

## **JUDICIAL CONFERENCE OF THE UNITED STATES**

September 20, 1989

The Judicial Conference of the United States convened on September 20, 1989, 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 James L. Oakes  
Chief Judge Charles L. Brieant, Southern District of  
New York

### **Third Circuit:**

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

### **Fourth Circuit:**

Chief Judge Sam J. Ervin, III  
Judge Frank A. Kaufman, District of Maryland

### **Fifth Circuit:**

Chief Judge Charles Clark  
Judge Barefoot Sanders, Northern District of Texas

### **Sixth Circuit:**

Chief Judge Albert J. Engel  
Chief Judge James P. Churchill, 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  
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

Retired Associate Justice Lewis F. Powell, Jr.; Circuit Judges Richard S. Arnold, Edward R. Becker, Douglas Ginsburg, Cynthia Hall, Stephanie K. Seymour, Walter K. Stapleton, and Robert S. Vance; Senior Circuit Judge Frank M. Coffin; District Judge Richard M. Bilby; and Senior District Judge Edward J. Devitt attended all or some of the sessions of the Conference. Circuit Executives Vincent Flanagan (First Circuit), Steven Flanders (Second Circuit), John P. 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), Gregory B. Walters (Ninth Circuit), Eugene Murret (Tenth Circuit), Norman E. Zoller (Eleventh Circuit), and Linda Finkelstein (District of Columbia Circuit) were also present.

Congressman Robert W. Kastenmeier, Chairman of the House Judiciary Subcommittee on Courts, Intellectual Property, and the Administration of Justice, attended the Conference briefly and spoke on matters pending in the Congress of interest to the judiciary. The Attorney General of the United States, Dick Thornburgh, and Solicitor General Kenneth Starr, 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, Director of the Federal Judicial Center, also attended the sessions of the Conference, as did Lawrence H. Averill, Jr., Administrative Assistant to the Chief Justice.

#### **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, 1989. 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, 1989, the number of cases appealed to the 12 regional courts of appeals rose nearly six percent to 39,734, due to a dramatic increase of more than 2,000 in appeals of criminal cases. The new sentencing guidelines, which for the first time make the sentence itself subject to appeal, contributed substantially to the increase in filings; clerks of appeals courts reported 1,234 appeals concerning sentences only. Dispositions increased four percent this year to a record 37,372, but still remained well below the level of filings. As a result, the pending caseload increased nine percent to 30,006 by year's end, the highest level ever. Filings in the U.S. Court of Appeals for the Federal Circuit climbed nine percent to 1,417, primarily due to an increase in appeals from the Merit Systems Protection Board. Terminations also increased by eight percent this year to 1,440, resulting in a reduction in the pending caseload for the second straight year, down to 636 appeals.

In the United States district courts, the number of civil filings declined three percent during 1989, to 233,293 cases. The decrease was characterized by a drop in U.S. plaintiff filings, particularly cases filed for recovery of overpayment of veterans' benefits. In cases with the United States as defendant, social security claims also continued to decline, reaching their lowest level since 1981. The number of civil cases disposed of decreased by two percent to 234,980, the lowest number of terminations since 1983; however, dispositions outnumbered filings, so the pending civil caseload fell one percent, to 242,436.

Criminal case filings increased three percent during 1989, following a similar increase last year. The 45,995 filings represented a caseload of 80 cases per judgeship, up from 78 per judgeship last year. The increase in criminal filings is directly attributable to the focus on drug-related crimes. Drug cases have increased more than 15 percent each of the last two years, while non-drug related cases have actually declined. Criminal case terminations increased two percent in 1989 to 42,810, after a slight decline last year, while pending criminal cases continued to climb. The pending criminal caseload reached 30,907 at year's end, 11 percent more than were pending at the end of 1988.

Filings in the U.S. bankruptcy courts continued to increase to record levels in 1989. The 642,993 petitions filed this year were eight percent above the number filed in 1988. Despite the overall increase, business petitions declined for the second straight year, dropping nine

percent to 62,534, the lowest level since 1984. Dispositions declined by two percent to 577,848, following last year's unprecedented increase of 22 percent, but still remained 20 percent above the total recorded for 1987. The pending caseload, however, rose to another record high of 879,340, up eight percent from December 31, 1988.

Mr. Mecham also reported that as of September 20, 1989, there were 14 vacancies among the 168 judgeship positions authorized for the United States courts of appeals, 38 vacancies among the 575 authorized judgeships in the United States district courts, and one vacancy on the Court of International Trade.

#### **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 highlights of the fiscal year 1989:

- o Title IV of the Judicial Improvements and Access to Justice Act (Public Law 100-702) made four changes to the Center's organic statute. It made the Center the historical office for the federal judiciary; authorized the Center to provide educational services to non-judicial branch employees where such programs would improve the operation of the courts; established the Federal Judicial Center Foundation to receive gifts to enhance and facilitate the Center's work; and formally recognized the office of Deputy Director.
- o Two new conference programs were initiated, for all U.S. appellate judges and for all U.S. chief district judges.
- o The Judicial Center continued a concentrated effort to refine its educational programs and broaden the content of its offerings. Particular effort continues to be devoted to helping the courts adapt to the requirements of guideline sentencing.

- o At the request of the Budget Committee of the Judicial Conference, the Judicial Center prepared the first comprehensive analysis of cost savings that would result from changes in diversity of citizenship jurisdiction. The Center is also devoting significant staff time to district and bankruptcy court time studies at the request of Conference committees. These studies will provide key information for use in estimating judgeship needs during the next decade.
- o A centralized training academy for probation and pretrial services officers has been established.
- o Testing has begun of a variety of public access facilities the Center has developed to allow law firms, agencies, and the public at large to have easy access to electronic court databases of case docket information.

#### **EXECUTIVE COMMITTEE**

The Executive Committee reported that, since the last session of the Conference in March, 1989, the Executive Committee had addressed the following matters on the Conference's behalf:

#### **JUDICIAL PAY**

In March, 1989 (Conf. Rpt., p. 19), the Judicial Conference unanimously agreed to recommend that Congress immediately increase judicial salaries by 30 percent and couple the increases with periodic cost-of-living adjustments. The Executive Committee approved a draft bill implementing that recommendation.

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

On May 1, 1989, the Executive Committee approved a spending plan for the appropriation "Salaries and Expenses" for the third quarter of the fiscal year 1989. A fourth quarter spending plan was approved on July 5, 1989.

## FEDERAL ETHICS LAW REFORM

At its March 1989 session (Conf. Rpt., p. 12), the Conference referred to the Executive Committee for action, a March 9, 1989 report and recommendations of the President's Commission on Federal Ethics Law Reform. After consultation with the Committees on the Codes of Conduct and Judicial Ethics, the Executive Committee approved extensive comments on the report and recommendations for transmittal to the President, Commission Chair (and retired Judge) Malcolm Wilkey, Attorney General Dick Thornburgh, and others. It was unanimously agreed that, with limited exceptions, the recommendations would have a serious and deleterious impact on the federal judiciary if enacted into law. See also "Federal Ethics Law Reform", infra pp. 55-56.

## PUERTO RICO LEGISLATION

The Executive Committee was asked to fashion a judicial branch response to an urgent request by Senator J. Bennett Johnston, Chairman of the Committee on Energy and Natural Resources, for comments on S. 710, 711, and 712, 101st Congress, three bills dealing with the status of Puerto Rico. Among other things, the bills would permit or require the use of the Spanish language in the United States District Court for Puerto Rico.

In consultation with the Committee on Federal-State Jurisdiction and the chairs of the Committees on Judicial Improvements and Criminal Law and Probation Administration, the Executive Committee approved a statement of Conference views which was transmitted to Chairman Johnston on July 5, 1989. The statement addressed the Spanish language problem; a requirement for transfer of certain cases to the District of Columbia; proposed restrictions on the appointment of federal judges to serve in Puerto Rico; the applicability of federal statutes and regulations to Puerto Rico; the assignment of various labor relations matters; and other issues of Puerto Rico law.

## MISCELLANEOUS ACTIONS

The Executive Committee approved a juror qualification/summons form for use in the experimental testing of a one-step qualification and summoning procedure; authorized the Judicial Resources Committee to grant exceptions to salary rollbacks for law clerks in certain circumstances (see March 1989 session, Conf. Rpt., p. 24); agreed to request that Congress approve the experimental use of comprehensive resident lists, in lieu of voter lists, for filling the master

jury wheel in the District of Massachusetts; agreed to request that Congress delete the current appropriations language restriction on the appointment of staff attorneys in the courts of appeals, and substitute report language permitting the Judicial Conference to approve staff attorney positions utilizing a formula based on authorized judgeships and workload; approved for transmittal to Congress draft appropriations language dealing with the Judicial Conference's hosting of the Fifth International Appellate Judges Conference in 1990 (see September 1987 session, Conf. Rpt., p. 100); approved a report for Congress on the actual costs of filing actions in the district courts of the United States, as required by Public Law 100-702, section 1012(b); and endorsed a project by the Director of the Administrative Office to establish one or more Administrative Office support operations outside of the Washington, D.C. metropolitan area.

## **COMMITTEE ON THE ADMINISTRATIVE OFFICE**

### **RESOLUTION**

In recognition of the 50th anniversary of the creation of the Administrative Office of the U.S. Courts, and the service provided by the agency to the courts, the Judicial Conference adopted the following resolution:

The Judicial Conference of the United States recognizes with appreciation and thanks,

The Administrative Office  
of the United States Courts

on the occasion of its 50th Anniversary of dedicated service to the Federal Judiciary.

The Administrative Office was established by Act of Congress in 1939. As the responsibilities of the courts have grown over the years, so have those of the agency. With limited staff and funds, the Administrative Office has provided those services essential to the sound operation of the United States Courts.

We look forward to many more years of rewarding association with the employees of the Administrative Office.

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

**ADDITIONAL JUDGESHIPS**

In order to respond to a sharp and steady increase in bankruptcy filings, the Conference voted to recommend that Congress authorize one additional bankruptcy judgeship for the Middle District of Tennessee.

**ADDITIONAL DUTY STATIONS AND PLACES OF  
HOLDING COURT FOR BANKRUPTCY JUDGES**

Public Law 100-587 authorized seven additional bankruptcy judgeship positions (one each in the Eastern and Western Districts of Texas, the Eastern District of Kentucky, and the Districts of Alaska, Arizona, Colorado, and Kansas). In March, 1989 (Conf. Rpt., pp. 10-11), the Judicial Conference designated the official duty stations for five of the judgeships, and at this session, the Conference designated Lexington, Kentucky, as the official duty station for the additional bankruptcy judgeship authorized for the Eastern District of Kentucky. Since no recommendation has been made for the District of Arizona by the Judicial Council of the Ninth Circuit, the designation for that district will be made at a later date.

At the request of the Judicial Council of the Second Circuit, the Judicial Conference designated Mayville as a place of holding bankruptcy court for the Western District of New York and eliminated Dunkirk and Jamestown as places of holding court for the same district.

**COMMITTEE ON THE BICENTENNIAL  
OF THE CONSTITUTION**

**COMMEMORATIVE COIN LEGISLATION**

On recommendation of the Committee on the Bicentennial of the Constitution, the Conference endorsed the enactment of legislation requiring the issuance of gold and silver coins to commemorate the Bicentennial of the Bill of Rights and the role of the federal judiciary in interpreting the Bill of Rights.

## **COMMITTEE ON THE BUDGET**

### **SUPPLEMENTAL APPROPRIATIONS FOR THE FISCAL YEAR 1990**

The Judicial Conference authorized the Director of the Administrative Office to submit to the Congress a request for supplemental appropriations for the fiscal year 1990 for "pay costs". The Conference also authorized the Director to amend the request because of any new legislation, action taken by the Judicial Conference, or for any other reason the Director considers necessary and appropriate.

### **APPROPRIATIONS FOR THE FISCAL YEAR 1991**

As was the case with regard to the budget submission for the fiscal year 1990 (September 1989 session, Conf. Rpt., p. 64), the Judicial Conference agreed to the submission of a less than fully funded budget request for the fiscal year 1991. This action was based on the Budget Committee's judgment that the FY 1991 request should exceed FY 1990 funding levels by no more than nineteen percent, whereas a fully funded request for FY 1991 would represent an increase of 24 percent over the estimated allowance for FY 1990. The amount agreed to, \$1,854,895,000 for the Courts of Appeals, District Courts, and Other Judicial Services, represents an increase of approximately 17.5 percent, and was the unanimous recommendation of the Budget Committee and "line" committee chairs.

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.

### **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. Since the evaluation of the project by the National Academy of Public Administration will be completed only after the third year of the pilot, the Conference concurred in the Committee's recommendation to extend the program for one additional year (through the fiscal year 1991), and also concurred in a recommendation to restrict the number of courts participating in the pilot to the present five courts.

## COMMITTEE ON CODES OF CONDUCT

The Committee on Codes of Conduct reported that, since its last report, the Committee had received 30 written inquiries and issued 28 advisory responses. The Chairman also responded to 43 telephone inquiries that did not require reference to the Committee. The Committee will publish three advisory opinions, (a) on the use of chambers, resources, and staff for law-related activities; (b) on the circumstances in which a sitting judge may explore the possibility of post-resignation employment; and (c) on the propriety of law clerks receiving bonuses and reimbursement for relocation and bar-related expenses from future employers prior to the completion of their clerkships.

## FEDERAL ETHICS LAW REFORM

On March 29, 1989, the Judicial Conference advised the President that, with limited exceptions, the recommendations of the President's Commission on Federal Ethics Law Reform would have a serious and deleterious impact on the federal judiciary if enacted into law. See "Federal Ethics Law Reform", *supra* p. 51. The recommendations have been introduced in the 101st Congress as S. 765 and H.R. 2337, the proposed "Governmentwide Ethics Act of 1989". It was the unanimous view of the Conference that the Act as applied to the judiciary is ill-conceived and fundamentally flawed because it is unnecessary, a waste of resources, and unworkable in its "governmentwide" approach. Accordingly, the Conference voted to communicate to Congress its strong opposition to these bills insofar as they relate to the federal judiciary.

Unlike the Governmentwide Ethics Act, the proposed "Post-Employment Restrictions Act of 1989" (H.R. 2267, 101st Congress) does not purport to regulate the conduct of officers and employees of the judiciary while they are in office. It would, however, affect former judges and judicial employees who received compensation at or above the GS 17 level, by making it a crime (a) to be involved during his or her lifetime in a matter on which the former judge or employee worked while employed in the judiciary (the "lifetime ban"); and (b) during the year immediately following his or her leaving office, to appear before the court on which he or she served (or sat by designation more than 60 days during the last two years in office) (the "one-year cooling off period"). The Governmentwide Ethics Act of 1989 contains a similar "one-year cooling off period" restriction. The Justice Department

has recommended that the "cooling off" restriction be extended to include any court on which the judge sat by designation within two years prior to leaving the bench.

With the exceptions noted below, enactment of H.R. 2267 would not have a detrimental effect on the judiciary. The Conference agreed, however, to communicate to Congress the recommendation that, because of the nature of their work, the one-year "cooling off" period contained in the Post-Employment Restrictions Act and the Governmentwide Ethics Act should be amended to exclude from the restriction Federal Public Defenders, United States Magistrates, and United States Bankruptcy Judges. The Conference also opposed the Department of Justice's proposal to extend the no-contact period to include any court on which a judge had sat by designation during the two years immediately prior to leaving the federal bench.

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

The Committee on Court Security reported on its efforts in reviewing and monitoring policy for the security of the courts and the judiciary. The Committee is studying such matters as off-site security arrangements and proposed firearms legislation.

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

#### **FEDERAL VICTIM'S SERVICES AND PROTECTION COMPLIANCE ACT**

Sections 103 and 104 of the proposed Federal Victim's Services and Protection Compliance Act (H.R. 1303, 101st Congress) provide that the Attorney General is to rate all law enforcement officers (including probation and pretrial services officers) on their compliance with the Victim and Witness Protection Act of 1982, and the Victims of Crime Act of 1984, and will set standards to govern services to victims and witnesses. Since no problems have arisen concerning the probation service in this area and additional supervision would be duplicative of ongoing court activity, the Conference voted to oppose these provisions.

#### **SENTENCING GUIDELINES REPORT**

The Conference approved a report for transmittal to the United States Sentencing Commission on the operation of the Commission's guidelines, as required by 28 U.S.C. 994(o).

## CRIMINAL FINE COLLECTION

Section 7121 of the Anti-Drug Abuse Act of 1988, Public Law 100-690, amended the Victims of Crime Act of 1984 (42 U.S.C. 10601(c)) to provide that the first \$2,200,000 in excess of \$125,000,000 deposited in the Crime Victims Fund each fiscal year through FY 1991 shall be available to the judicial branch for administrative costs of fine monitoring and collection. The ceiling is raised to \$150,000,000 for the fiscal years 1992 through 1994, and then "sunsets". Thus, under present law, the courts receive funding only if payments exceed the ceiling and, even then, the amount available is capped at \$2,200,000, which is less than is needed by the judiciary to carry out its administrative obligations.

The Committee on Criminal Law and Probation Administration recommended, and the Conference agreed, that in lieu of the existing statutory scheme, legislation should be sought to provide the judiciary with five percent of the statutory ceiling specified in the Crime Victims Fund, to be used to cover the costs of processing fines, assessments, restitution, interest and penalties, and the cost of monitoring fines by the probation system.

## PRISON INDUSTRIES PREFERENCE

A Senate-approved amendment to S. 1352 (101st Congress), a bill to authorize appropriations for the Department of Defense, would remove the Federal Prison Industries, Inc.'s preference in sales to the Department of Defense. Upon being advised that this amendment would effectively remove the primary market outlet for prison-produced goods, and could therefore have a deleterious impact on the nation's criminal justice system, the Conference voted to oppose the amendment.

## COMMITTEE ON DEFENDER SERVICES

### APPOINTMENTS AND PAYMENTS

The Committee on Defender Services reported that in the first half of the fiscal year 1989, approximately 31,500 persons were represented under the Criminal Justice Act, compared to approximately 30,000 in the first half of the fiscal year 1988, an increase of five percent. Of these 31,500 persons represented, 17,096, or 54.3 percent, were represented by federal public and community defender organizations.

**BUDGET REQUESTS -  
FEDERAL PUBLIC DEFENDER ORGANIZATIONS**

The Committee advised the Conference that it had approved supplemental budget requests for federal public defender organizations for the fiscal year 1990 as follows:

Arizona	\$ 168,760
California (C)	\$ 554,784
California (E)	\$ 294,491
Colorado	\$ 107,023
Hawaii	\$ 177,350
Illinois (C & S) and Missouri (E)	\$ 211,337
Kansas	\$ 81,321
Louisiana (E)	\$ 186,630
Maryland	\$ 129,053
Missouri (W)	\$ 93,662
North Carolina (E)	\$ 10,600
New Jersey	\$ 46,831
New Mexico	\$ 173,176
Oregon	\$ 240,438
Tennessee (M)	\$ 20,700
Tennessee (W)	\$ 136,019
Texas (S)	\$ 178,230
Virgin Islands	\$ 36,391
Washington (W) and Alaska	\$ 886,392
West Virginia (S)	<u>\$ 127,581</u>
Total	\$ 3,060,769

The Committee also approved budget requests for the fiscal year 1991 for the federal public defender organizations as follows:

Alaska	\$ 535,625
Arizona	\$ 1,971,171
California (C)	\$ 3,282,812
California (E)	\$ 2,074,377
California (N)	\$ 2,141,498
Colorado	\$ 1,067,025
Connecticut	\$ 632,768
District of Columbia	\$ 1,215,400
Florida (M)	\$ 1,943,377

Florida (N)	\$ 655,929
Florida (S)	\$ 3,150,018
Hawaii	\$ 1,103,906
Illinois (C & S) and Missouri (E)	\$ 1,276,336
Kansas	\$ 789,458
Louisiana (E)	\$ 890,170
Massachusetts	\$ 563,780
Maryland	\$ 1,621,777
Minnesota	\$ 600,564
Missouri (W)	\$ 891,538
Nevada	\$ 1,066,436
North Carolina (E)	\$ 899,755
New Jersey	\$ 1,432,549
New Mexico	\$ 1,127,228
Ohio (N)	\$ 589,896
Oklahoma (E, N & W)	\$ 796,669
Oregon	\$ 1,354,836
Pennsylvania (M)	\$ 724,298
Pennsylvania (W)	\$ 671,061
Puerto Rico	\$ 706,778
South Carolina	\$ 453,549
Tennessee (M)	\$ 664,652
Tennessee (W)	\$ 522,668
Texas (N)	\$ 961,677
Texas (S)	\$ 2,336,045
Texas (W)	\$ 1,667,976
Virgin Islands	\$ 868,806
Washington (W)	\$ 1,125,805
West Virginia (S)	\$ 608,498
Total	\$44,986,711

GRANT REQUESTS -  
TRADITIONAL COMMUNITY DEFENDER ORGANIZATIONS

The Committee advised the Conference that it had approved supplemental sustaining grants for the fiscal year 1990 for the following traditional community defender organizations:

Federal Defender Program, Inc., Illinois (N)	\$ 82,712
Legal Aid & Defender Assn. of Detroit, Federal Def. Div., Michigan (E)	\$ 42,974
The Legal Aid Society of New York, Federal Def. Services Unit, New York (E & S)	\$ 567,998
Defender Assn. of Philadelphia, Federal Court Div., Pennsylvania (E)	<u>\$ 65,399</u>
Total	\$ 759,083

The Committee also approved sustaining grants for the fiscal year 1991 for the six traditional community defender organizations, as follows:

Federal Defenders of San Diego, Inc., California (S)	\$ 3,045,362
Federal Defender Program, Inc., Georgia (N)	\$ 1,095,950
Federal Defender Program, Inc., Illinois (N)	\$ 1,282,950
Legal Aid & Defender Assn. of Detroit, Federal Def. Div., Michigan (E)	\$ 1,186,764
The Legal Aid Society of New York, Federal Def. Services Unit, New York (E & S)	\$ 4,496,371
Defender Assn. of Philadelphia, Federal Court Div., Pennsylvania (E)	<u>\$ 1,237,837</u>
Total	\$12,345,234

**DEATH PENALTY RESOURCE CENTER/  
COMMUNITY DEFENDER ORGANIZATIONS**

The Committee advised the Conference that it had approved sustaining grants for the fiscal year 1990 for 13 death penalty resource center/community defender organizations as follows:

Alabama Capital Case Resource Center	\$ 387,060
Arizona Capital Representation Project	\$ 222,578
California Appellate Project	\$ 1,492,410
Georgia Appellate Practice and Educational Resource Center	\$ 410,400
Kentucky Capital Litigation Resource Center	\$ 203,307
Loyola Death Penalty Resource Center	\$ 250,134
Mississippi Capital Defense Resource Center	\$ 315,820
Missouri Capital Punishment Resource Center	\$ 305,560
North Carolina Death Penalty Resource Center	\$ 206,260
Capital Post-Conviction Project of the Oklahoma Appellate Public Defender System	\$ 606,801
South Carolina Death Penalty Resource Center	\$ 166,954
Capital Representation Resource Center of Tennessee	\$ 355,884
Texas Appellate Practice and Educational Resource Center	<u>\$ 1,005,881</u>
Total	\$ 5,929,049

The Committee also approved sustaining grants for the fiscal year 1991 for the 13 centers as follows:

Alabama Capital Case Resource Center	\$ 400,549
Arizona Capital Representation Project	\$ 297,668
California Appellate Project	\$ 1,926,170
Georgia Appellate Practice and Educational Resource Center	\$ 442,372
Kentucky Capital Litigation Resource Center	\$ 344,818
Loyola Death Penalty Resource Center	\$ 308,730
Mississippi Capital Defense Resource Center	\$ 357,418
Missouri Capital Punishment Resource Center	\$ 313,480
North Carolina Death Penalty Resource Center	\$ 229,875
Capital Post-Conviction Project of the Oklahoma Appellate Public Defender System	\$ 612,323
South Carolina Death Penalty Resource Center	\$ 172,156
Capital Representation Resource Center of Tennessee	\$ 325,927
Texas Appellate Practice and Educational Resource Center	<u>\$ 2,140,224</u>
Total	\$ 7,871,710

#### GUIDELINES

Noting that the Anti-Drug Abuse Act of 1988 (Public Law 100-690) had effectively repealed attorney hourly compensation rates and case compensation maximums which would otherwise apply in death penalty cases, and concerned about the lack of standards for use by judicial officers in setting attorney compensation for death penalty representation, the Judicial Conference in March, 1989 (Conf. Rpt., pp. 15-16), asked each circuit, through its judicial council, to consider recommending a range or guideline with respect to attorney representation in such cases. The Conference requested circuit councils

to advise the Committee of any action taken, so that the Committee might recommend a model or uniform fee policy in this area.

After reviewing the circuit recommendations, the Conference approved the Committee's proposed amendment to the Guidelines for the Administration of the Criminal Justice Act to establish a range of \$75 to \$125 per hour for compensation for court-appointed attorneys in federal capital prosecutions and federal habeas corpus death penalty cases.

The Committee also informed the Conference that it had approved the following additional amendments to the Guidelines:

1. An amendment to paragraph 3.16 [redesignated as paragraph 6.03 C] concerning the conditions under which a death penalty resource center may use grant funds to furnish services in a district without such a center, and a new Appendix I, concerning qualification standards for death penalty expert consultant panels.
2. An amendment to paragraph 3.12 concerning transcripts of other than federal court proceedings.

In addition, the Committee approved a comprehensive set of revisions to the Guidelines to reflect technical changes required to conform to the Anti-Drug Abuse Act of 1988, to consolidate provisions relating to the appointment and compensation of counsel in death penalty cases, and to reorganize the Guidelines to make them easier to read.

## COMMITTEE ON FEDERAL-STATE JURISDICTION

### REPEAL OF REMAND ORDERS

The Judicial Conference of the Ninth Circuit transmitted to the Judicial Conference a resolution proposing repeal of 28 U.S.C. 1447(d), which makes orders remanding a case to the state court from which it was removed non-appealable. It was the view of the Committee on Federal-State Jurisdiction that repeal of section 1447(d) would add to the burdens of the federal courts, generate unwarranted delays through interlocutory appeals, and disrupt the existing balance between state and federal courts. The Conference agreed, and declined to endorse the proposal.

## **PARENTAL KIDNAPPING PREVENTION ACT**

In Thompson v. Thompson, 108 S.Ct. 513 (1988), the Supreme Court ruled that the Parental Kidnapping Prevention Act, 28 U.S.C. 1738A, does not create a federal cause of action to resolve conflicts between states on the issue of jurisdiction over child custody disputes. The American Bar Association has proposed that Congress overturn this holding.

The Judicial Conference opposed the overruling of Thompson v. Thompson. Such legislation would constitute an unnecessary expansion of federal jurisdiction into areas in which federal courts have no expertise and could result in unnecessary federal-state conflicts.

## **COMMITTEE ON INTERCIRCUIT ASSIGNMENTS**

The Committee on Intercircuit Assignments reported that during the period February 1, 1989, through August 1, 1989, the Committee had recommended 48 intercircuit assignments to be undertaken by 41 judges. Of this number, 13 were senior circuit judges, four were active circuit judges, 12 were senior district judges, nine were active district judges, one was a senior judge of the Court of International Trade, and two were active judges of the Court of International Trade.

Of the 48 assignments approved, 20 judges undertook 25 assignments to the courts of appeals, and 22 judges undertook 23 assignments to the district courts.

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

The Committee on the International Appellate Judges Conference reported on its progress in planning and raising funds for the International Appellate Judges Conference in Washington, D.C., September 11-14, 1990. The program has been preliminarily approved, and invitations have been sent out by the Chief Justice to all state and territorial chief justices.

## **COMMITTEE ON THE JUDICIAL BRANCH**

### **SENIOR JUDGE LEGISLATION**

Congressman Robert Kastenmeier, Chairman of the House Judiciary Subcommittee on Courts, Intellectual Property, and the

Administration of Justice, has introduced legislation in the 101st Congress affecting senior judges. The bill, H.R. 1930, would allow all senior judges to receive cost-of-living adjustments (COLAs) implemented for other executive level officers, but would set up a certification process that would prohibit senior judges from receiving non-COLA increases unless they met certain minimum workload requirements, i.e., 25 percent for case-related judicial duties, and full-time work for administrative functions. The two types of duties could not be aggregated and, once a senior judge failed to be certified for non-COLA salary increases, that judge could not again qualify for them.

The Conference determined that H.R. 1930 (or any similar proposal imposing minimum work requirements that must be met in order for senior judges to receive salary increases) inevitably creates unfortunate disincentives and is therefore undesirable in principle. In the event Congress were to enact this type of legislation despite the judiciary's reservations, the Conference voted to recommend the following revisions in the present text of H.R. 1930:

1. Add a "grandfather" provision to make the bill inapplicable to all federal judges in office as of the date of enactment or, at a minimum, make it inapplicable to all judges who have assumed senior status as of the date of enactment.
2. Redefine the workload requirements and delegate to the Judicial Conference and circuit judicial councils the responsibility for defining and measuring judicial duties meeting the requirements.
3. Allow senior judges more flexibility in meeting the minimum workload requirements over time and notwithstanding occasional breaks in service by providing for reentry into judicial work.

#### JUDICIAL BENEFITS

The Conference approved a resolution encouraging Congress to revise the Federal Employees Health Benefit program to introduce an element of competition, and approved the designation of a representative to work with the Office of Personnel Management in the executive branch in advocating improved health care coverage and reduced costs for judicial officers and employees.

## **COMMITTEE ON JUDICIAL ETHICS**

The Committee on Judicial Ethics reported that, as of July, 1989, the Committee had received 2,250 financial disclosure reports and certifications for the calendar year 1988, including 1,006 reports and certifications from judicial officers, and 1,244 reports and certifications from judicial employees.

### **MEMORIAL RESOLUTION**

Noting the death of Judge Lloyd F. MacMahon, the Conference adopted the following resolution:

The Judicial Conference of the United States notes with sadness the death of the Honorable Lloyd Francis MacMahon, on April 8, 1989, in White Plains, New York.

Judge MacMahon served with distinction as a Judge of the United States District Court for the Southern District of New York for nearly thirty years, having been appointed in September, 1959. He acted as Chief Judge of the Southern District of New York from 1980 to 1982, when he took senior status.

Judge MacMahon also served the judiciary through his participation on the Judicial Conference and several of its committees. He was a member of the Ad Hoc Committee on Court Facilities and Design from 1971 to 1975, and of the Committee on the Administration of the Criminal Law from 1970 to 1976. He was the district judge representative from the Second Circuit to the Judicial Conference of the United States from 1980 to 1982. He was a member of the Committee on Judicial Ethics from 1982 to 1988 and the Foreign Intelligence Surveillance Court, 1985 until the time of his death.

The members of the Judicial Conference and the Committee on Judicial Ethics convey their deepest sympathies to Judge MacMahon's family and request that this Resolution be sent to his widow, Margaret MacMahon, as a sign of their affection and respect.

## COMMITTEE ON JUDICIAL IMPROVEMENTS

### AUTOMATION

The Committee on Judicial Improvements reported that it had approved additional courts for implementation of the CIVIL/CRIMINAL and BANCAP systems in the fiscal year 1990 and early in the fiscal year 1991; established priorities for "controllable" automation spending; approved requests from the Ninth and Tenth Circuits to preserve their office automation and electronic mail capabilities until a uniform electronic mail system is developed and implemented; endorsed a two-phase effort by the Federal Judicial Center and the Administrative Office to integrate personal computer networks into the family of Integrated Case Management System (ICMS) electronic docketing applications; and approved for circulation and comment a draft report on staffing for office automation and data communications, prepared by the Ad Hoc Committee on Automation Staffing.

### FILING AND MISCELLANEOUS FEES

The Conference believes as a matter of policy that it is the responsibility of the Congress to finance the operations of the judiciary through appropriated funds. In these times of fiscal austerity, however, the Conference recognizes that sufficient funds to meet the judiciary's legitimate needs may not be forthcoming, and the Congress has specifically requested that the courts recommend ways to raise additional revenues through fees. Within this framework, the Conference agreed:

1. To amend the bankruptcy court miscellaneous fee schedule, prescribed by the Judicial Conference pursuant to 28 U.S.C. 1930(b), to impose a fee of \$60 for filing motions to vacate or modify the automatic stay, to withdraw the reference of a case, or to compel abandonment of property of the estate, provided that the revenues raised are credited to the judiciary's appropriations account.
2. To amend the bankruptcy court miscellaneous fee schedule to impose a fee of \$100 for docketing a cross-appeal from a bankruptcy court determination, provided that the revenues raised are credited to the judiciary's appropriations account.

3. To amend the bankruptcy court miscellaneous fee schedule to impose a fee of one-half the filing fee for deconsolidation of a joint petition, provided that the revenues raised are credited to the judiciary's appropriations account.
4. To seek authority of the Congress to impose administrative fees upon estates in chapter 11 and chapter 12 cases in bankruptcy, provided that the revenues raised are credited to the judiciary's appropriations account.
5. To recommend that Congress amend 28 U.S.C. 1930 to increase the filing fee in chapter 7 and chapter 13 cases in bankruptcy from \$90 to \$120, provided that the increased revenues of \$30 per filing are credited to the judiciary's appropriations account.
6. To recommend that Congress amend 28 U.S.C. 1931 and 2412 to permit taxation of the United States district court filing fee in favor of the United States as a prevailing plaintiff, notwithstanding that the litigating agency has not paid the fee, and to credit the revenues raised to the judiciary's appropriations account.

The Conference also recognized the contributions to the judiciary of the Administrative Office of the U.S. Courts by approving an annual allocation to the Administrative Office of not to exceed three percent of fees collected and retained for use by the judiciary, and by supporting the securing of Administrative Office allocation provisions in future legislation affecting appropriations distributions.

#### RECYCLING OF RECOVERABLE MATERIALS

Since funds presently saved from increased court efficiencies such as paper recycling must be returned to the Treasury, there is little incentive for courts to undertake innovative practices. The Conference, on the Committee's recommendation, agreed to seek legislation that would permit courts, on their own authority, to recycle recoverable materials, with the revenues generated to be credited to the judiciary's appropriations account. The Administrative Office was directed to develop guidelines for the courts concerning recycling court property, and to credit to participating courts any savings they generate.

## TRAVEL REGULATIONS FOR JUSTICES AND JUDGES

So that there will be no time lag between increases in per diem and mileage rates promulgated by the General Services Administration and implementation of increased travel reimbursement to judicial officers, the Judicial Conference authorized the Director to incorporate such increases automatically into the travel regulations for justices and judges, without further Conference approval.

## VIDEOTAPING COURT PROCEEDINGS

In September, 1988 (Conf. Rpt., p. 83), the Judicial Conference authorized a two-year experimental program of videotaping court proceedings. That program was limited to six district courts, in no more than two circuits. The Eastern and Western Districts of Pennsylvania in the Third Circuit, and the Eastern District of Louisiana and the Western District of Texas in the Fifth Circuit, were selected for participation in the pilot.

The Ninth Circuit Task Force on Court Reporting requested, and the Judicial Conference agreed, that the pilot be expanded to include a magistrate in the Northern District of California, provided that the full district court will accept a videotape as the record on appeal of the magistrate's determinations. In the event of limited availability of funding for the pilot, it was the consensus of the Committee that the courts originally selected should have priority, unless decentralized budgeting funds become available in the Northern District of California.

## COURT INTERPRETING BY TELEPHONE

Approximately three-fourths of the 43,000 judicial proceedings requiring a language interpreter in the district courts in 1987 occurred in the eight districts where certified staff interpreters are located. The remaining 86 districts relied on freelance interpreters, many of whom were non-certified or required travel. Moreover, there is a scarcity of certified Spanish/English and qualified "exotic language" interpreters in many areas.

At the suggestion of a clerk of court, the Conference approved a two-year pilot study to examine the feasibility of interpreting by telephone in two districts. The Conference also voted to request that the Federal Judicial Center evaluate the project, and issue a report so that adequate guidelines can be established if the pilot proves successful.

## DEBT COLLECTION

S. 84, 101st Congress, would establish a uniform, comprehensive debt collection procedure applicable to the collection of debts owed the United States. While taking no position on the specifics of S. 84, the Conference voted to support enactment of a uniform law of federal debt collection.

## COMMITTEE ON JUDICIAL RESOURCES

### FISCAL YEAR 1991 BUDGET REQUESTS FOR SUPPORTING PERSONNEL

The Judicial Conference reviewed requests for fiscal year 1991 positions for circuit executives' staffs and for staff attorney offices, and took the following actions (subject to the availability of resources):

1. Approved the reclassification of one administrative assistant to the circuit executive in the District of Columbia Circuit from JSP-14 to JSP-15, and the addition of one JSP-14 administrative assistant position to the circuit executive in the Seventh Circuit.
2. Approved the addition of one JSP-15 staff attorney (pre-argument) for the District of Columbia Circuit, one JSP-15 staff attorney (pre-argument) and one JSP-8 secretary to the staff attorney (pre-argument) for the First Circuit, and one JSP-7 secretary for the Sixth Circuit.

## ADDITIONAL COURT REPORTERS

The Conference approved two additional court reporter positions, one each in the Southern District of Alabama and the Northern District of California.

## CAREER LAW CLERKS

In March, 1989 (Conf. Rpt., pp. 24-25), the Judicial Conference approved the extension of the JSP-13/14 career law clerk classification to pro se law clerk positions, and directed the Committee on Judicial Resources to study the issue of extending the classification to staff attorneys. At this session, on recommendation of the Committee, the

• Conference (a) approved the extension of the JSP-13/14 career law clerk classification to nonsupervisory staff attorney and pre-argument attorney positions, leaving intact the target grade levels for supervisory and senior staff attorneys; (b) reaffirmed the previously established one-to-six ratio of supervisory staff attorney positions to nonsupervisory staff attorney positions; and (c) amended the law clerk qualification standards to qualify an individual for career law clerk status if the individual's prior experience includes work as a law clerk to a federal judge or magistrate, pro se law clerk, or staff attorney, or as a qualified attorney in other, non-judiciary attorney-related employment.

#### JUDICIARY SALARY PLAN MODIFICATIONS

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

1. Reclassification of court interpreter positions from JSP-12 to JSP-14.
2. Reclassification of deputy chief probation and pretrial services officer positions on the same principle as are chief deputy clerk positions, provided that no such position shall be graded higher than JSP-15.
3. Revision of the specialized experience portion of the classification and qualification standard for system administrator positions which support UNIX-based systems.
4. Addition of a training section.

#### EXECUTIVE PAY IN THE JUDICIARY

The executive branch's General Schedule, on which the JSP is patterned, has only six steps for grade 16, five steps for grade 17, and one step for grade 18. Accordingly, the judiciary's "supergrade" employees do not have available to them the full ten-step, 30 percent salary range available to other graded judicial branch employees. Although this has not caused serious problems because supergrade salaries are capped at the rate for level V of the Executive Schedule, pay and morale problems for senior court managers could result if Congress were to approve substantial pay increases for top officials of government.

The Judicial Conference approved the completion of the full ten-step pay chart for employees at the JSP-16, 17 and 18 levels.

## LONGEVITY BONUS PROGRAM

In order to recognize and reward long-term court employees for their dedicated service to the judiciary, the Judicial Conference approved a longevity bonus program for employees at step ten of any grade. The bonus would be available only to individuals with efficiency ratings of "good" or better for at least three years, and who have been employed by the judiciary for a minimum of five years. Under the program, which will be incorporated into the Guide to Judiciary Policies and Procedures, employees who obtain the endorsement of their appointing officers would receive, on their anniversary dates, approximately one-third the value of a within-grade increase. The bonus payments would not be built into the employees' base salaries and consequently would not be used in the computation of other salary-based payments.

## TEMPORARY HELP SERVICE FIRMS

The Conference approved the concept of giving courts the option of contracting with temporary help service firms when temporary employment is needed, so long as the program remains budget neutral. The program will be incorporated into the Guide to Judiciary Policies and Procedures.

## LEAVE ACT PAYMENTS

Effective November 19, 1988, section 1003 of the Judicial Improvements and Access to Justice Act (Public Law 100-702) removed bankruptcy judges and United States magistrates from coverage under the Leave Act, 5 U.S.C. 6301-6323, and also exempted law clerks from Leave Act coverage "unless specifically included by the appointing judge or by local rule of court." When they leave federal service, these individuals will be entitled to reimbursement for annual leave accumulated and accrued as of the effective date of their removal from Leave Act coverage. The question arose whether reimbursement should be at the rate of pay applicable at the time of removal from the Leave Act, or at the rate of pay applicable at the time of separation.

Consistent with the legislative history of the Judicial Improvements Act (134 Cong. Rec., p. S. 16305, Oct. 14, 1988), the Conference approved payment for the accrued annual leave at the rate of pay applicable at the time of separation from federal employment.

## ADDITIONAL JUDGESHIPS

The Conference authorized the Committee to reopen the 1988 judgeship survey in order to permit consideration of a request by the United States Court of Appeals for the Sixth Circuit for additional judgeships.

## COMMITTEE ON THE ADMINISTRATION OF THE FEDERAL MAGISTRATES SYSTEM

### CHANGES IN MAGISTRATE POSITIONS

After consideration of the report of the Committee on the Administration of the Federal Magistrates System, 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, the changes are to be effective when appropriated funds are available.

### SECOND CIRCUIT

#### New York, Northern:

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

#### New York, Eastern:

1. Authorized two additional full-time magistrate positions to serve the court at Brooklyn;
2. Changed the official location of the full-time magistrate position at Hempstead (including Uniondale) to Hauppauge or Hempstead (including Uniondale); and
3. Increased the salary of the part-time magistrate position at Patchogue from \$5,442 to \$6,176 per annum.

#### New York, Southern:

Increased the salary of the part-time magistrate position at Newburgh from \$7,740 to \$8,234 per annum.

**Vermont:**

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

**THIRD CIRCUIT**

**Pennsylvania, Eastern:**

1. Continued the full-time magistrate position at Philadelphia which is due to expire on December 10, 1990, for an additional eight-year term; and
2. Increased the salary of the part-time magistrate position at Allentown from \$7,740 to \$8,234 per annum.

**Pennsylvania, Middle:**

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

**FOURTH CIRCUIT**

**Maryland:**

Increased the salary of the part-time magistrate position at Hagerstown from \$7,740 to \$8,234 per annum.

**North Carolina, Eastern:**

Continued the part-time magistrate position at Wilmington for an additional four-year term and increased the salary from \$7,740 to \$10,293 per annum.

**North Carolina, Middle:**

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

## FIFTH CIRCUIT

### Texas, Northern:

Increased the salary of the part-time magistrate position at Wichita Falls from \$7,740 to \$8,234 per annum.

### Texas, Southern:

Converted the part-time magistrate position at Galveston to full-time status and designated the position as Galveston or Houston.

### Texas, Western:

Increased the salary of the part-time magistrate position at Pecos from \$32,936 to \$41,170 per annum.

## SIXTH CIRCUIT

### Kentucky, Eastern:

Continued the part-time magistrate position at London for an additional four-year term and maintained the salary at the current level of \$7,740 per annum until further specific action on the position.

### Ohio, Southern:

1. Continued the full-time magistrate position at Columbus which is due to expire on June 16, 1990, for an additional eight-year term; and
2. Continued the part-time magistrate position at Portsmouth for an additional four-year term at the currently authorized salary of \$2,264 per annum.

## SEVENTH CIRCUIT

### Illinois, Central:

Reaffirmed a prior decision to reduce the salary of the part-time magistrate position at Rock Island from \$10,293 to \$8,234 per annum, effective upon expiration of the current term.

**Indiana, Southern:**

1. Continued the part-time magistrate position at Terre Haute for an additional four-year term and increased the salary from \$5,442 to \$6,176 per annum; and
2. Continued the part-time magistrate position at New Albany for an additional four-year term at the currently authorized salary of \$2,264 per annum.

**EIGHTH CIRCUIT**

**Iowa, Southern:**

Continued the part-time magistrate position at Council Bluffs for an additional four-year term and maintained the salary at the current level of \$7,740 per annum until further specific action on the position.

**North Dakota:**

1. Continued the part-time magistrate position at Grand Forks for an additional four-year term at the currently authorized salary of \$12,351 per annum;
2. Continued the part-time magistrate position at Bismarck for an additional four-year term and maintained the salary at \$7,740 per annum until further specific action on the position; and
3. Continued the part-time magistrate position at Minot for an additional four-year term and increased the salary of the position from \$5,442 to \$6,176 per annum.

**NINTH CIRCUIT**

**Alaska:**

Continued the part-time magistrate position at Fairbanks for an additional four-year term at the currently authorized salary of \$24,702 per annum.

**California, Eastern:**

1. Maintained the salary of the part-time magistrate position at South Lake Tahoe at the current level of \$7,740 per annum until further specific action on the position; and
2. Maintained the salary of the part-time magistrate position at Bishop at the current level of \$7,740 per annum until further specific action on the position.

**California, Central:**

1. Authorized two additional full-time magistrate positions to serve the court at Los Angeles;
2. Continued the part-time magistrate position at San Luis Obispo for an additional four-year term but deferred action on the salary of the position;
3. Continued the part-time magistrate position at San Bernardino for an additional four-year term but deferred action on the salary of the position;
4. Continued the part-time magistrate position at Lancaster for an additional four-year term at the currently authorized salary of \$10,293 per annum; and
5. Increased the salary of the part-time magistrate position at Barstow (or Victorville) from \$7,740 to \$8,234 per annum, and agreed to review the salary again in one year.

**Hawaii:**

Increased the salary of the part-time magistrate position at Hilo from \$5,442 to \$6,176 per annum.

**Montana:**

1. Continued the full-time magistrate position at Billings for an additional eight-year term;
2. Continued the part-time magistrate position at Kalispell for an additional four-year term and increased the salary of the position from \$5,442 to \$6,176 per annum;

3. Continued the part-time magistrate position at Wolf Point for an additional four-year term and increased the salary of the position from \$3,265 to \$4,117 per annum; and
4. Continued the part-time magistrate position at Butte for an additional four-year term and increased the salary of the position from \$2,264 to \$4,117 per annum.

Nevada:

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

Oregon:

Increased the salary of the part-time magistrate position at Medford from \$5,442 to \$6,176 per annum.

Washington, Western:

1. Continued the part-time magistrate position at Tacoma (or Mount Rainier National Park) for an additional four-year term at the currently authorized salary of \$41,170 per annum;
2. Continued the part-time magistrate position at Olympic National Park for an additional four-year term at the currently authorized salary of \$32,936 per annum;
3. Continued the part-time magistrate position at Vancouver for an additional four-year term and maintained the salary at the current level of \$4,354 per annum until further specific action on the position; and
4. Continued the part-time magistrate position at Bellingham for an additional four-year term and maintained the salary at the current level of \$4,354 per annum until further specific action on the position.

## TENTH CIRCUIT

### Kansas:

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

### New Mexico:

1. Continued the part-time magistrate position at Las Cruces for an additional four-year term and increased the salary of the position from \$28,819 to \$41,170 per annum; and
2. Increased the salary of the part-time magistrate position at Clovis from \$5,442 to \$6,176 per annum.

### Oklahoma, Eastern:

Adjusted the salary of the part-time magistrate position at McAlester from \$7,740 to \$6,176 per annum.

### Wyoming:

Increased the salary of the part-time magistrate position at Jackson from \$7,740 to \$8,234 per annum.

## ELEVENTH CIRCUIT

### Alabama, Southern:

Converted the part-time magistrate position at Mobile to full-time status.

### Florida, Northern:

Continued the part-time magistrate position at Gainesville for an additional four-year term and increased the salary from \$3,265 to \$6,176 per annum.

### Georgia, Middle:

Increased the salary of the part-time magistrate position at Albany from \$5,442 to \$6,176 per annum.

Georgia, Southern:

Increased the salary of the part-time magistrate position at Brunswick (or Waycross) from \$21,650 to \$41,170 per annum.

#### **COMMITTEE ON PACIFIC TERRITORIES**

The Committee on Pacific Territories reported on the Eighth South Pacific Judicial Conference held in Kauai, Hawaii, April 30 through May 3, 1989. Over 50 judicial officers from 24 jurisdictions in the Pacific were in attendance.

#### **COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS**

##### **JUDICIAL CONDUCT AND DISABILITY ACT**

H.R. 1620, 101st Congress, would make various amendments to the Judicial Conduct and Disability Act, 28 U.S.C. 372(c). Since Title I of the bill would make a number of affirmative improvements or useful clarifications to the Act such as explicitly authorizing attorney fee awards to the objects of complaint proceedings, the Conference determined not to oppose Title I. The Conference tabled consideration of Title II of the legislation, which would establish a National Commission on Judicial Impeachment.

##### **JUDICIAL CONFERENCE RULEMAKING**

Section 372(c)(11) of title 28 provides that the Judicial Conference "may prescribe such rules for the conduct of proceedings ..., including the processing of petitions for review, as [it] considers to be appropriate." On the recommendation of the Committee to Review Circuit Council Conduct and Disability Orders, the Conference approved for submission to the public proposed rules for the processing of petitions for review of circuit council actions upon judicial conduct or disability complaints, with the understanding that the rules shall not be effective until they have been the subject of public notice and the opportunity for comment, as required by Public Law 100-702, section 403(c).

## **COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

### **EVIDENCE RULES**

The Committee on Rules of Practice and Procedure submitted to the Conference proposed amendments to Rule 609 of the Federal Rules of Evidence, which deals with impeachment by evidence of conviction of a crime. 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**

### **INDEPENDENT REAL PROPERTY AUTHORITY**

The Committee on Space and Facilities proposed for introduction in the Congress legislation to provide the judiciary with authority, independent of the General Services Administration but subject to congressional authorization and oversight, to determine and execute the judiciary's priorities with respect to space and facilities management. The proposal would create a separate building fund in the judiciary, similar to the Public Buildings Fund administered by the executive branch and to which the judiciary now contributes; retain jurisdictional arrangements of the Public Works Committees of the Congress; resolve judiciary facilities issues in a judicial branch/legislative branch context, between two constitutionally independent branches of government, rather than in the current dependent judicial branch/executive branch relationship; give the judiciary title to buildings it occupies as substantially sole tenant; create a contractual relationship with GSA in place of the current relationship wherein GSA is the landlord, with the judiciary merely a federal tenant; and allow, but no longer require, the courts to rely on GSA to provide facilities and services.

The Judicial Conference strongly endorsed the legislative proposal, and urged its prompt introduction and enactment.

## **COURTHOUSE MANAGEMENT**

In March, 1988 (Conf. Rpt., p. 40), the Judicial Conference approved a pilot program in which a court assumes the responsibility for managing its courthouse under a delegation of authority and transfer of

funding from the General Services Administration. Four courts are included in the program: the Northern District of Alabama (Birmingham) and the Southern District of Florida (Miami) are operating under delegation agreements, and the Eleventh Circuit Court of Appeals (Atlanta) and the Western District of Washington (Seattle) are negotiating the terms of their delegation agreements with GSA.

The Conference approved the inclusion in the pilot facilities management program of the Court of Appeals Building in Pasadena, California, and delegated to the Space and Facilities Committee the authority to approve an additional five court facilities, for a total of ten, to participate in the program.

#### **"JUDICIAL SPACE EMERGENCY"**

For over a decade, there has been a documented need for additional court space in Brooklyn, New York. In 1986, Congress authorized and provided funding to GSA for renovation of a large amount of space in the Emanuel Celler Federal Building and Courthouse in Brooklyn, but the present occupant, the Internal Revenue Service, has persistently declined to vacate the necessary space.

The Conference declared a "judicial space emergency" in the Eastern District of New York at Brooklyn, and approved the following resolution:

Whereas, the District Court for the Eastern District of New York at Brooklyn is faced with a judicial housing crisis which is seriously impeding the administration of justice in spite of congressional authorization to resolve the shortage of court facilities;

Whereas, space is not available to accommodate adequately all judgeships authorized for the court;

Whereas, effective use of visiting judges to assist the court with its burgeoning workload is not possible because of a lack of facilities for use by such judges;

Whereas, the court is unable to function efficiently due to the poor alignment of space between Judiciary and Department of Justice units, such as the U.S. Probation Office and the U.S. Attorney;

Whereas, the Internal Revenue Service and the General Services Administration have not to date agreed on terms for the relocation of the Internal Revenue Service from the court complex, in spite of congressional authorization in 1986 to do so;

Be it resolved, that the housing situation in the Eastern District of New York constitutes a judicial space emergency and that the Director of the Administrative Office of the United States Courts is authorized to notify the following entities of this intolerable situation, together with proposed means for resolution:

- A. The Judiciary Committees of the Congress;
- B. The Public Works Committees of the Congress;
- C. Relevant Senators and Members of Congress;
- D. The Commissioner of the Internal Revenue Service;  
and
- E. The Administrator of General Services.

#### **AD HOC COMMITTEE ON FEDERAL HABEAS CORPUS IN CAPITAL CASES**

The Ad Hoc Committee on Federal Habeas Corpus in Capital Cases was created by the Chief Justice in June, 1988, to inquire into "the necessity and desirability of legislation directed toward avoiding delay and the lack of finality" in capital cases in which the prisoner had or had been offered counsel. Retired Associate Justice Lewis F. Powell, Jr., was appointed to chair the Committee, which also included Judges Charles Clark, Paul H. Roney, William Terrell Hodges, and Barefoot Sanders.

The Committee proposed draft legislation to revise the existing habeas corpus statutory procedure with respect to those states that establish a system for the appointment and compensation of competent counsel throughout all stages of state post-conviction review. The draft would limit the period within which a federal habeas petition must be filed; establish an automatic stay of execution until federal habeas proceedings are completed; and prevent prisoners from continuing to file

successive petitions for habeas corpus in federal court after they have had one full course of judicial review, absent extraordinary circumstances and a colorable showing of factual innocence.

The Conference received the report of the Committee, agreed to the report's release, and discharged the Committee from further service. Consideration of the Committee's recommendations was postponed until March, 1990.

#### **AD HOC COMMITTEE ON CAMERAS IN THE COURTROOM**

The Ad Hoc Committee on Cameras in the Courtroom reported its "tentative" consensus that (1) rules governing the use of cameras in courtrooms should be stricken from the Code of Conduct for United States Judges, and instead should be included in Proceedings of the Judicial Conference and the Guide to Judiciary Policies and Procedures; (2) the rules governing cameras in federal courtrooms should be relaxed somewhat, to allow the use of cameras for security and "other purposes of judicial administration"; and (3) technological advances and the experiences of the states should continue to be monitored to determine whether further modifications of the restrictions would be warranted at a future date.

The Committee will obtain comments on these recommendations from the members of the Judicial Conference and other judicial officers in the system, and transmit final recommendations for Conference action in March, 1990.

#### **FEDERAL COURTS STUDY COMMITTEE**

The Federal Courts Study Committee reported on its progress in studying the role of the federal courts and their relationship to the state courts, the structure of the federal courts, and the workload of the federal courts. In accordance with Public Law 100-702, the Judicial Improvements and Access to Justice Act, the Committee will file its final report no later than April 2, 1990, with the Judicial Conference, the President, Congress, the Conference of Chief Justices, and the State Justice Institute.

**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 1990: 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.

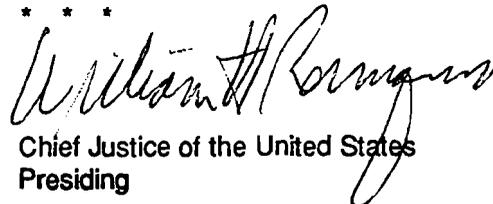
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**UNITED STATES SENTENCING COMMISSION**

Section 991 of title 28, United States Code, requires at least three of the members of the United States Sentencing Commission to be federal judges. As of the end of October, 1989, there will be three vacancies on the Commission, one of which is a judicial vacancy. The statute calls for the President to select federal judges after considering a list of six judges recommended by the Judicial Conference of the United States.

On October 20, 1989, by telephone vote, the Judicial Conference approved a list of nominees to be forwarded to the President for appointment to the Sentencing Commission.

\* \* \* \* \*

  
Chief Justice of the United States  
Presiding

October 31, 1989

85