to review "unless they raise a constitutional issue."

Since the approach taken in S. 2292 is consistent with prior Conference recommendations on judicial review of VA decisions in benefit cases, the Conference endorsed this legislation in principle.

#### **EXPORT ADMINISTRATION ACT**

H.R. 3973, 100th Congress, would provide for review in the Court of Appeals for the District of Columbia Circuit of certain civil penalty orders of the Secretary of Commerce under the Export Administration Act, 50 U.S.C. App. 2401-2420. Finding judicial review of such civil penalty orders to be unobjectionable, the Conference agreed to support such judicial review in principle.

#### **REMOVAL OF ALIEN TERRORISTS**

The Office of Management and Budget requested the views of the Judicial Conference on a Department of Justice draft bill to amend the immigration laws to provide a new method of removing from the United States aliens involved in terrorist acts. The bill would create a special court composed of five sitting district judges to hear proceedings for removal of alien terrorists (as defined in the bill), with multiple interlocutory appeals outside the main operation of the district court structure, to deal with a perceived special problem with international terrorists in the United States. Since no justification for this departure from traditional exclusion and deportation procedures has been demonstrated, the Conference opposed the legislation as placing an undue burden on the federal courts. The Conference also voted to recommend that OMB review the draft legislation carefully in view of the serious constitutional questions it raises.

#### **COMMITTEE ON INTERCIRCUIT ASSIGNMENTS**

The Committee on Intercircuit Assignments reported that during the period February 1, 1988, through July 31, 1988, the Committee had recommended 50 intercourt assignments to be undertaken by 44 judges. Of this number, one was a retired associate justice of the United States Supreme Court, 10 were senior circuit judges, 13 were active circuit judges, 12 were senior district judges, five were active district

judges, two were senior judges of the Court of International Trade, and two were active judges of the Court of International Trade.

Of the 50 assignments approved, 30 judges undertook 34 assignments to the courts of appeals, and 16 judges undertook 16 assignments to the district courts.

#### **COMMITTEE ON INTERNATIONAL APPELLATE JUDGES CONFERENCE OF 1990**

The International Appellate Judges Conference Committee reported on its activities in preparation for the International Appellate Judges Conference, tentatively set for September, 1990. The Committee is working in close cooperation with the Committee on the Bicentennial of the Constitution.

#### **COMMITTEE ON THE JUDICIAL BRANCH**

The Committee on the Judicial Branch reported that it has fixed its priority attention squarely upon the forthcoming review by the Commission on Executive, Legislative, and Judicial Salaries of pay rates for judges, the Congress, and Presidential appointees in the executive branch. Under the Federal Salary Act of 1967, as amended (2 U.S.C. 351, *et seq.*), the Commission must report to the President by December 15 as to the results of its review and its recommendation of the appropriate salary level for each office under its purview. The President then submits to Congress in early January his recommendations with respect to the exact rates of pay which he deems advisable for the covered offices and positions. These recommendations become the lawful salary rates for the affected positions unless both Houses of Congress enact a joint resolution of disapproval (which would have to be signed into law by the President) within the 30-day period commencing on the date when the President's pay recommendations are transmitted to Congress. This opportunity will mark the last occasion for meaningful salary reform (other than on an annual cost-of-living basis, if and when allowed by Congress), until 1993 at the earliest.

The Committee has been active in focusing the attention of White House officials on the judiciary's salary plight. Interested private groups, including the Federal Judges Association, the American Bar Association, the American College of Trial Lawyers, Common Cause, the corporate legal counsel, and the National Conferences of Bankruptcy Judges and of United States Magistrates, promise to be active in the effort to achieve meaningful salary relief.



## COMMITTEE ON JUDICIAL ETHICS

The Committee on Judicial Ethics reported that, as of June, 1988, the Committee had received 2,220 financial disclosure reports and certifications for the calendar year 1987, including 981 reports and certifications from judicial officers and 1,239 reports and certifications from judicial employees.

## COMMITTEE ON JUDICIAL IMPROVEMENTS

### AUTOMATION

A. The Committee on Judicial Improvements reported that it had unanimously approved the Long Range Plan\* for Automation in the United States Courts (1989 Update). In so doing, it reviewed the status of automation in the courts and the uncertainty of the current budgetary situation, and reaffirmed the following automation priorities:

1. In order to eliminate the substantial maintenance costs for the judiciary's aging DEC-10 mainframe computers, systems that off-load applications from the DEC-10s will receive top priority for development and implementation.
2. Recognizing that the Bankruptcy Court Automation Project (BANCAP) will be of inestimable value to the overburdened and paper-intensive bankruptcy courts, the second priority is the implementation of BANCAP.
3. Third in priority is implementation of other integrated case management (ICMS) systems in the appellate and district courts, and office automation to the extent funding is available. The data communications pilot project, and probation office automation follow.

In accordance with these priorities, the Committee selected courts for implementation of the CIVIL, CRIMINAL, and BANCAP systems for the fiscal year 1989 and early in the fiscal year 1990, resources permitting.

B. In 1987, the Court Administration Committee approved a comprehensive program to provide office automation at all levels of the judiciary over a three-year period, at a cost of approximately \$120,000,000. Although the judiciary has sought funds to implement this

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\*Formerly Five-Year Plan for Automation in the United States Courts.

program, Congress has not yet provided them. The judiciary remains fully committed to the comprehensive office automation program. However, until additional funding is forthcoming, in order to ensure that the limited available resources are disbursed equitably, the Committee adopted the following priorities for the emergency and scheduled replacement of office automation equipment:

1. Top priority for office automation equipment is the emergency replacement of word processing equipment in chambers that is certified by the judge to be failing and impossible to maintain (e.g., parts or service are unavailable, or machine cannot be kept in operation).
2. Any office automation funds available above the amount required for emergency replacement will be used to replace equipment for judges' secretaries on a machine-by-machine, court-by-court basis, starting with courts with the oldest average age of equipment in chambers.
3. Any additional funds for office automation may be used to provide one personal computer to be shared by law clerks in chambers where no government-furnished personal computers are available for law clerks.

New judicial officers, and those qualifying for purchase of office automation equipment under these priorities, will receive allocations of \$6,000 if they have a single secretary, \$10,000 if they have two secretaries, and \$16,000 if they have three secretaries. They may purchase IBM-AT compatible personal computers from the judiciary-wide office automation contract when it is awarded in the fiscal year 1989 or, alternatively, may elect to purchase locally, so long as (a) applicable procurement statutes and regulations are complied with, and (b) the equipment meets the specifications set by the Committee. The \$6,000, \$10,000, and \$16,000 allocations do not apply with respect to personal computers purchased under the decentralized budgeting pilot program, the Eleventh Circuit's program for management of financial resources, or the Personal Computer Purchases with Personnel Lapses program (see "Budget Decentralization", supra pp. 66-67).

## RELEASE AND SALE OF COURT DATA

The judiciary generates a large volume of data which is of considerable interest and value to the bar and litigants, to the media, to scholars and government officials, to commercial enterprises, and to the general public. The courts and the Administrative Office are frequently requested to release or sell court data to individuals and organizations outside the court family, including a growing volume of requests from credit agencies and other commercial organizations desiring bankruptcy case information for purposes of resale.

On recommendation of the Committee, the Judicial Conference authorized an experimental program of electronic access for the public to court information in one or more district, bankruptcy, or appellate courts in which the experiment can be conducted at nominal cost, and delegated to the Committee the authority to establish access fees during the pendency of the program. Although existing law requires that fees collected in the experimental phase would have to be deposited into the United States Treasury, the fees charged for automated access services could defray a significant portion of the cost of providing such services, were the Congress to credit these fees to the judiciary's appropriations account in the future.

## VIDEOTAPING COURT PROCEEDINGS

Under 28 U.S.C. 753, district judges may voluntarily use a variety of methods for taking the record of court proceedings, subject to guidelines promulgated by the Judicial Conference. At the request of a court that it be allowed to experiment with videotaping as a means of taking the official record, the Judicial Conference authorized an experimental program of videotaping court proceedings. Under the two-year experiment, which would include approximately six district courts (judges), in no more than two circuits, the courts of appeals would have to agree to accept as the official record on appeal a videotape in lieu of transcript or, in the alternative, the circuit must limit the production of transcript to be accepted on appeal to a very few pages. Participating judges would continue to utilize their present court reporting techniques (court reporter, electronic sound recording, etc.) during the experimental program.

The Conference designated the chair of the Committee on Judicial Improvements to seek approval of the Director of the Federal Judicial Center for the Judicial Center to design, conduct, and evaluate the experiment.

## VIDEOCONFERENCING OF ARRAIGNMENTS AND HABEAS CORPUS CASES

The Committee reviewed two proposals for closed circuit television communication between federal courts and local jails, and recommended that the Judicial Conference authorize an experimental videoconferencing program. The Conference authorized the experimental use of videoconferencing of initial appearances and arraignments ("not guilty" pleas only), and of prisoner civil rights and habeas corpus cases.

Although these programs will benefit the judiciary through increased regularity and flexibility in court scheduling and reduced security risks, they will also substantially reduce prisoner transportation costs. Accordingly, the chair of the Committee on Judicial Improvements will explore the availability of funds for implementation of the pilot programs.

## MISCELLANEOUS FEE SCHEDULES

In order to remedy an inadvertent omission when the miscellaneous fee schedules were comprehensively revised in 1987 (March 1987 Session, Conf. Rpt., pp. 11-17), the Conference added the following language to the miscellaneous fee schedules approved pursuant to 28 U.S.C. 1913 (courts of appeals), 1914 (district courts), 1926 (U.S. Claims Court), and 1930 (bankruptcy courts):

11. [or 12, 6, or 18, respectively] The court may charge and collect fees, commensurate with the cost of printing, for copies of the local rules of court. The court may also distribute copies of the local rules without charge.

The Conference also corrected the reference in the Language to Clarify Reopened and Converted Bankruptcy Code Cases, which follows the numbered items in the bankruptcy fee schedule, from 28 U.S.C. 1930(b) to 28 U.S.C. 1930(a).

## TRAVEL REGULATIONS FOR JUSTICES AND JUDGES

In order to permit reimbursement of meal expenses incurred at a judicial officer's official station, if the meals are incidental to the judicial officer's attendance at, and necessary to full participation in, a meeting of a committee of the Judicial Conference, the Conference approved the following amendment to the travel regulations for justices and judges

(Vol. III, Chapter 15, section D.1.a.(5) of the Guide to Judiciary Policies and Procedures) (underlined language to be inserted):

- (5) A judge who is invited to attend a Circuit Judicial Conference or Judicial Conference committee meeting which is being held in the city where that judge's official station is located may be reimbursed for meals if such meals are incidental to the meeting, provided that the attendance of the judge at the meals is necessary to full participation in the business of the conference or committee meeting and that the judge is not free to partake meals elsewhere without being absent and missing essential formal discussions, lectures or speeches concerning the business of the conference or meeting. Reference to this paragraph D.1.a.(5) on any voucher claiming such meals will be considered sufficient documentation that the judge has met the criteria for payment of this item of subsistence. Under no other circumstances may judges claim subsistence at their official station.

#### PLACES OF HOLDING COURT

The Judicial Conference voted to support the designation of Watertown as a place of holding court for the Northern District of New York, and the deletion of Malone as a place of holding court for the same district. The Conference also agreed to support S. 2340 and H.R. 4552, 100th Congress, bills to amend 28 U.S.C. 89(b) and (c) to move three counties from the Southern District of Florida to the Middle District of Florida.

#### COMMITTEE ON JUDICIAL RESOURCES

##### ADDITIONAL JUDGESHIPS

The Judicial Conference reviewed the results of the 1988 biennial survey of judgeship needs conducted by the Committee on Judicial Resources, and its predecessor Subcommittee on Judicial Statistics, and voted to recommend the creation of 14 additional judgeships in the United States courts of appeals, and 37 additional permanent judgeships and 22 additional temporary judgeships in the United States district courts. The Conference notes that the Congress has not as yet acted on the Conference recommendations for additional

judgeships resulting from the 1986 biennial survey. The recommendations which follow include all of the judgeships recommended by the Judicial Conference in 1986 for the courts of appeals. The recommendations for the district courts include 49 positions recommended by the Judicial Conference in 1986, but exclude 7 positions recommended in 1986 because the courts' recent workloads no longer support the positions or the courts have withdrawn their requests. The Conference also recommends that four positions presently authorized to serve more than one district be converted to serve a single district, that one position authorized to serve three districts be converted to serve two districts, and that six temporary judgeships be made permanent.

The Conference voted to recommend the creation of additional judgeship positions in the following United States courts of appeals:

Third Circuit . . . . .	2
Fourth Circuit . . . . .	4
Fifth Circuit . . . . .	1
Eighth Circuit . . . . .	2
Tenth Circuit . . . . .	2
Eleventh Circuit . . . . .	<u>3</u>
TOTAL . . . . .	14

The Conference also voted to recommend the creation of additional permanent and temporary judgeships in the following United States district courts:

First Circuit:

Massachusetts . . . . .	1 t/p*+1 temp.
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Second Circuit:

Connecticut . . . . .	2
New York (N) . . . . .	1 temp.
New York (E) . . . . .	1
New York (S) . . . . .	1
New York (W) . . . . .	1 t/p.

\*Existing temporary position to be made permanent.

Third Circuit:

New Jersey .....	3
Pennsylvania (E) .....	3 + 1 temp.
Virgin Islands .....	1

Fourth Circuit:

Maryland .....	1 temp.
Virginia (E) .....	1 temp.

Fifth Circuit:

Louisiana (M) .....	1 temp.
Louisiana (W) .....	1
Mississippi (S) .....	1
Texas (E) .....	1 temp.
Texas (S) .....	3
Texas (W) .....	1

Sixth Circuit:

Michigan (W) .....	1 temp.
Ohio (N) .....	1 t/p + 1 temp.
Ohio (S) .....	1 + 1 temp.
Tennessee (E) .....	1
Tennessee (M) .....	1 temp.

Seventh Circuit:

Illinois (N) .....	1 + 1 t/p
Illinois (C) .....	1 temp.
Illinois (S) .....	1 temp.
Indiana (N) .....	1 t/p

Eighth Circuit:

Arkansas (E) .....	2 r/single district*
Arkansas (W) .....	1
Iowa (N) .....	1 r/single district

\*Existing roving position between judicial districts to be redesignated.

Iowa (S).....	1
Missouri (E).....	1 + 1 temp.
Nebraska.....	1 temp.

Ninth Circuit:

California (N).....	2
California (E).....	1 temp.
California (C).....	6
Hawaii.....	1 temp.
Nevada.....	1 temp.
Oregon.....	1
Washington (W).....	1 t/p

Tenth Circuit:

Kansas.....	1 temp.
New Mexico.....	1
Oklahoma (N).....	1
Oklahoma (W).....	2 + 1 temp. + 1 r/ single district + 1 r/dual district

Eleventh Circuit:

Alabama (N).....	1 temp.
Florida (M).....	1 + 1 temp.*

TOTAL.....	37 + 22 temp. + 6 temps. to be made permanent + 5 rovers to be redesignated.
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\*If, prior to enactment of judgeship legislation, the Congress should transfer three counties from the Southern to the Middle District of Florida, the recommendation would be for two additional permanent judgeships for the Middle District of Florida.



If the Congress were to eliminate diversity of citizenship jurisdiction, the request for district judgeships would be reduced from 59 (37 permanent and 22 temporary) to 13 (two permanent and 11 temporary).

#### FISCAL YEAR 1990 BUDGET REQUESTS FOR SUPPORTING PERSONNEL

The Judicial Conference reviewed requests for fiscal year 1990 positions for circuit executives' staffs, for staff attorney offices, and for the national court library system, and took the following actions (subject to the availability of resources):

1. Agreed to the conversion of 12 temporary JSP-11 telecommunications coordinators in the circuit executives' offices to permanent positions, one in each circuit.
2. Approved an additional secretarial position for the circuit executives in the First and Third Circuits.
3. Approved the addition of two attorneys in excess of the one-to-one ratio of staff attorneys to judgeships, to enable the Tenth Circuit to staff a preargument conference program. An additional secretarial position was also approved.
4. Approved 38 additional positions (24 at JSP-9 and 14 at JSP-5) for the national court library system.

#### ADDITIONAL COURT REPORTERS

The Conference approved two additional court reporter positions, one each in the Western District of New York and the Northern District of Texas.

#### FEDERAL EMPLOYEE SALARY OFFSET PROGRAM

The Conference was informed that the President's Council on Integrity and Efficiency had asked for the cooperation of the judiciary in identifying employees delinquent with respect to federally-insured loans and other debts (primarily student loans). Under the Debt Collection Act of 1982 (Public Law 97-365), the judiciary has procedures for offsetting

the salaries of employees delinquent in debts covered by the Act. The Conference agreed to the request.

#### DEFERRAL OF REPAYMENT OF STUDENT LOANS

Observing that initial salary offers for top law school graduates seem to be increasing yearly, the Conference endorsed a proposal to recommend that Congress amend 20 U.S.C. 1077(a)(2)(C) to include judicial law clerks as one of the occupations for which, during service, repayment of the principal on a federally-insured educational loan is waived and only the interest is paid.

#### JUDICIARY SALARY PLAN MODIFICATIONS

On recommendation of the Committee, the Judicial Conference approved the following modifications to the Judiciary Salary Plan:

1. Reclassification of financial administrators from JSP-11 to JSP-12\*, financial assistants from JSP-7 to JSP-8, property & procurement administrators from JSP-10 to JSP-11, property & procurement assistants from JSP-7 to JSP-8, personnel specialists from JSP-11 to JSP-12\*, personnel assistants from JSP-7 to JSP-8, deputies in charge of divisional offices from JSP-13 to JSP-14\*, and docket clerks presently at JSP-7 to JSP-8.
2. Reclassification of two positions as Central Violations Bureau (CVB) administrators, JSP-11, one in each of the two national CVB service centers in the Western District of Texas and the District of Colorado. CVB classifications at locations other than at the two national centers would be discontinued.

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\*Target grade levels meeting specific criteria; not all positions have the potential of being classified at this level.

3. Establishment of a "Save Grade and Pay" plan for certain judiciary employees whose positions are abolished and who are qualified for, and have been selected for, lower graded positions in the judiciary.\*

#### RETIREMENT ANNUITIES FOR COURT REPORTERS

By virtue of a recent amendment to title 5 of the United States Code, as interpreted by the Office of Personnel Management, court reporters who wish to receive a retirement annuity based upon "full-time" service (as opposed to part-time service and a resulting reduction in annuity) must either (a) work a scheduled tour of duty in the courthouse of 80 hours per pay period; or (b) maintain records of the actual hours worked on federal business and work a minimum of 2,080 hours per year on that business. In order that annuities not be reduced solely due to the lack of a regularly scheduled tour of duty if the reporter is paid a full salary as fixed by the Judicial Conference, the Conference recommended a legislative change to 28 U.S.C. 753(e) to define court reporters as "full-time" employees for annuity purposes if they are paid full-time salaries.

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\*On October 6, 1988, the Executive Committee agreed that the plan would apply at this time only to estate administrators in the United States bankruptcy courts. At its December, 1988 meeting, the Committee on Judicial Resources will revisit the conditions and situations where the policy should apply, and make appropriate recommendations to the Conference in March, 1989.

**COMMITTEE ON THE ADMINISTRATION OF THE  
FEDERAL MAGISTRATES SYSTEM**

**SALARIES OF PART-TIME MAGISTRATES**

Observing that, effective October 1, 1988, the ceiling on the salary of full-time magistrates is 92 percent of the salary of a district judge, the Judicial Conference approved the following new salary structure for part-time magistrates:

<u>Level</u>	<u>Amount</u>
1 .....	\$2,264
2 .....	4,117
3 .....	6,176
4 .....	8,234
5 .....	10,293
6 .....	12,351
7 .....	14,410
8 .....	16,468
9 .....	20,585
10 .....	24,702
11 .....	28,819
12 .....	32,936
13 .....	37,053
14 .....	41,170

Magistrate positions in current salary level 2 (\$2,134 per annum) will be placed in new salary level 1 (\$2,264 per annum); magistrate positions in current salary levels 7, 8, 9, 10, and 13 (\$9,722, \$11,858, \$13,992, \$16,127, and \$24,070 per annum, respectively) will be placed in levels 5, 6, 7, 8, and 10 of the new salary structure (\$10,293, \$12,351, \$14,410, \$16,468, and \$24,702 per annum, respectively); magistrate positions in current salary levels 3, 4, 5, 6, 11, and 12 (\$3,201, \$4,269, \$5,335, \$7,588, \$18,380, and \$21,225 per annum, respectively) will receive a two percent cost-of-living adjustment, subject to review of the positions at future meetings of the Magistrates Committee; and the specific recommendations as to magistrate positions in former levels 14, 15, and 16 (\$27,390, \$31,719, and \$36,250 per annum, respectively), as set forth in "Changes in Magistrate Positions", below, were adopted by the Conference as noted below. These salary changes are effective October 1, 1988, subject to the availability of funds.

## CHANGES IN MAGISTRATE POSITIONS

After consideration of the report of the Committee and the recommendations of the Director of the Administrative Office, the district courts, and the judicial councils of the circuits, the Conference approved the following changes in salaries and arrangements for full-time and part-time magistrate positions. Unless otherwise indicated, these changes are to be effective when appropriated funds are available.

### SECOND CIRCUIT

New York, Northern:

Increased the salary of the part-time magistrate position at Watertown from \$24,070 to the new maximum salary of \$41,170 per annum.

### THIRD CIRCUIT

Pennsylvania, Eastern:

Authorized two additional full-time magistrate positions to serve the court at Philadelphia.

Pennsylvania, Middle:

1. Continued the full-time magistrate position at Wilkes-Barre for an additional eight-year term; and
2. Continued the part-time magistrate position at Scranton for an additional four-year term, with a realigned salary of \$32,936 per annum.

Pennsylvania, Western:

Continued the part-time magistrate position at Johnstown for an additional four-year term with a realigned salary of \$2,264 per annum.

Virgin Islands:

Increased the salary of the part-time magistrate position at Christiansted from \$36,250 to the new maximum salary of \$41,170 per annum.

## FOURTH CIRCUIT

### Maryland:

1. Continued the full-time magistrate position at Baltimore which is due to expire on October 9, 1989, for an additional eight-year term; and
2. Increased the salary of the part-time magistrate position at Upper Marlboro from \$36,250 to the new maximum salary of \$41,170 per annum.

### North Carolina, Eastern:

1. Continued the full-time magistrate position at Raleigh for an additional eight-year term;
2. Continued the authority of the clerk of court at Raleigh to perform magistrate duties for an additional four-year term at the currently authorized aggregate compensation of a clerk of a large district court (JSP-16); and
3. Increased the salary of the part-time magistrate position at Wilmington from \$5,335 to \$7,740 per annum.

### South Carolina:

1. Continued the full-time magistrate position at Columbia which is due to expire on May 15, 1989, for an additional eight-year term; and
2. Maintained the salary of the part-time magistrate position at Florence at the current salary level, with a realigned salary of \$28,819 per annum.

### Virginia, Eastern:

Continued the part-time magistrate position at Richmond for an additional four-year term and increased the salary from \$36,250 to the new maximum salary of \$41,170 per annum.

Virginia, Western:

Continued the full-time magistrate positions at Roanoke and Charlottesville, which are due to expire on September 20, 1989, for additional eight-year terms.

West Virginia, Southern:

Increased the salary of the part-time magistrate position at Beckley/Bluefield from \$36,250 to the new maximum salary of \$41,170 per annum.

FIFTH CIRCUIT

Louisiana, Western:

Increased the salary of the part-time magistrate position at Lafayette (or Opelousas) from \$36,250 to the new maximum salary of \$41,170 per annum.

Texas, Southern:

1. Continued the part-time magistrate position at Galveston for an additional four-year term and increased the salary from \$36,250 to the new maximum salary of \$41,170 per annum; and
2. Increased the salary of the part-time magistrate position at McAllen (or Brownsville) from \$36,250 to the new maximum salary of \$41,170 per annum.

Texas, Western:

1. Increased the salary of the part-time magistrate position at San Antonio from \$36,250 to the new maximum salary of \$41,170 per annum; and
2. Maintained the salary of the part-time magistrate position at Pecos at the current salary level, with a realigned salary of \$32,936 per annum.

## SIXTH CIRCUIT

### Kentucky, Eastern:

Increased the salary of the part-time magistrate position at Covington from \$7,588 to \$12,351 per annum.

### Kentucky, Western:

Increased the salary of the part-time magistrate position at Hopkinsville from \$36,250 to the new maximum salary of \$41,170 per annum.

### Michigan, Eastern:

Continued the full-time magistrate position at Detroit which is due to expire on May 18, 1989, for an additional eight-year term.

### Michigan, Western:

Increased the salary of the part-time magistrate position at Marquette from \$36,250 to the new maximum salary of \$41,170 per annum.

## SEVENTH CIRCUIT

### Illinois, Northern:

Increased the salary of the part-time magistrate position at Rockford from \$36,250 to the new maximum salary of \$41,170 per annum.

### Illinois, Southern:

1. Continued the full-time magistrate position at East St. Louis for an additional eight-year term; and
2. Authorized a new part-time magistrate position at East St. Louis at the new maximum salary of \$41,170 per annum.



Indiana, Northern:

1. Continued the full-time magistrate position at Hammond for an additional eight-year term;
2. Converted the part-time magistrate position at South Bend to full-time status;
3. Continued the part-time magistrate position at South Bend for an additional four-year term, or until a full-time magistrate is appointed at that location; and
4. Increased the salary of the part-time magistrate position at South Bend from \$36,250 to the new maximum salary of \$41,170 per annum, pending conversion of the position to full-time status.

Indiana, Southern:

1. Continued the full-time magistrate position at Indianapolis which is due to expire on September 30, 1989, for an additional eight-year term; and
2. Maintained the salary of the part-time magistrate position at Terre Haute at the current salary level, with a realigned salary of \$5,442 per annum.

EIGHTH CIRCUIT

Arkansas, Eastern:

Continued the part-time magistrate position at Jonesboro for an additional four-year term with a realigned salary of \$2,264 per annum.

Arkansas, Western:

Increased the salary of the part-time magistrate position at Hot Springs from \$13,992 to \$21,650 per annum.

Iowa, Southern:

1. Converted the part-time magistrate position at Des Moines to full-time status; and
2. Increased the salary of the part-time magistrate position at Des Moines from \$36,250 to the new maximum salary of \$41,170 per annum, pending conversion of the position to full-time status.

Minnesota:

Continued the part-time magistrate position at St. Paul for an additional four-year term and increased the salary from \$36,250 to the new maximum salary of \$41,170 per annum.

Missouri, Eastern:

1. Authorized an additional full-time magistrate position to be located at either Cape Girardeau or St. Louis; and
2. Discontinued the part-time magistrate position at Cape Girardeau upon the filling of the new full-time magistrate position.

South Dakota:

1. Maintained the salary of the part-time magistrate position at Rapid City at the current salary level, with a realigned salary of \$37,053 per annum; and
2. Maintained the salary of the part-time magistrate position at Pierre at the current salary level, with a realigned salary of \$28,819 per annum.

## NINTH CIRCUIT

### Alaska:

Increased the salary of the part-time magistrate position at Anchorage from \$36,250 to the new maximum salary of \$41,170 per annum.

### Arizona:

Maintained the salary of the part-time magistrate position at Grand Canyon National Park at the current salary level, with a realigned salary of \$28,819 per annum.

### California, Northern:

1. Continued the full-time magistrate position at San Francisco which is due to expire on September 6, 1990, for an additional eight-year term;
2. Converted the part-time magistrate position at Monterey (or Salinas) to a full-time magistrate position at San Jose or Monterey;
3. Continued the part-time magistrate position at Monterey (or Salinas) at the current salary level, with a realigned salary of \$32,936 per annum, for an additional four-year term, or until the appointment of the second full-time magistrate at San Jose; and
4. Changed the location of the part-time magistrate position at Monterey (or Salinas) to Monterey (or San Jose).

### California, Central:

Continued the full-time magistrate position at Los Angeles which is due to expire on April 22, 1989, for an additional eight-year term.

### California, Southern:

Increased the salary of the part-time magistrate position at El Centro from \$31,719 to \$37,053 per annum.

Idaho:

Continued the part-time magistrate position at Coeur d'Alene (or Moscow) for an additional four-year term with a realigned salary of \$16,468 per annum.

Montana:

Discontinued the part-time magistrate position at Glasgow upon the expiration of the current term on March 31, 1989.

Oregon:

1. Authorized a new part-time magistrate position at Medford at a salary of \$5,442 per annum; and
2. Continued the part-time magistrate position at Bend for an additional four-year term and increased the salary from \$2,134 to \$3,265 per annum.

Washington, Western:

1. Continued the full-time magistrate position at Seattle which is due to expire on September 30, 1989, for an additional eight-year term;
2. Continued the full-time magistrate position at Tacoma for an additional eight-year term;
3. Increased the salary of the part-time magistrate position at Tacoma (or Mt. Rainier National Park) from \$36,250 to the new maximum salary of \$41,170 per annum; and
4. Increased the salary of the part-time magistrate position at Olympic National Park from \$27,390 to \$32,936 per annum.

TENTH CIRCUIT

Colorado:

1. Increased the salary of the part-time magistrate position at Grand Junction from \$36,250 to the new maximum salary of \$41,170 per annum; and

2. Increased the salary of the part-time magistrate position at Colorado Springs from \$36,250 to the new maximum salary of \$41,170 per annum.

Kansas:

Continued the part-time magistrate position at Leavenworth for an additional four-year term with a realigned salary of \$12,351 per annum.

New Mexico:

Increased the salary of the part-time magistrate position at Las Cruces from \$21,225 to \$28,819 per annum.

Oklahoma, Western:

1. Increased the salary of the part-time magistrate position at Lawton from \$36,250 to the new maximum salary of \$41,170 per annum; and
2. Continued the part-time magistrate position at Oklahoma City for an additional four-year term with a realigned salary of \$21,650 per annum.

Utah:

1. Increased the salary of the part-time magistrate position at Salt Lake City from \$36,250 to the new maximum salary of \$41,170 per annum; and
2. Increased the salary of the part-time magistrate position at Monticello (or Moab) from \$2,134 to \$4,354 per annum.

Wyoming:

Discontinued the part-time magistrate position at Worland upon the expiration of its current term in July, 1989.

## ELEVENTH CIRCUIT

### Florida, Northern:

Continued the part-time magistrate position at Panama City for an additional four-year term with a realigned salary of \$12,351 per annum.

### Florida, Middle:

Increased the salary of the part-time magistrate position at Ft. Myers from \$2,134 to \$28,819 per annum.

### Georgia, Northern:

Increased the salary of the part-time magistrate position at Rome from \$36,250 to the new maximum salary of \$41,170 per annum.

### Georgia, Middle:

Maintained the salary of the part-time magistrate position at Columbus at the current salary level, with a realigned salary of \$37,053.

### Georgia, Southern:

Continued the full-time magistrate position at Augusta for an additional eight-year term.

## COMMITTEE ON PACIFIC TERRITORIES

The Committee on Pacific Territories reported on its activities in planning the Eighth South Pacific Judicial Conference, to be held on the Island of Kauai, Hawaii, April 30 through May 3, 1989. The tentative Conference theme is "Law and Fundamental Rights: A Pacific Perspective".

## COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

### LOCAL RULES

The Judicial Conference authorized the Committee on Rules of Practice and Procedure to undertake a study of local rules of the district courts. That study is under way. The Committee noted, however, that there is no uniform numbering system for federal district court local rules. Since there are many advantages of such a system, e.g., to help the bar in locating rules applicable to a particular subject, and to ease the incorporation of local rules into indexing services and the Westlaw and LEXIS computer services, the Conference approved and urged each district court to adopt a Uniform Numbering System for its local rules, patterned upon the Federal Rules of Civil Procedure.

### APPELLATE RULES

The Committee submitted to the Conference proposed amendments to Rules 4 ("Appeals as of Right - When Taken"), 26 ("Computation and Extension of Time"), and 27 ("Motions") of the Federal Rules of Appellate Procedure, together with Committee Notes explaining their purpose and intent. The Conference approved the amendments for transmission to the Supreme Court for consideration, with the recommendation that they be approved by the Court and transmitted to the Congress pursuant to law.

### CRIMINAL RULES

The Committee submitted to the Conference proposed amendments to Rules 11 ("Pleas"), 32.1 ("Revocation or Modification of Probation"), and 40 ("Commitment to Another District") of the Federal Rules of Criminal Procedure, to add appropriate references to "terms of supervised release", a new type of sentence created by the Sentencing Reform Act of 1984, 18 U.S.C. 3583. The proposed amendments were accompanied by Committee Notes explaining their purpose and intent. The Conference approved the amendments for transmission to the Supreme Court for consideration, with the recommendation that they be approved by the Court and transmitted to the Congress pursuant to law.

## COMMITTEE ON SPACE AND FACILITIES

### COURTROOM SIZES

Under the United States Courts Design Guide, approved by the Judicial Conference in March, 1984 (Conf. Rpt., p. 8), the construction of courtrooms larger than specified standards requires Conference approval. In order to accommodate large numbers of multi-litigant and multi-defendant trials in the Southern District of New York, the Conference approved a request from the Judicial Council of the Second Circuit to permit construction of courtrooms larger than the current standards in a new courthouse in lower Manhattan.

### DAY CARE CENTERS

In response to the requests of several courts for funds to join with other federal agencies in sharing the start-up costs and on-going space costs for day care centers, the Conference approved the discretionary participation of courts in the Federal Day Care Center Program, within available funding.

### RESOLUTION

Noting 50 years of public service by Judge Oren Harris, the Judicial Conference adopted the following resolution:

The Judicial Conference of the United States notes with appreciation, respect and admiration fifty years of public service by

#### THE HONORABLE OREN HARRIS

Senior United States District Judge for the Eastern and Western Districts of Arkansas.

In his five decades of dedicated service to his Country, Judge Harris served as prosecuting attorney for the Thirteenth Judicial District of the State of Arkansas from 1936-1940, and as a member of the United States House of Representatives from the Fourth District of Arkansas from 1941-1966. During his tenure in Congress, he served this Nation with great distinction as Chairman of the Interstate and Foreign Commerce Committee of the House of Representatives. Thereafter, he was appointed United States District Judge for



the Eastern and Western Districts of Arkansas on October 12, 1965, and entered on duty February 3, 1966. Judge Harris served as Chief Judge for the Western District of Arkansas from February 3, 1967 to December 20, 1973. He served as the district judge representative to the Judicial Conference of the United States from the Eighth Circuit from 1971-1974; he was a member of the Executive Committee from 1972-1974; the Advisory Committee on Civil Rules from 1971-1978; the Budget Committee from 1971-1983; and the Committee on the Judicial Branch from 1979-1987. He elected senior status on February 3, 1976.

Judge Harris has made innumerable contributions to the public good, especially while a member of the United States Congress and on the federal bench. We are proud to acknowledge his long, distinguished career and ask that this Resolution be sent to him as a mark of our respect and esteem.

#### **MEMORIAL RESOLUTIONS**

Noting the death of Judge Oscar H. Davis, the Conference adopted the following resolution:

The Judicial Conference of the United States with great sadness notes the death of Circuit Judge Oscar H. Davis of the United States Court of Appeals for the Federal Circuit on June 19, 1988.

Judge Davis succumbed to a long series of illnesses over the past several years. He sat with the court regularly until the month before his death, and, even in his many periods of hospitalization and convalescence, continued to write judicial opinions. In addition to carrying a full caseload with the Federal Circuit and keeping his work current, he frequently sat as a visiting judge with the U. S. Courts of Appeals in Washington and New York. He was recently honored by the Federal Circuit Bar Association on the occasion of the fiftieth anniversary of his admission to the bar.

Judge Davis was nominated by President Kennedy for the Court of Claims in 1962, and he

continued in office as a circuit judge when the Federal Circuit was created in 1982. He served in the Solicitor General's office from 1949 until his elevation to the bench, and as Acting Solicitor General in 1953 and 1956. He argued 45 cases in the Supreme Court and was counsel in 111 others.

Judge Davis was a graduate of Harvard College and Columbia University School of Law. He also was in private practice for several years, was an attorney in the Claims Division of the Department of Justice, and served as a captain in the Army Air Corps from 1942-46.

The members of the Judicial Conference of the United States convey their deepest sympathy to Judge Davis' survivors and request that this resolution be sent to them in recognition of our profound respect and abiding esteem

Noting the death of Judge J. Skelly Wright, the Conference adopted the following resolution:

With deep sadness, the United States Judicial Conference notes the death of Judge J. Skelly Wright on August 6, 1988. Judge Wright served on the United States District Court for the Eastern District of Louisiana from 1948-1962, and on the United States Court of Appeals for the District of Columbia Circuit from 1962 to 1987, serving as its Chief Judge from 1978 to 1981. He was also a member of the Temporary Emergency Court of Appeals from 1981 to 1987, and its Chief Judge from 1982 to 1987.

Judge Wright's career spanned half a century of domestic turbulence and change. A graduate of Loyola University Law School in New Orleans, Louisiana, he practiced law in his home town for fifteen years before becoming United States Attorney for the Eastern District of Louisiana. Appointed by President Truman to the United States District Court, he won a national reputation in the early 1960s for his firm implementation of the United States Supreme Court's desegregation decisions, carried out in the face of an unparalleled cam-

paigned of personal harassment and abuse. On the Circuit bench in the District of Columbia, he wrote nearly 1,000 opinions, many involving the most fundamental issues of the time, each one reflecting his jewel-bright mind, his forthrightness, his intense preoccupation with individual justice and his boundless humanity. Never in his long judicial career did he hesitate to confront and resolve difficult questions of law or theory when necessary to assure fairness and equal protection of the law. The lowliest citizen, the weak and powerless, were his special constituency. Judge Wright's combination of careful scholarship and courageous determination to make the law a working force in the lives of ordinary people placed him in the ranks of premier jurists of our country. He decided landmark cases involving the legal rights of students consigned to educational "tracks" in urban ghetto schools, of exploited consumers and poor tenants facing eviction, of comatose patients whose relatives would deny them blood transfusions, along with the most complex administrative cases that are the daily fare of the District of Columbia Circuit. He was well known as a fast and proficient opinion writer--he never kept his colleagues or litigants waiting. During all his years on the Court, he wrote and lectured at law schools--his wise humanity a continuous delight and illumination to generations of students, his own opinions gracing the casebooks they studied.

Judge Wright was an inspiring colleague, defying pomposity or arrogance, insisting always on bringing us back to the problem at hand, to the plight of the real people in the case awaiting our verdict. A modest man, he was in Justice Brennan's words, "more embarrassed than happy with praise." Yet, in his work, he exhibited raw courage of a kind that made him a lustrous adornment to the federal bench. He will be sorely missed.

The members of the Judicial Conference convey their sympathies to Judge Wright's widow, Helen Wright, to his son James Skelly Wright, Jr., and to his sisters and brother, and ask that this resolution be sent to them as a mark of our profound respect and affection for Judge Wright.

Noting the death of Judge Luther M. Swygert, the Conference adopted the following resolution:

Senior Circuit Judge Luther M. Swygert of the United States Court of Appeals for the Seventh Circuit in Chicago, Illinois was born on February 7, 1905 in Miami County, Indiana, the son of Irvin and Katharine Hoover Swygert. He died March 16, 1988 after serving as a federal judge for 45 years.

He was educated in a one-room country school for the first five grades. Judge Swygert attended the University of Notre Dame and graduated magna cum laude from its law school in 1927. He was admitted to the Indiana Bar and practiced law in Michigan City and Hammond, Indiana for four years. He described those early years as extremely difficult, saying that he was broke and nearly starving most of the time. In 1931, he was appointed deputy prosecuting attorney of Lake County, Indiana.

Soon thereafter, he married Mildred Kercher and they became the parents of two children, Robert, who died at age 13, and Michael, now a distinguished legal scholar, author and professor of law at Stetson University in St. Petersburg, Florida. In 1969, Judge Swygert's first wife died, and he married Mrs. Gertrude Pancoe.

In 1934, Judge Swygert became an Assistant United States Attorney for the Northern District of Indiana, which office he held until 1943 when President Franklin D. Roosevelt nominated him as a United States District Judge for the Northern District of Indiana. He was the first Democrat appointed to the federal bench from Indiana since the Civil War. He served as chief district judge until 1961 when President John F. Kennedy nominated him to the United States Court of Appeals for the Seventh Circuit. Judge Swygert served as its chief judge from 1970 to 1975. He became senior circuit judge in July 1981, but continued to serve the Seventh Circuit as well as other courts of appeals until he became ill in 1987.

Over the years, Judge Swygert served on various committees of the Judicial Conference of the United States, including: the Committee on Uniform Admissions to District Courts and Courts of Appeals, the Committee to Study and Consider the Problem of Venue and Jurisdiction of the District Courts, the Committee on the Revision of the Laws, the Committee on Habeas Corpus and the Subcommittee on Federal Jurisdiction. He was elected to the Judicial Conference as the Seventh Circuit's District Judge Representative in 1961 and also served as Circuit Chief Judge Representative from 1970 to 1975.

Throughout his career, Judge Swygert was known for his strong, ably expressed views in support of individual civil rights. He came from a liberal family and was proud to consider himself a liberal.

He was an enthusiastic and active alumnus of his college and law school, the University of Notre Dame, and served on its law school faculty as an adjunct professor. He also served as a member of its Alumni Board of Directors and on the Board of Visitors of the Valparaiso University School of Law. In addition, he was a teacher for the National Institute for Trial Advocacy and for the Department of Justice. Judge Swygert served as the first Judge-in-Residence at Washington and Lee University School of Law. At that time he lectured, researched and wrote. In 1984, he conducted an innovative seminar entitled "Language and the Law" during the fall term of school at Valparaiso University School of Law. Judge Swygert received doctor of laws degrees from Valparaiso University in 1964, the University of Notre Dame in 1969 and Stetson University School of Law in 1982.

He was active in preserving the Indiana Dunes along the shore of Lake Michigan, which culminated in the establishment of the Indiana Dunes National Seashore Park. He loved nature and enjoyed hiking in the Dunes and other parks.

Judge Swygert was an active innovator in judicial administration. He was the first to provide

written instructions to jurors to help them answer their own questions. Based on his experience in the United States Attorney's office and as a district judge, he championed a rule that required cases reversed for a new trial to be sent to a different trial judge unless the court of appeals or the lawyers representing all the parties wanted it retried by the original judge. Later, at his suggestion, the appellate panels were randomly selected. As circuit chief judge, he was always concerned about collegiality and promoting a spirit of judicial family. This included outings for his colleagues, welcoming parties for new staff, and even playing Santa Claus for the Seventh Circuit family Christmas Party.

Judge Swygert once commented that when he came to the Seventh Circuit in 1961, there were only about three hundred appeals filed a year, whereas during the following twenty-five years, the number increased eightfold. Concerning the problems spawned by such caseloads he said:

I think judges ought to have a lot of time to reflect, to let things develop . . . anything to get the subconscious and the unconscious into operation. There is pressure that defeats that very process, and we are apt to get into a mechanical, routine way of thinking. I deplore it.

Concerning the work of judging, he also said:

I think there is a similarity between the monastic kind of existence and judging. While judges can't be cloistered, there ought to be that kind of devotion and commitment to their jobs.

Concerning the work of the opinion writer, he said:

One thing that happens . . . is that once you start to write an opinion and get into it, sometimes you change your mind. I think the possibility of the writer of the opinion changing his mind is high -- much higher than the other people in agreement.

Judge Swygert once remarked that much of the happiness and lifelong satisfaction he had found in the legal profession derived from having encountered within it everyday so many stimulating minds and personalities. But Judge Swygert himself was indeed a superior example of those traits. He was a widely read, broadly educated, and genuinely cultured man. He was also one with abundant humor, compassion, and goodwill. We may well conclude by quoting Chief Judge William J. Bauer's statement when he announced Judge Swygert's death: "The bench has lost a tremendous man and the United States has lost a great jurist."

#### **PRETERMISSION OF TERMS OF THE COURTS OF APPEALS**

Pursuant to 28 U.S.C. 48, the Conference approved the pretermission of terms of the following United States Courts of Appeals during the calendar year 1989: the Court of Appeals for the Fourth Circuit at Asheville, North Carolina; the Court of Appeals for the Ninth Circuit at Los Angeles, California; and the Court of Appeals for the Tenth Circuit at Wichita, Kansas and Oklahoma City, Oklahoma.

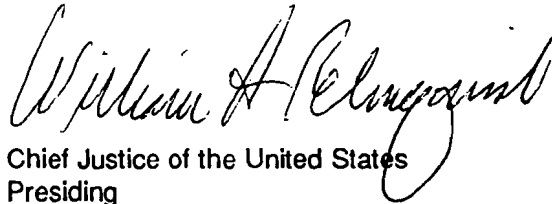
#### **FUNDING**

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

#### **RELEASE OF CONFERENCE ACTION**

The Conference authorized the immediate release of matters considered at this session where necessary for legislative or administrative action.

October 24, 1988

  
Chief Justice of the United States  
Presiding