

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

September 23-24, 1991

The Judicial Conference of the United States convened in Asheville, North Carolina, on September 23, 1991, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331, and continued in session on September 24. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Stephen G. Breyer  
Chief Judge Francis J. Boyle,  
District of Rhode Island

Second Circuit:

Chief Judge James L. Oakes  
Chief Judge Charles L. Brieant,  
Southern District of New York

Third Circuit:

Chief Judge Dolores K. Sloviter  
Chief Judge John F. Gerry,  
District of New Jersey

Fourth Circuit:

Chief Judge Sam J. Ervin, III  
Judge W. Earl Britt,  
Eastern District of North Carolina

**Fifth Circuit:**

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

**Sixth Circuit:**

Chief Judge Gilbert S. Merritt  
Judge Edward H. Johnstone<sup>1</sup>  
Western District of Kentucky

**Seventh Circuit:**

Chief Judge William J. Bauer  
Chief Judge Barbara B. Crabb,  
Western District of Wisconsin

**Eighth Circuit:**

Chief Judge Donald P. Lay  
Chief Judge Donald E. O'Brien  
Northern District of Iowa

**Ninth Circuit:**

Chief Judge J. Clifford Wallace  
Chief Judge William D. Browning,  
District of Arizona

**Tenth Circuit:**

Chief Judge Monroe G. McKay  
Judge Richard P. Matsch,  
District of Colorado

**Eleventh Circuit:**

Chief Judge Gerald B. Tjoflat  
Judge Anthony A. Alaimo,  
Southern District of Georgia

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<sup>1</sup>Designated by the Chief Justice.

District of Columbia Circuit:

Chief Judge Abner J. Mikva  
Chief Judge Aubrey E. Robinson, Jr.,  
District of Columbia

Federal Circuit:

Chief Judge Helen W. Nies

Court of International Trade:

Chief Judge (Acting) Gregory W. Carman

Circuit Judges Richard S. Arnold, Levin H. Campbell, Edward Leavy, Kenneth F. Ripple, Walter K. Stapleton, Deanell Reece Tacha, and Harlington Wood, Jr.; Senior Circuit Judges Thomas M. Reavley and Otto R. Skopil, Jr.; District Judges Wayne E. Alley, Sarah Evans Barker, Robert C. Broomfield, Julian A. Cook, Jr., Gustave Diamond, Lloyd D. George, Wm. Terrell Hodges, Thomas F. Hogan, Robert E. Keeton, Robert M. Parker, Sam C. Pointer, Jr., and Rya W. Zobel; and Senior District Judges Vincent L. Broderick and Walter T. McGovern attended all or some of the sessions of the Conference. Circuit Judge Edward R. Becker; District Judges David D. Dowd, Jr., Diana E. Murphy, and Martin L. C. Feldman; and Bankruptcy Judge Robert E. Ginsberg, members of the Federal Judicial Center Board, attended a joint session of the Board and 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 J. Murret (Tenth Circuit), Norman E. Zoller (Eleventh Circuit), and Linda Finkelstein (District of Columbia Circuit) were also present at Conference sessions.

The Solicitor General of the United States, Kenneth Starr, addressed the Conference on matters of mutual interest to the Department of Justice, the Congress, and the Conference. Circuit Judge William W. Wilkins, Jr., Chairman of the United States Sentencing Commission, briefed the Conference on issues concerning the Sentencing Commission.

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, Judicial Conference and Management Coordination Officer; Charles W. Nihan, Chief,

Long Range Planning Office; Wendy Jennis, Deputy Chief, Office of the Judicial Conference Secretariat; and David A. Sellers, Public Information Officer. Judge William W. Schwarzer and Russell R. Wheeler, Director and Deputy Director of the Federal Judicial Center, also attended the sessions of the Conference, as did Robb Jones, 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, presented to the Conference the *Annual Report of the Director* for the year ended June 30, 1991. 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 1991, total filings in the regional courts of appeals rose three percent to a record high of 42,033. The overall increase in appeals resulted in part from a five percent growth in criminal appeals from the U.S. district courts. Two major factors contributed to this increase: enactment of the Sentencing Guidelines which provide for appeals of convictions as well as sentences imposed, and drug-related appeals, which comprised 56 percent of the total criminal appeals filed. Appeals of the decisions of the district courts on state and federal prisoner petitions rose six percent, and appeals of bankruptcy cases increased a record 15 percent. Administrative agency cases, after a drop of 13 percent last year, increased seven percent in 1991. The courts of appeals disposed of 41,414 appeals in 1991, an increase of eight percent; appeals terminated on the merits rose seven percent. During 1991, the pending caseload in the regional courts of appeals increased two percent to 32,627, compared to an eight percent increase in 1990.

Filings in the U.S. Court of Appeals for the Federal Circuit increased one percent to 1,484, attributable to cases from the recently-formed Court of Veterans Appeals. Appeals disposed of in the Federal Circuit rose two percent to 1,424 this year. Since filings outnumbered terminations, the pending caseload rose by 60 cases or eight percent.

In the U.S. district courts, civil filings, which have decreased in number since 1988, declined again this past year to 207,742 cases, a drop of 10,137 (five percent) from 1990. Civil filings involving the United States decreased six percent to 52,654 cases; private filings declined by four percent to 155,088. The dip in U.S. government filings was mostly attributable to a 31 percent drop in actions to recover defaulted student loans and a 26 percent decrease in actions

to recover overpayment of veterans' benefits. By contrast, actions against the U.S. increased slightly to 25,090 filings. Both federal prisoner petitions (up three percent) and social security cases (up four percent) contributed to this growth. The most significant change in private civil filings was an 11 percent decrease in diversity of citizenship cases, attributable to a significant decline in asbestos cases, which fell 49 percent from 12,822 in 1990 to 6,539 in 1991. Diversity filings excluding asbestos cases remained essentially stable in 1991 at 44,405, suggesting that the initial impact of the May 1989 increase of the jurisdictional amount in diversity cases from \$10,000 to \$50,000, may be abating. Civil cases terminated remained stable in 1991 at 211,713 cases. Since terminations outnumbered filings by almost 4,000 cases, the pending caseload decreased by two percent to 240,599.

During 1991, criminal filings in the U.S. district courts declined for the first time since 1980, dropping four percent to 47,035 cases (including transfers). In contrast, the number of defendants charged increased slightly from 66,341 in 1990 to 66,556 in 1991. Drug cases (excluding transfers) decreased two percent from 12,592 in 1990 to 12,400 in 1991, due primarily to a decline in drug filings in the Southern District of Texas. Excluding Texas (Southern), drug filings nationwide actually increased three percent (292 cases) in 1991, and weapons and firearms filings increased 10 percent (to 2,975). Criminal cases terminated decreased six percent to 41,569 in 1991. Since the number of filings outnumbered terminations during 1991, the pending caseload rose 16 percent. On June 30, 1991, there were 39,276 pending criminal cases involving 58,393 defendants in U.S. district courts.

Bankruptcy filings rose 21 percent in 1991, to 880,399; terminations increased nearly 16 percent over 1990, reaching 718,885 for the same period. Because filings outpaced terminations, the number of pending petitions rose by 161,514 cases (17 percent) in 1991. The total pending caseload has now reached 1,123,433 petitions. The growth in bankruptcy filings was a result of a rapid rise in non-business filings, spurred primarily by 23 percent increases in both Chapter 7 liquidation and Chapter 13 adjustment filings. Business filings rose by a moderate five percent in 1991. Chapter 11 reorganizations had the largest percentage increase of all business chapters, rising nearly 12 percent to 19,540 filings; Chapter 13 and Chapter 7 business filings increased five percent and one percent, respectively. Chapter 12 family farmers filing business debt adjustments remained constant at 1,358 cases in 1991.

Mr. Mecham also reported that as of September 18, 1991, there were 21 vacancies among the 179 judgeship positions authorized for the United States courts of appeals, 109 vacancies among the 649 positions authorized for the United States district courts, and two vacancies on the United States Court of International Trade.

## ACTIVITIES OF THE ADMINISTRATIVE OFFICE

Mr. Mecham reported that since the mid-1980's, the budget and staff of the Administrative Office have declined steadily relative to the growth of the entire judiciary. For example, the Administrative Office's budget authority as a percentage of the budget authority for the entire judiciary has declined from three percent in 1984 to just over two percent today (excluding funding for reimbursable court automation positions).

The Administrative Office was reorganized in 1991 to make better use of its limited resources and to put additional emphasis on several critical areas. These changes provide greater focus on fundamental financial activities as well as the increasingly complex personnel and facilities areas. The reorganization resulted in the creation of a new Assistant Director position for Court Programs, providing enhanced management attention, guidance, and support in this critical area. In addition, three new offices were formed to (a) provide support to the Federal Rules committees; (b) staff the Committee on Long Range Planning; and (c) assess the resource impact of legislative and executive branch proposals on the judiciary.

The Administrative Office continues to make the decentralization of administrative functions to the courts a high priority. To date, court managers have been delegated authority in 48 management areas, and decentralization projects are currently underway or planned in an additional 15 areas. Twenty courts have been trained and have implemented budget decentralization in the fiscal year 1992, and all interested courts are expected to begin implementation by the fiscal year 1994.

The AO contracted with three consultants to review the federal judiciary automation program. This review provided a broad management-level assessment of the goals, strategies, and future direction of automation in the judiciary. The final report emphasized that the users should have more involvement in the design process and also recommended changes in the way the judiciary plans, budgets, and manages its automation activities. Procedures for implementing the report's recommendations are being developed.

During 1991, considerable staff effort and resources were devoted to developing plans for implementing the Civil Justice Reform Act of 1990. Also in 1991, the Administrative Office began to establish a new AO personnel system. In support of the Judicial Conference and its committees, and to carry out Conference policies, the AO completed many other projects, including developing a new staffing formula for probation and pretrial services offices, designing a new method of allocating positions to staff attorneys' offices in the United States Courts of Appeals, awarding a contract for the judiciary's data

communications network and beginning the first phase of implementation, designing an automated case assignment system for district and bankruptcy courts to facilitate random assignment of judges to cases, issuing a new Bankruptcy Clerks Manual and revising the Court Reporters Manual, conducting an extensive review of Criminal Justice Act (CJA) panel attorney compensation rates, concluding a report on the mandatory drug testing program required by the Anti-Drug Abuse Act of 1988, and completing the Court Operations and Administration Surveys assessing the state of administrative operations in the courts.

A major goal for 1992 will be the strengthening of the judiciary's space and facilities program. Tremendous progress has already been made with the publication of a new *United States Courts Design Guide* and the completion of long-range facilities plans by a third of the courts. Support mechanisms have been created to allow individual courts to take a much more aggressive role in managing their space and facilities programs. Currently, the judiciary is fully dependent on the executive branch for the provision of space and facilities. Consequently, a top legislative priority is enactment of legislation giving the judiciary independent real property authorities. With the need for major courthouse construction over the next decade, it is critical that the judiciary be able to set its own priorities and control the planning and funding of its projects.

Other legislative priorities for the coming year include reforming the Judicial Survivors' Annuities System (JSAS), including lowering the contribution rate for active, senior, and recalled judges from five to one percent; securing revisions to the proposed Violent Crime Control Act; obtaining new bankruptcy judgeships; and pursuing the repeal of Section 140 of Public Law 97-92 so that judges will receive automatic annual cost-of-living increases.

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

The Director of the Federal Judicial Center, Judge William W Schwarzer, reported on a reorganization of the Center approved by the Board last May, and on various educational and research projects of the Center. The Division of Continuing Education and Training was divided into a Judicial Education Division, for the education of judicial officers and staff attorneys, and a Court Education Division, for the education of the personnel of clerks' offices, probation and pretrial services officers, and the other supporting personnel of the judicial branch. Furthermore, the Publications Division has been expanded to a Publications and Media Division, absorbing most of the functions of the

since-abolished Special Educational Services Division, except the Center's Federal Judicial History Office, which is now a part of its general administration.

While the Center is expanding its orientation and continuing educational programs for judges, the creation of a separate Court Education Division indicates its commitment to strengthening the depth and breadth of its programs for supporting personnel. The Center and the Administrative Office continue their coordination of educational programming in light of their respective missions, as recommended by the AO-FJC Joint Task Force on education and training programs. The expanded Publications and Media Division will allow a more prominent role for publications and video productions in third branch education.

At the request of the Judicial Conference's Long Range Planning Committee, the Center is working with the Committee and the Administrative Office's Long Range Planning Office to fashion a long range planning seminar in March, 1992, for chief circuit judges and chairs of Conference committees. It is working with the National Center for State Courts and the State Justice Institute to develop a conference in April, 1992, on state-federal judicial relationships, which includes the Judicial Conference as a co-sponsor.

The Center has devoted significant resources in recent months to helping the courts implement the Civil Justice Reform Act of 1990, including customized technical assistance with caseload data analysis and two-day seminars in August and September, respectively, for the Act's pilot courts and early implementation and demonstration courts.

Judge Schwarzer noted that the Center and Sentencing Commission had reached agreement on procedures to ensure both the Center and the Commission will work together, without duplication, on programming that reflects both agencies' statutory obligations for sentencing education.

The Center is currently engaged in two wide-ranging studies of the courts of appeals, both mandated by Congress: one analyzes the extent and impact of intercircuit conflicts, and the other is studying various alternatives to the current structure of the courts of appeals.

## **ELECTIONS**

The Judicial Conference elected to membership on the Board of the Federal Judicial Center, Judge J. Harvie Wilkinson of the United States Court of Appeals for the Fourth Circuit and Bankruptcy Judge Sidney B. Brooks of the

District of Colorado, to succeed Circuit Judge Monroe G. McKay and Bankruptcy Judge Robert E. Ginsberg.

### **EXECUTIVE COMMITTEE**

Between Judicial Conference sessions, the Executive Committee took the following actions on behalf of the Conference:

#### **CRIME LEGISLATION**

The Executive Committee approved a report and recommendations of the Committee on Criminal Law and Probation Administration on the Senate-passed Biden-Thurmond Violent Crime Control Act of 1991 (S. 1241, 102nd Congress), including provisions on drug testing, mandatory restitution, mandatory minimum sentences, probation and supervised release revocation, law enforcement officers' rights, denial of federal benefits, and payment for services of guardians ad litem and HIV testing. Reiterating the Conference's long-standing position that federal prosecutions should be limited to charges that cannot or should not be prosecuted in state courts, and its opposition to mandatory minimum sentences, the Executive Committee also opposed two amendments in S. 1241: one to provide for federal prosecution of cases in which a firearm was used to commit a homicide if the firearm at some point crossed state or foreign borders, and the other to provide mandatory prison terms for the use, possession, or carrying of a firearm during a state crime of violence or state drug trafficking crime.

The Committee also concurred in the AO Director's recommendations that Congress should authorize the expansion of pretrial services urinalysis tests for inclusion of the results in pretrial services reports, and not establish a system of mandatory testing for post-conviction felony offenders.

#### **CIVIL JUSTICE REFORM ACT**

Title III of Public Law 101-650, the Civil Justice Reform Act of 1990 ("CJRA"), requires that the Director of the Administrative Office prepare semi-annual reports showing, by judicial officer, motions pending for more than six months, bench trials submitted for more than six months, and civil cases pending for more than three years. In contrast, prior Conference reporting requirements mandate the quarterly compilation of matters under advisement over 60 days, and an annual review of cases pending for more than three years.

The information required under the CJRA is sufficiently similar to the prior Conference requirements that the CJRA reports should be substituted therefor. Accordingly, the Executive Committee concurred in the recommendation of the

Committee on Court Administration and Case Management that the quarterly reports on matters under advisement over 60 days and annual reports of three-year-old cases be replaced by semi-annual reports on motions pending for more than six months, bench trials submitted for more than six months, and cases pending for more than three years. In order to make the reporting cycles for the district courts and courts of appeals consistent, the Executive Committee also agreed to require semi-annual rather than quarterly reports of matters under submission in the courts of appeals for more than 90 days. The Committee defined "motions pending," "bench trials submitted," and "three-year-old cases," and directed that the first CJRA report will be compiled on the basis of motions, bench trials, and cases pending on September 30, 1991. Of course, any circuit judicial council may require any other reports that it deems appropriate.

Until such time as they can be generated from automated systems, these reports will have to be prepared individually by judges and magistrate judges. Circuit executives will collect the reports from judicial officers in the same manner as they presently collect reports on matters under advisement, and forward consolidated circuit reports to the Administrative Office.

The Committee also approved interim guidelines for the allocation of resources for the implementation of the CJRA.

#### ADDITIONAL BANKRUPTCY JUDGESHIPS

In March, 1991 (JCUS-MAR 91, pp. 12-13), the Judicial Conference approved a new system of bankruptcy case weights and a biennial survey of judgeship needs. With regard to the 1991 survey, the Conference agreed to an expedited process, whereby recommendations would be presented to the Executive Committee in July, 1991.

After canvassing the Judicial Conference, the Executive Committee concurred in the Bankruptcy Committee's recommendation that Congress should create 18 new bankruptcy judgeships (in addition to 14 additional judgeships recommended by the Conference between September, 1989, and February, 1991), as follows: one each in the Districts of Massachusetts, New Hampshire, Connecticut, Pennsylvania (Eastern), New Jersey, Texas (Northern), Texas (Western), Tennessee (Western), Illinois (Southern), Alabama (Northern) and Florida (Southern); two each in the Southern District of New York, the Central District of California, and the Middle District of Florida; and a shared judgeship for the Middle and Southern Districts of Georgia. Approval of the new judgeships in New Hampshire and Illinois (Southern) was premised on the understanding that these courts would then provide substantial assistance in the District of Rhode Island and the Southern District of Indiana, respectively.

The Executive Committee considered and amended a Senate proposal that would require the Judicial Conference, after considering the results of a survey of the district conducted by the Director of the Administrative Office, to determine and report to the Congress whether bankruptcy judgeship vacancies created by resignation, retirement, removal or death should be filled.

In order to comply with a May 1, 1991, statutory deadline (§ 104 of the Bankruptcy Code) for transmittal to the Congress and the President, the Committee also approved recommendations for the uniform adjustment of dollar amounts in bankruptcy cases.

#### CRIMINAL JUSTICE ACT COMPENSATION

On recommendation of the Defender Services Committee, the Executive Committee (a) approved an attorney pay cost adjustment (formerly referred to as an "alternative attorney compensation rate") under the Criminal Justice Act of \$75 for in- and out-of-court time in the Northern District of Georgia, subject to the availability of funds; and (b) authorized the immediate retroactive implementation of the \$75 rate for all services performed by counsel appointed under the CJA in one case pending in that district, United States v. Moody, Jr., because of the unique circumstances involved. See also "Criminal Justice Act Compensation," infra pp. 56-57.

#### VIOLENCE AGAINST WOMEN ACT

The Violence Against Women Act of 1991 (S. 15, 102nd Congress) would, among other things, make the intentional injury to a spouse or intimate partner, by one who crossed a state line, a federal crime (Title II), provide for a civil rights remedy in the federal courts for victims of gender-based violence (Title III) and "encourage the circuit courts to conduct studies of instances, if any, of gender bias in each circuit" (Title V). The Executive Committee agreed to take no position on Title V, but directed the Administrative Office to continue to work with Congress to obtain acceptable modifications. With regard to Titles II and III, three Conference committees had reviewed the legislation and reported concern about its potential impact on the federal courts. Accordingly, the Committee voted to recommend the appointment by the Chief Justice of a special Ad Hoc Committee on Gender-Based Violence, not limited to members of the Executive Committee, to address the bill. See also "Violence Against Women Act," infra pp. 57-58.

#### CAMERAS IN THE COURTROOM

In reviewing the guidelines for conducting the cameras in the courtroom pilot program (see JCUS-SEP 90, pp. 103-104), the Committee on Court

Administration and Case Management determined that certain amendments to the guidelines were necessary prior to the experiment's July 1, 1991, commencement date. The Executive Committee concurred, modifying the guidelines in three respects. The Executive Committee also directed the Court Administration and Case Management Committee to notify courts that strict adherence to the guidelines is a condition to participation in this program.

#### RESOLUTION

Noting that this was the last Judicial Conference session for Chief Judge Charles Clark, Chairman of the Executive Committee, the Committee (Judge Clark not participating) approved the following resolution:

The Judicial Conference of the United States at its September 1991 session in Asheville, North Carolina, hereby pays special tribute to the:

#### HONORABLE CHARLES CLARK

Chief Judge of the United States Court of Appeals for the Fifth Circuit and Chairman of the Executive Committee of the Judicial Conference.

To the great misfortune of the Third Branch, Charles Clark has announced his intention to retire from service as a federal judge to pursue private practice. His departure will create a mammoth vacuum which will be difficult to fill. Serving the Judicial Conference in key leadership roles for over a decade, Judge Clark's contributions to the judicial system are innumerable.

Appointed to the Court of Appeals on October 17, 1969, Judge Clark became Chief Judge and a member of the Judicial Conference in October, 1981. He served on the Judicial Conference Advisory Committee on Appellate Rules from 1979 to 1982. In 1980, Judge Clark was appointed to the Budget Committee, and he served as its chairman from 1981 to 1987. He was a member of the Committee to Study the Judicial Conference from 1986 to 1987 and of the Special Committee on Habeas Corpus Review of Capital Sentences from 1988 to 1989. Judge Clark became a member of the Executive Committee in 1984, serving as Chairman since 1989. He chaired the Legislative Liaison Group of the Executive Committee from 1987 to 1989, and took on this role again in 1991.

His tenure as Budget Committee Chairman was particularly noteworthy for his outstanding leadership during a time of unprecedented judicial growth and ever-present threat of diminishing resources. In his role as a principal witness for the judiciary before Congress, Judge Clark commanded the respect of the legislators and was instrumental in earning credibility for the Third Branch. He felt a special responsibility to ensure that the judiciary requested only the funds that were required, and that these moneys were expended wisely and without waste. When the Balanced Budget and Emergency Deficit Control Act of 1985 ("Gramm-Rudman-Hollings Act") required substantial cuts in the judiciary's budget, Judge Clark did an extraordinary job leading the March 1986 session of the Judicial Conference through the mass of complex and difficult issues which required resolution in order to satisfy budgetary requirements.

Judge Clark served on the Judicial Conference Executive Committee longer than any other member in recent history. His consistent concern for the views of the full Conference and its presiding officer coupled with his dedication, wisdom and integrity combined to make his leadership of the group an exceptional one. A thorough and hardworking Chairman, he deftly led the Committee through the many important, and often emergent, issues before it, including such issues as those concerning the Civil Justice Reform Act and cameras in the courtroom, as well as a myriad of matters arising from the Federal Courts Study Committee. Judge Clark's unique role and special stature is reflected in part by the Chief Justice's entrusting the gavel to him during portions of the Conference sessions.

It is with mixed feelings that we express our warm and heartfelt good wishes to Charles Clark in his retirement from the federal judiciary. We extend our sincere gratitude and appreciation to him and his charming wife, Emily, as they return to private life. Judge Clark has been a distinguished and respected leader, and his significant contributions to the federal judicial system will be felt for many years to come.

#### MISCELLANEOUS ACTIONS

The Executive Committee also:

- approved a revised financial plan for the fiscal year 1991 to take into account funds received from enactment of a supplemental appropriations

request, and also approved adjustments to the fiscal year 1991 financial plan to utilize an estimated end-of-year balance in the "Salaries and Expenses" appropriation to establish a reserve for the fourth quarter;

- deferred until its consideration of the spending plan for the fiscal year 1992 a request by the Chief Judge of the United States Claims Court for immediate funding of temporary second law clerks for Claims Court judges;
- assigned oversight responsibility for the monitoring of asbestos litigation and legislation to the Committees on Court Administration and Case Management and Federal-State Jurisdiction, with the expectation that the chairmen would appoint a joint subcommittee on asbestos;
- directed that Conference members be provided with committee reports at the same time they are provided to Executive Committee members, thereby giving Conference members more time to review the reports;
- concurred in grammatical and formatting changes in the *United States Courts Design Guide*;
- changed the name of the Magistrates Committee to the "Committee on the Administration of the Magistrate Judges System";
- agreed to poll the Judicial Conference on presenting the names proposed by Chief Justice Rehnquist of Judges Pamela Rymer, Alicemarie Stotler, and Roger Wollman as possible successors to Judge George E. MacKinnon on the United States Sentencing Commission;<sup>2</sup>
- reviewed a list of likely appointees by the Chief Justice to a special committee to study the Criminal Justice Act (see § 318 of Public Law 101-650);
- requested the Director of the Administrative Office to notify all federal judicial officers of procedures to follow to have their addresses and telephone numbers removed from directories and similar publications;
- directed that Congressional leaders be contacted to request that an ongoing GAO study on court security include the entire subject of court and judicial security;

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<sup>2</sup>The Conference concurred in the recommendations, and the names were officially transmitted to the President on June 25, 1991.

- approved the agenda for the Ninth Circuit Sentencing Institute in September, 1991, and also approved a Sentencing Institute for the judges of the Second and Eighth Circuits in March, 1992, pending approval of the circuits involved; and
- declined to initiate a study into whether a contract relocation services program for disposal of the residences of certain judicial officers and employees transferred in the interest of the government should be reinstated, and also declined to authorize such assistance on an expedited basis for a particular judge whose permanent duty station had changed.

#### **COMMITTEE ON THE ADMINISTRATIVE OFFICE**

The Committee on the Administrative Office reported that it has established a subcommittee to examine the volume and nature of all the statistical gatherings and reports produced by the Administrative Office to assist the full Committee in reviewing those materials for continued usefulness.

#### **COMMITTEE ON AUTOMATION AND TECHNOLOGY**

##### **ACCESS TO THE COURTS BY THE DEAF COMMUNITY**

The Judicial Conference approved a pilot project in two courts in the Eighth Circuit to provide enhanced access to those courts by the deaf community. The project involves the installation of Telecommunication Devices for the Deaf (TDD) in the clerks' offices. In addition, the Committee on Automation and Technology reported that the General Services Administration provides a relay service to deaf persons who wish to make an inquiry to a federal agency. This service is available in all districts to assist a deaf person who needs to contact a federal court.

##### **VIDEOCONFERENCING -- ORAL ARGUMENTS**

The Conference approved, pending available funding, a one-year videoconferencing pilot project in the Third Circuit. This project will allow the Court of Appeals to use videoconferencing for oral arguments between Pittsburgh and Philadelphia. The cost-effectiveness of this practice will be studied, but it is anticipated that the service will benefit attorneys by enabling them to avoid travel costs and extended periods of time away from the office.

## JUDICIARY AUTOMATION FUND

The Judiciary Automation Fund allows the judiciary to convert funds which normally must be expended in one fiscal year into funds which may be expended over multiple fiscal years, thus providing stability and flexibility in the automation program. Pursuant to the appropriations legislation which established the Fund (Public Law 101-162), the operating authority of the Fund will terminate on September 30, 1994. On recommendation of the Committee on Automation and Technology and the Committee on the Budget, the Judicial Conference endorsed the continuation of the Judiciary Automation Fund beyond 1994 and agreed to seek a five-year extension of the Fund.

## BANKRUPTCY COURT AUTOMATION

In 1988, the Committee on Judicial Improvements approved a policy, which was incorporated into the *Long Range Plan for Automation in the U.S. Courts*, that the National Interim Bankruptcy System (NIBS) was an interim program and would not be expanded to include electronic docketing. On recommendation of the Committee on Automation and Technology, because of the strong preference of some NIBS courts to retain NIBS pending the transition to the new Court Integrated Information Management System (CIIMS) architecture, the Judicial Conference established the following new policy:

- a. Bankruptcy courts that have not been trained on BANCAP may choose which system (either BANCAP or NIBS) they prefer to implement; and
- b. once either NIBS or BANCAP is chosen, the decision can be changed only in extraordinary circumstances and with the approval of the Committee on Automation and Technology.

## FILING BY FACSIMILE

Effective December 1, 1991, amendments to the Federal Rules of Appellate, Civil, and Bankruptcy Procedure allow federal courts to enact local rules to permit papers to be filed by facsimile, provided that such local rules may be adopted only if "authorized by and consistent with standards established by the Judicial Conference of the United States." Given the current state of affordable facsimile technology, the routine acceptance at this time of court documents by facsimile would present practical problems and would create an administrative and resource burden to the courts. Thus, the Judicial Conference authorized courts, effective December 1, 1991, to adopt local rules to permit the clerk to accept for filing papers transmitted by facsimile transmission equipment, provided that such filing is permitted only (a) in compelling circumstances or (b)

under a practice which was established by the court prior to May 1, 1991 (the date the Federal Rules changes were transmitted to Congress).

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

### **UNITED STATES TRUSTEES**

Upon recommendation of the Committee on Administration of the Bankruptcy System, the Judicial Conference approved a Memorandum of Understanding between the Executive Office for United States Trustees and the judiciary regarding case closing and post confirmation Chapter 11 monitoring. This memorandum, which incorporates comments from the bankruptcy courts, fully delineates the respective responsibilities of the courts and the United States trustees in the case closing process.

### **TRUSTEE COMPENSATION**

The Judicial Conference agreed to seek appropriate legislative action to assure that a trustee who serves in a case converted to Chapter 7 will receive the same compensation authorized by section 330(b) of the Bankruptcy Code for a trustee serving in a case originally filed under Chapter 7.

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

The Committee on the Bicentennial of the Constitution reported that over 300 Article III judges had expressed interest in attending the Conference in Celebration of the Bill of Rights in Williamsburg in October, 1991. The Conference agenda provided a historical perspective on the Bill of Rights and included topics which focused on the First Amendment, examined criminal law issues and the right to privacy, and looked at the Bill of Rights in the international community.

## **COMMITTEE ON THE BUDGET**

### **ALTERNATIVE BUDGET REQUEST FOR THE FISCAL YEAR 1992**

Anticipating the need, once again, to reduce the judiciary's budget request below the optimum level, the Committee on the Budget proposed, and the Judicial Conference approved, alternative, or lower, budget estimates for the fiscal year 1993, subject to amendments necessary as a result of (a) new legislation; (b) actions of the Judicial Conference; or (c) other reasons the Director of the Administrative Office considers necessary and appropriate.

## **COMMITTEE ON CODES OF CONDUCT**

The Committee on Codes of Conduct reported that, since its last report, the Committee has received 49 new written inquiries and issued 43 advisory responses. The Chairman received and responded to 54 telephone inquiries, and other committee members responded to 62 informal inquiries from their colleagues.

### **FEDERAL ETHICS LAW REFORM**

The Judicial Conference approved the recommendation of the Committee on Codes of Conduct to amend the regulations implementing Titles III and VI of the Ethics Reform Act of 1989 (Public Law 101-194), relating to gifts and outside earned income, honoraria, and outside employment, to (a) cover the Commissioners and employees of the Sentencing Commission and the judges and employees of the United States Tax Court; (b) reflect technical amendments to the Ethics Reform Act and changes in other laws; and (c) make other minor technical corrections.

## **COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT**

### **NATURALIZATION**

Under the Naturalization Amendments of 1990, effective October, 1991, applicants for naturalization have an administrative ceremony unless they elect to take their oath in a ceremony in district court. These amendments also provide that the Immigration and Naturalization Service (INS) is responsible for printing and issuing all naturalization certificates; however, INS will not commit to providing courts with certificates to be issued at the court oath-taking ceremonies. Many judges who take pride in conducting these ceremonies, and wish to continue the tradition of oath-taking ceremonies in the courts, feel that a significant number of applicants will not choose a court ceremony if they believe that to do so would delay their receipt of a naturalization certificate. Therefore, the Conference resolved that any person seeking United States citizenship who elects a federal court as the situs of the administration of the oath of allegiance should be provided with a certificate of naturalization at the time of oath-taking.

### **PLACES OF HOLDING COURT**

Upon request of the Eastern District of North Carolina and the Judicial Council for the Fourth Circuit, the Judicial Conference agreed to recommend that Congress amend 28 U.S.C. § 113(a) to delete Clinton and Washington as places of holding court for the Eastern District of North Carolina and establish

Greenville as a place of holding court. The Conference also agreed, upon request of the Eastern District of Texas and the Judicial Council for the Fifth Circuit, to recommend that Congress amend 28 U.S.C. § 124(c) to establish Plano as a place of holding district court in the Eastern District of Texas.<sup>3</sup>

#### **VIDEOCONFERENCING -- DEPOSITIONS/TESTIMONY**

Noting that the cost and delay associated with the scheduling and travel often required for the taking of depositions and testimony in civil actions could be reduced through the use of videoconferencing technology, the Committee on Court Administration and Case Management recommended the approval in concept of the use of videoconferencing technology for the taking of depositions and the testimony of witnesses. The Conference concurred in the recommendation.

#### **COMMITTEE ON COURT AND JUDICIAL SECURITY**

The Committee on Court and Judicial Security reported that it had discussed the various activities it is monitoring, including a legislative proposal to authorize judicial officers to carry firearms; background investigations of court employees; and the General Accounting Office study of court security (see "Miscellaneous Actions," *supra* pp. 49-51). The Committee also received reports from the Federal Bureau of Investigation and the United States Secret Service on off-site security.

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

##### **INTERNATIONAL CRIMINAL COURT**

The Foreign Operations, Export Financing, and Related Program Appropriations Act (Public Law 101-513) required the Judicial Conference to report to Congress by October 1, 1991, on the feasibility and the relationship to the federal judiciary of an international criminal court. The Conference approved a report proposed by the Committee on Criminal Law and Probation Administration and authorized its transmittal to Congress.

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<sup>3</sup> In subsequent action, the Executive Committee approved on behalf of the Conference (mail vote concluded October 18, 1991), the substitution of Plano for Sherman as the place of holding bankruptcy court for the Sherman and Paris Divisions of the Eastern District of Texas, effective immediately.

## DRUG AFTERCARE PROGRAM

The authorization for funding for the substance abuse aftercare program expires on September 30, 1992. On recommendation of the Committee, the Judicial Conference endorsed legislation to reauthorize appropriations for the AO Director to contract for the substance abuse aftercare program.

## MANDATORY MINIMUM SENTENCES

Under current law, the only way a judge can sentence below a mandatory minimum is upon a motion of the government attesting that the defendant has provided substantial assistance. This can help offenders with a high degree of involvement, but often does not help lesser involved offenders who have no knowledge to trade. While the judiciary's overriding goal is to persuade Congress to repeal mandatory minimum sentences, for the short term, a safety valve of some sort is needed to ameliorate some of the harshest results of mandatory minimums. The Judicial Conference, on recommendation of the Committee on Criminal Law and Probation Administration, approved a proposed statutory amendment that would provide district judges with authority to impose a sentence below a mandatory minimum when a defendant has limited involvement in an offense.

## COMMITTEE ON DEFENDER SERVICES

### CRIMINAL JUSTICE ACT COMPENSATION

The Judicial Conference approved, subject to the availability of funds<sup>4</sup>, the Defender Services Committee's recommendation of a pay cost adjustment to increase the attorney compensation rate under the Criminal Justice Act to \$75 per hour for in-court and out-of-court work in the 35 districts set forth below:

Alabama (Southern)	Maryland
Arizona	Michigan (Western)
Connecticut	Mississippi (Northern)
Florida (Middle)	Mississippi (Southern)
Florida (Northern)	Missouri (Eastern)
Guam	Missouri (Western)
Idaho	Nevada
Kentucky (Eastern)	North Carolina (Western)
Kentucky (Western)	Ohio (Northern)
Louisiana (Eastern)	Ohio (Southern)
Louisiana (Middle)	Oregon
Louisiana (Western)	Pennsylvania (Middle)

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<sup>4</sup>Funding is not available for the fiscal year 1992.

Pennsylvania (Western)  
South Carolina  
Tennessee (Eastern)  
Tennessee (Middle)  
Texas (Eastern)  
Texas (Northern)

Texas (Southern)  
Texas (Western)  
Virginia (Western)  
West Virginia (Northern)  
West Virginia (Southern)

In anticipation of additional requests for pay cost adjustments, and to reduce the administrative burden on the Judicial Conference and its Executive Committee, the Conference delegated to the Defender Services Committee the authority to approve attorney pay cost adjustments for districts and in individual cases. See also "Criminal Justice Act Compensation," supra p. 47.

### **COMMITTEE ON FEDERAL-STATE JURISDICTION**

#### **VIOLENCE AGAINST WOMEN ACT**

After considering the report and recommendations of the Committee on Federal-State Jurisdiction and the Ad Hoc Committee on Gender-Based Violence, the Judicial Conference approved the following resolution on S. 15 (102nd Congress), the proposed Violence Against Women Act of 1991:

The Judicial Conference of the United States, while supporting the objectives of the Violence Against Women Act of 1991 (S. 15), joins the National Conference of State Chief Justices in opposing specific provisions of the current draft that significantly threaten the ability of the federal courts to administer this Act, and other Acts of Congress, promptly, fairly, and in accordance with their objectives.

Title III of S. 15 as drafted creates federal jurisdiction to allow victims of certain defined criminal acts motivated by gender to recover compensatory and punitive damages. The Conference agrees with the State Chief Justices that the current broad definition of crime (applicable, for example, to misdemeanors and other minor threats against persons and property) creates a right that "will be invoked as a bargaining tool within the context of divorce negotiations and add a major complicating factor to an environment which is often acrimonious as it is."

Title II creates a federal crime where one who, having traveled across a state line, commits an intentional act that injures his spouse or intimate partner. Furthermore, the federal court

before which the criminal case is brought may issue temporary orders of protection of an abused spouse or intimate partner.

The Conference agrees with the State Chief Justices when they say that S. 15 as drafted could cause major state-federal jurisdictional problems and disruptions in the processing of domestic relations cases in state courts. The Chief Justices point out that over three million domestic relations cases were filed in state courts in 1989. If a party to one-tenth of those suits were to seek collateral recourse under S. 15, those cases alone would exceed the total of all cases now pending in the district courts and courts of appeals of the federal judiciary.

In the recently enacted Civil Justice Reform Act, Congress recognized and stated very well the predicament of the civil dockets of the federal courts. By adding to those dockets causes of action now actionable in state courts, as S. 15 would do, or as sections 202 and 1213(G) of S. 1241 (the Violent Crime Control Act of 1991) would do, the serious problem will become much worse.

The subject of violence based on gender and possible responses is extremely complex. The Conference is prepared to work with Congress to ensure the most efficient utilization of scarce judicial resources and to fashion an appropriate response to violence directed against women.

The Conference instructed the Ad Hoc Committee on Gender-Based Violence to continue its dialogue with the sponsors of S. 15 and, in collaboration with the Executive Committee, to make known the position of the Judicial Conference to the members of Congress. See also "Violence Against Women Act," supra p. 47.

#### TRANSFER OF VENUE

The limit in 28 U.S.C. § 1404(a) on transfer of a civil action only to a district where it "might have been brought" is a source of potential difficulty, particularly where actions growing out of the same events may be pending in different courts and consolidation may be desirable. The Conference approved a proposal by the Federal-State Jurisdiction Committee to seek an amendment to this section which would delete the language "where it might have been brought" and thereby permit the transfer of civil litigation to any judicial district under the prevailing standards that govern section 1404(a) transfer.

## HABEAS CORPUS

Title XI of S. 1241 (102nd Congress), the Biden-Thurmond Violent Crime Control Act of 1991, which passed the Senate on July 11, 1991, contains provisions concerning general and capital habeas corpus reform. The habeas provisions in the Senate crime bill provide for deference to state court factual and legal determinations that have been "fully and fairly adjudicated" in state proceedings. Taking a formal position on the issue of "full and fair adjudication", the Judicial Conference voted to oppose the inclusion of language relating to full and fair adjudication contained in the proposed amendments of 28 U.S.C. §§ 2254(d) and 2259(b) in S. 1241.

## REMOVAL OF RESOLUTION TRUST CORPORATION CASES

The Conference approved the Federal-State Jurisdiction Committee's recommendation that Congress amend 12 U.S.C. § 1441a(l)(3) primarily to permit more flexibility in the removal authority of the Resolution Trust Corporation (RTC) in savings and loan actions. This amendment should alleviate some of the burden on the United States District Court for the District of Columbia and provide other options for removal of actions involving the RTC. The proposed amendment makes three other changes to the statute, not directly related to removal to the District of Columbia: (a) It ensures that this statute does not supersede any other removal provision; (b) it changes the time for removal from 30 days after suit is filed to 30 days after service to correct the problems arising from delayed service; and (c) it clarifies the procedure governing substitution of the RTC into pending litigation.

## NATIONAL CONFERENCE ON STATE-FEDERAL JUDICIAL RELATIONSHIPS

The Judicial Conference agreed to co-sponsor a National Conference on State-Federal Judicial Relationships in the spring of 1992. Other sponsors include the Federal Judicial Center, the State Justice Institute, the Conference of State Chief Justices, the National Center for State Courts, and the National Judicial Council of State and Federal Courts.

## COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

The Committee on Intercircuit Assignments reported that during the period February 1, 1991, through July 31, 1991, the Committee had recommended 92 intercircuit assignments to be undertaken by 61 Article III judges. Of this number, 21 were senior circuit judges, five were active circuit judges, 24 were senior district judges, five were active district judges, one was a senior judge from the Court of International Trade, and five were active judges of the Court of International Trade.

## **COMMITTEE ON THE JUDICIAL BRANCH**

### **TRAVEL REGULATIONS FOR JUSTICES AND JUDGES**

The Judicial Conference approved amendments to the Travel Regulations for United States Justices and Judges to:

- a. authorize the reimbursement of travel expenses incurred by the chief judge of a circuit or district in which a new Supreme Court justice previously served, for attending, upon invitation of the Chief Justice, the investiture of that justice;
- b. modify the actual expense reimbursement provisions for judges who rent or maintain an abode at a temporary duty location, permitting more favorable treatment of long-term lodging costs where the abode is rented by the week or month because the rent is less than the cost of acceptable hotel or motel accommodations, or where lodging during official travel is the primary purpose for renting or maintaining the abode on an annual basis;
- c. clarify that any judge who elects to claim subsistence on an actual expense basis must continue to do so on the day on which the judge returns to the official duty station or residence from which he or she commutes to that duty station;
- d. authorize reimbursement for travel expenses incurred by the Chief Justice or chief judge of a court, or his or her designee among the members of the court, in attending memorial services and funerals of judges or court employees;
- e. clarify that a senior judge may be reimbursed for travel expenses whenever the judge is authorized to travel away from his or her customary residence (official duty station) to transact official business;
- f. reflect the current use of government-sponsored credit cards and special accounts with GSA-contracted travel agents, rather than Government Transportation Requests (GTRs), to obtain commercial airplane, railroad, and bus tickets for official travel; and
- g. clarify that for reimbursement of expenses incurred by transferred judges in the sale and purchase of a residence, the judges should rely on the information in the relocation package provided at the time of transfer, which will be the most current, rather than the rates published in the regulations.

Upon recommendation of the Committee on the Judicial Branch, the Conference agreed to support legislation requested by the General Services Administration to authorize increased mileage rates for use of privately-owned aircraft, automobiles, and motorcycles on official travel.

On the subject of travel of spouses, the Judicial Conference adopted the following statement of policy:

The Judicial Conference recognizes the importance of spouses in the official lives of our judges. While there are countless examples of the personal aid and support that judges' spouses provide, they also perform a broader, public service by helping judges to bear the heavy responsibilities and confront the potential risks of a judicial career. This frequently causes spouses to put aside other obligations to accompany judges on official travel; for example, they may attend seminars at circuit judicial conferences that focus on security awareness and other matters of concern to judges and the Judiciary.

The Conference wishes to alleviate the personal financial burden of this spousal travel, yet does not advocate the use of appropriated funds to that end. Accordingly, the Committee on the Judicial Branch is directed to continue exploring appropriate ways in which "frequent flyer" and other bonuses earned as a result of official travel may be used by spouses in order to accompany judges on official travel in circumstances where their participation is sanctioned by the Chief Justice or chief judge of the respective court and qualifies as official travel because it necessarily relates to the performance of judicial duties.

#### **COMMITTEE ON JUDICIAL ETHICS**

The Judicial Ethics Committee reported that as of July, 1991, it had received 1,959 financial disclosure reports and certifications for the calendar year 1990, including 1,002 reports and certifications from judicial officers and 957 reports and certifications from judicial employees.

#### **COMMITTEE ON JUDICIAL RESOURCES**

##### **FISCAL YEAR 1993 BUDGET REQUESTS FOR SUPPORTING PERSONNEL**

The Judicial Conference reviewed requests for fiscal year 1993 positions for supporting personnel and approved the following additional positions (subject to the availability of funds):

- 106 JSP-8 electronic court recorder operators.
- 155 JSP-11 automation positions to support personal computers in the courts.
- 31 JSP-11 deputy clerks for the Automation Training and Support Centers.
- One deputy clerk position and one secretary position for the Judicial Panel on Multidistrict Litigation.

#### BANKRUPTCY ADMINISTRATOR OFFICES

In order to allow bankruptcy administrators to perform certain case closing functions being transferred from bankruptcy clerks' offices, the Judicial Conference authorized for fiscal year 1992, subject to the availability of funds, ten additional positions in bankruptcy administrator offices, including six JSP-9 case closing clerks and four JSP-11 administrative analysts.

#### ADDITIONAL COURT REPORTERS

The Conference approved one additional court reporter each for Georgia (Northern), Georgia (Southern), Maryland, Massachusetts, Nebraska, and Washington (Eastern), and the transfer of a previously-approved additional court reporter position in Texas (Northern) from Lubbock to Fort Worth.

#### JUDICIARY SALARY PLAN MODIFICATIONS

On recommendation of the Committee on Judicial Resources, the Judicial Conference took the following actions regarding position classifications and benchmark standards, subject, as always, to the availability of funds:

- Approved the establishment of benchmark standards for the following support positions in probation and pretrial services offices, at the same grade levels in the Judiciary Salary Plan for such positions in the district and bankruptcy court clerks' offices: supply clerk, records/reproduction clerk, receptionist, property and procurement assistant, secretary to the deputy chief, administrative analyst, personnel specialist, personnel assistant, and administrative manager;
- Approved an increase in the target grade of the secretary to chief preargument attorneys from JSP-8 to JSP-9.

- Approved revisions to the benchmark job standard for pro se writ clerks to remove the clause limiting to JSP-7 such positions in courts having pro se law clerks.
- Approved revisions to the benchmark job standard for systems managers to allow its use in courts with non-ICMS automated case management systems.

#### WORK MEASUREMENT AND STAFFING FORMULAS

On recommendation of the Committee on Judicial Resources, the Judicial Conference approved work measurement formulas for probation and pretrial services offices. These formulas reflect work performed currently in these offices and indicate that they have been understaffed by approximately 24 percent. The Conference also approved a staffing formula for staff attorney positions in courts of appeals, with the proviso that it be reevaluated in five years. A staffing needs determination and allocation methodology for Circuit Executives' offices, including a staffing ceiling, was approved by the Judicial Conference, which authorized, for the fiscal year 1993, the addition in these offices of 31 new permanent positions and the conversion of 17 current temporary positions to permanent. Implementation of each of these staffing changes is, of course, subject to the availability of funding.

Because the development of new work measurement formulas for clerks' offices has not yet been completed, the Conference, on recommendation of the Committee, approved an extension of the temporary additive automation support positions in UNIX-based courts and reinstated all temporary additive positions which have already expired. The extension would be effective until such time as the work measurement studies for offices in these courts are complete and the new staffing formulas are in effect.

#### GRADE LEVELS OF CLERKS AND CHIEF PROBATION/PRETRIAL SERVICES OFFICERS

On the recommendation of the Committee, the Judicial Conference approved changes to the guidelines (see JCUS-SEP 87, p. 7; JCUS-MAR 89, pp. 21-22) so as to determine annually the grades of clerks of district and bankruptcy courts and of chief probation and chief pretrial services officers. This determination will be made at or near the beginning of the fiscal year when allocations of positions are made to the court and will be based on projected workload data.

## JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

The Conference approved a special one-grade executive pay increase to JSP-16 for the executive attorney of the Judicial Panel on Multidistrict Litigation and a promotion to JSP-15 for the clerk of the Panel.

### PROBATION/PRETRIAL SERVICES OFFICERS' COMPENSATION

In order to maintain pay parity with executive branch law enforcement officers, the Judicial Conference approved two recommendations of the Committee on Judicial Resources concerning pay of certain probation and pretrial services officers and officer assistants. First, the Conference authorized higher basic pay rates for probation and pretrial services officers and officer assistants in the same amounts and at the same time as those specified in section 403 of the Federal Law Enforcement Pay Reform Act of 1990 for the General Schedule, and at JSP grades and steps (JSP-3 through JSP-10) corresponding to those specified in the Act for the General Schedule.

The Conference also approved geographic pay differentials for probation and pretrial services officers (except for chief probation and pretrial services officers) and officer assistants in the eight metropolitan areas specified in section 404 of the Law Enforcement Pay Reform Act for General Schedule employees, at the same time and in the same percentages specified in the Act, as follows (to be offset in three locations by the eight percent increase for court support employees approved by the Judicial Conference in January 1991 (JCUS-MAR 91, pp. 9-10)):

Boston-Lawrence-Salem, MA-NH Consolidated Metropolitan Statistical Area	16%
Los Angeles-Anaheim-Riverside, CA, Consolidated Metropolitan Statistical Area	16%
New York-Northern New Jersey-Long Island, NY-NJ-CT Consolidated Metropolitan Statistical Area	16%
San Francisco-Oakland-San Jose, CA, Consolidated Metropolitan Statistical Area	16%
San Diego, CA, Metropolitan Statistical Area	8%

Chicago-Gary-Lake County, IL-IN-WI Consolidated Metropolitan Statistical Area	4%
Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD Consolidated Metropolitan Statistical Area	4%
Washington, DC-MD-VA Metropolitan Statistical Area	4%

### TRANSCRIPT RATES

Due to the potentially widespread use by parties of diskette copies of transcripts, the Conference approved an increase in the rates allowed for diskette transcripts to make these rates the same as those allowed for paper transcripts. The Conference also approved the following guidelines to regulate the sale of transcripts on computer diskettes:

- Transcripts may be sold in computer diskette form in ASCII format, or other format requested by the ordering party and agreed to by the court reporter or transcriber, whether they represent originals, first copies, or additional copies.
- No additional charge is permitted for the cost of the diskette itself.
- Each page of transcript sold on diskettes must be formatted consistent with the Judicial Conference's approved transcript format guidelines, and diskettes may not contain any protection or programming codes that would prevent copying or transferring the data.
- The transcript copy filed with the clerk of court pursuant to 28 U.S.C. § 753(b) must be on paper; diskettes may be sold only if a paper copy is produced, certified, and filed with the clerk of court for the records of the court; and transcripts sold on diskettes must be identical to the paper transcripts filed with the clerk of court. Court reporters and transcribers who have Computer Assisted Transcript (CAT) or suitable word processing equipment are encouraged to provide diskettes of transcripts to parties upon request, but court reporters and transcribers who do not have CAT or suitable word processing equipment are not required to provide diskettes of transcripts to parties.
- Court reporters and transcribers must continue to produce paper originals and paper copies at the Judicial Conference rates when ordered by parties.

## EMPLOYEE RELOCATION REIMBURSEMENT POLICY

The Conference approved revisions to the judiciary's policy on reimbursement of employee relocation expenses to incorporate the interim employee relocation reimbursement guidelines adopted by the Executive Committee in June 1990 (JCUS-SEP 90, p. 65), and to place certain restrictions on reimbursement of relocations between districts of probation and pretrial services officers. The revisions will be published in the *Guide to Judiciary Policies and Procedures*.

## JUDGES' STAFFS

Current guidelines authorize court of appeals judges to hire a secretary, an assistant secretary, and up to three law clerks, and district court judges may hire a secretary and up to two law clerks. The Conference, at this session, authorized court of appeals and district court judges to employ an additional law clerk in lieu of an authorized secretary, or vice versa.

## COMMITTEE ON LONG RANGE PLANNING

The Long Range Planning Committee reported that it will focus its work on coordinating and supporting long range planning by others within the judiciary. The Committee further reported that it (a) designated individual members to establish liaison relationships with 15 Judicial Conference committees and with each circuit chief judge; (b) endorsed a request to the FJC that it sponsor, in conjunction with the Committee and the AO, a conference on long range planning in the federal court system; and (c) intends to present a request for contract funds for the fiscal years 1992 and 1993 to commission short-term assistance from organizations or persons experienced in long range planning.

## COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

### LEGISLATION

A "housekeeping" bill drafted by the Legislative and Public Affairs Office of the Administrative Office contains several provisions affecting magistrate judges, including provisions that would (a) amend certain statutes to expand powers of magistrate judges to revoke terms of supervised release in misdemeanor cases; (b) eliminate the requirement of consent of the defendants to trial by magistrate judges in petty offense cases; and (c) eliminate the requirement of written consent of the defendants to trial by magistrate judges in class A misdemeanor cases. At the recommendation of the Committee on the

Administration of the Magistrate Judges System, the Judicial Conference endorsed the provisions of this draft bill that affect magistrate judges.

Also on recommendation of the Committee, the Conference opposed the mandatory restitution provisions contained in such bills as H.R. 1809, S. 566, and S. 618, 102nd Congress, due to concerns about the potential impact on the courts of these provisions.

#### ACCESS TO CLASSIFIED INFORMATION

In order to assist magistrate judges in the performance of their duties in cases involving classified information, the Judicial Conference, on recommendation of the Magistrate Judges Committee, adopted a resolution that:

- a. Acknowledges the need for full-time magistrate judges to have access to classified and top secret information in the performance of duties assigned to them by district judges and in the trial of cases assigned to them with the consent of the parties;
- b. Endorses S. 394, 102nd Congress, the Counterintelligence Improvements Act of 1991, subject to the addition of a provision providing magistrate judges with automatic access to top secret information; and
- c. Directs the Administrative Office to seek the necessary revisions in the security procedures promulgated by the Chief Justice and the regulations of the Department of Justice in order to provide magistrate judges with automatic access to classified information for use in the judicial tasks assigned to them.

#### DESIGNATION OF NEW FULL-TIME MAGISTRATE JUDGE POSITIONS FOR ACCELERATED FUNDING

In order to provide prompt magistrate judge assistance to judicial districts which are seriously affected by drug filings, the Judicial Conference approved the Committee's recommendation to accelerate the funding for six new full-time magistrate judge positions. The new magistrate judge positions at Houston, Texas; Brownsville, Texas; McAllen (or Laredo), Texas; Boise, Idaho; Las Vegas, Nevada; and Montgomery, Alabama, were designated for accelerated funding in the fiscal year 1992.

#### CHANGES IN MAGISTRATE JUDGE 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 judge positions. Unless otherwise indicated, these changes are to be effective when appropriated funds are available.

### THIRD CIRCUIT

#### Pennsylvania (Middle)

- a. Rescinded discontinuation of the part-time magistrate judge position at Stroudsburg upon the filling of the new full-time magistrate judge position at Scranton, and instead continued the part-time position at Stroudsburg until December 31, 1993, at a reduced salary of \$4,626 per annum;
- b. authorized the full-time magistrate judges at Scranton and Wilkes-Barre to serve in the adjoining Eastern District of Pennsylvania and the District of New Jersey; and
- c. authorized the full-time magistrate judge at Allentown in the Eastern District of Pennsylvania to serve in the adjoining Middle District of Pennsylvania and the District of New Jersey.

### FOURTH CIRCUIT

#### West Virginia (Northern)

- a. Increased the salary of the part-time magistrate judge position at Wheeling from \$4,626 to \$18,503 per annum;
- b. decreased the salary of the part-time magistrate judge position at Morgantown from \$32,380 to \$18,503 per annum; and
- c. made no change in the full-time magistrate judge position at Elkins.

### FIFTH CIRCUIT

#### Louisiana (Eastern)

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

Louisiana (Middle)

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

Texas (Southern)

- a. Authorized an additional full-time magistrate judge position at Houston;
- b. authorized an additional full-time magistrate judge position at McAllen (or Laredo);
- c. converted the part-time magistrate judge position at McAllen (or Brownsville) to a full-time magistrate judge position at Brownsville; and
- d. made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

EIGHTH CIRCUIT

Arkansas (Western)

- a. Authorized an additional full-time magistrate judge position at Hot Springs or El Dorado or Texarkana;
- b. discontinued the part-time magistrate judge positions at Hot Springs, Harrison, and El Dorado upon the appointment of the new full-time magistrate judge at Hot Springs or El Dorado or Texarkana; and
- c. made no change in the full-time magistrate judge position at Fort Smith.

NINTH CIRCUIT

California (Eastern)

- a. Authorized an additional full-time magistrate judge position at Fresno;
- b. discontinued the part-time magistrate judge positions at Sequoia-Kings Canyon National Parks, Bakersfield, and Merced upon the appointment of the new full-time magistrate judge at Fresno; and
- c. made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

## Idaho

- a. Authorized a second full-time magistrate judge position at Boise;
- b. increased the salaries of the part-time magistrate judge positions at Pocatello and Coeur d'Alene from \$18,503 to \$27,755 per annum;
- c. discontinued the part-time magistrate judge positions at Pocatello and Coeur d'Alene upon the appointment of the second full-time magistrate judge at Boise; and
- d. made no change in the full-time magistrate judge position at Boise.

## Nevada

- a. Authorized an additional full-time magistrate judge position at Las Vegas; and
- b. made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

## TENTH CIRCUIT

## Utah

- a. Converted the part-time magistrate judge position at Salt Lake City to full-time status;
- b. increased the salaries of the part-time magistrate judge positions at Monticello (or Moab) and Cedar City from \$4,626 per annum to \$6,938 per annum; and
- c. made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

## Wyoming

Discontinued the part-time magistrate judge position at Cody, effective October 1, 1991.

## ELEVENTH CIRCUIT

### Alabama (Middle)

- a. Authorized an additional full-time magistrate judge position at Montgomery;
- b. discontinued the part-time magistrate judge position at Dothan effective upon the entry on duty of the new full-time magistrate judge at Montgomery; and
- c. made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

### Florida (Northern)

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

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

A recent amendment to the Judicial Conduct and Disability Act, 28 U.S.C. § 372(c)(8)(B), authorizes the Judicial Conference to certify to the House of Representatives sua sponte by majority vote, without certification or referral from a circuit judicial council, that consideration of impeachment may be warranted if a judge has been convicted of a felony and has exhausted all means of direct review or has waived the opportunity to seek such review. To implement this amendment, the Committee to Review Circuit Council Conduct and Disability Orders recommended, and the Conference approved, revisions to the Rules for the Processing of Certificates that a Judicial Officer Might Have Engaged in Impeachable Conduct.

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

The Committee on Rules of Practice and Procedure reported that it had reviewed its operations, policies and procedures. The Committee also reported that two subcommittees will be appointed: one on style, which will hereafter review submissions from advisory committees and suggest stylistic changes in language, and the other on planning, which will consider such matters as the frequency and scheduling of recommendations to the Conference, long range integration of rules, and ease of access to the rules by the entire profession.

## **COMMITTEE ON SPACE AND FACILITIES**

### *UNITED STATES COURTS DESIGN GUIDE*

On recommendation of the Committee on Space and Facilities, the Judicial Conference authorized amendments to the *United States Courts Design Guide* to (a) change "person" to "visitor" when describing the public in relevant sections of the *Guide*; (b) add language relevant to the location of Federal Defender Organizations; (c) reinstate the space standard in the previous edition of the *Guide* of 200 square feet for Assistant Federal Public Defenders; and (d) add a space standard of 100 square feet for secretaries to Assistant Federal Public Defenders, omitted from the March 1991 version of the *Guide*.

## **CONFERENCE ON COURT FACILITIES**

The Conference endorsed participation in a conference on courthouse design, construction, and operation, in joint sponsorship with the American Institute of Architects and the National Center for State Courts, to be held in Washington, D.C. in October 1992.

## **AD HOC COMMITTEE TO STUDY THE RELATIONSHIP BETWEEN THE FEDERAL JUDICIAL CENTER AND THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS**

In February, 1991, the Chief Justice established the Ad Hoc Committee to Study the Relationship Between the Federal Judicial Center and the Administrative Office of the United States Courts. After interviewing the Directors and Deputy Directors of the two agencies, one former Director of the FJC, and the Chairman of the Executive Committee of the Judicial Conference, and after studying the matter extensively, the Committee submitted a report which addressed six major areas involving relationships between the FJC and the AO and presented specific recommendations for improvement of relations in each area. The Judicial Conference and the Board of the Federal Judicial Center, in joint executive session, approved the report, as amended. The Conference also approved the following resolution:

**RESOLVED**, that the Report, as amended, of the Ad Hoc Committee to Study the Relationship between the Federal Judicial Center and the Administrative Office of the United States Courts be transmitted forthwith to the Director of the Administrative Office and to the Executive Committee of the Judicial Conference, to whom oversight responsibility for implementation is assigned, with instructions to effect the immediate implementation of the recommendations set out in the Report. To the greatest extent

feasible, implementation efforts shall proceed jointly with the Director of the FJC and the FJC Board unless the FJC Board and the Judicial Conference, upon the recommendation of its Executive Committee, jointly determine that any particular recommendation in the Report should be deferred, modified, or rejected.

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

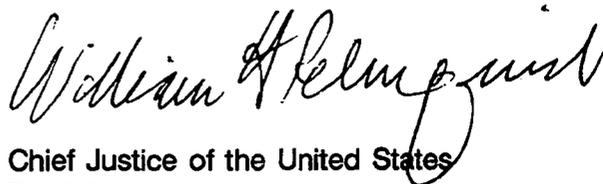
Pursuant to 28 U.S.C. § 48, the Conference approved the pretermission of terms of the following United States Courts of Appeals during the calendar year 1992: the Court of Appeals for the Fourth Circuit at Asheville, North Carolina; the Court of Appeals for the Ninth Circuit at Los Angeles, California; 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.

A handwritten signature in black ink, reading "William H. Rehnquist". The signature is written in a cursive style with a large, prominent "R".

Chief Justice of the United States  
Presiding

December 13, 1991