

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

March 16, 1992

The Judicial Conference of the United States convened in Washington, D.C., on March 16, 1992, 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 Francis J. Boyle,  
District of Rhode Island

Second Circuit:

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

Third Circuit:

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

Fourth Circuit:

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

Fifth Circuit:

Chief Judge Henry A. Politz  
Chief Judge Barefoot Sanders,  
Northern District of Texas

Sixth Circuit:

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

Seventh Circuit:

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

Eighth Circuit:

Chief Judge Richard S. Arnold  
Chief Judge Donald E. O'Brien,  
Northern District of Iowa

Ninth Circuit:

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

Tenth Circuit:

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

Eleventh Circuit:

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

District of Columbia Circuit:

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

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

Federal Circuit:

Chief Judge Helen W. Nies

Court of International Trade:

Chief Judge Dominick L. DiCarlo

Circuit Judges Damon J. Keith, Walter K. Stapleton, and Deanell Reece Tacha; Senior Circuit Judge Thomas M. Reavley; District Judges Robert C. Broomfield, Gustave Diamond, Lloyd D. George, Wm. Terrell Hodges, Robert E. Keeton, Robert M. Parker, Sam C. Pointer, Jr., and Rya W. Zobel; and Senior District Judge Vincent L. Broderick attended the sessions of the Conference. Circuit Executives Vincent Flanagan, Steven Flanders, John P. Hehman, Samuel W. Phillips, Lydia Comberrel, James A. Higgins, Collins T. Fitzpatrick, June L. Boadwine, Gregory B. Walters, Eugene J. Murret, Norman E. Zoller, and Linda Finkelstein were also present at Conference sessions.

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

L. Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the sessions of the Conference, as did James E. Macklin, Jr., Deputy Director; William R. Burchill, Jr., General Counsel; Robert E. Feidler, Legislative and Public Affairs Officer; Karen K. Siegel, Judicial Conference and Management Coordination Officer; Wendy Jennis, Deputy Chief, Judicial Conference Secretariat; and David A. Sellers, Public Information Officer. Judge William W. Schwarzer and Russell R. Wheeler, Director and Deputy Director of the Federal Judicial Center, also attended the sessions of the Conference, as did Robb Jones, Administrative Assistant to the Chief Justice; Jonathan Entin, Jeff Jackson, and Janice Sumler-Edmond, Judicial Fellows; and Justice Robert D. Nicholson of the Supreme Court of Western Australia.

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

The Director of the Administrative Office of the United States Courts, L. Ralph Mecham, presented to the Conference a brief report summarizing the business of the courts for the calendar year 1991.

## JUDICIAL BUSINESS OF THE COURTS

Mr. Mecham reported that in 1991, total filings in the regional courts of appeals rose by more than eight percent to a record high of 44,465. The overall increase in appeals resulted, in part, from continued growth in criminal appeals from the U.S. district courts, which increased ten percent. Drug-related appeals, which accounted for 55 percent of all criminal appeals filed, increased approximately five percent over 1990. Appeals of decisions of the U.S. district courts on state and federal prisoner petitions rose nine percent. Bankruptcy appeals rose by more than 16 percent, due to the continued growth of cases in U.S. bankruptcy courts. Appeals of other civil and administrative agency cases increased slightly, while original proceedings declined slightly. The courts disposed of 41,905 appeals during the year, an increase of five percent from 1990. Appeals terminated on the merits increased by 1,459 cases or seven percent and accounted for 55 percent of all dispositions. With filings again outnumbering terminations, the pending caseload in the regional courts of appeals rose eight percent to 34,956. The increase in pending criminal appeals, which now number 10,253, was the major factor in the overall increase.

In the U.S. Court of Appeals for the Federal Circuit, filings rose nine percent from 1,474 in 1990 to 1,611. Appeals from the Merit Systems Protection Board increased 13 percent and accounted for 49 percent of the total filings. Over 100 cases, seven percent of the total filings, were appeals of decisions of the Court of Veterans Appeals and the Department of Veterans Affairs. Appeals terminated in the Federal Circuit increased slightly from 1,418 cases in 1990 to 1,442 in 1991. Since filings outnumbered terminations, the pending caseload rose by 170 cases, or nearly 25 percent.

In the U.S. district courts, civil filings increased three percent to 217,656 cases in 1991 after a decrease of six percent in 1990. The increase in civil filings reversed a declining trend which began in 1986. The decline in civil filings during the late 1980's resulted primarily from decreases in filings by the U.S. government to recover overpayment of veterans' benefits (VA cases) and defaulted student loans (referred to as recovery cases), and in filings against the United States for social security benefits. The overall increase in civil filings in 1991 reflected a return to higher levels of these types of filings. Suits filed by the U.S. Government to recover defaulted student loans rose 157 percent from 3,494 cases to 8,988. VA cases increased a substantial 19 percent, rising from 4,029 filings in 1990 to 4,956 last year. Suits filed against the U.S. for social security benefits increased 28 percent from 6,819 cases in 1990 to 8,756 in 1991. Notable increases occurred also in filings involving banks (35 percent), Employee Retirement Income Security Act filings (13 percent), and civil rights

filings (ten percent). Civil cases closed in the district courts rose seven percent in 1991, primarily because of an increase in the number of asbestos case closings. This increase in asbestos closings resulted from the transfer of a large number of cases by the Judicial Panel on Multidistrict Litigation to the Eastern District of Pennsylvania. Exclusive of asbestos cases, civil cases terminated in the U.S. district courts were down two percent to 198,395 in 1991. The pending civil caseload (excluding the transferred asbestos cases noted above) decreased five percent in 1991.

Criminal case filings declined one percent in 1991, largely because of a drop in drug prosecutions in the Southern District of Texas and drunk driving and traffic violations in a few districts with large national parks and military installations. Despite these declines, criminal case filings remained higher than they were in 1987 and the number of criminal defendants continued to grow. Drug cases rose from 11,408 in 1990 to 11,705 in 1991, but this three percent increase was modest compared to 20 percent increases that occurred only a few years ago. The number of defendants in drug cases rose only one percent from 22,525 in 1990 to 22,778 in 1991. The effect of Operation Triggerlock, an initiative launched by the Department of Justice to bring weapons charges against all defendants in possession of guns while committing criminal acts, particularly drug dealing, contributed to another significant increase in weapons and firearms filings, which rose 27 percent this year. Fraud case filings dropped three percent in 1991, but lending institution fraud cases increased 16 percent to 1,356. Criminal case dispositions decreased one percent this year, dropping to 42,265 from 42,636 cases last year. With filings exceeding terminations, the pending caseload rose ten percent. On December 31, 1991, there were 39,812 pending criminal cases involving 59,427 defendants.

During 1991, there were 943,987 cases filed in the U.S. bankruptcy courts, the largest number ever filed during a comparable twelve-month period and an increase of 21 percent over 1990. Bankruptcy terminations increased to 782,141, up nearly 19 percent from a year ago. As a result of the large number of new filings, the pending caseload reached an all-time high of 1,192,281 cases on December 31, 1991, a substantial 16 percent increase over the 1,030,443 cases pending last year. The increase in filings was due primarily to a 21 percent increase in non-business filings. Among non-business cases, Chapter 7 liquidations increased by 22 percent; Chapter 13 adjustments rose by 21 percent; and filings under Chapter 11, which represent only a fraction of the non-business total, increased by 28 percent. Business filings increased ten percent in 1991 to 71,549 cases. This growth resulted from a seven percent increase in Chapter 7 business filings, a 14 percent rise in Chapter 11 business reorganizations, and a 15 percent increase in Chapter 13 business debt adjustments. Filings of family farmer business debt adjustments under Chapter

12 also increased after a decline in 1990. There were 1,495 cases filed under Chapter 12 in 1991, up 11 percent from the 1,346 filings in 1990.

Mr. Mecham also reported that as of March 16, 1992, there were 24 vacancies among the 179 judgeships authorized for the United States courts of appeals, 96 vacancies among the 649 positions authorized for the United States district courts, and two vacancies on the United States Court of International Trade.

#### ACTIVITIES OF THE ADMINISTRATIVE OFFICE

Mr. Mecham reported that appropriations subcommittee hearings on the judiciary's fiscal year 1993 budget request, held in both the House and Senate in February, went well. However, based on initial indications from committee members, funding increases will be difficult to achieve given the overall budget limits. The judiciary is requesting a total of \$2.8 billion, an increase of approximately \$443 million, or 19 percent, over funds appropriated in the fiscal year 1992. Over the years, the Administrative Office's share of the judiciary budget has fallen as the judiciary has grown. Despite the downward trend in the Administrative Office's share of the judiciary's budget, the agency continues to strive to provide the judiciary with essential policy, program, legal and management assistance.

The Administrative Office has been involved in several high priority projects this year:

- Implementation of the Civil Justice Reform Act (CJRA) - The Administrative Office and the Federal Judicial Center (FJC) are reviewing plans, providing training, and preparing a report to Congress on the early implementation districts;
- Implementation of the report of the automation consultants - Project teams are developing final plans for implementing the 16 recommendations which fall into four general categories of organization, development, support, and management systems;
- Expansion of budget decentralization - Twenty-one courts were trained in 1991, and an additional 40 courts will be trained this spring;
- Review of automated financial systems - A team of consultants from the U.S. Department of the Treasury has begun identifying strengths and weaknesses and devising strategies for improvement of the judiciary's financial systems;

- Comprehensive review of the Judiciary Salary Plan (JSP) - The National Academy of Public Administration is conducting a study of the JSP. Extensive opportunities for court review and input are being provided;
- Update of staffing formulas - The Judicial Conference approved the new staffing formula for probation and pretrial services offices in September 1991 (JCUS-SEP 91, p. 63), the district clerks' work measurement study is in the final analysis phase, and studies in the bankruptcy and appellate clerks' offices are also underway;
- Space and facilities services and support - A working group comprised of judges and senior court managers has made recommendations in the areas of development of space and facilities "management plans," long range facilities planning, project development, financial management, staff support, and training in order to improve the space and facilities support and services provided to the judiciary. The recommendations are being sent to all chief judges for review and comment before an implementation plan is developed;
- Courthouse construction program - Last year the Congress authorized about \$750 million for new construction and alteration funding for the judiciary as compared to an average of \$63 million per year from 1981 to 1991. The current courthouse construction program for the judiciary appears to be the largest office building construction program undertaken by the federal government during this century; and
- Legislative priorities - Enactment of legislation giving the judiciary control of its space and facilities program is a top legislative priority, as are reforming the Judicial Survivors' Annuities System (JSAS), obtaining new bankruptcy judgeships, and securing revisions that would minimize the negative impact on the federal court system of proposed legislation creating a civil rights remedy in the federal courts for victims of gender-based violence.

As of February 1992, the Federal Judiciary Building in Washington, D.C., was about 77 percent complete, based on funding expended. There are no anticipated delays, and occupancy is scheduled for October 1992. It will accommodate the support elements of the judiciary in Washington, D.C., including the Administrative Office, the Federal Judicial Center, and the U.S. Sentencing Commission. Elements of the Supreme Court Library and Historical Society will be in the building, and there will also be three chambers for retired Supreme Court Justices.

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

The Director of the Federal Judicial Center, Judge William W Schwarzer, reported on the reorganization, effective January 1, 1992, of the Center's former Innovations and Systems Development Division into a Planning and Technology Division, which provides technology development for the Center's research, education, and administrative functions and also serves the Judicial Conference's Automation and Technology Committee and Long Range Planning Committee. The division is conducting several research projects for the Long Range Planning Committee and assisted in the March 17-18, 1992, long-range planning seminar, which the Committee asked the Center to design for chief circuit judges and Judicial Conference committee chairs.

The Center last year provided 50 educational programs for 2,400 judicial officers, 79 seminars and workshops for 3,200 supporting personnel, and 440 in-court training programs for 12,800 persons. Orientation of new probation and pretrial services officers continues to be a major element of Center education for supporting personnel. The Center has produced new videotaped lectures for district judge orientation and announced a three-year leadership development program for probation and pretrial services officers. It is also bolstering its capacity to provide the courts with curriculum packages, multi-media instructional material, and training support, looking toward the day when the courts will have the capacity and funding mechanisms to organize and plan local training programs to meet their specific needs effectively, with appropriate Center assistance but with less need for travel.

The Center's current research and support activities include major efforts to assist districts in implementing the Civil Justice Reform Act, analysis of the operation of Rule 11 of the Federal Rules of Civil Procedure, and congressionally-mandated research into alternative appellate structures and the impact of intercourt conflicts.

The Center has moved the publication date of its statutorily-mandated annual report from September to March, so that the report coincides with the calendar year.

### **ELECTION**

The Judicial Conference elected to membership on the Board of the Federal Judicial Center Judge Michael A. Telesca, Western District of New York, to replace Judge David W. Dowd, whose term expired on March 28, 1992.



## **EXECUTIVE COMMITTEE**

### **UNITED STATES CLAIMS COURT**

Section 8 of a draft "Claims Court Technical and Procedural Improvements Act of 1991" would amend 28 U.S.C. § 331 to add as a member of the Judicial Conference the Chief Judge of the United States Claims Court. The Executive Committee, determining that it would be inappropriate for an Article I judge to be a member of the Judicial Conference which is preeminently the policy-making body for the Article III courts, recommended opposition to section 8 of this draft legislation. The Conference approved this recommendation.

In September 1987, the Judicial Conference agreed not to object to the creation of an Article I Claims Court outside of the judicial branch. JCUS-SEP 87, p. 68. At a later session, with specific legislation before it, the Conference changed its position and voted to recommend to the Congress that the Claims Court remain a part of the Third Branch. JCUS-SEP 88, p. 76. The Executive Committee, after reviewing the history of the Article I status of the Claims Court, referred to the Budget and Court Administration and Case Management Committees the question of whether the Conference should re-adopt its earlier position of not objecting to the placement of the Claims Court outside of the judiciary. See also, "United States Claims Court," *infra*, pp. 17-18, 22-23, 23-24, 26.

### **RESOLUTION**

In recognition of the outstanding work of Chairman Damon J. Keith and the members of the Committee on the Bicentennial of the Constitution, the Executive Committee recommended, and the Judicial Conference approved, adoption of the following resolution:

The Judicial Conference of the United States recognizes  
with appreciation, respect and admiration the

HONORABLE DAMON J. KEITH  
HONORABLE HARRY A. BLACKMUN  
HONORABLE WARREN E. BURGER  
HONORABLE ARTHUR L. ALARCON  
HONORABLE FRANK X. ALTIMARI  
HONORABLE ADRIAN G. DUPLANTIER  
HONORABLE WILLIAM BREVARD HAND  
HONORABLE PATRICK F. KELLY  
HONORABLE ROBERT C. MURPHY

HONORABLE HELEN W. NIES  
HONORABLE JAMES E. NOLAND  
HONORABLE JAIME PIERAS, JR.,

Chairman and members of the Committee on the Bicentennial of the Constitution.

Since 1985, the Committee has engaged in a wide variety of outstanding projects designed to foster judicial and public education on the Constitution of the United States and the Bill of Rights. Videotapes depicting trials on major constitutional issues have been distributed to public television stations, courthouses and schools nationwide. The Committee co-sponsored the International Appellate Judges Conference in Washington in 1990, attended by hundreds of judges from throughout the world, showcasing the Constitution and the Bill of Rights. The Committee has published brochures on the Constitution and the Bill of Rights and distributed millions of copies to school children around the nation, as well as to jurors and naturalized citizens, and has bestowed grants and stipends for many research and education projects.

The Committee commissioned the production of bronze plaques containing the full text of the Bill of Rights, and has presented over 200 of those plaques to courthouses, universities, libraries, legislatures and other institutions around the world.

In October 1991, the Committee, in conjunction with the College of William and Mary, Marshall-Wythe School of Law, sponsored a conference in celebration of the Bicentennial of the Bill of Rights. This conference was attended by over 300 federal judges, the largest gathering of its kind, and involved symposiums on many aspects of the Bill of Rights by outstanding jurists, practitioners and scholars.

Despite the substantial time required to accomplish the tasks before them, Judge Keith and the Committee members continued to perform their regular judicial duties as judges of their respective courts.

Judge Keith and the members of the Committee have earned our deep respect and sincere gratitude for their

commitment to the success of this important celebration of our Constitution and our hearty congratulations for a job well done.

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The Executive Committee reported that, since the last session of the Judicial Conference in September 1991, it has taken the following actions on behalf of the Conference:

#### TEMPORARY BANKRUPTCY JUDGESHIPS

In October 1991, the Executive Committee considered legislative proposals in response to congressional concern that bankruptcy judgeships might remain authorized even after the need for them subsided. The Committee expressed preference for legislative language which includes periodic review of all bankruptcy judgeships by the Judicial Conference over the concept of "temporary" bankruptcy judgeships. At a later session in December 1991, the Committee agreed to a concept of temporary bankruptcy judgeships by which such judgeships would be properly defined, and approved a specific definition which parallels the district court temporary judgeship provision.<sup>2</sup>

#### CELLULAR TELEPHONES

At this session, the Judicial Conference endorsed a recommendation of the Committee on Automation and Technology that all courts or units choosing to purchase cellular telephones will be required to pay the recurring charges from funds allocated to the court, whether or not the funds have been allotted for that specific purpose (See "Cellular Telephones," *infra*, p. 15). The Executive Committee, in anticipation of the Conference's approval of this recommendation, approved a plan for its implementation, clarifying that it included those courts which already have cellular phones, such as those in the Eleventh Circuit, but excluded the four probation/pretrial services offices participating in a pilot test of cellular telephone technology. The implementation plan assumes that the Administrative Office can adjust its accounting system and assure that the new system places minimal burdens on court staff.

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<sup>2</sup> On March 16, 1992, the Executive Committee approved for transmission to Congress specific draft language proposed by the Committee on the Administration of the Bankruptcy System defining temporary bankruptcy judgeships.

## CIVIL JUSTICE REFORM ACT

To enable the Court Administration and Case Management Committee to proceed expeditiously with implementation of the Civil Justice Reform Act of 1990 (CJRA), the Executive Committee granted a delegation of authority to the Committee to meet the following requirements of the CJRA:

1. The continued provision of advice and technical policy determinations regarding day-to-day implementation of the Act;
2. Designation or certification of early implementation districts, with the understanding that upon denial of such designation or certification, a request for reconsideration may be made to the Judicial Conference;
3. Pursuant to section 474(b), the review of civil justice expense and delay reduction plans and reports submitted by all districts and the transmission of requests for additional action;
4. The selection of methods to reduce cost and delay in the Northern District of California, the Northern District of West Virginia, and the Western District of Missouri under the demonstration program required by section 104 of the Act;
5. The study of the demonstration program pursuant to section 104; and
6. The development of a model plan pursuant to section 477(a).

## MISCELLANEOUS ACTIONS

The Executive Committee:

- Ratified the current designation of the Administrative Office General Counsel as the "designated agency ethics official" for purposes of the procurement integrity provisions of the Office of Federal Procurement Policy Act;
- Approved a spending plan for the fiscal year 1992 for the "Salaries and Expenses" appropriation;
- Approved an exception to the current Conference policy and authorized relocation expenses to be paid for up to three employees, not to exceed \$25,000 per employee, incident to the establishment of the new Plano, Texas, bankruptcy court clerk's office and the forced transfer of positions to that office;

- Approved the agenda for the March 1992 sentencing institute for the Second and Eighth Circuits;
- Referred to the Judicial Branch Committee for study and report to the Judicial Conference in September 1992, issues concerning an experimental project in the United States Court of Appeals for the District of Columbia whereby judicial opinions interpreting statutes would be forwarded to the United States House of Representatives;
- Revised the jurisdictional statements of the Judicial Conference Committee on Codes of Conduct and the Committee on Court and Judicial Security, and changed the name of the Criminal Law and Probation Committee to the Committee on Criminal Law; and
- Agreed, as part of its oversight responsibility, to monitor the progress of AO/FJC relations and revisit the issue in a year.

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

##### STATISTICAL REPORTING YEAR

On recommendation of the Committee on the Administrative Office, the Judicial Conference changed the statistical reporting year from the year ended June 30 to the year ended September 30. This change will enable the numbers used for the judiciary's budget submission and for the *Annual Report of the Director* to be the same, ensuring consistency and facilitating analysis of funding and workload indicators. In addition, the change will align the judiciary's reporting year with the fiscal year used by the rest of the federal government, as well as save staff overtime costs and relieve time pressures generated by the former reporting schedule.

##### REPORTS AND PUBLICATIONS

The Judicial Conference endorsed the recommendations of the Committee to:

1. Eliminate the following publications:
  - a. *Glossary of Terms Used in the Federal Courts;*
  - b. *Federal Offenders in the U.S. Courts;*
2. Eliminate the following, with the proviso that the Administrative Office inform the courts about alternative sources of this information:

- a. *Surety Company List;*
  - b. *Nationwide Listing of Approved Transcription Services;* and
3. Draft and transmit legislation to Congress that would:
- a. Transfer to the Department of Justice wiretap reporting as required in the Omnibus Crime Control and Safe Streets Act, 18 U.S.C. § 2519(1), (2), and (3);
  - b. Transfer to the Department of Justice and other litigating agencies the Equal Access to Justice Act reporting requirement, 28 U.S.C. § 2412(d)(5); and
  - c. Eliminate the Right to Financial Privacy Act reporting requirement, 12 U.S.C. § 3421(a).

#### FREEDOM OF INFORMATION ACT

The Judicial Conference reaffirmed its 1986 opposition (JCUS-SEP 86, p. 59) to extension of the Freedom of Information Act (5 U.S.C. § 552) in its present form to the Administrative Office or to any other element of the federal judicial branch. The Conference concurred in the conclusions of the Committee that the exemptions included in the Act are inapposite and not easily adapted to the judiciary, and that certain material and information in the possession of the Administrative Office should be exempted with precision from compulsory disclosure to the public in any "sunshine" legislation made applicable to it.

#### COMMITTEE ON AUTOMATION AND TECHNOLOGY

##### LONG RANGE PLAN FOR AUTOMATION

The Judicial Conference approved the fiscal year 1992 update to the *Long Range Plan for Automation in the Federal Judiciary*, subject to the following understandings noted in the Report of the Committee on Automation and Technology: (1) that the Administrative Office not interpret the approval as *carte blanche* to commence any new initiatives contained therein until the Committee has the opportunity for further study; (2) that outstanding issues contained in the Federal Judiciary Automation Program Review concerning the role of the executive sponsors be resolved fully; and (3) that while the Administrative Office can enter into contractual agreements, authority is not granted to expend additional funds on the installed base of minicomputers except to maintain regular day-to-day operations.

## CELLULAR TELEPHONES

The Judicial Conference approved the recommendation of the Committee to seek funding from Congress for the purchase and recurring costs of cellular telephones for judicial officers and supporting personnel. In the interim, such purchases may be made only from other lawful spending sources. See also "CELLULAR TELEPHONES," *supra*, p. 11.

## LIBRARY PROGRAM

Upon recommendation of the Automation and Technology Committee, the Judicial Conference approved the following:

1. Amendments to the lists of basic lawbooks for judicial officers found in Vol. I, Chapter VIII, Part M, *Guide to Judiciary Policies and Procedures*;
2. The allocation of \$2,000 for each new or replacement judge for discretionary purchases of legal reference materials, subject to the availability of appropriated funds; and
3. The purchase of legal newspapers for judges, subject to the availability of appropriated funds.

## COMMITTEE ON ADMINISTRATION OF THE BANKRUPTCY SYSTEM

### PLACES OF HOLDING BANKRUPTCY COURT

Upon request of the Judicial Council of the Sixth Circuit, the Judicial Conference approved the elimination of Mansfield, Ohio, as a place of holding bankruptcy court for the Northern District of Ohio. The Conference also approved, upon request of the Judicial Council of the Sixth Circuit, the change in the designation of Corbin, Kentucky, as a place of holding bankruptcy court to "London or Corbin, Kentucky."

### BANKRUPTCY ADMINISTRATORS

The "Regulations of the Judicial Conference of the United States Governing the Selection and Appointment of Bankruptcy Administrators" (*Guide to Judiciary Policies and Procedures*, Vol. V, Chap. X) did not provide guidelines for the reappointment of bankruptcy administrators since, under the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Public Law No. 99-554), the bankruptcy administrator program was due to expire in 1992. However, the program was extended by the Judicial Improvements Act of 1990 (Public Law No. 101-650) until 2002. Thus, the

Judicial Conference, on recommendation of the Committee on the Administration of the Bankruptcy System, approved the amendment of the bankruptcy administrator appointment regulations to provide procedural guidelines for the reappointment of bankruptcy administrators whose original terms will soon expire.

#### **RECALL OF RETIRED BANKRUPTCY JUDGES**

In order to retain the skills and experience of the large number of bankruptcy judges for whom retirement is imminent, the Judicial Conference adopted regulations for an extended recall program for bankruptcy judges. These regulations will be published in the *Guide to Judiciary Policies and Procedures*.

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

On recommendation of the Committee on the Bicentennial of the Constitution, the Judicial Conference transferred remaining Committee funds to the Federal Judicial Center for the preparation of the Third Edition of *Judges of the United States*. The work of the Committee having been completed, the Conference approved its request for discharge.

#### **COMMITTEE ON THE BUDGET**

The Committee on the Budget reported on budgetary matters including the fiscal year 1992 appropriation, the status of the fiscal year 1992 financial plan, and the fiscal year 1992 supplemental request submission for defender services; efforts to coordinate the judiciary's budget submissions; and the status of budget decentralization.

#### **COMMITTEE ON CODES OF CONDUCT**

The Committee on Codes of Conduct reported that since its last report, the Committee had received 39 new written inquiries and issued 31 advisory responses. The Chairman received and responded to 44 telephonic inquiries. In addition, individual Committee members responded to 56 informal inquiries from their colleagues.

#### **FEDERAL ETHICS LAW REFORM**

The Judicial Conference approved the Committee's recommendations to amend its regulations implementing Titles III and VI of the Ethics Reform Act of 1989, relating to gifts and outside earned income, honoraria, and outside employment, to (1) cover the judges and employees of the Court of Veterans



Appeals; (2) reflect the amendments to the Ethics Reform Act relating to the change in the definition of "honorarium" and the exclusion from the limitation on outside earned income of compensation from approved teaching activities by certain senior judges; and (3) clarify when and under what circumstances prior approval for compensated teaching activities must be obtained.

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

### **PLACES OF HOLDING COURT**

Under the current policy established in September 1978 (JCUS-SEP 78, pp. 45-46), the Committee considers and makes recommendations to the Judicial Conference on changes in the geographical configuration and organization of existing judicial districts only if the changes are viewed favorably by both the affected court(s) and the circuit judicial council. Although the Committee on Court Administration and Case Management recommended a revision of the current Judicial Conference policy, the Judicial Conference declined to change it.

### **JURY MATTERS**

Noting that difficulties occasionally arise in the application of the Jury Selection and Service Act to the restoration of civil rights of persons convicted of felonies (28 U.S.C. § 1865(b)(5)), the Conference agreed to urge Congress to amend the Act to allow for easier and more uniform application in qualifying persons who have been convicted in a state or federal court of a crime punishable by imprisonment for more than one year.

### **UNITED STATES CLAIMS COURT**

On the recommendation of the Committee, the Judicial Conference took the following actions with respect to the proposed "Claims Court Technical and Procedural Improvements Act of 1991" (See also "United States Claims Court," *supra*, p. 9, and *infra*, pp. 22-23, 23-24, 26):

1. Supported the proposed amendments contained in
  - a. Section 11(a) which would expand the places outside of Washington, D.C., where the Claims Court can hold court;
  - b. Section 13 providing the Claims Court with authority, like district courts and the Court of International Trade, to order payment of costs whenever an action is dismissed for lack of jurisdiction;

- c. Section 14 which specifies that the Claims Court be included in the definition of "a court of the United States" for the limited purposes of 28 U.S.C. § 1821 (*per diem* and mileage for witnesses), 28 U.S.C. § 1915 (proceedings *in forma pauperis*), 28 U.S.C. § 1920 (taxation of costs) and 28 U.S.C. § 1927 (counsel's liability for excessive costs); and
  - d. Section 15 which would give the Claims Court contempt powers;
- 2. Opposed the proposed amendment contained in section 2, to change the name of the Court to the United States Court of Claims, but supported a subsequent Claims Court proposal to change its name to the "United States Court of Federal Claims"; and
  - 3. Took no position on section 11(c), authorizing Claims Court proceedings to be held in a foreign country upon order of the chief judge, pending receipt of comments from the Department of State and further review by the Committee on Court Administration and Case Management.

#### FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES AUTHORIZATION ACT OF 1991

Section 308 of the proposed Federal Property and Administrative Services Authorization Act of 1991 (H.R. 3161) would (1) shorten the time in which a party has to file an appeal under the Act; and (2) transfer appellate jurisdiction over GSA Board of Contract Appeals cases from the United States Court of Appeals for the Federal Circuit to the United States Court of Appeals for the District of Columbia Circuit. Upon recommendation of the Committee, the Judicial Conference supported shortening the time for filing an appeal from the GSA Board of Contract Appeals and opposed the transfer of appellate jurisdiction of such cases to the District of Columbia Circuit.

#### COMMITTEE ON COURT AND JUDICIAL SECURITY

##### BACKGROUND INVESTIGATIONS OF COURT EMPLOYEES

The Judicial Conference approved the recommendation of the Committee on Court and Judicial Security that courts be authorized, on a limited basis, to request a "record check" (name, fingerprint, credit or National Crime Information Center check) where the court is appointing or promoting an employee to what it considers a sensitive position.

## EDUCATIONAL PROGRAMS

In order to raise the security consciousness of the judiciary, the Conference endorsed a policy to incorporate the subject of judicial security in the education programs of the Federal Judicial Center, circuit conferences, or other entities.

## COMMITTEE ON CRIMINAL LAW

### SENTENCING INSTITUTE

The Judicial Conference approved a sentencing institute for the judges of the Third, Seventh, and District of Columbia Circuits in the fall of 1992, at a site to be determined, subject to the development and approval of the agenda.

### SENTENCING COMMISSION

The Conference approved for submission to the United States Sentencing Commission the *Annual Report of the Judicial Conference of the United States to the United States Sentencing Commission, March 1992*, required by 28 U.S.C. § 994(o).

## COMMITTEE ON DEFENDER SERVICES

### APPOINTMENTS AND PAYMENTS

The Defender Services Committee reported that during the fiscal year 1991, approximately 78,594 persons were represented in United States courts pursuant to the provisions of the Criminal Justice Act (CJA), compared to 71,608 appointments in the fiscal year 1990 and 69,954 appointments in the fiscal year 1989. This represents an increase of 12 percent over the fiscal year 1990 and 12.4 percent over the fiscal year 1989. Of the 78,594 persons represented, approximately 49.1 percent were represented by federal public and community defender organizations.

### FUNDING OF 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 for fiscal years 1992 and 1993 from federal public defender organizations and traditional community defender organizations, as follows:

Federal Public Defender Organizations

<u>Fiscal Year 1992</u>	<u>Amount Approved</u>
California (Eastern)	\$ 74,419*
District of Columbia	236,076*
Nebraska	679,219
Oklahoma (Eastern & Northern)	450,557**
Oklahoma (Western)	615,948**
South Carolina	10,583*

<u>Fiscal Year 1993</u>	<u>Amount Approved</u>
California (Eastern)	\$ 99,610*
District of Columbia	389,675*
Nebraska	921,345
Oklahoma (Eastern & Northern)	561,564***
Oklahoma (Western)	737,146

\* Supplement to previously approved budget

\*\* The \$450,557 budget and the \$615,948 budget represent a reallocation of the \$1,066,505 previously approved budget for the single organization which had served all three districts.

\*\*\* This includes a budget supplement of \$76,648.

Community Defender Organizations

<u>Fiscal Year 1992</u>	<u>Amount Approved</u>
Montana Federal Defender Project Federal Defender Program, Inc.	\$662,689
Georgia (Northern)	294,000*
The Legal Aid Society New York (Eastern & Southern)	219,400*

<u>Fiscal Year 1993</u>	<u>Amount Approved</u>
Montana Federal Defender Project The Legal Aid Society New York (Eastern & Southern)	\$761,340 260,000*

\* Supplement to previously approved grant.

## FUNDING FOR DEATH PENALTY RESOURCE CENTERS

The Committee also reviewed and approved requests for fiscal year 1992 and 1993 funding for death penalty resource centers as set forth below:

<u>Fiscal Year 1992</u>	<u>Amount Approved</u>
Arkansas Death Penalty Resource Center	\$187,024
Capital Case Resource Center of Tennessee	101,600*
Nevada Appellate and Post-Conviction Legal Education Project	218,339
Pennsylvania Death Penalty Resource Center	350,405
Virginia Post Conviction Assistance Project	314,928
<u>Fiscal Year 1993</u>	<u>Amount Approved</u>
Arkansas Death Penalty Resource Center	\$277,450
Georgia Appellate Practice and Educational Resource Center, Inc.	723,427
Illinois Capital Resource Center	611,229
Nevada Appellate and Post-Conviction Legal Education Project	202,888
Pennsylvania Death Penalty Resource Center	405,500
Virginia Post Conviction Assistance Project	408,709

\* Supplement to previously approved grant.

## CRIMINAL JUSTICE ACT COMPENSATION

At its September 1991 session, the Judicial Conference delegated to the Defender Services Committee the authority to approve attorney pay cost adjustments for districts and in individual cases (JCUS-SEP 91, p. 57). Pursuant to that authority, the Committee, upon consideration of the results of a survey, the recommendations of the judicial councils for the circuits, and the recommendations of the Administrative Office, approved pay cost adjustments of \$75 per hour for in-court and out-of-court services for 28 districts as follows. Such adjustments are subject, as always, to the availability of funds.

Alabama (Northern)	North Carolina (Eastern)
Alabama (Middle)	North Carolina (Middle)
Arkansas (Eastern)	North Dakota
Colorado	Northern Mariana Islands
Delaware	Oklahoma (Northern)
Georgia (Middle)	Oklahoma (Eastern)
Georgia (Southern)	Oklahoma (Western)
Iowa (Northern)	Pennsylvania (Eastern)
Iowa (Southern)	Puerto Rico
Kansas	Utah
Minnesota	Vermont
Montana	Virgin Islands
New Hampshire	Washington (Eastern)
New York (Western)	Wyoming

The Committee also approved for the District of Hawaii, an increase to \$75 of the pay cost adjustment of \$70 per hour for both in-court and out-of-court services currently in effect.

#### REIMBURSEMENT FROM FORFEITED ASSETS

The application of asset forfeiture provisions has resulted in a number of defendants becoming eligible for the appointment of counsel pursuant to the CJA who, but for the forfeiture of their assets, would have retained counsel. Thus, asset forfeitures result in additional costs to the Defender Services appropriation. On recommendation of the Committee, the Judicial Conference endorsed efforts by the Administrative Office to obtain legislation to reimburse the Defender Services appropriation from the Department of Justice Assets Forfeiture Fund for those costs associated with providing CJA representation for defendants whose assets have been forfeited.

#### COMMITTEE ON FEDERAL-STATE JURISDICTION

##### UNITED STATES CLAIMS COURT

Section 12 of the proposed "Claims Court Technical and Procedural Improvements Act of 1991" provides for (1) an extension of the Claims Court's power to issue declaratory judgments; (2) a grant of jurisdiction to the Claims Court to hear ancillary claims arising under the Federal Tort Claims Act; (3) the repeal of 28 U.S.C. § 1500, which prohibits the Claims Court from hearing plaintiffs' claims if they have related cases pending in other courts; and (4) modification to existing claim certification requirements, such that current jurisdictional thresholds could be waived by the government in certain cases. Because such expansion of jurisdiction for the Claims Court may have the

unintended effect of granting the Claims Court jurisdiction beyond the confines of Article I, the Judicial Conference opposed this section of the proposed Act. See also, "United States Claims Court," *supra*, pp. 9, 17-18, and *infra*, pp. 23-24, 26.

### **COMMITTEE ON INTERCIRCUIT ASSIGNMENTS**

The Committee on Intercircuit Assignments reported that during the period August 1, 1991, through December 31, 1991, 82 intercircuit assignments were recommended by the Committee and approved by the Chief Justice to be undertaken by 62 Article III justices and judges. Of this number, two were retired associate justices, 17 were senior circuit judges, eight were active circuit judges, 27 were senior district judges, five were active district judges, two were senior judges of the Court of International Trade, and three were active judges of the Court of International Trade.

### **COMMITTEE ON THE JUDICIAL BRANCH**

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

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

1. Allow a higher daily rate for reimbursement of actual subsistence expenses in localities in which special or unusual circumstances result in a temporary increase in subsistence costs or otherwise render the ordinary expense allowance inadequate;
2. Allow judicial nominees and newly appointed judges to be reimbursed for travel expenses incurred in attending orientation programs sponsored by the Administrative Office or the courts to which they have been nominated or appointed; and
3. Allow, for travel to locations outside the conterminous United States, a reduced per diem on the last day of travel, or where lodging is obtained by purchase order, that is equivalent to the applicable GSA meals and incidental expense rate.

#### **UNITED STATES CLAIMS COURT**

On recommendation of the Judicial Branch Committee, the Judicial Conference took the following positions on the proposed "Claims Court

Technical and Procedural Improvements Act of 1991" (see also, "United States Claims Court," *supra*, pp. 9, 17-18, 22-23 and *infra*, p. 26):

1. Supported enactment of section 5, which would exempt retired judges of that court from the social security tax and "earnings test" during recall service, if modified to apply exclusively to judges who retire under 28 U.S.C. § 178(a) or (b) and perform recall service under § 178(d);
2. Supported enactment of section 6, which would treat judges of that court as "judges of the United States" for purposes of federal employee insurance and annuity programs, if modified to state that Claims Court judges are "officers" within the meaning of section 2104(a) of title 5, United States Code; and
3. Opposed enactment of section 9, which would exempt retired judges of that court from recall service under 28 U.S.C. § 375, and allow judges who retire under 28 U.S.C. § 178 to perform voluntary recall service under § 797 of that title.

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

The Judicial Ethics Committee reported that as of January 1992, it had received 2,040 financial disclosure reports and certifications for the calendar year 1990, including 1,034 reports and certifications from justices and Article III judges, 294 from bankruptcy judges, 357 from magistrate judges, and 355 from judicial employees.

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

##### **SALARY MATCHING**

In order to improve the courts' ability to compete with other employers for top quality candidates, the Judicial Conference endorsed the recommendation of the Committee on Judicial Resources that the judiciary's salary matching policy be revised. This policy, which allows setting the pay of employees entering the federal service at higher than the first step of the applicable grade in certain circumstances, is amended to (1) extend coverage of the policy to temporary appointments; (2) allow setting of salary at up to 20 percent above the applicant's current, non-federal salary, but not to exceed the rate for step ten of the grade at which the applicant is appointed; (3) allow setting of salary at a higher rate for applicants without current income or a bona fide employment offer, if the candidate has a reasonable prospect of obtaining



employment at the former salary level; (4) allow consideration of the value of the applicant's current fringe benefits, if they are substantially better than those offered by the federal government; and (5) redefine "bona fide offer" to encompass a written offer that does not include a salary commitment.

#### SAVED GRADE AND SAVED PAY

The Judicial Conference approved the Committee's recommended revision to the saved grade and saved pay policy to provide the same coverage for secretaries of deceased judges as is currently provided for other covered court employees, with the exception that the two-year saved grade period will be reduced by any time the secretary has been retained in the secretarial position following the judge's death.

#### JUDICIARY SALARY PLAN MODIFICATIONS

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

1. Approved revisions to the benchmark standards for supervising probation and pretrial services officers, that would allow one additional grade above the highest target grade of at least two non-supervisory subordinate officer positions, if there are at least three subordinates in total, and if the highest graded subordinates constitute at least 25 percent of the total staff supervised;
2. Approved an increase in the target grade for supervising staff attorneys to JSP-15;
3. Approved an increase in the target grade of secretary to the circuit librarian to JSP-9, and the deletion of the requirement for law library experience for that position;
4. Approved revisions to the benchmark standard for assistant systems managers, deleting the restriction which limits use of the standard to those courts where the systems manager supervises an automation support staff of six or more full-time positions;
5. Approved an upgrade of the training center manager (automation) position to JSP-14;
6. Approved the upgrade and retitling of the central violations bureau administrator position to central violations bureau manager, JSP-12, and

approved revision of the qualification requirements to include managerial experience;

7. Established a benchmark standard for appellate transcript coordinator, JSP-9;
8. Approved a revision which would allow a court whose size warrants classification of a grade JSP-18 for its clerk of court or chief probation officer to establish an organizational structure which consists of a chief deputy clerk or deputy chief probation officer at the appropriate grade of either JSP-15 or JSP-16 (depending upon the target grade of the unit head) and up to two JSP-14 mid-managerial positions, exclusive of appropriately classified deputy-in-charge positions, regardless of whether the grade of the district clerk in a given district prevents the bankruptcy clerk or chief probation officer in that district from being assigned to the JSP-18 grade level; and
9. Approved a revision to the benchmark standard for chief deputy clerks and deputy chief probation officers to allow a JSP-16 target grade for a chief deputy district clerk, a chief deputy bankruptcy clerk, and a deputy chief probation officer in courts where the clerk or chief probation officer is graded JSP-18.

#### ADMINISTRATIVE ASSISTANT TO THE CHIEF DISTRICT JUDGE IN THE DISTRICT OF COLUMBIA

The Judicial Conference approved an upgrade of the position of administrative assistant to the Chief District Judge in the District of Columbia to JSP-15.

#### UNITED STATES CLAIMS COURT

Under section 10 of the proposed "Claims Court Technical and Procedural Improvements Act of 1991," Claims Court judges would be authorized to appoint an equal number of law clerks and secretaries as the number allowed under Conference rules for district court judges. This provision would be a statutory restriction on the Judicial Conference's authority to determine the appropriate number of chambers employees for a specific group of judges. On recommendation of the Committee on Judicial Resources, the Conference opposed section 10 of the proposed legislation, on the ground that legislation is an inappropriate mechanism to determine chambers staffing requirements. See also, "United States Claims Court," *supra*, pp. 9, 17-18, 22-23, 23-24.

## STAFFING GUIDELINES FOR NON-UNIX COURTS

The Judicial Conference endorsed the Committee's recommendation to adopt for courts operating NIBS (National Interim Bankruptcy System), JAMS (Judiciary Automation Management System), and other non-UNIX automation systems that are of complexity similar to that of UNIX-based systems, the current staffing guidelines that are applicable to UNIX-based courts, provided that such systems, other than NIBS or JAMS, are certified by the Committee on Automation and Technology. The revisions to the staffing guidelines will provide non-UNIX courts with the position additives needed to operate systems which have requirements similar to those of the UNIX systems.

## CONTRACT COURT REPORTERS

In order to provide temporary relief while a study of the present method for assigning court reporter positions to the courts is being conducted, the Judicial Conference amended its policy so as to allow a court to hire a contract court reporter when all of the following conditions exist:

1. The official court reporter has requested relief because a judge has scheduled more than one trial per day, and the reporter is reporting for at least five hours on each such day;
2. The chief judge of the district certifies that a judge has scheduled more than one trial per day requiring reporting services for five or more hours per day, and the court's other official court reporters are unable to cover the proceedings because they are scheduled to report other proceedings or are on leave;
3. The purpose for considering and approving the relief is not to allow the official court reporter to work on transcript production; and
4. An official court reporter not under a tour of duty who is providing relief is prohibited from engaging in private reporting work on those days relief is provided.

## GRADE AND TITLE OF SECRETARIES TO JUDGES

Declining to overrule a Committee decision to disapprove a request to change the title of the benchmark standard from secretary to a federal judge to administrative assistant or chambers administrator, and to increase the target grade of the benchmark from JSP-11 to JSP-13, the Judicial Conference recommitted to the Judicial Resources Committee for study and a report to the

September 1992 session of the Conference, the issues of (1) grade and title of secretaries to judges; and (2) grade of principal secretary to chief district judges.

#### PRO SE LAW CLERKS

The Judicial Conference affirmed the Judicial Resources Committee's disapproval of a request to extend to pro se law clerks the JSP-15 and JSP-16 grade levels available for "elbow," or chambers, law clerks.

#### COMMITTEE ON LONG RANGE PLANNING

The Committee on Long Range Planning reported that in addition to assigning to each member a liaison responsibility with other Conference committees, the Chairman has assigned oversight responsibilities over general tasks such as (1) establishing a mission/role for the judiciary; (2) providing planning support to judicial planners; (3) assessing court structure and governance; and (4) developing a planning handbook to guide those in the judiciary whose duties involve strategic planning.

#### COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

##### PART-TIME MAGISTRATE JUDGES

On recommendation of the Magistrate Judges Committee, the Judicial Conference adopted a new salary structure for part-time magistrate judges. This new structure reduces the number of salary levels from 14 to the following eight levels:

<u>Level</u>	<u>Salary</u>
8	\$ 3,000
7	5,000
6	10,000
5	20,000
4	30,000
3	40,000
2	50,000
1	55,000

The Judicial Conference also adopted the following plan for transition from the current salary structure to the new salary structure:

<u>Former Salary Level or Salary</u>	<u>New Salary Level</u>
1	8
2 & \$3,265	7
3, 4, & \$7,740	6
5, 6, 7, 8,	5
9, 10	4
11, 12	3
13, 14	2

Notwithstanding the above transition plan, the salaries of the following part-time magistrate judge positions will be maintained at their current levels until further specific action of the Judicial Conference: Abilene, Texas; Santa Barbara, California; Barstow (or Victorville), California; Oxnard (or Ventura), California; Long Beach, California; South Lake Tahoe, California; Hilo, Hawaii; and McAlester, Oklahoma.

In order to clarify what is expected of part-time magistrate judges, the Conference adopted the Committee's proposed "General Expectations of Part-Time Magistrate Judges." These expectations, which follow, are intended to apply to all part-time magistrate judges except those compensated at level eight, although it is hoped that the level eight magistrate judges would meet the expectations to the extent practicable:

1. The part-time magistrate judge will be available to the district court and law enforcement agencies on a reasonable basis, notwithstanding that such availability may interrupt other activities.
2. The part-time magistrate judge will stay abreast of legal, procedural and administrative developments related to the performance of official duties by reading the *Legal Manual for United States Magistrate Judges* and other appropriate materials.
3. The part-time magistrate judge will timely review training materials and attend training seminars offered by the Federal Judicial Center.
4. The part-time magistrate judge will confer with the court at the headquarters of the court or other designated location at least once each year, if summoned by the court.
5. The part-time magistrate judge will serve as back-up to the district's full-time magistrate judges for reasonable lengths of time on request (e.g.,

when the full-time magistrate judges attend FJC seminars or circuit conferences).

6. The part-time magistrate judge will ensure that all appropriate paperwork is filled out in accordance with instructions. The JS 43 statistical report forms will be completed on a timely basis and submitted to the Magistrate Judges Division of the Administrative Office.
7. The part-time magistrate judge will follow the rules and regulations established by the Judicial Conference, particularly those related to conflicts-of-interest and the reimbursement of expenses.

#### MISDEMEANOR TRIALS

Consistent with its policy endorsing the elimination of written consent in misdemeanor cases (JCUS-SEP 91, p. 66), the Judicial Conference, on recommendation of the Magistrate Judges Committee, endorsed in principle an "opt out" or waiver system for obtaining the consent of the defendant to trial before a magistrate judge in a misdemeanor case.

#### ADJOINING DISTRICT JURISDICTION

In order to clarify adjoining district jurisdiction, the Judicial Conference authorized the following:

1. The full-time magistrate judge at Knoxville, Tennessee, and the full-time magistrate judge at Knoxville (or Chattanooga), Tennessee, to serve in the adjoining Western District of North Carolina;
2. The full-time magistrate judge at Richmond, Virginia, to serve in the adjoining Eastern District of North Carolina and the Western District of Virginia; and
3. The part-time magistrate judge at Richmond to serve in the adjoining Eastern District of North Carolina and the Western District of Virginia.

To avoid confusion as to which positions have been specifically designated to serve in adjoining districts, the Conference passed the following resolution extending existing adjoining district jurisdiction designations to all magistrate judge positions subsequently authorized at the same location:

Where a full-time or part-time magistrate judge position has been authorized specifically by the Judicial Conference to exercise adjoining district jurisdiction, any full-time or part-time

magistrate judge position established subsequently at the same location is authorized to exercise the same jurisdiction. This resolution is to apply prospectively, and to all existing positions.

### CHANGES IN MAGISTRATE JUDGE POSITIONS

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

#### FIRST CIRCUIT

##### Massachusetts

1. Authorized an additional full-time magistrate judge position at Boston; and
2. Made no other changes in the number, locations, salaries, or arrangements of the magistrate judge positions in the district, except as noted above in the section entitled "Part-Time Magistrate Judges," *supra* pp. 28-30.

##### Rhode Island

1. Converted the part-time magistrate judge position at Providence to full-time status;
2. Increased the salary of the part-time magistrate judge position at Providence from \$33,513 to \$47,877 per annum until such time as the new full-time magistrate judge at Providence is appointed; and
3. Made no other changes in the number, locations, salaries, or arrangements of the magistrate judge positions in the district, except as noted above in the section entitled "Part-Time Magistrate Judges," *supra* pp. 28-30.

#### SECOND CIRCUIT

##### New York, Eastern

1. Authorized an additional full-time magistrate judge position at Brooklyn;

2. Authorized a full-time magistrate judge position at Uniondale; and
3. Made no other changes in the number, locations, salaries, or arrangements of the magistrate judge positions in the district, except as noted above in the section entitled "Part-Time Magistrate Judges," *supra* pp. 28-30.

#### THIRD CIRCUIT

##### New Jersey

1. Authorized an additional full-time magistrate judge position to serve the court at Newark; and
2. Made no other changes in the number, locations, salaries, or arrangements of the magistrate judge positions in the district, except as noted above in the section entitled "Part-Time Magistrate Judges," *supra* pp. 28-30.

#### FOURTH CIRCUIT

##### North Carolina, Western

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

#### FIFTH CIRCUIT

##### Texas, Western

1. Authorized an additional full-time magistrate judge position at Austin or Waco;
2. Converted the part-time magistrate judge position at San Antonio to a full-time position;
3. Authorized an additional full-time magistrate judge position at Midland-Odessa or Pecos;
4. Increased the salary of the part-time magistrate judge position at Midland (or Odessa) from \$23,938 to \$47,877 per annum;



5. Discontinued the part-time magistrate judge positions at Pecos and Midland (or Odessa) upon the appointment of the new full-time magistrate judge at Midland-Odessa or Pecos; and
6. Made no other changes in the number, locations, salaries, or arrangements of the magistrate judge positions in the district, except as noted above in the section entitled "Part-Time Magistrate Judges," *supra* pp. 28-30.

#### SIXTH CIRCUIT

##### Ohio, Northern

1. Authorized a new full-time magistrate judge position to serve the court at Cleveland; and
2. Made no other changes in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

#### EIGHTH CIRCUIT

##### Missouri, Eastern

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

#### NINTH CIRCUIT

##### Alaska

1. Converted the part-time magistrate judge position at Anchorage to full-time status; and
2. Made no other changes in the number, salaries, or locations of the magistrate judge positions in the district, except as noted above in the section entitled "Part-Time Magistrate Judges," *supra* pp. 28-30.

##### California, Northern

Increased the salary of the part-time magistrate judge position at Eureka from \$4,787 to \$7,180 per annum.

Oregon

Increased the salary of the part-time magistrate judge position at Medford from \$7,180 to \$28,726 per annum.

TENTH CIRCUIT

Oklahoma, Western

1. Converted the part-time magistrate judge position at Oklahoma City to full-time status;
2. Discontinued the part-time magistrate judge position at Altus; and
3. Made no other changes in the number, locations, salaries, or arrangements of the magistrate judge positions in the district, except as noted above in the section entitled "Part-Time Magistrate Judges," *supra* pp. 28-30.

ELEVENTH CIRCUIT

Florida, Southern

Increased the salary of the part-time magistrate judge position at Fort Pierce from \$4,787 to \$23,938 per annum.

Georgia, Middle

1. Converted the part-time magistrate judge position at Albany to a full-time magistrate judge position at Macon or Albany; and
2. Made no other changes in the number, locations, salaries or arrangements of the magistrate judge positions in the district, except as noted above in the section entitled "Part-Time Magistrate Judges," *supra* pp. 28-30.

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

**COURT OF VETERANS APPEALS**

Under section 3 of Public Law 102-82, the Court of Veterans Appeals, an Article I court not subject to the administrative authority of the Judicial Conference (with the limited exception of the filing of financial disclosure reports

under 28 U.S.C. App. II) is required to establish procedures, consistent with 28 U.S.C. § 372(c), for the filing, investigation, and resolution of complaints with respect to the conduct or disability of any judge of the Court. However, there is no statutory provision for independent review of the Court's disciplinary actions. Upon request of the Chief Judge of the Court for the views of the Judicial Conference, the Committee recommended and the Conference approved a communication to the Court of Veterans Appeals and the Congress that the Conference does not object to properly drafted legislation providing the Conference a review role over the disposition of conduct and disability complaints involving judges of the Court of Veterans Appeals, but only if (1) consistent treatment is given to other Article I courts outside the Conference structure in the event they were to adopt a procedure pursuant to 28 U.S.C. § 372(c); and (2) it is clarified that the Conference is not thereby required to assume any other administrative function vis-a-vis those courts (except the review of financial disclosure reports, already independently required by law).

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

The Committee on Rules of Practice and Procedure reported that, at the request of the Chief Justice, it has asked the chairs and reporters of the advisory committees to include with any proposed rules changes to be submitted to the Supreme Court, a summary to indicate which of the proposed changes were the subject of substantial controversy, the arguments made on both sides, the reasoning of the committees in deciding the controversial matters the way they did, information regarding divisions of opinion within the responsible committees, and any substantial objections to the proposed changes. In addition, a plan for the review by the Style Subcommittee of proposed amendments to the various federal procedural rules has been adopted, and a review of the proposed rules amendments currently in circulation will be completed before the next Committee meeting.

#### **COMMITTEE ON SPACE AND FACILITIES**

##### *UNITED STATES COURTS DESIGN GUIDE*

The Judicial Conference approved amendments to the *United States Courts Design Guide*, recommended by the Committee on Space and Facilities, (1) making a technical change relevant to the number of judicial officers required for establishment of satellite and unstaffed court libraries; and (2) adding language concerning accessibility of federal defender offices.

## SPACE EMERGENCY IN BROOKLYN, NEW YORK

On recommendation of the Committee, the Judicial Conference approved the following resolution concerning the serious housing situation in the Eastern District of New York at Brooklyn:

WHEREAS, in September 1989, the Judicial Conference of the United States declared, for the first and only time to date, a "judicial space emergency" in the Eastern District of New York at Brooklyn due to the serious lack of adequate facilities in which to conduct court business, and no significant progress has been made toward resolving the court's critical housing problems; and

WHEREAS, within the next several months four judges will be eligible and may take senior status and no courtrooms or chambers are available for these judicial officers; and

WHEREAS, the court's caseload during the last five years has increased 12 percent as compared to a national decrease of 14 percent; for the year ended June 30, 1991, the workload of the court increased nine percent compared to a national decrease of four percent; and over the last five years the court devoted roughly 60 percent of its trial time to criminal cases, as compared to a national average of 40 percent; and

WHEREAS, in spite of the efforts of the Congress to direct the Executive Branch's General Services Administration to resolve the judicial space emergency, the Executive Branch has been unable to provide a solution to the long term housing needs of the Judiciary in Brooklyn;

NOW THEREFORE, the Judicial Conference of the United States reaffirms the urgent need to alleviate the critical housing problems of the court at Brooklyn, New York, by endorsing a plan to move the court into a renovated and greatly expanded Brooklyn General Post Office Building, and requests that all interested parties be advised of this resolution, including Congressmen and Senators from New York, the Chairmen of the House and Senate Public Works and Postal Service Committees and respective Subcommittee Chairmen, the Director of the Office of Management and Budget, and the Administrator of General Services.

## RESOLUTIONS

In appreciation of Judge Donald P. Lay, the Judicial Conference adopted the following resolution:

The Judicial Conference of the United States, recognizes with appreciation, respect and admiration the

HONORABLE DONALD P. LAY

of the United States Court of Appeals for the Eighth Circuit.

Judge Lay was appointed to the Court of Appeals on July 22, 1966, where he served for twenty-five years. At the time of his appointment, at the age of thirty-nine, he was the second youngest person to be appointed to the Court of Appeals. From January 1, 1980, until January 7, 1992, he served as the circuit's chief judge.

Judge Lay was a member of the United States Judicial Conference's Committee on Trial Practice and Technique from 1969-1970; a consultant to the Federal Judicial Center's Advisory Committee on State-Federal Relations from 1968-1970; a member of the Advisory Committee on Appellate Rules from 1973-1978; and a member of the Executive Board of the American Judicature Society from 1979-82. Since 1979, he has served on the U.S. Judicial Conference, the longest tenure of any chief judge in the nation.

Among Judge Lay's many distinctive honors was the Hanker-Finkbins Award from the University of Iowa in 1980, and a judicial achievement award as the Outstanding Federal Appellate Judge of the year in 1982, by the American Trial Lawyers. In 1988, he was awarded the prestigious Herbert Harley Award by the American Judicature Society in recognition of his contribution to the administration of justice.

Judge Lay's years as Chief Judge of the Eighth Circuit Court of Appeals have been marked by his commitment to opening the judicial process. During his tenure, federal practice committees were formed in each district to allow lawyers to have a greater voice in district court rules and procedures. In addition, selective invitations to the Eighth Circuit Judicial Conference were abandoned and open registration of all attorneys was adopted.

Circuit and district court historical societies were organized with the goal of preserving histories of all judges by videotape and portrait.

His commitment to civil rights is unparalleled. He has actively promoted the development of federal public defender programs and death penalty resource centers in the Eighth Circuit. In over 1,000 opinions, he has authored major death penalty cases, significant decisions on Indian law, and important cases dealing with free speech and women's rights. He has written extensively on federal habeas corpus and authored the dissent adopted by the Supreme Court in its landmark decision establishing due process for federal and state prisoners.

Judge Lay's friend and Eighth Circuit colleague, Senior Judge Myron H. Bright has said of him, "As a judge, he has been doggedly devoted to the pursuit of equal justice for everyone in this country and in his opinions for the court, has extended civil rights to all citizens regardless of race, sex, or religion."

For his principled leadership, his unyielding dedication to the work of the court, and his compassionate commitment to those served by the courts, we thank him and extend our highest esteem and gratitude.

\* \* \* \* \*

On behalf of the Judicial Conference, the Executive Committee adopted the following resolution:

The Judicial Conference of the United States, recognizes with appreciation, respect and admiration the

HONORABLE AUBREY E. ROBINSON, JR.

Chief Judge of the United States District Court for the District of Columbia and a member of this Conference from September 14, 1982, to March 30, 1992.

During his tenure on the federal bench, Judge Robinson has served the Conference and the judiciary in many capacities, including membership on the Ad Hoc Committee on Court Facilities and Design, 1971-1975; the Committee on Administration of the Criminal Law, 1977-1983; the Committee to Study the

Judicial Conference, 1986-1987; and the Board of the Federal Judicial Center and its *Bench Book* Committee, 1978-1982. Both Retired Chief Justice Burger and Chief Justice Rehnquist demonstrated their confidence in Judge Robinson's effectiveness, reliability, and judgment by appointing him to the Executive Committee of the Judicial Conference. While serving on the Executive Committee, Judge Robinson's adjunct assignments included serving on the ad hoc committee to develop strategy for consideration and appropriate action on the Civil Justice Reform Act of 1990, and chairing the Legislative Liaison Group, the organization of the Executive Committee that coordinates contacts between the judicial and legislative branches.

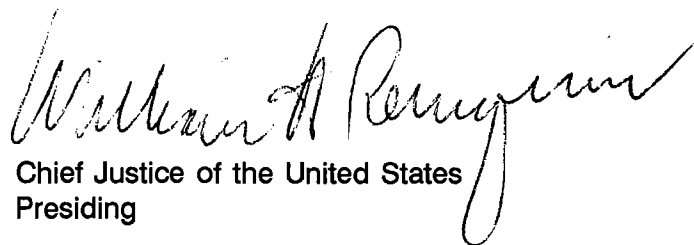
Judge Robinson has carried out his responsibilities to the Conference, the Executive Committee, and the United States District Court for the District of Columbia, with skill, tact and ability. He has set and continues to maintain a high standard as a dedicated public servant and has earned the regard, respect and esteem of his colleagues. We will miss his wise counsel and friendship during the sessions of the Judicial Conference, and extend our congratulations and deep appreciation for his many contributions to the administration of justice.

#### **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

May 26, 1992