

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

September 12, 1990

The Judicial Conference of the United States convened on September 12, 1990, 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 Stephen G. Breyer
Chief Judge Frank H. Freedman,
District of Massachusetts

Second Circuit:

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

Third Circuit:

Chief Judge A. Leon Higginbotham
Chief Judge John F. Gerry,
District of New Jersey

Fourth Circuit:

Judge Robert F. Chapman¹
Judge Frank A. Kaufman,
District of Maryland

¹Designated by the Chief Justice in place of Chief Judge Sam J. Ervin, III, who was unable to attend.

Fifth Circuit:

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

Sixth Circuit:

Chief Judge Gilbert S. Merritt
Chief Judge Eugene E. Siler,
Eastern District of Kentucky

Seventh Circuit:

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

Eighth Circuit:

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

Ninth Circuit:

Chief Judge Alfred T. Goodwin
Chief Judge William D. Browning,
District of Arizona

Tenth Circuit:

Chief Judge William J. Holloway, Jr.
Chief Judge Earl E. O'Connor,
District of Kansas

Eleventh Circuit:

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

District of Columbia Circuit:

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

Federal Circuit:

Chief Judge Helen W. Nies

Court of International Trade:

Chief Judge Edward D. Re

Circuit Judges Richard S. Arnold, Edward R. Becker, Joseph W. Hatchett, Stephanie K. Seymour, and Deanell Reece Tacha; Senior Circuit Judges Thomas M. Reavley and Joseph F. Weis, Jr.; District Judges Richard M. Bilby, Morey L. Sear, and Juan M. Perez-Gimenez; and Senior District Judges Walter T. McGovern and Robert F. Peckham attended all or some of the sessions of the Conference. Circuit Executives Vincent Flanagan (First Circuit), Steven Flanders (Second Circuit), John P. Hehman (Third Circuit), Samuel W. Phillips (Fourth Circuit), Lydia Comberrel (Fifth Circuit), James A. Higgins (Sixth Circuit), Collins T. Fitzpatrick (Seventh Circuit), June L. Boadwine (Eighth Circuit), Gregory B. Walters (Ninth Circuit), Norman E. Zoller (Eleventh Circuit), and Linda Finkelstein (District of Columbia Circuit), and Assistant Circuit Executive Teri Campbell (Tenth Circuit), were also present.

The Attorney General of the United States, Dick Thornburgh, and Solicitor General Kenneth W. Starr addressed the Conference on matters of mutual interest to the Department of Justice and the Conference.

L. Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the sessions of the Conference, as did James E. Macklin, Jr., Deputy Director; William R. Burchill, Jr., General Counsel;

Robert E. Feidler, Legislative and Public Affairs Officer; Karen K. Siegel, Chief, and Wendy Jennis, Deputy Chief, Office of the Judicial Conference Secretariat; and David A. Sellers, Public Information Officer. Judge William W Schwarzer and Charles W. Nihan, Director and Deputy Director of the Federal Judicial Center, also attended the sessions of the Conference, as did Lawrence H. Averill, Jr., Administrative Assistant to the Chief Justice.

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

The Director of the Administrative Office of the United States Courts, L. Ralph Mecham, submitted to the Conference the Annual Report of the Director for the year ended June 30, 1990. 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, 1990, the number of cases appealed to the 12 regional courts of appeals rose three percent to 40,898, due to a significant increase of almost 1,500 appeals of criminal cases. The new sentencing guidelines, which allow for appeal of the sentence itself, accounted for a portion of this rise in filings; this year, 1,745 appeals concerned sentences only. Dispositions increased three percent this year to 38,520, but remained below the level of filings, resulting in an eight percent increase in the pending caseload by year's end. Filings in the U.S. Court of Appeals for the Federal Circuit climbed three percent to 1,466, primarily due to an increase in appeals from the Merit Systems Protection Board. Terminations were three percent lower this year, resulting in an 11 percent increase in the pending caseload.

In the U.S. district courts, the number of civil filings declined seven percent during 1990, to 217,879 cases. A change in the jurisdictional amount from \$10,000 to \$50,000 resulted in a 15 percent decrease in diversity cases. Cases involving the U.S. also decreased significantly; U.S. plaintiff filings were down 10 percent and cases in which the U.S. was a defendant were down eight percent. Civil cases terminated fell nine percent to 213,922 in 1990, the lowest total since 1982; since filings slightly outnumbered terminations, the pending caseload increased two percent to 242,346.

Criminal case filings rose more than six percent in 1990, following more moderate increases of three percent in the two previous years. The 48,904 criminal filings represent 85 cases per judgeship, up from 80 per judgeship last year. The increase in criminal filings is directly attributable to the focus on drug related crimes. Although actual drug cases increased only six percent, related criminal offenses, specifically weapons and firearms and immigration violations, increased 23 percent. While criminal case terminations increased almost four percent in 1990 to 44,295, filings greatly outnumbered terminations, resulting in a 15 percent increase in criminal cases pending as of June 30, 1990.

Bankruptcy filings continued to increase to record levels in 1990, up 13 percent to 725,484 petitions this year. The increase was primarily in non-business cases, up 14 percent over last year and comprising 91 percent of the total filings. Although dispositions were up over seven percent, the pending caseload rose 12 percent to 974,593.

Mr. Mecham also reported that as of September 1, 1990, there were 10 vacancies among the 168 judgeship positions authorized for the United States courts of appeals, 33 vacancies among the 575 positions authorized for the United States district courts, and one vacancy on the United States Court of International Trade.

REPORT OF THE DIRECTOR OF THE FEDERAL JUDICIAL CENTER

The Director of the Federal Judicial Center, Judge William W Schwarzer, reported to the Conference on fiscal year 1990 Judicial Center activities.

During the fiscal year 1990, the Center designed and conducted 85 workshops and seminars for over 4,000 judicial officers, court managers, and other court personnel. In addition, 300 programs were conducted in local court settings by Center-trained instructional teams and by court training coordinators working with Center support and consultation.

Important Judicial Center research projects include, among many others, studies of court-annexed arbitration, litigation flow, bankruptcy estate administration, and district court and bankruptcy court time studies. The Center is working with the Administrative Office, judges and others to develop a deskbook on litigation management to provide judges with practical assistance in confronting management problems.

The Center has made it a top priority to offer case management education and support to judicial branch personnel; to offer programs that will assist judges and supporting personnel to meet growing responsibilities and perform increasingly complex and demanding tasks; to complete evaluation of new technology; to complete research that will provide information needed for effective reform and assess fairly the impact of innovation on the operations of the courts; and to further understanding of case management as the path to the "just, speedy, and inexpensive determination" of litigation.

EXECUTIVE COMMITTEE

RESOLUTION

In recognition of the substantial contributions made by outgoing chairmen of committees of the Judicial Conference,² the Executive Committee recommended and the Conference approved, adoption of the following resolution:

The Judicial Conference of the United States recognizes with appreciation, respect and admiration the following judicial officers:

Honorable Harlington Wood, Jr.
Committee on the Administrative Office

Honorable Morey L. Sear
Committee on Administration of the Bankruptcy System

Honorable Juan Perez-Gimenez
Committee on Court Security

Honorable Edward R. Becker
Committee on Criminal Law and Probation Administration

Honorable Stephanie K. Seymour
Committee on Defender Services

²The appointments of Judges Wood and McGovern were subsequently extended for an additional year.

Honorable William W Schwarzer
Committee on Federal-State Jurisdiction

Honorable Thomas A. Flannery
Committee on Intercircuit Assignments

Honorable Frank Coffin
Committee on the Judicial Branch

Honorable John H. Pratt
Committee on Judicial Ethics

Honorable Richard M. Bilby
Committee on Judicial Improvements

Honorable Walter T. McGovern
Committee on Judicial Resources

Honorable Joseph W. Hatchett
Committee on Administration of the Magistrates System

Honorable Joseph F. Weis
Committee on Rules of Practice and Procedure

Honorable Jon O. Newman
Advisory Committee on Appellate Rules

Honorable Lloyd D. George
Advisory Committee on Bankruptcy Rules

Honorable John F. Grady
Advisory Committee on Civil Rules

Honorable Leland C. Nielsen
Advisory Committee on Criminal Rules

Appointed as committee chairmen by Chief Justice Rehnquist, these distinguished jurists have played a vital role in the administration of the federal court system. These judges served as leaders of their Judicial Conference committees while, at the same time, continuing to perform in their regular capacities as judges in their own courts. They

have set a standard of skilled leadership and earned our deep respect and sincere gratitude for their innumerable contributions. We acknowledge with appreciation their commitment to the federal judiciary as shown by their dedicated service to the Judicial Conference and the judiciary as a whole.

* * * * *

The Executive Committee reported that, since the last session of the Conference in March, 1990, it had addressed the following matters on the Conference's behalf:

CIVIL JUSTICE REFORM ACT

Subsequent to the March 1990 session (JCUS-MAR 90, p. 9), the Executive Committee, and its Subcommittee on Civil Justice Reform chaired by Judge Robert F. Peckham, devoted considerable attention to the proposed Civil Justice Reform Act, S. 2648³ and H.R. 3898, 101st Congress. The Committee recommended, and the Conference approved by vote of 20 to one, a 14 point "Program to Address the Problems of Cost and Delay in Civil Litigation and to Improve Case Management"; authorized the Administrative Office to discuss with congressional staff legislation not inconsistent with the Program; approved a proposal for implementation of the Program, to include creation of a new Conference Committee on Court Administration and Case Management, effective September 13, 1990; and approved testimony for presentation before the Senate Judiciary Committee on Title I of S. 2648.

ADDITIONAL JUDGESHIPS

The results of the biennial survey of judgeship needs are traditionally presented for approval to the September session of the Judicial Conference in even-numbered years. E.g., JCUS-SEP 88, pp. 85-89. However, in order to have the most current judgeship needs presented to Congress in connection with its analysis of civil justice reform legislation, the Executive Committee approved the acceleration of Judicial Conference consideration of this matter. The Judicial Resources Committee accordingly expedited its review, and the Executive Committee agreed to poll the Judicial Conference on the results.

³Successor to S. 2027, 101st Congress, which was unanimously opposed by the Judicial Conference in March, 1990.

On June 1, 1990, the Conference voted to recommend the creation of 20 additional judgeships in the United States courts of appeals, and 47 additional permanent judgeships and 29 additional temporary judgeships in the United States district courts. The Conference also recommended that one temporary district judgeship be extended for an additional five years, that six temporary positions be converted to permanent, and that four roving judgeships be converted to a single district only. Finally, the Conference agreed to recommend the creation of an additional temporary judgeship for any district court or court of appeals in which an active judge has been selected as Director of the Federal Judicial Center.

The Conference voted to recommend the creation of additional judgeship positions in the following United States courts of appeals:

| | | |
|----------------|-------|----|
| First Circuit | ..... | 1 |
| Third Circuit | ..... | 4 |
| Fourth Circuit | ..... | 4 |
| Fifth Circuit | ..... | 1 |
| Sixth Circuit | ..... | 5 |
| Eighth Circuit | ..... | 2 |
| Tenth Circuit | ..... | 3 |
| TOTAL | ..... | 20 |

The Conference also voted to recommend the creation of additional permanent and temporary judgeships in the following United States district courts:

First Circuit:

Massachusetts 1 t/p⁴ + 1 temp.

Second Circuit:

Connecticut 2
 New York (N) 1 temp.
 New York (E) 3
 New York (S) 1
 New York (W) 1 t/p

⁴"T/p" refers to existing temporary positions to be made permanent.

Third Circuit:

| | |
|------------------|---|
| New Jersey | 4 |
| Pennsylvania (E) | 5 |
| Virgin Islands | 1 |

Fourth Circuit:

| | |
|--------------------|--------------|
| Maryland | 1 temp. |
| North Carolina (E) | extend temp. |
| South Carolina | 1 temp. |
| Virginia (E) | 1 temp. |
| West Virginia (N) | 1 temp. |
| West Virginia (S) | 1 temp. |

Fifth Circuit:

| | |
|-----------------|---------|
| Louisiana (M) | 1 temp. |
| Louisiana (W) | 1 temp. |
| Mississippi (S) | 1 |
| Texas (N) | 2 |
| Texas (E) | 1 temp. |
| Texas (S) | 7 |
| Texas (W) | 3 |

Sixth Circuit:

| | |
|---------------|-------------|
| Michigan (W) | 1 temp. |
| Ohio (N) | 1 + 1 temp. |
| Ohio (S) | 1 + 1 temp. |
| Tennessee (E) | 1 |
| Tennessee (M) | 1 temp. |

Seventh Circuit:

| | |
|--------------|-----------|
| Illinois (N) | 1 + 1 t/p |
| Illinois (C) | 1 temp. |
| Illinois (S) | 1 temp. |
| Indiana (N) | 1 t/p |

Eighth Circuit:

| | | |
|--------------|-------|----------------------------------|
| Arkansas (E) | ..... | 2 r/single district ⁵ |
| Arkansas (W) | ..... | 1 temp. + 1 t/p |
| Iowa (N) | ..... | 1 r/single district |
| Iowa (S) | ..... | 1 |
| Missouri (E) | ..... | 1 + 1 temp. |
| Nebraska | ..... | 1 temp. |

Ninth Circuit:

| | | |
|----------------|-------|-------------|
| California (N) | ..... | 2 |
| California (E) | ..... | 1 temp. |
| California (C) | ..... | 6 |
| California (S) | ..... | 1 temp. |
| Nevada | ..... | 1 temp. |
| Oregon | ..... | 1 + 1 temp. |
| Washington (W) | ..... | 1 t/p |

Tenth Circuit:

| | | |
|--------------|-------|-------------------------|
| Kansas | ..... | 1 temp. |
| New Mexico | ..... | 1 temp. |
| Oklahoma (N) | ..... | 1 temp. |
| Oklahoma (W) | ..... | 1 + 1 r/single district |

Eleventh Circuit:

| | | |
|-------------|-------|-------------|
| Alabama (N) | ..... | 1 temp. |
| Florida (M) | ..... | 2 + 1 temp. |
| Florida (S) | ..... | 1 temp. |

| | | |
|-------|-------|----------------------------|
| TOTAL | ..... | 47 |
| ..... | ..... | +29 temps. |
| ..... | ..... | + 6 temps. to be permanent |
| ..... | ..... | + 1 temp. extended |
| ..... | ..... | + 4 rovers redesignated |

⁵"R/single district" refers to existing roving positions between judicial districts to be redesignated.

If the Congress were to eliminate diversity of citizenship jurisdiction, the request for district judgeships would be reduced from 76 (47 permanent and 29 temporary) to 19 (6 permanent and 13 temporary).

FEDERAL COURTS STUDY COMMITTEE

Title I of Public Law 100-702 established within the Judicial Conference a Federal Courts Study Committee (FCSC) on the future of the federal judiciary. As required, the FCSC filed its final report with the Judicial Conference on April 2, 1990.

The Conference was advised that certain FCSC recommendations might be included in an "omnibus court reform" title of the civil justice reform package being considered by the 101st Congress and, consequently, that expedited review of the recommendations would be advisable. The various recommendations were referred to the committees having jurisdiction of each and the responses presented to the Executive Committee, which identified those appropriate for inclusion in non-controversial legislation and left the remainder for consideration by the Conference in plenary session. The latter category of items appears throughout these proceedings.

A. In May, 1990, the Executive Committee approved the following FCSC proposals for inclusion in comprehensive court reform legislation:

- Concerning diversity jurisdiction,⁶ to specify that the jurisdictional floor does not include non-economic damages, and to raise the jurisdictional minimum from \$50,000 to \$75,000 and index the new floor amount.
- To amend 42 U.S.C. § 1997e to require exhaustion of state institutional remedies in prisoner suits brought under 42 U.S.C. § 1983.

⁶The Judicial Conference has previously supported abolition of diversity jurisdiction (e.g., JCUS-MAR 77, p. 8), elimination of in-state plaintiff access to diversity jurisdiction (e.g., JCUS-MAR 77, p. 9), and amendment of 28 U.S.C. § 1332(c) to deem corporations to be citizens of every state in which they are licensed to do business (JCUS-MAR 88, p. 23).

- To extend the life of the United States Parole Commission, or create a successor agency, to conduct parole revocation hearings for "old law" prisoners. The Executive Committee opposed transferring jurisdiction to the Parole Commission or a successor agency over supervised release revocation proceedings for "new law" prisoners. See also "Revocation of Supervised Release", *infra* p. 71.
- To abolish the Temporary Emergency Court of Appeals and vest its remaining caseload in the Court of Appeals for the Federal Circuit.
- To amend 28 U.S.C. § 158 to authorize small circuits to create multi-circuit bankruptcy appellate panels.
- To reconstitute United States trustees as independent statutory officers in the judicial branch.
- To amend 28 U.S.C. § 636(c)(2) to allow judges and magistrates to remind parties of the possibilities of consent to civil trials before magistrates.
- To broaden statutory authorization for local rules for alternative and supplementary procedures in civil litigation, including rules for cost and fee incentives.
- To authorize and fund sustained experimentation with alternative and supplementary dispute resolution techniques.
- To support consideration by Congress of a "checklist" for legislative staff to use in reviewing proposed legislation for technical problems.
- To create limitations periods for major congressionally-created federal claims that presently lack such periods, and to adopt fallback limitations periods for federal claims not explicitly created by Congress.

- To clarify 28 U.S.C. § 1391(a) and (b), the general venue statute, and to provide that in federal question cases, there should be venue in a district in which any defendant may be found if there is no district in which the action may otherwise be brought.
- To amend 29 U.S.C. § 160 to provide that National Labor Relations Board orders be self-enforcing and to give jurisdiction over contempts and executions to the district courts.
- To increase juror and witness fees.
- To repeal mandatory minimum sentence provisions, whereupon the United States Sentencing Commission should reconsider the guidelines applicable to the affected offenses.
- To amend 28 U.S.C. § 133 to authorize temporary judgeships for the court of any active judge selected to assume a full-time office of national federal judicial administration.
- To amend 28 U.S.C. § 601 to authorize the Chief Justice, after consultation with the Judicial Conference, to appoint the director and deputy director of the Administrative Office.
- To create a personnel system for the Administrative Office independent of the Office of Personnel Management.
- To repeal or suspend the statutory requirement for specific authorization for cost-of-living judicial salary adjustments.⁷

The Executive Committee also made a number of study assignments of FCSC recommendations. To the Committee on Federal-State Jurisdiction, the Executive Committee assigned studies of minimal diversity jurisdiction; mass litigation procedure; proposals concerning the Anti-Injunction Act, abstention, and

⁷An additional item identified as non-controversial was a proposal to amend 28 U.S.C. § 331 to recognize the authority of the Judicial Conference to issue administrative rules. After a Conference member suggested that this matter was not without controversy, a three-judge subcommittee, chaired by Judge Sarah Barker, was appointed to study the issue and recommend Conference action. At its September 1990 plenary session, the Conference postponed consideration, pending further review by the Barker Subcommittee.

removal; and restructuring of the courts of appeals. The Committee on Judicial Improvements, and its successor Committee on Court Administration and Case Management, were assigned studies of sanctions for litigation misconduct, attorney fee awards, and chief judge selection. The Committee on Criminal Law and Probation Administration was asked to study discovery in criminal cases, and the Defender Services Committee was tasked with a comprehensive review of the 1964 Criminal Justice Act, as amended. Finally, the Executive Committee requested that the Rules Committee study whether Congress should delegate to the Supreme Court the authority to define what constitutes a final decision for purposes of 28 U.S.C. § 1291, and the circumstances in which orders and actions of district courts not otherwise subject to appeal under acts of Congress may be appealed to the courts of appeals.

The Executive Committee also agreed to request that the Federal Judicial Center study how courts handle scientific and technological complexity in litigation.

B. In August, 1990, the Executive Committee was informed that the long-awaited omnibus court reform measure (to be attached to civil justice reform legislation) had been introduced by Congressman Kastenmeier as H.R. 5381 (101st Congress). Also circulating was a similar, although somewhat narrower, proposal by Senator Grassley.⁸ In light of a scheduled hearing prior to the Conference's September 12, 1990, plenary session, the Executive Committee acted on the various committee recommendations with regard to the following items on the Conference's behalf:

1. Agreed to take no position on § 106 of H.R. 5381 ("Budget Estimates of Courts").
2. Supported § 110 of H.R. 5381 ("Removal of Separate and Independent Claims").
3. Supported the establishment of a separate, enhanced retirement system for judges of the United States Claims Court, such as the system included in § 113 of H.R. 5381 ("Retirement Program for Claims Court Judges").

⁸Both Congressman Kastenmeier and Senator Grassley were members of the FCSC. All references are to H.R. 5381, because no bill was ever formally introduced by Senator Grassley.

4. Supported § 114 of H.R. 5381 ("Parties' Consent to Determination by Bankruptcy Court").

5. Supported § 116 of H.R. 5381 ("Appeal of Certain Determinations Relating to Bankruptcy Cases").

6. Agreed to recommend three amendments to § 120 of H.R. 5381 ("Supplemental Jurisdiction").

7. Supported a "rule of 87" contained in § 204 of H.R. 5381 ("Retirement Age of Certain Federal Judges"), but also reaffirmed support for the "rule of 80".

8. Supported § 205 of H.R. 5381 ("Qualification of Chief Judge of Court of International Trade"), with a two-year "grandfather" of the incumbent chief judge.

9. Opposed any formal name change for United States magistrates (§ 206 of H.R. 5381, "Change of Name of United States Magistrates").

10. Opposed any change to 28 U.S.C. § 636(e) related to contempt power of magistrates (§ 207 of H.R. 5381, "[Contempt] Authority of Assistant United States District Judges").

11. Supported § 208 of H.R. 5381 ("Length of Service Required for Eligibility under the Judicial Survivors' Annuities Act").

12. Supported a technical amendment (§ 209(b) of H.R. 5381) to allow magistrates and bankruptcy judges to draw both annuities under 28 U.S.C. § 377 and military retired pay.

The Committee also agreed to recommend the inclusion of an amendment to 28 U.S.C. § 332 to impose equal representation of district and circuit judges as members of circuit judicial councils, in addition to the chief judge of the circuit as council chairman.

FEDERAL ETHICS LAW REFORM

The Executive Committee approved regulations under Title III of the Ethics Reform Act of 1989, Public Law No. 101-194, concerning gifts, and under Title VI, concerning outside earned income, honoraria, and outside employment.

ADDITIONAL BANKRUPTCY JUDGESHIPS

In order to respond to sharp and steady increases in bankruptcy filings, the Executive Committee voted to recommend that Congress authorize four additional bankruptcy judgeships, two in the District of Arizona, one in the Eastern District of Pennsylvania, and one in the Northern District of Georgia.

STATE-FEDERAL JUDICIAL COUNCIL

In March, 1990 (JCUS-MAR 90, p. 18), the Judicial Conference approved in principle creation of a National State-Federal Judicial Council. On the Conference's behalf, the Executive Committee approved a recommendation of the Committee on Federal-State Jurisdiction that the Chief Justice appoint four sitting federal judges to represent the federal judiciary on the Council, whose purposes will be "to consider matters referred to it by either the Judicial Conference of the United States or the Conference of Chief Justices relating to issues of mutual concern to the state and federal courts, to advise the Judicial Conference and the Conference of Chief Justices on improving the relationship between the two systems, and to seek methods to enhance operations of the local State-Federal Councils." The Council will propose a plan for carrying out its functions to be submitted for further approval by the Judicial Conference and the Conference of Chief Justices.

VOIR DIRE

The Executive Committee declined to object to proposals contained in S. 591 and S. 592 (101st Congress), establishing a four-year demonstration program in four districts to permit attorney participation in the voir dire examination of prospective jurors.

MISCELLANEOUS ACTIONS

The Executive Committee requested all judicial officers and employees who were previously required to file financial disclosure reports to prepare and file such reports for the calendar year 1989, notwithstanding Congress' inadvertent repeal of the statutory requirement for filing;⁹ restricted relocation reimbursement to situations involving employees grade JSP-12 or higher, except in cases of heads of offices or divisions, pending a comprehensive policy review of employee relocation allowances by the Committee on Judicial Resources;

⁹P.L. 101-280 reinstated the reporting requirement.

strongly opposed § 103(a) of S. 1972 (101st Congress), which would create a so-called "Federal Day", whereby all cases involving persons arrested on a designated day each month for felony drug violations that would otherwise be prosecuted in state or local courts would be presented to a federal grand jury (see also "'Federal Day' Legislation", *infra* p. 72); opposed S. 2104 and H.R. 4000 (101st Congress) insofar as the bills effectuate retrospective application of amendments to the Civil Rights Act of 1964 by requiring courts, upon a request for relief within specified periods, to vacate orders inconsistent with the amendments even in cases that have reached final judgment prior to enactment; approved a resolution in appreciation of Chief Judge Howard T. Markey (see "Resolution", *infra* p. 105); agreed to the expenditure of an additional \$5,000 to reward Ninth Circuit employees who demonstrated exemplary service during the earthquake of October 17, 1989, and its aftermath; approved a memorandum entitled, "Role of Committees of the Judicial Conference of the United States, Committee Chairmen and the Conference Secretary"; amended the spending plan for the "Salaries and Expenses" appropriation for the fiscal year 1990 to approve the expenditure of \$5,500,000 for urgent space alterations, furnishing of new space, electronic sound equipment, and clerks' travel, and also to make available \$1,700,000 from the no-year fund for new judges' requirements to provide for judges' needs in space alterations and furnishings (both subject to congressional approval of reprogramming requests); agreed that there should be full disclosure of Conference actions on individual votes, unless otherwise determined by the Conference; and increased the salary of the part-time magistrate position at Lander, Wyoming, from \$4,444 to \$26,662 per annum, effective September 1, 1990 and subject to the availability of funds.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

The Committee on the Administrative Office reported that it had considered issues concerning general organization, management, and administration of the courts in light of continued growth and increasing decentralization of functions, and referred several items to other committees of the Judicial Conference. The Committee also reported that it had reviewed the issue of delegations of administrative authority made from the Director of the Administrative Office to the courts and determined that the Administrative Office should develop a proposed delegation policy for consideration by the Committee on the Administrative Office and the Committee on Court Administration and Case Management.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

REGULATIONS GOVERNING RECALL OF RETIRED BANKRUPTCY JUDGES

In order to implement the Judicial Conference policy of maintaining parity between bankruptcy judges and U.S. magistrates, the Conference approved revisions to Section 2 of the Regulations Governing the Recall of Retired Bankruptcy Judges which mirror the changes in the magistrates recall regulations also approved by the Conference this session (see "Recall Regulations", *infra* p. 94). These revisions eliminate administrative problems in computing pay and add needed cross-references to new retirement legislation enacted since the regulations were promulgated by the Conference.

UNITED STATES TRUSTEES

The failure of many United States trustees to perform fully their supervisory responsibilities of auditing case trustee reports and fee requests and verifying the disposition of all assets of the estate has caused concern that improprieties may occur in the bankruptcy system. The Judicial Conference reaffirmed its position that the United States trustees should assume the full range of their responsibilities as contemplated by statute and that staff of the clerks' offices should not be used routinely to perform or duplicate the United States trustees' responsibilities.

TRUSTEE COMPENSATION

The Judicial Conference took no position on an increase in compensation for trustees proposed by the Department of Justice. Further, the Conference opposed Department of Justice-proposed legislation that would eliminate statutory authority of bankruptcy judges to fix the level of compensation for trustees, due to concerns that the proposal for mandatory compensation would diminish the incentive of trustees to perform their statutory duties and would inequitably benefit trustees who had administered uncomplicated estates.

BANKRUPTCY APPELLATE PANELS

The Judicial Conference opposed an FCSC recommendation that Congress enact legislation to require each circuit to establish bankruptcy appellate panels, with an opt-out provision for litigants. Under the current

system, each circuit may exercise its discretion to establish a bankruptcy appellate panel and to adopt implied consent procedures (28 U.S.C. § 158(b)).

COMMITTEE ON THE BICENTENNIAL OF THE CONSTITUTION

December 15, 1991, marks the two-hundredth anniversary of the ratification of the Bill of Rights. On recommendation of the Committee on the Bicentennial of the Constitution, the Judicial Conference agreed to encourage all circuit judicial conferences in 1991 to include an event in celebration of this bicentennial.

COMMITTEE ON THE BUDGET

ALTERNATIVE BUDGET REQUEST FOR THE FISCAL YEAR 1992

Anticipating the need to ensure that the judiciary's FY 1992 budget request is consistent with national budgetary constraints in a period of large federal deficits, the Committee on the Budget, after consulting with the chairs of the Conference committees whose program responsibilities directly affect the budget request, proposed budget estimates on balance lower than the full funding requests of the Conference committees. The Judicial Conference approved these alternative, or lower, budget estimates for the fiscal year 1992, subject to amendments necessary as a result of new legislation, actions of the Judicial Conference, or any other reason the Director of the Administrative Office considers necessary and appropriate.

COMMITTEE ON THE CODES OF CONDUCT

The Committee on Codes of Conduct reported that it is continuing to monitor legislation on judicial discipline and impeachment. The Committee also reported it would undertake a study of the new revisions to the American Bar Association (ABA) Model Code of Judicial Conduct to determine whether the Judicial Conference should adopt the substantive changes and, if so, how to do so appropriately for the federal judicial system.

COMMITTEE ON COURT SECURITY

LEGISLATION TO AUTHORIZE JUDICIAL OFFICERS TO CARRY FIREARMS

The Judicial Conference approved a legislative proposal of the Committee on Court Security that would authorize federal judicial officers to carry firearms. The proposed legislation would overcome what are often varied and conflicting provisions of state law on firearm possession, so as to allow all judicial officers who so desire to carry firearms to enhance their personal security.

COMMITTEE ON CRIMINAL LAW AND PROBATION ADMINISTRATION

SENTENCING GUIDELINES REVISION - RECOMMENDATIONS TO THE SENTENCING COMMISSION

The Judicial Conference authorized the Committee on Criminal Law and Probation Administration to act with regard to submission from time to time to the Sentencing Commission of proposed amendments to the Sentencing Guidelines, including proposals that would increase the flexibility of the Guidelines. The Conference also approved submission to the Commission of the following specific proposals:

1. Change the minimum imprisonment requirement of §§ 5C1.1(c)(3) and 5C1.1(d)(2) from "at least one-half of the minimum term" to "at least 1 month", to allow the sentencing court to determine the appropriate mix of imprisonment and confinement conditions when imposing a "split sentence."
2. Modify §§ 5B1.1(a)(2) and 5C1.1(c), and eliminate § 5C1.1(d), to permit probation with confinement/home detention conditions as a within-guidelines sentence in the ten guideline cells (those with minimum terms of from seven to ten months) for which a "split sentence" is the only current alternative to imprisonment for the full guideline term.
3. Permit probation without confinement/home detention conditions at two additional offense levels (seven and eight) for Category I offenders by changing the ranges in the cells to zero to six months.

4. Modify § 5H1.1 to permit greater flexibility to consider age as a basis for departure or the use of sentencing options.
5. Modify Chapter 5, Part H by adding an application note clarifying that offender characteristics that are not ordinarily relevant to sentencing may be considered if, alone or in combination, they are present to an unusual degree.
6. Promulgate a two-part policy statement to replace the current § 4A1.3, to clarify that departures due to the inadequacy of the criminal history score may be based on either degree of risk or type of risk.
7. Rewrite the relevant conduct guideline (§ 1B1.3), and accompanying commentary, to clarify that judges have flexibility to individualize the offense level according to the harm for which the defendant was personally culpable.
8. Reconsider the acceptance of responsibility guideline (§ 3E1.1) with particular attention as to whether the two offense level adjustment should be increased, whether a greater adjustment should be available for higher offense levels than for lower offense levels, and whether a range of adjustments (rather than a fixed two offense level adjustment) should be made available.

FEDERAL COURTS STUDY COMMITTEE RECOMMENDATIONS

On recommendation of the Committee, and also of the Committee on Defender Services, the Judicial Conference *supported* the following FCSC recommendations:

1. Initiatives should be taken that would coordinate prosecution efforts with local authorities in seeking to limit federal drug prosecutions to charges that cannot or should not be prosecuted in state courts.
2. The Attorney General should convene a conference on the problems of complex criminal trials.

The Conference *took no action* on the following FCSC recommendations:

1. The Congress should enact a comprehensive recodification of the federal criminal laws.
2. Serious consideration should be given to proposals that "(1) the guidelines issued pursuant to the Sentencing Reform Act not be treated as compulsory rules, but, rather, as general standards that identify the presumptive sentence, and (2) the guidelines, and if necessary the Sentencing Reform Act, be amended to permit consideration of an offender's age and personal history."
3. The Judicial Conference should create a standing committee to study proposed and actual guidelines and provide advice on them to the Sentencing Commission, the federal judiciary, and the Congress.¹⁰
4. The Congress should reevaluate the process by which Commission-promulgated guidelines become law.

REVOCATION OF SUPERVISED RELEASE

As noted, supra p. 61, on May 18, 1990, the Executive Committee approved the portion of an FCSC recommendation that supported the extension of the United States Parole Commission, or the creation of a successor agency, to conduct parole revocation hearings for "old law" prisoners and opposed the portion of the same recommendation which provided that jurisdiction over supervised release revocation proceedings for "new law" prisoners should be transferred to the Parole Commission or a successor agency. At this session, the Judicial Conference agreed to recommend to Congress that any determination with respect to revocation of supervised release be made by the district court, and that magistrates be permitted to conduct supervised release revocation proceedings and make reports and recommendations to the district court relating to the final determination.

¹⁰This item was also recommended by the Defender Services Committee.

"FEDERAL DAY" LEGISLATION

The Judicial Conference reaffirmed opposition to the concept of a "Federal Day" in federal courts, whereby local drug arrests would be prosecuted in federal courts. See also "Miscellaneous Actions", supra p. 66.

SUPERVISION OF OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY

Some offenders who have been found not guilty by reason of insanity are thereafter released to the community and often require a variety of social, psychiatric, and psychological services. Although the probation offices are often asked to become involved with such cases, there is no statutory authority for officers to perform services for such persons. On recommendation of the Committee, the Conference endorsed legislation to amend 18 U.S.C. § 3154 and § 3603 to provide authority for probation and pretrial services officers to supervise offenders found not guilty by reason of insanity but required by court order to receive community supervision services.

COMMITTEE ON DEFENDER SERVICES

APPOINTMENTS AND PAYMENTS

The Defender Services Committee reported that, during the first half of the fiscal year 1990, approximately 33,000 persons were represented under the Criminal Justice Act, compared to 31,500 persons for the first half of the fiscal year 1989, an increase of 4.8 percent. Of the 33,000 persons represented, approximately 54.2 percent (17,900) were represented by federal public and community defender organizations.

BUDGET AND GRANT REQUESTS - FEDERAL PUBLIC AND COMMUNITY DEFENDER ORGANIZATIONS

Under its delegated authority from the Judicial Conference (JCUS-MAR 89, p. 16), the Committee reviewed and approved funding requests from federal public defender organizations, traditional community defender organizations, and death penalty resource centers, as follows:

Federal Public Defender Organizations

1. Supplemental Funding for the Fiscal Year 1990

| <u>District</u> | <u>Amount Approved</u> |
|-------------------------|----------------------------|
| Connecticut | \$ 29,500 |
| Tennessee (M) | <u>61,400</u> |
| Total | \$ 90,900 |

2. Supplemental Funding for the Fiscal Year 1991

| <u>District</u> | <u>Amount Approved</u> |
|---|----------------------------|
| Alaska | \$ 37,413 |
| Arizona | 471,461 |
| California (N) | 323,286 |
| California (E) | 196,962 |
| California (C) | 1,684,366 |
| Connecticut | 101,243 |
| District of Columbia | 185,000 |
| Florida (S) | 985,287 |
| Illinois (C&S) & Missouri (E) | 56,915 |
| Kansas | 104,469 |
| Maryland | 252,757 |
| Minnesota | 79,997 |
| Missouri (W) | 126,063 |
| Nevada | 78,769 |
| New Jersey/Delaware ¹¹ | 308,746 |
| New Mexico | 110,605 |
| North Carolina (E) | 178,763 |
| Oklahoma (E, N & W) | 164,887 |
| Oregon | 100,216 |
| Pennsylvania (W) | 187,369 |
| Puerto Rico | 33,777 |
| South Carolina | 328,139 |

¹¹Subject to amendment of the CJA plans for the two districts.

| | |
|--|---------------|
| Tennessee (M) | 165,361 |
| Tennessee (W) | 36,357 |
| Texas (N) | 14,500 |
| Texas (S) | 424,087 |
| Texas (W) | 624,862 |
| Washington (E) ¹² | 783,014 |
| Washington (W) | 59,230 |
| West Virginia (S) | <u>97,741</u> |
| Total | \$ 8,301,642 |

3. Fiscal Year 1992 Budgets

| <u>District</u> | <u>Amount Approved</u> |
|---|----------------------------|
| Alaska | \$ 719,008 |
| Arizona | 2,892,245 |
| California (N) | 2,804,906 |
| California (E) | 2,793,263 |
| California (C) | 5,127,229 |
| Colorado | 1,142,912 |
| Connecticut | 857,600 |
| District of Columbia | 1,607,571 |
| Florida (N) | 767,064 |
| Florida (M) | 2,499,985 |
| Florida (S) | 4,569,701 |
| Hawaii | 1,255,437 |
| Illinois (C&S) & Missouri (E) | 1,434,649 |
| Kansas | 1,007,389 |
| Louisiana (E) | 991,358 |
| Massachusetts | 733,010 |
| Maryland | 1,994,475 |
| Minnesota | 926,026 |
| Missouri (W) | 1,282,996 |
| Nevada | 1,237,695 |
| New Jersey/Delaware | 2,092,386 |
| New Mexico | 1,715,105 |
| North Carolina (E) | 1,275,173 |
| Ohio (N) | 713,279 |

¹²Subject to amendment of the district's CJA plan.

| | |
|-----------------------------|----------------|
| Oklahoma (E,N&W) | 1,066,505 |
| Oregon | 1,915,788 |
| Pennsylvania (M) | 937,633 |
| Pennsylvania (W) | 954,137 |
| Puerto Rico | 902,889 |
| South Carolina | 845,792 |
| Tennessee (M) | 924,489 |
| Tennessee (W) | 645,063 |
| Texas (N) | 1,027,436 |
| Texas (S) | 3,471,883 |
| Texas (W) | 2,489,926 |
| Virgin Islands | 969,514 |
| Washington (E) | 654,368 |
| Washington (W) | 1,433,603 |
| West Virginia (S) | <u>859,162</u> |
| Total | \$61,538,650 |

Traditional Community Defender Organizations

1. Supplemental Funding for the Fiscal Year 1991

| <u>Community Defender Organization</u> | <u>Amount Approved</u> |
|--|----------------------------|
| Federal Defenders of San Diego, Inc., California (S) | \$ 348,441 |
| Federal Defender Program, Inc., Georgia (N) | 99,083 |
| Legal Aid & Defender Assn. of Detroit, Federal Defender Division, Michigan (E) | 147,034 |
| The Legal Aid Society of New York, Federal Defender Services Unit, New York (S & E) | 210,397 |
| Defender Assn. of Philadelphia, Federal Court Division, Pennsylvania (E) | <u>188,344</u> |
| Total | \$ 993,299 |

2. Fiscal Year 1992 Sustaining Grants

| | <u>Amount Approved</u> |
|--|----------------------------|
| <u>Community Defender Organization</u> | |
| Federal Defenders of San Diego, Inc., California (S) | \$ 3,860,297 |
| Federal Defender Program, Inc., Georgia (N) | 1,495,626 |
| Federal Defender Program, Inc., Illinois (N) | 2,037,308 |
| Legal Aid & Defender Assn. of Detroit, Federal Defender Division, Michigan (E) | 1,390,688 |
| The Legal Aid Society of New York, Federal Defender Services Unit, New York (S & E) | 5,114,990 |
| Defender Assn. of Philadelphia, Federal Court Division, Pennsylvania (E) | <u>1,565,397</u> |
| Total | \$15,464,306 |

Death Penalty Resource Center/Community Defender Organizations

1. Supplemental Funding for the Fiscal Year 1991

| | <u>Approved CJA Grant</u> | <u>Non-CJA Funds</u> |
|---|-------------------------------|--------------------------|
| Pennsylvania Death Penalty Resource Center ¹³ | \$ 299,215 | \$ 299,215 |

¹³Expected to open during the fiscal year 1991.

| | <u>Revised Sustaining CJA Grant</u> | <u>Non-CJA Funds</u> |
|---|---|--------------------------|
| Georgia Appellate Practice and Education Resource Center, Inc. | \$ 539,935 | \$ 252,600 |
| Mississippi Capital Defense Resource Center, Inc. | 369,314 | 188,068 |

2. Fiscal Year 1992 Sustaining Grants

| | <u>Approved CJA Grant</u> | <u>Non-CJA Funds</u> |
|---|-------------------------------|--------------------------|
| Alabama Capital Representation Resource Center | 412,450 | \$ 268,250 |
| Arizona Capital Representation Project | 427,026 | 188,266 |
| California Appellate Project | 1,775,740 | 2,131,900 |
| Volunteer Lawyers' Resource Center of Florida, Inc. | 1,535,931 | 209,072 |
| Georgia Appellate Practice and Educational Resource Center, Inc. | 504,761 | 295,754 |
| Illinois Capital Resource Center | 308,819 | 369,229 |
| Kentucky Capital Litigation Resource Center | 418,081 | 282,858 |
| Loyola Death Penalty Resource Center (Louisiana) | 327,201 | 106,516 |
| Mississippi Capital Defense Resource Center, Inc. | 443,684 | 191,909 |

| | | |
|--|------------------|----------------|
| Missouri Capital Punishment Resource Center | 418,808 | 128,160 |
| North Carolina Resource Center . . . | 229,875 | 229,875 |
| The Ohio Public Defender Commission, Death Penalty Resource Center . . | 981,399 | 1,999,428 |
| Capital Post-Conviction Project of the Oklahoma Appellate Public Defender System | 717,445 | 473,749 |
| South Carolina Death Penalty Resource Center | 476,627 | 200,926 |
| Capital Case Resource Center of Tennessee, Inc. | 350,978 | 289,850 |
| Texas Appellate Practice and Educational Resource Center . . . | <u>2,704,184</u> | <u>726,461</u> |
| Total | \$12,033,009 | \$ 8,092,203 |

FEDERAL COURTS STUDY COMMITTEE RECOMMENDATIONS

The Judicial Conference agreed to implement an FCSC recommendation to establish a special committee to conduct a comprehensive review of the Criminal Justice Act. The Committee would consider such issues as adequacy of representation furnished by CJA panel attorneys; training of CJA panel attorneys; appropriate assignment of responsibility for the administration of the CJA panel; maintenance of independence of CJA panel attorneys in districts with no defender organization; selection, term, and compensation of federal public defenders; relationship of federal defenders to the Administrative Office and the judiciary; early appointment of counsel; procedures to assure prompt payment of CJA attorney compensation vouchers; review of determinations of compensation for CJA attorneys; and any other issues which warrant consideration.

The Conference endorsed a recommendation of the FCSC that Congress provide increased resources to house incarcerated defendants near federal courthouses.

CRIMINAL JUSTICE ACT COMPENSATION

Consistent with a resolution of the Committee opposing reliance upon mandatory pro bono representation and supporting adequate compensation of CJA attorneys, the Conference took the following actions:

1. The CJA revision of 1986 amended 18 U.S.C. 3006A(d)(1) to authorize the Judicial Conference to increase the specified attorney compensation rates (\$60 and \$40 per hour for time spent in/out of court, respectively, and a \$75 per hour maximum alternative rate) by amounts not to exceed the aggregate of the federal pay comparability adjustments authorized since the effective date of the revision. To implement this authority, the Judicial Conference approved an amendment to paragraph 2.22 A(2)(d)(3) of the Guidelines for the Administration of the Criminal Justice Act (CJA Guidelines) to provide for automatic annual increases in maximum hourly attorney compensation rates, contingent upon the implementation of a federal pay comparability adjustment and the availability of sufficient funds in the Defender Services appropriation.

2. The Judicial Conference also (a) approved the extension of alternative hourly attorney compensation rates which are currently applicable only at specific court locations within a district to all places of holding court within the district; and (b) agreed to establish an alternative attorney compensation rate of \$75 per hour for in-and out-of-court time for all of the districts in the Seventh Circuit, subject to the availability of funds.

NOMINATION, APPOINTMENT AND EVALUATION OF FEDERAL PUBLIC DEFENDERS

Under paragraph 4.02 A of the CJA Guidelines, federal public defender nominees are subject to "full-field" background investigations similar to those conducted for candidates for the position of U.S. Attorneys. These are more costly and time-consuming than FBI "name checks" and IRS "records checks", which appear to be effective in revealing unfavorable information. Accordingly, the Judicial Conference approved a recommendation by the Defender Services Committee to amend paragraph 4.02 A of the CJA Guidelines to give courts of appeals discretion with regard to the employment of background investigations for federal public defender nominees.

The Conference approved an additional amendment to paragraph 4.02 A of the CJA Guidelines to establish procedures for the appointment and evaluation of federal public defenders. Among other things, the amendment gives the courts of appeals discretion with respect to whether judicial officers may serve on committees to assess performance of federal public defender candidates or incumbents.

DECENTRALIZATION OF CJA VOUCHER PROCESSING

Under a current Administrative Office program, the processing of payments to attorneys providing services under the Criminal Justice Act is decentralized in 61 district courts and six courts of appeals participating in the program on a voluntary basis. Due to the success of the program and the need to continue to improve the efficiency of the CJA payment system, the Judicial Conference approved the Committee's recommendation that the decentralized processing of the CJA Form 20, "Appointment of and Authority to Pay Court Appointed Counsel", and CJA Form 21, "Authorization and Voucher for Expert and Other Services", be made mandatory for all courts.

COMMITTEE ON FEDERAL-STATE JURISDICTION

CIVIL PRIORITIES

In response to recent legislative efforts to impose litigation priorities and time limits in certain classes of cases, the Judicial Conference (a) reiterated its strong opposition to legislative provisions imposing statutory litigation priority, expediting, or time limitation rules on specified classes of civil cases brought in the federal courts beyond those currently specified in 28 U.S.C. § 1657 (e.g., JCUS-MAR 80, p. 19; JCUS-SEP 81, p. 68); and (b) strongly opposed any attempt to impose statutory time limits for disposition of specified cases in the district courts, the courts of appeals or the Supreme Court. In addition, the Conference specifically opposed provisions relating to judicial case management of habeas corpus actions in capital cases and civil actions for certain violations involving financial depository institutions contained in the Senate-passed version of S. 1970 (101st Congress), the omnibus crime bill.

FEDERAL QUESTION CITIZEN SUITS

Responding to an increasing number of bills in Congress which would create private federal causes of action in areas of only marginal federal interest,

the Judicial Conference adopted the following standards and criteria for evaluating and determining the appropriate position for the judiciary to take with respect to legislative proposals to create new private federal causes of action or to create standing to bring "citizen suits" in the federal courts:

A. General Principles to be considered.

1. Proliferation of new private rights to sue in federal courts should not be encouraged.
2. New private rights to sue in federal courts should be established only to further a clear federal interest.
3. Especially strong federal interest should be shown before invading areas that traditionally have been left to state courts.
4. New federal rights should be narrowly drawn to encompass only the matters of specific federal interest.
5. The legislative history should clearly set forth the federal interests Congress believes justify the creation of federal question jurisdiction in a particular area.
6. Congress should provide the judicial resources necessary to meet caseload increases resulting from new federal claims.

B. Factors to be considered in determining whether it is appropriate to enact a proposal for enforcing federal rights by private litigation.

1. Whether private suits for injunctive or other relief are needed to supplement inadequate public enforcement resources.
2. Whether the subject matter is one traditionally within the realm of state law, such as ordinary fraud, domestic relations, or child custody.
3. Whether the subject matter involves an important widespread activity conducted on an interstate basis that creates peculiar difficulties in bringing civil actions in state courts, such as large scale boiler room telemarketing operations across state lines involving large amounts of money.

4. Whether other dispute resolution mechanisms are adequate or more appropriate, such as federal or state government administrative enforcement action or arbitration programs.

The Conference postponed consideration of S. 2754, a bill to create federal question jurisdiction for a victim of any rape, sexual assault, or abusive sexual contact motivated by gender-based animus to recover compensatory and punitive damages.

PATENT INFRINGEMENT DISPUTES

In response to the United States Trade Representative's request for comment on alternative solutions to discriminatory procedures in resolving international patent infringement disputes, the Judicial Conference opposed the creation of a specialized Article III Patent Court or the creation of a specialized patent division within the Article III Court of International Trade. The Conference has consistently opposed the establishment of specialized courts in the judicial branch (e.g., JCUS-SEP 86, p. 60; JCUS-SEP 62, p. 54). The Conference took no position, until a specific legislative proposal is advanced, on permitting the transfer of international patent infringement cases to the district courts.

FEDERAL COURTS STUDY COMMITTEE RECOMMENDATIONS

The Judicial Conference *supported* FCSC recommendations which:

1. Endorse legislation to provide that Employee Retirement Income Security Act cases involving less than \$10,000 not be removed from state to federal courts [provided that all claims brought under 29 U.S.C. § 1132(a)(1)(B) not be removable].
2. Endorse legislation to authorize pendent-party jurisdiction with discretion in the district court to dismiss or remand the pendent-party claims if state claims predominate, if they present novel or complex questions of state law, or if dismissal is warranted by considerations of fairness or economy.
3. Support the repeal of the Federal Employers' Liability Act and the Jones Act.

The Conference *opposed* an FCSC recommendation to:

Create an Article III Tax Court.¹⁴ [However, if such a proposal were to be enacted, the legislation should be drafted to spell out the relationship of the new court to the Judicial Conference and the Administrative Office.]

The Judicial Conference *took no position* on the following FCSC recommendations:

1. Congress should prohibit the so-called policy of "non-acquiescence in judicial decisions" under the Social Security Act.
2. Congress should establish a small claims procedure (under \$10,000) for claims under the Federal Tort Claims Act (see also "Small Claims Procedures", *infra* p. 94).

The Conference *referred* the following FCSC recommendations back to the Committee on Federal-State Jurisdiction for further study:

1. Congress should create a new structure for adjudicating disability claims under the Social Security Act with hearings before administrative law judges whose decisions could be appealed to a new Article I Court of Disability Claims, with Article III review in the geographic courts of appeals limited to constitutional claims and statutory construction.
2. Congress should authorize a five-year test program to allow the Equal Employment Opportunity Commission to arbitrate employment discrimination cases with the consent of both parties.

¹⁴Although the Judicial Conference in 1979 approved in principle a separate Court of Tax Appeals (JCUS-SEP 79, p.64), it opposes this proposal on the ground that no exception should be made to the Conference policy of general opposition to specialized Article III courts (*e.g.*, JCUS-SEP 86, p. 60; JCUS-SEP 62, p. 54).

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

The Committee on Intercircuit Assignments reported that during the period February 1, 1990, through August 1, 1990, the Committee had recommended 64 intercircuit assignments to be undertaken by 48 judges. Of this number, seven were senior circuit judges, nine were active circuit judges, 19 were senior district judges, seven were active district judges, one was a senior judge of the Court of International Trade, and five were active judges of the Court of International Trade.

INTERCIRCUIT ASSIGNMENTS FOR EDUCATIONAL PURPOSES

The Judicial Conference endorsed a recommendation of the FCSC to expand intercircuit assignments of circuit judges by recommending to Congress an amendment to 28 U.S.C. § 291 which would provide for the intercircuit assignment of circuit judges to sit on other courts of appeals from time to time on an exchange basis, as a means of promoting education in court administration.

COMMITTEE ON THE INTERNATIONAL APPELLATE JUDGES CONFERENCE OF 1990

The Committee on the International Appellate Judges Conference of 1990 will file a final report with the Judicial Conference in March, 1991, on the International Appellate Judges Conference, held in Washington, D.C., September 10 - 14, 1990.

COMMITTEE ON THE JUDICIAL BRANCH

SENIOR JUDGE CERTIFICATION

The Judicial Conference approved permanent Rules for Certification of Senior Judges, effective January 1, 1991. The Judicial Conference also approved the Committee's recommendation to seek two legislative revisions to the existing senior judge certification law in order to minimize disincentives to senior judge service as recommended by the FCSC. These revisions would permit senior judges (a) to make up lapses in annual certifications; and (b) to aggregate administrative duties with judicial duties for work certification purposes.

JUDICIAL SURVIVORS' ANNUITIES SYSTEM

The Conference agreed to seek legislation allowing survivors of judicial officers to continue Federal Employee Health Benefits enrollment whether or not the judicial officer participated in the Judicial Survivors' Annuities System.

COMMITTEE ON JUDICIAL ETHICS

The Judicial Ethics Committee reported that as of July, 1990, it had received 2,319 financial disclosure reports and certifications for the calendar year 1989, including 995 reports and certifications from judicial officers and 1,324 reports and certifications from judicial employees.

ETHICS REFORM ACT

Upon recommendation of the Committee, the Judicial Conference delegated its authorities under Title II and its authority for monitoring compliance with Titles III and VI of the Ethics Reform Act of 1989 (Pub. L. No. 101-194) to the Committee on Judicial Ethics.

COMMITTEE ON JUDICIAL IMPROVEMENTS

MISCELLANEOUS FEE SCHEDULE

To implement the fundamental judicial policy of encouraging settlement and compromise, the Judicial Conference amended Item 21 of the bankruptcy miscellaneous fee schedule to eliminate the application of the fee to motions for approval of an agreement or stipulation to the termination, annulment, modification or condition of the automatic stay. Effective October 1, 1990, the amended Item 21 reads as follows (language to be omitted is lined through):

21. For filing a motion to terminate, annul, modify, or condition the automatic stay provided under § 362(a) of title 11, a motion to compel abandonment of property of the estate pursuant to Bankruptcy Rule 6007(b), or a motion to withdraw the reference of a case under 28 U.S.C. § 157(d), \$60. ~~The fee shall be paid also upon the filing of a motion for approval of an agreement or stipulation to the termination, annulment, modification, or condition of the automatic stay, unless a motion requesting the relief has been filed previously and a fee paid therefor.~~

In order to clarify the responsibilities of a debtor in possession with regard to the payment of the \$120 fee for the filing of a complaint, the Judicial Conference approved the following amendment to Item 6 of the bankruptcy miscellaneous fee schedule (new language is underlined):

6. For filing a complaint, a fee should be collected in the same amount as the filing fee prescribed in 28 U.S.C. § 1914(a) for instituting any civil action other than a writ of habeas corpus. If the United States, other than a United States Trustee acting as a trustee in a case under Title 11, or a debtor is the plaintiff, no fee is required. If a trustee or debtor in possession is the plaintiff, the fee should be payable only from the estate and to the extent there is any estate realized.

JURY MATTERS

On recommendation of the Committee on Judicial Improvements, the Judicial Conference agreed to seek legislation to amend the Jury Selection and Service Act to permit travel by aircraft within the contiguous 48 states by grand jurors when weather conditions warrant, after certification of the Chief Judge and subject to guidelines set by the Conference.

ALTERNATIVE DISPUTE RESOLUTION

Under 28 U.S.C. § 657(a), a district court is authorized to establish and pay arbitrators' compensation, if any, for services rendered in each case, subject to compensation limits set by the Judicial Conference. Upon the recommendation of the Committee, the Conference established limitations of arbitrators' compensation at \$250 per day or per case for a single arbitrator and \$100 per day or per case per panel member. The Conference delegated authority to the new Committee on Court Administration and Case Management to approve exceptions. The Conference also agreed to allow arbitrators to apply for awards of excess fees for protracted hearings or cases involving excessive preparation time, not to exceed hourly rates authorized under the Criminal Justice Act (18 U.S.C. § 3006A(d)). Higher rates may be paid by the parties upon agreement.

Funding was approved for compensation of mediators for a pilot mediation program in the Bankruptcy Court for the Middle District of Florida. The Judicial Conference authorized the funding, not to exceed \$36,000 in the

fiscal year 1991, provided that no negative reaction is received from congressional committees.

CELLULAR TELEPHONE PILOT

Due to the growing interest in the use of cellular telephones as a means of improving the efficiency of court operations, the Committee on Judicial Improvements readdressed the issue of the purchase of such telephones, and determined that there may be good reasons for the utilization of cellular phones in probation and pretrial services offices. Following the Committee's recommendation, the Judicial Conference approved a pilot test of cellular telephone technology in four or more probation and/or pretrial services offices, two rural and two urban, to determine the effectiveness of cellular telephones in improving their operations.

PLACES OF HOLDING COURT

Upon request from the District Court for the District of Nevada and the Ninth Circuit Judicial Council, the Judicial Conference agreed to recommend that 28 U.S.C. § 108 be amended to include Ely and Lovelock as places of holding court in the District of Nevada.

FEDERAL COURTS STUDY COMMITTEE RECOMMENDATIONS

The Judicial Conference agreed to *support* the following FCSC recommendations:

1. District judges should take greater advantage of their authority to use oral findings of fact and conclusions of law in bench trials.
2. Federal courts should continue to use protective orders to preserve the confidentiality of sensitive materials.
3. The Administrative Office should regularly collect and report data concerning pro se litigation for use by a Conference committee, so that it may conduct an in-depth evaluation of the costs of pro se litigation to the litigants and the courts, and recommend to the Conference methods to reduce those costs and improve the efficiency of dispensing justice in those cases.

4. The courts should consider the impact on courts and litigants before adopting technological innovations designed to save costs in court reporting [provided that this does not constitute a retrenchment to old technology].
5. Each circuit [and district court] should designate the circuit executive or another person as the media contact person, with training for the contact person and the chief judges in media relations.
6. Courts should hold "press days" to facilitate communication between the courts and the media.
7. The courts should continue and expand publications programs to explain court operations to the public.
8. The federal judiciary should expand efforts to educate judges and supporting personnel about the existence and dangers of racial, ethnic, and gender discrimination and bias.

The Conference *opposed* the following FCSC recommendations:

1. When a court of appeals reviews a case raising an issue already decided in another circuit, it should accord considerable respect to that earlier decision; a panel contemplating disagreement with the panel of another circuit should circulate its draft opinion among the remaining judges of the court for their comments.
2. A representative ad hoc committee under the auspices of the Judicial Conference should review policy on unpublished court opinions in light of increasing ease and decreasing cost of database access.
3. The judicial councils should consider establishing grievance procedures for complaints by members of the public of inappropriate treatment by judicial branch personnel, including allegations of racial, ethnic, religious, or gender bias.
4. Congress should authorize a five-year experimental pilot project to resolve some intercircuit conflicts, during which the Supreme Court could refer selected cases to an en banc court of appeals

for disposition and creation of national precedent on the conflict issue. A properly staffed committee of the Judicial Conference should monitor the project and recommend after four years whether the experiment should be continued, modified or discontinued.

The Judicial Conference *took no position* on the following FCSC recommendations:

1. Congress should allow each court of appeals to perform its en banc functions by such number of the members of its en banc courts as may be prescribed by rule of the court of appeals, except that the number should not be less than nine unless the court has fewer than nine authorized judgeships.
2. The Judicial Conference should conduct an intercircuit study, perhaps under the aegis of the Federal Judicial Center, of the most effective appellate case management techniques, and provide a means for the courts regularly to exchange case management information, experience and ideas.

COMMITTEE ON JUDICIAL RESOURCES

FISCAL YEAR 1992 BUDGET REQUESTS FOR SUPPORTING PERSONNEL

The Judicial Conference reviewed requests for fiscal year 1992 positions for supporting personnel, and approved the following additional positions (subject to the availability of resources):

1. Three JSP-13 estate analysts, four JSP-11 administrative analysts, and 2.5 JSP-8 estate administration clerks in the six Bankruptcy Administrator Offices.
2. Twelve JSP-11 deputy clerks for the Automation Training Centers.
3. Twenty-five JSP-12 probation officers and fifteen JSP-7 probation clerks.
4. Two JSP-14 court interpreters for Texas (Southern) and one JSP-14 interpreter for Texas (Western).

5. Fifty-eight JSP-8 electronic court recorder operators.
6. Forty-two JSP-14 supervisory staff attorneys, thirty-four staff attorneys with a target grade of JSP-14, and eleven secretaries at JSP-7.

ADDITIONAL COURT REPORTERS

The Conference approved four additional court reporter positions, one each in the Eastern District of Arkansas, the Northern District of Florida, and the Districts of Montana and Oregon.

JUDICIARY SALARY PLAN MODIFICATIONS

On recommendation of the Committee on Judicial Resources, the Judicial Conference took the following actions regarding position classifications to be effective immediately but subject, as always, to the availability of funds and also subject to revision following completion of the ongoing comprehensive review of the Judiciary Salary Plan:

1. Approved the creation of two new benchmark standards: probation/pretrial services officer assistant I, JSP-5/6/7; and probation/pretrial services officer assistant II, JSP-7/8/9.
2. Reaffirmed its position on a ratio of one senior probation or pretrial services specialist position for every four line officer positions; approved a replacement benchmark standard for the JSP-13 senior probation/pretrial services specialist position; and adopted revised qualification and entry age standards for probation and pretrial services officer positions.
3. Approved a certification process for the classification of courtroom deputies to full-time magistrates, and approved the reclassification of eighty-one courtroom deputy clerks (magistrate) from JSP-9 to JSP-10 and ninety-one courtroom deputy clerks (magistrate) to JSP-11.
4. Approved the creation of a new JSP-12 user support specialist (Training Center) benchmark standard.

5. Authorized circuit chief judges to appoint an assistant secretary at the JSP-11 level when the judge maintains geographically separate offices and when one secretary is permanently assigned to a duty station in each location.
6. Approved an increase in the target grade of law clerks to federal judges, bankruptcy judges or magistrates, to allow individuals to progress to JSP-16 upon completion of certain experience requirements.
7. Amended the benchmark standard for deputies-in-charge of divisional offices.
8. Approved modifications to the qualification standards for librarians and librarian technician positions to ease recruitment difficulties.

EXECUTIVE PAY IN THE JUDICIARY

In order to remain competitive with the executive branch, which anticipates an increase in pay for senior executives in January, 1991, the Judicial Conference approved a one-grade pay increase, if requested by the appointing official, for clerks of the courts of appeals, district court clerks, bankruptcy court clerks, the Clerk of the Court of International Trade, the Clerk of the Claims Court, chief probation officers, chief pretrial services officers, senior staff attorneys, chief preargument attorneys, bankruptcy administrators, district court executives, and circuit librarians. The Conference authorized exceptions to normal promotion and time-in-grade requirements to be made to allow incumbents to be promoted to the next higher grade at the step held at the time of the promotion, and required that no position other than the court unit executives cited be increased in grade by virtue of this change. These increases are to take effect no earlier than January 1, 1991.

BASIC ADMINISTRATIVE WORK SCHEDULE FOR COURT EMPLOYEES

The Committee on Judicial Resources determined that the lack of an established work schedule has the potential to jeopardize a full-time court employee's entitlement to retirement and leave benefits, both of which are tied by statute to work schedules. Pursuant to the Committee's recommendation, the Judicial Conference adopted an 80-hour biweekly administrative work schedule for full-time court employees.

COURT REPORTERS

The Judicial Conference approved a Committee recommendation that an official court reporter receive credit for time spent serving in a federal court as a contract or per diem reporter for the purpose of calculating the ten-year waiting period for the five percent longevity salary increase available to court reporters (see JCUS-SEP 77, p. 55). Such credit would be calculated on a daily basis reflecting time spent recording federal court proceedings, and would not include transcript preparation time.

COURT REPORTERS' TRANSCRIPT RATES

When the Judicial Conference increased transcript rates in 1986 (on a temporary basis, JCUS-SEP 86, p. 61) and 1988 (on a permanent basis, JCUS-SEP 87, p. 64), it excluded government-paid transcripts from the increases. Recognizing the hardship this imposed on court reporters, the Judicial Conference at this session increased the rates for government-paid transcripts to the same levels as those for non-government-paid transcripts. Implementation of this increase is subject to the availability of funds.

AUTOMATION STAFFING

On recommendation of the Judicial Resources Committee, the Conference approved portions of the report entitled Staffing for Decentralized Automation: Support for PC-Based Systems, as follows:

1. Added 305 positions to the FY 1992 budget for automation support;
2. Added the position of administrative assistant to the circuit executive for automation to each circuit executive's office;
3. In each circuit executive's office, extended and made permanent a personal computer coordinator position; and
4. Authorized staff attorney offices to reprogram vacant clerical positions to appropriate automation positions, provided that the ratio of non-attorney to attorney positions adheres to Judicial Conference policy.

FEDERAL COURTS STUDY COMMITTEE RECOMMENDATIONS

The Judicial Conference took the following actions on FCSC proposals considered by the Committee on Judicial Resources:

1. Agreed to support the concept of maintaining a relatively small Article III judiciary through limitations on the jurisdiction and caseload of the courts, but opposed any efforts to set a maximum limit on the number of Article III judgeships.
2. Agreed to support a proposal that the Federal Judicial Center be requested, in cooperation with the Administrative Office, to develop alternative approaches for evaluating judgeship needs in the courts of appeals. Alternatives should include, but not be limited to, a weighted caseload approach.
3. Opposed a recommendation that the courts should have discretion in assigning a title to the chief administrative officer of the court.

COMMITTEE ON THE ADMINISTRATION OF THE FEDERAL MAGISTRATES SYSTEM

PART-TIME MAGISTRATES

On recommendation of the Committee on the Administration of the Federal Magistrates System, the Judicial Conference reaffirmed its preference for a system of full-time United States magistrates. See also 28 U.S.C. § 633(a)(3). It also endorsed the plans of the Committee to review each part-time position on an individual basis with a view toward eliminating most of the part-time positions either by abolishing them, combining them, or converting them to full-time positions.

In keeping with this preference for full-time magistrate positions, the Conference approved a cost-of-living adjustment for part-time magistrates in the same percentage as is granted by the Congress to federal employees generally in 1991, provided that no cost-of-living adjustment will be granted unless full-time magistrates receive a cost-of-living adjustment or a salary increase in 1991, equal to or above the adjustment granted to federal employees generally. The cost-of-living adjustment for part-time magistrates will become effective on the same date as any salary adjustment for full-time magistrates becomes effective.

SMALL CLAIMS PROCEDURES

The FCSC had proposed as one alternative to improve disposition of federal tort claims that the judiciary establish "divisions in the district court administered by magistrates" to handle claims below \$10,000. Pursuant to a recommendation by the Magistrates Committee, the Judicial Conference objected to this FCSC recommendation which would vest magistrates with authority to decide certain Federal Tort Claims Act cases automatically. The Conference also reaffirmed disapproval of legislation "which mandates that a district court automatically refer particular types of cases to magistrates." See, e.g., JCUS-MAR 80, p. 34; see also "Federal Courts Study Committee Recommendations", supra p. 83.

RECALL REGULATIONS

The Judicial Conference approved an amendment to the regulations governing the recall of retired magistrates to clear up confusion concerning the calculation of pay for recalled magistrates. See also "Regulations Governing Recall of Retired Bankruptcy Judges", infra p. 67. The Conference also approved minor revisions to the regulations to include cross-references to the new retirement act for bankruptcy judges and magistrates (28 U.S.C. § 377).

DESIGNATION OF NEW FULL-TIME MAGISTRATE POSITIONS FOR ACCELERATED FUNDING

In order to provide prompt magistrate assistance to judicial districts which are seriously affected by drug filings, the Judicial Conference approved the Committee's recommendation to accelerate the funding for three new full-time magistrate positions authorized at this session. Magistrate positions at San Diego, California, Portland, Oregon, and Las Cruces, New Mexico were designated for accelerated funding in the fiscal year 1991.

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.

D.C. CIRCUIT

District of Columbia

Continued the full-time magistrate position which is due to expire on June 1, 1991, for an additional eight-year term.

SECOND CIRCUIT

Connecticut

Continued the full-time magistrate position at Hartford which is due to expire on October 31, 1991, for an additional eight-year term.

New York, Northern

Rescinded the action taken in March, 1990, converting the part-time magistrate position at Watertown to a full-time position and establishing a part-time magistrate position to serve at Syracuse (or Utica) at a salary of \$44,436 per annum, and instead:

1. Authorized a full-time magistrate position to serve the court at Syracuse (or Utica); and
2. Continued the part-time magistrate position at Watertown for an additional four-year term at the currently authorized salary of \$44,436 per annum.

New York, Eastern

Continued the part-time magistrate position at Patchogue for an additional four-year term at the currently authorized salary of \$6,665 per annum.

New York, Southern

Continued the full-time magistrate position at New York City which is due to expire on November 30, 1991, for an additional eight-year term.

THIRD CIRCUIT

New Jersey

1. Authorized an additional full-time magistrate position to serve the court at Newark; and
2. Continued the full-time magistrate position at Camden which is due to expire on August 10, 1991, for an additional eight-year term.

Pennsylvania, Eastern

Continued the part-time magistrate position at Allentown for an additional four-year term and increased the salary of the position from \$8,887 per annum to \$44,436 per annum.

FOURTH CIRCUIT

North Carolina, Eastern

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

South Carolina

1. Continued the full-time magistrate position at Charleston for an additional eight-year term;
2. Continued the part-time magistrate position at Florence for an additional four-year term but deferred action on any change in the salary of the position; and
3. Continued the part-time magistrate position at Aiken for an additional four-year term at the currently authorized salary of \$2,444 per annum.

Virginia, Eastern

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

FIFTH CIRCUIT

Louisiana, Eastern

Continued the full-time magistrate position at New Orleans which is due to expire on July 31, 1991, for an additional eight-year term.

Louisiana, Western

Continued the part-time magistrate position at Monroe for an additional four-year term but deferred action on any change in the salary of the position.

Mississippi, Northern

1. Continued the full-time magistrate position at Greenville for an additional eight-year term; and
2. Continued the full-time magistrate position at Aberdeen (or Oxford) for an additional eight-year term.

Texas, Western

1. Increased the salary of the part-time magistrate position at Big Bend National Park from \$26,662 per annum to \$44,436 per annum for a three-month period commencing October 1, 1990, with a return to the \$26,662 per annum salary thereafter; and
2. Increased the salary of the part-time magistrate position at Midland from \$22,218 per annum to \$39,992 per annum for a two-month period commencing October 1, 1990, with a return to the \$22,218 per annum salary thereafter.

SIXTH CIRCUIT

Kentucky, Western

1. Converted the part-time magistrate position at Hopkinsville to a full-time magistrate position designated to serve the court at Hopkinsville or Bowling Green;

2. Continued the part-time magistrate position at Hopkinsville for an additional four-year term, or until the full-time magistrate is appointed; and
3. Continued the part-time magistrate position at Bowling Green for an additional four-year term, or until a full-time magistrate is appointed at Hopkinsville or Bowling Green, whichever comes first; the position to be discontinued thereafter.

Michigan, Eastern

1. Continued the full-time magistrate position at Detroit which is due to expire on November 13, 1991, for an additional eight-year term, and redesignated the position as Flint (or Detroit); and
2. Continued the full-time magistrate position at Detroit which is due to expire on December 1, 1991, for an additional eight-year term, and redesignated the position as Ann Arbor (or Detroit).

SEVENTH CIRCUIT

Wisconsin, Western

Discontinued the part-time magistrate position at Eau Claire at the expiration of the current term in July, 1991.

EIGHTH CIRCUIT

Iowa, Southern

Increased the salary of the part-time magistrate position at Council Bluffs from \$7,740 per annum to \$8,887 per annum.

Nebraska

1. Authorized an additional full-time magistrate position to serve the court at Omaha; and
2. Discontinued the part-time magistrate position at North Platte upon appointment of the new full-time magistrate at Omaha.

NINTH CIRCUIT

California, Eastern

1. Continued the full-time magistrate position at Yosemite National Park for an additional eight-year term at the currently authorized salary of 70% (\$62,210 per annum) of the maximum salary payable to a full-time magistrate;
2. Continued the part-time magistrate position at Sequoia-Kings Canyon National Parks for an additional four-year term at the currently authorized salary of \$13,331 per annum; and
3. Continued the part-time magistrate position at South Lake Tahoe for an additional four-year term and increased the salary from \$7,740 to \$11,109 per annum.

California, Central

1. Continued the salary of the part-time magistrate position at San Luis Obispo at the current level of \$26,662 per annum for the term commencing March 31, 1991;
2. Increased the salary of the part-time magistrate position at San Bernardino from \$22,218 to \$26,662 per annum for the term commencing January 18, 1991;
3. Continued the part-time magistrate position at Long Beach for an additional four-year term at the currently authorized salary of \$13,331 per annum; and
4. Increased the salary of the part-time magistrate position at Barstow (or Victorville) from \$8,887 to \$11,109 per annum.

California, Southern

1. Authorized an additional full-time magistrate position to serve the court at San Diego;
2. Continued the full-time magistrate position at San Diego which is due to expire on April 9, 1992, for an additional eight-year term; and

3. Continued the full-time magistrate position at San Diego which is due to expire on March 29, 1991, for an additional eight-year term.

Hawaii

1. Continued the part-time magistrate position at Wailuku for an additional four-year term and increased the salary from \$2,444 to \$4,444 per annum; and
2. Continued the part-time magistrate position at Hilo for an additional four-year term at the currently authorized salary of \$6,665 per annum.

Oregon

Authorized an additional full-time magistrate position to serve the court at Portland.

TENTH CIRCUIT

Colorado

1. Continued the full-time magistrate position at Denver which is due to expire on October 5, 1991, for an additional eight-year term;
2. Continued the full-time magistrate position at Denver which is due to expire on September 30, 1992, for an additional eight-year term; and
3. Decreased the salary of the part-time magistrate position at Grand Junction from \$44,436 to \$22,218 per annum, effective immediately.

New Mexico

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

ELEVENTH CIRCUIT

Florida, Middle

Continued the full-time magistrate position at Jacksonville which is due to expire on August 28, 1991, for an additional eight-year term.

Georgia, Middle

Continued the part-time magistrate position at Columbus for an additional four-year term at the currently authorized salary of \$39,992 per annum.

Georgia, Southern

1. Continued the part-time magistrate position at Brunswick (or Waycross) for an additional four-year term at the currently authorized salary of \$44,436 per annum; and
2. Discontinued the part-time magistrate position at Dublin (or Statesboro), effective immediately.

COMMITTEE ON PACIFIC TERRITORIES

The Committee on Pacific Territories reported on the status of pending legislation concerning Ninth Circuit review of judgments of local courts of American Samoa (H.R. 3438, 101st Congress) and a comprehensive proposal dealing with the Territory of Guam which could affect judicial relations between the federal courts and the territory (H.R. 98, 101st Congress).

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

APPELLATE RULES

The Committee on Rules of Practice and Procedure submitted to the Conference proposed amendments to Rules 4(a) ("Appeal as of Right - When Taken"), 25(a) ("Filing and Service"), 28(a), (b), and (h) ("Briefs"), 30(b) ("Appendix to the Briefs"), and 34(d) ("Oral Argument"), as well as amendments to correct typographical errors in Rules 6, 10(c), 26(a), 26.1, and 28(a) of the Federal Rules of Appellate Procedure. The proposed amendments were accompanied by Committee notes explaining their purpose and intent. The Conference approved the amendments for transmission to the Supreme Court for consideration, with the recommendation that they be approved by the Court and transmitted to Congress pursuant to law.

The Conference also agreed to recommend that Congress amend 28 U.S.C. § 2107 to conform to the proposed amendment to Rule 4(a) of the

Federal Rules of Appellate Procedure and to eliminate the inconsistency between that section and the current version of Appellate Rule 4.

CIVIL RULES

The Committee on Rules of Practice and Procedure submitted to the Conference a proposed new Civil Rule 4.1, as well as amendments to Civil Rules 4 ("Process"), 5 ("Service and Filings of Pleadings and Other Papers"), 12 ("Defenses and Objections--When and How Presented--By Pleading or Motion--Motion for Judgment on the Pleadings"), 15 ("Amended and Supplemental Pleadings"), 16 ("Pretrial Conferences; Scheduling; Management"), 24 ("Intervention"), 26 ("General Provisions Governing Discovery"), 28 ("Persons Before Whom Depositions May Be Taken"), 30 ("Depositions Upon Oral Examination"), 34 ("Production of Documents and Things and Entering Upon Land for Inspection and Other Purposes"), 35 ("Physical and Mental Examination of Persons"), 41 ("Dismissal of Actions"), 44 ("Proof of Official Record"), 45 ("Subpoena"), 47 ("Jurors"), 48 ("Juries of Less than Twelve--Majority Verdict"), 50 ("Motion for a Directed Verdict and for Judgment Notwithstanding the Verdict"), 52 ("Findings by the Court"), 53 ("Masters"), 63 ("Disability of a Judge"), 71A ("Condemnation of Property"), 72 ("Magistrates, Pretrial Matters"), and 77 ("District Courts and Clerks"). The Committee also submitted new chapter headings VIII and IX and amendments to the Appendix of Forms to the Federal Rules of Civil Procedure, as well as amendments to Rules C and E of the Supplemental Rules for Certain Admiralty and Maritime Claims. Advisory notes and a report explaining the purpose and intent of all the amendments were transmitted with the proposals. The Conference approved these amendments and authorized their transmittal to the Supreme Court for consideration with the recommendation that they be approved by the Court and transmitted to Congress pursuant to law.

BANKRUPTCY RULES

The Committee submitted to the Conference substantial amendments to the Rules of Bankruptcy Procedure, most of which were necessary to effect the provisions of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (P.L. 99-554) and the Retiree Benefits Bankruptcy Protection Act of 1988 (P.L. 100-334). These amendments were approved by the Conference, which authorized their transmittal to the Supreme Court for consideration with the recommendations that (a) they be approved by the Court and transmitted to Congress pursuant to law; and (b) they should become

effective as soon as possible without regard to the effective dates of the amendments to the Rules of Appellate and Civil Procedure.

The Committee also proposed a number of amendments to the Official Bankruptcy Forms to conform with the proposed changes to the Bankruptcy Rules or to accommodate the development of automation in the bankruptcy courts. The Judicial Conference approved these amendments to take effect on the effective date of the amended Federal Rules of Bankruptcy Procedure.

PROCEDURES OF THE RULES COMMITTEES

The Judicial Conference approved amendments to paragraphs 6(b) and 9(b) of the Procedures for the Conduct of Business by the Judicial Conference Committees on Rules of Practice and Procedure. These amendments would require retention of the records of the Committees at the Administrative Office for two years instead of the current five years, before they are forwarded to a Government Records Center.

COMMITTEE ON SPACE AND FACILITIES

The Committee on Space and Facilities reported that, in recognition of the urgent need for issuing revised space standards, it has accelerated the schedule for submitting to the Judicial Conference the revised space standards contained in the United States Court Design Guide. The Committee anticipates submitting the revised Design Guide for consideration at the Conference's March 1991 session.

AD HOC COMMITTEE ON CAMERAS IN THE COURTROOM

The Ad Hoc Committee on Cameras in the Courtroom was established in October, 1988, "to review recommendations from other Conference committees on the introduction of cameras in the courtroom, and to take into account the American Bar Association's ongoing review of Canon 3A(7) of its Code of Judicial Conduct, dealing with the subject." At earlier sessions, the Committee reported its initial reaction that the current language of Canon 3A(7) of the Code of Conduct for United States Judges, in effect for almost forty years, was unduly restrictive and that a more flexible approach was in order. E.g., JCUS-MAR 89, p. 34.

After careful consideration of the views expressed by numerous judges in the system and media representatives, and of the state experiences in this area, the Ad Hoc Committee recommended, and the Conference agreed, to (a) strike Canon 3A(7) from the Code of Conduct for United States Judges and henceforth include policy on cameras in the courtroom in the Guide to Judiciary Policies and Procedures; and (b) adopt a policy statement and commentary on cameras in the courtroom, extending their permissible uses. Under the revised policy, cameras will be permitted in the courtroom during ceremonial proceedings for any purpose. For non-ceremonial proceedings, their utilization will be broadened from "presentation of evidence" and "perpetuation of the record" (as contained in former Canon 3A(7)), to include "security purposes" and for other purposes of "judicial administration."

In the view of both the Committee and the Conference, lifting all restrictions on camera coverage in federal courthouses would not be an appropriate move reflective of the current sentiment of most federal judges. However, the Committee believed that controlled experimentation on a voluntary basis would offer federal judges the opportunity to observe first-hand the effect of camera coverage and broadcasting of proceedings in federal court. Consequently, the Committee proposed, and the Conference authorized, a three-year experiment in up to two courts of appeals and up to six district courts, permitting photographing, recording, and broadcasting of civil proceedings, in accordance with guidelines, also approved by the Conference, which participating courts would have to adopt and which give presiding judicial officers the discretion, at any time, to refuse, limit, or terminate media coverage for any reason "considered necessary or appropriate by the presiding judicial officer." The Federal Judicial Center has agreed to monitor and evaluate the pilot, which will commence July 1, 1991, and "sunset" June 30, 1994.

The Ad Hoc Committee was designated by the Conference to select the participating courts. Upon completion of the selection process, the Ad Hoc Committee is discharged from further service, and oversight of the pilot is then assigned to the Committee on Court Administration and Case Management.

RESOLUTION

On behalf of the Judicial Conference, the Executive Committee adopted the following resolution in appreciation of Judge Howard T. Markey of the Federal Circuit, as follows:

Judge Markey was the first Chief Judge of the United States Court of Appeals for the Federal Circuit, last Chief Judge of the United States Court of Customs and Patent Appeals, and member of this Conference from 1972 to 1990.

Chief Judge Markey served with distinction as a member of the Conference. The confidence and respect he earned during his tenure as a member of the Judicial Conference have been clearly demonstrated through his numerous committee appointments by two Chief Justices. He served as a member of the Executive Committee from 1982 to 1987, the Committee on Court Administration from 1979 to 1987, the Subcommittee on Judicial Improvements from 1975 to 1979, and as Co-Chairman of the Ad Hoc Committee on Cameras in the Courtroom from 1983 to 1984. He served as the Coordinator for the Committee on the Bicentennial of the Declaration of Independence from 1975 to 1981, and was later appointed to serve as Chairman of the Committee on the Bicentennial of the Constitution from 1985 to 1987. His leadership and skill were further demonstrated in his chairing of the Committee on the International Appellate Judges Conference from 1987 to 1988, and the Advisory Committee on the Codes of Conduct from 1979 to 1987. He was elected to the Board of Certification for Circuit Executives in 1973, and remained on the Board until 1985.

Of his many contributions to the administration of justice, three deserve special recognition:

The emergence of the United States Court of Appeals for the Federal Circuit - Chief Judge Markey presided over the emergence of the first new federal court to be established under Article III in more than 70 years. That its two predecessor courts, the Court of Claims and the Court of Customs and Patent Appeals, were respectfully consigned to history and replaced by a national court of appeals ready, willing and able from the first moment of its existence to execute the mandate of Congress was the handiwork of its first chief judge, Howard T. Markey. While his preeminent judicial leadership forged the bonds of judicial collegiality, his unparalleled administrative abilities were creative of the institutional framework through which the old became the new without pause or hesitation. He has left a legacy that will guide all who follow.

The Codes of Conduct - Chief Judge Markey served for almost a decade as the first chairman of the Judicial Conference's Advisory

Committee on the Codes of Conduct. No element of our society has been as free of unethical conduct as the federal judiciary. In our time, no single person has been so responsible for this vital aspect of the administration of justice as Chief Judge Howard T. Markey. Countless numbers of federal judges sought and received his advice on virtually every matter in their personal lives that impinged on their service as judges. Under his leadership of this vital committee, our judges received the clear, sound guidance needed to insure the integrity of their public lives and the sanctity of the judicial proceedings they preside over.

The American Inns of Court - While many in our society are cynical about the future of the administration of justice, the young movement known as the American Inns of Court holds the hope that lawyers and judges working together can vastly improve the quality of courtroom and lawyering skills in our overly litigious times. Chief Judge Markey has been a driving force in this movement, having served in many capacities, including chairman of the initial board of trustees of the American Inns of Court Foundation.

In summary, when the improvements in the administration of justice in these times are enumerated, they will have a common element, the energizing influence of a most remarkable jurist, Howard T. Markey. To create new institutions for the administration of justice, to keep the conscience of the judiciary during times of ethical scrutiny and change, and to participate in the renewal of the legal profession and the judiciary, these represent the very highest service to the cause of justice.

While we will miss his friendship and wise counsel at Judicial Conference sessions, we are proud to acknowledge his many contributions to the federal judiciary and the nation, and extend our esteem and gratitude.

MEMORIAL RESOLUTIONS

Noting the deaths of Judge Harrison L. Winter and Mr. William E. Foley, the Conference adopted the following resolutions:

The Judicial Conference of the United States notes with deep sadness the death of the

Honorable Harrison L. Winter

on April 10, 1990, in Baltimore, Maryland.

Judge Winter was a life-long Baltimore resident, a graduate of Johns Hopkins University and the University of Maryland Law School where he was a member of the Order of the Coif. He served as a United States District Judge from 1961 until his appointment to the Fourth Circuit Court of Appeals in 1966 where he served as its Chief Judge from 1981 until 1989, and was a member of this Conference for eight years.

Judge Winter believed in the Constitution and the rights of citizens and had a life-long dedication to civil rights and fairness to all citizens. He will be remembered as a superb administrator and an exceptional judge and lawyer. Judge Murnaghan of the Fourth Circuit said of Judge Winter that he was "one of those with the happy faculty of making up his mind easily after reflection."

The members of the Judicial Conference convey their sympathies to Judge Winter's widow, Gladys Winter, and to his family and ask that this Resolution be sent to them as a token of their respect and affection for Judge Winter.

* * * * *

The Judicial Conference of the United States notes with great sadness the death of

Mr. William E. Foley,

on August 11, 1990, in Washington, D.C. Mr. Foley served as Deputy Director of the Administrative Office of the United States Courts from 1964 to 1977 and served as Director from 1977 until his retirement in 1985. At the time of his retirement, the Conference noted the respect and admiration Mr. Foley had earned from the members of the Conference and federal judges throughout the nation. We echo those sentiments today and ask that this resolution be sent to Mrs. Foley as

an expression of our deepest sympathies and as a token of our respect and esteem.

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

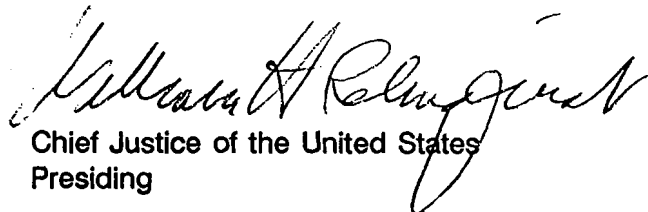
Pursuant to 28 U.S.C. § 48, the Conference approved the pretermission of terms of the following United States Courts of Appeals during the calendar year 1991: the Court of Appeals for the Fourth Circuit at Asheville, North Carolina; the Court of Appeals for the Ninth Circuit at Los Angeles, California; 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

November 12, 1990