

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

March 15, 1988

The Judicial Conference of the United States convened on March 15, 1988, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. 331. The Chief Justice presided and the following members of the Conference were present:

First Circuit:

Chief Judge Levin H. Campbell
Chief Judge 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 Phillip Pratt, Eastern District of
Michigan

Seventh Circuit:

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

Eighth Circuit:

Judge Gerald W. Heaney*
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

* Designated by the Chief Justice in place of Chief Judge Donald P. Lay,
who was unable to attend.

Federal Circuit:

Chief Judge Howard T. Markey

Court of International Trade:

Chief Judge Edward D. Re

Circuit Judges Boyce F. Martin, Jr. and Robert S. Vance, District Judge Richard M. Bilby, and Senior District Judge Walter T. McGovern attended all or some of the sessions of the Conference. Circuit Executives Steven Flanders (Second Circuit), Samuel W. Phillips (Fourth Circuit), Lydia Comberrel (Fifth Circuit), James A. Higgins (Sixth Circuit), Collins T. Fitzpatrick (Seventh Circuit), June L. Boadwine (Eighth Circuit), Francis L. Bremson (Ninth Circuit), Eugene J. Murret (Tenth Circuit), and Norman E. Zoller (Eleventh Circuit), and Circuit Executive-designates Vincent Flanagan (First Circuit) and John Hehman (Third Circuit) were also present.

Congressman Neal Smith, Chairman of the House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies, 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, and Solicitor General Charles Fried addressed the Conference on matters of mutual interest to the Department of Justice and the Conference. Circuit Judge Thomas J. Meskill, a member of the Conference's Budget Committee, briefed the Conference on the status of the judiciary's appropriations requests.

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

The Director of the Federal Judicial Center, Judge 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 a brief report summarizing the workload of the federal judiciary during the calendar year 1987.

JUDICIAL BUSINESS OF THE COURTS

Mr. Mecham reported that during 1987, the number of cases appealed to the 12 regional courts of appeals rose nearly three percent to 35,700, due primarily to a substantial increase in appeals of state prisoner petitions. Although terminations increased four percent this year, they did not keep pace with filings and, consequently, the pending caseload rose two percent to 26,894 on December 31, 1987. Filings in the United States Court of Appeals for the Federal Circuit rose more than 18 percent to 1,406. The largest increases were in appeals from the Merit Systems Protection Board and from the U.S. district courts. Dispositions declined 30 percent, dropping below the level of filings. As a result, the pending caseload climbed seven percent to 674.

In the United States district courts, the number of civil filings declined for the second consecutive year, dropping more than four percent to 233,292 (an average of 406 civil cases per authorized judgeship). The largest decreases were in cases involving recovery of overpayments of veterans' benefits, asbestos personal injury product liability suits, and marine contract actions. Civil terminations declined at a faster rate than filings (down eight percent), resulting in a one percent increase in the pending caseload. On December 31, 1987, there were 247,107 civil cases pending in the district courts.

Criminal filings continued to increase, rising more than four percent to 44,335 (an average of 77 criminal cases per authorized judgeship). The increase in criminal filings was due primarily to substantial rises in prosecutions under the Drug Abuse Prevention and Control Act and for fraud. Criminal dispositions rose six percent but remained below the level of filings. Accordingly, the pending caseload climbed nearly five percent to 26,454 on December 31, 1987.

The rate of increase in the number of bankruptcy petitions slowed considerably during 1987. Total bankruptcy filings rose only eight percent to 574,849, compared to a 28 percent increase a year ago. Non-business bankruptcies rose ten percent, while business bankruptcies rose only one percent. Despite a 29 percent increase in terminations, the pending caseload grew five percent, reaching a record level of 819,726 on December 31, 1987.

Mr. Mecham also reported that as of March 1, 1988, there were 11 vacancies among the 168 judgeship positions authorized for the United States courts of appeals and 34 vacancies among the 575 authorized judgeship positions in the United States district courts.

JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

A written statement filed with the Conference by the Judicial Panel on Multidistrict Litigation indicated that during the six-month period ended December 31, 1987, the Panel centralized 122 civil actions pursuant to 28 U.S.C. 1407. Of that number, 46 were transferred for coordinated or consolidated pretrial proceedings with 76 actions originally filed in the transferee districts. The Panel denied transfer of 16 actions.

Since its creation in 1968, the Panel has centralized 16,173 civil actions for pretrial proceedings in carrying out its statutory responsibilities.

EXECUTIVE COMMITTEE

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

NOTIFICATION

The Report of the Proceedings of the September 1987 Judicial Conference indicates that, in connection with its consideration of the report of the Committee to Study the Judicial Conference, the Conference approved the following principle (Conf. Rpt., p. 58):

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 requester promptly.

Responding to the suggestion that the Judicial Conference intended to require notification rather than merely to suggest it, the Executive Committee established the following interim policy:

When the Administrative Office recommends to a committee that a request submitted by a judge or court be rejected, the Director should notify the judge or court promptly; similarly, when a committee votes to reject the request of a judge or court, the chairman should notify the requester promptly, unless there are compelling reasons for not doing so.

At its March 15, 1988, session, the Judicial Conference made the interim policy permanent.

JURISDICTION OF COMMITTEES; PROCEDURES FOR ASSEMBLING AGENDAS

Among the duties assigned the Executive Committee by the Judicial Conference in September, 1987 (Conf. Rpt., p. 57), were to review the jurisdiction of each Conference committee, and to establish and publish procedures for assembling agendas so that interested courts and judges will know how to get matters before the Conference and its committees.

On January 6, 1988, the Executive Committee published a report detailing the jurisdiction of each Conference committee, a list of all committee members (with their terms), and procedures for assembling agendas. Under the procedures, courts and judges desiring to have matters considered by the Conference may transmit their requests, in writing, to the Director of the Administrative Office (Attention: Office of the Judicial Conference Secretariat). The Director is delegated the responsibility of assigning matters to the appropriate committee and notifying the requesting court or judge of the committee assignment. If jurisdictional questions arise between committees, they will be resolved on a priority basis by the Executive Committee.

ALTERNATIVE HOURLY COMPENSATION RATES IN DEATH PENALTY HABEAS CORPUS CASES

In September, 1987 (Conf. Rpt., pp. 94-95), the Judicial Conference approved a 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. Effective November 6, 1987, the Executive Committee agreed to extend the \$75 rate, in death penalty habeas corpus cases only, to the Southern District of California. See "Alternative Hourly Compensation Rates", infra p. 15.

APPROPRIATIONS FOR THE FISCAL YEAR 1988

The Executive Committee approved a spending plan for the appropriation "Salaries and Expenses" and supplemental appropriations requests for certain judicial accounts, both for the fiscal year 1988. See also "Appropriations for the Fiscal Year 1988", infra p. 10. Since expenditure levels vary from one month to the next, the plan was approved for the second quarter of the fiscal year, through March 31, 1988. An updated financial plan will be submitted to the Executive Committee in April, 1988.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

The Committee on the Administrative Office reported that, at its organizational meeting, the Director and his senior staff provided a full and comprehensive educational briefing on the operations and programs of the Administrative Office. The Committee plans to meet in April, 1988, to develop an implementing strategy for its role in providing advice and support to the Administrative Office and in monitoring the agency's general performance.

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

RESOLUTION

Noting the superior effort of the Director of the Administrative Office and members of his staff in obtaining the enactment of legislation which sets the salary of bankruptcy judges and a ceiling on the salary of full-time United States magistrates at 92 percent of the salary paid United States district judges, the Judicial Conference adopted the following resolution:

Whereas, salary adjustments allowed bankruptcy judges and United States magistrates during 1987 were grossly inadequate with relation to the services performed by these judicial officers; and

Whereas, L. Ralph Mecham, Director of the Administrative Office of the United States Courts recognized the need to provide salary relief to bankruptcy judges and magistrates and solicited the support of the Judicial Conference of the United States to petition Congress for a more equitable salary increase; and

Whereas, at its March 1987 meeting the Judicial Conference unanimously resolved to seek immediate salary increases for bankruptcy judges and magistrates; and

Whereas, Robert E. Feidler, Legislative and Public Affairs Officer of the United States Courts and Denis Hauptly, counsel of that office, successfully achieved passage of legislation authorizing salary increases for bankruptcy judges and United States magistrates equivalent to 92 percent of the salary of United States District Judges;

Now therefore, be it resolved, that the Judicial Conference of the United States Committee on the Administration of the Bankruptcy System does hereby express to L. Ralph Mecham, Director, Robert E. Feidler, Legislative and Public Affairs Officer, and

Denis Hauptly, counsel, of the Administrative Office of the United States Courts, its deep appreciation and sincere gratitude for their initiative and untiring efforts in obtaining for bankruptcy judges and United States magistrates substantial pay increases and particularly recognizes the diligence and vigilance of Denis Hauptly throughout the entire legislative process;

Be it further resolved, that the Judicial Conference adopts this resolution as its own and orders it recorded in the Proceedings of the Conference.

ADDITIONAL JUDGESHIPS

Due to an unusual increase in bankruptcy filings, the Conference voted to recommend that Congress authorize one additional bankruptcy judgeship for the Eastern District of Texas.

DELINEATION OF RESPONSIBILITIES FOR CLOSING BANKRUPTCY CASES

In order to provide guidance to bankruptcy judges and clerks in the delineation of responsibilities for closing bankruptcy cases in the aftermath of the Bankruptcy Reform Act of 1978 (Public Law 95-598) and the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Public Law 99-554), the Conference adopted the following policy statement:

The United States trustee program is being phased in across the country region by region. By statute, United States trustees appoint case trustees and supervise their performance. This includes the auditing of trustee reports and fees and the monitoring of trustee fiduciary responsibilities under the Bankruptcy Code and Rules.

When a United States trustee region becomes operational, it is expected that the United States trustee will assume, as soon as practicable, the full range of responsibilities contemplated by statute, including the auditing of case trustees' final reports and proposed orders of distribution. Absent unusual

circumstances, the court in the exercise of its judicial discretion to close a case should be able to rely on the certification of the United States trustee, in the U.S. trustee's official capacity and as an officer of the court, that the case trustee has properly and fully administered the estate. Staff of the clerk's office should not be used routinely to perform or duplicate United States trustees' responsibilities.

COMMITTEE ON THE BICENTENNIAL OF THE CONSTITUTION

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

COMMITTEE ON THE BUDGET

APPROPRIATIONS FOR THE FISCAL YEAR 1988

The Committee on the Budget reported that the fiscal year 1988 appropriation for the judiciary was signed into law as part of the government-wide "continuing resolution" (Public Law 100-202). New budget authority for the judiciary totals \$1,329,934,000, as compared to the fiscal year 1988 request of \$1,460,678,000 and the fiscal year 1987 appropriations of \$1,259,708,000.

In February, 1988, the Executive Committee authorized the Director to submit a fiscal year 1988 supplemental appropriations request of \$38,550,000 for the "Salaries and Expenses" appropriation, \$10,853,000 for the "Defender Services" appropriation, \$1,697,000 for "Court Security", and \$3,033,000 for the "Administrative Office" account.

FUNDING NEW MAGISTRATES

Under previous arrangements for funding new magistrate positions, months would frequently pass before the positions could be filled, particularly during periods of continuing resolutions when new appropriations were unavailable. On the recommendations of the Magistrates and Budget Committees, the Judicial Conference agreed to make funding of new magistrate positions a priority, and authorized the Director of the Administrative Office to proceed at the beginning of each fiscal year with a determination as to whether the costs of the new

positions could be absorbed and funding made available through reprogramming without disturbing ongoing programs.

REASSIGNMENT OF CERTAIN COSTS IN THE "SALARIES AND EXPENSES" APPROPRIATION

From time to time, Congress funds court projects while simultaneously reducing Administrative Office requests for personnel and funds necessary to support the same court projects. A typical example of this funding conflict is automation, where significant Administrative Office resources are expended for computer installation and operation in the courts. In order to permit the Administrative Office to continue carrying out these duties performed directly for the courts in connection with specific and definable projects without diverting resources from other ongoing projects, the Budget Committee authorized the Administrative Office to devise and implement a procedure permitting such services to be charged to the courts' appropriation, so long as the action complies with the law and congressional intent, and is cleared in advance with the Appropriations Committees of the Congress. The Budget and Executive Committees of the Judicial Conference are subsequently to be advised of any expenditures to be treated in this manner.

BUDGET DECENTRALIZATION

The Judicial Conference was advised that the pilot project for budget decentralization has been under way in the five pilot courts (Second Circuit Court of Appeals, and Southern New York, Western Washington, Northern California, and Arizona district courts) since the beginning of this fiscal year. Allocations of resources to the pilot courts are at the same levels as allocations planned for nonparticipating courts.

COMMITTEE ON CODES OF CONDUCT

The Committee on Codes of Conduct reported that since its last report, the Committee had received 32 written inquiries and issued 27 advisory responses. The Chairman also responded to 34 telephone inquiries that did not require reference to the Committee.

COMMITTEE ON COURT SECURITY

UNITED STATES MARSHALS SERVICE

The Committee on Court Security was established by the Judicial Conference in September, 1987, to oversee all court security matters. Among the most important of the new Committee's duties was to consider and make recommendations to the Conference on H.R. 3551, 100th Congress, the proposed "United States Marshals Service Act of 1987".

The Judicial Conference has previously supported certain aspects of H.R. 3551, including provisions to authorize the Attorney General to appoint "interim" United States marshals (March 1982 Session, Conf. Rpt., p. 19); to permit the Attorney General to set fees for the service of process (March 1981 Session, Conf. Rpt., p. 20); and to govern contracts for security guard or "perimeter security" services for court facilities (see the judiciary's annual budget requests since February, 1982). On the other hand, responding to a proposal which would have repealed 28 U.S.C. 569, under which the United States marshals "may, in the discretion of the respective courts, be required to attend any session of court", the September 1986 Conference (Conf. Rpt., p. 58) opposed any change in 28 U.S.C. 569.

After careful consideration, and noting that H.R. 3551 preserves intact the language of 28 U.S.C. 569, the Judicial Conference unanimously voted to support the bill, subject to two amendments developed by the Court Security Committee in coordination with the Director of the United States Marshals Service. First, the legislation should be amended specifically to include the following:

§566. Powers and duties

(a) It is the primary role and mission of the United States Marshals Service to provide for the security and to obey, execute and enforce all orders of the United States District Courts, the United States Courts of Appeals and the Court of International Trade.

In addition, observing that the bill would amend 28 U.S.C. 755 to permit bailiffs -- currently subject to a salary limit of \$6 a day to be paid only for actual attendance on days when the court is in session or the judge or

jury is present -- to be paid up to the rate of a GS-5 "from funds appropriated to the Courts", the Conference recommended that the amendment to section 755 be limited to eliminating the obsolete provision which establishes the \$6 per day bailiff payment. As a result, bailiffs' salaries would not be fixed by statute and the judiciary's budget would be unaffected.

**COMMITTEE ON CRIMINAL LAW
AND PROBATION ADMINISTRATION**

SENTENCING GUIDELINES TRAINING

In recognition of the fact that successful implementation of guideline sentencing depends substantially on training of the bench and bar, the Judicial Conference endorsed the Committee's suggestion that the district courts continue their guideline training efforts and sponsor programs that will also educate the bar, whose knowledge of guideline procedures is essential to effective implementation.

**TRANSFER OF JURISDICTION AND SUPERVISION
OF PERSONS ON SUPERVISED RELEASE**

The Sentencing Reform Act of 1984 (Public Law 98-473) provides authority for courts to impose periods of supervised release following incarceration sentences. 18 U.S.C. 3583. While a period of supervised release serves many of the same purposes previously served by parole supervision, the period of supervision is set by the court at sentencing instead of by the Parole Commission, and responsibility for setting and modifying the conditions of release, and revoking supervision for a violation of the terms of release, rests with the sentencing court.

Section 3605 of title 18 permits courts to transfer jurisdiction of a supervised releasee to another court, as has been the case with probationers for many years. Upon being advised of the economic and administrative advantages of transfer of jurisdiction of persons under supervised release to the district where they are being supervised, the Judicial Conference voted to encourage courts mutually to consent to such transfers as provided by 18 U.S.C. 3605, particularly when a violation of the conditions of supervised release has occurred in the district of supervision.

COMPREHENSIVE CRIME CONTROL ACT OF 1984

At its September 1985 (Conf. Rpt., pp. 60-61) and March 1987 (Conf. Rpt., p. 26) sessions, the Judicial Conference endorsed amendments to the Sentencing Reform Act of 1984 (Title II of the Comprehensive Crime Control Act of 1984, Public Law 98-473). While some of these proposals have been enacted in the Criminal Fines Improvement Act of 1987 (Public Law 100-185) and the Sentencing Act of 1987 (Public Law 100-182), others have not.

On the Committee's recommendation, the Conference re-endorsed an amendment to 18 U.S.C. 3563(a) to provide for exceptions to the requirement that, if probation is imposed for a felony, the sentence must include a fine, restitution, community service, or any combination of the three. In the Conference's view, there are limited cases in which this inflexible requirement would be counterproductive, and sentencing courts should have the authority to suspend the three mandatory conditions in circumstances where the defendant cannot comply with any of them.

In addition, the Conference agreed to recommend an amendment to title 18 to provide for monies to be made available from the Treasury to refund bail which had been erroneously forfeited and deposited in the Treasury. Section 3150(a) of title 18, which had previously provided this authority, was inadvertently omitted with the passage of Public Law 98-473.

COMMITTEE ON DEFENDER SERVICES

APPOINTMENTS AND PAYMENTS

The Committee on Defender Services submitted to the Conference a report on appointments and payments under the Criminal Justice Act (CJA) during the fiscal year 1987. The report indicated that of the \$87,858,000 appropriated for the implementation of the CJA in the fiscal year 1987, \$78,358,000 will be required to meet projected obligations, leaving a balance of \$9,500,000 available for use in the fiscal year 1988.

During the fiscal year 1987, approximately 62,327 persons were represented under the CJA, compared to 59,324 persons during the fiscal year 1986, an increase of 5.1 percent. Of the 62,327 persons represented, 33,400, or 53.6 percent, were represented by federal public

and community defender organizations, compared to 53.1 percent in the fiscal year 1986 and 52.4 percent in the fiscal year 1985.

The Conference authorized the Director of the Administrative Office to transmit the report to all chief judges, to all federal defender organizations, and to others who may request copies.

BUDGET REQUESTS - FEDERAL PUBLIC DEFENDERS

The Conference approved the supplemental budget request for the fiscal years 1988 and 1989 in the amounts of \$30,128 and \$40,655, respectively, for the Federal Public Defender Organization for the District of Colorado.

ALTERNATIVE HOURLY COMPENSATION RATES

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

Effective with services performed on or after October 1, 1987, and subject to the availability of funds, the September 1987 Judicial Conference (Conf. Rpt., pp. 94-95) 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; effective November 6, 1987, the Executive Committee extended the temporary alternative rate to the Southern District of California. See also "Alternative Hourly Compensation Rates in Death Penalty Habeas Corpus Cases", supra p. 7.

On the recommendation of the Defender Services Committee, and subject to the availability of funds, the Judicial Conference established a special alternative rate of \$75, for both in- and out-of-court time,

for representation in federal habeas corpus death penalty cases only, at all court locations in the following districts:

Arizona
California (Northern, Eastern, Central, and Southern)
Idaho
Kentucky (Eastern and Western)
Montana
Nevada
Ohio (Southern)
Oregon
Pennsylvania (Western)
Tennessee (Eastern, Middle, and Western)
Washington (Eastern and Western)

In addition, subject to the availability of funds, the Judicial Conference established general alternative rates for both in- and out-of-court time in the amounts indicated for the following districts and court locations:

<u>District</u>	<u>Amount/Location</u>
Alaska	\$75
Arizona	\$70 [Phoenix and Tucson]
California, Central	\$75
California, Eastern	\$75 [Sacramento and Fresno]
California, Northern	\$75
California, Southern	\$75
District of Columbia	\$75
Hawaii	\$70
Michigan, Eastern	\$75 [Detroit]
Nevada	\$60 [Las Vegas and Reno]
New Jersey	\$75
New Mexico	\$75 [Las Cruces]
New York, Eastern	\$75
New York, Southern	\$75
Oregon	\$60 [Portland]
Washington, Western	\$75 [Seattle]

Since the projected cost of implementing the recommended special and general alternative rates is \$9,765,000 in the fiscal year 1988, and \$13,265,000 in the fiscal year 1989, the Defender Services Committee recommended priorities for implementation of the alternative rates and funding of death penalty resource center/community defender organizations (see "Death Penalty Resources Centers", below), which the Conference approved.

The Conference also amended the guideline on establishment of alternative hourly rates (paragraph 2.22(A)(2) of the Guidelines for the Administration of the Criminal Justice Act) to incorporate additional criteria, specifically provide for the establishment of special death penalty alternative rates, and exempt special death penalty rate applications from the requirement of conducting a survey.

DEATH PENALTY RESOURCE CENTERS

In order to address the adequacy of resources for providing representation in death penalty habeas corpus cases, a number of federal circuits and districts are taking steps to create cooperative resource center programs to provide assistance, guidance, information, and other services to eligible individuals and appointed attorneys involved in death penalty litigation at both the federal and state stages of the proceedings. The Defender Services Committee anticipates that state and other non-federal sources will ultimately provide about half the funding for these organizations, with the remainder to be furnished through grants under the Criminal Justice Act.

To date, the district courts of four states have agreed to designate resource centers as community defender organizations through the amendment of their district court plans to implement the CJA. These four proposed resource center/community defender organizations have submitted, and the Conference approved, the following grant requests for the fiscal years 1988 and 1989. The requests were approved subject to the availability of funds, and contingent upon each proposed organization obtaining the state and other non-federal funds which it had indicated were necessary to finance the state component of its proposed activities, and also contingent upon final approval of all necessary CJA plan amendments.

Criminal Justice Act Grants

	<u>FY 1988</u>	<u>FY 1989</u>
Georgia Appellate Practice and Educational Resource Center, Inc. [GA-N, M, & S]	\$104,444	\$267,275
Mississippi Capital Defense Resource Center [MS-N & S]	\$ 82,175	\$195,950
North Carolina Death Penalty Resource Center [NC-E, M, & W]	\$ 33,915	\$ 87,760
Capital Representation Resource Center of Tennessee [TN-E, M, & W]	<u>\$ 86,307</u>	<u>\$167,634</u>
TOTAL	\$306,841	\$718,619

A modified version of the "Grant and Conditions" which "traditional" community defender organizations are required to execute prior to receipt of grant funds was approved for use in conjunction with grants to death penalty resource center/community defender organizations and will be included as Appendix D of the Guidelines. Minor amendments to clauses 8 and 14 of the "Grant and Conditions" used by the traditional community defenders were approved as well.

ADVICE OF COUNSEL PRIOR TO
PRETRIAL SERVICES INTERVIEW

The federal defenders have requested that the Judicial Conference amend the Guidelines for the Administration of the Criminal Justice Act to provide that, prior to being interviewed by a pretrial services or probation officer, a financially eligible defendant subject to proceedings under 18 U.S.C. 3142 et seq., should be afforded the opportunity to consult with counsel.

The Committee on Defender Services reported that, particularly with the advent of guideline sentencing, it shares the defenders' views that eligible defendants should be afforded an opportunity to confer with counsel prior to the pretrial services interview. However, the Committee

believes that further consideration is warranted before an amendment to the Guidelines can be proposed, and it will seek the views of the Judicial Conference Committees on Criminal Law and Probation Administration and on the Administration of the Magistrates System on this matter. In the interim, the Committee recommended, and the Conference approved, the following statement for dissemination to the courts:

The Judicial Conference recognizes the importance of the advice of counsel for persons subject to proceedings under 18 U.S.C. 3142 et seq., prior to their being interviewed by a pretrial services or probation officer. Accordingly, the Conference encourages districts to take the steps necessary to permit the furnishing of appointed counsel at this stage of the proceedings to financially eligible defendants, having due regard for the importance of affording the pretrial services officer adequate time to interview the defendant and verify information prior to the bail hearing.

GUIDELINES

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

1. Numerous technical amendments to paragraphs 2.01, 2.12, and 2.22 to conform to the Sentencing Reform Act of 1984 (Public Law 98-473), the Criminal Fine Improvements Act of 1987 (Public Law 100-185), and the Sentencing Act of 1987 (Public Law 100-182).
2. An amendment to paragraph 3.12 (C) to authorize the court to grant exceptions to the requirement for commercial duplication of transcripts in multi-defendant CJA cases, with respect to accelerated transcript services.
3. Amendments to paragraphs 2.27 (A) and 3.12 (A) concerning the appropriate forms for use in connection with payment for court authorized transcripts in CJA cases.
4. An amendment to paragraph 2.26 to eliminate the "1 hour travel time" rule.

RESOLUTION

In acknowledgement of his substantial contributions to the work of the Judicial Conference, the Conference adopted the following resolution honoring Judge Thomas J. MacBride:

On November 20, 1987, the Honorable William H. Rehnquist, Chief Justice of the United States, with sincere regret, acceded to Judge Thomas J. MacBride's request that he be relieved as Chairman of the United States Judicial Conference Committee to Implement the Criminal Justice Act.

The Chief Justice and the Judicial Conference acknowledge with deep appreciation Judge MacBride's long years and varied and valuable contributions in positions of leadership in the federal judiciary.

Over the course of his judicial tenure, Judge MacBride served as:

- o Chief Judge of the Eastern District of California from 1967 to 1979.
- o A member of the United States Judicial Conference Committee on the Administration of the Probation System from 1967 to 1968.
- o A member of the United States Judicial Conference from 1975 to 1978.
- o A member of the Foreign Intelligence Surveillance Court from 1979-1980.
- o A member of the United States Judicial Conference Committee to Implement the Criminal Justice Act from 1969-1987.
- o Chairman of the United States Judicial Conference Committee to Implement the Criminal Justice Act from 1979-1987.

In his capacity as a member and as Chairman of the Committee to Implement the Criminal Justice Act, Judge MacBride led the Federal Defender program through a period of remarkable but required growth necessitated by an increase in criminal appointments of counsel from approximately 30,000 in 1969 to more than 60,000 in 1987. During the period of his service on the CJA Committee the first Federal Defender organizations were created and their numbers grew to 66 headquarters and branch offices, providing representation in 47 federal judicial districts and 11 federal circuits. Even in times of particular fiscal austerity, Judge MacBride succeeded in securing the funds needed to ensure effective assistance of counsel and to build and maintain the exemplary Federal Defender program, which has enjoyed a reputation for providing a consistently outstanding level of representation and professional service to those charged with federal crimes and unable to afford counsel. His efforts also contributed to the funding and support of private panel attorneys, experts and others providing representational services under the Criminal Justice Act in each of the 94 federal judicial districts and 12 courts of appeals.

In addition, Judge MacBride devoted enormous energies, over a nine-year period, to the task of bringing about needed amendments to the Criminal Justice Act in the areas of attorney compensation and training.

Judge MacBride's commitment, enthusiasm, leadership, boundless energy, personal sacrifice and devotion to the administration of the federal judiciary, to the Federal Defender and assigned counsel program and to the cause of equal access to justice have earned and received the respect and admiration of all with whom he has served.

COMMITTEE ON FEDERAL-STATE JURISDICTION

DIVERSITY OF CITIZENSHIP JURISDICTION

Title IV of H.R. 3152, 100th Congress, the proposed "Court Reform and Access to Justice Act of 1987", contains two important provisions of interest to the judiciary: (1) the creation of multi-party, multi-forum jurisdiction; and (2) restrictions on diversity jurisdiction.

A. Although its provisions are complex, H.R. 3152 would permit the consolidation in federal district court of civil actions "arising out of the same transaction, occurrence, or series of related transactions or occurrences", in two general circumstances. Jurisdictional criteria for consolidation would be met where any party is a citizen of one state and any adverse party is a citizen of another state (minimal diversity), and if (1) a substantial part of the acts giving rise to the action occurred in two or more different states; or (2) any defendant resides in one state and (a) any other defendant resides in a different state, or (b) a substantial part of the acts giving rise to the action occurred in any other state. In order further to ensure that jurisdiction applies only to cases falling within the large mass-injury situation, this jurisdiction could be invoked only in an action for injury to person or property, and only then in three basic situations: (1) where 25 persons are alleged to have incurred damages of at least \$50,000 per person; (2) where five persons are alleged to have incurred damages of at least \$10,000 per person and the plaintiff cannot join all proper defendants to the claim in a state court, but can do so under this section; or (3) where five persons are alleged to have incurred damages of at least \$10,000 per person, and any party to a civil action is subsequently sued in another court on a claim arising out of the same transaction.

The Conference approved in principle creation of federal jurisdiction that would rely on minimal diversity to consolidate multiple litigation in state and federal courts of cases involving personal injury or property damage and arising out of a single event, provided it is coupled with provisions that would otherwise narrow diversity jurisdiction. Although the Conference has repeatedly called for the abolition of diversity jurisdiction in its present form (see paragraph B, below), H.R. 3152, by contrast, would redirect diversity jurisdiction to serve a purpose that state courts are not able to serve, *i.e.*, to facilitate the consolidation of scattered actions arising out of the same occurrence and thereby to promote more expeditious and economical disposition of such litigation.

B. At its September 1987 session (Conf. Rpt., p. 72), and without departing from prior recommendations to adopt more extensive restrictions on diversity of citizenship jurisdiction or to abolish it altogether, the Judicial 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. Observing that H.R. 3152 includes language to increase the jurisdictional amount to \$50,000, the Conference agreed to

support that provision. The Conference also supported a recommendation of the Department of Justice to amend 28 U.S.C. 1332(c) to provide that a corporation shall be deemed to be a citizen of any state in which it is licensed or registered to do business. This objective standard would substantially reduce the extent of diversity litigation involving corporations.

APPEALS OF CIVIL ACTIONS

Title VII of H.R. 3152, 100th Congress, would substantially revise the existing statutory provisions governing civil and criminal appeals. Except to reaffirm its prior approval of elimination of the Enelow-Ettelson doctrine (September 1987 Session, Conf. Rpt., p. 70), the Conference voted to oppose a major revision at this time of the provisions of title 28 governing appeals. The subject matter of Title VII of H.R. 3152 was referred for further study to the Advisory Committee on Appellate Rules and the Committee on Federal-State Jurisdiction.

HABEAS CORPUS

The Conference, by a split vote, declined to approve a recommendation that, except for certificate of probable cause provisions previously disapproved in March, 1986 (Conf. Rpt., pp. 29-30), it support H.R. 1333, 100th Congress, the proposed "Habeas Corpus Reform Act of 1987".

CIVIL RICO

In September, 1987 (Conf. Rpt., pp. 75-76), the Judicial Conference reaffirmed an earlier recommendation that Congress promptly take steps to narrow significantly the scope of 18 U.S.C. 1964(c), which provides for civil actions under the Racketeer Influenced and Corrupt Organizations Act (RICO).

While H.R. 2983, 100th Congress, would not effect a significant narrowing of the scope of civil RICO, some positive impact on the federal civil RICO caseload could be expected from enactment of the legislation. Consequently, the Conference voted to support H.R. 2983, insofar as it would (a) enact a requirement that a defendant be convicted of "predicate acts" as a prerequisite to civil liability in certain cases under the Act; (b) eliminate treble damages and punitive damages in certain cases; and (c) provide for exclusive federal jurisdiction of civil damages

actions under the Act (an appropriate limitation, since many of the predicate acts involve violation of federal criminal statutes exclusively enforced by federal courts).

PRODUCT LIABILITY

The Conference returned to the Committee on Federal-State Jurisdiction for further consideration a recommendation on H.R. 1115, 100th Congress, dealing with product liability issues.

ASBESTOS INFORMATION ACT

H.R. 2693, 100th Congress, would require a building owner who files a civil action relating to asbestos materials used in construction to attach to the complaint, to the extent not inconsistent with state law, regulations, or rule of court, detailed information concerning the nature and installation of the materials. Although observing that the bill may be considered by the Advisory Committee on Civil Rules for a determination of its impact on federal pleading, the Committee on Federal-State Jurisdiction recommended that the Judicial Conference support an amendment to the legislation to remove an ambiguity by providing that its pleading provisions will apply to a state court unless that state has by statute, regulation, rule, or order of court expressly provided otherwise. The Conference agreed to support the amendment.

BERNE CONVENTION IMPLEMENTATION ACT

S. 1301, H.R. 1623, and H.R. 2962, 100th Congress, are designed to effect adherence by the United States to the Berne Convention for the Protection of Literary and Artistic Works. The bills would amend the copyright laws in title 17 of the United States Code by omitting the requirement that notice of copyright be fixed to published works and, in the case of S. 1301, also omitting the requirement that a copyrighted work be registered before an action for infringement may be brought.

While taking no position on these bills, the Conference did agree to advise the Congress that, to the extent the bills delete the requirement of registration of a copyright as a prerequisite to litigation, there is likely to be increased difficulty in trying copyright cases.

STATE JUSTICE INSTITUTE

The Judicial Conference endorsed the reauthorization and funding of the State Justice Institute. See also March 1987 Session, Conf. Rpt., p. 19.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

The Committee on Intercircuit Assignments reported that during the period August 15, 1987, through February 1, 1988, the Committee had recommended 64 intercircuit assignments to be undertaken by 52 judges. Of this number, one was a retired associate justice of the United States Supreme Court, 17 were senior circuit judges, 11 were active circuit judges, 17 were senior district judges, four were active district judges, one was a senior judge of the Court of International Trade, and one was an active judge of the Court of International Trade.

Of the 64 assignments approved, 35 judges undertook 44 assignments to the courts of appeals, and 18 judges undertook 20 assignments to the district courts.

COMMITTEE ON THE JUDICIAL BRANCH

The Committee on the Judicial Branch reported on its activities in anticipation later this year of the impaneling of the Commission on Executive, Legislative and Judicial Salaries, the Commission's report to the President and, in early 1989, President Reagan's transmittal to Congress of his pay recommendations. The work of the Judicial Conference in support of judicial salary increases during this cycle is particularly important because, under existing law, this opportunity will mark the last occasion for meaningful salary reform (other than on an annual cost-of-living basis) until 1993. The Committee intends to submit to the 1988 Salary Commission documentation of the judiciary's compensation needs, focusing upon the significant erosion in purchasing power of judicial salaries since the "base line" year of 1969, when the mechanism of the Federal Salary Act of 1967, 2 U.S.C. 351 et seq., first became operational.

COMMITTEE ON JUDICIAL ETHICS

The Committee on Judicial Ethics reported that it has completed review of annual financial reports submitted for calendar year 1986 and continues to process responses to inquiry letters, initial, and termination

reports. The Committee approved the automation of the processing of financial disclosure reports. The resultant system will enable more timely, accurate, and responsive assessments of filings and closing of cases.

COMMITTEE ON JUDICIAL IMPROVEMENTS

AUTOMATION

The Committee on Judicial Improvements reported on the status of automation activities in the courts.

The appellate information management system (NewAIMS) is operational in three circuits, and implementation in five additional circuits is under way. The bankruptcy court automation project (BANCAP) and the full civil docketing system (CIVIL) have been developed by the Federal Judicial Center, pilot tested, and transferred to the Administrative Office for implementation. The first version of the criminal full docketing system (CRIMINAL), which is being developed by the Administrative Office, was released to the pilot courts in January, 1988.

In order to cope with the training demands of implementing these full docketing systems as soon as possible, a BANCAP training and support center was approved in the Western District of Texas last year. The Committee reported that, in light of the transfer of CIVIL from the Judicial Center to the Administrative Office for implementation, and the anticipated completion of CRIMINAL by the end of the fiscal year, the Committee had approved the establishment of a similar CIVIL/CRIMINAL training center in the District of Arizona.

The judiciary hopes to make a major office automation procurement award late this fiscal year or early in the fiscal year 1989. Consequently, the judiciary is seeking \$45,000,000 for office automation in the fiscal year 1989. The Committee will establish priorities for the installation of office automation equipment at its next meeting in June, 1988.

COMPUTER-ASSISTED LEGAL RESEARCH

Among the most frequent of requests received by the Administrative Office is one for access to computer-assisted legal research (CALR) in judges' chambers. While it has long been contemplated that CALR would become available in chambers under the office automation

program (see above, "Automation"), the Conference was advised that a good number of chambers are presently equipped with hardware, either government-provided or privately owned, which without upgrading is capable of accessing CALR through purchase of modems and installation of telephone lines. Under favorable contract terms with the Mead Data Central Corporation, LEXIS can therefore be immediately installed in appropriately equipped chambers at relatively minor expense without waiting for the office automation plan to commence. (Since the judiciary's contract with the West Publishing Company does not include these favorable terms, WESTLAW cannot be made available in chambers at this time.)

On the recommendation of the Committee, the Judicial Conference approved guidelines for the expansion of CALR into chambers. Under the guidelines, the chambers of judicial officers (circuit and district judges, including senior judges, bankruptcy judges, and full-time United States magistrates) would be eligible to receive LEXIS if the existing hardware can access it without upgrade, provided that the judicial officer can identify \$1,000 of lawbook continuation/subscription material to be cancelled; an additional \$500 of continuation/subscription material would need to be cancelled for each additional personal computer in chambers to be accessed. Certain exemptions are built into the guidelines to ensure that hard copies remain available at all locations.

VIDEOTAPING COURT PROCEEDINGS

The Judicial Conference authorized the videotaping of the trial in In re Washington Public Power Supply System Securities Litigation, MDL 551 (all cases), provided that the videotape does not constitute the official court record and there is no public access to the tapes.

TRAVEL REGULATIONS FOR JUSTICES AND JUDGES

In order to allow district judges to be reimbursed for attending the investiture ceremonies of bankruptcy judges and United States magistrates in their districts, and to reimburse bankruptcy judges and magistrates for attending investiture ceremonies for district judges, bankruptcy judges, and magistrates, the Judicial Conference amended subparagraph B.1.e.(2) of the travel regulations for justices and judges to read as follows:

- (2) District Judge, Bankruptcy Judge, or Magistrate. Only a circuit justice, the chief judge of the Court of Appeals (and such circuit judges as designated by the chief judge), district judges of the same district court, and bankruptcy judges or magistrates of the same district court (with the approval of the chief district judge) may receive reimbursement of travel expenses to attend the investiture of a newly-appointed district judge, bankruptcy judge, or magistrate.

The Conference also approved the following new paragraph D.1.c. to the travel regulations in order to permit judicial officers to use purchase orders to procure lodging, or lodging and meals:

- c. Payment of Lodging, or Lodging and Meals, by Purchase Order. Judges who are required to attend Judicial Conference Committee meetings or the Circuit Judicial Conferences and must obtain more costly lodging than would otherwise have been obtained may have their lodging procured directly by the use of a purchase order. Such lodging procured in this manner shall be done by purchase order issued by the Clerk of Court. When such direct billing procedures are used, a per diem allowance of \$33 may be claimed, or the traveler may itemize meals and other allowable subsistence expenses up to a daily maximum of \$50. This method of procurement may also be used to procure meals when billings for attendees at the meeting or conference are based on the American Plan. In this instance, only a minimal daily subsistence allowance should be authorized, generally not in excess of \$5.

Nothing in this subparagraph shall authorize purchase orders and/or reimbursement exceeding the maximum level of reimbursement authorized by subparagraphs 1.a. and 1.b. of this paragraph, except that for the purposes of this subparagraph, United States bankruptcy judges and magistrates may elect the alternative expense allowance level established in subparagraph 1.a.3.

Use of a purchase order under the new regulation (1) would entitle subordinate judicial officers to receive lodging and meals having an actual expense of subsistence not to exceed 150 percent of the established per diem rate for the location or up to \$150 per day, whichever is higher (an option Article III judges currently enjoy); and (2) would, in some locations, allow travelers to avoid the payment of costly local lodging taxes.

UNITED STATES CLAIMS COURT

The United States Claims Court was created in 1982 as an Article I court in the judicial branch. Last year, the Chief Judge of the Claims Court proposed that the Court be removed from the Article III system and placed "under its own administration, like other Article I courts". At its September 1987 session (Conf. Rpt., p. 68), the Judicial Conference determined not to object to the creation of an Article I Claims Court outside of the judicial branch.

S. 1608, 100th Congress, the "United States Claims Court Improvement Act of 1987", would amend title 28 "as it pertains to the structure of the United States Claims Court." Although the Conference was not unsympathetic to the Claims Court's desire to be independent of the Judicial Conference and the Administrative Office for administrative purposes, the Conference was of the view that further fact-finding was necessary to determine whether S. 1608 could achieve this goal without adversely affecting the availability of resources for the remainder of the judiciary. The Conference accordingly voted to refer the bill to the Executive Committee, for a determination of the appropriate committee(s) with jurisdiction to conduct this further fact-finding.

INCREASES IN FEE SCHEDULES

Pursuant to 28 U.S.C. 1930(b), the Judicial Conference amended the Schedule of Additional Fees for the United States Bankruptcy Courts to establish a \$500 fee for filing a petition ancillary to a foreign proceeding under 11 U.S.C. 304. The Conference also approved an amendment to the preamble to the bankruptcy fee schedule to expand the exemption from payment for services rendered "on behalf of the United States" to include services rendered "to bankruptcy administrators appointed under Public Law 99-554, section 302(d)(3)(I)."

AMENDMENTS TO THE JURY SELECTION AND SERVICE ACT

In September, 1985 (Conf. Rpt., pp. 83-84), and in September, 1987 (Conf. Rpt., p. 96), the Judicial Conference recommended that Congress approve several technical amendments to the Jury Selection and Service Act, 28 U.S.C. 1861 et seq. At this session, the Conference agreed to support an additional amendment to the Act to eliminate the automatic excuses from service now granted to members of fire and police departments and to public officials.

JUROR QUALIFICATION QUESTIONNAIRE

In response to the suggestion of a chief district judge that the current version of the juror qualification questionnaire does not enable information regarding Hispanic ethnicity to be gathered satisfactorily, the Judicial Conference revised the questionnaire to inquire as follows:

To assist in ensuring that all people are represented on juries, please indicate which of the following applies to you. Nothing disclosed will affect your selection for jury service.

- Black
- White
- American Indian
- Asian
- Other (specify)

Are you Hispanic? Yes No

MACHINE READABLE QUALIFICATION QUESTIONNAIRE

In March, 1987 (Conf. Rpt., p. 39), the Judicial Conference authorized 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). In September, 1987 (Conf. Rpt., p. 96), 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 Committee on Judicial Improvements designates. The Committee advised the Conference that it had approved the participation in the optical scanner experiment of the Central District of California, the

Eastern and Southern Districts of New York, and the Northern District of West Virginia.

The Judicial Conference agreed to grant discretion to the courts participating in the experimental test of optical scanning equipment to use the equipment officially to process juror qualification questionnaires.

PLACES OF HOLDING COURT

Under 28 U.S.C. 462, the Director of the Administrative Office, with the approval of the appropriate circuit judicial council, may provide chambers for circuit judges only at statutorily designated places of holding district court or elsewhere in federal facilities. When a circuit judge resides and maintains his or her official station in a community with no federal facilities or with federal facilities filled to capacity, the judiciary must go to Congress to seek affirmative legislation to have that community designated as a place of holding district court in order that private leased space may be acquired for circuit judge chambers.

Since the existing statutory scheme has the potential of defeating both congressional and Judicial Conference policy against the proliferation of places of holding court, the Judicial Conference voted to recommend that 28 U.S.C. 462(c) be amended to permit the Director of the Administrative Office to furnish chambers for circuit judges at any location, with the approval of the judicial council of the circuit.

COMMITTEE ON JUDICIAL RESOURCES

JUDGESHIP VACANCIES

Judgeship vacancies place significant burdens on the courts by increasing the workloads of those judges available for duty and diminishing the courts' ability to discharge their responsibilities. Accordingly, the Judicial Conference:

1. Noted the adverse effect on the courts and litigants attributable to vacancies in Article III judgeship positions and considers all such vacancies "judicial emergencies".
2. Urged all judges nearing retirement to notify the President and the Administrative Office as far in

advance as possible of a change in status -- if possible, six to twelve months before the contemplated date of change in status.

3. Agreed that greater effort should be made to publicize the deleterious effect such vacancies have on the administration of justice.

QUALITY STEP INCREASES

The Judiciary Salary Plan (JSP) authorizes an increase in a step within a pay grade as a means of recognizing exceptional service by an employee. The JSP permits an employee to receive such a "quality step increase", or QSI, no more than once every three years.

Noting that the executive branch, which has a similar provision in its personnel regulations, allows an employee to be awarded a QSI not more than once a year, the Conference amended the JSP to provide that "No more than one quality step increase may be granted to an employee within a period of 52 consecutive calendar weeks." The Conference premised its approval on full compliance with existing JSP requirements that limit such increases to exceptional performance of all major duties in a sustained manner that substantially exceeds the normal requirements for the position, and gives promise of continuing.

The Conference recognized that there may be a natural tendency routinely to grant quality step increases, particularly in small staff situations where the judge or supervisor is in constant contact with staff. That practice is to be avoided, for if annual QSIs are awarded automatically, their function as rewards for exceptional performance will be lost, and the judge or supervisor will be deprived of this valuable management tool for encouraging exceptional performance.

RETENTION OF STAFF UPON THE DEATH OR INCAPACITY OF A JUDGE

Current policy authorizes the automatic retention of chambers staff of a deceased or incapacitated judge for 30 days, with an extension for an additional 60 days upon request by the court. Since the need for continued staff in these circumstances depends on a number of factors characteristic of the court, e.g., geographical distribution of court facilities, procedures used in case allocations when a judgeship is

vacant, etc., the Conference voted to allow for the extension of staff, in 90- to 120-day increments beyond the current 90-day maximum, upon certification by the affected court to the Director of the Administrative Office that such additional staff resources are necessary.

ADDITIONAL COURT REPORTERS

The Judicial Conference approved an additional court reporter position in the Eastern District of Virginia.

CLASSIFICATION OF SUPPORTING PERSONNEL

On the recommendation of the Committee, the Judicial Conference approved the reclassification of deputy circuit librarians from JSP-12 to JSP-13, and the reclassification of secretaries to United States magistrates from JSP-10 to JSP-11. The Conference declined to increase the salaries of principal secretaries to metropolitan district court chief judges.

With regard to the procedures for classifying principal secretaries to circuit chief judges at the JSP-12 level (see September 1987 Session, Conf. Rpt., p. 65), the Conference agreed that:

1. Upon relinquishment of the office of a circuit chief judge, the principal secretary to that former circuit chief judge who has been increased in grade to a JSP-12 due to the assignment of exceptional circuit-wide duties, shall be reduced to the grade level of a circuit judge's secretary, at that step of the grade that would otherwise have been achieved absent the promotion to JSP-12.
2. The criterion to be used to assure adequate experience when a circuit chief judge's secretary is to be promoted to the grade of JSP-12 is three years as secretary to a circuit judge.

COURT INTERPRETERS ACT

At its September 1982 session (Conf. Rpt., p. 73), the Judicial Conference recommended amendments to the Court Interpreters Act, 28 U.S.C. 1827. S. 1867, 100th Congress, includes an additional series of amendments to the Act, upon which the Conference took the following positions:

1. Opposed a requirement that eight unspecified languages be certified for interpreter services in the courts. Discretion on the part of the judiciary, both as to which languages should be so certified, and how many, is desirable.
2. Opposed a proposal to require, in every instance, electronic sound recording of interpretations in court proceedings. The decision to record interpretations should be left to the discretion of the presiding judicial officer.
3. Supported a proposal that prepayment for interpreting services may be made at the court's discretion, with the court assigning costs to, and collecting costs from, the parties.
4. Supported a proposal to provide a schedule of uniform fees for interpreting services.

BOARD OF CERTIFICATION

The Judicial Conference agreed to propose legislation to eliminate the Board of Certification, 28 U.S.C. 332, and the certification function. The standards for the position of circuit executive contained in section 332(f), *i.e.*, experience in administrative and executive positions, familiarity with court procedures, and special training, would be retained.

COMMITTEE ON THE ADMINISTRATION OF THE FEDERAL MAGISTRATES SYSTEM

COST-OF-LIVING ADJUSTMENTS FOR PART-TIME MAGISTRATES

Heretofore, the cost-of-living adjustments which have been administratively applied automatically to full-time magistrates have not applied automatically to part-time magistrates; rather, a specific resolution of the Conference has been necessary to approve application of cost-of-living increases to the salaries of part-time magistrates. Almost invariably, those same adjustments, in percentage terms, have been forthcoming, through separate Conference action. Finding no reason for excluding part-time magistrates from the cost-of-living adjustment

granted automatically to full-time magistrates (and other government employees), the Conference agreed that part-time magistrates, including those in combination positions who perform part-time magistrate duties for additional compensation, shall henceforth be granted the same cost-of-living adjustments (in percentage terms) as are extended to full-time magistrates, effective at the same time as the adjustments for full-time magistrates. The adjustments in the salaries of part-time magistrates will be implemented by the Director of the Administrative Office unless otherwise directed by the Judicial Conference.

MAGISTRATES' SEAL OF OFFICE

Under 28 U.S.C. 638(c), the Director of the Administrative Office "shall furnish to each United States magistrate . . . an official impression seal in a form prescribed by the [Judicial] conference." The Conference approved the Committee's recommendation that the seal of the district court be prescribed as the seal for magistrates' use.

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

Massachusetts:

Continued the part-time magistrate position at Cape Cod National Seashore for an additional four-year term but decreased the salary of the position from \$5,335 to \$4,269 per annum.

Maine:

Converted the part-time magistrate position at Bangor to a full-time position.

THIRD CIRCUIT

New Jersey:

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

Pennsylvania, Eastern:

Increased the salary of the part-time magistrate position at Allentown from \$4,269 to \$7,588 per annum.

FOURTH CIRCUIT

West Virginia, Southern:

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

SIXTH CIRCUIT

Tennessee, Western:

Authorized a part-time magistrate position at Jackson at a salary of \$21,225 per annum.

EIGHTH CIRCUIT

Iowa, Southern:

Continued the part-time magistrate positions at Des Moines and Burlington for additional four-year terms at the currently authorized salaries of \$36,250 and \$4,269 per annum, respectively.

South Dakota:

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

NINTH CIRCUIT

Alaska:

1. Authorized a part-time magistrate position at Anchorage at a salary of \$36,250 per annum;
2. Continued the part-time magistrate position at Juneau for an additional four-year term and increased the salary of the position from \$3,201 to \$9,722 per annum;
3. Continued the part-time magistrate position at Ketchikan for an additional four-year term at the currently authorized salary of \$2,134 per annum; and
4. Continued the part-time magistrate position at Kodiak for an additional four-year term and increased the salary of the position from \$2,134 to \$3,201 per annum.

Arizona:

Increased the salary of the part-time magistrate position at Grand Canyon National Park from \$24,070 to \$27,390 per annum.

California, Central:

1. Continued the part-time magistrate position at Santa Barbara for an additional four-year term but decreased the salary from \$9,722 to \$7,588 per annum;
2. Continued the part-time magistrate position at Oxnard (or Ventura) 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 Barstow (or Victorville) for an additional four-year term and increased the salary from \$4,269 to \$7,588 per annum.

Idaho:

Increased the salary of the part-time magistrate position at Coeur d'Alene from \$9,722 to \$16,127 per annum.

Oregon:

Increased the salary of the part-time magistrate position at Pendleton from \$3,201 to \$4,269 per annum.

TENTH CIRCUIT

New Mexico:

1. Authorized a third full-time magistrate position to serve the district at Albuquerque;
2. Continued the part-time magistrate position at Clovis (or Portales or Roswell) for an additional four-year term at the currently authorized salary of \$5,335 per annum; and
3. Continued the part-time magistrate position at Sante Fe 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 Muskogee for an additional four-year term at the currently authorized salary of \$36,250 per annum, but discontinued the position upon the appointment of the new full-time magistrate at Muskogee or on October 1, 1988, whichever comes first.

Oklahoma, Western:

Authorized a part-time magistrate position at Altus at a salary of \$2,134 per annum.

COMMITTEE ON PACIFIC TERRITORIES

The Committee on Pacific Territories reported on its activities to secure enactment of legislation previously supported by the Judicial Conference to authorize certiorari to the United States Court of Appeals for the Ninth Circuit from certain cases decided by the High Court of American Samoa (September 1987 Session, Conf. Rpt., pp. 96-97) and to permit federal judges to sit in the courts of countries with which the

United States has a Compact of Free Association (March 1987 Session, Conf. Rpt., p. 39). The Committee also reported that the United States will host the Judicial Conference of the South Pacific in Hawaii in the Spring of 1989.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

RULES AMENDMENTS

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 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 Office of the Law Revision Counsel, U.S. House of Representatives, identified a number of technical errors in some of these amendments. After reviewing these errors, the Committee submitted to the Conference appropriate amendments to correct them, accompanied by Advisory Committee Notes explaining that they are purely technical in nature. The Conference approved the amendments, and transmitted them to the Supreme Court for consideration, with the recommendation that they be approved by the Court and transmitted to the Congress pursuant to law.

COMMITTEE ON SPACE AND FACILITIES

LONG-RANGE PLANNING

Recognizing the need to establish long-range planning for the courts' space and facilities requirements, the Judicial Conference voted to direct the courts to develop such long-range plans for facilities and space requirements. The Conference also directed the Committee on Space and Facilities to review and approve instructions to be submitted by the Administrative Office for the courts' use in developing the plans.

COURTHOUSE MANAGEMENT

On the recommendation of the Committee, the Judicial Conference approved a pilot program in which a court assumes the responsibility of managing its courthouse under a delegation of authority from the General Services Administration, under the following conditions:

1. An assessment of each building's condition will be performed and used in making decisions on the terms of delegations of authority and funding arrangements that may be established.
2. Each pilot court must have adequate staff and otherwise be prepared to manage its building before the delegation of authority is effected.
3. Each pilot court that assumes buildings management responsibilities will work with the Administrative Office to develop a method for evaluation of the results of the pilot.
4. All delegations of authority for the courts are to be signed by the Director of the Administrative Office in accordance with his statutory responsibilities, when he is satisfied that it is proper to do so.

The Northern District of Alabama, which is currently managing its new courthouse under a delegation of authority from GSA, will continue to do so as part of this pilot program. The Committee recommended, and the Conference approved, the Court of Appeals for the Eleventh Circuit and the District Courts in Southern Florida and Western Washington as potential participants in the pilot program.

PROCEEDINGS UNDER JUDICIAL CONDUCT AND DISABILITY ACT

The Judicial Conference, by unanimous vote, authorized the Secretary of the Conference to execute and issue to the Speaker of the House of Representatives a certificate providing as follows:

CERTIFICATE

TO THE SPEAKER, UNITED STATES HOUSE OF REPRESENTATIVES:

The Judicial Conference of the United States, acting pursuant to section 331 of title 28, United States Code, does hereby certify as follows:

1. On February 11, 1988, the Judicial Council of the Fifth Circuit certified to the Judicial Conference, as provided by 28 U.S.C. 372(c)(7)(B), that United States District Judge Walter L. Nixon, Jr., of the Southern District of Mississippi has engaged in conduct which might constitute one or more grounds for impeachment under Article I of the United States Constitution.

2. The Judicial Conference has exercised its authority under 28 U.S.C. 372(c)(8) to consider the certificate of the Judicial Council of the Fifth Circuit. In so doing, the Judicial Conference had before it certified official records of judicial proceedings manifesting as follows:

On March 31, 1986, Judge Nixon was convicted of two counts of violating section 1623 of title 18, United States Code.

On January 19, 1988, Judge Nixon's conviction became final upon denial of a petition for writ of certiorari by the Supreme Court of the United States.

3. Pursuant to Rule 1 of the Rules for Processing of Certificates from Judicial Councils that a Judicial Officer Might Have Engaged in Impeachable Conduct, the Judicial Conference considers no additional investigation by the Conference itself to be appropriate. It is apparent that the certification by the Judicial Council is premised entirely upon a judgment of conviction in a criminal case and that the judgment has become final. As provided in 28 U.S.C. 372(c)(8), the Judicial Conference concurs in the determination of the Judicial Council that Judge Nixon has engaged in

conduct which might constitute one or more grounds for impeachment under Article I of the Constitution.

4. Consideration of the impeachment of Judge Nixon may be warranted.

There are attached the certificate of the Judicial Council of the Fifth Circuit to the Judicial Conference, a letter, dated February 26, 1988, to the Judicial Conference of the United States from the Acting Chief Judge of the Fifth Circuit, and certified copies of the judgment and commitment order of the United States District Court for the Southern District of Mississippi entered on March 31, 1986; the judgment of the United States Court of Appeals of the Fifth Circuit on April 30, 1987, affirming the judgment of the District Court, supported by opinions issued on April 30, 1987, affirming the judgment and on September 8, 1987, denying Judge Nixon's petition for rehearing and suggestion for rehearing en banc; and an order of the Supreme Court of the United States, dated January 19, 1988, denying the petition for writ of certiorari filed by Judge Nixon.

Executed this 15th day of March, 1988.

L. Ralph Mecham*
Secretary

*The Chief Justice and Judge Charles Clark were not present and did not participate in the deliberations of the Judicial Conference with respect to the subject matter of this certificate. Judge L. T. Senter, Jr., though present, did not participate.

MEMORIAL RESOLUTIONS

Noting the death of Judge Carl McGowan, the Judicial Conference adopted the following resolution:

The Judicial Conference of the United States notes with sadness the death of Carl McGowan on December 23, 1987, in Washington, D.C.

Appointed in 1963 by President John F. Kennedy, Carl McGowan served with distinction as a member of the United States Court of Appeals for the District of Columbia Circuit for almost 25 years, completing his last sitting with the Court only a few months before his death. He acted as Chief Judge of the Court of Appeals for several months in 1981, just prior to taking senior status. In his two-and-one-half decades on the Court, Judge McGowan authored nearly 500 opinions, all of them illumined by clear reason, lucid expression, sure wisdom, and often a surprising wit. His patrician intelligence was a perfect match for his democratic soul. Judge McGowan's service on the Court spanned a time of turbulence and change for the country and for the Court. The issues he dealt with included the Watergate prosecutions, the Nixon tapes, the Pentagon Papers, the redefining of the rights of criminal defendants, the restructuring of administrative law, and key challenges to separation of powers principles. At all times he was a revered colleague steadfastly moving the Court toward common ground.

Born in Hymera, Indiana, Carl McGowan was a Dartmouth and Columbia Law School graduate, a World War II naval officer, a distinguished private practitioner, a Professor of Law at Northwestern University Law School, and Counsel to Governor Adlai Stevenson of Illinois. A master of politics and government, he was the quintessential legal realist; a precisionist in thought and word, his scholarly pragmatism permeated the Court's jurisprudence throughout his tenure.

Outside the Court, Judge McGowan maintained a lively presence in the wider world of his profession. He was a member of the governing Councils of the American Law Institute and the Administrative Conference of the United States. He also served as the United States Judicial Conference liaison to the Administrative Conference and on several of the Judicial Conference's key committees. In his latter years, he worked hard to bring order into the chaos of law clerk recruitment practices. He was also Chairman of the American Bar Association's Committee on Standards of Judicial Administration, and a Director of the Salzburg Seminar. A model of intellectual brilliance, invincible spirit, startling wit, impregnable integrity and a beloved colleague and mentor, he will be sorely missed in our ranks.

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

Noting the death of Judge Edward Weinfeld, the Conference adopted the following resolution:

The United States Judicial Conference notes with deep sadness the death of Judge Edward Weinfeld on January 17, 1988 in New York City. Judge Weinfeld had served on the bench of the Southern District of New York since August 14, 1950 and was, at the time of his death, the senior active district judge in the United States.

During his long tenure he had earned the reputation in his home community and throughout the nation as a trial judge without peer. The scholarship and depth of thought of his opinions were such that they were generally regarded as authoritative and ranked in persuasiveness with the decisions of appellate courts. His habit of starting the work day at dawn

became legendary. The combination of his high professional competence, industry and courtesy caused him to be widely admired by lawyers and judges.

Judge Weinfeld was born in New York City on May 14, 1901. He was educated in the New York City public school system and attended New York University Law School directly out of high school, receiving his LL.B. at the age of 20 in 1921, and an LL.M. in 1922. He practiced as a single practitioner from 1924 to 1950. His pre-judicial career included wide public service. He was Chief Counsel of the New York State Legislative Committee to investigate bondholders committees, a delegate to the New York State Constitutional Convention of 1938, and served under Governor Herbert H. Lehman as New York State's first Housing Commissioner. Thereafter he acted as Director of War Housing for the New York State War Council, and was President of the National Housing Conference and of the National Association of Housing Officials. He was extremely active in the affairs of his university, serving as President of the New York University Board of Trustees of the Law Center Foundation and as a life member of the Board of Trustees of New York University, from which he received an honorary LL.D. in 1970.

Judge Weinfeld served as a member of the Judicial Panel on Multi-District Litigation for the 10-year period 1968-1978 and was appointed by the Chief Justice to serve as a member of the Commission on the Bankruptcy Laws of the United States from 1971 to 1973. He was Chairman of the Judicial Conference Committee on the Administration of the Bankruptcy System from 1967 to 1979 and had been a member of the Committee since 1956.

Within the weeks before his death, Judge Weinfeld became the first recipient of the Henry J. Friendly Medal awarded by the American Law Institute and was selected by the Mayor of New York City to receive the LaGuardia Medal, New York City's highest award.

The members of the Judicial Conference convey their sympathy to his widow Lillian, his daughters Ann and Fern and his grandchildren, and ask that this Resolution be sent to them as a mark of the Conference's profound respect and high esteem.

ELECTIONS

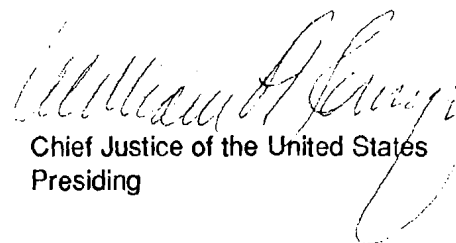
The Conference reaffirmed the Executive Committee's elections to membership on the Board of the Federal Judicial Center of Judge David D. Dowd of the Northern District of Ohio (vice District Judge David Mazzone) and Judge J. Clifford Wallace of the Ninth Circuit (vice Justice Anthony Kennedy). The Conference also elected Judge Collins J. Seitz of the Third Circuit to membership on the Board of Certification for Court Executives, vice Judge Jack Miller.

FUNDING

All of the foregoing recommendations which require the expenditure of funds 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

March 24, 1988