

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

September 22, 1992

The Judicial Conference of the United States convened in Washington, D.C., on September 22, 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
Judge Francis J. Boyle,
District of Rhode Island

Second Circuit:

Chief Judge Thomas J. Meskill
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 Morey L. Sear,
Eastern District of Louisiana

Sixth Circuit:

**Chief Judge Gilbert S. Merritt
Judge Edward H. Johnstone,
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
Chief Judge John Garrett Penn,
District of Columbia**

Federal Circuit:

Chief Judge Helen W. Nies

Court of International Trade:

Chief Judge Dominick L. DiCarlo

Circuit Judges Douglas H. Ginsburg, Deanell R. Tacha, and William W. Wilkins, Jr.; and District Judges Lloyd D. George, Robert E. Keeton, Stanley Marcus, Robert M. Parker, Sam C. Pointer, Jr., and Rya W. Zobel attended the Conference sessions. 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.

Congressman William Hughes, Chairman of the House Judiciary Subcommittee on Courts, Intellectual Property, and the Administration of Justice, spoke to the Conference on matters pending in Congress of interest to the judiciary. The Solicitor General of the United States, Kenneth 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, Judicial Conference Secretariat; 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; Richard Schickele, Supreme Court Staff Counsel; and Margaret Farrell, Marjorie McCoy, and Mark Rosenbaum, Judicial Fellows.

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 report on the activities of the agency and the workload of the federal judiciary during the year ended June 30, 1992.

JUDICIAL BUSINESS OF THE COURTS

Mr. Mecham reported that during 1992, total filings in the regional courts of appeals rose nine percent to a record high of 46,032. The overall increase in appeals resulted in part from a ten percent growth in criminal appeals from the U.S. district courts. Two major factors contributed to this increase: enactment of the sentencing guidelines, which provide for appeals of convictions as well as sentences imposed, and drug-related appeals, which comprised 54 percent of the total criminal appeals filed. Appeals of the decisions of the district courts on state and federal prisoner petitions rose 11 percent, and appeals of bankruptcy cases increased 16 percent. Administrative agency cases increased ten percent in 1992. The courts of appeals disposed of 42,933 appeals in 1992, an increase of four percent; appeals terminated on the merits rose two percent. During 1992, the pending caseload in the regional courts of appeals increased ten percent to 35,526, compared to a two percent increase in 1991.

Filings in the U.S. Court of Appeals for the Federal Circuit increased 13 percent to 1,684, attributable to cases from the Merit Systems Protection Board and from the Court of Veterans Appeals. Appeals disposed of in the Federal Circuit rose seven percent to 1,519 this year. Since filings outnumbered terminations, the pending caseload rose 21 percent.

Reversing a declining trend begun in 1988, civil filings in the U.S. district courts increased this year to 226,895 cases, up nine percent from 1991. Civil filings involving the United States increased 20 percent to 63,310 cases; private filings increased five percent to 163,585. Cases filed by the U.S. government rose 35 percent, mostly attributable to an increase in actions to recover defaulted student loans and overpayment of veterans' benefits. By contrast, actions against the U.S. increased only slightly, up four percent to 26,212 filings. Both federal civil rights (up 16 percent) and social security (up 9 percent) cases contributed to this growth. Two major factors contributed to the increase in private civil filings: a 23 percent rise in private civil rights cases and a 12 percent rise in state prisoner petitions. Offsetting these increases in private civil filings was a six percent decrease in diversity of citizenship cases, attributable to a significant decline in asbestos cases, which fell 42 percent in 1992. Action by the Judicial Panel on Multidistrict Litigation had a considerable effect on asbestos cases filed, terminated and pending last year. The Panel is transferring asbestos cases pending in the U.S. district courts to the Eastern District of Pennsylvania. Potential plaintiffs are delaying filing new asbestos cases while awaiting the outcome of settlement discussions. Diversity filings excluding asbestos cases remained essentially stable in 1992, suggesting that the initial impact of the May 1989 increase in the jurisdictional amount in diversity cases from \$10,000 to \$50,000 may be abating. Excluding asbestos,

civil cases terminated rose eight percent in 1992 while the pending caseload increased five percent.

During 1992, criminal filings in the U.S. district courts resumed the decade-long growth that had stalled in 1991, rising six percent to 48,342 cases (including transfers). The number of defendants charged increased five percent to 68,187 in 1992. The increase is attributable in part to the focus on drug-related crimes. Drug cases increased seven percent, although the composition and locale of the cases is shifting from the Southern District of Texas, where cases began to decline last year, to the Southern District of California, where filings grew 46 percent in 1992. Weapons and firearms prosecutions increased 23 percent in 1992. Criminal cases terminated increased two percent to 43,493 in 1992. Since the number of filings outnumbered terminations during 1992, the pending caseload rose 13 percent as of June 30, 1992.

Bankruptcy filings rose ten percent in 1992, to 972,490; terminations increased 19 percent over 1991, reaching 857,286 for the same period. Because filings outpaced terminations, the number of pending petitions rose by 115,204 cases (ten percent) in 1992. The total pending caseload has now reached 1,237,357 petitions. The growth in bankruptcy filings was a result of a rapid rise in non-business filings, spurred primarily by an 11 percent increase in Chapter 7 liquidations and a nine percent increase in Chapter 13 adjustment filings. Business filings rose seven percent in 1992. The growth resulted from a three percent increase in Chapter 7 business filings, a six percent increase in Chapter 11 business reorganizations, a 25 percent increase in Chapter 13 business debt adjustments, and a 20 percent increase in filings of family farmer business debt adjustments under Chapter 12.

Mr. Mecham also reported that as of September 1, 1992, there were 19 vacancies among the 179 judgeship positions authorized for the United States courts of appeals, 87 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 the fiscal year 1992 judiciary appropriation of \$2.339 billion did not include sufficient resources to meet the operational needs of the Criminal Justice Act (CJA) panel attorney program. Although a supplemental appropriation was requested in January 1992, Congress did not act in time to prevent all available funds for payment of panel attorneys from being exhausted on June 17, 1992. Pending approval of the supplemental request, the Executive Committee of the Judicial Conference chose to fund panel attorney payments out of monies drawn from other operations of the courts.

(See "Fiscal Year 1992 Financial Plan," *infra*, p. 56.) This shift of funds had a severe impact on other court functions.¹

Mr. Mecham also reported that, with regard to fiscal year 1993, the House and Senate Appropriations Committees, operating under very low allocations made to them under the Concurrent Resolution on the Budget (House Con. Res. 287), would apparently deliver the toughest budgetary hit to the judiciary since he became Director in 1985. The judiciary's FY 1993 request was \$2.836 billion, an increase of \$470 million, or 20%, over FY 1992. Mr. Mecham anticipated fiscal year 1993 appropriations from Congress to be at substantially lower levels, such that the operations of the judiciary and its services to the public during the year will be significantly impaired.²

Despite budgetary constraints, the Administrative Office (AO) achieved some important accomplishments the past year in the following areas:

- Legislation - Key legislation enacted this year includes reform of the Judicial Survivors' Annuities System (JSAS), which broadens and enhances the JSAS; the creation of 35 new bankruptcy judgeships; and the passage of an omnibus court reform bill that addresses many areas supported by the Conference.
- Communications - A number of efforts to enhance communications between the AO and the courts have been underway: (1) A task force of clerks, a circuit executive and AO senior managers was formed to discuss ways of improving communications and cooperation; (2) In response to suggestions from court unit heads, guidelines designed to increase the effectiveness of the AO advisory group structure were developed and are being implemented; (3) An AO Publications Council was created to continue efforts to improve the quality, usefulness and effectiveness of AO reports and publications; and (4) In order to implement effectively the recommendations of consultants on automation, a proposal for organizing and increasing user involvement in the automation development process was drafted and circulated for comment.

¹ The supplemental bill, appropriating \$31.25 million for defender services, was finally passed, and signed by the President on September 23, 1992.

² On October 6, 1992, the President signed a bill appropriating \$2.47 billion to the judiciary for FY 1993. This is approximately \$370 million below the judiciary's request and nearly \$200 million below the amount needed to stay even with the services provided in FY 1992.

- Civil Justice Reform Act (CJRA) Implementation - The AO and the Federal Judicial Center are jointly developing a model CJRA delay and expense reduction plan which gives examples of the types of programs the courts have adopted to implement the procedures and techniques outlined in the CJRA. The model plan also discusses problems, conditions, and other factors a court may consider when deciding whether a particular procedure or technique would be useful in that district.
- Space and Facilities Program - Mr. Mecham reported that it appears that the judiciary's courthouse building program is the largest such federal program undertaken this century. Currently, there are about 325 construction and alteration projects underway, 70 of which are major renovations (exceeding prospectus level) in existing courthouses. It is also estimated that 135 new courthouses are needed.
- Judiciary Salary Plan (JSP) Study - The first three phases of the JSP study are now complete with the presentation of the National Academy of Public Administration's report and recommendations to the Judicial Resources Committee in June 1992. The Committee accepted the report and directed the AO to proceed with Phase IV of the study. During Phase IV, court managers will be developing a new classification system as well as the compensation and job qualification components of the JSP.
- Federal Judiciary Building - The new Federal Judiciary Building was completed on time and under budget. The consolidation of judiciary agencies, including the AO and the Federal Judicial Center, into one building will improve service to the courts and the public.

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

The Director of the Federal Judicial Center, Judge William W Schwarzer, reported that, although at the time of the meeting the amount of the Center's fiscal year 1993 appropriation was not yet known, it was expected to fall below that of fiscal year 1992. The Center is suffering a proportionately larger cut in its appropriation than are the courts.

The Center is making substantial efforts to maintain its core education and research programs in the face of fiscal austerity. To that end the Center's Board and staff have taken a number of actions to ensure that its resources are applied in the most cost-effective ways. Among other things, the Center Board has approved termination of the Center's tuition assistance program, which subsidized individuals for job-related courses taken at universities and other

institutions. Most of the subject matter of courses previously made available through the tuition assistance program are covered by Center programs. The needs of local court units will continue to be met by expanded local training programs, which are far more cost-effective.

The Center will continue to give priority to its education and training mission, while also carrying out its statutory research and planning assistance tasks. This requires constant assessment and reassessment of the priorities to assign to the many demands of the Center. Currently, the Center allocates about two-thirds of its budget for education and training (including supporting activities such as publications, media, and enhanced educational technology), divided about 60-40 between supporting personnel and judicial personnel. It spends about 20 percent on research, eight percent on administration and five percent on the history office, interjudicial affairs and long-range planning.

As previously announced, during 1993, the Center will suspend for one year the traditional regional and circuit workshops and instead offer a series of national workshops, one for judges of the courts of appeals, three for district judges, one for bankruptcy judges and one for magistrate judges. These workshops will offer judges an opportunity to meet and exchange experiences with other judges throughout the country and will enable the Center to offer a more varied program.

The Center continues to support the implementation of the Civil Justice Reform Act. With assistance from the Committee on Court Administration and Case Management, the Administrative Office and others, the Center is publishing a Manual on Litigation Management and Expense and Delay Reduction, which will serve as a reference source for individual judges. The Center is also assisting the Committee with other CJRA tasks and will continue to conduct seminars to assist courts and advisory groups in implementation.

Judge Schwarzer noted that the Center is assisting the National Commission on Judicial Discipline and Removal, headed by former Congressman Robert Kastenmeier, with research into historical precedents and the operation of the existing system for dealing with alleged judicial unfitness. With the cooperation of the circuit judicial councils, Center staff will be examining certain complaints and files within the limits of applicable confidentiality restrictions. This research is considered of importance in helping the Commission to evaluate the adequacy of the existing system.

In April the Center, consistent with one of its statutory responsibilities, co-sponsored with the State Justice Institute the first national conference on judicial federalism, attended by over 300 state and federal judges. That conference is giving considerable impetus to efforts to advance state-federal

cooperation and coordination, and the Center is continuing to promote and assist such efforts, particularly in the organization and operation of state-federal judicial councils.

At its March meeting, the Conference approved the transfer to the Center of unspent funds in the budget of the Conference Bicentennial Committee, to support a new biographical directory of federal judges. The Center will send judges an extensive data form that is designed to ensure consistency among entries for judges who have served over the 200-year history of the federal judiciary and allow production of a biographical directory equal in scope to that currently available for the Congress.

Judge Schwarzer thanked the Conference committee chairs and chief circuit judges who participated in last March's long-range planning seminar designed by the Center in cooperation with the Administrative Office. The judges' comments during the seminar provided helpful lessons on long range planning for all those involved in the process. The Center is continuing to provide planning support to the Committee on Long Range Planning and other judicial branch units.

EXECUTIVE COMMITTEE

Between Judicial Conference sessions, the Executive Committee took the following actions on behalf of the Conference:

FISCAL YEAR 1992 FINANCIAL PLAN

In light of deficiencies in the Defender Services appropriation for payments to court-appointed attorneys and other persons providing investigative, expert and other services under the Criminal Justice Act (see "Activities of the Administrative Office," *supra*, p. 52), the Executive Committee revised the fiscal year 1992 financial plan, initially placing certain funds in reserve from among different program availabilities. Subsequently, anticipating Congressional approval of a supplemental appropriations request, the Committee authorized the "borrowing" of the reserved funds to pay panel attorneys. However, when it later appeared that irreparable harm could occur to the public safety because funds reserved from drug aftercare, contractual support for pretrial services, and electronic monitoring programs were not available to those programs, the Executive Committee identified alternative accounts from which funds could be "borrowed" to pay panel attorneys (and others under the CJA) until the

supplemental request was approved.⁹ The Committee also approved a plan for spending reserved funds after approval of the supplemental appropriations request.

IMPLIED CONSENT IN BANKRUPTCY PROCEEDINGS

The proposed Federal Courts Study Committee Implementation Act of 1992 (S. 1569, 102nd Congress) incorporated a Federal Courts Study Committee (FCSC) recommendation to amend 28 U.S.C. § 157(c) to allow a party in a non-core, related bankruptcy proceeding to be deemed to have consented to a bankruptcy judge's findings becoming final unless the party objects within 10 days after entry of the bankruptcy judge's findings (FCSC Report, April 2, 1990, p. 76). The Executive Committee had endorsed this FCSC recommendation in August 1990 (JCUS-SEP 90, p. 64), and now reaffirmed its endorsement in concept; however, the Committee, on recommendation of the Committee on Administration of the Bankruptcy System, agreed to support an alternative amendment (to 28 U.S.C. § 157(c)(1)) which more clearly accomplishes the same result.

The Executive Committee declined to take action on an additional recommendation of the Bankruptcy Committee to make a potentially more controversial amendment to 28 U.S.C. § 157(c)(2) which would, in the absence of objection, deem consent to a bankruptcy judge's final disposition of a non-core bankruptcy proceeding. See "Implied Consent," *infra*, p. 61.

FEDERALIZATION OF STATE CRIMES

Expressing opposition to a pronounced trend by Congress of federalizing traditional state crimes, the Executive Committee agreed on behalf of the Judicial Conference to oppose four bills pending in the 102nd Congress: The Child Support Recovery Act of 1992, H.R. 1241; Farm Animal and Research Facilities Protection Act of 1992, H.R. 2407; Anti-Car Theft Act of 1992, H.R. 4542; and The Kahla Lansing Child Protection Act, S. 2065. Such a trend will negatively impact on the ability of the federal courts to hear federal criminal prosecutions, as well as carry out vital civil responsibilities in a timely manner.

RESOLUTION

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

⁹As noted, the judiciary supplemental appropriations bill was subsequently signed by the President on September 23, 1992.

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

GEORGE E. MACKINNON

of the United States Court of Appeals for the District of Columbia Circuit.

During his twenty-three years on the federal bench, Judge MacKinnon has served the judiciary and the nation in manifold capacities. His service to the Judicial Conference and the judiciary overall has included membership on the Committee on Salaries from 1971 to 1972, the Subcommittee on Supporting Personnel from 1973 to 1980, and the Committee on the Administration of the Criminal Law from 1983 to 1987. In 1972, the Judicial Conference elected Judge MacKinnon to serve on the Board of Certification for Circuit Executives, where he continued to serve until 1983. Retired Chief Justice Burger appointed him to the three-judge Emergency Review Committee, which was tasked with considering requests for exceptions to the restrictions under the Gramm-Rudman-Hollings Deficit Reduction Act of 1985. From 1979 to 1982, Judge MacKinnon served as the first Presiding Judge of the United States Foreign Intelligence Surveillance Court of Review. President Reagan appointed him to the United States Sentencing Commission in 1985, where he remained until October of 1991.

Judge MacKinnon is now approaching the end of his third term as the Presiding Judge of the Special Division of the U. S. Court of Appeals in the District of Columbia, responsible for the selection and appointment of independent counsel under the Ethics in Government Act. As demonstrated by his numerous and diverse appointments over the past two decades, it is clear that Judge MacKinnon has enjoyed the confidence and trust of our recent Presidents and Chief Justices alike. Judge MacKinnon has carried out his responsibilities to the Conference, his court, and the nation with skill, tact, and integrity. He has maintained high standards as a dedicated public servant and has gained the regard, respect and esteem of his colleagues in all three branches of government.

On behalf of the Judicial Conference and a grateful nation, we extend congratulations and heartfelt appreciation for Judge MacKinnon's many significant contributions to the administration

of justice in the United States and wish him well in all his future endeavors.

MISCELLANEOUS ACTIONS

The Executive Committee:

- Approved for transmission to Congress draft language concerning "temporary" bankruptcy judgeships;
- Revised the jurisdictional statements of the Committees on Court Administration and Case Management and Long Range Planning, and changed the name of the Committee on Judicial Ethics to the Committee on Financial Disclosure;
- Reaffirmed approval of a program permitting reimbursement of a judicial nominee's travel expenses for attendance at a formal AO orientation;
- Approved a temporary increase in the salary of a part-time magistrate judge in the District of New Mexico to enable the magistrate judge to handle the workload of a deceased full-time magistrate judge until a successor is appointed;
- Opposed certain provisions of the Access to Justice Act (S. 2180 and H.R. 4155, 102nd Congress), took no position on certain provisions and referred one provision back to the Court Administration and Case Management Committee for further study;
- Approved transmittal to Congress of a report on the civil justice expense and delay reduction plans developed and implemented by the United States district courts as required by the Civil Justice Reform Act of 1990 (Public Law No. 101-650);
- Approved funding priorities with regard to the judiciary's fiscal year 1993 budget request in response to Congressional requests; agreed to communicate with circuit chief judges and chairmen of "line" Conference committees concerning Senate Appropriations Committee language suggesting ways to economize; and decided to seek ideas from judges on how to cope with the extremely tight fiscal year 1993 budget levels;
- Agreed to consult with Conference committee chairs concerning whether to make all committee reports accessible and agreed that background materials will generally not be made available;

- Agreed to seek an amendment to proposed Social Security legislation (H.R. 589, 102nd Congress) which would authorize the federal district courts (in addition to state courts which are already provided for in the bill) to use social security numbers for identification of individuals for jury selection;
- Authorized the Judicial Conference Committee to Review the Criminal Justice Act to release its interim report to the public in advance of the Conference session;
- Approved the agenda for the October 1992 Sentencing Institute for the Third, Seventh, and D.C. Circuits; and agreed to request the Criminal Law Committee to consider whether such training should be combined with other Federal Judicial Center programs; and
- Continued its oversight of relations between the Administrative Office and the Federal Judicial Center.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

The Committee on the Administrative Office reported that it has endorsed proposed guidelines for Administrative Office advisory groups. In addition, the Committee approved the recommendations of its Subcommittee on Report Production, Publications, and Statistical Gatherings, which called for increased coordination of existing statistical gathering systems; a comprehensive study of the *Guide to Judiciary Policies and Procedures*; a self-assessment of Administrative Office reports and publications, including a solicitation of suggestions from court personnel; and the creation of a catalog of Administrative Office reports and publications.

COMMITTEE ON AUTOMATION AND TECHNOLOGY

LIBRARY PROGRAM

The Committee on Automation and Technology recommended the voluntary use of a standard electronic citation system for opinions disseminated on the Electronic Dissemination of Opinions System (EDOS). The Judicial Conference declined to approve this recommendation.

The Committee also proposed amendments to the lawbook list for magistrate judges, which were approved by the Conference. The revised list will be published in the *Guide to Judiciary Policies and Procedures*.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

IMPLIED CONSENT

The Committee on the Administration of the Bankruptcy System recommended that the Judicial Conference support an amendment to 28 U.S.C. § 157(c)(2) to provide for implied consent to final determination by a bankruptcy judge in a non-core proceeding. Because of constitutional concerns raised, the Conference disapproved the provision. See also "Implied Consent in Bankruptcy Proceedings," *supra*, p. 57.

BANKRUPTCY ADMINISTRATORS

Recent legislative changes necessitated amendments to the existing "Regulations for the Bankruptcy Administrator Program," particularly in light section 317(b) of the Federal Courts Study Committee Implementation Act of 1990 (Public Law No. 101-650) which granted standing to bankruptcy administrators to file pleadings and briefs, and appear in court and be heard on any issue in any case under Title 11, United States Code. The Judicial Conference approved the Bankruptcy Committee's proposed amendments. The Conference also approved the Committee's recommendation to require a full field background investigation for future chapter 13 standing trustees and a name check investigation for chapter 7 trustees in those districts served by the bankruptcy administrator program.

PLACES OF HOLDING BANKRUPTCY COURT

Upon request of the Judicial Council of the Eighth Circuit, the Judicial Conference designated Fayetteville as an official duty station for a bankruptcy judge in Arkansas.

COMMITTEE ON THE BUDGET

ALTERNATIVE BUDGET REQUEST FOR THE FISCAL YEAR 1994

As in prior years, the Budget Committee anticipated the need to reduce the judiciary's budget request below the full funding level due to Congressional funding constraints in a period of large federal deficits. Thus, the Committee recommended, and the Judicial Conference approved alternative, or lower, budget requests for fiscal year 1994, subject to amendments necessary as a result of (a) new legislation, (b) actions of the Conference or (c) other reasons the Director of the Administrative Office considers necessary and appropriate, not to exceed a total increase of 29 percent over the fiscal year 1993 appropriation.

COMMITTEE ON THE CODES OF CONDUCT

Since its last report to the Conference in March 1992, the Committee received 48 new written inquiries and issued 38 advisory responses. The Chairman received and responded to 55 telephonic inquiries. In addition, individual Committee members responded to 61 informal inquiries from their colleagues.

CODE OF CONDUCT FOR UNITED STATES JUDGES

In August 1990, the American Bar Association approved a New Model Code of Judicial Conduct. In light of this New Model Code, the Committee on the Codes of Conduct conducted a comprehensive review of the Judicial Conference's Code of Conduct for United States Judges and recommended revisions to the Code. These revisions are intended to provide more guidance to judges in areas where experience has suggested the need for clarification. The Judicial Conference approved the Committee's recommendations. The Code of Conduct is published in the *Guide to Judiciary Policies and Procedures*.

RESOLUTION

In appreciation of Judge Walter K. Stapleton, the Judicial Conference adopted the following resolution:

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

WALTER K. STAPLETON

Chairman of the Committee on Codes of Conduct from November 20, 1987 to October 1, 1992.

Judge Stapleton has played a vital role in the administration of the federal court system and has served as a leader while, at the same time, continuing to perform his judicial duties as a Judge of the United States Court of Appeals for the Third Circuit. He has demonstrated an unwavering faith in the judicial process, and his departure marks the end of a distinguished era of substantive changes that expanded the responsibilities and increased the effectiveness of the Committee on the Codes of Conduct. Judge Stapleton shepherded the judiciary's implementation of the Ethics Reform Act of 1989, which included extensive work in drafting regulations which were adopted by the Judicial Conference. He also guided the

Committee's review of the Code of Conduct for United States Judges and subsequent recommendations for substantial revisions to the Code. Finally, he spearheaded the Committee's work in preparing for publication a compendium summarizing over 1,000 of its significant published and unpublished opinions interpreting the Code of Conduct and the Ethics Reform Act and regulations. He has set a standard of skilled leadership and has earned our deep respect and sincere gratitude for his innumerable contributions over the years.

We acknowledge with appreciation his commitment to the federal judiciary as shown by his dedicated service to the Judicial Conference and the judiciary as a whole.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

CLERICAL SUPPORT FOR PART-TIME MAGISTRATE JUDGES

To promote a more uniform level of clerical support for part-time magistrate judges who perform their duties in federal court space, the Judicial Conference voted to encourage the district courts to provide to such part-time magistrate judges the same level of administrative support afforded to full-time magistrate judges, to the extent feasible.

VIDEOTAPING COURT PROCEEDINGS

At its September 1988 session, the Judicial Conference authorized a two-year experiment to test the use of videotape recordings as a method of taking and reviewing the official record of court proceedings (JCUS-SEP 88, p. 83). Although the completion date for the experiment as established by the Committee on Court Administration and Case Management is December 31, 1992, the Committee believed that continued use of videotape beyond that date should be permitted in order to avoid any gap in that practice in the event that the Conference approves the use of videotape as a permanent option at its September 1993 session. Thus, on recommendation of the Committee (pending a Judicial Conference determination regarding the experiment in September 1993), the Conference authorized (1) participating district courts to continue the use of the videotaping systems beyond the end of the two-year experiment; and (2) participating appellate courts to continue to accept videotape as the record on appeal from pilot district courts.

CERTIFICATION OF INTERPRETERS

Upon request of the Judicial Councils of the Seventh and Ninth Circuits for certification of interpreters in 12 additional languages, the Committee on Court Administration and Case Management reviewed an analysis of the interpreting needs of these circuits and examined a proposal by the University of Arizona for the development of a more cost effective method for certifying and qualifying interpreters. Pending the availability of funds, the Judicial Conference approved the Committee's recommendation that the Conference direct the Administrative Office to provide for full certification of interpreters in Cantonese (Chinese), Ilocano, Korean, Mandarin (Chinese), Punjabi, Tagalog and Vietnamese; for modified certification of interpreters in Armenian, Japanese, Laotian and Polish; and for "Otherwise Qualified" status in Mein.

BIAS IN THE FEDERAL JUDICIARY

Concluding that bias, in all of its forms, presents a danger to the effective administration of justice in federal courts, the Committee recommended, and the Judicial Conference adopted, a resolution encouraging each circuit not already doing so to sponsor educational programs for judges, supporting personnel and attorneys to sensitize them to concerns of bias based on race, ethnicity, gender, age and disability, and the extent to which bias may affect litigants, witnesses, attorneys and all those who work in the judicial branch. Further, the Judicial Conference voted to encourage each circuit to report to the Committee on Court Administration and Case Management on action taken to implement this resolution.

MISCELLANEOUS FEES

Although the Judicial Conference schedules of fees for the appellate, district and bankruptcy courts provide for a handling fee of \$25 for a check paid into the court and returned for lack of funds (28 U.S.C. §§ 1913, 1914), a comparable provision was not included in the schedule of fees for the United States Claims Court (28 U.S.C. § 1927). Because the rationale for assessing such a fee exists equally in the Claims Court, the Conference approved a Committee recommendation to amend the schedule of fees for the United States Claims Court to include a \$25 fee for checks paid into the Court which are returned for lack of funds.

In order to recover more effectively the full costs of noticing in the bankruptcy courts, the Judicial Conference approved the collection of a miscellaneous administrative fee of \$30 in all chapter 7 and chapter 13 cases, in lieu of noticing fees currently charged by the clerk of court under 28 U.S.C. § 1930(b). In addition, the Conference directed the Committee on the

Administration of the Bankruptcy System to study an alternative fee arrangement which would assess a percentage fee on distributions made pursuant to plans confirmed in chapter 11 and chapter 7 asset cases. If the results of the study show that substantial funds could be raised by the chapter 11 and 7 asset case fees, then such fees, upon approval of the Judicial Conference and Congress (if appropriate), would replace the \$30 miscellaneous administrative fee.

FILING FEE FOR CIVIL ACTIONS

The civil filing fee was increased in 1978 from \$15 to \$60, and in 1986, it was raised from \$60 to \$120. Upon recommendation of the Committee on Court Administration and Case Management, the Conference supported an amendment to 28 U.S.C. § 1914(a) to increase the civil action filing fee from \$120 to \$150.

CLAIMS COURT TECHNICAL AND PROCEDURAL IMPROVEMENT ACT OF 1991

At its March 1992 session, the Judicial Conference, upon recommendation of the Committee, took no position on a provision of the draft Claims Court Technical and Procedural Improvement Act of 1991, which would have authorized judges of the Claims Court to hold evidentiary hearings in foreign countries (JCUS-MAR 92, p. 18). This was done so that the position of the State Department could be determined and assessed. Having considered the position of the Departments of Justice and State, the Committee recommended and the Conference approved support for that section of the Act which authorized hearings in foreign countries, with the proviso that the section be amended to include an interlocutory appeal provision, similar to that provided in 28 U.S.C. § 256(b) for the Court of International Trade.⁴

COMMITTEE ON COURT AND JUDICIAL SECURITY

In view of the importance of security for both judges and court staff, the Judicial Conference endorsed a policy that the District Court Security Committees, in conjunction with the United States Marshals Service, at least every two years should present a program on security to all judicial officers and

⁴The "Federal Courts Administration Act of 1992" (Public Law No. 102-572), signed by the President on October 29, 1992, renamed the Claims Court the "Court of Federal Claims" and authorized the Court to issue orders permitting evidentiary hearings in foreign countries. The new law also provides that an interlocutory appeal may be taken from such an order.

court employees. The program should be tailored to address local conditions and should include a plan for dealing with civil unrest.

COMMITTEE ON CRIMINAL LAW

The Committee on Criminal Law reported that it heard from Judge William W. Wilkins, Chairman of the United States Sentencing Commission, concerning the status of Judicial Conference recommendations to the Commission for amendments to the guidelines. The Commission decided not to take any action on recommendations related to departures from the sentencing guidelines in view of a comprehensive report by the Commission that will be available during the 1993 amendment cycle.

COMMITTEE ON DEFENDER SERVICES

ESTABLISHMENT OF NEW DEFENDER ORGANIZATIONS

In light of the relative cost effectiveness of the federal defender program, as well as the increasing complexity of criminal cases resulting in a decline in the acceptable number of cases a single attorney can competently handle, the Committee on Defender Services recommended removal of the requirement in the Criminal Justice Act that a district have a minimum of 200 CJA appointments annually in order to qualify for the establishment of a federal public or community defender organization. The Judicial Conference approved this recommendation and will seek legislation to accomplish this purpose. In the absence of a statutory minimum caseload requirement, proposals to establish federal defender organizations would continue to be reviewed for cost-effectiveness and ability to meet the needs of the district served, including the following factors: (1) the changing average caseload in a district; (2) the prevalence or lack of qualified attorneys to serve on the panel; (3) the proximity of court locations to each other; and (4) the nature of the district's caseload.

REPRESENTATION FOR EMPLOYMENT-RELATED INVESTIGATIONS

On recommendation of the Committee, the Judicial Conference voted to support proposed legislation which would provide that the Director of the Administrative Office shall reimburse federal public and community defender organization employees for the costs of legal representation incurred as a result of criminal or disciplinary investigations arising out of the employee's performance of official duties, provided that such investigation does not result in adverse action against the employee. The proposed legislation supported by the Conference further provides that the Director of the Administrative Office may, in his or her discretion, reimburse panel attorneys and others providing representational services pursuant to the CJA for legal costs incurred as a result

of a criminal or disciplinary investigation arising out of such person's conduct in furnishing such representation or other services, provided that the investigation does not result in an adverse action against the person.

ANNUAL REPORTS OF ATTORNEY COMPENSATION

In 1972, the Judicial Conference directed the Administrative Office to produce a quarterly report on panel attorneys earning in excess of \$1000 during the reporting period (JCUS-APR 72, p. 21). In subsequent years the Conference has increased the reporting period and the threshold amount (a semiannual report of earnings above \$6,000 (JCUS-OCT 72, p. 54); an annual report of earnings above \$12,000 (JCUS-SEP 76, p. 60-61); and an annual report of earnings above \$24,000 (JCUS-MAR 85, p. 31). Because increases in the costs of representation have resulted in lengthy reports, the preparation of which took substantial time, the Conference approved the Committee's recommendation to modify, once again, the requirement for an annual report on CJA panel attorney compensation in excess of \$24,000 to include only those attorneys earning in excess of \$50,000 during the preceding year.

FUNDING OF FEDERAL PUBLIC AND COMMUNITY DEFENDER ORGANIZATIONS

Under its delegated authority from the Judicial Conference (JCUS-MAR 89, p. 16), the Committee approved additional fiscal year 1993 funding for federal public defender organizations totalling \$6,412,309 in order to provide for FY 1993 budget allocation increases for 25 of the 43 existing defender organizations and initial funding for one defender organization newly authorized for FY 1993. The Committee also approved FY 1993 budget allocation increases totalling 1,582,566 for five of the nine traditional community defender organizations. These increases resulted in revised FY 1993 totals of \$92,390,373 for federal public defender organizations and \$24,270,372 for traditional community defender organizations.

COMMITTEE ON FEDERAL-STATE JURISDICTION

RESOLUTION

The Committee on Federal-State Jurisdiction recommended, and the Judicial Conference adopted, the following resolution:

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

THOMAS M. REAVLEY

Whereas Thomas M. Reavley served as Chairman of the Federal-State Jurisdiction Committee from March 30, 1990 until May 5, 1992 and served as a member of the Committee from November 20, 1987 until October 1, 1992, and as a member of the Committee on Court Administration from 1984 to 1987; and

Whereas during his tenure as Chairman of the Federal-State Jurisdiction Committee Judge Reavley also served as Chairman of the Ad Hoc Committee on Asbestos Litigation and the Ad Hoc Committee on Gender-Based Violence; and

Whereas Judge Reavley has represented the Judicial Conference before numerous committees of the United States Congress on issues of importance to the federal judiciary; and

Whereas Judge Reavley has worked tirelessly to foster and strengthen the relationships between the federal and state judiciaries; and

Whereas Judge Reavley has provided outstanding service to the federal judiciary through his inexhaustible energy and spirit; his unfaltering commitment to excellence; and his unfailing dedication and leadership; and

Whereas Judge Reavley has touched each of us with his warmth, kindness, intellect, humor, humility and unwavering belief in the good of humanity; and

Whereas Judge Reavley exemplifies the best of the federal judiciary;

Therefore be it resolved that the Judicial Conference of the United States recognizes the outstanding service of Judge Thomas M. Reavley and expresses our deep respect and appreciation for his innumerable contributions over the years to the Judicial Conference and the judiciary as a whole.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

The Committee on Intercircuit Assignments reported that during the period January 1, 1992 through June 30, 1992, 79 intercircuit assignments were recommended by the Committee and approved by the Chief Justice to be undertaken by 56 Article III judges. Of this number, 16 were senior circuit judges, three were active circuit judges, 26 were senior district judges, six were active district judges, one was a senior judge on the Court of International Trade, and four were active judges on the Court of International Trade.

COMMITTEE ON THE JUDICIAL BRANCH

FEDERAL TRAVEL DISCLOSURE ACT

The proposed "Federal Travel Disclosure Act of 1992" (H.R. 4530, 102nd Congress) contains provisions which would, among other things, restrict the availability of appropriated funds for official travel and require chief judges and the Director of the Administrative Office to approve, maintain records, and file reports on all official travel in the courts and other judicial branch agencies, respectively. In response to Congressional inquiry, and on recommendation of the Committee on the Judicial Branch, the Judicial Conference opposed enactment of this legislation as drafted, on grounds that its provisions would (1) impose unjustifiable administrative burdens; (2) unnecessarily require advance clearance for travel plainly appropriate in purpose and scope; (3) create ambiguities regarding the availability of funds for official travel and the travel authority of the Federal Judicial Center and the Sentencing Commission; and (4) curtail judiciary access to the expertise found in other federal agencies.

COMMITTEE ON FINANCIAL DISCLOSURE

The Financial Disclosure Committee, formerly named the Committee on Judicial Ethics (see "Miscellaneous Actions," *supra*, p. 59), reported that as of June 1992 it had received 2,239 financial disclosure reports and certifications for the calendar year 1991, including 1,022 reports and certifications from justices and Article III judges, 283 from bankruptcy judges, 350 from magistrate judges, and 584 from judicial employees.

COMMITTEE ON JUDICIAL RESOURCES

ADDITIONAL JUDGESHIPS

The Judicial Conference reviewed the results of the 1992 survey of judgeship needs conducted by the Committee on Judicial Resources and authorized the Administrative Office to transmit to Congress a request for nine

additional court of appeals judgeships, five additional permanent district court judgeships, eleven additional temporary district court judgeships, and the conversion of one roving district court position to permanent. Included in the request for district court judgeships are six positions recommended by the Judicial Conference in the last biennial judgeship survey but not authorized in the last omnibus judgeship act.

The creation of additional judgeships is recommended in the following United States courts:

Courts of Appeals

First Circuit	1
Fifth Circuit	1
Sixth Circuit	4
Tenth Circuit	3

District Courts

Second Circuit:

Connecticut	1 temp
New York (Eastern)	1 + 1 temp
New York (Western)	1 temp

Third Circuit:

Pennsylvania (Eastern)	1 temp
Virgin Islands	1

Fourth Circuit:

North Carolina (Western)	1 temp
South Carolina	1 temp

Fifth Circuit:

Louisiana (Middle)	1 temp
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Sixth Circuit:

Kentucky (Eastern)	1 rover to permanent in single district
Kentucky (Western)	1
Ohio (Northern)	1 temp

Ninth Circuit:

Arizona	1 temp
Nevada	1
Oregon	1 temp

Eleventh Circuit:

Alabama (Middle)	1 temp
Florida (Middle)	1

The Judicial Conference authorized transmittal to the Congress of detailed data showing the impact of eliminating or limiting diversity jurisdiction on the judgeship requirements of the U.S. district courts.

**FISCAL YEAR 1994 BUDGET REQUESTS
FOR SUPPORTING PERSONNEL**

The Judicial Conference reviewed requests for fiscal year 1994 positions for supporting personnel and approved the following (subject to the availability of funds):

1. Fifteen permanent positions, three temporary positions, and six permanent JSP-14 data network administrator positions for circuit executives' offices in ten circuits;
2. Fifteen attorney (five JSP-16 chief preargument attorneys and ten JSP-14 preargument attorneys) and five secretarial positions for preargument attorney offices in eight courts of appeals;
3. Ten court interpreter positions for FY 1994, one each for the District of Columbia, Florida (Southern), New York (Eastern), and Washington (Eastern); three for New York (Southern); and three for temporary assignments to courts with special needs;

4. Thirty-five additional positions to be allocated to court units to perform project coordination functions for major space and facilities projects; and
5. Seven additional positions (five to perform additional responsibilities associated with rising caseloads and two to provide automation support) in bankruptcy administrator offices.

ADDITIONAL COURT REPORTERS

The Conference approved one additional court reporter for the Northern District of Georgia, for funding in FY 1993, upon confirmation of the first replacement judge.

STAFFING FORMULAS

After a comprehensive nationwide evaluation of the staffing needs of the district court clerks' offices, a new staffing formula was developed to address the increasing demands of more complex operating environments and to provide full support to all active and senior Article III judges and full and part-time magistrate judges. The Judicial Conference, on recommendation of the Committee on Judicial Resources, approved the new staffing formula for district court clerks' offices with the understanding that any increases called for by the formula would be phased in over five years to allow for management improvements. Further, the Conference approved the Committee's recommendation that the Administrative Office allocate available positions on the basis of need rather than through a strict application of the formula.

The bankruptcy clerks' work measurement formula originally included a deviation factor designed to address needs in courts with complicated cases and backlogs. This formula is now seen as resulting in unfair apportionment of positions among the bankruptcy clerks' offices. On recommendation of the Committee, the Judicial Conference approved the deletion of the deviation factor from the bankruptcy clerks' work measurement formula and the inclusion in that formula of a judgeship factor of 1.5 positions per judgeship approved by Congress.

GRADES OF COURT UNIT EXECUTIVES

In March 1987, the Judicial Conference approved guidelines for determining the target grades of court unit executives with the provision that "in an individual court, no bankruptcy clerk, chief probation officer, or chief pretrial services officer shall be classified at a level higher than the clerk of the district court." JCUS-MAR 87, pp. 7-8. After consulting with the Committee on Court Administration and Case Management and the Committee on Criminal Law, the

Judicial Resources Committee recommended, and the Judicial Conference approved, the elimination of the restrictive grade provision for bankruptcy clerks, chief probation officers, and chief pretrial services officers. The Conference also instituted a new provision that would allow for an increase in the grade of the district court clerk in those instances where the grade of the district court clerk would otherwise be lower than the grade of either the bankruptcy clerk, the chief probation officer or the chief pretrial services officer in the same district, provided that the chief judge certifies that (1) the court has assigned responsibilities to the district court clerk equal to or greater than the responsibilities of the other unit heads in the district court; and (2) the district court clerk is responsible for performing certain administrative support functions for the other units of the district court.

Because the clerk of the United States Court of Appeals for the Ninth Circuit is assigned responsibilities significantly greater than those common to clerks in other courts of appeals, the Judicial Conference approved the recommendation of the Committee on Judicial Resources to upgrade the Ninth Circuit Clerk of Court to JSP-18.

GRADES OF CHIEF DEPUTY/SECOND-IN-COMMAND POSITIONS

In September 1990, the Judicial Conference approved an increase in pay for senior executives (JCUS-SEP 90, p. 91). This pay upgrade created a two-grade gap between certain second-in-command positions and their unit heads, where previously the Judiciary Salary Plan had provided that these second-in-command positions be graded one grade below the court unit chief. In order to reinstate the previous Conference policy and to standardize its application to a larger number of court support units, the Judicial Conference, on recommendation of the Committee, approved a one-grade gap between target grades of certain unit chiefs (circuit executives, clerks of courts of appeals, clerks of district and bankruptcy courts, chief probation officers, and chief pretrial services officers) and "type II" second-in-command positions, with no second-in-command classification exceeding a cap of JSP-16. The Conference also approved the necessary changes to the Judiciary Salary Plan's policy on chief deputy positions to broaden its coverage to include deputy circuit executives and deputy chief probation and pretrial services officers. Further, the Conference authorized an upgrade from JSP-13 to JSP-14 for deputy circuit librarians.

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 the revision of the landmark job standard for systems manager (JSP-13) to allow for its joint use by probation and pretrial services offices which have implemented, or shortly will implement, PACTS;
2. Approved the upgrade of assistant librarians in circuit headquarters libraries from JSP-11 to JSP-12;
3. Approved revisions to the landmark job standard for financial administrators to allow for JSP-9 financial specialists to support JSP-11 financial administrators, and JSP-11 financial specialists to support JSP-12 financial administrators;
4. Approved an administrative officer landmark job standard at JSP-11; and
5. Disapproved a motion to increase the target grades of judges' secretaries from JSP-11 to JSP-12, for persons who have served as secretaries to federal judges for a minimum of ten years and have been at step 10 of JSP-11 for at least one year.

LEAVE ACCUMULATION FOR COURT UNIT EXECUTIVES

As a result of the Civil Service Reform Act of 1978, members of the executive branch's Senior Executive Service were exempted from the restriction that limits most federal employees from carrying over from one year to the next more than 240 hours of annual leave. The Administrative Office of the United States Courts Personnel Act of 1990 (Public Law No. 101-474) enabled the leave accumulation exemption to be extended to senior members of the Administrative Office. In order to remain competitive with other government agencies in hiring and retaining top executives, the Judicial Conference voted to seek amendment of 5 U.S.C. § 6304(f) to include court unit executives in the exemption from the limitation on annual leave accumulation.

WITHIN-GRADE INCREASE POLICY

The previous within-grade increase policy required appointing officers to assign one of five performance ratings and certify this decision in writing to the Administrative Office in order for the pay increase to be effected. An employee who received the top three ratings ("acceptable" to "excellent") would receive a within-grade increase. The Judicial Conference endorsed the Committee's recommendation to make the process more efficient by revising the within-grade increase policy to provide a two-level rating process, "acceptable" and "unacceptable", and to require the filing of a report to the Administrative Office only if an "unacceptable" rating is given.

COMMITTEE ON LONG RANGE PLANNING

The Committee on Long Range Planning reported that it has established three subcommittees and assigned specific planning topics to each. The Committee is available to make substantive planning presentations at circuit judicial conferences upon request.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

SELECTION AND APPOINTMENT REGULATIONS

The Federal Magistrates Act authorizes the Judicial Conference to promulgate regulations governing the selection and appointment of magistrate judges. 28 U.S.C. § 631(b)(5). On recommendation of the Committee on the Administration of the Magistrate Judges System, the Judicial Conference revised the "Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges" in light of recent amendments to the Act, the Committee's interpretations of the regulations, and practical experience with their operation. The revisions will be published in a revised version of the pamphlet entitled "The Selection and Appointment of United States Magistrate Judges."

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

Converted the part-time magistrate judge position at Worcester (or Ayer) to a full-time magistrate judge position at Worcester (or Boston).

SECOND CIRCUIT

Connecticut

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

New York, Northern

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

New York, Southern

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

FOURTH CIRCUIT

North Carolina, Eastern

Discontinued the authority of the clerk of court at Raleigh to perform magistrate judge duties.

West Virginia, Northern

1. Increased the salary of the part-time magistrate judge position at Wheeling from \$20,000 per annum to \$30,000 per annum; and
2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

FIFTH CIRCUIT

Texas, Northern

Increased the salary of the part-time magistrate judge position at Abilene from \$7,180 per annum to \$10,000 per annum.

Texas, Eastern

1. Increased the salary of the part-time magistrate judge position at Sherman from \$5,000 to \$50,000 per annum, effective October 1, 1992; and
2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

SEVENTH CIRCUIT

Illinois, Southern

1. Increased the salary of the part-time magistrate judge position at East St. Louis from \$50,000 per annum to \$55,000 per annum; and
2. Made no change in the number, locations, salaries or arrangements of the other magistrate judge positions in the district.

EIGHTH CIRCUIT

Iowa, Northern

1. Increased the salary of the part-time magistrate judge position at Sioux City from \$5,000 per annum to \$10,000 per annum; and
2. Made no change in the location or arrangements of the full-time magistrate judge position in the district.

NINTH CIRCUIT

California, Central

1. Authorized an additional full-time magistrate judge position at Los Angeles (or Long Beach);

2. Discontinued the part-time magistrate judge position at Long Beach upon the appointment of an additional full-time magistrate judge at Los Angeles (or Long Beach);
3. Redesignated the part-time magistrate judge position at Santa Barbara to Santa Barbara (or Ventura) and increased the salary of that position from \$7,740 per annum to \$20,000 per annum, effective January 1, 1993;
4. Discontinued the part-time magistrate judge position at Oxnard (or Ventura), effective January 1, 1993;
5. Redesignated the part-time magistrate judge position at San Bernardino as San Bernardino (or Riverside);
6. Maintained the salary of the part-time magistrate judge position at Barstow (or Victorville) at the current level of \$11,968 per annum until further specific action on the position;
7. Discontinued the part-time magistrate judge position at Palm Springs (or Twentynine Palms), effective January 1, 1993; and
8. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

California, Eastern

Increased the salary of the part-time magistrate judge position at South Lake Tahoe from \$11,968 per annum to \$20,000 per annum.

Hawaii

Increased the salary of the part-time magistrate judge position at Hilo from \$7,180 per annum to \$10,000 per annum.

TENTH CIRCUIT

Oklahoma, Eastern

Increased the salary of the part-time magistrate judge position at McAlester from \$7,180 per annum to \$10,000 per annum.

Wyoming

Retained the part-time magistrate judge position at Casper with no change in the location, salary, or arrangements.

ELEVENTH CIRCUIT

Florida, Middle

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

Florida, Southern

Changed the location of the magistrate judge position at Miami (or West Palm Beach) to Fort Lauderdale.

DESIGNATION OF NEW FULL-TIME MAGISTRATE JUDGE POSITIONS FOR ACCELERATED FUNDING

In order to provide prompt magistrate judge assistance to judicial districts which are seriously affected by drug filings or impacted by the Civil Justice Reform Act, the Judicial Conference approved the Committee's recommendation to accelerate the funding for five new full-time magistrate judge positions authorized at this session. Magistrate judge positions at Worcester (or Boston), Massachusetts; New Haven, Connecticut; New York City, New York; Los Angeles (or Long Beach), California; and Tampa, Florida, were designated for accelerated funding in fiscal year 1993.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

The Committee to Review Circuit Council Conduct and Disability Orders reported that it continues to follow closely the work of the National Commission on Judicial Discipline and Removal, established by the Judicial Improvements Act of 1990, Public Law 101-650.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

ADVISORY COMMITTEE ON RULES OF EVIDENCE

Since the discharge in 1975 of the Advisory Committee on the Federal Rules of Evidence following the completion of the writing of the Evidence Rules, amendments to the Rules of Evidence have been considered by the Committee on Rules of Practice and Procedure and by the Advisory Committees on Civil and Criminal Rules. The Committee on Rules of Practice and Procedure concluded that there are sufficient unsettled areas in the Evidence Rules to warrant review and recommended the appointment of a separate Evidence Rules Advisory Committee. The Judicial Conference approved that recommendation, voting to request the Chief Justice to reactivate an Advisory Committee on the Federal Rules of Evidence with the suggestion of (1) some overlapping membership with the Advisory Committees on the Federal Rules of Civil and Criminal Procedure; and (2) the appointment of a reporter to serve the reactivated Evidence Rules Committee.

APPELLATE RULES

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Rules 3 ("Appeal as of Right--How Taken"), 3.1 ("Appeal from a Judgment Entered by a Magistrate Judge in a Civil Case"), 4 ("Appeal as of Right - When Taken"), 5.1 ("Appeal by Permission Under 28 U.S.C. § 636(c)(5)"), 6 ("Appeal in a Bankruptcy Case from a Final Judgment, Order, or Decree of a District Court or of a Bankruptcy Appellate Panel"), 10 ("The Record on Appeal"), 12 ("Docketing the Appeal; Filing a Representation Statement; Filing the Record"), 15 ("Review or Enforcement of an Agency Order - How Obtained; Intervention"), 25 ("Filing and Service"), 28 ("Briefs"), and 34 ("Oral Argument") of the Federal Rules of Appellate Procedure, as well as amendments to Forms 1 ("Notice of Appeal to a Court of Appeals From a Judgment or Order of a District Court"), 2 ("Notice of Appeal to a Court of Appeals From a Decision of the United States Tax Court"), and 3 ("Petition for Review of Order of an Agency, Board, Commission or Officer"). 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.

CRIMINAL RULES

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference a proposed new Criminal Rule 26.3 ("Mistrial") and proposed

amendments to Rules 1 ("Scope"), 3 ("The Complaint"), 4 ("Arrest Warrant or Summons Upon Complaint"), 5 ("Initial Appearance Before the Magistrate Judge"), 5.1 ("Preliminary Examination"), 6 ("The Grand Jury"), 9 ("Warrant or Summons Upon Indictment or Information"), 12 ("Pleadings and Motions Before Trial; Defenses and Objections"), 16 ("Discovery and Inspection"), 17 ("Subpoena"), 26.2 ("Production of Witness Statements"), 32 ("Sentence and Judgment"), 32.1 ("Revocation or Modification of Probation or Supervised Release"), 40 ("Commitment to Another District"), 41 ("Search and Seizure"), 44 ("Right to and Assignment of Counsel"), 46 ("Release From Custody"), 49 ("Service and Filing of Papers"), 50 ("Calendars; Plans for Prompt Disposition"), 54 ("Application and Exception"), 55 ("Records"), 57 ("Rules by District Courts"), and 58 ("Procedure for Misdemeanors and Other Petty Offenses") of the Federal Rules of Criminal Procedure. The Committee also submitted a proposed amendment to Rule 8 ("Evidentiary Hearing") of the Rules Governing Proceedings in the United States District Courts Under Section 2255 of Title 28, United States Code. 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 on Rules of Practice and Procedure submitted to the Judicial Conference a proposed new Bankruptcy Rule 9036 ("Notice by Electronic Transmission"), and proposed amendments to Bankruptcy Rules 1010 ("Service of Involuntary Petition and Summons; Petition Commencing Ancillary Case"), 1013 ("Hearing and Disposition of a Petition in an Involuntary Case"), 1017 ("Dismissal or Conversion of Case; Suspension"), 2002 ("Notices to Creditors, Equity Security Holders, United States, and United States Trustees"), 2003 ("Meeting of Creditors or Equity Security Holders"), 2005 ("Apprehension and Removal of Debtor to Compel Attendance for Examination"), 3009 ("Declaration and Payment of Dividends in a Chapter 7 Liquidation Case"), 3015 ("Filing, Objection to Confirmation, and Modification of a Plan in a Chapter 12 Family Farmer's Debt Adjustment or a Chapter 13 Individual's Debt Adjustment Case"), 3018 ("Acceptance or Rejection of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case"), 3019 ("Modification of Accepted Plan Before Confirmation in a Chapter 9 Municipality or a Chapter 11 Reorganization Case"), 3020 ("Deposit; Confirmation of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case"), 5005 ("Filing and Transmittal of Papers"), 6002 ("Accounting by Prior Custodian of Property of the Estate"), 6006 ("Assumption, Rejection and Assignment of Executory Contracts and Unexpired Leases"), 6007 ("Abandonment or Disposition of Property"), 9002 ("Meanings of Words in the Federal Rules of Civil Procedure When Applicable to Cases Under

the Code"), and 9019 ("Compromise and Arbitration"), together with Committee notes explaining their purpose and intent. These amendments were approved by the Conference, which authorized their transmittal to the Supreme Court for consideration with the recommendation that they be adopted by the Court and transmitted to Congress pursuant to law.

The Committee also proposed technical amendments to Official Bankruptcy Forms 5 ("Involuntary Petition"), 9B ("Notice of Commencement of Case Under Chapter 7 of the Bankruptcy Code, Meeting of Creditors, and Fixing of Dates (Corporation/Partnership No Asset Case)"), 9D ("Notice of Commencement of Case Under Chapter 7 of the Bankruptcy Code, Meeting of Creditors, and Fixing of Dates (Corporation/Partnership Asset Case)"), 9F ("Notice of Commencement of Case Under Chapter 11 of the Bankruptcy Code, Meeting of Creditors, and Fixing of Dates (Corporation/Partnership Case)"), and 9H ("Notice of Commencement of Case Under Chapter 12 of the Bankruptcy Code, Meeting of Creditors, and Fixing of Dates (Corporation/Partnership Family Farmer)"). The Judicial Conference approved these amendments.

CIVIL RULES

The Committee on Rules of Practice and Procedure submitted to the Conference a proposed new Civil Rule 4.1 ("Service of Other Process") and proposed amendments to Civil Rules 1 ("Scope and Purpose of Rules"), 5 ("Service and Filing of Pleadings and Other Papers"), 11 ("Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions"), 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"), 26 ("General Provisions Governing Discovery; Duty of Disclosure"), 28 ("Persons Before Whom Depositions May Be Taken"), 29 ("Stipulations Regarding Discovery Procedure"), 30 ("Depositions upon Oral Examination"), 31 ("Depositions upon Written Questions"), 32 ("Use of Depositions in Court Proceedings"), 33 ("Interrogatories to Parties"), 34 ("Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes"), 36 ("Requests for Admission"), 37 ("Failure to Make Disclosure or Cooperate in Discovery: Sanctions"), 38 ("Jury Trial of Right"), 50 ("Judgment as a Matter of Law in Actions Tried by Jury; Alternative Motion for New Trial; Conditional Rulings"), 52 ("Findings by the Court; Judgment on Partial Findings"), 53 ("Masters"), 54 ("Judgments; Costs"), 58 ("Entry of Judgment"), 71A ("Condemnation of Property"), 72 ("Magistrate Judges; Pretrial Matters"), 73 ("Magistrate Judges; Trial by Consent and Appeal Options"), 74 ("Method of Appeal from Magistrate Judge to District Judge under Title 28 U.S.C. § 636(c)(4) and Rule 73(d)"), 75 ("Proceedings on Appeal from Magistrate Judge to District Judge under Rule 73(d)"), and 76 ("Judgment of the District Judge on Appeal Under Rule 73(d) and Costs"), as well as a proposed new

Form 35 ("Report of Parties' Planning Meeting") and proposed amendments to Forms 2 ("Allegation of Jurisdiction"), 33 ("Notice of Availability of a Magistrate Judge to Exercise Jurisdiction and Appeal Option"), 34 ("Consent to Exercise of Jurisdiction by a United States Magistrate Judge, Election of Appeal to District Judge"), and 34A ("Order of Reference"). The Committee also proposed an amendment to Rule 4 ("Summons") of the Federal Rules of Civil Procedure and the adoption of Forms 1A ("Notice of Lawsuit and Request for Waiver of Service of Summons") and 1B ("Waiver of Service of Summons"). The rules and forms were modified by language regarding the extraterritorial service of process. The Committee also proposed the abrogation of Form 18-A. 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.

The Conference declined to approve a Committee proposal to amend Rule 56 ("Summary Judgment") of the Federal Rules of Civil Procedure.

EVIDENCE RULES

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Rules 101 ("Scope"), 705 ("Disclosure of Facts or Data Underlying Expert Opinion"), and 1101 ("Applicability of Rules") of the Federal Rules of Evidence. 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.

COMMITTEE ON SPACE AND FACILITIES

UNITED STATES COURTS DESIGN GUIDE

The Judicial Conference approved the recommendations of the Committee on Space and Facilities to amend the *United States Courts Design Guide* as follows:

1. Incorporate technical and editorial changes and recommendations from the General Services Administration;
2. Change the finish standards for grand jury hearing room suites;

3. Make the space standard for fitness facilities consistent with executive branch policy;
4. Add a space standard for news media rooms; and
5. Revise the space standard for circuit judge's chambers.

COMMITTEE TO REVIEW THE CRIMINAL JUSTICE ACT

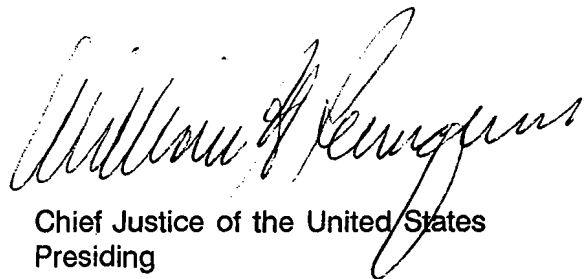
The Judicial Conference approved a resolution requesting the Defender Services Committee to undertake a detailed review of the "Interim Report of the Committee to Review the Criminal Justice Act of the Judicial Conference of the United States." The Defender Services Committee is to report back to the Conference by January 15, 1993:

FUNDING

All of the foregoing recommendations which require the expenditure of funds for implementation were approved by the Judicial 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

December 18, 1992