

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

*MARCH 13, 2002
WASHINGTON, D.C.*

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CHIEF JUSTICE WILLIAM H. REHNQUIST,
PRESIDING
LEONIDAS RALPH MECHAM, SECRETARY*

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The Judicial Conference of the United States convened in Washington, D.C., on March 13, 2002, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Michael Boudin
Chief Judge D. Brock Hornby,
District of Maine

Second Circuit:

Chief Judge John M. Walker, Jr.
Chief Judge Frederick J. Scullin, Jr.,
Northern District of New York

Third Circuit:

Chief Judge Edward R. Becker
Chief Judge Sue L. Robinson,
District of Delaware

Fourth Circuit:

Chief Judge J. Harvie Wilkinson III
Chief Judge Charles H. Haden II,
Southern District of West Virginia

Fifth Circuit:

Chief Judge Carolyn Dineen King
Judge Martin L. C. Feldman,
Eastern District of Louisiana

Sixth Circuit:

Chief Judge Boyce F. Martin, Jr.
Chief Judge Lawrence P. Zatkoff,
Eastern District of Michigan

Seventh Circuit:

Chief Judge Joel M. Flaum
Chief Judge Marvin E. Aspen,
Northern District of Illinois

Eighth Circuit:

Chief Judge David R. Hansen
Chief Judge James M. Rosenbaum,
District of Minnesota

Ninth Circuit:

Chief Judge Mary M. Schroeder
Judge Judith N. Keep,
Southern District of California

Tenth Circuit:

Chief Judge Deanell R. Tacha
Chief Judge Frank Howell Seay,
Eastern District of Oklahoma

Eleventh Circuit:

Chief Judge R. Lanier Anderson
Chief Judge Charles R. Butler, Jr.,
Southern District of Alabama

District of Columbia Circuit:

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

Federal Circuit:

Chief Judge Haldane Robert Mayer

Court of International Trade:

Chief Judge Gregory W. Carman

Circuit Judges Edward E. Carnes, Dennis G. Jacobs, Michael J. Melloy, Jane R. Roth, Anthony J. Scirica, and William W. Wilkins, Jr., and District Judges Lourdes G. Baird, Robin J. Cauthron, John G. Heyburn II, David F. Levi, John W. Lungstrum, Edwin L. Nelson, Harvey E. Schlesinger and Frederick P. Stamp, Jr. attended the Conference session. Jan Horbaly of the Federal Circuit represented the circuit executives.

Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director for Management and Operations; William R. Burchill, Jr., Associate Director and General Counsel; Karen K. Siegel, Assistant Director, Judicial Conference Executive Secretariat; Michael W. Blommer, Assistant Director, Legislative Affairs; David Sellers, Assistant Director, Public Affairs; and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat. Judge Fern Smith and Russell Wheeler, Director and Deputy Director of the Federal Judicial Center, also attended the session of the Conference, as did Sally Rider, Administrative Assistant to the Chief Justice.

Senators Patrick J. Leahy, Charles E. Schumer, and Orrin G. Hatch and Representatives F. James Sensenbrenner and Howard Coble spoke on matters pending in Congress of interest to the Conference. Solicitor General Theodore Olson addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice.

REPORTS

Mr. Mecham reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office (AO). Judge Smith spoke to the Conference about Federal Judicial Center programs, and Judge Diana E. Murphy, Chair of the United States Sentencing Commission, reported on Sentencing Commission activities.

ELECTIONS

The Judicial Conference elected to membership on the Board of the Federal Judicial Center for a term of four years Circuit Judge Pierre Leval of the Second Circuit to succeed Circuit Judge Stanley Marcus.

EXECUTIVE COMMITTEE

UNITED STATES SENTENCING COMMISSION

In September 2001, the Judicial Conference recommended that the President reappoint to the United States Sentencing Commission Judges Sterling Johnson, Jr. of the Eastern District of New York and Joe Kendall of the Northern District of Texas (JCUS-SEP/OCT 01, p. 39). Subsequently, Judge Kendall resigned from the federal bench. At this session, on recommendation of the Executive Committee, the Judicial Conference—

- a. Reaffirmed its recommendation that the President reappoint Judge Johnson; and
- b. In lieu of recommending the reappointment of Judge Kendall, urged the President to appoint Judge Ricardo Hinojosa of the Southern District of Texas.

FIVE-YEAR JURISDICTIONAL REVIEW

Every five years each committee of the Judicial Conference must recommend to the Executive Committee, with a justification, whether it should be maintained or abolished (JCUS-SEP 87, p. 60). Pursuant to this mandate,

each committee submitted to the Executive Committee a completed self-evaluation questionnaire, which was considered by the Executive Committee at its February 2002 meeting. The Executive Committee made no changes to the committee structure itself, but, on request of the respective committees, revised the jurisdictional statements of the Committees on Defender Services, Judicial Resources, Magistrate Judges, and Security and Facilities. The Executive Committee also revised its own jurisdictional statement. In addition, at the request of the Committee on Automation and Technology, the Executive Committee agreed to transfer two areas of responsibility from that committee's jurisdiction to the jurisdiction of the Committee on Court Administration and Case Management. These revisions were made final in March 2002, following an opportunity for comment by committee chairs. The Executive Committee also approved a recommendation of the Committee on Automation and Technology to change its name to the Committee on Information Technology and slightly modified the jurisdictional statement of that committee.

PRIVACY AND PUBLIC ACCESS TO ELECTRONIC CASE FILES

In September 2001, the Judicial Conference approved a policy on privacy and public access to electronic case files that includes a prohibition on electronic public access to documents in criminal cases, with the proviso that the prohibition be reexamined within two years (JCUS-SEP/OCT 01, pp. 48-50). In December 2001, the Committee on Court Administration and Case Management asked the Executive Committee to approve two exceptions to this prohibition, one for a pilot program whereby selected courts would provide electronic access to all criminal cases to facilitate reexamination of the policy, and the other for "high-profile" criminal cases where requests for documents impose extraordinary demands on a court's resources. The Executive Committee declined, without addressing the merits of the request, because it did not find that the circumstances rose to the level of an "emergency" requiring action prior to the next Conference session.

In January 2002, however, prompted by the recent filing of a high-profile case in the Eastern District of Virginia that resulted in extensive requests by the media for copies of documents, the Executive Committee agreed to approve on an interim basis, pending consideration by the full Conference, an exception to the prohibition on electronic public access in criminal cases for cases that place extraordinary demands on clerks' offices. The exception requires consent of the parties as well as a finding by the trial judge or presiding judge of the appellate panel that such access is warranted under the circumstances. Subsequently, in response to concerns raised, the

Committee also clarified the policy, noting that it did not prohibit web publication of, or electronic access to, judicial opinions and orders in criminal cases.

At this session, the Conference made permanent the exception for high-profile cases that place extraordinary demands on clerks' offices and approved the pilot program requested by the Committee on Court Administration and Case Management (*see infra*, "Privacy and Public Access to Electronic Case Files," pp. 10-11).

MISCELLANEOUS ACTIONS

The Executive Committee—

- Approved proposed adjustments to the judiciary's fiscal year 2003 budget request to take into consideration increases in the federal pay inflation rate and an anticipated postage rate increase as well as to fund recurring costs in the court security program that are associated with the judiciary's fiscal year 2001 emergency supplemental appropriation on terrorism.
- Approved a proposed spending plan for utilization of \$82.2 million in supplemental funding received by the judiciary for security following the September 11, 2001, terrorist attacks.
- Approved, with minor modifications, a *Report on the Jury System in the Federal Courts* that was prepared in response to congressional directive and required to be filed with Congress by February 1, 2002.
- In light of recent anthrax contamination of the United States mail system, adopted recommendations of the Committee on Security and Facilities to secure efficient and appropriate means of providing nationwide access to anthrax testing services and expert advice on addressing biological/chemical threats and to pursue possible changes to the *U.S. Courts Design Guide* to address biological and chemical threats.
- Allowed to take effect an automatic inflationary increase in the alternative subsistence amount for reimbursement of judges' travel expenses in light of the continued rise in travel costs in many locations.

- Requested that the Judicial Branch Committee reconsider the collection of data on non-case related travel of judges for the purpose of reporting that travel to Congress (*see infra*, “Travel Regulations for United States Justices and Judges,” p. 21).
- Agreed to dissolve the Coordinating Group on Financial Disclosure Legislation because its primary purpose was accomplished, *i.e.*, obtaining elimination or extension of the sunset date of the Conference’s authority to redact for security purposes information in judges’ financial disclosure reports.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it reviewed the progress of several major initiatives, including the AO’s efforts to enhance security of judges, judiciary personnel, and courthouses in the wake of the September 11, 2001, terrorist attacks and in response to the threat of anthrax in the mail. In light of the increased emphasis on electronic communications, the Committee asked the Administrative Office to undertake a comprehensive study of the requirements, practices, and methods of effective distribution of information to court officials who need it. The Committee reviewed and expressed its continuing support for the AO’s management oversight and stewardship initiatives, including numerous accomplishments achieved in 2001. The Committee considered a report on Administrative Office priorities from 1985 to 2001, and unanimously passed a resolution in recognition of Director Mecham’s leadership during this period.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

OFFICIAL DUTY STATIONS/PLACES OF HOLDING COURT

Under 28 U.S.C. § 152(b)(1), the Judicial Conference has authority to designate the places of holding court and official duty stations of bankruptcy judges. The Committee on the Administration of the Bankruptcy System

periodically conducts comprehensive nationwide surveys to discover any inaccuracies in such designations that might develop over time. Based on the most recent survey, which was conducted in the fall of 2001, and with the approval of the respective judges, courts, and circuit judicial councils, the Bankruptcy Committee recommended, and the Judicial Conference approved, changes in five official duty stations and eight places of holding court as follows:

OFFICIAL DUTY STATIONS

1. Transfer the official duty station of the bankruptcy judge at Hato Rey in the District of Puerto Rico to San Juan;
2. Designate the official duty station of Bankruptcy Judge Albert S. Dabrowski in the District of Connecticut as “Hartford or New Haven”;
3. Transfer the official duty station of Bankruptcy Judge Stephen S. Mitchell in the Eastern District of Virginia from Richmond to Alexandria;
4. Transfer the official duty station of Chief Bankruptcy Judge Kent Lindquist in the Northern District of Indiana from Gary to Hammond; and
5. Transfer the official duty station of the bankruptcy judge at Rome in the Northern District of Georgia to Atlanta.

PLACES OF HOLDING COURT

<u>District</u>	<u>City</u>	<u>Change</u>
Massachusetts	Barnstable	Addition
Puerto Rico	Ponce	Addition
Virginia-Western	Woodstock	Deletion
Ohio-Southern	Steubenville	Deletion
Ohio-Southern	St. Clairsville	Addition
Illinois-Southern	Effingham	Addition
Oregon	Redmond	Addition
Georgia-Northern	Rome	Addition

COMMITTEE ACTIVITIES

The Bankruptcy Committee reported that it decided to ask the Federal Judicial Center to begin planning two new studies: one to reassess the existing case-weights used in evaluating additional judgeship requests because of the many developments – legislative, technological, and economic – that have affected judicial workload since the case-weights were first developed; and a second to study venue-related issues, including identification of factors that influence selection of venue for chapter 11 cases of large companies. The Committee also endorsed several actions that it believes will enhance relations between district and bankruptcy courts and promote collegiality among the judges.

COMMITTEE ON THE BUDGET

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it discussed court security issues related to the September 11, 2001, terrorist attacks and other security threats, and the short-term and long-term funding implications of these issues. The Committee also discussed the possibility of serious budget constraints in future years due to the slowing economy and the shift in the federal budget situation from anticipated surpluses to expected deficits. The Committee hopes to use the long-range planning process and its summer meetings with the program committee chairs as vehicles to encourage program committees to look at long-range budget issues and ways to economize and prioritize.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

Since its last report in September 2001, the Committee on Codes of Conduct received 27 new written inquiries (three of which were subsequently withdrawn) and issued 22 written advisory responses. During this period, the average response time for requests was 18 days. The Chairman received and responded to 16 telephonic inquiries. In addition, individual Committee members responded to 95 inquiries from their colleagues.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

PRIVACY AND PUBLIC ACCESS TO ELECTRONIC CASE FILES

Model Local Rules. In September 2001, the Conference adopted model local rules for district and bankruptcy courts to assist those courts in implementing electronic case filing (JCUS-SEP/OCT 01, p. 50). At this session, on recommendation of the Committee on Court Administration and Case Management, the Conference adopted amendments to Rule 12 of the Model Local District Court Rules for Electronic Case Filing to conform those rules to the policy on privacy and public access to electronic case files also adopted by the Conference in September 2001 (JCUS-SEP/OCT 01, pp. 48-50). Rule 12, as amended, clarifies that access to unsealed civil documents is still available at the courthouse and that anyone with a Public Access to Electronic Court Records (PACER) account can access unsealed electronic documents over the Internet, consistent with the Conference-approved privacy policy.

Criminal Case Files Pilot Program. As noted above (*see supra*, “Privacy and Public Access to Electronic Case Files,” pp. 5-6), the policy on privacy and public access to electronic case files, adopted by the Conference in September 2001, prohibits remote public electronic access to criminal case file documents, with the proviso that the Committee on Court Administration and Case Management reexamine the prohibition within two years (JCUS-SEP/OCT 01, pp. 48-50). On recommendation of the Committee, the Conference approved creation of a pilot program to allow selected courts to provide remote public electronic access to criminal case file documents. The authority to select the participating courts was delegated to the Committee. The Federal Judicial Center has agreed to study the participating courts within the two-year time frame and inform the Committee of its findings.

“High-Profile” Criminal Cases. The Committee also recommended a modification to the criminal case files provision of the privacy policy to allow remote public electronic access to files in “high-profile” criminal cases where requests for documents impose extraordinary demands on a court’s resources. Consent of the parties would be required as well as a finding by the trial judge or presiding judge of the appellate panel that such access is warranted under the circumstances. In January 2002, the Executive Committee approved such an exception on an interim basis, pending consideration by the Conference, to

accommodate a recent high-profile case filed in the Eastern District of Virginia (*see supra*, “Privacy and Public Access to Electronic Case Files,” pp. 5-6). At this session, the Conference approved the Committee’s recommendation to allow such exceptions on a permanent basis.

JURY WHEEL DATA

To ensure that juries are selected randomly from a fair cross section of the community, the Administrative Office provides Census Bureau data for every jury division in each federal district showing racial, ethnic and gender composition of the general voting-age population to serve as a basis for comparison to jury wheel samplings. However, two recent court rulings have found that because an individual must be a citizen to be eligible to serve as a juror, the relevant population with which to make these comparisons is the voting-age population of *citizens*, rather than the voting-age population of *all persons*. Finding that the voting-age citizen population would provide a more precise basis for comparison against jury wheel samplings, the Committee recommended, and the Conference approved, the use of such data in lieu of voting-age general population data for district courts to complete Part IV of the Form JS-12, “Report on the Operation of the Jury Selection Plan.” The Conference directed the Administrative Office to make any necessary amendments to the form to comport with this change.

ELECTRONIC PUBLIC ACCESS FEE SCHEDULE

The Electronic Public Access Fee Schedule imposes a fee of seven cents per page for case file data obtained via the Internet (JCUS-SEP 98, p. 64; JCUS-MAR 01, pp. 12-13). This fee is based upon the total number of pages in a document, even if only one page is viewed, because the case management/electronic case files system (CM/ECF) software cannot accommodate a request for a specific range of pages from a document. Concerns have been raised that this can result in a relatively high charge for a small usage. Balancing user concerns with the need to generate sufficient revenue to fund the program, the Committee recommended that the Judicial Conference amend Section I of the Electronic Public Access Fee Schedule to cap the charge for accessing any single document via the Internet at the fee for 30 pages. The Conference adopted the Committee’s recommendation.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported on several steps being taken to implement the policy on privacy and access to electronic case files approved by the Judicial Conference in September 2001 (JCUS-SEP/OCT 01, pp. 48-50). The Committee also discussed implementation of Recommendation 73 of the *Long Range Plan for the Federal Courts* as it pertains to the statistical data that is collected by the courts, and the current practices in the courts regarding fee waivers for electronic public access. The Committee supported the establishment of a Criminal Justice Act (CJA) supervising attorney position in courts that would find it of value (using only local funds), and communicated this position to the Judicial Resources Committee, which was preparing a recommendation to the Conference on this matter (*see infra*, “Criminal Justice Act Supervising Attorneys,” p. 23).

COMMITTEE ON CRIMINAL LAW

JUVENILE DELINQUENCY PROVISIONS OF 18 U.S.C. § 5037

The Committee on Criminal Law reviewed the juvenile delinquency provisions of 18 U.S.C. § 5037 and recommended that the Judicial Conference seek certain amendments thereto. First, the Committee recommended that 18 U.S.C. § 5037 be amended to authorize imposition of “juvenile delinquency supervision,” a new form of supervision to follow any imprisonment of juvenile delinquents. Currently, there is no effective way under the statute to provide for post-imprisonment supervision that would permit juveniles to receive the kind of assistance available to adults in the transition from prison to the community. Second, the Committee recommended that section 5037 be amended to establish procedures for revocation of probation or juvenile delinquency supervision that are specifically for juveniles under 21 years of age. The cross-reference to the adult mandatory revocation provisions in 18 U.S.C. § 3565 would be deleted for persons who are under 21 years of age at the time of revocation. Third, the Committee recommended the creation of authority to sanction violations of probation or juvenile delinquency supervision for persons over 21 years of age. Finally, the Committee recommended codification of the holding in *United States v. R.L.C.*, 503 U.S. 291 (1992), to limit juveniles sentenced to terms of imprisonment to sentences that could be imposed upon similarly

situated adults under the sentencing guidelines. The Conference agreed to seek the amendments recommended by the Committee.

TECHNICAL AMENDMENT TO THE SPEEDY TRIAL ACT

On recommendation of the Committee, the Judicial Conference agreed to propose technical amendments to 18 U.S.C. § 3161(h) that would remove obsolete references to a provision of the Narcotic Addict Rehabilitation Act (28 U.S.C. § 2902). The Narcotic Addict Rehabilitation Act was repealed on October 17, 2000, by the Children's Health Act of 2000, Public Law No. 106-310.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that it was briefed on a comprehensive plan developed by the Department of Justice to enhance state drug courts nationwide, to ensure drug-free federal prisons, and to increase drug testing of offenders in the community. The plan included recommendations that the Department of Justice work with the judiciary on initiatives related to pretrial and post-conviction drug testing and treatment for those on probation, parole, or supervised release. The Committee was also briefed on the activities of an ad hoc working group that is reviewing and revising pretrial services and post-conviction supervision policies and of an ad hoc working group examining officer safety issues.

COMMITTEE ON DEFENDER SERVICES

PANEL ATTORNEY COMPENSATION

The Antiterrorism and Effective Death Penalty Act of 1996 amended 21 U.S.C. § 848(q)(10)(A) to establish a maximum compensation rate of \$125 per hour for panel attorney services in capital cases. That section also provides a specific mechanism for the Judicial Conference to authorize increases to the maximum hourly rate to take into account increases in the rates of federal pay. Noting the significant erosion since 1996 in the economic value of the \$125 capital rate, and reiterating the importance of maintaining a rate of compensation at a level sufficient to assure appointment of qualified attorneys (*see* JCUS-SEP 98, pp. 67-74), the Committee recommended that

the Judicial Conference exercise its authority under 21 U.S.C. § 848(q)(10)(A) to authorize all available Employment Cost Index (ECI) increases to the maximum hourly compensation rate for panel attorneys in capital cases. The Committee also recommended that the Conference amend paragraph 6.02A of the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Volume VII, *Guide to Judiciary Policies and Procedures*, to provide for future annual ECI increases automatically, subject to the availability of funding. The Conference approved the Committee's recommendations.

PHYSICAL FITNESS CENTERS

In September 2001, the Judicial Conference adopted a policy on physical fitness centers that, among other things, authorizes courts to expend local funds to allow court staff to participate in fitness center activities (JCUS-SEP/OCT 01, p. 62). Based on a determination that federal public and community defender organization personnel could also benefit from this policy, the Committee recommended that the Conference approve the inclusion of federal public and community defender organizations in the Conference's policy on physical fitness centers under the same terms as those applied to court units. The Committee's recommendation was approved.

GRANT AND CONDITIONS AGREEMENT

The Judicial Conference adopted a recommendation of the Committee to modify Clause 25 (Failure to Comply with Terms and Conditions) of the Grant and Conditions Agreement with Community Defender Organizations (Appendix D, Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Volume VII, *Guide to Judiciary Policies and Procedures*) to clarify the remedies available for the failure of grantees to comply with the terms of the grant and conditions agreement. The following sentence was added to the end of Clause 25¹:

The Conference reserves the right to pursue all remedies, including, but not limited to, recovery of monetary damages and accrued interest, for grantee's failure to comply with any of

¹The Conference also corrected a typographical error in the preceding sentence, replacing "therefore" with "therefor."

the terms and conditions of the grant award or to deliver the representation and other services which are the subject of the agreement.

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that, under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), it approved additional funding requests for fiscal year 2001 for federal defender organizations in the amount of \$519,900 and for fiscal year 2002 in the amount of \$710,500. In addition, the Committee approved fiscal year 2002 funding of \$221,000 for a new federal defender organization branch office, subject to congressional authorization and the availability of funds.

The Committee also reported that it approved revisions and additions to the Strategic Plan Outline for the Defender Services Program relating to federal capital representations. The Committee also received reports on federal defender and panel attorney training events in fiscal years 2001 and 2002, and on legislative activity in the 107th Congress. The Committee discussed several items to be considered by the Committee on Judicial Resources insofar as they affect defender services: the Criminal Justice Act supervising attorney pilot project (*see infra*, "Criminal Justice Act Supervising Attorneys," p. 23); expanded use of background checks; court unit executive leave (*see infra*, "Judiciary Leave Policy," pp. 24-25); and release of personnel information. The Committee's views on these items were conveyed to the Judicial Resources Committee.

COMMITTEE ON FEDERAL-STATE JURISDICTION

SECTION 204 OF THE PROPOSED INNOCENCE PROTECTION ACT OF 2001

Section 204 of the proposed Innocence Protection Act of 2001 (S. 486 and H.R. 912, 107th Congress) would amend 28 U.S.C. § 2254 to provide that in a habeas corpus proceeding instituted by an indigent applicant under sentence of death, the court shall not presume a finding of fact made by a state court to be correct, or decline to consider a claim on the ground that the applicant failed to raise the claim in state court, unless the state provided the applicant with legal representation at the pertinent stage in the state court

proceedings under a system that met the standards formulated by a National Commission on Capital Representation.² The Committee on Federal-State Jurisdiction was prepared to make a recommendation to the September 2001 Judicial Conference opposing section 204 but determined to reconsider the matter in view of a 1990 Conference position that had come to its attention.³

Upon reconsideration, the Committee again determined that section 204 raised serious federalism, resource, and practical concerns and threatened to unsettle existing habeas corpus requirements and therefore should be opposed. With regard to the Conference's prior position, it was the Committee's view that the Conference's 1990 position was ambiguous, and that many changes in the law had occurred since the 1990 position was adopted. Deciding, therefore, to base its recommendation upon the current legal landscape, the Committee recommended that the Conference express its continued support for the goal of ensuring that capital defendants have

²Section 201 of S. 486 and H.R. 912 would create a National Commission that would be responsible for formulating standards specifying the elements of an effective system for providing adequate representation.

³This position on procedural default rules and state findings of fact was adopted in March 1990 in conjunction with consideration of the Report of the Ad Hoc Committee on Federal Habeas Corpus in Capital Cases (often referred to as the Powell Committee Report), but was not included in the March 1990 *Report of the Proceedings of the Judicial Conference of the United States*. The position is as follows:

Upon the filing of a petition for a writ of habeas corpus in the federal court the court should first determine whether the specific guidelines for competent counsel were followed in the state proceedings. If the court determines that competent counsel was appointed in the state proceedings, the same counsel should be appointed in the federal court, wherever possible. If the court determines that competent counsel was not appointed in the state proceedings, the federal district court should appoint new counsel under the governing guidelines. In the latter case, the federal court should not require dismissal of non-exhausted state claims, or apply any procedural default rules or the rule governing the presumption of correctness of state court findings of fact.

competent representation in both state and federal capital proceedings at every stage of their cases, but oppose section 204 of the Innocence Protection Act. The Committee also recommended that to the extent the current and 1990 positions were in conflict, the 1990 position be superseded by the current position on section 204. The Conference adopted the Committee's recommendations.

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it had conducted a panel discussion on class action litigation, which included presentations by judges, practitioners, and academics, to assist the Committee in its ongoing review of problems and potential solutions relating to overlapping and multistate class actions. The Committee also informed the Conference of its consideration of the report of the Subcommittee on Mass Torts of the Bankruptcy Committee regarding the treatment of mass future claims in bankruptcy. In addition, the Committee reported on the work of its Subcommittee on Federal-State Interaction, which is charged with making suggestions as to how the Committee can better foster state-federal relations and educational initiatives.

COMMITTEE ON FINANCIAL DISCLOSURE

SPECIAL REDACTION REVIEW PANEL

In May 2000, the Judicial Conference approved revisions to the Regulations of the Judicial Conference of the United States on Access to Financial Disclosure Reports Filed by Judges and Judiciary Employees Under the Ethics in Government Act of 1978, as Amended, setting forth procedures for the redaction of information from financial disclosure reports that could endanger the filer or other person if obtained by a member of the public hostile to the filer (JCUS-SEP 00, p. 39). The revised regulations provided for a Special Redaction Review Panel to hear appeals from filers aggrieved by a denial of a request for redaction. The term of the Panel was set by regulation to expire on December 31, 2001. Of 17 appeals filed with the Panel before the expiration date, only one appeal is still pending. On recommendation of the Committee on Financial Disclosure, the Judicial Conference extended the term of the Special Redaction Review Panel in order for the Panel to be able to complete its work on the remaining 2001 appeal still pending.

COMMITTEE ACTIVITIES

As of December 31, 2001, the Committee on Financial Disclosure had received 3,595 financial disclosure reports and certifications for the calendar year 2000, including 1,298 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 349 from bankruptcy judges; 524 from magistrate judges; and 1,424 from judicial employees. The Committee reported that the Judicial Conference's authority to redact for security reasons information in a financial disclosure report filed by a judge or judiciary employee was extended until December 31, 2005 (Public Law No. 107-126).

COMMITTEE ON INFORMATION TECHNOLOGY⁴

LONG RANGE PLAN FOR INFORMATION TECHNOLOGY

Pursuant to 28 U.S.C. § 612 and on recommendation of the Committee on Information Technology, the Judicial Conference approved a 2002 update to the *Long Range Plan for Information Technology in the Federal Judiciary*. Funds for the judiciary's information technology program will be spent in accordance with this plan.

DECENTRALIZATION OF LONG-DISTANCE TELEPHONE BILLING

The Committee on Information Technology reported to the Conference on a proposal to decentralize long-distance telephone billing in fiscal year 2003, giving courts the ability to order, manage, and pay for their long-distance services locally. After discussion, the Conference approved a motion to refer the subject back to the Committee on Information Technology to evaluate whether decentralization is cost-effective considering local telephone rates and personnel time, and to develop standards for local review of long-distance telephone bills.

⁴Previously known as the Committee on Automation and Technology.

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it had amended the five-year courtroom technologies program objectives for new courthouses and courthouses undergoing major renovation; reviewed steps being taken to implement the recommendations made in a study of the lawbooks and library program approved by the Judicial Conference in September 2001; discussed how to tailor the interim appropriate Internet use policy approved by the Judicial Conference in September 2001 specifically to the judiciary, with the expectation that a permanent policy would be presented to the Judicial Conference for consideration in September 2002; and received updates on a number of information technology projects and issues.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that during the period from July 1, 2001, to December 31, 2001, a total of 76 intercircuit assignments, undertaken by 57 Article III judges, were processed and recommended by the Committee and approved by the Chief Justice. During calendar year 2001, a total of 166 intercircuit assignments were processed and approved. In addition, the Chairman aided courts requesting assistance by both identifying and obtaining judges willing to take assignments.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

TRANSFER OF INTERAGENCY AGREEMENT FUNDS

Under a 1995 interagency agreement between the Judicial Conference and the United States Agency for International Development (USAID), USAID provided funds to the judiciary through the Federal Judicial Center Foundation for use in developing and administering international rule-of-law programs (see JCUS-SEP 95, p. 69; JCUS-SEP 97, pp. 72-73). The projects for which those funds were designated have since been completed, and approximately \$3000 remains in the FJC Foundation. Since the Judicial

Conference has endorsed the use of a contract-based mechanism in place of the interagency agreement for funding of future projects (JCUS-SEP 99, p. 64), the Committee recommended, and the Conference approved, the return to USAID of the remaining unexpended funds under the 1995 interagency agreement, thus concluding the agreement.

COMMITTEE ACTIVITIES

The Committee reported on the success of the rule-of-law component of the Open World (formerly Russian Leadership) Program in forging ties between members of the United States and Russian judiciaries. The Committee also discussed steps it is taking to implement the Judicial Conference policy encouraging exposure of foreign lawyers and law students at United States law schools to the work of the courts (JCUS-SEP 99, p. 64). The Committee also reported on its involvement in rule-of-law and judicial reform activities relating to Asia and the Pacific, Europe, and Latin America, including participation in legal exchanges with India and Mexico.

COMMITTEE ON THE JUDICIAL BRANCH

FEDERAL EMPLOYEES' GROUP LIFE INSURANCE

On recommendation of the Committee on the Judicial Branch, the Judicial Conference endorsed seeking legislation to require the federal government to pay all the costs associated with active and senior Article III judges' and congressional members' Federal Employees' Group Life Insurance (FEGLI) premiums (i.e., premiums for Basic Life and all appropriate options and any potential tax consequences relating to the payment of those premiums). Currently, all FEGLI enrollees pay two-thirds the cost of basic and accidental death and dismemberment coverage, and all the cost of the three forms of optional FEGLI insurance.⁵ The Committee noted that enhancing judges' benefits to make them more competitive with the private sector will help the judiciary to continue to attract highly qualified individuals to the federal bench.

⁵The Director of the Administrative Office is authorized to pay out of appropriated funds any increase imposed after April 24, 1999, in the FEGLI premiums of Article III judges age 65 and above (JCUS-SEP 00, pp. 54-55).

TRAVEL REGULATIONS FOR UNITED STATES JUSTICES AND JUDGES

Frequent Flyer Mileage. Section 1116 of the National Defense Authorization Act for Fiscal Year 2002, Public Law No. 107-107, enacted on December 28, 2001, authorizes executive branch employees to use for personal travel frequent flyer miles or other travel entitlements accrued while traveling on official government business. The Travel Regulations for United States Justices and Judges have been silent on this issue. In light of the change in law with regard to executive branch employees, it was the consensus of the Committee on the Judicial Branch that the Judicial Conference should likewise expressly authorize judicial officers (as well as their family members and dependents) to use for personal travel officially earned frequent flyer mileage. On recommendation of the Committee, the Conference approved the following new subparagraph to section A.3. of the Travel Regulations for United States Justices and Judges, *Guide to Judiciary Policies and Procedures*, Vol. III-A, Chapter C-V:

Travel Promotional Awards—Frequent flyer miles and other travel promotional materials awarded at the sole discretion of a company and received by a judge in connection with official travel may be used at the discretion of that judge. This paragraph shall apply with respect to frequent flyer mileage and promotional materials received before, on, or after the date of adoption.

Non-Case Related Travel. In September 1999, the Judicial Conference approved an amendment to the Travel Regulations for United States Justices and Judges that substantially incorporated, for the purpose of reporting all non-case related professional travel undertaken by a judge of the United States, the travel reporting requirements for members of the United States Senate (JCUS-SEP 99, p. 65). In response to concerns raised by several judges about the reporting requirements, the Executive Committee requested that the Judicial Branch Committee revisit the policy (*see supra*, “Miscellaneous,” pp. 6-7). In order to give the Committee more time for an in-depth examination of the issue and to review the reporting requirements, the Conference approved a motion to extend the deadline from May 15, 2002 to October 1, 2002 for judges to file with their chief judges non-case related travel reports for calendar year 2001.

COMMITTEE ACTIVITIES

The Judicial Branch Committee reported that it continues to focus on securing meaningful salary relief for judges. The Committee authorized the chair to establish several subcommittees that are charged with considering and advising the Committee on long- and short-term issues relating to judges' pay, including relations with the other branches of government, the bar, and other organizations that support improved judicial salaries. The Committee also determined to continue its efforts to improve the judicial benefits package so that it is competitive with those already widely available throughout the private and public sectors. The Committee resolved to continue working closely with the Freedom Forum's First Amendment Center on planning and conducting regional programs for judges and journalists. In addition, the Committee established an ad hoc subcommittee that will consider and report to the Committee on new methods to educate the media and the public about the judicial branch and judges.

COMMITTEE ON JUDICIAL RESOURCES

PRO SE LAW CLERKS

To assist courts in recruiting and hiring competent and qualified pro se law clerks, and after considering various options, the Committee on Judicial Resources recommended that the Judicial Conference adopt a stabilizing factor for allocating pro se law clerk positions, similar to one that was recently adopted for bankruptcy appellate panel law clerks (JCUS-SEP/OCT 01, pp. 62-63). With a stabilizing factor, the number of allocated positions would only be reduced if the number of prisoner filings does not support the allocated positions in a court under the staffing formula for two years in a row. The Conference approved the use of the stabilizing factor and also approved a procedure whereby, if a court wants to extend a pro se law clerk position beyond the time that the court would be permitted to do so under the staffing formula, it would turn first to its own decentralized funding and then to its circuit's Temporary Emergency Fund.

CRIMINAL JUSTICE ACT SUPERVISING ATTORNEYS

In March 1997, the Judicial Conference approved a two-year pilot project authorizing designated clerks of court to hire an attorney to assist the court in Criminal Justice Act panel administration and case cost management, including voucher review (JCUS-MAR 97, p. 24). The pilot was later extended through March 2002 (JCUS-SEP 98, p. 67). After considering the views of the Defender Services and the Court Administration and Case Management Committees, the Committee on Judicial Resources agreed with both committees that it should recommend that the Conference endorse the establishment of a CJA supervising attorney position in courts that would find it of value. The Conference approved the recommendation. The committees differed, however, on how the position should be funded. After discussion, the Conference approved the recommendation of the Committee on Judicial Resources that the position be funded using as the sole source decentralized Salaries and Expenses account funding.

MEDICAL STANDARDS FOR PROBATION AND PRETRIAL SERVICES OFFICERS AND OFFICER ASSISTANTS

At the request of the Committee on Criminal Law, the Administrative Office enlisted the services of the Department of Health and Human Services, Public Health Service, Law Enforcement Medical Programs to conduct a study of the physical requirements of the qualification standards for probation and pretrial services officers and officer assistants. Based on this study and comments received from chief probation and chief pretrial services officers, the Committee on Judicial Resources, in consultation with the Committee on Criminal Law, recommended that the Conference (a) approve an update to the current medical requirements for these positions; (b) require all final candidates for these positions to undergo medical examinations by Public Health Service physicians, using the medical guidelines developed by the Public Health Service's Law Enforcement Medical Programs; and (c) permit the use of the medical guidelines in fitness-for-duty determinations for incumbents in these positions. As in the past, the final decision on hiring of new officers or officer assistants, or on the fitness for duty of incumbents, rests with the individual court. The Conference approved the Committee's recommendations.

CERTIFIED REALTIME COURT REPORTERS

Demand by judges for realtime court reporting, which requires a high level of knowledge, skills, and ability, has been steadily increasing. In order to ensure that federal courts can recruit and retain qualified realtime court reporters and to encourage current federal official court reporters without certification to work toward attaining realtime certification, the Committee recommended that the Judicial Conference adopt a separate salary level for federal official court reporters certified to provide realtime services to judges, attorneys and participants in court proceedings. The new salary level would include a salary increase of an additional ten percent above a court reporter's basic salary level. The Conference approved the Committee's recommendation.

JUDICIARY LEAVE POLICY

Under the judiciary leave policy contained in the *Guide to Judiciary Policies and Procedures*, Volume I-C, Chapter X, Subchapter 1630.1, circuit executives, federal public defenders, and court unit executives have been permitted to approve their own leave. On recommendation of the Committee on Judicial Resources and after discussion, the Judicial Conference approved amendments to the judiciary leave policy to provide that no individual shall approve his or her own leave and that all circuit executives, federal public defenders, and court unit executives must have their leave approved by the appropriate chief judge or designee. These changes bring the judiciary's leave policy into conformance with the Leave Act (which covers all judiciary employees other than judges and certain chambers staff), and with regulations promulgated thereunder (5 C.F.R. Part 630). Moreover, the changes are consistent with "good government" principles of accountability and stewardship. Volume I-C, Chapter X, Subchapter 1630.1 of the *Guide* will be amended as follows (new language is in italics; language to be omitted is struck through):

Section E. Responsibilities, 2.a. Leave Approving Court Officials: Approve or deny leave for subordinate employees in a consistent and equitable manner. ~~Wherever possible, it is strongly recommended that no employee sign as the authorizing official for one's own leave requests. No individual shall approve his/her own leave.~~

Section F. Approval Authority, 1. Annual Leave, Sick Leave, and Leave Without Pay (LWOP): Requests for approved leave (including LWOP) and advanced leave should be in writing. Each court and court unit will determine at what level of supervision normal leave requests and advanced leave requests are to be approved. *All circuit executives, federal public defenders, and court unit executives must have their leave approved by the appropriate chief judge or his/her designee.*

RECRUITMENT AND RETENTION OF LAW CLERKS

At the request of the Committee on Judicial Resources, the Administrative Office conducted a study to determine whether federal courts were experiencing any significant problems in recruiting and retaining law clerks. Although the study found that there was no serious nationwide problem in recruiting and retaining law clerks that warrants an increase in compensation, its results suggested several measures that could be taken to improve the process. The Committee recommended that the Conference adopt a resolution to improve the recruitment and retention of federal law clerks and endorse specific measures that could be implemented in that regard. After discussion, the Conference tabled this recommendation.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it declined to approve a request to initiate a drug testing policy for applicants for employment in district clerks' offices since courts already have both the legal and the delegated budget authority to implement such a policy at the local court level. The Committee also declined to approve a request to raise the current Court Personnel System (CPS) benchmark for courtroom deputy clerks to district judges from classification level 27 to 28, noting that each court has the authority to reclassify any CPS position to reflect greater substantive job responsibilities. The Committee decided not to make a recommendation to the Judicial Conference regarding expanding the use of background investigations and records checks in the courts until proposed guidelines are provided by the Administrative Office.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee on the Administration of the Magistrate Judges System and the recommendations of the Director of the Administrative Office, the district courts, and the judicial councils of the circuits, the Judicial Conference approved the following changes in positions, salaries, locations, and arrangements for full-time and part-time magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

FIRST CIRCUIT

District of Rhode Island

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

SECOND CIRCUIT

Northern District of New York

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

FOURTH CIRCUIT

Western District of North Carolina

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

Eastern District of Virginia

Redesignated the two magistrate judge positions designated as Norfolk, as Norfolk or Newport News, and the magistrate judge position designated as Newport News, as Norfolk or Newport News.

FIFTH CIRCUIT

Northern District of Texas

1. Authorized a full-time magistrate judge position at Abilene;
2. Upon the appointment of a full-time magistrate judge at Abilene, discontinued the part-time magistrate judge position at Abilene and the part-time magistrate judge position at San Angelo; and
3. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

SIXTH CIRCUIT

Middle District of Tennessee

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

EIGHTH CIRCUIT

Eastern District of Missouri

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

NINTH CIRCUIT

District of Guam

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

Western District of Washington

1. Authorized an additional full-time magistrate judge position at Tacoma or Seattle; and
2. Made no other changes in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

TENTH CIRCUIT

District of Kansas

1. Authorized an additional full-time magistrate judge position at Kansas City;
2. Discontinued the part-time magistrate judge position at Topeka, effective upon the appointment of the new full-time magistrate judge at Kansas City; and
3. _____ Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

District of Utah

1. Authorized an additional full-time magistrate judge position at Salt Lake City;
2. Upon the appointment of the new full-time magistrate judge at Salt Lake City, decreased the salary of the part-time magistrate judge position at St. George from Level 2 (\$57,961 per annum) to Level 4 (\$34,776 per annum); and
3. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

ELEVENTH CIRCUIT

Northern District of Florida

1. Converted the part-time magistrate judge position at Gainesville to full-time status; and
2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

COMMITTEE ACTIVITIES

The Committee reported that it discussed the allocation of pro se law clerk positions and voted unanimously to advise the Judicial Resources Committee that it favors changing the current allocation procedure to enable courts to offer at least a two-year commitment when hiring pro se law clerks (*see supra*, “Pro Se Law Clerks,” p. 22). Also, the Committee identified the following as the four most important long-range planning issues for the magistrate judges system: 1) appropriate limits on magistrate judge numbers and authority; 2) roles of magistrate judges in court governance; 3) appropriate chambers staffing for magistrate judges; and 4) contributions of magistrate judges to the quality of justice and the evaluation of full, fair, and effective utilization of magistrate judges.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders reported that it has undertaken a review and analysis of H.R. 3892 (107th Congress), legislation to amend the Judicial Conduct and Disability Act, 28 U.S.C. § 372(c), that was introduced on March 7, 2002.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF CRIMINAL PROCEDURE

In September/October 2001, the Judicial Conference approved amendments to the Federal Rules of Criminal Procedure, including comprehensive style revisions, and forwarded them to the Supreme Court for approval (JCUS-SEP/OCT 01, p. 70). Subsequent to the Conference’s approval, but prior to Supreme Court action on the proposal, Congress passed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT), Public Law No. 107-56, which amended Criminal Rules 6 and 41.

These amendments to Rules 6 and 41 did not incorporate the pending style revisions, and arguably could be superseded by them. To avoid confusion, the Committee on Rules of Practice and Procedure submitted to the Conference proposed technical amendments to Rules 6 and 41 (as revised by the USA PATRIOT ACT) to conform those rules to the style revisions pending before the Supreme Court. The Conference approved these amendments and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court (and integrated with the changes approved by the Judicial Conference in September/October 2001) and transmitted to Congress in accordance with the law.

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure approved for publication proposed amendments to Rule 1005 of the Federal Rules of Bankruptcy Procedure and several Official Bankruptcy Forms. The proposed amendments are consistent with provisions governing disclosure of social security and other personal identification numbers recommended under the recently adopted Judicial Conference policy on privacy and public access to electronic case files (JCUS-SEP/OCT 01, pp. 48-50). The Advisory Committees on Appellate, Bankruptcy, Civil, Criminal, and Evidence Rules are reviewing comments from the public submitted on amendments proposed in August 2001 to their respective sets of rules, including a significant number of comments on proposed amendments to Civil Rule 23 (class actions).

COMMITTEE ON SECURITY AND FACILITIES

24-HOUR HEATING AND COOLING

On recommendation of the Committee on Security and Facilities, the Judicial Conference endorsed a policy of providing heating and cooling systems 24 hours a day, 7 days a week, to control humidity and temperature in court facilities with environmental conditions conducive to growth of fungus or mold, subject to funding availability. Specific standards for implementation of this policy will be determined once a cost analysis is completed.

FIVE-YEAR COURTHOUSE PROJECT PLAN

After consultation with the circuit judicial councils, the Committee on Security and Facilities proposed a five-year plan of courthouse construction projects for the fiscal years (FYs) 2003-2007. As part of this proposal, the Committee recommended that the FY 2003 column of the plan be divided into two columns to reflect separately those projects that were unfunded in FY 2002 or earlier and those projects scheduled for funding in FY 2003, to distinguish better these two types of projects. The plan also adopted a new method for scoring annexes and separate courts of appeals and bankruptcy facilities that recognizes their differences from a district court facility. After discussion, the Conference approved the Five-Year Courthouse Project Plan for fiscal years 2003-2007, as recommended by the Committee.

COMMITTEE ACTIVITIES

The Committee on Security and Facilities considered the security implications of publishing the new edition of *Justices and Judges of the United States Courts* in both print and electronic formats and advised the Administrative Office Director to continue restriction of distribution, limit access within circuit headquarters libraries and prohibit photocopying, exclude photographs of judges from the J-Net, and caution judges about publishing their photographs in the print version and information about spouses in both versions. The Committee agreed with the criteria used by the U.S. Marshals Service to determine the level of security necessary at private seminars or meetings attended by judges.

FUNDING

All of the foregoing recommendations that require the expenditure of funds for implementation were approved by the Judicial Conference subject to

the availability of funds and to whatever priorities the Conference might establish for the use of available resources.

Chief Justice of the United States
Presiding

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