

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

September 21, 1987

The Judicial Conference of the United States convened on September 21, 1987, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. 331. The Chief Justice presided and the following members of the Conference were present:

First Circuit:

Chief Judge Levin H. Campbell
Chief Judge Juan M. Perez-Gimenez, District of
Puerto Rico

Second Circuit:

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

Third Circuit:

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

Fourth Circuit:

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

Fifth Circuit:

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

Sixth Circuit:

Chief Judge Pierce Lively
Chief Judge Philip Pratt, Eastern District of
Michigan

Seventh Circuit:

Chief Judge William J. Bauer
Judge Frank J. McGarr, Northern District of Illinois

Eighth Circuit:

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

Ninth Circuit:

Chief Judge James R. Browning
Chief Judge Robert F. Peckham, Northern District of
California

Tenth Circuit:

Chief Judge William J. Holloway
Chief Judge Sherman G. Finesilver, District of Colorado

Eleventh Circuit:

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

District of Columbia Circuit:

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

Federal Circuit:

Chief Judge Howard T. Markey

Court of International Trade:

Chief Judge Edward D. Re

Circuit Judge Gerald B. Tjoflat; Senior Circuit Judges John D. Butzner, Jr. and Clement F. Haynsworth, Jr.; District Judges Louis C. Bechtle, Barbara B. Crabb and Morey L. Sear; Senior District Judge Elmo B. Hunter; and Circuit Executive James A. Higgins attended all or some of the sessions of the Conference.

Congressman Neal Smith, Chairman of the House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies, and Congressman Hamilton Fish, ranking minority member of the House Judiciary Committee, attended the Conference briefly and spoke on matters pending in the Congress of interest to the judiciary. The Attorney General of the United States, Honorable Edwin Meese III, Solicitor General Charles Fried, and Stanley Morris, Director of the United States Marshals Service, addressed the Conference on matters of mutual interest to the Department of Justice and the Conference.

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

The Director of the Federal Judicial Center, Judge John C. Godbold, presented a report on the activities of the Center.

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

The Director of the Administrative Office of the United States Courts, L. Ralph Mecham, submitted to the Conference the Annual Report of the Director for the year ended June 30, 1987. The Conference authorized the Director to release the Annual Report immediately in preliminary form and to revise and supplement the final printed edition.

JUDICIAL BUSINESS OF THE COURTS

Mr. Mecham reported that during the year ended June 30, 1987, the number of cases appealed to the 12 regional courts of appeals rose almost three percent to 35,176 due to increases of criminal and private civil appeals. Dispositions, while increasing by two percent, still did not reach the level of filings, so pending cases increased by three percent to 26,008 on June 30, 1987. Filings in the United States Court of Appeals for the Federal Circuit rose 16 percent to 1,351 due primarily to increases in Merit Systems Protection Board appeals. Dispositions declined 19 percent, but still outnumbered filings. As a consequence, the pending caseload fell 24 percent during the year, to 699.

In the United States district courts, the number of civil filings dropped for the second consecutive year. The six percent decline, which reflected a level of 238,982 new civil cases, was centered in cases involving the United States government. The largest decreases were in social security disability cases and recovery of overpayments of veterans' benefits and defaulted student loans. The number of civil cases disposed of almost equaled filings this year, resulting in an increase in the pending caseload of less than one-half of one percent. On June 30, 1987, there were 243,159 civil cases pending in the district courts.

Criminal case filings, on the other hand, continued the increase begun in 1981 with a four percent increase. Case filings rose to 43,292, which is an average of 75 new criminal cases for each district court judgeship. Although criminal case terminations increased over seven percent this year, they did not keep pace with filings and the pending caseload increased four percent to 25,458 on June 30, 1987.

Bankruptcy petitions filed increased over 17 percent to 561,278. This is substantially less than last year's 31 percent increase because nonbusiness filings rose only 18 percent, half of last year's rate. Business filings increased 16 percent, a slightly higher rate than a year ago. Terminations increased over 34 percent, but fell short of filings by almost 80,000 petitions. On June 30, 1987, the pending bankruptcy caseload increased 11 percent over the previous year, to 808,504.

Mr. Mecham also reported that as of September 21, 1987, there were 11 vacancies among the 168 judgeship positions authorized for the United States courts of appeals, 47 vacancies among the 575 authorized judgeship positions in the United States district courts, and one vacancy on the United States Court of International Trade.

JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

The Judicial Panel on Multidistrict Litigation reported that during the year ended June 30, 1987, the Panel centralized 900 civil actions pursuant to 28 U.S.C. 1407. Of that number, 459 were transferred for coordinated or consolidated pretrial proceedings with 441 actions originally filed in the transferee districts. The Panel denied transfer of 50 actions.

Since its creation in 1968, the Panel has transferred 15,926 civil actions for centralized pretrial proceedings in carrying out its statutory responsibilities.

EXECUTIVE COMMITTEE

The Executive Committee of the Judicial Conference reported that, since the last formal session of the Conference in March, 1987, the Executive Committee had addressed the following matters on the Conference's behalf:

BANKRUPTCY ADMINISTRATOR PROGRAM

The Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Public Law 99-554), which provided for the expansion of the United States trustee program nationwide, excepted the judicial districts in Alabama and North Carolina from the program for a period of up to six years. The legislation specified that those districts

would be served by a "person . . . appointed under regulations issued by the Judicial Conference to administer estates in cases under title 11." Public Law 99-554, § 302(d)(3)(I).

In order to ensure that the bankruptcy administrator program would be operational on a timely basis, the Executive Committee approved interim regulations governing the establishment, duties and functions of the bankruptcy administrators in the six districts covered by the bankruptcy administrator program; interim regulations governing the selection and appointment of bankruptcy administrators in those districts; and transition regulations governing the selection and appointment of bankruptcy administrators. See also "Bankruptcy Administrator Interim Regulations", *infra* p. 81.

INTERNATIONAL APPELLATE JUDGES CONFERENCE

The Executive Committee voted to approve in principle the sponsorship of an International Appellate Judges Conference. Subject to the availability of adequate financing, the Conference will be held in Washington, D.C. in 1989 or 1990. See "Ad Hoc Committee on the International Appellate Judges Conference of 1989/90", *infra* p. 100.

UPGRADE OF ADMINISTRATIVE OFFICE POSITIONS

In order to attract and recruit quality personnel from within the judiciary and from other areas for key senior positions in the Administrative Office, the Executive Committee approved a proposal of the Director of the Administrative Office to elevate six existing positions in the Administrative Office from GS-18 to Level V of the Executive Schedule, and the Deputy Director from Level V to Level IV. Should Congress fail to approve that proposal, the Executive Committee approved an alternative recommendation for the creation of six additional "supergrade" (GS-16 to GS-18) positions in the agency.

SENTENCING GUIDELINES

At its March 1987 session (Conf. Rpt., pp. 40-41), the Judicial Conference directed the Ad Hoc Committee on Sentencing Guidelines to review the guidelines and policy statements which the Sentencing Commission subsequently filed with the Congress on April 13, 1987 and amended on May 1, 1987. On July 8, 1987, the Executive Committee considered the report and recommendations submitted by the Ad Hoc Committee.

Noting the mixed reaction of judges to the substance of the guidelines and the fact that courts may be asked to rule on their constitutionality, the Executive Committee declined to take a position on the substance of the guidelines, but reaffirmed the Conference's March 1987 endorsement (Conf. Rpt., p. 41) of legislation to make application of the guidelines turn on the date an offense is committed rather than the date of conviction.

The sentencing guidelines become effective on November 1, 1987, unless Congress takes action to modify them, recommit them to the Commission for revision, or enact legislation delaying their effective date. In September, 1986 (Conf. Rpt., p. 94), the Judicial Conference recommended that Congress extend the effective date of guidelines implementation for six months. With the submission of the guidelines on April 13, 1987, the Sentencing Commission requested that Congress delay implementation for nine months. The Executive Committee voted to endorse the Commission's suggestion for a nine-month delay, but concluded that an additional three months' delay would be beneficial and would allow the judiciary to proceed with implementation more effectively. Among the areas of concern identified by the Executive Committee that must be addressed are: (1) training of probation officers, which will be a major undertaking; (2) extensive training of district judges in guideline scoring; (3) field testing to ensure that there is not significant divergence in guidelines scoring by probation officers and judges; (4) vast increases in caseloads of the courts of appeals; (5) a way to insure that the courts of appeals get transcripts in non-Criminal Justice Act cases; and (6) the ability of the Bureau of Prisons to acquire and equip new facilities to deal with an increase in prison population.

The Congress has directed the Sentencing Commission to review and, where advisable, revise the guidelines. To assist in this endeavor, the Judicial Conference is required to provide, at least annually, a written report containing comments on the operation of the guidelines and suggesting needed changes. 28 U.S.C. 994(o). The Executive Committee determined that the appropriate committee of the Conference should monitor the operation and effect of the guidelines, prepare the reports required of the Judicial Conference by section 994(o), and recommend requests to Congress for the resources necessary to implement the guidelines.

The Conference in plenary session reaffirmed the Executive Committee's July 8, 1987, recommendations on sentencing guidelines.

COLA TAX EQUITY

Employees of the executive branch in Alaska, Hawaii and the territories of the United States have long received cost-of-living allowances (COLAs) to compensate them for the increased local cost-of-living. These COLAs are specifically free from federal income taxation under section 912(2) of the Internal Revenue Code, 26 U.S.C. 912(2). Although the judicial branch has since at least the 1940s paid COLAs to its employees at these locations, and has treated these COLAs as tax exempt, section 912(2) does not by its terms apply to the judiciary. In 1984, an individual in Hawaii formally complained to the Internal Revenue Service about the judiciary's failure to collect taxes on the COLAs and in April, 1987, the IRS concluded that the COLAs received by judicial branch employees cannot, as a matter of law, be excluded from gross income under existing law. Implementation of the ruling was delayed until October 12, 1987.

The Executive Committee concurred in an Administrative Office recommendation that legislation be sought, as soon as possible, to obtain COLA tax equity for employees of the judicial branch stationed outside the continental United States.

USE OF OVERNIGHT MAIL FOR PAYCHECK DISTRIBUTION

In September, 1986 (Conf. Rpt., p. 65), as a "Gramm-Rudman-Hollings" (Public Law 99-177) cost reduction measure, the Judicial Conference restricted the use of overnight mail to those items for which delivery within 24 hours is essential. The Executive Committee agreed to permit the use of overnight mail as needed to make timely distribution of paychecks to locations most apt to experience delay. The Executive Committee also noted with approval the Director's efforts to encourage all employees to avail themselves of the electronic transfer of funds (that is, direct deposit in the bank), thus reducing the need to issue checks to employees.

SPECIAL BUDGET COMMITTEE REPORT

The Executive Committee approved the Budget Committee's recommendation that the last category to be cut in the event of Congressional reductions in the judiciary's request for appropriations for the fiscal year 1989 should be personnel.

COMMITTEE TO STUDY THE JUDICIAL CONFERENCE

In December, 1986, the Chief Justice appointed a nine-member Committee to study the operation of the Judicial Conference and its committees. After canvassing the views of judges throughout the country, the Committee concluded that the Conference and its committee structure were fundamentally sound, but that structural and procedural revisions were necessary to enable the Conference (1) to operate more expeditiously by strengthening the authority of the Executive Committee to deal with internal and external Conference business; (2) to allow the Chief Justice to delegate some of his Conference duties to another Conference member; (3) to enable the committee structure to deal with budget and resource allocation matters more effectively; (4) to improve communications among the Conference, its committees, the courts, the judges, supporting personnel, and the Administrative Office; and (5) to ensure greater knowledge of, and allow greater participation in, the activities of the Conference and its committees by personnel throughout the judicial system.

Among the Committee's specific recommendations approved by the Judicial Conference were the following:

(1) **CONFERENCE GOVERNANCE AND OPERATIONS:** The Conference's Executive Committee will be strengthened, to provide the Conference with an entity capable of implementing its policies between sessions. The newly-constituted Executive Committee will consist of a chairman and six members (three circuit judges and three district judges), all appointed by the Chief Justice from the Conference membership. The chairman will act as temporary chairman of the Conference at the discretion of the Chief Justice, and can call meetings of and preside over the Executive Committee. The Executive Committee will be the senior executive arm of the Conference (subject at all times, however, to the authority of the Chief Justice and the Conference itself), and is authorized and directed to act on behalf of the Conference as to any matter requiring emergency action; to review the reports and recommendations of Conference committees and structure a Conference agenda consisting of a consent and a discussion calendar; to publish procedures for assembling Conference and committee agendas so that interested persons will know how to get matters before the Conference and its committees; to review the jurisdiction of each committee and resolve jurisdictional disputes among committees; to make recommendations with respect to needs of

the judiciary that should be addressed or planned for; and to establish a legislative liaison group to monitor the legislative situation and maintain improved judicial/legislative relations.

The Conference will continue to meet twice a year, and circuit executives may attend Conference sessions if their respective chief judges desire them to do so. A list of the membership, their terms of office, and the jurisdiction of all Conference committees will be distributed annually to all judicial officers and key supporting personnel. Conference members, committee chairmen, the Administrative Office, and circuit executives (insofar as their circuit council-assigned duties require it) will serve as a two-way communications link between the Conference and its committees on the one hand, and judges and support personnel on the other. Members of each committee will be designated as liaison to one or more circuits; personnel in those circuits can express concerns or criticisms to their circuit liaison judges.

The Administrative Office will retain primary responsibility for informing judges and supporting personnel of Conference actions. The agency is to stay abreast of the work and agendas of all Conference committees and provide information to affected courts, judges, and, if requested by the respective circuit councils, circuit executives. When the Administrative Office recommends to a committee that a request submitted by a judge or court be rejected, the committee chairman should consider directing that the judge or court be notified in sufficient time to submit responsive material; similarly, when a committee votes to reject the request of a judge or court, the chairman should consider notifying the requestor promptly.

(2) JUDICIAL CONFERENCE COMMITTEES: The Chief Justice retains all appointment authority, assisted by an advisory committee on committee appointments. The Conference's current eighteen-committee structure is revised. Thirteen committees are continued, five (Court Administration, Criminal Law, Probation, Jury System, and Sentencing Guidelines) are dissolved, and seven new committees (Administrative Office, Federal-State Jurisdiction, Judicial Improvements, Judicial Resources, Space and Facilities, Court Security, and Criminal Law & Probation Administration) are created. The new committee structure is set out below:

CURRENT STRUCTURE
(committee dissolved)

PROPOSED STRUCTURE
new committee

GENERAL GOVERNANCE, LIAISON*

- | | |
|--------------------|---|
| 1. Executive | 1. Executive, w/legislative liaison group |
| 2. Judicial Branch | 2. Judicial Branch |
| | 3. <u>Administrative Office</u> |
| | 4. <u>Federal-State Jurisdiction</u> |

DETERMINING, ALLOCATING RESOURCES

- | | |
|-----------------------------|---------------------------------|
| 3. Budget | 5. Budget |
| 4. (Court Administration) | 6. <u>Judicial Improvements</u> |
| | 7. <u>Judicial Resources</u> |
| 5. Intercircuit Assignments | 8. Intercircuit Assignments |
| | 9. <u>Space and Facilities</u> |
| | 10. <u>Court Security</u> |

PROGRAM AREAS

- | | |
|--|--|
| 6. Criminal Justice Act | 11. Defender Services (new name) |
| 7. (Criminal Law) | 12. <u>Criminal Law & Probation Administration</u> |
| 8. (Probation) | |
| 9. Administration of the Bankruptcy System | 13. Administration of the Bankruptcy System |
| 10. Magistrates | 14. Magistrates |
| 11. Rules of Practice and Procedure | 15. Rules of Practice and Procedure |
| 12. (Jury System) | |

CONDUCT AND ETHICS

- | | |
|-----------------------------------|-----------------------------------|
| 13. Codes of Conduct | 16. Codes of Conduct |
| 14. Judicial Ethics | 17. Judicial Ethics |
| 15. Conduct and Disability Orders | 18. Conduct and Disability Orders |

OTHER

- | | |
|---------------------------------|---------------------------------|
| 16. Constitutional Bicentennial | 19. Constitutional Bicentennial |
| 17. Pacific Territories | 20. Pacific Territories |
| 18. (Sentencing Guidelines) | |

*This classification of committees is simply to aid analysis.

Every five years, each committee must recommend to the Executive Committee, with a justification for the recommendation, either that the committee be maintained or that it be abolished.

All active and senior federal judges will be eligible for membership on any Conference committee, except that the Executive Committee is restricted to Judicial Conference members; committees may recommend to the Chief Justice the addition of bankruptcy judges, magistrates, or others, as regular committee members. Subject to the pleasure of the Chief Justice, no judge serving on a Conference committee, or on the Federal Judicial Center Board or the Multidistrict Litigation Panel, may at the same time serve on another committee, except the Executive Committee or ad hoc committees. Committee function and responsibility should determine the participation and ratio of circuit and district judges, and others, on a particular committee (subject, in the final analysis, to the discretion of the Chief Justice) and, as a general proposition, committees should represent the diversity (i.e., sex, race, age, ethnicity, experience, etc.) of the federal judiciary. Chairmen and committee members will serve three-year terms (staggered to avoid substantial turnover at one time), with an opportunity for one additional three-year term. In exceptional cases, committee chairmen may be appointed for additional terms.

Administrative Office and/or Federal Judicial Center personnel will continue to staff the Conference and its committees according to the wishes of committee chairmen. This arrangement continues the Administrative Office's Conference secretariat function; reflects the Center's statutory mandate to provide staff, research, and planning assistance to the Conference and its committees; and recognizes that both agencies provide complementary types of support to the Conference.

COMMITTEE ON COURT ADMINISTRATION

SALARIES OF BANKRUPTCY JUDGES AND UNITED STATES MAGISTRATES

At its March 1983 session (Conf. Rpt., pp. 9-10), the Judicial Conference voted to seek legislation to authorize the Director of the Administrative Office to fix the salaries of bankruptcy judges, United States magistrates, and other supporting judicial officers, subject to the supervision and direction of the Judicial Conference, at salaries not to exceed Level II of the Executive Schedule. The salary of district judges is currently pegged at the Level II amount of \$89,500. Observing that the

most recent increases in executive, legislative, and judicial salaries resulted in increases of less than three percent for bankruptcy judges and magistrates, the Conference in March, 1987 (Conf. Rpt., p. 31) endorsed "an immediate resolution of the problem through Congressional enactment of pay increases" for these judicial officers. The Conference also requested the Committee to review the salary ceiling element in the 1983 proposal.

S. 696, 100th Congress, would establish a linkage of 92 percent in the relative salaries of bankruptcy judges and magistrates with the salary of district judges. On the recommendation of its Court Administration, Magistrates, and Bankruptcy Committees, the Conference agreed to modify its March 1983 resolution, which recommended a ceiling of Executive Level II for bankruptcy judges and magistrates, by substituting a ceiling of 92 percent of a district court judge's salary.

The Conference also voted to recommend that 28 U.S.C. 332(f) be amended to increase the salaries of circuit executives not to exceed the annual rate of Level IV of the Executive Schedule pay rates, and to recommend that 28 U.S.C. 603 and 626 be amended to raise to the Executive Level IV rate the salaries of the Deputy Directors of the Administrative Office and the Federal Judicial Center. See also "Upgrade of Administrative Office Positions", supra p. 54.

RETIREMENT AND RECALL OF JUDICIAL OFFICERS

At its March 1987 session (Conf. Rpt., p. 11), the Judicial Conference reaffirmed support, with minor modifications, for a 1982 Conference proposal (March 1982 Session, Conf. Rpt., pp. 17-18) to establish a retirement system for fixed-term judicial officers. Referred to as the "14-year" retirement plan because it would provide these officers with a full annuity equal to the salary of office after 14 years of service, the proposal has been introduced by Congressman Kastenmeier as H.R. 2586, 100th Congress.

After being advised of an unintended side-effect contained in the 14-year retirement bill (whereby a judicial officer could not only receive the full 14-year retirement benefit but also a portion of the retirement benefit under the new Federal Employees' Retirement System (FERS) based upon the same years of service), the Conference directed the Administrative Office to work with the Congress in fashioning the most appropriate method of eliminating this partial double benefit.

QUALIFICATION STANDARDS FOR PROBATION AND PRETRIAL SERVICES OFFICERS AND ASSISTANTS

The Conference approved revised position descriptions and qualification requirements for probation and pretrial services personnel under FERS, incorporating standards approved in March, 1987 (Conf. Rpt., pp. 26-27).

LAW CLERK SALARIES

At its March 1987 session (Conf. Rpt., p. 8), the Judicial Conference noted that, in some areas of the country, top law school graduates are being offered salaries far beyond those of the federal government. In order to reduce this disparity and subject to the availability of funds, the Conference voted to remove the present JSP-11 and JSP-12 salaries for law clerks and legal assistants from the graded Judiciary Salary Plan schedule, and to pay new appointees to these positions \$33,000 and \$36,500, respectively (subject automatically to any future comparability increases).

It was the view of the Committee that the March 1987 action, when implemented, would adversely affect other court-employed attorneys. As approved, it proposed no change in the salaries of JSP-9 law clerks (currently paid \$22,458) or of career law clerks, who may be promoted to JSP-13 (currently \$38,727) only after four years of experience as law clerk to a federal judge, including three at the JSP-12 level (September 1985 Session, Conf. Rpt., p. 48). Nor does the resolution cover staff attorneys or pro se law clerks.

The Conference approved the Committee's recommendation to extend the ungraded salary system to grade JSP-9 law clerks by voting to remove the present JSP-9 salaries for law clerks to judicial officers from the graded JSP salary schedule, with the qualification criteria of the position to remain unchanged. New appointees would be paid the ungraded maximum rate of \$25,400, subject automatically to any future comparability increases and subject also to the availability of funds. The Conference also amended its September 1985 resolution on career law clerks (Conf. Rpt., p. 48) to eliminate the three-year service requirement; career law clerks may be promoted to grade JSP-13 after one year of service at the next lower salary level and, upon the recommendation of the

appointing judge, to grade JSP-14 (currently \$45,763) after one year of service in grade JSP-13. Finally, the Conference agreed to extend the ungraded salary system to staff attorneys and pro se law clerks, whose qualification criteria are identical to those of "elbow" law clerks.

Since implementation of the ungraded system has been approved subject to the availability of funds, the system will be funded in the fiscal year 1989 only to the extent that these increases are included in the fiscal year 1989 budget for this purpose.

The Committee reported that in order to adopt a common frame of reference and to limit administrative confusion in dealing with the ungraded salary levels, the Committee also (1) approved a change in the official title of a magistrate's "legal assistant" to "law clerk", since "legal assistants" and "law clerks" perform the same duties and operate under the same salary and qualifications standards; and (2) agreed that, upon implementation of the ungraded system, the former grade 9, 11, and 12 law clerks shall be referred to as "level I", "level II", and "level III" law clerks, respectively.

AD HOC COMMITTEE ON COURT REPORTERS

In March, 1987 (Conf. Rpt., p. 10), the Judicial Conference adopted findings and conclusions of the Ad Hoc Committee on Court Reporters, and directed the Ad Hoc Committee "to continue to monitor the situation and propose appropriate management reforms until discharged by the Judicial Conference." The Conference approved a report and proposals submitted by the Ad Hoc Committee which, as amended (1) change the Judiciary Salary Plan title of "court reporter coordinator" to "court reporting supervisor"; (2) recommend that 28 U.S.C. 636(c)(7) be amended to give a magistrate the sole power to determine the method by which the record will be taken; (3) require court reporters to keep their financial, attendance, and transcript records on standardized forms developed and provided by the Administrative Office; (4) provide that circuit councils oversee the implementation of and compliance with court reporter management plans of the district courts; and (5) require a court that places some of its reporters on a regular tour of duty to place all reporters in the same location on a regular tour of duty although courts may, for good and sufficient reasons when approved by their judicial councils, exempt any reporters on staff at the time of adoption of this policy.

The Committee reported that it had requested the Federal Judicial Center, in collaboration with the Administrative Office, to develop productivity standards for production of official transcript against which district courts can measure the transcript preparation competence of their court reporters.

TRANSCRIPT FEES

In September, 1986 (Conf. Rpt., p. 61), the Judicial Conference approved the following "temporary" increases in maximum allowable transcript rates, "provided that these maximum rates will not apply to any transcripts paid for by the government, to include payments under the Criminal Justice Act, as long as "Gramm-Rudman-Hollings" (Public Law 99-177) is in effect":

Maximum Transcript Rates

	Original	First Copy to Each Party	Each Add'l Copy to the Same Party
Ordinary	\$3.00	\$.75	\$.50
Expedited	\$4.00	\$.75	\$.50
Daily	\$5.00	\$1.00	\$.75
Hourly	\$6.00	\$1.00	\$.75

The Conference voted to strike "temporary" from the September, 1986 resolution on court reporters' transcript rates.

QUALIFICATION STANDARDS FOR SECRETARIES

Under the Judiciary Salary Plan, in order to attain the position of secretary to a federal judge, JSP-11, an individual must have served "four years as a secretary in a federal court, three of which must be at the JSP-10 level" (see March 1984 Session, Conf. Rpt., pp. 10-11; September 1985 Session, Conf. Rpt., pp. 48-49). Observing that these lengthened and restrictive requirements are deviations from the JSP and from executive branch practices, the Committee recommended that the JSP be amended to replace the language quoted above with "one year of legal secretarial experience at the JSP-10 or equivalent level" in the qualification standards for principal secretaries to federal judges. The Conference approved the amendment.

The Conference also agreed to increase the salary of the principal secretary to a chief judge of a circuit to JSP-12, after three years as secretary to a circuit chief judge and upon a showing of exceptional circuit-wide responsibilities.

CLASSIFICATION OF SUPPORTING PERSONNEL

The Conference approved the reclassification of (1) secretaries to senior staff attorneys at the JSP-9 level and of other secretaries in the senior staff attorneys' offices at JSP-7; (2) court recorder operator positions at the JSP-8 level, subject to the duties assigned; (3) positions in clerks' offices performing full-range intake duties at the JSP-8 level; and (4) clerical positions in probation and pretrial services offices from level JSP-6 to JSP-7.

EMPLOYEE ASSISTANCE PROGRAMS

Public Laws 91-616, 92-255, and 93-282 provide for the establishment of alcohol and drug abuse programs for federal employees. See also Public Law 79-658, which authorizes heads of agencies to establish health service programs "to promote and maintain the physical and mental fitness" of employees. Such Employee Assistance Programs (EAPs) provide at relatively low costs the services of psychologists or sociologists and make referrals to appropriate medical, legal, and other personnel who may not readily be available to employees and supervisors. An EAP established in the Administrative Office was able to provide assistance to 12 employees during a six-month period, with positive results.

The Conference voted to endorse the establishment and funding of Employee Assistance Programs at the local level.

AUTOMATION

The Committee on Court Administration reported on the progress of the various automation projects for the courts, on office automation/data communications, on computer-assisted legal research (CALR), and on automation personnel.

At its last session (Conf. Rpt., p. 21), the Conference was advised that the Subcommittee on Judicial Improvements, recognizing that the Bankruptcy Court Automation Project (BANCAP) will be of inestimable value to the overburdened bankruptcy courts, had requested the Federal

Judicial Center to focus its development resources to ensure that BANCAP is completed according to the schedule set out in the Five-Year Plan for Automation in the United States Courts (1987 Update). In so doing, the Subcommittee recognized that this could require other bankruptcy automation efforts, including Judicial Center support for a Department of Justice-managed demonstration project (see Public Law 99-554, the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986), and any modification of BANCAP to satisfy U.S. Trustee needs, to be deferred indefinitely. However, on reconsideration, the Subcommittee determined that development of an information system as envisioned by Public Law 99-554 which uses BANCAP as a base would be more cost-efficient than two separate development tracks. Accordingly, the Subcommittee endorsed a more cooperative approach with the United States Trustees' development efforts. The Subcommittee also approved a series of Administrative Office recommendations for accelerated BANCAP implementation, including establishment of a BANCAP training and support center in the Western District of Texas; establishment of BANCAP consolidated processing centers whereby one bankruptcy court with hardware provides BANCAP services to other courts; and increasing the number of BANCAP installations in the fiscal years 1988 and 1989.

The Committee also approved the acceleration of installation of office automation and data communications, voting to request that the judiciary seek funds for implementation of office automation activities over a three-year period, rather than a five-year period as previously contemplated.

The Subcommittee on Judicial Improvements reported that it had approved the expansion of CALR to all one-judge sites and had directed the Administrative Office to explore the possibility of installing additional convenience terminals at locations with heavy CALR usage.

On the recommendation of the Committee, the Judicial Conference assigned permanently the responsibility for oversight of automation to the new Judicial Improvements Committee.

CONSOLIDATION OF CENTRAL VIOLATIONS BUREAUS

Central Violations Bureaus (CVBs) were established to process efficiently petty offense and some misdemeanor cases where prosecution is initiated by violation notice. Eight automated CVBs currently handle

notices for 82 district courts, leaving only nine districts outside the automated system. (The Districts of Guam, the Virgin Islands, and the Northern Mariana Islands do not have central violations bureaus.)

In December, 1986, the Subcommittee on Judicial Improvements recognized that there were significant advantages in processing violation notices through the automated CVBs and requested that the Federal Judicial Center study the feasibility of further CVB consolidation. After careful study, the Judicial Center concluded that consolidation of the national CVB processing into two service centers could result in savings in personnel and office space costs, and in a much more standardized implementation of national CVB procedures. The Center made the following recommendations which were approved by the Conference:

- (1) The Magistrates Division of the Administrative Office, in consultation with representatives from the eight CVB service centers and from non-automated districts, should develop model procedures to be followed by all magistrates when handling petty offense cases initiated by the issuance of a violation notice.
- (2) The eight existing CVB centers should be consolidated into two national service centers, in the District of Colorado and the Western District of Texas.
- (3) The CVB Users' Group should be reinstated.
- (4) FEDCAP computers should be installed in the two remaining CVB service centers, with support for the automated CVB application on Four-Phase computers phased out as soon as possible.
- (5) The transfer of districts from an existing service center to one of the two remaining centers should be accomplished one service center at a time.
- (6) The personnel allocation for CVB functions for the nine districts not participating in the automated CVB program should be eliminated.
- (7) Current staff positions allocated to CVB service centers that would be closed should be eliminated through attrition.

- (8) The JSP levels assigned to CVB supervisors and staff should be re-evaluated by the Personnel Division of the Administrative Office in light of the changes in duties and responsibilities that would result from consolidation of the CVBs into two sites.
- (9) Training programs for new magistrates should be modified to include topics pertaining to the function and responsibility of the CVB.
- (10) Data should be collected regarding the cost benefits of pre-sorting CVB-generated mail.
- (11) The Financial Management Division of the Administrative Office should work with the two automated CVB service centers to ensure that fully satisfactory financial controls are implemented. Due to the magnitude of the revenues that would be processed, annual audits would be in order.
- (12) The Financial Management Division should reevaluate the use of lockboxes for the two CVB service centers.

UNITED STATES CLAIMS COURT

The United States Claims Court was created in 1982 as an Article I court in the judicial branch. Noting certain constitutional, administrative, and functional problems with the existing configuration, the Chief Judge of the Claims Court proposed the reestablishment of the United States Claims Court as an Article I court outside of the judicial branch.

Without consideration of any constitutional questions which might be involved, the Conference determined not to object to the creation of an Article I Claims Court outside of the judicial branch.

ARBITRATION

In March, 1987 (Conf. Rpt., p. 18), the Judicial Conference reaffirmed support for its proposed "Court-Annexed Arbitration Act" (March 1986 Session, Conf. Rpt., pp. 6-7), in lieu of enactment of H.R. 4341, 99th Congress, an alternative arbitration bill introduced by Congressman Kastenmeier. This reiterated the Judicial Conference position that, until substantial experience is obtained under current pilot projects, the arbitration program should be flexible and experimental in nature.

Mr. Kastenmeier has introduced in the 100th Congress H.R. 2127, a more flexible court-ordered arbitration bill. The Judicial Conference voted to support enactment of H.R. 2127 with minor amendments which would "grandfather" certain limits and procedures of the current court-annexed arbitration pilot program in the federal courts and make other improving adjustments. Among other things, the proposed amendments would (1) clarify that, in bankruptcy, only adversary proceedings may be subject to arbitration; (2) raise the dollar amount of money damages allowable in arbitration to \$150,000 and require documentation of the amount of damages; (3) allow the court to extend the time period before which an arbitration hearing must begin, if circumstances warrant such an extension; (4) require a bad faith demand for a trial de novo before costs and attorney fees can be assessed for the trial following arbitration by consent of the parties; (5) subject the compensation of arbitrators to limits set by the Judicial Conference; (6) extend the report date of the Federal Judicial Center from four to five years to enable the Judicial Center to have additional time to complete its research; and (7) require a written demand for a trial de novo to be filed with the district court.

FEDERAL COURTS STUDY ACT

S. 951, H.R. 1929, and H.R. 3227, 100th Congress, would establish a Federal Courts Study Commission, the details of which vary with each bill. The Judicial Conference previously has endorsed the creation of a temporary commission to study federal court jurisdiction (March 1981 Session, Conf. Rpt., p. 20; March 1982 Session, Conf. Rpt., p. 20; September 1982 Session, Conf. Rpt., pp. 71-72).

The Conference voted to support S. 951 and H.R. 1929, provided that the legislation is amended to narrow the scope of the Commission's activities and to include broader reporting requirements. The Conference also voted to support H.R. 3227, provided that the foregoing concerns are resolved and also provided that the bill is amended to permit the Chief Justice rather than the President to make a representative number of appointments from the judicial branch to the Commission.

UNITED STATES MARSHALS SERVICE

The Conference voted to refer a draft bill to "establish a United States Marshals Service" to the Executive Committee, for further referral to the appropriate Conference committee for additional study.

INCREASES IN FEE SCHEDULES

At its March 1987 session (Conf. Rpt., pp. 11-17), the Judicial Conference approved revised fee schedules for the appellate, district, and bankruptcy courts, and the Claims Court. On the recommendation of the Committee, the Conference approved the following technical amendments to the appellate, district, and bankruptcy court fee schedules.

Item 3 of the district and appellate schedules, and item 2 of the bankruptcy schedule, are amended to read:

For certification or exemplification of any document or paper, whether the certification is made directly on the document, or by separate instrument, \$5.

Item 4 of the bankruptcy fee schedule is amended to read:

For amendments to a debtor's schedules of creditors or lists of creditors after notice to creditors, \$20 for each amendment, provided the bankruptcy judge may, for good cause, waive the charge in any case.

INTERLOCUTORY APPEALS

Under the so-called Enelow-Ettelson doctrine (Enelow v. New York Life Ins. Co., 293 U.S. 379 (1935); Ettelson v. Metropolitan Life Ins. Co., 317 U.S. 188 (1942)), an order that governs the course of a court's own proceedings or stays the court's own proceedings is appealable if the underlying action is one that would have been brought at law before the merger of law and equity, and the basis of the order is some matter that could have been raised in a suit in equity before merger. The doctrine has been universally criticized. In the first place, there is no reason to distinguish between actions at law and suits in equity in determining whether a matter such as a stay of proceedings should be appealable. Furthermore, many actions involve requests both for legal and for equitable relief, or otherwise arise in postures that make such an historical analogy impossible.

On the recommendation of the Committee, the Judicial Conference voted to recommend that 28 U.S.C. 1292(a)(1) be amended to disallow appeals from orders governing the court's own proceedings.

CORPORATE VENUE

Venue generally turns on one of two considerations: the place where the claim arose or the residence of the parties. When one or more of the parties is a corporation, venue problems arise in determining a corporation's "residence".

The Committee recommended that 28 U.S.C. 1391(c) be amended to provide that a corporation for venue purposes should be deemed to reside in any judicial district in which it was subject to personal jurisdiction at the time the action was commenced. The Conference approved the recommendation.

REMOVAL JURISDICTION

At its September 1985 session (Conf. Rpt., pp. 50-51), the Judicial Conference endorsed the Committee's recommendation that 28 U.S.C. 1441(a) should be amended to eliminate the derivative jurisdiction doctrine. Upon further consideration of removal jurisdiction, the Committee concluded that further amendments to section 1441 are warranted, as are amendments to 28 U.S.C. 1446 and 1447. The suggested amendments, all of which were approved for transmittal to Congress by the Conference, would, *inter alia*, permit removal by "any" defendant; allow the citizenship of fictitious or "Doe" defendants to be disregarded for removal purposes; simplify the "pleading" requirements for removal; establish a one-year limit on removal based on diversity jurisdiction; eliminate the bond requirement on removal procedure; and regulate the joinder of additional parties after removal.

TORTURE VICTIM PROTECTION ACT

S. 824, 100th Congress, the proposed Torture Victim Protection Act, would fill perceived gaps in the Alien Tort Claims Act, 28 U.S.C. 1350. The bill would make every person "who, under actual or apparent authority of any foreign nation, subjects any person to torture or extrajudicial killing . . . liable to the party injured or his legal representatives in a civil action."

While taking no position on the substantive issues raised by the bill, the Judicial Conference recommended that Congress look closely at the problems that would be visited on the federal courts if S. 824 were to be enacted in its present form. Congress should, for example, examine such matters as the absence of provisions dealing with personal jurisdic-

tion or default; the lack of standards to help identify the "legal representatives" who may bring suit or the persons who might properly be made defendants; the fact that application of any statute of limitations is expressly barred, which could compound the difficulty of trying events that happened in foreign countries by the difficulties of stale evidence; and the failure to provide for collecting any judgments.

TEMPORARY EMERGENCY COURT OF APPEALS

At its March 1987 session (Conf. Rpt., p. 20), the Judicial Conference recommended abolition of the Temporary Emergency Court of Appeals, on condition that the court be permitted to complete its pending caseload during a transition period, but did not recommend any forum for the transfer of its jurisdiction.

On the advice of the Committee, the Conference voted to recommend that, upon abolition of TECA, the court's jurisdiction should be vested in the United States Court of Appeals for the Federal Circuit.

DIVERSITY OF CITIZENSHIP JURISDICTION

As recently as March, 1986 (Conf. Rpt., p. 17), the Judicial Conference reaffirmed its long-standing request that Congress eliminate diversity of citizenship jurisdiction under 28 U.S.C. 1332. Alternatively, the Conference has also recommended that in-state plaintiff access to diversity jurisdiction be eliminated and that the amount in controversy requirement be raised to \$25,000 (March 1977 Session, Conf. Rpt., pp. 8-9).

Without departing from recommendations to adopt more extensive restrictions on diversity jurisdiction or to abolish it altogether, the Conference agreed to recommend that 28 U.S.C. 1332 be amended to increase the amount in controversy required to establish diversity jurisdiction from a sum that exceeds \$10,000 to a sum that exceeds \$50,000. While raising the jurisdictional amount in diversity cases would not, in the Conference's view, be the preferred approach, it would represent a desirable step in decreasing the overwhelming federal judicial caseload.

ADMINISTRATIVE LAW JUDGES

S. 950, 100th Congress, the proposed Administrative Law Judge Corps Act, would establish a Judicial Nomination Commission charged

with making nominations for the executive branch offices of Chief Administrative Law Judge and division chief judges. The nominations would be made to the President, who would make appointments with the advice and consent of the Senate. Among those who would appoint members of the Commission would be the Chief Judges of the Court of Appeals for the District of Columbia Circuit and the District Court for the District of Columbia.

Since it would be inappropriate to impose on Article III judges the responsibility for this form of participation in the process of selecting executive branch officials, the Conference concurred in the Committee's recommendation that in the event of enactment of S. 950, others be designated to make these appointments to the Judicial Nomination Commission.

The bill also provides that federal courts may refer to the Administrative Law Judge Corps "any . . . case where a determination on the record after an opportunity for a hearing by a judge of the Corps is found by such court . . . to be desirable and appropriate." The Conference objected to this provision also, as it could short-circuit established doctrines that regulate the relationship between courts and administrative agencies.

WHISTLEBLOWER PROTECTION ACT

One provision of H.R. 25, 100th Congress, the proposed Whistleblower Protection Act, would amend 5 U.S.C. 7703(b)(1) to provide that review of final orders or decisions of the Merit Systems Protection Board, which now lies exclusively in the Court of Appeals for the Federal Circuit, be made available either in the Federal Circuit or in the court of appeals for the judicial circuit within which the petitioner resides.

No evidence has been presented to the Conference which would justify departure from the judgment made in 1982 to centralize such cases in the Federal Circuit. Consequently, the Conference voted to oppose this legislative change.

FAIR HOUSING AMENDMENTS

H.R. 1158 and S. 558, 100th Congress, seek to effect substantial changes in the substantive reach of the Fair Housing Act of 1968 (Title VIII of the Civil Rights Act of 1968), and also to establish for the first time an

effective means of administrative enforcement. While substantive changes in the Fair Housing Act raise matters of policy for the Congress, the enforcement and review provisions appropriately warrant comment by the judiciary.

Title VIII currently provides for investigation of complaints of discrimination by the Secretary of Housing and Urban Development and for "informal methods of conference, conciliation, and persuasion"; actual enforcement is left to litigation brought in the district courts by persons aggrieved or by the Attorney General. The proposed legislation would permit an aggrieved person to file a complaint with the Secretary, to bring an action in a state or federal court, or to do both at the same time; would permit court of appeals review of final orders of administrative law judges at the instance of aggrieved parties; and includes three separate provisions for the filing of petitions in the courts of appeals to enforce the orders of administrative law judges. In certain circumstances, the findings of fact and orders of the administrative law judges "shall be conclusive", and the clerk of the court of appeals must "forthwith" enter decrees enforcing the orders.

When similar legislation was considered in March, 1980, the Judicial Conference endorsed the Committee's recommendation that an aggrieved person who files a complaint with the Secretary be required to exhaust administrative proceedings before pursuing judicial remedies (Conf. Rpt., pp. 13-14), and it now finds no reason to alter that position. The Conference also believed that while prompt petitions for review or enforcement on an administrative record should be filed in the courts of appeals, enforcement of administrative orders after expiration of the time for court of appeals review would better be considered by district courts. Finally, the Conference objected strongly to any provision that would deprive a court of the power to modify an administrative order in light of the needs demonstrated by enforcement proceedings.

THE FAMILY AND MEDICAL LEAVE ACT

H.R. 925, 100th Congress, would, among other things, provide employees with limited amounts of unpaid family or medical leave. The proposed Family and Medical Leave Act would establish a Commission on Paid Family and Medical Leave, composed of 15 members representing the legislative and executive branches and the private sector, to study methods of providing workers with such leave.

The substantive issues raised by H.R. 925 are matters of policy upon which the judiciary defers to the legislative and executive branches. However, although judicial branch employees are covered by the bill, there is no judicial branch representation on the Commission on Paid Family and Medical Leave. The Conference approved the Committee's recommendation that, in the event of enactment, H.R. 925 should be amended to provide for judicial branch representatives on the Commission.

The Conference also observed that H.R. 925 raises questions as to the exhaustion of administrative remedies and automatic enforcement of administrative matters which parallel similar questions raised by the Fair Housing Amendments Act, discussed immediately above. An aggrieved person (i.e., a person not restored to a prior or equivalent position of employment on returning from family or medical leave) would be authorized to file a charge with the Secretary of Labor, who could issue a complaint which would lead to a hearing before an administrative law judge; thereafter, an aggrieved party could apparently seek review by the Secretary of Labor or directly in a court of appeals. An aggrieved party might also elect, either in the alternative or simultaneously, to file a civil action in a state or federal court. In addition, the Secretary could petition a district court for enforcement of any order that had not been appealed to a court of appeals, in which case the Secretary's order "shall not be subject to review".

Consistent with its position on the Fair Housing Amendments Act, above, the Conference voted to recommend that if enacted, H.R. 925 should be amended to provide that (1) any aggrieved person who elects to seek administrative remedies must exhaust those remedies before seeking judicial relief; and (2) enforcement of unreviewed orders of administrative law judges be obtained in the district courts, on such terms as are found appropriate by the court.

CIVIL RICO

At its March 1987 session (Conf. Rpt., p. 19), the Judicial Conference recommended that Congress promptly take steps to narrow significantly the scope of 18 U.S.C. 1964(c) (civil suits under the Racketeer Influenced Corrupt Organizations Act, or "civil RICO"). Suggesting that Congressional testimony had questioned the validity of the Conference's position that significant numbers of cases under that statute have been shifting from state to federal courts, Congressman John Conyers, Chair-

man of the House Judiciary Subcommittee on Criminal Justice, requested that the Conference reexamine its position on civil RICO.

It was the view of the Committee that the number of civil RICO cases is substantially larger than can be statistically documented given the judiciary's statistical practices and, moreover, that these cases require a disproportionately large amount of time to resolve. Accordingly, the Committee recommended that the Conference reaffirm its March 1987 position urging the Congress to narrow significantly the civil RICO provisions in 18 U.S.C. 1964(c). The Conference agreed to the recommendation.

COMMITTEE ON THE BUDGET

SUPPLEMENTAL APPROPRIATIONS FOR THE FISCAL YEAR 1988

The Conference authorized the Director of the Administrative Office to submit to the Congress a request for supplemental appropriations for the fiscal year 1988 for "pay costs", and program supplementals for "Salaries and Expenses", "Defender Services", "Court Security", and "Administrative Office of the United States Courts". The Conference also authorized the Director to amend the requests because of any new legislation, action taken by the Judicial Conference, or any other reason the Director considers necessary and appropriate.

APPROPRIATIONS FOR THE FISCAL YEAR 1989

The Conference approved the budget estimates for the fiscal year 1989. The estimates, exclusive of the Supreme Court, the United States Court of Appeals for the Federal Circuit, the Court of International Trade, and the Federal Judicial Center, total \$1,661,452,000, an increase of \$253,408,000, or 18 percent, over the judiciary's request for the fiscal year 1988. Provision has been made in the budget estimates for an additional 1,071 permanent positions. Approximately 66 percent of the increase is for mandatory or uncontrollable costs such as increases for judges' salaries; annualization of the fiscal year 1988 supplementals and other adjustments in compensation; adjustments for court operations such as increases in contract rates and charges for services, supplies, and equipment; and reimbursable space and facilities expenses. The remaining increases are for workload increases, new legislation, and new program initiatives necessary to maintain the same level of support and

services required by the rapid and continuing growth in the workload of the judiciary, or to improve the administration of justice.

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

"GRAMM-RUDMAN-HOLLINGS" BUDGET CUTS

In September, 1986 (Conf. Rpt., pp. 16-17), the Judicial Conference approved a series of cost-cutting measures in response to Public Law 99-177, the Balanced Budget and Emergency Deficit Control Act of 1985 ("Gramm-Rudman-Hollings"). On the recommendation of the Budget Committee, the Conference agreed to continue in effect restrictions on (1) temporary employment of secretaries, law clerks, and clerical personnel, limiting such employment to emergency situations or extraordinary circumstances; (2) overlapping appointments of secretaries and law clerks to judicial officers to be limited to those with only a single secretary or law clerk or where the cost is offset by a vacancy during the transition period; and (3) the use of express mail, with exceptions to be made only for those items for which delivery within 24 hours is essential.

BUDGET DECENTRALIZATION

In January, 1987, a committee of circuit executives presented to the Budget Committee a "proposal for limited decentralization of most components of circuit and district court budgets". The Budget Committee deferred action on the proposal, pending study by committees of the Judicial Conference whose areas of responsibility might be most directly affected by the proposal's implementation.

After being advised that the Court Administration, Magistrates, Probation, and Bankruptcy Committees had agreed to a scaled-down version of the original proposal, the Budget Committee recommended, and the Conference approved, implementation of a five-court, three-year pilot budget execution decentralization project (Second Circuit Court of Appeals, and Southern New York, Western Washington, Northern California, and Arizona district courts). Commencing on October 1, 1987, the project will test the benefits of expanding the role of the courts in managing local operating budgets.

JUDICIAL ETHICS COMMITTEE

The Judicial Ethics Committee reported that as of August, 1987, the Committee had received 2,045 financial disclosure reports for the calendar year 1986, including 1,594 reports from judicial officers and 451 reports from judicial employees, and had addressed 626 letters of inquiry to reporting individuals.

FINANCIAL DISCLOSURE REPORTS BY COURT REPORTERS

In September, 1981 (Conf. Rpt., pp. 78-79), the Judicial Conference approved a recommendation of the Committee to require the filing of financial disclosure reports by official United States court reporters when gross receipts from the sale of official transcripts, plus regular salary, equaled or exceeded compensation at the grade 16 level of the General Schedule. The recommendation was based upon the conclusion, reached by the Committee, that the definition of "judicial employee" in section 308(10) of the Ethics in Government Act (Public Law 95-521, Title III, § 308(10), 28 U.S.C. app. § 308(10)) could be read no other way.

The Committee reported that the requirement for filing financial disclosure reports had caused considerable misunderstanding among court reporters and required an unnecessary volume of correspondence on behalf of the Committee. Moreover, the Committee could find no conflict of interest in reporters' official duties which would require the need for such financial disclosure. Accordingly, the Committee recommended that legislation be sought specifically to relieve court reporters from any requirement to file financial disclosure reports. The Conference concurred in the recommendation.

ADVISORY COMMITTEE ON CODES OF CONDUCT

The Advisory Committee on Codes of Conduct reported that since its last report, the Committee had received 20 inquiries and issued 19 advisory opinions. The Chairman also responded to 26 telephone inquiries that did not require reference to the Committee.

CODE OF CONDUCT FOR UNITED STATES JUDGES

The Conference approved the substitution of "on the merits or procedures affecting the merits of" for "concerning" in Canon 3A(4).

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

The Committee on Intercircuit Assignments reported that during the period February 15, 1987, through August 20, 1987, the Committee had recommended 59 intercircuit assignments to be undertaken by 50 judges. Of this number, 11 were senior circuit judges, 10 were active circuit judges, 15 were senior district judges, six were active district judges, three were senior judges of the Court of International Trade, and five were active judges of the Court of International Trade.

Of the 59 assignments approved, 29 judges undertook 33 assignments to the courts of appeals, and 22 judges undertook 26 assignments to the district courts.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

The Committee on Rules of Practice and Procedure reported that on August 1, 1987, in the absence of Congressional action, amendments to the Civil, Criminal, and Bankruptcy Rules approved by the Judicial Conference at its September 1986 session (Conf. Rpt., pp. 67-68) took effect. Amendments to the Federal Rules of Evidence, also approved by the Conference in September, 1986, took effect on October 1, 1987, failing congressional action.

The Committee also reported on the progress of the Committee's study, authorized by the Conference in September, 1984 (Conf. Rpt., p. 67), of local court rules. Phase I of the study (consisting of a compilation, review, and preliminary analysis of the 5,000 local rules of the district courts and of the statutes, judicial opinions, and literature relating to local rules) has been completed by Dean Daniel R. Coquillette of Boston College Law School, Reporter to the Committee. The Committee authorized Dean Coquillette to proceed with the next phase, i.e., developing working papers dealing with (1) a uniform numbering system for local rules; (2) a proposed set of model local rules; (3) identification and analysis of rules that should be made the subject of uniform federal rules and of rules that conflict with the letter or spirit of statutory law or the federal rules; and (4) identification of redundant local rules that merely restate existing federal statutes and rules.

COMMITTEE ON THE ADMINISTRATION OF THE PROBATION SYSTEM

CONTRACTING AUTHORITY FOR PSYCHIATRIC SERVICES

Although the Director of the Administrative Office may contract for the treatment of drug or alcohol dependent probationers or parolees (18 U.S.C. 3672 and 4255), his authority does not extend to the provision of psychiatric or psychological treatment. The Committee reported that during the past year, the Probation Service received for supervision, from the courts or the United States Parole Commission, 600 persons in need of psychiatric or psychological treatment which the Service was unable to provide.

The Conference approved the Committee's recommendation that 18 U.S.C. 3672 and 4255 be amended to expand the Director's contract authority to include treatment services to offenders suffering from psychiatric disorders.

MODEL LOCAL RULE FOR GUIDELINE SENTENCING

The Sentencing Reform Act of 1984 (Title II of the Comprehensive Crime Control Act of 1984, Public Law 98-473), when fully implemented, will work a sweeping reform of substantive and procedural sentencing law in the federal courts. Under the law, sentencing guidelines drafted by the United States Sentencing Commission, unless modified by the Congress or delayed in implementation, become effective on November 1, 1987. In order to afford the judiciary and the bar the opportunity to prepare for proper implementation of the guidelines, the September 1986 Conference (Conf. Rpt., pp. 93-94) recommended that Congress extend the effective date of the guidelines until six months after they become law. On July 8, 1987, the Executive Committee of the Conference concluded that a 12-month delay would be beneficial and would allow the judiciary to proceed with implementation more effectively. The Conference reaffirmed this conclusion at this session. See "Sentencing Guidelines", supra pp. 54-55.

The Committee reported that it had drafted and transmitted to all chief district and circuit judges "Recommended Procedures for Guideline Sentencing and Commentary", including a "Model Local Rule for Guideline Sentencing". The Committee suggested that the district courts consider adopting the Model Rule, as proposed or as modified to meet

local needs, or incorporating the substance of its provisions in orders issued in individual cases.

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

BANKRUPTCY ADMINISTRATOR INTERIM REGULATIONS

The Judicial Conference ratified the March 1987 approval by its Executive Committee (see "Bankruptcy Administrator Program", supra pp. 53-54) of transition and interim regulations governing the selection and appointment of bankruptcy administrators, and of interim regulations governing their establishment, duties, and functions.

**NUMBER AND DUTY STATIONS OF
BANKRUPTCY ADMINISTRATORS**

The interim regulations for the bankruptcy administrator program, reaffirmed by the Judicial Conference as noted immediately above, provide for Conference approval of the number of bankruptcy administrators and their official duty stations.

The Conference approved the Committee's recommendation that the administrator program will be best served by authorizing one bankruptcy administrator for each judicial district in the affected states (Alabama and North Carolina), and established their official duty stations as follows:

Alabama, Northern	Birmingham*
Alabama, Middle	Montgomery
Alabama, Southern	Mobile
North Carolina, Eastern	Wilson
North Carolina, Middle	Greensboro
North Carolina, Western	Charlotte

*Also authorized to maintain branch offices in Anniston, Decatur, and Tuscaloosa.

RECALL TO SERVICE OF RETIRED BANKRUPTCY JUDGES

At its March 1985 session (Conf. Rpt., p. 22), the Conference adopted regulations governing the ad hoc recall to service of retired bankruptcy judges. See 28 U.S.C. 155(b). In 1986, a separate provision was enacted by Congress to provide for the recall of bankruptcy judges and magistrates to render "substantial service" for a period of five years. 28 U.S.C. 375.

The five-year provision permits the Judicial Conference to promulgate implementing regulations. 28 U.S.C. 375(h). The Bankruptcy and Magistrates Committees determined that implementing regulations were unnecessary at this time. On the one hand, the ad hoc recall provided in section 155(b) establishes no limitation on the term of recall; on the other hand, the term "substantial service", included in section 375 and made a prerequisite to five-year recall, is too difficult to define.

An amendment to the current regulations governing the ad hoc recall of retired bankruptcy judges is necessary, however. The regulations presently provide that recall shall be for a period fixed by the circuit council not to exceed six months. The Committee reported that such a short term imposes undue administrative burdens on the circuit councils and serious restrictions on the recruitment and hiring of personnel to serve the retired bankruptcy judge. The Conference therefore approved an amendment to the regulations governing the recall of retired bankruptcy judges to provide that recall may be for fixed periods not to exceed one year.

COMMITTEE ON THE ADMINISTRATION OF THE FEDERAL MAGISTRATES SYSTEM

RECALL OF RETIRED MAGISTRATES

At its March 1987 session (Conf. Rpt., p. 33), the Judicial Conference approved regulations for the recall to service of United States magistrates under 28 U.S.C. 636(h), patterned upon similar regulations previously promulgated by the Conference for the recall of retired bankruptcy judges under 28 U.S.C. 155(b). For the reasons discussed immediately above, the Committee recommended, and the Conference approved, an amendment to the regulations for the recall of United States magistrates to provide for recalls, and subsequent renewals, for periods not to exceed one year each.

MAGISTRATE POSITION AT KWAJALEIN MISSILE RANGE

Upon the recommendation of the Committee, the Conference found that no qualified individual who has been a member of the bar for five years and who is currently a member of the Hawaiian bar is available to serve as a part-time magistrate at Kwajalein Missile Range, and authorized the appointment of an individual who does not meet these requirements.

CHANGES IN MAGISTRATE POSITIONS

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

FIRST CIRCUIT

Puerto Rico:

Continued the full-time magistrate positions at San Juan which are due to expire on March 20, 1988 and April 19, 1989, for additional eight-year terms.

SECOND CIRCUIT

New York, Northern:

Continued the authority of the clerk of court to perform magistrate duties, at no additional compensation, for an additional four-year term.

New York, Southern:

Changed the location of the part-time magistrate position at Poughkeepsie to Newburgh (or some other community in Orange or Sullivan counties).

THIRD CIRCUIT

Delaware:

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

FOURTH CIRCUIT

Maryland:

Continued the part-time magistrate position at Upper Marlboro for an additional four-year term at the currently authorized salary of \$36,250 per annum.

FIFTH CIRCUIT

Louisiana, Western:

1. Continued the authority of the clerk of court to perform magistrate duties, at no additional compensation, for an additional four-year term; and
2. Did not discontinue the part-time magistrate at Monroe upon the filling of the new full-time position at Alexandria (or Monroe). See September 1986 Session, Conf. Rpt., p. 80. Continued the part-time magistrate position at Monroe until the end of the term (March 31, 1991) at the currently authorized salary of \$2,134 per annum.

Mississippi, Northern:

Continued the authority of the clerk of court to perform magistrate duties for an additional four-year term at the aggregate compensation of the JSP-16 level.

Texas, Northern:

Continued the part-time magistrate position at Wichita Falls for an additional four-year term at the currently authorized salary of \$7,588 per annum.

Texas, Western:

1. Continued the full-time magistrate position at San Antonio which is due to expire on March 8, 1989, for an additional eight-year term;
2. Continued the part-time magistrate position at San Antonio for an additional four-year term at the currently authorized salary of \$36,250 per annum;
3. Continued the part-time magistrate position at Big Bend National Park for an additional four-year term and increased the salary from \$13,992 to \$16,127 per annum; and
4. Maintained the salary of the part-time magistrate position at Pecos at \$31,719 per annum.

SIXTH CIRCUIT

Kentucky, Eastern:

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

Kentucky, Western:

Continued the part-time magistrate position at Owensboro for an additional four-year term and increased the salary from \$4,269 to \$11,858 per annum.

Ohio, Northern:

Continued the full-time magistrate position at Cleveland which is due to expire on February 4, 1989, for an additional eight-year term.

Tennessee, Eastern:

Continued the part-time magistrate position at Sevierville (or Gatlinburg) for an additional four-year term and increased the salary from \$7,588 to \$9,722 per annum.

Tennessee, Middle:

Continued the full-time magistrate position at Nashville which is due to expire on October 30, 1988, for an additional eight-year term.

SEVENTH CIRCUIT

Illinois, Northern:

1. Continued the full-time magistrate position at Chicago which is due to expire on November 8, 1990, for an additional eight-year term; and
2. Continued the part-time magistrate position at Rockford for an additional four-year term at the currently authorized salary of \$36,250 per annum.

Illinois, Central:

Discontinued the authority of the clerk of court to perform magistrate duties.

Wisconsin, Western:

1. Continued the part-time magistrate position at Ashland for an additional four-year term at the currently authorized salary of \$2,134 per annum; and

2. Continued the authority of the clerk of court to perform magistrate duties, at no additional compensation, for an additional four-year term.

EIGHTH CIRCUIT

Arkansas, Western:

Continued the part-time magistrate position at Hot Springs for an additional four-year term at the currently authorized salary of \$13,992 per annum.

Iowa, Northern:

1. Continued the full-time magistrate position at Cedar Rapids for an additional eight-year term; and
2. Continued the part-time magistrate position at Sioux City for an additional four-year term at the currently authorized salary of \$3,201 per annum.

Minnesota:

1. Continued the full-time magistrate position at Minneapolis which is due to expire on September 30, 1989, for an additional eight-year term; and
2. Continued the full-time magistrate position at Minneapolis (or St. Paul) which is due to expire on March 19, 1988, for an additional eight-year term.

Missouri, Eastern:

1. Continued the full-time magistrate positions at St. Louis which are due to expire on September 30, 1989 and October 7, 1990, for additional eight-year terms; and
2. Continued the part-time magistrate position at Cape Girardeau for an additional four-year term and increased the salary from \$2,134 to \$4,269 per annum.

Nebraska:

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

South Dakota:

1. Continued the part-time magistrate position at Pierre for an additional four-year term and increased the salary from \$16,127 to \$27,390 per annum; and
2. Continued the part-time magistrate position at Sioux Falls for an additional four-year term at the currently authorized salary of \$9,722 per annum.

NINTH CIRCUIT

Arizona:

1. Continued the part-time magistrate position at Yuma for an additional four-year term at the currently authorized salary of \$18,380 per annum; and
2. Continued the part-time magistrate position at Flagstaff (or Page) for an additional four-year term at the currently authorized salary of \$9,722 per annum.

California, Northern:

Increased the salary of the part-time magistrate position at Monterey from \$31,719 to \$36,250 per annum for a six-month period from October 1, 1987 to March 31, 1988, at which time the salary will revert to the previous level.

California, Eastern:

1. Continued the part-time magistrate position at Redding for an additional four-year term at the currently authorized salary of \$18,380 per annum;

2. Continued the part-time magistrate position at Bakersfield for an additional four-year term at the currently authorized salary of \$9,722 per annum; and
3. Continued the part-time magistrate position at Susanville for an additional four-year term at the currently authorized salary of \$3,201 per annum.

TENTH CIRCUIT

Colorado:

1. Continued the part-time magistrate position at Rocky Mountain National Park for an additional four-year term at the currently authorized salary of \$13,992 per annum; and
2. Increased the salary of the part-time magistrate position at Durango from \$3,201 to \$13,992 per annum.

New Mexico:

1. Continued the part-time magistrate position at Alamogordo for an additional four-year term at the currently authorized salary of \$3,201 per annum;
2. Continued the part-time magistrate position at Gallup for an additional four-year term at the currently authorized salary of \$2,134 per annum; and
3. Continued the part-time magistrate position at Farmington for an additional four-year term and increased the salary from \$2,134 to \$4,269 per annum.

Oklahoma, Eastern:

Continued the part-time magistrate position at McAlester for an additional four-year term at the currently authorized salary of \$7,588 per annum.

Wyoming:

1. Continued the part-time magistrate position at Jackson for an additional four-year term and increased the salary from \$5,335 to \$7,588 per annum; and
2. Continued the part-time magistrate position at Sheridan for an additional four-year term at the currently authorized salary of \$3,201 per annum.

ELEVENTH CIRCUIT

Florida, Middle:

1. Continued the full-time magistrate position at Jacksonville which is due to expire on January 11, 1989, for an additional eight-year term; and
2. Continued the full-time magistrate position at Orlando for an additional eight-year term.

Georgia, Northern:

Continued the full-time magistrate positions at Atlanta which are due to expire on August 10, 1988 and October 22, 1990, for additional eight-year terms.

Georgia, Middle:

Discontinued the part-time magistrate position at Valdosta effective December 31, 1987.

COMMITTEE TO IMPLEMENT THE CRIMINAL JUSTICE ACT

APPOINTMENTS AND PAYMENTS

The Committee reported that \$86,378,000 was available at the beginning of the fiscal year 1987 for the implementation of the Criminal Justice Act. Supplemental funding in the amount of \$1,480,000 was subsequently approved, bringing the total available for defender services in the fiscal year 1987 to \$87,858,000.

During the first half of the fiscal year 1987, approximately 28,000 persons were represented under the Criminal Justice Act, compared to approximately 26,000 in the first half of the fiscal year 1986, an increase of 7.7 percent. Of these 28,000 persons represented, 15,765, or 56.3 percent, were represented by federal public and community defender organizations. This represents a 6.4 percent increase over the 14,823 appointments received by federal defenders during the same period in the fiscal year 1986.

BUDGET REQUESTS - FEDERAL PUBLIC DEFENDER ORGANIZATIONS

The Conference approved supplemental budget requests for federal public defender organizations for the fiscal year 1988 as follows:

Arizona	\$ 227,356
California, Eastern	128,716
California, Central	85,350
Kansas	69,821
Massachusetts	28,059
Nevada	87,837
New Mexico	229,816
North Carolina	70,577
Oklahoma, Western, Northern, and Eastern	133,914
Oregon	21,629
Tennessee, Western	53,250
Texas, Southern	329,563
Texas, Western	265,917
Washington, Western/Alaska	<u>27,375</u>
 TOTAL	 \$1,759,180

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

Arizona	\$ 1,316,783
California, Northern	1,800,757
California, Eastern	1,245,011
California, Central	2,431,035
Colorado	750,498
Connecticut	517,161
Florida, Northern	402,489
Florida, Middle	1,117,448
Florida, Southern	2,629,539
Hawaii	819,397
Illinois, Southern and Central/Missouri, Eastern	812,010
Kansas	553,274
Louisiana, Eastern	614,145
Maryland	1,118,956
Massachusetts	492,131
Minnesota	428,633
Missouri, Western	709,785
Nevada	810,163
New Jersey	1,062,251
New Mexico	780,188
North Carolina, Eastern	620,835
Ohio, Northern	470,830
Oklahoma, Western, Northern, and Eastern	718,521
Oregon	832,282
Pennsylvania, Middle and Western	1,093,169
Puerto Rico	572,057
South Carolina	395,307
Tennessee, Middle	502,294
Tennessee, Western	323,415
Texas, Southern	1,543,247
Texas, Western	1,408,534
Virgin Islands	713,754
Washington, Western/Alaska	1,153,947
West Virginia, Southern	<u>280,029</u>
TOTAL	\$31,039,875

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

**GRANT REQUESTS -
COMMUNITY DEFENDER ORGANIZATIONS**

The Conference approved supplemental sustaining grants for the fiscal year 1988 for the following community defender organizations:

Federal Defenders of San Diego, Inc., California, Southern	\$234,521
Federal Defender Program, Inc., Georgia, Northern	80,685
The Legal Aid Society of New York, Federal Defender Services Unit, New York, Eastern & Southern	<u>302,577</u>
TOTAL	\$617,783

The Conference did not approve the fiscal year 1988 supplemental grant request submitted by the Legal Aid and Defender Association of Detroit, Federal Defender Division.

The Conference also approved sustaining grants for the fiscal year 1989 for the six community defender organizations as follows:

Federal Defenders of San Diego, Inc., California, Southern	\$1,984,225
Federal Defender Program, Inc., Georgia, Northern	729,690
Federal Defender Program, Inc., Illinois, Northern	1,063,000

Legal Aid & Defender Assn. of Detroit, Federal Defender Division, Michigan, Eastern	931,456
The Legal Aid Society of New York, Federal Defender Services Unit, New York, Eastern & Southern.	2,998,240
Defender Assn. of Philadelphia, Federal Court Division, Pennsylvania, Eastern	<u>965,982</u>
TOTAL	\$8,672,593

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

**ALTERNATIVE HOURLY COMPENSATION RATES IN
DEATH PENALTY HABEAS CORPUS CASES**

Subsection (d)(1) of the Criminal Justice Act, as amended (18 U.S.C. 3006A(d)(1)), establishes hourly maximum rates of attorney compensation of \$60 per hour for time expended in court, and \$40 per hour for time reasonably expended out of court. The subsection also authorizes the Judicial Conference to establish an alternative hourly compensation rate, not to exceed \$75 per hour, if the Conference determines that a higher rate is justified for a circuit or for particular districts within a circuit. Guidelines pursuant to this provision were approved by the March 1987 Conference (Conf. Rpt., p. 38).

The Committee reported its concern that there may not be sufficient resources in the CJA appropriation to cover payment of higher rates for all districts from which applications may reasonably be expected. In order to ensure that resources are available to provide relief in the areas where the need is the greatest, the Committee will consider all such requests at its next meeting in January, 1988, and established

an October 15, 1987 deadline for submission of alternative rate applications. With respect to requests already received, the Committee deferred consideration for all but three districts, the Northern, Central, and Eastern Districts of California. These districts provided compelling justification for a special alternative rate for death penalty habeas corpus cases.

Effective with respect to services performed on or after October 1, 1987, and subject to the availability of funds, the Conference approved a temporary special alternative maximum rate of \$75 per hour, for both in and out of court time, for representation in death penalty habeas corpus cases in the Northern, Central, and Eastern Districts of California.

GUIDELINES

The Conference approved a new subparagraph C to paragraph 3.12 of the Guidelines for the Administration of the Criminal Justice Act, relating to commercial duplication of transcripts in multi-defendant cases, applicable to transcripts ordered on or after October 1, 1987.

COMMITTEE ON THE ADMINISTRATION OF THE CRIMINAL LAW

INTERSTATE AGREEMENT ON DETAINERS ACT

The Department of Justice has proposed that the Interstate Agreement on Detainers Act (84 Stat. 1397) be amended to limit the participation of the United States in the Act to that of a "sending state". The proposal would also provide for Speedy Trial Act protection for state prisoners compelled to stand trial in the federal courts for federal offenses. See 18 U.S.C. 3161(c).

On the recommendation of the Committee, the Judicial Conference voted to support the proposed amendment to the Interstate Agreement on Detainers Act.

**COMMITTEE ON THE OPERATION OF
THE JURY SYSTEM**

**AMENDMENTS TO THE JURY SELECTION
AND SERVICE ACT**

In September, 1985 (Conf. Rpt., pp. 83-84), the Judicial Conference approved the transmittal to Congress of a package of five technical amendments to the Jury Selection and Service Act, 28 U.S.C. 1863 et seq. On the recommendation of the Committee, the Conference agreed to recommend an additional technical amendment, to 28 U.S.C. 1865, to authorize district courts to use non-court personnel, such as operators of optical scanning equipment, to assist in the filling of the qualified jury wheel.

MACHINE READABLE QUALIFICATION QUESTIONNAIRE

In March, 1987 (Conf. Rpt., p. 39), the Conference authorized the District Court for the District of New Mexico to use a machine readable form of the juror qualification questionnaire previously approved by the Conference under 28 U.S.C. 1869(h). At this session, the Conference authorized the expanded use of the questionnaire in the Middle District of Florida, the Western District of Texas, and such other districts as the new Judicial Improvements Committee shall designate. The Conference also authorized the Administrative Office, in consultation with the Judicial Improvements Committee, to make necessary non-substantive changes in the form of the questionnaire.

COMMITTEE ON PACIFIC TERRITORIES

AMERICAN SAMOA

At present, the Secretary of the Interior may revise judgments of the courts of American Samoa; there is currently no formal link between the Samoan territorial court system and the Article III federal system, although there is a theory by which the Secretary's action (or inaction) may be challenged in a district court as an abuse of discretion. See King v. Morton, 520 F.2d 1440 (D.C. Cir. 1975). The Committee reported that all segments of the Samoan business community, bar, and bench consulted by the Committee find this system unsatisfactory because final decisions are made by administrators rather than judicial officers.

The Committee proposed the enactment of legislation to provide that decisions of the High Court of American Samoa, on matters other than local law, shall be reviewable by writ of certiorari to the United States Court of Appeals for the Ninth Circuit. The Conference agreed to this recommendation, and also agreed to support enactment of legislation to provide that suits in the nature of mandamus against the Secretary of the Interior respecting American Samoa shall be brought only in the District Court for the District of Hawaii (provided that such action is properly brought in a district court of the United States).

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

The Committee to Review Circuit Council Conduct and Disability Orders reported that, since its last report, the Committee had received and acted upon one petition for review, ordering a public reprimand of a district judge for an extended scolding of a lawyer in open court in the presence of other lawyers and spectators and without affording the lawyer an opportunity for response. The Committee found such conduct to be intemperate, injudicious, and censorial.

RULES FOR THE PROCESSING OF CERTIFICATES FROM JUDICIAL COUNCILS THAT A JUDICIAL OFFICER MIGHT HAVE ENGAGED IN IMPEACHABLE CONDUCT

The Conference approved the following Rules for the Processing of Certificates from Judicial Councils that a Judicial Officer has Engaged In Conduct that Might Constitute Grounds for Impeachment:

1. When a certificate from a judicial council that a judicial officer has engaged in conduct that might constitute grounds for impeachment is premised entirely upon a judgment of conviction in a criminal case and the judgment has become final by the exhaustion or termination of all rights of direct judicial review, the Judicial Conference, in its discretion, may accept the final judgment as conclusive and, without notice to the accused judicial officer, make its own determination as to whether or not it will forward a final certificate to the House of Representatives of the United States Congress.
2. Except when the Judicial Conference of the United States determines that the full Conference should act upon the matter

pursuant to Rule 1, all such certification matters shall be referred in the first instance, by the Conference or its Executive Committee, to an ad hoc committee of Conference members or to the Committee to Review Circuit Council Conduct and Disability Orders for processing and the preparation of a report with recommendations back to the Conference.

3. When a certification proceeding is referred to a committee for a report and recommendation as provided in Rule 2, the relevant committee shall (1) provide the accused judicial officer with a copy of the certificate and a copy of all papers filed with the Judicial Conference in support of the certificate unless a copy of all such documents has previously been furnished to the accused judicial officer, or, (2) in its discretion, make all such papers available for inspection by him and his counsel in the Administrative Office in Washington, D.C., or some other convenient, designated place.
4. The accused judicial officer shall have sixty days within which to file a written response to the certificate. The sixty-day period will begin to run when (1) a copy of all relevant papers is furnished or made available for his inspection, or, (2) when he is given written notice of his right to file such a written response, whichever later occurs.

For good cause, the committee may extend the time within which a written response may be filed.

5. The committee may receive written argument from a complainant if the committee determines that it may be assisted by such receipt.
6. Oral argument ordinarily will not be allowed, but may be allowed if the committee determines that it would be assisted by it.
7. In the preparation and filing of his written response and in oral argument, if allowed, the judicial officer is entitled to representation by counsel of his choice at his expense.

8. (a) If the Judicial Conference or its committee determines that additional investigation is necessary or appropriate, notice that such investigation will be conducted will be given in advance to the accused judicial officer. The notice will be given at least ten days in advance of the commencement of the investigation, unless an emergency situation requires an earlier commencement of investigatory measures.

(b) During the course of any such investigation, the accused judicial officer will be afforded those opportunities as provided in 28 U.S.C. 372(c)(11)(B), and the complainant will be afforded those opportunities as provided in 28 U.S.C. 372(c)(11)(C).

(c) At the conclusion of any such investigation, the investigation panel will file a written report, a copy of which will be furnished the accused judicial officer or made available for his inspection and, if the committee decides that it is appropriate, to the complainant. The report of the investigation will be made a part of the record, and the time within which the accused judicial officer may file a written response will not begin to run before a copy of the report is furnished to him or made available for his inspection.

9. The committee will file with the Conference a report, including a recommendation or recommendations. The report will be received by the Conference as the reports of other of its committees. The Conference may adopt the report, including its recommendations, in its entirety, or adopt it in part and reject it in part.

10. Since the committee's report is an internal document and an accused judicial officer will already have been given an opportunity to file a full written response to the certificate, a copy of the committee's report need not be furnished to him.

COMMITTEE ON THE BICENTENNIAL OF THE CONSTITUTION

The Committee on the Bicentennial of the Constitution reported on its participation in the Bicentennial effort.

AD HOC COMMITTEE ON SENTENCING GUIDELINES

As discussed supra pp. 54-55 ("Sentencing Guidelines"), on July 8, 1987, the Executive Committee considered and acted upon recommendations from the Ad Hoc Committee on Sentencing Guidelines, which the Conference ratified in plenary session.

AD HOC COMMITTEE ON THE INTERNATIONAL APPELLATE JUDGES CONFERENCE - 1989/90

For approximately the last decade, appellate judges of many countries have held biennial International Appellate Judges Conferences. Delegates, normally among the foremost judicial officers of each country, gather at a pre-selected place to discuss for three or four days mutual problems and solutions. Delegates pay their own transportation but the host country pays for food and lodging of all delegates at the Conference. Previous conferences have been held in the Philippines, India, Australia, and Malaysia.

Prior to the Fourth International Appellate Judges Conference in Malaysia, Chief Judge James R. Browning obtained authority from the Executive Committee to invite the group to hold its Fifth International Conference in the United States in 1989 or 1990. See "International Appellate Judges Conference", supra p. 54. Chief Judge Browning extended the invitation, which was unanimously and enthusiastically received. The Ad Hoc Committee on the International Appellate Judges Conference reported that it had met to review the history and nature of the Conference and to make tentative plans for holding the Fifth International Conference in Washington, D.C., in connection with the ongoing celebration of the Bicentennial of the Constitution. Attendance by all members of the Judicial Conference, the Chief Justices of the 50 states, and a delegation from each of approximately 130 other countries, is anticipated.

On the recommendation of the Ad Hoc Committee, the Conference authorized the Chief Justice to appoint an International Appellate Judges Conference Committee to work with the Conference's Committee on the Bicentennial of the Constitution and other governmental and non-governmental entities, to accomplish the planning for and conduct of the Fifth International Appellate Judges Conference in 1989 or 1990.

MEMORIAL RESOLUTIONS

Noting the death of Wade H. McCree, Jr., the Conference adopted the following resolution:

The Judicial Conference of the United States notes with sadness the death of Wade H. McCree, Jr., on August 30, 1987 in Detroit, Michigan.

Wade McCree's public service included five years as a judge of the United States District Court for the Eastern District of Michigan and eleven years on the United States Court of Appeals for the Sixth Circuit. He resigned from the Court of Appeals upon being appointed Solicitor General of the United States in 1977. Judge McCree earned a reputation in each of these positions as a wise, scholarly and compassionate person. He was admired by all who were familiar with his writings and speeches, or who engaged in conversation with him, as a true master of the English language.

Wade McCree was born in Iowa and spent a part of his childhood in Hawaii. Michigan was his home throughout his adult years and he was identified there as an active participant in many civic, cultural and charitable pursuits. Judge McCree was educated at the Boston Latin School, Fisk University and Harvard Law School. His studies at Harvard were interrupted for service in the United States Army during World War II. Always deeply interested in education, he served on the Harvard Board of Overseers and was Vice-Chairman of the Fisk Board of Trustees.

Following completion of his term as Solicitor General, Judge McCree was named the Lewis M. Simes Professor of Law at the University of Michigan and occupied that chair at the time of his death. A gifted teacher, he earned the respect and affection of the faculty and students, who found in him not only a memorable instructor but a willing counselor as well.

Judge McCree was a member of the first Board of the Federal Judicial Center and made significant contributions to the development of the Center's role in improving the administration of justice in the United States. He was a valuable member of several committees of the Judicial Conference and was serving on the Committee on Rules of Practice and Procedure at the time of his

death. His wise counsel and delightful presence will be missed by all who were privileged to work with him.

The members of the Judicial Conference convey their deepest sympathy to Judge McCree's family, and request that this Resolution be sent to his widow, Dores McCree, as a sign of our respect.

Noting the death of Judge Robert L. Taylor, the Conference adopted following resolution:

The Conference notes with sadness the death of Judge Robert L. Taylor on July 11, 1987. Judge Taylor was a distinguished judge of the Eastern District of Tennessee for over thirty-seven years and was admired by all who knew and worked with him. During his years on the federal bench, he served as a member of the Judicial Conference of the United States from 1972 to 1975 as the district judge representative from the Sixth Circuit. He also served on various Conference committees, including the Executive Committee and the Committees on Trial Practice and Technique, Pretrial Procedure, and Rules for Admission to Practice in the Federal Courts. Retired Chief Justice Burger appointed him as a member of the Committee on Intercircuit Assignments in 1977 where he served until his death. We, the members of the Conference, convey our sympathy to his widow, Florence, and his family, and request that this resolution be sent to them as a mark of our respect and esteem.

RESOLUTIONS

Noting the resignation of Judge Edward Thaxter Gignoux as Chairman of the Committee on Rules of Practice and Procedure, the Conference adopted the following resolution:

The Judicial Conference of the United States, with great appreciation, profound respect, and no little regret, notes the resignation of Judge Edward Thaxter Gignoux from his position as Chairman of this Conference's Committee on Rules of Practice and Procedure. Judge Gignoux's able direction of the parent committee of the various advisory committees of this Conference and on this Conference itself, will be sorely missed. The Conference takes

this occasion to pay tribute to Judge Gignoux for his many contributions to the Conference and the judiciary.

Judge Gignoux was born in Maine and received both his undergraduate and law degrees from Harvard University. He served as a Lieutenant in the United States Army from 1942 to 1946 and afterwards briefly resumed his practice of law in Washington, D.C. before returning to Maine to associate with the firm of Verrill, Dana, Walker, Philbrick and Whitehouse. When he entered on duty as the ninth United States District Judge for the District of Maine on September 23, 1957, Judge Gignoux was the nation's youngest federal judge, a happy coincidence permitting the extensive use of his many abilities by the judiciary. He became chief judge of the district on November 8, 1978 and served in that capacity until he elected to take senior status on June 1, 1983.

Judge Gignoux's contributions to this body and to the judiciary of the United States generally are nearly too numerous to mention and can only be summarized. He was the district judge representative to the Conference from the First Circuit for two consecutive three-year terms between 1967 and 1973. He has been a member of the Advisory Committee on Bankruptcy Rules, 1960-1972; a member of the Committee on Trial Practice and Technique, 1965-1967; a member of the Committee on the Operation of the Jury System, 1966-1968; a member of the Committee on Court Administration, 1969-1980; Chairman of the Subcommittee on Supporting Personnel, 1968-1970; a member of the Review Committee, 1975-1978; and Chairman of the Subcommittee on Federal Jurisdiction, 1969-1970. He served as the only federal district court judge on the Traynor Committee that drafted the American Bar Association Code of Judicial Conduct, and he served as a member of the Conference's Judicial Ethics Committee, 1978-1985. He was also a member of the Ad Hoc Committee on the Media Petition ("Cameras in the Courtroom"), 1983-1984. He was appointed to his position as Chairman of the Standing Committee on Rules of Practice and Procedure in 1980.

Judge Gignoux has not limited his public services to the federal judiciary. He has served local government, charitable groups and bar associations. He has served his law school and the United States State Department. And he has been available to the Chief Justice to serve outside his district in difficult and sensitive cases. He has performed all of these tasks, the rewarding as well as the difficult, with his characteristic patience, courtesy, and high competence.

The Chief Justice and the members of the Judicial Conference of the United States extend their deep appreciation on behalf of the entire United States judiciary to Judge Edward Thaxter Gignoux for his contributions and ask that a copy of this tribute be entered into the Report of the Conference as a mark of our appreciation and respect.

Noting the resignation of Judge Elmo B. Hunter as Chairman of the Committee on Court Administration, the Conference adopted the following resolution:

WHEREAS, the Honorable Elmo B. Hunter has served as Member and Chairman of the Committee on Court Administration of the Judicial Conference of the United States for almost two decades; and

WHEREAS, Judge Hunter, throughout his years of distinguished service with the Committee, devoted long hours of diligent, dedicated and unstinting effort to the full consideration of numerous and important matters coming before the Committee; and

WHEREAS, Judge Hunter initiated a number of innovations in the management of the work of the Committee, including the organization of joint meetings of all its subcommittees, and coordination of its work with that of other Conference committees when cooperative efforts were essential; and

WHEREAS, Judge Hunter consistently presided over his Committee's meetings with commendable efficiency, good humor, and total fairness, ensuring the opportunity for each of its members to be heard, and managed the work of the Committee and the

reporting of its recommendations to the Judicial Conference of the United States with distinction and accuracy; and

WHEREAS, Judge Hunter, in his many presentations of testimony to Congress, reflected great credit upon himself, the Committee, the Judicial Conference, and the entire federal judiciary; and

WHEREAS, the dependably successful performance of the Committee's role, during an especially demanding era, was due in major part to the wise guidance and outstanding leadership of Judge Hunter,

NOW, THEREFORE, BE IT RESOLVED

That the Judicial Conference of the United States, assembled this 21st day of September, 1987, unanimously adopts this Resolution in Recognition of the Services of the Honorable Elmo B. Hunter.

ELECTION

The Conference elected to membership on the Board of the Federal Judicial Center Bankruptcy Judge Robert E. Ginsberg (for a term of four years to succeed Bankruptcy Judge Martin V.B. Bostetter, Jr., whose term expired on October 1, 1987).

PRETERMISSION OF TERMS OF THE COURTS OF APPEALS

Pursuant to 28 U.S.C. 48, the Conference approved the pretermis- sion of terms of the following United States Courts of Appeals during the calendar year 1988: 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.



Chief Justice of the United States
Presiding

October 7, 1987