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1979: March | September
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REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

March 11, 1997

The Judicial Conference of the United States convened in Washington, D.C., on March 11, 1997, 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 Juan R. Torruella
Chief Judge Joseph L. Tauro,
District of Massachusetts

Second Circuit:

Chief Judge Jon O. Newman
Chief Judge Peter C. Dorsey,
District of Connecticut

Third Circuit:

Chief Judge Dolores K. Sloviter
Chief Judge Edward N. Cahn,
Eastern District of Pennsylvania

Fourth Circuit:

Chief Judge J. Harvie Wilkinson III
Judge W. Earl Britt,
Eastern District of North Carolina

Fifth Circuit:

Chief Judge Henry A. Politz
Judge William H. Barbour, Jr.,
Southern District of Mississippi

Sixth Circuit:

Chief Judge Boyce F. Martin, Jr.
Judge Thomas A. Wiseman, Jr.,
Middle District of Tennessee

Seventh Circuit:

Chief Judge Richard A. Posner
Chief Judge Michael M. Mihm,
Central District of Illinois

Eighth Circuit:

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

Ninth Circuit:

Chief Judge Procter Hug, Jr.
Chief Judge Lloyd D. George,
District of Nevada

Tenth Circuit:

Chief Judge Stephanie K. Seymour
Judge Clarence A. Brimmer,
District of Wyoming

Eleventh Circuit:

Chief Judge Joseph W. Hatchett
Judge Wm. Terrell Hodges,
Middle District of Florida

District of Columbia Circuit:

Chief Judge Harry T. Edwards
Chief Judge John Garrett Penn,
District of Columbia

Federal Circuit:

Chief Judge Glenn L. Archer, Jr.

Court of International Trade:

Chief Judge Gregory W. Carman

Circuit Judges Norman H. Stahl and David R. Thompson and District Judges Julia Smith Gibbons, John G. Heyburn, II, George P. Kazen, Barefoot Sanders, and Ann C. Williams attended the Conference session. Circuit Executives Vincent Flanagan, Steven Flanders, Toby Slawsky, Samuel W. Phillips, Gregory A. Nussel, James A. Higgins, Collins T. Fitzpatrick, June L. Boadwine, Gregory B. Walters, Robert L. Hoecker, Norman E. Zoller, and Linda Ferren were also present.

Senators Richard J. Durbin and Patrick J. Leahy and Representative Barney Frank spoke on matters pending in Congress of interest to the Conference. Attorney General Janet Reno and Acting Solicitor General Walter Dellinger addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice.

Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director for Management and Operations; William R. Burchill, Jr., Associate Director and General Counsel; Karen K. Siegel, Assistant Director, Judicial Conference Executive Secretariat; Michael W. Blommer, Assistant Director, Legislative Affairs; David Sellers, Acting Assistant Director, Public Affairs; and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat. Judge Rya W. Zobel and Russell R. Wheeler, Director and Deputy Director of the Federal Judicial Center, also attended the session of the Conference, as did James Duff, Administrative Assistant to the Chief Justice; Mary Ann Willis, Supreme Court Staff Counsel; and judicial fellows Sirkka A. Kaufman, Harry L. Pohlman, Mark Syska, and Elizabeth Woodcock.

Reports

Mr. Mecham reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office. Judge Zobel spoke to the Conference about Federal Judicial Center programs, and Judge Richard Conaboy, Chairman of the United States Sentencing Commission, submitted a written report on Sentencing Commission activities.

Elections

The Judicial Conference elected to membership on the Board of the Federal Judicial Center Bankruptcy Judge A. Thomas Small of the Eastern District of North Carolina to replace

Bankruptcy Judge Elizabeth L. Perris, and Magistrate Judge Virginia M. Morgan of the Eastern District of Michigan to fill a new position created by the Federal Courts Improvement Act of 1996 (Public Law No. 104-317).

Executive Committee

United States Sentencing Commission

On recommendation of the Executive Committee, the Judicial Conference approved the following names for presentation to the President of the United States for appointment, subject to the advice and consent of the Senate, to fill two vacancies on the United States Sentencing Commission:

For reappointment:

Honorable A. David Mazzone, District of Massachusetts;

For appointment (to succeed the Honorable Julie Carnes, who does not seek reappointment):

Honorable Diana E. Murphy, Eighth Circuit
Honorable Donald E. O'Brien, Northern District of Iowa.

Resolution

On recommendation of the Executive Committee, the Judicial Conference adopted the following resolution, in recognition of the extraordinary contributions of Chief Judge Richard S. Arnold, who stepped down as Chair of the Budget Committee on December 31, 1996:

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

RICHARD S. ARNOLD

Chair of the Committee on the Budget of the Judicial Conference from November 20, 1987 to December 31, 1996. Appointed as committee chair by Chief Justice William H. Rehnquist, Chief Judge Arnold has played a pivotal role in the administration of the federal court system. He has served with distinction leading the Budget Committee while simultaneously performing his duties as Chief Judge of the United States Court of Appeals for the Eighth Circuit. Chief Judge Arnold has earned the gratitude of his colleagues for the innumerable contributions he has made not only while serving on the Budget

Committee, but also while serving on the Ad Hoc Committee on Regulatory Reform Legislation from 1981 to 1984, the Subcommittee on Judicial Improvements from 1983 to 1987, and currently as member of the Executive Committee. He has gained the confidence and respect of those with whom he has come in contact in all three branches of government. We pay tribute and extend our deep appreciation to Chief Judge Arnold for his unwavering commitment to the administration of justice and service to the federal judiciary.

Funding for District of Columbia Court System

On January 14, 1997, the President announced a plan to restructure the relationship between the federal government and the District of Columbia. The plan included a provision that the Administrative Office of the United States Courts would assume direct responsibility for funding the District of Columbia's local court system, although the local courts would remain "self-managed." The Budget, Federal-State Jurisdiction, and Criminal Law Committees reviewed the plan. The Executive Committee, on behalf of the Conference, concluded that it was inappropriate for the federal judiciary to be involved in the funding or operations of the local courts of the District of Columbia. The Executive Committee approved the following statement reflecting the Conference position:

> The District of Columbia Superior Court and Court of Appeals were created in 1970 as a new local court system designed to function like the courts of the various states, separate and apart from the United States District Court and the United States Court of Appeals for the District of Columbia. The separation of the two court systems would be blurred under a far-reaching proposal to restructure the relationship between the federal government and the District of Columbia announced by the President on January 14, 1997. The President's plan would have the federal government assume direct responsibility for funding the District of Columbia's court system, although the courts themselves, characterized by the White House as a "court system [that] works well," would remain "self-managed." While details have yet to be worked out, the plan specifically provides that "[t]he D.C. court system would be funded through the Judiciary's Administrative Office of the U.S. Courts."
>
> The Third Branch is sympathetic to the interest of the President and the Congress in the fiscal stability of the District of Columbia. The federal judiciary also understands fully the need to provide stable funding mechanisms for carrying out judicial functions. If the primary purpose of involving the federal judiciary is to serve as a conduit for the receipt of funds for the D.C. courts, there are more appropriate models for providing for the necessary funding which are consistent with the stated goal of preserving the ability of the D.C. court system to manage itself. These include, among others, funding systems developed for Article I courts, and creation of an independent agency to receive and disburse funds for D.C. courts and their related functions. Such options would also be

more consistent with the time-honored principle that federal courts are to have limited jurisdiction, whereas state and local courts such as those in the District of Columbia are to be courts of general jurisdiction under our system of federalism.

The proposed solution to fund the D.C. courts through the Administrative Office presents serious legal and practical problems. While these are numerous, two are of such concern that they warrant detailed consideration. First, the plan would place the Director of the Administrative Office in the untenable position of assuming legal responsibility for handling D.C. court funds without the authority to assure that such funding is expended in accordance with law. In addition, to the extent that the plan can be read to involve the federal courts in the supervision of offenders sentenced by D.C. judges, the federal probation system is simply not equipped to assume such massive new responsibilities.

It is essential to preserve the independence of the federal courts and, at the same time, retain an independent local judiciary for D.C. citizens. The Executive Committee of the Judicial Conference, acting by virtue of its emergency authority on the Conference's behalf, therefore urges the Executive and Legislative Branches to develop alternatives that would avoid the entanglement of the federal judiciary in the operations of the local courts of the District of Columbia.

Optimal Utilization of Judicial Resources

In reports accompanying the judiciary's appropriations legislation for fiscal years 1996 and 1997, Congress asked the federal judiciary to study and report on the "optimal utilization of judicial resources." The Executive Committee reviewed a draft report, endorsed by several Conference committees, which addressed four specific topics, as well as additional areas where improvements and cost efficiencies could be achieved, and determined to give the members of the Judicial Conference an opportunity to review the report. In a mail ballot which concluded on November 18, 1996, the Judicial Conference voted to approve the report. (Two members included suggestions for changes, which were accommodated.) The report was transmitted to Congress by the due date of November 30, 1996 (see *infra*, "Mail Ballots," p. 41).

Study of the Criminal Justice Act

The *Report of the Judicial Conference of the United States on the Federal Defender Program*, approved by the Judicial Conference in March 1993, contained a recommendation that the judiciary should arrange for a comprehensive, impartial review of the Criminal Justice Act (CJA) program every seven years (JCUS-MAR 93, p. 28). In response to a Defender Services Committee suggestion that planning begin now so that the study could be completed by the year 2000, the Executive Committee determined not to proceed with a comprehensive study. Instead,

the Executive Committee requested the Defender Services Committee to examine specific problem areas which may be in need of in-depth review.

Miscellaneous Actions

The Executive Committee:

- Approved participation in the Attorney General's pretrial drug testing initiative (now called Operation Drug TEST) of 20 districts, plus three additional districts provided they meet the budgetary parameters of the project, and authorized the chair of the Criminal Law Committee to approve the remaining two districts (see JCUS-SEP 96, p. 46);

- Declined to authorize the Administrative Office to request permission from Congress to implement in fiscal year 1997 a $5 per hour increase in Criminal Justice Act panel attorney rates in those districts in which a rate of $75 per hour has been approved but not implemented;

- Approved a transfer of up to $8.5 million from the judiciary's fee account to the Court Security account, assuming congressional approval;

- Approved for codification in the *Guide to Judiciary Policies and Procedures* a long-standing policy of the judicial branch that drugs should not be used, possessed, or distributed in the workplace;

- Granted approval of a sentencing program sponsored by the Federal Judicial Center, but only on the basis of the Executive Committee's interpretation that the statute (28 U.S.C. § 334) requiring Judicial Conference approval of sentencing institutes is inapplicable to this program, and with the further understanding, consistent with that interpretation, that Federal Judicial Center funds would be used to defray the costs;

- Agreed that the Conference should continue to take no position on legislation to create a commission to study the boundaries of the circuits, in particular the Ninth Circuit (see JCUS-SEP 96, p. 45), but voted to seek a change in appropriations language to allow funds provided to such a commission to be "available until expended";

- Authorized a one-time waiver of the limit on reimbursement of relocation expenses for an overseas law clerk, due to the particular circumstances;

- Made no change in the judges' maximum daily subsistence allowance, but asked the Judicial Branch Committee to review established *per diem* rates in the Boston area;

- Referred to the Judicial Resources Committee a question involving law clerk assistance to courts with significant judicial vacancies;

- Received from the Bankruptcy Committee a report providing recommendations for improving the United States trustee program, which had been requested by the Executive Committee in 1995 on the assumption that the program will remain, for now, within the Department of Justice;

- Adopted a position proposed by the Automation and Technology Committee regarding multiple vendors for computer-assisted legal research; and

- On request of the Bankruptcy Committee, approved the release of a preliminary Federal Judicial Center study of a bankruptcy *in forma pauperis* pilot project, provided that a two-page executive summary and appropriate disclaimers were included.

Committee on the Administrative Office

Committee Activities

The Committee on the Administrative Office reported that it was briefed by Director Mecham on legislation affecting the judiciary and on the agency's budget. The Committee also heard reports from senior Administrative Office managers on the agency's 1997 goals and objectives; efforts to improve the judiciary's financial management systems; the J-Net, the judiciary's intranet; the status of a study of the processes by which the Administrative Office obtains advice and feedback; human resource programs, including efforts to improve available information regarding health benefits; and evaluation and assessment activities.

Committee on Automation and Technology

Long Range Plan for Automation

Pursuant to 28 U.S.C. § 612, the Committee on Automation and Technology recommended approval of a fiscal year 1997 update to the *Long Range Plan for Automation in the Federal Judiciary* with the proviso that approval does not constitute authority for any specific project to proceed outside the automation management process. The Judicial Conference approved the update.

Library Program

In addition to library collections maintained in chambers, federal court libraries exist as circuit headquarters libraries, satellite libraries, and unstaffed libraries. Depending on the needs and sizes of the populations they serve, staffed satellite and unstaffed libraries provide varying levels of services, collections and staffing. On recommendation of the Committee, the Judicial Conference approved functional requirements for satellite and unstaffed libraries, including the requirement that satellite libraries should be sufficiently large to house a satellite library collection as established by the Judicial Conference. The Conference also agreed, on recommendation of the Security, Space and Facilities Committee, to incorporate these functional requirements into the *United States Courts Design Guide* (see *infra*, "*United States Courts Design Guide*," pp. 37-39).

Committee on the Administration of the Bankruptcy System

Bankruptcy Judgeships

The Judicial Conference is required by 28 U.S.C. § 152(b)(2) to submit recommendations for new bankruptcy judgeships to the Congress, which establishes the number of such judgeships for each judicial district. Based on the results of its most recent biennial bankruptcy judgeship survey,[(1)] the Bankruptcy Committee recommended that the Judicial Conference transmit to Congress proposed legislation to create 18 additional bankruptcy judgeships, either permanent or temporary based on the most recent case filing statistics available at the time legislation for the judgeships is sent to Congress. The Judicial Conference agreed with the Committee, and recommended judgeships in the following districts:

Northern District of New York (1)
Eastern District of New York (1)
Southern District of New York (1)
District of New Jersey (1)
Eastern District of Pennsylvania (1)
Middle District of Pennsylvania (1)
District of Maryland (2)
Eastern District of Virginia (1)
Southern District of Mississippi (1)
Eastern District of Michigan (1)
Western District of Tennessee (1)
Eastern District of California (1)
Central District of California (4)
Southern District of Florida (1)

The proposed judgeship in the Southern District of Mississippi would also provide assistance to the Northern District of Mississippi. The Conference also approved and agreed to transmit to Congress proposed legislation either to make the existing temporary bankruptcy judgeship in the District of Delaware permanent or to extend it for an additional five-year period so that the position does not lapse when the first vacancy occurs on or after October 28, 1998, as supported by the caseload and other factors at the time the legislation is to be transmitted.

Statistical Reporting of Intercircuit and Intracircuit Assignments

On recommendation of the Bankruptcy Committee, the Judicial Conference approved the collection and tracking of data on intercircuit and intracircuit assignments of bankruptcy judges. To assist in this effort, the Conference authorized the Director of the Administrative Office to make technical corrections, as necessary, to the B102 form (Monthly Report of Trials and Other Activity) and to add a supplemental form designed to collect information on judicial time spent outside of court assisting other districts. Improved statistical reporting may enable the judiciary to demonstrate more effectively to Congress its efforts to use existing judicial resources to meet rising workloads throughout the nation.

Reappointment of Bankruptcy Judges

Section 303 of the Federal Courts Improvement Act of 1996 authorizes the Judicial Conference to prescribe regulations which provide for the reappointment of incumbent bankruptcy judges that differ from the initial appointment procedure. The Bankruptcy Committee recommended revisions to the regulations governing the selection and appointment of bankruptcy judges, including a new chapter 5, entitled "Reappointment of United States Bankruptcy Judges," that would permit a court of appeals to reappoint an incumbent bankruptcy judge to an additional 14-year term without considering other qualified candidates. The Judicial Conference slightly modified the Committee's recommendation and approved the revisions to the regulations, which are now called the *Regulations of the Judicial Conference of the United States for the Selection, Appointment, and Reappointment of United States Bankruptcy Judges.*

Revision of Dollar Amounts in the Bankruptcy Code

Under section 104(a) of the Bankruptcy Code, the Judicial Conference is required to "transmit to the Congress and to the President before May 1, 1985 and before May 1 of every sixth year after May 1, 1985, a recommendation for the uniform percentage adjustment of each dollar amount in [title 11] and in section 1930 of title 28." The

Bankruptcy Committee determined not to recommend dollar adjustments at this time because some adjustments had been made by Congress when it enacted the Bankruptcy Reform Act of 1994 (Public Law No. 103-394), and because the congressionally established National Bankruptcy Review Commission, which is tasked with studying the bankruptcy system, will provide an opportunity for further review of the dollar amounts. The Judicial Conference approved the Bankruptcy Committee's recommendation that Congress and the President be advised that no uniform percentage adjustment should be made at this time to the dollar amounts contained in the Bankruptcy Code or in 28 U.S.C. §1930.

Committee on the Budget

Committee Activities

The Committee reported that it reviewed a presidential proposal to restructure the District of Columbia's finances which included the proposition that the federal government, through the Administrative Office of the U.S. Courts, assume the responsibility for providing funds for the local D.C. court system. While it appeared that the Administrative Office would serve only as a "pass-through" for funding with no management or operational responsibilities, the Committee determined that it was inappropriate for the Judicial Branch to undertake this role, and the issue was presented to the Executive Committee (see *supra*, "Funding for District of Columbia Court System," pp. 6-7).

Committee on Codes of Conduct

Ethics Reform Act Gift Regulations

The Committee on Codes of Conduct proposed revision of the Judicial Conference Ethics Reform Act regulations on gifts to clarify that judicial officers and employees may properly accept certain benefits from prospective and future employers under the gift regulations. The Judicial Conference approved the revision, which adds the following language to a new section 5(i) of the regulations and renumbers the existing section 5(i) as 5(j) (new language is in italics):

§ 5. A judicial officer or employee shall not accept a gift from anyone except for --

* * * * *

(i)(1) meals, lodgings, transportation, and other benefits customarily provided by a prospective employer in connection with bona fide employment discussions;

(2) in the case of a judicial officer or employee who has obtained employment to commence after judicial employment ends, reimbursement of relocation and bar-related expenses customarily paid by the employer;

(3) nothing in this subsection alters any other standards or Codes of Conduct adopted by the Judicial Conference of the United States relating to recusal due to conflicts of interest.

Committee Activities

The Committee on Codes of Conduct reported that since its last report to the Conference in September 1996, the Committee received 39 new written inquiries and issued 42 written advisory responses. During 1996, the average response time for these requests was 19 days, excluding responses that were held for discussion at Committee meetings. The Chairman received and responded to 25 telephonic inquiries. In addition, individual Committee members responded to 46 inquiries from their colleagues.

Committee on Court Administration and Case Management

Civil Justice Reform Act

The Civil Justice Reform Act of 1990 (CJRA) required all 94 federal district courts to implement expense and delay reduction plans for civil litigation. The CJRA established specific principles, guidelines, and techniques for the courts to consider in making their plans, and required the designation of certain pilot, comparison, and demonstration courts to measure the effectiveness of these principles and guidelines. A contract was awarded to the RAND Corporation (RAND) to study the experience of the pilot and comparison courts, and the Federal Judicial Center studied the programs implemented in the demonstration courts.

The CJRA requires the Judicial Conference to submit a report to Congress by June 30, 1997, on the pilot program. The Committee on Court Administration and Case Management, which oversees the CJRA program, sought and received input from other Judicial Conference committees and from federal judges and clerks, and drafted a report which, *inter alia*, reviews the independent evaluation conducted by RAND, the evaluation

conducted by the Federal Judicial Center, and the experiences of the 94 district courts in implementing their CJRA plans; recommends that the Act's pilot program, *as a package*, not be expanded; and identifies a proposed alternative program consisting of a number of measures based in large part on the CJRA experiment. The Judicial Conference approved the proposed Civil Justice Reform Act report for submission to Congress.[(2)]

Staffing Resources for CJRA and Arbitration Programs

Federal district courts have been experimenting with arbitration (both voluntary and mandatory non-binding programs) for more than a decade. Legislation formally authorizing such experimentation was extended twice and is scheduled to sunset on September 30, 1997 (see 28 U.S.C. §§ 651-658). The Committee on Court Administration and Case Management, determining that there had been sufficient time for experimentation and that courts interested in continuing their arbitration programs or beginning new ones could do so by local rule, made no proposal to extend the legislation.

Staffing resources to support the court-annexed arbitration program have been authorized and allocated to the district courts since the mid-1980's as part of the pilot program. These positions have been used by the courts to manage cases referred to arbitration. Similarly, staffing resources to support implementation and operations under the CJRA were authorized and allocated to the district courts over the last six years. These positions have been used by the courts, for example, to administer alternative dispute resolution (ADR) programs, to provide support for CJRA advisory groups, and to enhance case management. The CJRA is scheduled to sunset on December 1, 1997.

Because of the impending sunset of the CJRA and legislation authorizing the arbitration pilot programs, the Judicial Conference approved a recommendation of the Court Administration and Case Management Committee that (a) the Judicial Resources Committee be directed to consider the development of a funding mechanism for addressing ADR staffing resources in the courts; (b) centralized funding for existing CJRA and arbitration positions be continued pending the Judicial Resources Committee's recommendations and subsequent Conference action; and (c) the Judicial Resources Committee be directed to report back to the Judicial Conference on this issue at its March 1998 session.

Space Cost Containment

In March 1996, the Judicial Conference approved a space cost containment plan (JCUS-MAR 96, p. 35). The Court Administration and Case Management Committee was designated to take the lead in (a) determining what policy on courtroom sharing for active

and senior judges should be adopted and whether the impact of any delays resulting from courtroom sharing would adversely affect case processing; and (b) developing criteria for acquiring and releasing space for facilities where there is no judicial officer, visiting courtrooms and chambers where there is a resident judicial officer, and divisional offices.

Courtroom Sharing. On recommendation of the Court Administration and Case Management Committee, the Judicial Conference adopted the following policy statement and agreed to encourage courts to take into account the factors set forth below when considering requests to construct additional courtrooms:

> Recognizing how essential the availability of a courtroom is to the fulfillment of the judge's responsibility to serve the public by disposing of criminal trials, sentencings, and civil cases in a fair and expeditious manner and presiding over the wide range of activities that take place in courtrooms requiring the presence of a judicial officer, the Judicial Conference adopts the following policy for determining the number of courtrooms needed at a facility:
>
> With regard to district judges, one courtroom should be provided for each active judge. In addition, with regard to senior judges who do not draw caseloads requiring substantial use of courtrooms and to visiting judges, judicial councils should utilize the following factors as well as other appropriate factors in evaluating the number of courtrooms at a facility necessary to permit them to discharge their responsibilities.
>
> - An assessment of workload in terms of the number and types of cases anticipated to be handled by each such judge;
> - The number of years each such judge is likely to be located at the facility;
> - An evaluation of the current complement of courtrooms and their projected use in the facility and throughout the district in order to reaffirm whether construction of an additional courtroom is necessary;
> - An evaluation of the use of the special proceedings courtroom and any other special purpose courtrooms to provide for more flexible and varied use, such as use for jury trials; and
> - An evaluation of the need for a courtroom dedicated to specific use by visiting judges, particularly when courtrooms for projected authorized judgeships are planned in the new or existing facility.

The Judicial Conference also agreed to encourage each circuit judicial council to develop a policy on sharing courtrooms by senior judges when a senior judge does not draw a caseload

requiring substantial use of a courtroom.

Acquiring and Releasing Space. The Judicial Conference approved a recommendation of the Committee that a two-stage approach be taken in determining whether a non-resident facility should be closed, and adopted the following non-exclusive list of criteria for circuit judicial councils to use in determining whether to establish or maintain a facility without a resident judge:

1. The circuit councils should first evaluate the following three factors:

a. the number of miles from the nearest facility within the district;

b. the number of days the facility is used for court-related proceedings; and

c. the cost per day of use.

2. If those factors indicate that a facility should be considered for closure, the council should apply a cost-benefit test using the following criteria to determine whether the facility should remain open or be closed:

a. travel and per diem costs for judges and staff, litigants, and witnesses to the nearest alternative facility;

b. travel and per diem costs entailed by jurors if the facility is closed;

c. travel costs for all others involved in the proceeding (e.g., U.S. marshals, attorneys);

d. economic or other benefit the facility has to the community;

e. cost of defender services if the facility is closed;

f. historic significance of the facility;

g. representativeness of the jury pool; and

h. use of the facility by a community that would not be served as well if the facility were closed (e.g., Indian reservation, military base, national park).

On recommendation of the Security, Space and Facilities Committee (at the suggestion of the Committee on Court Administration and Case Management), the Judicial Conference approved the biennial filing by the circuit councils of space reduction reports. The Conference also agreed to require the circuit councils, as part of their reports, to assess the need for

maintaining any facility that does not have a resident judge (see *infra*, "Space Management Initiatives Plan," pp. 40-41).

Probation and Pretrial Services Divisional Offices. After obtaining input from the Criminal Law Committee, the Court Administration and Case Management Committee recommended the endorsement of criteria and a process for consideration by district courts and circuit councils whenever they are considering acquiring or releasing space in probation and pretrial services divisional offices. The Committee also recommended that the Judicial Conference urge all districts to go through the process of applying the cost-benefit criteria whenever a lease is up for renewal or, in government-owned space, every five years. The Judicial Conference approved the Committee's recommendations (see also *infra*, "Opening and Closing Facilities," p. 40).

Miscellaneous Fee Schedules

Bankruptcy Courts. Item 15 of the Miscellaneous Fee Schedule for the Bankruptcy Courts provides for a fee of $5.00 per page for the provision of mailing labels. Because of advancements in technology, the information needed for mailing labels is available to the public electronically (for example, through PACER for a fee of $.60 per minute), and most courts no longer provide mailing labels as set forth in the fee schedule. A party without access to an electronic system such as PACER can still receive copies of addresses, printed from the court's automated system, for the copy fee of $.50 per page. Thus, because the fee for providing mailing labels is rarely used and the amount of funds involved is negligible, the Judicial Conference approved the recommendation of the Committee to eliminate Item 15 from the Miscellaneous Fee Schedule for the Bankruptcy Courts. The Conference also agreed to designate Item Number 15 of the Miscellaneous Fee Schedule as "Repealed" so as not to disrupt the enumeration of the schedule, since Public Law No. 100-459 permits fees collected for all services enumerated after Item 18 to be deposited in a special fund for the operation and maintenance of the courts.

Judicial Panel on Multidistrict Litigation. At its March 1995 session, the Judicial Conference voted to propose legislation authorizing the establishment of a miscellaneous fee schedule for the Judicial Panel on Multidistrict Litigation (JCUS-MAR 95, p. 15). Such authorization was provided in the Federal Courts Improvement Act of 1996. On recommendation of the Committee, the Judicial Conference approved a miscellaneous fee schedule for the Judicial Panel on Multidistrict Litigation consistent with the other fee schedules.

Committee on Criminal Law

Victims' Rights Constitutional Amendment

Several proposals were made in the 104th Congress for a constitutional amendment on

victims' rights, and it is anticipated that similar proposals will be made in the 105th Congress. With the concurrence of the Federal-State Jurisdiction Committee, the Committee on Criminal Law recommended that the Judicial Conference take no position on a victims' rights constitutional amendment at this time because no one proposal has emerged in Congress upon which the judiciary can base a position. While lauding the goal of such proposals, the Criminal Law Committee raised concerns about the impact of previous victims' rights proposals on the administration of justice. The Judicial Conference approved the recommendations of the Criminal Law Committee that it (a) take no position on the enactment of a victims' rights constitutional amendment at this time; and (b) authorize the Criminal Law Committee, in consultation with the Federal-State Jurisdiction Committee and the Chair of the Executive Committee, to maintain contact with Congress as it deliberates enactment of a victims' rights constitutional amendment to inform how the amendment may impact the administration and costs of operating the federal courts.

Risk Prediction Index

Since 1980, federal probation officers have used a device known as the Risk Prediction Scale-1980 to assist in the assessment of the risk of recidivism posed by offenders being supervised on terms of probation or supervised release. At the request of the Committee on Criminal Law, an updated assessment tool was developed by the Federal Judicial Center. The Committee recommended, and the Judicial Conference approved, the use of the new Risk Prediction Index by probation officers in the case classification process in lieu of the Risk Prediction Scale-1980.

Firearms Regulations

The Federal Courts Improvement Act of 1996 amended 18 U.S.C. §§ 3603(9) and 3154 (13) to provide federal statutory authority for United States probation and pretrial services officers to carry firearms "under such rules and regulations as the Director of the Administrative Office of the United States Courts may prescribe." The Criminal Law Committee proposed *Regulations of the Director of the Administrative Office Concerning Carrying and Using Firearms by United States Probation and Pretrial Services Officers.* In addition, the Committee recommended that the authorized cylinder capacity of the weapons be increased from the standard which had been in use since 1985. At this session, the Judicial Conference modified the Committee's proposal with regard to the firearms and ammunition authorized for use by deleting proposed paragraph 4 of the regulations and inserting in lieu thereof the following new paragraph 4:

> The Director, in consultation with the Committee on Criminal Law of the Judicial Conference, shall periodically determine which firearms and ammunition are authorized for use by probation and pretrial services officers. No unauthorized firearms or ammunition shall be carried or used.

With that revision, the draft regulations of the Criminal Law Committee were approved by the Conference. These regulations will be published in the *National Firearms Training Manual* and the *Guide to Judiciary Policies and Procedures.*

Committee on Defender Services

Defender Organization Funding Requests

Under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), the Defender Services Committee approved fiscal year 1997 funding for Federal Public Defender organizations in the amount of $140,759,800 and grants for Community Defender organizations totaling $39,149,200.

Death Penalty Representation

In September 1995, the Judicial Conference approved a *Report on Death Penalty Representation* which included recommendations for procedures to contain the costs of private representation in death penalty habeas corpus proceedings (JCUS-SEP 95, pp. 78-81). To implement those procedures, the Defender Services Committee recommended amending paragraph 6.02 (Compensation of Appointed Counsel in Capital Cases) of the *Guidelines for the Administration of the Criminal Justice Act (CJA Guidelines)* to include a provision encouraging courts to (a) require attorneys to submit and to seek advance approval of litigation budgets in federal capital habeas corpus cases; and (b) employ the case-management techniques used in complex civil litigation to control costs in such cases. The Judicial Conference approved the amendment, which will be published in Volume VII of the *Guide to Judiciary Policies and Procedures*.

The Antiterrorism and Effective Death Penalty Act of 1996 (Public Law No. 104-132) (Antiterrorism Act) contained provisions relating to compensation of counsel and other service providers in capital cases (with respect to those commenced, or in which appeal is perfected, or on or after April 26, 1994), including a limit of $125 on the maximum hourly compensation rate for attorneys appointed in capital cases; a provision that courts "may" as opposed to "shall" authorize investigative, expert, or other services in capital cases where found to be reasonably necessary; a requirement that no *ex parte* request for investigative, expert, or other services in capital cases may be considered "unless a proper showing is made concerning the need for confidentiality"; and a case maximum of $7,500 on the payment of fees and expenses for services other than counsel unless certified as necessary by the court and approved by the chief judge (or designee) of the circuit. On recommendation of the Defender Services Committee, the Judicial Conference approved amendments to the *CJA Guidelines* to implement these provisions of the Antiterrorism Act relating to compensation of counsel and authorization and payment of other

service providers in capital cases.

In addition, the Judicial Conference approved a recommendation of the Committee that two statutory provisions (21 U.S.C. § 848(q) and 18 U.S.C. § 3005) as recently amended (Public Law No. 104-132; Public Law No. 103-322) be included in Chapter I of the *CJA Guidelines* for the convenience of judicial officers and attorneys providing representation pursuant to those statutes. The Conference also agreed that the language "and Related Statutes" should be added after the words "Guidelines for the Administration of the Criminal Justice Act (18 U.S.C. § 3006A)" at the appropriate tab.

Disclosure of Compensation Payments

The Antiterrorism Act includes provisions dealing with disclosure of Criminal Justice Act (CJA) payment information. The current Judicial Conference policy regarding release of information pertaining to CJA activities is basically consistent with the Antiterrorism Act disclosure provisions; the Act, in essence, converts the Judicial Conference policy favoring disclosure of CJA payment information into a statutory requirement. The Defender Services Committee recommended, and the Judicial Conference approved, amendments to paragraph 5.01 of the *CJA Guidelines* specifically to implement provisions in the Antiterrorism Act relating to disclosure of payments made to appointed counsel and providers of investigative, expert and other services.

Panel Attorney Administration

On request from two districts, the Defender Services Committee agreed to recommend that funding be provided from the Defender Services appropriation to support a two-year pilot project designed to enhance CJA voucher review and panel attorney management, with the caveat that, in light of the availability of other resources for training panel attorneys in substantive criminal law, the pilot project should not duplicate such activities. The Judicial Conference approved the two-year pilot project in the Central District of California and the District of Maryland. Each court will employ an attorney to assist the court in CJA panel administration and case cost analysis, supported by up to $261,000 over the two-year period in the Central District of California and up to $266,000 over the two-year period in the District of Maryland.

Case Compensation Maximums

On recommendation of the Defender Services Committee, the Judicial Conference agreed to support an amendment to the Criminal Justice Act to provide that compensation of counsel for representation in non-capital habeas corpus cases will be governed by the case limits applicable to felonies, since the collateral representation (which is provided where the interests of justice require) is often as difficult as that provided in directly defending against a felony prosecution.

The budgetary impact of this amendment should be insignificant since chief judges of the courts of appeals (or designees) have the authority to approve compensation in excess of the statutory limits in appropriate cases.

Committee on Financial Disclosure

Committee Activities

The Committee on Financial Disclosure reported that as of December 31, 1996, it had received 2,983 financial disclosure reports and certifications for the calendar year 1995, including 1,215 reports and certifications from Supreme Court justices, Article III judges and judicial officers of special courts; 336 from bankruptcy judges; 478 from magistrate judges; and 954 from judicial employees.

Committee on Intercircuit Assignments

Committee Activities

The Committee on Intercircuit Assignments reported that during the period from July 1, 1996 to December 31, 1996, a total of 88 intercircuit assignments, undertaken by 68 Supreme Court justices and Article III judges, were processed and recommended by the Committee on Intercircuit Assignments and approved by the Chief Justice. Several long-term designations were recommended and approved during calendar year 1996.

Committee on International Judicial Relations

Committee Activities

The Committee on International Judicial Relations reported that its members had participated in rule of law programs involving Hong Kong and Thailand, the People's Republic of China, the Russian Federation, countries of Eastern and Western Europe, countries of Latin America, and Haiti.

Committee on the Judicial Branch

Committee Activities

The Committee on the Judicial Branch reported that a major item on its agenda is judicial

compensation. The Committee determined that the mechanism for annually adjusting judicial compensation established by the Ethics Reform Act of 1989 is broken, and that the repeated denial of judges' pay adjustments is a threat to judicial independence. The Committee recommended the pursuit of legislation which would accomplish the following objectives: (a) give judges a "catch-up" pay adjustment; (b) sever the linkage between judicial, congressional, and Executive Schedule compensation and substitute linking judges' salary adjustments to the mechanism for adjusting General Schedule pay rates; and (c) repeal section 140 of Public Law No. 97-92. By mail ballot concluded on January 27, 1997, the Judicial Conference unanimously endorsed the Committee's recommendation (see *infra*, "Mail Ballots," p. 41).

Committee on Judicial Resources

Article III Judgeship needs

Courts of Appeals. In September 1996, the Judicial Conference approved a recommendation from the Judicial Resources Committee to adopt a revised process for reviewing the judgeship needs of the courts of appeals (JCUS-SEP 96, pp. 60-61). In response to that action, the Judicial Resources Committee and its Subcommittee on Judicial Statistics initiated an immediate survey of judgeship needs for the courts of appeals, since the last survey was outdated. Based on the results of the survey and utilizing the approved process, the Committee recommended that the Judicial Conference authorize the Administrative Office to transmit a request to Congress for an additional 12 permanent and five temporary circuit judgeships (in lieu of the previous request for 20 additional temporary judgeships). The Judicial Conference approved the recommendation, as follows:

First Circuit	1 Permanent
Second	2 Permanent
Circuit	1 Permanent
Fifth Circuit	2 Permanent and 2
Sixth Circuit	Temporary
Ninth Circuit	6 Permanent and 3 Temporary

District Courts. On recommendation of the Committee, which reviewed three requests for additional district judgeships utilizing the applicable weighted caseload formula and considering any special factors, the Judicial Conference authorized the Administrative Office to transmit a request to Congress for one additional judgeship for the Northern District of Texas, one additional judgeship for the Southern District of Texas, and one additional judgeship for the Eastern District of Virginia. This is in addition to the 33 district judgeships approved by the Conference in September 1996 (JCUS-SEP 96, pp. 59-60).

District Judgeship Needs Survey. In March 1996, the Judicial Conference approved a

recommendation from the Judicial Resources Committee to include in biennial district judgeship surveys a review of courts where it may be appropriate to recommend eliminating judgeships or leaving a vacant judgeship unfilled (JCUS-MAR 96, p. 24). The Committee circulated for comment a proposed process for such a review and revised the process to incorporate suggestions of the judicial councils. The Judicial Conference approved the revised process recommended by the Committee to be incorporated into the routine biennial surveys of judgeship needs to take into account the need to eliminate judgeships.

Temporary Judgeships. Over the last several years, legislation establishing temporary judgeships has varied in the method for calculating when those judgeships expired. The most recent provision, enacted in 1996, amended the Federal Judgeship Act of 1990 (Public Law No. 101-650) to allow temporary judgeships created in 1990 to exist until at least the first vacancy occurring five years after the confirmation of the judges named to fill the temporary positions. However, logistical problems associated with the temporary positions remain because Congress does not act on judgeship issues in a systematic manner, and since 1968, has acted on average only once every six to seven years. Since this cycle is beyond the five-year period for temporary judgeships, the judiciary has occasionally lost judgeships that are still necessary. On recommendation of the Judicial Resources Committee, the Judicial Conference agreed to authorize the Administrative Office to include in future Article III district and circuit judgeship proposals submitted for congressional consideration a seven-year minimum provision for temporary judgeships.

Congressional Accountability Act

In September 1996, the Judicial Conference approved a draft of the judiciary report required by the Congressional Accountability Act of 1995 (Public Law No. 104-1) (JCUS-SEP 96, pp. 63-64), and the report was submitted to Congress in December 1996. In keeping with the final report, the Judicial Resources Committee drafted a new model employment dispute resolution plan and circulated the plan widely for comments. After numerous revisions based on comments received, the Committee recommended, and the Conference approved a model employment dispute resolution plan.

Court Reporters

Since September 1983, it has been the policy of the Judicial Conference regarding retention of official court reporters when district judges elect to use electronic sound recording (ESR) systems with a dedicated operator rather than official court reporters, to allow any necessary reduction in personnel to be accomplished through attrition (JCUS-SEP 83, p. 48). The Judicial Conference approved a Judicial Resources Committee recommendation to limit to one year the amount of time courts may retain over-strength reporters when judges change their election to ESR systems. The revised policy reads as follows:

In the event the need for shorthand, stenotype, or other reporter services should diminish by reason of the utilization of an electronic sound recording system, necessitating a reduction in court reporter staffing, funding for the court reporter position will be discontinued one year from the date of the election to the electronic sound recording system.

Committee on the Administration of the Magistrate Judges System

Background Investigations

Section 4.02 of the *Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges* requires background investigations of nominees to magistrate judge positions by the Federal Bureau of Investigation (FBI) prior to appointment. Nominees for full-time magistrate judge positions are required to undergo full-field background investigations with a 15-year scope and Internal Revenue Service (IRS) tax checks, and nominees for part-time magistrate judge positions are required to undergo only FBI name checks and IRS tax checks. On recommendation of the Committee on the Administration of the Magistrate Judges System, which determined that it is just as important to the federal judiciary for part-time magistrate judges to be subject to extensive FBI background investigations as full-time magistrate judges, the Judicial Conference amended § 4.02 of the regulations to require any new appointee to a part-time magistrate judge position to undergo an FBI full-field background investigation, with a 15-year scope, prior to appointment. In circumstances involving high turnover and recruitment problems due to isolated locations of certain part-time magistrate judge positions, the Conference agreed to permit the Committee to grant waivers to the requirement for full-field background investigations by the FBI, on an individual case basis.

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 Judicial Conference approved the following changes in salaries and arrangements for full-time and part-time magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

First Circuit

District of Rhode Island

Made no change in the number or location of the magistrate judge positions in the district.

Second Circuit

Northern District of New York

1. Authorized an additional full-time magistrate judge position at Syracuse, Watertown, or Binghamton;

2. Increased the salary of the part-time magistrate judge position at Plattsburgh or Champlain from Level 6 ($10,640 per annum) to Level 5 ($20,640 per annum); and

3. Made no change in the number or location of the other magistrate judge positions in the district.

Third Circuit

Western District of Pennsylvania

1. Increased the salary of the part-time magistrate judge position at Johnstown from Level 2 ($51,600 per annum) to Level 1 ($56,760 per annum);

2. Increased the salary of the part-time magistrate judge position at Erie from Level 2 ($51,600 per annum) to Level 1 ($56,760 per annum); and

3. Made no change in the number, location, or arrangements of the other magistrate judge positions in the district.

Fourth Circuit

Western District of North Carolina

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Northern District of West Virginia

1. Increased the salary of the part-time magistrate judge position at Morgantown from Level 5 ($20,640 per annum) to Level 4 ($30,960 per annum); and

2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

Sixth Circuit

Middle District of Tennessee

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

Eighth Circuit

District of Minnesota and District of South Dakota

Authorized the part-time magistrate judge position at Sioux Falls in the District of South Dakota to serve in the adjoining District of Minnesota in accordance with 28 U.S.C. § 631 (a).

Eastern District of Missouri

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Ninth Circuit

District of Arizona

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

2. Increased the salary of the part-time magistrate judge position at Yuma from Level 4 ($30,960 per annum) to Level 2 ($51,600 per annum); and

3. Made no change in the locations or arrangements of the other magistrate judge positions in the district.

Southern District of California

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

District of Oregon

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

2. Discontinued the part-time magistrate judge position at Bend upon the appointment of a magistrate judge to fill the newly-authorized position at Portland; and

3. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

Western District of Washington

1. Increased the salary of the part-time magistrate judge position at Bellingham from Level 7 ($5,160 per annum) to Level 5 ($20,640 per annum); and

2. Increased the salary of the part-time magistrate judge position at Vancouver from Level 7 ($5,160 per annum) to Level 6 ($10,320 per annum).

Tenth Circuit

District of Kansas

1. Authorized a new part-time magistrate judge position at Topeka at Salary Level 2 ($51,600 per annum);

2. Upon the appointment of a part-time magistrate judge at Topeka, discontinued the part-time magistrate judge position at Leavenworth; and

3. Made no change in the number or locations of the other magistrate judge positions in the district.

Eleventh Circuit

Northern District of Alabama

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

2. Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

Middle District of Florida

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

2. Authorized an additional full-time magistrate judge position at Tampa; and

3. Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

Committee to Review Circuit Council Conduct and Disability Orders

Processing of Petitions for Review

The *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Circuit Council Orders under the Judicial Conduct and Disability Act (Rules for the Processing of Petitions for Review)* govern the handling by the Committee to Review Circuit Council Conduct and Disability Orders of petitions for Judicial Conference review filed pursuant to 28 U.S.C. § 372(c)(10). These rules do not impose any time limit upon the filing of a petition for review with the Conference. Because of the potential problems created by the absence of a clear time limit for filing a petition for review, the Committee recommended, and the Judicial Conference approved, an amendment to Rule 6 of the *Rules for the Processing of Petitions for Review* to establish a 60-day time limit for the filing of a petition for Conference review of final action of a circuit council, with an additional 30 days for the filing of cross-petitions.

As a result of the above amendment, two conforming changes to the Illustrative Rules Governing Complaints of Judicial Misconduct and Disability are necessary. On recommendation of the Committee, the Judicial Conference approved (a) the deletion of Illustrative Rule 17(d) (Special rule for decisions of judicial council) and the renumbering of the other subsections of Rule 17; and (b) the deletion of the last sentence of Illustrative Rule 18(e) (Judge under investigation) to conform to the amended Judicial Conference Rule 6.

Committee on Rules of Practice and Procedure

Federal Rules of Civil Procedure

The Committee on Rules of Practice and Procedures submitted to the Judicial Conference proposed amendments to Federal Rule of Civil Procedure 73 (Magistrate Judges; Trial by Consent and Appeal Options) and proposed amendments abrogating Rules 74 (Method of Appeal From Magistrate Judge to District Judge Under Title 28, U.S.C. § 636(c) 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 the Appeal under Rule 73(d) and Costs), and revisions of Forms 33 and 34. The proposed amendments were accompanied by Committee notes explaining their purpose and intent. These changes were proposed to conform to the provisions in the Federal Courts Improvement Act of 1996 which eliminate the alternative appeal to a district judge from a decision entered by a magistrate judge under 28 U.S.C. § 636(c). The Judicial Conference approved the amendments for transmission to the Supreme Court for its consideration, with the recommendation that they be approved by the Court and transmitted to Congress in accordance with the law.

Federal Rules of Criminal Procedure

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Criminal Rule 58 (Procedure for Misdemeanors and Other Petty Offenses) together with Committee notes explaining their purpose and intent. The proposed amendments conform with the provisions in the Federal Courts Improvement Act which modify the procedures governing the consent of a defendant to be tried by a magistrate judge. The Conference approved the amendments and authorized their transmittal to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

Federal Rules of Evidence

Under 42 U.S.C. § 13942(c), as amended in 1996, the Judicial Conference is required to report to Congress on whether the Federal Rules of Evidence should be amended, and if so how, "to guarantee that the confidentiality of communications between sexual assault victims and their therapists or trained counselors will be adequately protected in Federal court proceedings." The Committee on Rules of Practice and Procedure prepared a report to Congress, which explains that no amendment is necessary to guarantee the fair and adequate protection of the confidentiality of these communications in federal court proceedings. The Judicial Conference approved the proposed report, which concludes that it is not advisable to amend the Evidence Rules to include a special privilege for confidential communications between sexual assault victims and their counselors or therapists, for transmission to Congress in accordance with the law.

Committee on Security, Space and Facilities

Courtroom Sharing and Model for Courtroom Planning

At this session, the Judicial Conference approved factors recommended by the Court Administration and Case Management Committee that encourage courts and circuit judicial

councils to consider the number of courtrooms to be constructed in new and existing facilities for senior judges not drawing caseloads requiring substantial use of courtrooms and for visiting judges (see *supra*, "Space Cost Containment," pp. 17-20). On recommendation of the Security, Space and Facilities Committee, the Judicial Conference agreed to incorporate in the *United States Courts Design Guide (Design Guide)* the factors with commentary.

The Judicial Conference approved a recommendation of the Security, Space and Facilities Committee that it endorse the use of an automated planning model to assist courts and councils in calculating courtroom requirements in courthouse facilities. The Conference also approved the following specific planning assumptions for making projections of courtroom requirements. These assumptions may be modified by courts and judicial councils based upon actual circumstances, so that individual court needs can be considered when making the projections:

a. If a senior judge will be provided with a courtroom, it will be occupied by the judge for ten years after taking senior status;

b. It will take three years for a new judgeship to be established and for the judge to begin work once a court's caseload warrants an additional judgeship;

c. A replacement judge will begin working two years after the judge being replaced takes senior status; and

d. Active judges will take senior status in the year they are eligible.

The Conference agreed to incorporate these factors and planning assumptions in the *United States Courts Design Guide.*

United States Courts Design Guide

After a comprehensive review of the *United States Courts Design Guide*, including the solicitation of comments from individuals in the private sector, the courts, and the General Services Administration (GSA), the Committee on Security, Space and Facilities determined to recommend modifications to the *Design Guide*. Among the proposed revisions was the inclusion of policy statements in the *Design Guide* to assist in its use by a wide range of individuals, and to ensure that Congress and others involved with making public policy decisions about the construction of federal buildings are fully aware of the rationale for certain space standards. On recommendation of the Committee, the Judicial Conference also approved revisions to the *Design Guide* that:

a. emphasize the important role the project budget, long-term durability, and maintenance costs play in determining the level and type of interior finishes in new courthouses and in renovation projects, and add language that precludes the use of exotic hardwoods;

b. add a new Chapter 2 on general programming and budgetary considerations;

c. incorporate functional requirements recommended by the Committee on Automation and Technology and approved by the Conference for use by courts and circuit judicial councils when contemplating construction of satellite and unstaffed libraries (see *supra*, "Library Program," p. 11), and also require specific approval by the circuit council of space associated with circuit headquarters, satellite, and unstaffed libraries;

d. reduce the sizes of chambers suites when chambers library collections are shared between or among judicial officers, and incorporate designs that reduce chambers lawbook costs and do not increase rental costs, as optional design configurations to be considered for new construction and remodeled space;

e. define in more specific terms the amount of space needed to move from one space to another (i. e., circulation space), and prohibit design architects and court staff from adding spaces not originally contemplated in design programs, including spaces that increase floor size or building volume;

f. delineate in more specific terms staff office sizes using benchmarks from the Court Personnel System;

g. encourage the use of, and reaffirm the need for, shared use of space common to all court offices, such as conference and training rooms and staff lavatories, and provide specific standards on the size and number of these facilities;

h. increase the size of magistrate judges' courtrooms to 1,800 square feet and ceiling height to 16 feet;

i. encourage sharing of district court courtrooms for large, complex bankruptcy proceedings but permit, with specific approval of the circuit judicial council, one 2,400 square foot courtroom for large, complex bankruptcy proceedings in bankruptcy facilities; and

j. take no position on locating courtrooms and chambers on separate floors, but include this design configuration as an option available to courts wishing to incorporate it into construction projects.

The Conference agreed that changes to the *Design Guide* will be implemented effective with any project, the design of which begins on or after April 1, 1997. Any design which already has commenced could be amended provided no additional design fees or rental costs will result from the changes. Further, the costs of any changes incorporated into the designs of projects whose design appropriation already has been enacted will be absorbed from within the design

budget if the design has not yet commenced. The proposed construction budget for these projects will not be increased as a result of incorporating these changes.

The Conference also prohibited any action taken by a court or circuit judicial council that would lead to extravagance in courthouse construction or renovation; at the same time, the Conference recognized that a pragmatic approach to design ensures that courthouses constructed or renovated represent long-term value. In addition, the Conference endorsed transmission to the Congress of documentation for any departures from the space standards described in the *Design Guide* approved by the circuit judicial councils.

Five-Year Courthouse Project Plan

The first five-year plan of courthouse construction projects was approved by the Judicial Conference in March 1995 (JCUS-MAR 95, pp. 31-32). The judiciary was urged by the Congress and GSA to list the courthouse projects in priority order, and in March 1996, the Conference approved criteria for prioritizing projects (JCUS-MAR 96, p. 36). At this session, the Conference approved an updated five-year plan for the fiscal years 1998 to 2002 as recommended by the Committee on Security, Space and Facilities. In addition, the Conference agreed to include, as recommended by the General Accounting Office, a brief narrative description of each project's scope, and a description of how the criteria used to rank courthouse construction projects were applied to each project.

Release of Court Facilities

Last year, upon review by courts and circuit judicial councils of their space assignments -- a review prompted by the Judicial Conference-approved Space Management Initiatives in the Federal Courts Plan (see JCUS-MAR 96, p. 35), six locations without full-time resident judges were identified for release to GSA, for a savings to the judiciary of about $400,000 in annual space rental costs. On recommendation of the Security, Space and Facilities Committee, the Judicial Conference approved for release court facilities at five additional locations identified by the courts and circuit councils, as follows, subject to the ability of the court to obtain space at each location on an as-needed basis should it continue to require accommodations at that location: Clarksdale, Mississippi; Joplin, Missouri; St. Joseph, Missouri; Ardmore, Oklahoma; and Guthrie, Oklahoma.

Opening and Closing Facilities

At this session, the Judicial Conference approved, on recommendation of the Court Administration and Case Management Committee, a two-stage process for evaluating the need

for non-resident visiting judge facilities and criteria for acquiring and releasing space in probation and pretrial services offices (see *supra*, "Space Cost Containment," pp. 17-20). To supplement these processes, the Security, Space and Facilities Committee recommended, and the Judicial Conference agreed, to require a report addressing the criteria approved by the Judicial Conference, or circuit council-specific criteria, to accompany any space request for a new facility without a judicial officer in permanent residence or for a new probation or pretrial services office.

Use of Court Facilities by State and Local Governments

The Judicial Conference approved a recommendation of the Security, Space and Facilities Committee that, as a cost-savings measure, it strongly encourage courts to enter into shared facilities arrangements with state and local governments, or other entities. The Conference agreed to direct the Administrative Office to develop instructions and procedures for use by courts wishing to enter into such arrangements and to provide financial incentives to courts consummating agreements with state and local governments or other entities, subject to funding availability.

Space Management Initiatives Plan

Initially, the Space Management Initiatives in the Federal Courts Plan called for square footage and dollar allotments to be provided to each circuit judicial council. Because personnel staffing and costs are now projected to increase at a greater rate than was contemplated when the space rental restrictions were first considered by the Conference, it appears that the development of space allotments is not financially feasible, and the Committee recommended that the Plan be amended. The Committee further recommended that the November 1995 "Interim Guidelines for Acquisition of Space and Funding of Tenant Alterations," issued by the Administrative Office, should be used to limit future space growth, and that space assignments should be reviewed periodically with a view toward controlling costs. The Judicial Conference approved the recommendations of the Security, Space and Facilities Committee, as follows:

a. Amended the Space Management Initiatives in the Federal Courts Plan to delete the requirement that the AO provide allotments of square footage and space funding caps to the judicial councils, and add language providing that mechanisms for reducing space costs will be developed for use when needed if funding levels in annual financial plans do not support the priorities established by the Executive Committee;

b. Agreed to require space reduction reports (evaluations of current space holdings to determine if space can be used more effectively or released to the General Services Administration) to be submitted by circuit councils on a biennial basis;

c. Agreed to require that space benchmarks, once developed, be used by judicial councils when considering space requests. This action will ensure that courts and circuit councils examine and evaluate space requests using the *Design Guide* and other space analytical tools, including national space utilization averages, in making decisions to acquire space; and

d. Endorsed continued use by the AO until further notice of the November 1995 "Interim Guidelines for Space Acquisition and Tenant Alterations Funding" to limit future space growth.

Mail Ballots

The Judicial Conference completed two mail ballots since its last session. On November 18, 1996, the Conference concluded a ballot approving a report on the "optimal utilization of judicial resources" and authorized the report's transmittal to Congress (see *supra*, "Optimal Utilization of Judicial Resources,"

pp. 7-8). By mail ballot concluded on January 27, 1997, the Conference unanimously endorsed a Judicial Branch Committee proposal to seek legislation on judicial compensation (see *supra*, "Committee Activities," p. 26).

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

Except as otherwise specified, the Conference authorized the immediate release of matters considered by this session where necessary for legislative or administrative action.

Chief Justice of the United States
Presiding

1. This survey was conducted on an expedited basis in November 1996 because of a change in the schedule for completing the surveys approved by the Judicial Conference at its September 1996 session (JCUS-SEP 96, p. 50).

2. The report will become public at the same time it is submitted to Congress.

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

September 23, 1997

The Judicial Conference of the United States convened in Washington, D.C., on September 23, 1997, 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 Juan R. Torruella
Chief Judge Joseph L. Tauro,
District of Massachusetts

Second Circuit:

Chief Judge Ralph K. Winter, Jr.
Chief Judge Peter C. Dorsey,
District of Connecticut

Third Circuit:

Chief Judge Dolores K. Sloviter
Chief Judge Edward N. Cahn,
Eastern District of Pennsylvania

Fourth Circuit:

Chief Judge J. Harvie Wilkinson III
Judge W. Earl Britt,
Eastern District of North Carolina

Fifth Circuit:

Chief Judge Henry A. Politz
Judge William H. Barbour, Jr.,

Southern District of Mississippi

Sixth Circuit:

Chief Judge Boyce F. Martin, Jr.
Judge Thomas A. Wiseman, Jr.,
Middle District of Tennessee

Seventh Circuit:

Chief Judge Richard A. Posner
Chief Judge Michael M. Mihm,
Central District of Illinois

Eighth Circuit:

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

Ninth Circuit:

Chief Judge Procter Hug, Jr.
Chief Judge Lloyd D. George,
District of Nevada

Tenth Circuit:

Chief Judge Stephanie K. Seymour
Judge Clarence A. Brimmer,
District of Wyoming

Eleventh Circuit:

Chief Judge Joseph W. Hatchett
Judge Wm. Terrell Hodges,
Middle District of Florida

District of Columbia Circuit:

Chief Judge Harry T. Edwards
Chief Judge Norma H. Johnson,
District of Columbia

Federal Circuit:

Chief Judge Glenn L. Archer, Jr.

Court of International Trade:

Chief Judge Gregory W. Carman

Circuit Judges Stephen H. Anderson, Emmett R. Cox, Paul V. Niemeyer, Norman H. Stahl, and David R. Thompson and District Judges J. Owen Forrester, Julia Smith Gibbons, John G. Heyburn, II, D. Lowell Jensen, George P. Kazen, Philip M. Pro, Barefoot Sanders, Alicemarie H. Stotler, and Ann C. Williams attended the Conference session. Linda Ferren, Circuit Executive for the District of Columbia Circuit, was also present.

Senators Orrin Hatch and Patrick J. Leahy spoke on matters pending in Congress of interest to the Conference. Attorney General Janet Reno addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice.

Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director for Management and Operations; William R. Burchill, Jr., Associate Director and General Counsel; Karen K. Siegel, Assistant Director, Judicial Conference Executive Secretariat; Michael W. Blommer, Assistant Director, Legislative Affairs; Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat; and David Sellers, Deputy Assistant Director, Public Affairs. Judge Rya W. Zobel and Russell R. Wheeler, Director and Deputy Director of the Federal Judicial Center, also attended the session of the Conference, as did James Duff, Administrative Assistant to the Chief Justice; Mary Ann Willis, Supreme Court Staff Counsel; and judicial fellows Robert Clayman, David Pimentel and Harry

L. Pohlman.

REPORTS

Mr. Mecham reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office. Judge Zobel spoke to the Conference about Federal Judicial Center programs, and Judge Richard Conaboy, Chairman of the United States Sentencing Commission, reported on Sentencing Commission activities.

EXECUTIVE COMMITTEE

UNITED STATES SENTENCING COMMISSION

On recommendation of the Executive Committee, the Judicial Conference approved the following names for presentation to the President of the United States for appointment, subject to the advice and consent of the Senate, to fill vacancies on the United States Sentencing Commission:

For reappointment:

Honorable A. David Mazzone, District of Massachusetts.

For appointment:

Honorable Peter Beer, Eastern District of Louisiana
Honorable John C. Coughenour, Western District of Washington
Honorable William B. Enright, Southern District of California
Honorable Diana E. Murphy, Eighth Circuit
Honorable Donald E. O'Brien, Northern District of Iowa
Honorable Gerald E. Rosen, Eastern District of Michigan.

AD HOC STRATEGIC PLANNING COMMITTEE OF THE FEDERAL JUDICIAL CENTER

In 1996, the Chief Justice appointed an Ad Hoc Strategic Planning Committee of the Federal Judicial Center to review and to make recommendations concerning the operations of the Federal Judicial Center (FJC) in relation to its statutory missions. The report and recommendations of the Ad Hoc Committee were approved by the FJC Board in June 1997. Several of the recommendations of the Ad Hoc Committee's report expressly involve the relationship between the Administrative Office and the Federal Judicial Center, including

recommendations 4 and 7, which concern, respectively, education and training in the third branch and the creation of a high-level interagency working group to resolve potential interagency conflicts. The Director of the FJC submitted to the Executive Committee two motions (identified as Motions A and B) to implement these two recommendations. On recommendation of the Executive Committee, the Judicial Conference authorized the creation of an ad hoc committee, consisting of members of the Conference to be selected and appointed by the Chief Justice, to study the merits of Motions A and B related to the *Report of the Ad Hoc Strategic Planning Committee of the Federal Judicial Center.* The ad hoc committee is to make a report and recommendation for consideration by the March 1998 Judicial Conference.

The Director of the Federal Judicial Center also proposed a motion relating to improved communication between the Director and the Executive Committee concerning matters involving the FJC. In response, the Executive Committee adopted the following:

> The Executive Committee agrees to consider improved means by which the Director of the Federal Judicial Center may confer directly with the Committee on matters involving the Center's missions of research and education or the Center itself. The Committee is likewise receptive to receiving information about the Center's research activities.

RESOLUTIONS

The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution in recognition of the substantial contributions made by Judicial Conference committee chairs who will complete their terms of service in 1997:

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

HONORABLE J. OWEN FORRESTER
Committee on Automation and Technology

HONORABLE ANN C. WILLIAMS
Committee on Court Administration and Case Management

HONORABLE BAREFOOT SANDERS
Committee on the Judicial Branch

HONORABLE JAMES K. LOGAN
Advisory Committee on the Federal Rules of Appellate Procedure

HONORABLE D. LOWELL JENSEN

Advisory Committee on the Federal Rules of Criminal Procedure

Appointed as committee chairs by Chief Justice William H. Rehnquist, these outstanding jurists have played a vital role in the administration of the federal court system. These judges served with distinction as leaders of their Judicial Conference committees while, at the same time, continuing to perform their duties as judges in their own courts. They have set a standard of skilled leadership and earned our deep respect and sincere gratitude for their innumerable contributions. We acknowledge with appreciation their commitment and dedicated service to the Judicial Conference and to the entire federal judiciary.

FINANCIAL MATTERS

The Committee approved interim fiscal year 1998 financial plans for the Salaries and Expenses, Defender Services, Fees of Jurors and Commissioners, and Court Security accounts. The Committee authorized the Director of the Administrative Office to make technical and other adjustments to these plans, as deemed appropriate. In addition, for any year in which the judiciary does not receive new appropriations, the Committee authorized the continuation of judicial branch operations from all available sources of fees and no-year appropriations, subject to any necessary approval of congressional reprogramming requests, until such time as those funds are exhausted and under such guidance and direction as the Director of the Administrative Office deems appropriate.

JUDICIAL CONFERENCE COMMITTEE MATTERS

Every five years each committee of the Judicial Conference must recommend to the Executive Committee, with a justification, whether it should be maintained or abolished (JCUS-SEP 87, p. 60). Pursuant to this mandate, each committee submitted to the Executive Committee a completed self-evaluation questionnaire, which was considered by the Executive Committee at its August 1997 meeting. The Executive Committee made no changes to the committee structure itself, but, on request of the respective committees, revised the jurisdictional statements of the Committees on Automation and Technology, Budget, Court Administration and Case Management, Defender Services, Federal-State Jurisdiction, and Judicial Resources. The Executive Committee declined to approve a requested modification to the jurisdictional statement of the Intercircuit Assignments Committee.

On recommendation of the Committee on Security, Space and Facilities, the Executive Committee changed the name of that committee to the Committee on Security and Facilities, effective October 1, 1997.

MISCELLANEOUS ACTIONS

The Executive Committee:

- Agreed, on recommendation of the Committee on the Administration of the Magistrate Judges System, to continue the part-time magistrate judge position at San Bernardino, California for an additional 180 days or until a successor is approved to fill the part-time magistrate judge position at Barstow, California, whichever occurs first.

- Approved a recommendation of the Committee on the Budget that the Conference seek an amendment to title 28 permitting the Director of the Administrative Office to designate disbursing and certifying officers in the third branch.

- Authorized a 60-day suspension of the $.50 per page miscellaneous copying fee in the district and bankruptcy courts of North Dakota to enable attorneys impacted by flood conditions in the district to reconstruct their files in pending cases (see also *infra,* "Waivers in Natural Disaster Emergencies," pp. 60-61).

- Approved a recommendation of the Committee on the Judicial Branch that the Judicial Conference take no position on section (2)(a) of H.R. 930 (105th Congress), which would authorize the Administrator of General Services to issue regulations that would require the use of the government-issued travel charge card for all payments of expenses of official government travel, because it appears not to apply to the judiciary. In the event the proposed legislation is amended or clarified to cover the judiciary, then the Judicial Conference will oppose it.

- Agreed to amend the fiscal year 1997 financial plan for the Defender Services appropriation to revise the distribution of allocations between activities within the plan and to increase the total by up to $5,197,000, and to notify Congress of the change.

- On recommendation of the Committee on Security, Space and Facilities, approved the release of space in the Federal Building in Leavenworth, Kansas.

- Tentatively concurred in procedures outlined by the Committee on International Judicial Relations for receipt of funds and for international travel by judiciary representatives, subject to further review by the Executive Committee at a later date.

- Established a mechanism whereby each Judicial Conference committee shall periodically review the text of a judicial improvements bill in the form in which it was last introduced in Congress with regard to items within its jurisdiction, and make specific recommendations to the Executive Committee regarding deletions for the next bill. These recommendations will be presented for Judicial Conference action, where appropriate, by the Executive Committee.

- Authorized the long-range planning liaisons from relevant Conference committees to meet annually, if activities warrant.

- Agreed to distribute to the Conference committee chairs for comment a document outlining Conference and committee procedures entitled *The Judicial Conference of the United States and its Committees* and to present the document to the March 1998 Judicial Conference for its approval. If approved, the document will be distributed periodically to all judicial officers.

- Approved a request of the Chair of the Committee on Rules of Practice and Procedure that the Rules Committee and its advisory committees be exempt from the practice of appointing circuit liaisons within the committees.

- Affirmed that the Director of the Administrative Office and his staff (in consultation with the Chair of the Executive Committee) are the designated points of contact for all legislative communications from the judiciary.

- Provided comments to Congress for alternatives more appropriate than the Administrative Office for funding the local courts of the District of Columbia.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it is continuing to monitor developments related to pursuing the legislative goal of relieving the Administrative Office of its responsibility for supporting the District of Columbia Public Defender Service. In addition, the Committee was briefed by the Director of the Administrative Office on the status of legislative activity of interest to the judiciary and on agency activities. After reviewing the results of a study on the Administrative Office's advisory processes, the Committee endorsed a general approach for restructuring the process. The Committee also discussed a report of the Ad Hoc Strategic Planning Committee of the Federal Judicial Center and noted that some aspects of the report would have an impact on the Administrative Office. The Committee endorsed the following statement:

> Recognizing that the director of the Administrative Office has the authority to delegate, contract for services, and enter into interagency agreements in exercising his responsibilities, the director is nonetheless under legal obligations, which include his statutory duties and those assigned to him by the Judicial Conference. The director should take no action nor enter into any agreement that would prevent or restrict his ability to carry out those duties.

COMMITTEE ON AUTOMATION AND

TECHNOLOGY

INTERNET ACCESS AND USE

The Internet is a global network of networks, enabling computers of all kinds to communicate and share information throughout much of the world. Demand for access by judges and court staff for information-gathering, research and electronic mail outside the judiciary's Data Communications Network (DCN) is increasing. However, there are security risks associated with use of the Internet. To balance security concerns with the ability of local courts to provide Internet access, the Judicial Conference approved a policy, recommended by the Committee on Automation and Technology, that for any computer connected to the DCN, access to the Internet be provided only through national gateway connections approved by the Administrative Office pursuant to procedures adopted by the Committee on Automation and Technology.

Experience outside the judiciary has shown that there are four principal areas of concern associated with uncontrolled access to the Internet: institutional embarrassment, misperception of authority, lost productivity, and capacity demand. On recommendation of the Committee, the Conference agreed to urge all courts to adopt their own policies establishing local responsibility for managing employee access to the Internet and providing guidance on the responsible use of the Internet.

STANDARD ELECTRONIC CITATIONS

On August 6, 1996, the American Bar Association (ABA) approved a resolution calling for state and federal courts to develop a standard, format-neutral citation system and recommending a format that could be used. After surveying federal judges and providing an opportunity for public comment, including a public hearing, the Committee on Automation and Technology recommended that the Judicial Conference decline to adopt the ABA's recommendation on citation issues at this time. The Judicial Conference approved the Committee's recommendation. The Committee will explore studying the desirability, feasibility, and cost of establishing a centrally maintained, publicly accessible electronic database of all opinions submitted by federal courts for inclusion in the database.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

BANKRUPTCY JUDGESHIPS

The Committee on the Administration of the Bankruptcy System evaluated the need for 10 temporary bankruptcy judgeship positions that had been authorized pursuant

to the Bankruptcy Judgeship Act of 1992 and were due to expire with the first vacancies occurring as early as 1998. Based on recent judicial workload statistics and other factors, the Committee recommended, and the Judicial Conference agreed to take, the following actions:

a. Transmit to Congress proposed legislation to make permanent the temporary judgeships in the District of Puerto Rico and the Northern District of Alabama;

b. Transmit to Congress proposed legislation to extend the temporary judgeships for additional five-year periods in the District of South Carolina, the Western District of Texas, the Eastern District of Tennessee, and the Southern District of Illinois;

c. Reiterate its recommendation to Congress that the temporary position in the District of Delaware be extended to the first vacancy occurring due to death, retirement, resignation, or removal in the district that occurs 10 years or more after the date on which the temporary judgeship was originally filled; and

d. Take no action with regard to the status of the temporary judgeships in the District of New Hampshire, the Middle District of North Carolina, and the District of Colorado, which will permit the positions to lapse.

COMMITTEE ON THE BUDGET

FISCAL YEAR 1999 BUDGET REQUEST

In recognition of congressional funding constraints, the Budget Committee reduced and adjusted the program committees' proposed funding levels for the fiscal year 1999 budget request. The Judicial Conference approved the Budget Committee's lower budget request for fiscal year 1999, subject to amendments necessary as a result of new legislation, actions of the Judicial Conference, or other reasons the Director of the Administrative Office considers necessary and appropriate.

TEMPORARY EMERGENCY FUND

The temporary emergency fund (TEF) is used for the employment of short-term temporary secretaries and law clerks to assist judicial officers in emergency situations. Since fiscal year 1996, funds may be reprogrammed between the TEF and tenant alterations (JCUS-SEP 95, p. 73). The circuit judicial councils oversee the spending of TEF funds, but control over the actual funds has remained at the Administrative Office. On recommendation of the Budget Committee, the Judicial Conference approved implementation of the decentralization of the temporary emergency fund so that the actual

allotment of the TEF funds will be made to the circuit councils.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in March 1997, the Committee received 39 new written inquiries and issued 36 written advisory responses. To date in 1997, the average response time for these requests has been 20 days, excluding a response held for discussion at the Committee's meeting. The Chairman received and responded to 33 telephonic inquiries. In addition, individual Committee members responded to 61 inquiries from their colleagues.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

MISCELLANEOUS FEE SCHEDULES

Bankruptcy Court. The Judicial Conference is authorized by 28 U.S.C. § 1930(b) to prescribe miscellaneous bankruptcy fees. With significant input from the Bankruptcy Committee, which recently undertook a review of the Bankruptcy Court Miscellaneous Fee Schedule, the Court Administration and Case Management Committee recommended a number of revisions to the fee schedule. The Judicial Conference approved these revisions, which would:

(a) raise the fee for exemplification of a document because of the additional time and resources required (Item 2); (b) eliminate as burdensome to the clerk's office the requirement that creditors be notified when an amendment is made to a debtor's schedules of creditors or lists of creditors (Item 4); (c) expand the $30 administrative fee to apply to all chapters under title 11 and eliminate the $.50 per notice fee (Item 8); (d) eliminate the fee for filing a notice of appeal with the bankruptcy court in proceedings arising under the Bankruptcy Act (i.e., pre-1979) (Item 9); (e) eliminate as burdensome to the clerk's office the $.25 fee for processing each claim filed in excess of 10 (Item 10); (f) eliminate the fee for "transcribing a record of any proceeding by a regularly employed member of the bankruptcy court staff" because it is rarely utilized (Item 11); (g) increase to $35, to account for inflation, the fee for the "retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court," provided legislation is enacted permitting the judiciary to retain the increase (Item 13); (h) establish that the fee for docketing a notice of appeal or cross appeal from a bankruptcy judge's decision will be equal to the fee for filing an appeal from a district court to a court of appeals (Items 16 and 22); (i) increase the fee for filing a petition ancillary to a foreign proceeding to an amount equal to the fee for commencing a chapter 11 bankruptcy case, contingent upon the enactment of legislation permitting the judiciary to retain the resulting increase (Item 17); (j) establish that the fee for "filing a motion to

terminate, annul, modify, or condition the automatic stay provided under 11 U.S.C. § 362 (a), a motion to compel abandonment of property of the estate pursuant to Rule 6007(b) of the Federal Rules of Bankruptcy Procedure, or a motion to withdraw the reference of a case or proceeding under 28 U.S.C. 157(d)" will be equal to one-half the fee for instituting a civil action under 28 U.S.C. § 1914(a) (Item 21); and (k) add a new fee for the reopening of bankruptcy cases payable upon the filing of the motion to reopen.

The amended Miscellaneous Fee Schedule for the Bankruptcy Courts reads in pertinent part as follows:

> Item 2: For certification of any document or paper, whether the certification is made directly on the document or by separate instrument, $5. For exemplification of any document or paper, twice the amount of the fee for certification.
>
> * * * * *
>
> Item 4: For amendments to a debtor's schedules of creditors or lists of creditors, $20 for each amendment, provided the bankruptcy judge may, for good cause, waive the charge in any case.
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> * * * * *
>
> Item 8: In all cases filed under title 11, the clerk shall collect from the debtor or the petitioner a miscellaneous administrative fee of $30. This fee may be paid in installments in the same manner that the filing fee may be paid in installments, consistent with the procedure set forth in Federal Rule of Bankruptcy Procedure 1006.
>
> Item 9: For filing a motion to reopen a Bankruptcy Code case, a fee shall be collected in the same amount as the filing fee prescribed by 28 U.S.C. § 1930(a) for commencing a new case on the date of reopening, unless the reopening is to correct an administrative error or for actions related to the debtor's discharge. The court may waive this fee under appropriate circumstances or may defer payment of the fee from trustees pending discovery of additional assets.
>
> Item 10: Repealed
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> Item 11: Repealed
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> * * * * *
>
> Item 13 (Provided the judiciary is authorized to retain the increase): For retrieval of a record from a Federal Records Center, National Archives, or other storage

location removed from the place of business of the court, $35.

* * * * *

Item 16: For docketing a proceeding on appeal or review from a final judgment of a bankruptcy judge pursuant to 28 U.S.C. § 158(a) and (b), the fee shall be the same amount as the fee for docketing a case on appeal or review to the appellate court as required by Item 1 of the Court of Appeals Miscellaneous Fee Schedule. A separate fee shall be paid by each party filing a notice of appeal in the bankruptcy court, but parties filing a joint notice of appeal in the bankruptcy court are required to pay only one fee.

Item 17 (Provided the judiciary is authorized to retain the increase): For filing a petition ancillary to a foreign proceeding under 11 U.S.C. § 304, a fee shall be collected in the same amount as the filing fee prescribed in 28 U.S.C. § 1930(a)(3) for a case commenced under chapter 11 of title 11.

* * * * *

Item 21: For filing a motion to terminate, annul, modify, or condition the automatic stay provided under § 362 of title 11, a motion to compel abandonment of property of the estate pursuant to Rule 6007(b) of the Federal Rules of Bankruptcy Procedure, or a motion to withdraw the reference of a case or proceeding under 28 U.S.C. § 157(d), a fee shall be collected in the amount of one-half the filing fee prescribed in 28 U.S.C. § 1914(a) for instituting any civil action other than a writ of habeas corpus. If a child support creditor or its representative is the movant, and if such movant files the form required by § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

Item 22: For docketing a cross appeal from a bankruptcy court determination, the fee shall be the same amount as the fee for docketing a case on appeal or review to the appellate court as required by Item 1 of the Court of Appeals Miscellaneous Fee Schedule.

District Court. Item 11 of the District Court Miscellaneous Fee Schedule, prescribed by the Judicial Conference under 28 U.S.C. § 1914(b), sets out a $50 fee "for admission of attorneys to practice." Many district courts also charge local attorney admission fees in addition to the fee set out in the Miscellaneous Fee Schedule. There has been some confusion as to whether the District Court Miscellaneous Fee Schedule either permits or requires the collection of a fee for *pro hac vice* admission or for a renewal of an

attorney's admission to practice. On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference amended item 11 of the Miscellaneous Fee Schedule to clarify that the attorney admission fee applies only to original admissions, as follows:

> For original admission of attorneys to practice, $50 each, including a certificate of admission. For a duplicate certificate of admission or certificate of good standing, $15.

In addition, the Conference agreed to direct the Administrative Office to inform the courts that: (a) the attorney admission fee prescribed in Item 11 of the District Court Miscellaneous Fee Schedule does not apply to *pro hac vice* requests or renewals of attorney admission to practice; (b) local courts may charge, at their option, a local fee above the $50 fee for original admission of attorneys to practice, and a fee for *pro hac vice* admissions and for renewals of an attorney's admission to practice; and (c) revenues from local fees may be deposited into a district's local non-appropriated funds account.

The Judicial Conference also approved the recommendation of the Court Administration and Case Management Committee that two revisions to the Miscellaneous Fee Schedule for the Bankruptcy Courts also be made to similar items in the District Court Miscellaneous Fee Schedule. The fee for exemplification of any document or paper is increased (Item 3), and the fee for "transcribing a record of any proceeding by a regularly employed member of the court staff" is eliminated (Item 6). The amended items read as follows:

> Item 3: For certification of any document or paper, whether the certification is made directly on the document or by separate instrument, $5. For exemplification of any document or paper, twice the amount of the fee for certification.
>
> * * * * *
>
> Item 6: Repealed

In addition, the Conference approved for the District Court Miscellaneous Fee Schedule an increase to $35 for retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court (Item 8), provided legislation is enacted permitting the judiciary to retain the increase.

Court of Appeals and Judicial Panel on Multidistrict Litigation. As was done for the bankruptcy and district courts, the Judicial Conference agreed to raise the fee for retrieval of an archived record from $25 to $35 for the courts of appeals (Item 8) and for the Judicial Panel on Multidistrict Litigation (Item 4). This action will be taken upon

enactment of legislation permitting the judiciary to retain the increase.

Bankruptcy Appellate Panels. Although authorized to establish miscellaneous fee schedules for the appellate, district, and bankruptcy courts, the U.S. Court of Federal Claims, and the Judicial Panel on Multidistrict Litigation (28 U.S.C. §§ 1913, 1914, 1926, 1930, and 1932), the Judicial Conference does not have authority to establish a separate fee schedule for bankruptcy appellate panels (BAPs) established under 28 U.S.C. § 158(b)(1). Moreover, the clerks of the BAPs do not have the statutory authority to collect and pay fees into the Treasury. In order to establish a mechanism for collecting fees and ensure that courts charge the same fees for similar services, the Judicial Conference approved a Committee recommendation that it direct the Administrative Office to issue interim guidance to all bankruptcy appellate panel clerks to use the Miscellaneous Fee Schedule for the Courts of Appeals in determining which fees to charge for services provided to the public. All such fees will be collected by the clerk of the court of appeals for the circuit in which the BAP exists.

Search Fee Guidelines. In 1993, the Judicial Conference approved search fee guidelines to be utilized in connection with the $15 fee for a search of court records imposed under the miscellaneous fee schedules for the district and bankruptcy courts in order to provide guidance to the courts and promote uniformity in the application of the fee (JCUS-MAR 93, p. 11). In light of numerous inquiries regarding the guidelines and policy changes, it appears necessary to revise the guidelines to address common questions and clarify certain issues. On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference delegated authority to the Committee to approve certain revisions to the search fee guidelines and all future revisions.

Waivers in Natural Disaster Emergencies. The Judicial Conference has adopted a general policy to allow a waiver of the miscellaneous fees associated with obtaining copies of documents required by the Federal Emergency Management Agency in applying for emergency aid in pending cases (JCUS-MAR 95, p. 15). This year, due to spring flooding in North Dakota, it was necessary for the Executive Committee to consider a request, not covered by the Conference policy, for a waiver of copy fees for lawyers who needed to reconstruct their files in pending cases (see *supra*, "Miscellaneous Actions," p. 50). In order to save time during disasters and avoid piecemeal requests, the Judicial Conference approved a Committee recommendation to delegate authority to the Director of the Administrative Office to grant waivers of miscellaneous fees, excluding filing fees, following a natural disaster for a set period of time not to exceed one year, upon the request of the chief judge of the affected court.

STATUTORY FEE CHANGES

Bankruptcy Court. Under current law, if a bankruptcy case filed under chapter 7 or 13 is converted to chapter 11, a fee of $400 is collected; yet the current fee for filing a bankruptcy case under chapter 11 is $800. To correct this inconsistency, the Court Administration and Case Management Committee, with input from the Bankruptcy Committee, recommended that legislation be sought to amend 28 U.S.C. § 1930(a) to increase the amount of the fee for converting a chapter 7 or 13 case to a case under chapter 11 so that the petitioner will pay the same total fees as if the case had originally commenced under chapter 11. The Judicial Conference approved the recommendation. It is suggested that the allocation of this fee be the same as if the case were originally filed as a chapter 11 case, i.e., apportioned among the U.S. Trustee System Fund, the judiciary's Salaries and Expenses account, and the U.S. Treasury's General Fund.

Similarly, the Judicial Conference approved a Committee recommendation to seek legislation to amend 28 U.S.C. § 1930(a)(2) to increase the chapter 9 filing fee to the same amount as provided in 28 U.S.C. § 1930(a)(3) for commencing a case under chapter 11, provided legislation is enacted to permit the judiciary to retain the resulting increase in fees.

In addition, the Judicial Conference approved a recommendation of the Court Administration and Case Management Committee that it seek legislation to amend the statute that currently permits the judiciary to retain revenue from all fees after Item 18 of the Miscellaneous Fee Schedule for the Bankruptcy Courts so that the judiciary can continue to retain those fees now retained and any newly created fees, without reference to a specific number in the fee schedule.

Court of Federal Claims. Under the Federal Courts Improvement Act of 1982 (Public Law No. 97-164) the Judicial Conference has the authority to prescribe fees to be charged by the Court of Federal Claims. Pursuant to that authority, in September 1996, the Conference raised to $150 the filing fee for the Court of Federal Claims, provided legislation was enacted permitting the judiciary to keep the increase (JCUS-SEP 96, p. 54). Under 28 U.S.C. § 2520, the filing fee that can be charged by the Court of Federal Claims appears to be limited to $120; however, this statute predates the 1982 Federal Courts Improvement Act and is no longer necessary. On recommendation of the Committee, the Judicial Conference agreed to propose legislation to repeal 28 U.S.C. § 2520.

Fees for Technology Resources. Under section 404 of Public Law No. 101-151, the Judicial Conference shall prescribe reasonable fees to be collected by the federal courts for providing public access to information available in electronic form. This authority does not appear to extend to charging fees for the use of other technology provided by the courts (e.g., teleconferencing, electronic filing, and evidence presentation). The Judicial Conference approved a Committee recommendation to seek legislation that would:

a. Authorize the Judicial Conference to prescribe reasonable fees for use of information technology resources provided by the courts for improved access to, and efficiency of, the court;

b. Authorize the courts to collect and retain those fees for deposit into the Judiciary Information Technology Fund; and

c. Make the fees so deposited available to the Director of the Administrative Office, without fiscal year limitation, for reinvestment in information technology resources for purposes of improved court access and efficiency.

DIGITAL AUDIO COURT RECORDING

Digital audio recording is a computer-based system with features similar to audio recording systems, except that the recorded proceedings are stored and retrieved through the use of a computer, requiring specialized hardware and software. Potential benefits associated with the use of digital audio recording include: enhanced sound quality; immediate and remote access to segments of the record; savings in storage space; and for simultaneous recording, playback, note-taking and transcribing capabilities for users. As a new method of taking the record, digital audio recording cannot be utilized, even on an experimental basis, without Judicial Conference approval. Since it has been the practice of the Judicial Conference to test new methods of court reporting before approving their use on a permanent basis, the Conference approved a Committee on Court Administration and Case Management recommendation that it:

a. Authorize the use of digital audio recording equipment as a method of recording court proceedings for the limited purpose of studying its use in selected courtrooms;

b. Authorize a study of digital audio recording during a one-year period in a minimum of two district, two magistrate judge, and two bankruptcy courtrooms; and

c. Delegate authority to the Court Administration and Case Management Committee to select the study courts, with the recognition that courts selected for this study may be participating in other ongoing study efforts, such as the Electronic Courtroom Project of the Committee on Automation and Technology.

CIVIL JUSTICE REFORM ACT

Statistical Reporting. In March 1997, the Judicial Conference, in approving its final Civil Justice Reform Act (CJRA) report to Congress, determined that the CJRA

public reporting requirements should remain in effect beyond the Act's sunset date (JCUS-MAR 97, pp. 15-16). To ensure more accurate and consistent statistical reporting in and among districts, the Judicial Conference, at this session, approved a recommendation of the Court Administration and Case Management Committee that it require courts to use a new ICMS/CJRA software program (Release 96CJ01) beginning with the reporting of statistics relating to pending motions, bench trials, and three-year-old cases for the period ending March 31, 1998.

Role of Chief Judge. In October 1971, the Judicial Conference adopted a report entitled "Program for Prompt Disposition of Protracted, Difficult, or Widely Publicized Cases," that provided specific powers to the chief judge to ensure the prompt disposition of cases (JCUS-OCT 71, pp. 71-74). Although the program is not widely known and is rarely used, the Committee on Court Administration and Case Management was of the view that it is valuable in the management of cases. On recommendation of the Committee, the Judicial Conference reaffirmed its October 1971 adoption of the report.

SIZE OF GRAND JURIES

Legislation has been introduced (H.R. 1536, 105th Congress) that would amend 18 U.S.C. § 3321 to reduce federal grand juries to not less than nine nor more than thirteen persons, and require seven jurors to concur in the return of an indictment, as long as at least nine jurors were present. Although this proposal would result in cost savings for the judiciary, the Court Administration and Case Management Committee was of the view that there are also numerous non-monetary considerations that must be taken into account and that any proposed change to decrease the size of grand juries should be aired through the deliberative rulemaking process. The Judicial Conference approved a recommendation of the Committee that the Conference take no position at this time on H.R. 1536, related to the size of grand juries, and refer the issue to the Committee on Rules of Practice and Procedure for consideration under the Rules Enabling Act rulemaking process.

JUDICIAL REFORM ACT OF 1997

In May 1997, the Judicial Conference considered by mail ballot three sections of the draft Judicial Reform Act of 1997 (H.R. 1252, 105th Congress), that would have a major impact on the judiciary (see *infra*, "Judicial Reform Act of 1997," pp. 71 and 81-82, and "Mail Ballots," pp. 84-85). The proposed bill was subsequently revised, and the Committee on Court Administration and Case Management made recommendations concerning a number of new or revised provisions of the bill. The Conference approved the recommendations of the Committee and agreed to (a) continue to oppose the proposed revision to 28 U.S.C. § 464 concerning the reassignment of a civil case as a matter of right upon motion by a party; (b) oppose section 7 of the bill, regarding random assignment of habeas corpus cases, because it would limit the flexibility of the courts to administer court operations in the most efficient and effective way; and (c) oppose section 8 of the bill,

regarding the authority of the individual presiding judge to allow cameras in the appellate courts, because it is contrary to Conference policy, which gives each appellate court the authority to determine whether to permit cameras in the courtroom.

COMMITTEE ON CRIMINAL LAW

JUVENILE CRIME LEGISLATION

In Congress' last two sessions, juvenile crime has become a priority issue, and the chairs of the Committee on Criminal Law have written to members of Congress expressing the Committee's concerns on a number of legislative proposals dealing with juvenile crime. The Committee recommended that the Judicial Conference itself go on record as opposing the unwarranted federalization of juvenile crime, a position which is a logical and consistent application of the Conference's longstanding opposition to federalization of crime traditionally prosecuted at the state and local levels. The Judicial Conference agreed to (a) reaffirm its long-standing position that criminal prosecutions should be limited to those offenses that cannot or should not be prosecuted in state courts; (b) affirm that this policy is particularly applicable to the prosecution of juveniles; and (c) endorse the concerns previously expressed by the Committee on Criminal Law to Congress regarding recent juvenile crime legislation. See also *infra*, "Juvenile Crime Legislation," p. 70.

PRETRIAL SERVICES OFFICES

In an effort to determine whether savings could be achieved by providing pretrial services through probation offices rather than separate pretrial services offices, the Committee on Criminal Law undertook an analysis of the management and administrative support in the 42 courts with separate offices. After full consideration of the results of the analysis, the Committee recommended, and the Judicial Conference agreed, to affirm the principle that decisions regarding the form of organization with which to provide pretrial services should continue to be made by individual district courts and their respective circuit councils. The Conference also authorized the distribution of the Committee on Criminal Law's *Report on the Study of Savings in Probation and Pretrial Services* to all chief district judges and chief probation and pretrial services officers.

FICTITIOUS LIENS AGAINST JUDICIAL OFFICERS

The practice of filing fictitious liens against judicial officers and federal officials, in an effort to harass, is a long-standing one. The Department of Justice, which is charged through its United States attorneys' offices to represent federal officials in response to these liens, has indicated that it is in the process of drafting legislation that would make it

a federal offense to file a fictitious harassing lien. On recommendation of the Committee on Criminal Law, the Judicial Conference agreed to support legislation to be proposed by the Department of Justice that would create a new federal criminal offense for harassing or intimidating a federal official, including a judicial officer, with respect to the performance of official duties, including filing a lien on the real or personal property of that government official.

VICTIMS' RIGHTS LEGISLATION

In March 1997, the Judicial Conference determined to take no position on a proposed victims' rights constitutional amendment at that time, but authorized the Committee on Criminal Law, with the help of the Committee on Federal-State Jurisdiction and in consultation with the Chair of the Executive Committee, to maintain contact with Congress to make known the concerns of the judiciary on the impact of the amendment (JCUS-MAR 97, p. 21). No position was taken on a statutory approach to victims' rights. Subsequently, the Conference was asked for its views on victims' rights legislation proposed as an alternative to a constitutional amendment. On recommendation of the Criminal Law Committee, the Conference approved by mail ballot concluded on April 14, 1997, transmittal of a letter to Congress expressing a strong preference for a statutory approach to victims' rights over a constitutional amendment. The Conference took no position on the specifics of the proposed legislation. See *infra*, "Mail Ballots," pp. 84-85.

COMMITTEE ON DEFENDER SERVICES

DEATH PENALTY REPRESENTATION

As part of its continuing effort to contain the cost of federal capital habeas corpus litigation, the Defender Services Committee, while acknowledging variation among the circuits in local legal culture and state court practice, recommended establishment of a further mechanism (in addition to the sound discretion of the presiding judicial officer) to ensure that Criminal Justice Act (CJA) expenditures in capital habeas corpus cases are reasonable. The Judicial Conference agreed to urge each circuit judicial council to establish a special process for review of any state death penalty habeas corpus case within the circuit in which attorney compensation exceeds $100,000. Each circuit judicial council should notify the Judicial Conference of the procedures adopted by providing a written copy to the Conference Secretary.

DISCLOSURE OF COURT APPOINTED ATTORNEYS' FEES

The Disclosure of Court Appointed Attorneys' Fees and Taxpayer Right to Know Act of 1997 (S. 598, 105th Congress) would amend the CJA to require public disclosure of attorneys' fees, including payment vouchers, upon their approval by the court. Judges

would be required to disclose CJA payment information during the pendency of a case. The CJA currently provides for the disclosure of "amounts paid" rather than actual vouchers and does not indicate the timing of the disclosure. The Defender Services Committee expressed a number of concerns with the bill, including the extent of detail required to be disclosed, the timing of the disclosure, and the bill's potential limitation on judicial discretion in this area. On recommendation of the Committee, the Judicial Conference determined to take no position on S. 598, but to provide information to Congress concerning the impact of the bill on the administration of justice.

CIVIL ASSET FORFEITURE REFORM ACT

The Civil Asset Forfeiture Reform Act (H.R. 1965, 105th Congress) would, among other things, give courts discretion to appoint counsel to represent financially eligible claimants in civil asset forfeiture proceedings and to approve compensation at rates equivalent to those provided for representation under the CJA; authorize the appropriation of additional funds under the CJA for such purpose; and afford the government an opportunity to present evidence and examine the claimant at a required hearing to determine whether to appoint counsel. A number of issues are implicated in this legislative proposal including how funding for appointed counsel will be provided and whether counsel may be provided prior to the hearing regarding appointment of counsel. On recommendation of the Committee, the Judicial Conference agreed to communicate the following to Congress:

(1) Its preference that, consistent with current Conference policy expressed in the proposed Federal Courts Improvement Act (H.R. 2294, 105thCongress), the judiciary be reimbursed from the Department of Justice Asset Forfeiture Fund and the Department of Treasury Asset Forfeiture Fund for representational services provided in civil asset forfeiture proceedings under H.R. 1965; and

(2) The necessity, if such services are to be paid from the Defender Services appropriation, that sufficient additional funds be appropriated for that purpose;

b. That important considerations flow from the government's role in examining a claimant at the hearing regarding appointment of counsel under H.R. 1965. Claimants may need counsel at such hearings to protect their Fifth Amendment right against self-incrimination and Sixth Amendment right to counsel, which would add to the cost of furnishing representation. Although H.R. 1965 does not contemplate the appointment of counsel before that hearing, the bill should permit such appointment where there is reason to believe that the claimant could be subject to a criminal prosecution, civil or criminal contempt, or loss of liberty (see paragraph 2.01F(2) of the *Guidelines for the Administration of the Criminal Justice Act*); and

c. That due to the potential scope and duration of services which might be required of counsel, the bill should provide that the case compensation maximum applicable to the appointment of counsel for a person charged with a felony under the CJA should apply to the appointment of counsel pursuant to H.R. 1965 for a claimant in a civil asset forfeiture proceeding.

DEDFENDER ORGANIZATION FUNDING REQUESTS

Under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), the Defender Services Committee approved a total of $360,400 in increases to fiscal year 1997 budgets for five federal public defender organizations.

COMMITTEE ON FEDERAL-STATE JURISDICTION

NATIONAL JUDICIAL COUNCIL OF STATE AND FEDERAL COURTS

In 1990, the Judicial Conference and the Conference of Chief Justices (CCJ) approved the creation of the National Judicial Council of State and Federal Courts (JCUS-MAR 90, p. 18). The Council was established to consider matters referred to it by the Judicial Conference or the CCJ relating to issues of mutual concern to the state and federal courts; advise the Judicial Conference and the CCJ on improving the relationship between the two court systems; and seek methods to enhance the operations of the local state-federal judicial councils. During much of its existence, the Council struggled with defining its unique responsibilities in the state and federal judicial systems, and it has been inactive since 1994. On recommendation of the Federal-State Jurisdiction Committee, the Judicial Conference joined the CCJ in agreeing to abolish the National Judicial Council of State and Federal Courts, understanding that the work of the Council will be continued by the Judicial Conference Committee on Federal-State Jurisdiction and the State-Federal Relations Committee of the CCJ.

JUVENILE CRIME LEGISLATION

Several legislative proposals pending in the 105th Congress would enhance the opportunities for prosecuting juveniles in federal court, either as juveniles or as adults, and would expand federal criminal jurisdiction over gang-related activity. The Committee on Federal-State Jurisdiction concurred in the recommendation of the Committee on Criminal Law, approved by the Judicial Conference at this session, that juvenile prosecutions in federal court should be limited to those that cannot or should not be prosecuted in state courts (see *supra* "Juvenile Crime Legislation," p. 65). As a supplement to that position, on recommendation of the Federal-State Jurisdiction Committee, the Judicial Conference recognized that the appropriate age for prosecuting juveniles as adults in federal court for

a violation of federal law is a policy matter to be determined by Congress.

PRIVATE PROPERTY RIGHTS LEGISLATIONS

The Private Property Rights Implementation Act of 1997 (H.R. 1534, 105th Congress) is intended to "simplify and expedite access to the Federal courts for injured parties whose rights and privileges, secured by the United States Constitution, have been deprived by final actions of federal agencies or other government officials or entities acting under color of state law." The Committee on Federal-State Jurisdiction identified issues in this novel legislation. The bill would alter deeply ingrained federalism principles by prematurely involving the federal courts in property regulatory matters that have historically been processed at the state and local levels. The bill may also adversely affect the administration of justice and delay the resolution of property claims. For example, H. R. 1534 would: restrict the use of the abstention doctrine in takings, as well as non-takings, cases; codify the takings provisions within 28 U.S.C. § 1343, which may create confusion because of the availability of the general jurisdictional statute, 28 U.S.C. § 1331; and result in imprudent or inefficient procedures because of the restrictions on the use of the abstention doctrine and the liberalization of the requirement of ripeness. The Judicial Conference approved the Committee's recommendation to express these concerns to Congress regarding the proposed legislation.

JUDICIAL REFORM ACT OF 1997

Section 2 of the Judicial Reform Act of 1997 (H. R. 1252, 105th Congress) would require three-judge panels to consider applications for interlocutory or permanent injunctions restraining, on the ground of unconstitutionality, the enforcement, operation or execution of state laws adopted by referendum. In addition, these three-judge panels would be required to expedite consideration of applications for injunctions, and their decisions would be appealable directly to the Supreme Court. At its September 1995 session, the Judicial Conference unanimously opposed an identical provision and reaffirmed its longstanding opposition to three-judge panels generally (JCUS-SEP 95, pp. 83-85). In taking this position, the Conference recognized that it would likely apply in only a limited number of cases. In a mail ballot concluded on May 9, 1997, the Judicial Conference voted to adhere to its 1995 position and to oppose section 2 of H. R. 1252. See *infra,* "Mail Ballots," pp. 84-85.

Section 5 of the Judicial Reform Act of 1997 would prohibit a district court from entering any order or approving any settlement that requires a state or political subdivision of a state to impose, increase, levy, or assess any tax for the purpose of enforcing any federal or state common law, or any statutory or constitutional right or law, unless the court makes certain findings. The Committee on Federal-State Jurisdiction recommended that the Judicial Conference oppose section 5 of H. R. 1252 because it may interfere with

the ability of federal courts to fulfill their obligation to enforce remedies required by statute and to fashion appropriate remedies for constitutional violations. The Committee also noted that section 5 raises serious problems of judicial administration. By mail ballot, the Judicial Conference concurred with the Committee and voted to oppose section 5. See *infra*, "Mail Ballots," pp. 84-85.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that as of July 10, 1997, the Committee had received 2,899 financial disclosure reports and certifications for the calendar year 1996, including 1,187 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 324 from bankruptcy judges; 457 from magistrate judges; and 931 from judicial employees.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that during the period from January 1, 1997 to June 30, 1997, a total of 104 intercircuit assignments, undertaken by 72 Supreme Court justices and Article III judges, were processed and recommended by the Committee and approved by the Chief Justice. In addition, the Committee aided courts requesting assistance in identifying judges willing to take assignments.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

FUNDING FOR INTERNATIONAL JUDICIAL PROGRAMS

The Committee on International Judicial Relations was offered a grant by the United States Agency for International Development (USAID) of $500,000 for the Committee to continue its work with international education programs similar to two programs held in recent years pursuant to a 1994 interagency agreement. On recommendation of the Committee, the Judicial Conference agreed to accept the $500,000 grant from USAID to use for international judicial-related projects and programs. As was the case with the two prior programs, the Executive Committee will be asked to approve the specific programs.

COMMITTEE ON THE JUDICIAL BRANCH

JUDICIAL COMPENSATION

On recommendation of the Committee on the Judicial Branch, which has been working tirelessly to obtain an adequate level of compensation for the federal judiciary, the Judicial Conference approved the following resolution:

> That federal judges, Members of Congress, and top officials in the executive branch should receive a cost-of-living salary adjustment, as provided by the Ethics Reform Act of 1989. Such an adjustment to the compensation of these officials is necessary to protect them from increases in the cost-of-living that have occurred since their last such adjustment in January 1993.

CERTIFICATION OF SENIOR JUDGES

The Federal Courts Improvement Act of 1996 (Public Law No. 104-317) amended 28 U.S.C. § 371(f) to permit a senior judge to obtain retroactive certification as eligible for salary increases when additional workload in a subsequent year is sufficient to offset reduced workload in a prior year. In addition, the Act permits retired judges to aggregate administrative work with judicial work, although only one-half of the administrative work performed by a judge may be aggregated. On recommendation of the Committee on the Judicial Branch, the Judicial Conference approved conforming amendments to the Rules for Certification of Senior Judges, which are published in the *Guide to Judiciary Policies and Procedures*, Vol III, Ch. VII. The revised rules leave circuit chief judges ample discretion to implement the certification process.

JUDGES' TRAVEL REGULATIONS

Non-Prescribed Meetings. Under the Travel Regulations for United States Justices and Judges (published in the *Guide to Judiciary Policies and Procedures*, Vol. III, Ch. XV), official travel generally falls into three categories: judicial sittings, prescribed meetings, and other travel. A judge needs no advance authorization to travel for judicial sittings or for prescribed meetings, such as Judicial Conference committee meetings, but with respect to other travel, the travel regulations have dealt only with certain types of non-prescribed meetings, such as meetings of judges' associations and bar associations, and have not contemplated others, such as meetings between government agencies (foreign, federal, state, or local), universities, community organizations, and other entities. The Committee on the Judicial Branch recommended that the Judicial Conference amend the Travel Regulations for Justices and Judges to address the issue of how, as well as how many, judges may be designated as spokespersons for the judiciary at a non-prescribed meeting; to provide for approval by the chair of the Executive Committee when more than one judge is designated to travel abroad at judiciary expense; and to eliminate the necessity for clearance of the travel by the Director of the Administrative Office. The Conference approved the recommendation.

Senior Judges. Section 374 of title 28, United States Code, relieves a retired judge of any restrictions as to his or her residence and establishes that the judge's official station for purposes of computation of travel expenses shall be the city or town where he or she actually lives, whether or not court is held at such place. This provision enables a senior judge sitting by designation and assignment to be reimbursed for travel expenses commensurate with the distance actually traveled from home to the place of assignment and was intended to encourage the utilization of the services of retired judges and overcome their reluctance to accept assignments away from their homes. Although unaware of any abuse of the present reimbursement mechanism, the Committee was concerned about the potential unfavorable perceptions of it by those who are not knowledgeable about the generous workload contributions of senior judges. The Committee recommended, and the Conference approved, an amendment to the judges' travel regulations to require that a senior judge who has a principal residence outside the jurisdiction of the court to which the senior judge is designated and assigned (the "home court"), including a judge who resides outside the United States and its territories, be prohibited from receiving reimbursement of travel and subsistence expenses for travel back to the judge's home court unless such travel is cleared by the chief judge of the circuit in which the judge was commissioned.

MILITARY SURVIVOR BENEFIT PLAN

Under current law, judges in regular active service, unlike other federal employees who are military retirees, do not have contributions made to the Military Survivor Benefit Plan on their behalf from the military retirement fund. To correct this anomaly, the Judicial Conference approved a recommendation of the Committee that legislation be pursued to amend 28 U.S.C. § 371 to provide for contributions to be made to the Military Survivor Benefit Plan from a judge's military retired pay before the balance of such pay is returned to the United States Treasury as required by law.

PARTICIPATION IN THE MILITARY READY RESERVE

The Department of Defense is updating a longstanding directive which provides that federal employees who occupy key positions (including the Vice President, Members of Congress, and Article III judges) shall be transferred from the Ready Reserve to the Standby Reserve or Retired Reserve or, where appropriate, discharged. It requested the judiciary's comments. On recommendation of the Committee on the Judicial Branch, the Judicial Conference agreed to respond to this request by suggesting that an exception be included in Department of Defense Directive 1200.7 that would allow an Article III judge to continue to be a member of the Ready Reserve upon certification by the chief judge of the affected judge's circuit that the mobilization of the Article III judge concerned will not seriously impair the capability of the judge's court to function effectively.

COMMITTEE ON JUDICIAL RESOURCES

CIRCUIT EXECUTIVES' OFFICES

In September 1991, the Judicial Conference approved a staffing methodology and staffing ceiling for circuit executives' offices. The ceiling was subsequently adjusted to include additional positions. Three permanent positions above the ceiling were requested (one in the Third Circuit and two in the Eighth Circuit), but the Committee on Judicial Resources recommended that only one three-year temporary position (for the Eighth Circuit) be approved beginning in fiscal year 1999. The Judicial Conference approved the Committee's recommendation.

COURT PERSONNEL SYSTEM QUALIFICATIONS STANDARDS

In September 1993, the Judicial Conference approved development of the Court Personnel System, which lets courts request delegated authority for personnel actions involving classification, qualifications and compensation, but does not permit exceptions to qualification standards (JCUS-SEP 93, pp. 49-50). In response to requests from court unit executives, the Judicial Resources Committee recommended and the Judicial Conference agreed to permit the following exceptions to be made to the qualifications standards, except for minimum educational requirements for professional line positions, on a case-by-case basis for the following Court Personnel System positions: (1) those subject to recruitment difficulties as evidenced by high turnover, lack of qualified applicants, etc.; and (2) those for which the applicant has legal, paralegal, or graduate education directly related to the position to be filled. The Administrative Office will grant these exceptions for the first year with the understanding that future delegation to the courts is possible.

EARLY RETIREMENT AUTHORITY

In fiscal years 1996 and 1997, the Office of Personnel Management approved an "early-out" retirement authority for use by the judiciary. This authority has proven to be a useful management tool for many court units in the restructuring of their organizations. The Judicial Conference approved a Judicial Resources Committee recommendation to authorize all court units in fiscal year 1998 to offer early retirement to eligible employees in order to facilitate reorganization as a result of budget restrictions, workload changes, or other good management reasons. Implementation of this action is contingent upon a grant of authority by the Office of Personnel Management.

STUDENT LABOR

The child labor provisions of the Fair Labor Standards Act (FLSA) set 14 years as the lowest age for employing students. Although judiciary practices comply with these child labor provisions of the FLSA, written policies in the *Guide to Judiciary Policies and*

Procedures fail to reflect current practices. Specifically, the judiciary's written policy on age restrictions sets 16 as the minimum age for employing students. In addition, the FLSA sets detailed rules on when students may work, while the judiciary policy has a more general rule for student workers. Because the judiciary has stated in its report on the Congressional Accountability Act (CAA) that its practices comply with the child labor provisions of the FLSA (see *Study of Judicial Branch Coverage Pursuant to the Congressional Accountability Act of 1995*, December, 1996), the Judicial Conference approved a Committee recommendation that a technical amendment be made to the *Guide to Judiciary Policies and Procedures* to mirror the FLSA requirements with respect to age and hours of employment of student employees.

REALTIME COURT REPORTING

In March 1996, the Judicial Conference approved realtime transcript rates, with the fee paid for an unedited realtime transcript, set at $2.50 per page, to be credited towards the certified transcript fee (JCUS-MAR 96, p. 26). Concerns have been expressed that this rate structure has not offered court reporters adequate incentive to provide realtime services. On recommendation of the Judicial Resources Committee, the Judicial Conference approved a modification to the transcript fee rates for realtime unedited transcripts provided by certified realtime reporters to establish the maximum page rate authorized for the provision of realtime services, including the production and distribution of a realtime unedited transcript, to be $1 per page. Litigants who order realtime services, and subsequently order an original certified transcript of the same proceeding, will not receive a credit toward the purchase cost of the certified transcript.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

AD HOC RECALL REGULATIONS

The Committee on the Administration of the Magistrate Judges System recommended that the ad hoc recall regulations for magistrate judges be revised to clarify that certain magistrate judges recalled on less than a full-time basis may continue to practice law while on recall status, subject to the limitations set forth in the Code of Conduct for United States Judges governing part-time judicial officers and the Conflict-of-Interest Rules for Part-Time Magistrate Judges. The Judicial Conference approved the recommendation, amending section 3 of the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Recall of United States Magistrate Judges to state that a retired magistrate judge recalled to serve under 28 U.S.C. § 636(h) on less than a full-time basis who has retired under chapter 83 or 84 of title 5, United States Code, shall be subject to 28 U.S.C. § 632(b) which deals with part-time magistrate judges, the Code of Conduct for United States Judges governing part-time magistrate judges, and the Conflict-of-Interest Rules for Part-Time 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 Judicial Conference approved the following changes in positions, salaries, and arrangements for full-time and part-time magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

FIRST CIRCUIT

District of Massachusetts

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

District of Puerto Rico

Made no change in the number, location, or arrangements of the magistrate judge positions in the district.

SECOND CIRCUIT

District of Connecticut

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

THIRD CIRCUIT

New Jersey

Increased the salary of the part-time magistrate judge position at Fort Monmouth (or Fort Dix) from Level 2 ($51,600 per annum) to Level 1 ($56,760 per annum); and

2. Made no change in the number, locations, salaries, or arrangements of the other

magistrate judge positions in the district.

Middle District of Pennsylvania

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

FIFTH CIRCUIT

Eastern District of Texas

Authorized an additional full-time magistrate judge position at Texarkana; and

2. Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

Western District of Texas

1. Increased the salary of the part-time magistrate judge position at Big Bend National Park from Level 4 ($30,960 per annum) to Level 3 ($41,280 per annum), effective October 1, 1997, or as soon as funds are available; and

Redesignated the location of the part-time magistrate judge position at Big Bend National Park as Alpine or Big Bend National Park.

SEVENTH CIRCUIT

Eastern District of Wisconsin

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

EIGHTH CIRCUIT

Eastern District of Arkansas

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

NINTH CIRCUIT

Southern District of California

Authorized an additional full-time magistrate judge position at San Diego.

TENTH CIRCUIT

District of Colorado

1. Increased the salary of the part-time magistrate judge position at Grand Junction from Level 4 ($30,960 per annum) to Level 2 ($51,600 per annum), effective October 1, 1997, or as soon as funds are available; and

2. Discontinued the vacant part-time magistrate judge position at Durango.

ELEVENTH CIRCUIT

Northern District of Florida

Increased the salary of the part-time magistrate judge position at Gainesville from Level 6 ($10,320 per annum) to Level 5 ($20,640 per annum).

Northern District of Georgia

Authorized an additional full-time magistrate judge position at Atlanta; and

Made no change in the number, locations, salaries or arrangements of the other magistrate judge positions in the district.

ACCELERATED FUNDING

The accelerated funding program was established to provide prompt magistrate judge assistance to judicial districts seriously affected by drug filings or impacted by the Civil Justice Reform Act. On recommendation of the Magistrate Judges Committee, the Judicial Conference designated the new magistrate judge positions at Texarkana, Texas; San Diego, California; and Atlanta, Georgia, for accelerated funding in fiscal year 1998.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

JUDICIAL REFORM ACT OF 1997

The Committee to Review Circuit Council Conduct and Disability Orders reported that it has been following closely the progress of two legislative proposals in the 105th Congress that would amend the Judicial Conduct and Disability Act, 28 U.S.C. § 372(c). H.R. 702 and section 4 of the original version of the Judicial Reform Act of 1997 (H.R. 1252) would provide that any complaint of judicial misconduct or disability filed under the Act shall be referred to another circuit for complaint proceedings. On recommendation of the Committee, the Judicial Conference, in a mail ballot, expressed opposition to the provision (see *infra,* "Mail Ballots," pp. 84-85). The Committee will continue to monitor these legislative proposals.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF APPELLATER PROCEDURE

The Advisory Committee on Appellate Rules completed a style revision project to clarify and simplify the language of the appellate rules. The Committee on Rules of Practice and Procedure concurred with the advisory committee's recommendations and submitted revisions of all 48 Rules of Appellate Procedure and a revision of Form 4, together with Committee Notes explaining their purpose and intent. The Judicial Conference approved the proposed amendments to Appellate Rules 1 to 48 and to Form 4 and agreed to transmit them to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed revisions to Official Bankruptcy Forms 1 (Voluntary Petition), 3 (Application and Order to Pay Filing Fee in Installments), 6 (Schedule F), 8 (Chapter 7 Individual Debtor's Statement of Intention), 9A-9I (Notice of Commencement of Case Under the Bankruptcy Code, Meeting of Creditors and Fixing of Dates), 10 (Proof of

Claim), 14 (Ballot for Accepting or Rejecting a Plan), 17 (Notice of Appeal from a Judgment, Order, or Decree of a Bankruptcy Judge), and 18 (Discharge of Debtor), and new Forms 20A (Notice of Motion or Objection) and 20B (Notice of Objection to Claim). The revisions mainly clarify or simplify existing forms. The Judicial Conference approved the proposed revisions to official bankruptcy forms. Implementation of the new forms will take effect immediately, but the superseded forms may also be used until March 1, 1998.

FEDERAL RULES OF CIVIL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference a new Federal Rule of Civil Procedure 23(f), together with Committee Notes explaining its purpose and intent. This new subdivision would permit interlocutory appeal from an order granting or denying class action certification in the discretion of the court of appeals. The Judicial Conference approved the proposed new Civil Rule 23(f) and agreed to transmit it to the Supreme Court for its consideration with the recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF CRIMINAL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Criminal Rules 5.1 (Preliminary Examination), 26.2 (Production of Witness Statements), 31 (Verdict), 33 (New Trial), 35 (Correction or Reduction of Sentence), and 43 (Presence of the Defendant). The proposed amendments were accompanied by Committee Notes explaining their purpose and intent. The Judicial Conference approved the amendments and authorized their transmittal to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF EVIDENCE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference a proposed amendment to Evidence Rule 615 (Exclusion of Witnesses) together with Committee Notes explaining its purpose and intent. The amendment would expand the list of witnesses who may not be excluded from attending a trial to include persons authorized by statute to attend, e.g., a victim defined in the Victim's Rights and Restitution Act of 1990 and Victim Rights Clarification Act of 1997. The Judicial Conference approved the amendment and agreed to transmit it to the Supreme Court for its consideration with the recommendation that it be adopted by the Court and transmitted to Congress is accordance with the law.

**COMMITTEE ON SECURITY,
SPACES AND FACILITIES**

COURTHOUSE MANAGEMENT

In March 1988, the Judicial Conference approved guidelines for the establishment of delegations of authority from the General Services Administration for courts to manage and operate court facilities (JCUS-MAR 88, p. 40). Although Conference policy currently allows up to ten courts to participate in the delegated building management program (JCUS-SEP-89, pp. 81-82), it appears that many more courts may be interested in the program. On recommendation of the Committee on Security, Space and Facilities, the Judicial Conference agreed (a) to expand its policy limiting participation in the delegated building management program to ten courts and to allow any court meeting the Conference-approved conditions to participate in the program; and (b) to amend the conditions established in March 1988, under which courts may assume responsibilities for managing a court facility under a delegation of the General Services Administration's authority, by adding the following:

> All courts and court units occupying a building must approve a request for a delegation of General Services Administration's management and operations authority prior to submission of the request by the Administrative Office to the General Services Administration.

MAIL BALLOTS

The Judicial Conference completed two mail ballots since its last session. On April 14, 1997, the Conference concluded a ballot endorsing transmittal to Congress of a letter from the Chair of the Criminal Law Committee expressing the Conference's preference for a statutory approach, as opposed to a constitutional amendment, on victims' rights (see *supra*, "Victims' Rights Legislation," pp. 66-67).

By mail ballot concluded on May 9, 1997, the Conference considered three sections (2, 4, and 5) of a proposed Judicial Reform Act of 1997 (H.R. 1252, 105th Congress). The Conference voted to adhere to its 1995 position in opposition to three-judge panels generally and to oppose section 2, which would require that three-judge panels consider challenges to state laws adopted by referenda (see *supra*, "Judicial Reform Act of 1997," p. 71). In the same ballot, Conference members voted to oppose section 4, which would amend the Judicial Conduct and Disability Act to provide that complaints under the Act be referred to another circuit for proceedings (see *supra*, "Judicial Reform Act of 1997," pp. 81-82), and also to oppose section 5, which would limit court-imposed taxation. See also *supra*, "Judicial Reform Act of 1997," pp. 64-65.

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

Except as otherwise specified, the Conference authorized the immediate release of matters considered by this session where necessary for legislative or administrative action.

Chief Justice of the
United States
Presiding

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

March 10, 1998

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the Report of the Ad Hoc Strategic Planning
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Administrative Office/Federal Judicial Center Relations
Funding
Release of Conference Action

The Judicial Conference of the United States convened in Washington, D.C., on March 10, 1998, 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 Juan R. Torruella
Judge Joseph A. DiClerico,

District of New Hampshire

Second Circuit:

Chief Judge Ralph K. Winter, Jr.
Judge Peter C. Dorsey,

District of Connecticut

Third Circuit:

Chief Judge Edward R. Becker
Chief Judge Donald E. Ziegler,

Western District of Pennsylvania

Fourth Circuit:

Chief Judge J. Harvie Wilkinson III
Chief Judge Charles H. Haden II,

Southern District of West Virginia

Fifth Circuit:

Chief Judge Henry A. Politz
Judge William H. Barbour, Jr.,

Southern District of Mississippi

Sixth Circuit:

Chief Judge Boyce F. Martin, Jr.
Chief Judge Julia Smith Gibbons,[(1)]

Western District of Tennessee

Seventh Circuit:

Judge Robert L. Miller, Jr.,

Northern District of Indiana

Eighth Circuit:

Chief Judge Richard S. Arnold
Judge James M. Rosenbaum,

District of Minnesota

Ninth Circuit:

Chief Judge Procter Hug, Jr.
Judge Lloyd D. George,

District of Nevada

Tenth Circuit:

Chief Judge Stephanie K. Seymour
Judge Ralph G. Thompson,

Western District of Oklahoma

Eleventh Circuit:

Chief Judge Joseph W. Hatchett
Judge Wm. Terrell Hodges,

Middle District of Florida

District of Columbia Circuit:

Chief Judge Harry T. Edwards
Chief Judge Norma H. Johnson,

District of Columbia

Federal Circuit:

Chief Judge H. Robert Mayer
Court of International Trade:

Chief Judge Gregory W. Carman

Circuit Judges Stephen H. Anderson, Emmett R. Cox, W. Eugene Davis, David R. Hansen, Alan D. Lourie, Paul V. Niemeyer, Norman H. Stahl, and David R. Thompson and District Judges Edward B. Davis, John G. Heyburn II, D. Brock Hornby, George P. Kazen, Edward W. Nottingham, Philip M. Pro, and Alicemarie H. Stotler attended the Conference session. Jill Sayenga, Circuit Executive for the District of Columbia Circuit, was also present.

Senators Orrin Hatch and Patrick Leahy and Representatives Henry J. Hyde and Howard Coble spoke on matters pending in Congress of interest to the Conference. Attorney General Janet Reno and Solicitor General Seth P. Waxman addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice.

Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director for Management and Operations; William R. Burchill, Jr., Associate Director and General Counsel; Karen K. Siegel, Assistant Director, Judicial Conference Executive Secretariat; Michael W. Blommer, Assistant Director, Legislative Affairs; Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat; and David Sellers, Deputy Assistant Director, Public Affairs. Judge Rya W. Zobel and Russell R. Wheeler, Director and Deputy Director of the Federal Judicial Center, also attended the session of the Conference, as did James Duff, Administrative Assistant to the Chief Justice; Mary Ann Willis, Supreme Court Staff Counsel; and judicial fellows Robert Clayman, David Pimentel and Harry L. Pohlman.

REPORTS

Mr. Mecham reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office. Judge Zobel spoke to the Conference about Federal Judicial Center programs, and Judge Richard Conaboy, Chairman of the United States Sentencing Commission, reported on Sentencing Commission activities.

ELECTIONS

The Judicial Conference elected to membership on the Board of the Federal Judicial Center Judge Stanley Marcus, Eleventh Circuit, for a four-year term vice Judge Marvin E. Aspen, Illinois (Northern) and Judge Jean C. Hamilton, Missouri (Eastern), to fill the unexpired term of Judge Pasco Bowman (Eighth Circuit).

EXECUTIVE COMMITTEE

RESOLUTION

On behalf of the Judicial Conference, the Executive Committee approved the following resolution honoring Chief Judge Richard S. Arnold for his service to the Judicial Conference:

The Judicial Conference of the United States notes with deep regret the departure

from its ranks of our esteemed friend and colleague, the Honorable

RICHARD S. ARNOLD

Chief Judge of the United States Court of Appeals for the Eighth Circuit and member of this body since 1992.

Recognized throughout the judiciary for his gifted intellect, integrity, and statesmanlike demeanor, Judge Arnold has contributed selflessly and immeasurably to the administration of the federal court system. From his leadership of the Conference's Budget Committee to his dedicated service on the Executive Committee, he has demonstrated unwavering good judgment and has earned our utmost respect and gratitude.

Judge Arnold is a gracious and warmhearted individual who does not hesitate to exercise his keen, dry wit in a manner that is always uplifting and constructive. He is an invaluable asset to the judiciary and a valued friend. We will sorely miss him at Conference sessions, but look forward to his significant future contributions to the judiciary.

It is our pleasure to pay tribute to Judge Richard Arnold and to express our sincere appreciation for his friendship and for his countless accomplishments in the administration of justice.

MISCELLANEOUS ACTIONS

The Executive Committee:

- Revised the fiscal year 1998 Salaries and Expenses financial plan to (a) authorize use of $9 million in reserve funds for priority space alterations projects, for which the judiciary anticipates receiving a reduction in rent from the General Services Administration (GSA); and (b) approve the use of $3.7 million to fund additional temporary staffing resources for court units to meet short-term increases in workload associated with several automation systems and for financial duties resulting from recent legislation.

- Agreed, on recommendation of the Committee on Financial Disclosure, to support a legislative proposal that would allow the release of public financial disclosure forms to be deferred where the revealing of sensitive and personal information would endanger an individual judicial officer or employee. This position was subsequently modified by the Judicial Conference. See *infra,* "Financial Disclosure Reports," p. 16.

- Agreed, on recommendation of the Committee on the Administration of the Magistrate Judges System, to increase the salary of the part-time magistrate judge position at Redding, California from Level 5 to Level 4, redesignate the part-time magistrate judge position at Redding as Redding or Susanville, and discontinue the part-time magistrate judge position at Susanville. See *infra*, "Changes in Magistrate Judge Positions," p. 27.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reviewed the progress of efforts to improve the Administrative Office's advisory structure. In addition, the Committee discussed the Federal Judicial Center's motions on training responsibilities and organizational relationships with the Administrative Office. The Committee was also briefed by AO executives on initiatives in the areas of public affairs, employee benefits, and information technology.

COMMITTEE ON AUTOMATION AND TECHNOLOGY

LONG RANGE PLAN FOR INFORMATION TECHNOLOGY

Pursuant to 28 U.S.C. § 612, the Committee on Automation and Technology recommended approval of the fiscal year 1998 update to the *Long Range Plan for Information Technology in the Federal Judiciary* (formerly entitled *Long Range Plan for Automation in the Federal Judiciary*). The Judicial Conference approved the recommendation.

LOCAL INFORMATION TECHNOLOGY COMMITTEES

On recommendation of the Automation and Technology Committee, the Judicial Conference agreed to urge each court to consider creating a local information technology committee. These groups, generally comprised of judges and other court staff who represent all categories of information technology users, would facilitate training and communications on information technology issues, projects, and innovations.

COMMITTEE ON THE ADMINISTRATION

OF THE BANKRUPTCY SYSTEM

CHAPTER 7 FILING FEE WAIVER PROGRAM

In the judiciary appropriations act for fiscal year 1994 (Pub. L. No. 103-121), Congress directed the Judicial Conference to study the effect of waiving the filing fee in Chapter 7 cases for individual debtors who are unable to pay the fee even in installments. At the request and under the guidance of the Committee on the Administration of the Bankruptcy System, a study was conducted by the Federal Judicial Center. The report of the study, entitled *Implementing and Evaluating the Chapter 7 Filing Fee Waiver Program*, describes the implementation of the pilot program, projects the number of fee waiver applications and associated costs if a national program were to be implemented, and discusses issues to be addressed by subsequent legislation or rules if the program were implemented nationwide. On recommendation of the Committee, the Judicial Conference approved the report for submission to Congress by March 31, 1998.

BANKRUPTCY CHIEF JUDGES

Under 28 U.S.C. § 154(b), a chief judge of the bankruptcy court shall be designated in each district court having more than one bankruptcy judge. Section 154(b) is silent on any tenure, age, or seniority criteria for appointing chief bankruptcy judges, and there is considerable variation among the district courts on these matters. In March 1994, the Judicial Conference tabled a recommendation of the Bankruptcy Committee that it approve guidelines regarding the tenure of chief bankruptcy judges (JCUS-MAR 94, p. 11). At this session, the Conference approved a more limited proposal by the Committee that district courts be encouraged to appoint a chief bankruptcy judge for a set term of up to seven years, with the possibility of reappointment.

BANKRUPTCY JUDGES' RETIREMENT REGULATIONS

On recommendation of the Bankruptcy Committee, the Judicial Conference approved amendments to sections 6.03 (concerning the offset of an annuity under the Judicial Retirement System to recover prior government contributions to the Thrift Savings Plan) and 12.02 (regarding continuation of coverage under the Judicial Survivors' Annuities System for a judge who retires on a deferred annuity) of the Regulations of the Director Implementing the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988. The revisions will conform the guidelines to recent statutory amendments. See also *infra*, "Magistrate Judges' Retirement Regulations," p. 25.

COMMITTEE ON THE BUDGET

COMMITTEE ACTIVITIES

The Committee on the Budget reported that the presentation of the judiciary's fiscal year 1999 congressional budget request changed from previous years to align the request more closely with actual expenditures. This change is technical only and does not alter the budget formulation process nor the bottom line request. The new presentation is more accurate and easier to explain.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Conference in September 1997, the Committee received 30 new written inquiries and issued 31 written advisory responses. During this period, the average response time for requests has been 23 days, excluding responses that are held for discussion at Committee meetings. The chairman received and responded to 22 telephonic inquiries. In addition, individual Committee members responded to 64 inquiries from their colleagues.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

JUROR ATTENDANCE FEE

The Court Administration and Case Management Committee considered ways to ease the burden of individuals for whom jury service is a financial hardship. Rather than seek an across-the-board increase in the $40 attendance fee for all jurors, the Committee determined to focus on the aggravated burden of jurors who serve on lengthy trials. Currently, 28 U.S.C. § 1871(b)(2) provides discretion for courts to pay an additional amount up to $10 in excess of the fee after 30 days of service. On recommendation of the Committee, the Judicial Conference agreed to propose legislation to reduce from 30 to five the number of required days of attendance by jurors hearing one case in order to be eligible for the additional fee, as provided by § 1871(b)(2).

SHARING COURT FACILITIES

At its March 1997 session, the Judicial Conference strongly encouraged courts to enter into shared court facilities arrangements with state and local governments, or other entities, to reduce space rental costs (JCUS-MAR 97, p. 40). In an effort to provide guidance to courts implementing shared arrangements, the Committee on Court Administration and Case Management considered the implications of the Judicial Conference's policy on cameras in the courtroom when facilities are shared. The Committee recommended to the Conference, *inter alia*, that a state court using a federal court facility for a state judicial proceeding be permitted, at the discretion of the local court, to allow media cameras if authorized by state law. This recommendation was modified by the Judicial Conference, which approved the following:

> A federal judge who uses a state facility to conduct a federal proceeding is nevertheless bound by Judicial Conference policies, including the policy on cameras in the courtroom. The Judicial Conference policy on cameras in the courtroom also governs when a state court uses a federal facility to conduct state court judicial proceedings.

COMBINING FUNCTIONS OF THE BANKRUOTCY AND DISTRICT COURT CLERKS' OFFICES

In September 1996, the Judicial Conference, after reviewing a report by the National Academy of Public Administration on administrative structures of the federal trial courts, agreed to encourage courts to examine their administrative delivery systems and consider more efficient structures for the provision of administrative services (JCUS-SEP 96, pp. 53-54). As a result, some courts began to consider reorganizing or combining the administrative or operational functions of the district and bankruptcy clerks' offices. Since consolidation of the two offices implicates 28 U.S.C. § 156(d), which requires approval of the Judicial Conference and the Congress prior to a consolidation of the bankruptcy court clerk's office with the district court clerk's office, the Committee on Court Administration and Case Management determined that guidance should be provided to the courts on the issue of when administrative restructuring rises to the level of consolidation, thereby triggering the provisions of § 156(d). Working with the Bankruptcy Committee and after widespread distribution for comment, the Committee on Court Administration and Case Management recommended, and the Judicial Conference approved, procedures for combining functions of the clerks' offices in the district and bankruptcy courts. These procedures will be published in the *Guide to Judiciary Policies and Procedures*.

STATISTICAL REPORTING OF BANKRUPTCY APPEALS

Under the present statistical reporting system for district courts, adopted in 1991 to meet the requirements of the Civil Justice Reform Act (CJRA), all motions pending over six months, all bench trials under submission for over six months, and all cases pending for over three years must be included in the statistical reports, which also include the names of the district judges and the case names and numbers. Appeals taken from orders and decrees issued by bankruptcy judges pursuant to 28 U.S.C. § 158 are not included in the present reporting system. In order to assist in directing judges' attention to bankruptcy appeals and avoid undue delays in providing finality to matters where delay can be financially detrimental to the parties, the Judicial Conference approved a Court Administration and Case Management Committee recommendation to

a. Require the semi-annual public statistical reports now required by the Judicial Conference from the judges in the district courts to be expanded to include appeals to the district courts taken from orders and decrees issued by bankruptcy judges pursuant to 28 U.S.C. § 158;

b. Define the "pending date" for such appeals as 60 days from the date of the docketing of the appeal in the district court; and

c. Require that all bankruptcy appeals pending over six months in the district courts be included in the reports.

GRADUATED FEE STUDY

The judiciary appropriations act for fiscal year 1994 (Pub. L. No. 103-121) directed the Judicial Conference to study, in at least six judicial districts, the impact of a graduated fee system for cases filed under chapters 11 and 13 of title 11, United States Code. A study was conducted by the Administrative Office, and the resulting report was reviewed by both the Bankruptcy Committee and the Committee on Court Administration and Case Management. The Committees agreed with the conclusion of the report that the current fixed-fee filing system should not be replaced by a graduated fee system. On recommendation of the Court Administration and Case Management Committee, the Judicial Conference agreed to transmit to Congress the report regarding graduated filing fees in the bankruptcy courts.

CIVIL JUSTICE REFORM ACT

Under the Civil Justice Reform Act of 1990, 28 U.S.C. §§ 471-478 (which include almost all of the substantive requirements of the Act) were scheduled to sunset on December 1, 1997. However, prior to the sunset date, Public Law No. 105-53 was enacted, which provides, in part, that § 476, dealing with statistical reporting, shall remain

in effect permanently and that § 471 be deleted from the sunset provisions. Section 471 requires all 94 district courts to implement a civil justice expense and delay reduction plan, and all courts met this requirement by December 1993. Without the other six code sections that define the substantive and procedural standards of the CJRA program, which were allowed to expire, continued existence of § 471 is incongruous. On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference agreed to propose legislation to amend section 103(b)(2)(A) of the Civil Justice Reform Act, as amended by Public Law No. 105-53, to reinstate the sunset provision's applicability to 28 U.S.C. § 471.

COMMITTEE ON CRIMINAL LAW

SENTENCING AUTHORITIES

The Department of Justice has proposed amendments to five provisions of title 18, United States Code, 18 U.S.C. §§ 401 (criminal contempt), 1705 (destruction of letter boxes), 1916 (unauthorized employment or disposition of lapsed appropriations), 2234 (willfully exceeding authority in executing a search warrant), and 2235 (maliciously procuring and executing a search warrant), each of which currently expressly provides for the imposition of imprisonment or a fine, but not both. The amendments, which would allow for a sentence of a fine, imprisonment or both, would permit a court the customary sentencing flexibility to impose both a fine and a prison term when appropriate. On recommendation of the Committee on Criminal Law, the Judicial Conference concurred in the Department of Justice proposal to add the words "or both" at the appropriate place in each of the above provisions.

COMMITTEE ON DEFENDER SERVICES

QUALITY STEP INCREASES

Because the salary policies of federal public defender organizations (FPDOs) are based on those developed and used by the Department of Justice for United States Attorneys' offices (see 18 U.S.C. § 3006(g)(2)(A)) and are independent of the district courts, employee awards and other methods used by the courts for recognizing judiciary employees have been unavailable to the FPDOs. The only exception to this is the quality step increase (QSI), which is also used in the United States Attorneys' offices. In fiscal year 1993, due to budgetary constraints, QSIs were suspended for judiciary employees, including FPDO personnel. On recommendation of the Committee on Defender Services, the Judicial Conference agreed to grant federal defenders the authority to reinstate Quality Step Increases for graded employees of federal defender organizations, to the same extent

and within the same constraints as the offices of United States Attorneys.

CRIMINAL JUSTICE ACT GUIDELINES

On revising the Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines), (Volume VII, *Guide to Judiciary Policies and Procedures)*, to conform with congressional defunding of post-conviction defender organizations, the Committee on Defender Services determined to recommend further modifications to subparagraph 6.03C (Consulting Services in Capital Federal Habeas Corpus Cases and in Federal Capital Prosecutions) of the CJA guidelines, and the deletion of Appendix I (Qualification Standards for Designation of Expert Consultant Panels) of the CJA Guidelines to ensure the efficient use of expert attorney consultants. The Judicial Conference approved the recommended revisions which would, among other things, limit an expert attorney consultant to providing "light" consultation services, ensure that an expert attorney consultant shall not be paid an hourly rate exceeding that which an appointed counsel could be authorized to be paid, and replace the phrase "exhaustion of state remedies" with "determination of need to exhaust state remedies" in a list of examples of the type of work that may be performed by expert attorney consultants.

REPRESENTATION IN STATE COURT

The Committee on Defender Services considered whether representation in state court to exhaust state remedies in capital habeas corpus proceedings is within the scope of a federal defender's representation pursuant to the CJA's "ancillary matters" authority, 18 U.S.C. § 3006A(c), or under 21 U.S.C. § 848(q). Acting under authority delegated to it by the Judicial Conference for approval of federal defender organization budgets and grants (JCUS-MAR 89, p. 19), the Committee adopted the position that, prospectively, CJA funds may not be expended to support legal representation in capital post-conviction proceedings in state court, except for the purpose of seeking a stay of execution to preserve the right to pursue federal habeas corpus. To extend comparable restrictions to the compensation of CJA panel attorneys, the Committee recommended that the Judicial Conference, prospectively, adopt the position that CJA funds may not be expended to support legal representation in capital post-conviction proceedings in state court, except for the purpose of seeking a stay of execution to preserve the right to pursue federal habeas corpus. The Judicial Conference declined to approve the Committee's recommendation.

CJA FORM 23

To import the penalty of perjury assurance of an oath to the signature at the bottom of CJA Form 23 (Financial Affidavit in Support of Request for Attorney, Expert or Other Court Services Without Payment of Fee), the Committee on Defender Services recommended that the warning and certification statement of the form be revised to incorporate the language in 28 U.S.C. § 1746(2) (unsworn declarations under penalty of perjury). The Judicial Conference approved the recommendation.

COMMITTEE ON FEDERAL -STATE JURISDICTION

VIRGIN ISLANDS DISTRICT COURT

In September 1997, the Third Circuit Judicial Council unanimously adopted a resolution urging the Judicial Conference to support Article III status for the District Court of the Virgin Islands, currently a territorial court established under Article IV of the Constitution. In recent years, the Conference has viewed "commonwealth" status as a significant factor in considering the justification for Article III status. See, *e.g.*, JCUS-SEP 94, p. 51; JCUS-MAR 94, p. 19. The Committee on Federal-State Jurisdiction carefully considered the Judicial Council's resolution and agreed that, although the Virgin Islands has not sought or been granted commonwealth status, it has permanent ties to the United States and enjoys many of the attributes of a state. Moreover, the adjudicatory role of the District Court of the Virgin Islands is virtually identical to that of other district courts and the need for judicial independence equally as strong. Thus, for these reasons, as well as the assertion that no additional costs would be required, the Committee recommended, and the Judicial Conference agreed, that the Conference support the Third Circuit Judicial Council resolution recommending that the District Court of the Virgin Islands be made an Article III court.

COMMITTEE ON FINANCIAL DISCLOSURE

FINANCIAL DISCLOSURE REPORTS

Section 105 of the Ethics in Government Act of 1978 (5 U.S.C. app. 4, § 105), as amended, requires the release of financial disclosure reports to any member of the public who properly completes a request form and indicates that he or she understands the prohibitions on the use of the information contained in the report. Personal information not required by the statute is redacted prior to release, and judges are notified that their reports have been released. In response to security concerns when the safety of a particular judge is threatened, the United States Marshals Service drafted legislation to amend § 105 to defer the release of public financial disclosure forms where such a threat exists. Slightly

modifying a recommendation of the Committee on Financial Disclosure, which had consulted with the Committee on Security and Facilities, the Judicial Conference agreed to support in principle enactment of legislation that would at least allow the release of financial disclosure forms to be deferred where the revealing of sensitive and personal information would endanger the individual judicial officer or employee. See also *supra*, "Miscellaneous Actions," p. 6.

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that as of January 15, 1998, it had received 3,062 financial disclosure reports and certifications for the calendar year 1996, including 1,274 reports and certifications from Supreme Court justices, Article III judges and judicial officers of special courts; 338 from bankruptcy judges; 480 from magistrate judges; and 970 from judicial employees.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that during the period from July 1, 1997 to December 31, 1997, a total of 75 intercircuit assignments, undertaken by 60 Article III judges, were processed and recommended by the Committee and approved by the Chief Justice. In addition the Committee aided courts requesting assistance in identifying judges willing to take assignments. The Committee further reported that the Chief Justice had approved its recommended changes to the Guidelines for the Intercircuit Assignment of Article III Judges, which have been distributed to all judges.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported that it is considering proposals for potential rule of law programs to be funded by a grant from the United States Agency for International Development, as approved by the Judicial Conference in September 1997 (JCUS-SEP 97, pp. 72-73). Each program will be reviewed by the Executive Committee before implementation.

COMMITTEE ON THE JUDICIAL BRANCH

JUDICIAL COMPENSATION

In January 1997, the Judicial Conference unanimously endorsed the pursuit of legislation to accomplish the following objectives: (a) give judges a catch-up pay adjustment; (b) sever the linkage between judicial, congressional, and Executive Schedule compensation and substitute linking judges' salary adjustments to the mechanism for adjusting General Schedule pay rates; and (c) repeal section 140 of Public Law No. 97-92 (JCUS-MAR 97, pp. 26, 41). Subsequently Congress enacted legislation which enabled the judges to receive a 2.3 percent 1998 Employment Cost Index (ECI) adjustment. Believing that the judiciary should focus congressional and executive branch attention on the need to reestablish an institutional mechanism to deal with the impending problem of salary compression, the Committee on the Judicial Branch recommended, and the Judicial Conference adopted, a resolution to--

a. Seek vigorously a cost-of-living adjustment for federal judges, Members of Congress, and top officials in the executive branch for 1999;

b. Continue to seek the repeal of section 140 of Public Law No. 97-92; and

c. Support the revitalization of a federal salary-fixing entity similar to the former Commission on Executive, Legislative and Judicial Salaries.

FEDERAL EMPLOYEES GROUP LIFE INSURANCE

The Judicial Branch Committee made two recommendations relating to the Federal Employees Group Life Insurance Program (FEGLI): The first would increase the amount of supplemental additional coverage under Option B of the FEGLI program from the current limit of five times the employee's annual rate of pay or that of Executive Schedule Level II (whichever is lower); and the second would allow a re-employed annuitant to retain full FEGLI program Option B coverage after the completion of recall status. The Judicial Conference endorsed the concepts of these proposals.

JUDGES' TRAVEL

In light of the inadequacy of the current judges' maximum daily subsistence allowance in a number of metropolitan areas that are experiencing a severe shortage of

hotel rooms, the Judicial Conference approved a Judicial Branch Committee recommendation to increase by $25 the maximum daily subsistence allowance for judges' travel.

The Committee was asked to consider a proposal by Senate Judiciary Subcommittee Chairman Charles Grassley that a provision be included in a bankruptcy judgeship bill which would require bankruptcy judges to seek pre- and post-travel approval of non-case related professional (non-personal) travel from their chief bankruptcy judges, and that such travel be reported annually to Congress by the Director of the Administrative Office. It was the Committee's view, shared by the Bankruptcy Committee, that although Congress has a legitimate interest in how the judiciary spends appropriated funds, the provision would impose unjustifiable administrative burdens and unnecessarily require advance clearance for travel plainly appropriate in purpose and scope. On recommendation of the Judicial Branch Committee, the Conference agreed to (a) affirm the importance of travel undertaken for governance and educational purposes in achieving judiciary and public policy objectives; and (b) reaffirm strongly the judiciary's obligation, responsibility, and authority to regulate judicial travel, and oppose specific legislative regulation of such travel. The Judicial Conference declined to adopt a third Committee proposal that judges be required to report non-case related official travel to the appropriate chief judge.

COMITTEE ON JUDICIAL RESOURCES

ARTICLE III JUDGESHIP NEEDS

Courts of Appeals. In March 1997, the Judicial Conference voted to recommend an additional judgeship for the Fifth Circuit Court of Appeals (JCUS-MAR 97, pp. 26-27). At the request of the Fifth Circuit Court of Appeals and on recommendation of the Committee on Judicial Resources, the Judicial Conference agreed at this session to rescind its recommendation for the additional Fifth Circuit judgeship.

Court of Appeals Judgeship Survey. In response to congressional interest in the judiciary's developing an internal mechanism for recommending that judgeship vacancies not be filled, the Judicial Conference, in March 1997, approved a process for reviewing workload situations in the district courts that may suggest the need to recommend not filling a vacant judgeship or eliminating a judgeship (JCUS-MAR 97, p. 27). After opportunity for comment by circuit judicial councils, the Committee on Judicial Resources proposed a similar mechanism for the courts of appeals. The Judicial Conference approved the process to be included in the biennial judgeship surveys for determining when to recommend that a vacancy not be filled or a position be eliminated in the courts of appeals beginning with the next survey. Since the United States Courts of

Appeals for the District of Columbia and the Federal Circuits are currently excluded from the process and standards used by the Conference for determining judgeship needs, those courts would be excluded also from this process.

District Courts. In March 1996, the Judicial Conference recommended conversion of an existing temporary judgeship in the Northern District of Alabama to a permanent position (JCUS-MAR 96, p. 24). The temporary judgeship in that district lapsed in May 1996, and the district was not included for a judgeship in the temporary judgeship bill which was approved by Congress in October 1997 (Pub. L. No. 105-53). Since the need for an additional judge remains, the Judicial Conference approved a Judicial Resources Committee recommendation to amend its judgeship request to Congress to include one additional permanent judgeship for the Northern District of Alabama.

The Judicial Conference, in September 1996, recommended one additional temporary judgeship for the Middle District of Louisiana (JCUS-SEP 96, pp. 59-60). However, the district's need for an additional judge was satisfied with the enactment of Public Law No. 105-53, which transferred one permanent judgeship from the Eastern District of Louisiana to the Middle District. With the concurrence of the chief judge of the Middle District of Louisiana, the Judicial Resources Committee recommended, and the Judicial Conference agreed, to amend its judgeship request to exclude the additional temporary judgeship for the Middle District of Louisiana.

ALTERNATIVE DISPUTE RESOLUTION

The Judicial Resources Committee had been directed by the Judicial Conference to "consider the development of a funding mechanism for addressing alternative dispute resolution (ADR) staffing resources in the courts and report back to the Judicial Conference" (JCUS-MAR 97, p. 16). Using the results of a survey of all district courts, the Committee developed a staffing factor for the ADR programs in most district courts and a separate staffing factor for six districts with extensive ADR programs. On recommendation of the Committee, the Judicial Conference approved a staffing factor of 2.17 hours for each case participating in a local ADR program. This factor will be applied to most district courts beginning in fiscal year 1999 meeting the following criteria:

a. The district court must have an established ADR program that is certified by the chief judge (excluding Federal Rule of Civil Procedure 16 judicial settlement conferences);

b. District clerk's office resources must be used to administer the program;

c. The ADR program has to have been in place long enough for the district court or the Administrative Office to accumulate one year's worth of data; and

d. The ADR program must be effective.

For the following six districts, which have extensive ADR programs, the Judicial Conference approved a staffing factor of 4.38 hours per case in an ADR program, plus a constant of 1397.23 hours, to be applied beginning in fiscal year 1999: Northern District of California, Middle District of Florida, Western District of Missouri, District of New Jersey, Eastern District of New York, and Eastern District of Pennsylvania.

In order to allow courts an additional six months for an orderly transition of functions and to prepare for any loss of resources associated with the sunset of the Civil Justice Reform Act or the redistribution of arbitration funds, the Judicial Conference approved a Judicial Resources Committee recommendation that funding for CJRA staffing resources in district courts be continued through the end of fiscal year 1998.

COURTROOM SUPPORT FOR DISTRICT JUDGES

When an active district judge resigns, retires, or dies, staffing credit and the associated funding for courtroom support are eliminated in the following fiscal year's allocation, unless the judicial vacancy is filled. However, the caseload continues to exist and requires management. On recommendation of the Judicial Resources Committee, the Judicial Conference authorized the provision of courtroom deputy clerk staffing credit and associated funding based on judicial vacancies when an active district judge leaves the court without taking senior status.

SALARY MATCHING/ADVANCED IN-STEP APPOINTMENT

The Judicial Conference approved a recommendation of the Judicial Resources Committee to amend the salary matching/advanced in-step appointment policy to allow setting the starting salary of a newly hired Court Personnel System employee at any step of the classification level, in any situation where an applicant has unusually high or unique qualifications directly pertinent to the position being filled and/or because of a special need of the court unit for the applicant's services. The change allows courts the option of negotiating starting salaries for new employees and enables court units to compete favorably with the executive branch.

CIRCUIT EXECUTIVES OFFICES

In September 1991, the Judicial Conference established a staffing methodology

and staffing ceilings for circuit executives' offices (JCUS-SEP 91, p. 63). To update the formula and adjust for an error in the original study methodology, the Judicial Conference, on recommendation of the Judicial Resources Committee, approved revised staffing ceilings for circuit executives' offices, increasing the authorized staffing levels from 221.5 to 240.2 for fiscal year 2000. In addition, the Conference authorized the Director of the Administrative Office to approve new work units within these revised ceilings, beginning in fiscal year 2000, based on a demonstration of need and the availability of funding.

SUPPLEMENTAL BENEFITS

The basic federal benefits package available to most judiciary employees provides retirement coverage, health and life insurance, and a tax-deferred savings opportunity under the Thrift Savings Plan. However, with specific legislative authority, non-salary benefits are offered by several federal agencies to their employees in addition to the base federal benefits package. In order to continue to attract and retain a competent workforce, the Judicial Conference agreed with a proposal of the Judicial Resources Committee that it seek legislation to provide the Director of the Administrative Office the discretion to establish a program of supplemental benefits for judicial officers and employees.

LIABILITY INSURANCE

Public Law No. 104-201 authorizes both executive and legislative branch agencies to reimburse qualified employees for some of the costs incurred for professional liability insurance. This provision does not apply to the judiciary. On recommendation of the Committee on Judicial Resources, the Judicial Conference agreed to seek an amendment to include coverage of the judicial branch in section 636 of Public Law No. 104-201, which authorizes reimbursement of any qualified employee for not to exceed one-half the costs incurred by such employee for professional liability insurance.

PERSONAL ASSISTANTS FOR INDIVIDUALS WITH DISABILITIES

In keeping with its commitment to the principles of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, the judiciary has sought to provide reasonable accommodations for its judicial officers and employees with disabilities, including providing equipment and devices that will allow members of the court family to perform job tasks, as well as funds to provide personal assistants for those involved in training, when necessary. However, the judiciary lacks explicit authority to use appropriated funds to hire personal assistants for judicial officers and employees with disabilities (*e.g.*, readers for the blind and interpreters for the deaf) to assist in day-to-day

work. The Judicial Conference approved a Judicial Resources Committee recommendation that it seek legislation to include the judiciary in 5 U.S.C. § 3102 so as to give the judiciary explicit authority, comparable to the executive branch, to hire personal assistants for employees with disabilities.

DEPENDENT CARE ASSISTANCE PROGRAM

A dependent care assistance program (DCAP) allows an employer to provide dependent care benefits to its employees tax-free, subject to certain limits. In response to a request from Congress for comment on pending legislation establishing a DCAP for all federal employees, the Judicial Conference, on recommendation of the Judicial Resources Committee, agreed to support the establishment of dependent care assistance programs for federal employees as provided in H.R. 2213 (105th Congress), but with the modification that the Director of the Administrative Office be given the authority to establish a dependent care assistance program for the Third Branch.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

AUTHORITY TO GRANT A CONTINUANCE OF A PRELIMINARY EXAMINATION

In 1997, at the request of the Committee on Rules of Practice and Procedure, the Committee on the Administration of the Magistrate Judges System considered a proposal to seek legislation to amend 18 U.S.C. § 3060(c) to give magistrate judges the authority to grant a continuance of a preliminary examination without the defendant's consent, and determined to endorse the proposal. Subsequently, the Rules Committee decided it would be more appropriate to propose an amendment to Federal Rule of Criminal Procedure 5(c) and advise Congress of the need for a parallel statutory change later in the rulemaking process. The matter was referred to the Advisory Committee on Criminal Rules, which elected to take no action on the matter. In light of the Rules Committee's determination not to pursue the matter, the Magistrate Judges Committee again considered the issue and recommended that the Judicial Conference endorse an amendment to 18 U.S.C. § 3060. The Judicial Conference determined to refer to both the Magistrate Judges Committee and the Committee on Rules of Practice and Procedure the issue of giving magistrate judges the authority to grant a continuance of a preliminary examination without the consent of the accused, with instructions to the Rules Committee to propose an amendment to Criminal Rule 5(c) consistent with the legislative amendment to 18 U.S.C. § 3060 which has been proposed by the Magistrate Judges Committee.

INTERCIRCUIT AND INTRACIRCUIT ASSIGNMENT OF MAGISTRATE JUDGES

The temporary assignment of magistrate judges to other districts in emergency situations is permitted under 28 U.S.C. § 636(f). After opportunity for comment by the circuit judicial councils and on recommendation of the Magistrate Judges Committee, the Judicial Conference approved proposed Judicial Conference Guidelines for the Intercircuit and Intracircuit Assignment of United States Magistrate Judges for the temporary assignment of magistrate judges to other districts in emergency situations under 28 U.S.C. § 636(f).

AD HOC RECALL OF MAGISTRATE JUDGES

On recommendation of the Magistrate Judges Committee, the Judicial Conference approved two amendments to the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Recall of United States Magistrate Judges. The first establishes workload standards for magistrate judges retired at less than full salary who are recalled to serve on a full-time basis, to ensure that the level of work provided is commensurate with the amount of recall compensation received. The second sets a cap (equal to the amount of compensation earned by an active part-time magistrate judge at the highest salary level (Level 1)) on the amount of annual salary that a retired magistrate judge may receive when recalled on a "when-actually-employed" basis.

MAGISTRATE JUDGES' RETIREMENT REGULATIONS

As with the Bankruptcy Committee (see *infra*, "Bankruptcy Judges' Retirement Regulations," p. 8), the Magistrate Judges Committee also recommended amendments to sections 6.03 and 12.02 of the Regulations of the Director Implementing the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988. The amendments, which were approved by the Conference, will conform the guidelines to recent statutory amendments.

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Magistrate Judges Committee and the recommendations of the Director of the Administrative Office, the district courts, and the judicial councils of the circuits, the Judicial Conference approved the following changes in positions, salaries, and arrangements for full-time and part-time magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds

are available.

FIRST CIRCUIT

District of Maine

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

SECOND CIRCUIT

Western District of New York

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

2. Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

FOURTH CIRCUIT

Northern District of West Virginia

1. Converted the part-time magistrate judge position at Wheeling to full-time status; and

2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

SEVENTH CIRCUIT

Southern District of Illinois

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Southern District of Indiana

1. Increased the salary of the part-time magistrate judge position at New Albany from Level 8 ($3,167 per annum) to Level 7 ($5,279 per annum); and

2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

Western District of Wisconsin

Made no change in the number, location, salaries, or arrangements of the magistrate judge positions in the district.

EIGHTH CIRCUIT

District of Minnesota

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

District of South Dakota

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

NINTH CIRCUIT

Eastern District of California

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

2. Increased the salary of the part-time magistrate judge position at Redding from Level 5 ($21,115 per annum) to Level 4 ($31,672 per annum);*

3. Redesignated the part-time magistrate judge position at Redding as Redding or Susanville; *

4. Discontinued the part-time magistrate judge position at Susanville;* and

5. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

Northern District of California

1. Authorized an additional full-time magistrate judge position at San Francisco or Oakland; and

2. Made no change in the number, locations, salaries, or arrangements of the other

magistrate judge positions in the district.

Western District of Washington

1. Discontinued the part-time magistrate judge position at Olympic National Park;

2. Increased the salary of the part-time magistrate judge position at Vancouver from Level 6 ($10,557 per annum) to Level 5 ($21,115 per annum); and

3. Made no change in the number, locations, salaries or arrangements of the other magistrate judge positions in the district.

TENTH CIRCUIT

District of Wyoming

1. Increased the salary of the part-time magistrate judge position at Casper from Level 8 ($3,167 per annum) to Level 7 ($5,279 per annum); and

2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

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COMMITTEE ACTIVITIES

The Committee reported on pending legislation, H.R. 1252 (105th Congress), which would amend the Judicial Conduct and Disability Act of 1980, 28 U.S.C. § 372(c), to provide that any complaint of judicial misconduct or disability filed under the Act that is not dismissed at the outset by the chief judge of the circuit in which the complained-against judge serves shall be transferred to another circuit for further complaint proceedings. The provision has been amended since the Judicial Conference opposed it in April 1997 (JCUS-SEP 97, pp. 81-82). The Committee advised that no new Judicial Conference action was necessary, but that it would continue to monitor the legislation.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

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SIZE OF GRAND JURY

H.R. 1536 (105th Congress) would reduce the size of a grand jury to not less than nine, nor more than thirteen persons and would require at least seven jurors to concur in an indictment so long as nine members were present. In 1975, the Advisory Committee on Criminal Rules favored similar legislation. However, the Committee on Rules of Practice and Procedure, agreeing with the present position of its Advisory Committee on Criminal Rules, recommended that the Judicial Conference oppose H.R. 1536 for three reasons: a reduced grand jury would increase the possibility of a runaway prosecution, have less diversity of viewpoints and experiences, and cause diminished citizen participation. The Judicial Conference agreed to oppose the legislation.

COMMITTEE ON SECURITY AND FACILITIES

FIVE-YEAR COURTHOUSE PROJECT PLAN

At its March 1997 session, the Judicial Conference approved a five-year plan of courthouse projects arrayed in priority order for fiscal years 1998-2002 (JCUS-MAR 97, p. 39). Because the President's fiscal year 1998 budget did not include any funding for courthouse construction projects, all projects in the 1998-2002 plan have been delayed at least one year. After consultation with the chief circuit judges and circuit executives, the Committee on Security and Facilities proposed a five-year courthouse construction plan for the fiscal years 1999-2003, which the Judicial Conference endorsed. The Conference also voted to delegate to the Security and Facilities Committee the authority to move projects not included in the President's fiscal year 1999 budget request, but shown in the fiscal year 1999 column of the plan, to fiscal year 2000.

GENERAL SERVICES ADMINISTRATION IMPROVEMENT ACT

A proposed bill, the General Services Administration Improvement Act of 1997, H. R. 2751 (105th Congress), would, among other things, require submission to Congress of courtroom utilization data for existing and proposed new courthouses, information on courtroom sharing, and conformance with standards of the *United States Courts Design Guide*. The bill would also require comment and transmittal of the *Design Guide* by GSA to Congress on an annual basis. Noting that the bill was unnecessary in light of existing judiciary initiatives and that it is inappropriate to legislate administrative prerequisites in the area of federal real estate, the Security and Facilities Committee recommended that the Judicial Conference oppose those provisions of H.R. 2751 that affect the judiciary. The Conference concurred in the Committee's recommendation.

FUNDS FOR NEW BUILDINGS

Funds borrowed by the government to finance the construction of buildings are accounted for in the federal budget as if they are spent in one to three years, even though, as in a mortgage, the funds plus interest might be paid to the entity from which they were borrowed over a 20- or 30-year period. H.R. 623 (105th Congress) would change the way these transactions are accounted for in the federal budget. The change would result in a more realistic and favorable treatment of capital investments in the federal budget to the benefit of the judiciary. On recommendation of the Security and Facilities Committee, the Judicial Conference agreed to endorse H.R. 623 with respect to financing mechanisms for public buildings.

AD HOC COMMITTEE TO STUDY MERITS OF MOTIONS RELATED TO THE REPORT OF THE AD HOC STRATEGIC PLANNING COMMITTEE OF THE FEDERAL JUDICIAL CENTER

ADMINISTRATIVE OFFICE/FEDERAL JUDICIAL CENTER RELATIONS

In 1996, the Chief Justice appointed an Ad Hoc Strategic Planning Committee of the Federal Judicial Center to review and to make recommendations concerning the operations of the Federal Judicial Center in relation to its statutory missions. The Committee's report, approved by the FJC Board in June 1997, included several recommendations concerning the relationship between the Administrative Office and the Federal Judicial Center. The FJC Director's proposals (referred to as Motions A and B) for implementation of these recommendations were submitted to the Executive Committee, and in September 1997, the Judicial Conference authorized the creation of an ad hoc committee, consisting of members of the Conference, to study the merits of the two motions (JCUS-SEP 97, p. 47).

After hearing from both the Administrative Office and the Federal Judicial Center, as well as from a number of chairs of Judicial Conference committees, the Conference's Ad Hoc Committee revised the two motions and recommended their endorsement by the Judicial Conference. The Conference unanimously adopted the recommendations which follow. With regard to the four-person Judicial Conference/Federal Judicial Center Working Group described below, the Conference anticipates that in actual practice, the Working Group will function rarely, if ever, and any decisions it does make will result in accommodations that are acceptable to both directors.

The Judicial Conference agrees that:

a. The Federal Judicial Center (FJC) is the federal courts' primary educational agency, but the Administrative Office of the United States Courts (AO) nonetheless remains in control of its own educational programs. Under existing law, Conference policy, and established practice,

1. the FJC is responsible generally for judicial training, case and court management training, and professional management education and training of supervisory and professional personnel; and

2. the AO is responsible generally for education and training related to the proper performance of the administrative and operational duties vested in the Director of the AO by statute, and delegated by him to court personnel.

b. The Interagency Coordinating Committee of Senior Managers referred to in the report of the 1990 AO/FJC Task Force shall be reinstituted. Composed of an equal number of AO and FJC personnel and co-chaired by the designees of the AO and FJC Directors, this Committee shall meet regularly and institute procedures to ensure that the 1993 interagency agreement and this declaration of policy are implemented. In particular, the Committee shall perform the following functions:

1. assess the future education and training needs of the third branch;

2. collaborate in the planning and formulation of specific training programs to meet unsatisfied needs and respond to Conference committee requests in regard to education;

3. review periodically both existing as well as contemplated agency educational offerings, with each agency exchanging with the other in a timely fashion information concerning the design, substance, methodology, and faculty of these programs and whether an outside contractor or vendor has been or should be used;

4. reduce any overlap in educational programs offered by the agencies and avoid even the appearance of duplication;

5. coordinate with relevant committees of the Judicial Conference; and

6. establish as necessary protocols to govern interagency relations in the field of education and training.

The Judicial Conference approves the creation of a four-person Judicial Conference/Federal Judicial Center Working Group consisting of one member of the Conference and one member of the FJC Board (each to be designated by the Chief Justice), together with the Directors of the AO and the FJC, or their designees, to resolve interagency disputes between the FJC and the AO concerning education and training issues that cannot be resolved on the staff level. If the group cannot resolve an interagency dispute, it shall submit it to the Chief Justice for resolution or referral to the appropriate body. The Chief Justice shall have the discretion to dissolve the Working Group at any time he concludes that such action is in the best interests of the federal judiciary.

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

Except as otherwise specified, the Conference authorized the immediate release of matters considered by this session where necessary for legislative or administrative action.

Chief Justice of the
United States
Presiding

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* Approved by the Executive Committee on behalf of the Judicial Conference on February 11, 1998. See *supra*, "Miscellaneous Actions," p. 6.

1. Designated by the Chief Justice

Report of the Proceedings of the Judicial Conference of the United States

September 15, 1998

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Release of Conference Action

The Judicial Conference of the United States convened in Washington, D.C., on September 15, 1998, 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 Juan R. Torruella
Judge Joseph A. DiClerico,
District of New Hampshire

Second Circuit:

Chief Judge Ralph K. Winter, Jr.
Judge Peter C. Dorsey,
District of Connecticut

Third Circuit:

Chief Judge Edward R. Becker
Chief Judge Donald E. Ziegler,
Western District of Pennsylvania

Fourth Circuit:

Chief Judge J. Harvie Wilkinson III
Chief Judge Charles H. Haden II,
Southern District of West Virginia

Fifth Circuit:

Chief Judge Henry A. Politz
Judge William H. Barbour, Jr.,

Southern District of Mississippi

Sixth Circuit:

Chief Judge Boyce F. Martin, Jr.
Judge Thomas A. Wiseman, Jr.
Middle District of Tennessee

Seventh Circuit:

Chief Judge Richard A. Posner
Judge Robert L. Miller, Jr.,
Northern District of Indiana

Eighth Circuit:

Chief Judge Pasco M. Bowman II
Judge James M. Rosenbaum,
District of Minnesota

Ninth Circuit:

Chief Judge Procter Hug, Jr.
Judge Lloyd D. George,
District of Nevada

Tenth Circuit:

Chief Judge Stephanie K. Seymour
Judge Ralph G. Thompson,
Western District of Oklahoma

Eleventh Circuit:

Chief Judge Joseph W. Hatchett
Judge Wm. Terrell Hodges,
Middle District of Florida

District of Columbia Circuit:

Chief Judge Harry T. Edwards
Chief Judge Norma H. Johnson,
District of Columbia

Federal Circuit:

Chief Judge Haldane Robert Mayer

Court of International Trade:

Chief Judge Gregory W. Carman

Circuit Judges Stephen H. Anderson, Emmett R. Cox, W. Eugene Davis, David R. Hansen, Paul V. Niemeyer, A. Raymond Randolph, Norman H. Stahl, and David R. Thompson and District Judges Edward B. Davis, Julia S. Gibbons, John G. Heyburn II, D. Brock Hornby, George P. Kazen, Philip M. Pro, Alicemarie H. Stotler, and William J. Zloch attended the Conference session. Collins Fitzpatrick, Circuit Executive for the Seventh Circuit, was also present.

Senator Orrin G. Hatch spoke on matters pending in Congress of interest to the Conference. Attorney General Janet Reno addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice.

Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director for Management and Operations; William R. Burchill, Jr., Associate Director and General Counsel; Karen K. Siegel, Assistant Director, Judicial Conference Executive Secretariat; Michael W. Blommer, Assistant Director, Legislative Affairs; Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat; and David Sellers, Deputy Assistant Director, Public Affairs. Judge Rya W. Zobel, Director of the Federal Judicial Center, also attended the session of the Conference, as did James Duff, Administrative Assistant to the Chief Justice; Mary Ann Willis, Supreme Court Staff Counsel; and judicial fellows Mary Clark, Paul Fiorelli, Nancy Miller and Christie Warren.

Reports

Mr. Mecham reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office. Judge Zobel spoke to the Conference about Federal Judicial Center programs, and Judge Richard Conaboy, Chairman of the United States Sentencing Commission, reported on Sentencing Commission activities.

Executive Committee

Law Clerk Interviews

At its September 1993 session (JCUS-SEP 93, p. 49), in an effort to improve the law clerk hiring process, the Judicial Conference agreed to recommend to all judicial officers that March 1 of the year before a clerkship begins be the benchmark starting date for law clerk interviews. The policy is not binding on judges, and it has become apparent that it is not universally followed and, therefore, is not an accurate reflection of the practice in the courts. Moreover, there is no consensus within the judiciary as to whether any alternate standardized policy could be more successful in improving the law clerk hiring process. On recommendation of the Executive Committee, the Judicial Conference rescinded its September 1993 policy recommending that March 1 of the year before a clerkship begins be the benchmark starting date for law clerk interviews.

Resolutions

The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution in recognition of the substantial

contributions made by Judicial Conference committee chairs who will complete their terms of service in 1998:

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

HONORABLE A. RAYMOND RANDOLPH
Committee on Codes of Conduct

HONORABLE EMMETT R. COX
Committee on Defender Services

HONORABLE STEPHEN H. ANDERSON
Committee on Federal-State Jurisdiction

HONORABLE FRANK J. MAGILL
Committee on Financial Disclosure

HONORABLE PHILIP M. PRO
Committee on the Administration of the Magistrate Judges System

HONORABLE ALICEMARIE H. STOTLER
Committee on Rules of Practice and Procedure

Appointed as committee chairs by Chief Justice William H. Rehnquist, these outstanding jurists have played a vital role in the administration of the federal court system. These judges served with distinction as leaders of their Judicial Conference committees while, at the same time, continuing to perform their duties as judges in their own courts. They have set a standard of skilled leadership and earned our deep respect and sincere gratitude for their innumerable contributions. We acknowledge with appreciation their commitment and dedicated service to the Judicial Conference and to the entire federal judiciary.

The Judicial Conference of the United States and its Committees

In February 1997, the Executive Committee undertook to update and codify numerous Conference and committee practices into a single document entitled *The Judicial Conference of the United States and its Committees*. Drafts of the document were distributed by the Committee for comment to Conference committee chairs, the Director of the Federal Judicial Center, and the Chief Justice, and the Committee addressed concerns raised. On recommendation of the Committee, the Conference approved the document, which can be used as a source reference for everyone, as well as a teaching device for new committee appointees and chairs.

United States Sentencing Commission

With the resignation of the Chairman of the United States Sentencing Commission, Judge Richard Conaboy, on October 31, 1998, all seven seats on the Commission will be vacant. In the Commission's 14-year history, its chairman has always been a federal judge. The Executive Committee strongly believes that this practice should be maintained in order to preserve the objectivity and independence of the Commission and its leadership. On recommendation of the Committee, the Judicial Conference agreed to urge the President, with the advice and consent of the Senate, to continue the longstanding tradition of appointing a federal judge to chair the United States Sentencing Commission.

Data Collection and Dissemination

Legislative proposals on bankruptcy reform pending in the 105th Congress include differing provisions on the collection, publication, and reporting of bankruptcy statistics and case data. The proposals are inconsistent as to whether certain data on consumer debtors should be collected by the Executive Office for United States Trustees or the

Administrative Office of the United States Courts, and provisions dealing with the release of all public record data held by bankruptcy clerks in electronic form raise significant privacy issues. On recommendation of the Committees on Judicial Resources and the Administration of the Bankruptcy System, the Executive Committee approved, on behalf of the Conference, the adoption of the following position statements to be used in response to congressional proposals on data collection and dissemination (see also *infra*, "National Bankruptcy Review Commission," pp. 46-58 (regarding Recommendations 4.1.1-4.1.5)):

> It is the position of the Judicial Conference of the United States that the federal judiciary should collect and maintain those data it requires for its own operations to fulfill its statutory responsibilities. Accordingly, the collection of financial data on consumer debtors, if desired by Congress, should be assigned to the United States trustee system, which is responsible for supervising trustees and estates and approving distributions to creditors.
>
> It is the position of the Judicial Conference of the United States that the release of data held by the federal judiciary shall be subject to appropriate privacy concerns and safeguards.

Miscellaneous Actions

The Executive Committee:

- Approved proposed interim financial plans for fiscal year 1999 for the Salaries and Expenses, Defender Services, Fees of Jurors and Commissioners, and Court Security accounts, based on appropriations levels midway between the House and Senate allowances. The plans are to be considered final without further action upon the enactment of a judiciary appropriations bill, assuming the appropriations levels are sufficient to fund the plans.[(1)]

- Approved an amended Memorandum of Understanding with the Federal Judicial Center Board and the Federal Judicial Center Foundation Board, which clarifies the roles of the three organizations in administering funds received for the Judicial Conference's benefit, establishes appropriate administrative mechanisms to maintain the separation of funds deposited for Conference use, and broadens the categories of programs for which monies may be received on the Conference's behalf.

- Provided guidance to the Director of the Administrative Office on the judiciary's response to certain provisions of the "Judicial Reform Act of 1998" (H.R. 1252, 105th Congress).

- Authorized retroactive implementation of a $75 per hour rate for the in-court time of attorneys appointed under the Criminal Justice Act in an unusually complex and extended criminal case in the Southern District of Florida because of the unique and extraordinary circumstances of the case.

- Approved a recommendation of the Court Administration and Case Management Committee that it take no position on "The Alternative Dispute Resolution Act of 1998" (H.R. 3528, 105th Congress), provided that certain amendments were made, and determined that if the amendments were not made, the bill should be opposed.

- Agreed, on recommendation of the Committee on Judicial Resources, to revise the fiscal year 1998 Salaries and Expenses financial plan to authorize use of up to $1 million from the reserve to provide information, counseling, and software to judiciary employees who have an opportunity to switch from the Civil Service Retirement System to the Federal Employees Retirement System.

- On recommendation of the Magistrate Judges Committee and the Ninth Circuit Judicial Council, approved an increase in the salary of the part-time magistrate judge position at Santa Barbara, California, from Level 4 ($31,672 per annum) to Level 1 ($58,065 per annum), and agreed to discontinue the part-time magistrate judge position at San Luis Obispo, California.

- Approved an exception to the Judicial Conference policy disallowing the use of realtime reporting systems as an official method of recording bankruptcy proceedings (JCUS-MAR 94, p. 16) for a disabled judge in the

- Southern District of California, and authorized the Director of the Administrative Office to grant similar exceptions for disabled judges in the future.

- As recommended by the Committee on International Judicial Relations, approved the use of grant funds from the United States Agency for International Development for six rule of law programs; the Judicial Conference sponsorship of, and the expenditure of up to $5,000 for, a program for Russian judges and administrators; and the use of $15,000 for a training needs assessment for Venezuelan judges.

- Authorized the creation of six reimbursable positions in the Administrative Office for a work measurement project, effective in fiscal year 1998, and six reimbursable

positions for a benefits project, effective in fiscal year 1999.

- Expanded to the Northern District of Illinois a community affairs pilot program currently approved for two circuit executives' offices.

- As a first step in the process of reevaluating the existing policy on relocation allowances, approved a request for reimbursement of relocation expenses, using local funds, for a new settlement attorney in the First Circuit Court of Appeals, and instructed the Director of the Administrative Office to prepare a proposal allowing the payment of relocation expenses from local funds for certain high-level court personnel.

Committee on the Administrative Office

Committee Activities

The Committee on the Administrative Office was briefed on recent Administrative Office activities, including efforts to update the five major court staffing formulas; a plan to upgrade the skills and knowledge of procurement professionals in the courts and to issue certification warrants; various public affairs program initiatives, including expanded use of video and web technology and a pilot program for community affairs positions in two circuits and one district; and Defender Services program management initiatives. The Committee expressed its support for the final plan for implementing the Administrative Office's new advisory structure and noted the Administrative Office's accomplishment in developing a streamlined advisory system that will reduce the number of permanent groups and allow for timely advice on administrative policies and programs from those affected.

Committee on Automation and Technology

Committee Activities

The Committee on Automation and Technology reported on the progress of its initiative to facilitate courtroom processes through the use of technology. Based on the positive findings of the Electronic Courtroom Project, which assessed the current use and applicability of four kinds of technologies-- video evidence presentation, video conferencing, access to electronic methods of taking the record, and access to external databases--in a variety of courtroom settings, the Committee requested that the Administrative Office develop guidelines and propose a plan for the implementation of courtroom technologies over time. In addition, the Committee reviewed progress on

efforts to develop and implement electronic case files systems for use throughout the judiciary and was advised that installation of the judiciary's Data Communications Network (DCN) would be completed in September 1998, approximately one year ahead of schedule and under anticipated cost.

Committee on the Administration of the Bankruptcy System

Bankruptcy Judgeships

In accordance with 28 U.S.C. § 152(b)(3), the Judicial Conference conducts a comprehensive review of all judicial districts every other year to assess the continuing need for all authorized bankruptcy judgeships and reports its recommendations to Congress for the elimination of any authorized position that can be eliminated when a vacancy exists by reason of resignation, retirement, removal, or death. As a result of the 1998 continuing need survey, the Committee on the Administration of the Bankruptcy System recommended that the Judicial Conference recommend to Congress that no bankruptcy judgeship position be statutorily eliminated and that the Conference advise the Sixth and Eighth Circuit Judicial Councils to consider not filling vacancies in the Northern District of Ohio and the District of South Dakota that currently exist or may occur by reason of resignation, retirement, removal, or death, until there is a demonstrated need to do so. The Judicial Conference approved the Committee's recommendation.

Intercircuit Assignment of Bankruptcy Judges

To implement 28 U.S.C. § 155(a), which authorizes the temporary transfer of a bankruptcy judge to another district, the Judicial Conference, in September 1988, approved Guidelines for the Intercircuit Assignments of Bankruptcy Judges (JCUS-SEP 88, pp. 59-60). On recommendation of the Bankruptcy Committee, the Conference approved clarifying and technical amendments to the guidelines as follows (additions in italics, language omitted is lined-through):

> Guideline 6. The "lender-borrower" rules may be relaxed in situations in which *(a)* a bankruptcy judge has *recused himself or herself or* been disqualified, ~~of retired bankruptcy judges who have~~ *(b) the bankruptcy judge to be loaned or borrowed is on* ~~been recalled~~ *recall status* ~~to active service~~ pursuant to 28 U.S.C.
>
> § 155(b), or *(c)* other situations if approved by the affected circuit councils.

Commentary to Guideline 6, ¶ 4. Through the recall system, retired bankruptcy judges, *with their consent,* ~~are~~ *may be* recalled to active service by ~~the circuits from which they retired.~~ *either the circuit from which the bankruptcy judge retired or another circuit in need of a recalled bankruptcy judge.* The recall system is governed by two sets of regulations: One for extended recall of a retired bankruptcy judge to active service (*i.e.*, recall to active service for a period of three years) and one for recall of a retired bankruptcy judge to active service on an ad hoc basis (*i.e.*, recall to active service for varying periods, but for no more than one year *and a day*).

Place of Holding Bankruptcy Court

The Judicial Conference is authorized to determine the official duty stations of bankruptcy judges and places of holding bankruptcy court (28 U.S.C. § 152(b)(1)). At the request of the court and with the approval of the Eighth Circuit Judicial Council, the Judicial Conference approved a Bankruptcy Committee recommendation that Independence be designated as an additional place of holding bankruptcy court in the Northern District of Iowa.

National Bankruptcy Review Commission

The Bankruptcy Reform Act of 1994 established the National Bankruptcy Review Commission as an independent commission to investigate and study issues and problems relating to the Bankruptcy Code and to prepare a report containing its findings, conclusions, and recommendations for legislative or administrative action (Public Law No. 103-394, § 603). On October 20, 1997, the *Report of the National Bankruptcy Review Commission* was submitted to the President, Congress, and the Chief Justice. The report contains over 170 specific recommendations for changes to the present bankruptcy law and system, a number of which have a potential impact on the workload and administration of the federal courts. The Bankruptcy Committee reviewed all of the Commission recommendations, but certain recommendations fall principally within the jurisdictions of other Conference committees (*i.e.*, the Committees on Court Administration and Case Management, Judicial Resources, and Rules of Practice and Procedure) and were referred to those committees for review and recommendation.

Appellate Review. Two National Bankruptcy Review Commission recommendations, 3.1.3 and 3.1.4, were debated at the Conference session. These recommendations would fundamentally change the existing bankruptcy appeals system by providing for the direct appeal of all final--and certain interlocutory--bankruptcy court

orders to the courts of appeals (by-passing the district courts and the bankruptcy appellate panels). The Bankruptcy Committee recommended that the Conference--

a. support the concept of one level of appellate review of dispositive orders of bankruptcy judges; but

b. urge that no change in the current appellate process be considered until the judiciary has an opportunity to study further the existing process and possible alternative structures and to submit a subsequent report to Congress; and

c. seek to include, in any legislation Congress moves to enact which would provide for direct appeal of bankruptcy court decisions to the courts of appeals, provisions permitting the circuits, at their option and consistent with the Constitution, to utilize bankruptcy appellate panels as adjuncts to the appellate process or, with the consent of the parties, as dispositive of appeals, under guidelines developed by the Judicial Conference.

The Conference declined to approve the first part (part a) of the Bankruptcy Committee's recommendation and determined, instead, to endorse a recommendation of the Court Administration and Case Management Committee that the Conference support the simplification of appellate review of dispositive orders of bankruptcy judges. The Conference approved part b of the Bankruptcy Committee's recommendation, which would give the judiciary an opportunity to study the current process and possible alternatives. Part c of the Bankruptcy Committee's recommendation dealing with use of bankruptcy appellate panels was not approved by the Conference; instead, the Conference, p12 ending completion of the study, opposed the appeal as of right from dispositive orders of bankruptcy judges directly to the courts of appeals.

Other Recommendations. With respect to the remaining National Bankruptcy Review Commission recommendations with potential impact on the federal judiciary, on recommendation of the relevant Conference committee,[(2)]

the Judicial Conference took the following positions:[(3)]

With regard to Commission Recommendation 1.1.1 (concerning the establishment of a national filing system), agreed that there is a value in a national filing system that would provide each case with a unique identifier, to the extent that this can be done with proper regard for safeguarding the privacy of sensitive personal information.

With regard to Commission Recommendation 1.1.2 (concerning random audits of debtors' schedules), expressed general support for measures designed to enhance

the integrity of the bankruptcy system, while cautioning that new duties should not be imposed on bankruptcy trustees without providing additional resources to those trustees for the additional work.

With regard to Commission Recommendation 1.1.3 (concerning the filing of false claims by creditors), took no position on this recommendation for a change in substantive bankruptcy law because it concerns a matter of public policy that is best addressed by Congress, but informed Congress that implementation of this recommendation could result in more litigation over objections to claims, which would increase the workload of judges and clerks.

With regard to Commission Recommendation 1.1.4 (concerning systems administration of consumer bankruptcies), expressed thanks for the endorsement of the 1997 amendments to Bankruptcy Rule 9011, and agreed to follow procedures set forth in the Rules Enabling Act, 28 U.S.C. §§ 2071-2077, for considering further amendments and recommending them to the Supreme Court.

With regard to Commission Recommendation 1.1.5 (concerning financial education programs for debtors), expressed general support for the principle of greater access to financial education for debtors, but stated that if the Congress authorizes such programs, it also should specify by whom they can be provided and how they are to be funded.

With regard to Commission Recommendations 1.2.1 and 1.2.2 (concerning the debtor's ability to exempt certain property), expressed general support for measures designed to treat debtors equally and to enhance the integrity of the bankruptcy system and the public's perception of integrity in the system, but took no position on these recommendations for changes in substantive bankruptcy law because they concern matters of public policy that are best addressed by Congress.

With regard to Commission Recommendations 1.2.5 (concerning the debtor's ability to exempt funds held in a trust) and 1.2.6 (concerning the debtor's ability to exempt certain property), expressed general support for the principle of affording debtors a "fresh start" after bankruptcy, but took no position on these recommendations for changes in substantive bankruptcy law because they concern matters of public policy that are best addressed by Congress.

With regard to Commission Recommendation 1.3.1 (concerning reaffirmation agreements), supported the enactment of amendments to section 524(d) of the Bankruptcy Code to require appropriate documentation of a motion to approve a reaffirmation agreement and to clarify when a court must hold a reaffirmation hearing, but took no position on the merits of amending section 524(c) to specify the standard for approval by the court of a proposed reaffirmation agreement. In

addition, the Conference allowed the procedure for prescribing an official form under Federal Rule of Bankruptcy Procedure 9009 to go forward.

With regard to Commission Recommendation 1.3.4 (concerning security interests in household goods), took no position on this recommendation for a change in substantive bankruptcy law because it concerns a matter of public policy that is best addressed by Congress, but agreed to advise Congress that implementation of the recommendation would likely increase the number of valuation hearings held by bankruptcy judges, and to urge Congress to specify, in any implementing legislation, the valuation standard to be applied.

With regard to Commission Recommendation 1.4.3 (concerning the dischargeability of debts for the payment of criminal restitution orders), took no position on this recommendation for a change in substantive bankruptcy law because it concerns a matter of public policy that is best addressed by Congress.

With regard to Commission Recommendation 1.4.4 (concerning the dischargeability of family support obligations), took no position on this recommendation for a change in substantive bankruptcy law because it concerns a matter of public policy that is best addressed by Congress, but expressed support for clarification of the current confusing statutory scheme governing the nondischargeability of family support obligations.

With regard to Commission Recommendation 1.4.5 (concerning the dischargeability of student loans), took no position on this recommendation for a change in substantive bankruptcy law because it concerns a matter of public policy that is best addressed by Congress, but noted that the repeal of section 523(a)(8) of the Bankruptcy Code would reduce litigation.

With regard to Commission Recommendation 1.4.6 (concerning pre-bankruptcy default judgments), expressed support for a uniform standard for issue preclusion with regard to dischargeability complaints filed in the bankruptcy courts, as well as other types of adversary proceedings.

With regard to Commission Recommendation 1.4.8 (concerning the period of time for objecting to the debtor's discharge), took no position on this recommendation for a change in substantive bankruptcy law because it concerns a matter of public policy that is best addressed by Congress, but noted that the suggested change appears unnecessary because the Bankruptcy Code already provides creditors a one-year period after the debtor's discharge to seek revocation of the discharge, and also noted that the recommended change would create a new degree of uncertainty with respect to the finality of bankruptcy cases.

With regard to Commission Recommendation 1.4.9 (concerning proposed new requirements for dismissing objections to discharge), supported the recommendation to amend section 727 of the Bankruptcy Code on the basis that it should enhance the integrity of the bankruptcy system.

With regard to Commission Recommendation 1.5.2 (concerning the valuation of collateral), took no position on the merits of the specific valuation standards proposed by the Commission, but acknowledged the need for some uniform valuation standard.

With regard to Commission Recommendation 1.5.3 (concerning the rate of interest to be paid to secured creditors), expressed support for a uniform national standard regarding the appropriate rate of interest that will give a secured creditor the present value of its allowed secured claim, but took no position on what that standard should be.

With regard to Commission Recommendation 1.5.6 (concerning the authority of the bankruptcy court to issue *in rem* orders), urged that Congress defer action on this Commission recommendation until further study can be made of the due process concerns raised by the proposal.

With regard to Commission Recommendation 1.5.8 (concerning the reporting of bankruptcy filings by credit reporting agencies), supported amendments to the Fair Credit Reporting Act that would require credit reporting agencies to report chapter 13 filings differently from chapter 7 filings, and supported a requirement that credit reporting agencies note on credit reports the fact that debtors have completed voluntary debtor education programs.

With regard to Commission Recommendation 1.5.9 (concerning the establishment of credit rehabilitation programs by trustees), expressed general support for measures designed to assist debtors in reestablishing credit after bankruptcy, while cautioning that new duties should not be imposed on bankruptcy trustees without providing the means for accomplishing those objectives.

With regard to Commission Recommendations 2.1.1 through 2.1.5 (concerning the treatment of mass future claims in bankruptcy), agreed to inform Congress that it is currently studying the issues associated with mass tort litigation (through an ad hoc Mass Torts Working Group), and that it will defer any comment on these recommendations until that study is concluded. The Conference also noted that the proposal in Commission Recommendation 2.1.2 would create additional ancillary litigation as to the appointment or removal of a mass future claims representative and would add appreciably to the work of the bankruptcy judges and the clerks' staff.

With regard to Commission Recommendation 2.3.2 (concerning consent of former partners), voted to urge Congress, if it enacts legislation, to defer to the provisions of the Rules Enabling Act for any procedural rules that may be required to implement changes in the Bankruptcy Code.

With regard to Commission Recommendation 2.3.3 (concerning the jurisdiction of the bankruptcy court in partnership cases), expressed support, in the interest of judicial economy and efficient case administration, for centralizing the determination of the rights and liabilities of general partners to partnership creditors and to each other in the partnership bankruptcy case. The Conference opposed specifically designating these matters as core matters under 28 U.S.C. § 157(b), noting that doing so may raise jurisdictional concerns in the context of adjudicating contribution claims among nondebtor general partners who have not filed proofs of claim or otherwise consented to the jurisdiction of the bankruptcy court.

With regard to Commission Recommendations 2.3.14 and 2.3.16 (concerning partnership cases), took no position on these recommendations for changes in substantive bankruptcy law because they concern matters of public policy that are best addressed by Congress, but expressed opposition to legislation that would amend the federal rules of procedure without following the procedures prescribed in the Rules Enabling Act, 28 U.S.C. §§ 2071-2077.

With regard to Commission Recommendations 2.3.18 and 2.3.19 (concerning partnership cases), expressed general support for improving the administration of partnership cases, and urged that the extent, form, and timing of disclosure by nondebtor general partners be left to the rulemaking process prescribed in the Rules Enabling Act, 28 U.S.C. §§ 2071-2077.

With regard to Commission Recommendation 2.3.20 (concerning partnership cases), expressed general support for a statutory clarification of the treatment of limited liability company (LLC) members and LLC managers under the Bankruptcy Code, but took no position on whether LLC members in member-managed LLCs and LLC managers in manager-managed LLCs should be treated like general partners under the Code.

With regard to Commission Recommendation 2.4.6 (concerning the need to hold a meeting of creditors in chapter 11 cases), opposed the Commission's recommendation to amend section 341 of the Bankruptcy Code to empower the bankruptcy courts to issue orders waiving meetings of creditors in "pre-packaged" chapter 11 cases due to concerns that the proposal (a) is inconsistent with existing section 341(c), which divests the bankruptcy courts of power over the section 341

meetings; (b) appears to favor corporate "pre-packaged" plan debtors over other parties in interest in bankruptcy cases; and (c) would generate more hearings on motions to waive section 341 meetings on an expedited or emergency basis, thus requiring from the courts additional judicial and clerical resources.

Reaffirmed support for the use of alternative dispute resolution, but opposed Commission Recommendation 2.4.7 (concerning local mediation programs).

With regard to Commission Recommendation 2.4.8 (concerning creditors' committees), supported the recommendation to empower the bankruptcy court to order a change in membership of creditors' committees to ensure adequate representation of creditors, even though implementation of the recommendation may generate increased litigation.

With regard to Commission Recommendation 2.4.9 (concerning employee participation in bankruptcy cases), agreed to inform Congress that the schedules that must be filed by a debtor (Official Form 6) already require disclosure of employee-related obligations and that action on the Commission's recommendation is unnecessary.

With regard to Commission Recommendation 2.4.10 (concerning enhancing the efficacy of examiners and limiting the grounds for appointment of examiners in chapter 11 cases), restated support for limiting the circumstances under which a trustee or trustee's own firm can be retained as a professional by the trustee, but took no position on this recommendation to permit examiners to retain professionals under the same standards that govern the retention of other professionals, because such a change in substantive bankruptcy law concerns a matter of public policy that is best addressed by Congress. With respect to the recommendation to consider an amendment to Bankruptcy Rule 2004, the Conference noted that the recommendation is addressed directly to the Advisory Committee on Bankruptcy Rules, which has considered the matter and determined, for the time being, simply to monitor any case law that develops and, accordingly, urged Congress to defer to the provisions of the Rules Enabling Act, 28 U.S.C. §§ 2071-2077.

With respect to Commission Recommendation 2.5.2 (concerning flexible rules for disclosure statements and plans), expressed support for authorizing the bankruptcy courts to exercise greater flexibility in managing small business cases under chapter 11, but urged Congress, if it enacts legislation, to defer to the provisions of the Rules Enabling Act, 28 U.S.C. §§ 2071-2077, for any procedural rules or official forms that may be required to implement changes in the Bankruptcy Code.

With respect to Commission Recommendation 2.5.3 (concerning reporting

requirements for small business debtors), took no position on the merits of the recommendation, but urged Congress, if it enacts legislation on the subject of small business cases under chapter 11 of the Bankruptcy Code, to defer to the provisions of the Rules Enabling Act, 28 U.S.C. §§ 2071-2077, for any procedural rules or official forms that may be required to implement changes in the Bankruptcy Code.

With regard to Commission Recommendation 2.5.7 (concerning a proposed requirement that the court conduct a scheduling conference in chapter 11 small business cases), indicated its support for scheduling conferences as a valuable case management tool, but opposed mandatory scheduling conferences on grounds that they are not necessary in every case, could use court and judicial time unnecessarily, and would infringe on the judges' discretion to manage their cases.

With regard to Commission Recommendation 2.5.9 (concerning the basis for dismissal or conversion of chapter 11 small business cases), took no position on this recommendation for a change in substantive bankruptcy law, but opposed the time deadlines that would be set forth in 11 U.S.C. § 1112(b)(3), if that section were modified in accordance with the Commission recommendation.

With regard to Commission Recommendation 2.5.10 (concerning the powers and duties of the United States trustee or bankruptcy administrator in chapter 11 small business cases), supported the recommendation for an enhanced role of the United States trustees and the bankruptcy administrators in chapter 11 small business cases, but noted that efficient procedures for administering chapter 11 cases already exist, to a large extent, in the bankruptcy administrator program.

With regard to Commission Recommendations 3.1.1 and 3.1.2 (concerning the establishment of Article III bankruptcy courts and the transition to that status), strongly opposed the Commission's recommendation that bankruptcy courts be established under Article III of the Constitution.

With regard to Commission Recommendation 3.1.5 (concerning the appropriate venue for corporate debtors), urged that Congress defer action on the recommended change in the venue statutes until there is additional published scholarship on the subject, because the data now available do not clearly support the need for any statutory change.

With regard to Commission Recommendation 3.2.2 (concerning venue for preference actions), took no position on this recommendation for a change in substantive bankruptcy law because it concerns a matter of public policy that is best addressed by Congress.

With regard to Commission Recommendation 3.3.1 (concerning the United States

trustee program), reiterated its longstanding position that placement of the United States trustee program as an independent office in the judicial branch is essential to sound case management and effective administration of estates in bankruptcy cases, but took no position on the specific recommendations concerning the United States trustee program.

With regard to Commission Recommendation 3.3.3 (concerning the qualification of attorneys, accountants, and other professionals), took no position on the Commission recommendation regarding the qualification of professionals under 11 U.S.C. § 1107(b), but noted that enactment of the Commission recommendation could increase litigation over whether a prospective professional's interest or equity interest in the debtor is "insubstantial," thereby increasing the judicial and clerical workloads of the courts.

Opposed Commission Recommendation 3.3.4 (concerning nationwide admission to practice), and instead encouraged bankruptcy courts to review their local rules in order to streamline the process of admission for non-resident attorneys who want to appear in a particular proceeding.

With regard to Commission Recommendation 3.3.5 (concerning the appointment of fee examiners), recommended that legislative action to preclude the appointment of fee examiners in bankruptcy cases and proceedings be deferred pending further study, noting the burdensome, time-consuming nature of the requirement that bankruptcy judges conduct an independent review of bankruptcy fee applications.

With regard to Commission Recommendation 3.3.6 (concerning attorney referral programs), supported the amendment of 11 U.S.C. § 504 to permit an attorney compensated out of a bankruptcy estate to remit a percentage of such compensation to a bona fide, nonprofit, public service referral program.

With regard to Commission Recommendations 4.1.1 through 4.1.5 (concerning data compilation and dissemination), opposed as unnecessary the appointment of a third-party data collection coordinator because sufficient mechanisms exist and are being employed currently for coordination between the Administrative Office and the Executive Office for United States Trustees on bankruptcy data compilation and dissemination matters. The Conference also opposed as unnecessary the enactment of legislation requiring electronic public access to bankruptcy data because efforts are already underway in the judiciary to establish electronic access at the lowest possible cost.

With regard to Commission Recommendation 4.2.1 (concerning notice to governmental units of bankruptcy cases), expressed support for efforts to ensure that all parties to a bankruptcy case, including governmental entities, receive

adequate notice of bankruptcy cases, including a requirement that clerks' offices be required to take reasonable steps to prepare and update local registries of governmental entities to which notice should be given, but recommended that the establishment of such a mechanism be left to the rulemaking process under the Rules Enabling Act, 28 U.S.C. §§ 2071-2077.

With regard to Commission Recommendation 4.2.3 (concerning taxation and the Bankruptcy Code), expressed general support for the principle of facilitating adequate and effective notice in bankruptcy cases to governmental units and noted that proposed amendments to the Federal Rules of Bankruptcy Procedure that would provide better notice to all federal and state governmental units have been published for comment.

With regard to Commission Recommendation 4.2.7 (concerning trust fund taxes), supported a requirement that small business debtors be required to create and maintain separate bank accounts for trust fund taxes and nontax deductions from employee paychecks, and supported appropriate sanctions for violations of the segregation requirement, but recommended that the harsh sanction of removal from the trustee panel be reserved for egregious cases.

With regard to Commission Recommendation 4.2.20 (concerning chapter 11 disclosure statements), supported the establishment of standards for tax disclosures in chapter 11 disclosure statements, limited to cases in which an accountant for the debtor in possession has been appointed, on grounds that such a requirement would make it easier for bankruptcy judges to evaluate and approve disclosure statements.

With regard to Commission Recommendation 4.2.24 (concerning abusive serial filings), supported amendment of the Bankruptcy Code to give bankruptcy judges discretion to dismiss abusive serial filings with prejudice to refiling under chapter 13 or 11 for a period determined by the court, but recommended that any bar to refiling should be limited to a specific period of time (such as three years).

With regard to Commission Recommendation 4.2.35 (concerning the authority of bankruptcy courts to grant declaratory relief), took no position on this recommendation for a change in substantive bankruptcy law because it concerns a matter of public policy that is best addressed by Congress, but advised Congress that giving bankruptcy judges the power to issue declaratory judgments on prospective tax issues may require additional judicial resources to hear and resolve such matters.

With regard to Commission Recommendation 4.3.2 (concerning chapter 9 municipal bankruptcy cases), took no position on this recommendation for a change in substantive bankruptcy law, but recommended that Congress resolve the

apparent conflict between sections 901 and 921(d) of the Bankruptcy Code.

With regard to Commission Recommendation 4.3.4 (concerning the appointment of the presiding judge in chapter 9 cases), opposed the recommended deletion of section 921(b) of the Bankruptcy Code and instead supported the current statutory scheme, which requires the chief judge of the court of appeals to designate a bankruptcy judge to conduct each chapter 9 case.

With regard to Commission Recommendation 4.4.1 (concerning chapter 12 family farmer cases), supported the recommended increase in the chapter 12 debt limits and the proposal to make chapter 12 a permanent part of the Bankruptcy Code.

With regard to Commission Recommendation 4.4.2 (concerning chapter 12 family farmer cases), generally supported the Commission's recommendation to provide some consistent, fair, national standard for calculating the chapter 12 trustee's statutory percentage fee, but did not take a position on what specific standard is appropriate.

Committee on the Budget

Fiscal Year 2000 Budget Request

In recognition of congressional funding constraints, the Budget Committee reduced and adjusted the program committees' proposed funding levels for the fiscal year 2000 budget request. The Judicial Conference approved the Budget Committee's lower budget request for fiscal year 2000, subject to amendments necessary as a result of new legislation, actions of the Judicial Conference, or other reasons the Director of the Administrative Office considers necessary and appropriate.

Cost Control Monitoring System

Currently, under the Cost Control Monitoring System (CCMS), when a new work unit is authorized for a program, it is funded at the national average for all position types in that program. For settlement conference attorneys, the effect of this policy is that the national average includes the averages for attorneys as well as support staff and thus does not provide sufficient funds to hire an attorney when a new one is authorized for these small offices. In order to address the funding difficulties created by CCMS in conference attorney offices, the Judicial Conference approved a Budget Committee recommendation that the Conference revise the CCMS formula for determining funding levels for settlement conference attorney offices to provide separate national average salaries for conference attorneys and for support staff, effective in fiscal year 1999.

Certifying Officer Legislation

In May 1997, the Executive Committee of the Judicial Conference agreed on behalf of the Judicial Conference to seek an amendment to title 28 permitting the Director of the Administrative Office to designate certifying officers in the judiciary (JCUS-SEP 97, p. 50). Enactment of such legislation would fix responsibility between individuals requesting goods and services and those actually approving payment for those goods and services, and would afford the judiciary's disbursing officers the personal liability protection executive branch disbursing officers have enjoyed for many years. Concern has been expressed that this provision as endorsed by the Conference could reduce the authority of a chief judge to manage his or her court. To avoid this result, the Judicial Conference approved a Budget Committee recommendation that, in the event of enactment of certifying officer legislation, the Director of the Administrative Office should consult with the chief judge before designating additional certifying officers in a district court.

Funding for Tribal Courts

There is currently little federal funding provided to tribal court systems. The federal judiciary has a stake in ensuring that adequate funding is provided because in the event tribal court systems fail, a large number of filings could come under the federal courts' jurisdiction. On recommendation of the Committee, the Judicial Conference expressed its support for the appropriation of adequate funding for tribal courts.

Committee on Codes of Conduct

Code of Conduct for Federal Public Defender Employees

Canon 6 of the Code of Conduct for Federal Public Defender Employees does not currently allow federal public defender offices to accept the voluntary, uncompensated services of individuals on paid leaves of absence from private firms. Such volunteer arrangements are permitted in U.S. attorneys' offices. Noting that the interest of governmental parity and the lack of any overriding ethical concerns favor an exemption similar to that contained in the provisions governing the U.S. attorneys' offices, the Committee on Codes of Conduct recommended, and the Judicial Conference approved, a revision to the second paragraph of Canon 6 of the Federal Public Defender Employees Code as follows (new language is italicized):

Notwithstanding the above, a defender employee *(other than a defender employee*

serving without compensation) should not receive any salary, or any supplementation of salary, as compensation for official government services from any source other than the United States.

This revision is not limited to attorneys and thus would apply to investigators, paralegals, and other defender staff.

Judges' Recusal Obligations

A series of news articles published in the spring of 1998 focused the attention of the judiciary on judges' recusal obligations. The Committee on Codes of Conduct addressed issues arising from the responsibility of judges to ensure their compliance with financial conflict of interest rules. The Committee does not believe that any ethical principles require judges to make their recusal lists available to the public at their courthouses, but agreed that the Committee should focus its efforts on assisting judges in meeting their recusal responsibilities. Such efforts include increased education of judges about recusal responsibilities, including periodic reminders encouraging judges to create and update recusal lists; development of a model or standardized checklist to be distributed to all judges for use in drawing up recusal lists; and development of automated systems, including software programs, budget and staff permitting, for use in chambers or clerks' offices to compare judges' recusal lists to their court dockets.

After discussion, the Judicial Conference determined to refer for review by the Committees on Codes of Conduct and Financial Disclosure the following recommendation:

That the Judicial Conference encourage all courts to maintain in the clerk's office, to be available to the litigants upon written request, a list for each judge of the companies in which the judge, individually or as a fiduciary, or the judge's spouse, or a minor child residing in the household, has a financial interest requiring recusal.

Committee Activities

Since its last report to the Conference in March 1998, the Committee on Codes of Conduct received 40 new written inquiries and issued 37 written advisory responses. The average response time for inquiries was 20 days. The Chairman received and responded to 29 telephonic inquiries. In addition, individual Committee members responded to 98 inquiries from their colleagues.

Committee on Court Administration and Case Management

Methods Analysis Program - Jury Administration

The Methods Analysis Program (MAP) identifies "better practices" for performing the work of the courts and encourages court units to adopt these or similar practices utilized by individual courts. A MAP work group of court personnel developed a number of ideas to improve the jury administration function, some of which would require legislation or changes to the federal rules. The Committee on Court Administration and Case Management made recommendations on three of these proposals.

The first MAP proposal addressed by the Committee concerned the delegation of authority to make determinations on the qualification, disqualification, exemption and/or excuse of jurors. The Jury Selection and Service Act (Jury Act) authorizes the chief judge of the district court, or another district court judge as the court's jury plan may provide, to determine whether a person is qualified, unqualified, exempt, or excused permanently from jury service (28 U.S.C. § 1865). Satisfied that districts delegating this authority to clerks of court would continue to adhere to the principles of nondiscrimination by using the required objective criteria, the Committee recommended that the Judicial Conference propose legislation to amend 28 U.S.C. § 1865 to permit the chief judge to authorize the clerk of court, under supervision of the court and if the court's jury plan so authorizes, to determine whether persons are qualified or unqualified for, exempt from, or to be excused from jury service. The Conference concurred in the Committee's recommendation.

The second MAP proposal dealt with elimination of the requirement set forth in the Jury Act at 28 U.S.C. §§ 1864(a) and 1866(a), that clerks shall "publicly draw at random" from the master wheel and qualified wheel the names of persons required for jury service. "Publicly draw" is defined in 28 U.S.C. § 1869(k) as a "drawing which is conducted...after reasonable public notice and which is open to the public." With advanced computer technology, more courts are moving to a purely randomized method for selecting juries, and it is unlikely that the public has any interest in attending a drawing. On recommendation of the Committee, the Judicial Conference agreed to propose legislation to amend the Jury Act to eliminate the public drawing requirements for selecting names from the master and qualified jury wheels, provided there is public notice of the process by which names are periodically drawn.

The third MAP proposal involved the automatic excuse from jury service now granted to members of the armed forces in the Jury Act (28 U.S.C. § 1863(b)(6)). Barring any individual from jury duty seems excessive, and circumstances have changed in the last decade so that military personnel have more flexibility to accommodate jury service without interfering with their official duties. Under 10 U.S.C. § 982, the Department of Defense has the authority to make a determination whether military duties require a service member to be exempt from service on a state or local jury; however, title 10 does not apply to service on federal juries. On recommendation of the Committee, the Conference agreed to propose legislation to amend the Jury Act to eliminate the automatic

excuse from service now granted to members of the armed forces in active service under 28 U.S.C. § 1863(b)(6) on the ground that they are exempt, and support a related amendment to 10 U.S.C. § 982 to refer to federal jury service.

Composition of Circuit Councils

Implementation Strategy 50a(2) of the *Long Range Plan for the Federal Courts*, approved by the Judicial Conference in September 1995 (JCUS-SEP 95, p. 52), states that "each circuit judicial council should have an equal number of district and circuit judge members, including the chief circuit judge." Despite its inclusion in proposed court improvement bills, the implementation strategy has not yet been enacted by Congress. The Court Administration and Case Management Committee received a request, based on concerns for the possibility of impasse in the councils' deliberative processes, that it recommend to the Conference modification of this position. The Committee was of the view that the Conference position, as espoused in the *Long Range Plan*, remains desirable, and made no recommendation to the Conference for change. However, after debate at the session, the Conference determined that the current language of 28 U.S.C. § 332(a), which provides that a circuit judicial council shall consist of "the chief judge of the circuit, who shall preside, and an equal number of circuit judges and district judges of the circuit," should be retained.

Statistical Reporting of Social Security Appeals

Social security appeals are not currently required to be included in the statistical reporting system adopted to meet the requirements of the Civil Justice Reform Act (CJRA), except when a motion filed in the case is pending more than six months, or when a case is pending more than three years. Until recently, bankruptcy appeals were similarly excluded; however, in March 1998, the Judicial Conference adopted a recommendation requiring all bankruptcy appeals pending over six months in the district court to be included in the CJRA statistical reports (JCUS-MAR 98, p. 11). Noting that including social security appeals in public reports may encourage courts to remain attentive to their prompt disposition, the Court Administration and Case Management Committee recommended, and the Judicial Conference agreed, that social security appeals be included in CJRA public reports in the same way as motions in civil cases, but that the pending date from which the six-month clock begins to run be set at 60 days after the filing of the transcript.

Miscellaneous Fee Schedules

Internet Fee for Electronic Access to Court Information. The miscellaneous fee schedules for the appellate, district and bankruptcy courts, the U.S. Court of Federal Claims, and the Judicial Panel on Multidistrict Litigation provide a fee for public access to court electronic records (PACER) (28 U.S.C.

§§ 1913, 1914, 1926, 1930 and 1932). The revenue from these fees is used exclusively to fund the full range of electronic public access (EPA) services. With the introduction of Internet technology to the judiciary's current public access program, the Committee on Court Administration and Case Management recommended that a new Internet PACER fee be established to maintain the current public access revenue while introducing new technologies to expand public accessibility to PACER information. On the Committee's recommendation, the Judicial Conference approved an amendment to the miscellaneous fee schedules for the appellate, district and bankruptcy courts, the U.S. Court of Federal Claims, and the Judicial Panel on Multidistrict Litigation to establish an Internet PACER fee of $.07 per page for public users obtaining PACER information through a federal judiciary Internet site.

The Committee also addressed the issue of what types of data or information made available for electronic public access should have an associated fee and what types of data should be provided at no cost. On recommendation of the Committee, the Judicial Conference agreed to include the following language as addenda to the same miscellaneous fee schedules:

a. The Judicial Conference has prescribed a fee for access to court data obtained electronically from the public dockets of individual case records in the court, except as provided below.

b. Courts may provide other local court information at no cost. For example:

- local rules,
- court forms,
- news items,
- court calendars,
- opinions designated by the court for publication, and
- other information--such as court hours, court location, telephone listings--determined locally to benefit the public and the court.

Court of Federal Claims. In September 1997, the Judicial Conference approved an amendment to the district court and bankruptcy court miscellaneous fee schedules to increase the fee for exemplifications to twice the amount of the fee for certifications (JCUS-SEP 97, p. 59). The miscellaneous fee schedule for the United States Court of Federal Claims also contains a provision on fees for exemplifications and certifications, which was inadvertently excluded from this Conference action. At this session, the Conference approved a Committee recommendation that the Conference amend Item 3 of the United States Court of Federal Claims miscellaneous fee schedule to make the fee for certification of any document or paper, where the certification is made directly on the

document or by separate instrument, $5 [(4)] and the fee for exemplification of any document or paper twice the amount of the fee for certification.

The Court of Federal Claims was also omitted from action taken by the Conference in March 1993 amending the miscellaneous fee schedule for district courts to increase the fees for admission to practice and for duplicate

admission certificates and certificates of good standing (JCUS-MAR 93, p. 6). Since the miscellaneous fee schedule for the Court of Federal Claims contains similar provisions, at this session the Conference approved the Committee's recommendation that the Conference raise the attorney admission fee, prescribed in Item 4 of the United States Court of Federal Claims miscellaneous fee schedule, to $50 and the fee for a duplicate certificate of admission or certificate of good standing to $15, provided that legislation permitting the judiciary to retain any increase in fees collected under the miscellaneous fee schedules is enacted.

Consolidation - Southern District of West Virginia

At its March 1998 session, the Judicial Conference adopted procedures for combining functions in the district and bankruptcy courts. The procedures provide for the review of requests for the consolidation of district and bankruptcy court clerks' offices by the Judicial Conference, as required by 28 U.S.C. § 156(d) (JCUS-MAR 98, pp. 10-11). Pursuant to these procedures, the Southern District of West Virginia submitted to the Judicial Council of the Fourth Circuit a plan to consolidate the administrative and operational functions of the district court and bankruptcy court clerks' offices and the probation office. The Judicial Council unanimously approved the request, and the plan was referred to the Committee on Court Administration and Case Management to review in consultation with the Committee on the Administration of the Bankruptcy System. On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference approved the consolidation plan submitted by the Southern District of West Virginia and agreed to refer it to Congress for approval.

Committee on Criminal Law

Committee Activities

The Committee on Criminal Law reported that it had reviewed and commented on the Methods Analysis Program study of pretrial services investigation and report-writing functions, in which 34 suggested "better practices" had been developed by a work group and assessed in the courts. The Committee also reviewed and agreed to distribute the *Directory of Cooperative and Sharing Arrangements in Districts with Separate Pretrial Services and Probation Offices* and the *Appendix to the Directory* to chief district judges

and chief probation and pretrial services officers. The Committee was briefed on several additional matters, including an update on Federal Judicial Center and Administrative Office efforts to undertake a study on the viability and reliability of various case tools to assist officers with the pretrial services supervision function, and a report prepared by the Federal Bureau of Investigation to the Congress on implementing the collection of deoxyribonucleic acid (DNA) samples from federal felony offenders.

Committee on Defender Services

Panel Attorney Administration

In March 1997, the Judicial Conference approved a two-year pilot project in the Central District of California and the District of Maryland that provides funding for an attorney in each district to assist the court in Criminal Justice Act (CJA) panel administration and case cost analysis (JCUS-MAR 97, p. 24). At this session, on recommendation of the Committee on Defender Services, the Judicial Conference agreed to approve shifting the funding source for the project, beginning in fiscal year 1999, from the Defender Services appropriation to the judiciary's Salaries and Expenses account, and to extend the duration of the pilot project through March 2002, supported by approximately $701,500 from the Salaries and Expenses account, in order to permit adequate time for evaluation.[(5)]

Defender Organization Funding Requests

Under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), the Defender Services Committee approved $125,800 to establish two federal public defender organizations and an increase of $300,800 to the fiscal year 1998 budget of another federal public defender organization.

Federal Death Penalty Cases

In response to judicial and congressional concerns about the increasing cost of death penalty representation, a subcommittee of the Defender Services Committee conducted a year-long study of the costs, availability, and quality of appointed counsel in federal death penalty cases. The report of the subcommittee, entitled *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation*, identified specific steps to be taken in order to ensure that expenditures in federal death penalty cases remain within reasonable limits. On recommendation of the Defender Services Committee, the Judicial Conference approved the following recommendations identified in the report, and authorized public release of the report:

1. Qualifications for Appointment

Quality of Counsel. Courts should ensure that all attorneys appointed in federal death penalty cases are well qualified, by virtue of their prior defense experience, training and commitment, to serve as counsel in this highly specialized and demanding type of litigation. High-quality legal representation is essential to assure fair and final verdicts, as well as cost-effective case management.

b. Qualifications of Counsel. As required by statute, at the outset of every capital case, courts should appoint two counsel, at least one of whom is experienced in and knowledgeable about the defense of death penalty cases. Ordinarily, "learned counsel" should have distinguished prior experience in the trial, appeal, or post-conviction review of federal death penalty cases, or distinguished prior experience in state death penalty trials, appeals, or post-conviction review that, in combination with co-counsel, will assure high-quality representation.

c. Special Considerations in the Appointment of Counsel on Appeal. Ordinarily, the attorneys appointed to represent a death-sentenced federal appellant should include at least one attorney who did not represent the appellant at trial. In appointing appellate counsel, courts should, among other relevant factors, consider:

i. the attorney's experience in federal criminal appeals and capital appeals;

ii. the general qualifications identified in paragraph 1(a), above; and

iii. the attorney's willingness, unless relieved, to serve as counsel in any post-conviction proceedings that may follow the appeal.

d. Special Considerations in the Appointment of Counsel in Post-Conviction Proceedings. In appointing post-conviction counsel in a case where the defendant is sentenced to death, courts should consider the attorney's experience in federal post-conviction proceedings and in capital post-conviction proceedings, as well as the general qualifications set forth in paragraph 1(a).

e. Hourly Rate of Compensation for Counsel. The rate of compensation for counsel in a capital case should be maintained at a level sufficient to assure the appointment of attorneys who are appropriately qualified to undertake such representation.

2. Consultation with Federal Defender Organizations or the Administrative Office

a. Notification of Statutory Obligation to Consult. The Administrative Office of the

U.S. Courts (Administrative Office) and federal defender organizations should take appropriate action to ensure that their availability to provide statutorily mandated consultation regarding the appointment of counsel in every federal death penalty case is well known to the courts. (See 18 U.S.C. § 3005.)

b. Consultation by Courts in Selecting Counsel. In each case involving an offense punishable by death, courts should, as required by 18 U.S.C.

§ 3005, consider the recommendation of the district's Federal Public Defender (FPD) (unless the defender organization has a conflict) about the lawyers to be appointed. In districts not served by a Federal Public Defender Organization, 18 U. S.C. § 3005 requires consultation with the Administrative Office. Although not required to do so by statute, courts served by a Community Defender Organization should seek the advice of that office.

c. Consultation by Federal Defender Organizations (FDOs) and the Administrative Office in Recommending Counsel. In discharging their responsibility to recommend defense counsel, FDOs and the Administrative Office should consult with Federal Death Penalty Resource Counsel in order to identify attorneys who are well qualified, by virtue of their prior defense experience, training and commitment, to serve as lead and second counsel.

3. Appointment of More Than Two Lawyers

Number of Counsel. Courts should not appoint more than two lawyers to provide representation to a defendant in a federal death penalty case unless exceptional circumstances and good cause are shown. Appointed counsel may, however, with prior court authorization, use the services of attorneys who work in association with them, provided that the employment of such additional counsel (at a reduced hourly rate) diminishes the total cost of representation or is required to meet time limits.

4. Appointment of the Federal Defender Organization

a. FDO as Lead Counsel. Courts should consider appointing the district's FDO as lead counsel in a federal death penalty case only if the following conditions are present:

i. the FDO has one or more lawyers with experience in the trial and/or appeal of capital cases who are qualified to serve as "learned counsel"; and

ii. the FDO has sufficient resources so that workload can be adjusted without unduly disrupting the operation of the office, and the lawyer(s)

assigned to the death penalty case can devote adequate time to its defense, recognizing that the case may require all of their available time; and

iii. the FDO has or is likely to obtain sufficient funds to provide for the expert, investigative and other services reasonably believed to be necessary for the defense of the death penalty case.

b. FDO as Second Counsel. Courts should consider appointing the district's FDO as second counsel in a federal death penalty case only if the following conditions are present:

i. the FDO has sufficient resources so that workload can be adjusted without unduly disrupting the operation of the office, and the lawyer(s) assigned to the death penalty case can devote adequate time to its defense, recognizing that the case may require all of their available time; and

ii. the FDO has or is likely to obtain sufficient funds to provide for the expert, investigative and other services reasonably believed to be necessary for the defense of the death penalty case.

5. The Death Penalty Authorization Process

a. Streamlining the Authorization Process. The Department of Justice (DOJ) should consider adopting a "fast track" review of cases involving death-eligible defendants where there is a high probability that the death penalty will not be sought.

b. Court Monitoring of the Authorization Process. Courts should exercise their supervisory powers to ensure that the death penalty authorization process proceeds expeditiously.

6. Federal Death Penalty Resource Counsel

a. Information from Resource Counsel. In all federal death penalty cases, defense counsel should obtain the services of Federal Death Penalty Resource Counsel in order to obtain the benefit of model pleadings and other information that will save time, conserve resources and enhance representation. The judiciary should allocate resources sufficient to permit the full value of these services to be provided in every case.

b. Technology and Information Sharing. The Administrative Office should explore the use of computer-based technology to facilitate the efficient and cost-effective sharing of information between Resource Counsel and defense counsel in federal death penalty cases.

7. Experts

a. Salaried Positions for Penalty Phase Investigators. The federal defender program should consider establishing salaried positions within FDOs for persons trained to gather and analyze information relevant to the penalty phase of a capital case. FDOs should explore the possibility that, in addition to providing services in death penalty cases to which their FDO is appointed, it might be feasible for these investigators to render assistance to panel attorneys and to other FDOs.

b. Negotiating Reduced Rates. Counsel should seek to contain costs by negotiating reduced hourly rates and/or total fees with experts and other service providers.

c. Directory of Experts. A directory of experts willing to provide the assistance most frequently needed in federal death penalty cases, and their hourly rates of billing, should be developed and made available to counsel.

8. Training

Federal Death Penalty Training Programs. The Administrative Office should continue to offer and expand training programs designed specifically for defense counsel in federal death penalty cases.

9. Case Budgeting

a. Consultation with Prosecution. Upon learning that a defendant is charged with an offense punishable by death, courts should promptly consult with the prosecution to determine the likelihood that the death penalty will be sought in the case and to find out when that decision will be made.

b. Prior to Death Penalty Authorization. Ordinarily, the court should require defense counsel to submit a litigation budget encompassing all services (counsel, expert, investigative and other) likely to be required through the time that DOJ determines whether or not to authorize seeking the death penalty.

c. After Death Penalty Authorization. As soon as practicable after the death penalty has been authorized by DOJ, defense counsel should be required to submit a further budget for services likely to be needed through the trial of the guilt and penalty phases of the case. In its discretion, the court may

determine that defense counsel should prepare budgets for shorter intervals of time.

d. Advice from Administrative Office and Resource Counsel. In preparing and reviewing case budgets, defense counsel and the courts should seek advice from the Administrative Office and Federal Death Penalty Resource Counsel, as may be appropriate.

e. Confidentiality of Case Budgets. Case budgets should be submitted *ex parte* and should be filed and maintained under seal.

f. Modification of Approved Budget. An approved budget should guide counsel's use of time and resources by indicating the services for which compensation is authorized. Case budgets should be re-evaluated when justified by changed or unexpected circumstances, and should be modified by the court where good cause is shown.

g. Payment of Interim Vouchers. Courts should require counsel to submit vouchers on a monthly basis, and should promptly review, certify and process those vouchers for payment.

h. Budgets In Excess of $250,000. If the total amount proposed by defense counsel to be budgeted for a case exceeds $250,000, the court should, prior to approval, submit such budget for review and recommendation to the Administrative Office.

i. Death Penalty Not Authorized. As soon as practicable after DOJ declines to authorize the death penalty, the court should review the number of appointed counsel and the hourly rate of compensation needed for the duration of the proceeding pursuant to subparagraph 6.02.B(2) of the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Volume VII, *Guide to Judiciary Policies and Procedures*.

j. Judicial Conference Guidelines. The Judicial Conference should promulgate guidelines on case budgeting for use by the courts and counsel.

k. Judicial Training for Death Penalty Cases. The Federal Judicial Center should work in cooperation with the Administrative Office to provide training for judges in the management of federal death penalty cases and, in particular, in the review of case budgets.

10. Case Management

a. Non-Lawyer Staff. Where it will be cost-effective, courts should consider authorizing payment for services to assist counsel in organizing and analyzing documents and other case materials.

b. Multi-defendant Cases

i. Early Decision Regarding Severance. Courts should consider making an early decision on severance of non-capital from capital co-defendants.

ii. Regularly Scheduled Status Hearings. Status hearings should be held frequently, and a schedule for such hearings should be agreed upon in advance by all parties and the court.

iii. "Coordinating Counsel." In a multi-defendant case (in particular a multi-defendant case in which more than one individual is eligible for the death penalty), and with the consent of co-counsel, courts should consider designating counsel for one defendant as "coordinating counsel."

iv. Shared Resources. Counsel for co-defendants should be encouraged to share resources to the extent that doing so does not impinge on confidentiality protections or pose an unnecessary risk of creating a conflict of interest.

v. Voucher Review. In large multi-defendant cases, after approving a case budget, the court should consider assigning a magistrate judge to review individual vouchers. The court should meet with defense counsel at regular intervals to review spending in light of the case budget and to identify and discuss future needs.

11. Availability of Cost Data

The Administrative Office should improve its ability to collect and analyze information about case budgets and the cost of capital cases.

Committee on Federal-State Jurisdiction

Medical Records Privacy Legislation

The Committee on Federal-State Jurisdiction considered several proposals pending in the 105th Congress concerning the privacy of medical records. In general, these proposals are intended to ensure the confidentiality of certain medical records by creating uniform standards for the disclosure of "protected" health information, that is, information that either identifies, or could be used to identify, the individual who is the subject of the information. In addition, the bills would provide individuals with the right to obtain access to their records, amend their records, and receive notice of their rights; establish a system for disclosure of medical information; and create criminal and administrative penalties for violation of certain rights. The proposals would also create a civil cause of action in cases where an individual's rights have been "knowingly or negligently" violated; however, it is not specified whether jurisdiction over such actions lies in state or federal court. Some proposals also permit the court to award punitive damages in certain circumstances. Referencing recommendations in the *Long Range Plan for the Federal Courts* that encourage recognition of the federal courts as courts of limited jurisdiction and resources, the Committee on Federal-State Jurisdiction recommended, and the Judicial Conference agreed, that the Conference endorse the following principles pertaining to medical records privacy legislation pending in the 105th Congress:

Principle 1--Court Jurisdiction

The private cause of action for wrongful disclosure of protected health information created by the medical records privacy legislation concerns a substantive area that traditionally has been governed by state law. Consistent with general principles of federalism, both the original and removal jurisdiction of federal courts to adjudicate such private causes of action should be limited to cases where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, or some other substantial sum as determined by Congress.

Principle 2--Standard for the Award of Punitive Damages

If Congress determines to provide punitive damages as part of the remedies for a violation of the Medical Records Privacy Act, Congress should provide a statutory standard for the award of such damages to avoid wasteful litigation over the standard governing such damages.

Principle 3--Access to Medical Records for Use in Pending Litigation

To the extent that litigation arises outside of the context of the Medical Records Privacy Act (*e.g.*, personal injury cases), but nevertheless gives rise to issues concerning access to information protected by such Act, the parties should resolve such issues exclusively before the court handling the underlying litigation and not by instituting duplicative litigation.

Multidistrict Litigation Transfer Provision

Section 1407(a) of title 28, United States Code, authorizes the Judicial Panel on Multidistrict Litigation to transfer civil actions with common questions of fact "to any district for coordinated or consolidated pretrial proceedings." It also requires the Judicial Panel to remand any such action to the district court in which the action was filed at or before the conclusion of such pretrial proceedings. Until recently, however, federal courts have approved the practice of a transferee court invoking the venue transfer provision (28 U.S.C.§ 1404(a)) and transferring the case to itself for trial purposes. In *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach,* 118 S.Ct. 956 (1998), the Supreme Court acknowledged the possible wisdom of permitting such self-transfers, but held that they were currently prohibited by 28 U.S.C. § 1407(a). The Committee on Federal-State Jurisdiction, after soliciting the views of the Judicial Panel and the Committee on Court Administration and Case Management, recommended that the Judicial Conference support legislation to amend the multidistrict litigation transfer provision, 28 U.S.C. § 1407, to provide that a district court conducting pretrial proceedings pursuant to that section could assign a transferred case for trial proceedings to itself or another district court in the interest of justice and for the convenience of parties and witnesses. The Judicial Conference approved the Committee's recommendation.

Judicial Improvement Act of 1998

The Committee on Federal-State Jurisdiction was asked to review, and make recommendations regarding, the "Judicial Improvement Act of 1998" (S. 2163, 105th Congress) in anticipation of congressional hearings. Many of the provisions contained in S. 2163 are similar to those included in the "Judicial Reform Act of 1998" (H.R. 1252, 105th Congress), upon which the Conference has previously commented (JCUS-SEP 97, pp. 64-65, 71, 81-82, and 85). On recommendation of the Committee, the Conference took the following positions on other provisions in S. 2163 that have potential implications for the federal judiciary:

a. Opposed section 2, which would require expanded use of three-judge courts for challenges to state laws adopted by referenda *and* to Acts of Congress.

b. Opposed in section 3(a), which concerns the termination of prospective relief in *any* civil action, the time limit established therein that would require the court to act within 60 days, which may impede the effective administration of justice.

c. Opposed section 3(b), concerning special masters, because it could be interpreted

broadly and thus bar the use of special masters in federal courts with respect to all proceedings, except for the remedial phase.

d. Took no position on section 3(c), which would prohibit federal judges from ordering tax increases.

e. Took no position on section 12, which would limit federal habeas review of *Miranda* claims and claims based upon a voluntarily given confession.

f. Took no position on section 13, which would prohibit federal judges from specifically barring retrial of a successful habeas petitioner.

g. Took no position on section 15 relating to termination of prospective relief in prison condition cases.

h. Took no position on section 16 relating to limitations on attorney's fees in prison condition cases.

i. Took no position on section 17, which would authorize the federal court to make findings that a prisoner's claims were filed for a malicious purpose or to harass the defendants and require the court to forward such findings to the state's department of corrections.

j. Expressed concerns with section 18, which would deny jurisdiction to the federal courts to enter prisoner release orders, because the withdrawal of this jurisdiction (i) would sweep too broadly by reaching orders that do not in themselves direct state officials to release any prisoners; (ii) might prove counterproductive, by foreclosing relatively deferential forms of federal remedies and forcing judges to fashion alternative remedies that might more deeply affect the administration of prisons; and (iii) would operate as a bar to federal relief in even the most intractable cases, including those addressed by the Prison Litigation Reform Act enacted in 1996, which conditions relief upon specific findings that no alternative remedy will ameliorate the conditions at the prison.

Committee on Financial Disclosure

Committee Activities

The Ethics in Government Act of 1978 (5 U.S.C. app. 4 § 105), as amended, requires the release of financial disclosure reports to any member of the public who properly completes the request form. The Committee on Financial Disclosure reviewed its

current procedures for implementation of this section and found that public access could be facilitated by wider publication of the procedure and the form (AO Form 10A) for obtaining access to a financial disclosure report. The Committee agreed that copies of the form and accompanying instructions for obtaining a report should be placed on the judiciary's website and made available in local courthouses.

Upon review of its administrative procedures for release of reports, the Committee recognized that certain administrative procedures could be changed to facilitate the overall request process without compromising security. The Committee determined to delete the requirement that requests for reports must contain a notarized signature, and it reduced the cost for reproduction of copies of a report from 50 cents to 20 cents per page.

The Committee reported that as of July 10, 1998, it had received 3,032 financial disclosure reports and certifications for the calendar year 1997, including 1,166 reports and certifications from Supreme Court Justices, Article III judges, and judicial officers of special courts; 324 from bankruptcy judges; 481 from magistrate judges; and 1,061 from judicial employees.

Committee on Intercircuit Assignments

Committee Activities

The Committee on Intercircuit Assignments reported that during the period from January 1, 1998 to June 30, 1998, a total of 122 intercircuit assignments, undertaken by 76 Article III judges, plus one retired Associate Justice, were processed and recommended by the Committee and approved by the Chief Justice. In addition, the Committee aided courts requesting assistance in identifying judges willing to take assignments.

Committee on International Judicial Relations

Committee Activities

The Committee on International Judicial Relations reported that it had approved a strategic plan for the Committee compatible with its jurisdictional statement, and agreed that all future committee activities would be subject to the plan. In addition, the Committee endorsed six new international rule of law programs to be funded by grants from the United States Agency for International Development and sought Executive Committee approval for them (see *supra*, "Miscellaneous Actions," pp. 41-43). The Committee also reviewed its role and participation in rule of law programs in the Americas, Russia, and China, and was briefed on a number of ongoing international

judicial reform initiatives.

Committee on the Judicial Branch

Committee Activities

The Committee on the Judicial Branch reported on the prospects for a 1999 judges' Employment Cost Index salary adjustment and discussed ways to improve the current statutory process for reviewing and setting the salaries of judges, senior executive branch officials, and Members of Congress. The Committee received updates on a number of judicial benefits issues, including a flexible benefits plan, an employee-pay-all long-term care insurance program, and pending legislation to improve life insurance and health benefits.

Committee on Judicial Resources

Secretaries to Chief Circuit Judges

In September 1987, the Judicial Conference approved a change to the Judiciary Salary Plan (JSP) qualification standards for principal secretaries to chief circuit judges to permit temporary promotion to JSP-12 after serving three years as a secretary to a circuit judge and upon a showing of exceptional circuit-wide duties and responsibilities (JCUS-SEP 87, pp. 64-65). When the chief judge stepped down, however, the secretary would revert back to the grade that would have been attained had the temporary promotion not occurred. The Conference, on recommendation of the Committee on Judicial Resources, approved a change to the JSP qualification standards to allow a secretary to a chief circuit judge to be promoted from JSP-11 to JSP-12 after one year as a secretary to a circuit judge. To protect the secretaries from significant salary reductions once the chief circuit judge steps down, on the Committee's recommendation, the Conference also provided that the promotion to JSP-12 of the chief circuit judge's secretary be considered temporary for only two years, and that after the two-year period, the promotion to JSP-12 be made permanent.

Settlement Conference Attorney Offices

At its September 1994 session, the Judicial Conference approved a five-year cap on the growth of the settlement conference attorney program and provided that requests for new positions within the approved cap may be authorized by the Administrative Office while requests for positions in excess of the cap must be referred to the Committee on

Judicial Resources and the Conference for approval (JCUS-SEP 94, pp. 56-57). On recommendation of the Committee, the Conference approved one attorney and one support staff position for the Eleventh Circuit settlement conference attorney's office to establish a branch office in Miami, Florida, beginning in fiscal year 2000. The Conference directed that funding be provided by the Administrative Office at the appropriate Cost Control Monitoring System national average salary level. See also s*upra*, "Cost Control Monitoring System," pp. 58-59.

Bankruptcy Appellate Panel Staffing

The staff attorney position for the Second Circuit Bankruptcy Appellate Panel (BAP) was originally authorized in 1996 and was later extended through the end of fiscal year 1998. In response to a request from the Second Circuit BAP, and on the Committee's recommendation, the Judicial Conference approved a one-year extension of the bankruptcy appellate panel staff attorney for the Second Circuit until September 30, 1999.

Bankruptcy Administrators

After consulting with the Committee on the Administration of the Bankruptcy System, the Judicial Resources Committee recommended that the Conference approve requests for seven new positions for fiscal year 2000 for the bankruptcy administrators: one in the Eastern District of North Carolina, one in the Western District of North Carolina, four in the Northern District of Alabama, and one in the Southern District of Alabama. The Conference approved the Committee's recommendation.

Circuit Executive for the Federal Circuit

The Chief Judge of the United States Court of Appeals for the Federal Circuit requested that the Conference seek an amendment to 28 U.S.C. §§ 332(e) and (f) to include a provision for the establishment of a circuit executive for the Federal Circuit. Although the Federal Circuit does not have a circuit judicial council, many of the responsibilities currently performed by the clerk of court in the Federal Circuit are the same as those functions prescribed by § 332(e), which identifies duties that may be delegated to a circuit executive. On recommendation of the Judicial Resources Committee, the Judicial Conference agreed to seek an amendment to 28 U.S.C. § 332 to establish a combined circuit executive/clerk of court position for the Federal Circuit.

Committee on the Administration of the Magistrate Judges System

Selection and Appointment Regulations

Currently, sections 2.01 and 6.03(a) of the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges require that, prior to the selection of a magistrate judge, notice of the impending appointment be published in a general local newspaper or similar publication and, if practicable, in a bar journal, newsletter, or local legal periodical. Some courts, particularly in metropolitan areas, have been concerned about the high costs of publication in their local newspapers. Concluding that the courts themselves are in the best position to determine how to provide effective notice, the Committee recommended, and the Conference approved, amendments to sections 2.01 and 6.03(a) of the regulations to require that before a district court selects a magistrate judge, whether a new appointment or a reappointment, it must publish a public notice in a general local newspaper, in a widely-circulated local legal periodical, or in both.

Changes in Magistrate Judge Positions

After consideration of the report of the Committee on the Administration of the Magistrate Judges System and the recommendations of the Director of the Administrative Office, the district courts, and the judicial councils of the circuits, the Judicial Conference approved the following changes in salaries and arrangements for full-time and part-time magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

First Circuit

District of New Hampshire

Made no change in the number of positions or the location of the existing magistrate judge position in the district.

Second Circuit

District of Vermont

Made no change in the number of positions or the location of the existing

magistrate judge position in the district.

Fourth Circuit

District of South Carolina

1. Increased the salary of the part-time magistrate judge position at Aiken from Level 8 ($3,167 per annum) to Level 6 ($10,557 per annum); and

2. Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

Fifth Circuit

Northern District of Mississippi

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Northern District of Texas

1. Increased the salary of the part-time magistrate judge position at San Angelo from Level 6 ($10,557 per annum) to Level 4 ($31,672 per annum);

2. Decreased the salary of the part-time magistrate judge position at Abilene from Level 4 ($31,672 per annum) to Level 5 ($21,115 per annum); and

3. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

Western District of Texas

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

Ninth Circuit

District of Alaska

Increased the salary of the part-time magistrate judge position at Juneau from Level 5 ($21,115 per annum) to Level 1 ($58,065 per annum) for a two-month period commencing October 1, 1998, with a reduction back to Level 5 thereafter.

District of Hawaii

1. Converted the part-time magistrate judge position at Honolulu to full-time status; and

2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

District of Oregon

Increased the salary of the part-time magistrate judge position at Pendleton from Level 7 ($5,279 per annum) to Level 6 ($10,557 per annum).

Tenth Circuit

District of New Mexico

1. Increased the salary of the part-time magistrate judge position at Gallup from Level 8 ($3,167 per annum) to Level 7 ($5,279 per annum); and

2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

Eastern District of Oklahoma

1. Increased the salary of the part-time magistrate judge position at McAlester from Level 4 ($31,672 per annum) to Level 2 ($52,787 per annum); and

Made no change in the number, location, or arrangements of the other magistrate judge position in the district.

District of Utah

1. Increased the salary of the part-time magistrate judge position at St. George from Level 6 ($10,557 per annum) to Level 4 ($31,672 per annum); and

2. Made no change in the number, locations, salaries, or arrangements of the other

magistrate judge positions in the district.

Eleventh Circuit

Southern District of Florida

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

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

Middle District of Georgia

1. Converted the part-time magistrate judge position at Columbus to full-time status; and

2. Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

Accelerated Funding

The accelerated funding program was originally established in fiscal year 1991 to provide prompt magistrate judge assistance to judicial districts seriously affected by drug filings (JCUS-SEP 90, p. 94). It was subsequently expanded to include courts affected by the CJRA (JCUS-SEP 92, p. 79). Following the expiration of most of the provisions of the CJRA on December 1, 1997, the Committee reviewed the accelerated funding program and determined that instead of establishing specific criteria for the designation of a position for accelerated funding, it was appropriate to consider all relevant factors in its determination. On recommendation of the Committee, the Judicial Conference agreed that in lieu of the criteria for accelerated funding previously applied by the Conference, accelerated funding for magistrate judge positions would be provided to all courts with an immediate need for prompt magistrate judge assistance, as recommended by the Committee.

On recommendation of the Committee, the Judicial Conference agreed to designate the new magistrate judge positions at Honolulu, Hawaii; Miami, Florida; West Palm

Beach, Florida; and Columbus, Georgia, for accelerated funding in fiscal year 1999.

Committee to Review Circuit Council Conduct and Disability Orders

Committee Activities

In May 1997, the Judicial Conference determined to oppose legislation introduced in the 105th Congress to amend the Judicial Conduct and Disability Act of 1980 (28 U.S. C. § 372(c)) regarding the transfer to another circuit of complaints of judicial misconduct (JCUS-SEP 97, pp. 81-82). The Committee to Review Circuit Council Conduct and Disability Orders reported that there had been no action on this proposal in the Senate, and that the Committee would continue to monitor any legislative developments in this area. The Committee further reported that it determined to add commentary to the Illustrative Rules Governing Complaints of Judicial Misconduct and Disability to provide guidance in dealing with the problem of mass filings of identical section 372(c) complaints by different individuals against the same judge or judges.

Committee on Rules of Practice and Procedure

Federal Rules of Bankruptcy Procedure

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 1017 (Dismissal or Conversion of Case; Suspension), 1019 (Conversion of Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to Chapter 7 Liquidation Case), 2002 (Notices to Creditors, Equity Security Holders, United States, and United States Trustee), 2003 (Meeting of Creditors or Equity Security Holders), 3020 (Deposit; Confirmation of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case), 3021 (Distribution under Plan), 4001 (Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements), 4004 (Grant or Denial of Discharge), 4007 (Determination of Dischargeability of a Debt), 6004 (Use, Sale, or Lease of Property), 6006 (Assumption, Rejection and Assignment of Executory Contracts and Unexpired Leases), 7001 (Scope of Rules of Part VII), 7004 (Process; Service of Summons, Complaint), 7062 (Stay of Proceedings to Enforce a Judgment), 9006 (Time), and 9014 (Contested Matters). The proposed amendments were accompanied by Committee Notes explaining their purpose and intent. The Judicial Conference approved the amendments and authorized their transmittal to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

Federal Rules of Civil Procedure

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed technical amendments to Civil Rule 6(b) (Time) and Form 2 (Allegation of Jurisdiction). The proposed amendments were accompanied by Committee Notes explaining their purpose and intent. The Judicial Conference approved the amendments and authorized their transmittal to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

Federal Rules of Criminal Procedure

The Committee on Rules of Practice and Procedure submitted proposed amendments to Criminal Rules 6 (The Grand Jury), 11 (Pleas), 24 (Trial Jurors), and 54 (Application and Exception) to the Judicial Conference, along with Committee Notes explaining their purpose and intent. The Judicial Conference approved the amendments and authorized their transmittal to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

Committee on Security and Facilities

Child Care Centers in Courthouses

Following the bombing of the Alfred P. Murrah Federal Building in Oklahoma City, the Committee considered whether it is advisable for federally-sponsored child day care centers to be located in federal courthouses. After reviewing the positions of the Committee on Judicial Resources, the Department of Justice, the United States Marshals Service, and an executive branch interagency working group on security issues in federal facilities, the Committee recommended amendments to the judiciary's existing policy on housing day care centers. The Conference slightly modified, and then approved, the Committee's recommendation that it--

a. Reaffirm support for participation by the judiciary in the Federal Day Care Center Program;

b. Amend its existing policy on participation by the courts in the Federal Day Care Center Program to preclude location of such centers in new or renovated buildings housing courts and seek relocation of centers in existing buildings housing court operations within three

years. If a center has not been relocated within three years, an examination of the circumstances contributing to the inability to relocate the center(s) should be pursued;

c. Encourage courts to pursue establishment of child day care centers outside of buildings housing courts; and

d. Amend the *United States Courts Design Guide* to include language precluding location of a child day care center when constructing or renovating a courthouse.

Funding for Courthouse Construction

In late 1997, the Office of Management and Budget submitted to Congress an executive branch budget request for fiscal year 1999 that did not include any funds in the General Services Administration (GSA) budget for courthouse construction. In light of the serious implications of delaying the courthouse construction program further (no funds were included in GSA's budget for fiscal year 1998), the Committee on Security and Facilities proposed that funds for courthouse construction be requested as part of the judiciary's, rather than GSA's, budget beginning in fiscal year 2000. This action would be consistent with prior Conference support for the judiciary's independence from the executive branch in the area of real property administration. See JCUS-SEP 89, p. 81; *Long Range Plan for the Federal Courts*, December 1995, p. 86 (Implementation Strategy 51a). On recommendation of the Committee, the Judicial Conference agreed to seek funding for courthouse construction, including funding for planning new projects, in the judiciary's budget request beginning in fiscal year 2000, unless a further assessment of congressional reaction to such a proposal counsels against such action as determined jointly by the chairmen of the Security and Facilities Committee and Budget Committee, and the Director of the Administrative Office.

Funding

All of the foregoing recommendations that 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

Except as otherwise specified, the Conference authorized the immediate release of matters considered by this session where necessary for legislative or administrative action.

Chief Justice of the United States
Presiding

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1. On October 21, 1998, an omnibus appropriations bill was enacted that included appropriations for the judiciary's accounts at levels sufficient to fund the approved financial plans.

2. The following committees were given the primary responsibility to review and make recommendations to the Judicial Conference on National Bankruptcy Review Commission recommendations, as follows: Court Administration and Case Management - Recommendations 2.4.7 and 3.3.4; Judicial Resources - Recommendations 4.1.1 through 4.1.5; Rules of Practice and Procedure - Recommendations 1.1.4, 2.3.2, 2.4.9, 2.4.10, 2.5.2, 2.5.3, and 4.2.3; and Administration of the Bankruptcy System - all remaining recommendations.

3. The Judicial Conference took no position on Commission recommendations not addressed below.

4. The Judicial Conference, in September 1996, approved an inflationary increase of this fee to $7.00, provided legislation is enacted permitting the judiciary to retain the resulting increase (JCUS-SEP 96, p. 54).

5. Funding for two similar positions, one each in the Northern District of California and the Ninth Circuit, was authorized in April 1998 on a four-year, temporary basis. These two positions will be included in the assessment of the pilot project.

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

March 16, 1999

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The Judicial Conference of the United States convened in Washington, D.C., on March 16, 1999, 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 Juan R. Torruella
Judge Joseph A. DiClerico,
District of New Hampshire

Second Circuit:

Chief Judge Ralph K. Winter, Jr.
Chief Judge Charles P. Sifton,
Eastern District of New York

Third Circuit:

Chief Judge Edward R. Becker
Chief Judge Donald E. Ziegler,
Western District of Pennsylvania

Fourth Circuit:

Chief Judge J. Harvie Wilkinson III
Chief Judge Charles H. Haden II,
Southern District of West Virginia

Fifth Circuit:

Chief Judge Carolyn Dineen King
Judge Hayden W. Head, Jr.,
Southern District of Texas

Sixth Circuit:

Chief Judge Boyce F. Martin, Jr.
Judge Thomas A. Wiseman, Jr.
Middle District of Tennessee

Seventh Circuit:

Chief Judge Richard A. Posner

Judge Robert L. Miller, Jr.,
Northern District of Indiana

Eighth Circuit:

Chief Judge Pasco M. Bowman II
Judge James M. Rosenbaum,
District of Minnesota

Ninth Circuit:

Chief Judge Procter Hug, Jr.
Judge Lloyd D. George,
District of Nevada

Tenth Circuit:

Chief Judge Stephanie K. Seymour
Judge Ralph G. Thompson,
Western District of Oklahoma

Eleventh Circuit:

Chief Judge Joseph W. Hatchett
Judge Wm. Terrell Hodges,
Middle District of Florida

District of Columbia Circuit:

Chief Judge Harry T. Edwards
Chief Judge Norma H. Johnson,
District of Columbia

Federal Circuit:

Chief Judge Haldane Robert Mayer

Court of International Trade:

Chief Judge Gregory W. Carman

Circuit Judges W. Eugene Davis, David R. Hansen, Jane R. Roth, Anthony J. Scirica, David R. Thompson, and Walter K. Stapleton, and District Judges Carol Bagley Amon, Robin J. Cauthron, Julia S. Gibbons, John G. Heyburn II, D. Brock Hornby, George P. Kazen, David Levi, Edward W. Nottingham, Harvey E. Schlesinger, and William J. Zloch attended the Conference session. Collins Fitzpatrick, Circuit Executive for the Seventh Circuit, was also present.

jcr:152

Senators Orrin Hatch and Patrick Leahy, and Representatives Howard Berman, Howard Coble, and John Conyers, Jr., spoke on matters pending in Congress of interest to the Conference. Attorney General Janet Reno addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice.

Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director for Management and Operations; William R. Burchill, Jr., Associate Director and General Counsel; Karen K. Siegel, Assistant Director, Judicial Conference Executive Secretariat; Michael W. Blommer, Assistant Director, Legislative Affairs; Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat; and David Sellers, Deputy Assistant Director, Public Affairs. Judge Rya W. Zobel and Russell Wheeler, Director and Deputy Director of the Federal Judicial Center, also attended the session of the Conference, as did James Duff, Administrative Assistant to the Chief Justice, and judicial fellows Mary Clark, Paul Fiorelli, Nancy Miller and Christie Warren.

Reports

Mr. Mecham reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office, and Judge Zobel spoke to the Conference about Federal Judicial Center programs.

Elections

The Judicial Conference elected to membership on the Board of the Federal Judicial Center Circuit Judge Robert M. Parker of the Fifth Circuit to replace Circuit Judge Bruce Selya and District Judge William H. Yohn, Jr., Eastern District of Pennsylvania, to replace District Judge Richard Matsch.

Executive Committee

Federal Employees' Group Life Insurance

The Federal Employees' Group Life Insurance program consists of "basic" life insurance coverage and three categories of "optional" coverage. The Federal Employees' Life Insurance Improvement Act, Public Law No. 105-311, extends to all federal employees the ability, previously enjoyed by Article III judges alone, to carry Option B life insurance at full face value into retirement by continuing to pay premiums. To implement this legislation, the Office of Personnel Management proposed rate changes that would substantially increase payments for judges 65 and over. On recommendation of the Executive Committee, taken up as new business at the Conference session, the Judicial Conference approved the following resolution:

The United States Office of Personnel Management's (OPM) recent administrative action to effectively double the Federal Employees' Group Life Insurance (FEGLI) premiums of hundreds of Article III judges raises serious systemic questions. The action by OPM also poses a serious threat to the financial security of the families of hundreds of sitting judges, and to the future stability of the judiciary, as many judges have reasonably relied on FEGLI as the keystone of their financial and estate planning. OPM's present action now leaves these judges without viable alternatives because of prohibitive costs or intervening uninsurability.

Therefore, the Judicial Conference of the United States resolves that the Director of OPM and the President and, if necessary, the Congress of the United States, should immediately take the necessary action to preserve the existing relationship between judges and the FEGLI program.

Budgetary Matters

Proposed Federal Courts Budget Protection Act. In September 1998, the Judicial Conference agreed to seek funding for courthouse construction in the judiciary's budget requests beginning in fiscal year 2000 (unless a further assessment of congressional reaction to such a proposal counseled against such action), thus bypassing the Office of Management and Budget (JCUS-SEP 98, p. 89). At a March 1999 meeting, the Executive Committee endorsed a legislative proposal implementing this action. The legislative proposal also provides that the judiciary's entire budget will be submitted directly to Congress. This provision would bolster, in the face of White House efforts to impose "negative allowances" against the judiciary's budget requests, the statutory requirement (31 U.S.C. § 1105(b)) that the President must submit the judiciary's budget "without change."

Supplemental Appropriations for Court Security. In fiscal year 1998, Congress approved an emergency supplemental appropriation for enhanced security at embassies and other executive and legislative branch facilities housing high-risk agencies, but no such funding was included for courthouses. On recommendation of the chairmen of the Budget and Security and Facilities Committees, the Executive Committee approved the filing with Congress of a fiscal year 1999 emergency court security supplemental appropriations request for

approximately $30 million. The supplemental request (and a resulting amendment to the judiciary's fiscal year 2000 appropriations request) would fund enhancements necessary to ensure that the level of perimeter security provided at federal court facilities is comparable to other facilities housing similar high-risk government agencies (*see infra* "Committee Activities" (Committee on the Budget), p. 11).

Federal Courts Improvement Legislation

In August 1997, the Executive Committee established a mechanism whereby each Judicial Conference committee is required to review periodically items within its jurisdiction that had been included in the most recent judiciary-proposed federal courts improvement bill. The committees are to inform the Executive Committee whether any provision should be deleted from the next such proposed bill (JCUS-SEP 97, p. 51). After reviewing the Conference committees' positions on items included in the federal courts improvement bill proposed by the judiciary for consideration in the 105th Congress, the Executive Committee asked the Security and Facilities Committee to reconsider its decision not to pursue, at this time, a provision to authorize federal judges to carry firearms for purposes of personal security and to establish a firearms training program. The Security and Facilities Committee subsequently agreed to include the item in the courts improvement bill transmitted to the 106th Congress. With regard to items that fall within the original jurisdiction of the Executive Committee, the Committee agreed to seek comments from the Federal Judicial Center Board before pursuing the creation of a Judicial Conference Foundation to receive and expend private contributions in support of official programs, including international education initiatives (*see* JCUS-MAR 95, p. 6). The Committee also agreed to include a provision in the next judiciary-proposed courts improvement bill permitting the Directors of the Federal Judicial Center and the Administrative Office, and the Administrative Assistant to the Chief Justice, to receive retirement credit for certain prior government service in the legislative branch.

Miscellaneous Actions

The Executive Committee:

- authorized courts to pay relocation allowances, using local funds, for transferees or new appointees to positions as court unit executives and their "type II deputies" who perform as full alter egos, if both the chief judge and the circuit judicial council conclude that the relocation of the affected employee and payment of such expenses is "in the interest of the

Government";

- agreed by mail ballot in October 1998, that the judiciary should vigorously seek to have a provision requiring reporting of judges' travel expenses deleted from S. 2516 (105th Congress) or, if unsuccessful, oppose the legislation in its entirety (*but see infra* "Travel Regulations for United States Justices and Judges," p. 20);

- determined that the judiciary's long-range planning process would be enhanced if it involved the chairs of appropriate Conference committees rather than designated liaisons from the committees, particularly in light of increased emphasis on long-range planning and budgeting; and

- made a number of referrals to Conference committees, for example, to the Criminal Law Committee suggesting that it ensure oversight of the home confinement program and to the Defender Services Committee asking it to monitor certain appearances in state court by federal defenders.

Committee on the Administrative Office

Committee Activities

The Committee was briefed on a number of Administrative Office activities including initiatives to control the volume of correspondence and surveys sent to judges and court officials, efforts to enhance and integrate long-range planning and budgeting, continuing efforts to obtain adequate resources from Congress, and several major human resources initiatives. In addition, the Committee, reviewing positions that had previously been included in federal courts improvement legislation, noted that a provision transferring from the Administrative Office to the Department of Justice responsibility for filing an annual wiretap report with Congress has been strongly opposed by the Department of Justice. The Committee determined to postpone further legislative efforts in this regard pending consideration of alternative strategies for changing the reporting requirement. The Committee also recognized the 60th anniversary of the creation of the Administrative Office and commended its six directors and their staffs for exemplary service to the federal judiciary.

Committee on Automation and Technology

Courtroom Technologies

Believing that courtroom technologies constitute a significant enhancement to the fact-finding mission of the federal courts, the Committee on Automation and Technology recommended that the Judicial Conference endorse the use of such technologies in the courtroom, including video evidence presentation systems, videoconferencing systems, and electronic methods of taking the record. The Committee further recommended that the Conference, subject to the availability of funds and priorities set by the Committee, urge that (a) courtroom technologies be considered as necessary and integral parts of courtrooms undergoing construction or major renovation; and (b) the same courtroom technologies be retrofitted into existing courtrooms or those undergoing tenant alterations as appropriate. The Conference approved the Committee's recommendations.

Long Range Plan for Information Technology

Pursuant to 28 U.S.C. § 612, on recommendation of the Committee on Automation and Technology, the Judicial Conference approved the 1999 update to the *Long Range Plan for Information Technology in the Federal Judiciary*.

Access to Internet Sites

In accordance with Judicial Conference policy (JCUS-SEP 97, pp. 52-53), access to the Internet for any computer connected to the judiciary's data communications network is provided only through national gateway connections approved by the Administrative Office. The national gateways are equipped with software that is capable of blocking access to certain Internet sites. The Committee on Automation and Technology recommended that the Conference authorize the national gateway connections to block access to adult-oriented, pornographic Web sites on the Internet, with access to these sites for individual court employees being provided for official business upon request of any judicial officer. Viewing this as a local matter, the Judicial Conference declined to approve the Committee's recommendation.

Committee on the Administration of the Bankruptcy System

Bankruptcy Judgeships

The Judicial Conference is required by 28 U.S.C. § 152(b)(2) to submit recommendations for new bankruptcy judgeships to

Congress, which establishes the number of such judgeships for each judicial district. In March 1991, the Conference adopted a policy that provides for a national survey of judgeship needs every two years and establishes criteria for evaluating requests for additional bankruptcy judgeships (JCUS-MAR 91, pp. 12-13).[(1)] Based on the 1998 biennial survey of judgeship needs, the Committee on the Administration of the Bankruptcy System recommended that the Judicial Conference transmit to Congress proposed legislation to create 24 additional bankruptcy judgeships (either permanent or temporary, using the most recent per judgeship weighted filing statistics available at the time proposed legislation for the judgeships is sent to Congress). The Judicial Conference approved the recommendation for judgeships in the following districts:

District of Puerto Rico (1)[(2)]
Northern District of New York (1)
Eastern District of New York (1)
Southern District of New York (1)
District of Delaware (1)
District of New Jersey (1)
Eastern District of Pennsylvania (1)
Middle District of Pennsylvania (1)
District of Maryland (3)
Eastern District of North Carolina (1)
Eastern District of Virginia (1)
Southern District of Mississippi (1)
Eastern District of Michigan (1)
Western District of Tennessee (1)
Eastern District of California (1)
Central District of California (4)
Southern District of Georgia (1)
Southern District of Florida (2)

The Conference also agreed to recommend that the judgeship in the Southern District of Georgia currently shared with the Middle District of Georgia be converted to a full-time position for the Middle District of Georgia and that the proposed judgeship in the Southern District of Mississippi provide assistance to the Northern District of Mississippi. In addition, the Conference approved and agreed to transmit to Congress a request to make the existing temporary bankruptcy judgeship in the District of Delaware permanent, in lieu of a previous determination to recommend that it be extended to the first vacancy occurring due to death, retirement, resignation, or removal in the district that occurs 10 years or more after the date on which the temporary judgeship was originally filled (*see* JCUS-SEP 97, pp. 53-54).

Bankruptcy Estate Administration

In September 1991, the Judicial Conference approved a memorandum of understanding (MOU) between the Executive Office for United States Trustees (EOUST) and the Administrative Office describing the respective duties of the United States trustee, the court, and the clerk in the case closing process and post-confirmation monitoring of chapter 11 cases (JCUS-SEP 91, p. 53). At its March 1996 session, the Judicial Conference, on recommendation of the Bankruptcy Committee, approved an amended MOU (JCUS-MAR 96, pp. 9-10). The amendments, among other things, specified the responsibility of the United States trustee in verifying the reliability of case trustee certification procedures and the accuracy of trustee reports so that bankruptcy judges can be assured that each case has been fully administered and may be ordered closed. Although the Director of the EOUST had verbally approved the amended MOU prior to its approval by the Conference, he did not sign the agreement. After further modifications addressing concerns of both parties, the EOUST Director signed a revised agreement, and, on recommendation of the Committee, the Judicial Conference approved the revised

Amended Memorandum of Understanding Between the Executive Office for United States Trustees and the Administrative Office of the United States Courts Regarding Case Closing and Post Confirmation Chapter 11 Monitoring.

Committee on the Budget

Committee Activities

The Committee on the Budget reviewed adjustments to the fiscal year 2000 budget request and was updated on developments related to the June 15, 1999 cutoff of obligation authority for judiciary appropriations contained in the judiciary's fiscal year 1999 appropriations act (Public Law No. 105-277). The Committee was briefed on a number of additional issues, including the Administrative Office's efforts to obtain funds from Congress to continue courthouse construction and its initiative to improve the judiciary's financial management program. The Committee endorsed in principle a recommendation of the Committee on Security and Facilities that a fiscal year 1999 supplemental appropriations request and a fiscal year 2000 budget request amendment for additional court security officers

and for court security upgrades be submitted to Congress.[(3)] The Committee also discussed efforts to enhance long-range planning and budgeting in the judiciary.

Committee on Codes of Conduct

Committee Activities

Judges' Recusal Obligations. The Committee on Codes of Conduct reported on the efforts of several Judicial Conference committees to assist judges in meeting their recusal obligations. These initiatives include enhanced education and training to ensure that judges are aware of their recusal responsibilities; dissemination of information directly to judges about their recusal responsibilities; development of model checklists for judges to use in drawing up recusal lists; examination of automated systems to compare judges' recusal lists to their court dockets; consideration of amendments to the federal rules to require parties to disclose corporate affiliates that may necessitate judges' recusal; and examination of a requirement that a recusal check be done before any order is entered in a case. At the request of the Judicial Conference (JCUS-SEP 98, p. 61), the Committee also reconsidered a resolution, before the Conference in September 1998, concerning disclosure to litigants of recusal lists. The Committee concluded that its original position, that such disclosure was not required by the Code of Conduct for United States Judges, was sound and that policy considerations counseled against a blanket rule regarding judges maintaining recusal lists in clerks' offices. *See also infra* "Judges' Recusal Obligations," pp 17-18.

Advisory Opinions. The Committee reviewed and approved an advisory opinion summarizing the factors about which judges should be sensitive when engaging in settlement discussions and an opinion summarizing the Committee's advice pertaining to judges serving as trustees. Both opinions will be published in Volume II of the *Guide to Judiciary Policies and Procedures.* The Committee also agreed to republish the entire contents of Volume II of the *Guide.*

Inquiries. Since its last report to the Conference in September 1998, the Committee on Codes of Conduct received 38 new written inquiries and issued 34 written advisory responses. The average response time for inquiries was 24 days. The Chairman received and responded to 16 telephonic inquiries. In addition, individual Committee members responded to 77 inquiries from their colleagues.

Committee on Court Administration and Case Management

Program for Prompt Disposition of Protracted, Difficult, or Widely Publicized Cases

The Program for Prompt Disposition of Protracted, Difficult, or Widely Publicized Cases (commonly referred to as the "Bar Harbor Resolution") was approved by the Judicial Conference in 1971 (JCUS-OCT 71, pp. 71-74) and reaffirmed in September 1997 (JCUS-SEP 97, p. 64). The program was originally intended to ensure the orderly and prompt disposition of complex cases by allowing a chief judge to assign them to specific judges. Addressing concerns raised (*e.g.*, a greater potential for "judge shopping" and specialization), the Committee on Court Administration and Case Management concluded that the program was inconsistent with the concept of judicial autonomy. After seeking input from district court chief judges, the Committee recommended that the Judicial Conference rescind the 1971 Bar Harbor Resolution and its September 1997 reaffirmation of the program, as not compatible with the random assignment of cases. The Conference approved the recommendation. In addition, to offset the sometimes unequal workloads resulting from random selection, which can threaten a court's ability to manage its caseload, on recommendation of the Committee, the Conference agreed to--

a. recommend that districts with multi-category case assignment systems, at their discretion, consider establishing one or more categories for protracted or complex cases to ensure that these cases are assigned randomly and evenly to all judges; and

b. recommend that districts, at their discretion, consider establishing a procedure that would allow for the voluntary transfer of an already-assigned case back to the random assignment system. Such a procedure should incorporate the need for agreement between the chief judge and the judge to whom the case was originally assigned.

Bankruptcy Noticing Guidelines

In March 1986, the Judicial Conference approved guidelines that provide for the preparation and mailing of notices in bankruptcy cases by persons other than bankruptcy clerks (JCUS-MAR 86, p.

21). Since that time, there have been changes to the bankruptcy rules and procedures that necessitate procedural, non-substantive revisions to the guidelines. With the concurrence of the Committee on the Administration of the Bankruptcy System, the Committee on Court Administration and Case Management recommended, and the Conference approved, proposed procedural revisions to the bankruptcy noticing guidelines. On recommendation of the Committee, the Conference also agreed to delegate authority to the Committee on Court Administration and Case Management, in consultation with the Bankruptcy Committee, to approve all future procedural revisions to the bankruptcy noticing guidelines.

Commission on Structural Alternatives for the Federal Courts of Appeals

The Commission on Structural Alternatives for the Federal Courts of Appeals, appointed by the Chief Justice pursuant to Public Law No. 105-119, issued its final report in December 1998. The report contained, among other things, a recommendation that circuit judicial councils be authorized to establish district court appellate panels (DCAPs), which would provide the first level of review for designated categories of cases that involve error correction, with discretionary review in the courts of appeals. Concerned that DCAPs would slow down the resolution of appeals by adding another tier of review, would be difficult to administer, and would likely undermine uniformity of the federal system and collegiality among judges within a circuit (requiring more *en banc* rehearings to resolve conflicts among panels and requiring district court judges to sit in review of their colleagues' decisions), the Committee recommended that the Judicial Conference oppose the proposal of the Commission on Structural Alternatives for the Federal Courts regarding the establishment of district court appellate panels. After discussion and consideration of further input from the Commission, the Conference adopted the Committee's recommendation.

Committee on Criminal Law

Home Confinement Program Monograph

On recommendation of the Committee on Criminal Law, the Judicial Conference endorsed *The Federal Home Confinement Program for Defendants and Offenders*, Monograph 113, and authorized its distribution to the courts. The purpose of the monograph is to provide uniformity in the operation and administration of the home confinement program among districts by

providing national standards for probation and pretrial services officers to use in administering the program.

Pretrial Services Investigation and Report Monograph

On recommendation of the Committee on Criminal Law, the Judicial Conference endorsed *The Pretrial Services Investigation and Report*, Monograph 112, and authorized its distribution to the courts. The monograph establishes standards and provides information for officers who perform pretrial services functions. It is intended to complement the standards established by *Pretrial Services Supervision*, Publication 111, and the *Guide to Judiciary Policies and Procedures*, Volume XII, Pretrial Services Manual.

Operation Drug TEST

In June 1996, the Executive Committee agreed to the judiciary's participation in Operation Drug TEST (Testing, Effective Sanctions, and Treatment), the Attorney General's program of increased pretrial drug testing of criminal defendants, so long as participation by individual districts was voluntary and the Department of Justice paid the cost of the program (JCUS-SEP 96, p. 46). In September 1996, the Administrative Office and the Department of Justice signed a memorandum of understanding to implement the program. The MOU has since been extended through September 30, 1999. The Department of Justice has requested that the program, operating in 53 sites across 24 federal districts, be expanded to approximately 10 additional districts. On the Committee's recommendation, the Judicial Conference agreed to endorse the expansion of Operation Drug TEST to approximately 10 additional courts, authorize the Administrative Office to modify the existing MOU accordingly, and delegate authority to the Committee chair to invite courts to participate and to select the additional courts.

Committee on Defender Services

Disclosure of Criminal Justice Act Payments

The judiciary's fiscal year 1998 appropriations act, Public Law No. 105-119, amended 18 U.S.C. § 3006A(d)(4) to require that amounts paid to attorneys appointed under the Criminal Justice Act (CJA) be made publicly available and set forth rules for doing so. The new law is not inconsistent with other policies or provisions of law requiring disclosure, but imposes specific direction as to when and

how much information should be released. This amendment applies to cases filed on or after January 25, 1998, and has a two-year "sunset" provision. On recommendation of the Committee on Defender Services, the Conference approved a conforming amendment to paragraph 5.01B of the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Volume VII, *Guide to Judiciary Policies and Procedure,* to implement the new law. The revised guidelines set forth the procedures for disclosing payment information. They authorize courts to use the current versions of the vouchers submitted by CJA panel attorneys as the sole means to release payment information and provide that documentation submitted by CJA panel attorneys in support of their claims for payment, plus other attachments to the voucher forms, are not covered by the law and need not be released at any time.

Defender Organization Funding Requests

Under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), the Committee on Defender Services approved budgets and grant requests for federal defender organizations in the amount of $218,078,500 for fiscal year 1999.

Committee on Federal-State Jurisdiction

Year 2000 Legislation

Several bills have been introduced in the 106th Congress that are intended to address a potential flood of state and federal court litigation related to year 2000 (Y2K) issues. Although they would not create a new federal cause of action, the bills would, among other things, provide original jurisdiction over Y2K class actions based on minimal diversity of citizenship with no minimum amount in controversy required. Coupled with provisions permitting removal of such actions to federal court by a single defendant or a single member of the plaintiff class, these provisions have the potential for shifting virtually all Y2K class actions from state to federal court.

The Committee on Federal-State Jurisdiction noted that federalization of Y2K class actions would deprive the judicial system of the contributions that state courts would otherwise make in resolving such litigation and holds the potential for heavily burdening the federal courts and causing substantial costs and delays for the litigants. While minimal diversity may be appropriate to facilitate the resolution of certain mass tort-type cases (*see, e.g.*, JCUS MAR-88,

pp. 21-23), the proposed expansion of federal jurisdiction over Y2K class actions in the manner provided in the pending bills is inconsistent with the objective of preserving the federal courts as tribunals of limited jurisdiction. The Federal-State Jurisdiction Committee therefore recommended, and the Judicial Conference after discussion agreed, that the Conference should oppose the provisions expanding federal court jurisdiction over Y2K class actions in bills (S. 96, S. 461, and H.R. 775) under consideration by the 106th Congress.

Committee on Financial Disclosure

Judges' Recusal Obligations

At its September 1998 session (JCUS-SEP 98, pp. 60-61), the Judicial Conference determined to refer for review by the Committees on Codes of Conduct and Financial Disclosure the following recommendation:

> That the Judicial Conference encourage all courts to maintain in the clerk's office, to be available to the litigants upon written request, a list for each judge of the companies in which the judge, individually or as a fiduciary, or the judge's spouse, or a minor child residing in the household, has a financial interest requiring recusal.

In recommending against such disclosure, the Committee on Financial Disclosure noted that section 455 of title 28 imposes a personal obligation on each judge to decide whether to recuse himself or herself from a case and that this responsibility cannot be shifted to staff or litigants. The Committee also expressed concern about security risks related to the release of individual financial information without statutory safeguards such as those found in section 105 of the Ethics in Government Act of 1978 (5 U.S.C. app. 4 § 105). The Committee recommended that, in lieu of encouraging all courts to maintain in the clerk's office a recusal list for each judge that would be available to litigants upon written request, the Judicial Conference continue to support the efforts of the Committees on Codes of Conduct and Financial Disclosure to educate and inform judges of their responsibilities under 28 U.S.C. § 455, the Code of Conduct for United States Judges, and the financial disclosure provisions of the Ethics in Government Act of 1978. After discussion, the Judicial Conference adopted the Committee's recommendation. *See also supra* "Committee Activities" (Committee on Codes of Conduct), pp. 11-12.

Committee Activities

The Committee on Financial Disclosure reported that as of December 31, 1998, the Committee had received 3,206 financial disclosure reports and certifications for the calendar year 1997, including 1,231 reports and certifications from Supreme Court Justices, Article III judges, and judicial officers of special courts; 342 from bankruptcy judges; 505 from magistrate judges; and 1,128 from judicial employees.

Committee on Intercircuit Assignments

Committee Activities

The Committee on Intercircuit Assignments reported that during the period from July 1, 1998 to December 31, 1998, a total of 96 intercircuit assignments, undertaken by 61 Article III judges, were processed and recommended by the Committee and approved by the Chief Justice. In addition, the Committee aided courts requesting assistance in identifying judges willing to take assignments.

Committee on International Judicial Relations

Committee Activities

The Committee on International Judicial Relations reported that it will make available to the public its strategic plan, which defines the judiciary's unique and limited role in international judicial relations. The plan will serve to inform organizations and contractors involved in international rule of law and judicial reform initiatives of the standards used by the Committee to determine whether to become involved in such initiatives. The Committee also reported on developments in a number of ongoing or contemplated rule of law programs throughout the world.

Committee on the Judicial Branch

Judicial Compensation

The adequacy of judicial compensation continues to be a major concern. *See, e.g.*, JCUS-MAR 97, p. 26. Judges and other high-

level government officials have received only one cost-of-living increase in six years, and there is currently no functioning mechanism to review the adequacy of the salaries of these officials. Moreover, the President's salary, which has remained unchanged for 30 years, has effectively capped the salaries of top officials and caused pay compression to set in. Believing that the judiciary should encourage and support the efforts of congressional leaders to effect meaningful salary relief for officials in all three branches of government, and that this cannot be achieved without a substantial raise in the President's salary, the Committee on the Judicial Branch recommended that the Judicial Conference resolve to seek vigorously a pay adjustment for federal judges, members of Congress, and top officials in the executive branch for 2000 and that it seek to ease pay compression for officials in all three branches of government by supporting an increase in the presidential salary. The Conference approved the Committee's recommendation.

Travel Regulations for United States Justices and Judges

After a comprehensive review of the Travel Regulations for United States Justices and Judges, the Committee on the Judicial Branch recommended extensive revisions to streamline the regulations and make them easier to use, to eliminate inconsistencies, to delete language concerning issues that rarely arise, and to continue the judiciary's commitment to prudent fiscal policies. The Conference approved the revised regulations, which are both substantively and structurally different from the existing regulations. The regulations will be published in the *Guide to Judiciary Policies and Procedures.*

The Conference also discussed legislative proposals to require a judge to report annually to his or her chief judge on travel undertaken for reasons not directly related to any case assigned to the judge. In March 1998, the Judicial Conference had strongly opposed a legislative proposal to require bankruptcy judges to obtain pre-and post-travel approval of non-case related professional (non-personal) travel. At the same time, the Conference had also opposed a Judicial Branch Committee proposal to amend the travel regulations to require all judges to report non-case related official travel to the appropriate chief judge (JCUS-MAR 98, pp. 18-19). Despite the Conference's position, members of the 105th Congress continued to pursue legislation requiring the reporting of non-case related official travel of judges.[(4)] At this session, the Judicial Conference revisited its position on amending the travel regulations and voted to direct the Committee on the Judicial Branch to prepare a proposed amendment to the travel regulations that would substantially incorporate, for the purpose of reporting all non-case related professional travel

undertaken by a judge of the United States, the travel reporting requirements for members of the United States Senate. Such requirements will specifically include the reporting of the purpose for which the non-case related travel is undertaken and the source and amount of all reimbursement received by a judge for any such travel not paid for with appropriated funds, subject to the reporting exceptions contained in the Ethics in Government Act of 1978.

Relocation Regulations for United States Justices and Judges

For several years, an interim policy on relocation reimbursement for judges has been in effect, which sharply limits the payment of relocation expenses. In an effort to give each judicial circuit and court of national jurisdiction the discretion to authorize and fix a transferred or newly appointed judge's relocation allowance (to the greatest extent permitted), to clarify the nature and scope of each potential allowance, and to make the regulations easier to use, the Committee on the Judicial Branch drafted and recommended adoption of new Relocation Regulations for United States Justices and Judges. The Judicial Conference approved the revised regulations, which will be published in Volume III of the *Guide to Judiciary Policies and Procedures.*

Committee on Judicial Resources

Article III Judgeship Needs

Additional Judgeships. On recommendation of the Committee on Judicial Resources, which reviewed requests and justifications for additional judgeships in the courts of appeals and the district courts utilizing criteria and standards previously approved by the Judicial Conference (*see* JCUS-SEP 96, pp. 60-61; JCUS-MAR 97, pp. 26-27), the Conference approved transmittal to Congress of a request for an additional seven permanent and four temporary judgeships in the courts of appeals, and for 33 permanent and 25 temporary district judgeships, and the conversion of 10 existing temporary judgeships to permanent in the district courts. This request is in lieu of previous Conference recommendations. Judgeships were recommended at the following locations ("P" denotes permanent; "T" denotes temporary):

Courts of Appeals	
First Circuit	1P
Second Circuit	2P
Sixth Circuit	2P, 1T
Ninth Circuit	2P, 3T
District Courts	
Northern District of New York	1T, Convert 1T to P
Eastern District of New York	3P
Western District of New York	1T
District of Maryland	1P
Western District of North Carolina	1P, 1T
District of South Carolina	1P
Eastern District of Virginia	2P, Convert 1T to P
Northern District of Texas	1P
Eastern District of Texas	1T
Southern District of Texas	2P
Western District of Texas	2P
Eastern District of Kentucky	1T
Northern District of Ohio	Convert 1T to P
Southern District of Ohio	1T
Eastern District of Tennessee	1T
Central District of Illinois	Convert 1T to P
Southern District of Illinois	Convert 1T to P
Southern District of Indiana	1T
Eastern District of Arkansas	1T
District of Minnesota	1T
Eastern District of Missouri	Convert 1T to P
Western District of Missouri	1T
District of Nebraska	Convert 1T to P
District of Arizona	3P, 3T
Northern District of California	1T
Eastern District of California	1P, 1T, Convert 1T to P
Southern District of California	3P, 1T
District of Hawaii	1T, Convert 1T to P
District of Nevada	2P, 1T
District of Oregon	1T
Western District of Washington	1T
District of Colorado	1P, 1T
District of Kansas	Convert 1T to P
District of New Mexico	1P, 1T
Northern District of Alabama	1P, 1T
Middle District of Alabama	1P
Southern District of Alabama	1T
Middle District of Florida	5P
Southern District of Florida	2P

Courts with Low-Weighted Caseloads. In March 1996, the Judicial Conference approved a recommendation of the Judicial Resources Committee to include in biennial district judgeship surveys a review of courts where it may be appropriate to recommend eliminating judgeships or leaving a vacant judgeship unfilled (JCUS-MAR 96, p. 24). A process for such a review in the district courts was approved by the Conference in March 1997 (JCUS-MAR 97, p. 27), and a similar mechanism was approved for the courts of appeals in March 1998 (JCUS-MAR 98, p. 19). The 1999 biennial survey of judgeship needs included these new processes. Based on the findings of this survey, and after opportunity for additional input from affected courts and judicial councils, the Committee recommended that the Judicial Conference advise the President and the Senate that any single existing or future vacancy not be filled in the following courts: District of Delaware; District Court of the District of Columbia; District of Wyoming; and Southern District of West Virginia**.** The Judicial Conference approved the Committee's recommendation regarding the District of Delaware, the District of Wyoming, and the Southern District of West Virginia by acclamation. After discussion and consideration of the objections raised by the District Court of the District of Columbia, it approved the recommendation of the Committee with regard to that court as well.

Judicial Emergencies

In March 1988, the Judicial Conference defined all vacancies in Article III judgeship positions as "judicial emergencies" (JCUS-MAR 88, p. 31). In practice, the term "judicial emergency" has come to be defined as all vacancies of more than 18 months. With the current Judicial Conference policy to identify courts with low-weighted caseloads and potentially recommend that vacancies in those courts not be filled (JCUS-MAR 96, p. 24), a situation now exists where a vacancy could be designated as an emergency at the same time the Judicial Conference recommends to Congress that it not be filled. On recommendation of the Committee on Judicial Resources, the Judicial Conference revised the definition of a "judicial emergency" vacancy as follows:

> a. Any vacancy in a district court where weighted filings are in excess of 600 per judgeship, or any vacancy in existence more than 18 months where weighted filings are between 430 and 600 per judgeship; and
>
> b. Any vacancy in a court of appeals where adjusted

filings per panel are in excess of 700, or any vacancy in existence more than 18 months where adjusted filings are between 500 and 700 per panel.

Secretaries to Federal Judges

Official Titles. In order to give judges the option of selecting appropriate titles for their secretaries, the Judicial Conference, slightly modifying a recommendation of its Judicial Resources Committee, voted to allow judges officially to title their primary secretaries whatever they deem appropriate.

Secretaries to Former Chief Circuit Judges. In September 1998, the Judicial Conference approved a change to the Judiciary Salary Plan (JSP) qualification standards to allow a secretary to a chief circuit judge to be promoted from JSP-11 to JSP-12 after one year as a secretary to a circuit judge. In addition, to protect the secretaries from significant salary reductions once the chief circuit judge stepped down, the Conference provided that the promotion to JSP-12 of the chief circuit judge's secretary be considered temporary for only two years, and that after the two-year period, the promotion to JSP-12 be made permanent (JCUS-SEP 98, p. 80), making the secretary eligible for "saved grade/saved pay" when the chief circuit judge stepped down. At this session, the Judicial Conference agreed to apply the 1998 policy change regarding the promotion to JSP-12 to certain individual former chief circuit judges' secretaries who had been promoted to the JSP-12 level and had held that grade for at least two years before their chief circuit judge stepped down.

Death Penalty Law Clerks

Death penalty law clerk programs in the Ninth and Tenth Circuits provide funding for law clerks with expertise in capital cases. In June 1998, the Committee on Court Administration and Case Management voted unanimously to strongly endorse permanent funding of a death penalty law clerk program on a national basis in both district and appellate courts and conveyed its vote to the Committee on Judicial Resources for consideration. On recommendation of the Judicial Resources Committee, modified at the Conference session to clearly limit the program to the district courts, the Judicial Conference agreed to provide funding for a death penalty law clerk program on a national basis in the district courts at the rate of one law clerk for each 15 capital habeas corpus cases in a district, if requested by the circuit judicial council.

Court Reporter Compensation

A recent study conducted at the request of the Committee on Judicial Resources and completed in November 1998, concluded that the salaries of court reporters are competitive in both the public and private sectors and that the federal judiciary is not experiencing difficulty in recruiting and retaining court reporters. Nonetheless, in order to provide another means to recognize court reporters' service to the judiciary and another measure of parity with other court employees, the Judicial Conference approved a recommendation of the Committee that the employee recognition program (*see Guide to Judiciary Policies and Procedures,* Volume IC, Ch. 10, Subch. 1451.2) be modified to extend longevity bonus awards to court reporters who have 20 years of federal service.

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Transcript Rates

Current rules allow court reporters who have realtime certification to sell realtime unedited transcripts for $1.00 per page, with no credit towards the purchase of a certified transcript, nor with a requirement that a certified transcript be purchased (JCUS-SEP 97, p. 77). To address court reporter concerns about the unprofitability of the $1.00 per page rate and about circulating unedited transcripts that are not backed up by certified transcripts, the Judicial Resources Committee recommended that the transcript fee rates for realtime unedited transcripts be modified to:

a. Establish the maximum page rate authorized for the provision of realtime services, including the production and distribution of realtime unedited transcripts, at $2.50 per page. A litigant who orders realtime services will be required to purchase an original certified transcript of the same pages of realtime unedited transcript at the regular rates (ordinary, expedited, daily, or hourly); and

b. Establish the maximum page rate for copies of realtime unedited transcripts at $1.00 per page. A litigant who orders a copy of a realtime unedited transcript will be required to purchase a certified copy of the same pages of realtime unedited copies at the regular copy rate (ordinary, expedited, daily, or hourly).

The Judicial Conference approved the Committee's recommendation.[(5)]

Courtroom Support for District Judges

In March 1998, the Judicial Conference approved a recommendation of the Committee on Judicial Resources to provide courtroom deputy clerk staffing credit and associated funding based on judicial vacancies when an active district judge leaves the court without taking senior status (JCUS-MAR 98, p. 21). The Judicial Resources Committee subsequently determined that it made practical sense to maintain consistent support for court reporter positions as well. On recommendation of the Committee, the Judicial Conference authorized the Administrative Office, when the court requests, to provide court reporter staffing credit and associated funding based on judicial vacancies when an active district judge leaves the court without taking senior status. The additional credit may be withdrawn if other vacant judgeships are filled before the specific vacancy for which the court reporter credit was given.

Law Clerks for Magistrate Judges

In September 1991, the Judicial Conference authorized circuit and district judges to hire an additional law clerk in lieu of a secretary, or vice versa (JCUS-SEP 91, p. 66). In March 1993, the Judicial Conference agreed to allow such an option for bankruptcy and magistrate judges as well, but for magistrate judges conditioned it on the consent of the chief judge of the district court (JCUS-MAR 93, p. 16). Since magistrate judges make all other staffing decisions concerning their personal staffs without the consent of the chief judge, the Committee on Judicial Resources, with the concurrence of the Committee on the Administration of the Magistrate Judges System, recommended, and the Judicial Conference agreed, that the Conference should modify the 1993 policy to allow a magistrate judge to hire an additional law clerk in lieu of a secretary, or vice versa, without the need to obtain the consent of the chief judge of the district court.

Bankruptcy Administrators

The bankruptcy administrator program was established in the six judicial districts in North Carolina and Alabama under section 302 (d)(3)(I) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of
1986 (Public Law No. 99-554). The responsibilities of the bankruptcy administrators have grown considerably (*e.g.*, they now appear in court, they have case closing responsibilities formerly handled by bankruptcy clerks, and they oversee the process for the collection and

disbursement of more estate assets). On recommendation of the Judicial Resources Committee, the Judicial Conference approved increases in the salary caps of the bankruptcy administrators to JSP-17 for the bankruptcy administrator position in the Northern District of Alabama and to JSP-16 for the positions in the other five bankruptcy administrator districts, effective immediately.

Recruitment and Retention Bonuses

The Judicial Resources Committee considered the concerns of many court unit executives that they are experiencing difficulty in attracting and retaining key employees in automation positions and that the lack of appropriate compensation tools for automation positions is beginning to distort the Court Personnel System classification system. The Committee noted that recruitment and retention bonuses, authorized in the executive branch since 1990 to attract and retain highly-skilled employees, might serve as effective compensation enhancements for high-caliber employees performing automation functions. On recommendation of the Committee, the Judicial Conference agreed to authorize recruitment and retention bonuses for key employees in automation positions on a two-year pilot basis, funded from a court unit's existing financial resources, and to require court units to supply data to the Administrative Office on bonus use so that the effectiveness of the program can be evaluated. The Conference also agreed to encourage court units to adopt criteria for recruitment and retention bonuses that apply to court units within the same district or to court units at the circuit level within the same circuit, as applicable.

Alternative Dispute Resolution Staffing

In order to address the need for alternative dispute resolution (ADR) staffing resources in the district courts, the Judicial Conference at its March 1998 session approved a "basic" staffing factor of 2.17 hours for each case that participates in an ADR program for most district courts and a "robust" staffing factor of approximately 4/5 of a work unit plus a factor of 4.38 hours per case to be applied only to six specific courts with extensive ADR programs (JCUS-MAR 98, pp. 20-21). Three additional courts asked the Judicial Resources Committee to apply the "robust," rather than "basic," staffing factor to them. Based on the number of cases participating in the ADR programs in these districts and the number of hours to process those cases for the twelve-month reporting period ending June 1998, the Committee concluded that no change was warranted for one of these courts. On recommendation of the Committee, the Judicial Conference authorized the application of the

"robust" staffing factor to the Western District of Michigan and the District of Rhode Island for clerk's office positions performing duties related to alternative dispute resolution.

Telecommuting Policy

The Judicial Conference agreed, on recommendation of the Judicial Resources Committee, to approve a telecommuting policy for the courts. The policy, which will be published in the *Guide to Judiciary Policies and Procedures*, includes a requirement that if a court, chambers or court unit desires to allow its employees to telecommute, it must have a written policy that contains certain minimal provisions. The national policy allows for local flexibility in designing telecommuting programs.

Judiciary Benefits Initiative

On recommendation of the Judicial Resources Committee, the Judicial Conference approved the following judiciary benefits philosophy statement:

> A goal of the judiciary is to be a model employer so it may attract and retain well-qualified employees. The judiciary's employee benefits program is an important tool in attracting and retaining these employees. Therefore, the judiciary's benefits program will be one that is responsive to the reasonable needs of employees, is competitive in the market place, and is fiscally responsible.

Committee on the Administration of the Magistrate Judges System

Selection and Appointment Regulations

Section 6.02 of the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges requires a court to determine whether it wishes to consider the reappointment of an incumbent magistrate judge prior to the expiration of his or her term of office. If the court decides that it wishes to consider the reappointment of the incumbent, it is directed to follow procedures set forth in chapter 6 of the regulations for the reappointment of magistrate judges. If the court decides not to reappoint the incumbent, then it is directed to follow procedures set forth in chapters 2, 3, 4, and 5 of the regulations for new

appointments of magistrate judges.

Although the intent of the regulations was to prohibit combining these procedures, the language of section 6.02 does not clearly prevent a court from seeking comments on an incumbent while also seeking new applicants, or prevent an incumbent, who has been notified by the court that he or she will not be reappointed, from applying for the position once it is advertised. On recommendation of the Committee on the Administration of the Magistrate Judges System, the Judicial Conference agreed to amend section 6.02 of the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges to prevent the use of this "hybrid" selection procedure for magistrate judges and make it clear that a court may not seek comments on an incumbent while also seeking new applicants for a magistrate judge position.

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 Judicial Conference approved the following changes in positions, salaries, and arrangements for full-time and part-time magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

Second Circuit

Eastern District of New York

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

2. Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

Fourth Circuit

Eastern District of North Carolina

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

Eastern District of Virginia

1. Converted the part-time magistrate judge position at Richmond to full-time status; and

2. Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

Fifth Circuit

Western District of Louisiana

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

Southern District of Texas

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

2. Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

Seventh Circuit

Eastern District of Wisconsin

Increased the salary of the part-time magistrate judge position at Green Bay from Level 8 ($3,167 per annum) to Level 6 ($10,557 per annum).

Eighth Circuit

District of Minnesota

1. Authorized an additional full-time magistrate judge position at Minneapolis or St. Paul; and

2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

Ninth Circuit

Southern District of California

1. Authorized an additional full-time magistrate judge position at San Diego; and

2. Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

District of Montana

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

Tenth Circuit

Northern District of Oklahoma

Made no change in the number, location, or arrangements of the magistrate judge positions in the district.

Eleventh Circuit

Southern District of Alabama

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

2. Made no change in the number, location, or arrangements of the other magistrate judge positions in the district.

Northern District of Florida

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

Middle District of Florida

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

2. Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

Committee to Review Circuit Council Conduct and Disability Orders

Committee Activities

The Committee to Review Circuit Council Conduct and Disability Orders reported that the 105th Congress adjourned without enactment of any proposal to amend the Judicial Conduct and Disability Act, 28 U.S.C. § 372(c). A measure passed in the House of Representatives in April 1998 would have amended the Act to provide that any complaint of judicial misconduct or disability filed under the Act that was not dismissed at the outset by the chief judge of the circuit in which the complained-against judge serves would be transferred to another circuit for further complaint proceedings. In April 1997, the Judicial Conference approved a resolution expressing opposition to a similar version of this legislation (JCUS-SEP 97, pp. 81-82). The Committee will continue to monitor legislative developments in this area in the 106th Congress.

Committee on Rules of Practice and Procedure

Federal Rules of Criminal Procedure

Forfeiture Procedures. A proposed new Criminal Rule 32.2 would establish a comprehensive set of forfeiture procedures, consolidating several procedural rules (Rules 7, 31, 32, and 38) currently governing the forfeiture of assets in a criminal case. Under the proposed amendments, the nexus between the property to be forfeited and the offense committed by the defendant would be established during the first stage of the proceedings as part of the sentencing. In the second stage, procedures governing ancillary proceedings are prescribed to determine the claims of any third party asserting an interest in the property. After considering public comments, and making revisions in light of those comments, the Advisory Committee on Criminal Rules recommended, and the Standing Rules Committee concurred, that the Judicial Conference

approve proposed new Criminal Rule 32.2 and amendments to Criminal Rules 7, 31, 32, and 38 and transmit them after the Conference's September 1999 session to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law. After failure of a motion to recommit the proposed rule to the Committee for further review, the Judicial Conference approved the Committee's recommendation.

Counsel for Witnesses Appearing Before the Grand Jury. H.R. Conference Report No. 105-825 at 1071 (1998), which accompanied the judiciary's fiscal year 1999 appropriations act (Public Law No. 105-277), directs the Judicial Conference to report to the Committees on Appropriations, not later than April 15, 1999, its findings on whether Rule 6(d) of the Federal Rules of Criminal Procedure should be amended to allow a witness appearing before a grand jury to have counsel present. After reviewing extensive historical and current information on this issue, the Advisory Committee on Criminal Rules prepared a report recommending that no action be taken at this time to amend Rule 6(d). The Committee on Rules of Practice and Procedure endorsed the report and recommended its adoption by the Judicial Conference. The Conference adopted and agreed to transmit to Congress the report containing findings and a recommendation that Rule 6(d) of the Federal Rules of Criminal Procedure not be amended at this time to allow a witness appearing before a grand jury to have counsel present.

Committee on Security and Facilities

After-Hours Courthouse Security

Noting that sufficient justification exists to provide any court facility that desires with additional resources for some level of after-hours security coverage, and that the current process for requesting after-hours security is unduly burdensome, the Committee on Security and Facilities recommended that an after-hours security presence at locations housing full-time judicial officers be provided upon request, as a matter of policy, subject to the availability of funds. The Judicial Conference approved the Committee's recommendation with a slight modification to clarify that eligible locations would be those where judges and employees routinely remain in the building after normal business hours and on weekends or in exigent circumstances.

Public Buildings Reform Legislation

In March 1996, the Judicial Conference determined that it would take no position on the Public Buildings Reform Act of 1995, S. 1005 (104th Congress), a bill which dealt with the roles of the General Services Administration and the judiciary in courthouse construction (JCUS-MAR 96, p. 35). At the same time, the Security and Facilities Committee was delegated the authority to work with the Director of the Administrative Office and the Executive Committee to see that the judiciary's concerns were addressed if further congressional action occurred. After the bill passed the Senate without opportunity for input from the judicial branch, the Security and Facilities Committee recommended, and by mail ballot concluded on July 2, 1996, the Judicial Conference agreed, that the Conference should seek certain amendments to the bill (JCUS-SEP 96, p. 45).

The same bill was introduced in the 105th Congress (S. 2481) and could be reintroduced in the 106th Congress. Because the enactment of any such bill would clearly affect the judiciary's ability to determine space standards necessary for the functioning of a modern-day court, at this session the Judicial Conference approved the recommendation of the Committee that, in lieu of the Conference's current position on public buildings reform legislation, it oppose those provisions of any future legislation that would adversely affect the judiciary.

Five-Year Courthouse Project Plan

After consultation with circuit judicial councils, the Committee on Security and Facilities proposed a five-year plan of courthouse construction projects for the fiscal years 2000-2004. The Conference approved the plan, except that the inclusion of the Savannah, Georgia project was made contingent upon a decision of the Eleventh Circuit Judicial Council not to withdraw its support for the project.[(6)]

Role of the Committee

The authority and responsibility for a circuit's space management program, including the authority to approve exceptions to the *United States Courts Design Guide* and to identify funding sources for exceptions, lies with the circuit judicial councils (28 U.S. C. § 462(b)). The Committee on Security and Facilities explored what advisory role to the councils it might play when councils consider space policy matters, requests from courts for new space, and requests from courts to deviate from space standards and planning assumptions approved by the Conference. The Committee anticipates

that an upcoming comprehensive study of the judiciary's space and facilities program will address these issues. In the interim, the Judicial Conference approved a Committee recommendation that the Conference strongly encourage the circuit judicial councils to--

> a. consult with the circuit's representative to the Security and Facilities Committee prior to consideration of a request for approval of an exception to the space standards or planning assumptions published in the *United States Courts Design Guide*, with this policy to be published in the next revision to the *Design Guide;* and
>
> b. consider designating the Committee's circuit representative an *ex officio* member of a council's space committee, if one exists.

Parking Policy

Balancing concerns about the number of parking spaces assigned against financial constraints, the Committee on Security and Facilities recommended that the judiciary's current parking policy be revised to (a) provide a court moving into a new facility the same number of parking spaces as were paid for by the Administrative Office prior to the move; (b) state specifically that the chief judge or designee will assign all parking spaces according to the priority established by the parking policy as spaces become vacant; (c) include the provision of a parking space for a judge when visiting a non-resident location; and (d) offer guidance on providing spaces for temporarily disabled employees. The Judicial Conference approved the Committee's recommendation, and the new policy will be published in the *Guide to Judiciary Policies and Procedures.*

Resolution

The Judicial Conference approved the following resolution honoring Judge Rya W. Zobel for her service as Director of the Federal Judicial Center:

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

RYA W. ZOBEL

Director of the Federal Judicial Center, 1995-1999.

Her rich experience as a United States District Judge for the District of Massachusetts and her leadership role as Chair of the Judicial Conference Committee on Automation and Technology, and her earlier membership on the Committee on the Operation of the Jury System as well as the Committee on Judicial Improvements, earned Judge Zobel the distinction of being selected in 1995 by the Chief Justice and the Board of Directors of the Federal Judicial Center as the Center's Director, a position of the highest responsibility in the federal courts. Under her leadership the Center has maintained the tradition of excellence established by her predecessors as reflected in the high quality of the Center's educational programs for federal judges and court staff, research and planning projects, publications, and seminars for foreign judges and legal officers from around the world.

The Judicial Conference is pleased to express its gratitude to Judge Zobel for her dedication to the administration of the federal courts in her service as Director of the Federal Judicial Center, and wishes her well as she returns to her career in Massachusetts.

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Funding

All of the foregoing recommendations that 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.

Chief Justice of the United States
Presiding

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1. Congress has not acted on the Conference's requests for additional bankruptcy judgeships based on three biennial surveys conducted between 1993 and 1997.

2. This is in addition to a September 1997 Judicial Conference determination to pursue legislation to make permanent an existing temporary judgeship in the District of Puerto Rico (JCUS-SEP 97, pp. 53-54).

3. The Executive Committee subsequently approved the recommendation on behalf of the

Conference (see supra “Budgetary Matters,” pp. 5-6).

4. In response to one proposal, S. 2516, the Executive Committee determined that the judiciary should seek to have the reporting requirement deleted from the bill, or, if unsuccessful, oppose the bill in its entirety (see supra “Miscellaneous Actions,” p. 7).

5. In the event that implementation of the new transcript rate appears to have a substantial impact on the Defender Services budget, the matter may be revisited.

6. On March 30, 1999, the Eleventh Circuit Judicial Council voted to continue its support for the Savannah, Georgia project.

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

September 15, 1999

The Judicial Conference of the United States convened in Washington, D.C., on September 15, 1999, 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 Juan R. Torruella
Judge Joseph A. DiClerico, Jr.,
District of New Hampshire

Second Circuit:

Chief Judge Ralph K. Winter, Jr.
Chief Judge Charles P. Sifton,
Eastern District of New York

Third Circuit:

Chief Judge Edward R. Becker
Chief Judge Donald E. Ziegler,
Western District of Pennsylvania

Fourth Circuit:

Chief Judge J. Harvie Wilkinson III
Chief Judge Charles H. Haden II,
Southern District of West Virginia

Fifth Circuit:

Chief Judge Carolyn Dineen King
Judge Hayden W. Head, Jr.,
Southern District of Texas

Sixth Circuit:

Chief Judge Boyce F. Martin, Jr.
Judge Thomas A. Wiseman, Jr.,
Middle District of Tennessee

Seventh Circuit:

Chief Judge Richard A. Posner
Judge Robert L. Miller, Jr.,
Northern District of Indiana

Eighth Circuit:

Chief Judge Roger L. Wollman
Judge James M. Rosenbaum,
District of Minnesota

Ninth Circuit:

Chief Judge Procter Hug, Jr.
Judge Lloyd D. George,
District of Nevada

Tenth Circuit:

Chief Judge Stephanie K. Seymour
Judge Ralph G. Thompson,
Western District of Oklahoma

Eleventh Circuit:

Chief Judge R. Lanier Anderson III
Judge Wm. Terrell Hodges,
Middle District of Florida

District of Columbia Circuit:

Judge Laurence H. Silberman[1]
Chief Judge Norma H. Johnson,
District of Columbia

Federal Circuit:

Chief Judge Haldane Robert Mayer

Court of International Trade:

Chief Judge Gregory W. Carman

Circuit Judges W. Eugene Davis, David R. Hansen, Dennis G. Jacobs, Paul V. Niemeyer, Jane R. Roth, Anthony J. Scirica, and Walter K. Stapleton, District Judges Robin J. Cauthron, John G. Heyburn II, D. Brock Hornby, Michael J. Melloy, Edward W. Nottingham, and Harvey E. Schlesinger, and Judge Richard W. Goldberg of the Court of International Trade attended the Conference session. Gregory B. Walters, Circuit Executive for the Ninth Circuit, was also present.

Senator Patrick Leahy spoke on matters pending in Congress of interest to the Conference. Attorney General Janet Reno and Solicitor General Seth Waxman addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice.

Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director for Management and Operations; William R. Burchill, Jr., Associate Director and General Counsel; Karen K. Siegel, Assistant Director, Judicial Conference Executive Secretariat; Michael W. Blommer, Assistant Director, Legislative Affairs; Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat; and David Sellers, Deputy Assistant Director, Public Affairs. Judge Fern Smith and Russell Wheeler, Director and Deputy Director of the Federal Judicial Center, also attended the session of the

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[1] Designated by the Chief Justice to attend in lieu of Chief Judge Harry T. Edwards.

Conference, as did James Duff, Administrative Assistant to the Chief Justice, and judicial fellows Amie Clifford, Richard Mendales and Mark Miller.

REPORTS

Mr. Mecham reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office. Judge Smith spoke to the Conference about Federal Judicial Center programs.

EXECUTIVE COMMITTEE

RESOLUTIONS

The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution in recognition of the substantial contributions made by Judicial Conference committee chairs who complete their terms of service in 1999:

> The Judicial Conference of the United States recognizes with appreciation, respect and admiration the following judicial officers:
>
> **HONORABLE DAVID R. THOMPSON**
> Committee on the Administration of the Bankruptcy System
>
> **HONORABLE GEORGE P. KAZEN**
> Committee on Criminal Law
>
> **HONORABLE CYNTHIA H. HALL**
> Committee on International Judicial Relations
>
> **HONORABLE JULIA SMITH GIBBONS**
> Committee on Judicial Resources

HONORABLE FERN M. SMITH
Advisory Committee on the Rules of Evidence

HONORABLE NORMAN H. STAHL
Committee on Security and Facilities

Appointed as committee chairs by Chief Justice William H. Rehnquist, these outstanding jurists have played a vital role in the administration of the federal court system. These judges served with distinction as leaders of their Judicial Conference committees while, at the same time, continuing to perform their duties as judges in their own courts. They have set a standard of skilled leadership and earned our deep respect and sincere gratitude for their innumerable contributions. We acknowledge with appreciation their commitment and dedicated service to the Judicial Conference and to the entire federal judiciary.

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The Executive Committee approved, on behalf of the Conference, the following resolution recognizing Judge Wm. Terrell Hodges' outstanding service as Chair of the Executive Committee:

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

WM. TERRELL HODGES

Chairman of the Executive Committee from October 1, 1996 to October 1, 1999, and member of this body for six years.

Judge Hodges came to the Judicial Conference in 1993 after election by his peers in the Eleventh Circuit and following several years of service on a variety of Conference Committees, including three years as Chair of the Advisory Committee on Criminal Rules. Recognized for his exceptional intellect, keen analytical ability, and statesman-like demeanor, Judge Hodges rapidly earned the respect of his colleagues and of Chief Justice Rehnquist who, in 1994, appointed him to the Conference's

Executive Committee. In 1996, the Chief Justice appointed Judge Hodges to serve as Chairman of the Executive Committee -- only the second district judge in the history of the Conference to have this important honor.

Judge Hodges has been a superb Executive Committee Chair and an outstanding leader, who never wavered from the high-quality professionalism that is his standard. He set the tone for each Committee meeting with his thorough preparation, receptiveness to views of other members, and insightful comments. Through his astute grasp of the issues, and quick analysis of concerns expressed during Committee discussions, he was consistently able to forge Executive Committee consensus.

Judge Hodges is a man of impeccable integrity, someone we are proud to have as our friend and colleague. We are most grateful for his numerous contributions to the federal judiciary and the administration of justice. While we will miss his wise counsel at Judicial Conference and Executive Committee sessions, we look forward to working with him in the future and to our continued friendships with him and his wife, Peggy, in the years to come.

BANKRUPTCY APPELLATE STRUCTURE

In September 1998, in response to a recommendation of the National Bankruptcy Review Commission, the Judicial Conference voted to support simplification of appellate review of dispositive orders of bankruptcy judges, but urged that no change in the bankruptcy appellate process be considered until the judiciary had an opportunity to study further the existing process and possible alternative structures and submit a report to Congress. Pending completion of the study, the Conference opposed the appeal as of right from dispositive orders of bankruptcy judges directly to the courts of appeals (JCUS-SEP 98, pp. 46-47). After considering a study conducted by the Federal Judicial Center and with the concurrence of the Court Administration and Case Management Committee, the Committee on the Administration of the Bankruptcy System recommended that the Judicial Conference propose to Congress the following revised bankruptcy appellate structure:

> Appeals from dispositive orders of bankruptcy judges should continue to be taken to the district court or to the bankruptcy appellate panel, if one has been established, with further appeal as of right to the court of appeals. Additionally, the dispositive orders of bankruptcy judges should be reviewable directly in the court of appeals if, upon certification from the district court or the bankruptcy appellate panel, or upon motion by all parties to the appeal, the court of appeals determines that (1) a substantial question of law or matter of public importance is presented and (2) an immediate appeal from the order to the court of appeals is in the interest of justice.

Because of the likelihood of early congressional action, the Executive Committee approved the recommendation on behalf of the Conference. Subsequently, in response to an inquiry from Senator Patrick Leahy, the Executive Committee agreed to endorse a variation of the above position that would delete the words "or upon motion by all parties to the appeal."

CLASS ACTION LEGISLATION

Pending legislation, S. 353 and H.R. 1875 (106th Congress), would expand federal jurisdiction over class actions by permitting the initial filing in or removal to federal court of almost all such actions now brought in the state courts. The Committee on Federal-State Jurisdiction recommended to the Executive Committee that the Judicial Conference oppose the legislation, noting concerns that the provisions would add substantially to the workload of the federal courts and are inconsistent with principles of federalism. The Executive Committee also considered the views of the Committee on Rules of Practice and Procedure, which believed that the Conference should defer taking a formal position opposing the legislation at this time, and instead, should encourage Congress to continue exploring with the judiciary less intrusive and burdensome approaches. The Executive Committee voted on behalf of the Conference to express its opposition to the class action provisions in the two bills in their present form. A letter for transmittal to Congress stating the Conference's position was approved by the Committee. *See also infra*, "Committee Activities," p. 62.

COURT OF FEDERAL CLAIMS LEGISLATION

Several provisions relating to the Court of Federal Claims were submitted to Congress for inclusion in the judiciary's federal courts improvement bill. The Executive Committee considered the proposed amendments and determined to (a) ask that a section authorizing service by Federal Claims Court judges on territorial courts not be pursued; (b) express no objection to a provision that makes the residence of a retired Federal Claims Court judge his or her "official duty station"; (c) support a provision dealing with Court of Federal Claims judicial conferences, so long as the conferences are held in Washington, D.C.; (d) pose no objection to a section that provides that the annuity paid to any retired Federal Claims Court judge after age 65 be treated the same for Federal Insurance Contributions Act (FICA) tax and social security coverage as the annuity paid to an Article III judge on senior status, so long as the exemption from FICA tax is provided only in the context of a judge's performing judicial service under 28 U.S.C. § 178(d) (*see* JCUS-MAR 92, p. 24); (e) support a provision that clarifies that Federal Claims Court judges are "officers" within the meaning of title 5 for purposes of federal employee insurance and annuity programs (see JCUS-MAR 92, p. 24); (f) oppose a section dealing with life insurance coverage of Claims Court judges under the Federal Employees' Group Life Insurance (FEGLI) program, in order to study whether to extend certain coverage (now available to Article III judges) to Claims Court judges as well as to bankruptcy, magistrate, and territorial judges; (g) oppose a provision that would exempt Federal Claims Court judges from the requirement that a Federal Employees Health Benefits Program enrollee must have enrolled in the program for at least five years prior to retirement in order to continue participation and study the impact this section would have on non-Article III judges (such an exemption is currently provided only to Article III judges who retire on senior status); and (h) pose no objection to a revised proposed amendment to 28 U.S.C. § 797 that would authorize the chief judge of the Court of Federal Claims to recall, in certain circumstances, a judge who had retired based on disability under 28 U.S.C. § 178(c).

MISCELLANEOUS ACTIONS

The Executive Committee:

- Approved proposed interim financial plans for fiscal year 2000 for the Salaries and Expenses, Defender Services, Fees of Jurors and Commissioners, and Court Security accounts, based on appropriations levels midway between the House and Senate allowances, and authorized the Director of the Administrative Office to make technical and other adjustments as deemed necessary.

- Opposed strongly the imposition of any assessment of costs related to the storage of case files by the National Archives and Records Administration and authorized the Director of the Administrative Office to seek administrative relief or, failing that, legislation exempting the federal courts from any assessment of costs related to case files storage.

- Opposed a proposed $25 increase in chapter 7 and 13 bankruptcy filing fees to provide additional funds for the Department of Justice's United States trustee program.

- Endorsed a Court Administration and Case Management Committee-proposed amendment to 28 U.S.C. § 112(c) to add Central Islip, New York as a place of holding court (*see also infra*, "Places of Holding Court/Official Duty Stations," p. 51) and an amendment to 28 U.S.C. § 124(c) to redistribute the counties among the divisions of the Eastern District of Texas.

- On recommendation of the Security and Facilities Committee, opposed as unnecessary provisions in S. 599 (106th Congress) (and any other similar legislation) that assign to the Director of the Administrative Office the duties of issuing regulations for entities operating child care centers in judicial facilities and enforcing compliance with them.

- Agreed to defer seeking legislation approved in 1995 by the Judicial Conference to create a Judicial Conference Foundation (JCUS-MAR 95, p. 6) until after January 6, 2001.

- In light of the Judicial Conference's strong opposition to cameras in courtrooms, determined to oppose the judiciary's federal courts improvement bill if it includes a provision authorizing presiding judges of district and appellate courts to permit media coverage of court proceedings.

- Agreed to advise the Defender Services Committee to defer seeking enactment of legislation authorizing reimbursement or indemnification of Criminal Justice Act (CJA) panel attorneys for malpractice and related actions arising from their CJA services.

- Approved, on recommendation of the Defender Services Committee, payment of $75 per hour to CJA attorneys in a highly complicated case in the Southern District of Florida.

- Supported, at the behest of the Security and Facilities Committee, the Federal Judiciary Protection Act of 1999 (S. 113, 106th Congress), which would, among other things, increase criminal penalties for assaulting or threatening federal judges, their family members, and other public servants.

- Approved revisions to the jurisdictional statement of the Economy Subcommittee of the Budget Committee.

- Declined to approve a request to allow second law clerks, authorized to bankruptcy courts with pending judgeship requests, to be hired in the previous fiscal year.

- Approved an interim delegation of authority to the Financial Disclosure Committee to allow it to act for the Conference, through a subcommittee, in reviewing requests for redaction of harmful information from financial disclosure reports, pending approval by the Judicial Conference of regulations implementing the "Identity Theft and Assumption Deterrence Act of 1998" (Public Law No. 105-318). *See infra*, "Release of Financial Disclosure Reports," p. 63.

- Authorized the release, after the Conference has acted, of the summaries prepared for the Judicial Resources Committee by the Administrative Office in response to requests for additional Article III judgeships.

- On recommendation of the Bankruptcy Committee and the Court Administration and Case Management Committee, opposed a provision in S. 625, 106th Congress, that would require copies of federal tax returns of individual chapter 7 and 13 debtors to be filed with and maintained by the courts and noted that responsibility for collection and maintenance of debtors' tax returns would more appropriately be assigned to the United States trustees.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office was briefed on the Administrative Office's progress in developing a long-term care insurance program and a flexible benefits plan for judicial officers and employees. It discussed ongoing and planned comprehensive assessments of a number of judiciary programs, including space and facilities, probation and pretrial services, court security, and information technology. The Committee received an update on the financial management improvement activities underway in the Administrative Office and discussed the status of the judiciary's budget and the potential for future funding difficulty. It also considered the AO's long-range planning efforts and discussed how the Committee may begin to identify strategic issues affecting the Administrative Office and the judiciary. The Committee praised the Administrative Office for its efforts in resolving the crisis created for federal judges when the Office of Personnel Management proposed a significant increase in the Federal Employees' Group Life Insurance Option B premium rates for individuals aged 65 and older.

COMMITTEE ON AUTOMATION AND TECHNOLOGY

COMMITTEE ACTIVITIES

The Committee on Automation and Technology considered issues related to establishing publically accessible electronic repositories of opinions and received updates on several major information technology initiatives, including the case management/electronic case files project, the courtroom technology initiative,

the virtual law library project, and the administrative stewardship projects (Human Resources Management Information System (HRMIS), CJA Panel Attorney Payment System, Financial and Accounting System for Tomorrow (FAS_4T), Jury Management System (JMS), and Integrated Library System (ILS)). It also reviewed the status of year 2000 compliance within the judiciary.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

BANKRUPTCY JUDGE RECALL REGULATIONS

On recommendation of the Committee on the Administration of the Bankruptcy System, the Judicial Conference approved amendments to the Regulations Governing the Ad Hoc Recall of Retired Bankruptcy Judges and the Regulations Governing the Extended Recall Service of Retired Bankruptcy Judges to clarify the regulations, improve their flexibility, and eliminate unnecessary provisions. The amendments to the extended service recall regulations (a) clarify that it is the judicial council of the circuit in which a retired bankruptcy judge will serve that is required to certify that the judge will perform substantial service; and (b) modify the regulations, which had provided for a fixed term of three years, by permitting variable periods of extended service for recalled bankruptcy judges ranging from more than a year to three years.

The amendments to both the *ad hoc* and extended service recall regulations clarify that any bankruptcy judge who retires under the Judicial Retirement System (28 U.S.C. § 377) and who thereafter practices law is not eligible for recall and (as provided in 28 U.S.C. § 155(b)) that a retired bankruptcy judge may be directly recalled to serve as a bankruptcy judge by *any* circuit (not just the circuit in which the judge formerly served). These amendments also eliminate the largely *pro forma* requirement for Bankruptcy Committee approval of a request for the intercircuit assignment of a bankruptcy judge on recall service. *See also infra*, "Magistrate Judge Recall Regulations," pp. 68-69.

PLACES OF HOLDING COURT/OFFICIAL DUTY STATIONS

Pursuant to 28 U.S.C. § 152(b)(1), the Judicial Conference is responsible for determining the official duty stations of bankruptcy judges and their places of holding court. On recommendation of the Committee, after consultation by the Director of the Administrative Office with the respective judicial councils, the Conference agreed to—

a. approve the designation of Central Islip as the official duty station for the two bankruptcy judges currently stationed in Westbury and the bankruptcy judge stationed in Hauppauge and delete the latter two locations as official duty stations in the Eastern District of New York (to be effective on the date the bankruptcy court moves to a new courthouse in Central Islip); and

b. approve the designation of Sheboygan, Wisconsin, as an additional place of holding bankruptcy court and delete the designation of Manitowoc as a place of holding bankruptcy court in the Eastern District of Wisconsin.

COMMITTEE ON THE BUDGET

FISCAL YEAR 2001 BUDGET REQUEST

In light of the congressional budget environment, the Budget Committee recommended a fiscal year 2001 budget request that is lower than the funding levels proposed by the program committees. The Judicial Conference approved the request, subject to amendments necessary as a result of new legislation, actions of the Judicial Conference, or other reasons the Director of the Administrative Office considers necessary and appropriate.

BUDGET DECENTRALIZATION GUIDELINES

In September 1995, the budget decentralization guidelines were amended to allow circuit judicial councils to reprogram monies between temporary emergency funds (TEF), which are intended for employment of short-term temporary secretaries and law clerks, and tenant alteration funds (JCUS-SEP 95,

p. 73). There is no express provision in the guidelines prohibiting judicial councils from using this authority to reprogram TEF funds from judicial council budgets to other court units, where they can be used not only for tenant alterations, but also for other purposes. To ensure that these funds are used for their intended purpose, on recommendation of the Budget Committee, the Judicial Conference agreed to modify the budget decentralization guidelines expressly to prohibit reprogramming for any other purpose of temporary emergency and tenant alteration funds allotted to the circuit councils.

COMMITTEE ON CODES OF CONDUCT

CODE OF CONDUCT FOR UNITED STATES JUDGES

The Code of Conduct for United States Judges was amended in September 1992 to incorporate gender-neutral phrasing. In the course of making those changes, Canon 3C(1)(c) was altered in a way that appeared to require judges to recuse themselves due to the fiduciary holdings of a spouse or minor resident child, absent any other beneficial or legal interest that might independently necessitate the judges' recusal. The Committee on Codes of Conduct determined that the alteration was unintentional and inconsistent with 28 U.S.C. § 455(b)(4) and prevailing authority. The Committee recommended, and the Judicial Conference approved, the following revision to Canon 3C(1)(c), which returns the canon to its pre-1992 phrasing (with the exception of gender neutral language that will be retained) and conforms the canon more closely to the corresponding statutory provision. (New material is in bold, deleted material is struck out.)

> (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which:
>
> > (c) the judge knows that **the judge**, individually or as a fiduciary, ~~the judge~~ or the judge's spouse or minor child residing in the household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be affected substantially by the outcome of the proceeding. . . .

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

ALTERNATIVE DISPUTE RESOLUTION

The Alternative Dispute Resolution Act of 1998 (Public Law No. 105-315), which expanded the role of alternative dispute resolution (ADR) in the federal district courts, requires district courts to establish, subject to regulations approved by the Judicial Conference, the amount of compensation, if any, that each arbitrator or neutral shall receive for services rendered under Chapter 44 of title 28 of the United States Code (28 U.S.C. § 658(a)). On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference approved for inclusion in the *Guide to Judiciary Policies and Procedures* the following regulation regarding the compensation of alternative dispute resolution neutrals (including arbitrators):

> All district courts must establish a local rule or policy regarding the compensation, if any, of neutrals for services rendered under Chapter 44 of title 28, United States Code, §§ 651-658. Discretion remains with the court as to whether that rule or policy should provide that neutrals serve *pro bono* or for a fee. As long as funding is not provided pursuant to the Act, the Judicial Conference does not encourage courts to institute rules or policies providing for court-funded, non-staff alternative dispute resolution neutrals.

In addition to the regulation, the Committee recommended, and the Conference approved, the following two non-mandatory principles and accompanying commentary, to be published in the *Guide,* that are intended to assist courts in developing local compensation procedures:

- *Where an ADR program provides for the neutral to receive compensation for services, the court should make explicit the rate of and limitations upon compensation.*

  Commentary: Methods of compensation for ADR neutrals vary widely from court to court. Some courts use a panel of neutrals who serve completely *pro bono*. Other courts use a modified program, where a certain number of hours are provided free of charge, with a

fixed hourly rate thereafter to be paid by the parties, while still others have a fixed per-case payment schedule. Other programs have left the matter of compensation to the participants themselves, for negotiation with the neutral. Whatever funding mechanism is decided upon, the court's rule should minimize undue burden and expense for parties electing to use ADR.

- *When an ADR program provides for neutrals to receive compensation, the court should require both the neutrals and the parties to disclose all fee and expense requirements and limitations in the ADR process. A participant who is unable to afford the cost of ADR should be excused from paying.*

  Commentary: Where courts permit neutrals to charge a fee to ADR participants, fee disputes can be prevented through disclosure of the fee arrangements. If the court intends to require a certain level of *pro bono* service in order to participate as a neutral in a court-annexed ADR program, the level of the pro bono commitment should be explicitly defined.

RECORDS MANAGEMENT

The Committee on Court Administration and Case Management considered and made recommendations on two issues related to record-keeping policies and practices of the federal courts, both stemming from a 1992 evaluation and report by the National Archives and Records Administration (NARA).

Storage and Retention of Sealed Court Records. Prior to 1995, the *Guide to Judiciary Policies and Procedures* prohibited sealed records from being retired to NARA federal records centers (FRCs) until such time as the seal was vacated. However, the 1992 NARA evaluation found that seals were often not vacated in a timely fashion, which resulted in a buildup of files in court space. In 1995, NARA partially addressed this problem by permitting temporary sealed records with an established date for vacating the seal to be stored at the FRCs. Similar regulations were subsequently included in the *Guide*. At this session, the Judicial Conference slightly modified, and then adopted, the following non-mandatory guidelines recommended by the Committee, to provide courts with further guidance on management of sealed records:

a. Courts should consider establishing a practice for judges, when sealing records, to specify a date when a seal may be vacated, or to state that a record should be sealed permanently.

b. Courts should be encouraged to review and consider unsealing older bodies of sealed material, particularly in cases sealed by judges no longer on the bench, and set a presumptive time-frame after a record has been sealed when it may be unsealed, with the burden on the litigants to establish why the seal should be maintained.

c. Courts should be encouraged to review their sealed records and transfer to the National Archives and Records Administration's federal records centers any that belong to temporary case files.[2]

To assist courts in the process of transferring sealed records to the FRCs, the Conference adopted a Committee recommendation to modify the guidelines for disposal of sealed records found in Volume XIII, Chapter XVII, Part A of the *Guide* to include the following:

a. Sealed records are not to be retired in the same accessions (shipments of documents) as unrestricted case files;

b. NARA Standard Form 135, Accessions of Sealed Records, should clearly indicate that the records are sealed and include the date when seals may be vacated; and

c. Sealed records that relate to permanent case files are not to be retired in the same accessions as temporary records.

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[2] "Temporary" case files refer to cases (after 1969) that were terminated *prior to trial*. "Permanent" case files relate to cases that were terminated *during or after trial* or that have been determined by NARA or the court to have *historical value. See Guide to Judiciary Policies and Procedure*s, Vol. XIII, chap. XVII, Part A, p. 19 *et seq*.

Court Records Designated "Disposal Not Authorized." In September 1982, the Judicial Conference approved and incorporated into the *Guide to Judiciary Policies and Procedures* disposition schedules for court records that had been developed jointly by the Administrative Office and NARA (JCUS-SEP 82, pp. 118-119). There were, however, a number of categories of records that the judiciary considered to have permanent historical value, but which NARA appraised as lacking archival value and therefore considered temporary. The designation "disposal not authorized" was created by the Administrative Office to resolve temporarily the dispute between NARA and the judiciary. NARA appraisers and the Administrative Office have since reached agreement on a disposition schedule for these records. On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference agreed to adopt the following records retention and disposition schedules for cases currently designated "disposal not authorized" and, pending official approval from NARA, to direct Administrative Office staff to include the schedules in Volume XIII, Chapter XVII, Part A of the *Guide to Judiciary Policies and Procedures*:

a. Attorney Disbarment Proceedings – *Permanent* – Transfer to FRCs after five years. Transfer to NARA's permanent collection when 25 years old.

b. Attorney Admission Records – *Permanent* – Transfer to FRCs after five years. Transfer to NARA's permanent collection when 25 years old.

c. Files on Disciplinary Actions Against Attorneys – Transfer to FRCs after five years. Destroy when 50 years old.

d. Formal Actions and Minutes of the Circuit Judicial Councils – *Permanent* – Transfer to FRCs after five years. Transfer to NARA's permanent collection when 25 years old.

e. Appellate Judicial Assignments and Designations – Transfer to FRCs when no longer needed for reference. Destroy when 50 years old.

DIGITAL AUDIO COURT RECORDING

In September 1997, the Judicial Conference authorized a one-year study of the use of digital audio court recording in court proceedings to assist in the determination of whether it should be added as an approved method of taking the

record under 28 U.S.C. § 753(b) (JCUS-SEP 97, p. 63). Digital audio recording is a computer-based system with features similar to audio recording systems, except that the recorded proceedings are stored and retrieved through the use of a computer requiring specialized hardware and software. Based on the study's findings that digital audio recording technology can provide a reliable, accurate record of court proceedings and the basis for accurate, timely transcript delivery, the Committee on Court Administration and Case Management recommended and the Judicial Conference approved digital audio recording technology as a method of taking the official record in federal court, to be implemented upon the development of guidelines by the Director of the Administrative Office. The guidelines should include technical and functional system requirements and a self-assessment tool for courts to use when deciding whether to purchase digital audio recording systems. Additional funds over the cost of analog systems will not be provided.

CIVIL JUSTICE REFORM ACT REPORTING REQUIREMENTS

Pending Date for Motions. The Civil Justice Reform Act of 1990 (CJRA) (Public Law No. 101-650) requires, *inter alia*, that the Director of the Administrative Office prepare semi-annual reports showing, by judicial officer, motions pending for more than six months. Prior to this session, the standard provided that the pending date for a motion (the date from which the six-month clock begins to run) is 30 days after the date of filing (JCUS-SEP 91, pp. 45-46). The Committee on Court Administration and Case Management was asked to consider changing the definition of pending to "when the motion is fully submitted" in light of the practice of some courts to require the movant to hold all motion papers and submit them to the court only after all the responses and replies from all parties are complete. The Committee recommended that the existing definition of pending be retained, but the language be expanded to address the procedures of those courts that have adopted a "holding" rule. The Conference, after discussion, agreed to amend the instructions for the CJRA report on civil motions pending over six months (as provided in the *Guide to Judiciary Policies and Procedures*) to state that for each district and magistrate judge, the pending date for a motion to be reported is 30 days after the motion is filed or, if the motion papers are not filed until the motion is fully briefed, then the date the motion is first served. If no decision on the motion has been entered on the docket six months after the pending

date, the motion should be reported as pending before the district or magistrate judge. The Conference further agreed to request that each circuit council review local rules that include holding procedures for the filing of motions to ensure that such rules or practices are consistent with Rule 5(d) of the Federal Rules of Civil Procedure.

Social Security Appeals. In September 1998, the Judicial Conference required that social security appeals be included in CJRA statistical reports in the same way as motions in civil cases, but with a pending date from which the six-month clock begins to run set at 60 days after the filing of the transcript in the case (JCUS-SEP 98, p. 63). Noting that often responses in social security appeals are not filed within 60 days after the filing of the transcript and appeals are not ready for decision in that time, the Committee on Court Administration and Case Management, with the concurrence of the Committee on the Administration of the Magistrate Judges System, recommended that the Judicial Conference amend the pending date in social security appeals from 60 to 120 days after the filing of the transcript. The Conference adopted the Committee's recommendation.

COMMITTEE ON CRIMINAL LAW

DNA COLLECTION AND ANALYSIS

The Federal Bureau of Investigation (FBI) is authorized to establish and maintain an index of deoxyribonucleic acid (DNA) identification records, collected by or on behalf of criminal justice agencies, to serve as a national storage medium for such records (42 U.S.C. § 14132; 28 U.S.C. § 531 note). However, individuals convicted in federal and military courts are not currently required by statute to provide DNA samples for analysis and inclusion in the FBI's national DNA database. The proposed "Violent Offender DNA Identification Act of 1999" (S. 903, 106th Congress) would require certain federal convicted offenders to submit to DNA collection and analysis for entry into the database, and addresses DNA sample analysis, quality assurance standards, testing methods, and regulations governing purpose and confidentiality. The responsibility for collecting samples from prisoners would reside with the Federal Bureau of Prisons, but probation officers would be responsible for coordinating testing for those under supervision. On recommendation of the Committee on Criminal Law, the Judicial

Conference agreed to take no position on the proposed legislation so long as the judiciary is fully funded to implement the required provisions.

INTENSIVE FIREARMS PROSECUTION

Intensive firearms prosecution programs are designed to move firearms prosecutions from state to federal court. In these programs, local, state, and federal law enforcement officials cooperate to prosecute in federal court virtually all crimes committed with firearms. Legislation has been introduced in the 106th Congress (*e.g.*, S. 254, the "Criminal Use of Firearms by Felons (CUFF) Act") that would provide for the expansion of these prosecution programs nationwide. The Judicial Conference adopted the recommendation of the Committee on Criminal Law that it take no position on proposed legislation to expand intensive firearms prosecution programs other than to recommend that any such legislation, if enacted, provide for a proportionate increase in judicial resources to the affected federal courts.

POST-SENTENCE REPORTS

Post-sentence reports are prepared by probation officers when presentence investigation reports are waived by the court and are used by the Federal Bureau of Prisons (BOP) for classification and designation procedures for defendants sentenced to incarceration and by probation officers in providing community supervision. The Committee on Criminal Law, reviewing post-sentence report procedures with a view toward reducing any unnecessary expenditures of judicial resources, concluded that BOP's needs can be met with a report that is streamlined to include only critical elements necessary to assist in classification and screening. Moreover, in lieu of a post-sentence report, probation officers can rely on the investigative information already contained in the offender's supervision file. On recommendation of the Committee, the Judicial Conference approved the following changes to the current practice:

a. Rename the post-sentence report prepared by probation officers to the "Supplemental Informational Report to the Federal Bureau of Prisons";

b. Revise the content of the report to include only specific relevant information necessary to assist the BOP;

c. Reduce the frequency of the report's preparation by requiring the preparation of the report only when the presentence report has been waived by the court and when inmates have more than nine months imprisonment remaining to be served on their sentence; and

d. Ask that an ongoing work measurement study be expanded to include the weighting of the work associated with the new supplemental informational report, taking into account the impact of gathering investigative information for the supervision file.

BACKGROUND INVESTIGATIONS FOR PROBATION AND PRETRIAL SERVICES OFFICE EMPLOYEES

Under existing policy, the judiciary authorizes initial FBI single-scope background investigations for probation and pretrial services officers and conducts limited record checks for non-officer personnel in sensitive positions. Noting concerns about security and public safety, as well as requirements by other law enforcement agencies that probation and pretrial services staff have updated background investigations before access is granted to information in certain law enforcement databases, the Committee recommended changes to the Administrative Office background investigation policy with respect to probation and pretrial services officers and assistants. The Judicial Conference approved the recommended changes, adopting a policy that (a) in addition to the current initial single-scope background investigations for probation and pretrial services officers, the Director of the Administrative Office should arrange updated single-scope background investigations for all probation and pretrial services officers every five years, unless the Director determines that there are classes of employees or situations in which updated background investigations are not practical; and (b) the Director of the Administrative Office should arrange initial and updated single-scope background investigations for all probation and pretrial services officer assistants.

OLEORESIN CAPSICUM PEPPER SPRAY

In March 1996, the Judicial Conference adopted a policy authorizing probation and pretrial services officers to purchase, carry, and use for law enforcement purposes Cap-Stun, a specific brand of oleoresin capsicum (OC) pepper spray (a non-lethal spray used in self-defense) (JCUS-MAR 96, p. 18). At the time, Cap-Stun was the only product tested and approved by a national law enforcement agency. There has since been a proliferation of and continuing improvement in OC products. On recommendation of the Committee on Criminal Law, the Judicial Conference agreed to clarify its March 1996 policy on Cap-Stun by authorizing the Director of the Administrative Office to develop and approve minimum product safety and effectiveness standards for OC use, and to allow individual offices to use any OC products that meet those standards and local needs.

COMMITTEE ON DEFENDER SERVICES

PROFESSIONAL LIABILITY INSURANCE

The Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 (Public Law No. 105-277) authorized the judiciary to provide reimbursement for a portion of the cost of professional liability insurance to certain groups within the judiciary, effective October 1, 1998. The maximum reimbursement allowed is one-half the cost of the policy. The Committee on Defender Services considered application of this benefit to federal public defender organization (FPDO) employees.[3] Under the statute, FPDO employees would be eligible for reimbursement from their respective organizations' existing budgets only if they are "supervisors" and/or "managers" authorized by the Judicial Conference to receive the benefit. In accordance with the Committee's recommendations, the Conference designated the federal public defender position as a "manager" and/or "supervisor" position eligible to participate in the program and authorized individual federal public defenders to make the determination, consistent with Judicial Conference guidelines, as to whether other positions in the defender's organization constitute "manager" or "supervisor" positions. The Conference adopted the following guidelines, recommended by the Committee, to

[3] The Committee on Judicial Resources considered application of this statute to other judiciary employees. *See infra,* "Professional Liability Insurance," pp. 66-67.

be applied by federal public defenders in determining eligibility for the program[4]:

1. Participation of an FPDO in the program is at the discretion of the federal public defender. No additional funds will be provided to an FPDO's budget for this purpose.

2. The program is limited to "management officials" and "supervisors" within the FPDOs, as those terms are defined in 5 U.S.C. § 7103(a).

3. Generally, a person occupying an attorney position is not eligible for the program unless he/she serves in a supervisory capacity.

4. The program must be administered fairly within an individual FPDO, such that all qualified employees with the same or similar job descriptions must be eligible to participate. Eligibility determinations should be based upon examination of particular positions and their duties rather than the individuals occupying those positions.

5. A federal public defender's plan for implementing this program must be set out in writing and announced to employees before implementation.

DEFENDER ORGANIZATION FUNDING REQUESTS

Under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), the Defender Services Committee approved $151,300 to establish a new federal public defender organization and a new community defender organization. It also approved increases totaling $467,800 for the fiscal year 1999 budgets of one FPDO and of the Federal Defender Training Group.

COMMITTEE ON FEDERAL-STATE JURISDICTION

[4] Subsequent to the Conference session, Congress enacted Public Law No. 106-58, which *requires* reimbursement for a portion of the cost of professional liability insurance to all interested, eligible employees. The Judicial Conference guidelines will need to be revised to reflect the new requirement.

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction recommended that the Judicial Conference oppose S. 353 and H.R. 1875 (106th Congress), which would expand federal court jurisdiction over class action suits. On behalf of the Judicial Conference, the Executive Committee voted to oppose the class action provisions in these bills, in their present form (*see supra*, "Class Action Legislation," p. 45).

COMMITTEE ON FINANCIAL DISCLOSURE

RELEASE OF FINANCIAL DISCLOSURE REPORTS

Section 105 of the Ethics in Government Act of 1978 (5 U.S.C. app. 4 § 105), as amended by section 7 of the "Identity Theft and Assumption Deterrence Act of 1998" (Public Law No. 105-318)[5], authorizes the Judicial Conference to redact information in a financial disclosure report when the Conference, in consultation with the United States Marshals Service, decides that revealing personal and sensitive information could endanger the individual filer. The Conference, in consultation with the Department of Justice, is required to issue regulations setting forth the circumstances under which redaction is appropriate and the procedures for redaction. In recommending regulations, the Committee on Financial Disclosure considered the views of the Department of Justice and also of the Security and Facilities Committee, which had some concerns regarding the failure of the proposed regulations to include specific Marshals Service procedures. After discussion, the Judicial Conference approved the recommendation of the Committee on Financial Disclosure that it adopt the regulations proposed by that Committee implementing § 105 of the Ethics in Government Act of 1978, as amended, governing the release of financial disclosure reports to the public. *See also supra,* "Miscellaneous Actions," p. 48.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

[5] This amendment will expire on December 31, 2001.

The Committee on Intercircuit Assignments reported that during the period from January 1, 1999, to June 30, 1999, a total of 59 intercircuit assignments, undertaken by 43 Article III judges, were processed and recommended by the Committee and approved by the Chief Justice. In addition, the Committee aided courts requesting assistance in identifying judges willing to take assignments.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

Under an interagency agreement between the Judicial Conference and the United States Agency for International Development's (USAID) Center for Democracy and Governance ("Democracy Center"), USAID has provided $345,915 to the judiciary through the Federal Judicial Center Foundation for use in developing and administering international rule-of-law programs. Although a second grant of $500,000, accepted by the Judicial Conference in September 1997 (JCUS-SEP 97, pp. 72-73), never materialized, the Democracy Center is interested in continuing to fund future programs involving the federal judiciary, particularly short-term strategic interventions and assessments involving foreign judiciaries. The Judicial Conference approved a Committee recommendation that it endorse in principle the USAID's use of a contract-based mechanism rather than a new interagency agreement to fund international judicial reform and rule-of-law activities involving the federal judiciary.

JUDICIAL OBSERVER PROGRAMS

Programs currently ongoing in at least two law schools provide foreign students with an opportunity to observe first-hand how the rule of law, judicial independence, and the administration of justice are effectuated in the federal courts. On recommendation of the Committee on International Judicial Relations that the judiciary's participation in such programs be expanded, the Judicial Conference agreed to encourage courts to expose foreign lawyers and/or foreign law students enrolled in United States law schools (in LL.M. programs or otherwise) to the work of the courts in the United States and to the operation of the rule of law in those courts.

COMMITTEE ON THE JUDICIAL BRANCH

THRIFT SAVINGS PLAN

Presently, the Thrift Savings Plan (TSP) does not allow enrollees to roll-over money from 401(k) and other qualified accounts into TSP accounts, although

a federal employee who leaves government service may roll TSP funds into a private sector retirement plan. In the private sector, large employers commonly allow roll-overs of distributions from one eligible retirement plan to another. Legislation pending in the 106th Congress (H.R. 208) would amend the TSP to provide this benefit to federal employees. On recommendation of the Committee on the Judicial Branch, the Judicial Conference endorsed the concept of allowing Thrift Savings Plan enrollees to transfer funds from qualified retirement plans of previous employers to TSP accounts.

TRAVEL REGULATIONS FOR UNITED STATES JUSTICES AND JUDGES

Reporting of Non-Case Related Travel. At its March 1999 session, the Judicial Conference directed the Committee on the Judicial Branch to prepare a proposed amendment to the Travel Regulations for United States Justices and Judges that would substantially incorporate, for the purpose of reporting a judge's non-case related travel, the travel reporting requirements for members of the United States Senate (JCUS-MAR 99, pp. 19-20). At this session, the Judicial Conference approved the Committee's proposed regulations, effective October 1, 1999, which are designed to make reporting as easy as possible and yet satisfy congressional requests for information about non-case related travel. They apply to circuit, district, bankruptcy and magistrate judges as well as to judges of the United States Court of International Trade, the United States Court of Federal Claims and territorial district courts.

Alternative Method for Computing Per Diem Travel Reimbursement. To mitigate the adverse effects on judges of reductions in per diem rates in some locations, the Committee recommended, and the Judicial Conference approved, proposed amendments to the Travel Regulations for United States Justices and Judges to allow judges to claim the cost of lodging as well as to take the standard meals and incidental expenses allowance (presently $46 per day) authorized under the judges' travel regulations. This change is consistent with executive branch practice.

Laundry, Cleaning, and Pressing Expenses and Lodging Taxes. Under the judges' travel regulations, a judge may claim reimbursement for the cost of laundry, cleaning and pressing of clothing while on travel as a subsistence expense (*Guide to Judiciary Policies and Procedures*, Vol. III, Ch. XV, § E.2.b.(4)). On

recommendation of the Committee, and consistent with recent General Services Administration amendments to the Federal Travel Regulations, the Conference amended the judges' travel regulations to allow judges to claim reimbursement for these expenses, as well as lodging taxes, as reimbursable miscellaneous transportation expenses.

COMMITTEE ON JUDICIAL RESOURCES

PROFESSIONAL LIABILITY INSURANCE

The Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 (Public Law No. 105-277) authorized the judiciary to provide reimbursement for a portion of the cost of professional liability insurance to certain groups within the judiciary, effective October 1, 1998. The maximum reimbursement allowed is one-half the cost of the policy. The legislation is applicable to three groups within the third branch: (1) justices and judges; (2) law enforcement officers (*i.e.*, probation and pretrial services officers); and (3) "supervisors and managers within the Judicial Branch as authorized by the Judicial Conference of the United States." The Committee on Judicial Resources considered implementation of the statute for "supervisors" and "managers" within the judiciary, excluding federal public defender organizations.[6] On recommendation of the Committee, the Judicial Conference agreed that court unit executive positions would be designated as "manager" and /or "supervisor" positions eligible to participate in the program. Further, court unit executives (including chief probation and chief pretrial services officers for non-officer managers and supervisors) will be authorized to determine which positions within their units are managerial or supervisory for purposes of the program, consistent with Judicial Conference guidelines. The Conference approved the following guidelines proposed by the Committee[7]:

[6] The Committee on Defender Services made recommendations to the Conference regarding application of the statute to federal public defender organization employees. *See supra,* "Professional Liability Insurance," pp. 61-62.

[7] As noted in footnote 4 (p. 61, *supra*), subsequent legislation (Public Law No. 106-58) makes reimbursement to eligible and interested employees mandatory. These guidelines will need to be revised to reflect this new requirement.

1. A court's participation in the program is discretionary. However, any participating court must have a written plan that is announced to employees before the program is implemented.

2. Participation of a court unit in the program is at the discretion of the court unit executive; however, to the extent possible, co-located courts of appeals, district courts, and bankruptcy courts should endeavor to develop compatible programs. No additional funds will be provided to a court unit's budget for this purpose.

3. The program is limited to "management officials" and "supervisors" within the courts, as those terms are defined in section 7103(a) of title 5, United States Code.

4. Generally, a person occupying an attorney or a law clerk position is not eligible for the program unless the person serves in a supervisory capacity.

5. The program must be administered fairly within an individual court, such that all qualified employees with the same or similar job descriptions must be eligible to participate. Eligibility determinations should be based upon examination of particular positions and their duties rather than the individuals occupying those positions.

CIRCUIT EXECUTIVE'S OFFICE STAFFING

In September 1996, the Judicial Conference approved a temporary architect/engineer position in the District of Columbia Circuit Executive's office for a three-year period to assist in a multi-year construction project to build an annex to the existing courthouse (JCUS-SEP 96, p. 63). Because the project is ongoing, the Conference approved, at the request of the court and on recommendation of the Committee, an extension of the position for two years, until the end of fiscal year 2002. The Director of the Administrative Office is authorized to extend the position for an additional two years if suitable justification is provided in the future.

COURT INTERPRETER POSITIONS

Based on established criteria, the Judicial Resources Committee recommended and the Conference approved, two additional court interpreter positions for the Southern District of California for fiscal year 2001.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

MAGISTRATE JUDGE RECALL REGULATIONS

On recommendation of the Committee on the Administration of the Magistrate Judges System, the Judicial Conference approved technical and substantive amendments to the Regulations of the Judicial Conference Establishing Standards and Procedures for the Recall of United States Magistrate Judges (*ad hoc* recall regulations) and the Regulations of the Judicial Conference of the United States Governing the Extended Service Recall of Retired United States Magistrate Judges (extended service recall regulations). The amendments to the *ad hoc* and extended service recall regulations will, among other things:

a. Clarify that a magistrate judge who retires under the Judicial Retirement System (28 U.S.C. § 377) and who thereafter practices law is permanently ineligible for recall service;

b. Clarify that a magistrate judge who is recalled should be referred to as "magistrate judge" and has all the powers and duties of an active magistrate judge;

c. Clarify (as provided in 28 U.S.C. § 636(h)) that a retired magistrate judge may be recalled as a magistrate judge in any judicial district by the judicial council of the circuit within which the district is located; and

d. Incorporate language from the Travel Regulations for United States Justices and Judges authorizing payment of transportation and actual subsistence expenses for court business conducted inside and outside the corporate

limits of the recalled judge's official duty station, which upon retirement becomes the judge's permanent residence.

In addition, the amendments to the extended service recall regulations will eliminate language stating that judges on extended service recall are considered employees for purposes of retirement under chapter 83, the Civil Service Retirement System (CSRS), and chapter 84, the Federal Employees Retirement System (FERS), of title 5, United States Code. Judges recalled on an extended service basis have no additional retirement rights under CSRS or FERS upon recall. *See also supra*, "Bankruptcy Judge Recall Regulations," p. 50.

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 Judicial Conference approved the following changes in positions, locations, salaries, and arrangements for full-time and part-time magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

FIRST CIRCUIT

District of New Hampshire

Made no change in the number of positions or the location or arrangements of the existing magistrate judge position in the district.

FOURTH CIRCUIT

Middle District of North Carolina

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

District of South Carolina

1. Authorized an additional full-time magistrate judge position at Greenville, Spartanburg, or Anderson; and

2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

FIFTH CIRCUIT

Western District of Texas

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

2. Converted the part-time magistrate judge position at Del Rio to full-time status and designated the position as Del Rio or Eagle Pass;

3. Increased the salary of the part-time magistrate judge position at Del Rio from Level 2 ($52,787 per annum) to Level 1 ($58,065 per annum) commencing on October 1, 1999, if funds are available; and

4. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

SIXTH CIRCUIT

Eastern District of Kentucky

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

Western District of Kentucky

1. Redesignated the full-time magistrate judge position at Hopkinsville or Bowling Green as Owensboro or Bowling Green;

2. Redesignated the full-time magistrate judge position at Louisville or Owensboro as Louisville; and

3. Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

Northern District of Ohio

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

SEVENTH CIRCUIT

Northern District of Illinois

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Central District of Illinois

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Northern District of Indiana

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

EIGHTH CIRCUIT

Eastern District of Arkansas

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

2. Discontinued the part-time magistrate judge position at Jonesboro; and

3. Made no change in the number, location, or arrangements of the other magistrate judge positions in the district.

Southern District of Iowa

1. Converted the part-time magistrate judge position at Davenport to full-time status;

2. Discontinued the part-time magistrate judge position at Council Bluffs upon the retirement of the incumbent in September 1999; and

3. Made no change in the number, location, or arrangements of the other magistrate judge positions in the district.

District of South Dakota

1. Converted the part-time magistrate judge position at Sioux Falls to full-time status;

2. Increased the salary of the part-time magistrate judge position at Pierre from Level 2 ($52,787 per annum) to Level 1 ($58,065 per annum);

3. Increased the salary of the part-time magistrate judge position at Rapid City from Level 2 ($52,787 per annum) to Level 1 ($58,065 per annum); and

4. Increased the salary of the part-time magistrate judge position at Aberdeen from Level 7 ($5,279 per annum) to Level 6 ($10,557 per annum).

NINTH CIRCUIT

District of Arizona

1. Converted the part-time magistrate judge position at Yuma to full-time status; and

2. Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

Northern District of California

Increased the salary of the part-time magistrate judge position at Eureka from Level 6 ($10,557 per annum) to Level 5 ($21,115 per annum).

TENTH CIRCUIT

District of Colorado

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

District of Utah

Made no change in the salary of the part-time magistrate judge position at Saint George.

ACCELERATED FUNDING

On recommendation of the Committee, the Judicial Conference agreed to designate the new magistrate judge positions at Greenville, Spartanburg, or Anderson, South Carolina; El Paso and Del Rio, Texas; Little Rock, Arkansas; Davenport, Iowa; Sioux Falls, South Dakota; and Yuma, Arizona, for accelerated funding in fiscal year 2000.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee reported on the status of litigation arising from an order issued by the Judicial Council of the Fifth Circuit and affirmed by the Committee, imposing sanctions against a district judge.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF CIVIL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Civil Rules 4 (Summons), 5 (Serving and Filing Pleadings and Other Papers), 12 (Defenses and Objections—When and How Presented—By Pleading or Motion—Motion for Judgment on the Pleadings), 14 (Third-Party Practice), 26(d) (Timing and Sequence of Discovery), 26(f) (Conference of Parties; Planning for Discovery), and 37 (Failure to Make Disclosure or Cooperate in Discovery: Sanctions), along with amendments to the Supplemental Admiralty Rules B (In Personam Actions: Attachment and Garnishment), C (In Rem Actions: Special Provisions), and E (Actions in Rem and Quasi in Rem: General Provisions). The Judicial Conference approved these amendments and the accompanying Committee Notes for transmittal to the Supreme Court.

Other amendments to the Civil Rules proposed by the Rules Committee were debated at the Conference session. The Judicial Conference approved revisions to Rule 26(a) (Required Disclosures; Methods to Discover Additional Matter), which would eliminate the local "opt-out" and would narrow mandatory disclosure requirements; 26(b)(1) (Discovery Scope and Limits: In General), which would narrow the scope of discovery to matters relevant to "claims or defenses"; and 30 (Depositions upon Oral Examination), which deals with the length of depositions. These amendments, as well as those mentioned above, will be transmitted, accompanied by the Committee Notes explaining their purpose and intent, to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

After discussion, the Judicial Conference declined to approve proposed amendments to Rules 26(b)(2) (Discovery Scope and Limits: Limitations)[8] and 34 (Production of Documents and Things and Entry upon Land for Inspection and Other Purposes).

FEDERAL RULES OF EVIDENCE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Evidence Rules 103 (Rulings on Evidence), 404 (Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes), 701 (Opinion Testimony by Lay Witnesses), 702 (Testimony by Experts), 703 (Bases of Opinion Testimony by Experts), 803(6) (Hearsay Exceptions; Availability of Declarant Immaterial), and 902 (Self-authentication), together with Committee notes explaining their purpose and intent. These amendments were approved by the Conference without debate, except those pertaining to Rule 702 (proposed in response to the Supreme Court's decision in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993)), which were approved after discussion. The Conference authorized the transmittal of these

[8] The proposed amendment to Rule 26(b)(2) that was on the floor of the Conference concerned cost shifting. The Rules Committee also proposed an amendment to the same rule dealing with presumptive national limits on depositions and interrogatories. This latter amendment was approved by the Conference for transmission to the Supreme Court through a mail ballot concluded on December 3, 1999.

rules, with the accompanying Committee Notes, to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 1017 (Dismissal or Conversion of Case; Suspension), 2002 (Notices to Creditors, Equity Security Holders, United States, and United States Trustee), 4003 (Exemptions), 4004 (Grant or Denial of Discharge), and 5003 (Records Kept by the Clerk). The proposed amendments were accompanied by Committee Notes explaining their purpose and intent. The Judicial Conference approved the amendments and authorized their transmittal to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

COMMITTEE ON SECURITY AND FACILITIES

NAMING FEDERAL COURTHOUSES

Enactment of legislation naming a federal courthouse for a federal judge who has retired from the bench is a way of paying tribute to the judge's years of service dedicated to the administration of justice. However, this action may cause concern if the retired judge is a practicing attorney who might appear in the very courthouse bearing his or her name. In order to avoid the potential for perceptions of bias or conflict of interest, the Judicial Conference approved a recommendation of the Committee on Security and Facilities that it oppose naming a courthouse or other federal building after a retired federal judge who currently practices law.

AUTOMATED EXTERNAL DEFIBRILLATOR PROGRAM

Automated external defibrillators (AEDs) are portable devices that can deliver a life-saving electric shock to a victim of cardiac arrest and dramatically improve the victim's chance of survival. On recommendation of the Committee on Security and Facilities, the Judicial Conference endorsed the provision of AED

services for judicial officers and judiciary employees and agreed that the judiciary will assist the United States Marshals Service in establishing a program to provide these services at all court facilities, subject to the availability of funds.

FUNDING

All of the foregoing recommendations that require the expenditure of funds for implementation were approved by the Judicial Conference subject to the availability of funds and to whatever priorities the Conference might establish for the use of available resources.

Chief Justice of the United States
Presiding

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

March 14, 2000

The Judicial Conference of the United States convened in Washington, D.C., on March 14, 2000, 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 Juan R. Torruella
Judge Joseph A. DiClerico, Jr.,
District of New Hampshire

Second Circuit:

Chief Judge Ralph K. Winter, Jr.
Chief Judge Charles P. Sifton,
Eastern District of New York

Third Circuit:

Chief Judge Edward R. Becker
Chief Judge Donald E. Ziegler,
Western District of Pennsylvania

Fourth Circuit:

Chief Judge J. Harvie Wilkinson III
Chief Judge Charles H. Haden II,
Southern District of West Virginia

Fifth Circuit:

Chief Judge Carolyn Dineen King
Judge Hayden W. Head, Jr.,

Southern District of Texas

Sixth Circuit:

Chief Judge Boyce F. Martin, Jr.
Judge Thomas A. Wiseman, Jr.,
Middle District of Tennessee

Seventh Circuit:

Chief Judge Richard A. Posner
Judge Robert L. Miller, Jr.,
Northern District of Indiana

Eighth Circuit:

Chief Judge Roger L. Wollman
Judge James M. Rosenbaum,
District of Minnesota

Ninth Circuit:

Chief Judge Procter Hug, Jr.
Judge Judith N. Keep,
Southern District of California

Tenth Circuit:

Chief Judge Stephanie K. Seymour
Judge Ralph G. Thompson,
Western District of Oklahoma

Eleventh Circuit:

Chief Judge R. Lanier Anderson III
Chief Judge Charles R. Butler, Jr.,
Southern District of Alabama

District of Columbia Circuit:

Chief Judge Harry T. Edwards
Chief Judge Norma H. Johnson,
District of Columbia

Federal Circuit:

Chief Judge Haldane Robert Mayer

Court of International Trade:

Chief Judge Gregory W. Carman

Circuit Judges W. Eugene Davis, David R. Hansen, Dennis G. Jacobs, Diana E. Murphy, Paul V. Niemeyer, Jane R. Roth, Anthony J. Scirica, Walter K. Stapleton, and William W. Wilkins, Jr., District Judges Carol Bagley Amon, Robin J. Cauthron, Edward B. Davis, John G. Heyburn II, D. Brock Hornby, Michael J. Melloy, Edward W. Nottingham, Harvey E. Schlesinger, and William J. Zloch, and Judge Richard W. Goldberg of the Court of International Trade attended the Conference session. Gregory B. Walters, Circuit Executive for the Ninth Circuit, was also present.

Senator Patrick Leahy and Representative Howard Coble spoke on matters pending in Congress of interest to the Conference. Attorney General Janet Reno addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice.

Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director for Management and Operations; William R. Burchill, Jr., Associate Director and General Counsel; Karen K. Siegel, Assistant Director, Judicial Conference Executive Secretariat; Michael W. Blommer, Assistant Director, Legislative Affairs; Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat; and David Sellers, Deputy Assistant Director, Public Affairs. Judge Fern Smith and Russell Wheeler, Director and Deputy Director of the Federal

Judicial Center, also attended the session of the Conference, as did James Duff, Administrative Assistant to the Chief Justice, and judicial fellows Amie Clifford, Richard Mendales, and Mark Miller.

REPORTS

Mr. Mecham reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office. Judge Smith spoke to the Conference about Federal Judicial Center programs, and Judge Diana E. Murphy, Chair of the United States Sentencing Commission, reported on Sentencing Commission activities.

ELECTIONS

The Judicial Conference elected to membership on the Board of the Federal Judicial Center Judge Pauline Newman of the Federal Circuit to replace District Judge Thomas F. Hogan; Judge Robert Bryan of the Western District of Washington to replace Chief Judge Jean C. Hamilton of the Eastern District of Missouri; and Judge Jean C. Hamilton to fill the unexpired term of Circuit Judge Robert M. Parker.

EXECUTIVE COMMITTEE

FINANCIAL DISCLOSURE REPORTS

On recommendation of the Executive Committee, the Judicial Conference reviewed a December 10, 1999, decision of the Committee on Financial Disclosure, made pursuant to authority delegated to it by the Conference, to deny a request by an Internet news organization, APBnews.com, for release of the financial disclosure forms of all Article III and magistrate judges. APBnews.com had indicated in its request that it intended to post the forms on the Internet. The Financial Disclosure Committee determined that allowing reports to be published on the Internet would be inconsistent with section 105 of the Ethics in Government Act of 1978 (5 U.S.C. app. § 105), which prohibits disclosure of a report to any person who has not made a written application stating that person's name, occupation and address; providing the name and

address of any other persons or organization on whose behalf the inspection or copy is requested; and further stating that the person is aware of the prohibitions on the obtaining or use of the report. The Committee also concluded that publication of the reports on the Internet would frustrate the intent of section 7 of the Identity Theft and Assumption Deterrence Act of 1998 (5 U.S.C. app. § 105(b)(3)) that authorizes the Conference to redact information in a financial disclosure report filed by a judge when the Conference, in consultation with the United States Marshals Service, decides that revealing personal and sensitive information could endanger the filer. The Committee on Security and Facilities concurred in the position of the Financial Disclosure Committee with regard to Internet posting of judges' financial disclosure reports.

The Executive Committee sought Conference consideration of the Financial Disclosure Committee's decision because its members believed that section 105(b)(2) does not authorize denial of a financial disclosure report because of the requester's stated intentions to publish the report. However, the Executive Committee was also of the view that the statute does not require the release for dissemination to the public of unredacted forms containing information that could endanger the filer, and that the Financial Disclosure Committee has the authority under the Identity Theft and Assumption Deterrence Act to make appropriate redactions and then provide the redacted forms to the requester.

After a full discussion of the complex issues raised, the Judicial Conference determined by a two-to-one margin to approve the Executive Committee's recommendation to rescind the December 10, 1999, decision of the Financial Disclosure Committee to withhold release of judges' financial disclosure reports where the requester indicates that the reports will be posted on the Internet. The Conference further agreed to direct the Committee on Financial Disclosure to exercise its delegated authority as follows:

a. On an interim basis, when the Committee receives a request for a judicial officer's financial disclosure form that may result in the dissemination to the public of that form or the information contained therein, the Committee will invite the judicial officer to review the information contained in his or her form. Where the officer believes it appropriate, the officer may request redaction of personal and sensitive information that is otherwise confidential and could endanger the officer or other person if obtained by any member of the public hostile to the judicial officer. Upon receipt of a request for redaction, the Committee will, in consultation with the United States Marshals Service, grant

or deny the request after determining whether the information sought to be redacted is not otherwise easily available to the public and could, if obtained by a hostile member of the public, endanger the officer or other person; and

b. On a permanent basis, the Committee will implement a procedure requiring judicial officers who believe redactions to be appropriate prior to public dissemination to request such redactions when the annual disclosure form is filed. The Committee will follow the procedures specified above in determining the merits of such requests.

Further, in lieu of a similar recommendation made by the Financial Disclosure Committee (*see infra*, "Financial Disclosure Reports," pp. 16-17), the Judicial Conference determined to instruct the chairs of the Committees on Codes of Conduct, Financial Disclosure, and Security and Facilities to confer expeditiously with a view to proposing as soon as possible to their committees and then to the Judicial Conference legislative amendments to the Ethics in Government Act that accommodate the public's need for information regarding the financial interests of judicial officers and the security of such officers.

JUDICIAL COMPENSATION

Under the Federal Employees Pay Comparability Act of 1990, 5 U.S.C. § 5301 *et seq*., the President may establish geographic adjustments of basic pay for General Schedule employees in areas in which there exists a significant disparity in rates of pay offered by non-federal employers and those offered by the government. The judiciary, to the extent permitted by law, has extended such rates to its employees. However, locality pay adjustments are not currently available to officials whose pay is adjusted under the Employment Cost Index mechanism of the Ethics Reform Act of 1989 (*e.g*., the Vice President, Executive Schedule officers, members of Congress, and judges). In response to an Office of Personnel Management legislative proposal to extend locality pay to the Vice President and all Executive Schedule officers, the Committee on the Judicial Branch recommended that the Judicial Conference support the proposal, with the understanding that if Congress elected to include itself in the legislation, the judiciary should be included as well, to the same extent, and without differential among judges. Subsequently, the judiciary was advised that legislation was to be introduced in Congress to extend locality pay to the Vice President, all Executive Schedule officers, *and* the judiciary, but not to Congress, with the locality pay adjustment to be applied to all judges equally at the Washington, D. C. rate, which is currently 9.05 percent. The Executive Committee determined to support this legislation on behalf of the Conference.

PROFESSIONAL LIABILITY INSURANCE

In September 1999, the Judicial Conference adopted two sets of guidelines implementing legislation authorizing the judiciary to provide reimbursement for a portion of the cost of professional liability insurance to certain groups within the judiciary. One set of guidelines pertained to federal public defender organization management and supervisory employees (JCUS-SEP 99, pp. 61-62) and the other set pertained to other judiciary supervisors and managers (JCUS-SEP 99, pp. 66-67). Subsequently, Congress amended the legislation to make the reimbursement benefit mandatory instead of discretionary (Public Law No. 106-58). Accordingly, the Committees on Defender Services and Judicial Resources recommended that the guidelines be amended to reflect this change and also to provide that maximum reimbursement would be limited annually to $150, or one-half the cost of the insurance, whichever is less. The Executive Committee approved these recommendations on behalf of the Judicial Conference.

MANAGED CARE LEGISLATION

Both the Senate and the House of Representatives passed bills during the First Session of the 106th Congress that would provide additional rights and procedures for persons in managed care health plans (health maintenance organizations (HMOs)), as well as for certain other individuals with health insurance. The Committee on Federal-State Jurisdiction examined such legislation with particular focus on the availability of legal recourse in the federal courts against HMOs for treatment decisions. The Senate bill (S. 1344) would not create a personal injury action for damages in any court. The House bill (H.R. 2990) would amend the Employee Retirement Income Security Act of 1974 (ERISA) to preclude an ERISA preemption defense to any cause of action by a patient under state law to recover damages resulting from personal injury or for wrongful death in connection with the receipt of medical treatment. Alternative approaches establishing a personal injury cause of action for the negligent denial of medical benefits in federal court, though defeated in the House, remain under congressional consideration.

Personal injury claims arising from the denial of medical treatment have

traditionally and satisfactorily been resolved under state law and primarily in the state court system. Consistent with the Judicial Conference's longstanding position that Congress should refrain from granting jurisdiction to federal courts over disputes raising questions primarily of state law, the Federal-State Jurisdiction Committee recommended that the Judicial Conference urge Congress to provide that, in any managed care legislation agreed upon, the state courts be the primary fora for the resolution of personal injury claims arising from the denial of health care benefits, should Congress determine that such legal recourse is warranted. The Executive Committee, which was asked to consider this issue on an expedited basis so that the judiciary's position could be communicated to Congress before the congressional conference committee began its deliberation, approved the Federal-State Jurisdiction Committee's recommendation.

MISCELLANEOUS ACTIONS

The Executive Committee:

- Approved final financial plans for the Salaries and Expenses, Defender Services, Fees of Jurors and Commissioners, and Court Security appropriations accounts for the remainder of fiscal year 2000 and authorized the Director of the Administrative Office to make technical and other adjustments, as appropriate.

- At the request of the Committee on International Judicial Relations, endorsed the use of remaining United States Agency for International Development-Judicial Conference interagency funds to provide assistance to the judiciary of Nigeria, subject to certain conditions.

- Pursuant to Public Law No. 105-339, approved procedures submitted by the Administrative Office and the Federal Judicial Center to provide for veterans' preference in applications for employment and in the conduct of any reductions in force.

- On recommendation of the Committee on the Judicial Branch, amended section G.1.a of the Travel Regulations for United States Justices and Judges (which defines "non-case related travel"), to substitute in lieu of subsection (2) of the definition the following language: "(2) that involves judicial administration,

training, education, and extra-judicial activities as permitted by law and encouraged by the Code of Conduct for United States Judges;".

- Agreed to adjust for inflation the maximum daily rate for reimbursement of itemized expenses for judges' travel within the continental United States.

- Approved a recommendation of the Defender Services Committee that legislation be pursued authorizing reimbursement or indemnification of Criminal Justice Act (CJA) panel attorneys for civil malpractice and related actions arising from their CJA services. *See* JCUS-MAR 93, p. 27.

- Adopted a recommendation of the Judicial Resources Committee that the judgeship recommendations approved by the Conference in March 1999 for transmittal to Congress (JCUS-MAR 99, pp. 21-22) be amended to exclude the additional temporary judgeship for the District of Minnesota.

- Modified the procedure set forth in *The Judicial Conference of the United States and its Committees* for determining who shall attend a Conference session to provide that the outgoing chair of each committee attending the Conference, in consultation with the Judicial Conference Secretariat, should determine whether the outgoing or incoming chair will attend the session occurring just prior to the expiration of the outgoing chair's term, without regard to whether an item is on the discussion calendar.

- Requested the Administrative Office to post on its website a list indicating which judges had hired law clerks for a particular year.

- On recommendation of the Committee on Financial Disclosure, approved deletion of Form AO 10A (as well as instructions and references thereto) from the regulations implementing the Identity Theft and Assumption Deterrence Act of 1998, to facilitate routine administrative changes to the form.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it was briefed on the

progress of studies to assess the space and facilities program, court security program, information technology program, and national training needs. The Committee reviewed favorably the Administrative Office's efforts to ensure diversity in its workforce. The Committee also discussed long-range strategic issues for the Administrative Office. It reviewed initiatives underway in the agency to support the probation and pretrial services system. In addition, the Committee passed the following resolution in recognition of the Administrative Office and its Director, Leonidas Ralph Mecham:

> In appreciation of continued excellent service to the federal judiciary by the Administrative Office of the U.S. Courts and its Director, Leonidas Ralph Mecham, the Committee on the Administrative Office recognizes the agency's efforts and accomplishments during 1999. Director Mecham's many successful initiatives included securing a fiscal year 2000 funding increase for the courts, when Congress had proposed reducing judiciary funding; obtaining an increase in judges' pay, only the second in seven years; opposing a Department of Justice appeal of the *Williams v. United States* lawsuit regarding judges' pay; achieving the passage of legislation protecting judges aged 65 and older from drastic increases in their life insurance premiums; and implementing an improved benefits program for judges and judiciary employees which offers unprecedented long-term care insurance and flexible spending accounts.
>
> The Committee unanimously expresses its appreciation for the outstanding achievements of Director Mecham and of the Administrative Office during 1999.

COMMITTEE ON AUTOMATION AND TECHNOLOGY

LONG RANGE PLAN FOR INFORMATION TECHNOLOGY

Pursuant to 28 U.S.C. § 612 and on recommendation of the Committee on Automation and Technology, the Judicial Conference approved a 2000 update to the *Long Range Plan for Information Technology in the Federal Judiciary.* There were no substantive differences between the 1999 and 2000 updates.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

PLACE OF HOLDING BANKRUPTCY COURT

At the request of the Middle District of Florida and the Eleventh Circuit Judicial Council and in accordance with 28 U.S.C. § 152(b)(1), the Committee on the Administration of the Bankruptcy System recommended, and the Judicial Conference approved, the designation of Viera as an additional place of holding bankruptcy court in the Middle District of Florida.

COMMITTEE ON THE BUDGET

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it had been advised of adjustments to the fiscal year 2001 budget request and had discussed procedures for preparation of the fiscal year 2002 budget request. The Committee was briefed on the explosion of drug and immigration cases along the southwest border and its adverse impact on court operations, on ongoing financial management improvement initiatives, and on a planned review of budget decentralization policies and procedures designed to ensure that the benefits of decentralization to the courts and the judiciary will be fully realized.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that it had received 43 new written inquiries and issued 43 written advisory responses with an average response time of 23 days. The Chairman received and responded to 19 telephonic inquiries, and individual Committee members responded to 104 inquiries from their colleagues.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

CASE ASSIGNMENT

The proposed Blind Justice Act of 1999 (S. 1484, 106th Congress) would require courts of appeals and district courts to assign all cases on a random basis, with limited exceptions for "related" and "technical" cases. The Judicial Conference has recently reaffirmed the judiciary's strong support for the random assignment of cases (JCUS-MAR 99, p. 13). However, noting that all courts already employ random case assignment procedures, the Committee on Court Administration and Case Management concluded that the proposed legislation neglected to take into account the complexities associated with the random assignment process, and would unnecessarily interfere with the authority of judges to manage their caseloads in a fair and expeditious manner. The Committee raised several specific concerns with the proposed legislation and recommended that the Judicial Conference oppose the Blind Justice Act of 1999 and notify Congress of its concerns. The Conference approved the Committee's recommendation.

COURT OF APPEALS MISCELLANEOUS FEE SCHEDULE

In September 1997, the Judicial Conference directed bankruptcy appellate panels (BAPs) to utilize the miscellaneous fee schedule for the courts of appeals to determine fees for services provided to the public (JCUS-SEP 97, p. 60). However, there is no fee in the appellate fee schedule for notices of appeal from BAPs commensurate with the $5 notice of appeal fee set forth in the bankruptcy miscellaneous fee schedule for filing notices of appeal from the district court. To correct this discrepancy, the Conference adopted a recommendation of the Committee on Court Administration and Case Management, concurred in by the Committee on the Administration of the Bankruptcy System, to add a $5 notice of appeal fee to the miscellaneous fee schedule for the courts of appeals as follows:

> Upon the filing of any separate or joint notice of appeal or application for appeal from a Bankruptcy Appellate Panel, or notice of the allowance of an appeal from a Bankruptcy Appellate Panel, or of a writ of certiorari, $5 shall be paid by the appellant or petitioner.

CIVIL JUSTICE REFORM ACT REPORTING REQUIREMENTS

In September 1999, the Judicial Conference adopted a recommendation of the Committee on Court Administration and Case Management to amend the instructions for the Civil Justice Reform Act report on civil motions pending over six months to state that for each district and magistrate judge, the pending date for a motion to be reported is 30 days after the motion is filed or, if the motion papers are not filed until the motion is fully briefed, then 30 days after the date the motion is first served (JCUS-SEP 99, pp. 57-58). Subsequently, the Committee was asked to revisit the issue to consider whether to use as the pending date 30 days from the date "the motion is fully submitted" to address the procedures of courts where motions are not filed until all responsive pleadings have been served, a position the Committee had earlier rejected. After careful consideration, the Committee declined to propose any modifications to the September 1999 Conference decision. The Conference discussed the issue at this session at the request of a Conference member, and it declined to make any changes to its September 1999 action on the matter.

COMMITTEE ON CRIMINAL LAW

FICTITIOUS LIENS AGAINST JUDICIAL OFFICERS

In September 1997, the Judicial Conference agreed to support legislation then being drafted by the Department of Justice that would have created a new federal criminal offense for harassing or intimidating a federal official, including a judicial officer, with respect to the performance of official duties, to include the filing of a lien on the real or personal property of that official (JCUS-SEP 97, p. 66). However, to date, the Department of Justice's draft legislation has not been released or transmitted to Congress. In order to advance legislation on this issue, the Judicial Conference adopted a recommendation of the Committee on Criminal Law that the Conference modify its previous policy to authorize the judiciary itself to pursue such legislation.

CONDITIONS OF PROBATION AND SUPERVISED RELEASE

The Sentencing Reform Act of 1984 provided for a number of discretionary conditions of probation which are listed in 18 U.S.C. § 3563(b) as subsections (1) through (20). The Antiterrorism and Effective Death Penalty Act of 1996 changed the numbering of these conditions, but neglected to change references to them contained in 18 U.S.C. §§ 3563(a) (Mandatory conditions [of probation]) and 3583(d) (Conditions of supervised release), causing confusion and anomalous results. The renumbering has also resulted in the authorization of intermittent confinement (custody by the Federal Bureau of Prisons during nights, weekends, or other intervals of time) as a condition of supervised release when it was not previously statutorily available. The Committee on Criminal Law reviewed the current use of intermittent confinement as a condition of probation and supervised release and determined that the flexibility to use such a condition as a response to a violation should be preserved. On recommendation of the Committee, the Conference agreed to pursue legislation that would correct the cross-references in 18 U.S.C. §§ 3563(a) and 3583(d) to reflect the renumbering of 18 U.S.C. § 3563(b) by the Antiterrorism and Effective Death Penalty Act, except that the cross-reference in 18 U.S.C. § 3583(d) authorizing discretionary intermittent confinement as a condition of supervised release should be preserved, but its use limited to violation proceedings.

WORKPLACE DRUG TESTING PROGRAM/ZERO TOLERANCE POLICY

On recommendation of the Criminal Law Committee, the Judicial Conference adopted a workplace drug testing program for probation and pretrial services officers and officer assistants that includes applicant, random, reasonable suspicion, follow-up, and voluntary drug testing to be implemented by the Director of the Administrative Office. The Committee's recommendation was based on a determination that each component of the program is appropriate and feasible for officers in the judiciary. The Administrative Office will report all test results to the chief district judge or chief probation or pretrial services officer for appropriate personnel action.

The Conference also approved a recommendation of the Committee that the Conference adopt a zero tolerance policy for controlled substance (as defined in the Controlled Substance Act, 21 U.S.C. §§ 811-812) use by probation and pretrial

services officers and officer assistants, due to the special nature of the officers' investigative and supervision work and unique law enforcement mission within the judiciary. Zero tolerance calls upon the courts to take some action, up to and including dismissal, in the event the officer or officer assistant were to test positive for drug use. This policy expands the existing judicial branch policy on drug use in the workplace (*see* JCUS-MAR 97, p. 9) and conforms the practice in the federal probation and pretrial services system to the practice of other federal law enforcement agencies.

COMMITTEE ON DEFENDER SERVICES

DISCLOSURE OF CJA PANEL ATTORNEY PAYMENTS

In 1997, subsection (d)(4) of the Criminal Justice Act, 18 U.S.C. § 3006A, was amended to require that amounts paid to attorneys appointed under the CJA be made publicly available pursuant to a specific process. This amendment included a two-year sunset provision. To conform to the amendment, in March 1999, the Judicial Conference approved revisions to paragraph 5.01B of the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Volume VII, *Guide to Judiciary Policies and Procedures* (JCUS-MAR 99, pp. 15-16). The Committee on Defender Services has found that the revised guideline provides a workable mechanism for disclosing CJA panel attorney payment information, while at the same time affording attorneys reasonable notice prior to disclosure to allow them to request redaction of information to protect their clients' interests. There has been no reported difficulty with the procedure. On recommendation of the Committee, the Conference agreed to retain the revised guideline after the scheduled sunset, with the following minor revisions: (a) to indicate that for cases filed on or after January 25, 2000, the guideline will no longer be statutorily based; and (b) to reflect a further amendment to CJA subsection (d)(4), enacted as part of the Fiscal Year 2000 Consolidated Appropriations Act (Public Law No. 106-113), which states that in death penalty cases where the underlying alleged criminal conduct took place on or after

April 19, 1995, the amount of the fees shall not be considered a reason justifying limited disclosure of payments to attorneys.[1]

DEFENDER ORGANIZATION FUNDING REQUESTS

Under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), the Committee on Defender Services approved budgets for federal defender organizations in the amount of $244,595,000 for fiscal year 2000.

COMMITTEE ON FEDERAL-STATE JURISDICTION

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction made a recommendation to the Judicial Conference regarding pending managed care legislation. In order to communicate a Conference policy to Congress expeditiously, the Executive Committee acted on this matter on behalf of the Conference. *See supra,* "Managed Care Legislation," pp. 7-8. In addition, the Committee reported that it discussed asbestos legislation, mass torts, class action legislation, and rules governing attorney conduct.

COMMITTEE ON FINANCIAL DISCLOSURE

FINANCIAL DISCLOSURE REPORTS

On recommendation of the Committee on Financial Disclosure, the Judicial Conference approved an amendment to paragraph 4.0(b)(1) of the Regulations of the Judicial Conference of the United States on Access to Financial Disclosure Reports

[1] In accordance with the Defender Services Committee's recommendation, the Judicial Conference approved the proposed revisions to paragraph 5.01B of the CJA Guidelines subject to the proviso that if the public disclosure provisions of 18 U.S.C. § 3006A(d)(4) were extended beyond their scheduled expiration date of January 24, 2000, the Guidelines should remain unchanged. The public disclosure provisions did expire as scheduled, and therefore this proviso is moot.

Filed by Judges and Judiciary Employees Under the Ethics in Government Act of 1978, As Amended, to remove the requirement that a requester provide his or her social security number on the request form.

The Committee also dealt extensively with a request by APBnews.com, an Internet news organization, for release of the financial disclosure forms of all Article III and magistrate judges so that they may be posted on the Internet. Its December 10, 1999, decision to deny the request was reconsidered by the Conference pursuant to a recommendation of the Executive Committee. Understanding that its decision was to be reconsidered, the Financial Disclosure Committee recommended that an ad hoc committee be established to develop a legislative proposal concerning the obligations of judicial officers to disclose. The Conference addressed the Committee's recommendation in the context of the recommendations of the Executive Committee on the same subject. *See supra*, "Financial Disclosure Reports," pp. 4-6.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that during the period from July 1, 1999 to December 31, 1999, a total of 98 intercircuit assignments, undertaken by 65 Article III judges, were processed and recommended by the Committee and approved by the Chief Justice. During calendar year 1999, 153 intercircuit assignments were processed and approved. In addition, the Committee aided courts requesting assistance in identifying and obtaining judges willing to take assignments.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its involvement in rule-of-law programs in or with delegations from Africa, Asia, Europe, the Middle East, and Latin America. The Committee also commended the government of Puerto Rico and members of its legal community who had helped found the Inter-American Center

for the Administration of Justice and Public Policy, which trains judges and defenders from Central and South America in common law procedures in a Spanish language environment.

COMMITTEE ON THE JUDICIAL BRANCH

THRIFT SAVINGS PLAN

Under 5 U.S.C. § 8433(h)(1)(A), judges and other employees who are still employed by the federal government are permitted a one-time-only withdrawal of any portion of funds from their Thrift Savings Plan (TSP) accounts at age 59 ½ (which is considered by the Internal Revenue Service to be the retirement age) or older. The regulations governing private sector plans place no restrictions on the number of in-service withdrawals allowed after age 59 ½ (26 C.F.R. § 1.401(k)-1(d)). Article III judges are not permitted to withdraw funds from the TSP in the nature of a retirement benefit until they become separated from federal service or take senior status. Because some judges may decide never to take senior status or may delay taking it beyond age 65, this one-time withdrawal feature places a particular hardship on them. On recommendation of the Committee on the Judicial Branch, the Judicial Conference agreed to endorse legislation that would amend 5 U.S.C. § 8433 to permit all TSP participants to withdraw their funds without restriction when they reach retirement age. The Conference further agreed that as a fallback position, in the event an amendment to § 8433 is not viable, legislation should be sought amending 5 U.S.C. § 8440a to repeal the rule requiring judges to separate from the government or elect senior status as a condition precedent to securing TSP funds.

LUMP-SUM PAYMENT OF ANNUAL LEAVE

Pursuant to 5 U.S.C. §§ 5551 and 5552, employees under the Leave Act, 5 U.S.C. § 6301 *et seq*., are generally entitled to a lump-sum payment of their annual leave balance only when they separate from civilian government service by resignation, retirement, entry into active military duty, or death, and they may not receive payments when transferring between federal positions. Nevertheless, by longstanding practice, when career government employees are named to Article III judgeships (exempt from Leave Act coverage), they have received a lump-sum payment of their annual leave balance upon their appointment to the judicial office on the theory that their lifetime

appointment was inconsistent with the notion of their ever "separating" from the government so as eventually to receive a refund. Pursuant to new regulations issued by the Office of Personnel Management, however, judicial appointees will no longer receive a lump-sum payment at the time of appointment. Instead, consistent with the letter of 5 U.S.C. § 5551, the earned leave must be held in abeyance either for recredit if the employee transfers back to a Leave Act-covered position or for payment of a lump sum upon separation (at the rate earned when the presidential appointment was made). 5 C.F.R. § 550.1203(e). Such deferral could in some cases be tantamount to a forfeiture of the funds. To rectify this situation, the Judicial Conference adopted a recommendation of the Committee that it endorse legislation that would amend 5 U.S.C. § 5551 to restore the previous practice with regard to lump-sum payment of annual leave upon appointment to judicial office.

MILITARY DUAL COMPENSATION RESTRICTIONS

Section 651 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law No. 106-65) repealed the dual compensation restrictions which were found at 5 U.S.C. § 5532, applicable to retired military personnel reemployed in civilian positions. For most federal employees, including all non-Article III judges, this legislation ended the reductions in retired pay previously required of retired military service members who assume civilian federal employment. It is the view of the Department of Defense that 28 U.S.C. § 371(e) continues to prohibit the receipt of military retired pay by Article III judges. To permit judges to receive military retired pay in the same manner as other federal employees, on recommendation of the Committee, the Conference endorsed legislation that would amend 28 U.S.C. § 371 by repealing subsection (e), retroactive to October 1, 1999, with the understanding that an effective date of fiscal year 2001 may be substituted if the former date would jeopardize enactment of the provision.

COURT OF FEDERAL CLAIMS LEGISLATION

Life Insurance. The Court of Federal Claims sought to have included in the judiciary's federal courts improvement bill (H.R. 1752, 106th Congress) a provision that would amend chapter 87 of title 5, United States Code, to provide that a retired Claims Court judge is a "judge of the United States" for purposes of Federal

Employees' Group Life Insurance (FEGLI) coverage. This would extend to these judges full FEGLI Basic Life insurance coverage into retirement with the same level of government contributions as Article III judges. It was the stated intention of the Court of Federal Claims in proposing this legislation also to extend to its judges the FEGLI "fix," *i.e*., the benefit recently enacted by Congress that empowers the Conference, in its discretion, to authorize payment from appropriated funds of any increases imposed after April 24, 1999, in the life insurance premiums for Article III judges age 65 or above (Public Law No. 106-113). In August 1999, the Executive Committee, acting on behalf of the Conference, determined to oppose the Claims Court provision in order to study whether to extend such coverage to Claims Court judges as well as to bankruptcy, magistrate, and territorial judges (JCUS-SEP 99, p. 46). The Committee on the Judicial Branch has subsequently had the opportunity to consider the recommendations of the Committees on the Administration of the Bankruptcy and Magistrate Judges Systems on this issue. Citing legislative priorities and principles of equity, the Judicial Branch Committee recommended, and the Conference agreed, that the Conference should oppose the proposal that a judge of the Court of Federal Claims be deemed a "judge of the United States" for purposes of construing and applying chapter 87 of title 5, United States Code, and to the extent that it would extend the reach of the FEGLI "fix" to the judges of the Court of Federal Claims.

Health Benefits. In August 1999, the Executive Committee also opposed, on behalf of the Conference, a legislative proposal that would exempt Federal Claims Court judges from the requirement that a Federal Employees Health Benefits Program enrollee must have been enrolled in the program for at least five years prior to retirement in order to continue participation after retirement, so that the impact of the section on non-Article III judges could be studied (JCUS-SEP 99, p. 46). This exemption is currently provided only to an Article III judge who retires on senior status or a bankruptcy or magistrate judge who is recalled under 28 U.S.C. § 375. After considering the views of the Bankruptcy and Magistrate Judges Committees, the Judicial Branch Committee recommended that the Conference support an amendment to the extent that it would except retired judges of the Court of Federal Claims who are recalled to perform judicial duties under
28 U.S.C. § 178(d) from the five-year prior enrollment requirement in order to participate in the Federal Employees Health Benefits Program. The Judicial Conference approved the recommendation.

COMMITTEE ON JUDICIAL RESOURCES

COMMITTEE ACTIVITIES

The Judicial Resources Committee made two recommendations to the Judicial Conference that were acted upon by the Executive Committee due to time constraints. One dealt with a request of the District of Minnesota that a previously approved additional temporary judgeship (JCUS-MAR 99, pp. 21-22) be excluded from the Conference's judgeship recommendations. *See supra,* "Miscellaneous Actions," pp. 8-9. The second involved modifications to Judicial Conference guidelines for administering the professional liability insurance reimbursement program (JCUS-SEP 99, pp. 66-67). *See supra,* "Professional Liability Insurance," p. 7.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

RECALL REGULATIONS

On recommendation of the Committee on the Administration of the Magistrate Judges System, the Judicial Conference approved amendments to section 13(a)-(d) of the *ad hoc* and extended service recall regulations for retired magistrate judges to provide that: (a) for full-time out-of-district recalls of one to three months, a recalled judge may claim subsistence expenses of no more than 75% of the maximum *per diem* for the location where the judge is recalled; (b) for full-time out-of-district recalls exceeding three months, a recalled judge may claim subsistence expenses of no more than 60% of the maximum *per diem* for the location where the judge is recalled; and (c) the Director of the Administrative Office may adjust the reimbursement limits where it is demonstrated that such limits are either too high or too low to compensate retired judges fairly for recall service in the designated location. The purpose of these amendments is to provide magistrate judges, district courts, and circuit judicial councils with advance knowledge of the extent to which expenses will be reimbursed for any proposed recall.

Also on recommendation of the Committee, the Conference amended section 13(e) of the *ad hoc* and extended service recall regulations to provide for Committee review of any new request for recall service in which the magistrate judge's salary and reimbursable travel and subsistence expenses are expected to exceed an annual total of $50,000. Such approval would provide a neutral evaluation of recall requests involving substantial expense to the judiciary.

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 Judicial Conference approved the following changes in positions, salaries, and arrangements for full-time and part-time magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

FOURTH CIRCUIT

District of Maryland

1. Increased the salary of the part-time magistrate judge position at Hagerstown from Level 4 ($32,749 per annum) to Level 2 ($54,582 per annum);

2. Increased the salary of the part-time magistrate judge position at Salisbury from Level 6 ($10,916 per annum) to Level 5 ($21,833 per annum);

3. Redesignated the two full-time magistrate judge positions currently designated as Greenbelt or Prince Georges Plaza as Greenbelt;

4. Redesignated the full-time magistrate judge position currently designated as Greenbelt, Baltimore or Prince Georges Plaza as Greenbelt or Baltimore; and

5. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

FIFTH CIRCUIT

Eastern District of Louisiana

Made no change in the number, location, or arrangements of the magistrate judge positions in the district.

Southern District of Mississippi

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

EIGHTH CIRCUIT

Northern District of Iowa

1. Designated the full-time magistrate judge position at Sioux City to serve in the adjoining District of Nebraska and District of South Dakota; and

2. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

District of Nebraska

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

District of North Dakota

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

NINTH CIRCUIT

District of Alaska

1. Increased the salary of the part-time magistrate judge position at Ketchikan

from Level 8 ($3,275 per annum) to Level 6 ($10,916 per annum); and

2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

Northern District of California

1. Authorized an additional full-time magistrate judge position at San Francisco or San Jose; and

2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

Southern District of California

1. Converted the part-time magistrate judge position at El Centro to full-time status; and

2. Made no change in the number, location, or arrangements of the other magistrate judge positions in the district.

District of Nevada

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

TENTH CIRCUIT

District of New Mexico

1. Authorized a part-time magistrate judge position at Roswell at Salary Level 7 ($5,458 per annum); and

2. Redesignated the part-time magistrate judge position currently designated as Clovis or Portales or Roswell as Clovis or Portales.

District of Utah

1. Increased the salary of the part-time magistrate judge position at Saint George from Level 4 ($32,749 per annum) to Level 2 ($54,582 per annum); and

2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

ELEVENTH CIRCUIT

Middle District of Alabama

Made no change in the number, location, or arrangements of the magistrate judge positions in the district.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders reported on the status of litigation arising from an order issued by the Judicial Council of the Fifth Circuit and affirmed by the Committee, imposing sanctions against a district judge.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it reviewed the status of a number of proposed rules changes and approved proposed amendments to the Appellate and Criminal Rules for publication and comment. The Committee also considered issues relating to rules governing attorney conduct and rules requiring non-governmental corporate parties to disclose financial interests, and embarked on a second comprehensive national local rules project.

COMMITTEE ON SECURITY AND FACILITIES

FIVE-YEAR COURTHOUSE PROJECT PLAN

After consultation with circuit judicial councils, the Committee on Security and Facilities proposed a five-year plan of courthouse construction projects for the fiscal years 2001-2005. The Judicial Conference approved the plan.

FEDERAL PROTECTIVE SERVICE REFORM ACT

Pursuant to 28 U.S.C. § 566(a), security for the federal judiciary is the responsibility of the United States Marshals Service (USMS). This responsibility overlaps with that of the General Services Administration's (GSA) Federal Protective Service in multi-tenant buildings housing both court and non-court units. To clarify the appropriate division of responsibility between these agencies, the Administrative Office, USMS, and GSA have executed a series of agreements relating to court security services which stipulate that the USMS provides security for federal judicial facilities, including many multi-tenant facilities that house court operations. In order to address concerns that certain provisions in the proposed Federal Protective Service Reform Act (H.R. 809, 106th Congress) could infringe upon the role of the USMS in providing security for the federal judiciary, on recommendation of the Committee, the Conference agreed to seek an amendment to the bill that would insert the following language as a new section 10 at the end of the bill:

> None of the provisions in this Act shall be construed to interfere with, supersede, or otherwise affect the authority of the United States Marshals Service to provide security for the federal judiciary pursuant to 28 U.S.C. § 566 *et seq*.

SPACE ACQUISITION AND RENOVATION ALTERNATIVES

Many courts exist in crowded, insecure, and functionally obsolescent facilities that, nonetheless, will never be included in a Five-Year Courthouse Project Plan. Some local courts have been receiving direct offers from private developers and the

United States Postal Service to form partnerships either to construct new courthouses or renovate existing court facilities in Postal Service-owned buildings. Recognizing the potential benefits of partnerships with the private sector, the Committee determined to explore this alternative further. In the interim, it recommended that the Conference approve the following policy with regard to space acquisition and renovation alternatives: (a) courts should advise their judicial councils and the Administrative Office as soon as they are approached by non-judiciary parties proposing and recommending repair, alteration, or replacement of court facilities; (b) courts should be advised that no financial commitment to any such proposal can be made by a court or council on behalf of the judiciary due to funding constraints; and (c) the Committee on Security and Facilities should begin development of a program to address the needs of courts retaining current facilities that need repairs or alterations to improve operational functions and/or security. The Conference adopted the Committee's recommendation.

UNITED STATES COURTS DESIGN GUIDE

Ballistic-Resistant Glazing. The 1997 edition of the *United States Courts Design Guide* requires UL Standard 752, Level VIII ballistic-resistant glazing for windows located in courtrooms and chambers at ground level, and Level III ballistic-resistant glazing for windows in courtrooms located above the ground floor. No special glazing is required for judges' chambers windows located above the ground floor. Based on ballistic testing showing that Level IV glazing provides adequate protection and is less costly than Level VIII, the Committee recommended that the Conference amend the *Design Guide* to provide that, for new construction or major renovation projects, the ballistic-resistant glazing standard for windows in all courtrooms and chambers, regardless of where they are located in the courthouse, be UL Standard 752, Level IV, unless the United States Marshals Service determines that ballistic-resistant glazing is not needed. The Conference adopted the Committee's recommendation.

Bookshelves in Chambers. The *United States Courts Design Guide* provides that the General Services Administration is responsible for funding all fixed furniture, including bookshelves in judges' chambers, while the judiciary is financially responsible for all movable furniture and equipment. In order to clarify GSA's funding responsibility for fixed bookcases with adjustable bookshelves, the Conference adopted a recommendation of the Committee to amend the *Design Guide* to strike the

word "bookshelves" from the language in Table 5.1 listing "movable" furniture.

Jury Boxes in Bankruptcy Courtrooms. The 1997 edition of the *United States Courts Design Guide* provides that every bankruptcy courtroom "must" accommodate an eight-person jury box. The Committee recommended that the *Design Guide* be amended to state that an eight-person jury box should be provided "when determined necessary," in order to clarify that jury boxes in bankruptcy courtrooms are not required in every new courthouse. The Conference voted to recommit the recommendation to the Security and Facilities Committee so that the Committee may obtain the views of the Committee on the Administration of the Bankruptcy System, provided that while the matter is under reconsideration, a moratorium will be imposed on the design or construction of jury boxes in new or existing bankruptcy courtrooms.

COURTROOM SHARING

The President's fiscal year 2001 budget request for seven courthouse construction projects includes a statement that the request "assumes courtroom sharing." The General Services Administration was directed by the Office of Management and Budget (OMB) to reduce the budget for each of the seven projects to reflect an OMB-generated policy on courtroom sharing that would allow only two courtrooms for every three judges, regardless of court type. OMB's position is in direct contradiction to a Judicial Conference policy on courtroom sharing that provides for one courtroom for each active district judge and specific guidelines to determine the number of courtrooms for senior and visiting judges (JCUS-MAR 97, pp. 17-18). The Judicial Conference policy, which was developed after analysis of two major studies on courtroom utilization and case management, recognizes the indispensable need for a courtroom to fulfill the essential judicial responsibilities of criminal trials, sentencing, and civil cases. Congress has provided OMB with no authority over the provision of courtrooms for federal judges or over the underlying policy governing courtroom utilization. Adopting a recommendation of the Committee on Security and Facilities, concurred in by the Committee on Court Administration and Case Management, the Judicial Conference strongly condemned the unilateral efforts of the Office of

Management and Budget to impose a courtroom sharing policy on the judicial branch, as an unwarranted and inappropriate intrusion into the constitutionally mandated independence of the judiciary.

MAIL BALLOT

By mail ballot concluded on December 3, 1999, the Conference approved for transmission to the Supreme Court an amendment to Rule 26(b)(2) of the Federal Rules of Civil Procedure dealing with presumptive national limits on depositions and interrogatories. *See* JCUS-SEP 99, p. 74.

FUNDING

All of the foregoing recommendations that require the expenditure of funds for implementation were approved by the Judicial Conference subject to the availability of funds and to whatever priorities the Conference might establish for the use of available resources.

Chief Justice of the United States
Presiding

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

September 19, 2000

The Judicial Conference of the United States convened in Washington, D.C., on September 19, 2000, 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 Juan R. Torruella
Judge Joseph A. DiClerico, Jr.,
District of New Hampshire

Second Circuit:

Chief Judge Ralph K. Winter, Jr.
Judge Charles P. Sifton,
Eastern District of New York

Third Circuit:

Chief Judge Edward R. Becker
Chief Judge Donald E. Ziegler,
Western District of Pennsylvania

Fourth Circuit:

Chief Judge J. Harvie Wilkinson III
Chief Judge Charles H. Haden II,
Southern District of West Virginia

Fifth Circuit:

Chief Judge Carolyn Dineen King
Judge Hayden W. Head, Jr.,
Southern District of Texas

Sixth Circuit:

Chief Judge Boyce F. Martin, Jr.
Judge Thomas A. Wiseman, Jr.,
Middle District of Tennessee

Seventh Circuit:

Chief Judge Joel M. Flaum
Judge Robert L. Miller, Jr.,
Northern District of Indiana

Eighth Circuit:

Chief Judge Roger L. Wollman
Judge James M. Rosenbaum,
District of Minnesota

Ninth Circuit:

Chief Judge Procter Hug, Jr.
Judge Judith N. Keep,
Southern District of California

Tenth Circuit:

Chief Judge Stephanie K. Seymour
Judge Ralph G. Thompson,
Western District of Oklahoma

Eleventh Circuit:

Chief Judge R. Lanier Anderson III
Chief Judge Charles R. Butler, Jr.,
Southern District of Alabama

District of Columbia Circuit:

Chief Judge Harry T. Edwards
Judge Thomas F. Hogan,[1]
District of Columbia

Federal Circuit:

Chief Judge Haldane Robert Mayer

Court of International Trade:

Chief Judge Gregory W. Carman

Circuit Judges W. Eugene Davis, Dennis G. Jacobs, Paul V. Niemeyer, Jane R. Roth, Anthony J. Scirica, and Walter K. Stapleton, and District Judges Carol Bagley Amon, Lourdes G. Baird, Robin J. Cauthron, John G. Heyburn II, D. Brock Hornby, Michael J. Melloy, Edwin L. Nelson, and Harvey E. Schlesinger attended the Conference session. Jan Horbaly of the Federal Circuit represented the Circuit Executives.

Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director for Management and Operations; William R. Burchill, Jr., Associate Director and General Counsel; Karen K. Siegel, Assistant Director, Judicial Conference Executive Secretariat; Michael W. Blommer, Assistant Director, Legislative Affairs; David Sellers, Assistant Director, Public Affairs; and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat. Judge Fern Smith and Russell Wheeler, Director and Deputy Director of the Federal Judicial Center, also attended the session of the Conference, as did

[1]Designated by the Chief Justice.

Sally Rider, Administrative Assistant to the Chief Justice, and judicial fellows L. Karl Branting, Jill E. Evans, Barry T. Ryan, and Jennifer A. Segal.

Senators Orrin Hatch and Patrick Leahy and Representative Howard Coble spoke on matters pending in Congress of interest to the Conference. Attorney General Janet Reno and Solicitor General Seth P. Waxman addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice.

REPORTS

Mr. Mecham reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office. Judge Smith spoke to the Conference about Federal Judicial Center programs, and Judge Diana E. Murphy, Chair of the United States Sentencing Commission, reported on Sentencing Commission activities.

EXECUTIVE COMMITTEE

RESOLUTIONS

The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution in recognition of the substantial contributions made by Judicial Conference committee chairs who complete their terms of service in 2000:

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

HONORABLE RALPH K. WINTER, JR.
Executive Committee

HONORABLE EDWARD B. DAVIS
Committee on the Administrative Office

HONORABLE EDWARD W. NOTTINGHAM
Committee on Automation and Technology

HONORABLE D. BROCK HORNBY
Committee on Court Administration and Case Management

HONORABLE STANLEY S. HARRIS
Committee on Intercircuit Assignments

HONORABLE ADRIAN G. DUPLANTIER
Advisory Committee on the Rules of Bankruptcy Procedure

HONORABLE PAUL V. NIEMEYER
Advisory Committee on the Rules of Civil Procedure

Appointed as committee chairs by Chief Justice William H. Rehnquist, these outstanding jurists have played a vital role in the administration of the federal court system. These judges served with distinction as leaders of their Judicial Conference committees while, at the same time, continuing to perform their duties as judges in their own courts. They have set a standard of skilled leadership and earned our deep respect and sincere gratitude for their innumerable contributions. We acknowledge with appreciation their commitment and dedicated service to the Judicial Conference and to the entire federal judiciary.

* * * * *

The Executive Committee approved on behalf of the Conference the following resolution in appreciation of Chief Judge Ralph K. Winter's outstanding service as Chair of the Executive Committee:

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

RALPH K. WINTER, JR.

Chief Judge of the United States Court of Appeals for the Second Circuit and member of this Conference, for his outstanding, insightful and politically astute leadership as Chair of the

Executive Committee since October 1, 1999. At the time Judge Winter joined the Conference in July 1997, and the Executive Committee in April 1998, he had already provided years of invaluable service to the Conference as Chair of the Advisory Committee on the Federal Rules of Evidence and as a member of the Civil Rules Committee. Although his tenure as Chair of the Executive Committee was relatively brief, he led that Committee through many complex issues with clarity of purpose and with distinction. One of the most significant issues he addressed concerned a request from a news organization for the release of financial disclosure reports of Article III and magistrate judges so that the requester could post those reports on the Internet. In coordination with the Committees on Financial Disclosure, Codes of Conduct, and Security and Facilities, Judge Winter ably led the Executive Committee in seeking a course for the Conference that would accommodate public access to information regarding the financial interests of judicial officers, in full compliance with the Ethics in Government Act of 1978, and at the same time ensure the safety and security of judges and their families.

Judge Winter's confident leadership, firm resolve, and spirit of openness fostered understanding and mutual respect for differing opinions, enabling a satisfactory conclusion to this difficult issue and numerous others before the Executive Committee in the past year. All the while, Judge Winter displayed his characteristic warmth and keen sense of humor.

As he leaves the chair of the Executive Committee and membership on the Judicial Conference, we offer to Judge Winter our heartfelt gratitude and express our sincere hope that our paths will continue to cross frequently. With best wishes to him and his wife, Katherine, for happy, healthy years ahead.

* * * * *

On behalf of the Conference, the Executive Committee approved the following resolution in appreciation of the support and service of the Honorable Henry J. Hyde:

September 19, 2000

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

HENRY J. HYDE

Member of Congress representing the Sixth District of Illinois since 1974, Chairman of the Committee on the Judiciary of the United States House of Representatives since 1994, and long-time friend and steadfast supporter of the federal judiciary.

Henry Hyde began his career in service to his country in 1942, when immediately after graduation from St. George High School in Evanston, Illinois, he enlisted in the United States Navy. A combat veteran of World War II, he retired as a Commander in the United States Naval Reserve in 1968. Graduating from Georgetown University in 1947, Mr. Hyde went on to attend Loyola University School of Law, receiving a *juris doctor* degree in 1949. After nearly two decades as a trial attorney in Chicago, and eight years as a state representative in the Illinois General Assembly, including service as its Majority Leader, the citizens of the Sixth District elected him as their representative in the United States Congress.

After twenty-six years of distinguished service in the House of Representatives, Henry Hyde has become a respected leader of national prominence. He is widely admired for his honesty and sound judgment, unfailingly displayed with humor and civility.

The Judicial Conference particularly recognizes Chairman Hyde's long and distinguished service on the Committee on the Judiciary. His record of accomplishments there bears witness to an unwavering respect for the Constitution of the United States and an abiding belief in the rule of law. Henry Hyde is sensitive to the position of the Judicial Conference on legislation affecting the judiciary, and on such matters, has been a source of wise counsel to judges. He recognizes the independence of the judicial branch, has vigorously supported improvements in the administration of justice, and has worked to provide appropriate and equitable compensation and benefits to judges and their staffs.

The legacy of the Honorable Henry Hyde, as a Member of Congress, as a leader of the Committee on the Judiciary, and as a valued friend to the federal judiciary will endure for many years to come.

JUDICIAL EDUCATION REFORM ACT

The Judicial Education Reform Act of 2000 (S. 2990, 106th Congress) would prohibit federal judges from accepting "anything of value in connection with a seminar" and give the Board of the Federal Judicial Center the power to authorize government funding for judges to attend only those "seminars that are conducted in a manner so as to maintain the public's confidence in an unbiased and fair-minded judiciary." The bill was introduced after a private organization issued a report critical of judges attending private educational seminars at the expense of the seminar sponsors. Although recognizing the need for maintaining public trust and confidence in the federal courts, the Executive Committee raised serious concerns about the proposed legislation, noting that it represented an inappropriate response to a highly complex issue. After discussion, the Judicial Conference approved an Executive Committee recommendation that the Conference communicate to Congress the following views on the proposed legislation:

a. S. 2990 (106th Congress) is overly broad; would have unintended consequences, such as prohibiting federal judges from reimbursed attendance at bar association meetings and law school seminars; raises potential constitutional issues, such as imposing an undue burden on speech; and would mandate an inappropriate censorship role for the Federal Judicial Center;

b. The proposed legislation raises a number of serious issues that deserve due consideration, including congressional hearings and an opportunity for the Judicial Conference to study and comment upon those issues and to take such action as is necessary and appropriate; and

c. In its present form the Judicial Conference of the United States opposes S. 2990.

FINANCIAL DISCLOSURE REPORTS

At its March 2000 session, the Judicial Conference approved an Executive Committee recommendation concerning the public release of financial disclosure reports and the processing of requests for the redaction of certain information from those reports for security reasons (JCUS-MAR 00, pp. 4-6). This action necessitated revision of the Regulations of the Judicial Conference of the United States on Access to Financial Disclosure Reports Filed by Judges and Judiciary Employees Under the Ethics in Government Act of 1978, as Amended. The Executive Committee, in consultation with the chairs of the Committees on Codes of Conduct and Security and Facilities and the full Financial Disclosure Committee, drafted modifications to the regulations — including an appellate mechanism involving a redaction review panel — and, after opportunity for review by the Department of Justice, transmitted them to the Judicial Conference for ratification. The regulations were unanimously approved by the Conference (with one member not voting) by mail ballot concluded on May 3, 2000. Shortly thereafter, the Executive Committee approved further amendments permitting redaction of information that would reveal either the location of a residence of the filer or of a family member or the place of employment of the filer. S*ee also infra,* "Financial Disclosure Reports," p. 53.

FEDERAL EMPLOYEES' GROUP LIFE INSURANCE

Prior to October 1998, Article III judges had the exclusive right to carry full Federal Employees' Group Life Insurance (FEGLI) coverage into retirement, and many relied on this coverage in developing their financial and estate plans. In 1998, after Congress enacted legislation expanding this benefit to all federal employees, the Office of Personnel Management proposed rate changes in FEGLI premiums that would significantly increase for judges the cost of maintaining the insurance and, for older judges, make continued coverage prohibitively expensive. To minimize the impact of this regulatory change, Congress enacted legislation, Public Law No. 106-113 (the "FEGLI fix"), authorizing the Director of the Administrative Office, on direction of the Judicial Conference, to pay the cost of any increase. Advised that Congress was considering extending the FEGLI fix to United States bankruptcy judges and United States magistrate judges, the Executive Committee, on behalf of the Conference, took the following position:

The "FEGLI fix" was enacted in order to allow Article III judges to continue to carry full Federal Employees' Group Life Insurance coverage into retirement. The "fix" was critical in maintaining the *status quo* for Article III judges, who were in peril of losing a long-time benefit—applicable only to life-tenured federal judges—upon which many of them had come to rely as the keystone of their financial and estate planning.

The Executive Committee of the Judicial Conference recently became aware of proposed legislation that would include United States bankruptcy judges and United States magistrate judges within the "FEGLI fix." Whether the "fix" should be extended beyond the Article III judiciary is an extremely complex issue that could have potential impact beyond the Third Branch. Accordingly, the Executive Committee respectfully requests that Congress defer action on this issue until a complete review and discussion can be had within the judicial branch, and also between the judiciary and the other two branches.

See also infra, "Federal Employees' Group Life Insurance," pp. 54-55.

MISCELLANEOUS ACTIONS

The Executive Committee—

- Approved proposed interim financial plans for fiscal year 2001 for the Salaries and Expenses, Defender Services, Fees of Jurors and Commissioners, and Court Security accounts, based on the Senate allowance for direct appropriations, as well as fee collections and carryover balances, and authorized the Director of the Administrative Office to make technical and other adjustments as deemed necessary.

- Approved a recommendation of the Defender Services Committee for prospective implementation of a $75 per hour rate for in-court and out-of-court work performed by Criminal Justice Act (CJA) panel attorneys representing Terry Lynn Nichols, who was convicted in connection with the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City, in his 28 U.S.C. § 2255 motion.

- Agreed to continue to promote the September 1999 Conference position on a bankruptcy appellate structure (JCUS-SEP 99, p. 44-45) and to a fallback position that could be used in negotiations with Congress, if necessary.

- On recommendation of the Defender Services Committee, approved modifications to the Guidelines for the Administration of the Criminal Justice Act and Related Statutes to implement the provisions of the Civil Asset Forfeiture Reform Act of 2000, Public Law No. 106-185, relating to the appointment and compensation of counsel on behalf of certain claimants in judicial civil forfeiture proceedings.

- Approved a recommendation of the Court Administration and Case Management Committee that legislation be sought to designate Springfield as a place of holding court in the District of Oregon.

- Agreed to release non-resident court facilities in Auburn in the Northern District of New York, and Jasper in the Northern District of Alabama, as recommended by the Committee on Security and Facilities.

- Approved, with a minor modification, a revised jurisdictional statement proposed by the Committee on the Administration of the Bankruptcy System.

- Declined to delegate to the Court Administration and Case Management Committee the authority to approve the final draft of the "Manual for Litigation Management and Cost and Delay Reduction," which the Civil Justice Reform Act of 1990 requires the Conference to prepare.

- Approved, on recommendation of the Committee on Judicial Resources and in anticipation of the approval of new court staffing formulae by the Judicial Conference in September 2000, a staffing formula transition plan to provide as smooth a transition as possible. *See also infra,* "Staffing Formulae," pp. 56-57.

- On recommendation of the Committee on the Administration of the Magistrate Judges System, granted a waiver of the selection and appointment regulations to allow the service of two non-resident members on the merit selection panel considering applicants for a vacant magistrate judge position at Newark, New Jersey.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it reviewed the status of several major initiatives and studies undertaken by the Administrative Office. It noted particularly the successful implementation of supplemental benefits programs. The Committee received a comprehensive briefing on the Administrative Office's information technology program, including updates on the planned introduction of new case management/electronic case files (CM/ECF) systems, the use of courtroom technologies, and information technology training and support activities.

COMMITTEE ON AUTOMATION AND TECHNOLOGY

COMMITTEE ACTIVITIES

The Committee on Automation and Technology reported that it discussed the progress of an ongoing study of law books and libraries being conducted under the auspices of its Subcommittee on Library Programs. The Committee also reaffirmed its strong support of the new CM/ECF systems under development as the preferred case management applications for the judiciary; discussed preliminary directions of an independent, comprehensive study of the judiciary's national information technology program that it is jointly sponsoring with the Director of the Administrative Office; and received updates on a number of information technology issues.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

BANKRUPTCY JUDGESHIPS

In accordance with 28 U.S.C. § 152(b)(3), the Judicial Conference conducts a comprehensive review of all judicial districts every other year to assess the continuing need for all authorized bankruptcy judgeships. By December 31 of each even-numbered year, the Conference reports its recommendations to

Congress for the elimination of any authorized bankruptcy judgeship position that can be eliminated when a vacancy exists by reason of resignation, retirement, removal, or death. As a result of the 2000 continuing need survey, the Committee on the Administration of the Bankruptcy System recommended, and the Judicial Conference agreed, that the Conference take the following actions:

a. Recommend to Congress that no bankruptcy judgeship be statutorily eliminated;

b. Advise the First, Eighth, and Ninth Circuit Judicial Councils to consider not filling vacancies in the District of Maine, the District of South Dakota and the Northern District of Iowa, and the District of Alaska (respectively) that currently exist or may occur by reason of resignation, retirement, removal, or death, until there is a demonstrated need to do so; and

c. Advise the Eighth Circuit Judicial Council that, if a vacancy were to occur in the State of Iowa by reason of resignation, retirement, removal, or death of a bankruptcy judge, it should authorize the three remaining Iowa bankruptcy judges to administer cases within both Iowa districts.

REAPPOINTMENT OF BANKRUPTCY JUDGES

In March 1997, the Judicial Conference adopted a new chapter 5 to the Regulations of the Judicial Conference of the United States for the Selection, Appointment, and Reappointment of United States Bankruptcy Judges to provide for reappointment of incumbent bankruptcy judges without subjecting them to the full application and merit screening process required of candidates for new positions (JCUS-MAR 97, p. 13). Recently, concerns have been raised by some courts of appeals about the difficulty of complying with the time frames set forth in chapter 5 when questions arise about an incumbent's suitability. To address these concerns, the Conference, on recommendation of the Committee, adopted amendments to chapter 5 that provide courts of appeals with the flexibility to extend the time frames in appropriate cases and to require as much as 12 months advance written notice of a judge's willingness to accept reappointment. In addition, the Conference approved a recommendation of the Committee to add

language to chapter 5 that clarifies the long-standing view that the selection, appointment, and reappointment regulations set forth procedural guidelines that create no vested rights for any incumbent or prospective bankruptcy judge.

PLACE OF HOLDING BANKRUPTCY COURT

At the request of the Western District of North Carolina and the Fourth Circuit Judicial Council, and in accordance with 28 U.S.C. § 152(b)(1), the Committee on the Administration of the Bankruptcy System recommended, and the Judicial Conference approved, the designation of Wilkesboro as an additional place of holding bankruptcy court and the deletion of Statesville as a place of holding bankruptcy court in the Western District of North Carolina.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Bankruptcy System reported that it recommended for further study a number of policy options regarding privacy and public access to electronic case files for possible adoption by the judiciary. In addition, the Committee determined that the recommendations of the National Bankruptcy Review Commission concerning the treatment of mass future claims in bankruptcy merit further study. With regard to space and facilities issues, the Committee agreed to communicate to the Committee on Security and Facilities that it concurred in the view that bankruptcy courtrooms do not normally require a jury box unless there is a demonstrated need and that it opposed mandatory courtroom sharing for judges.

COMMITTEE ON THE BUDGET

FISCAL YEAR 2002 BUDGET REQUEST

In recognition of congressional budget constraints, the Budget Committee recommended a fiscal year 2002 budget request that is lower than the funding levels proposed by the program committees. The Judicial Conference approved the request, with one modification, subject to amendments necessary as a result of new legislation, actions of the Judicial Conference, or other reasons the Director of the Administrative Office considers necessary and appropriate. The request

was modified by adoption of a recommendation of the Defender Services Committee to increase the CJA panel attorney hourly rate to $113 for both in-court and out-of-court time. (The Budget Committee had recommended $85 for in-court time and $75 for out-of-court time.) The $113 rate reflects implementation of a $75 per hour rate approved by the Conference but not yet implemented in most districts, adjusted by cost-of-living salary increases granted between 1988 and 2002 to most federal employees. *See infra*, "Panel Attorney Compensation," p. 50.

COMMITTEE ACTIVITIES

The Committee on the Budget reported that the new staffing formulae for court support offices (*see infra*, "Staffing Formulae," pp. 56-57) were incorporated into the fiscal year 2002 budget request and commended the efforts taken in completing the formula revisions. The Committee was briefed on the updating of existing court allotment formulae in non-personnel areas and the development of a methodology for allotting funds in spending categories for which no formulae previously existed. The Committee also reported that long-range planning and budgeting will be a focal point at its January 2001 meeting.

COMMITTEE ON CODES OF CONDUCT

CODE OF CONDUCT FOR UNITED STATES JUDGES

To clarify that the Code of Conduct for United States Judges applies to senior judges, whether or not they are actually performing judicial duties, the Judicial Conference adopted a recommendation of the Committee on Codes of Conduct to amend the first sentence of the Compliance Section of the Code as follows (new language in bold; language to be omitted is struck through):

> Anyone who is an officer of the federal judicial system ~~performing~~ **authorized to perform** judicial functions is a judge for the purpose of this Code.

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Conference in March 2000, the Committee received 31 new written inquiries and issued 31 written advisory responses with an average response time of 18 days. The Chairman received and responded to 29 telephonic inquiries, and individual Committee members responded to 147 inquiries from their colleagues.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

ACCESS TO LOCAL RULES

On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference agreed to adopt a proposal, also endorsed by the Committee on Rules of Practice and Procedure, that the Conference encourage courts to post their local rules on Internet websites, which would then be linked to the judiciary's external website. The intent of this proposal is to create a single source for all local rules that is easily accessible by the bench, bar, and public. Specifically, the Conference agreed to—

a. Encourage appellate, district and bankruptcy courts to (1) post their local rules on their own websites by July 1, 2001, and if they do not have a website, to develop one, if only to post their local rules; (2) establish a local rules icon or post their local rules in a prominent location on their websites, to which a user could have ready access; and (3) include a uniform statement indicating that the rules are current as of a date certain; and

b. Direct the Administrative Office to link local court websites to its federal rules Internet web page.

JURY SELECTION AND SERVICE ACT

Under the Jury Selection and Service Act, 28 U.S.C. § 1864 *et seq.*, for the traditional two-step jury selection process, individuals who fail to respond to the

qualification questionnaire "may" be called into court to fill out the form (28 U.S.C. § 1864(a)), while those who fail to respond to a summons "shall" be ordered into court to show cause for their non-compliance (28 U.S.C. § 1866(g)). A number of courts utilize a one-step jury selection process, a procedure whereby qualification questionnaires and summonses are sent out simultaneously. In order to limit challenges to the one-step process based on a court's failure to take action against persons who do not respond to the one-step juror qualification questionnaires and summonses, the Court Administration and Case Management Committee recommended that the Judicial Conference endorse an amendment to § 1866(g) to change the statute's language from "shall" to "may." This is in keeping with § 1878(b), which provides that "no challenge ... shall lie solely on the basis that a jury was selected in accordance with a one-step summoning and qualification procedure," and would allow courts to determine locally the extent of enforcement for failure to respond to either the one- or two-step summons. The Judicial Conference approved the recommendation to seek amendment of the first sentence of 28 U.S.C. § 1866(g) as follows (new language in bold; language to be omitted is struck through):

> (g) Any person summoned for jury service who fails to appear as directed **may** ~~shall~~ be ordered by the district court to appear forthwith and show cause for ~~his~~ failure to comply with the summons.

JUROR QUALIFICATION QUESTIONNAIRE

Two substantial changes were made in the 2000 census regarding the collection of data on race. First, the major racial groups were expanded from five to six by separating "Asian and Pacific Islander" into "Asian" and "Native Hawaiians and other Pacific Islanders," and second, individuals who consider themselves multi-racial could be so categorized. To continue the practice of having the juror qualification questionnaire track the census forms, the Court Administration and Case Management Committee recommended that the question on the questionnaire dealing with race be amended to reflect the census changes. In addition, the Committee recommended that separate questions regarding race and ethnicity be merged. The Conference adopted the Committee's recommendation to revise the juror qualification questionnaire to read as set forth below. The Conference also directed the Administrative Office to make implementing changes to its Form JS-12 "Report on the Operation of the Jury

Selection Plan," which collects juror representation statistics, and if necessary, to the juror qualification form.

10. RACE/ETHNICITY

a. To assist in ensuring that all people are represented on juries, please fill in completely one or more circles which describe you. (See Note on reverse side.) Nothing disclosed will affect your selection for jury service.

- -Black
- -Asian
- -Native American Indian
- -White
- -Native Hawaiian/Pacific Islander
- -Other (specify) _____

b. Are you Hispanic? • -yes • -no

ELECTRONIC PUBLIC ACCESS FEES

In September 1998, the Judicial Conference amended the miscellaneous fee schedules for the appellate, district and bankruptcy courts, the United States Court of Federal Claims, and the Judicial Panel on Multidistrict Litigation (promulgated pursuant to 28 U.S.C. §§ 1913, 1914, 1926, 1930, and 1932) to establish a fee of $.07 per Internet page for information obtained through the public access to court electronic records (PACER) system (JCUS-SEP 98, pp. 64-65). In order to clarify that this fee was intended to apply to all case-related documents obtained electronically via the Internet, and not merely docket sheets, the Conference adopted a recommendation of the Committee to amend the language of subpart (a) of the addendum to those miscellaneous fee schedules as follows (new language in bold; language to be omitted is struck through):

(a) The Judicial Conference has prescribed a fee for access to court data obtained electronically from the public ~~dockets~~ **records** of individual case**s** ~~records~~ in the court, **including filed documents and the docket sheet,** except as provided below.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it discussed a number of issues, including the development of a proposed privacy policy for the judiciary by its Subcommittee on Privacy and Electronic Access to Case Files; the prisoner civil rights pretrial proceedings videoconferencing program and the growth of videoconferencing in the district courts; the litigation management manual that is being drafted pursuant to a requirement of the Civil Justice Reform Act of 1990; and the Committee's role in long-range planning and budgeting. In addition, the Committee discussed the implementation of Recommendation 73 of the judiciary's *Long Range Plan for the Federal Courts*, which calls for the federal courts to expand their data-collection and information-gathering capacity to obtain better data for judicial administration.

COMMITTEE ON CRIMINAL LAW

FINE AND RESTITUTION MONOGRAPH

On recommendation of the Committee on Criminal Law, the Judicial Conference approved for publication and distribution to the courts a new monograph, *Criminal Monetary Penalties: A Guide to the Probation Officer's Role* (Monograph 114), including revised forms for judgments in criminal cases (AO 245B-245I). The monograph consolidates existing policies; provides uniform procedures on the imposition, collection, and enforcement of criminal monetary penalties; and establishes a closer nexus between already-established policy in this area and any Federal Judicial Center financial investigation training.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported on the status of a comprehensive assessment of the probation and pretrial services system and the establishment of an ad hoc working group to review probation and pretrial services supervision. The Committee also reported that it has been working with the Committee on Court Administration and Case Management to consider whether access to public records through the Internet requires changes in existing

judiciary policies. The Committee is reviewing policy alternatives for electronic access to criminal files, along with the associated implications.

COMMITTEE ON DEFENDER SERVICES

PANEL ATTORNEY COMPENSATION

In 1986, Congress amended paragraph (1) of subsection (d) of the Criminal Justice Act, 18 U.S.C. § 3006A, to authorize the Judicial Conference to increase the $60 in-court/$40 out-of-court panel attorney hourly rates to $75 where justified for individual circuits and districts, and beginning in 1990, to make annual adjustments to the maximum hourly rates based on cost-of-living pay increases granted by statute to most federal employees. The Judicial Conference has approved the $75 rate for all judicial districts. However, due to budgetary and congressional constraints, the panel attorney rates authorized by statute and Conference action have yet to be fully implemented.[2] Noting the eroding effect of inflation on currently established rates, the discrepancy between panel attorney rates and rates paid by the government to counsel for other purposes, and the already-established policy of the Conference that panel attorneys should receive compensation that covers "reasonable overhead and a fair hourly fee," the Defender Services Committee recommended that the Judicial Conference seek for fiscal year 2002 an authorized hourly rate for panel attorneys of $113 for both in- and out-of-court time to reflect implementation of the $75 hourly rate and employee salary cost-of-living adjustments from 1988 to 2002. This recommendation conflicted with the fiscal year 2002 budget request endorsed by the Budget Committee. *See supra*, "Fiscal Year 2002 Budget Request," pp. 44-45. The Conference approved the Defender Services Committee's recommendation and modified the fiscal year 2002 budget request accordingly.

[2]In 1990, the Judicial Conference implemented higher rates up to $75 in all or part of 16 districts. Subsequently, through fiscal year 2000, Congress has authorized two $5 increases, resulting in hourly rates of $70 in-court/$50 out-of-court in most districts.

STUDENT LOAN FORGIVENESS

A student loan forgiveness program of the Department of Education, the Federal Perkins Loan Program, has been interpreted to include prosecuting attorneys, but not federal defenders. In order to maintain the parity established in the Criminal Justice Act with respect to the compensation of prosecuting attorneys and federal defenders, the Judicial Conference approved a Defender Services Committee recommendation that it support legislation that would provide federal defenders with the same eligibility for student loan forgiveness as is granted to their counterparts in United States attorney offices.

COMMITTEE ACTIVITIES

Under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), the Defender Services Committee approved increases totaling $1,656,000 for the fiscal year 2000 budgets of three federal public defender organizations.

The Committee also reported that it approved a strategic plan outline that defines the mission and goals for the judiciary's implementation and management of the CJA, and includes both strategies for accomplishing the program goals and performance measures to determine the degree to which each strategy meets its targeted goal. The Committee reviewed a report on federal defender and panel attorney training events in fiscal year 2000, and approved plans for training in fiscal year 2001, subject to the availability of funding. The Committee also recommended and obtained expedited approval by the Executive Committee, on behalf of the Judicial Conference, of revisions to the CJA Guidelines to reflect the authorization provided in the Civil Asset Forfeiture Reform Act of 2000, Public Law No. 106-185, for appointment of counsel, to be paid at CJA rates, for representation in certain civil forfeiture proceedings. *See supra*, "Miscellaneous Actions," pp. 40-41.

COMMITTEE ON FEDERAL-STATE JURISDICTION

FIFTH AMENDMENT TAKINGS CASES

District courts and the United States Court of Federal Claims generally have concurrent jurisdiction over Fifth Amendment takings claims. However, equitable relief (*e.g.*, injunctive and declaratory relief) in such cases is only available in district court pursuant to 28 U.S.C. § 1346(a)(2) (known as the Little Tucker Act), and monetary relief exceeding $10,000 is only available in the Court of Federal Claims pursuant to 28 U.S.C. § 1491 (Tucker Act). As a result, it is sometimes necessary for litigants to file actions in both courts in order to obtain equitable and monetary relief. For the past several years, some members of Congress have sought to address this situation through legislation that would make complete relief available in both courts by expanding the jurisdiction and remedial powers of the Court of Federal Claims, as well as the jurisdiction of district courts over monetary claims exceeding $10,000. The Judicial Conference is opposed to such jurisdictional expansion in the Court of Federal Claims (JCUS-MAR 92, pp. 22-23; JCUS-SEP 95, pp. 82-83) and has repeatedly informed Congress of its concerns with that approach. Given the continuing efforts in Congress to resolve the so-called Tucker Act "shuffle," the Committee on Federal-State Jurisdiction recommended that the Conference take the position that if Congress determines to provide complete relief for the resolution of Fifth Amendment takings claims in one judicial forum, then that forum should be an Article III court, and the present jurisdictional monetary ceiling of $10,000 for such claims brought under 28 U.S.C. § 1346 should be eliminated. The Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that its members had substantial concerns with provisions of the Innocence Protection Act of 2000 (S. 2690 and H.R. 4167, 106th Congress) that would place new responsibilities on the Director of the Administrative Office to promulgate regulations specifying the elements of an effective system for providing competent legal services to indigents in state capital cases and to award grants to provide defense services in state capital cases. The Committee determined to pursue further these and other issues raised in such bills after consulting with other interested Conference committees. The Committee also discussed the Federalization of Crimes Uniform

Standards Act of 2000 (H.R. 4544, 106th Congress), the Small Business Liability Reform Act of 2000 (H.R. 2366, 106th Congress), and several mass tort and class action issues.

COMMITTEE ON FINANCIAL DISCLOSURE

FINANCIAL DISCLOSURE REPORTS

In May 2000, the Judicial Conference approved revisions to the Regulations of the Judicial Conference of the United States on Access to Financial Disclosure Reports Filed by Judges and Judiciary Employees Under the Ethics in Government Act of 1978, as Amended, setting forth procedures for the redaction of information from financial disclosure reports that is otherwise confidential and could endanger the filer or other person if obtained by a member of the public hostile to the filer. *See supra*, " Financial Disclosure Reports,"
p. 39. Noting that a filer's request for redaction may also contain sensitive and personal information that could endanger the filer if made public, the Committee on Financial Disclosure recommended that the Conference amend the regulations to provide that a filer's request for redaction and its supporting documents, except for copies of the financial disclosure report or amendments thereto, are confidential and will only be used to determine whether to grant a request for redaction. Such documents are not considered to be a part of any report releasable under section 105(b)(1) of the Act. The Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that as of July 15, 2000, the Committee had received and reviewed 3,214 financial disclosure reports and certifications for the calendar year 1999, including 1,217 reports and certifications from Supreme Court Justices, Article III judges, and judicial officers of national courts; 335 from bankruptcy judges; 481 from magistrate judges; and 1,181 from judicial employees.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that during the period from January 1, 2000, to June 30, 2000, a total of 101 intercircuit assignments, undertaken by 70 Article III judges, were processed and recommended by the Committee and approved by the Chief Justice. In addition, the Committee aided courts requesting assistance by both identifying and obtaining judges willing to take assignments.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its participation in a World Bank conference on legal and judicial reform held in Washington, D.C., on June 5-7, 2000, and its involvement in rule-of-law programs in or with delegations from Africa, Asia, Europe, and Latin America. The Committee also reported on the revision of its strategic plan, and its plans to use a web-based questionnaire to update its database of federal judges, court administrators, and federal defenders interested in assisting foreign judiciaries and organizations involved in international judicial reform and the rule of law. The database is used to make referrals to organizations requesting judicial assistance in the United States and abroad.

COMMITTEE ON THE JUDICIAL BRANCH

FEDERAL EMPLOYEES' GROUP LIFE INSURANCE

In November 1999, legislation was enacted to mitigate the effect of a proposal by the Office of Personnel Management to double the Federal Employees' Group Life Insurance premiums for judges aged 65 and above (Public Law No. 106-113). This legislation authorized the Director of the Administrative Office, as directed by the Judicial Conference, to pay the cost of any such increase on behalf of Article III judges. To implement this new law and ensure that Article III judges retain the full value of their FEGLI benefits, which many judges have

come to rely upon as the centerpiece of their estate plans, the Committee on the Judicial Branch recommended that the Judicial Conference authorize payment on behalf of (a) all active Article III judges aged 65 and above, (b) senior judges retired under 28 U.S.C. § 371(b) or 372(a), and (c) judges retired under 28 U.S.C. § 371(a) who are enrolled in the program, of the full amount of any increases in the cost (and any expenses associated with such payments) of the judges' insurance imposed after April 24, 1999. The Conference adopted the Committee's recommendation. *See also supra*, "Federal Employees' Group Life Insurance," pp. 39-40.

TRAVEL REGULATIONS FOR UNITED STATES JUSTICES AND JUDGES

Filing of Travel Vouchers. On recommendation of the Judicial Branch Committee, the Judicial Conference approved an amendment to the Travel Regulations for United States Justices and Judges to establish a time limit for judges' submission of claims for reimbursement of travel expenses. The revised regulations require judges to submit claims for reimbursement within 90 days after the official travel is completed. The Director of the Administrative Office may make exceptions when necessary to meet special circumstances or in the best interest of the government.

Reimbursement for Day-of-Return Expenses. The Travel Regulations for United States Justices and Judges have sometimes been understood to preclude a judge from claiming reimbursement for actual expenses on the day of return from travel. At this session, the Judicial Conference adopted a recommendation of the Judicial Branch Committee to amend the judges' travel regulations to provide that on the day of return to his or her official duty station or residence, a judge may (a) claim a per diem allowance for meals and other expenses of $46, or (b) itemize meals and other subsistence expenses up to a daily maximum of $100.

Non-Case Related Travel. At its September 1999 session, the Judicial Conference adopted regulations for the reporting of non-case related travel that instructed judges to file their reports using a draft form set out in an appendix (JCUS-SEP 99, p. 65). That form has now been replaced by an electronic system, the "Judges' Non-Case Related Travel Reporting System," which not only allows judges to report electronically such travel, but also allows a chief judge to have access to a court's reports in chambers. On recommendation of the Committee,

the Conference agreed to amend the travel regulations to (a) refer to the automated Judges' Non-Case Related Travel Reporting System in lieu of the draft reporting form; and (b) authorize the Director, without further Conference approval, to make conforming changes to the judges' travel regulations should the title or website address of the Judges' Non-Case Related Travel Reporting System change.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported on the status of its efforts to secure cost-of-living and locality pay adjustments for judges, and the difficulties the judiciary is facing, particularly with regard to retention and recruitment, as a result of woefully inadequate judicial salaries and the lure of private sector compensation. The Committee also reported on, among other matters, the judiciary's benefits initiatives and the status of two cases raising issues concerning taxation of judicial compensation.

COMMITTEE ON JUDICIAL RESOURCES

STAFFING FORMULAE

The judiciary's requests for funding of staff positions for court support offices are based on staffing formulae which had not been updated since the early 1990s. At the direction of the Judicial Resources Committee, comprehensive work measurement studies were undertaken in court support offices, and proposed staffing formulae were developed which, nationwide, reflect all the work performed in these offices. The new formulae, while not expected to reflect all possible situations due to varying managerial styles, operating environments, and priorities, will provide adequate support for the workload in each office in the aggregate, and decentralized budgeting allows local managers to exercise the authority to assign and prioritize work requirements as necessary. On recommendation of the Committee, the Judicial Conference approved proposed staffing formulae for the appellate court units and circuit offices, the district clerks' offices, the district court pro se law clerk offices, the probation and pretrial services offices, and the bankruptcy clerks' offices, for implementation in fiscal year 2001. The Conference also approved a one-year continued use of high-year

prisoner petition reporting as an interim device for the district clerks' offices. *See also supra,* "Miscellaneous Actions," pp. 40-41.

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COURT INTERPRETER POSITIONS

Additional court interpreter positions are needed in certain districts to handle a dramatic increase in criminal case filings associated with an initiative of the Department of Justice in the southwest border districts. Based on established criteria, the Committee on Judicial Resources recommended, and the Judicial Conference approved, two additional court interpreter positions for the Southern District of Texas and five additional court interpreter positions (two of which are presently temporary positions) for the Western District of Texas for fiscal year 2002. The latter five positions will be funded in fiscal year 2001, if possible.

COURT OF FEDERAL CLAIMS CLERK'S OFFICE

In order to address recent increases in both case filings and the number of sitting judges, the United States Court of Federal Claims requested seven new positions for its clerk's office. On the Committee's recommendation, the Conference approved the new positions as part of the fiscal year 2002 budget request, with the proviso that if the number of senior/recalled judges should decrease, the court's allocation will be adjusted accordingly. The Conference also agreed to support accelerated funding for these seven positions as an unfunded requirement in fiscal year 2001.

LEAVE POLICY FOR ORGAN DONORS

In order to enhance the federal government's leadership role in encouraging organ donations, section 6327 of title 5, United States Code, was recently amended to increase from seven to 30 days each calendar year the amount of paid leave executive branch employees may receive when serving as organ donors. This statute does not currently apply to the judiciary. The Committee recommended that the judiciary conform its leave policy to that of the executive branch and adopt the same increase to 30 days of paid leave for judiciary employees to serve as organ donors. The Conference approved the Committee's recommendation.

ARTICLE III JUDGESHIP NEEDS

It has been a decade since an omnibus judgeship bill has been enacted by Congress.[3] However, toward the end of the 106th Congress, it appeared that Congress might be willing to entertain such a bill, with the additional judgeships to be filled by the next President. Consequently, the Judicial Resources Committee determined to accelerate its Biennial Survey of Judgeship Needs, the results of which are usually presented to the Judicial Conference in March of odd-numbered years, so that up-to-date Conference recommendations could be considered in any judgeship bill. On recommendation of the Judicial Resources Committee and its Subcommittee on Judicial Statistics, the Judicial Conference agreed, by mail ballot concluded on July 27, 2000, to recommend that Congress establish six permanent and four temporary circuit judgeships and 30 permanent and 23 temporary district judgeships, convert seven temporary district judgeships to permanent, and extend one temporary district judgeship, as follows ("P" denotes permanent; "T" denotes temporary):

Courts of Appeals	
First Circuit	1T
Second Circuit	2P
Sixth Circuit	2P
Ninth Circuit	2P, 3T
District Courts	
Alabama (Middle)	1P
Alabama (Northern)	1P, 1T
Alabama (Southern)	1T
Arizona	1P, 4T
California (Central)	2T
California (Eastern)	2P, Convert 1T to P
California (Northern)	1P
California (Southern)	5P, 3T
Colorado	1P, 1T
Florida (Middle)	1P, 1T
Florida (Southern)	2P

[3]In 1999, Congress did create nine additional judgeships in three judicial districts.

Hawaii	Convert 1T to P
Illinois (Central)	Convert 1T to P
Illinois (Southern)	Convert 1T to P
Indiana (Southern)	1T
Kentucky (Eastern)	1T
Nebraska	Convert 1T to P
Nevada	1T
New Mexico	2P, 1T
New York (Eastern)	3P
New York (Northern)	1T, Convert 1T to P
New York (Western)	1T
North Carolina (Western)	2P
Ohio (Northern)	Extend T
Oregon	1T
South Carolina	1P
Texas (Southern)	2P
Texas (Eastern)	1T
Texas (Western)	3P, 1T
Virginia (Eastern)	2P, Convert 1T to P
Washington (Western)	1T

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that after considering various alternatives to the current allocation formula for death penalty law clerks, it asked the Administrative Office to conduct a work measurement study of the program and report back within two years. The Committee also requested that the Administrative Office make technical adjustments to the current court-sizing formula to ensure that the compensation levels of incumbent court unit executives are not reduced solely by virtue of implementation of the new staffing formulae. The Committee endorsed the concept of physical fitness centers in the judiciary and asked the Administrative Office to develop a fitness center policy. The Committee also endorsed the concept of ergonomics in the judicial workplace and encouraged the Committee on Security and Facilities to develop a policy in that area.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

MAGISTRATE JUDGE SURVEY PROCESS

In March 1991, the Judicial Conference adopted a methodology for reviewing magistrate judge positions which provided for district-wide reviews every four years for districts with part-time magistrate judge positions, and every five years for districts with only full-time magistrate judge positions (JCUS-MAR 91, pp. 20-21). The four-year cycle was intended to accelerate the transition to a system of primarily full-time magistrate judges. Citing a significant decline in the number of part-time magistrate judge positions, the ability of courts to request a change in status of part-time magistrate judge positions at any time, and the prospect of savings of both time and money, the Committee on the Administration of the Magistrate Judges System recommended and the Conference approved a change in the methodology for reviewing magistrate judge positions to provide for district-wide reviews every five years for all districts.

SELECTION AND APPOINTMENT REGULATIONS

Section 4.02 of the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges requires a full-field background investigation by the Federal Bureau of Investigation (FBI) of nominees to full-time or part-time magistrate judge positions prior to appointment. These regulations have not been interpreted to require incumbent part-time magistrate judges who have been selected for full-time positions to undergo a second FBI full-field investigation prior to their full-time appointment. However, the vast majority of part-time magistrate judges also practice law, and much of their work is therefore not supervised by the court. In order to ensure that such individuals have not engaged in any illegal or improper activity, the Conference adopted a recommendation of the Magistrate Judges Committee that Section 4.02 be amended to require that all part-time magistrate judge appointees to full-time magistrate judge positions, including those who were the subject of a full-field background investigation prior to appointment to the part-time position, undergo an FBI full-field background investigation prior to full-time appointment.

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 Judicial Conference approved the following changes in positions, locations, salaries, and arrangements for full-time and part-time magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

DISTRICT OF COLUMBIA CIRCUIT

District of Columbia

Made no change in the number or arrangements of the magistrate judge positions in the district.

FIRST CIRCUIT

District of Puerto Rico

1. Authorized an additional full-time magistrate judge position at San Juan or Ponce to serve both locations; and

2. Made no change in the number, location, or arrangements of the other magistrate judge positions in the district.

SECOND CIRCUIT

District of Connecticut

Redesignated one of the New Haven magistrate judge positions as Hartford or New Haven.

Eastern District of New York

Redesignated the two Uniondale magistrate judge positions, the Uniondale or Hauppauge magistrate judge position, and the Hauppauge or Hempstead or Uniondale magistrate judge position as Central Islip.

Southern District of New York

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

THIRD CIRCUIT

District of Delaware

Made no change in the number of positions, or the location or arrangement of the existing magistrate judge position in the district.

Western District of Pennsylvania

1. Converted the part-time magistrate judge position at Erie to full-time status; and

2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

District of the Virgin Islands

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

FIFTH CIRCUIT

Western District of Texas

1. Authorized an additional full-time magistrate judge position at Pecos or Alpine;

2. Discontinued the part-time magistrate judge position at Alpine or Big Bend National Park, effective upon the appointment of a full-time magistrate judge at Pecos or Alpine; and

3. Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

SIXTH CIRCUIT

Southern District of Ohio

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

EIGHTH CIRCUIT

Western District of Arkansas

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

NINTH CIRCUIT

District of Arizona

1. Authorized one additional full-time magistrate judge position at Phoenix;

2. Authorized two additional full-time magistrate judge positions at Tucson; and

3. Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

Central District of California

1. Authorized three additional full-time magistrate judge positions at Los Angeles and one additional full-time magistrate judge position at Los Angeles or Riverside;

2. Increased the salary of the part-time magistrate judge position at Barstow from Level 5 ($21,833 per annum) to Level 3 ($43,665 per annum); and

3. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

Eastern District of Washington

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

TENTH CIRCUIT

Western District of Oklahoma

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

ELEVENTH CIRCUIT

Northern District of Florida

1. Increased the salary of the part-time magistrate judge position at Gainesville from Level 5 ($21,833 per annum) to Level 2 ($54,582 per annum); and

2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

Southern District of Georgia

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

COMMITTEE ACTIVITIES

The Committee reported that it discussed and provided its views on two issues concerning security and facilities. First, the Committee opposed a proposal by the United States Marshals Service to create dedicated arraignment rooms in federal courthouses because the Committee believes that any benefits realized by the rooms would come at a cost of judges' time and efficiency. The Committee also voted to recommend that the appropriate Judicial Conference committee endorse and recommend to the Conference a policy of providing one courtroom for each active full-time magistrate judge because such a policy is essential to the

Judicial Conference

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Privacy and Security Notices

effective functioning of magistrate judges. The Committee communicated these positions to the Committees on Security and Facilities and Court Administration and Case Management.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders reported that it has published, and will distribute to the courts, a pamphlet containing the current version of the Illustrative Rules Governing Complaints of Judicial Misconduct and Disability and related materials that may be useful to judges and court staff in implementing the complaint procedure established by 28 U.S.C. § 372(c).

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF BANKRUPTCY PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed revisions to Bankruptcy Rules 1007 (Lists, Schedules, and Statements; Time Limits), 2002 (Notices to Creditors, Equity Security Holders, United States, and United States Trustee), 3016 (Filing of Plan and Disclosure Statement in Chapter 9 Municipality and Chapter 11 Reorganization Cases), 3017 (Court Consideration of Disclosure Statement in Chapter 9 Municipality and Chapter 11 Reorganization Cases), 3020 (Deposit; Confirmation of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case), 9006 (Time), 9020 (Contempt Proceedings), and 9022 (Notice of Judgment or Order). The proposed amendments were accompanied by Committee Notes explaining their purpose and intent. The Conference approved the amendments and authorized their transmittal to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law. In addition, the Committee submitted and the Conference approved proposed revisions to Official Form 7 (Statement of Financial Affairs).

FEDERAL RULES OF CIVIL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Civil Rules 5 (Service and Filing of Pleadings and Other Papers), 6 (Time), 65 (Injunctions), 77 (District Courts and Clerks), 81 (Applicability in General), and 82 (Jurisdiction and Venue Unaffected). The Committee also submitted a proposal to abrogate the Copyright Rules of Practice because they do not conform to current copyright law or to modern concepts of due process. Technical changes necessitated by this abrogation are proposed to Rules 65 and 81. The proposed Civil Rules revisions were accompanied by Committee Notes explaining their purpose and intent. The Conference approved the amendments and the abrogation of the Copyright Rules and authorized their transmittal to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it approved the recommendations of its advisory committees to publish for public comment proposed amendments to the Appellate, Bankruptcy, Civil, and Criminal Rules. The proposals include a comprehensive style revision of the Federal Rules of Criminal Procedure, which is part of an overall effort to clarify and simplify the procedural rules. Among other matters, the Committee considered a report on an ongoing study of national rules governing attorney conduct and the status of pending legislation directing the Judicial Conference to recommend such rules.

COMMITTEE ON SECURITY AND FACILITIES

JURY BOX SIZE

Prior to this Conference session, the *United States Courts Design Guide* required that district court jury boxes accommodate 18 jurors. The Judicial Conference approved a recommendation of the Committee on Security and Facilities that the jury box space standards be amended to accommodate only 12

jurors in magistrate judge courtrooms, 16 jurors in district courtrooms, and 18 jurors in special proceedings courtrooms or where otherwise required. These changes will allow most courtrooms to accommodate two-tier jury boxes and free space in the courtroom well for other uses, such as multiple-defendant trials and new technologies.

CYCLICAL MAINTENANCE FOR COURT FACILITIES

In the past, the General Services Administration (GSA) included the cost of cyclical maintenance, such as repainting and recarpeting, in the rent charged for agency space in federal buildings. Under new pricing policies, GSA will maintain only the public space of federal buildings occupied by the judiciary, and provide for building systems, such as heating and plumbing. On recommendation of the Committee on Security and Facilities, the Conference endorsed as a matter of policy a cyclical maintenance program for court-occupied space, subject to the availability of appropriated funds.

COMMITTEE ACTIVITIES

The Committee on Security and Facilities reported that the consulting firm of Ernst & Young completed its comprehensive, nationwide study of the judiciary's space and facilities program and submitted its final report and recommendations in May 2000. The Committee discussed the process for reviewing the report, as well as issues raised in the report and in the President's fiscal year 2001 budget request related to courtroom sharing. The Committee also reported that Scientific Applications International Corporation had been awarded a 12-month contract to conduct a comprehensive study of the court security program that will focus on the physical security of court buildings and the protection of judges.

MAIL BALLOTS

The Judicial Conference conducted two mail ballots since its March 2000 session. In a mail ballot concluded on May 3, 2000, the Conference approved amendments to the Regulations of the Judicial Conference of the United States on Access to Financial Disclosure Reports Filed by Judges and Judiciary Employees

under the Ethics in Government Act of 1978, as Amended (*see supra,* "Financial Disclosure Reports," p. 39). In July 2000, the Judicial Conference approved, by mail ballot, a Judicial Resources Committee recommendation to amend the Conference's request to Congress for additional Article III judgeships (*see supra*, "Article III Judgeship Needs," pp. 58-59).

FUNDING

All of the foregoing recommendations that require the expenditure of funds for implementation were approved by the Judicial Conference subject to the availability of funds and to whatever priorities the Conference might establish for the use of available resources.

Chief Justice of the United States
Presiding

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

March 14, 2001

The Judicial Conference of the United States convened in Washington, D.C., on March 14, 2001, 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 Juan R. Torruella
Chief Judge D. Brock Hornby,
District of Maine

Second Circuit:

Chief Judge John M. Walker, Jr.
Judge Charles P. Sifton,
Eastern District of New York

Third Circuit:

Chief Judge Edward R. Becker
Chief Judge Sue L. Robinson,
District of Delaware

Fourth Circuit:

Chief Judge J. Harvie Wilkinson III
Chief Judge Charles H. Haden II,
Southern District of West Virginia

Fifth Circuit:

Chief Judge Carolyn Dineen King
Judge Hayden W. Head, Jr.,
Southern District of Texas

Sixth Circuit:

Chief Judge Boyce F. Martin, Jr.
Judge Thomas A. Wiseman, Jr.,
Middle District of Tennessee

Seventh Circuit:

Chief Judge Joel M. Flaum
Chief Judge Marvin E. Aspen,
Northern District of Illinois

Eighth Circuit:

Chief Judge Roger L. Wollman
Judge James M. Rosenbaum,
District of Minnesota

Ninth Circuit:

Chief Judge Mary M. Schroeder
Judge Judith N. Keep,
Southern District of California

Tenth Circuit:

Chief Judge Deanell R. Tacha
Chief Judge Frank Howell Seay,
Eastern District of Oklahoma

Eleventh Circuit:

Chief Judge R. Lanier Anderson
Chief Judge Charles R. Butler, Jr.,
Southern District of Alabama

District of Columbia Circuit:

Chief Judge Harry T. Edwards
Judge Thomas F. Hogan,[1]
District of Columbia

Federal Circuit:

Chief Judge Haldane Robert Mayer

Court of International Trade:

Chief Judge Gregory W. Carman

Circuit Judges W. Eugene Davis, David R. Hansen, Dennis G. Jacobs, Jane R. Roth, Anthony J. Scirica, Walter K. Stapleton, and William W. Wilkins, Jr., and District Judges Lourdes G. Baird, Robin J. Cauthron, John G. Heyburn II, David F. Levi, John W. Lungstrum, Edwin L. Nelson and Harvey E. Schlesinger attended the Conference session. Jan Horbaly of the Federal Circuit represented the Circuit Executives.

Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director for Management and Operations; William R. Burchill, Jr., Associate Director and General Counsel; Karen K. Siegel, Assistant Director, Judicial Conference Executive Secretariat; Michael W. Blommer, Assistant Director, Legislative Affairs; David Sellers, Assistant Director, Public Affairs; and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat. Judge Fern Smith and Russell Wheeler, Director and Deputy Director of the Federal Judicial Center, also attended the session of the Conference, as did Sally Rider, Administrative Assistant to the Chief Justice.

Senator Jeff Sessions and Representatives Howard Coble and F. James Sensenbrenner spoke on matters pending in Congress of interest to the Conference. Attorney General John Ashcroft addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice.

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[1]Designated by the Chief Justice.

REPORTS

Mr. Mecham reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office (AO). Judge Smith spoke to the Conference about Federal Judicial Center programs, and Judge Diana E. Murphy, Chair of the United States Sentencing Commission, reported on Sentencing Commission activities.

ELECTIONS

The Judicial Conference elected to membership on the Board of the Federal Judicial Center, each for a term of four years, Chief Bankruptcy Judge Robert F. Hershner, Jr. of the Middle District of Georgia to replace Bankruptcy Judge A. Thomas Small, and Magistrate Judge Robert B. Collings of the District of Massachusetts to replace Magistrate Judge Virginia M. Morgan.

EXECUTIVE COMMITTEE

FINANCIAL DISCLOSURE LEGISLATION

The authority to redact information from financial disclosure reports when the release of such information could endanger a judge or judicial employee was granted to the Judicial Conference by the Identity Theft and Assumption Deterrence Act of 1998 (Public Law No. 105-318), which modified section 105(b) of the Ethics in Government Act of 1978 (5 U.S.C. app. § 105(b)). However, this grant of authority is scheduled to expire on December 31, 2001. On recommendation of the Committee on Financial Disclosure, concurred in by the Committee on Security and Facilities, the Executive Committee determined, on behalf of the Judicial Conference, that the judiciary should take prompt action to seek the elimination of the sunset provision found in section 7 of the Identity Theft and Assumption Deterrence Act (5 U.S.C. app. § 105(b)(3)(E)).

FEDERAL COURTS IMPROVEMENT BILL

Every two years, each Conference committee considers legislative initiatives within its jurisdiction that were approved by the Conference but not

yet enacted to decide whether those provisions should be pursued in the upcoming federal courts improvement bill, and notifies the Executive Committee of its determinations. At its February 2001 meeting, the Executive Committee reviewed the positions of the committees on whether pending Conference positions should be pursued in the 107th Congress. With two exceptions (which were referred back to the relevant committees for further consideration), the Executive Committee concurred in the determinations of the committees to include or not to include these provisions in the bill.

The Executive Committee also reviewed a legislative provision within its own jurisdiction that had not been enacted and the pursuit of which had previously been suspended by the Committee since its enactment was unlikely. This provision would establish a Judicial Conference Foundation to receive and expend private contributions in support of official programs (JCUS-MAR 95, p. 6). The Committee determined to continue to defer pursuit of such a foundation.

MISCELLANEOUS ACTIONS

The Executive Committee—

- Agreed to adjust for inflation the alternative subsistence rate for judges itemizing travel expenses and to reinstate the annual automatic inflation adjustment to that rate, subject to Executive Committee review;

- Supported the Financial Disclosure Committee's adoption of a standard for granting waivers of the fee for obtaining copies of financial disclosure reports (i.e., a demonstrated inability to pay), and the application of that standard to deny a waiver for a media organization requesting the 1999 financial disclosure reports of all Article III judges;

- Received a report of the Magistrate Judges Committee on the growth of the magistrate judges system;

- Asked the Committee on the Administrative Office to undertake a review of reports required by law to be produced by the Administrative Office;

- Approved a resolution honoring Representative Harold Rogers, former Chairman of the House Appropriations Subcommittee on the Departments of Commerce, Justice, State, the Judiciary, and Related Agencies; and

- Agreed on the need for prompt action to minimize any non-business related activity that is being conducted on court computers; determined to encourage all chief judges to establish policies in their courts on the appropriate use of the Internet; and asked the Committee on Automation and Technology to continue current efforts in information technology (IT) security and to develop a comprehensive plan for improving IT security in the courts.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

WIRETAP REPORTS

The Omnibus Crime Control and Safe Streets Act of 1968 requires the Administrative Office to report to Congress annually the number and nature of federal and state applications for orders authorizing or approving the interception of wire, oral or electronic communications ("wiretap orders") based on reports submitted to the agency by federal and state judges and prosecutors (18 U.S.C. § 2519(1), (2), and (3)). In March 1992, the Judicial Conference determined to seek legislation to have this responsibility transferred to the United States Department of Justice (JCUS-MAR 92, p. 14), but has been unable to win sufficient support in Congress to accomplish this end. In an effort to simplify the process, at this session, the Conference approved an Administrative Office Committee recommendation that the judiciary seek an amendment to 18 U.S.C. § 2519(1) to allow judges to submit a single annual report to the Administrative Office, no later than January of each year, that reports on all wiretap orders for the preceding calendar year rather than an individual report each time a wiretap order is approved or denied. This change would reduce the burden on the judges and their staffs without impacting the accuracy or timeliness of the AO's report, and would not be mandatory for judges who wish to continue submitting reports throughout the year.

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it reviewed the status of several major initiatives and studies undertaken by the Administrative Office. The Committee was briefed on the AO's investigative assistance to the courts in resolving allegations against judiciary employees or others having business with the courts, and on how the judiciary's administrative oversight mechanisms had been used effectively to identify potential irregularities in the courts. The Committee endorsed oversight enhancement initiatives, including a handbook for chief judges and programs that increase chief judges' awareness of administrative management and internal control issues. The Committee also received a comprehensive briefing on the Administrative Office's human resources initiatives, including the success of new benefits programs and efforts to seek legislation that would provide the Director of the Administrative Office with independent benefits authority; the successful implementation of the new Human Resources Management Information System in the Administrative Office, the Federal Judicial Center, and the U.S. Sentencing Commission, and plans to expand the system to the courts; and implementation of new staffing formulae in the courts.

COMMITTEE ON AUTOMATION AND TECHNOLOGY

LONG RANGE PLAN FOR INFORMATION TECHNOLOGY

Pursuant to 28 U.S.C. § 612 and on recommendation of the Committee on Automation and Technology, the Judicial Conference approved the 2001 update to the *Long Range Plan for Information Technology in the Federal Judiciary*. Funds for the judiciary's information technology program must be spent in accordance with this plan.

LOCATION OF COURT RECORDS

Section 457 of title 28, United States Code, requires that the "records of district courts and courts of appeals shall be kept at one or more of the places where court is held." However, for electronic records, developments in computer and network technology have virtually eliminated physical location

of the hardware on which such records reside as a factor in accessing those records, and the ability to store information electronically in multiple locations dramatically reduces potential loss from manmade or natural disasters. On recommendation of the Committee on Automation and Technology, the Judicial Conference agreed to seek a legislative change to 28 U.S.C. § 457 to delete any reference to physical location requirements so as to accommodate electronic records and supporting repositories.

COMMITTEE ACTIVITIES

The Committee on Automation and Technology reported that it had received the results of a comprehensive, independent study of the judiciary's national information technology program, which concluded that the judiciary has established a national information technology program using significantly fewer resources than other government organizations. The Committee also discussed Internet and electronic mail traffic and requested further analysis; reviewed progress in an ongoing study of lawbooks and libraries; and received updates on a number of other information technology projects and issues, such as implementation of the new case management/electronic case files system and new technologies for obtaining remote access to the judiciary's data communications network.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

REAPPOINTMENT OF BANKRUPTCY JUDGES

In March 1997, the Judicial Conference added a chapter to the selection and appointment regulations for bankruptcy judges (chapter 5) to provide for reappointment of incumbent bankruptcy judges without subjecting them to the full application and merit screening process required of candidates for new positions (JCUS-MAR 97, p. 13). Chapter 5 was subsequently amended to address appellate court concerns with certain time frames set forth in those regulations (JCUS-SEP 00, pp. 43-44). At this session, on recommendation of

the Committee on the Administration of the Bankruptcy System,[2] the Judicial Conference made additional changes to chapter 5 to (a) clarify that a court of appeals will consider an incumbent bankruptcy judge who seeks reappointment before considering other qualified candidates; (b) remove a phrase from section 5.01(b) that might appear to create a presumption of reappointment; (c) empower the chief judge of a court of appeals to extend time periods set forth in the reappointment regulations, rather than requiring a vote of the active members of that court; (d) eliminate a requirement in section 5.01(c) that the court of appeals take an initial vote to determine whether the incumbent appears to merit reappointment, and provide that the court of appeals proceed directly to the public comment period; and (e) extend from 30 to 60 days the time period during which the court of appeals must vote on the reappointment following receipt of public comment.

PLACE OF HOLDING BANKRUPTCY COURT

On the recommendation of the Bankruptcy Committee, and in accordance with 28 U.S.C. § 152(b)(1), the Judicial Conference approved the request of the Western District of Missouri and the Eighth Circuit Judicial Council to designate Carthage, Missouri, as an additional place of holding bankruptcy court in the Western District of Missouri, and delete the designation of Joplin, Missouri.

COMMITTEE ACTIVITIES

The Bankruptcy Committee reported that it addressed several fee issues. It proposed to the Court Administration and Case Management Committee, for recommendation to the Conference, an amendment to the Bankruptcy Court Miscellaneous Fee Schedule to provide that fees for appeals or cross-appeals by bankruptcy trustees (and debtors in possession in chapter 11 cases) be payable only from the estate and to the extent that an estate is realized, in order to encourage trustees to pursue estate assets. The Committee also concurred in the recommendations of the Committee on Court Administration and Case Management with regard to the revision and restructuring of electronic public

[2] The Bankruptcy Committee's original recommendations were revised prior to the Judicial Conference session in response to concerns raised by the Executive Committee.

access fees, and it endorsed other amendments to the Bankruptcy Miscellaneous Fee Schedule (*see infra* "Miscellaneous Fee Schedules," pp. 12-15).

COMMITTEE ON THE BUDGET

TRANSFER OF RETIREMENT FUNDS

The Judicial Conference adopted a recommendation of the Budget Committee that the Conference rescind its March 1993 decision to pursue legislation that would allow the judiciary's contributions to the Civil Service Retirement Fund to be returned to the judiciary when bankruptcy and magistrate judges for whom the benefits are paid elect to transfer out of the Civil Service Retirement System (JCUS-MAR 93, p. 6). The proposal has been rejected by the last four Congresses, and there is little likelihood of its enactment.

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it discussed efforts to establish a greater linkage between the annual budget formulation process and the use of the long-range budget estimates. To assist the Committee in these efforts, the Administrative Office will develop long-range budget estimates in the fall of each year rather than in the spring. This change will enable the Budget Committee to review updated estimates at its January meetings and use these estimates in preparing the budget guidance to the program committees for the following spring/summer budget cycles. The Committee also discussed strategies for presenting the 2002 budget request to Congress and the need to emphasize the quality of justice when justifying annual requests for resources.

COMMITTEE ON CODES OF CONDUCT

CODE OF CONDUCT FOR JUDICIAL EMPLOYEES

Canon 3F(4) of the Code of Conduct for Judicial Employees requires certain designated employees to keep informed of their own and their close

relatives' financial interests in order to avoid conflicts of interest. The Committee on Codes of Conduct recommended amending Canon 3F(4) to add a definition of "financial interest" and to clarify that judicial employees have no duty to inquire about relatives' fiduciary interests. These amendments would conform the "duty of inquiry" provisions for judicial employees to the corresponding provisions applicable to judges under Canon 3C(2) of the Code of Conduct for United States Judges (*see* JCUS-SEP 99, p. 52). The Committee also proposed limiting application of Canon 3F(4) to the employees specified in Canon 3F(2)(a) (i.e., law clerks and staff attorneys), as these are the only employees who, like judges, are subject to automatic disqualification due to financial interest. The Conference approved the amendments to Canon 3F(4), which read as follows (new language is in italics; deleted language is struck through):

> (4) A judicial employee who is subject to Canon 3F(2)(*a*) should keep informed about his or her personal~~, financial~~ and fiduciary *financial* interests and make a reasonable effort to keep informed about ~~such~~ *the personal financial* interests of a spouse or minor child residing in the judicial employee's household. *For purposes of this canon, "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:*
>
> *(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the employee participates in the management of the fund;*
>
> *(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;*
>
> *(iii) the proprietary interest of a policy holder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;*

(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

COMMITTEE ACTIVITIES

Since its last report in September 2000, the Committee on Codes of Conduct received 25 new written inquiries and issued 26 written advisory responses. During this period, the average response time for requests was 19 days. The Chairman received and responded to 23 telephonic inquiries. In addition, individual Committee members responded to 135 inquiries from their colleagues.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

MISCELLANEOUS FEE SCHEDULES

Electronic Public Access. Pursuant to 28 U.S.C. §§ 1913, 1914, 1926(a), 1930(b) and 1932, the Judicial Conference is authorized to prescribe fees to be collected by the appellate and district courts, the Court of Federal Claims, the bankruptcy courts, and the Judicial Panel on Multidistrict Litigation, respectively. While the various fees included in these miscellaneous fee schedules are often court-specific, the fees pertaining to electronic public access (EPA) to court information cut across fee schedule lines. The Judicial Conference approved a Court Administration and Case Management Committee recommendation that EPA fees be removed from the various courts' fee schedules and reissued in an independent miscellaneous EPA fee schedule that would apply to all court types.

The Committee also recommended three substantive amendments to the EPA fee schedule. The first amendment concerned the user fee for Internet access to the judiciary's new case management/electronic case files (CM/ECF) system. Pursuant to section 404 of Public Law No. 101-515, which directs the Judicial Conference to prescribe reasonable fees for public access to information available in electronic form, the judiciary established a seven cents per page fee for Internet access to electronic court records that will apply to CM/ECF when it is introduced (JCUS-SEP 98, p. 64). In response to

concerns about the effect of these fees on open access to court records, especially with regard to litigants, the Committee recommended that the schedule be amended to state that attorneys of record and parties in a case (including pro se litigants) receive one free electronic copy of all filed documents, if receipt is required by law or directed by the filer, which could then be printed and saved to the recipient's own computer or network. The Committee further recommended that no fee under this provision be owed until an individual account holder accrued charges of more than $10 in a calendar year. This would allow free access to over 140 electronic pages, providing a basic level of public access consistent with the services historically provided by the courts. After discussion, the Conference adopted the Committee's recommendations.

The Committee's second proposal was for the establishment of a new fee of 10 cents per page for printing paper copies of documents through public access terminals at clerks' offices. This proposed fee, set at a level commensurate with the costs of providing existing services and developing enhanced services, is less than the 50 cents per page fee currently being charged for retrieving and copying court records and would therefore encourage the use of public access terminals and reduce demands on clerks' offices. The Conference approved the Committee's recommendation.

Lastly, the Committee recommended, and the Conference approved, the establishment of a Public Access to Court Electronic Records (PACER) Service Center search fee of $20. The PACER Service Center provides registration, billing, and technical support for the judiciary's EPA systems and receives numerous requests daily for particular docket sheets from individuals who do not have PACER accounts. This fee would be consistent with the fees currently imposed "for every search of the records of the court, and for certifying the results thereof" in the other fee schedules.

Reproduction of Recordings. The miscellaneous fee schedules for the appellate, district, and bankruptcy courts include a provision requiring that a fee be charged for "reproduction of magnetic tape recordings, either cassette or reel-to-reel...including the cost of materials." The Committee recommended that this fee be modified to account for the expanded variety of media technologies, including the use of digital equipment, rather than magnetic tape recordings. In addition, the Committee recommended that the current exemption from the fee for the federal government be eliminated when the requested record is available through the judiciary's CM/ECF system. Approving the Committee's recommendations, the Conference amended

Item 5 of the appellate and district court miscellaneous fee schedules and Item 3 of the bankruptcy court miscellaneous fee schedule relating to the reproduction of recordings to read as follows:

> For reproduction of recordings of proceedings, regardless of the medium, $20, including the cost of materials. This fee shall apply to services rendered on behalf of the United States, if the reproduction of the recording is available electronically.

The Conference also agreed to amend the preambles to the appellate, district, and bankruptcy court miscellaneous fee schedules to eliminate the exemption for federal agencies from the fee for reproduction of recordings.

Local Rules. The Conference adopted a Committee recommendation to amend provisions in the appellate, district, and bankruptcy court and Court of Federal Claims miscellaneous fee schedules (Item 11, Item 12, Item 18, and Item 6, respectively) to reflect that local rules may be provided by means other than printing a paper copy, such as electronically via the Internet. The provisions were amended as follows (new language is in italics; deleted language is struck through):

> The court may charge and collect fees~~, commensurate with the cost of printing,~~ for copies of the local rules of court *commensurate with the cost of providing such copies*. The court may also distribute copies of the local rules without charge.

Amendments in Bankruptcy Cases. On recommendation of the Committee, the Conference amended Item 4 of the Bankruptcy Court Miscellaneous Fee Schedule, which prescribes a fee of $20 for each amendment to a debtor's schedules of creditors or lists of creditors, to make clear that amendments to the matrices or to the mailing lists of creditors, which are often used by clerks' offices to notify creditors and other parties of actions relating to the bankruptcy case, would also generate the $20 fee. This provides an incentive to debtors to make certain that matrices and mailing lists are accurate when filed.

Miscellaneous Documents. Both the district and the bankruptcy court miscellaneous fee schedules impose a fee for filing or indexing a miscellaneous document not in a case or proceeding for which a filing fee has been paid, except that the district court provision sets forth four specific

instances in which the fee is applicable while the bankruptcy court provision is more general. For consistency, the Judicial Conference, on recommendation of the Committee, amended both Item 1 of the District Court Miscellaneous Fee Schedule and Item 7 of the Bankruptcy Court Miscellaneous Fee Schedule to read as follows:

> For filing or indexing any document not in a case or proceeding for which a filing fee has been paid, $30.

CIVIL LITIGATION MANAGEMENT MANUAL

On recommendation of the Committee and as required by the Civil Justice Reform Act of 1990 (CJRA) (*see* 28 U.S.C. § 479(c)(1)), the Judicial Conference approved for publication a civil litigation management manual that describes those litigation management and cost and delay reduction principles, techniques, and programs deemed most effective by the Judicial Conference and the Directors of the Administrative Office and the Federal Judicial Center.

JUROR QUALIFICATION QUESTIONNAIRE

In September 2000, the Judicial Conference revised the juror qualification questionnaire to conform the categories on race and ethnicity to those used by the Census Bureau for the 2000 census (JCUS-SEP 00, pp. 47-48). The Census Bureau and other executive branch agencies have since revised the terminology used to describe some of those categories. Specifically, the term "Black" has been changed to "Black or African American"; the term "Hispanic" has been changed to "Hispanic or Latino"; and the term "Native American Indian" has been changed to "American Indian or Alaska Native." So that the juror qualification questionnaire terminology will continue to mirror that used by the Census Bureau, the Conference approved a Committee recommendation that Question 10 of the juror qualification questionnaire be revised to incorporate these changes.

SOCIAL SECURITY REPORTING REQUIREMENTS

Social security appeals are included in the Civil Justice Reform Act statistical reports in the same way as motions in civil cases, but with a pending

date from which the six-month clock begins to run set at 120 days after the filing of the transcript in the case (JCUS-SEP 98, p. 63; JCUS-SEP 99, p. 58). A small number of courts have adopted procedures that have the effect of delaying by up to two months the date from which the clock begins to run by allowing the transcript to be filed with the court when the Commissioner of Social Security files the responsive brief, rather than when the transcript is served on the claimant. These procedures are similar to the "holding" procedures for civil motions discussed by the Conference in September 1999 (JCUS-SEP 99, pp. 57-58), in that they raise concerns about the uniformity of the reporting requirements and about compliance with Rule 5(d) of the Federal Rules of Civil Procedure (which requires all papers served upon a party to be filed with the court "within a reasonable time after service"). On recommendation of the Committee, the Conference agreed to amend the instructions for the CJRA report on social security appeals pending over six months, as published in the *Guide to Judiciary Policies and Procedures*, to define the "pending date" for such appeals to be reported as 120 days after the filing of the transcript in the case, or in cases where the transcript is served upon a party before it is filed with the court, then 120 days after the initial service of the transcript. The Conference further agreed to request that each circuit council review local rules with "holding" procedures for social security cases to ensure compliance with Federal Rule of Civil Procedure 5(d).

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported on a number of issues relating to electronic case filing, including the Committee's extensive work on a judiciary-wide privacy policy for consideration by the Conference, and its evaluation of existing local court rules and practices pertaining to electronic filing. In other areas, the Committee provided its views on courtroom sharing for magistrate and bankruptcy judges to the Committee on Security and Facilities; considered the development of processes for identifying and assisting "high workload courts," as recommended by the Judicial Officers Resources Working Group; and began consideration of the issue of the changing nature of litigation in the district courts.

COMMITTEE ON CRIMINAL LAW

RISK PREDICTION INDEX

In March 1997, the Judicial Conference approved the use of the Risk Prediction Index (RPI) by probation officers to assist in the assessment of the risk of recidivism posed by offenders being supervised on terms of probation and supervised release (JCUS-MAR 97, p. 21). Studies conducted by the Federal Judicial Center, at the request of the Criminal Law Committee, demonstrate that the RPI can also be useful in identifying those individuals released to pretrial services supervision who are likely to succeed and those who are likely to have their release status revoked. Accordingly, the Committee recommended, and the Judicial Conference approved, the use of the Risk Prediction Index by pretrial services officers (and probation officers in combined districts) to assist in the assessment of risk posed by defendants under pretrial services supervision.

JUDGMENTS IN A CRIMINAL CASE

On the Committee's recommendation and after discussion, the Conference approved revised forms for judgments in a criminal case (AO 245B-AO 245I) for publication and distribution to the courts. The judgment forms were revised to include express language indicating adjudication of guilt. In addition, in order to protect the identity of cooperating defendants, the portion of the forms entitled "Statement of Reasons," which includes sensitive information about whether a defendant's substantial assistance served as the basis for a sentence departure, was revised to become an attachment to the judgment forms, and will not be disclosed to the public. However, the complete judgment form, including the Statement of Reasons, will continue to be forwarded to appropriate entities, such as the United States Sentencing Commission, the Federal Bureau of Prisons, defense counsel, government attorneys, and the appellate courts.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported on the status of a strategic assessment of the probation and pretrial services system and on the activities of an ad hoc work group that is reviewing and revising the pretrial services

and post-conviction supervision monographs. The Committee also reviewed a report on an independent study of the federal judiciary's home confinement program, which will be published and disseminated to the courts later this year.

COMMITTEE ON DEFENDER SERVICES

COMMUNITY DEFENDER ORGANIZATION GRANT AND CONDITIONS AGREEMENT

On recommendation of the Defender Services Committee, the Judicial Conference approved revisions to clause 8 of the grant and conditions agreement to prohibit community defender organizations (CDOs) from using Criminal Justice Act (CJA) grant funds to contract locally for audit services that would duplicate the AO's national contract audit. The revisions would also require prior approval of the AO's Defender Services Division before a CDO may use grant funds to engage an expert to respond to findings of a national contract audit. The fourth paragraph of clause 8 was amended to read as follows (new language is in italics):

> The grantee may contract with local accountants or with the Auditor, for any accounting and financial services necessary for the operation of its office, including, but not limited to, the preparation of all required federal and state tax returns and any additional annual audit reports required by the Board of Directors *that do not duplicate the national contract audit*. *Notwithstanding the foregoing, a grantee may use grant funds to contract with an expert for the purpose of responding to a finding of the Auditor in the annual audit when authorized in advance to do so by the Defender Services Division.*

REASONABLE ACCOMMODATION FOR EMPLOYEES WITH DISABILITIES

Section 3102 of title 5, United States Code, as recently amended by section 311 of Public Law No. 106-518, the Federal Courts Improvement Act of 2000, authorizes the head of each agency in the judicial branch to provide personal assistants for disabled judges or employees, as determined necessary

by the agency head. In order to implement this legislation with respect to federal defender organizations, the Committee on Defender Services recommended that the Judicial Conference take the following actions:

a. Designate federal public defenders as "agency heads" for purposes of appointing personal assistants for individuals with disabilities in federal public defender organizations;

b. Provide executive directors of community defender organizations with the same authority as federal public defenders with respect to individuals with disabilities in those organizations; and

c. Authorize the Administrative Office to develop guidelines for federal public defenders and executive directors of community defender organizations to use in determining when and in what circumstances the creation of a personal assistant position is appropriate.

The Conference adopted the Committee's recommendations. *See also infra*, "Reasonable Accommodation for Employees with Disabilities," pp. 25-26.

PROFESSIONAL LIABILITY INSURANCE

The judiciary's fiscal year 1999 appropriations act (Public Law No. 105-277), as amended by Public Law No. 106-58, requires the judiciary to reimburse judges and certain judicial employees for up to half the cost of professional liability insurance. The guidelines adopted by the Judicial Conference to implement this program for federal public defender organization (FPDO) employees (JCUS-SEP 99, pp. 61-62; JCUS-MAR 00, p. 7), placed a $150 cap on the amount of reimbursement an eligible individual was entitled to receive. Due to an increase in premiums, the Committee on Defender Services recommended that the guidelines for FPDO employees be amended to lift the $150 cap and permit reimbursement of up to one-half the cost of the policy, regardless of the dollar amount. The Judicial Conference approved the recommendation. *See also infra* "Professional Liability Insurance," p. 26.

AMICUS CURIAE POLICY FOR FEDERAL DEFENDERS

On recommendation of the Committee on Defender Services, the Judicial Conference approved the addition of a new paragraph to Chapter IV ("Defender Organizations") of the Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines), which sets forth the circumstances in which federal defenders may participate as *amicus curiae* in CJA cases. The new section formalizes a longstanding practice of permitting federal defenders to participate as *amicus curiae* when requested to do so by an appellate court, and in death penalty habeas corpus cases. The section further authorizes federal defenders to participate as *amicus curiae* in cases where, in the defender's judgment, a legal issue affects the case of a client whom the defender represents, i.e., "on behalf of a client as an ancillary matter appropriate to the proceedings." *See* 18 U.S.C. § 3006A(c). The new paragraph reads as follows:

> 4.06 Participation as *Amicus Curiae*. Pursuant to governing court rules, Federal Public Defenders and Community Defenders may participate as *amicus curiae* in federal court at the invitation of the court, in death penalty habeas corpus cases, or on behalf of a client as an ancillary matter appropriate to the proceedings.

USE OF CJA RESOURCES

In an effort to provide specific guidance on the use of CJA resources by panel attorneys for automation-related needs involving unusual or extraordinary expenses, the Defender Services Committee recommended, and the Conference approved, a revision to paragraph 3.16 of the CJA Guidelines. The revision requires, among other things, that panel attorneys consult with the Defender Services Division prior to requesting court authorization to use CJA funds to acquire computer hardware or software costing more than $300, or to obtain computer systems and automation litigation support personnel and experts whose services are expected to have a combined cost exceeding $10,000, and that any computer hardware or software acquired with CJA funds remains the property of the United States. The Conference also approved a model order, to be included in Appendix C ("Advance

Authorization") of the CJA Guidelines, for authorizing the acquisition of computer hardware and/or software in conformance with the revised guideline.

COMMITTEE ACTIVITIES

Under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), the Committee on Defender Services approved fiscal year 2001 budgets for 56 federal public defender organizations totaling $210,417,000, and for 15 community defender organizations in the total amount of $57,960,400.

The Committee on Defender Services reported that it met with the Chairman of the Budget Committee to discuss budgetary matters, with particular attention to the judiciary's request for FY 2002 funding for a $113 hourly panel attorney rate, as approved by the Conference in September 2000 (JCUS-SEP 00, pp. 44-45; 50). The Committee continued its strategic planning effort by examining fundamental aspects of the Defender Services program from a broad-based perspective.

COMMITTEE ON FEDERAL-STATE JURISDICTION

RESIDENT ALIEN PROVISO

The Committee on Federal-State Jurisdiction identified a need to amend the "resident alien proviso" in section 1332(a) of title 28, United States Code, to clarify the scope of diversity of citizenship jurisdiction in disputes involving aliens admitted to the United States as permanent residents. Congress added this proviso to the section in 1988 to "deem" an alien admitted for permanent residence as a citizen of the state in which the alien is domiciled with the specific purpose of denying federal jurisdiction in suits between a citizen of a state and an alien permanently residing in the same state. However, the proviso's deeming language has been interpreted as applying to other litigation circumstances involving aliens. For example, under section 1332(a)(2), a non-resident alien has been permitted to sue a United States citizen and a resident alien by deeming the resident alien to be a citizen of the state of his domicile. Such application of the proviso has broadened the scope of diversity jurisdiction beyond that contemplated when the statute was enacted. Thus, upon recommendation from the Committee on

Federal-State Jurisdiction, the Judicial Conference agreed to propose legislation to resolve conflicting interpretations of the resident alien proviso in 28 U.S.C. § 1332(a) by deleting that proviso and substituting therefor text providing that the district courts shall not have diversity of citizenship jurisdiction under subsections 1332(a)(2)-(3) where the matter in controversy is between a citizen of a state and a citizen or subject of a foreign state admitted to the United States for permanent residence and domiciled in the same state.

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported on its continuing assessment of legislative proposals that would, among other things, permit individuals in federal and state custody to request post-conviction DNA testing and provide a system for ensuring competent counsel in the states for indigent defendants in capital cases. The Committee also informed the Conference of its consideration of mass torts/class action issues, attorney conduct rules in the federal courts, the Committee's project to ascertain amendments for jurisdictional improvements, and the Federal Judicial Code Revision Project of the American Law Institute.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that as of December 31, 2000, the Committee had received 3,521 financial disclosure reports and certifications for the calendar year 1999, including 1,285 reports and certifications from Supreme Court Justices, Article III judges, and judicial officers of special courts; 365 from bankruptcy judges; 509 from magistrate judges; and 1,362 from judicial employees.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that during the period from July 1, 2000, to December 31, 2000, a total of 89 intercircuit assignments, undertaken by 70 Article III judges, were processed and recommended by the Committee and approved by the Chief Justice. During calendar year 2000, a total of 190 intercircuit assignments were processed and approved. In addition, the Committee aided courts requesting assistance by both identifying and obtaining judges willing to take assignments.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its involvement in rule-of-law and judicial reform activities relating to Africa, Asia, Europe, and Latin America, including United States Agency for International Development-funded programs to build upon the already-established partnership between the Russian and U.S. judiciaries, and a presentation to the European Court of Human Rights on appellate court structure, case management, and rules. The Committee is also working with the Library of Congress' Russian Leadership Program, which brings policymakers and leaders from the Russian Federation to communities throughout the United States, in developing a rule-of-law component that will provide Russian judges an opportunity to obtain an appreciation for the United States judicial system and the role of judges in American society.

COMMITTEE ON THE JUDICIAL BRANCH

JUDICIAL COMPENSATION

The value of federal judges' salaries continues to decline due to the combination of the denial of many annual Employment Cost Index (ECI) adjustments and inflation. At the same time, the salaries of private sector lawyers and law school deans have skyrocketed. This pay erosion and pay disparity have a negative effect on judges' morale, recruitment, and retention

and represent a real threat to Article III's guarantees of judicial independence, lifetime tenure, and undiminished compensation. Accordingly, the Judicial Conference modified slightly and then unanimously approved a Judicial Branch Committee recommendation that the Conference pursue vigorously—

a. An Employment Cost Index adjustment for federal judges, Members of Congress, and top officials in the executive branch for 2002 and subsequent years, as provided by law;

b. Legislation to give judges and other high level federal officials a "catch-up" pay adjustment of 9.6 percent to recapture Employment Cost Index adjustments previously foregone; and

c. Appointment of a presidential commission to consider and make recommendations to the President on appropriate salaries for high-level officials in all three branches of government.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it has continued to devote its attention to securing salary relief for all federal judicial officers. The Committee received an update on developments in the judiciary's benefits program and on the status of two cases raising issues concerning taxation of judicial compensation.

COMMITTEE ON JUDICIAL RESOURCES

BIENNIAL SURVEY OF JUDGESHIP NEEDS

As part of the Biennial Survey of Judgeship Needs, workloads in district and appellate courts with low weighted caseloads are reviewed for the purpose of determining whether to recommend that an existing or future judgeship vacancy not be filled. Through this process, in March 1999, the Judicial Conference recommended to the President and the Senate that an existing or future judgeship vacancy not be filled in the District Courts for the District of Columbia, the District of Delaware, the Southern District of West Virginia, and the District of Wyoming (JCUS-MAR 99, pp. 22-23). After conducting the 2001 judgeship needs survey, the Committee on Judicial Resources determined that either the caseload or the courts' resources in the

District of Delaware and the Southern District of West Virginia had changed sufficiently to support a recommendation that any future vacancy in those courts be filled. On recommendation of the Committee, the Judicial Conference voted to amend its March 1999 position to delete the District of Delaware and the Southern District of West Virginia from the list of courts in which a vacancy should not be filled.

REASONABLE ACCOMMODATION FOR EMPLOYEES WITH DISABILITIES

As previously noted with respect to federal defender offices (*see supra* "Reasonable Accommodation for Employees with Disabilities," pp. 18-19), the Federal Courts Improvement Act of 2000 gives the judiciary the authority to use appropriated funds to hire personal assistants for judges and employees with disabilities. Under this legislation, which amends 5 U.S.C. § 3102, the head of each agency in the judicial branch may provide for personal assistants that the agency head determines are necessary to enable a disabled judge or employee to perform his or her official duties. On recommendation of the Committee on Judicial Resources, the Judicial Conference took the following actions to implement this new law with respect to judicial officers and court employees:

a. Approved creation of a personal assistant position under the Judiciary Salary Plan and the Court Personnel System to provide appropriate work assistance, as needed, to judges and judiciary employees with disabilities;

b. Endorsed the Administrative Office's use of classification flexibility currently existing under the Judiciary Salary Plan to classify personal assistant positions appropriately;

c. Designated each chief judge, or the chief judge's designee, as the "agency head" for judges and chambers staff, and each court unit executive as the "agency head" for employees of that unit, for purposes of appointing personal assistants for individuals with disabilities;

d. Authorized use of central funding for personal assistant positions, as necessary, under the Judiciary Salary Plan for support of eligible judges and chambers staff;

e. Authorized provision of an allotment to a court after receipt of a request for a personal assistant position under the Court Personnel System and an Administrative Office determination that AO guidelines were met; and

f. Authorized the Administrative Office to develop guidelines for designated agency heads to use in determining when and in what circumstances the creation of a personal assistant position is appropriate.

PROFESSIONAL LIABILITY INSURANCE

Guidelines adopted by the Judicial Conference to implement, in accordance with Public Law No. 105-277, as amended by Public Law No. 106-58, a professional liability insurance reimbursement program for court staff (JCUS-SEP 99, pp. 66-67; JCUS-MAR 00, p. 7) placed a $150 cap on the amount of reimbursement an eligible individual is entitled to receive. In the face of increased cost of premiums for such insurance, the Conference, on recommendation of the Committee on Judicial Resources, agreed to amend those guidelines to remove the $150 cap, retroactive to October 1, 1999 (*see also supra*, "Professional Liability Insurance," p. 19).

RECRUITMENT AND RETENTION BONUSES

In March 1999, the Judicial Conference authorized the use of recruitment and retention bonuses for automation positions in the courts on a two-year pilot basis (JCUS-MAR 99, p. 27). Based on findings that the program fulfills a genuine need in the courts and is being used judiciously, the Committee recommended, and the Judicial Conference agreed, that the program be made permanent.

LAW CLERK STUDENT LOANS

In September 1988, the Judicial Conference agreed to seek an amendment to 20 U.S.C. § 1077(a)(2)(C) to include full-time judicial law clerks among those occupations entitled to defer repayment, during service, of the principal on federally insured educational loans (JCUS-SEP 88, p. 90). At this session, on recommendation of the Committee, the Conference slightly

modified its September 1988 position. It determined to seek legislation deferring interest *as well as* principal on such loans during the clerkship, for a period not to exceed three years of service.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it had asked the Administrative Office to conduct a comprehensive study, including a survey of Article III, bankruptcy, and magistrate judges, to determine if they are having difficulty recruiting and retaining highly qualified individuals to serve as law clerks, and, if so, to propose monetary and non-monetary solutions. The Committee also decided to ask the Administrative Office to undertake a comprehensive review of the Temporary Emergency Fund (TEF). The review will address such issues as whether there should be criteria for the allocation of law clerk and secretary positions to judges who need them and how to collect sufficient information regarding the use of the TEF. The Committee will coordinate this project with other Judicial Conference committees, as appropriate.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

REIMBURSEMENT REGULATIONS

Regulations for the reimbursement of expenses incurred by part-time magistrate judges, adopted pursuant to 28 U.S.C. § 635(b), allow a part-time magistrate judge to claim reimbursement for salary expenses actually incurred for secretarial or clerical assistance rendered in connection with official magistrate judge duties, but do not make reference to reimbursement of support staff expenses for holidays, vacation leave, or sick leave. Noting that certain part-time magistrate judges at the higher salary levels require full-time or extensive staff support, the Committee on the Administration of the Magistrate Judges System recommended, and the Judicial Conference approved, amendments to the regulations to authorize reimbursement for holidays and annual and sick leave taken by judges' support staff, not to exceed federal employee entitlements. The revised regulations do not require reimbursement for holidays and leave, but only set upper limits for

reimbursement for those part-time magistrate judges who choose to claim reimbursement for such expenses.

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 Judicial Conference approved the following changes in positions, salaries, locations, and arrangements for full-time and part-time magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

THIRD CIRCUIT

District of New Jersey

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

2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

FOURTH CIRCUIT

Middle District of North Carolina

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Western District of Virginia

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Northern District of West Virginia

1. Redesignated the full-time magistrate judge position at Elkins as Clarksburg or Elkins;

2. Redesignated the part-time magistrate judge position at Clarksburg as Martinsburg upon the appointment of a full-time magistrate judge at Clarksburg or Elkins; and

3. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

Southern District of West Virginia

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

FIFTH CIRCUIT

Western District of Louisiana

Increased the salary of the part-time magistrate judge position at Monroe from Level 4 ($33,633 per annum) to Level 3 ($44,844 per annum).

SIXTH CIRCUIT

Western District of Michigan

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Southern District of Ohio

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

2. Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

Eastern District of Tennessee

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Western District of Tennessee

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

EIGHTH CIRCUIT

Western District of Missouri

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

TENTH CIRCUIT

District of Wyoming

Increased the salary of the part-time magistrate judge position at Casper from Level 7 ($5,605 per annum) to Level 6 ($11,211 per annum).

ELEVENTH CIRCUIT

Northern District of Georgia

1. Converted the part-time magistrate judge position at Rome to full-time status;

2. Authorized one additional full-time magistrate judge position at Atlanta; and

3. Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that it discussed at length the issue of the growth of the magistrate judges system. The Committee concluded that it is appropriate for it to continue to consider requests from courts for additional magistrate judge positions and to recommend approval of those requests that meet the criteria

established by the Judicial Conference, as it has to date, and that it will continue to monitor the growth of the magistrate judges system carefully. The Committee forwarded background materials and a statement of the issues on this topic to the Executive Committee (*see supra,* "Miscellaneous Actions," p. 5).

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders reported that it has distributed to the courts a pamphlet containing the current version of the Illustrative Rules Governing Complaints of Judicial Misconduct and Disability and related materials that may be useful to judges and court staff in implementing the complaint procedure established by 28 U.S.C. § 372(c).

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it approved for immediate publication proposed amendments to Rule C of the Supplemental Rules for Certain Admiralty and Maritime Claims to conform with recent legislation. The Committee's Subcommittee on Technology is working with the Committee on Court Administration and Case Management studying privacy issues that arise from electronic case filing and developing guidance for courts to implement an electronic case filing system. The Advisory Committees on Appellate, Bankruptcy, Civil, and Criminal Rules are reviewing comments from the public submitted on amendments proposed to their respective sets of rules, including most significantly a proposed comprehensive style revision of the Federal Rules of Criminal Procedure.

COMMITTEE ON SECURITY AND FACILITIES

CONSTRUCTION SUBMISSION PROCESS/ FIVE-YEAR COURTHOUSE PROJECT PLAN

For the last four fiscal years, the Office of Management and Budget has either eliminated or substantially reduced funding for courthouse construction projects in the General Services Administration portion of the President's budget requests. The Committee on Security and Facilities recommended that the Judicial Conference approve a formal courthouse construction submission process that presents the current budget-year housing requirements approved by the circuit judicial councils and the Judicial Conference in the Five-Year Courthouse Project Plan, for transmission to executive branch officials, the leadership of the House and Senate, the relevant appropriations and authorizing committee chairmen, and others deemed appropriate. The submission would not be a budget request, but a formal narrative statement of the judiciary's housing requirements to educate key legislative and executive branch decision makers about these requirements. The Judicial Conference approved the Committee's recommendation by mail ballot concluded on January 30, 2001.

At the same time, the Judicial Conference, after taking into consideration the comments of the circuit judicial councils, approved the Five-Year Courthouse Project Plan for fiscal years 2002-2006 on an expedited basis, so that it could be used to prepare the courthouse construction submission. The Conference also approved by mail ballot a related recommendation that it recognize the Eleventh Circuit Court of Appeals' critical need for additional office space to house court staff in Atlanta, Georgia. (This latter proposal is not included in the Five-Year Plan because the intended building would accommodate court staff rather than judges.)

RELEASE OF SPACE

Pursuant to 28 U.S.C. § 462(f), and on recommendation of the Committee, the Judicial Conference approved the release of space and closure of the non-resident facilities in Ada in the Eastern District of Oklahoma, and in Enid in the Western District of Oklahoma.

ERGONOMICS IN THE JUDICIAL WORKPLACE

Ergonomics is the applied science of workplace equipment design intended to maximize productivity by reducing employee fatigue and discomfort. In order to prevent work-related musculosketal injuries and minimize financial liability for the judiciary, the Committee on Security and Facilities, with the encouragement of the Committee on Judicial Resources, recommended that the Judicial Conference endorse the concept of ergonomics in the judicial workplace and authorize the provision of information on ergonomic assessments and the acquisition of ergonomic furniture, as local funding permits, to assist courts when addressing ergonomic issues. The Conference adopted the Committee's recommendation.

BANKRUPTCY JURY BOXES

The Committee on Security and Facilities recommended to the March 2000 Judicial Conference that the *U. S. Courts Design Guide* be amended to state that an eight-person jury box should be provided "when determined necessary," in order to clarify that jury boxes in bankruptcy courtrooms are not required in every new courthouse. At that session, the Conference voted to recommit the recommendation to the Committee so that it might obtain the views of the Committee on the Administration of the Bankruptcy System, provided that while the matter was under reconsideration, a moratorium would be imposed on the design or construction of jury boxes in new or existing bankruptcy courtrooms (JCUS-MAR 00, p. 28). The Bankruptcy Committee considered the issue and concurred in the view that bankruptcy courtrooms do not normally require a jury box unless there is a demonstrated need. The Judicial Conference approved the Security and Facilities Committee recommendations that the *Design Guide* be amended to clarify that jury boxes in bankruptcy courtrooms are not required in every new courthouse and that the March 2000 moratorium on design and construction of jury boxes in new or existing bankruptcy courtrooms be lifted.

COMMITTEE ACTIVITIES

The Committee on Security and Facilities reported that, with the strong concurrence of the Judicial Branch Committee, it had rejected an Ernst & Young facilities study recommendation that senior judges have access to a

dedicated courtroom only for the first two years of senior status and share courtrooms thereafter, in favor of the existing Judicial Conference planning assumption that permits a dedicated courtroom for a senior judge for ten years after taking senior status. The Committee endorsed a proposal that requires court security officer (CSO) contractors to designate physicians to conduct physical examinations of CSOs and directed the U.S. Marshals Service to implement CSO medical standards endorsed by the Committee in June 2000.

FUNDING

All of the foregoing recommendations that require the expenditure of funds for implementation were approved by the Judicial Conference subject to the availability of funds and to whatever priorities the Conference might establish for the use of available resources.

Chief Justice of the United States
Presiding

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

September/October 2001

The Judicial Conference of the United States convened in Washington, D.C., on September 11, 2001, 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 Michael Boudin
Chief Judge D. Brock Hornby,
District of Maine

Second Circuit:

Chief Judge John M. Walker, Jr.
Judge Charles P. Sifton,
Eastern District of New York

Third Circuit

Chief Judge Edward R. Becker
Chief Judge Sue L. Robinson,
District of Delaware

Fourth Circuit

Chief Judge J. Harvie Wilkinson III
Chief Judge Charles H. Haden II,
Southern District of West Virginia

Fifth Circuit

Chief Judge Carolyn Dineen King
Judge Hayden W. Head, Jr.,
Southern District of Texas

Sixth Circuit

Chief Judge Boyce F. Martin, Jr.
Judge Thomas A. Wiseman, Jr.,
Middle District of Tennessee

Seventh Circuit

Chief Judge Joel M. Flaum
Chief Judge Marvin E. Aspen,
Northern District of Illinois

Eighth Circuit

Chief Judge Roger L. Wollman
Chief Judge James M. Rosenbaum,
District of Minnesota

Ninth Circuit

Chief Judge Mary M. Schroeder
Judge Lloyd D. George,[1]
District of Nevada

Tenth Circuit

Chief Judge Deanell R. Tacha
Chief Judge Frank Howell Seay,
Eastern District of Oklahoma

Eleventh Circuit

Chief Judge R. Lanier Anderson, III
Chief Judge Charles R. Butler, Jr.,
Southern District of Alabama

[1]Designated by the Chief Justice to attend in lieu of Judge Judith N. Keep of the Southern District of California.

District of Columbia Circuit:

Chief Judge Douglas H. Ginsburg
Chief Judge Thomas F. Hogan,
District of Columbia

Federal Circuit:

Chief Judge Haldane Robert Mayer

Court of International Trade:

Chief Judge Gregory W. Carman

Shortly after the Judicial Conference session began on September 11, 2001, members were informed of terrorist attacks in New York and Washington, D.C. The Conference adjourned promptly upon notification of the evacuation of the Supreme Court Building. No Conference business was conducted on that day, although the members were addressed by Senators Patrick Leahy, Orrin Hatch, and Jeff Sessions, and Representatives James Sensenbrenner and Howard Coble. The committee recommendations comprising the Conference's consent and discussion calendars were subsequently considered by Conference members in two mail ballots[2] — one concluded on September 19, 2001, and the second concluded on October 1, 2001. The actions taken as a result of these mail ballots are described below.[3]

EXECUTIVE COMMITTEE

RESOLUTIONS

The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution in recognition of the substantial contributions made by Judicial Conference committee chairs who will complete their terms of service in 2001:

[2]Two discussion items were deferred until the March 2002 Conference session.

[3]Unless otherwise noted, all actions were approved by the mail ballot concluded on September 19, 2001.

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

HONORABLE CAROL BAGLEY AMON
Committee on Codes of Conduct

HONORABLE WALTER K. STAPLETON
Committee on Federal-State Jurisdiction

HONORABLE WILLIAM J. ZLOCH
Committee on Financial Disclosure

HONORABLE DAVID R. HANSEN[4]
Committee on the Judicial Branch

HONORABLE WILL L. GARWOOD
Advisory Committee on Rules of Appellate Procedure

HONORABLE W. EUGENE DAVIS
Advisory Committee on Rules of Criminal Procedure

Appointed as committee chairs by Chief Justice William H. Rehnquist, these outstanding jurists have played a vital role in the administration of the federal court system. These judges served with distinction as leaders of their Judicial Conference committees while, at the same time, continuing to perform their duties as judges in their own courts. They have set a standard of skilled leadership and earned our deep respect and sincere gratitude for their innumerable contributions. We acknowledge with appreciation their commitment and dedicated service to the Judicial Conference and to the entire federal judiciary.

[4]The resolution recognizing the contributions of Judge Hansen was approved by the Executive Committee, on behalf of the Conference, by mail ballot concluded on March 29, 2001, to coincide with the completion of his term as chair.

UNITED STATES SENTENCING COMMISSION

On recommendation of the Executive Committee, the Judicial Conference agreed to urge the President, with the advice and consent of the Senate, to reappoint to the United States Sentencing Commission Judges Sterling Johnson, Jr., of the Eastern District of New York, and Joe Kendall of the Northern District of Texas.

INFORMATION TECHNOLOGY SECURITY/ USE OF THE INTERNET

In March 2001, the Executive Committee was advised that, consistent with Judicial Conference policy (*see* JCUS-SEP 88, p. 57), the Administrative Office was confidentially informing chief judges of potentially inappropriate use of the Internet by court personnel, so that the chief judge could take action, if appropriate. The Committee supported these actions, and asked the Committee on Automation and Technology to develop a comprehensive plan for improving information technology security in the judiciary. In late May, upon hearing of objections by certain judges to the judiciary's Internet access policy as managed by the AO, the Executive Committee urged the Committee on Automation and Technology, on an expedited basis, to develop policies and procedures to protect the confidentiality of electronic judicial communications and work product, including appropriate controls on monitoring.

The Executive Committee subsequently learned that the Ninth Circuit Judicial Council had directed the disconnection of intrusion detection software installed at the Ninth Circuit Internet gateway (which also serves the Eighth and Tenth Circuits). This software made possible, among other things, the identification of high-volume music and movie files. Concerned that the security of judiciary data in these circuits was jeopardized, the Committee determined to ask that the Ninth Circuit Council reactivate the intrusion detection software immediately, and agreed that if this was done, the identification of high-volume files (to which the Ninth Circuit Council had objected) would cease in all three judiciary gateways, pending the previously requested development of policies and procedures by the Automation and Technology Committee. The Ninth Circuit Council agreed.

In June, and again in August 2001, the Executive Committee was informed by the Chair of the Automation and Technology Committee of the latter committee's efforts to develop procedures on appropriate Internet use and

the management of such use and on recommendations to be presented to the Conference for actions to be taken pending further development (*see* "Internet Security," p. 43). In August 2001, the Executive Committee, with the concurrence of the Automation and Technology Committee, agreed to release to the public prior to the Conference session the latter committee's addendum to its report, which deals with this matter.

MISCELLANEOUS ACTIONS

The Executive Committee—

- Approved proposed interim financial plans for fiscal year 2002 for the Salaries and Expenses, Defender Services, Fees of Jurors and Commissioners, and Court Security accounts, as recommended by the Director of the Administrative Office, and authorized the Director of the Administrative Office to make technical and other adjustments as deemed necessary. The Executive Committee will be consulted as necessary concerning significant changes in the financial plans or allotments that might be required once a full-year appropriation is enacted.

- Concurred in the determination of the Court Administration and Case Management Committee to defer seeking enactment in a federal courts improvement bill of a provision authorizing the judiciary to charge fees for courtroom technologies such as videoconferencing of appellate arguments, in order to maintain the noncontroversial nature of the bill.

- Declined to take action on a Judicial Branch Committee request to authorize the Director of the Administrative Office to "weigh-in" in support of permitting federal employees to utilize frequent flier mileage for personal use.

- Discussed the issue of judges' attendance at private seminars, and determined to ask the Codes of Conduct Committee to consider amending Advisory Opinion No. 67 in light of *In re Aguinda*, 241 F.3d 194 (2d Cir. 2001).

- Approved a recommendation of the Budget Committee to amend the cost control monitoring system policy on funding court positions to provide nine months of funding for each increase in work units and three months of funding for each decrease in work units, subject to the availability of funds as determined by the Executive Committee during

approval of annual financial plans, and upon consideration of the advice and recommendation of the Director of the Administrative Office.

- Approved a recommendation of the Security and Facilities Committee that a third "judicial space emergency" be declared in Brooklyn, New York.

- Agreed to release to the public prior to Conference action a Court Administration and Case Management Committee report relating to privacy and public access to electronic case files.

- On recommendation of the Criminal Law Committee, agreed to (a) strongly support the establishment of projects designed to evaluate reentry programs to assist certain criminal offenders' reintegration into local communities from prison; (b) not oppose legislation designed to implement such projects so long as the judiciary is fully funded to implement the required provisions of any proposed legislation; and (c) authorize the Administrative Office Director to work with Congress to suggest modifications to any proposed legislation reflecting concerns of the Conference including, among other things, that the project parameters be structured to maximize efficiency and effectiveness.

- Agreed to ask the Administrative Office to implement certain changes to the Federal Law Clerk Information System suggested by law school placement personnel and also agreed to encourage all judges to participate in the system.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that, at the request of the Executive Committee, it conducted a review of the purposes for which statutorily required reports are produced by the Administrative Office and determined that it was not necessary to seek to modify or eliminate any of the 17 statutorily required reports. The Administrative Office Committee devoted considerable attention to the AO's role and actions in managing the security and performance of the judiciary's data communications network, including its procedures for notifying chief judges about possible inappropriate Internet use, which were consistent with established protocols. The Committee was briefed on current issues respecting the managing of judiciary Internet

usage; it met in executive session and reviewed and approved the actions of the Administrative Office in that regard. The Committee was also briefed on the progress of several major initiatives and studies, including the status of the AO's management oversight and stewardship initiative.

COMMITTEE ON AUTOMATION AND TECHNOLOGY

LAWBOOKS AND LIBRARIES STUDY

At the request of the Executive Committee, the Committee on Automation and Technology, with the assistance of the Committee on Security and Facilities, undertook a comprehensive study of lawbook and library usage within the judiciary with an eye toward cutting costs. Based on this study, the Committee recommended that the Conference adopt the following strategic recommendations:

1. The lawbooks and library program should be actively managed through circuit-wide library committees and governance structures, increased use and better application of existing management tools and techniques, and periodic review of and consultation with users as to their needs and use of legal research materials. Potential opportunities for more efficient use of lawbook resources should be explored by each circuit.

2. While successful efforts to restrain the costs of the lawbooks and library program have been achieved over the past several years, modest changes to chambers core collection guidelines and refinements to space and other guidelines would assist in a cost-effective use of judiciary lawbook funds.

3. There continues to be a clear and compelling need for legal research materials in hard copy format, and it is clear that the transition to on-line legal research is an evolutionary process. The judiciary should continue to promote the use of on-line research and training for judges, librarians and others. Local variations due to differences in research needs, types of cases, culture, and physical plant need to be recognized, and the reduction of lawbook collections should occur on a voluntary basis.

The Committee also recommended adoption of 32 implementing recommendations, which are contained in the executive summary to the Committee's Lawbooks and Libraries Study Report. The Judicial Conference

approved the Committee's recommendations, which are intended to make the lawbook and library program more cost-effective and efficient without sacrificing availability of research materials.

INTERNET SECURITY

In September 1997, the Judicial Conference approved a judiciary-wide policy aimed at protecting the security of the judiciary's electronic systems and information, requiring that, for computers connected to the judiciary's data communications network, access to the Internet would be provided only through national gateway connections approved by the Administrative Office pursuant to procedures adopted by the Automation and Technology Committee. It also urged all courts to adopt their own policies establishing local responsibility for managing employee access to the Internet and providing guidance on appropriate Internet use. JCUS-SEP 97, pp. 52-53. In December 2000, concerned with the explosive growth in Internet usage within the judiciary, the Committee asked the Administrative Office to conduct an analysis of such use. The analysis revealed that a significant factor contributing to the growth of Internet traffic in the courts appeared to be related to personal, rather than business usage.

Informed of the Automation and Technology Committee's efforts, of the AO's analysis, and of subsequent steps taken to advise chief judges of potentially inappropriate Internet use, the Executive Committee, in March 2001, asked the Committee on Automation and Technology to develop a comprehensive plan for improving information technology security in the judiciary (*see* JCUS-MAR 2001, p. 6). The Executive Committee later expanded its request, urging the Automation Committee, on an expedited basis, to develop policies and procedures to protect the confidentiality of electronic judiciary communications and work product, including appropriate controls on monitoring (*supra*, "Information Technology Security/Use of the Internet," pp. 39-40).

The Committee on Automation and Technology developed a number of recommendations regarding operations of the national communications infrastructure, appropriate use of judiciary information technology resources, noticing of judiciary employees, and protection of the judiciary's communications infrastructure. These recommendations were approved by the Judicial Conference, as follows:

That the Judicial Conference—

- Pending the completion of a review of the system architecture in 2002 that will be completed under the Committee's direction, with a view toward possible decentralization of Internet access to individual courts in a manner consistent with the security of the entire judiciary network, agree to reaffirm (a) that computers connected to the data communications network (DCN) shall access the Internet only through national gateways; and (b) that operations and security at those gateways are under the administrative, managerial, and logistical control of the Administrative Office, subject to the direction of the Conference or, where appropriate, Conference committees;

- Agree to adopt immediately, on an interim basis, the model use policy developed by the federal Chief Information Officers Council (except for Section F, "Privacy Expectations," which the Committee determined to reconsider), as ultimately revised by the Committee or its Subcommittee on IT Architecture and Infrastructure to tailor it to the judiciary, as a national minimum standard defining appropriate Internet use, subject to the right of each court unit to impose or maintain more restrictive policies. Further agree that in carrying out routine administrative, operational, and maintenance responsibilities, should instances of possibly inappropriate use of government resources come to the attention of the management of a court unit or the Administrative Office, established Judicial Conference notification policy will be followed;

- Reaffirm that individual courts have responsibility to enforce appropriate Internet use policies and direct the Administrative Office, as part of its regular audit process, to examine and comment upon the adequacy of the courts' enforcement methods;

- Agree to recommit to the Committee on Automation and Technology a recommendation on providing notice to judiciary employees of Internet use policies, in light of developments in technology and recent concerns raised on privacy; and

- Having discerned no material business use for Gnutella, Napster, Glacier, and Quake, all of which raise immediate and continuing security vulnerabilities, agree to (a) direct the Administrative Office to take appropriate steps to block such traffic involving computers connected to the DCN; and (b) delegate to the Committee the authority to block other tunneling protocols that may cause security breaches.

COMMITTEE ACTIVITIES

The Committee on Automation and Technology reported that it had approved priorities for implementing the recommendations of a comprehensive, independent study of the judiciary's national information technology program and approved resource requirements and priorities for the five programs under its jurisdiction: automation, telecommunications, court automation support reimbursable, library services, and electronic public access. The Committee discussed a revised information technology vision to be included in the next update to the *Long Range Plan for Information Technology* and received briefings on a number of information technology projects. The Committee also endorsed the continuation of an implementation strategy for installation of the replacement electronic mail system.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

TRUSTEE RETENTION OF PROFESSIONALS

Section 327(d) of the Bankruptcy Code (11 U.S.C. § 327(d)) allows courts to authorize trustees to hire themselves or their firms as attorneys or accountants for an estate if it is "in the best interest of the estate." This practice has been defended on the grounds of economy and efficiency to the estate, but has also raised concerns about possible conflicts of interest as well as a public perception of impropriety. In March 1994, the Judicial Conference agreed to support amendments to section 327(d) to address such concerns (JCUS-MAR 94, p. 11), but for a variety of reasons, such legislation has not been pursued. Upon reconsideration, the Committee determined to recommend that the Conference rescind its March 1994 position, noting that courts are aware of the dangers inherent in the practice of trustees employing themselves or their firms and have not encountered any difficulty in supervising the practice, or in applying the "best interest of the estate" standard that presently exists in section 327(d). The Conference adopted the Committee's recommendation.

CHAPTER 11 QUARTERLY FEES

Bankruptcy administrators are independent non-judicial officers within the judicial branch who by statute perform the same bankruptcy estate administration oversight functions in the six districts in Alabama and North

Carolina that the United States trustees perform in the other districts. Section 105 of the Federal Courts Improvement Act of 2000, Public Law No. 106-518, proposed by the Judicial Conference in March 1996 (JCUS-MAR 96, p. 10) and enacted on November 13, 2000, authorizes the Conference to impose quarterly fees in chapter 11 cases in bankruptcy administrator districts comparable to those already being charged in United States trustee districts. To implement this statute, the Conference approved a Bankruptcy Committee recommendation that such fees be imposed in bankruptcy administrator districts in the amounts specified in 28 U.S.C. § 1930, as those amounts may be amended from time to time.

COMMITTEE ACTIVITIES

The Bankruptcy Committee reported that it has established a subcommittee to study venue-related issues in bankruptcy cases, including effective procedures for handling large chapter 11 cases.[5] It also authorized its chair, at an appropriate time, to create a subcommittee to help coordinate the judiciary's implementation of bankruptcy reform legislation. The Committee further unanimously endorsed the recommendations of the Court Administration and Case Management Committee regarding privacy and public access to court case files (s*ee infra*, "Privacy and Public Access to Electronic Case Files," pp. 48-50) and of the Budget Committee regarding the designation of certifying officers (s*ee infra,* "Certifying Officers," p. 47).

COMMITTEE ON THE BUDGET

FISCAL YEAR 2003 BUDGET REQUEST

The Judicial Conference approved the Budget Committee's proposed budget request for fiscal year 2003, subject to amendments necessary as a result of new legislation, actions of the Judicial Conference, or any other reason the Executive Committee considers necessary and appropriate.

[5]Prior to this Judicial Conference session, the Bankruptcy Committee withdrew for further consideration certain recommendations it had made proposing amendments to statutory and rule provisions governing venue in bankruptcy cases and proceedings.

CERTIFYING OFFICERS

The Federal Courts Improvement Act of 2000 included a Conference-sought provision authorizing the Director of the Administrative Office to designate certifying officers in the judiciary. In anticipation of such legislation, at its September 1998 session, the Judicial Conference adopted an implementation strategy stating that the Director should consult with the chief judge before designating additional certifying officers in a district court (JCUS-SEP 98, p. 59). At this session, the Judicial Conference approved a recommendation of the Budget Committee, made in consultation with the Committees on Court Administration and Case Management, Bankruptcy, Criminal Law, and Defender Services, that the September 1998 Conference policy be amended so that the appropriate chief judge maintains oversight of operations within his or her court unit. Under the amended policy, the Director of the Administrative Office will designate certifying officers in appellate, district, and bankruptcy courts with the concurrence of the respective chief judges of those courts. In those courts in which the clerk's office functions of the district and bankruptcy units are consolidated, certifying officer responsibilities also will be consolidated, and concurrence of the chief district judge will be required. Certifying officers in the bankruptcy administrator and bankruptcy appellate panel programs will be designated with the concurrence of the circuit chief judge, and federal public defenders will be designated without chief judge concurrence.

COMMITTEE ACTIVITIES

The Budget Committee and chairs of the program committees discussed news articles that reported the apparent use of the Internet by court employees for non-official purposes including substantial downloading of inappropriate material. The Budget Committee believes that the judiciary must employ adequate safeguards over the use of its property and facilities; that past success in acquiring the necessary appropriations for the operations of the courts is due largely to the trusting relationship that the judiciary enjoys with the Congress and the confidence Congress has that the judiciary will use its resources wisely; and that all reasonable steps must be taken to retain Congress' confidence in the courts' stewardship of the taxpayers' dollars. Therefore, the Committee unanimously resolved that, in formulating an information resources use policy, the Committee on Automation and Technology should ensure that judiciary

automation property and facilities are used for official purposes. The Budget Committee encouraged the Conference to embrace policies and administrative procedures for all judiciary programs that will promote reasonable safeguards over the use of judiciary assets. *See also, supra,* "Internet Security," pp. 43-44.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

Since its last report to the Judicial Conference in March 2001, the Committee on Codes of Conduct received 31 new written inquiries and issued 31 written advisory responses. During this period, the average response time for these requests was 18 days. The Chairman received and responded to 17 telephonic inquiries. In addition, individual committee members responded to 126 inquiries from their colleagues.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

PRIVACY AND PUBLIC ACCESS TO ELECTRONIC CASE FILES

After extensive study and opportunity for public comment, the Committee on Court Administration and Case Management, with substantial input from the Committees on Criminal Law, the Administration of the Bankruptcy System, Rules of Practice and Procedure, and Automation and Technology, endorsed the "Report on Privacy and Public Access to Electronic Case Files" (the Privacy Report) and recommended its adoption by the Judicial Conference. The Privacy Report establishes a judiciary-wide policy governing electronic availability of case file information. The Judicial Conference approved the following general principles and specific recommendations contained in the Report regarding access to different types of case files:

GENERAL PRINCIPLES

- There should be consistent, nationwide policies in federal courts in order to ensure that similar privacy protections and access presumptions apply regardless of which federal court is the custodian of a particular case file.

- Notice of these nationwide policies should be given to all litigants in federal court so that they will be aware of the fact that materials which they submit in a federal court proceeding could become available on the Internet.

- Members of the bar must be educated about the policies and the fact that they must protect their clients by carefully examining the documents that they file in federal court for sensitive, private information and by making the appropriate motions to protect documents from electronic access when necessary.

- Except where otherwise noted, the policies apply to both paper and electronic files.

- Electronic access to docket sheets through PACERNet and court opinions through court websites will not be affected by these policies.

- The availability of case files at the courthouse will not be affected or limited by these policies.

- Nothing in these recommendations is intended to create a private right of action or to limit the application of Rule 11 of the Federal Rules of Civil Procedure.

SPECIFIC RECOMMENDATIONS

- Civil Case Files. Documents in civil case files should be made available electronically to the same extent that they are available at the courthouse with one exception (that Social Security cases should be excluded from electronic access) and one change in policy (that certain "personal data identifiers" should be modified or partially redacted by the litigants; these identifiers are Social Security numbers, dates of birth, financial account numbers and names of minor children).

- Criminal Case Files. Public remote electronic access to documents in criminal cases should not be available at this time, with the understanding that this policy will be reexamined within two years of adoption by the Judicial Conference.

- Bankruptcy Case Files. Documents in bankruptcy case files should be made generally available electronically to the same extent that they are available at the courthouse, with a similar policy change for personal identifiers as in civil cases; section 107(b)(2) of the Bankruptcy Code

should be amended to establish privacy and security concerns as a basis for the sealing of a document; and the Bankruptcy Code and Rules should be amended as necessary to allow the court to collect a debtor's full Social Security number but display only the last four digits.

- Appellate Case Files. Appellate case files should be treated at the appellate level the same way in which they are treated at the lower level.

MODEL LOCAL RULES FOR ELECTRONIC CASE FILING

On recommendation of the Committee, the Conference adopted model local rules for district and bankruptcy courts to assist those courts in implementing the electronic case filing (ECF) program.[6] The rules were developed with the assistance of the Committee on Automation and Technology and the Committee on Rules of Practice and Procedure. Courts may adopt the rules in full or in part, and courts may also opt to promulgate them through standing orders.

MISCELLANEOUS FEES

Judicial Panel on Multidistrict Litigation. In September 1996, the Judicial Conference approved increases to certain fees in the miscellaneous fee schedules for appellate, district, and bankruptcy courts and the Court of Federal Claims to account for inflation. These fee increases were made contingent on the enactment of legislation to permit the judiciary to retain the resulting increased amounts (JCUS-SEP 96, p. 54). The Conference's 1996 action did not extend to the Judicial Panel on Multidistrict Litigation because its fee schedule was not established until March 1997 (JCUS-MAR 97, p. 20). Legislation permitting the judiciary to retain miscellaneous fee increases was enacted in section 102 of the Federal Courts Improvement Act of 2000 and includes the Multidistrict Litigation Panel with the other court types for which such fee increases may be retained. In order to maintain uniformity among the fee schedules of the different court types, the Judicial Conference approved a Committee recommendation that the Miscellaneous Fee Schedule for the Judicial Panel on Multidistrict Litigation be amended to include the fee increases set forth below:

[6]No courts of appeals have yet instituted ECF. Therefore, no rules are proposed for those courts at this time.

Fee	Current Amount	Increased Amount
Search of Records	$15	$20
Certification of Documents	$ 5	$ 7
Returned Check	$25	$35

Federal Agency Exemption in the Courts of Appeals. On recommendation of the Committee, the Judicial Conference agreed to amend Items 2 and 4 of the Court of Appeals Miscellaneous Fee Schedule to add language concerning limitations on federal agency exemption from fees. This language, which is similar to that found in the district and bankruptcy court fee schedules, had been inadvertently omitted when the appellate fee schedule was amended to reflect the application of electronic access fees (*see* JCUS-SEP 93, pp. 44-45). As amended, Items 2 and 4 read as follows (new language in italics) :

> (2) For every search of the records of the court and certifying the results thereof, $20. *This fee shall apply to services rendered on behalf of the United States if the information requested is available through electronic access*.
>
> * * * * *
>
> (4) For reproducing any record or paper, 50 cents per page. This fee shall apply to paper copies made from either: (1) original documents; or (2) microfiche or microfilm reproductions of the original records. *This fee shall apply to services rendered on behalf of the United States if the record or paper requested is available through electronic access*.

Appeal Fee in Bankruptcy. The Conference adopted the recommendation of the Committee on Court Administration and Case Management, as endorsed by the Committee on the Administration of the Bankruptcy System, to amend Items 15 and 21 of the Bankruptcy Court Miscellaneous Fee Schedule to provide that fees for appeals or cross-appeals by bankruptcy trustees (and debtors in possession in chapter 11 cases) be payable only from the estate and to the extent that an estate is realized in order to encourage trustees to pursue estate assets. A similar provision has already been included in Item 6 of the Bankruptcy Court Miscellaneous Fee Schedule pertaining to the obligation of trustees and debtors in possession to pay adversary proceeding filing fees.

JUROR ATTENDANCE FEE

Pursuant to the Jury Selection and Service Act, 28 U.S.C. § 1871, jurors are entitled to receive a fee of $40 per day for attendance at a place of trial or hearing. While this fee is not intended to support or replace salaries, it is intended to provide a minimal level of compensation for jurors fulfilling their civic responsibility. However, this fee has not been increased in over ten years.[7] On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference agreed to seek legislation to amend 28 U.S.C. § 1871(b)(1) to increase from $40 to $50 the fee paid to a juror per day of actual attendance, subject to congressional funding.

E-GOVERNMENT ACT OF 2001

The proposed E-Government Act of 2001 (S. 803 and H.R. 2458, 107th Congress) is intended to improve the use of information technology by the federal government. Section 205 of both bills would require appellate, district and bankruptcy courts to establish official websites containing information or links to information such as local rules, written opinions and electronically filed documents. It would permit the Judicial Conference to promulgate rules to address privacy concerns, and includes an "opt out" provision. The bills also address the conditions under which fees may be charged for court information. Since an extensive effort is already underway in the judiciary both to expand public access through technology (*e.g.*, the case management/electronic case files system) and to address privacy issues related to public access (*see supra*, "Report on Privacy and Public Access to Electronic Case Files," pp. 48-50), it was the Committee's view that the judiciary is better equipped to address these issues. On recommendation of the Committee, the Judicial Conference agreed to ask Congress to strike section 205 and replace it with a provision giving the judiciary six months to study the use of information technology in providing court-related information to the public and provide the Senate Governmental Affairs and the House Government Reform Committees with language more tailored to the objectives and needs of the judiciary and its users.

[7]In March 1998, the Judicial Conference approved seeking legislation to reduce from 30 to five the number of days jurors are required to serve before they are eligible to receive an additional fee (JCUS-MAR 98, p. 9), but this proposal has not yet been enacted.

In addition, on recommendation of the Committee, the Conference adopted the following specific fallback positions in the event Congress declines to strike section 205:

That the Judicial Conference—

a. take no position with regard to the meaning of the term "written opinion" as used in the legislation;

b. take no position on the amendment of the fee language in the Judiciary Appropriations Act of 1991;

c. make Congress aware of the fact that there are significant costs associated with the maintenance of written opinions online for an indefinite period of time;

d. make Congress aware of any inconsistencies between any privacy and access policy the Conference may adopt and the provisions of the legislation;

e. make Congress aware that the "opt out" provision of the bill is contrary to the establishment of a nationwide access policy and should be viewed as merely a short-term solution to initial noncompliance;

f. seek an amendment to the legislation to allow chief bankruptcy judges to create the websites of bankruptcy courts; and

g. seek an amendment to the legislation to extend the time requirement for compliance with both the operation of court websites and the availability of electronic documents to five years after the effective date of the Act.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that, among other things, it received a briefing on the Criminal Justice Act supervisory attorney pilot project, which will be evaluated by the Committee at its next meeting; an update on videoconferencing in the federal courts; an update on the case management/electronic case files project; and a briefing on the Federal Judicial Center's ongoing district case weighting study.

COMMITTEE ON CRIMINAL LAW

DNA AND COMPETENCY OF COUNSEL LEGISLATION

Legislation pending in the 107th Congress on improving the availability of post-conviction forensic DNA testing in federal and state criminal justice systems and on ensuring competent counsel in state capital cases was considered by the Committees on Criminal Law, Defender Services, and Federal-State Jurisdiction, each with regard to those provisions falling within its jurisdiction. The recommendations of those committees were presented to the Conference in one consolidated report and are discussed *infra,* "Consolidated Report on DNA and Competency of Counsel Legislation," pp. 72-75.

COMMITTEE ACTIVITIES

The Committee reported on its recommendation to the AO Director that the Regulations of the Director of the Administrative Office Concerning the Carrying and Use of Firearms by U.S. Probation and Pretrial Services Officers be revised to authorize probation and pretrial services officers to carry judiciary-issued, double-action only, semiautomatic firearms in the performance of their official duties. The regulations, adopted by the Conference at its March 1997 session (JCUS-MAR 97, p. 22), delegate to the AO Director, in consultation with the Committee, the authority to determine which firearms and ammunition are authorized for use by the officers. The Committee was briefed on the activities of an ad hoc working group that is reviewing and revising pretrial services and post-conviction supervision monographs.

COMMITTEE ON DEFENDER SERVICES

MALPRACTICE CLAIMS AGAINST PANEL ATTORNEYS

The Federal Courts Improvement Act of 2000 amended subsection (d) of the Criminal Justice Act (CJA), 18 U.S.C. § 3006A(d), to authorize courts to reimburse panel attorneys for expenses reasonably incurred by them in defending against actions alleging their malpractice in furnishing representational service under the CJA. On recommendation of the Committee

on Defender Services, the Judicial Conference approved a proposed revision of paragraph 2.27 of the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Volume VII, *Guide to Judiciary Policies and Procedures,* to add a new subparagraph (D) to advise courts and panel attorneys regarding implementation of this legislation. (The previous subparagraph (D) is redesignated as (E).) The new guideline sets a monetary ceiling for reimbursement, the deductible amount of the attorney's professional liability insurance or $5,000, whichever is less; precludes reimbursement for the value of the attorney's *own* services in defending against the action; and, as specified in the statute, prohibits reimbursement if a judgment of malpractice is rendered against the panel attorney. Expenses incurred on or after November 13, 2000 are eligible for reimbursement.

DNA AND COMPETENCY OF COUNSEL LEGISLATION

Legislation pending in the 107th Congress on improving the availability of post-conviction forensic DNA testing in federal and state criminal justice systems and on ensuring competent counsel in state capital cases was considered by the Committees on Criminal Law, Defender Services, and Federal-State Jurisdiction, each with regard to those provisions falling within its jurisdiction. The recommendations of those committees were presented to the Conference in one consolidated report and are discussed *infra*, "Consolidated Report on DNA and Competency of Counsel Legislation," pp. 72-75.

COMMITTEE ACTIVITIES

Under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), the Committee on Defender Services approved fiscal year 2002 budgets and grants for 73 federal defender organizations, totaling $272,123,700.

The Committee reported that it reviewed the continuing development and implementation of the Outline of the Defender Services Program Strategic Plan, and supported the concept of convening a joint state and federal defender conference on quality of representation. The Committee endorsed establishment of two capital resource counsel positions to be used to train and consult with federal defender organization staffs on federal death penalty representation, and, as their availability permits, provide support and training to Criminal Justice Act panel attorneys on such matters. Efforts by the

Committee and other components of the judiciary to obtain an increase in the compensation rate for Criminal Justice Act panel attorneys appear to be yielding positive results, in that Congress approved FY 2002 funding for an hourly rate of $90 for in-court and out-of-court work. The Committee also received a report on federal defender and panel attorney training events.

COMMITTEE ON FEDERAL-STATE JURISDICTION

DIVERSITY JURISDICTION

Section 1332(c) of title 28, United States Code, currently "deems" a corporation to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business, for purposes of diversity of citizenship and removal jurisdiction. The provision was originally adopted to expand the number of states in which a corporation will be deemed a citizen, thus restricting the scope of diversity jurisdiction. However, some courts have interpreted the word "State" in section 1332(c)(1) as not including foreign states, resulting in the expansion of the availability of diversity jurisdiction for corporations with foreign contacts. In response to this situation, the Committee on Federal-State Jurisdiction recommended that the Judicial Conference endorse enactment of a proposal of the American Law Institute to amend 28 U.S.C. § 1332(c) to deem a corporation to be a citizen of every state and foreign state by which it has been incorporated and of the state or foreign state in which it has its principal place of business. The Conference adopted the Committee's recommendation, which would have the effect of restricting the availability of diversity jurisdiction for corporations with foreign contacts.

PATIENTS' RIGHTS LEGISLATION

During the first session of the 107th Congress, both the Senate and the House of Representatives passed differing versions of the "Bipartisan Patient Protection Act" as S. 1052 and H.R. 2563, respectively. These bills would establish new federal standards governing the provision of medical benefits in health insurance plans. Both bills would also provide legal recourse for damage claims for injuries resulting from the denial by a health plan of a

medical benefit. They differ, however, in their allocation of jurisdiction to the state and federal courts and in the type of action permitted.[8]

S. 1052 would create a new federal cause of action, with exclusive federal court jurisdiction, for personal injuries arising from a failure to exercise ordinary care in making a decision regarding an individual's coverage under a health benefit plan. S. 1052 would also lift the preemption bar in the Employee Retirement Income Security Act of 1974 (ERISA) to permit suits for personal injuries arising from "medically reviewable determinations" (*e.g.*, decisions based on the necessity or appropriateness of a treatment) to go forward in state courts in accordance with otherwise applicable state law. H.R. 2563 would create a single federal cause of action for damages that result from negligent coverage decisions, as well as medically reviewable decisions. State and federal courts would be given concurrent jurisdiction. Although H.R. 2563 precludes removal of claims arising from a medically reviewable determination, it permits removal if the action is against certain parties. The two bills would also provide for access to a court when a benefit has been denied and the patient believes that exhaustion of internal and external review processes would result in irreparable injury to the patient's health. S. 1052 would make federal court the exclusive forum for the adjudication of such exigent benefit claims, while H.R. 2563 would provide for concurrent jurisdiction in the state and federal courts and would make no provision to bar removal.

In February 2000, during the 106th Congress, the Executive Committee, on behalf of the Judicial Conference, adopted a recommendation of the Committee on Federal-State Jurisdiction urging Congress to provide that in any managed care legislation, the state courts be the primary fora for the resolution of personal injury claims arising from the denial of health care benefits, should Congress determine that such legal recourse is warranted. The Executive Committee recognized that personal injury claims arising from the provision or denial of medical treatment have historically been governed by state tort law, and suits on such claims have traditionally and satisfactorily been resolved primarily in the state court system. JCUS-MAR 00, pp. 7-8. After reviewing the legal recourse provisions of S. 1052 and H.R. 2563, and in light of

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[8]Presently, suits for personal injury damages against health insurance plans governed by the Employee Retirement Income Security Act of 1974 are generally barred, and only a claim for the actual benefit or service is permitted in federal, as well as state, court. 29 U.S.C. § 1132(a).

previous Conference action, the Committee on Federal-State Jurisdiction recommended that the Conference—

a. Continue to recognize that state courts should be the primary fora for the resolution of personal injury claims arising from the denial of health care benefits;

b. Express concern with any provision in patients' rights legislation that would create a new cause of action in federal court for personal injury claims arising from medically reviewable (*e.g.*, necessity of treatment) benefit decisions; and

c. Encourage Congress, in any such legislation, to provide state courts with jurisdiction (concurrent or otherwise) over any suits to compel insurance plans to provide interim medical benefits on an emergency basis and to bar removal of such suits.

By mail ballot concluded on October 1, 2001, the Conference adopted the Committee's recommendations.

DNA AND COMPETENCY OF COUNSEL LEGISLATION

Legislation pending in the 107th Congress on improving the availability of post-conviction forensic DNA testing in federal and state criminal justice systems and on ensuring competent counsel in state capital cases was considered by the Committees on Criminal Law, Defender Services, and Federal-State Jurisdiction, each with regard to those provisions falling within its jurisdiction. The recommendations of those committees were presented to the Conference in one consolidated report and are discussed *infra,* "Consolidated Report on DNA and Competency of Counsel Legislation," pp. 72-75.

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it was briefed on a number of issues related to mass torts and class actions, including proposed amendments to Rule 23 of the Federal Rules of Civil Procedure regarding duplicative and competing class actions. In addition, the Committee formed a Subcommittee on Federal-State Interaction, which is tasked with

making suggestions as to how the Committee can better foster state-federal relations and educational initiatives. Other topics discussed by the Committee included the work of the Ninth Circuit's Pacific Islands Committee, the status of asbestos litigation, legislative language to make orders of the National Labor Relations Board self-enforcing, and a proposal by administrative law judges to restructure the appellate administrative review of Social Security claims.

COMMITTEE ON FINANCIAL DISCLOSURE

FINANCIAL DISCLOSURE REPORT PREPARATION

On recommendation of the Committee on Financial Disclosure, the Judicial Conference agreed (by mail ballot concluded on October 1, 2001) to authorize the reimbursement of judges and judiciary employees for the cost of professional fees, not to exceed $1000, for the preparation of annual financial disclosure reports. Reimbursement of this expense is appropriate because preparation of a financial disclosure report is a part of a filer's official duties and imparts no personal benefit; rather it satisfies an official government need.

COMMITTEE ACTIVITIES

As of July 1, 2001, the Committee had received 3,231 financial disclosure reports and certifications for the calendar year 2000, including 1,174 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 320 from bankruptcy judges; 488 from magistrate judges; and 1,249 from judicial employees.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that during the period from January 1, 2001, to June 30, 2001, a total of 90 intercircuit assignments, undertaken by 58 Article III judges, were processed and recommended by the Committee on Intercircuit Assignments and approved by the Chief Justice. In addition, the Committee aided courts requesting assistance by both identifying and obtaining judges willing to take assignments.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported that seven delegations of Russian judges have participated in a Library of Congress Russian Leadership Program rule-of-law component that has been established with Committee assistance. The program includes visits to the federal and state courts in a local community in the United States. The Committee also reported on its involvement in rule-of-law and judicial reform activities relating to Africa, Asia, Europe, and Latin America, including work with the Russian and Venezuelan judiciaries funded through the United States Agency for International Development.

COMMITTEE ON THE JUDICIAL BRANCH

GOVERNMENT MANAGEMENT REFORM ACT OF 1994

Section 101 of the Government Management Reform Act of 1994, Public Law No. 103-356, amended the Ethics Reform Act of 1989 to provide that an annual Employment Cost Index (ECI) adjustment for judges, members of Congress, and Executive Schedule officials can be no higher than a comparable pay adjustment for General Schedule employees. The effect of this provision has been that judges and other high-level federal officials have lost 2.8 percent of their annual ECI adjustments cumulatively, resulting in a loss of about $4,000 annually. After considering the legislative histories of the Ethics Reform Act and section 101 of the Government Management Reform Act, the Committee concluded that section 101 is contrary to the intent of Congress and the President in enacting the Ethics Reform Act (which was to make annual pay adjustments for high-level officials independent of those for other federal employees) and is unfair in its application to judges. On recommendation of the Judicial Branch Committee, the Judicial Conference agreed to seek repeal of section 101 of the Government Management Reform Act of 1994, as it operates on judges, members of Congress, and Executive Schedule officials.

TRAVEL REGULATIONS FOR UNITED STATES JUSTICES AND JUDGES

On recommendation of the Judicial Branch Committee, the Judicial Conference agreed to amend the Travel Regulations for United States Justices and Judges to clarify the Director's authority with regard to reimbursement for travel and subsistence expenses for judges with special needs. The amendments provide that (a) the Director may authorize a judge with a special need (*e.g.*, physical disability) transportation and per diem expenses incurred by a family member or other attendant who must travel with the judge to make the trip possible; (b) a judge with a special need is authorized services (*e.g.*, renting and/or transporting a wheelchair) to enable the judge to accomplish successfully the purpose of the travel; and (c) the Director may authorize an actual subsistence expense reimbursement not to exceed 300 percent of the applicable maximum per diem rate, where the daily subsistence allowance for judges who itemize is inadequate to cover the cost of a hotel room that is accessible or otherwise equipped for physically disabled persons.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it has continued to give high priority to the problem of judicial compensation. The Committee also devoted considerable time and attention to benefits matters and received an update on the status of two cases raising issues concerning taxation of judicial compensation.

COMMITTEE ON JUDICIAL RESOURCES

COURT INTERPRETER POSITIONS

Based on established criteria, the Committee on Judicial Resources recommended, and the Judicial Conference approved, ten additional court interpreter positions for fiscal year 2003: six positions for the District of Arizona, including the conversion of three temporary positions to permanent; three positions for the Southern District of California; and one position for the Northern District of California. Four of these positions (three in the District of Arizona and one in the Southern District of California) were approved for accelerated funding in fiscal year 2002. On recommendation of the Committee,

the Conference declined to approve additional court interpreter positions for the Districts of Massachusetts, Nebraska, New Jersey, and Puerto Rico.

BANKRUPTCY ADMINISTRATOR STAFF

The bankruptcy administrator for the Northern District of Alabama requested authority to have a "type II" chief deputy bankruptcy administrator position, citing the size, geographic distribution and level of responsibilities of that office. This request was supported by the chief judge of the Eleventh Circuit Court of Appeals, and the chief judges of the district and bankruptcy courts of the Northern District of Alabama. On recommendation of the Committee, which determined that the bankruptcy administrator for that district would use a second-in-command type II chief deputy in a manner consistent with the position description set forth in the Judiciary Salary Plan, the Conference approved the bankruptcy administrator's request.

PHYSICAL FITNESS CENTERS

Physical fitness programs have been promoted by both the private and federal sectors as a means to improve employee productivity, reduce absenteeism, lessen employee turnover, and decrease health care costs. Judiciary staff have used on-site and shared fitness centers for several years. At the request of the Committee on Security and Facilities, the Committee on Judicial Resources developed a judiciary policy on physical fitness centers to give guidance on such matters as liability, safety, and space concerns, and recommended its adoption by the Conference. Among other things, the policy authorizes local funds to be expended to allow court staff to participate in fitness center activities. The Conference adopted the policy on physical fitness centers proposed by the Committee.

BANKRUPTCY APPELLATE PANEL LAW CLERKS

In order to develop a methodology for allocating bankruptcy appellate panel law clerks, the Judicial Resources Committee considered the caseloads and resources of bankruptcy appellate panel judges, recommendations made by chief bankruptcy appellate panel judges and bankruptcy appellate panel clerks, and other detailed alternatives. On recommendation of the Committee, the Conference agreed to take the following actions:

a. Adopt a national staffing allocation formula for bankruptcy appellate panel law clerks of one law clerk for every 100 bankruptcy appellate panel annual case participations on a circuit-wide basis, not to exceed one law clerk per bankruptcy appellate panel judge;

b. Define bankruptcy appellate panel case participations for the bankruptcy appellate panel law clerk formula as including (1) case terminations on the merits following oral hearing or submission on the briefs and (2) case procedural terminations ruled on by a judge;

c. Approve a rounding factor of 75 bankruptcy appellate panel case participations for all filings above the initial base of 100 case participations for receiving a second or subsequent law clerk;

d. Approve a stability factor that would reduce the number of allocated positions only if the bankruptcy appellate panel does not meet the formula standard with the rounding factor for two years in a row; and

e. Authorize the Director of the Administrative Office to approve requests for bankruptcy appellate panel law clerk extensions for compelling reasons.

DISTRICT CLERKS' OFFICES STAFFING FORMULA

In September 2000, the Judicial Conference approved a new staffing formula for the district clerks' offices (JCUS-SEP 00, pp. 56-57). Subsequently, in order to take into consideration the impact of new technologies, the Committee recommended that the Conference revise the formula to include a new "automation" factor and to remove the automation component from the existing "organizational" factor. In addition, the Committee recommended a technical amendment to the "judge support" staffing factor to reflect that this factor was intended to be based on "judges authorized," not "judges present," since the former is a more accurate indicator of workload. The Conference adopted the proposed automation, organizational, and judge support staffing factors as part of the staffing formula for the United States district court clerks' offices to be implemented in fiscal year 2002.

ALTERNATIVE DISPUTE RESOLUTION STAFFING FACTOR

In March 1998, the Judicial Conference approved a "basic" and a "robust" staffing factor for clerk's office positions performing duties related to alternative dispute resolution (JCUS-MAR 98, pp. 20-21). The basic staffing factor was intended to apply to most district courts' alternate dispute resolution (ADR) programs, while the robust factor was intended for a limited number of courts with extensive ADR programs. The District of South Carolina, heretofore funded using the basic staffing factor, requested application of the robust factor, citing significant growth in its program. Based on the number of cases reported as participating in the District of South Carolina's ADR program, and the number of hours spent processing those cases for the 12-month reporting period ending June 2000, the Committee on Judicial Resources recommended that the Judicial Conference approve that district's request. The Conference adopted the Committee's recommendation.

QUALIFICATIONS STANDARDS FOR CHIEF PROBATION AND CHIEF PRETRIAL SERVICES OFFICERS

The Judicial Conference approved a recommendation of the Committee on Judicial Resources that it adopt revised qualifications standards for chief probation officers and chief pretrial services officers in order to modernize and enhance those standards. The new standards retain requirements for a bachelor's degree before specialized experience is credited and for three years of technical experience for continued law enforcement officer retirement system coverage, but they eliminate credit for graduate-level education and allow substitution of three years of successful experience as a supervisor or a manager for the requirement of a year at the next lower level of specialized experience.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it encouraged the Director of the Administrative Office to increase the health care flexible spending account cap from $5,000 to a maximum of $10,000. The Committee took no action on special rates proposed by the Office of Personnel Management for information technology personnel because a survey of all

court units conducted by the Administrative Office in March 2001 showed no apparent nationwide problem with information technology recruitment and retention in the judiciary (although the data indicated problems in certain locality pay areas). The Committee asked the Administrative Office to provide an update if the situation changes and to develop educational materials that encourage courts to use the full range of Court Personnel System flexibilities and monetary and non-monetary incentives to attract and retain information technology employees.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

SELECTION AND APPOINTMENT REGULATIONS

On recommendation of the Committee on the Administration of the Magistrate Judges System, the Judicial Conference approved technical and clarifying changes to the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges. Among other things, the changes add the Territory of Guam and the Commonwealth of the Northern Mariana Islands as locations where a person may be a member of the bar to be qualified for appointment as a magistrate judge, and clarify that any additional qualification standard that a court may wish to impose, beyond those in the selection and appointment regulations, may not be inconsistent with the court's policy as an equal opportunity employer.

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 Judicial Conference approved the following changes in positions, locations, salaries, and arrangements for full-time and part-time magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

THIRD CIRCUIT

Eastern District of Pennsylvania

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Middle District of Pennsylvania

Increased the salary of the part-time magistrate judge position at Williamsport from Level 7 ($5,605 per annum) to Level 6 ($11,211 per annum).

FOURTH CIRCUIT

District of South Carolina

1. Authorized an additional full-time magistrate judge position in Charleston; and

2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

FIFTH CIRCUIT

Middle District of Louisiana

Made no change in the number or arrangements of the magistrate judge positions in the district.

Northern District of Texas

Increased the salary of the part-time magistrate judge position at Abilene from Level 5 ($22,422 per annum) to Level 4 ($33,633 per annum).

Western District of Texas

Redesignated the full-time magistrate judge position currently designated as Austin or Waco as Austin.

SIXTH CIRCUIT

Eastern District of Michigan

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

NINTH CIRCUIT

District of Idaho

Made no change in the number, location, or arrangements of the magistrate judge positions in the district.

District of Oregon

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

ELEVENTH CIRCUIT

Northern District of Alabama

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

ACCELERATED FUNDING

On recommendation of the Committee, the Judicial Conference agreed to designate the new full-time magistrate judge position at Charleston, South Carolina, for accelerated funding in fiscal year 2002.

COMMITTEE ACTIVITIES

The Committee considered two issues concerning the selection and appointment regulations for magistrate judge positions. First, the Committee discussed a judge's suggestion that the regulations be amended to provide that if an applicant for a magistrate judge position is a member of the same law firm as a member of the merit selection panel, the panel member must step down.

The Committee determined not to seek a change to the regulations to address the issue, but instead to add language to the selection and appointment pamphlet that each panel member must disclose to all other panel members any personal or professional relationships with any applicants for the position. The Committee also declined to adopt a judge's suggestion that the regulations be modified to allow career law clerks with at least five years of clerkship experience to have that clerkship time considered in computing the five-year active practice of law requirement.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders reported that it met in August 2001 to consider a petition for review of an order entered by the Judicial Council of the District of Columbia Circuit in proceedings conducted under the Judicial Conduct and Disability Act, 28 U.S.C. § 372(c). The petition, filed in April 2001, was taken under advisement.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF APPELLATE PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Appellate Rules 1 (Scope of Rules; Title), 4 (Appeal as of Right -- When Taken), 5 (Appeal by Permission), 21 (Writs of Mandamus and Prohibition, and Other Extraordinary Writs), 24 (Proceeding in Forma Pauperis), 25 (Filing and Service), 26 (Computing and Extending Time), 26.1 (Corporate Disclosure Statement), 27 (Motions), 28 (Briefs), 31 (Serving and Filing Briefs), 32 (Form of Briefs, Appendices, and Other Papers), 36 (Entry of Judgment; Notice), 41 (Mandate: Contents; Issuance and Effective Date; Stay), 44 (Case Involving a Constitutional Question When the United States Is Not a Party) and 45 (Clerk's Duties), and new Form 6 (Certificate of Compliance With Rule 32(a)), together with Committee notes explaining their purpose and intent. The Judicial Conference approved the amendments and new form and authorized their transmittal to the

Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 1004 (Partnership Petition), 2004 (Examination), 2015 (Duty to Keep Records, Make Reports, and Give Notice of Case), 4004 (Grant or Denial of Discharge), 9014 (Contested Matters), and 9027 (Removal), and new Rule 1004.1 (Petition for an Infant or Incompetent Person), together with Committee notes explaining their purpose and intent.[9] The Judicial Conference approved the amendments and the new rule and authorized their transmittal to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law. The Committee also proposed, and the Conference approved, amendments to Official Forms 1 (Voluntary Petition) and 15 (Order Confirming Plan). The revisions to the forms will take effect December 1, 2001.

FEDERAL RULES OF CIVIL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Civil Rules 54 (Judgments; Costs), 58 (Entry of Judgment), and 81 (Applicability in General), and to Rule C of the Supplemental Rules for Certain Admiralty and Maritime Claims (In Rem Actions: Special Provisions), as well as a new Civil Rule 7.1 (Disclosure Statement), together with Committee notes explaining their purpose and intent. The Judicial Conference approved the amendments and the new rule and authorized their transmittal to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

[9]The proposed amendments originally included revisions to Bankruptcy Rule 2014 (Employment of a Professional Person); however, prior to the Conference session, this proposal was withdrawn by the Committee for further consideration.

FEDERAL RULES OF CRIMINAL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Conference a comprehensive "style" revision of Criminal Rules 1-60. This revision is part of a larger effort to clarify, simplify, and standardize the language of the procedural rules.[10] The Committee also submitted to the Conference proposed "substantive" revisions to Criminal Rules 5 (Initial Appearance Before the Magistrate Judge), 5.1 (Preliminary Examination), 10 (Arraignment), 12.2 (Notice of Insanity Defense or Expert Testimony of Defendant's Mental Condition), 26 (Taking of Testimony), 30 (Instructions), 35 (Correction or Reduction of Sentence), and 43 (Presence of the Defendant), and a proposed new Rule 12.4 (Disclosure Statement). These revisions had been under consideration apart from the "style" project. The Conference first approved the style amendments, then the substantive amendments,[11] and then directed that the substantive amendments be substituted for the corresponding rules contained in the style amendments, inserting new Rule 12.4 as well. The Conference agreed to transmit these changes as a single set of proposals to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure approved the recommendations of its advisory committees to publish for public comment proposed amendments to the Bankruptcy, Civil, Criminal, and Evidence Rules. The Committee was advised of the status of its local rules project, which entails reviewing all local rules of courts for consistency and duplication. An extensive report on this project will be presented at the Committee's January 2002 meeting and will be shared with the courts.

[10]The Federal Rules of Appellate Procedure were similarly revised in 1997 (JCUS-SEP 97, p. 82).

[11]The substantive amendments to Criminal Rules 5, 10, and 43 were approved by mail ballot concluded on October 1, 2001.

COMMITTEE ON SECURITY AND FACILITIES

U.S. COURTS DESIGN GUIDE

In order to accommodate the unique space requirements of individual courts, the *U.S. Courts Design Guide* includes a provision allowing for "departures" from the *Design Guide*, which must be approved by the appropriate circuit judicial council. (Such "departures" have also been referred to at various times as "exceptions," "deviations," and "waivers.") To reflect more accurately that the *Design Guide* contemplates that some courts would have special needs, the Committee on Security and Facilities recommended, and the Conference agreed, that the word "departures" should be replaced with the words "special requirements" throughout the *Design Guide.* The approval process for such "special requirements" will not change. (Grammatical revisions necessitated by this action may be made without further Conference approval.)

DELEGATION OF CONSTRUCTION AUTHORITY

Section 614 of title 40, United States Code, authorizes General Services Administration (GSA) delegation of construction authority to executive branch agencies. Prompted by experience that shows higher costs for the judiciary when it obtains alterations services through GSA than when it contracts directly with commercial vendors, the Committee recommended that the Judicial Conference seek legislation that would expressly permit GSA to delegate construction and alteration authority to the judiciary to the same extent that it may do so to executive branch agencies. The Conference adopted the Committee's recommendation.

CONGRESSIONAL REVIEW OF COURTHOUSE CONSTRUCTION

On recommendation of the Committee, the Judicial Conference agreed to oppose legislation pending before the 107th Congress (H.R. 254) that would provide for more detailed congressional review of all court alteration and construction projects. The bill would require the AO to submit all planned projects in court space to Congress and would allow 30 days for any member of Congress to disapprove a project. Currently, Congress only considers

individual prospectus-level (exceeding $1.99 million) court construction and repair and alteration projects for authorization and appropriations. H.R. 254 could require time-consuming documentation of even a small project.

COURTROOM INFORMATION PROJECT

On recommendation of the Committee, the Judicial Conference endorsed voluntary participation by federal courts in the "Courtroom Information Project" of the National Center for State Courts, a program to share information with members of the bar about the size, shape, lighting, wiring, and lines of sight in federal and state courtrooms. The Committee determined that participation would cause minimal risk to the security of a court, and cooperative projects with state courts are worthwhile.

COMMITTEE ACTIVITIES

The Committee on Security and Facilities reported that in response to questions about firearms standards for court security officers, it resolved that the United States Marshals Service is best qualified to determine the types of weapons necessary to protect the judiciary.[12] The Committee made technical revisions to update the Space Acquisition Guidelines, which had been approved by the Judicial Conference in March 1997 (JCUS-MAR 97, p. 41) and last updated February 25, 1999. The Guidelines provide a process for managing and evaluating non-prospectus space projects. The Committee referred the updated Guidelines to the Administrative Office Director for implementation.

COMMITTEES ON CRIMINAL LAW, DEFENDER SERVICES, AND FEDERAL-STATE JURISDICTION

CONSOLIDATED REPORT ON DNA AND COMPETENCY OF COUNSEL LEGISLATION

Three bills pending in the 107th Congress, the "Innocence Protection Act of 2001" (S. 486 and H.R. 912) and the "Criminal Justice Integrity and

[12]A Conference member identified this matter for the discussion calendar, but when the Conference session was canceled, the item was deferred.

Innocence Protection Act of 2001" (S. 800), have the dual goals of improving the availability of post-conviction forensic DNA testing in federal and state criminal justice systems and ensuring competent counsel in state capital cases. Responsibility for considering these legislative proposals was divided among three Conference committees. The Committee on Defender Services reviewed those sections addressing the assignment of counsel, the Committee on Criminal Law examined provisions directed to DNA testing in the federal criminal justice system, and the Committee on Federal-State Jurisdiction reviewed those provisions affecting state criminal justice systems. At the request of the Executive Committee, the three committees submitted their recommendations in one consolidated report. These recommendations were approved by the Judicial Conference by mail ballot concluded on October 1, 2001, as follows:

With respect to legislation pending in the 107th Congress to enhance the availability of post-conviction DNA testing in federal and state criminal justice systems and to ensure competent counsel in state capital proceedings (*e.g.,* S. 486 and H.R. 912, "The Innocence Protection Act of 2001," and S. 800, the "Criminal Justice Integrity and Innocence Protection Act of 2001"), and similar legislation that might be introduced in the future, that the Judicial Conference:

a. Support the goal of establishing fair and uniform standards for post-conviction forensic DNA testing in the federal criminal justice system. *(Committee on Criminal Law)*

b. Support the goal of affording innocent people wrongly convicted the opportunity to obtain DNA testing relevant to their claim of innocence, but oppose provisions that would entitle a person convicted of a non-capital federal crime the right to apply to the sentencing court for DNA testing in connection with an offense used for sentencing purposes. *(Committee on Defender Services)*

c. Support provisions that would give federal courts discretion to appoint counsel for a financially eligible person who is convicted of a federal crime and is applying to the federal court for DNA testing in connection with that conviction. *(Committee on Defender Services)*

d. Support the goal of ensuring that capital defendants have competent legal representation in both state and federal capital proceedings at every stage of their cases. *(Committee on Defender Services)*

e. Support giving the Judicial Conference the opportunity to provide input to any national commission established to set standards specifying the elements of an effective system for providing adequate representation to indigent persons facing the death penalty, but oppose requiring members of the federal judiciary to serve as members of the commission. *(Committee on Defender Services)*

f. Support the award of grants for the purpose of providing defense services in connection with representation both in state capital trials and appeals and in state and federal post-conviction proceedings, except that, with regard to funds to be used in state court, support the federal judiciary's providing input into, but oppose the federal judiciary's being responsible for, the administration of such funds. *(Committee on Defender Services)*

g. With regard to provisions affecting state criminal justice systems that raise issues of federalism and resources burdens:

1. Oppose provisions that would entitle individuals not in custody to seek post-conviction DNA testing to challenge a state criminal conviction;

2. Express concerns with provisions that would displace state time limits and procedural default rules as applicable to individuals convicted after DNA testing became a routine feature of the state's criminal justice system;

3. Encourage Congress, to the extent it conditions the receipt of federal funds on a state's certification that it will provide DNA testing, to limit such conditions to those grants that relate directly to developing or improving a state's DNA analysis capability or to collecting, analyzing, or indexing DNA material for law enforcement identification purposes;

4. Oppose provisions that would permit the routine naming of state judges as defendants in any new federal cause of action to obtain DNA testing or evidence;

5. Encourage Congress, in addressing the consequences of a state's failure to provide appropriate post-conviction DNA testing, to consider making any federal judicial remedy available only where the state judicial system fails to provide an adequate and effective remedy;

6. Oppose provisions that would require the Attorney General to withhold certain prison funding to a state if that state permits the death penalty but does not meet the national standards specifying the elements of an effective system for providing adequate representation in state capital cases as established by a national commission described above; and

7. Oppose provisions that would require states to certify that, as a condition for receiving certain federal grants, juries having a role in determining the sentence in a capital proceeding are instructed as to all statutorily authorized sentencing options, including parole eligibility rules, if a defendant so requests. *(Committee on Federal-State Jurisdiction)*

h. Authorize the Director of the Administrative Office of the U.S. Courts to work with chairs of the respective Judicial Conference committees to suggest to Congress modifications of the relevant legislation that address the concerns of the Conference. *(Committees on Criminal Law, Defender Services, and Federal-State Jurisdiction)*

FUNDING

All of the foregoing recommendations that require the expenditure of funds for implementation were approved by the Judicial Conference subject to the availability of funds and to whatever priorities the Conference might establish for the use of available resources.

Chief Justice of the United States
Presiding

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

March 13, 2002

The Judicial Conference of the United States convened in Washington, D.C., on March 13, 2002, 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 Michael Boudin
Chief Judge D. Brock Hornby,
District of Maine

Second Circuit:

Chief Judge John M. Walker, Jr.
Chief Judge Frederick J. Scullin, Jr.,
Northern District of New York

Third Circuit:

Chief Judge Edward R. Becker
Chief Judge Sue L. Robinson,
District of Delaware

Fourth Circuit:

Chief Judge J. Harvie Wilkinson III
Chief Judge Charles H. Haden II,
Southern District of West Virginia

Fifth Circuit:

Chief Judge Carolyn Dineen King
Judge Martin L. C. Feldman,
Eastern District of Louisiana

Sixth Circuit:

Chief Judge Boyce F. Martin, Jr.
Chief Judge Lawrence P. Zatkoff,
Eastern District of Michigan

Seventh Circuit:

Chief Judge Joel M. Flaum
Chief Judge Marvin E. Aspen,
Northern District of Illinois

Eighth Circuit:

Chief Judge David R. Hansen
Chief Judge James M. Rosenbaum,
District of Minnesota

Ninth Circuit:

Chief Judge Mary M. Schroeder
Judge Judith N. Keep,
Southern District of California

Tenth Circuit:

Chief Judge Deanell R. Tacha
Chief Judge Frank Howell Seay,
Eastern District of Oklahoma

Eleventh Circuit:

Chief Judge R. Lanier Anderson
Chief Judge Charles R. Butler, Jr.,
Southern District of Alabama

District of Columbia Circuit:

Chief Judge Douglas H. Ginsburg
Chief Judge Thomas F. Hogan,
District of Columbia

Federal Circuit:

Chief Judge Haldane Robert Mayer

Court of International Trade:

Chief Judge Gregory W. Carman

Circuit Judges Edward E. Carnes, Dennis G. Jacobs, Michael J. Melloy, Jane R. Roth, Anthony J. Scirica, and William W. Wilkins, Jr., and District Judges Lourdes G. Baird, Robin J. Cauthron, John G. Heyburn II, David F. Levi, John W. Lungstrum, Edwin L. Nelson, Harvey E. Schlesinger and Frederick P. Stamp, Jr. attended the Conference session. Jan Horbaly of the Federal Circuit represented the circuit executives.

Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director for Management and Operations; William R. Burchill, Jr., Associate Director and General Counsel; Karen K. Siegel, Assistant Director, Judicial Conference Executive Secretariat; Michael W. Blommer, Assistant Director, Legislative Affairs; David Sellers, Assistant Director, Public Affairs; and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat. Judge Fern Smith and Russell Wheeler, Director and Deputy Director of the Federal Judicial Center, also attended the session of the Conference, as did Sally Rider, Administrative Assistant to the Chief Justice.

Senators Patrick J. Leahy, Charles E. Schumer, and Orrin G. Hatch and and Representatives F. James Sensenbrenner and Howard Coble spoke on matters pending in Congress of interest to the Conference. Solicitor General Theodore Olson addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice.

REPORTS

Mr. Mecham reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office (AO). Judge Smith spoke to the Conference about Federal Judicial Center programs, and Judge Diana E. Murphy, Chair of the United States Sentencing Commission, reported on Sentencing Commission activities.

ELECTIONS

The Judicial Conference elected to membership on the Board of the Federal Judicial Center for a term of four years Circuit Judge Pierre Leval of the Second Circuit to succeed Circuit Judge Stanley Marcus.

EXECUTIVE COMMITTEE

UNITED STATES SENTENCING COMMISSION

In September 2001, the Judicial Conference recommended that the President reappoint to the United States Sentencing Commission Judges Sterling Johnson, Jr. of the Eastern District of New York and Joe Kendall of the Northern District of Texas (JCUS-SEP/OCT 01, p. 39). Subsequently, Judge Kendall resigned from the federal bench. At this session, on recommendation of the Executive Committee, the Judicial Conference—

a. Reaffirmed its recommendation that the President reappoint Judge Johnson; and

b. In lieu of recommending the reappointment of Judge Kendall, urged the President to appoint Judge Ricardo Hinojosa of the Southern District of Texas.

FIVE-YEAR JURISDICTIONAL REVIEW

Every five years each committee of the Judicial Conference must recommend to the Executive Committee, with a justification, whether it should be maintained or abolished (JCUS-SEP 87, p. 60). Pursuant to this mandate,

each committee submitted to the Executive Committee a completed self-evaluation questionnaire, which was considered by the Executive Committee at its February 2002 meeting. The Executive Committee made no changes to the committee structure itself, but, on request of the respective committees, revised the jurisdictional statements of the Committees on Defender Services, Judicial Resources, Magistrate Judges, and Security and Facilities. The Executive Committee also revised its own jurisdictional statement. In addition, at the request of the Committee on Automation and Technology, the Executive Committee agreed to transfer two areas of responsibility from that committee's jurisdiction to the jurisdiction of the Committee on Court Administration and Case Management. These revisions were made final in March 2002, following an opportunity for comment by committee chairs. The Executive Committee also approved a recommendation of the Committee on Automation and Technology to change its name to the Committee on Information Technology and slightly modified the jurisdictional statement of that committee.

PRIVACY AND PUBLIC ACCESS TO ELECTRONIC CASE FILES

In September 2001, the Judicial Conference approved a policy on privacy and public access to electronic case files that includes a prohibition on electronic public access to documents in criminal cases, with the proviso that the prohibition be reexamined within two years (JCUS-SEP/OCT 01, pp. 48-50). In December 2001, the Committee on Court Administration and Case Management asked the Executive Committee to approve two exceptions to this prohibition, one for a pilot program whereby selected courts would provide electronic access to all criminal cases to facilitate reexamination of the policy, and the other for "high-profile" criminal cases where requests for documents impose extraordinary demands on a court's resources. The Executive Committee declined, without addressing the merits of the request, because it did not find that the circumstances rose to the level of an "emergency" requiring action prior to the next Conference session.

In January 2002, however, prompted by the recent filing of a high-profile case in the Eastern District of Virginia that resulted in extensive requests by the media for copies of documents, the Executive Committee agreed to approve on an interim basis, pending consideration by the full Conference, an exception to the prohibition on electronic public access in criminal cases for cases that place extraordinary demands on clerks' offices. The exception requires consent of the parties as well as a finding by the trial judge or presiding judge of the appellate panel that such access is warranted under the circumstances. Subsequently, in response to concerns raised, the Committee

also clarified the policy, noting that it did not prohibit web publication of, or electronic access to, judicial opinions and orders in criminal cases.

At this session, the Conference made permanent the exception for high-profile cases that place extraordinary demands on clerks' offices and approved the pilot program requested by the Committee on Court Administration and Case Management (*see infra*, "Privacy and Public Access to Electronic Case Files," pp. 10-11).

MISCELLANEOUS ACTIONS

The Executive Committee—

- Approved proposed adjustments to the judiciary's fiscal year 2003 budget request to take into consideration increases in the federal pay inflation rate and an anticipated postage rate increase as well as to fund recurring costs in the court security program that are associated with the judiciary's fiscal year 2001 emergency supplemental appropriation on terrorism.

- Approved a proposed spending plan for utilization of $82.2 million in supplemental funding received by the judiciary for security following the September 11, 2001, terrorist attacks.

- Approved, with minor modifications, a *Report on the Jury System in the Federal Courts* that was prepared in response to congressional directive and required to be filed with Congress by February 1, 2002.

- In light of recent anthrax contamination of the United States mail system, adopted recommendations of the Committee on Security and Facilities to secure efficient and appropriate means of providing nationwide access to anthrax testing services and expert advice on addressing biological/chemical threats and to pursue possible changes to the *U.S. Courts Design Guide* to address biological and chemical threats.

- Allowed to take effect an automatic inflationary increase in the alternative subsistence amount for reimbursement of judges' travel expenses in light of the continued rise in travel costs in many locations.

- Requested that the Judicial Branch Committee reconsider the collection of data on non-case related travel of judges for the purpose of reporting that travel to Congress (*see infra,* "Travel Regulations for United States Justices and Judges," p. 21).

- Agreed to dissolve the Coordinating Group on Financial Disclosure Legislation because its primary purpose was accomplished, *i.e.*, obtaining elimination or extension of the sunset date of the Conference's authority to redact for security purposes information in judges' financial disclosure reports.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it reviewed the progress of several major initiatives, including the AO's efforts to enhance security of judges, judiciary personnel, and courthouses in the wake of the September 11, 2001, terrorist attacks and in response to the threat of anthrax in the mail. In light of the increased emphasis on electronic communications, the Committee asked the Administrative Office to undertake a comprehensive study of the requirements, practices, and methods of effective distribution of information to court officials who need it. The Committee reviewed and expressed its continuing support for the AO's management oversight and stewardship initiatives, including numerous accomplishments achieved in 2001. The Committee considered a report on Administrative Office priorities from 1985 to 2001, and unanimously passed a resolution in recognition of Director Mecham's leadership during this period.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

OFFICIAL DUTY STATIONS/PLACES OF HOLDING COURT

Under 28 U.S.C. § 152(b)(1), the Judicial Conference has authority to designate the places of holding court and official duty stations of bankruptcy judges. The Committee on the Administration of the Bankruptcy System

periodically conducts comprehensive nationwide surveys to discover any inaccuracies in such designations that might develop over time. Based on the most recent survey, which was conducted in the fall of 2001, and with the approval of the respective judges, courts, and circuit judicial councils, the Bankruptcy Committee recommended, and the Judicial Conference approved, changes in five official duty stations and eight places of holding court as follows:

OFFICIAL DUTY STATIONS

1. Transfer the official duty station of the bankruptcy judge at Hato Rey in the District of Puerto Rico to San Juan;

2. Designate the official duty station of Bankruptcy Judge Albert S. Dabrowski in the District of Connecticut as "Hartford or New Haven";

3. Transfer the official duty station of Bankruptcy Judge Stephen S. Mitchell in the Eastern District of Virginia from Richmond to Alexandria;

4. Transfer the official duty station of Chief Bankruptcy Judge Kent Lindquist in the Northern District of Indiana from Gary to Hammond; and

5. Transfer the official duty station of the bankruptcy judge at Rome in the Northern District of Georgia to Atlanta.

PLACES OF HOLDING COURT

District	City	Change
Massachusetts	Barnstable	Addition
Puerto Rico	Ponce	Addition
Virginia-Western	Woodstock	Deletion
Ohio-Southern	Steubenville	Deletion
Ohio-Southern	St. Clairsville	Addition
Illinois-Southern	Effingham	Addition
Oregon	Redmond	Addition
Georgia-Northern	Rome	Addition

COMMITTEE ACTIVITIES

The Bankruptcy Committee reported that it decided to ask the Federal Judicial Center to begin planning two new studies: one to reassess the existing case-weights used in evaluating additional judgeship requests because of the many developments – legislative, technological, and economic – that have affected judicial workload since the case-weights were first developed; and a second to study venue-related issues, including identification of factors that influence selection of venue for chapter 11 cases of large companies. The Committee also endorsed several actions that it believes will enhance relations between district and bankruptcy courts and promote collegiality among the judges.

COMMITTEE ON THE BUDGET

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it discussed court security issues related to the September 11, 2001, terrorist attacks and other security threats, and the short-term and long-term funding implications of these issues. The Committee also discussed the possibility of serious budget constraints in future years due to the slowing economy and the shift in the federal budget situation from anticipated surpluses to expected deficits. The Committee hopes to use the long-range planning process and its summer meetings with the program committee chairs as vehicles to encourage program committees to look at long-range budget issues and ways to economize and prioritize.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

Since its last report in September 2001, the Committee on Codes of Conduct received 27 new written inquiries (three of which were subsequently withdrawn) and issued 22 written advisory responses. During this period, the average response time for requests was 18 days. The Chairman received and responded to 16 telephonic inquiries. In addition, individual Committee members responded to 95 inquiries from their colleagues.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

PRIVACY AND PUBLIC ACCESS TO ELECTRONIC CASE FILES

Model Local Rules. In September 2001, the Conference adopted model local rules for district and bankruptcy courts to assist those courts in implementing electronic case filing (JCUS-SEP/OCT 01, p. 50). At this session, on recommendation of the Committee on Court Administration and Case Management, the Conference adopted amendments to Rule 12 of the Model Local District Court Rules for Electronic Case Filing to conform those rules to the policy on privacy and public access to electronic case files also adopted by the Conference in September 2001 (JCUS-SEP/OCT 01, pp. 48-50). Rule 12, as amended, clarifies that access to unsealed civil documents is still available at the courthouse and that anyone with a Public Access to Electronic Court Records (PACER) account can access unsealed electronic documents over the Internet, consistent with the Conference-approved privacy policy.

Criminal Case Files Pilot Program. As noted above (*see supra,* "Privacy and Public Access to Electronic Case Files," pp. 5-6), the policy on privacy and public access to electronic case files, adopted by the Conference in September 2001, prohibits remote public electronic access to criminal case file documents, with the proviso that the Committee on Court Administration and Case Management reexamine the prohibition within two years (JCUS-SEP/OCT 01, pp. 48-50). On recommendation of the Committee, the Conference approved creation of a pilot program to allow selected courts to provide remote public electronic access to criminal case file documents. The authority to select the participating courts was delegated to the Committee. The Federal Judicial Center has agreed to study the participating courts within the two-year time frame and inform the Committee of its findings.

"High-Profile" Criminal Cases. The Committee also recommended a modification to the criminal case files provision of the privacy policy to allow remote public electronic access to files in "high-profile" criminal cases where requests for documents impose extraordinary demands on a court's resources. Consent of the parties would be required as well as a finding by the trial judge or presiding judge of the appellate panel that such access is warranted under the circumstances. In January 2002, the Executive Committee approved such an exception on an interim basis, pending consideration by the Conference, to

accommodate a recent high-profile case filed in the Eastern District of Virginia (*see supra*, "Privacy and Public Access to Electronic Case Files," pp. 5-6). At this session, the Conference approved the Committee's recommendation to allow such exceptions on a permanent basis.

JURY WHEEL DATA

To ensure that juries are selected randomly from a fair cross section of the community, the Administrative Office provides Census Bureau data for every jury division in each federal district showing racial, ethnic and gender composition of the general voting-age population to serve as a basis for comparison to jury wheel samplings. However, two recent court rulings have found that because an individual must be a citizen to be eligible to serve as a juror, the relevant population with which to make these comparisons is the voting-age population of *citizens*, rather than the voting-age population of *all persons*. Finding that the voting-age citizen population would provide a more precise basis for comparison against jury wheel samplings, the Committee recommended, and the Conference approved, the use of such data in lieu of voting-age general population data for district courts to complete Part IV of the Form JS-12, "Report on the Operation of the Jury Selection Plan." The Conference directed the Administrative Office to make any necessary amendments to the form to comport with this change.

ELECTRONIC PUBLIC ACCESS FEE SCHEDULE

The Electronic Public Access Fee Schedule imposes a fee of seven cents per page for case file data obtained via the Internet (JCUS-SEP 98, p. 64; JCUS-MAR 01, pp. 12-13). This fee is based upon the total number of pages in a document, even if only one page is viewed, because the case management/electronic case files system (CM/ECF) software cannot accommodate a request for a specific range of pages from a document. Concerns have been raised that this can result in a relatively high charge for a small usage. Balancing user concerns with the need to generate sufficient revenue to fund the program, the Committee recommended that the Judicial Conference amend Section I of the Electronic Public Access Fee Schedule to cap the charge for accessing any single document via the Internet at the fee for 30 pages. The Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported on several steps being taken to implement the policy on privacy and access to electronic case files approved by the Judicial Conference in September 2001 (JCUS-SEP/OCT 01, pp. 48-50). The Committee also discussed implementation of Recommendation 73 of the *Long Range Plan for the Federal Courts* as it pertains to the statistical data that is collected by the courts, and the current practices in the courts regarding fee waivers for electronic public access. The Committee supported the establishment of a Criminal Justice Act (CJA) supervising attorney position in courts that would find it of value (using only local funds), and communicated this position to the Judicial Resources Committee, which was preparing a recommendation to the Conference on this matter (*see infra*, "Criminal Justice Act Supervising Attorneys," p. 23).

COMMITTEE ON CRIMINAL LAW

JUVENILE DELINQUENCY PROVISIONS OF 18 U.S.C. § 5037

The Committee on Criminal Law reviewed the juvenile delinquency provisions of 18 U.S.C. § 5037 and recommended that the Judicial Conference seek certain amendments thereto. First, the Committee recommended that 18 U.S.C. § 5037 be amended to authorize imposition of "juvenile delinquency supervision," a new form of supervision to follow any imprisonment of juvenile delinquents. Currently, there is no effective way under the statute to provide for post-imprisonment supervision that would permit juveniles to receive the kind of assistance available to adults in the transition from prison to the community. Second, the Committee recommended that section 5037 be amended to establish procedures for revocation of probation or juvenile delinquency supervision that are specifically for juveniles under 21 years of age. The cross-reference to the adult mandatory revocation provisions in 18 U.S.C. § 3565 would be deleted for persons who are under 21 years of age at the time of revocation. Third, the Committee recommended the creation of authority to sanction violations of probation or juvenile delinquency supervision for persons over 21 years of age. Finally, the Committee recommended codification of the holding in *United States v. R.L.C.,* 503 U.S. 291 (1992), to limit juveniles sentenced to terms of imprisonment to sentences that could be imposed upon similarly situated adults under the sentencing

guidelines. The Conference agreed to seek the amendments recommended by the Committee.

TECHNICAL AMENDMENT TO THE SPEEDY TRIAL ACT

On recommendation of the Committee, the Judicial Conference agreed to propose technical amendments to 18 U.S.C. § 3161(h) that would remove obsolete references to a provision of the Narcotic Addict Rehabilitation Act (28 U.S.C. § 2902). The Narcotic Addict Rehabilitation Act was repealed on October 17, 2000, by the Children's Health Act of 2000, Public Law No. 106-310.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that it was briefed on a comprehensive plan developed by the Department of Justice to enhance state drug courts nationwide, to ensure drug-free federal prisons, and to increase drug testing of offenders in the community. The plan included recommendations that the Department of Justice work with the judiciary on initiatives related to pretrial and post-conviction drug testing and treatment for those on probation, parole, or supervised release. The Committee was also briefed on the activities of an ad hoc working group that is reviewing and revising pretrial services and post-conviction supervision policies and of an ad hoc working group examining officer safety issues.

COMMITTEE ON DEFENDER SERVICES

PANEL ATTORNEY COMPENSATION

The Antiterrorism and Effective Death Penalty Act of 1996 amended 21 U.S.C. § 848(q)(10)(A) to establish a maximum compensation rate of $125 per hour for panel attorney services in capital cases. That section also provides a specific mechanism for the Judicial Conference to authorize increases to the maximum hourly rate to take into account increases in the rates of federal pay. Noting the significant erosion since 1996 in the economic value of the $125 capital rate, and reiterating the importance of maintaining a rate of compensation at a level sufficient to assure appointment of qualified attorneys (*see* JCUS-SEP 98, pp. 67-74), the Committee recommended that the Judicial

Conference exercise its authority under 21 U.S.C. § 848(q)(10)(A) to authorize all available Employment Cost Index (ECI) increases to the maximum hourly compensation rate for panel attorneys in capital cases. The Committee also recommended that the Conference amend paragraph 6.02A of the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Volume VII, *Guide to Judiciary Policies and Procedures*, to provide for future annual ECI increases automatically, subject to the availability of funding. The Conference approved the Committee's recommendations.

PHYSICAL FITNESS CENTERS

In September 2001, the Judicial Conference adopted a policy on physical fitness centers that, among other things, authorizes courts to expend local funds to allow court staff to participate in fitness center activities (JCUS-SEP/OCT 01, p. 62). Based on a determination that federal public and community defender organization personnel could also benefit from this policy, the Committee recommended that the Conference approve the inclusion of federal public and community defender organizations in the Conference's policy on physical fitness centers under the same terms as those applied to court units. The Committee's recommendation was approved.

GRANT AND CONDITIONS AGREEMENT

The Judicial Conference adopted a recommendation of the Committee to modify Clause 25 (Failure to Comply with Terms and Conditions) of the Grant and Conditions Agreement with Community Defender Organizations (Appendix D, Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Volume VII, *Guide to Judiciary Policies and Procedures*) to clarify the remedies available for the failure of grantees to comply with the terms of the grant and conditions agreement. The following sentence was added to the end of Clause 25[1]:

> The Conference reserves the right to pursue all remedies, including, but not limited to, recovery of monetary damages and accrued interest, for grantee's failure to comply with any of

[1]The Conference also corrected a typographical error in the preceding sentence, replacing "therefore" with "therefor."

the terms and conditions of the grant award or to deliver the representation and other services which are the subject of the agreement.

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that, under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), it approved additional funding requests for fiscal year 2001 for federal defender organizations in the amount of $519,900 and for fiscal year 2002 in the amount of $710,500. In addition, the Committee approved fiscal year 2002 funding of $221,000 for a new federal defender organization branch office, subject to congressional authorization and the availability of funds.

The Committee also reported that it approved revisions and additions to the Strategic Plan Outline for the Defender Services Program relating to federal capital representations. The Committee also received reports on federal defender and panel attorney training events in fiscal years 2001and 2002, and on legislative activity in the 107th Congress. The Committee discussed several items to be considered by the Committee on Judicial Resources insofar as they affect defender services: the Criminal Justice Act supervising attorney pilot project (*see infra*, "Criminal Justice Act Supervising Attorneys," p. 23); expanded use of background checks; court unit executive leave (*see infra*, "Judiciary Leave Policy," pp. 24-25); and release of personnel information. The Committee's views on these items were conveyed to the Judicial Resources Committee.

COMMITTEE ON FEDERAL-STATE JURISDICTION

SECTION 204 OF THE PROPOSED INNOCENCE PROTECTION ACT OF 2001

Section 204 of the proposed Innocence Protection Act of 2001 (S. 486 and H.R. 912, 107th Congress) would amend 28 U.S.C. § 2254 to provide that in a habeas corpus proceeding instituted by an indigent applicant under sentence of death, the court shall not presume a finding of fact made by a state court to be correct, or decline to consider a claim on the ground that the applicant failed to raise the claim in state court, unless the state provided the applicant with legal representation at the pertinent stage in the state court

proceedings under a system that met the standards formulated by a National Commission on Capital Representation.[2] The Committee on Federal-State Jurisdiction was prepared to make a recommendation to the September 2001 Judicial Conference opposing section 204 but determined to reconsider the matter in view of a 1990 Conference position that had come to its attention.[3]

Upon reconsideration, the Committee again determined that section 204 raised serious federalism, resource, and practical concerns and threatened to unsettle existing habeas corpus requirements and therefore should be opposed. With regard to the Conference's prior position, it was the Committee's view that the Conference's 1990 position was ambiguous, and that many changes in the law had occurred since the 1990 position was adopted. Deciding, therefore, to base its recommendation upon the current legal landscape, the Committee recommended that the Conference express its continued support for the goal of ensuring that capital defendants have

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[2]Section 201 of S. 486 and H.R. 912 would create a National Commission that would be responsible for formulating standards specifying the elements of an effective system for providing adequate representation.

[3]This position on procedural default rules and state findings of fact was adopted in March 1990 in conjunction with consideration of the Report of the Ad Hoc Committee on Federal Habeas Corpus in Capital Cases (often referred to as the Powell Committee Report), but was not included in the March 1990 *Report of the Proceedings of the Judicial Conference of the United States.* The position is as follows:

> Upon the filing of a petition for a writ of habeas corpus in the federal court the court should first determine whether the specific guidelines for competent counsel were followed in the state proceedings. If the court determines that competent counsel was appointed in the state proceedings, the same counsel should be appointed in the federal court, wherever possible. If the court determines that competent counsel was not appointed in the state proceedings, the federal district court should appoint new counsel under the governing guidelines. In the latter case, the federal court should not require dismissal of non-exhausted state claims, or apply any procedural default rules or the rule governing the presumption of correctness of state court findings of fact.

competent representation in both state and federal capital proceedings at every stage of their cases, but oppose section 204 of the Innocence Protection Act. The Committee also recommended that to the extent the current and 1990 positions were in conflict, the 1990 position be superseded by the current position on section 204. The Conference adopted the Committee's recommendations.

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it had conducted a panel discussion on class action litigation, which included presentations by judges, practitioners, and academics, to assist the Committee in its ongoing review of problems and potential solutions relating to overlapping and multistate class actions. The Committee also informed the Conference of its consideration of the report of the Subcommittee on Mass Torts of the Bankruptcy Committee regarding the treatment of mass future claims in bankruptcy. In addition, the Committee reported on the work of its Subcommittee on Federal-State Interaction, which is charged with making suggestions as to how the Committee can better foster state-federal relations and educational initiatives.

COMMITTEE ON FINANCIAL DISCLOSURE

SPECIAL REDACTION REVIEW PANEL

In May 2000, the Judicial Conference approved revisions to the Regulations of the Judicial Conference of the United States on Access to Financial Disclosure Reports Filed by Judges and Judiciary Employees Under the Ethics in Government Act of 1978, as Amended, setting forth procedures for the redaction of information from financial disclosure reports that could endanger the filer or other person if obtained by a member of the public hostile to the filer (JCUS-SEP 00, p. 39). The revised regulations provided for a Special Redaction Review Panel to hear appeals from filers aggrieved by a denial of a request for redaction. The term of the Panel was set by regulation to expire on December 31, 2001. Of 17 appeals filed with the Panel before the expiration date, only one appeal is still pending. On recommendation of the Committee on Financial Disclosure, the Judicial Conference extended the term of the Special Redaction Review Panel in order for the Panel to be able to complete its work on the remaining 2001 appeal still pending.

COMMITTEE ACTIVITIES

As of December 31, 2001, the Committee on Financial Disclosure had received 3,595 financial disclosure reports and certifications for the calendar year 2000, including 1,298 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 349 from bankruptcy judges; 524 from magistrate judges; and 1,424 from judicial employees. The Committee reported that the Judicial Conference's authority to redact for security reasons information in a financial disclosure report filed by a judge or judiciary employee was extended until December 31, 2005 (Public Law No. 107-126).

COMMITTEE ON INFORMATION TECHNOLOGY[4]

LONG RANGE PLAN FOR INFORMATION TECHNOLOGY

Pursuant to 28 U.S.C. § 612 and on recommendation of the Committee on Information Technology, the Judicial Conference approved a 2002 update to the *Long Range Plan for Information Technology in the Federal Judiciary*. Funds for the judiciary's information technology program will be spent in accordance with this plan.

DECENTRALIZATION OF LONG-DISTANCE TELEPHONE BILLING

The Committee on Information Technology reported to the Conference on a proposal to decentralize long-distance telephone billing in fiscal year 2003, giving courts the ability to order, manage, and pay for their long-distance services locally. After discussion, the Conference approved a motion to refer the subject back to the Committee on Information Technology to evaluate whether decentralization is cost-effective considering local telephone rates and personnel time, and to develop standards for local review of long-distance telephone bills.

[4]Previously known as the Committee on Automation and Technology.

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it had amended the five-year courtroom technologies program objectives for new courthouses and courthouses undergoing major renovation; reviewed steps being taken to implement the recommendations made in a study of the lawbooks and library program approved by the Judicial Conference in September 2001; discussed how to tailor the interim appropriate Internet use policy approved by the Judicial Conference in September 2001 specifically to the judiciary, with the expectation that a permanent policy would be presented to the Judicial Conference for consideration in September 2002; and received updates on a number of information technology projects and issues.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that during the period from July 1, 2001, to December 31, 2001, a total of 76 intercircuit assignments, undertaken by 57 Article III judges, were processed and recommended by the Committee and approved by the Chief Justice. During calendar year 2001, a total of 166 intercircuit assignments were processed and approved. In addition, the Chairman aided courts requesting assistance by both identifying and obtaining judges willing to take assignments.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

TRANSFER OF INTERAGENCY AGREEMENT FUNDS

Under a 1995 interagency agreement between the Judicial Conference and the United States Agency for International Development (USAID), USAID provided funds to the judiciary though the Federal Judicial Center Foundation for use in developing and administering international rule-of-law programs (see JCUS-SEP 95, p. 69; JCUS-SEP 97, pp. 72-73). The projects for which those funds were designated have since been completed, and approximately $3000 remains in the FJC Foundation. Since the Judicial

Conference has endorsed the use of a contract-based mechanism in place of the interagency agreement for funding of future projects (JCUS-SEP 99, p. 64), the Committee recommended, and the Conference approved, the return to USAID of the remaining unexpended funds under the 1995 interagency agreement, thus concluding the agreement.

COMMITTEE ACTIVITIES

The Committee reported on the success of the rule-of-law component of the Open World (formerly Russian Leadership) Program in forging ties between members of the United States and Russian judiciaries. The Committee also discussed steps it is taking to implement the Judicial Conference policy encouraging exposure of foreign lawyers and law students at United States law schools to the work of the courts (JCUS-SEP 99, p. 64). The Committee also reported on its involvement in rule-of-law and judicial reform activities relating to Asia and the Pacific, Europe, and Latin America, including participation in legal exchanges with India and Mexico.

COMMITTEE ON THE JUDICIAL BRANCH

FEDERAL EMPLOYEES' GROUP LIFE INSURANCE

On recommendation of the Committee on the Judicial Branch, the Judicial Conference endorsed seeking legislation to require the federal government to pay all the costs associated with active and senior Article III judges' and congressional members' Federal Employees' Group Life Insurance (FEGLI) premiums (i.e., premiums for Basic Life and all appropriate options and any potential tax consequences relating to the payment of those premiums). Currently, all FEGLI enrollees pay two-thirds the cost of basic and accidental death and dismemberment coverage, and all the cost of the three forms of optional FEGLI insurance.[5] The Committee noted that enhancing judges' benefits to make them more competitive with the private sector will help the judiciary to continue to attract highly qualified individuals to the federal bench.

[5]The Director of the Administrative Office is authorized to pay out of appropriated funds any increase imposed after April 24, 1999, in the FEGLI premiums of Article III judges age 65 and above (JCUS-SEP 00, pp. 54-55).

TRAVEL REGULATIONS FOR UNITED STATES JUSTICES AND JUDGES

Frequent Flyer Mileage. Section 1116 of the National Defense Authorization Act for Fiscal Year 2002, Public Law No. 107-107, enacted on December 28, 2001, authorizes executive branch employees to use for personal travel frequent flyer miles or other travel entitlements accrued while traveling on official government business. The Travel Regulations for United States Justices and Judges have been silent on this issue. In light of the change in law with regard to executive branch employees, it was the consensus of the Committee on the Judicial Branch that the Judicial Conference should likewise expressly authorize judicial officers (as well as their family members and dependents) to use for personal travel officially earned frequent flyer mileage. On recommendation of the Committee, the Conference approved the following new subparagraph to section A.3. of the Travel Regulations for United States Justices and Judges, *Guide to Judiciary Policies and Procedures*, Vol. III-A, Chapter C-V:

> *Travel Promotional Awards*–Frequent flyer miles and other travel promotional materials awarded at the sole discretion of a company and received by a judge in connection with official travel may be used at the discretion of that judge. This paragraph shall apply with respect to frequent flyer mileage and promotional materials received before, on, or after the date of adoption.

Non-Case Related Travel. In September 1999, the Judicial Conference approved an amendment to the Travel Regulations for United States Justices and Judges that substantially incorporated, for the purpose of reporting all non-case related professional travel undertaken by a judge of the United States, the travel reporting requirements for members of the United States Senate (JCUS-SEP 99, p. 65). In response to concerns raised by several judges about the reporting requirements, the Executive Committee requested that the Judicial Branch Committee revisit the policy (*see supra,* "Miscellaneous," pp. 6-7). In order to give the Committee more time for an in-depth examination of the issue and to review the reporting requirements, the Conference approved a motion to extend the deadline from May 15, 2002 to October 1, 2002 for judges to file with their chief judges non-case related travel reports for calendar year 2001.

COMMITTEE ACTIVITIES

The Judicial Branch Committee reported that it continues to focus on securing meaningful salary relief for judges. The Committee authorized the chair to establish several subcommittees that are charged with considering and advising the Committee on long- and short-term issues relating to judges' pay, including relations with the other branches of government, the bar, and other organizations that support improved judicial salaries. The Committee also determined to continue its efforts to improve the judicial benefits package so that it is competitive with those already widely available throughout the private and public sectors. The Committee resolved to continue working closely with the Freedom Forum's First Amendment Center on planning and conducting regional programs for judges and journalists. In addition, the Committee established an ad hoc subcommittee that will consider and report to the Committee on new methods to educate the media and the public about the judicial branch and judges.

COMMITTEE ON JUDICIAL RESOURCES

PRO SE LAW CLERKS

To assist courts in recruiting and hiring competent and qualified pro se law clerks, and after considering various options, the Committee on Judicial Resources recommended that the Judicial Conference adopt a stabilizing factor for allocating pro se law clerk positions, similar to one that was recently adopted for bankruptcy appellate panel law clerks (JCUS-SEP/OCT 01, pp. 62-63). With a stabilizing factor, the number of allocated positions would only be reduced if the number of prisoner filings does not support the allocated positions in a court under the staffing formula for two years in a row. The Conference approved the use of the stabilizing factor and also approved a procedure whereby, if a court wants to extend a pro se law clerk position beyond the time that the court would be permitted to do so under the staffing formula, it would turn first to its own decentralized funding and then to its circuit's Temporary Emergency Fund.

CRIMINAL JUSTICE ACT SUPERVISING ATTORNEYS

In March 1997, the Judicial Conference approved a two-year pilot project authorizing designated clerks of court to hire an attorney to assist the court in Criminal Justice Act panel administration and case cost management, including voucher review (JCUS-MAR 97, p. 24). The pilot was later extended through March 2002 (JCUS-SEP 98, p. 67). After considering the views of the Defender Services and the Court Administration and Case Management Committees, the Committee on Judicial Resources agreed with both committees that it should recommend that the Conference endorse the establishment of a CJA supervising attorney position in courts that would find it of value. The Conference approved the recommendation. The committees differed, however, on how the position should be funded. After discussion, the Conference approved the recommendation of the Committee on Judicial Resources that the position be funded using as the sole source decentralized Salaries and Expenses account funding.

MEDICAL STANDARDS FOR PROBATION AND PRETRIAL SERVICES OFFICERS AND OFFICER ASSISTANTS

At the request of the Committee on Criminal Law, the Administrative Office enlisted the services of the Department of Health and Human Services, Public Health Service, Law Enforcement Medical Programs to conduct a study of the physical requirements of the qualification standards for probation and pretrial services officers and officer assistants. Based on this study and comments received from chief probation and chief pretrial services officers, the Committee on Judicial Resources, in consultation with the Committee on Criminal Law, recommended that the Conference (a) approve an update to the current medical requirements for these positions; (b) require all final candidates for these positions to undergo medical examinations by Public Health Service physicians, using the medical guidelines developed by the Public Health Service's Law Enforcement Medical Programs; and (c) permit the use of the medical guidelines in fitness-for-duty determinations for incumbents in these positions. As in the past, the final decision on hiring of new officers or officer assistants, or on the fitness for duty of incumbents, rests with the individual court. The Conference approved the Committee's recommendations.

CERTIFIED REALTIME COURT REPORTERS

Demand by judges for realtime court reporting, which requires a high level of knowledge, skills, and ability, has been steadily increasing. In order to ensure that federal courts can recruit and retain qualified realtime court reporters and to encourage current federal official court reporters without certification to work toward attaining realtime certification, the Committee recommended that the Judicial Conference adopt a separate salary level for federal official court reporters certified to provide realtime services to judges, attorneys and participants in court proceedings. The new salary level would include a salary increase of an additional ten percent above a court reporter's basic salary level. The Conference approved the Committee's recommendation.

JUDICIARY LEAVE POLICY

Under the judiciary leave policy contained in the *Guide to Judiciary Policies and Procedures,* Volume I-C, Chapter X, Subchapter 1630.1, circuit executives, federal public defenders, and court unit executives have been permitted to approve their own leave. On recommendation of the Committee on Judicial Resources and after discussion, the Judicial Conference approved amendments to the judiciary leave policy to provide that no individual shall approve his or her own leave and that all circuit executives, federal public defenders, and court unit executives must have their leave approved by the appropriate chief judge or designee. These changes bring the judiciary's leave policy into conformance with the Leave Act (which covers all judiciary employees other than judges and certain chambers staff), and with regulations promulgated thereunder (5 C.F.R. Part 630). Moreover, the changes are consistent with "good government" principles of accountability and stewardship. Volume I-C, Chapter X, Subchapter 1630.1 of the *Guide* will be amended as follows (new language is in italics; language to be omitted is struck through):

> Section E. Responsibilities, 2.a. Leave Approving Court Officials: Approve or deny leave for subordinate employees in a consistent and equitable manner. ~~Wherever possible, it is strongly recommended that no employee sign as the authorizing official for one's own leave requests.~~ *No individual shall approve his/her own leave.*

Section F. Approval Authority, 1. Annual Leave, Sick Leave, and Leave Without Pay (LWOP): Requests for approved leave (including LWOP) and advanced leave should be in writing. Each court and court unit will determine at what level of supervision normal leave requests and advanced leave requests are to be approved. *All circuit executives, federal public defenders, and court unit executives must have their leave approved by the appropriate chief judge or his/her designee.*

RECRUITMENT AND RETENTION OF LAW CLERKS

At the request of the Committee on Judicial Resources, the Administrative Office conducted a study to determine whether federal courts were experiencing any significant problems in recruiting and retaining law clerks. Although the study found that there was no serious nationwide problem in recruiting and retaining law clerks that warrants an increase in compensation, its results suggested several measures that could be taken to improve the process. The Committee recommended that the Conference adopt a resolution to improve the recruitment and retention of federal law clerks and endorse specific measures that could be implemented in that regard. After discussion, the Conference tabled this recommendation.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it declined to approve a request to initiate a drug testing policy for applicants for employment in district clerks' offices since courts already have both the legal and the delegated budget authority to implement such a policy at the local court level. The Committee also declined to approve a request to raise the current Court Personnel System (CPS) benchmark for courtroom deputy clerks to district judges from classification level 27 to 28, noting that each court has the authority to reclassify any CPS position to reflect greater substantive job responsibilities. The Committee decided not to make a recommendation to the Judicial Conference regarding expanding the use of background investigations and records checks in the courts until proposed guidelines are provided by the Administrative Office.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee on the Administration of the Magistrate Judges System and the recommendations of the Director of the Administrative Office, the district courts, and the judicial councils of the circuits, the Judicial Conference approved the following changes in positions, salaries, locations, and arrangements for full-time and part-time magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

FIRST CIRCUIT

District of Rhode Island

Made no change in the number or location of the magistrate judge positions in the district.

SECOND CIRCUIT

Northern District of New York

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

FOURTH CIRCUIT

Western District of North Carolina

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Eastern District of Virginia

Redesignated the two magistrate judge positions designated as Norfolk, as Norfolk or Newport News, and the magistrate judge position designated as Newport News, as Norfolk or Newport News.

FIFTH CIRCUIT

Northern District of Texas

1. Authorized a full-time magistrate judge position at Abilene;

2. Upon the appointment of a full-time magistrate judge at Abilene, discontinued the part-time magistrate judge position at Abilene and the part-time magistrate judge position at San Angelo; and

3. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

SIXTH CIRCUIT

Middle District of Tennessee

Made no change in the number or location of the magistrate judge positions in the district.

EIGHTH CIRCUIT

Eastern District of Missouri

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

NINTH CIRCUIT

District of Guam

Converted the part-time magistrate judge position at Agana to full-time status.

Western District of Washington

1. Authorized an additional full-time magistrate judge position at Tacoma or Seattle; and

2. Made no other changes in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

TENTH CIRCUIT

District of Kansas

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

2. Discontinued the part-time magistrate judge position at Topeka, effective upon the appointment of the new full-time magistrate judge at Kansas City; and

3. Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

District of Utah

1. Authorized an additional full-time magistrate judge position at Salt Lake City;

2. Upon the appointment of the new full-time magistrate judge at Salt Lake City, decreased the salary of the part-time magistrate judge position at St. George from Level 2 ($57,961 per annum) to Level 4 ($34,776 per annum); and

3. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

ELEVENTH CIRCUIT

Northern District of Florida

1. Converted the part-time magistrate judge position at Gainesville to full-time status; and

2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

COMMITTEE ACTIVITIES

The Committee reported that it discussed the allocation of pro se law clerk positions and voted unanimously to advise the Judicial Resources Committee that it favors changing the current allocation procedure to enable courts to offer at least a two-year commitment when hiring pro se law clerks (*see supra*, "Pro Se Law Clerks," p. 22). Also, the Committee identified the following as the four most important long-range planning issues for the magistrate judges system: 1) appropriate limits on magistrate judge numbers and authority; 2) roles of magistrate judges in court governance; 3) appropriate chambers staffing for magistrate judges; and 4) contributions of magistrate judges to the quality of justice and the evaluation of full, fair, and effective utilization of magistrate judges.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders reported that it has undertaken a review and analysis of H.R. 3892 (107th Congress), legislation to amend the Judicial Conduct and Disability Act, 28 U.S.C. § 372(c), that was introduced on March 7, 2002.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF CRIMINAL PROCEDURE

In September/October 2001, the Judicial Conference approved amendments to the Federal Rules of Criminal Procedure, including comprehensive style revisions, and forwarded them to the Supreme Court for approval (JCUS-SEP/OCT 01, p. 70). Subsequent to the Conference's approval, but prior to Supreme Court action on the proposal, Congress passed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT), Public Law No. 107-56, which amended Criminal Rules 6 and 41.

These amendments to Rules 6 and 41 did not incorporate the pending style revisions, and arguably could be superseded by them. To avoid confusion, the Committee on Rules of Practice and Procedure submitted to the Conference proposed technical amendments to Rules 6 and 41 (as revised by the USA PATRIOT ACT) to conform those rules to the style revisions pending before the Supreme Court. The Conference approved these amendments and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court (and integrated with the changes approved by the Judicial Conference in September/October 2001) and transmitted to Congress in accordance with the law.

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure approved for publication proposed amendments to Rule 1005 of the Federal Rules of Bankruptcy Procedure and several Official Bankruptcy Forms. The proposed amendments are consistent with provisions governing disclosure of social security and other personal identification numbers recommended under the recently adopted Judicial Conference policy on privacy and public access to electronic case files (JCUS-SEP/OCT 01, pp. 48-50). The Advisory Committees on Appellate, Bankruptcy, Civil, Criminal, and Evidence Rules are reviewing comments from the public submitted on amendments proposed in August 2001 to their respective sets of rules, including a significant number of comments on proposed amendments to Civil Rule 23 (class actions).

COMMITTEE ON SECURITY AND FACILITIES

24-HOUR HEATING AND COOLING

On recommendation of the Committee on Security and Facilities, the Judicial Conference endorsed a policy of providing heating and cooling systems 24 hours a day, 7 days a week, to control humidity and temperature in court facilities with environmental conditions conducive to growth of fungus or mold, subject to funding availability. Specific standards for implementation of this policy will be determined once a cost analysis is completed.

FIVE-YEAR COURTHOUSE PROJECT PLAN

After consultation with the circuit judicial councils, the Committee on Security and Facilities proposed a five-year plan of courthouse construction projects for the fiscal years (FYs) 2003-2007. As part of this proposal, the Committee recommended that the FY 2003 column of the plan be divided into two columns to reflect separately those projects that were unfunded in FY 2002 or earlier and those projects scheduled for funding in FY 2003, to distinguish better these two types of projects. The plan also adopted a new method for scoring annexes and separate courts of appeals and bankruptcy facilities that recognizes their differences from a district court facility. After discussion, the Conference approved the Five-Year Courthouse Project Plan for fiscal years 2003-2007, as recommended by the Committee.

COMMITTEE ACTIVITIES

The Committee on Security and Facilities considered the security implications of publishing the new edition of *Justices and Judges of the United States Courts* in both print and electronic formats and advised the Administrative Office Director to continue restriction of distribution, limit access within circuit headquarters libraries and prohibit photocopying, exclude photographs of judges from the J-Net, and caution judges about publishing their photographs in the print version and information about spouses in both versions. The Committee agreed with the criteria used by the U.S. Marshals Service to determine the level of security necessary at private seminars or meetings attended by judges.

FUNDING

All of the foregoing recommendations that require the expenditure of funds for implementation were approved by the Judicial Conference subject to

the availability of funds and to whatever priorities the Conference might establish for the use of available resources.

Chief Justice of the United States
Presiding

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

September 24, 2002

The Judicial Conference of the United States convened in Washington, D.C., on September 24, 2002, 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 Michael Boudin
Chief Judge D. Brock Hornby,
District of Maine

Second Circuit:

Chief Judge John M. Walker, Jr.
Chief Judge Frederick J. Scullin, Jr.,
Northern District of New York

Third Circuit:

Chief Judge Edward R. Becker
Chief Judge Sue L. Robinson,
District of Delaware

Fourth Circuit:

Chief Judge J. Harvie Wilkinson III
Chief Judge Charles H. Haden II,
Southern District of West Virginia

Fifth Circuit:

Chief Judge Carolyn Dineen King
Judge Martin L. C. Feldman,
Eastern District of Louisiana

Sixth Circuit:

Chief Judge Boyce F. Martin, Jr.
Chief Judge Lawrence P. Zatkoff,
Eastern District of Michigan

Seventh Circuit:

Chief Judge Joel M. Flaum
Judge Marvin E. Aspen,
Northern District of Illinois

Eighth Circuit:

Chief Judge David R. Hansen
Chief Judge James M. Rosenbaum,
District of Minnesota

Ninth Circuit:

Chief Judge Mary M. Schroeder
Judge Judith N. Keep,
Southern District of California

Tenth Circuit:

Chief Judge Deanell R. Tacha
Chief Judge Frank Howell Seay,
Eastern District of Oklahoma

Eleventh Circuit:

Chief Judge J. L. Edmondson
Chief Judge Charles R. Butler, Jr.,
Southern District of Alabama

District of Columbia Circuit:

Chief Judge Douglas H. Ginsburg
Chief Judge Thomas F. Hogan,
District of Columbia

Federal Circuit:

Chief Judge Haldane Robert Mayer

Court of International Trade:

Chief Judge Gregory W. Carman

Circuit Judges Edward E. Carnes, Dennis G. Jacobs, Michael J. Melloy, Jane R. Roth, and Anthony J. Scirica, and District Judges Lourdes G. Baird, John G. Heyburn II, David F. Levi, John W. Lungstrum, Edwin L. Nelson, Patti B. Saris, Harvey E. Schlesinger, and Frederick P. Stamp, Jr. attended the Conference session. Betsy Shumaker of the Tenth Circuit represented the circuit executives.

Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director for Management and Operations; William R. Burchill, Jr., Associate Director and General Counsel; Karen K. Siegel, Assistant Director, Judicial Conference Executive Secretariat; Michael W. Blommer, Assistant Director, Legislative Affairs; David Sellers, Assistant Director, Public Affairs; and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat. Judge Fern M. Smith and Russell Wheeler, Director and Deputy Director of the Federal Judicial Center, were in attendance at the session of the Conference, as was Judge Diana Murphy, Chair of the United States Sentencing Commission. Sally Rider, Administrative Assistant to the Chief Justice; Scott Harris, Supreme Court Legal Counsel; and the 2002-2003 Judicial Fellows also observed the Conference session.

Senators Patrick J. Leahy, Orrin G. Hatch, and Jeff Sessions and Representatives F. James Sensenbrenner and Howard Coble spoke on matters pending in Congress of interest to the Conference. Attorney General John Ashcroft addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice.

REPORTS

Mr. Mecham reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office (AO), and Judge Smith spoke to the Conference about Federal Judicial Center programs.

EXECUTIVE COMMITTEE

RESOLUTIONS

The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution in recognition of the substantial contributions made by Judicial Conference committee chairs who will complete their terms of service in 2002:

> The Judicial Conference of the United States recognizes with appreciation, respect and admiration the following judicial officers:
>
> **HONORABLE CHARLES H. HADEN II**
> Executive Committee
>
> **HONORABLE ROBIN J. CAUTHRON**
> Committee on Defender Services
>
> **HONORABLE MILTON I. SHADUR**
> Advisory Committee on Rules of Evidence
>
> Appointed as committee chairs by Chief Justice William H. Rehnquist, these outstanding jurists have played a vital role in the administration of the federal court system. These judges served with distinction as leaders of their Judicial Conference committees while, at the same time, continuing to perform their duties as judges in their own courts. They have set a standard of skilled leadership and earned our deep respect and sincere gratitude for their innumerable contributions. We acknowledge with appreciation their commitment and dedicated service to the Judicial Conference and to the entire federal judiciary.

MISCELLANEOUS ACTIONS

The Executive Committee—

- On recommendation of the Court Administration and Case Management Committee, agreed to endorse S. 848 (107th Congress), the Social Security Number Misuse Prevention Act of 2001, provided certain amendments affecting court records are made to the legislation;

- Approved minor revisions to *The Judicial Conference of the United States and its Committees*, a document outlining Conference and committee practices and procedures;

- Agreed to a request from the Security and Facilities Committee to remove the word "large" from paragraph six of the mail handling policy adopted by the Judicial Conference by mail ballot in July 2002 (*see infra,* "Mail Handling Policy," pp. 61-63) that referred to funding for design and construction of mail facilities in "large" court-only buildings;

- Approved a request of the Committee on Rules of Practice and Procedure that congressional leaders be advised of an inadvertent omission of one sentence in the "style" revisions to the Federal Rules of Criminal Procedure that had previously been approved by the Conference (JCUS-SEP/OCT 01, p. 70) and the Supreme Court and transmitted to Congress in April 2002, and that Congress be asked to enact legislation to correct the error;

- Approved a recommendation of the Court Administration and Case Management Committee that the Conference (a) seek legislation to designate Plattsburgh, New York, as a place of holding court in the Northern District of New York and St. Clairsville, Ohio, as a place of holding court in the Southern District of Ohio; and (b) support legislation authorizing the Southern District of Iowa to conduct proceedings at the federal courthouse in Rock Island, Illinois, during the renovation of the Southern District of Iowa's courthouse in Davenport;

- Approved proposed interim financial plans for fiscal year 2003 for the Salaries and Expenses, Defender Services, Fees of Jurors and Commissioners, and Court Security accounts, and authorized the Director of the Administrative Office to make technical and other

adjustments as deemed necessary. The Executive Committee will be consulted as necessary concerning significant changes in the financial plans that might be required once a full-year appropriation is enacted; and

- Approved the concept of an off-site court operations support center; authorized the release to Congress of a report entitled, "Court Operations Support Center and Continuity of Operations Housing Plan," which addresses the feasibility, requirements, costs, and benefits of establishing an off-site facility; and approved funding for fiscal year 2003 start-up costs for the center.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it reviewed the progress of several major initiatives, including the AO's efforts to obtain legislative and spending authority for the AO Director to provide benefits for judges and judicial branch employees, the AO's support of continuity of operations planning in the courts and a study of the need for an off-site support center to ensure continuation of core court support operations in the event of an emergency affecting the Thurgood Marshall Federal Judiciary Building in Washington, D.C., and the judiciary's management oversight and internal controls initiatives. The Committee considered the results of a review the AO conducted of its communications with the courts and noted several procedural improvements made in response to feedback garnered from advisory groups. The Committee endorsed proposed changes to the Administrative Office's advisory group structure and reviewed and provided comments on a draft publication for judges regarding travel regulations and procedures that the AO is developing in response to the Committee's request.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

BANKRUPTCY JUDGESHIPS

New Judgeships. The Judicial Conference is required by 28 U.S.C. § 152(b)(2) to submit recommendations for new bankruptcy judgeships to Congress, which establishes the number of such judgeships for each judicial district. In March 1991, the Conference adopted a policy that provides for a national survey of judgeship needs every two years and establishes criteria for evaluating requests for additional bankruptcy judgeships (JCUS-MAR 91, 12-13). Based on the 2002 biennial survey of judgeship needs, the Committee on the Administration of the Bankruptcy System recommended that the Judicial Conference transmit to Congress proposed legislation to convert two existing temporary bankruptcy judgeship positions to permanent status, extend for an additional five-year period the temporary bankruptcy judgeships in four districts, create 36 additional bankruptcy judgeships, and convert the bankruptcy judgeship shared by the Middle and Southern Districts of Georgia to a full-time position for the Middle District of Georgia. Congress has not acted on the additional judgeships requested by the Conference since 1992 despite a dramatic rise in bankruptcy filings and judicial workloads. The Conference approved the Committee's recommendations, which are in lieu of previous Conference recommendations.

Continuing Need for Existing Judgeships. In accordance with 28 U S.C. § 152(b)(3), the Judicial Conference conducts a comprehensive review of all judicial districts every other year to assess the continuing need for all authorized bankruptcy judgeships. By December 31 of each even-numbered year, the Conference reports its recommendations to Congress for the elimination of any authorized bankruptcy judgeship position that can be eliminated when a vacancy exists by reason of resignation, retirement, removal or death. As a result of the 2002 continuing need survey, the Bankruptcy Committee recommended, and the Judicial Conference agreed, that the Conference take the following actions:

a. Recommend to Congress that no bankruptcy judgeship be statutorily eliminated; and

b. Advise the Eighth and Ninth Circuit Judicial Councils to consider not filling vacancies in the Districts of South Dakota and Alaska,

respectively, that currently exist or may occur by reason of resignation, retirement, removal, or death, until there is a demonstrated need to do so.

VENUE IN BANKRUPTCY CASES

In order to eliminate existing uncertainty in the case law and help address concerns about forum shopping in bankruptcy cases and proceedings, the Bankruptcy Committee recommended that the Judicial Conference seek an amendment of the bankruptcy venue statute (28 U.S.C. § 1412) to allow a judge to raise an issue of venue and to transfer a bankruptcy case *sua sponte.* The Conference adopted the Committee's recommendation.

OFFICIAL DUTY STATIONS

On recommendation of the Bankruptcy Committee, and in accordance with 28 U.S.C. § 152(b)(1), the Judicial Conference approved the request of the Eastern District of New York and the Second Circuit Judicial Council to designate the official duty station for the judge selected to replace Bankruptcy Judge Dorothy Eisenberg in the Eastern District of New York as "Brooklyn or Central Islip," and the request of the District of New Jersey and the Third Circuit Judicial Council to transfer the official duty station of Bankruptcy Judge Morris Stern from Trenton to Newark in the District of New Jersey.

COMMITTEE ACTIVITIES

The Bankruptcy Committee reported on the steps being taken to finalize a report of its mass tort litigation subcommittee on the treatment of mass future claims in bankruptcy. In addition, the Committee, conscious of the need for fiscal restraint, recommended that funding in fiscal year 2004 for the areas within its program oversight remain at the adjusted current services levels for fiscal year 2003. At the request of the Budget Committee's Economy Subcommittee, the Bankruptcy Committee also discussed the sharing of administrative functions by the courts, information technology investments and staffing, and development of a new case-weighted formula for evaluating additional bankruptcy judgeship requests. The Committee received briefings on a wide range of topics, including inter-court relationships, bankruptcy judge reappointment issues, and workforce diversity.

COMMITTEE ON THE BUDGET

FISCAL YEAR 2004 BUDGET REQUEST

In light of the congressional budget environment, the Budget Committee recommended a fiscal year 2004 budget request lower than the funding levels proposed by the program committees. The Judicial Conference approved the budget request subject to amendments necessary as a result of new legislation, actions of the Judicial Conference, or other reasons the Executive Committee considers necessary and appropriate.[1] The approved budget request includes funding for a panel attorney compensation rate of $113 per hour for non-capital representations, which was subsequently a subject for discussion at this Conference session in relation to a recommendation by the Defender Services Committee that the rate be increased to $120 per hour in fiscal year 2004. The Conference declined to adopt the Defender Services Committee's recommendation (*see infra,* "Panel Attorney Compensation," pp. 44-45).

OFFICIAL ACCOUNTING SYSTEM FOR THE COURTS

On recommendation of the Budget Committee, the Judicial Conference endorsed the Financial Accounting System for Tomorrow (FAS_4T) as the official accounting system of the courts necessary to support the decentralization of various budget and financial management authorities. FAS_4T is a commercial, off-the-shelf financial application that has been tested and certified by the Joint Financial Management Improvement Program, a cooperative effort by the Department of the Treasury, the General Accounting Office, the Office of Management and Budget, and the Office of Personnel Management, to improve financial management practices in the government. The implementation of a single, standard financial system in all courts will better enable the judiciary to meet its stewardship responsibilities in a cost-effective manner.

[1]Subsequent to the Conference session, by mail ballot concluded on October 9, 2002, the Executive Committee approved technical adjustments to the fiscal year 2004 budget request.

COMMITTEE ACTIVITIES

The Budget Committee reported that it unanimously agreed to make recommendations to various Judicial Conference committees pertaining to short- and long-term planning and economy issues. The Committee recommended that consideration be given to, among other things, identifying all costs associated with information technology investments; advancing the schedule for reviewing the court support staffing formulae; and sharing of administrative functions such as information technology support, human resources management, financial management, and procurement among court units.

COMMITTEE ON CODES OF CONDUCT

CAPITAL GAINS ROLLOVER LEGISLATION

The Committee on Codes of Conduct, in consultation with the Committee on the Judicial Branch, recommended that the Judicial Conference seek legislation extending to the judicial branch the capital gains rollover treatment available to the executive branch by virtue of Internal Revenue Code § 1043. That provision allows for the rollover of investments without an immediate recognition of taxable capital gains where the sale was undertaken to comply with conflict-of-interest requirements. Such a provision would provide financial relief to judges willing to divest financial holdings in order to avoid disqualification and resulting disruptions of court dockets. The Conference approved the Committee's recommendation.

COMMITTEE ACTIVITIES

Since its last report to the Judicial Conference in March 2002, the Committee on Codes of Conduct received 36 new written inquiries and issued 32 written advisory responses. During this period, the average response time for these requests was 16 days. The Chairman received and responded to 27 telephone inquiries. In addition, individual committee members responded to 120 inquiries from colleagues.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

ELECTRONIC PUBLIC ACCESS FEES

The Committee on Court Administration and Case Management reviewed the way in which courts have implemented the limited exemptions allowed by the Judicial Conference from the collection of electronic public access (EPA) fees. The Committee found a wide variation in the application of these exemptions. Noting that such variation detracted from what the Conference intended to be a national policy, the Committee recommended, and the Conference approved, the following policies with regard to the EPA fee schedule:

a. The EPA fee schedule and its limited exemptions should be applied in a similar manner in all courts, rather than through individual court practices and policies; and

b. Review of a court's compliance with the EPA fee schedule and its exemptions should be included in the court financial audit process.

Implementation guidelines will be developed for the Conference's approval.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it examined the issue of workforce diversity in court clerks' offices and unanimously agreed that achieving and maintaining workforce diversity be identified as a strategic long-range issue for the federal courts. The Committee also reported that it was briefed on a number of other issues, including the creation of the position of Court of Appeals Emergency Preparedness Officer; an overview of the operation of the Court Personnel System; a review of the principles of the judiciary's decentralized budgeting; a report on videoconferencing in the federal courts; and an update on the Federal Judicial Center's ongoing major initiatives.

COMMITTEE ON CRIMINAL LAW

OFFICER SAFETY PROGRAM

On recommendation of the Committee on Criminal Law, the Judicial Conference approved a "use of force continuum" to govern self-defense responses by probation and pretrial services officers and authorized the Director of the Administrative Office to develop an officer safety program to include, among other things, implementing policies regarding the use of force, officer safety instructor certification, resource materials, and training. The use of force continuum, which will provide the general structure for the safety program, is a set of defensive options consisting of five progressive levels governing an officer's response to threatening situations.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that it received information on various court practices regarding the content and format of presentence investigation reports. The Committee also was informed about the practices of the Federal Bureau of Prisons (BOP) with regard to the redisclosure of such reports and agreed to consult with representatives from the AO, the Department of Justice (including BOP), the United States Sentencing Commission, and others to examine concerns raised. The Committee was updated on a strategic assessment of the probation and pretrial services system, including the results of a recently completed survey of chief probation and pretrial services offices. The Committee unanimously agreed to adopt achieving and maintaining workforce diversity as a Committee long-range strategic issue and to recommend that workforce diversity be adopted as a long-range, crosscutting, strategic issue for the judiciary.

COMMITTEE ON DEFENDER SERVICES

PANEL ATTORNEY COMPENSATION

As noted above, the fiscal year 2004 budget request recommended by the Budget Committee and approved at this session by the Conference included funding for a panel attorney compensation rate of $113 per hour for non-capital representations (*see supra*, "Fiscal Year 2004 Budget Request," p. 41), the same rate sought in fiscal years 2002 and 2003. The Committee on Defender

Services recommended that the Conference include funding in the fiscal year 2004 budget request to increase the panel attorney rate to $120 per hour, which reflects a $75 per hour base rate of pay plus cumulative annual federal pay Employment Cost Index adjustments authorized by Congress and approved by the Conference but never fully funded. After discussion, the Conference declined to approve the Defender Services Committee's recommendation of $120 per hour.

GRANT AND CONDITIONS AGREEMENT

The Judicial Conference approved a recommendation of the Committee on Defender Services to revise Clause 8 (Audits) of the Grant and Conditions Agreement with Community Defender Organizations (CDOs) to delete language that permits CDOs to contract for local accounting services with the contract auditor selected and paid for by the Administrative Office to perform an annual audit of the grantee's financial activities. This modification is consistent with newly revised auditor independence requirements under the Government Auditing Standards. On recommendation of the Committee, the Conference also amended Clause 8 to add payroll, disbursing, and record-keeping services to the list of services for which CDOs can contract with local accountants. This modification makes explicit that CDOs may use local accountants for such activities, as they have done in the past. The new clause reads as follows (new language in bold italics and deleted language in strikeout):

> The grantee may contract with local accountants ~~or with the Auditor,~~ for any accounting and financial services necessary for the operation of its office, including, but not limited to, the preparation of all required federal and state tax returns~~,~~***; payroll, disbursing, and record-keeping services;*** and any additional annual audit reports required by the Board of Directors that do not duplicate the national contract audit. Notwithstanding the foregoing, a grantee may use grant funds to contract with an expert for the purpose of responding to a finding of the Auditor in the annual audit when authorized in advance to do so by the Defender Services Division.

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that, under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), it approved fiscal year 2003 budgets for 73 federal defender organizations totaling $329,227,600. The Committee also reported that, consistent with Judicial Conference policy (JCUS-MAR 95, pp. 18-19), it recommended seeking an immediate amendment to the Criminal Justice Act to raise the case compensation maximums for panel attorney representations, and the Administrative Office transmitted to Congress proposed legislation including such an amendment. The Committee reaffirmed its position that developing and sustaining workforce diversity should be recognized as a long-range planning strategic issue for the Defender Services program. The Committee was briefed on other significant long-range planning initiatives for the Defender Services program, including a joint state/federal defender conference on quality of criminal defense representation.

COMMITTEE ON FEDERAL-STATE JURISDICTION

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it has continued to explore alternative approaches to legislation pending before Congress to address class action litigation in the federal and state courts. The Committee declined to endorse a recommendation, forwarded to it by the Committee on Rules of Practice and Procedure for its consideration, relating to the use of minimal diversity in such actions, but recognized the importance of continuing to explore less intrusive and less burdensome means, both statutory and non-statutory, to redress the problems presented by overlapping and competing class actions. In addition, the Committee endorsed five proposals to foster state-federal judicial educational opportunities, including the creation of a website reflecting state-federal judicial education programs. As part of its jurisdictional improvements project, the Committee also continued its review of several proposals to reform the standards for, and process of, removal and remand.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that as of July 1, 2002, it had received 3,578 financial disclosure reports and certifications for the calendar year 2001, including 1,243 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 339 from bankruptcy judges; 512 from magistrate judges; and 1,484 from judicial employees. The Committee continued its efforts to ensure that all filers are aware of the obligation to file a report that accurately reflects the information required by the Ethics in Government Act of 1978 (5 U.S.C. §§ 101-111). Members of the Committee participated in a series of orientation seminars run by the Federal Judicial Center for newly appointed district judges and workshops run by the Administrative Office for judges' secretaries and judicial assistants. In addition, the Committee developed a one-hour presentation on the ten most common errors that filers make in completing the financial disclosure report, which was aired on the Federal Judiciary Television Network.

COMMITTEE ON INFORMATION TECHNOLOGY

MODEL USE POLICY

In September 2001, the Judicial Conference adopted, on an interim basis, a policy establishing a national minimum standard for appropriate use of government office equipment, including information technology. The Conference adopted the policy, based on one developed for use in the executive branch, with the understanding that the Committee on Information Technology would tailor it for the judiciary. Individual courts retained the right to impose or maintain more restrictive policies. The Conference also reaffirmed that individual courts have responsibility to enforce appropriate use policies and directed the Administrative Office, as part of its regular audit process, to examine and comment upon the adequacy of the courts' enforcement methods (JCUS-SEP/OCT 01, pp. 43-44). At this session, on recommendation of the Committee, which proposed modifications to the interim policy to make it specific to the judiciary, the Conference approved on a permanent basis the policy governing personal use of government office equipment, including

information technology. The tailored policy does not vary substantively from the interim policy.

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it endorsed the engagement of the National Security Agency to conduct an assessment of the adequacy of security measures for the judiciary's data communications network, determined that no movement should be made to decentralize funding for long-distance telephone services at this time, and received the results of a preliminary analysis on how the courts expend decentralized funds for information technology. The Committee also endorsed resource requirements and priorities for the programs under its jurisdiction and received updates on a number of information technology projects and issues.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that during the period from January 1, 2002, to June 30, 2002, a total of 108 intercircuit assignments, undertaken by 75 Article III judges, were processed and recommended by the Committee on Intercircuit Assignments and approved by the Chief Justice. In addition, the Committee aided courts requesting assistance by both identifying and obtaining judges willing to take assignments. The Committee also reported on changes to the intercircuit assignment process that would increase efficiency and timely processing of requests.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its involvement in rule-of-law and judicial reform activities throughout the world, highlighting those in the Russian Federation, Rwanda, China, Venezuela, Romania, and Algeria. Judge Michael Mihm of the Central District of Illinois and Judge Lloyd George of the District of Nevada were recognized by the

Council of Judges of the Russian Federation for the assistance they have provided in the ten years since the Council's establishment.

COMMITTEE ON THE JUDICIAL BRANCH

TRAVEL REGULATIONS FOR JUSTICES AND JUDGES

On recommendation of the Committee on the Judicial Branch, the Judicial Conference approved an amendment to the Travel Regulations for United States Justices and Judges to allow judges to claim reimbursement for personal luggage handling as a miscellaneous transportation expense. Previously, judges could claim reimbursement for tips for transporting personal luggage only where the judge claimed reimbursement for actual expenses of subsistence.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it continues to concentrate much of its attention on the critical question of judicial compensation. The Committee prepared documentation to submit to the Second National Commission on the Public Service (the "Volcker Commission") regarding the judiciary's compensation needs, focusing upon the significant erosion in the purchasing power of judicial salaries, the upward trajectory in the salaries of other legal professionals, and trends in judicial retirements and resignations. The Committee also devoted considerable time and attention to the status of the judiciary's benefits initiative, the Judicial Survivors' Annuities System, and the Federal Employees Health Benefits Program.

COMMITTEE ON JUDICIAL RESOURCES

PRO SE LAW CLERKS

The Judicial Conference, at its March 2002 session, approved a procedure whereby if a court wants to extend a pro se law clerk position beyond the time that it would be permitted to do so under the staffing formula, the court would turn first to its own decentralized funding and then to its circuit's Temporary Emergency Fund (JCUS-MAR 02, p. 22). However,

because pro se law clerks are funded centrally by the Administrative Office, this policy blurred the distinction – key to budget decentralization – between centrally held and decentralized funds. At this session, the Conference approved the recommendation of the Judicial Resources Committee that the policy be modified so that a court wishing to extend a pro se law clerk position beyond the time that its staffing formula would allow would request funds to do so from its circuit's Temporary Emergency Fund.

DEATH PENALTY LAW CLERKS

In March 1999, the Judicial Conference adopted a staffing formula for death penalty law clerks of one law clerk for each 15 capital habeas corpus cases in a district, if requested by the circuit judicial council (JCUS-MAR 99, p. 24). Noting that death penalty law clerks, like pro se law clerks, develop extensive knowledge and experience in their respective subject-matter areas, the Committee recommended that the Judicial Conference approve the use of a stabilizing policy similar to that recently adopted for pro se law clerks (JCUS-MAR 02, p. 22). The Conference agreed and approved a stabilizing policy that provides that the number of allocated death penalty law clerk positions will only be reduced if the number of pending capital habeas corpus cases does not meet the formula standard for two consecutive years.

ALTERNATIVE DISPUTE RESOLUTION

In March 1998, the Judicial Conference approved a "basic" and a "robust" staffing factor for clerk's office positions performing duties related to alternative dispute resolution (JCUS-MAR 98, pp. 20-21). The basic staffing factor was intended to apply to most district courts' alternative dispute resolution (ADR) programs, while the robust factor was intended for a limited number of courts with extensive ADR programs. Citing a significant growth in its ADR program and the strong support it receives from the bench and bar, the Eastern District of Missouri requested application of the robust factor to support its ADR program. On recommendation of the Committee, the Judicial Conference approved the district's request.

COURT INTERPRETERS

Based on established criteria, the Committee recommended, and the Conference approved, four additional court interpreter positions for fiscal year

2004: two positions for the Southern District of California, one position for the Northern District of Illinois, and one position for the District of Nevada. These positions will address the steady growth in the number of Spanish/English interpreter events in those districts.

CHIEF DEPUTY CLERK

Noting the unique responsibility and workload of the clerk's office for the District of the District of Columbia stemming from its location in the nation's capital, the Committee recommended that the Judicial Conference authorize a second JSP-16 Type II chief deputy clerk position for that district, using existing decentralized funding available to the court. The Conference adopted the Committee's recommendation.

DISTRICT COURT EXECUTIVE PILOT PROGRAM

The district court executive pilot program, authorized by the Judicial Conference in 1981, was designed to provide supervisory administrative assistance to chief district judges in courts with enhanced non-judicial, managerial responsibilities (JCUS-MAR 81, p. 68). Three of the six districts that participated in the pilot program have retained the district court executive position; the other three merged the functions of the position into the clerk's office. The Committee on Judicial Resources consulted with the Court Administration and Case Management Committee, which conducted a review of the pilot program. Based on the latter committee's review, which noted the growth of cross-unit administration and the flexibility of budget decentralization to allow the development of management positions suited to a particular court's needs, the Judicial Resources Committee recommended that the district court executive pilot program be terminated. Also in keeping with the views of the Committee on Court Administration and Case Management, the Judicial Resources Committee recommended continuing existing staffing allocations for the courts that participated in the pilot program (allowing the courts to maintain the positions should they so choose), since the existing positions created under the pilot program continue to provide valuable services to the courts and much of the work for which district court executive positions are responsible has been incorporated into the staffing and funding allocations for all six districts. The Judicial Conference adopted the Judicial Resources Committee's recommendations.

RELEASE OF PERSONNEL INFORMATION

On recommendation of the Judicial Resources Committee, the Judicial Conference approved a policy regarding the release by the Administrative Office of personnel information pertaining to judges and judiciary employees. The policy refines the procedures for the release of aggregate personnel data and restricts the type of individual information that is allowed to be released to the public without express written authorization of the judge or employee. The new policy will be set forth in the *Guide to Judiciary Policies and Procedures,* Volume I, Chapter X.

BACKGROUND CHECKS/INVESTIGATIONS

The Judicial Conference discussed and adopted a recommendation of the Judicial Resources Committee to expand the use of background investigations and checks in the courts. The new policy creates two categories of positions based on the nature of the work and the position's potential to impact the judiciary adversely. For "sensitive" positions, a Federal Bureau of Investigation (FBI) fingerprint check is required, and a credit check is optional depending on the duties of the position. For "high-sensitive" positions, an Office of Personnel Management (OPM) ten-year single-scope background investigation is required, as well as five-year updates. Five-year updates are also required for all employees in high-sensitive positions who had FBI background investigations prior to this policy being implemented. The policy applies to all new hires of court and federal public defender organization employees, and also applies to current court and federal public defender organization employees who are hired for or promoted into high-sensitive positions.[2] The policy will be published in the *Guide to Judiciary Policies and Procedures*, Volume I, Chapter X.

Also on recommendation of the Committee, the Judicial Conference authorized the Administrative Office to use OPM in lieu of the FBI for conducting pre-employment background investigations of probation and pretrial services officers and officer assistants. OPM background investigations provide

[2]This policy does not apply to probation and pretrial services officers and officer assistants, bankruptcy administrators, and chapter 13 standing bankruptcy trustees because they are covered by previously approved policies on background investigations (*see* JCUS-SEP 68, pp. 68-69; JCUS-SEP 99, p. 60; JCUS-SEP 87, p. 81; and JCUS-SEP 92, p. 61).

the same level of investigative coverage as FBI investigations at half the cost and can be expedited from 120 days to as little as 35 days for a modest additional fee. Moreover, because OPM already conducts all required reinvestigations of officers and officer assistants, the process for investigations will be streamlined.

TRANSCRIPT RATES

Noting that transcript and transcript copy fee rates for federal official court reporters have not been increased in more than a decade, the Committee on Judicial Resources recommended, and the Judicial Conference approved, a ten percent increase in such rates to be effective in fiscal year 2003.[3] The increase is subject to the availability of funding in the Defender Services appropriation for any necessary increase in that appropriation to defray the increased rates.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that in response to a request for input on several long-range planning issues from the Economy Subcommittee of the Committee on the Budget, the Committee encouraged the Administrative Office to conduct a study on ways to structure increasingly complex courts to ensure the highest quality and most professional administrative support without impairing their local authority. The Committee Chair briefed the Committee on his testimony regarding the judiciary benefits program before a House subcommittee, which applauded the judiciary's Flexible Benefit Program and indicated its interest in the judiciary serving as a model for the other branches of the government. The Committee also reported that it supported the identification of workforce diversity as a cross-cutting, long-range planning issue.

[3]This increase will not apply to rates for original transcripts in six large metropolitan district courts that previously received approval to increase those rates by ten or twenty percent from the Director of the Administrative Office pursuant to his Conference-delegated authority to increase transcript rates when the circumstances justify it (JCUS-MAR 81, pp. 7-8).

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

PARTICIPATION AT CIRCUIT JUDICIAL CONFERENCES

On recommendation of the Committee on the Administration of the Magistrate Judges System, the Judicial Conference agreed to seek an amendment to 28 U.S.C. § 333 to include magistrate judges among the judicial officers who may by statute be summoned to a circuit judicial conference. Magistrate judges regularly attend circuit judicial conferences in all circuits. They were not included in section 333 upon its original enactment in 1939 because the modern office of magistrate judge did not exist at that time.

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee on the Administration of the Magistrate Judges System and the recommendations of the Director of the Administrative Office, the district courts, and the judicial councils of the circuits, the Judicial Conference approved the following changes in positions, salaries, locations, and arrangements for full-time and part-time magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

FIRST CIRCUIT

District of Massachusetts

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

SECOND CIRCUIT

District of Connecticut

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

THIRD CIRCUIT

Middle District of Pennsylvania

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

FIFTH CIRCUIT

Eastern District of Texas

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

SEVENTH CIRCUIT

Eastern District of Wisconsin

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

EIGHTH CIRCUIT

District of Minnesota

Increased the salary of the part-time magistrate judge position at Bemidji from Level 8 ($3,477 per annum) to Level 6 ($11,592 per annum).

NINTH CIRCUIT

Eastern District of California

1. Converted the part-time magistrate judge position at Bakersfield to full-time status;

2. Increased the salary of the part-time magistrate judge position at Redding from Level 4 ($34,776 per annum) to Level 3 ($46,368 per annum);

3. Increased the salary of the part-time magistrate judge position at South Lake Tahoe from Level 5 ($23,184 per annum) to Level 4 ($34,776 per annum); and

4. Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

District of Nevada

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

TENTH CIRCUIT

District of New Mexico

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

2. Authorized an additional full-time magistrate judge position at Albuquerque;

3. Increased the salary of the part-time magistrate judge position at Roswell from Level 7 ($5,795 per annum) to Level 5 ($23,184 per annum);

4. Discontinued the part-time magistrate judge position at Clovis or Portales, effective April 1, 2003; and

5. Made no other changes in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

Eastern District of Oklahoma

1. Converted the part-time magistrate judge position at McAlester to full-time status; and

2. Made no change in the location or arrangements of the other magistrate judge positions in the district.

District of Wyoming

Increased the salary of the part-time magistrate judge position at Lander from Level 7 ($5,795 per annum) to Level 6 ($11,592 per annum).

ELEVENTH CIRCUIT

Middle District of Florida

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

2. Authorized an additional full-time magistrate judge position at Jacksonville; and

3. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

Southern District of Florida

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

2. Authorized an additional full-time magistrate judge position at Fort Lauderdale;

3. Authorized an additional full-time magistrate judge position at West Palm Beach or Miami; and

4. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

ACCELERATED FUNDING

On recommendation of the Committee, the Judicial Conference agreed to designate for accelerated funding in fiscal year 2003 the nine new full-time magistrate judge positions approved by the Conference.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that it discussed the issue of workforce diversity in the context of the magistrate judges system and recognized the need for diversity in magistrate judge appointments. The Committee voted unanimously to write to all district court chief judges to emphasize the importance of diversity and to encourage

courts to continue efforts to achieve diversity in all aspects of the magistrate judge selection process. The Committee also discussed the issue of magistrate judge involvement in court governance. The Committee agreed to write to the chief judges of those circuits without a magistrate judge on the circuit council to encourage them to consider including magistrate judges on their respective circuit councils.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

INFORMATION ON COMPLAINT PROCEDURES

In recognition of the increasing importance of on-line availability of information for the transaction of legal business, and at the suggestion of two members of Congress, the Committee to Review Circuit Council Conduct and Disability Orders recommended that the Judicial Conference:

a. Urge every federal court to include a prominent link on its website to its circuit's forms for filing complaints of judicial misconduct or disability and its circuit's rules governing the complaint procedure; and

b. Encourage chief judges and judicial councils to submit non-routine public orders disposing of complaints of judicial misconduct or disability for publication by on-line and print services.

The Conference adopted the Committee's recommendations.

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders continued to monitor the status of H.R. 3892 (107th Congress), legislation to amend (in several minor respects) the Judicial Conduct and Disability Act, 28 U.S.C. § 372(c), that was introduced on March 7, 2002.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF APPELLATE PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed technical amendments to Appellate 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), 3 (Petition for Review of Order of an Agency, Board, Commission or Officer), and 5 (Notice of Appeal to a Court of Appeals From a Judgment or Order of a District Court or a Bankruptcy Appellate Panel). The Judicial Conference approved the amendments and authorized their transmittal to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 1005 (Caption of Petition), 1007 (Lists, Schedules, and Statements; Time Limits), 2002 (Notices to Creditors, Equity Security Holders, United States, and United States Trustee), 2003 (Meeting of Creditors or Equity Security Holders), 2009 (Trustees for Estates When Joint Administration Ordered), 2016 (Compensation for Services Rendered and Reimbursement of Expenses), and new Rule 7007.1 (Corporate Ownership Statement), together with Committee notes explaining their purpose and intent. The Judicial Conference approved the amendments and the new rule and authorized their transmittal to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

The Committee also submitted, and the Conference approved, proposed revisions to Bankruptcy Official Forms 1 (Voluntary Petition), 5 (Involuntary Petition), and 17 (Notice of Appeal Under 28 U.S.C. § 158(a) or (b) From a Judgment, Order, or Decree of a Bankruptcy Judge) relating to multilateral clearing banks and child-support creditors, to take effect on December 1, 2002, and proposed privacy-related revisions to Bankruptcy Official Forms 1 (Voluntary Petition), 3 (Application and Order to Pay Filing Fee in Installments), 5 (Involuntary Petition), 6 (Schedules), 7 (Statement of Financial Affairs), 8 (Individual Debtor's Statement of Intention), 9 (Notice of Commencement of Case Under the Bankruptcy Code, Meeting of Creditors, and

Deadlines), 10 (Proof of Claim), 16A (Caption (Full)), 16C (Caption of Complaint in Adversary Proceeding Filed by a Debtor), 17 (Notice of Appeal Under 28 U.S.C. § 158(a) or (b) From a Judgment, Order, or Decree of a Bankruptcy Judge), and 19 (Certification and Signature of Non-Attorney Bankruptcy Petition Preparer (See 11 U.S.C. § 110)), to take effect on December 1, 2003.

FEDERAL RULES OF CIVIL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Civil Rules 23 (Class Actions), 51 (Instructions to Jury: Objection), 53 (Masters), 54 (Judgments; Costs), and 71A (Condemnation of Property), and revisions to Forms 19 (Motion to Dismiss, Presenting Defenses of Failure to State a Claim, of Lack of Service of Process, of Improper Venue, and of Lack of Jurisdiction Under Rule 12(b)), 31 (Judgment on Jury Verdict), and 32 (Judgment on Decision by the Court), together with Committee notes explaining their purpose and intent. The Judicial Conference approved the changes and authorized their transmittal to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law. Included in these proposed amendments is a substantial reworking of Rule 23 class action procedures focusing on four areas of class action litigation: the timing of the certification decision and notice; judicial oversight of settlements (which was discussed at the Conference session); attorney appointment; and attorney compensation.

FEDERAL RULES OF CRIMINAL PROCEDURE

The Bail Bond Fairness Act of 2001, H.R. 2929, 107th Congress, would amend Criminal Rule 46(e) to eliminate the current power of a judge to forfeit a bail bond for failure to satisfy a condition of release, other than "if the defendant fails to appear physically before the court." Noting that current Rule 46(e) provides judges with the flexibility to impose added safeguards to ensure a defendant's compliance with conditions of release, *e.g.*, refraining from drug use, and that absent such assurance, judges might decide to retain a defendant in custody, the Committee recommended that the Conference oppose such legislation. The Conference adopted the Committee's recommendation.

FEDERAL RULES OF EVIDENCE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference a proposed amendment to Evidence Rule 608(b) (Specific instances of conduct), together with Committee notes explaining its purpose and intent. The Judicial Conference approved the amendment and authorized its transmittal to the Supreme Court for its consideration with the recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law.

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure unanimously endorsed the findings and recommendations of the Advisory Committee on Civil Rules dealing with problems raised by filings of duplicative and overlapping class actions and transmitted them to the Committee on Federal-State Jurisdiction for its consideration. The Committee supports "the concept of minimal diversity for large, multi-state class actions, in which the interests of no state are paramount, with appropriate limitations or threshold requirements so that the federal courts are not unduly burdened and the states' jurisdiction over in-state class actions is left undisturbed." The Committee also approved for publication proposed amendments to Rule 9014 of the Federal Rules of Bankruptcy Procedure, Rule 41 of the Federal Rules of Criminal Procedure, Rule 804 of the Federal Rules of Evidence, and a comprehensive revision of the Rules Governing Section 2254 Cases and Section 2255 Proceedings.

COMMITTEE ON SECURITY AND FACILITIES

MAIL HANDLING POLICY

In response to concerns raised by the recent anthrax contamination of the United States mail system, the Committee on Security and Facilities contracted with an independent consultant to conduct a study of current judiciary mail handling facilities and practices and to recommend procedures and infrastructure guidelines to improve mail handling safety in federal courthouses.

Based on this study, the Committee recommended that the Judicial Conference take the following steps to enhance judiciary mail handling policies and procedures:

a. Issue guidance to courts on mail handling procedures, and consider establishing a central mail facility in court-only and possibly in multi-tenant buildings for screening, sorting and opening the mail;

b. Require a court's full concurrence on the adoption and implementation of the study's enhanced mail handling policies and procedures prior to construction of a central mail facility;

c. Approve funding for design and construction of central mailrooms for the Moakley Courthouse in Boston, the Moynihan U.S. Courthouse in New York City, and the Bryan Courthouse in Alexandria to prepare for the high-threat trials;

d. Approve updating the *U. S. Courts Design Guide* to incorporate the new standards for mailrooms in new courthouses;

e. Approve issuing design changes or change orders to the General Services Administration (GSA) on all courthouses in the design and construction phases to provide a central mail facility that meets the current Interagency Security Committee and *U. S. Courts Design Guide* standards and proposed prototype architectural and mechanical standards for bio-chemical safety;

f. Approve funding design and construction for mail facilities in large[4] court-only buildings and ask the circuit councils to work with GSA to develop costs for specific buildings so that priorities can be set; and

g. In FY 2003, approve construction of mail facilities for remaining court-only and multi-tenant buildings as funding permits.

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[4]The Security and Facilities Committee subsequently came to believe that the word "large" in this section was too restrictive and would limit the circuit judicial councils in setting local priorities in this area. The Committee sought the removal of the word "large" from this provision of the mail handling policy. The Executive Committee approved the change on behalf of the Judicial Conference (*see supra*, "Miscellaneous Actions," p. 37).

Since the process of designing and constructing new mail facilities is a lengthy one, the Committee requested and the Judicial Conference agreed to an expedited review of these recommendations so that safety measures could be put in place as soon as possible. By mail ballot concluded on July 18, 2002, the Judicial Conference approved the recommendations.

FIVE-YEAR COURTHOUSE PROJECT PLAN

In March 2002, the Conference approved the Five-Year Courthouse Project Plan for fiscal years 2003-2007 with fiscal year 2003 projects displayed in two columns to distinguish those projects unfunded in fiscal year 2002 and prior years from those scheduled for funding in fiscal year 2003. Funding priority between the two columns was not established (JCUS-MAR 02, p. 31). At this session, on recommendation of the Committee on Security and Facilities, the Conference agreed to take the following actions regarding the Five-Year Courthouse Project Plan:

a. Endorse placement of projects in the first year of each Five-Year Plan that gives priority in descending order by score: (1) first, to any unfunded projects remaining from earlier years; and then (2) to projects planned for that first year;

b. Approve the placement of new projects in the Five-Year Plan in score order with other projects in any of the last three years of any Five-Year Plan;

c. Endorse the early acquisition of sites (including donated sites) for courthouse projects; however, projects with donated sites shall maintain their original placement in score order on the Five-Year Plan; and

d. Authorize the Administrative Office to work with GSA prior to submission of the President's budget request to OMB in any given fiscal year.

JURY ROOM SIZE

In September 2000, the Judicial Conference amended the *U. S. Courts Design Guide* to reduce the number of jurors to be accommodated in a standard district courtroom from 18 to16, unless otherwise required, since courts had

advised that they seldom convened 18 jurors for a trial (JCUS-SEP 00, pp. 66-67). However, courts have noted that on those occasions when they do empanel 16 to 18 jurors, particularly for trials expected to last a week or longer, a 350 square foot jury deliberation room is not large enough for jurors' comfort. In order to accommodate such cases, the Conference adopted the recommendation of the Committee on Security and Facilities to amend the *Design Guide* to—

a. Permit one in four district court jury deliberation rooms to be 500 square feet;

b. Permit one jury deliberation room to be 500 square feet in courthouses with fewer than four courtrooms; and

c. Stipulate that, if a special proceedings courtroom is planned for a new courthouse project, the 500 square foot jury deliberation room should be placed adjacent to it.

SPECIAL PROCEEDINGS COURTROOMS

On recommendation of the Committee, and after discussion, the Judicial Conference agreed to amend the *Design Guide* to add language that would permit a special proceedings courtroom for new court buildings planned with fewer than four district courtrooms, in states with small, widely dispersed populations, to accommodate multi-defendant trials in those locations. Special proceedings courtrooms in such locations will no longer be considered "special requirements" necessitating approval of circuit judicial councils.

SECURITY IN THE COURTROOM

To provide a framework for decision-making for the judiciary-funded court security program, the Committee recommended, and the Conference approved, guiding principles for federal judicial security. Those principles state that federal judges, court staffs and visitors to courthouses are targets; that the federal judiciary is responsible for identifying the judiciary's strategic security needs, in conjunction with the United States Marshals Service and others; that protection of the judiciary is the primary U.S. Marshals Service task; that resources provided by the judiciary to the U.S. Marshals Service or to any other executive branch agency are a supplement to, not a substitute for, the resources

otherwise available to those agencies for protecting the federal judiciary; and that a unified program is essential.

COMMITTEE ACTIVITIES

The Committee on Security and Facilities reported that it considered ways to enhance the court security program and recommended that the Administrative Office convene a focus group of judges to discuss "what works and what does not work" with regard to court security, and develop an orientation program for chief judges to reinforce the vital role of the court security committee in the overall security program of each judicial district. The Committee also reviewed an evaluation of the first year of implementation of the cyclical maintenance program for court space and concluded that the results, which showed that 80 percent of the funds were expended on court buildings over 20 years old, reinforced the need for the program approved by the Judicial Conference in September 2000 (JCUS-SEP 00, p. 67). The Committee was briefed on the recent, significant agreement between GSA and the judiciary that allows the judiciary to plan for ten years of expansion room in a new courthouse from the date of occupancy, rather than from the date of design, as has been done in the past.

FUNDING

All of the foregoing recommendations that require the expenditure of funds for implementation were approved by the Judicial Conference subject to the availability of funds and to whatever priorities the Conference might establish for the use of available resources.

Chief Justice of the United States
Presiding

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

March 18, 2003

The Judicial Conference of the United States convened in Washington, D.C., on March 18, 2003, 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 Michael Boudin
Judge D. Brock Hornby,
District of Maine

Second Circuit:

Chief Judge John M. Walker, Jr.
Chief Judge Frederick J. Scullin, Jr.,
Northern District of New York

Third Circuit:

Chief Judge Edward R. Becker
Chief Judge Sue L. Robinson,
District of Delaware

Fourth Circuit:

Chief Judge William W. Wilkins
Judge David C. Norton,
District of South Carolina

Fifth Circuit:

Chief Judge Carolyn Dineen King
Judge Martin L. C. Feldman,
Eastern District of Louisiana

Sixth Circuit:

Chief Judge Boyce F. Martin, Jr.
Chief Judge Lawrence P. Zatkoff,
Eastern District of Michigan

Seventh Circuit:

Chief Judge Joel M. Flaum
Judge Marvin E. Aspen,
Northern District of Illinois

Eighth Circuit:

Chief Judge David R. Hansen
Chief Judge James M. Rosenbaum,
District of Minnesota

Ninth Circuit:

Chief Judge Mary M. Schroeder
Chief Judge David Alan Ezra,
District of Hawaii

Tenth Circuit:

Chief Judge Deanell R. Tacha
Chief Judge Frank Howell Seay,
Eastern District of Oklahoma

Eleventh Circuit:

Chief Judge J. L. Edmondson
Judge J. Owen Forrester,
Northern District of Georgia

District of Columbia Circuit:

Chief Judge Douglas H. Ginsburg
Chief Judge Thomas F. Hogan,
District of Columbia

Federal Circuit:

Chief Judge Haldane Robert Mayer

Court of International Trade:

Chief Judge Gregory W. Carman

Circuit Judges Dennis G. Jacobs, Michael J. Melloy, Jane R. Roth, and Anthony J. Scirica, and District Judges Lourdes G. Baird, John G. Heyburn II, John W. Lungstrum, James Robertson, Patti B. Saris, Harvey E. Schlesinger, and Frederick P. Stamp, Jr. attended the Conference session. Betsy Shumaker of the Tenth Circuit represented the circuit executives.

Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director for Management and Operations; William R. Burchill, Jr., Associate Director and General Counsel; Karen K. Siegel, Assistant Director, Judicial Conference Executive Secretariat; Michael W. Blommer, Assistant Director, Legislative Affairs; David Sellers, Assistant Director, Public Affairs; and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat. Judge Fern Smith and Russell Wheeler, Director and Deputy Director of the Federal Judicial Center, were in attendance at the session of the Conference, as was Sally Rider, Administrative Assistant to the Chief Justice. Scott Harris and Tonia Powell, Supreme Court Counsel and Staff Counsel, and the 2002-2003 Judicial Fellows also observed the Conference proceedings.

Senators Orrin G. Hatch and Patrick J. Leahy and Representatives John Conyers, Jr., and Lamar S. Smith spoke on matters pending in Congress of interest to the Conference. Attorney General John Ashcroft addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice.

REPORTS

Mr. Mecham reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office (AO). Judge Smith spoke to the Conference about Federal Judicial Center programs, and Judge

Diana E. Murphy, Chair of the United States Sentencing Commission, reported on Sentencing Commission activities.

ELECTIONS

The Judicial Conference elected to membership on the Board of the Federal Judicial Center, each for a term of four years, District Judges Sarah S. Vance of the Eastern District of Louisiana and James A. Parker of the District of New Mexico to succeed District Judges Jean C. Hamilton of the Eastern District of Missouri and William H. Yohn, Jr. of the Eastern District of Pennsylvania.

EXECUTIVE COMMITTEE

UNITED STATES SENTENCING COMMISSION

On recommendation of the Executive Committee, the Judicial Conference agreed to recommend that the President, with the advice and consent of the Senate, reappoint to the U.S. Sentencing Commission Judges Ruben Castillo of the Northern District of Illinois and William K. Sessions III of the District of Vermont.

FEDERAL COURTS IMPROVEMENT BILL

Every two years, each Conference committee considers legislative initiatives within its jurisdiction that were approved by the Conference but not yet enacted to decide whether those provisions should be pursued in the upcoming federal courts improvement bill or another legislative vehicle, and notifies the Executive Committee of its determinations. At its February 2003 meeting, the Executive Committee reviewed the decisions of the committees on whether pending Conference positions should be pursued in the 108th Congress. With two exceptions (which were referred back to the relevant committees for further consideration), the Executive Committee concurred in the determinations of the committees on whether or not to seek such legislation at this time. The Executive Committee also reviewed any legislative provisions within its own jurisdiction that had not yet been enacted.

MISCELLANEOUS ACTIONS

The Executive Committee—

- Approved adjustments to the judiciary's fiscal year (FY) 2004 budget request, including technical changes necessitated by increases in the federal pay and benefit inflation rates and increased life insurance premiums for Article III judges, and reflecting a lower estimate of the annual recurring costs associated with a proposed court operations support center;

- In light of the fiscal uncertainty created by Congress' failure to pass an FY 2003 appropriations bill before the end of the 107th Congress, authorized the Director of the Administrative Office to issue guidance to court units that receive funding from the Salaries and Expenses account, limiting their rates of operation through December 31, 2002 to 95 percent of their FY 2002 allotment levels;

- Approved a proposed letter for the Chief Justice's signature appealing provisions in the Senate-passed omnibus appropriations bill for FY 2003 that would have provided lower-than-required funding levels, significantly restructured certain judiciary appropriations accounts, and made important policy changes with regard to the provision of judicial security;

- Agreed that the Executive Committee chair should join the Director of the Administrative Office and the chair of the Budget Committee in advising the courts of the severity of the judiciary's budget situation in FY 2004, of the likelihood that the budget crisis will continue in years to come, and of the critical need for the Conference committees and the courts to adjust budget requests and spending plans to reflect this budget environment;

- Upon enactment of a judiciary appropriations bill, approved final financial plans for fiscal year 2003 for the Salaries and Expenses, Defender Services, Fees of Jurors and Commissioners, and Court Security accounts, and reaffirmed its earlier determination to advise courts of the severity of the budget crisis and the likelihood that it will continue in years to come;

- Approved proposed comments, concurred in by the chairs of the Committees on Court Administration and Case Management, Information Technology, and Rules of Practice and Procedure, to be submitted to the Department of Commerce's National Telecommunications and Information Administration, urging retention of the statutory exception for official court documents found in the Electronic Signatures in Global and National Commerce Act (Public Law No. 106-229);

- On recommendation of the Committee on the Administration of the Magistrate Judges System, approved immediate temporary increases in the salaries of two part-time magistrate judges, one in the Eastern District of California and one in the District of North Dakota, and subsequently extended for up to nine months the salary increase for the part-time magistrate judge in North Dakota;

- Approved the public release of a report drafted by the Bankruptcy Committee's Subcommittee on Mass Torts, provided that it contain certain disclaimer language;

- Declined to change the jurisdictional statement of the Committee on Judicial Resources to include oversight of the Federal Law Clerk Information System, but will revisit the issue if the need arises;

- Requested that the Magistrate Judges Committee reconsider its recommendation that the Director of the Administrative Office amend the Regulations of the Director Implementing the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act to exclude mediation and arbitration from the definition of the practice of law;

- Requested that the Court Administration and Case Management Committee, in consulation with the Committee on Information Technology, consider whether to propose regulations to assist the courts in implementing the E-Government Act (Public Law No. 107-347); and

- Determined to allow the annual automatic inflation adjustment to the alternative subsistence rate for reimbursement of judges' travel expenses to take effect.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it was briefed on the AO's efforts to obtain funding for the judiciary, to keep Judicial Conference and committee members informed during the uncertain fiscal year 2003 budget situation, and to provide guidance to the courts on spending limitations pending enactment of a judiciary budget. The Committee was also briefed on a study on establishing an off-site court operations support center and on other emergency preparedness efforts, on the activities of the Appellate Court and Circuit Administration Division, and on major AO initiatives including internal control enhancements, benefits initiatives, and a study to be undertaken to identify viable alternatives for the delivery of administrative support services to the courts.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

REVISION OF BANKRUPTCY CODE DOLLAR AMOUNTS

Section 104(a) of the Bankruptcy Code requires the Judicial Conference to transmit to Congress and to the President every six years a recommendation for the uniform percentage adjustment of each dollar amount in the Bankruptcy Code and in 28 U.S.C. § 1930 (which prescribes filing and other fees to be paid in bankruptcy cases). Since § 104(a) was adopted, there have been several statutory changes relating to bankruptcy fee provisions, including authorization for periodic automatic adjustments of numerous specific dollar amounts in the Code (*see* § 104(b) of the Code, added by the Bankruptcy Reform Act of 1994, Public Law No. 103-394). These changes call into question the appropriateness of recommending a uniform percentage increase to all dollar amounts and fees. Moreover, the Court Administration and Case Management Committee is currently conducting a study of court fees and intends to make recommendations to the Judicial Conference for consideration in September 2003. The Conference therefore approved the Bankruptcy Committee's recommendation that Congress and the President be advised, before the May 1,

2003 statutory deadline, that no uniform percentage adjustment should be made at this time to the dollar amounts contained in the Bankruptcy Code or in 28 U.S.C. § 1930, pending review of all fees by the Judicial Conference in September 2003.

COMMITTEE ACTIVITIES

The Bankruptcy Committee reported that it established a subcommittee to work with the Committee on Information Technology to define further functionality in the case management/electronic case files (CM/ECF) system in order to assist judges in using the system. In addition, the Committee considered whether service as an arbitrator or mediator by retired bankruptcy judges should be deemed the practice of law under the Director's retirement regulations; discussed budget contingency planning and efforts to identify and incorporate "better practices" into the court staffing formulae; and received briefings on a wide range of topics, including studies of existing court fees, court sharing of administrative resources, bankruptcy case weights, and venue-related issues in large chapter 11 cases.

COMMITTEE ON THE BUDGET

COURT REGISTRY INVESTMENT SYSTEM

On recommendation of the Budget Committee, the Judicial Conference agreed to seek legislation to allow the Court Registry Investment System (CRIS) to invest in Treasury securities issued under the Government Account Series program. Participation in this program will increase the liquidity of CRIS funds and their income-earning potential because the judiciary will be able to invest daily instead of weekly and avoid certain investment fees.

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it discussed the likelihood of serious budget constraints in future years. The Committee considered short-term and long-term funding issues, including strategies to address increases in future budget requirements that could approach 20 percent annually. The Committee plans to use the long-range planning process and its summer meeting with the program committee chairs as vehicles to support and

encourage program committees in their efforts to examine long-range budget issues and to limit annual budget increases so that requests to Congress can continue to be justified.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Conference in September 2002, the Committee received 35 new written inquiries and issued 38 written advisory responses. During this period, the average response time for requests was 19 days. The Chairman received and responded to 22 telephone inquiries, and individual Committee members responded to 110 inquiries from their colleagues.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

SUBPOENAS TO JUDGES AND EMPLOYEES

On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference adopted regulations to govern the judiciary's responses to subpoenas issued to federal judges and employees, to be included in the *Guide to Judiciary Policies and Procedures*. These regulations establish procedures for litigants to follow in obtaining testimony of judiciary personnel and production of judiciary records in legal proceedings, as well as procedures for judges and employees to follow if they receive subpoenas. The regulations should, among other things, expedite the response process and minimize the involvement of the federal judiciary in issues unrelated to its mission.

COURT TECHNOLOGY FEES

Section 1920 of title 28, United States Code, allows judges and clerks of court to tax litigants for certain costs of litigation. The Committee on Court Administration and Case Management was asked to consider whether the list of taxable costs should be amended to include expenses associated with new

courtroom technologies. Concluding that adding the full range of such costs might go well beyond the intended scope of the statute, the Committee recommended that the Conference endorse two limited amendments to 28 U.S.C. § 1920, the first to permit taxing the cost of transcripts produced electronically, and the second to permit taxing the costs associated with copying materials whether or not they are in paper form. The Conference adopted the Committee's recommendation and agreed to seek the following amendments to 28 U.S.C. § 1920 (new language is in bold, language to be deleted is struck through):

> A judge or clerk of any court of the United States may tax as costs the following:
>
> * * * *
>
> (2) Fees ~~of the court reporter for all or any part of the stenographic transcript~~ **for printed or electronically recorded transcripts** necessarily obtained for use in the case; and
>
> * * * *
>
> (4) Fees for exemplification and ~~copies of papers~~ **the costs of making copies of any materials where the copies are** necessarily obtained for use in the case...

PLACES OF HOLDING COURT

On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference agreed to take the following actions with regard to places of holding court:

- Northern District of Indiana. Rescind its March 1993 endorsement of legislation to amend 28 U.S.C. § 94(a) to alter the name and composition of one of the divisions of the Northern District of Indiana (*see* JCUS-MAR 93, p. 10). The Northern District of Indiana advised the Committee that the provision was no longer necessary.

- Western District of Tennessee. At the request of the Western District of Tennessee and the Sixth Circuit Judicial Council, seek legislation amending 28 U.S.C. § 123(c) to transfer Dyer County from the Western Division to the Eastern Division of the Western District of Tennessee.

- Eastern District of Texas/Western District of Arkansas. At the request of the Eastern District of Texas and the Western District of Arkansas, as well as the Fifth and Eighth Circuit Judicial Councils, seek amendments to 28 U.S.C. §§ 83(b) and 124(c) to provide that court for the Eastern District of Texas and the Western District of Arkansas may be held anywhere in the federal courthouse that sits astride the Texas-Arkansas state line.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it considered a wide array of issues, including the current initiative to identify and assess efficient structural options for the delivery of administrative services to the courts; ongoing efforts to clarify the exemption policy set forth in the Judicial Conference's fee schedule for electronic public access to court records; and steps being taken to implement the Judicial Conference's privacy policy for electronic public access to court records and to determine the impact Public Law No. 107-347, the E-Government Act, will have on such implementation.

COMMITTEE ON CRIMINAL LAW

PRESENTENCE INVESTIGATION REPORT MONOGRAPH

On recommendation of the Committee on Criminal Law, the Judicial Conference approved revisions to the *Presentence Investigation Report for Defendants Sentenced Under the Sentencing Reform Act of 1984*, Publication 107, for publication and distribution to the courts. The revisions are intended to provide probation officers with better guidance on issues related to the format and content of the presentence report and the manner in which the presentence investigation should be conducted. In addition, technical revisions were made to reflect changes in case law, legislation, sentencing guidelines, or policy.

POST-CONVICTION SUPERVISION MONOGRAPH

On recommendation of the Committee on Criminal Law, the Judicial Conference approved revisions to the *Supervision of Federal Offenders,*

Monograph 109, for publication and distribution to the courts. The revisions reflect changes in statutes, case law, policies, and population trends, and incorporate "best practice" findings from research and other sources.

COMMITTEE ACTIVITIES

The Criminal Law Committee reported that it was briefed on the practices of the Bureau of Prisons with regard to redisclosure of presentence investigation reports provided to the Bureau by probation officers to assist in inmate classification and designation decisions. The Committee learned that the Department of Justice (DOJ) intends to draft DOJ-wide policies and procedures concerning the handling of presentence investigation reports in view of their confidential nature, and the Committee agreed to wait for this policy before proceeding further. The Committee also received reports on actions taken to implement the recommendations of a home confinement program review and on the results of surveys sent to court unit executives examining sharing of administrative functions in the courts. The Committee endorsed efforts of the Committee on Judicial Resources to reestablish a methods analysis program to explore more effective ways of incorporating "better practices" into the staffing requirements process.

COMMITTEE ON DEFENDER SERVICES

COMPUTER-ASSISTED LEGAL RESEARCH

The Committee on Defender Services considered modifications to paragraphs 2.27, 2.31, and 3.15 of the Guidelines for the Administration of the Criminal Justice Act (CJA) and Related Statutes, *Guide to Judiciary Policies and Procedures*, Volume VII, that would simplify and expedite procedures for reimbursing CJA panel attorneys for expenses incurred in conducting computer-assisted legal research. Under these proposed modifications, panel attorney costs in conducting computer research during the course of a CJA representation would be treated more like other reimbursable expenses under existing CJA Guideline 2.27, which provides that "out-of-pocket expenses reasonably incurred may be claimed on the voucher, and must be itemized and reasonably documented." Claims in excess of $500 would have to be accompanied by a brief statement of explanation from the attorney. In order to assess the potential budgetary impact of these new procedures, the Committee

recommended, and the Conference approved, a pilot program for up to 18 months whereby up to six courts would utilize the modified version of the Guidelines.

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it was briefed on the status of the Defender Services appropriation and considered ways in which a projected shortfall might be addressed. In addition, it received a report on activities of the Committee on International Judicial Relations relating to defender services in other countries, and designated the Chair of the Defender Services Committee to serve as liaison to the International Judicial Relations Committee. The Committee was also briefed on long-range planning activities for the CJA program and approved revisions to its Outline of the Defender Services Program Strategic Plan. Under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), the Defender Services Committee approved $596,700 to fund two new community defender organization branch offices, and $852,500 for capital habeas corpus representations for two federal defender organizations, subject to the availability of FY 2003 funds.

COMMITTEE ON FEDERAL-STATE JURISDICTION

CLASS ACTION LEGISLATION

In 1999, the Judicial Conference expressed its opposition to legislation then pending in the 106th Congress that would have expanded federal jurisdiction over class action litigation by permitting, through the use of minimal diversity of citizenship, the initial filing in or removal to federal court of almost all such actions now brought in state court (JCUS-SEP 99, p. 45). Concern had been expressed that such legislation was inconsistent with principles of federalism and would add substantially to the workload of the federal courts. Similar legislation was introduced in the 107th Congress and is now pending in the 108th Congress. After discussing the problems created by certain class actions, and possible solutions that would be less intrusive and burdensome than the proposed legislation, and after extensive discussions with the Committee on Rules of Practice and Procedure, the Committee on Federal-State Jurisdiction, with the concurrence of the Rules Committee, recommended the following resolution:

> The Judicial Conference recognizes that the use of minimal diversity of citizenship may be appropriate to the maintenance of significant multi-state class action litigation in the federal courts, while continuing to oppose class action legislation that contains jurisdictional provisions that are similar to those in the bills introduced in the 106th and 107th Congresses. If Congress determines that certain class actions should be brought within the original and removal jurisdiction of the federal courts on the basis of minimal diversity of citizenship and an aggregation of claims, Congress should be encouraged to include sufficient limitations and threshold requirements so that federal courts are not unduly burdened and states' jurisdiction over in-state class actions is left undisturbed, such as by employing provisions to raise the jurisdictional threshold and to fashion exceptions to such jurisdiction that would preserve a role for the state courts in the handling of in-state class actions. Such exceptions for in-state class actions may appropriately include such factors as whether substantially all members of the class are citizens of a single state, the relationship of the defendants to the forum state, or whether the claims arise from death, personal injury, or physical property damage within the state. Further, the Conference should continue to explore additional approaches to the consolidation and coordination of overlapping or duplicative class actions that do not unduly intrude on state courts or burden federal courts.

After discussion, the Judicial Conference unanimously adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it continued its review of possible statutory amendments governing removal and remand to address particular problems that have arisen in federal court. Those proposals are being shared with selected individuals to obtain comments prior to the Committee's June 2003 meeting. In addition, the Committee discussed anticipated legislation regarding asbestos litigation and the implementation of its five initiatives to promote state-federal judicial education, including the website developed in conjunction with, and maintained by, the Federal Judicial Center to list state-federal judicial education programs.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that as of December 31, 2002, the Committee had received 3,738 financial disclosure reports and certifications for the calendar year 2001, including 1,277 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 345 from bankruptcy judges; 523 from magistrate judges; and 1,593 from judicial employees.

COMMITTEE ON INFORMATION TECHNOLOGY

LONG RANGE PLAN FOR INFORMATION TECHNOLOGY

Pursuant to 28 U.S.C. § 612 and on recommendation of the Committee on Information Technology, the Judicial Conference approved a 2003 update to the *Long Range Plan for Information Technology in the Federal Judiciary*. Funds for the judiciary's information technology program will be spent in accordance with this plan.

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it discussed the progress of an analysis to identify and examine all costs associated with the use of information technology in the judiciary (including personnel and facilities costs), ratified the selection of a server replacement platform for national software applications, and urged that efforts to define an enterprise-wide information technology architecture for the judiciary be expedited. The Committee also received a summary report on implementation of the policy, approved by the Judicial Conference in September 2002, governing personal use of government office equipment and the courts' methods of enforcing that policy.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that during the period from July 1, 2002, to December 31, 2002, a total of 102 intercircuit assignments, undertaken by 70 Article III judges, were processed and recommended by the Committee on Intercircuit Assignments and approved by the Chief Justice. During calendar year 2002, a total of 210 intercircuit assignments were processed and approved, a 27 percent increase over 2001. In addition, the Committee aided courts requesting assistance by both identifying and obtaining judges willing to take assignments. The Committee implemented several changes related to its functions and responsibilities, including its procedures used to process requests for intercircuit assignments.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its involvement in rule-of-law and judicial reform activities throughout the world, highlighting those in the Russian Federation, Albania, China, India, Rwanda, Serbia, and Turkey. In recognition of increasing international interest in the United States system of defender services, the Committees on Defender Services and International Judicial Relations intend to collaborate on providing guidance and information to national and international organizations on the development of defender services systems and programs. The Committee also urged the Administrative Office to assume expeditiously ongoing responsibility for the database of federal judges, court administrators, and defenders interested in assisting foreign judiciaries, which was developed by the Federal Judicial Center at the Committee's request.

COMMITTEE ON THE JUDICIAL BRANCH

DEATH BENEFITS FOR ARTICLE III JUDGES

Judges' survivors, unlike the survivors of other federal employees, receive no survivor benefit protection unless the judge elects to participate in

the Judicial Survivors' Annuities System. On recommendation of the Judicial Branch Committee, the Judicial Conference endorsed the concept, proposed by the Director of the Office of Personnel Management, of a government-funded, lump-sum death benefit for Article III judges' survivors, modeled after the Public Safety Officers' Benefit Program.

TRAVEL REGULATIONS FOR UNITED STATES JUSTICES AND JUDGES

Maximum Meals and Incidental Expenses Rate. In order to cover fully the cost of judges' travel expenses and maintain parity with the executive branch, the Committee on the Judicial Branch recommended an increase from $46 to $50 in the judges' Meals and Incidental Expenses rate (where expenses are not itemized) provided for in sections E.4.a., E.4.b.(1), and E.4.c. of the Travel Regulations for United States Justices and Judges, *Guide to Judiciary Policies and Procedures*, Vol. III-A, ch. C.V. The Judicial Conference approved the recommendation.

Ceremonial Travel. Under the judges' travel regulations, travel expenses to attend memorial services, funerals, portrait hangings, and groundbreaking ceremonies have generally not been reimbursable as an official travel expense, although a chief judge could designate one judge to represent the court at such events and his or her expenses would be reimbursed. Recognizing the importance of ceremonial events for court morale and public communication, the Committee on the Judicial Branch recommended, and the Conference approved, an amendment to the judges' travel regulations to allow a chief judge to authorize reimbursable travel by more than one judge from the court to memorial services, funerals, portrait hangings, and courthouse groundbreaking and dedication ceremonies.

Senior Judges' Commuting-Type Expenses. On recommendation of the Committee, the Conference approved an amendment to the Travel Regulations for United States Justices and Judges to clarify that reimbursement of transportation expenses for senior judges who commute between their homes and the courthouse should be limited to the commuted mileage or public mass transit fare rate, absent the approval of the circuit judicial council.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it continues to pursue vigorously meaningful salary relief for judges. In recent months, the Committee has sought to focus the attention of the political branches, the media, and legal associations on the findings and recommendations of the National Commission on the Public Service, commonly known as "the Volcker Commission," which concluded that "judicial salaries are the most egregious example of the failure of federal compensation policies" and recommended that Congress grant an immediate and significant increase in such salaries. The Committee also gave substantial attention to judicial benefits matters, including the status of the judiciary benefits initiative and judicial survivors' benefits.

COMMITTEE ON JUDICIAL RESOURCES

ARTICLE III JUDGESHIP NEEDS

Additional Judgeships. Utilizing established standards and criteria, the Committee on Judicial Resources considered requests and justifications for additional judgeships in the courts of appeals and the district courts as part of its 2003 biennial judgeship survey process. Based on its review, and after considering the comments of the courts and the circuit councils, the Committee recommended that the Judicial Conference authorize the Administrative Office to transmit to Congress a request for an additional nine permanent and two temporary judgeships in the courts of appeals, an additional 29 permanent and 17 temporary judgeships in the district courts, and conversion to permanent status of five existing temporary judgeships in the district courts. The Committee also recommended that the temporary judgeships be established for a term of ten years from the date of confirmation, under the same terms recently established by the Congress in the 21st Century Department of Justice Appropriations Authorization Act (Public Law No. 107-273). The Conference approved the recommendations, agreeing to transmit the following requests to Congress in lieu of any previously submitted Article III judgeship requests ("P" denotes permanent; "T" denotes temporary):

Courts of Appeals

First Circuit	1P
Second Circuit	2P
Sixth Circuit	1P
Ninth Circuit	5P, 2T

District Courts

New York (Eastern)	3P, 1T
New York (Western)	1T
South Carolina	1P
Virginia (Eastern)	2P
Illinois (Northern)	1T
Indiana (Northern)	1T
Indiana (Southern)	1T
Iowa (Northern)	1T
Missouri (Eastern)	Convert 1T to P
Missouri (Western)	1P
Nebraska	Convert 1T to P
Arizona	3P
California (Northern)	1P, 1T
California (Eastern)	3P, Convert 1T to P
California (Central)	1P, 2T
California (Southern)	2P, 3T
Hawaii	Convert 1T to P
Idaho	1T
Oregon	1P
Washington (Western)	1P
Colorado	1T
Kansas	Convert 1T to P
New Mexico	2P, 1T
Utah	1T
Alabama (Northern)	1P
Alabama (Middle)	1P
Florida (Middle)	2P, 1T
Florida (Southern)	4P

Judgeship Vacancies. As part of the biennial survey of judgeship needs, workloads in district and appellate courts with low weighted caseloads are reviewed for the purpose of determining whether to recommend that an existing or future judgeship vacancy not be filled. In March 1999, and again

in March 2001, the District Court for the District of Columbia was among those courts in which the Judicial Conference recommended that the next vacancy not be filled (JCUS-MAR 99, pp. 22-23; JCUS-MAR 01, pp. 24-25). Based on new information presented during the 2003 biennial survey indicating that the court was facing singular and burdensome challenges, the Committee recommended that the Judicial Conference amend its March 2001 position, and delete the District Court for the District of Columbia from the list of courts in which a vacancy should not be filled. The Conference adopted the Committee's recommendation, and thus, only the District Court for the District of Wyoming remains on the list of courts in which a vacancy should not be filled. Also, on recommendation of the Committee, the Conference agreed that the request of the District of Columbia District Court to be exempted from the biennial judgeship survey because of the unusual nature of its caseload be denied, as such an exemption would undermine the reasoned and consistent process adopted by the Conference for identifying judgeship needs.

JUDGE-SPECIFIC DATA

Judicial Conference policy prohibits the Administrative Office from releasing judge-identifying information from statistical databases, except to the extent required by law (JCUS-MAR 95, pp. 21-22). On recommendation of the Committee, in the wake of recent requests for court information, the Conference reaffirmed its current policy against the release of judge-specific data, except to the extent required by law.

JUDGE'S NOTIFICATION OF CHANGE IN STATUS

In order to help reduce delays in filling judicial vacancies, in September 1995, as part of the *Long Range Plan for the Federal Courts*, the Judicial Conference adopted language encouraging retiring judges and those taking senior status to provide substantial (i.e., six-month or one-year) advance notice of that action (JCUS-SEP 95, p. 56). This position modified slightly a similar position adopted in March 1988 (*see* JCUS-MAR 88, pp. 31-32). At this session, in order to ensure that the judiciary has taken all reasonable steps to avert or ameliorate any vacancy crisis, the Committee on Judicial Resources recommended that the Conference clarify and strengthen its policy on advance notification of a change in status by a judge by adopting the following language:

> The Judicial Conference strongly urges all judges to notify the President and the Administrative Office of the United States Courts as far in advance as possible of a change in status, preferably 12 months before the contemplated date of change in status.

The Conference adopted the Committee's recommendation.

SALARY MATCHING/ADVANCED IN-STEP POLICY

On recommendation of the Judicial Resources Committee, the Judicial Conference agreed to amend the judiciary's "salary matching/advanced in-step" policy to eliminate the 90-day break in federal government service rule for applicants from outside the judiciary for Court Personnel System (CPS) positions. That rule required a break in federal government service of at least 90 days before a prospective applicant for a CPS position was eligible to be appointed at a level above the first step of the classification level for which the applicant qualified. Revocation of the 90-day rule will give court managers the same compensation flexibility they currently have for non-government applicants, and will provide them with an additional management tool to assist in recruiting top-quality, non-judiciary government applicants.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it endorsed the granting of annual employment cost index increases in salary to court employees, consistent with executive branch employees in terms of amount and timing. The Committee resolved to support a study to identify and assess cost-effective and efficient structural options for the delivery of administrative support services to the courts, with the understanding that the study address the following: (1) prioritizing fairly the needs of all units; (2) maintaining quality services; (3) quantifying the offsetting costs entailed by measures designed to achieve savings; (4) documenting who pays for centralized work and who reaps the savings; and (5) formalizing service delivery agreements. Also, the Committee approved reestablishing a methods analysis program to explore with courts more effective ways to incorporate "better practices" into the staffing requirements process.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee on the Administration of the Magistrate Judges System and the recommendations of the Director of the Administrative Office, the district courts, and the judicial councils of the circuits, the Judicial Conference approved the following changes in positions, salaries, locations, and arrangements for full-time and part-time magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

FIRST CIRCUIT

District of Maine

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

SECOND CIRCUIT

Southern District of New York

Redesignated as Middletown the part-time magistrate judge position previously designated as Newburgh.

Western District of New York

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

FOURTH CIRCUIT

Northern District of West Virginia

Increased the salary of the part-time magistrate judge position at Martinsburg from Level 4 ($35,854 per annum) to Level 3 ($47,805 per annum).

SIXTH CIRCUIT

Western District of Michigan

Redesignated as Grand Rapids the magistrate judge position previously designated as Kalamazoo.

SEVENTH CIRCUIT

Southern District of Illinois

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Southern District of Indiana

1. Increased the salary of the part-time magistrate judge position at New Albany from Level 7 ($5,974 per annum) to Level 6 ($11,951 per annum); and

2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

Western District of Wisconsin

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

NINTH CIRCUIT

Eastern District of California

1. Converted the part-time magistrate judge position at Redding to full-time status;

2. Discontinued the part-time magistrate judge position at South Lake Tahoe; and

3. Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

TENTH CIRCUIT

District of Colorado

1. Authorized a part-time magistrate judge position at Durango at Level 4 ($35,854 per annum);

2. Decreased the salary of the part-time magistrate judge position at Grand Junction from Level 2 ($59,757 per annum) to Level 3 ($47,805 per annum) upon the appointment of a new part-time magistrate judge at Durango; and

3. Made no change in the number, location, or arrangements of the other magistrate judge positions in the district.

District of Wyoming

1. Increased the salary of the part-time magistrate judge position at Green River from Level 8 ($3,584 per annum) to Level 7 ($5,974 per annum); and

2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that it reviewed proposed rules changes being considered by the Advisory Committee on Criminal Rules and (a) endorsed promulgation of a new criminal rule that would establish procedures for both non-case-dispositive and case-dispositive matters in felony cases referred to magistrate judges; (b) endorsed inclusion of waiver language in the new rule, provided that the new provision would retain a district judge's discretionary authority to review a magistrate judge's ruling *sua sponte* or at the request of a party, regardless of whether timely objections have been filed; and (c) disagreed with the proposal that acceptance of guilty pleas in felony cases be specified as case-dispositive matters. These views were communicated to the Advisory Committee.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders reported that it is monitoring the status of *Spargo v. New York State Commission on Judicial Conduct*, 244 F.Supp. 2d 72 (N.D.N.Y. 2003). That ruling strikes down, as an impermissible prior restraint under the First Amendment, discipline of a New York state judge based on his alleged violation of provisions of the New York Code of Judicial Conduct restricting New York state judges' political activities (apart from their own campaigns for judicial office). The court also found that generally-worded provisions of the New York Code (such as the provision that a judge should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary) were too vague to support discipline for activity otherwise protected by the First Amendment.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure approved for publication proposed amendments to Rule 4008 of the Federal Rules of Bankruptcy Procedure, which would establish a deadline for filing a reaffirmation agreement. The Committee also approved for publication proposed amendments to Rules B and C of the Supplemental Rules for Certain Admiralty and Maritime Claims. These proposed amendments are modest and technical in nature. The Advisory Committees on Bankruptcy, Criminal, and Evidence Rules are reviewing comments from the public submitted on amendments proposed in August 2002 to their respective sets of rules. The Committee also received the report of its Local Rules Project and referred it to the committees' reporters for their review.

COMMITTEE ON SECURITY AND FACILITIES

COURTROOM SECURITY

In 1984, the Conference authorized the presence of a deputy United States marshal in the courtroom based on four levels of anticipated risk set forth in the report of the Attorney General's Task Force on Court Security (JCUS-SEP 84, pp. 48-49), and in 1985 the Conference authorized, with some qualifications, the use of court security officers in the courtroom in low-risk proceedings that do not warrant the presence of a deputy marshal under the Attorney General's risk criteria mentioned above (JCUS-SEP 85, pp. 45-46). After soliciting comments from the judicial community, the Committee on Security and Facilities recommended that the Conference amend its 1984 and 1985 policies both to enhance security in the courtroom and to recognize the overarching statutory authority of judges to order the level of security necessary in a particular proceeding. After discussion, the Conference slightly modified and then adopted the Committee's recommendations to—

a. Amend Judicial Conference policy on courtroom security to require:

(1) A deputy marshal in the courtroom during all criminal proceedings in which a defendant is present, including criminal proceedings before magistrate judges, unless the presiding judge determines one is not required; and

(2) A court security officer in all civil proceedings in which a party is present, including bankruptcy proceedings, upon the determination of the presiding judge; and

b. Affirm, notwithstanding the policies established above, that the presiding judge may determine the level of security necessary in a particular proceeding pursuant to 28 U.S.C. § 566.

FIVE-YEAR COURTHOUSE PROJECT PLAN

After considering comments from courts and the circuit judicial councils, the Committee on Security and Facilities recommended, and the Judicial Conference approved, a five-year plan for courthouse construction projects, which prioritizes in score order the judiciary's housing needs for the

fiscal years 2004-2008. With regard to projects planned for FY 2004, funding is requested only for those projects that will be ready for contract award in that year.

HOMELAND SECURITY LEGISLATION

To address concerns that legislation pending in the 107th Congress to create the Department of Homeland Security could impinge upon the authorities of the agencies responsible for the judiciary's security, the Committee on Security and Facilities recommended that the Judicial Conference seek two amendments to the proposed legislation. The first amendment would have ensured that creation of the Department of Homeland Security did not affect the security arrangements for the Third Branch, and the second would have strengthened judicial security by giving the judiciary the statutory authority to determine its own security arrangements. The Conference adopted the Committee's recommendation by mail ballot concluded on November 6, 2002.[1]

COMMITTEE ACTIVITIES

The Committee on Security and Facilities reported that it was briefed on the development of an orientation program for chief judges intended to heighten security awareness and re-emphasize the importance of active court security committees in each district. The Committee also considered a study concerning application of the *U.S. Courts Design Guide* standards to renovation and alteration projects, and discussed the need for a supplementary manual for such projects. In addition, the Committee discussed results of an analysis of well size in the courtroom and agreed that the judiciary should focus on flexible ways to provide more space in the courtroom well such as installing movable spectator rails and seats, using only two-tiered jury boxes, and adopting efficient wheelchair ramp designs to serve the judge's bench and witness boxes.

[1]Congress failed to include these provision in the legislation, which was enacted on November 25, 2002 (*see* Public Law No. 107-296).

FUNDING

All of the foregoing recommendations that require the expenditure of funds for implementation were approved by the Judicial Conference subject to the availability of funds and to whatever priorities the Conference might establish for the use of available resources.

Chief Justice of the United States
Presiding

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

September 23, 2003

The Judicial Conference of the United States convened in Washington, D.C., on September 23, 2003, 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 Michael Boudin
Judge D. Brock Hornby,
District of Maine

Second Circuit:

Chief Judge John M. Walker, Jr.
Chief Judge Frederick J. Scullin, Jr.,
Northern District of New York

Third Circuit:

Chief Judge Anthony J. Scirica
Chief Judge Sue L. Robinson,
District of Delaware

Fourth Circuit:

Chief Judge William W. Wilkins
Judge David C. Norton,
District of South Carolina

Fifth Circuit:

Chief Judge Carolyn Dineen King
Judge Martin L. C. Feldman,
Eastern District of Louisiana

Sixth Circuit:

Chief Judge Boyce F. Martin, Jr.
Chief Judge Lawrence P. Zatkoff,
Eastern District of Michigan

Seventh Circuit:

Chief Judge Joel M. Flaum
Judge Marvin E. Aspen,
Northern District of Illinois

Eighth Circuit:

Chief Judge James B. Loken
Chief Judge James M. Rosenbaum,
District of Minnesota

Ninth Circuit:

Chief Judge Mary M. Schroeder
Chief Judge David Alan Ezra,
District of Hawaii

Tenth Circuit:

Chief Judge Deanell R. Tacha
Chief Judge Frank Howell Seay,
Eastern District of Oklahoma

Eleventh Circuit:

Chief Judge J. L. Edmondson
Judge J. Owen Forrester
Northern District of Georgia

District of Columbia Circuit:

Chief Judge Douglas H. Ginsburg
Chief Judge Thomas F. Hogan,
District of Columbia

Federal Circuit:

Chief Judge Haldane Robert Mayer

Court of International Trade:

Chief Judge Gregory W. Carman

The following Judicial Conference committee chairs or their designees attended the Conference session: Circuit Judges Edward E. Carnes, Dennis G. Jacobs, Marjorie O. Rendell, and Jane R. Roth and District Judges Lourdes G. Baird, John G. Heyburn II, Sim Lake, David F. Levi, John W. Lungstrum, Catherine D. Perry, Lee H. Rosenthal, Patti B. Saris, Harvey E. Schlesinger, and Frederick P. Stamp, Jr. Karen Greve Milton of the Second Circuit represented the circuit executives.

Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director for Management and Operations; William R. Burchill, Jr., Associate Director and General Counsel; Karen K. Siegel, Assistant Director, Judicial Conference Executive Secretariat; Michael W. Blommer, Assistant Director, Legislative Affairs; David Sellers, Assistant Director, Public Affairs; and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat. Judge Barbara Rothstein and Russell Wheeler, Director and Deputy Director of the Federal Judicial Center, also attended the session of the Conference, as did Sally Rider, Administrative Assistant to the Chief Justice; Scott Harris, Supreme Court Legal Counsel; and the 2003-2004 Judicial Fellows.

Senators Patrick J. Leahy and Jeff Sessions and Representative John Conyers, Jr. spoke on matters pending in Congress of interest to the Conference. Attorney General John Ashcroft addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice.

REPORTS

Mr. Mecham reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office (AO). Judge Rothstein spoke to the Conference about Federal Judicial Center programs, and Judge Diana E. Murphy, Chair of the United States Sentencing Commission, reported on Sentencing Commission activities.

EXECUTIVE COMMITTEE

RESOLUTIONS

The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution in recognition of the substantial contributions made by Judicial Conference committee chairs who will complete their terms of service in 2003:

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

HONORABLE LOURDES G. BAIRD
Committee on the Administrative Office

HONORABLE MICHAEL J. MELLOY
Committee on the Administration of the Bankruptcy System

HONORABLE WILLIAM W. WILKINS
Committee on Criminal Law

HONORABLE JAMES C. CACHERIS
Committee on Intercircuit Assignments

HONORABLE PAUL A. MAGNUSON
Committee on International Judicial Relations

HONORABLE HARVEY E. SCHLESINGER
Committee on the Administration of the Magistrate Judges System

HONORABLE ANTHONY J. SCIRICA
Committee on Rules of Practice and Procedure

HONORABLE DAVID F. LEVI
Advisory Committee on Civil Rules

Appointed as committee chairs by Chief Justice William H. Rehnquist, these outstanding jurists have played a vital role in the administration of the federal court system. These judges served with distinction as leaders of their Judicial Conference committees while, at the same time, continuing to perform their duties as judges in their own courts. They have

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

SENTENCING-RELATED LEGISLATION

On March 27, 2003, the House of Representatives approved a floor amendment (the "Feeney Amendment") to H.R. 1104, 108th Congress, the then-pending "Child Abduction Prevention Act," which would have, among other things, restricted district courts' authority to depart downward from the sentencing guidelines to grounds specifically identified by the United States Sentencing Commission. It also would have required, in appeals of downward departures, *de novo* review by the courts of appeals of sentencing judges' application of the guidelines to the facts. The House substituted H.R. 1104 for an earlier-passed Senate bill dealing with child pornography, and a conference was scheduled forthwith. In light of the rapidity with which the bill was moving through Congress, the Committee on Criminal Law reviewed the legislation on an expedited basis and sought Executive Committee consideration of the matter. By mail ballot concluded on April 3, 2003, the Executive Committee approved the Criminal Law Committee's recommendations that the Conference—

> Oppose legislation that would eliminate the courts' authority to depart downward in appropriate situations unless the grounds relied upon are specifically identified by the Sentencing Commission as permissible for the departure;
>
> Consistent with the prior Judicial Conference position on congressionally mandated guideline amendments, oppose legislation that directly amends the sentencing guidelines, and suggest that, in lieu of mandated amendments, Congress should instruct the Sentencing Commission to study suggested changes to particular guidelines and to report to Congress if it determines not to make the recommended changes;
>
> Oppose legislation that would alter the standard of review in 18 U.S.C. § 3742(e) from "due deference" regarding a sentencing judge's application of the guidelines to the facts of a case to a "*de novo*" standard of review;

Oppose any amendment to 28 U.S.C. § 994(w) that would impose specific recordkeeping and reporting requirements on federal courts in all criminal cases or that would require the Sentencing Commission to disclose confidential court records to the Judiciary Committees upon request; and

Urge Congress that, if it determines to pursue legislation in this area notwithstanding the Judicial Conference's opposition, it do so only after the Judicial Conference, the Sentencing Commission, and the Senate have had an opportunity to consider more carefully the facts about downward departures and the implications of making such a significant change to the sentencing guideline system.[1]

FISCAL YEAR 2003 APPROPRIATIONS SHORTFALL

In June 2003, the judiciary forwarded to Congress an emergency fiscal year (FY) 2003 supplemental appropriations request to address funding shortfalls for juror fees, payments to private panel attorneys under the Criminal Justice Act (CJA), and housing for 15 newly created district judgeships. In mid-July, when it became apparent that the 2003 Fees of Jurors and Commissioners appropriations account would be depleted earlier than expected, the Executive Committee agreed that if supplemental funds were not forthcoming, the judiciary should seek approval from Congress to reprogram up to $5 million from the Salaries and Expenses emergency reserve fund to cover the jury fee shortfall. The Committee also determined to urge judges to defer, if possible, non-critical civil jury trials, so as to minimize spending of funds that had been earmarked for emergencies.

Having received no fiscal year 2003 supplemental appropriation by late-July 2003, the judiciary promptly sought approval from Congress to reprogram $5 million from the Salaries and Expenses emergency reserve fund into the Fees of Jurors and Commissioners account. The chair of the Senate Appropriations Subcommittee on Commerce, Justice, State, and the Judiciary declined to approve the request, encouraging, instead, the submission of a

[1]A somewhat narrower version of the bill was subsequently passed by Congress and signed into law on April 30, 2003, as the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 or "PROTECT Act" (Public Law No. 108-21). The Conference, at this session, voted to support repeal of certain provisions of the PROTECT Act. *See infra*, "The PROTECT Act," pp. 18-20.

revised request to reprogram the entire $10 million reserve to be used both for jury expenses and for payments to CJA panel attorneys. The Executive Committee agreed to that approach, and a request to reprogram $10 million from the Salaries and Expenses account to the Fees of Jurors and the Defender Services accounts was approved by Congress in mid-August 2003. Judges were notified that deferral of civil jury trials was no longer necessary.[2]

ASBESTOS LEGISLATION

S. 1125, the Fairness in Asbestos Injury Resolution Act of 2003 ("FAIR Act"), pending in the 108th Congress, is intended to establish an efficient process for the resolution of asbestos-related personal injury claims. The Committee on Federal-State Jurisdiction was asked to review those jurisdictional provisions of the bill that would impact court structure and operations and made a number of substantive recommendations for changes. On June 18, 2003, the Executive Committee, on behalf of the Conference, unanimously approved a letter to Congress, based on the recommendations of the Federal-State Jurisdiction Committee, expressing the concerns of the Conference.

Subsequently, the Bankruptcy Committee reviewed the portions of the bill that would impact the bankruptcy system. On August 14, 2003, the Executive Committee approved, with modifications, a second letter to Congress, prepared by the Bankruptcy Committee, expressing the judiciary's deep concerns over the legislation's significant impact on the bankruptcy system.

MISCELLANEOUS ACTIONS

The Executive Committee—

- Approved a recommendation of the Magistrate Judges Committee to increase from Level 4 to Level 1 the salary of the part-time magistrate judge in Martinsburg, West Virginia, during the time the resident district court judge is on active duty in the National Guard;

[2]A supplemental appropriation, including $32.5 million for the judiciary, was enacted on September 29, 2003.

- Approved a recommendation of the Magistrate Judges Committee to waive the residency requirement contained in the selection and appointment regulations for magistrate judges for the chair of the merit selection panel that is considering the reappointment of an incumbent magistrate judge in the Western District of Arkansas;

- On recommendation of the Committee on Federal-State Jurisdiction, following the request of the Ninth Circuit Judicial Council, agreed that the judiciary would seek Article III status for the District Court of Guam;

- On recommendation of the Committee on Court Administration and Case Management, agreed to modify the Conference's March 1988 and September 1998 positions (JCUS-MAR 88, p. 30; JCUS-SEP 98, p. 62) regarding the elimination of the automatic exemptions from jury service for active members of the Armed Forces, fire and police officials, and "public officers" of federal and state governments to provide instead that the Conference seek amendment of 28 U.S.C. § 1863(b)(5)(B) to make these persons eligible for automatic excuse from jury service upon individual request;

- Approved a recommendation of the Court Administration and Case Management Committee that the Conference seek amendment of 28 U.S.C. § 124(d) to move Hudspeth County from the Pecos Division to the El Paso Division in the Western District of Texas;

- Approved the recommendation of the Bankruptcy Committee that the Judicial Conference express concern regarding legislation that would expunge case records in an involuntary bankruptcy case filed in bad faith against an individual and instead support a policy and procedure to retain case records upon dismissal of such cases with a notation, flag, or other means to signal to the public the nature of the dismissal.

- Approved a letter responding to two requests from Congress, one for legislative language implementing the Judicial Conference's March 2003 position on class action legislation, and a second for the Conference's views on S. 274 (108th Congress), the proposed Class Action Fairness Act of 2003, as ordered reported by the Senate Judiciary Committee on April 11, 2003;

- On recommendation of the Committee on Court Administration and Case Management, approved a joint legislative proposal of the judiciary and the Department of Justice, arrived at upon the request of Congress,

to amend provisions of the E-Government Act of 2002, Public Law No. 107-347, that concern the development of rules addressing the protection of personal identifying information in court records.

- In light of uncertainties in the fiscal year 2004 appropriations process and the likelihood that the judiciary would be operating under a continuing resolution for up to two months, approved strategies for balancing the budget with anticipated resources during the period covered by the continuing resolution and also approved the issuance of interim allotments to the courts during the continuing resolution period.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it was briefed on the organization and functions of the Office of Legislative Affairs. The Committee also received a comprehensive briefing on the AO's audit, review, and investigative assistance programs, and reviewed the status of implementation of internal control enhancements that were endorsed by the Committee in December 2000. The Committee discussed an initiative launched by Director Mecham in 2002 to post for comment on the judiciary's intranet site draft versions of program changes, guides, and publications developed by the Administrative Office for the courts. This comment process has been successful and will be continued.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

EMERGENCY AUTHORITY TO HOLD BANKRUPTCY COURT OUTSIDE A DISTRICT

In the wake of the terrorist attacks of September 11, 2001, some courts determined that federal court facilities in adjoining districts or circuits might be more readily accessible in the event of an emergency than facilities within the district. However, under the current statutory framework, bankruptcy judges are only specifically authorized to hold court within their own judicial districts

(28 U.S.C. § 152(c)). On recommendation of the Committee on the Administration of the Bankruptcy System, the Judicial Conference agreed to seek legislation to permit bankruptcy judges to hold court outside of their districts and circuits in the event of an emergency. *See also, infra*, "Emergency Authority to Hold Proceedings Outside a District or Circuit," p. 15.

TRAVEL BY RECALLED BANKRUPTCY JUDGES

In March 2003, the Judicial Conference amended the Travel Regulations for United States Justices and Judges, *Guide to Judiciary Policies and Procedures*, Vol. III-A, ch. C-V, to clarify that reimbursement of transportation expenses for senior judges who commute between their homes and the courthouse should be limited to the commuted mileage or public mass transit fare rate, absent approval of a different rate by the circuit judicial councils (JCUS-MAR 03, p. 17). Since the travel provision for recalled bankruptcy judges contains similar language to the provision amended by the Conference (*Guide to Judiciary Policies and Procedures*, Vol. III, section B, ch. VII, ¶ 11), at this session, the Judicial Conference adopted a recommendation of the Committee to amend the travel provision for bankruptcy judges to make it consistent with the corresponding provision in the *Guide* dealing with senior judge travel. *See also, infra*, "Magistrate Judge Recall Regulations," pp. 31-32.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Bankruptcy System reported that it endorsed proposals of the Committee on Court Administration and Case Management to (1) amend provisions of the Bankruptcy Code to implement the Conference policy on privacy and public access to bankruptcy court records; and (2) amend the Bankruptcy Court Miscellaneous Fee Schedule. The Committee also recommended that the Judicial Conference express concerns regarding pending legislation in the 108th Congress on asbestos litigation reform and on involuntary petition filing. In order to communicate those concerns to Congress in an expeditious manner, the Executive Committee acted on the Conference's behalf on each of these matters. *See supra,* "Asbestos Legislation," p. 7 and "Miscellaneous Actions," pp. 7-9. In addition, the Committee approved fiscal year 2005 funding recommendations for the areas within its program oversight; discussed ways to

limit growth in the judiciary's budget; and was briefed on a wide range of topics, including mediation/arbitration by retired bankruptcy judges, and studies of bankruptcy case weights and court sharing of administrative resources.

COMMITTEE ON THE BUDGET

FISCAL YEAR 2005 BUDGET REQUEST

Facing a particularly dire budget environment, the Budget Committee recommended a fiscal year 2005 budget request that incorporated a number of cost-saving mechanisms, including modifications to the methodologies used to calculate the cost of staffing and non-salary formulae. The Judicial Conference approved the budget request subject to amendments necessary as a result of new legislation, actions of the Judicial Conference, or other reasons the Executive Committee considers necessary and appropriate.

COMMITTEE ACTIVITIES

The Committee on the Budget reported on the status of the judiciary's fiscal year 2003 supplemental appropriations request and budget requests for FYs 2004 and 2005. The Committee recommended to the Executive Committee that the changes to the formula allotment methodologies that were incorporated in the fiscal year 2005 budget request also be used in developing the fiscal year 2004 and future financial plans. In addition, the Committee endorsed proposed increases to various judiciary fees being recommended to the Judicial Conference by the Court Administration and Case Management Committee.

COMMITTEE ON CODES OF CONDUCT

GIFT REGULATIONS

On recommendation of the Committee on Codes of Conduct, the Judicial Conference adopted revised regulations under title III of the Ethics Reform Act of 1989 concerning the giving, solicitation, or acceptance of certain gifts by officers and employees of the judicial branch, and directed that they be published in Volume II of the *Guide to Judiciary Policies and*

*Procedure*s. The revisions were primarily technical and organizational in nature, intended to align the regulations more closely with the underlying statute, and to incorporate improvements and useful provisions from other sources.

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in March 2003, it had received 26 new written inquiries and issued 22 written advisory responses. During this period, the average response time for these requests was 21 days. The Chairman received and responded to 20 telephone inquiries. In addition, individual committee members responded to 148 inquiries from their colleagues.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

MISCELLANEOUS FEES

The Committee on Court Administration and Case Management undertook a comprehensive review of the miscellaneous fees set by the Judicial Conference for the courts of appeals, the district courts, the United States Court of Federal Claims, the bankruptcy courts, and the Judicial Panel on Multidistrict Litigation, pursuant to 28 U.S.C. §§ 1913, 1914, 1926, 1930, and 1932, respectively, and recommended several changes, including adjustments for inflation, specific fee increases, establishment of new fees, and clarification of certain provisions, as specifically noted below. The Committee's recommendations were endorsed in relevant part by the Budget and Bankruptcy Committees.

Inflationary increases. In September 1996, the Judicial Conference raised certain miscellaneous fees to account for inflation and rising court costs (JCUS-SEP 96, p. 54). At that time, the Committee on Court Administration and Case Management determined that it would be appropriate to review the miscellaneous fee schedules approximately every five years to determine if any inflationary adjustments were warranted. At this session, the Conference approved a recommendation of the Committee to adopt inflationary increases to most miscellaneous fees.

Court of Appeals Miscellaneous Fee Schedule.

Appellate Docketing Fee. On recommendation of the Committee, the Judicial Conference amended Item 1 of the Court of Appeals Miscellaneous Fee Schedule to increase the fee for docketing a case on appeal or review, or docketing any other proceeding, from $100 to $250. The Committee recommended the increase after considering the benefits derived from, and the resources required for, such filings and after comparing the appellate docketing fee to other filing and docketing fees. An increase in this fee will also result in an increase in Item 15 (fee for docketing an appeal in the bankruptcy court) and Item 21 (fee for docketing a cross appeal in the bankruptcy court) of the Bankruptcy Court Miscellaneous Fee Schedule, both of which track the appellate docketing fee.

Videoconferencing Fee. The Conference adopted a recommendation of the Committee to add a new, optional fee to the Court of Appeals Miscellaneous Fee Schedule of $200 per remote location for the use, at the request of counsel, of videoconferencing equipment in connection with an oral argument. This discretionary fee would be used to defray the cost of transmission lines and maintaining the videoconferencing equipment.

Bankruptcy Court Miscellaneous Fee Schedule.

Amendment Fee. On recommendation of the Committee, the Conference amended Item 4 of the Bankruptcy Court Miscellaneous Fee Schedule, which requires a $20 fee for each amendment to the debtor's list of creditors, matrix, or mailing lists, to make explicit two exceptions that have heretofore been made as a matter of policy: first, that no fee be charged to change the address of a creditor or an attorney for a creditor listed on the schedules; and second, that no fee be charged to add the name and address of a listed creditor's attorney.

Reopening Fee. Item 11 of the Bankruptcy Court Miscellaneous Fee Schedule requires a fee for filing a motion to reopen a Bankruptcy Code case, but allows a court to defer payment from trustees pending discovery of additional assets. To clarify how this fee applies in situations in which no assets are located and to encourage trustees to reopen cases where the possibility of locating additional assets exists, the Committee recommended that the following language be added to Item 11: "If payment is deferred, the fee shall be waived if no additional assets are discovered." The Conference adopted the Committee's recommendation.

Fee for Splitting a Case. On recommendation of the Committee, the Conference amended the fee for splitting a joint case filed under § 302 of title 11 of the United States Code into two separate cases at the request of a debtor(s) (Item 19), from one-half the applicable filing fee, to the full cost of filing such a case, since an entirely new case is being created.

Fee for Filing a Motion to Lift Stay. Item 20 of the Bankruptcy Court Miscellaneous Fee Schedule sets forth a fee "for filing a motion to terminate, annul, modify, or condition the automatic stay provided under § 362(a) of title 11, a motion to compel abandonment of property of the estate pursuant to Rule 6007(b) of the Federal Rules of Bankruptcy Procedure, or a motion to withdraw the reference of a case or proceeding under 28 U.S.C. § 157(d)." On recommendation of the Committee, the Judicial Conference agreed to make explicit two exemptions from this fee that have been applied in practice: (a) exemptions for motions to lift a co-debtor stay under 11 U.S.C. §§ 1201 and 1301; and (b) exemptions for stipulations for court approval of an agreement regarding relief from a stay. In addition, the Conference adopted a recommendation of the Committee that the fee for filing motions listed in Item 20 be amended from one-half the filing fee prescribed in 28 U.S.C. § 1914(a) to the full filing fee, which is currently $150.

ELECTRONIC PUBLIC ACCESS FEE EXEMPTION POLICY

The Committee on Court Administration and Case Management recommended, and the Judicial Conference adopted, amendments to the Electronic Public Access Fee Schedule that articulate a national policy regarding exemptions from electronic public access fees. The amendments clarify that exemptions to the fee are only to be given upon a showing of cause, are limited to specific categories of users, may be granted for a specific period of time, may be revoked at the discretion of the court, and are only for access related to the purpose for which the exemption was given. The Committee also recommended, and the Conference agreed, that the current 30-page fee cap on the cost of obtaining "documents" via PACER (JCUS-MAR 02, p. 11) be extended to cover docket sheets and case-specific reports, but not transcripts of court proceedings. A 30-page cap on the cost of obtaining transcripts via PACER would result in a transcript cost that is inconsistent with the current cost of obtaining those transcripts.

EMERGENCY AUTHORITY TO HOLD PROCEEDINGS OUTSIDE A DISTRICT OR CIRCUIT

Current law with respect to district courts and courts of appeals (28 U.S.C. §§ 141 and 48(b), respectively) authorizes special court sessions to be held within the district and/or circuit in which the court is located. Recognizing that places of holding court in adjoining districts and circuits are often closer or more accessible to each other than are the closest places of holding court within the same district and/or circuit, the Committee on Court Administration and Case Management recommended that the Conference seek legislation that makes explicit a court's authority, in times of emergency, to hold special court sessions outside of the district or the circuit in which a court may be located. The Conference adopted the Committee's recommendation. *See also, supra*, "Emergency Authority to Hold Bankruptcy Court Outside a District," pp. 9-10.

MODEL LOCAL RULES FOR ELECTRONIC FILING

In September 2001, the Judicial Conference adopted model local rules for electronic filing in civil and bankruptcy cases (JCUS-SEP/OCT 01, p. 50). At this session, on recommendation of the Committee on Court Administration and Case Management, in consultation with the Committee on Rules of Practice and Procedure, the Conference adopted model local rules for electronic filing in criminal cases, as well as minor amendments and clarifications to the civil and bankruptcy model local rules. These model rules are non-binding and are intended only to provide courts with guidance on the implementation of electronic case filing. The Conference also agreed to delegate to the Court Administration and Case Management Committee the authority to make routine, technical and/or non-substantive modifications to these model local rules.

PRIVACY AND PUBLIC ACCESS TO ELECTRONIC CASE FILES

In September 2001, the Judicial Conference approved a judiciary-wide privacy policy addressing public remote electronic access to case files (JCUS-SEP/OCT 01, pp. 48-50). The policy permits remote access to civil and bankruptcy case files so long as certain personal data identifiers, such as

Social Security numbers and names of minor children, are modified or partially redacted. Remote public electronic access to criminal case files was prohibited, with the proviso that the policy would be reexamined within two years. To facilitate that reexamination, in March 2002, the Judicial Conference approved creation of a pilot program to allow selected courts to provide such access (JCUS-MAR 02, p. 10). At this session, noting that a study of the pilot courts revealed no evidence of harm to an individual as a result of remote public access, and that such access reinforced the concept of the courts as being an open, public institution, the Court Administration and Case Management Committee recommended that the Judicial Conference amend current Judicial Conference policy to permit remote public access to electronic criminal case file documents to be the same as public access to criminal case file documents at the courthouse. The Committee also recommended that upon the effective date of any change in policy, the Conference require that personal data identifiers be redacted by the filer of the document, whether the document is filed electronically or on paper, as follows:

1. Social Security numbers to the last four digits;
2. financial account numbers to the last four digits;
3. names of minor children to the initials;
4. dates of birth to the year; and
5. home addresses to city and state.

Further, recognizing the need for specific guidelines before the policy can become effective, and noting concerns expressed by the Committee on Criminal Law, the Committee recommended that the Conference delay the effective date of this new policy until such time as the Conference approves specific guidance on the implementation and operation of the policy to be developed by the Committees on Court Administration and Case Management, Criminal Law, and Defender Services. Finally, pending approval of such guidance, the Committee recommended continuation of the pilot project, with monitoring by the Federal Judicial Center. After discussion, the Conference, with one member dissenting, adopted the Committee's recommendations.

ELECTRONIC ACCESS TO OFFICIAL TRANSCRIPTS

After extensive study, the Committee on Court Administration and Case Management recommended that the Judicial Conference adopt a policy requiring courts that make electronic documents remotely available to the

public to make electronic transcripts of proceedings remotely available if such transcripts are otherwise prepared. The Committee also recommended that the policy include a process for redacting certain identifying information from these documents in order to protect individual privacy and security and to be consistent with the Judicial Conference policy on privacy and public access to electronic case files. In addition, the Committee recommended that it be delegated the authority to develop and issue guidance to the courts on implementation of this policy. In making its recommendations, the Committee specifically noted that it was not the intent of the policy to impact court reporter income, and suggested that the Committee on Judicial Resources examine this issue. After discussion, the Judicial Conference, with one member dissenting, adopted the policy on electronic availability of transcripts of court proceedings recommended by the Committee. However, in light of concerns expressed about the effect of the policy on court reporter compensation, the Conference deferred implementation of the policy until the March 2004 Judicial Conference session, at which time the Conference will consider a report of the Judicial Resources Committee on the impact of the policy on court reporter compensation. The Conference also agreed to delegate to the Committee the authority to develop and issue guidance to the courts upon implementation of the policy.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it approved a fiscal year 2005 funding request for lawbooks and computer-assisted legal research and provided its recommendations to the Budget Committee to be included in the overall budget request. The Committee also considered how to provide assistance to the courts in implementing the requirements of the E-Government Act of 2002 (Public Law No. 107-347), which requires, among other things, that each appellate, district and bankruptcy court maintain a website that provides information on the clerk's office and chambers; all written opinions issued by the court, in a text-searchable format; and access to documents filed or converted to electronic form. The Committee continued its consideration of long-range planning issues, with a particular focus on the need of the court system to provide court information in languages other than English so as to ensure meaningful access to the federal courts for all citizens.

COMMITTEE ON CRIMINAL LAW

PRETRIAL SERVICES SUPERVISION MONOGRAPH

On recommendation of the Committee on Criminal Law, the Judicial Conference approved revisions to a monograph entitled *United States Pretrial Services Supervision*, Publication 111, for publication and distribution to the courts. To be consistent with other Conference-approved guidance for officers, the document was renamed *The Supervision of Federal Defendants*, Monograph 111. The revisions incorporate "best practice" findings from research and other sources, and because those findings relate to the effectiveness of supervision in general, many of the revisions are similar to recently approved revisions to *The Supervision of Federal Offenders*, Monograph 109 (JCUS-MAR 03, pp. 11-12).

JUDGMENTS IN A CRIMINAL CASE

On recommendation of the Committee, the Judicial Conference approved revised forms of judgments in criminal cases (AO 245B-245I) for publication and distribution to the courts. The revisions include certain technical and other changes required by new legislation. The Statement of Reasons was also amended to ensure that court-ordered findings that differ from information in presentence investigation reports are transmitted to Bureau of Prisons staff for use in classification and designation decisions and to facilitate better documentation of sentencing and departure actions taken by courts to help the Sentencing Commission perfect its data collection and reporting efforts. In addition, a new payment option has been added to the Schedule of Payments that defers the setting of a payment schedule until after an offender's release from imprisonment to provide the court an opportunity to evaluate the offender's earning capability at the time of release. Also on recommendation of the Committee, the Conference designated the Statement of Reasons as the mechanism by which courts comply with the requirements of the PROTECT Act to report reasons for sentences to the United States Sentencing Commission.

THE PROTECT ACT

As noted earlier, the PROTECT Act was signed into law on April 30, 2003. This Act expands to national coverage a rapid-response system to help

find kidnapped children. However, just prior to passage, an amendment ("the Feeney Amendment") was adopted in the House that would have severely limited, in all cases, the authority of judges to depart downward from the sentencing guidelines. The Judicial Conference, through its Executive Committee, which acted on an expedited basis on recommendation of the Criminal Law Committee, opposed a number of provisions of the Feeney Amendment. *See supra*, "Sentencing-Related Legislation," pp. 5-6. Although the enacted legislation included a somewhat narrower version of the sentencing amendments, it still contained provisions of concern to the judiciary.

At this session, the Judicial Conference considered, and slightly modified, a recommendation of the Criminal Law Committee seeking repeal of certain portions of the PROTECT Act. The Conference agreed by overwhelming majority (with one member voting "present") that, because the judiciary and the Sentencing Commission were not consulted in advance concerning this legislation, it would support repeal of those provisions of the PROTECT Act that do not directly relate to child kidnapping or sex abuse, including the provisions previously acted upon on behalf of the Conference by the Executive Committee (*see supra*, "Sentencing-Related Legislation," pp. 5-6), as well as the following provisions of the Act on which the Conference has not previously taken positions:

a. The requirement that directs the Sentencing Commission to make available to the House and Senate Judiciary Committees all underlying documents and records it receives from the courts without established standards on how these sensitive and confidential documents will be handled and protected from inappropriate disclosure;

b. The requirement that the Sentencing Commission release data files containing judge-specific information to the Attorney General;

c. The requirement that the Department of Justice submit judge-specific sentencing guideline departure information to the House and Senate Judiciary Committees;

d. The requirement that the Sentencing Commission promulgate guidelines and policy statements to limit departures;

e. The requirement that the Sentencing Commission promulgate a policy statement limiting the authority of the courts and the United States attorneys' offices to develop and implement early disposition programs; and

f. The amendment of 28 U.S.C. § 991(a) to limit the number of judges who may be members of the Sentencing Commission.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that it was briefed on a proposed Department of Justice policy and on proposed Bureau of Prisons procedures for handling presentence investigation reports and that it continues to work with those agencies to ensure that the use and distribution of such reports is commensurate with their confidential nature. The Committee also authorized the distribution to the courts of revisions to *The Federal Home Confinement Program for Defendants and Offenders*, Monograph 113, that are technical in nature and do not require approval by the Judicial Conference. The Committee received reports on the status of a strategic assessment of the probation and pretrial services system, an ongoing study of administrative services, and the implementation of various probation and pretrial services system information technology initiatives.

COMMITTEE ON DEFENDER SERVICES

CASE BUDGETING IN HIGH-COST CASES

The Judicial Conference approved a recommendation of the Committee on Defender Services to add a new subparagraph 2.22B(4) to the Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines), Volume VII, *Guide to Judiciary Policies and Procedures.* The new section is intended to encourage courts to use case budgeting techniques in complex, non-capital panel attorney representations that appear likely to become or have become extraordinary in terms of cost. Similar provisions have already been included in paragraph 6.02F of the CJA Guidelines for capital cases (*see* JCUS-MAR 97, p. 23).

CJA VOUCHER APPROVAL

Under sections (d)(3) and (e)(3)of the Criminal Justice Act, 18 U.S.C. § 3006A, and a death penalty provision of the Controlled Substances Act, 21 U.S.C. § 848(q)(10)(B), vouchers submitted by panel attorneys and investigative, expert, and other service providers that are in excess of certain

statutory maximum amounts, must be approved by the chief judge of the circuit, who may delegate such approval authority to an active circuit judge. The Committee on Defender Services recommended that the Judicial Conference seek amendments to those statutes to include senior circuit judges and appropriate non-judicial officers qualified by training and legal experience to perform those tasks, among those to whom circuit chief judges may delegate authority. The proposed amendments would also allow a claimant to seek review by the chief judge in any case in which the delegate judge or non-judicial officer reduced an excess payment that had been certified as necessary by the court before which the services were provided. The Conference adopted the Committee's recommendations.

RELOCATION REGULATIONS

At this session, on recommendation of the Committee on Judicial Resources, concurred in by the Committee on Defender Services, the Judicial Conference adopted comprehensive relocation regulations for court and federal public defender organization employees, which authorize relocation reimbursement for federal public defenders and first assistant federal public defenders, if the chief judge of the hiring circuit certifies that the relocation is in the interest of the government and the chair of the Committee on Defender Services concurs. *See infra*, "Relocation Regulations," p. 28. Noting that community defender organizations are the functional equivalents of federal public defender organizations and that the level of responsibility of capital resource counsel is at least comparable to that of a first assistant defender, the Committee on Defender Services recommended, and the Judicial Conference agreed, that relocation reimbursement eligibility also be authorized for—

a. Executive directors and first assistant defenders in community defender organizations, consistent with the policies set forth in the relocation regulations applicable to federal public defender organization personnel, except that reimbursement for individuals in community defender organizations would be approved when the board of directors of the hiring organization makes a determination that the requested reimbursement is "in the interest of the Defender Services program," and the chair of the Committee on Defender Services concurs; and

b. Capital resource counsel in federal defender organizations, pursuant to the procedure applicable to the defender organization where the capital resource counsel is to be stationed.

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it was briefed on the status of the Defender Services appropriation and considered ways in which a projected shortfall might be addressed. In addition, it discussed the long-term growth projected for the Criminal Justice Act program and identified several initiatives for potential cost containment. The Committee endorsed the use of surveys to address congressional concerns about the need for increasing the panel attorney hourly compensation rate in non-capital cases and to point out strengths or weaknesses in the quality of representation furnished by appointed counsel. Under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), the Committee approved FY 2004 budgets for 74 federal defender organizations totaling $360,116,400.

COMMITTEE ON FEDERAL-STATE JURISDICTION

JURISDICTIONAL IMPROVEMENTS

As part of its jurisdictional improvements project, the Committee on Federal-State Jurisdiction recommended that the Judicial Conference seek seven amendments to title 28 of the United States Code to improve the clarity of the law and increase judicial efficiency. Six of the seven recommendations pertain to removal and remand procedures; the seventh relates to the definition of citizenship, for purposes of diversity jurisdiction, of insurance companies engaged in direct action litigation. After discussion, the Judicial Conference unanimously agreed to seek the following amendments to title 28 of the United States Code:

a. Amend 28 U.S.C. § 1446(b) to codify in multiple-defendant cases the requirement that all defendants join in or consent to a notice of removal, to give each defendant 30 days in which to have the opportunity to remove or consent to removal, and to permit earlier-served defendants, who did not remove within their own 30-day time period, to consent to a timely notice of removal by a later-served defendant;

b. Address situations where the amount in controversy in diversity jurisdiction cases is unspecified or in doubt by amending 28 U.S.C. § 1446(b) to commence the 30-day period for removal when it

becomes known, through responses to discovery or information that enters the record of the state proceeding, that the amount in controversy exceeds the statutory minimum figure, and to create an exception to the current one-year period for removal upon a showing of plaintiff's deliberate non-disclosure of the amount in controversy;

c. Amend 28 U.S.C. § 1446(b) to authorize district courts to permit removal after the one-year period in appropriate circumstances;

d. Amend 28 U.S.C. § 1441(c) to clarify the right of access to federal court upon removal for the adjudication of separate federal law claims that are joined with state law claims by requiring district courts to retain the federal claims and remand unrelated state law claims;

e. Amend 28 U.S.C. § 1446 to separate the removal provisions relating to civil and criminal proceedings into two statutes;

f. Amend 28 U.S.C. § 1446(a) to replace the specific reference to Rule 11 of the Federal Rules of Civil Procedure with a generic reference to the rules governing pleadings and motions in civil actions in federal court; and

g. Amend 28 U.S.C. § 1332(c) to extend to insurers in direct action litigation the same definition of citizenship as that previously adopted by the Judicial Conference with regard to corporations with foreign contacts.

NLRB ORDERS

In May 1990, the Executive Committee, on behalf of the Judicial Conference, approved, after endorsement by the Federal-State Jurisdiction Committee, a proposal of the Federal Courts Study Committee that the Conference seek amendment of 29 U.S.C. § 160 to make National Labor Relations Board (NLRB) orders self-enforcing and to give jurisdiction over contempt actions and actions to execute judgments to the district courts (JCUS-SEP 90, p. 62). After several unsuccessful attempts to pursue this proposal through the judiciary's courts improvement bill, and at the request of the Executive Committee, the Federal-State Jurisdiction Committee revisited this position. The Committee noted that the policy behind the 1990 Conference position remains essentially sound, and that enactment of the proposed amendments would likely result in efficiency gains for the judiciary. However, the Committee also recognized that a change in the law is most unlikely because the NLRB has declined to comment on the legislation.

Therefore, the Committee recommended that the Conference policy be modified to indicate that the Conference "supports in principle" the legislative amendments. In that way, the position could be used to support the efforts of other entities if they chose to pursue similar legislation in the future, but the judiciary would no longer actively pursue the legislation itself. The Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it made recommendations to the Judicial Conference on the claims resolution process proposed in the Fairness in Asbestos Injury Resolution Act of 2003 (S. 1125, 108th Congress), on class action legislation, and on Article III status for the District Court of Guam. As these issues needed to be addressed on an expedited basis, the Executive Committee acted in each instance on behalf of the Conference. *See supra*, "Asbestos Legislation," p. 7, and "Miscellaneous Actions," pp. 7-9. The Committee also heard a presentation on federal-state coordination of complex litigation and received updates on a number of issues, including state-federal judicial education initiatives, and proposed changes to the Social Security claims process.

COMMITTEE ON FINANCIAL DISCLOSURE

STATUTORY FILING REQUIREMENTS

Judicial Officers. The Committee on Financial Disclosure, in consultation with the Committees on Codes of Conduct and Security and Facilities, recommended that the Judicial Conference seek legislation to create a separate financial disclosure statute for judges that would make the financial disclosure reporting requirements for judicial officers more consistent with the narrowly focused role of the judiciary and with judges' recusal obligations under 28 U.S.C. § 455, and at the same time address legitimate security concerns of the judiciary. Under this proposal, existing reporting requirements would be amended to eliminate the value and income thresholds for reporting investment assets, the value and income codes for investment assets reported, and the reporting of purchases or sales of investment assets. In addition, copies of judges' reports would be required to be made available at the courthouse pursuant to regulations established by the Judicial Conference. The Conference agreed to seek legislation consistent in principle

with the Committee's proposed draft legislation, which would change and make more meaningful judicial officers' obligations to prepare and file financial disclosure reports.

Judicial employees. On July 16, 2003, the Office of Government Ethics (OGE) transmitted to Congress proposed legislation to simplify the financial disclosure requirements for all three branches of government by increasing the thresholds for reporting income, liabilities, and investments and reducing the number of value categories for reporting. The Committee reviewed the proposal and determined that the provisions would be appropriate for non-judge employees of the judiciary, but not for judicial officers (see above). On recommendation of the Committee, the Judicial Conference agreed to support the inclusion of non-judge employees of the judiciary in the OGE's proposed amendments to the Ethics in Government Act transmitted to Congress on July 16, 2003.

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that as of July 15, 2003, the Committee had received 3,574 financial disclosure reports and certifications for the calendar year 2002, including 1,269 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 323 from bankruptcy judges; 507 from magistrate judges; and 1,475 from judicial employees.

COMMITTEE ON INFORMATION TECHNOLOGY

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that both an assessment of the adequacy of security measures for the judiciary's data communications network and a comprehensive study to examine the costs associated with the judiciary's information technology (IT) investments are nearing completion. The Committee discussed efforts underway to identify locally developed IT applications that could be shared across the judiciary. IT training for judges was reviewed, and the Committee suggested focusing training more on how judges can apply technical tools to accomplish day-to-day judicial business. The Committee also endorsed resource requirements and priorities for the programs under its jurisdiction and received updates on a number of information technology projects and issues.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that during the period from January 1, 2003, to June 30, 2003, a total of 62 intercircuit assignments, undertaken by 48 Article III judges, were processed and recommended by the Committee on Intercircuit Assignments and approved by the Chief Justice. In addition, the Committee aided courts requesting assistance by identifying and obtaining judges willing to take assignments.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported that it scheduled its Spring 2003 meeting to coincide with the Center for Democracy's annual international judicial conference, at which more than 100 foreign jurists participated. The conference focused on judicial independence and strengthening the rule of law. The Committee also reported on its judicial reform activities throughout the world, including in the Russian Federation, Ecuador, Ghana, and Korea. In May 2003, the Administrative Office assumed responsibility for the database of federal judges, court administrators, and defenders interested in assisting foreign judiciaries, which had been developed at the Committee's request by the Federal Judicial Center.

COMMITTEE ON THE JUDICIAL BRANCH

TRAVEL REGULATIONS FOR UNITED STATES JUSTICES AND JUDGES

Special Lower Fares. On recommendation of the Committee on the Judicial Branch, the Judicial Conference approved an amendment to the Travel Regulations for United States Justices and Judges expressly to authorize judges reimbursement for special lower fares obtained for official travel, including non-refundable fares, and to provide judges with clear and specific guidance on the use of such fares.

Recalled Judges' Official Duty Stations. The Committee also recommended, and the Conference approved, an amendment to the travel regulations to clarify that the official duty station for a recalled bankruptcy or magistrate judge is the abode the retired judge designates in writing to the Administrative Office as his or her principal residence. This brings the travel regulations into conformity with 28 U.S.C. § 374 and Judicial Conference regulations on the recall of retired bankruptcy and magistrate judges, which relieve recalled judges of any restrictions as to their residence, thereby treating them similarly to senior Article III judges.

JUDICIAL COMPENSATION

Noting a recently released report of the National Commission on the Public Service, which identified judicial salaries as the most egregious example of the failure of federal compensation policies and recommended an immediate increase in judicial salaries, the Judicial Branch Committee recommended that the Judicial Conference endorse and vigorously seek legislation that would increase judicial salaries by 16.5 percent, which would yield an average of $24,948, across all levels of judicial offices. By mail ballot concluded on May 5, 2003, the Judicial Conference voted unanimously to approve the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it continues to work toward securing judges' compensation legislation. The Committee has been assisted in its efforts by representatives from the organized bar and other groups concerned about the independence and quality of the federal judiciary. The Committee also continues to work to educate the media and the public on the role of the federal judiciary, as well as the needs of the federal courts and the problems they face in discharging their duties.

COMMITTEE ON JUDICIAL RESOURCES

VOLUNTARY SEPARATION INCENTIVE PAYMENT AUTHORITY

Pursuant to authority established in the Homeland Security Act of 2002, Public Law No. 107-296, and on recommendation of the Committee on

Judicial Resources, the Judicial Conference adopted for fiscal year 2004 a judiciary voluntary separation incentive payment program for Court Personnel System employees, consistent with the requirements of the Act. The program, which will use courts' decentralized funds, will provide unit executives with flexibility in reducing staffing levels in furtherance of strategic workforce-reshaping goals.

RELOCATION REGULATIONS

The judiciary is authorized to pay the relocation expenses of employees of the judicial branch pursuant to chapter 57 of title 5 of the United States Code and implementing regulations adopted by the General Services Administration (41 C.F.R. Part 302). The judiciary administers the program in conformance with those regulations as well as with interim policies on court employee eligibility established by the Executive Committee. At this session, on recommendation of the Judicial Resources Committee, with the concurrence of the Defender Services Committee, the Judicial Conference adopted comprehensive relocation regulations for court and federal public defender organization employees that largely incorporate, with only three substantive changes, the interim policies and are substantially similar to relocation regulations adopted for justices and judges in March 1999 (JCUS-MAR 99, pp. 20-21). Two of the substantive changes involve overseas law clerk reimbursements, and the third gives to the Director of the Administrative Office the express authority to grant exceptions to the eligibility requirements of the regulations where the Director finds it to be "in the interest of the government," if the exception has been approved by the chief judge of the receiving court, and the circuit judicial council has concurred (*see also, supra,* "Relocation Regulations," p. 21).

LAW CLERK QUALIFICATIONS

The Committee on Judicial Resources, with the concurrence of the Magistrate Judges Committee, recommended that the qualifications standards for "elbow" law clerks be expanded to allow experience as a pro se law clerk in the federal courts to be considered as equivalent to elbow law clerk experience for purposes of establishing the grade level for elbow law clerks. The Judicial Conference adopted the Committee's recommendation.

SENIOR STAFF ATTORNEYS

The Committee on Judicial Resources recommended that the Judicial Conference raise the target grade for senior staff attorneys from JSP-16 to JSP-17 after considering the role of staff attorneys in the administration of the appellate courts and their crucial managerial and legal responsibilities. The Judicial Conference adopted the Committee's recommendation, which is to be implemented upon request from each circuit chief judge, subject to the availability of funds.

BANKRUPTCY ADMINISTRATORS

The Committee on Judicial Resources, with the concurrence of the Committee on the Administration of the Bankruptcy System, recommended that the Judicial Conference approve six new positions for fiscal year 2005 for the bankruptcy administrators, one in the Middle District of Alabama, two in the Eastern District of North Carolina, one in the Middle District of North Carolina, and two in the Western District of North Carolina. The Conference adopted the Committee's recommendation and also agreed that accelerated funding for the positions should be provided in fiscal year 2004, subject to the availability of funds.

COURT INTERPRETERS

In order to address an increased volume of Spanish/English interpreting events, the Judicial Conference, on recommendation of the Committee on Judicial Resources, authorized two staff court interpreter positions for fiscal year 2005: one for the Middle District of Florida and one for the District of Utah. The Conference also approved accelerated funding in fiscal year 2004 for the position in the District of Utah, subject to the availability of funds.

JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

The Committee on Judicial Resources recommended, and the Judicial Conference approved, a staffing formula for the Judicial Panel on Multidistrict Litigation, to be implemented in fiscal year 2004, subject to the availability of funds. The formula is based on the work that is performed by the Panel and is

expected to determine adequate and accurate levels of staffing to ensure the continued successful completion of necessary Panel support functions.

PAY PARITY

Legislation pending in the 108th Congress, if enacted, would lift the current pay caps for high-level executive branch employees. In order to maintain the judiciary's competitiveness in recruitment and retention of employees, and consistent with past Judicial Conference policy supporting pay parity, the Judicial Conference adopted a recommendation of the Committee to authorize the Director of the Administrative Office to pursue legislative opportunities to ensure pay parity between judicial and executive branch employees, with the understanding that (1) the basic pay plus incentive awards for any judicial branch employee should not exceed the salary of a district court judge; and (2) the implementation of any changes would require further Judicial Conference approval, as appropriate.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it approved a resolution that endorsed a two-percent "productivity adjustment" for fiscal year 2005 budget formulation purposes that is expected to save almost $40 million if it is applied to all court programs. The Committee declined to recommend that either senior staff attorneys or circuit librarians be allowed to establish a single Type II deputy position, and tabled a request to recommend allowing a second Type II deputy position for large and complex district and bankruptcy courts, pending a report from the Administrative Office. Also, the Committee decided to table for one year the issue of the appropriate use of the Temporary Emergency Fund, and asked the Administrative Office to continue to monitor financial data regarding the use of the fund.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

DIVERSITY IN THE MAGISTRATE JUDGE SELECTION PROCESS

The Committee on the Administration of the Magistrate Judges System recommended that the Judicial Conference resolve that:

a. Each district court, as part of the magistrate judge selection process, report on its efforts to achieve diversity by providing information about the dissemination of the notice of a vacancy in a magistrate judge position, and on its efforts to ensure a diverse merit selection panel and to inform panel members of their obligations to make an affirmative effort to identify and give due consideration to all qualified applicants, including women and members of minority groups; and

b. Each district court and merit selection panel report on the race/ethnic group and gender of (1) the merit selection panel; (2) all those interviewed by the panel for the magistrate judge position; (3) the five applicants the panel determined as best qualified and whose names were submitted to the court; and (4) the individual selected and appointed to fill the magistrate judge position.

After discussion, the Judicial Conference voted to recommit the recommendations to the Committee.

MAGISTRATE JUDGE RECALL REGULATIONS

FBI Background Investigations. On recommendation of the Magistrate Judges Committee, the Judicial Conference approved amendments to the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Recall of United States Magistrate Judges (ad hoc recall regulations) and the Regulations of the Judicial Conference of the United States Governing the Extended Service Recall of Retired United States Magistrate Judges (extended service recall regulations) to require that, before beginning recall service (1) a retired magistrate judge who has been separated from federal judicial service for more than one year, but no more than ten years, be subject to a name and finger print check by the FBI, a tax check by the Internal Revenue Service, and a credit check by the Office of Personnel Management; and (2) a retired magistrate judge who has been

separated from federal judicial service for more than ten years be subject to an FBI full-field background investigation with a 15-year scope.

Extensions of Recall Terms. The ad hoc and extended service recall regulations for magistrate judges require the Magistrate Judges Committee to approve all requests for intercircuit service of a recalled magistrate judge and all new requests for recall service in which the magistrate judge's salary and reimbursable travel and subsistence expenses are expected to exceed an annual total of $50,000, but they do not explicitly require approval of requests for extensions of these recall terms. To ensure that there is a continuing need for a recalled judge, the Committee recommended, and the Conference approved, amendments to the ad hoc and extended service recall regulations to require such Committee approval.

Travel by Recalled Magistrate Judges. In March 2003, the Judicial Conference amended section B.3.a.(7)(b) of the Travel Regulations for United States Justices and Judges, *Guide to Judiciary Policies and Procedures*, Vol. III-A, ch. C-V, to clarify that reimbursement of transportation expenses for senior judges who commute between their homes and the courthouse should be limited to the commuted mileage or public mass transit fare rate, absent the approval of the circuit judicial council (JCUS-MAR 03, p. 17). Since the ad hoc and extended service recall regulations for retired magistrate judges contain identical provisions to the one amended by the Conference that dealt with senior judges, the Conference approved a Committee recommendation that the Conference amend the recall regulations to be consistent with section B.3.a.(7)(b) of the judges' travel regulations. *See also, supra*, "Travel by Recalled Bankruptcy Judges," p. 10.

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee on the Administration of the Magistrate Judges System and the recommendations of the Director of the Administrative Office, the district courts, and the judicial councils of the circuits, the Judicial Conference approved the following changes in positions, salaries, locations, and arrangements for full-time and part-time magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

SECOND CIRCUIT

Eastern District of New York

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

2. Authorized an additional full-time magistrate judge position at Central Islip; and

3. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

District of Vermont

Made no change in the district's number of magistrate judge positions or in the location or arrangements of the current magistrate judge position.

FOURTH CIRCUIT

District of Maryland

1. Converted the part-time magistrate judge position at Hagerstown to full-time status, and designated the position as Baltimore or Greenbelt;

2. Redesignated as Greenbelt the full-time magistrate judge position currently designated as Greenbelt or Baltimore; and

3. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

FIFTH CIRCUIT

Northern District of Mississippi

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Northern District of Texas

Increased the salary of the part-time magistrate judge position at Wichita Falls from Level 6 ($11,951 per annum) to Level 4 ($35,854 per annum).

SIXTH CIRCUIT

Eastern District of Tennessee

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

2. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

EIGHTH CIRCUIT

Western District of Arkansas

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

District of North Dakota

Extended the temporary increase in the salary of the part-time magistrate judge position at Grand Forks from Level 5 ($23,902 per annum) to Level 2 ($59,757 per annum) through March 31, 2004, or until such date as the full-time magistrate judge at Bismarck resumes his full duties, whichever is earlier.

TENTH CIRCUIT

Eastern District of Oklahoma

Redesignated as Muskogee the full-time magistrate judge position currently designated as McAlester.

ELEVENTH CIRCUIT

Middle District of Georgia

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

ACCELERATED FUNDING

On recommendation of the Committee, the Judicial Conference agreed to designate for accelerated funding in fiscal year 2004 the new full-time magistrate judge positions at Brooklyn, New York; Central Islip, New York; Chattanooga, Tennessee; and Baltimore or Greenbelt, Maryland.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that it decided to defer, but not withdraw, its position that service as an arbitrator or mediator by retired magistrate judges and bankruptcy judges should not be considered the practice of law under the Regulations of the Director Implementing the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act. The Committee also discussed possible additional criteria for the creation of new full-time magistrate judge positions and decided that the current Judicial Conference criteria are comprehensive and that the Committee-s detailed review of each request ensures that only justified requests are approved. Further, the Committee considered an item on law clerk assistance for Social Security appeals that was also considered by the Court Administration and Case Management and Judicial Resources Committees, and requested that detailed materials be prepared on this subject for these committees' December 2003 meetings.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders reported that, in the absence of any petition before it for review of judicial council action under the Judicial Conduct and Disability Act, it has continued to monitor congressional activity in the area of judicial conduct and disability.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF BANKRUPTCY PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 1011 (Responsive Pleading or Motion in Involuntary and Ancillary Cases), 2002 (Notices to Creditors, Equity Security Holders, United States, and United States Trustee), and 9014 (Contested Matters), together with Committee notes explaining their purpose and intent. The Judicial Conference approved the amendments and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law. In addition, the Committee submitted, and the Conference approved, a proposed new Official Form 21 (Statement of Social Security Number) to take effect on December 1, 2003.

FEDERAL RULES OF CRIMINAL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Criminal Rule 35 (Correcting or Reducing a Sentence), as well as comprehensive revisions to the rules governing 28 U.S.C. § 2254 cases and § 2255 proceedings and accompanying forms, together with Committee notes explaining their purpose and intent. The proposed amendments to the § 2254 and § 2255 rules were intended to conform those rules to recent legislation and to reflect the best practices of the courts, as well as to improve their clarity, consistent with the recent comprehensive style revision of the Federal Rules of Criminal Procedure. The Judicial Conference approved the amendments and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF EVIDENCE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference a proposed amendment to Evidence Rule 804(b)(3) (Hearsay Exceptions; Declarant Unavailable), together with Committee notes explaining its purpose and intent. The Judicial Conference approved the

amendment and authorized its transmittal to the Supreme Court for its consideration with a recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law.

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it approved for publication proposed amendments to Rules 4, 26, 27, 28, 32, 34, 35, and 45, and new Rules 28.1 and 32.1 of the Federal Rules of Appellate Procedure; Rules 1007, 3004, 3005, 4008, 7004, and 9006 of the Federal Rules of Bankruptcy Procedure; Rules 6, 24, 27, 45, and new Rule 5.1 of the Federal Rules of Civil Procedure, and Rules B and C of the Supplemental Rules for Certain Admiralty and Maritime Claims; and Rules 12.2, 29, 32, 32.1, 33, 34, and 45, and new Rule 59 of the Federal Rules of Criminal Procedure. The Committee also approved publishing at a later date, for public comment, proposed style revisions of Rules 1 through 15 of the Federal Rules of Civil Procedure as part of a larger package of revisions to other rules currently under review.

COMMITTEE ON SECURITY AND FACILITIES

FIVE-YEAR COURTHOUSE PROJECT PLAN

In order to address a growing backlog of construction projects on the annual Five-Year Courthouse Project Plan, the Committee on Security and Facilities considered various options, including freezing the current Five-Year Plan. However, the Committee also wanted to address intolerable security and operational problems in three southwest border courts and in Los Angeles, California. After consulting with the circuit judicial councils, the Committee recommended that the Judicial Conference take the following actions:

a. Designate judicial space emergencies in Los Angeles, California; El Paso, Texas; San Diego, California; and Las Cruces, New Mexico, and display these projects without scores, but in priority order, above the other projects on the first year of the FYs 2005-2009 Five-Year Courthouse Project Plan to convey the critical housing needs at those locations;

b. Approve the Five-Year Courthouse Project Plan for FYs 2005-2009, which consists of the FYs 2004-2008 Five-Year Plan as modified by the designation of the four judicial space emergencies; and

c. Freeze the annual five-year plans until not more than $500 million of courthouse projects remain on the first year.

The Conference adopted the Committee's recommendations.

U.S. COURTS DESIGN GUIDE

The placement of a federal defender office in close proximity to law enforcement offices could conflict with the defender's mission to function as an independent law office that requires the trust, confidence, and cooperation of its clients for effective representation. The Committee on Security and Facilities, in consultation with the Defender Services Committee, therefore recommended that the Judicial Conference amend the *U.S. Courts Design Guide*, Chapter 3, page 3-14 and Chapter 10, page 10-27, with regard to federal defender office space to clarify that federal defenders' staffed offices should be located within reasonable walking distance of the courthouse; must be located outside the courthouse or other federal facility housing law enforcement agencies unless the federal defender determines that being in such buildings would not compromise the organization's mission; and if within such buildings, must be, at a minimum, on a different floor from the law enforcement agencies. The Judicial Conference approved the Committee's recommendations.

TENANT ALTERATIONS PROJECTS

On recommendation of the Committee, the Judicial Conference agreed to urge circuit judicial councils to begin capital planning and prioritizing non-prospectus tenant alterations projects for two to three years in the future and to include a bankruptcy court representative on judicial council space committees to ensure that all courts have an opportunity to provide input.

COMMITTEE ACTIVITIES

The Committee on Security and Facilities reported that it discussed and endorsed for review by other Judicial Conference committees several options for controlling future rental costs, which currently constitute approximately 20 percent of the judiciary's budget. The Committee also discussed two U.S. Marshals Service studies required by the FY 2003 Omnibus Appropriations Act, Public Law No. 108-7: a nationwide courthouse security survey and an independent study of the relationships among the Department of Homeland Security, the U.S. Marshals Service, and the judiciary as they relate to the court security program. The Committee was briefed on a number of ongoing programs and projects, including a non-prospectus tenant alterations project review, a Temporary Emergency Fund survey, the building management delegation program, and the judiciary's emergency preparedness program.

MEMORIAL RESOLUTION

The Judicial Conference approved the following resolution noting the death of the Honorable Edwin L. Nelson of the United States District Court for the Northern District of Alabama, Chair of the Information Technology Committee from 2000 to 2003:

> The Judicial Conference of the United States notes with sadness the death of the Honorable Edwin L. Nelson, on May 17, 2003, near Birmingham, Alabama.
>
> Judge Nelson served with distinction on the federal bench for nearly 30 years, first as a magistrate judge and then as a district judge since 1990. As a member of the Judicial Conference Committee on Information Technology (1997-2003) and as its chair (2000-2003), Judge Nelson played a pivotal role during a period of unprecedented technological change and evolution through his ability to facilitate cooperation and communication. Judge Nelson was a man of integrity, courage, wisdom, and wit, and will be missed by all who knew him.
>
> The members of the Judicial Conference convey their deepest sympathies to Judge Nelson's widow, Linda, and to his family.

FUNDING

All of the foregoing recommendations that require the expenditure of funds for implementation were approved by the Judicial Conference subject to the availability of funds and to whatever priorities the Conference might establish for the use of available resources.

Chief Justice of the United States
Presiding

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

March 16, 2004

The Judicial Conference of the United States convened in Washington, D.C., on March 16, 2004, 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 Michael Boudin
Chief Judge Hector M. Laffitte,
District of Puerto Rico

Second Circuit:

Chief Judge John M. Walker, Jr.
Chief Judge Frederick J. Scullin, Jr.,
Northern District of New York

Third Circuit:

Chief Judge Anthony J. Scirica
Chief Judge Thomas I. Vanaskie,
Middle District of Pennsylvania

Fourth Circuit:

Chief Judge William W. Wilkins
Judge David C. Norton,
District of South Carolina

Fifth Circuit:

Chief Judge Carolyn Dineen King
Judge Martin L. C. Feldman,
Eastern District of Louisiana

Sixth Circuit:

Chief Judge Danny J. Boggs
Chief Judge Lawrence P. Zatkoff,
Eastern District of Michigan

Seventh Circuit:

Chief Judge Joel M. Flaum
Judge J. P. Stadtmueller,
Eastern District of Wisconsin

Eighth Circuit:

Chief Judge James B. Loken
Chief Judge James M. Rosenbaum,
District of Minnesota

Ninth Circuit:

Chief Judge Mary M. Schroeder
Chief Judge David Alan Ezra,
District of Hawaii

Tenth Circuit:

Chief Judge Deanell R. Tacha
Judge David L. Russell,
Western District of Oklahoma

Eleventh Circuit:

Chief Judge J. L. Edmondson
Judge J. Owen Forrester
Northern District of Georgia

District of Columbia Circuit:

Chief Judge Douglas H. Ginsburg
Chief Judge Thomas F. Hogan,
District of Columbia

Federal Circuit:

Chief Judge Haldane Robert Mayer

Court of International Trade:

Chief Judge Jane A. Restani

Circuit Judges Edward E. Carnes, Dennis G. Jacobs, Marjorie O. Rendell, and Jane R. Roth, and District Judges Nina Gershon, John G. Heyburn II, Robert B. Kugler, Sim Lake, David F. Levi, John W. Lungstrum, James Robertson, Lee H. Rosenthal, Patti B. Saris, and Frederick P. Stamp, Jr. attended the Conference session. Karen Milton of the Second Circuit represented the circuit executives.

Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts (AO), attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director for Management and Operations; William R. Burchill, Jr., Associate Director and General Counsel; Karen K. Siegel, Assistant Director, Judicial Conference Executive Secretariat; Michael W. Blommer, Assistant Director, Legislative Affairs; David Sellers, Assistant Director, Public Affairs; and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat. Judge Barbara Jacobs Rothstein and Russell Wheeler, Director and Deputy Director of the Federal Judicial Center (FJC), also attended the session of the Conference, as did Sally Rider, Administrative Assistant to the Chief Justice; Timothy B. McGrath, Staff Director of the United States Sentencing Commission; and the 2003-2004 Judicial Fellows.

Representatives F. James Sensenbrenner and Lamar S. Smith spoke on matters pending in Congress of interest to the Conference. Deputy Attorney General James B. Comey, Jr. addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice.

REPORTS

Mr. Mecham reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office, and Judge Rothstein spoke to the Conference about Federal Judicial Center programs. Judge Heyburn, chair of the Committee on the Budget, briefed the members on

judiciary appropriations, and Judge Tacha, chair of the Committee on the Judicial Branch, reported on judicial compensation.

ELECTIONS

The Judicial Conference elected to membership on the Board of the Federal Judicial Center, each for a term of four years, Judge Terence T. Evans, United States Court of Appeals for the Seventh Circuit, to succeed Judge Pauline Newman, and Judge Bernice Bouie Donald, United States District Court, Western District of Tennessee, to succeed Judge Robert Bryan.

EXECUTIVE COMMITTEE

FISCAL YEAR 2004 FINANCIAL PLANS

At the time of the Executive Committee's December 2003 meeting, Congress had not yet enacted a final fiscal year 2004 appropriations bill for the judiciary. However, agreement by House and Senate conferees had been reached, as part of an omnibus appropriations bill, on funding levels for the judiciary. Using those agreed-upon levels, modified by two congressionally imposed across-the-board reductions, the Executive Committee adopted fiscal year 2004 financial plans for the Salaries and Expenses, Defender Services, Fees of Jurors and Commissioners, and Court Security accounts. The financial plans take into consideration limited resources in fiscal year 2004 and the likelihood that funding will become increasingly scarce in future years. The Committee also approved a recommended strategy for distribution of allotments to court units funded under the Salaries and Expenses account and methods for addressing shortfalls in other accounts. Anticipating that the Congress would recess for the year without enactment of an omnibus bill, the Executive Committee also unanimously approved guidance for operating under a continuing resolution until the end of January 2004. In addition, the Committee approved a proposal to seek supplemental funding that would restore the appropriation level for the Salaries and Expenses account to the amount approved by congressional conferees prior to the across-the-board reductions and that would also provide sufficient funds for Criminal Justice Act panel attorneys in fiscal year 2004.

MISCELLANEOUS ACTIONS

The Executive Committee—

- On recommendation of the Court Administration and Case Management Committee, opposed legislation (S. 1719, 108th Congress) that would amend 28 U.S.C. § 134 to prohibit the reassignment between divisions of any district judge in Texas whose duty station has three or fewer judges without the consent of all the district judges in the district;

- Approved technical adjustments to the fiscal year 2005 budget request associated with changes in the federal pay and benefits inflation rates, revised requirements in the Fees of Jurors and Court Security accounts, higher projected receipts from electronic public access charges, a decrease in anticipated benefits costs for court personnel, and a revised assumption regarding projected unobligated balances in fiscal year 2004 that can carry forward to finance requirements in fiscal year 2005;

- Agreed, on recommendation of the Committee on the Administration of the Magistrate Judges System, to seek removal from proposed legislation entitled the "Vital Interdiction of Criminal Terrorist Organizations Act of 2003" (VICTORY Act) of a provision that would strip magistrate judges of their existing trial authority in civil and criminal forfeiture proceedings and give them case-dispositive motions authority in such proceedings instead;

- Approved a recommendation of the Committee on Judicial Resources that the voluntary separation incentive ("buy-out") program approved by the Judicial Conference in September 2003 (JCUS-SEP 03, pp. 27-28) be amended to eliminate the financial incentive for court units to favor involuntary separations over voluntary buy-outs;

- On recommendation of the Committee on Criminal Law, approved technical changes to the Statement of Reasons that accompanies a judgment in a criminal case to comply with sentencing guideline amendments promulgated by the United States Sentencing Commission and to meet the data collection needs of the Commission;

- Allowed to take effect the annual automatic inflation adjustment to the alternative subsistence rate for judges' travel expenses;

- Approved release of a report by the Bankruptcy Committee's Subcommittee on Venue-Related Issues relating to large chapter 11 cases, with an appropriate disclaimer indicating that it is not Conference approved;

- Requested that the Committee on Defender Services, which is delegated budgetary responsibility for the defender services program, impose a rent control moratorium on all space requests below $2.29 million, with certain limited exceptions, similar to the moratorium recommended by the Security and Facilities Committee and approved by the Judicial Conference at this session with regard to non-defender judiciary space requests (*see infra*, "Space Rental Costs," p. 28), and report back to the Executive Committee on the actions taken in this regard; and

- In light of the anticipated dire budget situation for the foreseeable future, agreed to ask the Chief Justice whether he would charge a new ad hoc group of judges with the responsibility to develop an integrated strategy to deal with the probability of declining resources.[1]

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it discussed extensively the Administrative Office's management oversight and stewardship program for judges and unit executives, focusing particularly on AO assistance to the courts in strengthening internal controls for administrative decisions and operations. It unanimously passed a resolution commending the efforts of the Administrative Office to promote good stewardship in the federal courts, including improvements to chief judge orientations to put more focus on oversight and stewardship responsibilities. The Committee was briefed on the functions and activities of the AO's Article III Judges Division. It was also given a report on an ongoing study of alternatives for providing administrative services to courts and expressed its support for identifying more efficient ways to provide administrative services for the courts.

[1]The Chief Justice subsequently determined that the Executive Committee was the appropriate group to spearhead this strategic financial policy and planning effort; a mission statement describing the Committee's expanded role was approved by the Chief Justice.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

ATTENDANCE AT JUDICIAL CONFERENCE SESSIONS

The Committee on the Administration of the Bankruptcy System recommended that the Judicial Conference invite one bankruptcy judge, selected by the Chief Justice, to attend Judicial Conference sessions in a non-voting capacity. The Magistrate Judges Committee made a similar recommendation regarding attendance of a magistrate judge at Conference sessions (*see infra*, "Attendance at Judicial Conference Sessions," p. 22). After discussion, the Conference adopted the Committee's recommendation.

UNIFORM DOLLAR AMOUNTS IN THE BANKRUPTCY CODE

Section 104(a) of the Bankruptcy Code requires the Judicial Conference to transmit to Congress and to the President every six years a recommendation for a uniform percentage adjustment of each dollar amount in the Bankruptcy Code and in 28 U.S.C. § 1930 (which prescribes filing and other fees to be paid in bankruptcy cases). However, since § 104(a) was adopted, there have been several statutory changes relating to bankruptcy fee provisions, including authorization for periodic automatic adjustments of numerous specific dollar amounts in the Code (*see* § 104(b) of the Code, added by the Bankruptcy Reform Act of 1994, Public Law No. 103-94). These changes have made any across-the-board uniform percentage adjustment of all dollar amounts unnecessary and inappropriate. Moreover, the Conference has never endorsed a blanket adjustment of fees, preferring instead to adjust individual fees after balancing fiscal responsibilities with the need to keep the courts accessible to the public. The Conference therefore approved the Bankruptcy Committee's recommendation to seek repeal of 11 U.S.C. § 104(a) relating to uniform adjustments of filing and miscellaneous fees in the bankruptcy courts.

COMMITTEE ACTIVITIES

The Bankruptcy Committee reported that it approved a resolution requesting the assistance of the Committee on Information Technology in supporting certain locally developed calendaring and order-signing programs to address the urgent automation needs of bankruptcy judges. It also endorsed a cost-saving proposal for legislation to change the method of funding and

accounting for chapter 7 bankruptcy trustee fees; expressed support for certain proposals to facilitate law clerk assistance and to improve the collection and reporting of judicial statistics; and discussed, at the request of the Security and Facilities Committee, whether to recommend changes to the existing policy on courtrooms for recalled bankruptcy judges. The Committee received reports on a wide range of topics, including the status of pending bankruptcy reform legislation and legislative efforts to obtain authorization of additional bankruptcy judgeships.

COMMITTEE ON THE BUDGET

CHAPTER 7 TRUSTEE PAYMENTS

The Budget Committee, with the concurrence of the Bankruptcy Committee, recommended that the Judicial Conference seek legislation to change the process for paying chapter 7 bankruptcy trustees. Currently, a portion of the filing fee paid in a chapter 7 case is placed in a deposit fund with the Department of Treasury, where it is held pending distribution to trustees. Under the new model, this portion of the fee would be deposited into the judiciary fee account, and chapter 7 trustees would be paid from the judiciary's Salaries and Expenses account. The Judicial Conference approved the recommendation, which would simplify the accounting associated with chapter 7 trustee payments.

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it focused its discussions on developing strategies for formulating future budget requests in a constrained budget environment. These strategies encompassed the committee's two priorities – acquiring additional resources from Congress and preparing the program committees for future budget constraints. Throughout these discussions, the Committee noted helpful actions already taken by program committees, expressed support for planned future actions by program committees, and reaffirmed the need to approach future budget cycles collaboratively with these committees.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Conference in September 2003, the Committee received 34 new written inquiries and issued 23 written advisory responses. (Several additional responses resolved at the Committee's January 2004 meeting were to be issued shortly thereafter.) During this period, the average response time for requests was 20 days. The Chairman received and responded to 29 telephone inquiries, and individual Committee members responded to 180 inquiries from their colleagues.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

MISCELLANEOUS FEES

Preambles. On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference amended the preambles to the miscellaneous fee schedules for the courts of appeals, the district courts, the Court of Federal Claims, the bankruptcy courts, and the Judicial Panel on Multidistrict Litigation (promulgated by the Judicial Conference pursuant to 28 U.S.C. §§ 1913, 1914, 1926, 1930, and 1932, respectively) to reflect that fees charged are for the totality of services provided by the court, including those provided through the court's electronic systems. The preambles, which are identical for all of these fee schedules, were amended so that the pertinent sentence reads as follows:

> Following are fees to be charged for services provided by the [appropriate court].

District Court Miscellaneous Fee Schedule. The Committee recommended that the attorney admission fee, Item 10 of the District Court Miscellaneous Fee Schedule, be raised from $50 to $150, noting the significant benefit attorneys derive from this one-time fee, which has not been raised in several years. The Judicial Conference, after discussion, adopted the recommendation.

PLACES OF HOLDING COURT

At the request of the District of Colorado and the Tenth Circuit Judicial Council, and on recommendation of the Court Administration and Case Management Committee, the Judicial Conference agreed to seek legislation to amend 28 U.S.C. § 85 to designate Colorado Springs as a place of holding court for the District of Colorado.

PUBLIC ACCESS TO ELECTRONIC CRIMINAL CASE FILES

In September 2003, the Judicial Conference adopted a policy permitting remote public access to electronic criminal case file documents to be the same as public access to criminal case file documents at the courthouse, with a requirement that filers redact personal data identifiers from documents filed electronically or in paper. The Conference delayed the effective date of this policy pending approval of specific guidance on the implementation and operation of the policy to be developed by the Committees on Court Administration and Case Management, Criminal Law and Defender Services (JCUS-SEP 03, pp. 15-16). At this session, the Committee on Court Administration and Case Management, in conjunction with the Committees on Criminal Law and Defender Services, after consulting with the Department of Homeland Security, recommended, and the Judicial Conference approved, guidance and a model local rule on privacy and public access to electronic criminal case files.

REMOTE ELECTRONIC ACCESS TO TRANSCRIPTS

In September 2003, the Judicial Conference agreed to adopt a policy requiring courts that make electronic documents remotely available to the public to make electronic transcripts of proceedings remotely available if such transcripts are otherwise prepared. The Conference deferred implementation of the policy, however, until March 2004, and requested that the Judicial Resources Committee study the impact of the policy on court reporter income and report back to the Conference. The Committee on Court Administration and Case Management was delegated the authority to develop and issue guidance to the courts on implementation of this policy (JCUS-SEP 03, pp. 16-17). These committees decided that the best approach to gathering data on court reporter income would be to conduct a pilot program whereby district

courts desiring to do so would voluntarily implement the policy on public electronic access to official transcripts. So that the pilot program could commence as soon as possible, the committees sought expedited Conference approval of the pilot program. They also requested that the Conference defer the date of the Judicial Resources Committee's report, and subsequent implementation of the policy, until the September 2004 Judicial Conference session to allow for collection and analysis of the data. The Conference approved these recommendations by mail ballot concluded on November 26, 2003.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it undertook an examination of petit juror utilization rates. Noting that the number of jurors called for service but not challenged or seated was continuing to rise, the Committee decided to send a letter to each court along with statistics indicating that court's pattern of jury usage and offering assistance for improving these statistics. The Committee also considered several issues relating to its responsibilities for the lawbooks and libraries program, including lawbook spending and space requirements for satellite libraries.

COMMITTEE ON CRIMINAL LAW

UNITED STATES SENTENCING COMMISSION

The Committee on Criminal Law, at the suggestion of the Committee on Defender Services, recommended that the Judicial Conference seek legislation that would authorize the Conference to appoint a federal defender to serve as an *ex-officio*, non-voting member of the United States Sentencing Commission. Currently, 28 U.S.C. § 994(o) requires a representative of the federal public defenders to submit an annual report to the Commission concerning the guidelines, and the Commission may invite a federal defender to testify at open Commission meetings. However, an *ex-officio* member can attend and provide input even at non-public meetings. The Attorney General or his or her designee, and the chair of the United States Parole Commission already serve as *ex-officio*, non-voting members of the Sentencing Commission (*see* 28 U.S.C. § 991(a) and § 235 of Public Law No. 98-473, respectively). The Conference adopted the Committee's recommendation.

FINE AND RESTITUTION STATUTES

In order to achieve greater flexibility in the establishment and adjustment of criminal fine and restitution payment schedules, the Committee recommended that the Judicial Conference seek legislation that would provide that all criminal monetary penalties be payable immediately and collected as non-dischargeable civil debts. This would essentially decriminalize debt collection and apply well-established and efficient civil debt collection techniques to the collection of criminal debts. The Conference adopted the Committee's recommendation.

FEDERAL TORT CLAIMS ACT

The Federal Tort Claims Act, 28 U.S.C. § 2671 *et seq*., excludes intentional torts from its coverage, with the exception of those committed by investigative or law enforcement officers, defined by statute as "any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law." While probation and pretrial services officers are considered law enforcement officers for most purposes, pretrial services officers are not authorized to make arrests, and probation officers are discouraged by Judicial Conference policy from exercising their search and arrest authority (JCUS-MAR 93, p. 13). To ensure that any intentional torts of these officers are covered by the Act, the Conference approved a recommendation of the Committee that it seek an amendment to the Federal Tort Claims Act, 28 U.S.C. § 2680(h), to establish explicitly that both probation and pretrial services officers are law enforcement officers for purposes of the Act.[2]

POST-CONVICTION SUPERVISION MONOGRAPH

The Judicial Conference approved revisions to *The Supervision of Federal Offenders,* Monograph 109, in March 2003 (JCUS-Mar 03, pp. 11-12). However there have been a number of additional changes in statutes, case law, and policy that warrant further substantive revisions to the monograph. On recommendation of the Committee on Criminal Law, the Judicial

[2]The Conference took a similar position with regard to pretrial services officers twice previously (JCUS-SEP 76, p. 52; JCUS-SEP 77, pp. 76-77).

Conference approved revisions to *The Supervision of Federal Offenders,* Monograph 109, for publication and distribution to the courts.

PRESENTENCE INVESTIGATION REPORT MONOGRAPH

The Presentence Investigation Report, Monograph 107, provides guidance to probation officers on the format and content of the presentence report. It also includes instructions on how the presentence investigation should be conducted and a model report. The Committee on Criminal Law recommended that the face sheet of the model report be revised to include a section setting forth restrictions on the use and redisclosure of presentence investigation reports that reflect their confidential nature. The face sheet would advise, among other things, that disclosure to the Bureau of Prisons and any redisclosure by the Bureau are authorized solely to assist in administering an offender's prison sentence and for certain other limited purposes. On recommendation of the Committee, the Conference adopted a revised model face sheet for presentence investigation reports to be included in *The Presentence Investigation Report*, Monograph 107.

JUDGMENTS IN A CRIMINAL CASE

The Judicial Conference adopted a recommendation of the Criminal Law Committee that authority to approve technical, non-controversial revisions to the forms for judgments in criminal cases (AO 245B-245I) be delegated to the Committee.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that it has asked the Committee on Judicial Resources to recommend pursuit of legislation that would amend 18 U.S.C. § 3152(c) to make the selection process for chief pretrial services officers the same as the selection process for chief probation officers under 18 U.S.C. § 3602(c). The Committee received a report from the United States Sentencing Commission on recently enacted sentencing guideline amendments required by the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 or "PROTECT Act" (Public Law No. 108-21). The Sentencing Commission also reported a sharp increase in the number of documents received from the courts since enactment of the PROTECT Act, which includes a provision requiring courts to submit certain documents to the Commission. In addition, the Committee

was briefed on the status of a joint AO-FJC study of the substance abuse treatment program for offenders and defendants and on an ongoing study of administrative services.

COMMITTEE ON DEFENDER SERVICES

CRIMINAL JUSTICE ACT RESOLUTION

On recommendation of the Committee on Defender Services, the Judicial Conference endorsed the following resolution in recognition of the 40th anniversary of the enactment of the Criminal Justice Act of 1964:

> The Judicial Conference of the United States recognizes the fortieth anniversary of the Criminal Justice Act of 1964, 18 U.S.C. § 3006A, which has created a nationally heralded program, administered by the judiciary, for the appointment and compensation of counsel to represent individuals who have been charged with a federal crime and cannot pay for their defense. The statute ensures that all defendants in federal court receive the effective assistance of counsel guaranteed by the Sixth Amendment.
>
> The Criminal Justice Act program has adapted to dramatic changes in the criminal justice system over the past 40 years. Today, due to the ever-burgeoning federal criminal caseload, federal defender organizations and private "CJA panel" attorneys furnish over 140,000 representations per year to financially eligible persons. The complexity of federal criminal practice has increased substantially since 1964, as have the time commitment and skill level required of defense counsel. Federal defender organizations, authorized by a 1970 amendment to the Criminal Justice Act, now serve 83 of the 94 federal judicial districts. The commitment of Congress to fund the Criminal Justice Act program, and of the judiciary to support it, together with the dedication of thousands of federal defender personnel and CJA panel attorneys, have produced an assigned counsel program that delivers professional, cost-effective representation.
>
> By ensuring the fair treatment and effective representation of all persons accused of federal crimes, the Criminal Justice Act

protects the rights and liberties of all citizens. The statute, and the defender program that it created, have become models for nations seeking to adopt the rule of law, including the right to the effective assistance of counsel, as part of their criminal justice systems.

The federal judiciary has been a proud steward over the Criminal Justice Act program, which has become a fundamental and critical component of the American criminal justice system.

CRIMINAL JUSTICE ACT PAYMENTS FOR PARALEGAL SERVICES

In March 1993, the Judicial Conference agreed to seek explicit legislative authority to pay compensation, at reduced hourly rates, to paralegals and law students who assist CJA panel attorneys (JCUS-MAR 93, p. 27). However, such explicit authority does not appear to be necessary, as courts permit paralegals and legal assistants, including law students, who assist CJA panel attorneys to be reimbursed using one of two methods, either under subsection (e) of the CJA, 18 U.S.C. § 3006A, as a "service other than counsel," or as an "expense" of counsel under subsection (d)(1) of the CJA. At this session, after determining that there should be a uniform method of payment as opposed to this dual system, and that the former method provides greater judicial oversight than the latter, the Committee recommended and the Judicial Conference agreed to—

a. Amend paragraph 3.16 ("Other Services and Computer Hardware and Software") of the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Volume VII, *Guide to Judiciary Policies and Procedures*, to provide explicit authorization and compensation (at rates less than those paid to appointed counsel) for paralegals, legal assistants (including law students), and other non-secretarial professional support personnel employed by appointed counsel, as services other than counsel under subsection (e) of the Criminal Justice Act; and

b. Delete subparagraph 2.31A ("Law Student"), which has permitted compensation paid to law students to be reimbursed as an expense of appointed counsel under subsection (d)(1) of the Criminal Justice Act.

The Conference further agreed to rescind, as no longer necessary, its 1993 policy of seeking explicit legislative authority for payment at reduced hourly rates for such services.

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it endorsed a set of core principles for the management and administration of CJA panel attorney programs, based on the December 2002 report by the Vera Institute of Justice entitled "Good Practices for Federal Panel Attorney Programs - A Preliminary Study of Plans and Practices." The Committee discussed an AO initiative to evaluate case weighting as a possible method of facilitating comparative analyses of federal defender organization workloads and refining projected resource needs. It reviewed a draft of "Guidelines for Implementation of the Judicial Conference Policy on Privacy and Public Access to Electronic Criminal Case Files." The Committee discussed the policy adopted by the Judicial Conference regarding the electronic availability of transcripts of court proceedings (JCUS-SEP 03, pp. 16-17), and expressed concerns about the policy's potential resource impact on the Defender Services program.

COMMITTEE ON FEDERAL-STATE JURISDICTION

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it was briefed by the Director of the Federal Judicial Center on past projects undertaken by the FJC, including the development of a website for state-federal judicial education programs, and on the FJC's continuing goal to increase cooperation between federal and state judges. The Committee was also briefed by the chair and a member of the Judicial Panel on Multidistrict Litigation on the work of the Panel and techniques for managing complex litigation. In addition, the Committee determined to continue further development of a proposal to confer discretion on the district courts to dismiss actions in cases where the amount in controversy drops below the statutory threshold. The Committee also conducted an informal review of its operations and projects, and discussed the status of asbestos, DNA, and class action legislation.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that as of December 31, 2003, the Committee had received 3,934 financial disclosure reports and certifications for the calendar year 2002, including 1,360 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 352 from bankruptcy judges; 537 from magistrate judges; and 1,685 from judicial employees.

COMMITTEE ON INFORMATION TECHNOLOGY

LONG RANGE PLAN FOR INFORMATION TECHNOLOGY

Pursuant to 28 U.S.C. § 612 and on recommendation of the Committee on Information Technology, the Judicial Conference approved a 2004 update to the *Long Range Plan for Information Technology in the Federal Judiciary*. Funds for the judiciary's information technology program will be spent in accordance with this plan.

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it is seeking "partner" relationships with each of the Judicial Conference program committees, inviting those committees to take a more active role in identifying their information technology (IT)-related business needs and prioritizing IT projects within their respective program areas. Committee members also suggested that the IT training curriculum be revised to emphasize work done in the courtroom and chambers and urged that training and IT awareness be provided through additional venues. The Committee discussed the PACER Archives project, which will ensure that the program complies with statutory requirements and that court data from closed case management/electronic case files (CM/ECF) system cases will continue to be available. The Committee expressed support for the Administrative Office's ongoing study of administrative services and for the availability of individual access to the judiciary's data communications network for official court reporters.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that during the period from July 1, 2003, to December 31, 2003, a total of 85 intercircuit assignments, undertaken by 53 Article III judges, were processed and recommended by the Committee on Intercircuit Assignments and approved by the Chief Justice. During calendar year 2003, a total of 147 intercircuit assignments were processed and approved, a 30 percent decrease from 2002, likely due to the creation of additional judgeships in three district courts that had frequently borrowed judges for intercircuit assignments. In addition, the Committee aided courts requesting assistance by identifying and obtaining judges willing to take assignments.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its involvement in rule-of-law and judicial reform activities throughout the world, highlighting those in Bahrain, Croatia, Ecuador, Ghana, and the Russian Federation. The Committee continues to work closely on the rule-of-law component of the Open World Program, which brings Russian jurists and judicial officials to the United States to forge closer ties between the Russian and United States judiciaries. With funding from the U.S. Department of State, several United States judges were also able to make reciprocal visits to meet with Open World alumni.

COMMITTEE ON THE JUDICIAL BRANCH

JUDGES' TRAVEL REGULATIONS

Maximum Meals and Incidental Expenses Rate. Effective October 1, 2003, the General Services Administration (GSA) increased the maximum Meals & Incidental Expenses (M & IE) reimbursement rate from $50 to $51 for executive branch employees who travel to high-cost locations. In order to maintain parity with the executive branch, and to ensure that there will be no time lag between increases in the maximum M & IE rate promulgated by GSA

and the availability of increased travel reimbursement for judges' travel, the Judicial Branch Committee recommended that the Conference:

a. Approve an increase from $50 to $51 in the judges' Meals and Incidental Expenses reimbursement rate (where expenses are not itemized) provided for in sections E.4.a., E.4.b.(1), and E.4.c. of the Travel Regulations for United States Justices and Judges, *Guide to Judiciary Policies and Procedures*, Vol. III-A, ch. C-V.; and

b. Authorize the Director of the Administrative Office to incorporate future M & IE reimbursement rate increases promulgated by the General Services Administration automatically into the judges' travel regulations, without further approval of the Judicial Conference.

The Conference adopted the Committee's recommendations.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it continues to focus its priority attention on securing the enactment of a 16.5 percent increase in judicial salaries. While a significant portion of the Congress, the media, and the public understands the serious threat that inadequate judicial compensation presents to the United States system of justice, there is still a long way to go to obtain congressional approval. The Committee will continue to exert its utmost efforts to achieve this Judicial Conference objective.

COMMITTEE ON JUDICIAL RESOURCES

ELBOW LAW CLERK COMPENSATION

Noting a significant and accelerating growth in "elbow" law clerk salaries and benefits and a need to limit such growth in the face of a severe federal budgetary environment, the Committee on Judicial Resources undertook an analysis of elbow law clerk compensation and recommended that the Judicial Conference take the following actions:

a. Adopt a policy whereby judges may not designate an "elbow" law clerk as a "career" law clerk until the law clerk has completed four full

years of employment as a "term" law clerk, at which time a law clerk could be designated as career and thereby become eligible to participate in the Federal Employees' Retirement System and the Thrift Savings Plan;

b. Approve an amendment to the judiciary's salary matching/advanced in-step appointment policy to establish a salary matching cap of JSP-12, step five, for law clerk appointees coming from other than federal civil service jobs; and

c. Adopt a policy discouraging judges from placing term law clerks under the Leave Act.

After discussion, the Judicial Conference recommitted the recommendations to the Committee, with instructions that it reconsider any Conference policy that discourages the hiring of career law clerks.

LAW CLERK QUALIFICATIONS

In September 2003, the Judicial Conference agreed to expand the qualification standards for elbow law clerks to allow experience as a pro se law clerk to be considered as equivalent to elbow law clerk experience for purposes of establishing the grade level for elbow law clerks (JCUS-SEP 03, p. 28). At this session, on recommendation of the Committee on Judicial Resources, the Conference approved an expansion of the qualification standards for elbow law clerks to include staff attorney experience as creditable for purposes of establishing grade eligibility for elbow law clerks.

TEMPORARY BACKFILL OF CHAMBERS STAFF

Judicial Conference policy restricts "temporary employment of secretaries, law clerks, legal assistants, and clerical personnel for judges and magistrates to emergency situations or extraordinary circumstances, except for extended absences due to illness or maternity leave" (JCUS-SEP 86, pp. 64-65; JCUS-SEP 87, p. 77). In July 2003, the Director of the Administrative Office found that extended military duty constituted extraordinary circumstances for purposes of this policy and authorized the use of centralized funding to backfill three chambers staff called to active military duty. In light of the large number of reservists and members of the national guard now being called to extended active duty, the Committee on Judicial Resources recommended that the Judicial Conference modify its policy to add extended

active military service as a specific exception to the restriction on use of centralized funds for temporary chambers personnel. The Conference approved the recommendation, allowing chambers to "backfill" positions of employees called to extended active military service with temporary personnel, upon appropriate certification, using centralized funds.

TYPE II DEPUTY

Citing extraordinary circumstances in the District of Maryland, the Committee recommended, and the Judicial Conference approved, a second JSP-16 Type II chief deputy clerk position for the district clerk's office in the District of Maryland using existing decentralized funding available to the court.

REASONABLE ACCOMMODATIONS

Section 3102 of title 5, United States Code, authorizes the head of each agency in the judicial branch to provide personal assistants for disabled judges or employees, as determined necessary by the agency head. In March 2001, the Judicial Conference designated chief judges or their designees, court unit executives, and federal public defenders as the "agency heads" for employees of their respective chambers or units (JCUS-MAR 01, pp. 18-19, 25-26). The Conference also authorized the Administrative Office to develop guidelines for designated agency heads to use in determining when and under what circumstances the creation of a personal assistant position was appropriate. At this session, after discussion, the Conference declined to approve a recommendation of the Committee to amend the policy to give the Director of the Administrative Office the responsibility for approving personal assistant positions. The Conference did approve, however, a recommendation of the Committee to institute a reporting requirement for reasonable accommodations other than those involving personal assistants.[3]

[3] On April 20, 2004, the Executive Committee, acting on behalf of the Conference, amended the reporting requirement to include reasonable accommodations involving personal assistants.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it affirmed continued development of updated staffing formulae for district clerks, bankruptcy clerks, and probation and pretrial services offices for presentation at its June 2004 meeting. The Committee voiced strong support for developing new methodologies to gauge the impact of information technology on the work of the courts, to incorporate this impact into future staffing formulae, and to enhance the work measurement process by recognizing procedural and technological differences.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

ATTENDANCE AT JUDICIAL CONFERENCE SESSIONS

The Committee on the Administration of the Magistrate Judges System recommended that the Judicial Conference invite one magistrate judge, selected by the Chief Justice, to attend Judicial Conference sessions in a non-voting capacity. This recommendation was similar to one made by the Bankruptcy Committee (*see supra*, "Attendance at Judicial Conference Sessions," p. 7). After discussion, the Conference approved the Committee's recommendation.

AUTHORITY TO HOLD PROCEEDINGS OUTSIDE A DISTRICT IN AN EMERGENCY

In September 2003, the Judicial Conference agreed to seek legislation that would permit district, bankruptcy, and appellate courts, in times of emergency, to hold special court sessions outside their districts and/or circuits (JCUS-SEP 03, pp. 9-10, 15). Magistrate judges were not specifically included in this proposal although their activities are subject to certain territorial limitations imposed by the Federal Magistrates Act, 28 U.S.C. § 631 *et seq*. On recommendation of the Committee, the Judicial Conference agreed that in pursuing legislation to allow extraterritorial emergency special court sessions, it would seek inclusion of a provision that makes clear that magistrate judges can participate in such sessions.

RESIDENCY REQUIREMENT FOR MERIT SELECTION PANEL MEMBERS

Section 3.02(c) of the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges requires each member of a merit selection panel to be a resident of the district within which a magistrate judge appointment or reappointment is to be made. In recent years, waivers have been sought from this regulation to permit non-resident persons with significant ties to the community to serve on merit selection panels. On recommendation of the Committee, the Judicial Conference agreed to amend section 3.02(c) to allow courts to determine at a local level those individuals who should be allowed to serve on panels based on their ties to the community, without having to seek waivers. The regulation was amended to read as follows:

> 3.02 (c) Each member of the panel shall be a resident of the district within which the appointment is to be made, or, if a nonresident, have significant ties to the community of the district.

TAX COURT LEGISLATION

Section 318 of the proposed "Tax Administration Good Government Act," S. 882, 108th Congress, would change the title of the special trial judges in the Tax Court to "magistrate judges of the Tax Court." To avoid potential confusion with the position of United States magistrate judge, the Committee recommended that the Judicial Conference oppose use of the term "magistrate judge" in S. 882. The Conference adopted the Committee's recommendation.

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee on the Administration of the Magistrate Judges System and the recommendations of the Director of the Administrative Office, the district courts, and the judicial councils of the circuits, the Judicial Conference approved the following changes in the number, salaries, and arrangements of full-time and part-time

magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

THIRD CIRCUIT

Eastern District of Pennsylvania

1. Authorized one additional full-time magistrate judge position at Philadelphia; and

2. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

FOURTH CIRCUIT

Eastern District of North Carolina

1. Increased the salary of the part-time magistrate judge position at Greenville from Level 2 ($61,071 per annum) to Level 1 ($67,178 per annum); and

2. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

Eastern District of Virginia

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Western District of Virginia

Authorized a part-time magistrate judge position at Harrisonburg at Level 4 ($36,642 per annum).

FIFTH CIRCUIT

Western District of Louisiana

1. Converted the part-time magistrate judge position at Monroe to full-time status;

2. Redesignated as Alexandria the full-time magistrate judge position previously designated as Alexandria or Monroe; and

3. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

Southern District of Texas

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

SIXTH CIRCUIT

Western District of Kentucky

Authorized the two full-time magistrate judge positions at Louisville to serve in the adjoining Southern District of Indiana.

SEVENTH CIRCUIT

Southern District of Indiana

Authorized the part-time magistrate judge position at New Albany to serve in the adjoining Western District of Kentucky.

Northern District of Illinois

1. Authorized one additional full-time magistrate judge position at Chicago; and

2. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

EIGHTH CIRCUIT

District of Minnesota

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

NINTH CIRCUIT

District of Hawaii

1. Discontinued the part-time magistrate judge position at Johnston Island; and

2. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

District of Montana

1. Increased the salary of the part-time magistrate judge position at Wolf Point from Level 7 ($6,105 per annum) to Level 6 ($12,213 per annum); and

2. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

District of Nevada

1. Authorized one additional full-time magistrate judge position at Las Vegas; and

2. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

TENTH CIRCUIT

Northern District of Oklahoma

Made no change in the number, location, or arrangements of the magistrate judge positions in the district.

ELEVENTH CIRCUIT

Southern District of Alabama

Made no change in the number, location, or arrangements of the magistrate judge positions in the district.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that it opposes elimination of the statutory authority of magistrate judges to vote on the selection of chief pretrial services officers, disagreeing with the Criminal Law Committee's recommendation to the Judicial Resources Committee that legislation be sought to amend 18 U.S.C. § 3152(c) to make the selection process for chief pretrial services officers the same as the selection process for chief probation officers under 18 U.S.C. § 3602(c). The Judicial Resources Committee will consider both committees' views at its June 2004 meeting. The Magistrate Judges Committee also agreed to include in all future survey reports that analyze requests for new magistrate judge positions information on the space implications of any new positions, and, if available, the related costs of such requests.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders reported that, in the absence of any petition before it for review of judicial council action under the Judicial Conduct and Disability Act, it has continued to monitor congressional activity in the area of judicial conduct and disability.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it approved for publication proposed amendments to Rules 5005 (Filing and Transmittal of Papers) and 9036 (Notice by Electronic Transmission) of the Federal Rules of Bankruptcy Procedure. The Committee also approved for later publication proposed style amendments to Civil Rules 16-37 and 45. Publication of these rules as well as proposed style amendments to Civil Rules

1-15 approved in September 2003 (JCUS-SEP 03, p. 37) have been deferred until all the civil rules have been revised, which is expected to occur early in 2005. The Advisory Committees on Appellate, Bankruptcy, Civil, and Criminal Rules are reviewing comments from the public submitted on amendments proposed in August 2003 to their respective sets of rules.

COMMITTEE ON SECURITY AND FACILITIES

SPACE RENTAL COSTS

In order to control rental costs, the Conference adopted a recommendation of the Committee on Security and Facilities to impose for one year a moratorium on all space requests of less than $2.29 million in construction costs, except requests for courtrooms, chambers, lease renewals, official parking, and recovery from natural disasters or terrorist attacks. The Conference authorized the Director of the Administrative Office to make limited exceptions in consultation with the circuit representative to the Security and Facilities Committee and in coordination with the circuit judicial council.

U. S. COURTS DESIGN GUIDE

Renovations and Alterations Manual. Noting the difficulty and costliness of applying *U.S. Courts Design Guide* space standards to the structure, circulation patterns, and systems of older, existing buildings, and after studying the issue, the Committee began development of a renovations and alterations supplement to the *Guide*. A draft chapter on courtrooms was completed and endorsed by the Committee. In light of the usefulness of this chapter for courts with renovation and alteration projects, the Committee recommended that the Judicial Conference approve Chapter 4, Courtrooms, for publication and distribution before completion of the entire *U.S. Courts Renovation and Alteration Project Manual.* The Conference adopted the Committee's recommendation.

Access Floors for Courthouses. "Raised" or "access" floors are terms used to describe flooring that is raised to a height that permits easy routing of audio, video, telecommunications, videocommunications, data security, and power cables under the floor, and allows for rerouting of wiring without costly procedures. Access flooring has been authorized in the *U.S. Courts Design*

Guide since 1997, but most new courthouse projects still do not have access flooring throughout the building. Since requiring access flooring throughout the courthouse would greatly reduce the costs and time involved in altering space in the future, the Committee recommended that the Conference approve amendments to the *Guide* that would:

a. Describe the purpose and importance of access flooring throughout the courthouse, and its functional and long-term benefits; and

b. Require access flooring at least four inches in height throughout the courthouse except in mechanical rooms, electric and communication closets, toilets, and other utility spaces.

The Conference adopted the Committee's recommendations.

Interagency Security Committee Guidelines. The *U.S. Courts Design Guide*, Chapter 14: Courthouse Security, currently requires that all courthouse security systems and equipment be consistent with GSA's *Security Criteria Manual*. However, security design and construction criteria are now published by the Interagency Security Committee[4] in a document entitled *Security Design Criteria*. To reflect this change, the Committee recommended, and the Conference agreed, that Chapter 14: Courthouse Security, of the *Design Guide* be amended to:

a. Strike the references on pages 14-1, 14-2, and 14-4 to GSA's *Security Criteria Manual* (Class C Buildings), and replace them with references to the Interagency Security Committee's *Security Design Criteria*; and

b. Include a statement in paragraph four, page 14-2, that all courthouses should be designed and constructed with the "medium" level of security provided in the Interagency Security Committee's *Security Design Criteria*.

[4]The Interagency Security Committee was created to provide a permanent body to address government-wide security for federal facilities. Federal executive agencies, including the U.S. Marshals Service, participate, and the Administrative Office is an associate member without voting rights.

COMMITTEE ACTIVITIES

The Committee on Security and Facilities reported that it discussed the status of two U.S. Marshals Service studies required by the FY 2003 Omnibus Appropriations Act, Public Law No. 108-7, a nationwide courthouse security survey and a management study of the nationwide court security program. The Committee also discussed court security officer medical standards issues that have prompted 12 lawsuits filed in federal court. In addition, the Committee was briefed on the emerging "smart" identification card technology and its implications for the judiciary; the publication of manuals, studies, and a website on best practices in courthouse space; a new General Accounting Office study of courthouse projects; the building management delegation program; a tenant alterations criteria study; and the judiciary's emergency preparedness program.

FUNDING

All of the foregoing recommendations that require the expenditure of funds for implementation were approved by the Judicial Conference subject to the availability of funds and to whatever priorities the Conference might establish for the use of available resources.

Chief Justice of the United States
Presiding

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

September 21, 2004

The Judicial Conference of the United States convened in Washington, D.C., on September 21, 2004, 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 Michael Boudin
Chief Judge Hector M. Laffitte,
District of Puerto Rico

Second Circuit:

Chief Judge John M. Walker, Jr.
Chief Judge Frederick J. Scullin, Jr.,
Northern District of New York

Third Circuit:

Chief Judge Anthony J. Scirica
Chief Judge Thomas I. Vanaskie,
Middle District of Pennsylvania

Fourth Circuit:

Chief Judge William W. Wilkins
Judge David C. Norton,
District of South Carolina

Fifth Circuit:

Chief Judge Carolyn Dineen King
Judge Martin L. C. Feldman,
Eastern District of Louisiana

Sixth Circuit:

Chief Judge Danny J. Boggs
Chief Judge Lawrence P. Zatkoff,
Eastern District of Michigan

Seventh Circuit:

Chief Judge Joel M. Flaum
Judge J. P. Stadtmueller,
Eastern District of Wisconsin

Eighth Circuit:

Chief Judge James B. Loken
Chief Judge James M. Rosenbaum,
District of Minnesota

Ninth Circuit:

Chief Judge Mary M. Schroeder
Chief Judge David Alan Ezra,
District of Hawaii

Tenth Circuit:

Chief Judge Deanell R. Tacha
Judge David L. Russell,
Western District of Oklahoma

Eleventh Circuit:

Chief Judge J. L. Edmondson
Judge J. Owen Forrester,
Northern District of Georgia

District of Columbia Circuit:

Chief Judge Douglas H. Ginsburg
Chief Judge Thomas F. Hogan,
District of Columbia

Federal Circuit:

Chief Judge Haldane Robert Mayer

Court of International Trade:

Chief Judge Jane A. Restani

The following Judicial Conference committee chairs or designees attended the Conference session: Circuit Judges Marjorie O. Rendell and Jane R. Roth and District Judges W. Royal Furgeson, Jr., Nina Gershon, John G. Heyburn II, Robert B. Kugler, Sim Lake, David F. Levi, John W. Lungstrum, James Robertson, Lee H. Rosenthal, Patti B. Saris, and Frederick P. Stamp, Jr. Bankruptcy Judge A. Thomas Small and Magistrate Judge John M. Roper, Sr. were also in attendance as observers. James A. Higgins of the Sixth Circuit represented the circuit executives.

Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director for Management and Operations; William R. Burchill, Jr., Associate Director and General Counsel; Karen K. Siegel, Assistant Director, Judicial Conference Executive Secretariat; Michael W. Blommer, Assistant Director, Legislative Affairs; David Sellers, Assistant Director, Public Affairs; and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat. Judge Barbara Jacobs Rothstein and Russell Wheeler, Director and Deputy Director of the Federal Judicial Center, also attended the session of the Conference, as did Sally Rider, Administrative Assistant to the Chief Justice, and the 2004-2005 Judicial Fellows.

Senators Orrin G. Hatch, Patrick J. Leahy, Jeff Sessions and Ted Stevens and Representative John Conyers, Jr. spoke on matters pending in Congress of interest to the Judicial Conference. Attorney General John Ashcroft addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice.

REPORTS

Mr. Mecham reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office (AO). Judge

Rothstein spoke to the Conference about Federal Judicial Center (FJC) programs, and Judge Ricardo H. Hinojosa, Chair of the United States Sentencing Commission, reported on Sentencing Commission activities. Judge Heyburn, Chair of the Committee on the Budget, briefed the members on judiciary appropriations, and Judge Carolyn Dineen King, Chair of the Executive Committee, reported on that Committee's initiative to contain costs in the judiciary.

EXECUTIVE COMMITTEE

RESOLUTIONS

The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution in recognition of the substantial contributions made by Judicial Conference committee chairs who will complete their terms of service in 2004:

> The Judicial Conference of the United States recognizes with appreciation, respect, and admiration the following judicial officers:
>
> **HONORABLE WILLIAM L. OSTEEN, SR.**
> Committee on Codes of Conduct
>
> **HONORABLE FREDERICK P. STAMP, JR.**
> Committee on Federal-State Jurisdiction
>
> **HONORABLE DENNIS G. JACOBS**
> Committee on Judicial Resources
>
> **HONORABLE WILLIAM J. BAUER**
> Committee to Review Circuit Council Conduct and Disability Orders
>
> **HONORABLE A. THOMAS SMALL**
> Advisory Committee on Bankruptcy Rules
>
> **HONORABLE EDWARD E. CARNES**
> Advisory Committee on Criminal Rules
>
> Appointed as committee chairs by Chief Justice William H. Rehnquist, these outstanding jurists have played a

vital role in the administration of the federal court system. These judges served with distinction as leaders of their Judicial Conference committees while, at the same time, continuing to perform their duties as judges in their own courts. They have set a standard of skilled leadership and earned our deep respect and sincere gratitude for their innumerable contributions. We acknowledge with appreciation their commitment and dedicated service to the Judicial Conference and to the entire federal judiciary.

BUDGET MATTERS

Fiscal Year 2004 Financial Plans. In March 2004, the Chief Justice charged the Executive Committee with developing an integrated strategy for controlling costs in fiscal year (FY) 2005 and beyond (JCUS-MAR 04, p. 6). As part of this effort, the Committee asked the program committees to submit specific cost-containment suggestions both for the short and long terms. In early June 2004, the Executive Committee considered "quick-hitting" suggestions from the program committees that could be implemented immediately to help alleviate the FY 2005 budget situation. Based on an aggressive review of fiscal year 2004 requirements, the program committees identified $29.2 million that could be carried forward into the FY 2005 Salaries and Expenses account, and the Administrative Office identified $23.6 from centrally managed accounts that could similarly be carried forward. The Defender Services, Court Security, and Fees of Jurors accounts were also reviewed and revisions proposed. The Executive Committee endorsed the program-committee and AO-recommended adjustments to the fiscal year 2004 financial plans. The Committee determined that other quick-hitting items identified by program committee chairs would be considered by the Judicial Conference in September 2004 together with longer-term suggestions as part of one package.

Fiscal Year 2005 Financial Plans. Advised of the strong possibility that the judiciary would be operating under a continuing resolution for at least some months into FY 2005, which would likely hold judiciary appropriations to a "hard freeze" at fiscal year 2004 levels, the Executive Committee, in late July 2004, considered and approved preliminary FY 2005 financial plans for the four major judiciary accounts (Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners) at a hard-freeze level. These plans incorporated a number of recommendations from Judicial Conference program committees for reducing costs. For the Salaries and Expenses account, the Executive Committee also approved an alternate

preliminary financial plan based on a four percent funding increase over the fiscal year 2004 funded level. The Committee agreed that the hard-freeze plan and the four percent plan should be used to form the high and low guideposts within which the Administrative Office would develop shadow allotments for the courts. For the Defender Services, Court Security, and Fees of Jurors and Commissioners accounts, the Executive Committee identified items that could be funded in the event of increases above the hard-freeze levels.

Cost Containment for Fiscal Year 2005 and Beyond. In response to the Executive Committee's request for assistance in the development of an integrated strategy for controlling costs for fiscal year 2005 and beyond, ten Judicial Conference program committees undertook a comprehensive review of the judiciary policies under their purviews to identify ways to contain costs in their respective program areas. Using the program committees' ideas (as well as those of the Committee on the Budget), the Executive Committee developed a cost-containment strategy for the judiciary, which was incorporated into a report entitled, "Cost-Containment Strategy for the Federal Judiciary: 2005 and Beyond."

The cost-containment strategy contains the following six broad avenues in which specific initiatives would be pursued and implemented:

- Space and Facilities Cost Control
  Objective: Impose tighter restraints on future space and facilities costs.

- Workforce Efficiency
  Objective: Trim future staffing needs through re-engineering work processes and reorganizing functions to increase efficiency, and by employing different staffing techniques.

- Compensation Review
  Objective: Explore fair and reasonable opportunities to limit future compensation costs.

- Effective Use of Technology
  Objective: Invest wisely in technologies to enhance productivity and service, while controlling operating costs by revamping the service-delivery model for national information-technology systems.

- Defender Services, Court Security, Law Enforcement, and Other Program Changes
  Objective: Study and implement cost-effective modifications to programs.

- Fee Adjustments
  Objective: Ensure that fees are examined regularly and adjusted as necessary to reflect economic changes.

The overall cost-containment strategy described in the report forms the roadmap for discrete action and coordinated efforts related to achieving cost-containment objectives. On recommendation of the Executive Committee, the Conference approved the report.[1] The Executive Committee will ensure that the components of the strategy that remain to be developed are both developed and implemented and will continue to monitor, coordinate, and promote progress on all cost-containment efforts.

MISCELLANEOUS ACTIONS

The Executive Committee—

- Approved a request of the Committees on Judicial Resources and Court Administration and Case Management to extend the duration of a pilot project on electronic access to transcripts (*see* JCUS-MAR 04, pp. 10-11) and to defer until September 2005 the date by which those committees would report back to the Conference on the pilot;

- Approved a Judicial Resources Committee recommendation to extend the deadline for participation in the voluntary separation incentive ("buyout") program previously approved by the Conference (JCUS-SEP 03, pp. 27-28) through January 31, 2005, with the understanding that the program would be funded with decentralized funds;

[1]The report includes several items that were presented separately to the Judicial Conference at this session by the specific committees recommending their approval. Those items appear in these proceedings under their respective committee headings. (*See infra*, "Fees," p. 11-12; "Sharing Administrative Services," pp. 12-13; "Lawbooks," p. 13; "Program Changes," pp. 14-15; "Federal Defender Organization Space Requests," pp. 15-16; "Travel Regulations for United States Justices and Judges," pp. 19-20); "Voluntary Separation Incentive Payment Program," pp. 21-22; "Promotion Policies," pp. 22-23; "Magistrate Judge Position Vacancies," p. 26; "Magistrate Judge Recall Regulations," pp. 26-27; "Two-Year Moratorium on Courthouse Construction Projects," pp. 34-35; "Limits on Space Growth," pp. 35-36; and "Tenant Alterations Criteria," p. 36.)

- Agreed, on recommendation of the Judicial Resources Committee, to expand the judiciary's telecommuting policy to include employees in federal public defender organizations, and endorsed the expeditious implementation of telework within the judiciary;

- At the suggestion of the Judicial Branch Committee, and in light of the budget situation, agreed to roll back the allowable alternative subsistence amount for judges' travel reimbursement to the 2003 level; and

- Approved transmittal to Congress of a report on issues related to juror utilization in the federal district courts that was prepared in response to a congressional directive and was due in Congress by July 21, 2004.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it discussed extensively the judiciary's unprecedented funding crisis in fiscal year 2005, the potential for long-term continuing budget shortfalls, and the steps being taken by the Administrative Office to support the Executive Committee's cost-containment initiative. The Committee also reviewed spending restrictions implemented at the Administrative Office in response to the constrained FY 2004 budget and in anticipation of a possible hard freeze in fiscal year 2005. The Committee noted the importance of various stewardship initiatives, including the recently issued *Internal Controls Handbook for the Federal Courts*, which is intended to assist court managers in reviewing and developing internal control procedures consistent with applicable policies and regulations. The Administrative Office was asked to report back in one year on whether these initiatives have resulted in better administrative management in the courts as evidenced by trends in audit findings.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

BANKRUPTCY JUDGESHIPS

In accordance with 28 U.S.C. § 152(b)(3), the Judicial Conference conducts a comprehensive review of all judicial districts every other year to

assess the continuing need for authorized bankruptcy judgeships. By December 31 of each even-numbered year, the Conference reports its recommendations to Congress for the elimination of any authorized bankruptcy judgeship position that can be eliminated when a vacancy exists by reason of resignation, retirement, removal or death. On recommendation of the Bankruptcy Committee, which relied on the results of the 2004 continuing need survey, the Judicial Conference agreed to take the following actions:

a. Recommend to Congress that no bankruptcy judgeship be statutorily eliminated; and

b. Advise the Eighth and Ninth Circuit Judicial Councils to consider not filling vacancies in the Districts of South Dakota and Alaska, respectively, that currently exist or may occur by reason of resignation, retirement, removal, or death, until there is a demonstrated need to do so.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Bankruptcy System reported that it approved fiscal year 2006 funding recommendations for the areas within its oversight, and, along with other Conference committees, explored various cost-containment ideas as part of the Executive Committee's initiative to develop an integrated strategy for controlling judiciary costs in FY 2005 and beyond. It also agreed to advise the Judicial Branch Committee that it endorsed the extension to bankruptcy judges as well as magistrate judges of the "FEGLI fix" provided to Article III judges that effectively capped personal life insurance costs after age 65 (JCUS-SEP 00, pp. 54-55) and the Judicial Resources Committee that if the staffing formula for bankruptcy clerks' offices were to be adopted, the Committee should consider recommending a phase-in period. In addition the Bankruptcy Committee endorsed a resolution encouraging bankruptcy courts to support and participate in consumer education programs; agreed that certain additional data elements should be included in the Administrative Office's statistical reporting system; and considered and received reports on a wide array of topics.

COMMITTEE ON THE BUDGET

FISCAL YEAR 2006 BUDGET REQUEST

In light of an extremely austere congressional budget environment, the Budget Committee recommended a fiscal year 2006 budget request lower than the funding levels proposed by the program committees. The request incorporates over $106 million in savings realized from substantial cost-containment efforts undertaken by the program committees, and anticipates $19 million in additional revenues from new and increased fees recommended by the Court Administration and Case Management Committee and endorsed by the Conference at this session (*see infra,* "Fees," pp. 11-12). The Judicial Conference approved the budget request subject to amendments necessary as a result of new legislation, actions of the Judicial Conference, or other reasons the Executive Committee considers necessary and appropriate.

CONTINUING RESOLUTION EXEMPTION

Recognizing the judiciary's need for certainty and sufficient and timely funding to avoid compromising its core mission of administering justice, the Judicial Conference adopted a resolution, recommended by the Budget Committee, strongly urging Congress and the President to exempt the judicial branch from any fiscal year 2005 continuing resolution and to provide, instead, full-year funding at least at the current services level contained in the House-passed version of the judiciary's 2005 appropriations bill (H.R. 4754, 108th Congress). So that the resolution could be transmitted to Congress in a timely manner, the Conference approved it by mail ballot concluded on August 19, 2004.

COMMITTEE ACTIVITIES

The Committee on the Budget reported that in addition to its work on the fiscal year 2006 budget request, it discussed and supported the cost-containment efforts of the Executive Committee and the program committees. The Committee also endorsed proposed new and increased judiciary fees to be considered by the Conference at this session (*see infra*, "Fees," pp. 11-12) and incorporated several cost-containment initiatives into the fiscal year 2006 budget request (*see supra,* "Fiscal Year 2006 Budget Request," p. 10).

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in March 2004, it had received 35 new written inquiries and issued 29 written advisory responses. During this period, the average response time for these requests was 16 days. The Chair received and responded to 73 informal inquiries. In addition, individual committee members responded to 135 informal inquiries from their colleagues.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

FEES[2]

District Court Filing Fee. The district court filing fee, set forth in 28 U.S.C. § 1914(a), is currently set at $150 and has not been adjusted for inflation or otherwise raised since 1997. On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference agreed to seek an amendment to 28 U.S.C. § 1914(a) to increase the filing fee from $150 to $250 and an accompanying amendment to 28 U.S.C. § 1931(a) to increase from $90 to $190, the amount of the filing fee that the judiciary is authorized to retain in the judiciary's fee account. Contingent upon enactment of such legislation, in order to ensure that the fee increase has no impact on the fee for filing a motion to lift the automatic stay imposed under Item 20 of the Bankruptcy Court Miscellaneous Fee Schedule, the Conference also adopted a recommendation of the Committee to amend Item 20 to delete the reference to the amount required for filing a civil action and insert language establishing a $150 fee for a motion to lift the automatic stay.[3]

[2]The fee adjustments described in this section were included in the judiciary's comprehensive cost-containment strategy adopted by the Conference at this session (*see supra*, "Budget Matters," pp. 5-7).

[3]The amendments were subsequently incorporated in the Consolidated Appropriations Act of 2005, Public Law No. 108-447, enacted on December 8, 2004. The increased fee becomes effective 60 days after the date of enactment.

Appellate Attorney Admission Fee. The Conference adopted a recommendation of the Committee to establish an appellate attorney admission fee of $150 to be incorporated into the Court of Appeals Miscellaneous Fee Schedule. This fee is in addition to any attorney admission fee charged and retained locally pursuant to Federal Rule of Appellate Procedure 46(a)(3). The proceeds from the new fee will be deposited into the judiciary's fee account.

Central Violations Bureau (CVB) Processing Fee. The Central Violations Bureau processes the payments of approximately 400,000 petty offense citations every year that are issued by various government agencies for violations on federal property. No fee has been charged for the considerable work the CVB does in processing these cases. On recommendation of the Committee, the Judicial Conference agreed to seek legislation establishing a processing fee of $25 for cases processed through the CVB and allowing the proceeds to be retained by the judiciary.[4]

Public Access to Court Electronic Records (PACER) Internet Fee. Congress has specified that electronic public access (EPA) fees be used to enhance electronic public access, which is currently available through the PACER program. More recently, in the congressional conference report accompanying the judiciary's FY 2004 appropriations act, Congress expanded the permitted uses of EPA funds to include case management/electronic case files (CM/ECF) system operational costs. In order to provide sufficient revenue to fully fund currently identified case management/electronic case files system costs, the Conference adopted a recommendation of the Committee to amend Item 1 of the Electronic Public Access Fee Schedule to increase the fee for public users obtaining information through a federal judiciary Internet site from seven to eight cents per page.

SHARING ADMINISTRATIVE SERVICES

An independent study is currently being conducted on ways to deliver administrative services to the courts in a more efficient and cost-effective manner. In order to help contain costs in the short-term while the study is being completed, the Committee on Court Administration and Case Management recommended that the Judicial Conference strongly urge all

[4]The Consolidated Appropriations Act of 2005 also provided the Judicial Conference with the authority to prescribe and retain a fee for the processing of violations through the CVB.

district and bankruptcy courts to work together to examine and assess the financial benefits of sharing support units for information technology, procurement, personnel, budget and other general administrative functions. To ensure that this exercise is initiated by the courts, it further recommended that the Conference request that the chief judges of the district and bankruptcy courts, as well as the relevant court unit executives, meet and discuss sharing of services in the areas listed above, and that each district file a report with the Executive Committee, with copies to its chief circuit judge and to the chair of the Court Administration and Case Management Committee, outlining the efforts that the district has undertaken to examine sharing administrative services. The Conference adopted the Committee's recommendations, which are included in the judiciary's comprehensive cost-containment strategy adopted at this session (*see supra,* "Budget Matters," pp. 5-7).

LAWBOOKS

The *Guide to Judiciary Policies and Procedures,* Volume 1, Chapter 5, Part H, "Lawbooks Available to Judges," provides lists of lawbooks that newly appointed judges may request for a chambers collection. These lists had not been updated in many years. On recommendation of the Committee on Court Administration and Case Management, the Conference approved revisions to these lists that would reduce costs and avoid duplication. This item is contained in the judiciary's comprehensive cost-containment strategy adopted at this session (*see supra,* "Budget Matters," pp. 5-7).

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it considered and endorsed proposed revisions to the Model Grand Jury Charge approved by the Judicial Conference in 1986 and provided these revisions to the Criminal Law and Defender Services Committees for their review. Members also discussed the work of the Committee's subcommittee on the implementation of the policy on electronic access to official transcripts, which is exploring options to address loss of income to court reporters attributable to the policy. The Committee also discussed its ongoing initiative to increase access to federal court documents for persons with limited English proficiency, including the establishment of a J-Net repository of translated information and documents; requested the Rules Committee to consider amendments to the civil and bankruptcy rules that would permit courts to require mandatory electronic case filing; and adopted a new model local rule for electronic filing regarding the use of hyperlinks in

CM/ECF documents, as well as amendments to two existing rules necessitated by technical improvements to the CM/ECF software.

COMMITTEE ON CRIMINAL LAW

CONGRESSIONAL ADVISORY GROUP ON SENTENCING

The judiciary was asked by the Chairman of the House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies to provide input on qualifications of candidates for a temporary advisory group on sentencing issues and mandatory minimum penalties. On recommendation of the Committee on Criminal Law, the Conference agreed to suggest that current and former federal and state prosecutors, members of the defense bar, scholars, probation officers, state sentencing guideline authorities, federal and state judges, and other practitioners with significant current experience and expertise in relevant areas of the law and sentencing, along with a reporter, be considered as candidates for the group.

PRETRIAL SERVICES SUPERVISION MONOGRAPH

On recommendation of the Committee on Criminal Law, the Judicial Conference approved the distribution of revisions to the *Supervision of Federal Defendants*, Monograph 111. The revisions clarify certain policies in response to questions raised by pretrial services officers, correct errors, and make other technical changes.

PROGRAM CHANGES

Recognizing the seriousness of the judiciary's financial situation, the Committee recommended that the Judicial Conference endorse revisions to certain practices with respect to pretrial services investigations, pretrial services supervision, presentence investigation reports, and post-conviction supervision cases to reduce specific categories of work currently being performed but not absolutely critical to public safety and the mission of probation and pretrial services. The intent was to allow limited resources to be spent on more critical, mission-driven functions so that the probation and pretrial services system can continue to provide high-quality pretrial services and presentence investigation reports to the courts in appropriate cases and to

supervise those defendants and offenders who raise serious public safety concerns. The Conference adopted the Committee's recommendations, which were also included in the comprehensive cost-containment strategy for the judiciary adopted by the Judicial Conference at this session (*see supra*, "Budget Matters," pp. 5-7). The Committee will present to the Conference for approval at a later date, proposed revisions to the various monographs to implement the cost-containment program changes.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that it recommended to the Committee on Judicial Resources that the proposed staffing formulae for probation and pretrial services offices be adopted by the Judicial Conference. The Committee also endorsed the Judicial Resources Committee's ongoing efforts to review the methodology currently used in the staffing formulae to identify, assess, and measure cost-effective procedures that may lead to higher levels of efficiency and quality in the courts. In addition, the Committee was briefed on a joint AO/FJC study on substance abuse testing and treatment services and on an independent strategic assessment of the probation and pretrial services system. Noting that both studies reported a lack of adequate data to assess the programs, the Committee endorsed a strategic approach that (a) the probation and pretrial services system be organized, staffed, and funded in ways to promote mission-critical outcomes; and (b) the capacity be developed to empirically measure the results.

COMMITTEE ON DEFENDER SERVICES

FEDERAL DEFENDER ORGANIZATION SPACE REQUESTS

In March 2004, in order to control rental costs, the Judicial Conference imposed a one-year moratorium on all space requests of less than $2.29 million in construction costs funded from the Salaries and Expenses account, with certain specified exceptions (JCUS-MAR 04, p. 28). The Executive Committee subsequently asked the Defender Services Committee to consider a similar moratorium for federal defender organizations. At this session, on recommendation of the Committee on Defender Services, the Judicial Conference imposed a moratorium on all federal defender organization space requests of less than $2.29 million ($2.36 million in FY 2005) in construction

costs for one year, except requests for lease renewals, official parking, and space necessary for recovery from natural disasters or terrorist attacks. The Conference authorized the Director of the Administrative Office to make limited exceptions in consultation with the Defender Services Committee chair and the Committee member who is the liaison to the federal defender's circuit. For federal public defender organizations, the circuit judicial council will also be consulted. This item is included in the federal judiciary's comprehensive cost-containment strategy that was also approved by the Conference at this session (*see supra*, "Budget Matters," pp. 5-7).

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it reviewed and prioritized numerous cost-containment initiatives identified by its budget subcommittee, as well as those suggested by the Executive Committee. The Committee supported seeking an expert services contract with the Vera Institute of Justice to conduct a study of Criminal Justice Act plans and practices at the appeals court level. Under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), the Committee approved FY 2005 federal defender organization budgets and grants totaling $395,392,900, as well as supplemental FY 2004 funding for four organizations totaling $1,877,000. The Committee approved FY 2005 plans for federal defender and panel attorney training, but, in view of the austere budget climate, decided to reduce training-related expenditures by ten percent as a temporary measure.

COMMITTEE ON FEDERAL-STATE JURISDICTION

CHILD CUSTODY LEGISLATION

Three bills pending in the 108th Congress (S. 2202, H.R. 3941, and H.R. 4347) would, among other things, add a provision to the Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A, to provide a cause of action in the U.S. district courts to resolve conflicting child custody orders between courts of different states. On two prior occasions, the Judicial Conference has opposed similar legislation on the grounds that it would constitute "an unnecessary expansion of federal jurisdiction into areas in which federal courts have no expertise and could result in unnecessary federal-state conflicts" (JCUS-SEP 89, p. 64; JCUS-MAR 96, pp. 20-21). In view of the length of time since the Conference last addressed this issue and the renewed

congressional interest in creating federal jurisdiction in this area, the Committee recommended that the Conference reaffirm its opposition to the creation of a federal cause of action for the intended purpose of resolving conflicting child custody orders between two or more states. The Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it is assessing the Social Security Administration's proposed approach to revise the disability claims process and was briefed on it by Jo Anne B. Barnhart, Commissioner of Social Security, and Martin H. Gerry, Deputy Commissioner of the Office of Disability and Income Security Programs. The Committee also reviewed the "Fairness in Asbestos Injury Resolution Act of 2004," S. 2290 (108th Congress), but concluded that regarding those provisions within its jurisdiction, no action was necessary at this time. In addition, following discussion, the Committee agreed not to pursue a proposal that had been developed within its jurisdictional improvements project to authorize district courts, in their discretion, to dismiss diversity jurisdiction cases when their value drops below the threshold amount of $75,000 during the course of proceedings. Instead, it determined to pursue a proposal to bring uniformity to the treatment of stipulations as to the amount in controversy when removal is sought.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that as of July 10, 2004, the Committee had received 3,598 financial disclosure reports and certifications for the calendar year 2003, including 1,224 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 328 from bankruptcy judges; 498 from magistrate judges; and 1,548 from judicial employees. The Committee also reported that during the last six months, it has focused on further refining the procedures for processing requests for copies of financial disclosure reports required to be released to the public under section 105 of the Ethics in Government Act of 1978, as amended. The goal is to identify ways of making the release and

redaction process more efficient while minimizing the security risks for the judiciary's filers.

COMMITTEE ON INFORMATION TECHNOLOGY

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it discussed a number of cost-containment measures and endorsed a vigorous program to identify and implement more cost-effective service delivery models for national information technology products. The Committee reaffirmed its support of the ongoing study of administrative services and encouraged courts to look aggressively at opportunities to share information technology resources where feasible. The Committee also considered various training opportunities for judges so that they could take more effective advantage of technology in their day-to-day work. In addition, the Committee examined security measures associated with the judiciary's data communication network.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that it reviewed the guidelines and operating procedures for intercircuit assignments of Article III judges. It recommended, and the Chief Justice approved, a change to the guideline related to the "lender/borrow rule" to give more flexibility to courts requesting intercircuit assignments, and it proposed a new guideline related to long-term assignments. As part of its cost-containment efforts, the Committee recommended that the AO collect more complete data on intercircuit assignments in order to be able to evaluate the costs and benefits of the program and asked the Committee on Judicial Resources to consider collecting data on intracircuit assignments in order to ensure that data are collected on all visiting judge assignments. The Committee also reported that during the period from January 1, 2004, to June 30, 2004, a total of 56 intercircuit assignments, undertaken by 44 Article III judges, were processed and recommended by the Committee on Intercircuit Assignments and approved by the Chief Justice.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its involvement in rule-of-law and judicial reform activities throughout the world, highlighting those in Croatia, the Dominican Republic, Jordan, and the Russian Federation. The Committee is working with the American Bar Association on a U.S. Department of State-funded project on judicial integrity, targeting Albania, Indonesia, and Kenya. The Committee also reported on its ongoing assistance to the National Center for State Courts and the Supreme Court of Korea in arranging judicial observations in federal courts for Korean judges attending U.S. law schools as visiting scholars.

COMMITTEE ON THE JUDICIAL BRANCH

TRAVEL REGULATIONS FOR UNITED STATES JUSTICES AND JUDGES

Death While in Travel Status. Section 5742 of title 5, United States Code, authorizes the federal government to pay for the preparation and transportation of the remains of federal employees who die while in business travel status (including judges), as well as other expenses associated with the employee's death. The Administrator of General Services has promulgated regulations for the executive branch that specify those expenses that may be paid or reimbursed (41 C.F.R. chapter 303). On recommendation of the Committee on the Judicial Branch, the Judicial Conference approved an amendment to the Travel Regulations for United States Justices and Judges to incorporate by reference 41 C.F.R. chapter 303 and to prescribe a procedure for processing claims related to the death of a judge while in travel status.

Authorized Judicial Meetings. Judges who travel to "authorized judicial meetings" need no prior authorization in order to receive reimbursement (section B.1.b. of the Travel Regulations for United States Justices and Judges). On recommendation of the Committee, the Conference approved an amendment to section B.1.b. to provide expressly that meetings of bankruptcy appellate panels and bankruptcy courts and their committees are included within the definition of "authorized judicial meetings."

Automobile Rentals. On recommendation of the Committee, the Judicial Conference approved an amendment to section D.2.c.(1) of the judges' travel regulations to list expressly the factors that judges should consider in renting cars. Also on recommendation of the Committee, the Conference amended section D.2.c.(2) of the travel regulations to clarify that the cost of collision damage waiver or insurance is included in the cost of a government contract vehicle rental and is therefore not separately reimbursable. This proposal is included in the cost-containment strategy approved by the Conference at this session (*see supra*, "Budget Matters," pp. 5-7).

First-Class Accommodations. Section D.2.a.(1) of the judges' travel regulations encouraged judges who travel by common carrier to use less than first-class accommodations, except for reasons of security, health, physical disability, unavailability of less than first-class accommodations, or any other reason deemed necessary for the expeditious conduct of official business. In view of the current constrained fiscal environment, the Conference adopted a recommendation of the Committee to amend section D.2.a.(1) to eliminate the catch-all phrase "or any other reason deemed necessary for the expeditious conduct of official business." This item is contained in the cost-containment strategy adopted by the Conference at this session (*see supra*, "Budget Matters," pp. 5-7).

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it continues to consider ways to maintain and enhance the independence and dignity of the federal judicial office. The Committee devoted a considerable portion of its meeting to considering steps that may be taken to secure a more equitable level of judicial compensation. Still, the Committee is deeply aware of the challenges confronting the judiciary at this time. One of these is adequate funding, which has the strong potential to eclipse other legislative priorities.

COMMITTEE ON JUDICIAL RESOURCES

STAFFING FORMULAE

At the request of the Committee on Judicial Resources, the Administrative Office reviewed and proposed revisions to the staffing

formulae for the United States district and bankruptcy clerks' offices and for probation and pretrial services offices. Nationwide, these proposed new staffing formulae reflect all the work performed in these court support offices in the aggregate; however, due to varying managerial styles, operating environments and priorities, they may not reflect work performed in each office individually. Decentralized budgeting allows local managers to assign, reassign, and prioritize work requirements as necessary. On recommendation of the Committee on Judicial Resources, in order to provide the staffing needed to perform the federal judicial support requirements and functions of the district and bankruptcy clerks' offices and the probation and pretrial services offices, the Judicial Conference approved the proposed staffing formulae for these offices for implementation in fiscal year 2005, with the understanding that the Administrative Office will continue to study certain issues raised by its District Clerks Advisory Group and other issues as needed.

RELOCATION REGULATIONS

In September 2003, the Judicial Conference adopted new relocation regulations for court and federal public defender organization employees, which eliminated reimbursement to law clerks relocating outside the conterminous United States for transportation of their vehicles (JCUS-SEP 03, p. 28). Concerns were subsequently raised by judges in affected districts about their ability to recruit competitive, highly qualified candidates, due to the additional financial costs these individuals would now have to incur. Among other things, the judges noted the lack of adequate transportation services in their districts, the difficulty and expense of buying or renting a vehicle, and the limited affordable housing near their courthouses. On recommendation of the Committee, the Judicial Conference modified its relocation regulations to allow law clerks relocating to and returning from outside the conterminous United States to be reimbursed for transportation of their privately owned vehicles if a chief judge makes a determination that such reimbursement is "in the interest of the Government," and the circuit council concurs.

VOLUNTARY SEPARATION INCENTIVE PAYMENT PROGRAM

In September 2003, the Judicial Conference adopted a voluntary separation incentive (buyout) payment program for fiscal year 2004 (JCUS-SEP 03, pp. 27-28) as a management tool to accommodate reduced budgets,

achieve workforce reshaping, and encourage staff with obsolete skills to leave or retire. In April 2004, in response to a dire budget forecast for FY 2005, the Executive Committee, on behalf of the Conference, approved a request from the Judicial Resources Committee to extend the buyout program through January 31, 2005 (*see supra*, "Miscellaneous Actions," pp. 7-8). At this session, in order to allow the courts and federal public defender organizations maximum flexibility to deal with the difficult budget situation, the Committee recommended, and the Conference authorized, extension of the current buyout program for Court Personnel System employees, official court reporters, and federal public defender organization employees for the entire FY 2005, with the understanding that courts and federal public defender organizations should not assume that centralized funds will be available in fiscal year 2005. This recommendation was included in the federal judiciary's cost-containment strategy adopted by the Conference at this session (*see supra* "Budget Matters," pp. 5-7).

EMPLOYEE RECOGNITION PROGRAM

The Judicial Conference, on recommendation of the Committee on Judicial Resources, approved revisions to the judiciary's employee recognition program, *Guide to Judiciary Policies and Procedures*, Volume 1, Chapter 10, Subchapter 1451.2. The revisions address stewardship issues, define authorization requirements and award limits, and clarify policy and audit requirements.

PROMOTION POLICIES

Six Percent Promotion Rule. The Committee on Judicial Resources recommended that the Conference modify the current promotion rule for Court Personnel System employees that increases salaries by six percent. As modified, the policy would allow court units the flexibility to establish a local promotion policy that sets the increase for a fiscal year at a uniform, unit-wide rate of not less than three percent nor more than six percent. The Conference adopted the Committee's recommendation, which is also included in the Conference-approved cost-containment strategy (*see supra*, "Budget Matters," pp. 5-7).

Special Salary Rates. The judiciary has established special salary rates in geographical areas where salaries being paid for specific occupations by non-federal employers are so high that the salary gap between federal and

non-federal employment significantly impairs government recruitment and retention of well-qualified employees. Unlike locality pay rates, however, special rates of pay are considered basic rates of pay. Therefore, a promotion or reassignment from a job using special rate salary tables to one using locality pay tables provides a large salary windfall to the employee. On recommendation of the Committee, the Judicial Conference agreed to modify the compensation policy so that special salary rates are treated the same as locality pay for promotions and reassignments. This item is contained in the cost-containment strategy adopted by the Conference at this session (*see supra* "Budget Matters," pp. 5-7).

CHIEF CIRCUIT MEDIATORS

Noting the importance of chief circuit mediators to the efficient disposition of appellate cases, and the substantial legal responsibilities of their offices, the Committee recommended that the Conference raise the target grade for all chief circuit mediators from JSP-16 to JSP-17, to be implemented upon request from each circuit chief judge, subject to the availability of funds. The Conference adopted the Committee's recommendation.

TYPE II DEPUTIES

Courts have generally been permitted to have only one Type II deputy position per unit at a JSP-16 level unless the Conference finds unique characteristics justifying an additional Type II deputy based on individual justification provided by the court. The Committee was asked to consider criteria to allow large and complex district and bankruptcy courts to have second Type II deputy positions. On recommendation of the Committee, the Judicial Conference authorized any unit in a district or bankruptcy court with ten or more authorized judgeships to establish a second JSP-16 Type II deputy position upon notification to the Administrative Office, to be funded with the court's decentralized funds.

In addition, the Committee, citing extraordinary circumstances in the Middle District of Florida, recommended a second JSP-16 Type II chief deputy clerk position for the district clerk's office in the Middle District of Florida, using existing decentralized funding available to the court. The Judicial Conference approved the recommendation.

SECRETARY TO THE CHIEF JUDGE OF THE COURT OF INTERNATIONAL TRADE

All secretaries to federal judges have a target grade of JSP-11, except secretaries to chief circuit judges, who, if assigned exceptional circuit-wide duties, can be raised to a target grade of JSP-12, which becomes permanent after two years (JCUS-SEP 87, pp. 64-65; JCUS-SEP 98, p. 80). The chief judge of the Court of International Trade requested an increase in the target grade of her secretary from JSP-11 to JSP-12, citing the complexities of the position and the substantial similarity between the duties and responsibilities of her secretary and those of secretaries to circuit chief judges. On recommendation of the Committee, the Conference increased the target grade of the secretary to the chief judge of the Court of International Trade from JSP-11 to JSP-12.

COURT INTERPRETERS

Four additional Spanish/English official court interpreter positions were requested for FY 2006: two for the District of Arizona, one for the Northern District of Georgia, and one for the District of New Jersey. Based on established criteria, the Committee on Judicial Resources recommended, and the Judicial Conference approved, one additional court interpreter position for FY 2006 for the Northern District of Georgia, subject to the availability of funds.

SELECTION OF CHIEF PRETRIAL SERVICES OFFICERS

Pursuant to 18 U.S.C. § 3152(c), chief pretrial services officers are appointed by panels made up of the chief judge of the circuit, the chief judge of the district, and a magistrate judge of the district, or their designees. Expressing the view that this system is too cumbersome, particularly in circuits with several pretrial services offices, the Committee on Criminal Law requested that the Committee on Judicial Resources consider recommending that legislation be sought to conform the selection process for chief pretrial services officers to that for chief probation offices, who are appointed "by the [district] court" pursuant to 18 U.S.C. § 3602(c). After considering the views of the Committees on Criminal Law and the Administration of the Magistrate Judges System, the latter of which opposed eliminating the requirement that a magistrate judge participate in the selection process, the Judicial Resources

Committee recommended that the Judicial Conference seek legislation that would amend 18 U.S.C. § 3152(c) to make the selection process for chief pretrial services officers the same as that for chief probation officers, thereby eliminating the requirement for a chief circuit judge and a magistrate judge to participate in the selection. The Conference adopted the Committee's recommendation.

HUMAN RESOURCES MANAGEMENT INFORMATION SYSTEM

Noting that the current and anticipated constrained fiscal environment calls for a rapid deployment of technological solutions that will yield work and cost savings for the courts, the Committee recommended that the Judicial Conference support full funding for the planned Human Resources Management Information System technology-related efforts. The Conference approved the Committee's recommendation.

STREAMLINED TIMELY ACCESS TO STATISTICS

The Committee recommended that the Judicial Conference affirm its support for the new Streamlined Timely Access to Statistics (NewSTATS) system for gathering and reporting statistics. The NewSTATS system is a multi-year project consisting of two major components: 1) development of a single, integrated enterprise database to replace the Administrative Office's 13 existing stand-alone databases; and 2) development of a controlled customer-access web capability that would allow users in the courts, the Administrative Office, and the Federal Judicial Center access to reports in the database and the ability to conduct queries of the data from their desktops. The Conference approved the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that in response to a request from the Executive Committee, it provided a number of cost-containment measures for the Executive Committee's consideration in developing short- and long-term strategies for dealing with budget shortfalls anticipated in FY 2005 and the foreseeable future. In furtherance of its cost-containment efforts, the Committee on Judicial Resources asked the Administrative Office to prepare a project plan for a study of employee

compensation policies, and to report back to the Committee at its December 2004 meeting. The Committee also asked the Administrative Office to work with its appropriate advisory groups to develop and implement a process redesign approach to work measurement that will enhance the effectiveness and quality of court unit functions, while defining measurable procedures to be included in the staffing formulae. These initiatives are included in the comprehensive cost-containment strategy that the Conference adopted (*see supra*, "Budget Matters," pp. 5-7).

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

MAGISTRATE JUDGE POSITION VACANCIES

Before a vacancy in a magistrate judge position can be filled, the Director of the Administrative Office as well as the judicial council of the relevant circuit must recommend that the position be filled (JCUS-OCT 70, p. 72). In making such a determination, the Director seeks input from the circuit representative on the Magistrate Judges Committee. In the current budget climate, the Committee was of the view that further scrutiny is required. The Committee recommended, and the Judicial Conference resolved, that all magistrate judge position vacancies be subject to review by the full Magistrate Judges Committee unless the Committee chair decides, based on a recent survey of the relevant district, that the vacancy may be filled without full Committee involvement. This cost-containment measure is part of the comprehensive cost-containment strategy approved by the Judicial Conference at this session (*see supra*, "Budget Matters," pp. 5-7).

MAGISTRATE JUDGE RECALL REGULATIONS

Salaries and benefits of recalled judges' staffs comprise the most costly component of the magistrate judge recall program. To ensure a comprehensive review of the need for staff for recalled magistrate judges, on recommendation of the Committee, the Judicial Conference agreed to amend section 7 of the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Recall of United States Magistrate Judges (the ad hoc recall regulations) and the Regulations of the Judicial Conference of the United States Governing the Extended Service Recall of Retired United States Magistrate Judges (the extended service recall regulations) to read substantially as follows:

> Subject to the approval of the judicial council of the circuit, a recalled magistrate judge may be provided with secretarial, law clerk, and courtroom deputy clerk services on a part-time or full-time basis, up to the same extent that those services are provided to a full-time magistrate judge in active service in the district of recall. The judicial council shall certify, initially and annually, that the recalled judge will perform or is performing "substantial service" and that the staff approved by the council is appropriate for the recalled judge's workload. The judicial council also should consider whether existing staff of the court can provide support services.

The Conference-approved cost-containment strategy included this item (*see supra*, "Budget Matters," pp. 5-7).

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee on the Administration of the Magistrate Judges System and the recommendations of the Director of the Administrative Office, the district courts, and the judicial councils of the circuits, the Judicial Conference approved the following changes in the number, salaries, locations, and arrangements for full-time and part-time magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

THIRD CIRCUIT

District of Delaware

> Made no change in the number of positions, or the location or arrangements of the existing magistrate judge position in the district.

FOURTH CIRCUIT

Northern District of West Virginia

1. Increased the salary of the part-time magistrate judge position at Martinsburg from Level 3 ($48,856 per annum) to Level 1 ($67,178 per annum); and

2. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

Eastern District of North Carolina

Redesignated as Greenville the full-time magistrate judge position currently designated as Wilmington, and redesignated as Wilmington the part-time magistrate judge position currently designated as Greenville.

FIFTH CIRCUIT

Southern District of Mississippi

1. Authorized an additional full-time magistrate judge position at Hattiesburg or Gulfport;

2. Redesignated as Gulfport the full-time magistrate judge position currently designated as Biloxi or Gulfport;

3. Redesignated as Jackson or Gulfport the full-time magistrate judge position currently designated as Jackson or Biloxi or Gulfport;

4. Redesignated as Gulfport or Hattiesburg the full-time magistrate judge position currently designated as Gulfport or Biloxi or Hattiesburg; and

5. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

SIXTH CIRCUIT

Eastern District of Kentucky

1. Authorized the full-time magistrate judge position at Covington, Kentucky, to serve in the adjoining Southern District of Ohio and the two full-time magistrate judge positions at Cincinnati, Ohio, to serve in the adjoining Eastern District of Kentucky in accordance with 28 U.S.C. § 631(a); and

2. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

Southern District of Ohio

Authorized the full-time magistrate judge position at Covington, Kentucky, to serve in the adjoining Southern District of Ohio and the two full-time magistrate judge positions at Cincinnati, Ohio, to serve

in the adjoining Eastern District of Kentucky in accordance with 28 U.S.C. § 631(a).

Western District of Kentucky

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Northern District of Ohio

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

SEVENTH CIRCUIT

Central District of Illinois

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Northern District of Indiana

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Eastern District of Wisconsin

Increased the salary of the part-time magistrate judge position at Green Bay from Level 6 ($12,213 per annum) to Level 4 ($36,642 per annum).

EIGHTH CIRCUIT

Eastern District of Arkansas

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Southern District of Iowa

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

District of South Dakota

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

NINTH CIRCUIT

Central District of California

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

2. Authorized an additional full-time magistrate judge position at Riverside;

3. Discontinued the part-time magistrate judge position at Barstow upon the expiration of the incumbent's term on January 11, 2006 or upon the appointment of the new full-time magistrate judge at Riverside, whichever is later; and

4. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

TENTH CIRCUIT

District of Colorado

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

District of New Mexico

1. Authorized an additional full-time magistrate judge position at Las Cruces; and

2. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

District of Utah

1. Authorized an additional full-time magistrate judge position at Salt Lake City;

2. Discontinued the part-time magistrate judge positions at Monticello and Vernal upon the appointment of the new full-time magistrate judge at Salt Lake City; and

3. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

ACCELERATED FUNDING

On recommendation of the Committee, the Judicial Conference agreed to designate the new full-time magistrate judge position at Las Cruces, New Mexico, for accelerated funding in fiscal year 2005.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that it voted unanimously to recommend to the Judicial Branch Committee that it recommend that the Judicial Conference support pending legislation to extend the "FEGLI fix" to magistrate judges and bankruptcy judges. The Magistrate Judges Committee also considered updated diversity statistics from *The Judiciary Fair Employment Practices Annual Report* published for the period October 1, 2002 to September 30, 2003, and noted that magistrate judges were a more diverse population in 2003 than in 2002.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders approved a study to examine the operation of the existing procedures under the Judicial Conduct and Disability Act (28 U.S.C. § 351 *et seq*.), proposed by the Judicial Conduct and Disability Act Study Committee appointed by Chief Justice Rehnquist and chaired by Justice Stephen Breyer. The Committee communicated its approval to Justice Breyer by letter dated August 16, 2004. Pursuant to Rule 16(h) of the Illustrative Rules Governing Complaints of Judicial Misconduct and Disability (which has been adopted by most of the circuits), the Committee's approval permits the circuit councils to authorize access to confidential materials for purposes of this research project.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF APPELLATE PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Appellate Rules 4 (Appeal as of Right – When Taken), 26 (Computing and Extending Time), 27 (Motions), 28 (Briefs), 32 (Form of Briefs, Appendices, and Other Papers), 34 (Oral Argument), 35 (En Banc Determination), and 45 (Clerk's Duties) and proposed new Rule 28.1 (Cross-Appeals), together with Committee notes explaining their purpose and intent. The Judicial Conference approved the amendments and new rule and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 1007 (Lists, Schedules, and Statements; Time Limits), 3004 (Filing of Claims by Debtor or Trustee), 3005 (Filing of Claim, Acceptance, or Rejection by Guarantor, Surety, Indorser, or Other Codebtor), 4008 (Discharge and Reaffirmation Hearing), 7004 (Process; Service of Summons, Complaint), and 9006 (Time), together with Committee notes explaining their purpose and intent. The Judicial Conference approved the amendments and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law. In addition, the Committee recommended, and the Conference approved, amendments to Official Forms 16D (Caption for Use in Adversary Proceeding Other Than for a Complaint Filed by a Debtor) and 17 (Notice of Appeal Under 28 U.S.C. § 158(a) or (b) From a Judgment, Order, or Decree of a Bankruptcy Judge) to take effect on December 1, 2004, and to Schedule G of Official Form 6 (Executory Contracts and Unexpired Leases) to take effect on December 1, 2005.

FEDERAL RULES OF CIVIL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Civil Rules 6 (Time), 27 (Depositions Before Action or Pending Appeal), and 45 (Subpoena), and Supplemental Rules for Certain Admiralty and Maritime Claims B (In Personam Actions: Attachment and Garnishment) and C (In Rem Actions: Special Provisions), together with Committee notes explaining their purpose and intent. The Judicial Conference approved the amendments and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF CRIMINAL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Criminal Rules 12.2 (Notice of an Insanity Defense; Mental Examination), 29 (Motion for a Judgment of Acquittal), 32 (Sentencing and Judgment),[5] 32.1 (Revoking or Modifying Probation or Supervised Release), 33 (New Trial), 34 (Arresting Judgment), and 45 (Computing and Extending Time), and proposed new Rule 59 (Matters Before a Magistrate Judge), together with Committee notes explaining their purpose and intent. The Judicial Conference approved the amendments and new rule and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

[5]Subsequent to this session, Congress passed the Justice for All Act of 2004 (Public Law No. 108-405) which provides for broader rights of crime victims to be heard at public proceedings than the proposed amendment to Criminal Rule 32. To avoid conflict and confusion, at the request of the Rules Committee, the Executive Committee, on behalf of the Conference, by mail ballot concluded on October 26, 2004, withdrew the proposed amendment to Rule 32 prior to its transmittal to the Supreme Court.

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure approved for publication proposed amendments to Federal Rules of Bankruptcy Procedure 1009, 2002, 4002, 5005, 7004, 9001, 9036, and Schedule I of Official Form 6; Federal Rules of Civil Procedure 16, 26, 33, 34, 37, 45, 50, and Form 35; Supplemental Rules for Certain Admiralty and Maritime Claims A, C, and E, and new Rule G; Federal Rules of Criminal Procedure 5, 32.1, 40, 41, and 58; and Federal Rules of Evidence 404, 408, 606, and 609. The Committee also approved publishing for public comment, at a later date, proposed style revisions to Civil Rules 38-63 (except Rule 45, which was approved earlier) and noncontroversial style/substantive amendments to Civil Rules 4, 9, 11, 14, 16, 26, 30, 31, 36, and 40 as part of a larger package of revisions to other rules currently under review.

COMMITTEE ON SECURITY AND FACILITIES

COURTHOUSE CONSTRUCTION FUNDING

Because of the critical fiscal situation facing the judiciary, the Committee on Security and Facilities recommended that the Judicial Conference seek full funding for FY 2005 only for the four courthouse projects designated by the Conference in September 2003 as judicial space emergency projects, rather than for the entire FY 2005 list of courthouse projects approved at that time (JCUS-SEP 03, pp. 37-38). In order to provide this information to Congress at the earliest possible time, the Judicial Conference approved the Committee's recommendation by mail ballot concluded on March 25, 2004. The four projects for which funding will be sought are Los Angeles, California; El Paso, Texas; San Diego, California; and Las Cruces, New Mexico.

TWO-YEAR MORATORIUM ON COURTHOUSE CONSTRUCTION PROJECTS

To control rental costs, which now constitute approximately 22 percent of the judiciary's total budget, the Committee on Security and Facilities recommended that the Judicial Conference take the following actions:

a. Impose a moratorium for 24 months on the planning, authorizing, and budgeting for courthouse construction projects and new prospectus-level repair and alteration projects (except for those projects dedicated solely to building system upgrades) to enable a reevaluation of the long-range facilities planning process. The reevaluation shall include an assessment of the underlying assumptions used to project space needs and how courts can satisfy those needs with minimal costs in short- and long-term constrained budgetary environments;

b. Apply the moratorium to those courthouse projects on the Five-Year Courthouse Project Plan for FYs 2005-2009 as follows:

(1) the 35 courthouse projects not yet in design; and

(2) the seven projects with congressional appropriations and authorizations that are ready to start design;

c. Authorize the Administrative Office Director, in consultation with the appropriate circuit judicial council and the circuit representative to the Committee on Security and Facilities, to determine if an emergency warrants an exemption from the moratorium; and

d. Request that the General Services Administration cease the preparation of all new feasibility studies, except those involving only building systems, until the re-evaluation of the long-range facilities planning process is completed.

The Judicial Conference adopted the Committee's recommendations, which are also included in the cost-containment strategy for the judiciary approved by the Conference at this session (*see supra* "Budget Matters," pp. 5-7).

LIMITS ON SPACE GROWTH

Recognizing that there were no real limits on the amount of space circuit judicial councils could approve, the Committee considered whether national limits should be established to control rental costs of new courthouses and major repair and alteration projects and whether an annual square footage

allocation for non-prospectus projects[6] should be provided to each circuit judicial council. Because such limits require examination of each circuit's space inventory, as well as growth factors, budget estimates, and more, the Committee recommended that the Judicial Conference endorse the following:

a. A request to all chief circuit judges to cancel pending space requests wherever possible;

b. As an interim measure, a budget check process to be performed together by the Administrative Office and circuit judicial council staff and instituted immediately to ensure that all pending space requests before the circuit councils reflect consideration of alternative space, future rent implications, and affordability by the judiciary; and

c. If funding is not available for the request, but a circuit judicial council nevertheless determines that the space is "necessary" pursuant to its statutory authority, the council must then seek an exception from the Judicial Conference through this Committee in coordination with the Budget Committee.

The Conference adopted the Committee's recommendation, which is also contained in the cost-containment strategy approved by the Conference at this session (*see supra*, "Budget Matters," pp. 5-7).

TENANT ALTERATIONS CRITERIA

Noting the lack of a nationwide model for assessing the cost effectiveness and value of non-prospectus tenant alteration projects, the Security and Facilities Committee had previously requested the Administrative Office to conduct a tenant alteration criteria study. Based on this study, the Committee recommended, and the Judicial Conference endorsed, criteria for scoring and prioritizing non-prospectus tenant alterations projects and a cost model for determining project estimates. These criteria will be particularly helpful during times of budgetary shortfalls, but are not intended to substitute for decision-making at the local level by courts and/or circuit judicial councils. This item is part of the Conference-approved cost-containment strategy (*see supra*, "Budget Matters," pp. 5-7).

[6] A non-prospectus project is one that would cost less than $2.36 million dollars in FY 2005 and does not require line-item approval by Congress.

COMMITTEE ACTIVITIES

The Committee on Security and Facilities reported that it voted to accelerate its comprehensive review of the *U.S. Courts Design Guide* for consideration by the Judicial Conference. This review will emphasize (1) controlling costs; (2) examining existing space standards; (3) meeting functional space needs of the courts; and (4) sharing space. The Committee discussed the March 2004 Department of Justice Inspector General Report on the U.S. Marshals Service Judicial Security Process, which made six recommendations to improve the protection afforded the federal judiciary. The Committee was also briefed on the status of two U.S. Marshals Service studies required by the FY 2003 Omnibus Appropriations Act, Public Law No. 108-7, and the multiple pending lawsuits regarding the judiciary's court security officer medical standards.

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MEMORIAL RESOLUTIONS

The Judicial Conference approved the following resolutions noting the deaths of the Honorable Charles H. Haden II of the United States District Court for the Southern District of West Virginia; the Honorable Judith N. Keep of the United States District Court for the Southern District of California; and the Honorable Morey L. Sear of the United States District Court for the Eastern District of Louisiana:

> The Judicial Conference of the United States notes with sadness the death of the Honorable Charles H. Haden II of the United States District Court for the Southern District of West Virginia, on March 20, 2004, at his home in Charleston, West Virginia.
>
> Judge Haden served with distinction on the federal bench for twenty-nine years. He was Chief Judge of the District Court from 1982 to 2002. Judge Haden was appointed to the Committee on the Administration of the Probation System by Chief Justice Warren E. Burger in 1979, and served until 1986. In June 1997, he was elected as the Fourth Circuit District Judge Representative to the Judicial Conference of the United States, and in October 1999, Chief Justice William H. Rehnquist named him to the Executive Committee of the

Judicial Conference and later appointed him Chairman of that committee where he served from 2000 to 2002. His service as Chairman was outstanding, and the committee flourished under his leadership. Judge Haden was also among a select number of West Virginians who had served in all three branches of West Virginia government, first, in the legislative branch as a Member of the House of Delegates, then in the executive branch as State Tax Commissioner, and finally in the judicial branch as a Justice and then Chief Justice of the Supreme Court of Appeals of West Virginia. Judge Haden always said that he would like to be remembered as a public servant. He was a kind, thoughtful, and wise man, who will be missed by all who knew him.

The members of the Judicial Conference convey their deepest sympathies to Judge Haden's widow, Priscilla, and to his family.

* * *

The Judicial Conference of the United States acknowledges with sorrow the death of the Honorable Judith N. Keep of the United States District Court for the Southern District of California, on September 14, 2004, in San Diego, California.

Judge Keep served with distinction on the federal bench for 24 years. She was Chief Judge of the District Court from 1991 to 1998. She was the District Court's first female judge and its first female Chief Judge. Judge Keep was appointed to the Committee on Defender Services by Chief Justice William H. Rehnquist in 1998, and served until 2004. In October 1999, she was elected as the Ninth Circuit District Judge Representative to the Judicial Conference of the United States. She served as a valued member of the Judicial Conference through September 2002. Judge Keep also made a significant contribution to court governance as an eight-year member of the Judicial Council of the Ninth Circuit, where she served as a representative of the Chief District Judges of the Circuit and the District Judges Association, and as a member of the Judicial Conference. Her service to the Ninth Circuit also included chairing the Task Force on Judicial Disability, which

helped pave the way for new initiatives that promoted health and well being among judges.

Judge Keep was known for her sharp intellect, infectious laugh and ability to bring people together for the common good. She will be deeply missed and fondly remembered by her many colleagues and friends throughout the judiciary.

The members of the Judicial Conference convey their deepest sympathies to Judge Keep's husband, Russell L. Block, and to her family.

* * *

The Judicial Conference of the United States notes with sadness the death of the Honorable Morey L. Sear of the United States District Court for the Eastern District of Louisiana, on September 6, 2004, in New Orleans, Louisiana.

Judge Sear was appointed in 1971 as one of the first magistrate judges in the Eastern District of Louisiana. He was appointed a United States District Judge by President Gerald R. Ford on May 7, 1976. He served as Chief Judge of the Eastern District of Louisiana from 1992 to 1999, and assumed senior status in 2000.

Judge Sear made significant contributions to court governance not only in his own district but also at the national level. He served as chairman of the Judicial Conference's Advisory Committee on Bankruptcy Rules from 1984 to 1986, and as chairman of the Committee on the Administration of the Bankruptcy System from 1986 to 1990. In 1992, Judge Sear was elected as the Fifth Circuit's District Judge Representative to the Judicial Conference. While serving on the Judicial Conference, Chief Justice William H. Rehnquist appointed Judge Sear to the Executive Committee, where he served from 1993 until 1995. In 1993, Judge Sear was instrumental in instituting the first standing meeting of the District Judge Representatives to the Judicial Conference, where issues of common concern to the district courts and their judges could be

vetted. These have become vital meetings that continue to be held today following each Judicial Conference session.

Judge Sear was a courageous, hard-working jurist, and a statesman of the first order. We will miss his dry sense of humor and his collegial manner. The members of the Judicial Conference convey their deepest sympathies to Judge Sear's wife, Lee, and to his family.

FUNDING

All of the foregoing recommendations that require the expenditure of funds for implementation were approved by the Judicial Conference subject to the availability of funds and to whatever priorities the Conference might establish for the use of available resources.

Chief Justice of the United States
Presiding

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

March 15, 2005

The Judicial Conference of the United States convened in Washington, D.C., on March 15, 2005, 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 Michael Boudin
Judge Hector M. Laffitte,
District of Puerto Rico

Second Circuit:

Chief Judge John M. Walker, Jr.
Chief Judge Michael B. Mukasey,
Southern District of New York

Third Circuit:

Chief Judge Anthony J. Scirica
Chief Judge Thomas I. Vanaskie,
Middle District of Pennsylvania

Fourth Circuit:

Chief Judge William W. Wilkins
Judge David C. Norton,
District of South Carolina

Fifth Circuit:

Chief Judge Carolyn Dineen King
Chief Judge Glen H. Davidson,
Northern District of Mississippi

Sixth Circuit:

Chief Judge Danny J. Boggs
Judge William O. Bertelsman,
Eastern District of Kentucky

Seventh Circuit:

Chief Judge Joel M. Flaum
Judge J.P. Stadtmueller,
Eastern District of Wisconsin

Eighth Circuit:

Chief Judge James B. Loken
Chief Judge James M. Rosenbaum,
District of Minnesota

Ninth Circuit:

Chief Judge Mary M. Schroeder
Chief Judge David Alan Ezra,
District of Hawaii

Tenth Circuit:

Chief Judge Deanell R. Tacha
Judge David L. Russell,
Western District of Oklahoma

Eleventh Circuit:

Chief Judge J. L. Edmondson
Judge J. Owen Forrester,
Northern District of Georgia

District of Columbia Circuit:

Chief Judge Douglas H. Ginsburg
Chief Judge Thomas F. Hogan,
District of Columbia

Federal Circuit:

Chief Judge Paul R. Michel

Court of International Trade:

Chief Judge Jane A. Restani

The following Judicial Conference committee chairs attended the Conference session: Circuit Judges Julia S. Gibbons, Marjorie O. Rendell, and Jane R. Roth and District Judges Susan C. Bucklew, W. Royal Furgeson, Jr., Nina Gershon, Robert B. Kugler, Sim Lake, David F. Levi, John W. Lungstrum, Howard D. McKibben, James Robertson, Lee H. Rosenthal, and Patti B. Saris. Bankruptcy Judge A. Thomas Small and Magistrate Judge John M. Roper, Sr., were also in attendance. James A. Higgins of the Sixth Circuit represented the circuit executives.

Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director for Management and Operations; William R. Burchill, Jr., Associate Director and General Counsel; Laura C. Minor, Assistant Director, and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat; Michael W. Blommer, Assistant Director, Legislative Affairs; and David Sellers, Assistant Director, Public Affairs. Judge Barbara Jacobs Rothstein and Russell Wheeler, Director and Deputy Director of the Federal Judicial Center, and Judge Ricardo H. Hinojosa and Timothy B. McGrath, Chair and Staff Director of the United States Sentencing Commission, were in attendance at the session of the Conference, as was Sally Rider, Administrative Assistant to the Chief Justice. Scott Harris, Supreme Court Counsel, and the 2004-2005 Judicial Fellows also observed the Conference proceedings.

Senators Arlen Specter and Patrick J. Leahy and Representatives F. James Sensenbrenner and John Conyers, Jr., spoke on matters pending in Congress of interest to the Conference. Attorney General Alberto Gonzales addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice.

REPORTS

Mr. Mecham reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office (AO). Judge Rothstein spoke to the Conference about Federal Judicial Center (FJC) programs, Judge Hinojosa reported on Sentencing Commission activities, and Judge Gibbons reported on judiciary appropriations.

ELECTIONS

The Judicial Conference elected to membership on the Board of the Federal Judicial Center, each for a term of four years, Magistrate Judge Karen Klein of the District of North Dakota to succeed Magistrate Judge Robert B. Collings of the District of Massachusetts, and Bankruptcy Judge Stephen Raslavich of the Eastern District of Pennsylvania to succeed Chief Bankruptcy Judge Robert F. Hershner, Jr., of the Middle District of Georgia.

EXECUTIVE COMMITTEE

RESOLUTION

The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution recognizing the substantial contributions made by Chief Judge John G. Heyburn II, whose term of service as chair of the Committee on the Budget ended in December 2004:

> The Judicial Conference of the United States recognizes with appreciation, respect and admiration the
>
> **HONORABLE JOHN G. HEYBURN II**
>
> Chair of the Budget Committee from 1994 to 2004. Appointed to the Committee by Chief Justice William H. Rehnquist in 1994, Chief Judge Heyburn has played a vital role in the administration of the federal court system. He served with distinction as a member and leader of the Budget Committee while, at the same time, continuing to perform his duties as Chief Judge of the United States District Court for the Western District of Kentucky. Judge Heyburn has set a standard

of skilled leadership and earned our deep respect and sincere gratitude for his innumerable contributions. We acknowledge with appreciation his commitment and dedicated service to the Judicial Conference and to the entire federal judiciary.

CIRCUIT JUDICIAL CONFERENCES

Under 28 U.S.C. § 333, "[t]he chief judge of each circuit may summon biennially, and may summon annually, the circuit, district, and bankruptcy judges of the circuit, in active service, to a conference at a time and place that he designates, for the purpose of considering the business of the courts and advising means of improving the administration of justice within such circuit." Nearly all circuits convene annual or biennial conferences, sometimes with members of the bar and sometimes without. Circuits are provided allotments from centrally held appropriated funds for conference expenses (other than judges' travel expenses, which are paid from a separate centrally held fund), but some circuits pay for certain expenses with non-appropriated funds, such as conference registration fees and attorney admission fees. In an effort to contain costs, the Judicial Conference adopted an Executive Committee recommendation that insofar as funding of such conferences is concerned, the Conference (a) encourage the circuits to look to alternative funding sources for non-travel-related expenses to the extent advisable and permissible, including non-appropriated funds (such as attorney admission fees if the bar participates in a conference) and (b) authorize use of appropriated funds for non-travel-related expenses only in alternate years. This action does not apply to circuit judicial conferences for which binding commitments have already been made.

FEDERAL COURTS IMPROVEMENT BILL

Every two years, each Conference committee considers legislative initiatives within its jurisdiction that were approved by the Conference but not yet enacted to decide whether those provisions should be pursued in the upcoming federal courts improvement bill or another legislative vehicle, and notifies the Executive Committee of its determinations. The Executive Committee reviewed the decisions of the committees on whether pending Conference positions should be pursued in the 109th Congress and concurred in the determinations of the committees, with one exception. The exception, dealing with judges carrying firearms, was due to intervening circumstances, and the Security and Facilities Committee concurred with the Executive Committee's determination (*see infra*, "Security Issues," pp. 6-7). The

Executive Committee also reviewed legislative provisions within its own jurisdiction that had not yet been enacted.

SECURITY ISSUES

In response to recent violence against judges and their families and staff and on recommendation of the Executive Committee, the Judicial Conference adopted the following resolution, which was introduced as new business on the Conference floor:

> The brutal murders of the husband and mother of United States Judge Joan Humphrey Lefkow of the Northern District of Illinois on February 28, 2005, are an attack against the rule of law in the United States. This tragedy suffered by a member of our judicial family, as well as the horrific events that occurred on March 11, 2005, in the courthouse in Fulton County, Georgia, strike at the core of our system of government. A fair and impartial judiciary is the backbone of a democracy. These tragic events cannot and will not undermine the judiciary's essential role in our society.
>
> We, the members of the Judicial Conference, call upon leaders of the United States Department of Justice and of the United States Marshals Service (whose primary responsibility is the security of members of the federal judiciary and their families) to review fully and expeditiously all aspects of judicial security and, in particular, security at judges' homes and other locations away from the courthouse. We also call upon both the legislative and executive branches to provide adequate funding for this essential function.
>
> Accordingly, the Judicial Conference of the United States declares that (1) the crisis in off-site judicial security evidenced in part by the recent deaths of Judge Lefkow's husband and mother is of the gravest concern to the federal judiciary, and (2) addressing this matter is of the highest urgency to the Conference and will be the top priority in the judiciary's discussions with the Attorney General of the United States and other Justice Department representatives, including the Director of the United States Marshals Service.

The Executive Committee took the following additional steps to enhance judicial security. It directed the Administrative Office to work with commercial information providers, such as computer-assisted legal research firms and credit bureaus, to block unjustified access to personal information of judges and their families. It directed the Committee on Security and Facilities and other relevant Conference committees and the Administrative Office to conduct a comprehensive review of the judiciary's security requirements to determine what further actions are needed to improve off-site judicial security, and it asked the Security and Facilities Committee to continue its efforts to work with the United States Marshals Service on this issue. In addition, it revisited whether the judiciary should pursue a longstanding Conference-approved proposal to authorize federal judges to carry firearms in certain circumstances and establish a firearms training program for judges (JCUS-SEP 90, p. 69) and concluded that, in light of current circumstances, the proposal should be pursued in the 109th Congress (*see supra*, "Federal Courts Improvement Bill," pp. 5-6).

MISCELLANEOUS ACTIONS

The Executive Committee—

- Approved final fiscal year (FY) 2005 financial plans for the Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners accounts following the enactment of an omnibus appropriations bill that included the judiciary's fiscal year 2005 appropriation;

- Approved, on recommendation of the Court Administration and Case Management and Information Technology Committees, guidance to the courts regarding the definition of "written opinion" and addressing issues of "text searchability" needed to implement the E-Government Act of 2002 (Public Law No. 107-347);

- Continued to monitor the status of various ongoing cost-containment initiatives, particularly with respect to the major projects, such as the compensation study, the study of administrative services, and the courthouse construction moratorium, and convened a working group comprised of members from the Executive, Budget, and Security and Facilities Committees to review alternatives for dealing with future rental costs;

- Determined to defer, until the September 2005 session of the Judicial Conference, implementation of an increase in the bankruptcy adversary proceeding filing fee that occurred when an increase in the civil action filing fee, to which the adversary proceeding fee is linked, was authorized by Congress in the omnibus appropriations act;

- On recommendation of the Rules Committee, approved the withdrawal of a proposed amendment to Criminal Rule 32 (*see* JCUS-SEP 04, p. 33), prior to its transmittal to the Supreme Court, that addresses a victim's right to allocution in the district court, to avoid conflict with the recently enacted Justice for All Act of 2004, Public Law No. 108-405, which also addresses a victim's right to be heard at public proceedings in the district courts;

- Allowed to take effect the annual automatic adjustment to the alternative subsistence rate for judges' travel expenses; and

- Made referrals to appropriate Conference committees as follows: asked the Judicial Resources Committee to review its standards for recommending new Article III judgeships; asked the Court Administration and Case Management and the Judicial Resources Committees to make recommendations to the September 2005 Judicial Conference on whether the Judicial Conference should take a position regarding the proposed split of the Ninth Circuit, and if so, what considerations should inform that position; asked the Magistrate Judges Committee to update its earlier report on the growth of the magistrate judges system and forward it to the Judicial Resources Committee; and asked the Budget Committee to provide advice on a recommendation of the Security and Facilities Committee regarding the courthouse construction project plan for FY 2007 from the perspective of the judiciary's overall budget and to consider and make recommendations to the Security and Facilities Committee and the Executive Committee regarding affordability of pending courthouse construction projects not already approved for construction by the Judicial Conference.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it undertook a comprehensive review of the statutory duties, organization, resources, and

activities of the various components of the Administrative Office, with primary emphasis on budget restrictions and cost-containment initiatives within the Administrative Office and judiciary wide. Noting that AO staffing has not grown in ten years, the Committee observed that the AO has continued to provide a wide range of essential services and quality support to the Judicial Conference and its committees and to the courts despite resource shortages. The Committee expressed its satisfaction with the efficient manner in which the AO manages its limited resources and other funds on behalf of the courts, and it concluded that the AO does everything within its capability to expend resources economically.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

ADDITIONAL BANKRUPTCY JUDGESHIPS

Pursuant to 28 U.S.C. § 152(b)(2), the Judicial Conference submits periodic recommendations for new bankruptcy judgeships to Congress, which establishes the number of such judgeships for each judicial district. In March 1991, the Conference adopted a policy that provides for a national survey of judgeship needs every two years and establishes criteria for evaluating requests for additional bankruptcy judgeships (JCUS-MAR 91, pp. 12-13). Based on the 2004-2005 biennial survey of judgeship needs, the Committee recommended that the Judicial Conference transmit to Congress proposed legislation to create 47 additional bankruptcy judgeship positions, convert three existing temporary bankruptcy judgeship positions to permanent status, extend for an additional five-year period the temporary bankruptcy judgeship in one district, and convert the bankruptcy judgeship shared by two districts to a full-time position for one of them. The Committee asked the Judicial Conference to approve the request on an expedited basis so that the most up-to-date recommendation could be included in bankruptcy legislation (S. 256, 109th Congress) that was moving quickly in Congress. Congress has not approved new bankruptcy judgeships since 1992, although bankruptcy filings and judicial workloads have risen dramatically in that period. By mail ballot concluded on February 16, 2005, the Conference approved the Committee's recommendation.[1]

[1]The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Public Law No. 109-8, was signed into law on April 20, 2005. It did not include the updated recommendation for new judgeships.

OFFICIAL DUTY STATION

On the recommendation of the Bankruptcy Committee, and in accordance with 28 U.S.C. § 152(b)(1), the Judicial Conference approved a request of the Eleventh Circuit Judicial Council to transfer the official duty station of Bankruptcy Judge Paul G. Hyman, Jr., from Fort Lauderdale to West Palm Beach in the Southern District of Florida.

COMMITTEE ACTIVITIES

The Bankruptcy Committee reported that it devoted most of its meeting to discussing how best to further the judiciary's cost-containment effort and develop innovative ways for bankruptcy courts to work even more efficiently and economically in the future. The Committee also endorsed two suggestions to educate judges on the subject of attorney discipline in bankruptcy courts; reviewed all pending Conference-approved legislative positions within its jurisdiction at the request of the Executive Committee; endorsed a recommendation that the Federal Judicial Center develop and maintain an on-line judicial performance survey for use by bankruptcy judges, subject to certain conditions; and received reports on a wide range of topics.

COMMITTEE ON THE BUDGET

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it expects the judiciary's budget outlook to continue to be challenging for the next several years due to fiscal constraints faced by Congress. Much of the Committee's discussions focused on developing strategies for obtaining from Congress the funding necessary for the judiciary to do its work. To that end, the Budget Committee established a Congressional Outreach Subcommittee to focus and coordinate all of the judiciary's efforts to acquire additional resources. The Committee also expressed its support of the efforts of the program committees in implementing the cost-containment strategy that was approved by the Judicial Conference in September 2004 (JCUS-SEP 04, pp. 5-7). Finally, the Committee adopted a resolution re-affirming its support for the budget decentralization program in these uncertain budgetary times.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Conference in September 2004, the Committee received 29 new written inquiries and issued 28 written advisory responses (one inquiry was withdrawn). During this period, the average response time for requests was 15 days. The Chairman received and responded to 19 oral inquiries, and the other Committee members responded individually to 159 oral inquiries from their colleagues.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

REFUNDING FEES PAID ELECTRONICALLY

The Judicial Conference has a longstanding policy prohibiting the refund of fees, with narrow exceptions, e.g., when fees are collected without authority or as a result of administrative error on the part of the clerk's office. However, the introduction of the Case Management/Electronic Case Files (CM/ECF) system, which allows parties to pay fees electronically with a credit card, has created many more opportunities for error on the part of filers. On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference approved, in principle, guidance for the courts regarding the refunding of fees paid electronically. The guidance provides, among other things, that courts should develop procedures for addressing refunds of electronic payments, that refunds should be requested by motion or application, that the decision whether to refund is a judicial determination, but may be delegated to the clerk as long as procedures clearly address the types of refunds clerks may authorize, and that refunds should be processed electronically, not through checks.

DISPOSAL OF SCANNED RECORDS

On recommendation of the Committee, the Judicial Conference endorsed a proposed agreement between the National Archives and Records Administration (NARA) and the Administrative Office that paper case files in bankruptcy and district courts utilizing the national CM/ECF system need not

be retained for archival purposes after they have been scanned in their entirety into the CM/ECF system. The agreement, along with a proposed disposition schedule, will be transmitted to NARA for its formal clearance process.

DIGITAL AUDIO COURT RECORDING

In September 1999, the Judicial Conference approved the use of digital audio recording equipment as an additional method of taking the official record of court proceedings with a funding limitation that any additional costs for such equipment over the cost of analog equipment would be defrayed from decentralized funds (JCUS-SEP 99, p. 56). In the intervening years, the cost of digital audio equipment has become more competitive, the technology has improved, and analog equipment has started to become obsolete. The Committee therefore recommended, and the Conference approved, removal of this funding limitation for courts seeking procurement of digital audio recording systems.

MODEL GRAND JURY CHARGE

At the request of the American College of Trial Lawyers, the Court Administration and Case Management Committee undertook a comprehensive review of the current Model Grand Jury Charge approved by the Judicial Conference in March 1986 (JCUS-MAR 86, p. 33). Noting that the Conference-approved charge differed from the model charge included in the *Benchbook for U.S. District Judges* (*Benchbook*) published by the Federal Judicial Center, the Committee worked with the Federal Judicial Center's *Benchbook* Committee to come up with a single revised model charge to be approved by the Conference and included in the FJC's *Benchbook*. After obtaining input from a number of sources, including the Department of Justice and the Committees on Criminal Law and Defender Services, the Committee on Court Administration and Case Management recommended a revised Model Grand Jury Charge for the Conference's approval. The Conference adopted the Committee's recommendation.

FILING FEE FOR THE U.S. COURT OF FEDERAL CLAIMS

The Consolidated Appropriations Act of 2005, Public Law No. 108-447, enacted on December 8, 2004, raised the district court filing fee from $150 to $250. The filing fee for the Court of Federal Claims, which the

Judicial Conference has authority to amend pursuant to 28 U.S.C. § 1926(a), has traditionally tracked the district court filing fee. On recommendation of the Committee, the Conference agreed to amend the fee schedule for the U.S. Court of Federal Claims to increase the filing fee from $150 to $250.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it is continuing work on several cost-containment initiatives, such as the delivery of administrative services in the courts and cost savings associated with use of the CM/ECF system. The Committee is also reevaluating its current fee principles to ensure that they accurately reflect the recommendations made by the Committee and adopted by the Conference that have resulted in an estimated $80 million in additional annual revenue. The Committee reviewed all outstanding Conference-approved legislative provisions under its jurisdiction in order to determine if they should be included in the courts improvement bill or other legislative vehicles that will be introduced in the 109th Congress.

COMMITTEE ON CRIMINAL LAW

PRESENTENCE INVESTIGATION REPORT MONOGRAPH

On recommendation of the Committee on Criminal Law, the Judicial Conference approved revisions to *The Presentence Investigation Report for Defendants Sentenced Under the Sentencing Reform Act of 1984*, Publication 107, for publication and distribution to the courts. The revisions incorporate program changes that implement cost-containment measures approved by the Judicial Conference in September 2004, including revisions to reduce the program requirements for presentence investigation reports and to reduce the circumstances in which post-conviction supervision is recommended (JCUS-SEP 04, pp. 14-15). Language discouraging the practice of adding conditions of supervision to the 13 standard conditions included in the "Judgment in a Criminal Case" form, as well as technical changes, was also included.

POST-CONVICTION SUPERVISION MONOGRAPH

The Committee recommended that the Judicial Conference approve revisions to *The Supervision of Federal Offenders,* Monograph 109, for publication and distribution to the courts. The revisions incorporate program changes that implement cost-containment measures approved by the Judicial Conference in September 2004 (JCUS-SEP 04, pp. 14-15), as well as new cost-containment measures and technical changes. The revisions are designed to limit the growth in the number of offenders under post-conviction supervision, reduce post-conviction supervision program requirements, and contain costs in substance abuse treatment services paid for by the judiciary. The Conference approved the Committee's recommendation.

PRETRIAL SERVICES INVESTIGATION AND REPORT MONOGRAPH

On recommendation of the Committee on Criminal Law, the Judicial Conference approved revisions to *The Pretrial Services Investigation and Report,* Monograph 112, for publication and distribution to the courts. The revisions included those that implement cost-containment program changes approved by the Conference in September 2004 (JCUS-SEP 04, pp. 14-15), as well as new cost-containment and technical changes. The changes are intended to, among other things, reduce or eliminate the practice of conducting pretrial services investigations for certain cases, create new model pretrial services reports, and reduce or eliminate the practice of recommending pretrial services supervision in certain cases.

CONSOLIDATION OF PROBATION AND PRETRIAL SERVICES OFFICES

On several occasions, the Committee on Criminal Law has considered whether potential cost savings could be achieved by the consolidation of probation and pretrial services offices. In September 1997, the Judicial Conference affirmed the principle that the form of organization for providing pretrial services should be determined by the individual district courts and their respective judicial councils (JCUS-SEP 97, p. 66). The Committee was again asked to consider whether savings could be achieved by consolidating any remaining separate probation and pretrial services offices as part of the

judiciary's comprehensive cost-containment strategy approved by the Judicial Conference in September 2004 (JCUS-SEP 04, pp. 5-7). After an exhaustive study, the Committee recommended that the Conference maintain the policy that the form of organization for providing pretrial services should be determined by individual district courts and their respective circuit councils, but districts that have not considered the issue of consolidation of their separate probation and pretrial services offices should do so when—

a. a chief probation or pretrial services officer is scheduled to retire or transfer; and

b. consolidation may serve as a means to achieve additional economies and efficiencies without compromising the mission of pretrial services.

The Conference approved the Committee's recommendation.

SENTENCING ISSUES

The Committee on Criminal Law considered, and discussed extensively, sentencing issues in the wake of the Supreme Court decision in the consolidated cases, *United States v. Booker/United States v. Fanfan*, 125 S.Ct. 738 (2005). On recommendation of the Committee, the Conference agreed to take the following actions:

a. Resolve that the federal judiciary is committed to a sentencing guideline system that is fair, workable, transparent, predictable, and flexible;

b. Urge Congress to take no immediate legislative action and instead to maintain an advisory sentencing guideline system;

c. Delegate to the Committee on Criminal Law the authority to—

   1. develop educational programs, forms, and other similar guidance for judges and probation officers;

   2. work with the Sentencing Commission to improve the Statement of Reasons form and evaluate additional methods to ensure accurate and complete reporting of sentencing decisions;

3. work with the Commission to improve the Commission's data collection, analyses, and reporting to ensure that sentencing data meet the needs of the Commission, Congress, and the judiciary; and

4. develop various strategies to pursue and promote the above-described Conference positions in discussion with the Commission, Department of Justice, and Congress; and

d. Oppose legislation that would respond to the Supreme Court's decision by (1) raising directly the upper limit of each guideline range or (2) expanding the use of mandatory minimum sentences.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported its suggestion to the Judicial Resources Committee that that Committee recommend to the Conference adoption of a resolution encouraging courts in a position to hire to consider hiring highly qualified and well-trained probation and pretrial services officers from those federal courts that are forced to make involuntary reductions to staff (*see infra*, "Inter-District Transfer Policy," p. 26). In addition, in response to an Executive Committee request, the Committee considered whether certain law enforcement responsibilities should continue to reside within the judiciary. The Committee unanimously agreed that the probation and pretrial services system provides valuable services to the judiciary, but requested additional information that would help determine whether there are compelling reasons, including significant cost savings, for transferring post-conviction supervision functions to an outside agency.

COMMITTEE ON DEFENDER SERVICES

COUNSEL IN CASES NO LONGER DEATH ELIGIBLE

Section 3005 of title 18, United States Code, entitles a defendant, upon indictment for a federal death-eligible offense, to obtain the appointment of two counsel, at least one of whom is learned in the law applicable to capital cases. The maximum panel attorney hourly compensation rate in capital cases, which is set pursuant to 21 U.S.C. § 848(q)(10)(A), is significantly higher than the noncapital rate, which is established under the Criminal Justice Act, 18 U.S.C. § 3006A(d)(1). Where it is determined some time after

indictment that the death penalty will not be sought, paragraph 6.02B(2) of the Guidelines for the Administration of the Criminal Justice Act (CJA Guidelines), Volume 7, *Guide to Judiciary Policies and Procedures*, provides that the court may reconsider whether the number of counsel initially appointed and the higher rate of compensation initially authorized is necessary for the duration of the proceeding. On recommendation of the Committee on Defender Services, the Conference agreed to strengthen the language of CJA Guideline 6.02B(2) to discourage courts, absent extenuating circumstances, from continuing more than one counsel and/or the maximum capital compensation rate in those cases in which it is determined that the death penalty will not be sought. The amended guideline lists a number of factors for the courts to consider in determining whether extenuating circumstances exist.

REPRESENTATION OF FEDERAL JURORS

Pursuant to 28 U.S.C. § 1875, jurors are protected against discharge, intimidation, or coercion by their employers as a result of being summoned for jury service in a federal court. Any juror claiming a violation of this provision is, upon a district court's finding of probable merit, entitled to appointment of counsel to represent him or her in any action in the district court necessary to the resolution of such claim. On recommendation of the Committee, the Judicial Conference approved revisions to paragraphs 2.01E(4) and 2.22B(2) of the CJA Guidelines to clarify that appointments to represent federal jurors for the protection of their employment are compensable with Defender Services funds, that private attorneys (rather than federal defenders) should receive such appointments, and that the Criminal Justice Act's felony case compensation maximum applies to such representations.

COMPUTER-ASSISTED LEGAL RESEARCH

In March 2003, the Judicial Conference approved a pilot program in which up to six courts were authorized to utilize simplified and expedited procedures for reimbursing CJA panel attorneys for expenses incurred in conducting computer-assisted legal research (JCUS-MAR 03, pp. 12-13). The purpose of the pilot was to assess the budgetary impact of the proposed new procedures. On recommendation of the Committee, which found minimal budgetary impact, the Judicial Conference terminated the pilot program and approved revisions to paragraphs 2.27, 2.31, and 3.15 of the CJA Guidelines,

Volume 7, *Guide to Judiciary Policies and Procedures,* to simplify and expedite reimbursement procedures for computer-assisted legal research.

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it approved project plans for four major Defender Services cost-containment initiatives. To advance its goal of limiting costs of CJA representations in capital cases and large, non-capital "mega-cases," the Committee approved a proposal to request an Administrative Office reimbursable position to provide objective case-budgeting advice for judges. The Committee also authorized one capital § 2255 counsel position, in view of the growing need for qualified and cost-effective representation in post-conviction federal death penalty cases; funding for a mitigation coordinator, in light of increased demand for capital mitigation expertise following the Supreme Court's decision in *Wiggins v. Smith*, 539 U.S. 510 (2003); and establishment of two federal defender sentencing counsel positions, needed to address the obligation of federal defenders to provide comments to the United States Sentencing Commission pursuant to 28 U.S.C. § 994(o). In addition, under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), the Committee approved (subject to the availability of funds and authorization by Congress) FY 2005 funding totaling $644,900 for federal defender offices to serve three new districts.

COMMITTEE ON FEDERAL-STATE JURISDICTION

SOCIAL SECURITY DISABILITY CLAIMS PROCESS

The Social Security Administration (SSA) has indicated an intent to propose regulations that would eliminate a claimant's right to request review by the SSA's Appeals Council of an adverse decision of an administrative law judge (ALJ). The Appeals Council would be abolished and the ALJ's decision would become the agency's final decision, unless it was chosen for a further discretionary review. The Federal-State Jurisdiction Committee was concerned that the proposed changes would significantly increase the number of Social Security cases filed in federal court, and also had the potential for increasing costs and delays for dissatisfied claimants. On recommendation of the Committee, the Judicial Conference agreed to support efforts to improve the efficiency and effectiveness of the process by which the Social Security Administration considers Disability Insurance and Supplemental Security

Income claims, but oppose the elimination of a claimant's right to request review of an administrative law judge's adverse decision by the Appeals Council, or another administrative reviewing unit with comparable authority, prior to seeking relief in federal district court.

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it is considering two proposals to clarify the treatment of stipulations as to the amount in controversy in diversity of citizenship actions when such actions are removed to federal court, as well as several proposals for amendments to the venue statute. The Committee also discussed a number of other legislative issues, including bills that seek to eliminate the jurisdiction of the federal courts to decide constitutional challenges related to certain issues and the jurisdictional provisions in a draft asbestos bill. In addition, the Committee reviewed outstanding Conference-approved legislative positions within its jurisdiction to determine whether they should be pursued in the 109th Congress. The Committee received a report on the work of the Pacific Islands Committee of the Ninth Circuit Judicial Council and heard a presentation on the concept of federalism.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that as of December 31, 2004, the Committee had received 3,942 financial disclosure reports and certifications for the calendar year 2003, including 1,314 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 353 from bankruptcy judges; 553 from magistrate judges; and 1,722 from judicial employees. The Committee also reported that it continues to pursue amendment of the Ethics in Government Act of 1978 to change the reporting requirements for judicial officers and employees and ensure continuation of the redaction authority that has been granted to the judiciary, but is scheduled to expire on December 31, 2005.

COMMITTEE ON INFORMATION TECHNOLOGY

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it discussed a general approach to identifying and implementing more cost-effective service delivery models, and that it is refining the content and purposes of information technology training, especially that pertaining to judges. With respect to privacy and security of the judiciary's data communications network, the Committee will prepare an overall strategy and provide ample opportunity for comment in advance of making future policy recommendations. The Committee resolved that courts should use non-appropriated funds to provide public access to the Internet and encouraged courts to share non-appropriated funds among all court units within the district for that purpose. The Committee also received updates on various initiatives, including the Edwin L. Nelson Local Initiatives Program and implementation of the E-Government Act.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that during the period from July 1, 2004, to December 31, 2004, a total of 92 intercircuit assignments, undertaken by 57 Article III judges, were processed and recommended by the Committee on Intercircuit Assignments and approved by the Chief Justice. During calendar year 2004, a total of 148 intercircuit assignments were processed and approved. In addition, the Committee aided courts requesting assistance by both identifying and obtaining judges willing to take assignments. The Committee also reported that it was updated on the Administrative Office's efforts to collect data on visiting judges and accompanying chambers staff for the purpose of evaluating the costs and benefits of the intercircuit assignment program.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its involvement in rule-of-law and judicial reform activities throughout the world, highlighting those in Croatia, Slovenia, Ecuador, Liberia, Mexico, and the Russian Federation. The Committee will be working closely with the U.S. Agency for International Development and its contractor in Mexico over the next five years to support that country's judicial reform and rule-of-law efforts.

COMMITTEE ON THE JUDICIAL BRANCH

"FEGLI FIX"

Retired Article III Judges. Pursuant to Public Law No. 106-113, in September 2000, the Judicial Conference authorized the Director of the Administrative Office to pay any increases in the cost of Federal Employees Group Life Insurance (FEGLI) imposed after April 24, 1999, including any expenses generated by such payments, to all active Article III judges aged 65 and above, senior judges retired under 28 U.S.C. § 371(b) or § 372(a), and judges retired under 28 U.S.C. § 371(a) who were enrolled in the program (JCUS-SEP 00, pp. 54-55). The purpose of the "FEGLI fix" was to maintain stability in FEGLI premium payments of Article III judges (many of whom had come to rely on FEGLI benefits as the centerpiece of their estate plans) in the face of substantial Office of Personnel Management rate increases. At this session, the Committee on the Judicial Branch recommended that the Judicial Conference amend its policy prospectively to exclude payments on behalf of judicial officers who retire from office under 28 U.S.C. § 371(a), noting that such payments could serve as an incentive for Article III judges to retire from the judicial office. The policy, as amended, would provide that the judiciary will pay the increases in the cost and associated expenses of the judges' insurance imposed after April 24, 1999, except that for any Article III judge appointed after March 15, 2005, the judiciary will pay these increases only while the judge remains in active service or where the judge retains the judicial office in senior status under § 371(b) or § 372(a) of title 28, U.S. Code. The Conference adopted the Committee's recommendation.

Fixed-Term Judges. In September 2000, upon first learning that Congress was considering extending the FEGLI fix to bankruptcy and

magistrate judges, the Executive Committee, acting on behalf of the Conference, asked Congress to defer action until a complete review could be accomplished (JCUS-SEP 00, pp. 39-40). Since that time, Congress, over the objection of the Judicial Conference (JCUS-MAR 00, p. 19), extended the FEGLI fix to judges on the Court of Federal Claims as part of the Federal Courts Improvement Act of 2000, Public Law No. 106-518, and has been receptive to extending it to United States Tax Court judges as well (*see* section 314 of H.R. 1528, which passed both houses of the 108th Congress in different forms). Based on this and other considerations, the Committee on the Judicial Branch, with the concurrence of the Committees on the Administration of the Bankruptcy System and the Administration of the Magistrate Judges System, recommended that the Judicial Conference endorse the concept of extending the FEGLI fix to bankruptcy and magistrate judges (those who are in active status or are retired under the Judicial Retirement System, 28 U.S.C. § 377) and territorial district court judges (those who are in active status or are retired under 28 U.S.C. § 373), exclusive of those judges who elect to engage in the practice of law after retirement under 28 U.S.C. § 377(m) or § 373(d). Bankruptcy, magistrate, and territorial judges who elect to practice law after retirement become ineligible for recall and, therefore, consistent with the exclusion of Article III judges who retire from office under 28 U.S.C. § 371(a), are also ineligible for benefits under the FEGLI fix. Finally, parity requires applying a similar limitation to retired Court of Federal Claims judges. Therefore, the Committee recommended that the Conference adopt a policy excepting from the FEGLI fix Court of Federal Claims judges who elect to engage in the practice of law under 28 U.S.C. § 178(j)(4). The Conference adopted the Committee's recommendations.

TRAVEL REGULATIONS FOR UNITED STATES JUSTICES AND JUDGES

Judges' Use of Special Lower Airfares. On recommendation of the Committee, the Judicial Conference approved an amendment to section D.2.a.(6) of the Travel Regulations for United States Justices and Judges (*Guide to Judiciary Policies and Procedures*, Vol. 3, Ch. C-5, Exh. A) to—

a. Encourage judges to use discounted airfares, including penalty and non-refundable tickets, as well as tickets requiring Saturday night stay-overs, in the interest of economy when it is prudent to do so;

b. Authorize a judge's reimbursement from appropriated funds for penalties or additional costs assessed for cancellations or changes in reservations; and

c. Expressly authorize a judge's reimbursement from appropriated funds for the additional cost of meals and lodging incurred in connection with a Saturday night stay-over, when such an arrangement represents a savings to the government.

The Committee was of the view that the savings the judiciary could obtain from discount airfares would more than offset any charges assessed for cancellations or changes in reservations.

Home-to-Work Transportation for Disabled Judges. In order to authorize government-provided home-to-work transportation for temporarily disabled judges, a chief judge must comply with technical requirements and restrictions provided in 31 U.S.C. § 1344 and section D.4 of the judges' travel regulations (*Guide to Judiciary Policies and Procedures,* Vol. 3, Ch. C-5, Exh. A, § D.4), some of which have been misinterpreted by the courts. In order to clarify the time limits established in those provisions, the Committee recommended, and the Conference approved, an amendment to section D.4. of the travel regulations to specifically state that an initial determination that compelling operational considerations exist to justify home-to-work transportation for disabled judges is limited to a period of 15 days, with extensions of not more than 90 calendar days where it is determined that compelling operational considerations continue to exist. On recommendation of the Committee, the Conference also updated the name of the House Committee on Government Reform referenced in section D.4. of the judges' travel regulations.

JUDICIAL COMPENSATION

Pursuant to the Federal Employees Pay Comparability Act of 1990, the mechanism for annually adjusting General Schedule employee pay includes two components, an across-the-board pay adjustment based upon changes in the Employment Cost Index (ECI) over a 12-month period, minus one half of one percent, plus a comparability pay adjustment that is based on comparisons of federal and nonfederal salaries in local areas and varies by pay locality region. By contrast, the mechanism for annually adjusting salaries of judges, members of Congress, Executive Schedule officials, and the Vice President, set forth in the Ethics Reform Act, section 704 of Public Law No. 101-94, includes only the ECI portion of the salary adjustment applicable to General

Schedule employees. As a result, since 1994, the rates of pay of General Schedule employees have risen by over 52 percent while the salaries of judges and other senior government officials have only increased by just over 21 percent. On recommendation of the Committee on the Judicial Branch, the Judicial Conference agreed to seek legislation to replace the Ethics Reform Act's ECI salary adjustment mechanism with a provision that would authorize judges, members of Congress, Executive Schedule officials, and the Vice President to receive an enhanced annual pay adjustment in an amount equivalent to the overall average pay increase authorized for the General Schedule under the Federal Employees Pay Comparability Act of 1990.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it continues to pursue possible avenues of improving judicial compensation and benefits, notwithstanding the constrained budget climate. The Committee is also vigorously examining ways to improve judicial-legislative communications. Education of the public, especially the media, on the judiciary and the role of judges in society remains a priority of the Committee. The Committee hopes that progress on each of these fronts will lead to the objective of maintaining and enhancing the independence and dignity of the federal judicial office.

COMMITTEE ON JUDICIAL RESOURCES

ARTICLE III JUDGESHIP NEEDS

The Committee on Judicial Resources considered requests and justifications for additional judgeships in the courts of appeals and the district courts as part of its 2005 biennial judgeship survey process. For the district court request, the Committee revised slightly the starting point for recommending additional judgeships from weighted filings in excess of 430 per judgeship, to weighted filings in excess of 430 per judgeship with an additional judgeship(s) and utilized new district court case weights. Based on its review, and after considering the comments of the courts and the circuit councils, the Committee recommended that the Judicial Conference authorize transmittal to Congress of a request for an additional nine permanent and three temporary judgeships in the courts of appeals, and in the district courts, an additional 44 permanent and 12 temporary judgeships, conversion to permanent status of three existing temporary judgeships, and the extension of one existing temporary judgeship for an additional five years. The

Conference approved the recommendations, agreeing to transmit the following request to Congress in lieu of any previously submitted Article III judgeship requests ("P" denotes permanent; "T" denotes temporary):

COURTS OF APPEALS

First Circuit	1P
Second Circuit	2P
Sixth Circuit	1P
Eighth Circuit	1T
Ninth Circuit	5P, 2T

DISTRICT COURTS

New York (Eastern)	3P
New York (Western)	1P
New Jersey	1T
South Carolina	1P
Virginia (Eastern)	2P
Texas (Southern)	3P
Ohio (Northern)	Extend T
Ohio (Southern)	1T
Illinois (Northern)	1P
Indiana (Southern)	1P
Arkansas (Eastern)	0
Iowa (Northern)	1T
Minnesota	1T
Missouri (Eastern)*	Convert T to P
Missouri (Western)	1P
Nebraska	1P
Arizona	4P, 1T
California (Northern)	3P, 1T
California (Eastern)	4P
California (Central)	4P
California (Southern)	1P
Hawaii*	Convert T to P
Idaho	1P
Nevada	1P
Oregon	1P, 1T
Washington (Western)	1P
Colorado	1P, 1T
Kansas*	Convert T to P
New Mexico	1P, 1T

Utah	1T
Alabama (Northern)	1P
Alabama (Middle)	1T
Florida (Middle)	4P, 1T
Florida (Southern)	3P

* If the temporary judgeship lapses, the Conference's recommendation would be amended to one additional permanent judgeship.

INTER-DISTRICT TRANSFER POLICY

Cost-containment measures recommended by the Committee on Criminal Law and adopted by the Conference at its September 2004 session (JCUS-SEP 04, pp. 14-15) have resulted in the elimination of, or substantial reduction in, specific categories of work performed by probation and pretrial services offices. As these changes may impact staffing levels in some districts more than in others, the Committee recommended, and the Judicial Conference approved, adoption of the following resolution to acknowledge the value of trained and experienced officers and to make clear that the judiciary values its personnel:

> Courts in a position to hire new probation and pretrial services officers are strongly encouraged to consider hiring highly qualified and well-trained officers from those federal courts that are forced to make involuntary reductions in staff.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it endorsed project plans presented by the Administrative Office for two initiatives: (a) a study of compensation policies for all biweekly court employees in both chambers and non-chambers positions; and (b) the development and implementation of a process redesign program that would enhance the effectiveness and quality of court unit functions, while defining measurable procedures to be included in staffing formula development. Both of these initiatives are included in the long-term cost-containment strategy approved by the Judicial Conference in September 2004 (JCUS-SEP 04, pp. 5-7).

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

RECALL REGULATIONS

The Committee on the Administration of the Magistrate Judges System recommended that the Conference approve technical and clarifying amendments to the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Recall of United States Magistrate Judges (the ad hoc recall regulations) and the Regulations of the Judicial Conference of the United States Governing the Extended Service Recall of Retired United States Magistrate Judges (the extended service recall regulations) to (a) standardize the information that should be specified in the order of recall, (b) provide explicitly that the Magistrate Judges Committee has authority to approve or disapprove requests for staff for recalled magistrate judges (whose recall is subject to the Committee's approval), and (c) change the title of the ad hoc recall regulations to "Regulations of the Judicial Conference of the United States Governing the Ad Hoc Recall of Retired United States Magistrate Judges," to make it more accurate and consistent with the title for the extended service recall regulations. The Conference adopted the Committee's recommendation.

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee on the Administration of the Magistrate Judges System and the recommendations of the Director of the Administrative Office, the respective district courts and judicial councils of the circuits, the Judicial Conference made no changes in the number, locations, salaries, or arrangements of the full-time and part-time magistrate judge positions in the following districts: the District of New Hampshire, the Eastern District of Louisiana, the Northern District of Iowa, the District of Nebraska, the District of North Dakota, the Northern District of California, the Southern District of California, and the Middle District of Alabama. In addition, on the Committee's recommendation, the Judicial Conference determined not to authorize at this time filling a magistrate judge position in the District of Alaska at Anchorage when it becomes vacant in May 2005, with the understanding that the Magistrate Judges Committee will reconsider the court's request to fill the vacancy at its December 2005 meeting. The Judicial Conference made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the District of Alaska.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that as part of its cost-containment effort it did not consider any requests for new positions at its December 2004 meeting. In addition, pursuant to a new Judicial Conference policy adopted in September 2004 (JCUS-SEP 04, p. 25), it conducted an enhanced review of magistrate judge position vacancies to determine whether to authorize filling specific positions (*see supra*, "Changes in Magistrate Judge Positions," p. 28). The Committee also discussed a forthcoming proposal of the Social Security Administration to overhaul its disability claims process, and resolved that, "[c]onsistent with its long-standing view that magistrate judge adjudication of civil cases with litigant consent improves efficiency and should be encouraged, the Magistrate Judges Committee recommends that parties consider consenting to magistrate judge adjudication of social security appeals in any district court in which such appeals are referred to magistrate judges."

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF BANKRUPTCY PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 2002 (Notices to Creditors, Equity Security Holders, United States, and United States Trustee), 9001 (General Definitions), and 9036 (Notice by Electronic Transmission), together with Committee notes explaining their purpose and intent. The Judicial Conference approved the amendments – which were processed on an expedited schedule because of expected cost savings for the federal judiciary – and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with law.

FEDERAL RULES OF CIVIL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed new Civil Rule 5.1 (Constitutional Challenge to a Statute – Notice, Certification, and Intervention) and proposed conforming amendments to Civil Rule 24 (Intervention), together with Committee notes explaining their purpose and intent. The Judicial Conference approved the

new rule and amendments and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with law.

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure approved for publication proposed style amendments to Civil Rules 23 and 64-86, completing its style revision of the Civil Rules. (The Committee had earlier approved proposed style amendments to Civil Rules 1-63 for publication once all revisions under consideration were completed.) The Committee also approved for publication a small number of minor style/substance amendments that make modest, non-controversial changes to the Civil Rules, as well as amendments intended to resolve "global issues" in the Civil Rules. The entire package of proposed amendments to the Federal Rules of Civil Procedure (Civil Rules 1-86) were published in February 2005, with the public comment period to end on December 15, 2005. The Committee also approved for publication proposed amendments to Bankruptcy Rules 1014, 3007, and 7007.1. The Advisory Committees on Appellate, Bankruptcy, Civil, Criminal, and Evidence Rules are reviewing comments from the public submitted on amendments to their respective sets of rules proposed in August and November 2004.

COMMITTEE ON SECURITY AND FACILITIES

NON-PROSPECTUS SPACE MORATORIUM

In order to control rental costs, in March 2004, the Committee on Security and Facilities approved a one-year moratorium, until March 2005, on all non-prospectus space requests (projects costing less than $2.36 million in FY 2005), except requests for courtrooms, chambers, lease renewals, official parking, and recovery from natural disasters or terrorist attacks (JCUS-MAR 04, p. 28).[2] At this session, on recommendation of the Committee, the Conference extended the moratorium to March 2006, to allow additional time for the development of space cost-control mechanisms. The Director of the

[2]In September 2004, the Conference approved a similar moratorium on all non-prospectus space requests for federal defender organizations (JCUS-SEP 04, pp. 15-16).

Administrative Office is authorized to make limited exceptions to the moratorium in consultation with the circuit representative to the Security and Facilities Committee and in coordination with the circuit judicial council, the Budget Committee, and the Executive Committee.

CLOSING COURT FACILITIES

Using criteria established in March 1997 (JCUS-MAR 97, pp. 17-20), the Committee conducted its biennial review of nationwide space assignments to determine the need for non-resident visiting judge facilities. Courts were asked to release all space that was not absolutely necessary in light of the budgetary constraints facing the judiciary. Based on this review, the Committee recommended, and the Conference approved, the release of space and closure of the non-resident court facility in Dubuque, Iowa, and the release of space in Houma, Louisiana.

COMMITTEE ACTIVITIES

The Committee on Security and Facilities reported that, in order to achieve necessary Federal Protective Service (FPS) cost reductions, it determined to survey courts about the possibility of reducing or eliminating 24-hours-a-day/seven-days-a-week FPS contract guard posts, including weekend and holiday coverage (when buildings are largely empty); 9:00 p.m to 6:00 a.m. weekday posts; and any weekday daytime posts when court security officers (CSOs) are also working. In addition, to examine the CSO staffing formula and hearing standards, the Committee determined to acquire the assistance of two experts: one who would evaluate CSO duties and the staffing formula and the other who would advise the Committee on whether to change the hearing standards. The Committee also approved a resolution recommending that rent, which is currently paid from the Salaries and Expenses account, be funded through a separate appropriation within the judiciary's budget. The Security and Facilities Committee forwarded the resolution to the Budget Committee for its consideration, which determined to take the matter under advisement.

MEMORIAL RESOLUTION

The Judicial Conference approved the following resolution noting the death of the Honorable Richard S. Arnold of the Eighth Circuit Court of Appeals:

> With profound sadness, the Judicial Conference of the United States notes the death of the Honorable Richard S. Arnold of the United States Court of Appeals for the Eighth Circuit, on September 23, 2004, in Rochester, Minnesota.
>
> Judge Arnold served with preeminent distinction as a jurist for nearly 26 years, beginning on the federal district courts in Arkansas and continuing on the Eighth Circuit appellate bench. He was chief judge of his circuit from January 1992 until April 1998, and he continued to perform valuable judicial service until right before his death, having assumed senior judge status in April 2001.
>
> Judge Arnold was a pillar of the federal judiciary, both within the Eighth Circuit and on the national scene. A recipient of the Edward J. Devitt Distinguished Service to Justice Award in 1999, he made significant, enduring contributions to the administration of justice, the rule of law, and the improvement of society.
>
> Judge Arnold's invaluable support of the work of the Judicial Conference began shortly after he took the bench and continued for the remainder of his life. He served initially on the Ad Hoc Committee on Regulatory Reform Legislation from 1981 to 1984, and on the Judicial Improvements Subcommittee of the Committee on Court Administration from 1983 to 1987. In late 1987, the Chief Justice selected him to chair the Committee on the Budget, a position he went on to hold for nine years. As budget chairman, he presided over important changes in the judiciary's budgetary processes and was a highly effective advocate for the needs and accomplishments of the third branch during times of increasing fiscal austerity in the federal government.
>
> During his six years as chief circuit judge, Judge Arnold was also a member of this body and, by appointment of

the Chief Justice, the Conference's Executive Committee. In recent years, he was called upon again to serve the judiciary at the national level—as vice chair of the Committee on the Judicial Branch, where he labored tirelessly to improve the adequacy of judicial compensation. Throughout his Conference and committee service, Judge Arnold was an outstanding judicial leader and ambassador who rightly earned the esteem of his fellow judges and all others with whom he dealt.

Judge Arnold represented the best qualities seen in federal judges. Though blessed with rare intellectual gifts, unquestioned integrity, and a statesmanlike bearing, he was also a modest, gracious and warmhearted man, with great sensitivity for human freedom and dignity. Possessed of a keen, dry wit, he challenged and inspired his colleagues. America has lost a superior jurist, the judiciary has lost a great colleague, and all of us have lost a good friend.

As a sign of their affection and respect, the members of the Judicial Conference convey their deepest sympathies to Judge Arnold's widow, Kay, and to his family.

FUNDING

All of the foregoing recommendations that require the expenditure of funds for implementation were approved by the Judicial Conference subject to the availability of funds and to whatever priorities the Conference might establish for the use of available resources.

Chief Justice of the United States
Presiding

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

September 20, 2005

The Judicial Conference of the United States convened in Washington, D.C., on September 20, 2005, pursuant to the call of the late Chief Justice of the United States, William H. Rehnquist, issued under 28 U.S.C. § 331. Associate Justice John Paul Stevens presided in accordance with 28 U.S.C. § 3, and the following members of the Conference were present:

First Circuit:

Chief Judge Michael Boudin
Judge Hector M. Laffitte,
District of Puerto Rico

Second Circuit:

Chief Judge John M. Walker, Jr.
Chief Judge Michael B. Mukasey,
Southern District of New York

Third Circuit:

Chief Judge Anthony J. Scirica
Chief Judge Thomas I. Vanaskie,
Middle District of Pennsylvania

Fourth Circuit:

Chief Judge William W. Wilkins
Judge David C. Norton,
District of South Carolina

Fifth Circuit:

Chief Judge Carolyn Dineen King
Chief Judge Glen H. Davidson,
Northern District of Mississippi

Sixth Circuit:

Chief Judge Danny J. Boggs
Judge William O. Bertelsman,
Eastern District of Kentucky

Seventh Circuit:

Chief Judge Joel M. Flaum
Judge J.P. Stadtmueller,
Eastern District of Wisconsin

Eighth Circuit:

Chief Judge James B. Loken
Chief Judge James M. Rosenbaum,
District of Minnesota

Ninth Circuit:

Chief Judge Mary M. Schroeder
Chief Judge David Alan Ezra,
District of Hawaii

Tenth Circuit:

Chief Judge Deanell R. Tacha
Judge David L. Russell,
Western District of Oklahoma

Eleventh Circuit:

Chief Judge J. L. Edmondson
Judge J. Owen Forrester,
Northern District of Georgia

District of Columbia Circuit:

Chief Judge Douglas H. Ginsburg
Chief Judge Thomas F. Hogan,
District of Columbia

Federal Circuit:

Chief Judge Paul R. Michel

Court of International Trade:

Chief Judge Jane A. Restani

The following Judicial Conference committee chairs attended the Conference session: Circuit Judges Samuel A. Alito, Jr., Julia S. Gibbons, Marjorie O. Rendell, Jane R. Roth, and David B. Sentelle; and District Judges Susan C. Bucklew, W. Royal Furgeson, Jr., Nina Gershon, D. Brock Hornby, Robert B. Kugler, Sim Lake, David F. Levi, John W. Lungstrum, Howard D. McKibben, James Robertson, Lee H. Rosenthal, and Patti B. Saris. Bankruptcy Judge A. Thomas Small and Magistrate Judge John M. Roper, Sr., were also in attendance. Gregory B. Walters of the Ninth Circuit represented the circuit executives.

Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director for Management and Operations; William R. Burchill, Jr., Associate Director and General Counsel; Laura C. Minor, Assistant Director, and Jeffrey A. Hennemuth, Deputy Assistant Director, Judicial Conference Executive Secretariat; Cordia A. Strom, Assistant Director, Legislative Affairs; and David Sellers, Assistant Director, Public Affairs. Judge Barbara Jacobs Rothstein and Russell Wheeler, Director and Deputy Director of the Federal Judicial Center, and Judge Ricardo H. Hinojosa, Chair of the United States Sentencing Commission, were in attendance at the session of the Conference, as was Sally Rider, Administrative Assistant to the Chief Justice. Scott Harris, Supreme Court Counsel, and the 2005-2006 Judicial Fellows also observed the Conference proceedings.

Senators Arlen Specter and Patrick J. Leahy and Representatives Lamar S. Smith and Joseph Knollenberg spoke on matters pending in Congress of interest to the Conference. Attorney General Alberto R. Gonzales addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice.

REPORTS

Mr. Mecham reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office (AO). Judge

Rothstein spoke to the Conference about Federal Judicial Center (FJC) programs, Judge Hinojosa reported on Sentencing Commission activities, Judge Gibbons reported on judiciary appropriations, and Judge Hornby reported on judicial compensation.

EXECUTIVE COMMITTEE

RESOLUTION

The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution recognizing the substantial contributions made by the Judicial Conference committee chairs whose terms of service end in 2005:

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

HONORABLE CAROLYN DINEEN KING
Executive Committee

HONORABLE JOHN W. LUNGSTRUM
Committee on Court Administration and Case Management

HONORABLE SIM LAKE
Committee on Criminal Law

HONORABLE PATTI B. SARIS
Committee on Defender Services

HONORABLE MARY M. LISI
Committee on Financial Disclosure

HONORABLE JAMES ROBERTSON
Committee on Information Technology

HONORABLE FERN M. SMITH
Committee on International Judicial Relations

HONORABLE DEANELL REECE TACHA
Committee on the Judicial Branch

HONORABLE SAMUEL A. ALITO, JR.
Advisory Committee on Appellate Rules

Appointed as committee chairs by Chief Justice William H. Rehnquist, these outstanding jurists have played a vital role in the administration of the federal court system. These judges served with distinction as leaders of their Judicial Conference committees while, at the same time, continuing to perform their duties as judges in their own courts. They have set a standard of skilled leadership and earned our deep respect and sincere gratitude for their innumerable contributions. We acknowledge with appreciation their commitment and dedicated service to the Judicial Conference and to the entire federal judiciary.

NEW BANKRUPTCY LEGISLATION

The Executive Committee was asked to approve on behalf of the Judicial Conference a number of emergency measures required to facilitate timely implementation of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Public Law No. 109-8), which generally takes effect on October 17, 2005. On recommendation of the Committee on Rules of Practice and Procedure, the Executive Committee adopted new and revised official bankruptcy forms for nationwide use and, to facilitate uniformity of practice until the Federal Rules of Bankruptcy Procedure can be amended to reflect the new legislation, agreed to authorize distribution to the courts of proposed changes in the Bankruptcy Rules that can be adopted in individual districts by local rule or general order as interim rules. On recommendation of the Committee on the Administration of the Bankruptcy System, the Executive Committee also approved interim procedures for *in forma pauperis* waivers of chapter 7 filing fees and interim guidelines for certification of credit counseling agencies and debtor education programs.

JUDICIAL SECURITY COMMITTEE

Because of increased concerns for the personal safety of judges and their families, the Executive Committee recommended to the Conference that the Committee on Security and Facilities be divided into a Committee on Judicial Security and a Committee on Space and Facilities so that a committee could devote its efforts entirely to security matters. With the approval of the Chief Justice, the Conference was polled by mail ballot and adopted the recommendation. The Executive Committee approved jurisdictional

statements for the two committees and determined that the organizational change would take effect on October 1, 2005.

HURRICANE KATRINA RESOLUTION

The Judicial Conference approved a recommendation of the Executive Committee, introduced as new business on the Conference floor, to adopt the following resolution expressing appreciation for the efforts of judiciary employees related to Hurricane Katrina:

> The Judicial Conference of the United States notes with deepest appreciation the extraordinary performance and exemplary dedication to the administration of justice of the federal court personnel who are working to help the affected courts recover from the devastation wrought by Hurricane Katrina.
>
> The Conference expresses special thanks to the judges and court employees of the Fifth and Eleventh Circuits who have suffered great personal loss but continue to work tirelessly to restore court operations. The Conference also recognizes the extraordinary efforts of the chief judges and their staffs who have displayed remarkable leadership under the most difficult of circumstances. The courage, commitment, and hard work of the court personnel in these locations have enabled the affected courts to continue to serve the public – some in their own courthouses and others in temporary quarters – and help to hasten the return of those courts to normal operations.
>
> The Conference also would like to acknowledge the fine work and generosity of the entire federal court family. Across the country, judges, court employees, and Administrative Office staff members have devoted countless hours to assisting their colleagues in the areas affected by Hurricane Katrina, and many are also supplying personal financial and other assistance to hurricane victims.
>
> Finally, on behalf of the entire federal judiciary, the Judicial Conference pledges support and encouragement for the ongoing recovery effort and offers the deepest sympathy to everyone who has lost family, friends, homes, or livelihood in this terrible disaster. The Conference acknowledges with pride the federal judiciary's response to the challenges of recovery –

a response that shows firm determination and a strong, cooperative spirit.

MEMORIAL RESOLUTION FOR CHIEF JUSTICE REHNQUIST

The Executive Committee approved, and the Judicial Conference affirmed, the following resolution expressing deep regret at the death of the Honorable William H. Rehnquist of the Supreme Court of the United States:

> The Judicial Conference of the United States notes with sadness the death, on September 3, 2005, of the Honorable
>
> **WILLIAM HUBBS REHNQUIST**
>
> Chief Justice of the United States. A Wisconsin native and an adopted son of Arizona, he was born in Milwaukee in 1924, and he served in the United States Army Air Corps in North Africa in World War II. He was a Phi Beta Kappa graduate of Stanford University and received Master of Arts degrees from both Stanford and Harvard University. He graduated first in his class from Stanford Law School in 1952, and served as law clerk to Associate Justice Robert H. Jackson at the Supreme Court of the United States.
>
> Chief Justice Rehnquist entered private practice in Phoenix in 1953, and in 1969 was appointed Assistant Attorney General, Office of Legal Counsel in the Department of Justice. In 1971, President Richard M. Nixon nominated him to serve as Associate Justice of the Supreme Court of the United States; he was confirmed by the Senate and took his oath as the 100th Justice in January 1972.
>
> Nominated to serve as Chief Justice by President Ronald Reagan in June of 1986, he became the 16th Chief Justice of the United States on September 26 of that year. In 1999, he became the second Chief Justice in the history of the United States to preside over an impeachment trial of a president of the United States.
>
> The Chief Justice excelled in administering the federal courts. The Chief Justice displayed his leadership in the Judicial Conference of the United States almost immediately

by appointing in 1986 a committee of federal judges to study the organization and operations of the Conference, the first such effort in 17 years. He took his role in the Conference structure seriously, and through the establishment of term limits, he significantly expanded the numbers of judges appointed to serve on Conference committees. Chief Justice Rehnquist presided at the semi-annual Judicial Conference sessions for almost two decades with a firm hand. He ran efficient, effective meetings – showing respect for the rules of order and expecting succinctness in presentation, while demonstrating the wit that was his hallmark. His tenure as head of the judicial branch encompassed, among many other things, the Federal Courts Study Committee, the Powell Committee on capital *habeas corpus* remedies, which he established, and the White Commission study on the structural alternatives for the federal appellate courts.

Chief Justice Rehnquist loved history as well as the law, and he was the author of four books. Above all, he was a man of integrity and courtesy, deep humility, and courage.

We mourn the passing of our Chief, a great jurist and good friend, and we express our deepest sympathy to his family, which he loved above all else.

MISCELLANEOUS ACTIONS

The Executive Committee—

- On recommendation of the Committees on Court Administration and Case Management and Information Technology, approved and authorized transmittal to Congress of the annual report for 2005 on deferred court compliance with section 205 of the E-Government Act of 2002 (Public Law No. 107-347);

- Adopted a Committee on Rules of Practice and Procedure recommendation to request that the Supreme Court withdraw a proposed amendment to Rule 4008 of the Federal Rules of Bankruptcy Procedure so that it could be recommitted to the Committee for further consideration in light of its inconsistency with a provision of the new Bankruptcy Abuse Prevention and Consumer Protection Act of 2005;

- Approved a recommendation of the Committee on Financial Disclosure to authorize the chair of that committee to work on the Conference's behalf to obtain enactment of legislation extending, in the broadest possible terms, the Conference authority to redact financial disclosure reports for security purposes that is scheduled to expire on December 31, 2005, with the understanding that, if extension is otherwise unattainable, the Conference would not oppose legislation limiting that authority to protection against physical danger;

- On recommendation of the Committee on Criminal Law, approved a revised Statement of Reasons form to be attached to the Judgment in a Criminal Case;

- On recommendation of the Committee on the Budget, agreed to seek legislation to give the judiciary the flexibility in multi-year contracting and contract payments already permitted to executive branch and certain legislative branch agencies;

- Approved interim fiscal year 2006 financial plans for the Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners accounts, and for the Electronic Public Access program, pending congressional enactment of the judiciary's appropriations for fiscal year 2006;

- Recommitted to the Committee on Federal-State Jurisdiction a recommendation regarding the proposed REAL ID Act of 2005 (H.R. 418 and H.R. 1268, 109th Congress) for development of a more general position that would address any legislation intended to preclude judicial review of constitutional claims (see also *infra*, "Legislation to Eliminate Federal Court Jurisdiction," p. 23);

- Approved an amended jurisdictional statement for the Committee to Review Circuit Council Conduct and Disability Orders that reflects minor technical changes to the Judicial Conduct and Disability Act;

- Approved a recommendation of the Committee on Judicial Resources that the judiciary seek legislation to amend 5 U.S.C. § 6391(a)(2) to include judicial branch agencies among those agencies authorized to participate in emergency leave transfer programs; and

- Deferred for six months implementation of a policy adopted by the Conference in March 2005 relating to funding of circuit judicial conferences so that various practical issues could be studied.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it considered issues regarding pay parity between executive-level employees in the judiciary and the executive branch and expressed support for the AO Director to apply to AO executives any interim adjustments in salary caps approved by the Judicial Conference for court executives (see "Executive Compensation," *infra*, p. 29). The Committee also endorsed pursuing statutory authorities for AO executive pay comparable to those that already exist or that will be sought in the future for court executives, in order to achieve parity with the executive branch. In light of renewed interest in Congress regarding an inspector general for the judiciary, the Committee determined that there is no reason to propose any change to the Judicial Conference policy strongly opposing an inspector general for the judiciary (JCUS-MAR 96, p. 7).

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

OFFICIAL DUTY STATIONS/ PLACES OF HOLDING COURT

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, enacted on April 20, 2005, authorizes the appointment of 28 new bankruptcy judgeships in 21 districts. Pursuant to 28 U.S.C. § 152(b)(1), the Judicial Conference is responsible for determining the official duty stations of bankruptcy judges and their places of holding court, based on recommendations of the Director of the Administrative Office, who in turn must consult with the respective judicial councils. After considering the requests of the judicial councils (some of which requested permission to move an incumbent bankruptcy judge to a new duty station and to locate the newly created judgeship at the original duty station), the Bankruptcy Committee recommended, and the Judicial Conference approved, the following designations of official duty stations and places of holding court:

Official Duty Stations for New Judgeships

District	***Number of New Judgeships***	***Official Duty Station***
First Circuit		
Puerto Rico	1	Ponce
Second Circuit		
New York Northern	1	Syracuse
New York Southern	1	New York, New York (Bowling Green)
Third Circuit		
Delaware	4	Wilmington
New Jersey	1	Trenton
Pennsylvania Eastern	1	Philadelphia
Pennsylvania Middle	1	Wilkes-Barre or Harrisburg
Fourth Circuit		
Maryland	2	Baltimore
	1	Greenbelt
North Carolina Eastern	1	Wilson
South Carolina	1	Spartanburg
Virginia Eastern	1	Richmond
Fifth Circuit		
Mississippi Southern	1	Jackson
Sixth Circuit		
Michigan Eastern	1	Flint or Bay City, with the other city designated as an additional place of holding court
Tennessee Western	1	Memphis, with Jackson, Tennessee designated as an additional place of holding court
Ninth Circuit		
Nevada	1	Las Vegas

Eleventh Circuit		
Florida Southern	1	Miami
	1	Fort Lauderdale
Georgia Southern	1	Augusta

Changes in Official Duty Stations

District	***Former Duty Station***	***New Duty Station***
Fourth Circuit		
North Carolina Eastern		
Hon. J. Rich Leonard	Wilson	Raleigh
Eleventh Circuit		
Georgia Southern		
Hon. John S. Dalis	Augusta	Brunswick

RETIREMENT REGULATIONS

For each bankruptcy or magistrate judge covered under the Federal Employees' Retirement System, the government contributes up to five percent of salary to the Thrift Savings Plan (TSP) on behalf of that judge, one percent automatically and up to four percent as a matching contribution. However, if a judge then later elects to participate in the Judicial Retirement System (JRS), 5 U.S.C. § 8440b(b)(7) requires that any annuity received under JRS be offset by an amount equal to the portion of any TSP distribution the judge received that represents the government's earlier contribution to TSP. Noting that § 6.03(e) of the Regulations of the Director Implementing the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988 is inconsistent with 5 U.S.C. § 8440b(b)(7) because it treats any contributions still unrecovered at the time of a judge's death as a debt to the government, even though there is no longer a JRS annuity to offset, the Committee recommended that the section be deleted. Since § 6.03(e) also applies to magistrate judges, the Committee on the Administration of the Magistrate Judges System made the same recommendation (see *infra* "Retirement Regulations," p. 33). The Conference adopted the Committee's recommendation.

CONFIDENTIALITY OF TAX INFORMATION

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 expands the list of tax documents a debtor must file under 11 U.S.C. § 521 and requires that courts make these documents available to any party in interest in accordance with procedures (to be established by the Director of the Administrative Office) that safeguard the confidentiality of the information. On recommendation of the Committee and pursuant to the Act, the Conference agreed to adopt the "Director's Interim Guidance Regarding Tax Information under 11 U.S.C. § 521," which balances the disclosure requirements of section 521 with the need to protect sensitive financial and personal information from unrestricted dissemination.

COMMITTEE ACTIVITIES

The Bankruptcy Committee reported that it reaffirmed its long-standing view that the bankruptcy administrator program should be retained within the judiciary. It also received status reports on a wide range of topics, including the activities of its Subcommittee on Automation to address automation concerns of bankruptcy judges, a study of venue-related issues being conducted by a joint subcommittee of the Bankruptcy Committee and the Advisory Committee on Bankruptcy Rules, the Administrative Office study on administrative resources, and developments regarding consumer education programs.

COMMITTEE ON THE BUDGET

FISCAL YEAR 2007 BUDGET REQUEST

In recognition of continuing budgetary constraints, the Budget Committee recommended a fiscal year 2007 budget request that reflected a number of cost-containment measures. The Judicial Conference approved the budget request subject to amendments that may become necessary as a result of (a) new legislation, (b) actions of the Judicial Conference, or (c) any other reason the Executive Committee considers necessary and appropriate.

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it discussed the judiciary's ongoing efforts to acquire additional resources from Congress and the program committees' progress on implementing the Judicial Conference-approved cost-containment strategy. The Committee also discussed judicial travel and space rental issues, and endorsed seeking appropriate legislation to affirm the judiciary's need for increased procurement flexibility (see *supra*, "Miscellaneous Actions," pp. 8-9).

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Conference in March 2005, the Committee received 19 new written inquiries and issued 18 written advisory responses (one inquiry was withdrawn). During this period, the average response time for requests was 16 days. The Chairman received and responded to 23 informal inquiries (by telephone, electronic mail, or in person), and the other Committee members responded individually to 166 informal inquiries from their colleagues.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

RESTRUCTURING THE NINTH JUDICIAL CIRCUIT

In response to efforts in the 108th and 109th Congresses to link authorization of new judgeships requested by the judiciary to legislation to restructure the Ninth Judicial Circuit (i.e., to split it into two or three circuits), the Executive Committee asked the Committees on Court Administration and Case Management and Judicial Resources to advise the Conference on whether it should take a position on the proposed circuit split and, if so, what considerations should inform that position. Following discussion, the Conference agreed to adopt the following recommendations of the Committee on Court Administration and Case Management:

a. The Conference's consideration of the issue of splitting the Ninth Circuit should be independently based on the circuit split issue alone and should not be driven by possible linkage of that issue to a judgeship bill.

b. The Conference should not take a position either endorsing or opposing legislation providing for the split of the Ninth Circuit.

c. The Conference should continue to provide Congress with such information on the current status of court administration and case management in the Ninth Circuit as Congress may request.

d. While neither endorsing nor opposing the merits of proposals to divide the Ninth Circuit, the Conference should strongly emphasize to Congress the impact the existing proposals would have on the judiciary as well as on the citizens it serves, specifically, (i) the extent to which a split would exacerbate the current imbalance between the number of appeals originating in California and the number of appellate judges available to hear these cases and (ii) the uncertain amount of appropriations to support the new circuit structures.

e. The Conference should endorse the report entitled "Position of the Committee on Court Administration and Case Management Regarding Legislation to Divide the Ninth Circuit" to the extent it is not inconsistent with the recommendations specifically approved by the Conference.

The Conference took additional actions with regard to this issue (see *infra*, "Restructuring the Ninth Judicial Circuit," p. 29).

ELECTRONIC TRANSCRIPTS

In September 2003, the Judicial Conference adopted a policy requiring courts that make documents electronically available via the Public Access to Court Electronic Records (PACER) system also to make prepared electronic transcripts of court proceedings available remotely. To address privacy concerns, the policy includes a process for redacting personal identifying information from transcripts. The Conference deferred implementation of the policy, however, until it could consider a report to be prepared by the Committee on Judicial Resources regarding the impact the policy would have on court reporter compensation (JCUS-SEP 03, pp. 16-17). After considering the Judicial Resources Committee's report, presented to the Conference at this session, as well as information submitted by court reporters and the views of the Committees on Defender Services and Information Technology, the

Committee on Court Administration and Case Management recommended that the Conference implement its policy on electronic availability of transcripts by —

a. Adopting a $.75 per-page fee for remote electronic public access to transcripts, providing that a portion of that transcript fee be paid to the court reporter who prepared the transcript and setting that portion at $.50 per page, and directing the judiciary to retain the remainder of the fee ($.25 per page, which includes the current public access fee of $.08 per page) to recoup the cost of developing, maintaining, and operating the systems to perform these functions;

b. Seeking appropriate legislation necessary to effectuate these fees;

c. Authorizing the expansion of the existing pilot project on the electronic availability of transcripts – for at least six months – while the modifications noted above are implemented; and

d. Directing this Committee, as part of the ongoing pilot project, to work with the Defender Services Committee to evaluate the impact of the policy on the Defender Services program (i.e., develop cost estimates for the Defender Services budget and examine implementation issues) and to determine whether to recommend changes to the policy.

The Conference adopted the Committee's recommendations.

ATTORNEY ADMISSION FEE FOR THE COURT OF FEDERAL CLAIMS

The Judicial Conference adopted a recommendation of the Committee on Court Administration and Case Management to increase the attorney admission fee for the United States Court of Federal Claims from $50 to $150. This makes the Court of Federal Claims fee consistent with the attorney admission fee charged in the district courts, which was raised to $150 in March 2004 (JCUS-MAR 04, p. 9), and in the courts of appeals, which was established at $150 in September 2004 (JCUS-SEP 04, p. 12).

FEE FOR TECHNOLOGY RESOURCES IN THE COURTS

In September 1997, the Judicial Conference agreed to seek legislation to authorize the judiciary to establish fees for the use of court-provided

technology resources (JCUS-SEP 97, p. 62). Since that time, there have been legislative and other changes affecting the establishment, collection, and retention of fees by the judiciary that obviate the need for seeking such legislation. Therefore, on the Committee's recommendation, the Conference agreed to rescind its position to seek legislation that would expressly provide for fee authority for technology resources in the courts.

APPOINTING AUTHORITY FOR CIRCUIT LIBRARIANS

In September 2001, the Conference adopted a recommendation of the then Committee on Automation and Technology (which at that time had jurisdiction over the library program) to seek legislation amending 28 U.S.C. § 713 to provide that circuit librarians be selected and hired by the circuit judicial councils rather than by the courts of appeals. This was one of a number of recommendations intended to improve library program governance (JCUS-SEP/OCT 01, pp. 42-43). After reviewing the breadth of services librarians are providing and the level of coordination that currently takes place between the chief circuit judges and library committees or the circuit judicial councils, the Court Administration and Case Management Committee determined that this proposed legislation was not necessary. The Committee recommended that the Conference rescind its September 2001 position seeking change in the appointing authority for circuit librarians, and the Conference agreed.

GEOGRAPHIC LOCATION REQUIREMENT FOR COURT RECORDS

In March 2001, on recommendation of the then Committee on Automation and Technology (which had jurisdiction over records management issues at that time), the Judicial Conference agreed to pursue legislation that would eliminate the requirement of 28 U.S.C. § 457 that records be kept at a place where court is held (JCUS-MAR 01, pp. 7-8). The intent of seeking such legislation was to ensure that electronic records of a court could be maintained on servers that might not be located at a place where court was actually held. It was subsequently determined that such legislation was unnecessary as electronic court records are accessible at the courthouse, as well as at other locations, through the courts' Case Management/Electronic Case Files (CM/ECF) system, and therefore the statutory requirements are met and actually exceeded. The Conference adopted the Committee's recommendation that the position be rescinded.

LAWBOOKS AND LIBRARIES

On recommendation of the Committee on Court Administration and Case Management, the Conference, as part of the judiciary's cost-containment efforts, adopted a policy with regard to lawbooks and libraries that judges (a) maintain only those subscriptions to print case reporters deemed essential to chambers, (b) cancel all existing subscriptions to print case reporters that are not essential to chambers, and (c) give serious consideration to whether subscriptions to law journals, law reviews, and treatises are essential. The Conference also approved the Committee's recommendation that the policy be implemented through the librarians with the assistance and participation of the chief judges of the appellate, district, and bankruptcy courts. Finally, on the Committee's recommendation, the Conference recognized that, although print case reporters are not deemed essential by all judges, the responses from a large number of judges to a questionnaire regarding lawbooks clearly show that, for a significant number of judges, print reporters remain an essential resource for carrying out the courts' fundamental mission of administering justice.

MODEL LOCAL RULES FOR ELECTRONIC FILING

The Judicial Conference adopted model local rules for electronic filing in civil and bankruptcy cases in September 2001 and in criminal cases in September 2003 and delegated to the Committee on Court Administration and Case Management the authority to make routine, technical and/or non-substantive modifications to these model local rules (JCUS-SEP/OCT 01, p. 50; JCUS-SEP 03, p. 15). At this session, on recommendation of that Committee, the Conference adopted model local rules for appellate electronic case filing with a similar delegation of authority to the Committee to make subsequent routine, technical, and/or non-substantive modifications. Adoption of the rules by individual appellate courts is discretionary, and it is expected that each court will tailor the rules to fit its local situations.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that, among other things, it discussed the impact on the courts of the judiciary's policy on privacy and public access to electronic case files and requested that the Federal Judicial Center conduct a study of this issue. The Committee also reviewed a draft of the American Bar Association's

"Principles for Juries and Jury Trials," and created a subcommittee to review the principles in greater detail. The Committee was also briefed on the efforts by the Administrative Office to work with the National Archives and Records Administration regarding the implementation of an agreement reached to permit the disposal of paper documents after they have been scanned into the Case Management/Electronic Case Files system. The Committee reiterated its support for the agreement and urged its implementation as quickly as possible.

COMMITTEE ON CRIMINAL LAW

CONTRACTING AUTHORITY FOR NON-TREATMENT SERVICES

In addition to broad general contracting authority under 28 U.S.C. § 604(a), the Director of the Administrative Office has explicit authority under 18 U.S.C. § 3672 to contract for reentry services for federal offenders addicted to drugs or suffering from a mental defect who are under post-conviction supervision. Such services include substance abuse and mental health treatment, and medical, educational, social, vocational training, and/or other rehabilitative interventions. Noting that all offenders could benefit from transitional services such as emergency housing and vocational training, the Committee recommended that the Judicial Conference seek legislation to explicitly authorize the AO Director to contract for non-treatment services (e.g., medical, educational, emergency housing, and vocational training) and other reentry interventions for post-conviction supervision offenders generally. The Conference adopted the Committee's recommendation.

POST-CONVICTION SUPERVISION MONOGRAPH

On recommendation of the Committee on Criminal Law, the Judicial Conference approved revisions to *The Supervision of Federal Offenders*, Monograph 109, for publication and distribution to the courts. The revisions, modeled after the early termination policy applicable to parolees and other offenders under the jurisdiction of the United States Parole Commission, create a presumption in favor of recommending early termination of supervised releasees and probationers who —

a. have been under supervision for at least 18 months and

    1. are not career violent and/or drug offenders, sex offenders, or terrorists,

2. present no identified risk to the public or victims, and
3. are free from any moderate or high severity violations; or

b. have been under supervision for at least 42 months and

1. are not career violent and/or drug offenders, sex offenders, or terrorists, and
2. are free from any moderate or high severity violations.

PRETRIAL SERVICES SUPERVISION MONOGRAPH

On recommendation of the Committee, the Judicial Conference approved revisions to *The Supervision of Federal Defendants,* Monograph 111, for publication and distribution to the courts. The revisions incorporate program changes that implement cost-containment measures approved by the Judicial Conference in September 2004 (JCUS-SEP 04, pp. 14-15). The revisions are designed to limit the growth in the number of offenders under pretrial services supervision, reduce pretrial services supervision program requirements, and contain costs in substance abuse treatment services paid for by the judiciary.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that it proposed revisions to the Statement of Reasons attached to the Judgment in a Criminal Case forms (AO 245B and AO 245C) in view of the Supreme Court decision in the consolidated cases, *United States v. Booker/United States v. Fanfan*, 125 S.Ct. 738 (2005). The revisions, which were approved by the Executive Committee on behalf of the Conference, are designed to enable the Sentencing Commission to determine more precisely the number of sentences imposed (1) within the advisory guideline sentencing range, (2) within the advisory guidelines as adjusted by any departure under the advisory guidelines (including departures initiated or supported by the government), and (3) outside the advisory guideline system based on the sentencing judge's articulation of other sentencing factors set forth in 18 U.S.C. § 3553(a) (including those sentencing adjustments initiated or supported by the government). In addition, the Committee unanimously agreed to generally support the revisions to the *U.S. Courts Design Guide* recommended by the Committee on Security and Facilities that would reduce the square footage for office space related to probation and pretrial services staff.

COMMITTEE ON DEFENDER SERVICES

CASE BUDGETING

Pilot Project. In order to control costs of Criminal Justice Act representations in capital cases and non-capital "mega-cases," the Committee on Defender Services recommended, and the Judicial Conference approved, a pilot project lasting up to three years wherein the Defender Services appropriation would fund up to three circuit positions to support the case-budgeting process. These positions are intended to provide objective case-budgeting advice to judges and enhance management of, and accountability for, the cases most significantly affecting the Defender Services account.

Investigative and Expert Services. Concerned that some panel attorneys are delaying pursuit of aspects of their representation during the initial stages of the case-budgeting process, the Committee recommended that the Conference amend paragraphs 2.22B(4) and 6.02F of the Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines), Volume 7, *Guide to Judiciary Policies and Procedures*, to state that courts, pending submission and approval of case budgets, should act upon requests for investigative, expert, and other services where prompt authorization is necessary for adequate representation. The Conference approved the Committee's recommendation.

NON-PROSPECTUS SPACE MORATORIUM

On recommendation of the Committee, the Judicial Conference agreed to continue for one year, until September 2006, the moratorium initially imposed in September 2004 on all federal defender organization non-prospectus space requests,[1] except requests for lease renewals, official parking, and space necessary for recovery from natural disasters or terrorist attacks. The Director is authorized to make limited exceptions in consultation with the Defender Services Committee's chair and the Committee member who is the liaison to the federal defender's circuit. Any exceptions involving space requests for federal public defender organizations will also require coordination with the circuit judicial council.

[1]Non-prospectus space requests are those whose construction costs are less than $2.36 million in FY 2005, and less than $2.47 million in FY 2006.

LOCATION OF FEDERAL DEFENDER OFFICE SPACE

In September 2003, the Judicial Conference amended the *U.S. Courts Design Guide* to provide, among other things, that federal defender offices must be located outside the courthouse, or other federal buildings housing law enforcement agencies, unless the federal defender has determined that the location would not compromise the defender organization's ability to fulfill its mission (JCUS-SEP 03, p. 38). At this session, in order to ensure that the independent character and image of the federal defender function is maintained, and that the fiscal impact of locating a defender office in a courthouse has been fully examined, the Committee on Defender Services recommended that the policy be amended to require the Defender Services Committee's approval before locating a defender office in a courthouse and, further, that the revision be reflected in the *Design Guide*. The Conference adopted the Committee's recommendation.

PANEL ATTORNEY COMPENSATION

Non-Capital Compensation Rate. On recommendation of the Committee, the Judicial Conference approved revisions to paragraphs 2.22A(1) through (3) of the CJA Guidelines to reflect the increase by Congress of the non-capital hourly rate for panel attorneys to $90 and to delete obsolete provisions for establishing alternative hourly rates up to $75.

Capital Compensation Rate. The Conference approved a Committee recommendation to revise paragraphs 6.02A(1)(a) and 6.02B(1) of the CJA Guidelines to reflect the recent increase by Congress in the maximum capital hourly rate from $125 to $160.

Interim Voucher Withholding Percentage. Sample interim voucher orders for non-capital panel attorney claims and for capital and non-capital claims from investigative, expert, and other service providers, contained in Appendices E and F of the CJA Guidelines, include provisions for withholding one-third of compensation on interim vouchers. The purpose of the withholding provision is to strike a balance between the interest in relieving court-appointed attorneys of financial hardships in extended and complex cases, and in preserving the statutorily imposed responsibility of the chief judge of the circuit to provide a meaningful review of claims for excess compensation (CJA Guideline 2.30A). Noting that these objectives could be accomplished by withholding less than one-third of compensation, the Committee recommended that the Judicial Conference endorse revisions to the sample interim voucher orders contained in Appendices E and F of the

CJA Guidelines to reduce the suggested one-third of compensation withholding amount to 20 percent. The Conference approved the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), it approved FY 2006 federal defender organization budgets and grants totaling $423,163,000. In addition, after considering proposed changes to the *U.S. Courts Design Guide*, the Committee communicated its recommendations to the Security and Facilities Committee, including its agreement with the proposed removal of federal defender space standards from the *Guide* and the development of a separate set of standards. The Committee reviewed materials regarding electronic access to official transcripts that were being presented to the Committees on Court Administration and Case Management and Judicial Resources, and then conveyed to those two committees its views on issues potentially affecting the Defender Services program.

COMMITTEE ON FEDERAL-STATE JURISDICTION

LEGISLATION TO ELIMINATE FEDERAL COURT JURISDICTION

The Committee on Federal-State Jurisdiction considered several bills pending in the 109th Congress that would eliminate federal court jurisdiction to hear certain constitutional claims. Noting the importance of preserving the rights of individuals to bring constitutional claims in Article III courts, and of protecting the independence of the judicial branch as a coordinate and coequal branch of government, the Committee recommended that the Judicial Conference strongly oppose legislation that would deprive a party of the opportunity to pursue claims under the U.S. Constitution in Article III courts. After discussing the potential breadth of the recommendation, the Conference recommitted it to the Committee for further consideration. (See also *supra*, "Miscellaneous Actions," pp. 8-9).

DECLARATION AND REMAND PROPOSAL

As part of its ongoing jurisdictional improvements project, the Committee on Federal-State Jurisdiction recommended that the Judicial

Conference seek legislation to preserve state court jurisdiction in diversity cases in which plaintiffs declare that they will forgo recovery in excess of the threshold amount for federal court jurisdiction. In particular, the Committee recommended, and the Conference approved, seeking legislation to —

a. Amend section 1441(a) of title 28, United States Code, to provide that if the plaintiff has filed a declaration in state court, as part of or in addition to the initial pleading, to the effect that the plaintiff will neither seek nor accept an award of damages or entry of other relief exceeding the amount specified in section 1332(a) of title 28, the case shall not be removed on the basis of the jurisdiction conferred in section 1332(a) of this title so long as the plaintiff abides by the declaration and it remains binding under state practice; and

b. Amend section 1447 of title 28, United States Code, to (1) provide that within 30 days after the filing of a notice of removal of a civil action in which the district court's removal jurisdiction rests solely on original jurisdiction under section 1332(a) of title 28, the plaintiff may file a declaration with the district court to the effect that the plaintiff will neither seek nor accept an award of damages or entry of other relief exceeding the amount specified in section 1332(a), and (2) authorize the district court, upon the filing of such a declaration, to remand the action to state court or retain the case in the interest of justice.

The first part of the proposal would preclude removal in those cases where the plaintiff has filed a declaration in state court, if such declaration is permitted by state practice, that the plaintiff will not seek or accept a recovery in excess of the existing federal jurisdictional threshold (now $75,000). The second part of the proposal would provide the federal court with discretion to remand an action to state court on the basis of a declaration filed within 30 days of removal, but would also allow the court to retain the case in the interest of justice.

HABEAS CORPUS LEGISLATION

Legislation is pending in the 109th Congress (the "Streamlined Procedures Act of 2005," S. 1088 and H.R. 3035) that is intended to reform federal habeas corpus review of state court convictions in both capital and non-capital cases. In July 2005, letters were transmitted to both the House and Senate Judiciary Committees expressing the judiciary's opposition to certain provisions of the bills based on existing positions of the Judicial Conference. In late July 2005, the Senate Judiciary Committee adopted a substitute amendment to S. 1088. The Committee on Federal-State

Jurisdiction (in consultation with the Committees on Criminal Law and Defender Services) undertook a review of those provisions of S. 1088, as amended in July 2005, and H.R. 3035 that had not been addressed in the initial letters to the Senate and House Judiciary Committees. The Committee also examined the underlying premise of the proposed bills that there is unreasonable delay in the resolution of habeas corpus petitions filed by state prisoners in federal courts that requires remedial legislation. Based on its review, the Committee recommended that the Judicial Conference —

a. Express support for the elimination of any unwarranted delay in the fair resolution of habeas corpus petitions filed by state prisoners in the federal courts;

b. Urge that, before Congress considers additional amendments to habeas corpus procedures, analysis be undertaken to evaluate whether there is any unwarranted delay occurring in the application of current law in resolving habeas corpus petitions filed in federal courts by state prisoners and, if so, the causes for such delay;

c. Express opposition to legislation regarding federal habeas corpus petitions filed by state prisoners that has the potential to (1) undermine the traditional role of the federal courts to hear and decide the merits of claims arising under the Constitution; (2) impede the ability of the federal and state courts to conduct an orderly review of constitutional claims, with appropriate deference to state-court proceedings; and (3) prevent the federal courts from reaching the merits of habeas corpus petitions by adding procedural requirements that may complicate the resolution of these cases and lead to protracted litigation, including the following sections of the proposed "Streamlined Procedures Act of 2005" in the 109th Congress (H.R. 3035 as introduced and S. 1088 as amended in July 2005):

    Section 2 of H.R. 3035 and S. 1088 (mixed petitions);
    Section 4 of H.R. 3035 and S. 1088 (procedurally defaulted claims);
    Section 5 of H.R. 3035 and S. 1088 (tolling of limitation period);
    Section 6 of H.R. 3035 (harmless errors in sentencing); and
    Section 9(a) of H.R. 3035 (federal review of capital cases under chapter 154 of title 28, United States Code);

d. Express opposition to section 3 (amendments to petitions) of H.R. 3035 and S. 1088 that would prohibit the federal courts from considering modifications to existing claims or the addition of new claims that meet the requirements of current law;

e. Express opposition to section 7 of H.R. 3035 and section 6 of S. 1088 that would make the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) applicable to cases pending prior to its enactment, and section 14 of H.R. 3035 and S. 1088 that would make the proposed Streamlined Procedures Act applicable to pending cases; and

f. Express opposition to the provision in section 11 of H.R. 3035 and section 10 of S. 1088 that would amend 21 U.S.C. § 848(q) to require an application for investigative, expert, or other services in connection with challenges to a capital sentence involving state or federal prisoners to be decided by a judge other than the judge presiding over the habeas corpus proceeding.

The Conference adopted the Committee's recommendations.

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it continued to monitor the Social Security Administration's (SSA) proposed changes to the disability claims process, including proposed new regulations, and that a letter commenting on those regulations was sent by the Director of the Administrative Office (Director) to the Commissioner of the SSA. In addition, the Committee asked the Director to convey to Congress the judiciary's opposition to a provision of the proposed "Federal Consent Decree Fairness Act" (S. 489, H.R 1229, 109th Congress) that would require federal district courts to rule on certain motions within 90 days. Such a provision is inconsistent with the long-standing policy of the Conference opposing statutory imposition of litigation priorities, expediting requirements, or time limitations beyond those already specified in certain cases. The Committee also reviewed asbestos legislation, and, at the Committee's suggestion, a letter was sent to Congress reiterating the Conference's concern with provisions that would limit the ability of any court to issue a stay in certain situations.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that as of July 11, 2005, the Committee had received 3,634 financial disclosure reports and certifications for calendar year 2004, including 1,240 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 324 reports from bankruptcy judges; 513 reports

from magistrate judges; and 1,557 reports from judicial employees. The Committee also reported that the authority of the Judicial Conference to redact personal and sensitive information from financial disclosure reports will expire on December 31, 2005. The primary focus of the Committee's legislative effort for 2005 continues to be the repeal of this sunset provision (see *supra*, "Miscellaneous Actions," pp. 8-9).

COMMITTEE ON INFORMATION TECHNOLOGY

LONG RANGE PLAN FOR INFORMATION TECHNOLOGY

Pursuant to 28 U.S.C. § 612 and on recommendation of the Committee on Information Technology, the Judicial Conference approved a 2006 update to the *Long Range Plan for Information Technology in the Federal Judiciary*. Funds for the judiciary's information technology program will be spent in accordance with this plan.

JUDICIARY NETWORK SECURITY AND PRIVACY REPORT

Based on an independent security assessment of the judiciary's data communications network (DCN), Case Management/Electronic Case Files system, and Lotus Notes, the Committee on Information Technology prepared a report and recommendations regarding judiciary network security and privacy, as well as an overall strategy for implementing the report. After soliciting input from the courts and revising the report where possible, the Committee recommended that the Judicial Conference approve the report and adopt its recommendations and direct the Committee on Information Technology to coordinate implementation of the recommendations. The Conference agreed.

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it endorsed a revised approach to information technology training for judges to focus more specifically on judges' tasks and functions and discussed various options. The Committee reaffirmed its commitment to cost containment, including identifying and implementing cost-effective service delivery models that take into consideration performance, service levels, security, and disaster recovery techniques. It agreed to permit access to the DCN by community defender organizations for administrative purposes and considered issues within its

jurisdiction related to the implementation of the E-Government Act of 2002 and the Judicial Conference's electronic transcript policy.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that during the period from January 1, 2005 to June 30, 2005, a total of 47 intercircuit assignments, undertaken by 36 Article III judges, were processed and recommended by the Committee and approved by the Chief Justice. In addition, the Committee aided courts requesting assistance by both identifying and obtaining judges willing to take assignments. The Committee received an update of the Administrative Office's effort to collect additional data on visiting judge assignments (both intercircuit and intracircuit) to help evaluate the costs and benefits of the intercircuit assignment program.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its involvement in rule-of-law and judicial reform activities throughout the world, highlighting those in Cambodia, Ecuador, Korea, Liberia, Mexico, and the Russian Federation. The Committee continues to work closely on the rule-of-law component of the Open World Program at the Library of Congress, which has been expanded to bring Ukrainian as well as Russian jurists and judicial officials to the United States.

COMMITTEE ON THE JUDICIAL BRANCH

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that its priority attention is concentrated on the problem of the adequacy of judicial compensation. This includes seeking vigorously to widen the circle of outside supporters of improved compensation. While focusing upon that objective, the Committee continues to consider other matters of relevance to the judiciary within its jurisdiction, e.g., it is actively examining ways to improve judicial-legislative communications.

COMMITTEE ON JUDICIAL RESOURCES

RESTRUCTURING THE NINTH JUDICIAL CIRCUIT

Along with the recommendations of the Committee on Court Administration and Case Management (see *supra* "Restructuring the Ninth Judicial Circuit," pp. 14-15), the Conference considered and discussed recommendations of the Committee on Judicial Resources on proposals to restructure the Ninth Circuit. The Conference agreed to adopt, and to give prompt notice to Congress of, the following Committee recommendations:

a. The Conference opposes any legislation that would restructure the Ninth Circuit if, as with H.R. 211, H.R. 212, H.R. 3125, S. 1296, and S. 1301 (109th Cong.), it would provide an inadequate level of judicial resources and an uncertain amount of appropriations to support the new circuit structures.

b. The Conference opposes efforts to condition legislative action regarding the establishment of new judgeships recommended by the Conference on the restructuring of judicial circuits.

Since the Conference determined not to take a position either endorsing or opposing legislation providing for the split of the Ninth Circuit (see *supra*, pp. 14-15), it did not reach recommendations of the Committee regarding factors the Conference should consider were it to take such a position.

EXECUTIVE COMPENSATION

The salaries of circuit and court unit executives have been subject to a locality pay cap established by the Judicial Conference in September 1993 to match executive branch limits that are no longer applicable to the executive branch senior executive service (JCUS-SEP 93, p. 50). In order to provide relief to unit executives, especially those in high cost-of-living areas who have reached the pay cap and have had limited pay increases in the past few years, to help enhance recruitment and retention efforts in high cost-of-living areas, and to take a step toward re-establishing pay parity with the executive branch, the Committee recommended that the Judicial Conference approve, as an interim measure pending completion of a comprehensive compensation study, the application of locality pay to circuit and court unit executive salaries up to the salary of a district judge, to be applied at the request of the chief judge on behalf of the court. The Conference adopted the Committee's recommendation.

WORKFORCE RESHAPING

The judiciary has in place through 2005 a voluntary separation incentive (buyout) program and a voluntary early retirement program for Court Personnel System (CPS) employees, official court reporters, and federal public defender organization employees (JCUS-SEP 03, pp. 27-28; JCUS-SEP 04, pp. 7, 21-22). Noting the success of these programs both in achieving savings for the judiciary and in facilitating organizational restructuring in court offices, the Committee recommended that the Judicial Conference offer both the buyout and early retirement programs through FY 2009, to be implemented each fiscal year at the discretion of the Director of the Administrative Office. The Committee also recommended that, for the early retirement program only, non-chambers Judiciary Salary Plan employees be permitted to participate. CPS employees, official court reporters, and federal public defender organization employees would continue to be included in both programs. The Conference adopted the Committee's recommendations.

TEMPORARY REPLACEMENTS FOR CHAMBERS STAFF

On recommendation of the Committee on Judicial Resources, the Judicial Conference, with regard to the judiciary's policy on centrally funded temporary replacements for absent chambers staff, affirmed that (a) central funding is generally limited to 20 weeks for maternity reasons, and 24 weeks for medical reasons to care for a family member with a serious health condition; (b) centrally funded temporary replacement is unlimited in cases where the chambers employee is absent due to his or her own illness; (c) appropriate medical documentation is required; and (d) the policy does not cover swing pool secretaries.

WAIVER OF COURT REPORTER QUALIFICATIONS

Pursuant to 28 U.S.C. § 753(a), the Judicial Conference has established minimum qualifications for official court reporters in federal courts to ensure speed and accuracy needed to preserve reliable records of court proceedings (see *Guide to Judiciary Policies and Procedures*, Volume 6, Court Reporters Manual, Part 3.4.2.). Conference policy also allows for waivers of these qualifications when a court demonstrates a good faith effort to recruit a qualified reporter and when employment is probationary until the qualifications requirements are fulfilled. *Guide*, Volume 6, Part 3.4.4. Concerned that requests for waivers are increasing in

frequency and that courts are not taking active steps to meet the qualification requirements, the Committee recommended amendments to the qualifications policy to stress the importance of maintaining court reporting skills at the minimum levels provided. The Committee recommended, and the Conference agreed to adopt, a qualifications waiver policy for official court reporters that (a) waivers may be granted for a period of one year;[2] (b) a court's request for a waiver must demonstrate a good faith effort to recruit a qualified reporter through a nationwide search; (c) a court reporter hired under a waiver must demonstrate that he or she has taken the scheduled certification tests required pursuant to Conference policy each time the tests have been offered, and has provided the test results to the respective court and the Administrative Office; (d) annual waivers may be authorized by the Administrative Office for a total of no more than three years, after which any continued request (including justification) would be made to the Committee; and (e) a court reporter not meeting the qualification requirements would be on probation during the waiver period until the requirements are fulfilled.

TELEWORK FOR COURT REPORTERS

Under an existing Judicial Conference guideline, court reporters who have been placed on a regular tour of duty and earn annual leave in accordance with the Leave Act (5 U.S.C. § 6301 et seq.) are required to serve their tour of duty "in the courthouse" (JCUS-SEP 83, p. 49). In order to allow court reporters to participate in the judiciary's telework program, the Judicial Conference, on recommendation of the Committee, agreed to amend its September 1983 guideline to permit any such court reporter, if the court determines the reporter to be eligible for telework under the court's telework program and has authorized the reporter to do so, to perform official duties outside the courthouse in a designated location approved by the court.

COURT INTERPRETERS

Based on established criteria, the Committee on Judicial Resources recommended that the Judicial Conference approve four additional Spanish staff court interpreter positions for fiscal year 2007, one for the District of Arizona, one for the District of Nebraska, and two for the District of New

[2]By mail ballot completed on November 30, 2005, the Executive Committee, acting on behalf of the Conference, slightly modified this provision to provide that waivers may be granted for a period of one year and one day, so that court reporters hired under the waiver policy are eligible to receive benefits.

Mexico, based on the Spanish language interpreting workloads in these courts. The Committee recommended that the Conference not approve additional Spanish staff court interpreter positions for the Southern District of Iowa and the District of New Jersey. The Committee further recommended that with regard to the District of New Mexico's request for a third additional Spanish staff court interpreter position, the Conference should advise the District to utilize the position currently providing Navajo language interpreting for Spanish language interpreting in light of the decreased need for Navajo language interpreting and the increased need for Spanish language interpreting in that district. Finally, the Committee recommended accelerated funding in fiscal year 2006 for one of the additional Spanish staff court interpreter positions for the District of New Mexico. The Conference adopted the Committee's recommendations.

JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

The Judicial Conference adopted a recommendation of the Committee to raise the target grades of the following positions for the Judicial Panel on Multiditrict Litigation: the executive attorney from Judiciary Salary Plan (JSP)-16 to JSP-17, to bring that salary into conformity with the salary of senior staff attorneys, and the clerk from JSP-15 to JSP-16 and chief deputy clerk from JSP-14 to JSP-15, to reflect new classification criteria adopted in 2004 for clerks of district courts.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it endorsed a report on the first phase of a study of court compensation and a revised plan for further study, including advancing the component dealing with executive-level compensation. A report will be presented to the Committee at its June 2006 meeting. Regarding access to work measurement data, the Committee endorsed continuation of the current practice of strict confidentiality for individual employees' data, but decided to allow access by judiciary personnel to aggregate data without the names of the courts. The Committee reviewed a report and considered a proposal concerning electronic access to official court transcripts and court reporter income. It also affirmed its strong support for the Human Resources Management Information System (HRMIS) and the total funding requested for fiscal year 2006 for HRMIS as part of the judiciary's cost-containment and productivity initiatives.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

RETIREMENT REGULATIONS

As explained above (see "Retirement Regulations," *supra*, p. 12), Section 6.03(e) of the Regulations of the Director Implementing the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988 is inconsistent with 5 U.S.C. § 8440b(b)(7). The Committee on the Administration of the Magistrate Judges System, in parallel with the Bankruptcy Committee, recommended that the provision be deleted. The Conference adopted the Committee's recommendations.

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee on the Administration of the Magistrate Judges System and the recommendations of the Director of the Administrative Office, the respective district courts, and judicial councils of the circuits, the Judicial Conference approved the following changes in positions, salaries, locations, and arrangements for full-time and part-time magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

DISTRICT OF COLUMBIA CIRCUIT

District of Columbia

Made no change in the number, location, or arrangements of the magistrate judge positions in the district.

FIRST CIRCUIT

District of Puerto Rico

Made no change in the number, location, or arrangements of the magistrate judge positions in the district.

SECOND CIRCUIT

Southern District of New York

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

THIRD CIRCUIT

Eastern District of Pennsylvania

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Western District of Pennsylvania

1. Did not authorize filling one of the magistrate judge positions at Pittsburgh when it becomes vacant in September 2005.

2. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

District Court of the Virgin Islands

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

FIFTH CIRCUIT

Western District of Texas

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

NINTH CIRCUIT

District of Arizona

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Central District of California

1. Authorized an additional full-time magistrate judge position at Los Angeles.

2. Redesignated a magistrate judge position previously designated as Los Angeles as Santa Ana.

3. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

Eastern District of Washington

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

TENTH CIRCUIT

District of Colorado

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

2. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

District of New Mexico

1. Authorized an additional full-time magistrate judge position at Las Cruces.

2. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

Western District of Oklahoma

1. Increased the salary of the part-time magistrate judge position at Lawton from Level 2 ($62,597 per annum) to Level 1 ($68,857 per annum).

2. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

ELEVENTH CIRCUIT

Southern District of Georgia

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

ACCELERATED FUNDING

On recommendation of the Committee, the Conference agreed to designate the new full-time magistrate judge position at Las Cruces, New Mexico, for accelerated funding in fiscal year 2006.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that it is updating its 2001 report on the growth of the magistrate judges system in response to a request from the Executive Committee. The Committee also continued its cost-containment efforts, recommending accelerated funding for only one of the three new magistrate judge positions it is recommending to the Judicial Conference and agreeing not to consider requests for new full-time magistrate judge positions at its December 2005 meeting. The Committee discussed the issue of security for judges and resolved that "full-time magistrate judges, part-time magistrate judges, and recalled magistrate judges should be included in the spending plan for funds appropriated in the FY 2005 Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief for increased judicial security outside of courthouse facilities, including home intrusion detection systems for judges."

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF APPELLATE PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference a proposed amendment to Appellate Rule 25 (Filing and Service), and a proposed new Rule 32.1 (Citing Judicial Dispositions), together with Committee notes explaining their purpose and intent. The Conference approved the amendment to Rule 25, and after discussion, approved new Rule 32.1 with the stipulation that it apply only to judicial

dispositions issued on or after January 1, 2007. The Conference authorized the transmittal of the amendment and new rule to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 1009 (Amendments of Voluntary Petitions, Lists, Schedules and Statements), 5005 (Filing and Transmittal of Papers), and 7004 (Process; Service of Summons, Complaint), together with Committee notes explaining their purpose and intent. The Judicial Conference approved the amendments and authorized their transmission to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF CIVIL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Civil Rules 5 (Service and Filing of Pleadings and Other Papers), 9 (Pleading Special Matters), 14 (Third-Party Practice), 16 (Pretrial Conferences; Scheduling; Management), 26 (General Provisions Governing Discovery; Duty of Disclosure), 33 (Interrogatories to Parties), 34 (Production of Documents, Electronically Stored Information, and Things and Entry Upon Land for Inspection and Other Purposes), 37 (Failure to Make Disclosure or Cooperate in Discovery; Sanctions), 45 (Subpoena), 50 (Judgment as a Matter of Law in Jury Trials; Alternative Motion for New Trial; Conditional Rulings), and 65.1 (Security: Proceedings Against Sureties), and Civil Form 35 (Report of Parties' Planning Meeting); and proposed amendments to Rules A (Scope of Rules), C (In Rem Actions: Special Provisions), and E (Actions in Rem and Quasi in Rem: General Provisions), and proposed new Rule G (Forfeiture Actions in Rem) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, together with Committee notes explaining their purpose and intent. The Judicial Conference approved the amendments and new rule and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF CRIMINAL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Criminal Rules 5 (Initial Appearance), 6 (The Grand Jury), 32.1 (Revoking or Modifying Probation or Supervised Release), 40 (Arrest for Failing to Appear in Another District or for Violating Conditions of Release Set in Another District), 41 (Search and Seizure), and 58 (Petty Offenses and Other Misdemeanors), together with Committee notes explaining their purpose and intent. The Judicial Conference approved the amendments and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF EVIDENCE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Evidence Rules 404 (Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes), 408 (Compromise and Offers to Compromise), 606 (Competency of Juror as Witness), and 609 (Impeachment by Evidence of Conviction of Crime), together with Committee notes explaining their purpose and intent. The Judicial Conference approved the amendments and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that, in preparation for implementation of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, many of whose provisions would become effective on October 17, 2005, it recommended a package of proposed interim bankruptcy rules for adoption through standing or general orders by the courts, as well as new official forms. In light of the time constraint, the Executive Committee acted on behalf of the Judicial Conference to approve the forms and authorize distribution of the interim bankruptcy rules to the courts (see *supra*, "New Bankruptcy Legislation," p. 5). The Committee expects to publish for public comment no later than August 2006 proposed new and amended Federal Rules of Bankruptcy Procedure based substantially on the interim rules, modified, as appropriate, after considering comments

from the bench and bar reflecting the use of the interim rules, as well as any additional revisions to the official forms.

COMMITTEE ON SECURITY AND FACILITIES

U.S. COURTS DESIGN GUIDE

Phase I Revisions. In accordance with the integrated cost-containment strategy approved by the Judicial Conference in September 2004 (JCUS-SEP 04, pp. 6-7), the Committee on Security and Facilities has been conducting a comprehensive review of the *U.S. Courts Design Guide* to assess the validity of current design standards for new courthouses and to identify revisions that would control costs without affecting functionality. After soliciting suggestions and comments from judges, court unit executives, and other interested parties, and obtaining the views of seven other Conference committees, the Committee completed Phase I of the review by recommending that the Conference endorse 18 *Design Guide* revisions for chambers suites and court office space. Following discussion, the Conference endorsed 10 of the proposed revisions and recommitted the other 8 proposals to the Committee for further consideration.

Exceptions to the *U.S. Courts Design Guide*. As stated in a policy adopted by the Judicial Conference in March 1999 (JCUS-MAR 99, p. 35), the authority to approve exceptions to the *Design Guide* lies generally with the circuit judicial councils. As part of its comprehensive review of the *Design Guide*, the Committee recommended that this policy be revised to provide that, while the circuit judicial council has the authority and responsibility for a circuit's space management program (*see* 28 U.S.C. § 462(b)), the authority to approve the following exceptions to the *Design Guide* should rest with the Judicial Conference: (a) exceeding the total space "envelope" for either the court unit or project as a whole; (b) changing the standard configurations for judges' chambers; and (c) changing the plumbing standard for an office. Authority to approve exceptions to exceed the recommended office space standards within the total envelope of space for the court unit would remain with the circuit judicial councils. The Conference adopted the recommendation with a modification that once a circuit judicial council has endorsed one of the exceptions itemized above, authority to grant that exception would rest with the Committee on Space and Facilities unless the Committee disagreed with the circuit judicial council, in which case the Judicial Conference would decide whether to grant the exception. Finally, on recommendation of the Committee, the Conference rescinded its September/October 2001 policy (JCUS-SEP/OCT 01, p. 71), which

substituted the term "special requirements" for the term departures (also referred to as exceptions, deviations, and waivers) in the *Design Guide*.

INDEPENDENT REAL PROPERTY AUTHORITY

In September 1989, the Judicial Conference endorsed seeking legislation to provide the judicial branch with independent authority to manage, acquire, construct, maintain, and dispose of its own real property (JCUS-SEP 89, p. 81). Citing increasing concern with regard to escalating rent payments to the General Services Administration (GSA) and lack of progress in obtaining rent reductions from GSA, the Committee on Security and Facilities recommended that the Conference reaffirm support for legislation to establish independent real property authority for the judiciary separate from GSA. After discussion, the Conference determined to recommit the matter so that the Committee on Space and Facilities, acting in consultation with the Committee on the Budget, could develop and submit to the Conference a detailed plan illustrating how independent real property authority could be implemented.

RENT AS A SEPARATE APPROPRIATION

Space rent was a separate appropriation prior to FY 1987, when it was merged into the Salaries and Expenses account. In December 2004, the Committee on Security and Facilities adopted a resolution recommending that rent again be sought as a separate appropriation and forwarded the resolution to the Budget Committee for its consideration. The Budget Committee expressed a preference for pursuing administrative rather than legislative remedies at that time. Noting that pursuit of rent as a separate appropriation could provide rental relief for the judiciary in the long term, the Committee asked the Judicial Conference to refer the resolution to the Committee on the Budget for its reconsideration. The Conference adopted the Committee's recommendation.

COURTHOUSE CONSTRUCTION PLAN

In advance of the March 2005 Conference session, the Committee recommended a courthouse construction project plan through which the judiciary would request fiscal year 2007 funding for seven courthouse projects. The Committee's recommendation was deferred to the September 2005 Judicial Conference to give the Budget Committee an opportunity to make recommendations to the Security and Facilities Committee and the

Executive Committee regarding the affordability of pending courthouse construction projects not yet approved for construction funding by the Conference (JCUS-MAR 05, p. 8). The Security and Facilities Committee subsequently reaffirmed its support for the FY 2007 project plan, expanded to include two projects suggested by GSA. The Budget Committee recommended that, except for projects deemed a judicial space emergency, all funding requests for new construction projects should be deferred until at least the March 2006 Conference session. Following discussion of the two committees' views, the Conference agreed to seek FY 2007 funding for the pending courthouse projects in Buffalo, New York; Salt Lake City, Utah; Jackson, Mississippi; Fort Pierce, Florida; and Savannah, Georgia,[3] and it deferred action on other projects until March 2006.

BUILDING MANAGEMENT DELEGATION PROGRAM

In March 1988, the Judicial Conference approved a pilot program in which courts could assume responsibility for managing their courthouses under a delegation of authority from the General Services Administration (JCUS-MAR 88, p. 40). Courts in Birmingham, Alabama, and Miami and West Palm Beach, Florida, assumed responsibilities for court facilities under this program. Following recent changes to the program instituted by GSA, the judiciary sought an independent review of the program. Based on that review, the Committee recommended that the Judicial Conference (a) end the judiciary's participation in the building management delegation program, and (b) develop a transition plan to return to GSA the operation and management of the court facilities within the Southern District of Florida and the Northern District of Alabama. The Conference adopted both recommendations.

COMMITTEE ACTIVITIES

The Committee on Security and Facilities reported that it discussed and continues to pursue several cost-containment initiatives, including a comprehensive reevaluation of the long-range facilities planning process, a review of existing criteria for closure of non-resident court facilities, and an effort to reduce Federal Protective Service (FPS) costs for contract guard services. After the Congress provided $11.9 million as an emergency supplemental appropriation to improve off-site security for the judiciary, the

[3]These five projects were specifically excluded from the 2-year moratorium on planning, authorizing, and budgeting for courthouse construction projects imposed by the Conference in September 2004 (*see* JCUS-SEP 04, pp. 34-35).

Committee resolved to develop an agreement between the Administrative Office and the Department of Justice regarding use of the supplemental funding to provide up to $4,000 per judge for the purchase of home intrusion detection systems for all federal judges.

FUNDING

All of the foregoing recommendations that require the expenditure of funds for implementation were approved by the Judicial Conference subject to the availability of funds and to whatever priorities the Conference might establish for the use of available resources.

Leonidas Ralph Mecham
Secretary to the Judicial
Conference of the United States

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

March 14, 2006

The Judicial Conference of the United States convened in Washington, D.C., on March 14, 2006, 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 Michael Boudin
Judge Hector M. Laffitte,
District of Puerto Rico

Second Circuit:

Chief Judge John M. Walker, Jr.
Chief Judge Michael B. Mukasey,
Southern District of New York

Third Circuit:

Chief Judge Anthony J. Scirica
Chief Judge Garrett E. Brown, Jr.,
District of New Jersey

Fourth Circuit:

Chief Judge William W. Wilkins
Judge David C. Norton,
District of South Carolina

Fifth Circuit:

Chief Judge Edith Hollan Jones
Chief Judge Glen H. Davidson,
Northern District of Mississippi

Sixth Circuit:

Chief Judge Danny J. Boggs
Judge William O. Bertelsman,
Eastern District of Kentucky

Seventh Circuit:

Chief Judge Joel M. Flaum
Judge J. P. Stadtmueller,
Eastern District of Wisconsin

Eighth Circuit:

Chief Judge James B. Loken
Judge Lawrence L. Piersol,
District of South Dakota

Ninth Circuit:

Chief Judge Mary M. Schroeder
Judge Charles R. Breyer,
Northern District of California

Tenth Circuit:

Chief Judge Deanell R. Tacha
Judge David L. Russell,
Western District of Oklahoma

Eleventh Circuit:

Chief Judge J. L. Edmondson
Chief Judge Robert L. Hinkle,
Northern District of Florida

District of Columbia Circuit:

Chief Judge Douglas H. Ginsburg
Chief Judge Thomas F. Hogan,
District of Columbia

Federal Circuit:

Chief Judge Paul R. Michel

Court of International Trade:

Chief Judge Jane A. Restani

The following Judicial Conference committee chairs attended the Conference session: Circuit Judges Julia Smith Gibbons, Marjorie O. Rendell, Jane R. Roth, and David Bryan Sentelle; and District Judges Susan C. Bucklew, Paul G. Cassell, W. Royal Furgeson, Jr., Nina Gershon, John Gleeson, D. Brock Hornby, Robert B. Kugler, David F. Levi, Howard D. McKibben, Lee H. Rosenthal, John R. Tunheim, and Thomas I. Vanaskie. Bankruptcy Judge A. Thomas Small and Magistrate Judge John M. Roper, were also in attendance. Norman E. Zoller of the Eleventh Circuit represented the circuit executives.

Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts (AO), attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director for Management and Operations; William R. Burchill, Jr., Associate Director and General Counsel; Laura C. Minor, Assistant Director, and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat; Cordia A. Strom, Assistant Director, Legislative Affairs; and David A. Sellers, Assistant Director, Public Affairs. Judge Barbara Jacobs Rothstein and John S. Cooke, Director and Deputy Director of the Federal Judicial Center (FJC), and Judge Ricardo H. Hinojosa, Chair of the United States Sentencing Commission, were in attendance at the session of the Conference, as was Sally M. Rider, Administrative Assistant to the Chief Justice. Scott Harris, Supreme Court Counsel, and the 2005-2006 Judicial Fellows also observed the Conference proceedings.

Senators Arlen Specter, Patrick J. Leahy, and Jeff Sessions and Representatives F. James Sensenbrenner, Jr. and Lamar S. Smith spoke on matters pending in Congress of interest to the Conference. Attorney General Alberto R. Gonzales addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice.

REPORTS

Mr. Mecham reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office. Judge Rothstein spoke to the Conference about Federal Judicial Center programs, and Judge Hinojosa reported on Sentencing Commission activities. In addition, Judge Hornby reported on judicial compensation and the judiciary's relationship with Congress, Judge Sentelle reported on judicial security, and Judge Cassell provided an update on sentencing guidelines.

ELECTIONS

The Judicial Conference elected Judge Karen J. Williams of the Court of Appeals for the Fourth Circuit to membership on the Board of the Federal Judicial Center for a term of four years, to succeed Judge Pierre N. Leval of the Court of Appeals for the Second Circuit.

RESOLUTIONS

Marking the upcoming retirement of Mr. Mecham from the position of Director of the Administrative Office, the Judicial Conference adopted the following resolution by mail ballot:

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

LEONIDAS RALPH MECHAM
Director of the Administrative Office
1985 - 2006

Director Leonidas Ralph Mecham has served under three Chief Justices and for more than 20 years as the Administrative Office's Director, earning him the distinction of serving longer than any previous Director in the agency's history. Under Ralph Mecham's stewardship, the federal court system has flourished.

Ralph Mecham has focused on enhancing support to the Judicial Conference and its committees, building relationships,

and providing excellent services to judges and the courts. He has also promoted effectiveness and achievement in all judiciary programs. Ralph Mecham's acumen for legislative affairs greatly strengthened the judiciary's ability to communicate its budgetary and legislative needs to Congress and the executive branch. His success in securing adequate resources for the judiciary in tight budgetary climates enabled federal courts to maintain high standards of service to the public while carrying out the judiciary's critical mission. He tirelessly pursued increases in judges' and court executives' pay and enhancements of benefits to ensure that the federal judiciary can recruit and retain the best people. He created a program that enabled the judiciary to obtain funding for new courthouses to replace aging, unsafe facilities, and he pushed to enhance judicial security.

Ralph Mecham has endeavored to reach out across the judicial family to build strong relationships and seek broad input. He championed innovations that have revolutionized court administration. His initiative to decentralize financial and management responsibilities to the courts provided judges and court managers with the flexibility they needed to address their unique requirements and priorities, and enhanced accountability and effectiveness. Recognizing early the potential benefits of new technologies, he transformed court operations through the deployment of a data communications network and numerous systems.

Ralph Mecham's visionary leadership, deep devotion to the independence and integrity of the federal judiciary, and unflagging spirit, drive and determination have left an enduring legacy for federal judicial administration. A man of remarkable intelligence and good humor, he has inspired others to accomplish a great deal, as well. The Judicial Conference expresses its deep gratitude to Ralph Mecham for his record of excellent and dedicated service to the federal judiciary, and it wishes the best to him and his warm and gracious wife, Barbara, as they enter this new stage of their lives.

In separate resolutions (which are reprinted in the Appendix), several committees of the Judicial Conference paid tribute to the dedicated and accomplished service to the judiciary of Director Mecham. Also set forth in

the Appendix is a resolution of the Committee on the Administrative Office recognizing the accomplishments and contributions to the judicial branch of Associate Director Clarence A. "Pete" Lee, Jr.

EXECUTIVE COMMITTEE

CIRCUIT JUDICIAL CONFERENCES

In March 2005 the Judicial Conference, in an effort to contain costs, approved a policy that would limit the use of the judiciary's appropriations to cover the non-travel related expenses associated with circuit judicial conferences by authorizing such use only in alternate years (JCUS-MAR 05, p. 5). Implementation of the policy was subsequently deferred so that possible changes could be considered to address practical issues that had been brought to the Executive Committee's attention (JCUS-SEP 05, p. 9). The Committee then considered an alternative policy that would allow the use for circuit conferences of appropriated funds, both centrally held and decentralized, to the extent otherwise permissible, with centrally held funding to be allotted in amounts that would be established biennially, but could be distributed either in alternate years or in separate allotments for each of two successive years. On recommendation of the Committee, the Judicial Conference modified its previous policy with regard to funding for circuit judicial conferences and agreed to—

a. Encourage the circuits to use non-appropriated funds (e.g., attorney admission fees and conference registration fees), to the extent advisable and permissible, to pay the expenses (other than the travel costs of judiciary personnel) for all circuit conferences in which the bar participates;

b. Direct the Administrative Office, subject to approval by the Executive Committee, to establish and periodically adjust a biennial per capita rate at which centrally held appropriated funds will be made available to pay circuit conference expenses (apart from the travel costs of judiciary personnel) during fiscal years 2007 and 2008, and during ensuing two-year periods; and

c. Authorize the Administrative Office to provide such funding to the circuits for such expenses in single allotments available in alternate years or, if a particular circuit requests, in annual allotments that may not, in the aggregate, exceed the biennial funding amount available to that circuit in accordance with the per-capita rate established for that period.

MISCELLANEOUS ACTIONS

The Executive Committee—

- Approved adjustments to the judiciary's fiscal year (FY) 2007 budget request;

- Approved final fiscal year 2006 financial plans for the four major judiciary appropriations accounts—Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners;

- At the request of the Committee on Rules of Practice and Procedure, approved on behalf of the Conference transmission of a report to Congress required under the Class Action Fairness Act of 2005 (Pub. L. No. 109-2);

- On recommendation of the Committee on Rules of Practice and Procedure, approved on the Conference's behalf revisions to three bankruptcy official forms that had previously been adopted as part of the judiciary's implementation of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Pub. L. No. 109-8);

- On recommendation of the Magistrate Judges Committee and on the Conference's behalf, authorized the District of Utah to retain the part-time magistrate judge position in Monticello until the incumbent retires, but no longer than the end of his current term of office (which expires March 28, 2007);

- Approved on the Conference's behalf a minor technical change in the policy, adopted in September 2005, concerning waivers of the qualification requirements for official court reporters;

- Approved an amendment to the jurisdictional statement for the Committee on the Administrative Office to reflect explicitly that committee's ongoing oversight responsibility for Administrative Office audit, review, and investigative assistance activities;

- At the request of the Director of the Administrative Office, endorsed three exceptions to the Judicial Conference's non-prospectus space moratorium, which already had the approval of the Space and Facilities Committee, and advised the Director to defer granting an exemption from the Conference's prospectus-level courthouse construction moratorium for a lease-construction project until additional information could be obtained; and

- Adjusted for inflation the alternative subsistence rate for judges' travel in New York City and Washington, D.C.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that, following an exhaustive examination of the judiciary's oversight and review system (including local, circuit, and national roles, responsibilities, and mechanisms for review), it concluded that the system is effective and that the AO's activities in this regard are carried out properly and well. The Committee also proposed, and the Executive Committee approved, modification to the Committee's jurisdictional statement to reflect expressly its ongoing responsibility to oversee the audit, review, and investigative assistance activities of the Administrative Office (see *supra*, "Miscellaneous Actions," pp. 7-8). In addition, the Committee determined to establish a recognition program, named in honor of outgoing Director Mecham, by which the Committee will acknowledge AO employees for noteworthy achievements in providing support to the courts.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

CONSUMER CREDIT COUNSELING/DEBTOR EDUCATION PROGRAMS

Interim Guidelines. On recommendation of the Committee on the Administration of the Bankruptcy System, the Judicial Conference approved revisions to the interim guidelines for certification of credit counseling agencies and debtor education programs in bankruptcy administrator districts, which had been adopted to implement the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. The revisions include changes to the structure and extent of the bonding requirement for counseling agencies, a more extensive requirement for disclosure of relationships between counseling agencies and other businesses, and a requirement for documentary proof of non-profit status. The Conference also adopted a recommendation of the Committee to delegate to the Director of the Administrative Office authority to amend the interim guidelines as necessary to conform to similar guidelines for the United States trustee program, as adopted and amended from time to time by the Executive Office for U.S. Trustees.

Bankruptcy Administrator Guidelines. On recommendation of the Committee, the Conference amended the Guidelines of the Director of the Administrative Office of the United States Courts Relating to the Administration of the Bankruptcy Administrator Program to—

a. Require that approved applications of consumer credit counseling agencies and debtor education providers be retained until the expiration of the applicable statute of limitations on criminal misrepresentations and that rejected applications be retained until expiration of the statute of limitations on suits against the government; and

b. Limit chapter 13 trustees to providing debtor education courses only to chapter 13 debtors.

SELECTION AND APPOINTMENT REGULATIONS

Section 2.01 of the Judicial Conference Regulations for the Selection, Appointment and Reappointment of United States Bankruptcy Judges requires that public notice of a bankruptcy judgeship vacancy be published in a "general

local newspaper or similar publication and in a bar journal, newsletter, or local legal periodical, if available," in order to ensure broad dissemination of the public notice and attract qualified applicants. Noting that the cost of newspaper advertisements continues to escalate and that internet employment sites not only provide far-reaching public access, but also are generally offered free of charge or at low cost, the Committee recommended, and the Conference approved, an amendment to section 2.01 to make publication of judicial vacancy announcements through print advertisements in local newspapers optional, rather than required, and to permit electronic publication of those announcements.

OFFICIAL DUTY STATION

On recommendation of the Bankruptcy Committee, and in accordance with 28 U.S.C. § 152(b)(1), the Judicial Conference approved Bakersfield as the official duty station for the new bankruptcy judgeship in the Eastern District of California, as requested by the Ninth Circuit Judicial Council.

COMMITTEE ACTIVITIES

The Bankruptcy Committee reported that it adopted a resolution commending the judges and employees of the bankruptcy courts for their extraordinary efforts in implementing the new bankruptcy legislation. It also commented on a report on the Administrative Office's study of administrative services, and it provided suggestions to the Committee on Information Technology on strategies to help meet the technology needs of judges. The Committee further suggested certain fee amendments made necessary by the new bankruptcy legislation and received reports on a wide variety of topics, including an analysis showing that the benefits of the bankruptcy judge recall program significantly outweigh the costs.

COMMITTEE ON THE BUDGET

BUDGET CAPS FOR SPACE RENTAL COSTS

In furtherance of the judiciary's efforts to contain space rental costs, the Budget Committee recommended, and the Judicial Conference approved in concept, the establishment of an annual budget cap for space rental costs to

be determined by the Budget Committee in consultation with the Space and Facilities Committee. The rent budget cap would apply to all future rent requirements, including but not limited to new courthouses, repair and alteration projects, and additional space acquisitions.

FISCAL YEAR 2006 APPROPRIATIONS

Noting the adverse effects on the judiciary of across-the-board funding cuts in FY 2004 and 2005, and that a third year of such cuts would severely jeopardize the judiciary's ability to perform its constitutional duties, the Judicial Conference, in November 2005, approved by mail ballot a resolution recommended by the Budget Committee urging Congress and the President to exempt the judiciary from any across-the-board cuts to its fiscal year 2006 appropriations and to provide funding at least at the level contained in the judiciary's appeal to congressional conferees.

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it discussed a number of issues aimed at reducing the judiciary's General Services Administration (GSA) rent requirements since rent paid to GSA continues to consume over 20 percent of the judiciary's Salaries and Expenses account budget. In addition, at the request of the Judicial Conference (JCUS-SEP 05, p. 40), it reconsidered a proposal to seek a separate appropriation to cover GSA rental charges and determined that a separate appropriation for rent would not be in the best interest of the judiciary. The Committee also discussed the judiciary's long-range budget outlook, efforts to acquire additional resources from Congress, and the program committees' progress on the Judicial Conference-approved cost-containment strategy (JCUS-SEP 04, pp. 6-7), including studies of administrative services and alternative service delivery models for information technology.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that it reviewed, commented on, and endorsed publication of new training materials for judges on conflicts of interest, outside activities, and other ethical issues. It also advised the Conference that since its last report to the Conference in September 2005, the Committee received 29 new written inquiries and issued 28 written advisory responses (one inquiry was withdrawn). During this period, the average response time for requests was 15 days. The Chairman received and responded to 41 informal inquiries, and the other Committee members responded individually to 130 informal inquiries from their colleagues.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

MISCELLANEOUS FEES

Electronic Public Access Fee Schedule. On recommendation of the Committee on Court Administration and Case Management, the Conference amended the Electronic Public Access (EPA) Fee Schedule to add a 50-cent-per-page fee for the Public Access to Court Electronic Records (PACER) Service Center to reproduce, on paper, records pertaining to a PACER account, and a $45 fee for a check paid to the PACER Service Center that is returned for lack of funds. Similar fees are already included in the appellate, district, and bankruptcy miscellaneous fee schedules. The fee for reproducing records only applies to services rendered on behalf of the United States if the record or paper relates to the requester's account and is remotely available through electronic access. Also on the Committee's recommendation, the Conference increased the EPA fee for a search of court records conducted by PACER Service Center staff from $20 to $26, the fee currently charged for searches done by clerk's office staff, and clarified that this fee applies per name or item searched.

Court of Appeals Miscellaneous Fee Schedule. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 establishes a procedure for direct bankruptcy appeals to the courts of appeals in specific circumstances. Under interim rules developed to facilitate uniform practice

under the new Act,[1] litigants are required to pay a $250 filing fee, set forth in Item 15 of the Bankruptcy Court Miscellaneous Fee Schedule, before a direct appeal can be certified to the court of appeals. However, Item I of the Court of Appeals Miscellaneous Fee Schedule requires a $250 filing fee when an appeal is authorized to proceed in the court of appeals. Noting that the imposition of two $250 filing fees to file a single appeal was probably unintended and would be unjust, the Committee recommended, and the Conference agreed, that Item I of the Court of Appeals Miscellaneous Fee Schedule be amended by adding the following sentence at the end of the existing language:

> A docketing fee shall not be charged for the docketing of a direct bankruptcy appeal when the fee has been collected by the bankruptcy court in accordance with 28 U.S.C. § 1930n. (Bankruptcy Court Miscellaneous Fee Schedule, Item 15).

Waiver of Miscellaneous Fees in Emergencies. In September 1997, the Judicial Conference delegated authority to the Director of the Administrative Office to grant waivers of miscellaneous fees, excluding filing fees, following a natural disaster, for a set period of time not to exceed one year, upon the request of the chief judge of the affected court (JCUS-SEP 97, pp. 60-61). Noting that this policy would not cover man-made events such as terrorist attacks, which could have the same or greater destructive impact as natural disasters, and that recent legislation permitting courts to hold proceedings outside of their geographic boundaries in times of emergency applies under all emergency conditions, the Committee recommended, and the Conference agreed, that the delegation of authority to the Director to waive fees in times of natural disasters should be amended to read as follows:

> Authority is delegated to the Director of the Administrative Office to grant waivers of certain and specified miscellaneous fees, excluding filing fees, when emergency conditions are present, for a set period of time not to exceed one year, upon the request of the chief judge, or, if the chief judge is not available, the most senior active judge of the affected court.

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[1]The Executive Committee, in August 2005, acted on behalf of the Conference to authorize distribution of proposed interim rules for adoption in individual districts by local rule or general order, to be used until the Federal Rules of Bankruptcy Procedure could be amended to reflect the new legislation (JCUS-SEP 05, p. 5).

Bankruptcy Miscellaneous Fee Schedule. The Deficit Reduction Act of 2005 (Pub. L. No. 109-171) increases the filing fees for appellate, civil, and bankruptcy cases, effective April 9, 2006. These legislative fee increases would affect several fees on the Bankruptcy Court Miscellaneous Fee Schedule, promulgated by the Judicial Conference, that are linked to the filing fees. Since the Judicial Conference has increased nearly all of the miscellaneous fees in recent years, and the judiciary has not had an opportunity to review the appropriateness of these automatic increases, the Committee, in consultation with the Bankruptcy Committee, recommended that the Judicial Conference stay implementation of the automatic increases in order to provide time for the Court Administration and Case Management Committee and the Bankruptcy Committee to review and analyze their merits. The Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it discussed several issues, including legislative efforts to split the Ninth Circuit, implementation of the policy on electronic availability of transcripts of courts proceedings, the work of its privacy subcommittee, and a follow-up study conducted by the Federal Judicial Center on implementation of the privacy policy. The Committee considered a number of other significant legislative proposals, including a proposal to establish a pilot program that would assign patent cases only to judges who have been designated to hear them, and several proposals relating to cameras in the courtroom. The Committee also discussed the efforts of its library subcommittee to reduce future spending, develop financial plans for lawbooks, modify the list of lawbook material available to newly appointed judges, and review library sizes and types of spaces to determine if reductions could be made.

COMMITTEE ON CRIMINAL LAW

PRESENTENCE INVESTIGATION REPORT MONOGRAPH

On recommendation of the Committee on Criminal Law, the Judicial Conference approved revisions to the *Presentence Investigation Report for Defendants Sentenced Under the Sentencing Reform Act of 1984*, Publication 107, and a new AO Form 246, for publication and distribution to the courts.

The revisions (a) incorporate changes prompted by the recent Supreme Court decision on sentencing in *United States v. Booker,* 543 U.S. 220 (2005), (b) provide guidance to judges on ordering modified presentence investigation reports in appropriate cases, and (c) restyle and reorganize the monograph to facilitate its use as a training and reference document. New AO Form 246 was developed to assist the courts in ordering specific presentence investigations and reports.

AUTHORITY TO MODIFY MONOGRAPHS

In order to expedite the implementation of technical, conforming, and non-controversial amendments to monographs prepared for use by the probation and pretrial services system, the Committee on Criminal Law recommended that the Judicial Conference delegate to the Committee the authority to approve such changes for existing and future monographs, for publication and distribution to the courts. The Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that, in light of the success of the 2005 National Sentencing Policy Institute, it asked the Federal Judicial Center to convene a National Sentencing Policy Institute during 2006, to focus upon the effects of *United States v. Booker* and to provide a forum for discussing federal sentencing policy. The Committee also determined to advise the Executive Committee that there is no compelling reason to transfer the post-conviction supervision function to an agency outside of the judiciary, and furthermore that such a transfer would be detrimental and counterproductive.

COMMITTEE ON DEFENDER SERVICES

CRIMINAL JUSTICE ACT (CJA) VOUCHERS

Reduction Procedures for CJA Panel Attorney Claims. On recommendation of the Committee on Defender Services, the Judicial Conference amended paragraph 2.22D of the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Volume 7,

Guide to Judiciary Policies and Procedures, to state that courts should provide appointed counsel in CJA representations with prior notice of proposed reductions to CJA vouchers (other than for reductions related to mathematical or technical errors), a brief statement of reasons for proposed reductions, and an opportunity to address the judge's concerns. The amendment explicitly endorses informality and flexibility in both communication of the notice and in the resolution of any objection by counsel; no hearing, formal or otherwise, is required. This change is not intended to confer a right to obtain review of the judge's decision.

Voucher Reductions in Constrained Budgetary Environments. Noting that some judges may delay action on CJA vouchers or reduce the amount of compensation awarded in response to constrained budgetary circumstances, and that appropriations issues should not be resolved at the expense of individual attorneys, the Committee recommended that the Conference approve a new paragraph 2.22D of the CJA Guidelines to advise judges not to delay or reduce vouchers for the purpose of diminishing Defender Services program costs, and redesignate current paragraphs 2.22D (as amended above) through F as 2.22E through G, respectively. The Conference approved the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that to advance its cost-containment efforts, it formulated plans for soliciting circuit interest in participating in a pilot project, approved by the Judicial Conference at its September 2005 session (JCUS-SEP 05, p. 21), under which the Defender Services appropriation will fund three circuit positions for up to three years to support the case-budgeting process. In addition, after considering a report on federal defender organizations that had been affected by catastrophic hurricanes in 2005 and noting problems encountered (such as locating displaced clients and communicating with staff and other parts of the judiciary, including the Administrative Office), the Committee requested that the Administrative Office collect defender organizations' continuity of operations and communications plans and that action be taken to initiate or update them.

COMMITTEE ON FEDERAL-STATE JURISDICTION

AMENDMENTS TO THE VENUE STATUTES

As part of its jurisdictional improvements project, the Committee on Federal-State Jurisdiction recommended that the Judicial Conference adopt amendments to title 28 of the United States Code to clarify and improve the venue statutes. The Conference approved the recommended amendments as follows:

a. Add a new 28 U.S.C. § 1390 to define the terms and scope of the general venue provisions to be set forth in § 1391;

b. Amend 28 U.S.C. § 1391 to—

1. establish a single venue standard for both federal question and diversity of citizenship jurisdiction, to apply unless venue is otherwise specified by a federal statute, and to provide that "fallback venue," i.e., venue when there is no other district in which the action may be brought, is proper in a judicial district in which any defendant is subject to the court's personal jurisdiction as to the action in question;

2. clarify that residence for a natural person means the judicial district in which that person is domiciled;

3. establish venue without regard to the local or transitory nature of the action;

4. extend the rules governing corporate venue to any unincorporated associations that enjoy capacity to sue and be sued under applicable law; and

5. limit venue in multiple defendant cases to a district of the state in which all defendants reside; and

c. Repeal 28 U.S.C. § 1392, which established a separate rule for local actions.

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported on the status of the Social Security Administration's proposed changes to the disability claims process. The Committee also considered immigration reform legislation pending in the 109th Congress and discussed recent changes in the administrative review of immigration cases by the Board of Immigration Appeals and the impact of those changes on the workload of the courts of appeals. The Committee was provided an update on habeas corpus legislation pending in Congress and addressed the need for the federal courts to review the processing of capital habeas corpus petitions filed in the federal courts by state prisoners to determine whether there are any unwarranted delays, and if so, the causes of such delays. Members also participated in a roundtable discussion of ways the Committee may be of assistance to the federal and state courts on issues of mutual concern.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that as of December 31, 2005, the Committee had received 4,084 financial disclosure reports and certifications for calendar year 2004, including 1,344 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 357 reports from bankruptcy judges; 563 reports from magistrate judges; and 1,820 reports from judicial employees. The Committee reported that the authority of the Judicial Conference to redact personal and sensitive information from financial disclosure reports expired on December 31, 2005. The primary focus of legislative efforts in this area for 2006 is restoration of the judiciary's redaction authority.

COMMITTEE ON INFORMATION TECHNOLOGY

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it reviewed efforts underway to encourage judges to use technology, resolved that remote access technologies—such as high-speed access to the internet and personal digital assistants—can be of great benefit for judges' security and efficiency,

indicated support for courts making these technologies available to judges, and requested that the Administrative Office seek funds for this purpose. The Committee continued to monitor cost-containment efforts to identify and implement cost-effective information technology service delivery models. It also provided comments on a study of administrative services, cautioning that confidentiality, security, quality of service, reliability, and potential impact on the judiciary's information technology infrastructure should be considered as decisions are made regarding the delivery of administrative services.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that, during calendar year 2005, a total of 129 intercircuit assignments were undertaken by 66 Article III judges. In addition, the Committee received an update on the Administrative Office's effort to collect additional information on visiting judge assignments (both intercircuit and intracircuit) to help evaluate the costs and benefits of the program. The Committee's view, based on fiscal year 2005 data, was that the benefits of the visiting judge program clearly outweigh its costs. The Judicial Resources Committee concurred with this conclusion, and the Executive Committee was advised of these results. The Committee also reported that it would continue to promote the effective use of visiting judges.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its involvement in rule-of-law and judicial reform activities throughout the world, highlighting those in Albania, Indonesia, Montenegro, and the Russian Federation. The Committee also reported on its ongoing involvement with the rule-of-law component of the Open World Program at the Library of Congress, which brings Russian and Ukrainian jurists and judicial officials to the United States.

COMMITTEE ON THE JUDICIAL BRANCH

ROTH 401(K)-TYPE PLAN

The Economic Growth and Tax Relief Reconciliation Act of 2001 (Pub. L. No. 107-16) authorizes employers in the private and non-profit sectors to offer their employees the opportunity to make Roth 401(k) contributions beginning January 1, 2006. This legislation does not cover federal employees. Roth 401(k) plans differ from traditional 401(k)-type plans, such as the federal employees' Thrift Savings Plan, in that contributions are taxable at the time of the contribution but the proceeds, plus any earnings, are completely free from federal tax at the time of distribution. On recommendation of the Committee, the Conference agreed to ask the Federal Retirement Thrift Investment Board to seek legislation that would authorize the establishment of a Roth 401(k)-type option for Thrift Savings Plan participants.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it has continued to devote its priority attention to the problem of judicial compensation. In view of the upward spiral in the salaries of law firm associates, the Committee questioned whether federal judges' salaries bear a reasonable relationship to those of the pool of lawyers from which candidates for judicial office are typically drawn. At its December 2005 meeting, the Committee devoted considerable time and attention to the discussion of benefits matters, including the Judicial Survivors' Annuities System.

COMMITTEE ON JUDICIAL RESOURCES

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it endorsed extending the time line for the court compensation study in order to afford greater involvement of judges, unit executives, and employees. After much discussion, the Committee resolved to create an ad hoc subcommittee to study all facets of law clerk recruitment, including electronic tools to assist in the application and selection process. The Committee determined that the work measurement study of pro se law clerks in the district courts that had been

scheduled to begin in spring 2006 should be postponed until more information on the use of these law clerks is obtained. The Committee endorsed an interim policy to allow court and federal public defender organization employees to participate in any emergency leave transfer program authorized by the President, once appropriate legislative authority is enacted to include the judicial branch.

COMMITTEE ON JUDICIAL SECURITY

U.S. BUREAU OF PRISONS MAIL SCREENING

In the wake of two recent incidents involving the delivery of a suspicious package from a U.S. Penitentiary to a clerk of court's office, the Committee on Judicial Security recommended that all outgoing mail to judges from inmates incarcerated at maximum security facilities be screened. After discussing and slightly modifying the recommendation, the Conference agreed to urge the Bureau of Prisons (which had recently instituted an interim screening procedure and was in the process of considering long-term measures) to adopt a policy that requires the screening, without reading, of all outgoing mail to federal judges and courts from inmates incarcerated in a U.S. Penitentiary or high-security Federal Correctional Institution.

SECURITY AT LEASED PROBATION AND PRETRIAL SERVICES OFFICES

On recommendation of the Committee, which noted the security risks faced by probation and pretrial services officers in leased space, the Judicial Conference adopted a policy authorizing the placement of security screening equipment and contract security guards at leased facilities that house probation or pretrial services offices.

IN-SERVICE TRAINING FOR DEPUTY U.S. MARSHALS

Expressing concern about the adequacy of training for deputy U.S. marshals, the Committee on Judicial Security recommended that the Judicial Conference urge the Director of the U.S. Marshals Service (USMS) to provide regular, formal, in-service training to deputy U.S. marshals as a priority in, at a minimum, the following areas: (a) how to conduct a residential security

survey; and (b) how to provide an effective protective security detail. The Conference agreed to the Committee's recommendation.

JUDICIAL PERSONNEL PROFILES

The USMS maintains Judicial Personnel Profiles, which contain personal information about judges and their families that may be needed in an emergency. The Judicial Conference agreed, on recommendation of the Committee, to encourage judges to complete the Judicial Personnel Profile upon taking office and to periodically update this information as requested by the USMS. To address concerns about the confidentiality of the judges' personal information, on recommendation of the Committee, the Conference also agreed to request that the USMS take appropriate measures to ensure the security of the information contained in judges' Judicial Personnel Profiles.

COMMITTEE ACTIVITIES

The Committee on Judicial Security reported that it discussed the court security officer (CSO) program and the re-evaluation of the CSO staffing formula as a cost-containment issue. The Committee determined that, prior to re-evaluating the formula, it is necessary to conduct a thorough review of the CSO contract. In considering charges to the judiciary for security provided at court locations by the Federal Protective Service (FPS), the Committee recommended that the Budget Committee seek Judicial Conference endorsement for Congress to provide direct appropriations to the FPS, as opposed to the FPS charging each agency and branch of government on a pro-rata basis for its services.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee on the Administration of the Magistrate Judges System and the recommendations of the Director of the Administrative Office and the respective district courts and circuit judicial councils, the Judicial Conference increased the salary of the part-time magistrate judge position at Eureka in the Northern District of

California from Level 5 ($25,512 per annum) to Level 2 ($63,786 per annum), and made no changes in the number, locations, salaries, or arrangements of the full-time and part-time magistrate judge positions in the following districts: the District of New Jersey, the Middle District of North Carolina, the Southern District of West Virginia, the Southern District of Ohio, the Western District of Tennessee, and the Western District of Missouri. The Judicial Conference also made no change in the location, salary, or arrangements of the part-time magistrate judge position at Salisbury in the District of Maryland.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that as part of its cost-containment efforts it would continue its practice of not considering any requests for additional full-time magistrate judge positions at its December meetings. Pursuant to the September 2004 Judicial Conference policy regarding the review of magistrate judge position vacancies (JCUS-SEP 04, p. 26), the Committee considered requests from three courts to fill vacancies in magistrate judge positions and determined that the three vacancies should be filled. Currently, three magistrate judge positions are being held vacant. As part of its ongoing oversight and review of the magistrate judge recall program, the Committee reviewed a cost-benefit study of the program prepared by staff. It determined that the program to recall retired magistrate judges to active service continues to be effective in providing needed assistance to courts at a lower cost than authorizing additional permanent positions and should be continued.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders reported that it continues to carry out its responsibilities with regard to considering petitions for review of final actions by circuit judicial councils on complaints of misconduct or disability of federal judges.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure approved for publication proposed amendments to Rule 8 of the Federal Rules of Civil Procedure and Rules 1, 12.1, 17, 18, and 32 of the Federal Rules of Criminal Procedure, and proposed new Criminal Rule 43.1. The proposals to amend the Criminal Rules would implement the Crime Victims' Rights Act (18 U.S.C. § 3771). The advisory rules committees are reviewing comments from the public regarding a proposed comprehensive restyling of the Federal Rules of Civil Procedure and Illustrative Forms, proposed amendments and new rules to implement the E-Government Act of 2002 (Pub. L. No. 107-347, as amended by Pub. L. No. 108-281), proposed amendments to Criminal Rules 11, 32, and 35 to conform with the decision in *United States v. Booker*, and recently distributed interim bankruptcy rules and official forms, which implement the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. The Committee expects to publish for public comment no later than August 2006 proposed new and amended Federal Rules of Bankruptcy Procedure based substantially on the interim rules, modified as appropriate, after considering comments resulting from the use of the interim rules, and any additional revisions to the official forms.

COMMITTEE ON SPACE AND FACILITIES

CORE VALUES FOR THE SPACE AND FACILITIES PROGRAM

On recommendation of the Committee on Space and Facilities, the Judicial Conference endorsed core values for the judiciary's space and facilities program to serve as a foundation for the program's long-range strategic plan and the judiciary's long-range facilities planning process. The core values pertain to the availability, function, adequacy, sufficiency, cost, and structural security of U.S. courthouses.

ASSET MANAGEMENT PLANNING AND PROJECT SCORING

As part of the judiciary's comprehensive cost-containment strategy adopted by the Judicial Conference in September 2004 (JCUS-SEP 04, pp. 6-7), the Committee on Space and Facilities has been re-evaluating the judiciary's long-range facilities planning process. The Committee determined that the process, which had been initiated in 1988 (JCUS-MAR 88, p. 39) and subsequently refined (see, e.g., JCUS-MAR 95, pp. 31-32; JCUS-MAR 96, p. 36; JCUS-SEP 02, p. 63), did not address the benefits of a project as compared to its financial impact. After obtaining input from the courts, the Committee recommended that the Judicial Conference adopt, in concept, asset management planning as an objective methodology that identifies the costs and benefits of alternatives to enhance the long-range facilities planning process. The Committee also recommended that the Conference endorse, in concept and subject to further refinement, asset management planning as the new methodology for scoring and placing courthouse projects on a five-year courthouse project plan, to apply to the 35 projects without congressional appropriations or authorizations[2] on the Five-Year Courthouse Project Plan for FYs 2005-2009 and to future projects. The remaining 18 projects on that plan, which have congressional authorizations and appropriations and were scored previously under the judiciary's existing methodology, would not be subject to the asset management planning process. The Conference adopted the Committee's recommendations.

INDEPENDENT REAL PROPERTY AUTHORITY

In September 2005, facing skyrocketing rental costs and increasing frustration with the judiciary's dependent relationship with the General Services Administration, the then Committee on Security and Facilities recommended that the Judicial Conference reaffirm its 1989 policy to seek independent real property authority for the judiciary (JCUS-SEP 89, p. 81) . The Conference recommitted the matter to the Space and Facilities

[2]These projects were also subject to a two-year space moratorium adopted by the Judicial Conference in September 2004 (JCUS-SEP 04, pp. 34-35).

Committee[3] so that it could develop, in consultation with the Budget Committee, a plan illustrating how independent real property authority could be implemented (JCUS-SEP 05, p. 40). After endorsing general concepts of a draft implementation plan,[4] and obtaining and incorporating the views of the Budget Committee, the Committee on Space and Facilities recommended that the Judicial Conference affirm its continued support for legislation to establish independent real property authority for the judiciary separate from GSA, with the form and timing of seeking and implementing such authority to be subject to approval by the Executive Committee in consultation with the Space and Facilities Committee and the Budget Committee. The Conference adopted the Committee's recommendation.

COURTHOUSE CONSTRUCTION PLAN FOR FISCAL YEARS 2007 AND 2008

In September 2005, the Judicial Conference agreed to seek FY 2007 courthouse construction funding for pending projects in Buffalo, New York; Salt Lake City, Utah; Jackson, Mississippi; Fort Pierce, Florida; and Savannah, Georgia, and it deferred action on four other projects (San Antonio, Texas; Mobile, Alabama; Rockford, Illinois; and San Jose, California) until March 2006. Noting the continuing significant security and operations problems at the locations of the four deferred projects, the Committee recommended that the Conference seek funding in FY 2008 for those four projects, as well as for the five projects endorsed for FY 2007 that remain unfunded. The Committee also recommended that the FY 2007 request be amended to include funding for site acquisition for two of the four deferred projects, San Antonio, Texas and San Jose, California. The Conference adopted the Committee's recommendations.

[3]Effective October 2005, the Judicial Conference divided the Security and Facilities Committee into a Committee on Space and Facilities and a Committee on Judicial Security (JCUS-SEP 05, pp. 5-6).

[4]The Committee will continue to refine the implementation plan to reflect emerging trends in real property management and the terms of the authorizing legislation ultimately enacted.

BUDGET CHECK PROCESS FOR NON-PROSPECTUS SPACE PROJECTS

In September 2004, in order to control rental costs, the Judicial Conference endorsed an interim budget check process for all pending space requests, to be performed jointly by the Administrative Office and circuit judicial council staff, to ensure that alternative space, future rent implications, and affordability by the judiciary are considered prior to project approval. If funding is determined not to be available, but a circuit judicial council nevertheless determines that the space is necessary, then the council must seek an exception from the Judicial Conference through the Space and Facilities Committee, in coordination with the Budget Committee, to proceed with the project (JCUS-SEP 04, p. 36). At this session, on recommendation of the Committee, the Judicial Conference reaffirmed that all non-prospectus space requests are subject to the budget check process and endorsed the following time frame for consideration of requests for exceptions for non-prospectus space projects:

> A request for an exception for a non-prospectus space project will be considered sequentially, first by the Space and Facilities Committee at its June or December meeting; second, by the Budget Committee at its July or January meeting; and finally, by the Judicial Conference at its September or March session.

JUDICIAL SPACE EMERGENCIES

As part of the Committee's cost-containment initiative to re-evaluate the long-range facilities planning process, the Committee considered the conditions under which a judicial space emergency should be declared. Based on its review, the Committee recommended that the Judicial Conference approve the following policy:

> A building is eligible to be considered a judicial space emergency when the Committee on Space and Facilities determines that, among other things, (1) the court building is severely damaged or (2) it has an excessive caseload that impacts its space. The Committee on Space and Facilities will examine each emergency situation on a case-by-case basis to

determine whether to recommend that the Judicial Conference declare the project a space emergency.

The Committee noted that in making its case-by-case determinations, it would take into account whether any unique situations merit the declaration of a space emergency. The Conference approved the Committee's recommendation.

CRITERIA FOR CLOSURE OF CERTAIN COURT FACILITIES

In March 1997, the Judicial Conference adopted criteria for circuit judicial councils to use in determining whether to close facilities without a resident judge (JCUS-MAR 97, p. 18-19). As a cost-containment measure, this Committee recently undertook a review of those criteria and whether they should also be applied to closure of one-judge court facilities. After obtaining views from judges and court personnel, the Committee recommended that the Judicial Conference adopt revised closure criteria factors and weights and apply the criteria only to non-resident judge locations. Under the new methodology, an overall closure score would be developed by comparing a weighted average for three criteria scores (facility usage, location, and building condition) to the fourth criterion score (building operating cost). The circuit judicial councils, which have the statutory authority to determine whether court accommodations are necessary (28 U.S.C. § 462(b)), would then determine if a facility should be recommended for closure. The Conference adopted the Committee's recommendation.

U.S. COURTS DESIGN GUIDE

The Committee has been conducting a comprehensive review of the *U.S. Courts Design Guide* to identify revisions that would control costs without affecting functionality. In September 2005, the Judicial Conference approved several Phase I revisions to the *Design Guide* pertaining to court office space but recommitted for further Committee consideration proposed revisions pertaining to chambers suites (JCUS-SEP 05, p. 39). For this session, the Committee recommended modified Phase I revisions for chambers suites, as well as Phase II technical revisions concerning public space or atria, raised or access flooring, and acoustics. The Conference adopted the Phase II technical revisions as recommended and, after discussion, adopted the newly recommended Phase I chambers suites

revisions, with further modifications to the standards for ranges of shelving in judges' chambers.

APPELLATE CHAMBERS IN LEASED SPACE

Concerned about the cost and security implications of providing chambers for circuit judges in leased space, the Committee recommended, and the Conference agreed to adopt, the following policy:

a. If a new circuit judge is appointed in a locale within a normal commuting distance of an existing courthouse or court facility with space available for a circuit judge, that space (rather than private leased space) should be assigned to the new circuit judge. If more than one chambers is available in the court facility, the new circuit judge may select among the available chambers.

b. If the available chambers does not contain adequate square footage to accommodate the new circuit judge and five staff members, or if there are not private offices for four law clerks, a proposed alternative consistent with the standards of the *U.S. Courts Design Guide* may be considered by the circuit judicial council to the extent funding is available.

LEASE CONSTRUCTION

Noting that lease construction as a method for building court facilities raises space planning and monetary concerns, the Committee on Space and Facilities recommended, and the Judicial Conference agreed to, the following:

a. That circuit judicial councils be advised that lease-construct projects, including those that were approved by a circuit judicial council prior to the adoption of the Conference's budget check process in September 2004 and that have experienced cost increases since estimates were initially developed by GSA, are subject to the budget check process; and

b. That a qualified construction manager be hired by the judiciary to monitor each lease-construct project during design and construction.

COMMITTEE ACTIVITIES

The Committee on Space and Facilities reported that it considered and notified the Budget and Executive Committees of its decisions on several requests for exceptions and exemptions to the space moratoria and budget check process. In addition, the Committee reaffirmed its support for the proposal to seek a separate appropriation for rent. (Subsequently, the Budget Committee declined to pursue this proposal (see *supra*, "Committee Activities," p. 11)).

FUNDING

All of the foregoing recommendations that require the expenditure of funds for implementation were approved by the Judicial Conference subject to the availability of funds and to whatever priorities the Conference might establish for the use of available resources.

Chief Justice of the United States
Presiding

March 14, 2006

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

APPENDIX

RESOLUTIONS HONORING ADMINISTRATIVE OFFICE DIRECTOR

COMMITTEE ON THE ADMINISTRATIVE OFFICE

In recognition of twenty years of distinguished service to the federal judiciary, we, the Committee on the Administrative Office, express our sincere appreciation to Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts. A remarkable man of remarkable achievement, under Director Mecham's stewardship, the federal courts have enjoyed a golden age of judicial administration.

During his tenure as the longest-serving director of the Administrative Office, Director Mecham transformed federal judicial administration through the force of his vision and leadership, reinventing the Administrative Office to improve its service to the federal judiciary. Since he became Administrative Office Director in 1985, Director Mecham has launched countless successful initiatives in support of the independence and quality of the judicial branch, to assist federal judges and judicial employees, and to promote the effectiveness of court operations. His program of decentralizing administrative authorities to the courts has empowered chief judges and court executives by providing them with greater local administrative control, flexibility, and accountability, which, in turn, has resulted in better service to the public and savings to the taxpayers.

He has improved Administrative Office relations with judges and court staff by working closely with the federal judges' professional associations and by establishing court advisory groups, composed of court executives and judges, to provide feedback and advice on important issues. He has also emphasized the key roles played by bankruptcy judges and magistrate judges and has worked to increase their participation in the judiciary's policy making processes.

Over the course of his service, Ralph Mecham has shown exceptional leadership on legislative and budgetary matters, successfully obtaining funding for judiciary operations and courthouses in the face of continuing fiscal austerity. He was the driving force in attaining funding and approval for the Thurgood Marshall Federal Judiciary Building. He has improved court business processes and service to the public by championing the innovative use of information technology, particularly through the creation of a judiciary-wide data

communications network and the provision of electronic case filing and remote public access to court records.

Ralph Mecham has worked tirelessly to improve the quality of judges' and judiciary employees' lives by improving personal security for judges and their families, strengthening courthouse security, improving emergency response capability, fighting for fair compensation for judicial officers and executives, developing a ground-breaking benefits program, and protecting judges aged 65 and older from drastic increases in their life insurance premiums.

Therefore, in recognition of his courageous leadership and twenty years of dedicated service to the Judicial Conference, judges, and the entire judicial family, and in recognition of his outstanding accomplishments that have made an indelible contribution to the administration of justice, the Committee on the Administrative Office commends Director Leonidas Ralph Mecham.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

The Judicial Conference Committee on the Administration of the Bankruptcy System commends Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, for his assiduous and effective work on behalf of the federal judiciary for over 20 years. The Director's willingness to become personally involved in addressing major issues affecting the judiciary—as demonstrated most recently by his dedicated efforts to enhance compensation and benefits for judges, increase their personal security and that of their families, and ensure that the judicial branch receives adequate appropriations—as contributed immeasurably to the administration of the federal court system. His tenure as Director has been marked by a degree of dedication to the judiciary that has set a gold standard for all successors.

The members of the Committee express their sincere appreciation to Director Mecham for his strong, inspired support and devoted service to the judiciary.

COMMITTEE ON THE BUDGET

In appreciation and recognition of the Honorable Leonidas Ralph Mecham, the Budget Committee of the Judicial Conference extends our heartfelt appreciation for his distinguished leadership as Director of the Administrative Office of the United States Courts for nearly twenty-one years.

His outstanding guidance and direction leave an enduring legacy. His devoted and skillful leadership enabled the judiciary to carry out its mission and serve the American people. The judiciary as a whole has benefitted greatly from his keen intellect; his calm but highly effective management skills; and his personal integrity and warmth. Working with him as members of the Budget Committee has been a source of great personal pleasure and a high honor to all of us.

His contribution to the communications between the legislative and judicial branches on funding issues has greatly enhanced the stature of the judiciary's budget. The trust that now exists between these branches is a result of his openness with Congress and with Judicial Conference committee chairs. His determined defense of the independence of the Judiciary and its budget during a time of major growth in workload has been extremely effective.

To Ralph, we express our genuine and heartfelt thanks. The Budget Committee will sorely miss his gentle guidance and courageous spirit. We wish the best to him and his family and hope for many future associations with him in the years to come.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

The Court Administration and Case Management Committee recognizes with appreciation, respect and admiration Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts from 1985 to 2006.

Appointed to the position by Chief Justice Warren E. Burger in 1985, Mr. Mecham has played a vital role in the administration of the federal court system. This Committee is intimately involved in the management and administration of the federal courts and, as such, recognizes the tremendous accomplishments of Mr. Mecham as Director of the Administrative Office. Mr. Mecham has set a standard

of skilled leadership and earned our deep respect and sincere gratitude for his innumerable contributions. The Committee acknowledges with appreciation his commitment and dedicated service to the Judicial Conference and the entire federal judiciary. He will be greatly missed.

COMMITTEE ON INFORMATION TECHNOLOGY

The Judicial Conference Committee on Information Technology recognizes with grateful appreciation Leonidas Ralph Mecham for his years of dedicated service to the judiciary.

As Director of the Administrative Office, Mr. Mecham has played a pivotal role in assisting this Committee to fulfill its charter of providing policy recommendations, planning, and oversight of the judiciary information technology program. Under his management, the data communications network connected the entire judiciary, electronic systems revolutionized case management, and unparalleled efforts were made to meet the information privacy and security needs of judges.

We acknowledge Mr. Mecham's lasting contribution to the judiciary's information technology program, resulting from his exemplary leadership, the dedication of scarce resources, tireless management, and determination. We extend our heartfelt thanks and gratitude for his matchless efforts.

COMMITTEE ON THE JUDICIAL BRANCH

The Committee on the Judicial Branch recognizes Administrative Office Director Leonidas Ralph Mecham for his commitment to excellence and for his leadership of the Administrative Office of the U.S. Courts.

Since his appointment in 1985, Director Mecham has devoted tireless energy in support of the independence of the judicial branch and the advancement of judicial administration. Working with the Judicial Conference and its committees, Director Mecham decentralized administrative authorities to the courts, shaped the Administrative Office into an outstanding service organization, and tirelessly pursued increased appropriations, judgeships, courthouses, improved compensation and benefits, enhanced security, and other issues of concern to the judicial branch.

In recognition of service to the judiciary and his many accomplishments that have improved the lives of judges and judicial employees, the Committee on the Judicial Branch commends Director Leonidas Ralph Mecham.

COMMITTEE ON SPACE AND FACILITIES

The Judicial Conference Committee on Space and Facilities, by unanimous resolution, commends with deep appreciation and respect the 20 years of distinguished and dedicated service to the federal judiciary of Leonidas Ralph Mecham, Director of the Administrative Office of the U.S. Courts.

Beginning in July 1985, Director Mecham tirelessly pursued and successfully revived a court space and facilities program through new construction and major renovations, which considerably improved the administration of justice and court operations. During his tenure, 68 new courthouses were constructed nationwide. Twenty more are now in the planning or design stages due to Director Mecham's personal commitment to the facilities needs of the courts. The Committee praises his outstanding commitment and unparalleled achievements to the space and facilities program upon his retirement.

* * * * *

RESOLUTION HONORING ADMINISTRATIVE OFFICE ASSOCIATE DIRECTOR

By unanimous resolution, the Committee on the Administrative Office recognizes the accomplishments and contributions to the judicial branch of Clarence A. "Pete" Lee, Jr.

Mr. Lee has served the Administrative Office in a number of important positions, but most notably as the Administrative Office's "second-in-command," providing Director Leonidas Ralph Mecham with cogent advice and overseeing the day-to-day operations of the agency.

Pete Lee has a remarkable understanding of the workings of government institutions and human behavior, that, combined with a creative and insightful intellect, have made him a force for progress and innovation in improving the operations of the Administrative Office and of the federal courts. He has been a leader in

organizational reform, enhancing financial, planning, evaluation, human resources, facilities, and information technology systems and practices.

Since the creation of the Committee on the Administrative Office in 1989, Mr. Lee has provided valuable information and insight into the Administrative Office's support of the judiciary, and has welcomed and encouraged the advice and input of this Committee in order to improve the Administrative Office's service to judges and the courts.

The Committee hereby commends Administrative Office Associate Director Clarence A. Lee, Jr., for nearly forty years of service to the federal government, including eighteen years of stellar service to the federal judiciary.

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

September 19, 2006

The Judicial Conference of the United States convened in Washington, D.C., on September 19, 2006, 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 Michael Boudin
Judge Hector M. Laffitte,
District of Puerto Rico

Second Circuit:

Chief Judge John M. Walker, Jr.
Chief Judge Kimba M. Wood,
Southern District of New York

Third Circuit:

Chief Judge Anthony J. Scirica
Chief Judge Garrett E. Brown, Jr.,
District of New Jersey

Fourth Circuit:

Chief Judge William W. Wilkins
Judge David C. Norton,
District of South Carolina

Fifth Circuit:

Chief Judge Edith Hollan Jones
Chief Judge Glen H. Davidson,
Northern District of Mississippi

Sixth Circuit:

Chief Judge Danny J. Boggs
Judge Charles R. Simpson III,
Western District of Kentucky

Seventh Circuit:

Chief Judge Joel M. Flaum
Judge J. P. Stadtmueller,
Eastern District of Wisconsin

Eighth Circuit:

Chief Judge James B. Loken
Judge Lawrence L. Piersol,
District of South Dakota

Ninth Circuit:

Chief Judge Mary M. Schroeder
Judge Charles R. Breyer,
Northern District of California

Tenth Circuit:

Chief Judge Deanell Reece Tacha
Judge David L. Russell,
Western District of Oklahoma

Eleventh Circuit:

Chief Judge J. L. Edmondson
Chief Judge Robert L. Hinkle,
Northern District of Florida

District of Columbia Circuit:

Chief Judge Douglas H. Ginsburg
Chief Judge Thomas F. Hogan,
District of Columbia

Federal Circuit:

Chief Judge Paul R. Michel

Court of International Trade:

Chief Judge Jane A. Restani

The following Judicial Conference committee chairs attended the Conference session: Circuit Judges Julia Smith Gibbons, Marjorie O. Rendell, Jane R. Roth, and David Bryan Sentelle; and District Judges Paul G. Cassell, W. Royal Furgeson, Jr., Nina Gershon, John Gleeson, D. Brock Hornby, Robert B. Kugler, David F. Levi, Howard D. McKibben, Gordon J. Quist, Lee H. Rosenthal, John R. Tunheim, and Thomas I. Vanaskie. Bankruptcy Judge A. Thomas Small and Magistrate Judge John M. Roper, Sr., were also in attendance. Gary H. Wente of the First Circuit represented the circuit executives.

James C. Duff, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director for Management and Operations; William R. Burchill, Jr., Associate Director and General Counsel; Laura C. Minor, Assistant Director, and Jeffrey A. Hennemuth, Deputy Assistant Director, Judicial Conference Executive Secretariat; Cordia A. Strom, Assistant Director, Legislative Affairs; and David A. Sellers, Assistant Director, Public Affairs. District Judge Barbara Jacobs Rothstein and John S. Cooke, Director and Deputy Director of the Federal Judicial Center, and District Judge Ricardo H. Hinojosa, Chair of the United States Sentencing Commission, were in attendance at the session of the Conference, as were Jeffrey P. Minear and Sally M. Rider, Administrative Assistants to the Chief Justice. Scott Harris, Supreme Court Counsel, and the 2006-2007 Judicial Fellows also observed the Conference proceedings.

Attorney General Alberto R. Gonzales addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice. Senators Arlen Specter, Patrick J. Leahy, Christopher S. Bond, and Jeff Sessions, and Representatives Joseph Knollenberg and Lamar S. Smith spoke on matters pending in Congress of interest to the Conference.

REPORTS

Mr. Duff reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office (AO). Judge Rothstein spoke to the Conference about Federal Judicial Center (FJC) programs and Judge Hinojosa reported on Sentencing Commission activities. Judge Hornby, chair of the Committee on the Judicial Branch, reported on judicial compensation and Judge Gibbons, chair of the Committee on the Budget, reported on judiciary appropriations.

EXECUTIVE COMMITTEE

RESOLUTION

The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution recognizing the substantial contributions made by the Judicial Conference committee chairs whose terms of service end in 2006:

> The Judicial Conference of the United States recognizes with appreciation, respect, and admiration the following judicial officers:
>
> **HONORABLE ROBERT B. KUGLER**
> Committee on the Administrative Office
>
> **HONORABLE NINA GERSHON**
> Committee on the Administration of the Magistrate Judges System
>
> **HONORABLE JANE R. ROTH**
> Committee on Space and Facilities
>
> Appointed as committee chairs by the Chief Justice of the United States, these outstanding jurists have played a vital role in the administration of the federal court system. These judges served with distinction as leaders of their Judicial Conference committees while, at the same time, continuing to perform their duties as judges in their own courts. They have set a standard of skilled leadership and earned our deep respect and sincere gratitude for their innumerable contributions. We

acknowledge with appreciation their commitment and dedicated service to the Judicial Conference and to the entire federal judiciary.

JUDICIAL ETHICS

Media accounts alleging that certain judges may have participated in cases in which they had a financial interest or failed to include in financial disclosure reports their attendance at privately funded educational seminars have led to renewed congressional interest in judicial ethics, including efforts to impose an inspector general on the judiciary. The Executive Committee discussed the issue on a number of occasions and agreed that a strong, appropriate response was necessary to assure Congress and the public that the judiciary is committed to upholding the highest ethical standards and maintaining accountability. With the endorsement of the Chief Justice, the Committee, in August 2006, distributed to judges and congressional leadership a report on the status of the judiciary's efforts to address judicial ethics issues. In addition, the Committee asked the Codes of Conduct Committee to consider on an expedited basis proposals regarding the use of automated conflict-checking software (*see infra* "Judicial Ethics," p. 11). It had also previously asked the Judicial Branch Committee to make proposals to the Conference, in coordination with the Codes of Conduct Committee, concerning judges' attendance at privately funded educational seminars (*see infra* "Judges' Attendance at Privately Funded Educational Programs," p. 24).

IMMIGRATION LEGISLATION

In March 2006, anticipating quick action in Congress on pending immigration legislation, the Executive Committee approved two recommendations of the Federal-State Jurisdiction Committee on the Conference's behalf: (a) that the Conference oppose a provision that would require a "certificate of reviewability" from a single circuit judge before a Board of Immigration Appeals (BIA) decision could be reviewed in a court of appeals by a three-judge panel; and (b) that Congress be urged to provide the judicial branch with sufficient resources to carry out its responsibilities for handling any additional immigration caseload resulting from such legislation. The Executive Committee also reaffirmed, in the context of immigration cases, the Conference's previously stated opposition to the consolidation of appeals in a single court and determined to reiterate that position for purposes

of a Senate hearing on the matter. Further, the Committee agreed that any communication to Congress on this topic should also express support for additional resources for the executive branch to litigate and review immigration cases, and support for modifications to BIA composition and procedures, to enhance administrative review of these cases.

COURT SPACE PROJECTS

At the request of the Director of the Administrative Office, the Executive Committee considered, and then endorsed, requests for exemptions from the Judicial Conference's prospectus-level space moratorium for court space projects in Charlotte, North Carolina; Toledo, Ohio; Orlando, Florida; Billings, Montana; Bangor, Maine; Springfield, Massachusetts; New Bern, North Carolina; and Cincinnati, Ohio. In addition, the Committee approved, on behalf of the Conference, a recommendation of the Committee on Space and Facilities that a judicial space emergency be declared with respect to the court facility in Billings, Montana. Also on behalf of the Conference and on recommendation of the Space and Facilities Committee, which had coordinated with the Budget Committee, the Executive Committee approved an exception to the Conference's budget check process so that chambers could be obtained through a commercial lease for a newly appointed Ninth Circuit judge for whom an existing chambers suite was not available. The Executive Committee conditioned its actions with respect to the projects in Billings, Bangor, Springfield, New Bern, and Cincinnati and the Ninth Circuit judge's chambers project on certain funding arrangements and on charging the additional rent associated with each project against the respective circuit council's future space rental cap (*see infra* "Rent Budget Cap," p. 10). In addition, it conditioned the Billings and Ninth Circuit chambers projects on application of the latest changes to the *U.S. Courts Design Guide*.

MISCELLANEOUS ACTIONS

The Executive Committee—

- Approved, on behalf of the Judicial Conference and on recommendation of the Committees on Court Administration and Case Management and Information Technology, an annual report to Congress on deferred court compliance with section 205 of the E-Government Act of 2002, and authorized transmittal of that report to Congress as specified in the Act;

- Agreed to a legislative strategy proposed by the Court Administration and Case Management Committee regarding the issue of cameras in the courtroom and delegated to that committee, assisted by the Administrative Office, the authority to respond to Congress on actions it may take on cameras issues and report to the Executive Committee;

- Pending final congressional action on the judiciary's appropriations for fiscal year 2007, approved fiscal year 2007 interim financial plans for the Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners accounts and for the Electronic Public Access program, and endorsed a strategy for distributing court allotments among the court programs; and

- Recommended that the Conference approve memorial resolutions in memory of two former Conference members (*see infra* "Memorial Resolutions," pp. 38-41).

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it discussed recently introduced legislation to establish an inspector general in the judiciary and the communication effort to explain the Judicial Conference's strong opposition to that proposal. This opposition arises from concerns that an inspector general would seriously undermine the principle of an independent federal judiciary and that the judiciary already has an extensive system for oversight and review that effectively addresses operational integrity and stewardship. The Committee endorsed several enhancements to the Administrative Office's audit and review program, including a more formal process to follow up on actions taken by courts to address audit findings. The Committee selected the first two recipients of its *Leonidas Ralph Mecham Award for Exemplary Service to the Courts*, created by the Committee to recognize individual Administrative Office staff for significant accomplishments.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

BANKRUPTCY JUDGESHIPS

In accordance with 28 U.S.C. § 152(b)(3), the Judicial Conference conducts a comprehensive review of all judicial districts every other year to assess the continuing need for authorized bankruptcy judgeships. By December 31 of each even-numbered year, the Conference reports its recommendations to Congress for the elimination of any authorized bankruptcy judgeship position that can be eliminated when a vacancy exists by reason of resignation, retirement, removal, or death. On recommendation of the Bankruptcy Committee, which relied on the results of the 2006 continuing-need survey, the Judicial Conference agreed to take the following actions:

a. Recommend to Congress that no bankruptcy judgeship be statutorily eliminated; and

b. Advise the Eighth and Ninth Circuit Judicial Councils, as appropriate, to consider not filling vacancies in the District of South Dakota, the District of Alaska, and the Central District of California that currently exist or may occur by reason of resignation, retirement, removal, or death, until there is a demonstrated need to do so.

SELECTION AND APPOINTMENT REGULATIONS

In March 2006, the Judicial Conference approved an amendment to section 2.01 of the Judicial Conference Regulations for the Selection, Appointment, and Reappointment of United States Bankruptcy Judges to make publication of judicial vacancy announcements through print advertisements in local newspapers optional, rather than required, and to permit electronic publication of those announcements (JCUS-MAR 06, pp. 9-10). At this session, on recommendation of the Committee, the Conference made a parallel change to section 5.02(a) of the regulations, dealing with reappointment notices, to permit publication of a notice of an incumbent's willingness to be reappointed to be made through electronic means and to make newspaper advertisement optional.

DEBTOR AUDIT STANDARDS

Section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Pub. L. No. 109-8) requires the Judicial Conference to establish procedures in bankruptcy administrator districts to determine the accuracy, veracity, and completeness of petitions, schedules, and other information a debtor is required to provide in cases filed in chapter 7 or chapter 13 cases in which the debtor is an individual. Audits pursuant to § 603(a) must be in accordance with generally accepted auditing standards unless the Judicial Conference determines to develop alternative standards. Noting that the ten generally accepted auditing standards were developed in the context of auditing financial statements of businesses, and that § 603(a) applies by its terms to audits of individuals only, the Committee recommended alternative standards modeled after standards adopted by the Attorney General for judicial districts served by United States trustees. The proposed standards are consistent with generally accepted auditing standards. The Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Bankruptcy Committee reported that it approved implementation of a new bankruptcy judge recall registry system on the J-Net to enable courts needing assistance from a recalled judge to identify, quickly and easily, retired judges who have expressed a willingness to serve on recall. The Committee also forwarded to the Court Administration and Case Management Committee a number of recommendations for changes to the Bankruptcy Court Miscellaneous Fee Schedule (*see infra* "Miscellaneous Fees," pp. 12-14); endorsed a resolution in support of maintaining existing bankruptcy clerk's office staffing levels through the next fiscal year to ensure effective transition and implementation of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005; and endorsed a proposal that the Administrative Office make available electronically "fillable" versions of bankruptcy forms.

COMMITTEE ON THE BUDGET

FISCAL YEAR 2008 BUDGET REQUEST

Noting the continuation of a constrained budget environment, the Budget Committee recommended a fiscal year 2008 budget request that was lower than the funding levels proposed by the program committees. The Judicial Conference approved the budget request subject to amendments necessary as a result of new legislation, other actions of the Conference, or any other reason the Executive Committee considers necessary and appropriate.

FEDERAL PROTECTIVE SERVICE FUNDING

Currently the Federal Protective Service (FPS) charges individual agencies on a pro-rata basis for the services it provides. Concluding that savings in administrative costs could be realized if the FPS were funded through direct appropriations to the Department of Homeland Security, the Budget Committee, at the request of the Judicial Security Committee, recommended that the Judicial Conference (a) ask Congress to provide direct appropriations to the FPS, and (b) make a request to the President to incorporate direct funding for FPS charges into the President's fiscal year 2008 budget request. The Conference adopted the Committee's recommendations.

RENT BUDGET CAP

On recommendation of the Budget Committee, and after discussion, the Judicial Conference set an annual cap on rent for all future rent requirements at an average annual growth rate of 4.9 percent for fiscal years 2009 through 2016 in order to control space rental costs. The amount of the cap is provisional based on information available to the Budget Committee at its July 2006 meeting and is subject to reconsideration when the fiscal year 2009 budget is formulated, should actions or events outside the control of the judiciary or the adoption of budget caps covering other budget categories require such reconsideration.

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it considered strategies for developing budget caps for non-space areas of the Salaries and Expenses account to be used in formulating future budget requests and stated it would work with program committees to identify the impact of proposed caps in each area of the budget. It also discussed flexibility in budget decentralization rules with regard to ways to enable movement of funds from one court unit to another. The Committee supported the development of and continued to endorse a comprehensive financial management continuing education program for court staff, and it discussed the judiciary's ongoing efforts to acquire additional resources from Congress and ways to enhance congressional outreach.

COMMITTEE ON CODES OF CONDUCT

JUDICIAL ETHICS

In response to a request from the Executive Committee (*see supra* "Judicial Ethics," p. 5), and after consultation with several other Conference committees, the Committee on Codes of Conduct recommended that the Judicial Conference adopt a conflict-screening policy that mandates checking for financial conflicts of interest with the aid of computer software. The policy would be administered and directed by the circuit councils under the authority set forth in 28 U.S.C. § 332(d)(1) and by the individual courts not subject to the authority of a circuit council. After discussion, the Conference modified slightly and then adopted the Committee's recommendation. Use of automated conflict screening is intended to be an addition to, and not a replacement for, each judge's personal review of matters for conflicts.

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Conference in March 2006, the Committee received 26 new written inquiries and issued 26 written advisory responses. During this period, the average response time for requests was 13 days. The Chairman received and responded to 39 informal inquiries (by telephone, electronic mail, or in

person), and the other Committee members responded individually to 157 informal inquiries from their colleagues.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

MISCELLANEOUS FEES

Chapter 15 Reopening Fee. Item 11 of the Bankruptcy Court Miscellaneous Fee Schedule provides that the fee for reopening a bankruptcy case is the same as the filing fee prescribed in 28 U.S.C. § 1930(a) for commencing a new case. The filing fee for commencing a chapter 15 case, however, is a miscellaneous fee authorized by 28 U.S.C. § 1930(b) and not a statutory fee set forth in § 1930(a); therefore, Item 11 does not provide a reopening fee for chapter 15 cases. On recommendation of the Committee on Court Administration and Case Management, the Conference agreed to amend Item 11 of the Bankruptcy Court Miscellaneous Fee Schedule to create a reopening fee for chapter 15 cases equal to the chapter 15 filing fee contained in Item 16 of the Bankruptcy Court Miscellaneous Fee Schedule as of the date of the request to reopen.

Exemptions from Reopening Fee. Item 11 of the Bankruptcy Court Miscellaneous Fee Schedule provides an exemption from the fee for reopening a bankruptcy case "for actions related to the debtor's discharge." Concerned that this exemption could be interpreted to apply in cases in which no discharge had been entered, the Committee recommended that Item 11 be amended to clarify the two situations in which the exemption from the reopening fee is applicable (i.e., reopening a case to enforce the discharge and reopening a case to file nondischargability complaints under Bankruptcy Rule 4007(b)) and to expressly state that the reopening fee applies to requests to reopen cases in which the court did not enter a discharge. The Conference approved the recommendation.

Chapter 7 Trustee Fee. Section 330(b) of the Bankruptcy Code requires that the trustee in a chapter 7 case be paid a fee of $60–$45 from the statutory filing fee and an additional $15 to be prescribed by the Judicial Conference. For initial filings, the additional $15 trustee fee is set forth in Item 9 of the Bankruptcy Court Miscellaneous Fee Schedule. In establishing the fee for reopening a chapter 7 case and the fee for splitting a joint chapter 7 case, Items 11 and 19 of the Bankruptcy Court Miscellaneous Fee Schedule,

respectively, require petitioners to pay the amount of the statutory filing fee but do not require payment of the additional $15 trustee fee. In order to comply with the requirement of 11 U.S.C. § 330(b) regarding chapter 7 trustee fees, on recommendation of the Committee, the Conference agreed to amend the Bankruptcy Court Miscellaneous Fee Schedule to add a $15 chapter 7 trustee fee to the fee for reopening a chapter 7 case (Item 11) and to the fee for splitting a joint chapter 7 case (Item 19).

Adversary Proceeding Fee. Item 6 of the Bankruptcy Court Miscellaneous Fee Schedule links the fee for filing an adversary proceeding to the statutory fee for filing a civil action. Title X of the Deficit Reduction Act of 2005 (Pub. L. No. 109-171) increased the civil action filing fee from $250 to $350, which has the effect of increasing the fee for filing an adversary proceeding, as well. Noting that the two types of actions can vary significantly, and that the amount in controversy in bankruptcy actions is typically much lower than that in civil actions, the Committee recommended that the fee for filing an adversary proceeding in bankruptcy be delinked from the civil action filing fee, that the fee remain $250, and that the fee schedule be amended accordingly. The Conference adopted the Committee's recommendation.

Bankruptcy Appellate Docketing Fee. The fee for docketing an appeal or a cross appeal from a bankruptcy court determination (Items 15 and 21, respectively, of the Bankruptcy Court Miscellaneous Fee Schedule) is linked to the appellate court docketing fee (Item 1 of the Court of Appeals Miscellaneous Fee Schedule), which the Deficit Reduction Act of 2005 raised from $250 to $450. Since bankruptcy appeals are usually heard in the first instance in a district court or by a bankruptcy appellate panel, and then may be taken to a court of appeals, two docketing fees would be required in those cases in which a second appeal is taken. Because of the unique structure of the bankruptcy appellate process, the Committee recommended that the docketing fee for appeals and cross appeals from a bankruptcy court determination be de-linked from the appellate court docketing fee and remain at $250, but that an additional $200 fee be required if a direct appeal or cross appeal from the bankruptcy court to the court of appeals is granted, to equal the $450 appellate court docketing fee. The Conference agreed to amend the fee schedule in accordance with the Committee's recommendation.

Bankruptcy Direct Cross-Appeal Docketing Fee . On recommendation of the Committee, the Conference agreed to amend Item 1 of the Court of Appeals Miscellaneous Fee Schedule to provide that no fees would be collected by the courts of appeals under that item for docketing direct cross

appeals in bankruptcy cases if fees had already been collected under Item 21 of the Bankruptcy Court Miscellaneous Fee Schedule for such appeals. A similar amendment to Item 1 was made in March 2006 with regard to direct bankruptcy appeals (JCUS-MAR 06, pp. 12-13).

Conversion Fees. On recommendation of the Committee, the Conference amended Item 10 of the Bankruptcy Court Miscellaneous Fee Schedule to include a general bankruptcy conversion fee to be assessed whenever the filing fee of the chapter to which a case is converted exceeds the filing fee for the chapter under which the case was initially filed. This fee is equal to the difference in the filing fees. However, in the event a case is converted to a chapter with a lower filing fee, a refund would not be granted. Conversions from chapter 7 or 13 to chapter 11 are specifically excluded because fees are assessed for these conversions pursuant to 28 U.S.C. § 1930(a).

ELECTRONIC PUBLIC ACCESS

Fee Schedule. Currently, the Electronic Public Access (EPA) Fee Schedule prohibits users of the Public Access to Court Electronic Records (PACER) system who are exempt from EPA fees from selling the information they receive from that system; however, it does not prohibit users from disseminating the same information at no charge. Therefore, the Committee recommended that the fee schedule be amended to prohibit any transfer of case information received under a fee exemption absent express authorization from the court. The Committee also recommended that language be added to the fee schedule policy notes to state that this prohibition does not apply to the quotation or reference to such materials in a scholarly or other similar work. The Conference adopted the Committee's recommendations.

Crime Victim Notification Data. To assist the Department of Justice in fulfilling its statutory obligation under the Crime Victims' Rights Act, 18 U.S.C. § 3771(a)(2), to notify crime victims of upcoming proceedings in federal cases, the Judicial Conference, on recommendation of the Committee, authorized the Administrative Office to enter into a memorandum of understanding with the Department of Justice to provide the Department with an electronic feed of case information, with the following conditions:

a. the Department will not be required to pay the EPA fees for the information received, but agrees to reimburse the judiciary for the costs incurred in programming the data feed;

b. the data transferred is limited to the information required to fulfill the victim-notification responsibilities set by statute;

c. the data is provided directly to the Department's Victim Notification System (VNS);

d. the Department agrees to use the information only for victim notification; and

e. the Department agrees not to sell or transfer the information other than for the purposes of victim notification (with an exception for transfers to judicial branch organizations, such as pretrial services and probation offices).

JURY MATTERS

Jury Service. To impress upon the public the serious nature of jury service, on recommendation of the Committee, the Judicial Conference agreed to seek amendments to the statutes establishing penalties for failure to appear in response to summonses relating to jury service, 28 U.S.C. §§ 1864(b) and 1866(g), to increase the maximum amount of the fine from $100 to $5,000, and to offer an option for community service.

Grand Juror Handbook. The Conference adopted a Committee recommendation to amend the *Handbook for Federal Grand Jurors* to conform with the Model Grand Jury Charge revisions approved by the Conference in March 2005 (JCUS-MAR 05, p. 12), with two additional changes for clarity.

CONSOLIDATION OF DISTRICT AND BANKRUPTCY COURT CLERKS' OFFICES IN THE DISTRICT OF COLUMBIA

Section 156(d) of title 28 requires Judicial Conference and congressional approval of plans to consolidate bankruptcy and district court clerks' offices. In March 1998, the Conference adopted procedures for considering consolidation plans (JCUS-MAR 98, pp. 10-11). Pursuant to these procedures, the Committee, in consultation with the Bankruptcy Committee, reviewed a joint proposal from the district and bankruptcy courts of the District of Columbia to consolidate their clerks' offices. The plan had been endorsed by their circuit judicial council. Concluding that the proposal

could be expected to produce cost savings and that there would not be a decrease in the quality of services to the judges, the bar, and the public, the Committee recommended that the Conference endorse the consolidation. The Conference agreed to the Committee's recommendation, and Congress will be notified of the Conference's action.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it considered, among other things, a wide array of issues pertaining to the judiciary's records management program, and that it offered assistance to the Administrative Office in this area. The Committee also discussed recent reports relating to judges who have issued rulings in cases in which they may have had a conflict of interest due to financial interests in one of the parties, and expressed its view to the Executive Committee that circuit judicial councils should mandate use of the automated conflict-checking capabilities of the Case Management/Electronic Case Files (CM/ECF) system. The Committee also reviewed the ongoing cost-containment efforts relating to libraries and law books, the law books and computer-assisted legal research budget request for fiscal year 2008, and the final steps in the complete migration from WestMate software to the current web-based Westlaw legal research service.

COMMITTEE ON CRIMINAL LAW

FOREIGN INTELLIGENCE SURVEILLANCE COURT

A bill pending in the 109th Congress (S. 2453) would require the Foreign Intelligence Surveillance Court to sit en banc on a quarterly basis. The Committee noted that members of the court are widely dispersed and that the frequency of travel contemplated in the legislation would be costly and inefficient, but concluded that meeting en banc, as appropriate to ensure uniformity and consistency in decision-making, would be beneficial. On recommendation of the Committee, the Conference agreed to support legislation that would authorize judges on the Foreign Intelligence Surveillance Court to sit en banc, but to express its preference that such sittings be authorized to occur at the court's discretion. The Conference adopted the Committee's recommendation.

UNITED STATES SENTENCING COMMISSION

The Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (PROTECT) Act of 2003 (Pub. L. No. 108-21) amended 28 U.S.C. § 991, regarding composition of the U. S. Sentencing Commission. It replaced the requirement that at least three of the Commission's voting members must be federal judges with a provision that not more than three such members may be federal judges. In September 2003, the Judicial Conference expressed opposition to that provision, along with several others in the PROTECT Act, noting that the judiciary and the Sentencing Commission had not been consulted regarding the legislation (JCUS-SEP 03, pp. 18-20). At this session, citing, among other things, the unique expertise on sentencing issues that judges provide, the Committee recommended, and the Conference agreed, that the judiciary affirmatively seek restoration of the statutory requirement that at least three federal judges be included among the voting members of the Sentencing Commission.

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SUPERVISED RELEASE

Generally, the maximum length of a term of supervised release is determined by the classification of the offense committed. The Committee expressed the view that greater discretion to tailor the duration of a term of supervised release to the specifics of a case would improve its effectiveness. On recommendation of the Committee, the Judicial Conference agreed to support an amendment to 18 U.S.C. § 3583(b) to give the court authority to impose a longer term of supervised release, based on specific findings, if the unusual circumstances of a case indicate that a longer term is needed to rehabilitate the offender, protect society, and otherwise serve the interest of justice.

PROFITING FROM A CRIME

On recommendation of the Committee, the Judicial Conference determined to support legislation that would establish "not profiting from a crime" as a mandatory condition of probation and of supervised release and to support similar legislation (to the extent it relates to the federal courts and the administration of justice) to prevent criminals from profiting from their crimes.

RESTITUTION

Currently, there is no authorization under federal law for general restitution to crime victims. A judge may order restitution only if the loss suffered by the victim falls within certain categories specified by statute. On recommendation of the Committee, the Judicial Conference agreed to support legislation that would authorize general restitution in any criminal case at the discretion of the judge when the circumstances of the case warrant it.

SENTENCING IN COCAINE CASES

Under the Anti-Drug Abuse Act of 1986 (Pub. L. No. 99-570), 100 times as much powder cocaine as crack cocaine is needed to trigger the same mandatory minimum sentences. Noting concern that this disparity could have a corrosive effect on public confidence in the courts, the Committee recommended that the Judicial Conference oppose the existing difference between crack and powder cocaine sentences and support the reduction of that difference. After discussion, the Conference adopted the Committee's recommendation.

RESIDENTIAL REENTRY CENTERS

As a result of recent case law, a disparity exists among the circuits with regard to the extent to which an inmate in Bureau of Prisons custody may serve a term of incarceration in a residential reentry center. Noting the statutory requirement that sentencing judges impose sufficient punishment, but no more than is necessary to achieve the penological goals of the statute, the Committee recommended that the Conference support legislation to resolve the statutory ambiguities between 18 U.S.C. § 3624(c) and 18 U.S.C. § 3621(b) that have given rise to the intercircuit disparity. The Conference adopted the Committee's recommendation.

CRIME VICTIMS RIGHTS ADVISORY GROUP

On recommendation of the Committee, the Judicial Conference agreed to recommend to the U.S. Sentencing Commission that it establish a Crime

Victims Rights Advisory Group, analogous in structure to the existing Practitioners Advisory Group and Probation Officers Advisory Group. Such a group would facilitate the exchange of ideas and information between crime victim advocates and the Sentencing Commission.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that on March 16, 2006, its chair testified on behalf of the Conference before the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security about the impact of the 2005 Supreme Court decision in *United States v. Booker*. He noted that patterns of federal sentencing have not changed dramatically following *Booker* and urged that the courts of appeals be allowed to work through uncertainties caused by *Booker* and establish a jurisprudence of "reasonableness" review. The Criminal Law Committee endorsed the development of an automated system to transmit sentencing documentation to the U.S. Sentencing Commission and the Bureau of Prisons, endorsed centralizing Probation/Pretrial Services Automated Case Tracking System (PACTS) servers in a contract facility, and encouraged the use of evidence-based practice research in the supervision and treatment of federal defendants and offenders.

COMMITTEE ON DEFENDER SERVICES

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it had selected the Second, Sixth, and Ninth Circuits to participate in a pilot project under which the Defender Services appropriation will, for up to three years, fund three circuit positions to support the process of case budgeting, which is a high-priority cost-containment initiative. The Committee endorsed, for dissemination, a list of suggested "good practices" identified by the Vera Institute of Justice in its January 2006 report, "Good Practices for Panel Attorney Programs in the U.S. Courts of Appeals." Consistent with the goals of the judiciary's study on administrative services, the Committee approved a new protocol for maximizing the utilization of federal defender organization personnel through the sharing of services of certain non-attorney staff, within prescribed parameters. The Committee also approved federal defender organization budgets under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17).

COMMITTEE ON FEDERAL-STATE JURISDICTION

VENUE

In March 2006, the Judicial Conference adopted several recommendations for changes to the statutory provisions governing venue (28 U.S.C. § 1391 et seq.) (JCUS-MAR 06, p. 17). At this session, in continuance of its jurisdictional improvements project, the Committee recommended, and the Conference approved, seeking the following additional changes to clarify and improve the venue statutes:

a. Amend 28 U.S.C. § 1391 to authorize a civil action to be filed in any division of a district, subject to the power of the district court to provide by local rule or court order for the initial filing in a particular division and for the transfer of any civil action between divisions of the district;

b. Amend 28 U.S.C. § 1404 to authorize the district court, in its discretion, to transfer a civil action or other proceeding of a civil nature anywhere within the district for trial or for any other phase of the litigation;

c. Amend 28 U.S.C. § 1391 to specify that district courts shall disregard for venue purposes aliens and United States citizens who have their domicile in another country; and

d. Amend 28 U.S.C. § 1391 to grant a venue defense to permanent resident aliens who are domiciled in the United States.

TERRITORIAL COURT INTERPRETER PROGRAMS

A bill pending in the 109th Congress, S. 2611, the Comprehensive Immigration Reform Act of 2006, would authorize financial assistance for state court interpreter programs. At the request of the Pacific Islands Committee of the Ninth Circuit Judicial Council, which noted that local courts in the Pacific island territories are experiencing the same challenges as the state courts with regard to providing effective court interpreting services, the Federal-State Jurisdiction Committee recommended that the Judicial Conference seek inclusion of the United States territories and former trust territories in any bill that authorizes or appropriates federal funding for state

court interpreter programs. The Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it gave extensive consideration to immigration reform legislation pending in the 109th Congress and considered proposed legislation, not yet introduced in Congress, that would affect the jurisdiction of the Court of International Trade. The Committee received an update on the final regulations of the Social Security Administration pertaining to the disability claims process and was briefed on the capital habeas corpus study being undertaken by the Administrative Office and the Federal Judicial Center in consultation with this and other Conference committees. The Committee also discussed the federalism implications of proposed Federal Rule of Evidence 502, which seeks to address problems with subject-matter waiver, inadvertent disclosure, enforceability of confidentiality orders, and selective waiver.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that as of July 6, 2006, the Committee had received 3,745 financial disclosure reports and certifications for calendar year 2005, including 1,209 reports and certifications from Supreme Court justices, Article III judges, and judges of special courts; 333 reports from bankruptcy judges; 508 reports from magistrate judges; and 1,695 reports from judicial employees. The Committee also provided an update on the judiciary's legislative initiative to have the Judicial Conference's authority to redact sensitive information from financial disclosure reports restored. That authority, which was contained in 5 U.S.C. app. § 105(b)(3)(E), expired on December 31, 2005. The Committee also reported that in response to recent media attention, on May 16, 2006, its chair sent a memorandum to all judges reminding them of their obligation to report educational trips and seminars reimbursed or paid for by private educational or nonprofit organizations.

COMMITTEE ON INFORMATION TECHNOLOGY

LONG RANGE PLAN FOR INFORMATION TECHNOLOGY

Pursuant to 28 U.S.C. § 612 and on recommendation of the Committee on Information Technology, the Judicial Conference approved the fiscal year 2007 update to the *Long Range Plan for Information Technology in the Federal Judiciary*. Funds for the judiciary's information technology program will be spent in accordance with this plan.

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that as part of its ongoing efforts to identify and implement more cost-effective service delivery models, it approved the consolidation of servers for the Probation/Pretrial Services Automated Case Tracking System (PACTS) and plans to review recommendations regarding Financial Accounting System for Tomorrow (FAS_4T), Lotus Notes e-mail, and Jury Management System (JMS) servers. The Committee endorsed limited access to the judiciary's Data Communications Network for the United States Tax Court, the United States Court of Appeals for the Armed Forces, the United States Court of Appeals for Veterans Claims, and the Rules Committees' official reporters and consultants. The Committee also discussed available mechanisms to reduce the amount of unwelcome e-mail, also known as "spam," and endorsed efforts by the Administrative Office to implement measures at the national gateways to limit the amount of spam.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that during the period from January 1, 2006 to June 30, 2006, a total of 63 intercircuit assignments, undertaken by 45 Article III judges, were processed and recommended by the Committee and approved by the Chief Justice. The Committee continued to disseminate information about intercircuit assignments to increase awareness and facilitate the use of visiting judges and regularly aided courts requesting assistance by identifying and obtaining judges willing to take assignments.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its involvement in rule of law and judicial reform activities throughout the world, highlighting those in Albania, Equatorial Guinea, Indonesia, Korea, the Russian Federation, and Ukraine. The Committee completed its work with the American Bar Association on a U.S. Department of State-funded project on judicial integrity involving Albania, Indonesia, and Kenya.

COMMITTEE ON THE JUDICIAL BRANCH

JUDICIAL SURVIVORS' ANNUITIES SYSTEM

Tax Treatment of Judges' Contributions. Currently, judges' contributions to the Judicial Survivors' Annuities System (JSAS) are made after federal, state, and local taxes have been deducted from the judges' paychecks. On recommendation of the Committee on the Judicial Branch, the Judicial Conference agreed to seek legislation that would provide for judges' contributions to JSAS to be made using pre-tax instead of after-tax dollars.

Annuity Benefit Levels. In response to indications that some judges would be willing to pay, out-of-pocket, for a higher level of JSAS benefits, the Committee recommended that the Conference seek legislation to allow judges to voluntarily increase their contributions to JSAS in order to increase their survivors' annuities. The Conference adopted the Committee's recommendation.

TRAVEL REGULATIONS FOR UNITED STATES JUSTICES AND JUDGES

Evacuation, Safe Haven, and Other Special Allowances. The Judicial Conference approved an amendment to the Travel Regulations for United States Justices and Judges, recommended by the Committee, to establish a permanent policy on the payment of evacuation, safe haven, or other special allowances to judges in the event of a disaster. Such a policy will enable courts to promptly establish alternate work locations and resume normal court operations as early as possible in the wake of a disaster.

Judges with Special Needs. The judges' travel regulations currently allow the Director of the Administrative Office to authorize reimbursement for travel and subsistence expenses for a family member or travel attendant to accompany a judge with special needs, but not for the expense of personal care services that may be provided by such an attendant. Noting that executive branch travel regulations were recently amended to permit reimbursement for the latter expenses, and that such reimbursement is both necessary and appropriate, the Committee recommended, and the Conference approved, an amendment to the judges' travel regulations to authorize payment for the services of an attendant traveling with a judge to accommodate the judge's special needs.

JUDGES' ATTENDANCE AT PRIVATELY FUNDED EDUCATIONAL PROGRAMS

The Judicial Branch Committee recommended and, after discussion, the Judicial Conference slightly modified and then approved a policy intended to ensure greater transparency and accountability with regard to judges' attendance at privately funded educational programs. The policy requires non-government educational program providers (other than state and local bar associations, subject-matter bar associations, judicial associations, the Judicial Division of the American Bar Association, and the National Judicial College) that wish to pay or reimburse expenses incurred by federal judges in connection with attendance at programs whose significant purpose is the education of federal or state judges, to disclose certain information about the programs and their sources of funding. Providers are subject to the disclosure requirements if they wish to reimburse or pay judges' expenses above the threshold amount at which judges must report reimbursements on their annual financial disclosure reports (currently $305). Judges may not accept such reimbursements unless they first ascertain that the program providers have made the required disclosures, and they must report their attendance within 30 days of the conclusion of the program. Both the seminar provider disclosures about programs and the judges' disclosures about attendance at programs will be publicly available on the internet. The policy becomes effective January 1, 2007.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it continues to actively address problems confronting the judiciary, including the inadequacy

of judicial compensation and survivors' benefits. The Committee is also taking steps to enhance communications between the judiciary and Congress and the media. These activities, combined with the Committee's development of a policy that addresses the issue of judges' attendance at privately funded educational programs, are intended to further the broader objective of maintaining and improving judicial independence.

COMMITTEE ON JUDICIAL RESOURCES

STAFFING FORMULAS

At the request of the Committee on Judicial Resources, the Administrative Office conducted a review of the district and bankruptcy clerks' offices staffing formulas adopted in September 2004 (JCUS-SEP 04, pp. 20-21), to assess the impact of the CM/ECF system and other innovations that may have led to efficiencies and increased effectiveness in the judiciary, and to address concerns raised by the Administrative Office's District Clerks Advisory Group with regard to the district clerk's office staffing formula. Based on that review, the Committee recommended, and the Conference approved, new staffing formulas for district and bankruptcy clerks' offices, to be implemented in fiscal year 2007. The district clerk's office formula will be revisited in two years and the bankruptcy clerk's office formula will be reassessed on a somewhat shorter cycle to take into account changes in bankruptcy clerk's office procedures resulting from passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

COURT-SIZING FORMULAS

Court-sizing formulas are used to determine the appropriate grades and salaries of court unit executives, including district and bankruptcy clerks of court, and by extension, chief deputy clerks. The court-sizing formulas for district and bankruptcy clerks take into account the numbers of court unit employees based on 100 percent of the relevant staffing formulas, as well as the number of authorized judgeships. Since the new staffing formula for bankruptcy clerks' offices will result in a decrease in staffing allocations for some courts, the Committee recommended that the Conference approve technical adjustments to the court-sizing formula for bankruptcy clerks of court, so that their grades are not adversely affected solely by virtue of implementation of the new staffing formula. As in the past, adjustments to court unit executive grades will continue to follow increases and decreases in

workload. The Committee also recommended that the Conference delegate to the Committee on Judicial Resources the authority to make such technical adjustments to any court-sizing formulas in the future, as needed, when the respective staffing formulas are revised. The Conference adopted the Committee's recommendations.

COMPENSATION COST-CONTAINMENT INITIATIVES

In 2004, the Executive Committee asked the Committee on Judicial Resources to consider cost-containment initiatives that could be implemented in fiscal year 2005 and beyond. Among the short-term actions taken to contain compensation costs was the elimination of funding for the longevity bonus program[1] and for new positions for the swing pool secretarial program[2] for fiscal years 2005 and 2006. At this session, the Judicial Conference approved the Committee's recommendations to continue the suspension of the longevity bonus program pending completion of a court compensation study currently underway, and to eliminate permanently centralized funding of new and/or replacement positions for the swing pool secretary program, for all court units.

TEMPORARY EMERGENCY FUND

The Temporary Emergency Fund (TEF) provides money to circuit judicial councils for temporary staffing emergencies in chambers. The funds may also be reprogrammed for use in tenant alterations. The funds have been distributed to the circuits each year based on the number of authorized judgeships in each circuit, with 5 percent held in reserve and managed by the Administrative Office. In response to concerns that TEF funding levels have been declining in recent years and are not sufficient to address the need for emergency personnel in some courts, the Committee recommended that the

[1]Under the longevity bonus program, employees who are at the top step of a salary range are eligible for a 1 percent cash bonus on an annual basis if certain criteria are met.

[2]The swing pool secretary program was established to provide secretarial assistance to judges for short periods of time when hiring a temporary replacement for principal secretarial staff would not be feasible.

Conference approve the allocation of all TEF funding to the circuit judicial councils without maintaining a 5 percent reserve. The Committee further recommended that the Conference stress the importance of using these funds for staff, rather than alterations. The Conference adopted the Committee's recommendations.

LAW CLERK QUALIFICATIONS

In recent years, the Judicial Conference expanded the qualification standards for "elbow" law clerks to allow experience as a pro se law clerk or as a staff attorney to be considered as equivalent to elbow law clerk experience for purposes of establishing the grade level for elbow law clerks (JCUS-SEP 03, p. 28; JCUS-MAR 04, p. 20). Since there appears to be no reason to distinguish bankruptcy appellate panel law clerk experience for these purposes, at this session the Committee recommended that the Conference approve an expansion of the qualification standards for elbow law clerks to consider bankruptcy appellate panel law clerk experience as creditable for purposes of establishing grade eligibility. The Conference adopted the Committee's recommendation.

ALTERNATIVE DISPUTE RESOLUTION

In March 1998, the Judicial Conference approved "basic" and "robust" staffing factors for clerk's office positions performing duties related to alternative dispute resolution (ADR) (JCUS-MAR 98, pp. 20-21). The basic staffing factor was intended to apply to most district courts' ADR programs, while the robust factor was intended for a limited number of courts with extensive ADR programs. Based on the number of cases participating in the ADR programs in the Central District of California and the Middle District of Pennsylvania, and on the number of hours spent processing these cases, the Committee recommended that the Conference approve the requests of those districts for application of the robust staffing factor for clerk's office positions with duties related to ADR. The Conference approved the Committee's recommendations.

COURT INTERPRETERS

Based on established criteria, the Committee on Judicial Resources recommended, and the Judicial Conference approved, one additional Spanish staff court interpreter position for fiscal year 2008 for the Western District of Texas, and accelerated funding for that position in fiscal year 2007. On the Committee's recommendation, the Conference declined to approve two additional Spanish staff court interpreter positions for the District of New Mexico.

FAIR EMPLOYMENT PRACTICES

On recommendation of the Committee, the Judicial Conference approved changing the date for submission of *The Judiciary Fair Employment Practices Annual Report* from the March to the September session of the Judicial Conference by amending the last sentence of the Conference's resolution on equal employment opportunity (*see* JCUS-MAR 80, p. 5). This will allow the Administrative Office sufficient time to complete the complex, multi-step process required to produce the detailed report.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it endorsed a vision and goals, which will serve as the basis for future funding requests and action planning for the judiciary's human resources program. The Committee also endorsed the establishment by the Administrative Office of a group, with representatives from all court unit types, to study the "core modeling" methodology for use in work measurement and to prepare a report to be presented to the Committee at its December 2006 meeting.

COMMITTEE ON JUDICIAL SECURITY

COMMITTEE ACTIVITIES

The Committee on Judicial Security reported that it continued its discussion on court security officer (CSO) staffing, which was aided by the feedback provided at the first meeting of an advisory group of U.S. Marshals

Service staff. It also discussed preliminary steps to transfer responsibility for establishing the CSO hearing standards from the judiciary to the Marshals Service. In addition, the Committee discussed the successful implementation of the Home Intrusion Detection Systems Program.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

SELECTION AND APPOINTMENT OF MAGISTRATE JUDGES

Senior Judge Participation. Pursuant to 28 U.S.C. § 631(a) and the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges, magistrate judges are currently selected by majority vote of the active district judges of a court from a list provided by a merit selection panel. An amendment to the Senate's version of the proposed Comprehensive Immigration Reform Act of 2006 (S. 2611, 109th Cong.) would specifically confer on senior judges the right to vote on the appointment of magistrate judges in their districts. Noting that the current method of appointment is effective, the Committee on the Administration of the Magistrate Judges System recommended that the Conference oppose the amendment. The Conference adopted the Committee's recommendation.

Electronic Publication of Notices. In light of the ready availability and low cost of electronic publication of notices, the Committee recommended, and the Judicial Conference approved, amendments to Sections 2.01 and 6.03(a) of the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges to require wide circulation of magistrate judge position vacancy announcements and notices of consideration of reappointments, and to make publication of such notices through print advertisements in local newspapers and legal periodicals optional rather than required. Similar revisions were made to the selection and appointment regulations for bankruptcy judges in March 2006 and at this Conference session (*see* JCUS-MAR 06, pp. 9-10 and "Selection and Appointment Regulations," *supra*, p. 8).

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee on the Administration of the Magistrate Judges System and the recommendations of the Director of the Administrative Office, the respective district courts, and the judicial councils of the circuits, the Judicial Conference approved the following changes in positions, salaries, locations, and arrangements for full-time and part-time magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

SECOND CIRCUIT

Eastern District of New York

Redesignated one of the magistrate judge positions currently designated as Central Islip as Brooklyn or Central Islip.

THIRD CIRCUIT

District of Delaware

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

2. Made no other change in the location or arrangements of the existing magistrate judge position in the district.

FOURTH CIRCUIT

Northern District of West Virginia

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

FIFTH CIRCUIT

Middle District of Louisiana

Made no change in the number, location, or arrangements of the magistrate judge positions in the district.

Eastern District of Texas

1. Authorized an additional full-time magistrate judge position for the district, to be located at Marshall.

2. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

NINTH CIRCUIT

District of Alaska

Authorized filling the vacant magistrate judge position at Anchorage with the understanding that the upcoming vacancy created by the retirement of the current full-time magistrate judge at that location in November 2007 will not be filled.

District of Idaho

Made no change in the number, location, or arrangements of the magistrate judge positions in the district.

District of Oregon

1. Increased the salary of the part-time magistrate judge position at Pendleton from Level 6 ($12,755 per annum) to Level 5 ($25,512 per annum).

2. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

ELEVENTH CIRCUIT

Northern District of Alabama

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Northern District of Georgia

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

ACCELERATED FUNDING

On recommendation of the Committee, the Conference agreed to designate the new full-time magistrate judge positions at Wilmington, Delaware and Marshall, Texas for accelerated funding in fiscal year 2007.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that pursuant to Judicial Conference policy regarding the review of magistrate judge position vacancies (JCUS-SEP 04, p. 26), the Committee determined that vacancies in four district courts should be filled. The Committee approved an initiative to automate the list of retired magistrate judges who are willing and available to serve on recall and to post the list on the J-Net so that it can be viewed by chief judges and other court personnel seeking the services of a recalled magistrate judge. The Committee considered statistics on the gender and ethnic diversity of magistrate judges and agreed that the chair will send a letter to each court that receives approval to fill a magistrate judge position vacancy to urge the court to consider the importance of diversity in the magistrate judge appointment process.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

RULES IMPLEMENTING THE E-GOVERNMENT ACT

To implement the E-Government Act of 2002 (Pub. L. No. 107-347), the Committee on Rules of Practice and Procedure submitted to the Judicial Conference a proposed amendment to Appellate Rule 25 (Filing and Service), and proposed new Bankruptcy Rule 9037 (Privacy Protection for Filings Made with the Court), Civil Rule 5.2 (Privacy Protection for Filings Made with the Court), and Criminal Rule 49.1 (Privacy Protection for Filings Made with the Court), together with Committee Notes explaining their purpose and intent. The Act requires the Supreme Court to prescribe rules "to protect privacy and security concerns relating to electronic filing of documents and the public availability . . . of documents filed electronically." The proposed amendment and new rules are based on Judicial Conference policy regarding the redaction of certain personal information from court filings (JCUS-SEP/OCT 01, pp. 48-50; JCUS-SEP 03, pp. 15-16). The Judicial Conference

approved the amendment and new rules and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF APPELLATE PROCEDURE

See supra "Rules Implementing the E-Government Act," pp. 32-33, regarding a proposed amendment to Appellate Rule 25 (Filing and Service).

FEDERAL RULES OF BANKRUPTCY PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 1014 (Dismissal and Change of Venue), 3007 (Objections to Claims), 4001 (Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements), 6006 (Assumption, Rejection or Assignment of an Executory Contract or Unexpired Lease), and 7007.1 (Corporate Ownership Statement), and proposed new Bankruptcy Rules 6003 (Interim and Final Relief Immediately Following the Commencement of the Case — Applications for Employment; Motions for Use, Sale, or Lease of Property; and Motions for Assumption or Assignment of Executory Contracts), and 9005.1 (Constitutional Challenge to a Statute — Notice, Certification, and Intervention), together with Committee Notes explaining their purpose and intent. The Judicial Conference approved the rules amendments and new rules and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law. *See also supra* "Rules Implementing the E-Government Act," pp. 32-33, regarding a proposed new Bankruptcy Rule 9037 (Privacy Protection for Filings Made with the Court).

IMPLEMENTATION OF THE BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005

Following passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the Act), the Executive Committee, acting on behalf of the Judicial Conference, authorized distribution to the courts of proposed interim bankruptcy rules that could be adopted in individual districts by local

rule or general order to facilitate uniform practice under the Act, pending amendment of the Federal Rules of Bankruptcy Procedure (JCUS-SEP 05, p. 5). At this session, the Committee on Rules of Practice and Procedure proposed an amendment to Interim Bankruptcy Rule 1007 with a recommendation that it be distributed to the courts and adopted by standing order or local rule to take effect on October 1, 2006. The proposed amendment addresses problems arising from the debtor's obligation to file a certificate showing completion of a credit counseling course prior to commencing a bankruptcy case, by providing debtors a 15-day grace period within which to file the certificate. The Committee also submitted proposed revisions to Official Forms 1, 5, 6, 9, 22A, 22C, and 23, and new Exhibit D to Official Form 1, which include revisions implementing the proposed amendment to Interim Rule 1007 and new statistical reporting requirements mandated by the Act. The Judicial Conference approved distributing to the courts the amendment to Interim Rule 1007 and approved the revisions to the Official Forms. The effective date of the revised Official Forms is October 1, 2006.

FEDERAL RULES OF CIVIL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Conference a proposed comprehensive style revision of Civil Rules 1-86 and the Illustrative Forms contained in the Appendix of Forms of the Federal Rules of Civil Procedure, to clarify and simplify them without changing their substantive meaning. Similar revisions have already been made to the Federal Rules of Appellate Procedure (JCUS-SEP 97, p. 82) and the Federal Rules of Criminal Procedure (JCUS-SEP/OCT 01, p. 70). The Committee also proposed minor substantive amendments to proposed restyled Civil Rules 4 (Summons), 9 (Pleading Special Matters), 11 (Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions), 14 (Third-Party Practice), 16 (Pretrial Conferences; Scheduling; Management), 26 (General Provisions Governing Discovery; Duty of Disclosure), 30 (Depositions Upon Oral Examination), 31 (Depositions Upon Written Questions), 40 (Assignment of Cases for Trial), 71.1 (Condemning Real or Personal Property), and 78 (Motion Day). Finally, the Committee proposed style changes to pending amendments (scheduled to take effect in December 2006) to Civil Rules 5.1 (Constitutional Challenge to a Statute — Notice, Certification, and Intervention), 33 (Interrogatories to Parties), 34 (Production of Documents, Electronically Stored Information, and Things and Entry Upon Land for Inspection and Other Purposes), 37 (Failure to Make Disclosure or Cooperate in Discovery; Sanctions), 45 (Subpoena), and 50 (Judgment as a

Matter of Law in Jury Trials; Alternative Motion for New Trial; Conditional Rulings) and to proposed new Civil Rule 5.2 (Privacy Protection for Filings Made with the Court) (*see supra* "Rules Implementing the E-Government Act," pp. 32-33). The Judicial Conference approved the amendments and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF CRIMINAL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Criminal Rules 11 (Pleas), 32 (Sentencing and Judgment), 35 (Correcting or Reducing a Sentence), and 45 (Computing and Extending Time), together with Committee Notes explaining their purpose and intent, and a recommendation to abrogate the form entitled, "Model Form for Use in 28 U.S.C. § 2254 Cases Involving a Rule 9 Issue" contained in the Appendix of Forms to the Rules Governing Section 2254 Cases in the United States District Courts. The Judicial Conference approved the amendments and the recommendation to abrogate the model form and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law. *See also supra* "Rules Implementing the E-Government Act," pp. 32-33, regarding a proposed new Criminal Rule 49.1 (Privacy Protection for Filings Made with the Court).

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it approved for publication proposed amendments and additions to the Federal Rules of Bankruptcy Procedure and Official Forms to implement the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. The proposed changes are based substantially on the interim rules, modified as appropriate after considering comments from the bench and bar as a result of the use of the interim rules. The Committee also approved for publication proposed amendments to the Federal Rules of Criminal Procedure and a new Criminal Rule, as well as a proposed new Federal Rule of Evidence. The comment period expires on February 15, 2007.

COMMITTEE ON SPACE AND FACILITIES

U.S. COURTS DESIGN GUIDE

As part of the judiciary's long-term cost-containment strategy, the Committee on Space and Facilities has been conducting a comprehensive review of the *U.S. Courts Design Guide* to identify revisions that would reduce costs without affecting functionality. Revisions pertaining to court office space and chambers suites, as well as certain technical revisions, have already been adopted (JCUS-SEP 05, pp. 39-40; JCUS-MAR 06, pp. 28-29). In continuation of this effort, the Conference took the following actions with regard to Committee recommendations concerning the *Design Guide*:

a. Agreed, after discussion, to apply the standards of the new 2007 edition of the *U.S. Courts Design Guide* to the design and construction of new buildings and annexes, all new leases, and repair and alteration projects where new space, including courtrooms and chambers, is planned for an entire court unit;

b. Agreed, after discussion, to amend the *Design Guide* to state that when designing for new construction, the court must adopt a palette of finishes as the new building standard and apply that standard to all future renovation projects in that courthouse;

c. Adopted a policy that once a courtroom configuration is agreed upon by a court, that layout will be the standard courtroom configuration for that judge type in that project, and changes to the standard courtroom configuration will be included among the exceptions that must be approved by the Committee on Space and Facilities, or the Judicial Conference, as appropriate;

d. Adopted a policy that a circuit judicial council must specifically approve any attorney lounge for a district or bankruptcy court;

e. Endorsed a standard that provides a separate dining area for judges only when a cafeteria is planned for that building;

f. Agreed to require, with regard to access or raised flooring, that (a) the floor finish facilitate access to the underfloor cabling and wiring without complete removal and replacement of floor covering; and (b) high quality carpet tile, vinyl composition tile (for high traffic or utility spaces such as computer rooms), "quick release" nonadhesive

carpet strips, or "quick release" adhesive broadloom carpet be used as the floor finish or covering;

g. Declined to approve sample floor plans for appellate, district, bankruptcy, and magistrate judge courtrooms that depict ramps as the preferred method to accommodate persons with disabilities; and

h. Approved a number of technical revisions to the *Design Guide* pertaining to shared support space, CM/ECF space, mechanical systems, ceiling heights, and lighting.

BUDGET CHECK PROCESS

A budget check process was adopted by the Judicial Conference in September 2004 as a space cost-control mechanism and is applicable to all prospectus and non-prospectus space actions (JCUS-SEP 04, pp. 35-36). At this session, the Committee recommended, and the Conference adopted, the following with respect to budget checks:

a. the budget check process is applicable to requests from the General Services Administration (GSA) for input into feasibility studies; and

b. with regard to chambers space requests for judges taking senior status or for their replacements needed within the next 24 months, the budget check process is streamlined as follows: Circuit judicial councils will conduct a budget analysis jointly with the Administrative Office with review by the Committee on Space and Facilities, prior to transmitting any space request to GSA. Requests for courtrooms associated with these judges will be subject to the regular budget check process.

The Committee also recommended that the projects in Greenville, South Carolina; Harrisburg, Pennsylvania; San Antonio, Texas; San Jose, California; and Anniston, Alabama, which already have authorization from Congress to begin design and are therefore not subject to the budget check process, proceed with the following conditions: they will incorporate all approved revisions to the *U.S. Courts Design Guide*, they will not exceed the amount of square footage authorized by Congress for the judiciary in the projects, including the specific number of courtrooms and chambers, and the rent resulting upon the completion of these projects will be charged against the future annual rent budget caps (*see supra* "Rent Budget Cap," p. 10). The Conference adopted the Committee's recommendations.

In addition, the Conference adopted a Committee recommendation to approve exceptions to the budget check process for non-prospectus space projects in Hato Rey, Puerto Rico; Port Huron, Michigan; Jackson, Tennessee; and Las Cruces, New Mexico, on the condition that the projects be funded from the local or circuit council tenant alterations funds and any additional rent that will be accrued because of the alteration will be charged against the circuit councils' future space rental caps.

COMMITTEE ACTIVITIES

The Committee on Space and Facilities reported that it is continuing to test the new long-range facilities planning methodology called asset management planning as a cost-containment initiative. Another such initiative, the rent validation project, which involves reviewing space assignments, GSA rent charges, appraisals, and rental rates, will be completed within one year.

MEMORIAL RESOLUTIONS

The Judicial Conference approved the following resolutions noting the deaths of the Honorable Edward R. Becker of the Third Circuit Court of Appeals and the Honorable Howard T. Markey, who had served on the Federal Circuit Court of Appeals:

> The Judicial Conference of the United States notes with profound sadness the death of the Honorable Edward R. Becker of the United States Court of Appeals for the Third Circuit, on Friday, May 19, 2006, in Philadelphia, Pennsylvania. Judge Becker's very distinguished career on the federal bench spanned nearly 36 years, beginning in 1970 with an appointment, at age 37, to the United States District Court for the Eastern District of Pennsylvania. He became an appellate judge in 1982 and served as chief judge of his circuit and, therefore, a member of this body from 1998 to 2003. As a senior judge, he continued to perform valuable service until shortly before his death.
>
> During his lengthy tenure, Judge Becker made significant and enduring contributions to federal judicial administration, both in his own circuit and at the national level.

In 1979, he was appointed by Chief Justice Warren Burger to what is now known as the Judicial Conference Committee on Criminal Law, where he served for 11 years, including 3 years as committee chair. Recognizing his keen analytical abilities, broad knowledge of the judicial process and judiciary programs, and remarkable work ethic, Chief Justice William Rehnquist called upon Judge Becker in 1990 to serve for nearly five and a half years on the Committee on Long Range Planning, where he played a leading role in producing the judiciary's first comprehensive long-range plan. At approximately the same time he served a four-year term on the Board of the Federal Judicial Center, which benefitted from his renowned pragmatism and efficiency as well as many years of judging experience. Soon after he became a Conference member, Chief Justice Rehnquist asked him to serve on the Executive Committee, a forum in which his customary energy and creativity were brought to bear on the problems of the judiciary as a whole.

While devoting considerable time to administrative matters, Judge Becker was also a towering legal scholar, responsible for many influential rulings that often anticipated changes in the law later adopted by the Supreme Court. In recognition of his numerous contributions to the law and the administration of justice, the American Judicature Society bestowed upon him the 20th annual Edward J. Devitt Distinguished Service to Justice Award in 2002.

A man of high principle and unquestioned integrity, Judge Becker was admired not only for his superior intellect and powerful decisions, but also his great courage, ceaseless determination, personal humility, and respect for all persons no matter their station in life. He earned the esteem and affection of everyone with whom he worked, was widely revered as a leader, counselor, and friend, and was well-known for a musical talent that he loved to share. The nation has lost one of its finest jurists, and we have lost a dear colleague with whom it was an occasional privilege to "charge up San Juan Hill." We will long remember Edward Becker and honor his plentiful achievements.

As a sign of their affection and respect, the members of the Judicial Conference convey their deepest sympathies to Judge Becker's widow, Flora, and to his other family members.

* * *

With profound sadness, the Judicial Conference of the United States notes the death of the Honorable Howard T. Markey, Chief Judge of the United States Court of Customs and Patent Appeals from 1972 to 1982, and then Chief Judge of the United States Court of Appeals for the Federal Circuit from its inception (in 1982) until 1990. He served with great distinction and the widespread acclaim of judges from throughout the judiciary until his retirement to academia in 1991.

Chief Judge Markey was a giant of the federal judiciary; while he was ably leading both courts, he was also shaping the course of judicial administration of the entire Third Branch. By the end of his tenure, he was the senior member of the Judicial Conference, having served from 1972 to 1990. For many years, he chaired the committee now called the Committee on Codes of Conduct. In this capacity, he wrote many of the leading opinions construing and applying in particular cases the ethical canons applicable to federal judicial officers. He also served on the Executive Committee and the Committee on Court Administration, and he chaired the Committee on the Bicentennial of the Constitution and the Ad Hoc Committee on the International Appellate Judges Conference of 1989/90.

Although the chief judge of a busy court with numerous areas of jurisdiction, he nevertheless sat repeatedly with all other courts of appeals around the country. He is believed to be the only judge to have sat with every regional circuit. In addition, he carried a full caseload with his court, sitting more often than any other active judge on the Federal Circuit.

Chief Judge Markey led his two courts with extraordinary energy and efficiency, frequently returning a portion of the annual appropriation by the Congress to the U.S. Treasury. He led a lean court in which each judge had only

two law clerks. He lived out the motto posted in his chambers which read, "The best possible decision, in the shortest possible time, at the least possible cost."

Throughout his Judicial Conference, Conference committee, and court service, Chief Judge Markey was a forceful and renowned judicial leader, who rightly earned the respect of fellow judges, lawyers, and other persons with whom he dealt. A larger-than-life personality, he is well remembered by many for his endless store of jokes, fascinating anecdotes and instructive stories, as well as for his Irish wit and charm. He inspired his colleagues, and many others. In 1998, in recognition of his many judicial achievements, the National Courts Building was renamed by Act of Congress the "Howard T. Markey National Courts Building." America has lost an extraordinary patriot, jurist, and judicial leader. Many have lost a good friend.

As a sign of their admiration, affection and deep respect the members of the Judicial Conference wish to convey their heartfelt sympathies to Chief Judge Markey's surviving family, especially his sister, Catherine; sons, Jeffrey and Christopher; and daughter, Jennifer.

FUNDING

All of the foregoing recommendations that require the expenditure of funds for implementation were approved by the Judicial Conference subject to the availability of funds and to whatever priorities the Conference might establish for the use of available resources.

Chief Justice of the United States
Presiding

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

March 13, 2007

The Judicial Conference of the United States convened in Washington, D.C., on March 13, 2007, 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 Michael Boudin
Judge Ernest C. Torres,
District of Rhode Island

Second Circuit:

Chief Judge Dennis Jacobs
Chief Judge Kimba M. Wood,
Southern District of New York

Third Circuit:

Chief Judge Anthony J. Scirica
Chief Judge Garrett E. Brown, Jr.,
District of New Jersey

Fourth Circuit:

Chief Judge William W. Wilkins
Judge David C. Norton,
District of South Carolina

Fifth Circuit:

Chief Judge Edith Hollan Jones
Chief Judge Glen H. Davidson,
Northern District of Mississippi

Sixth Circuit:

Chief Judge Danny J. Boggs
Judge Charles R. Simpson III,
Western District of Kentucky

Seventh Circuit:

Chief Judge Frank H. Easterbrook
Judge Wayne R. Andersen,
Northern District of Illinois

Eighth Circuit:

Chief Judge James B. Loken
Judge Lawrence L. Piersol,
District of South Dakota

Ninth Circuit:

Chief Judge Mary M. Schroeder
Judge Charles R. Breyer,
Northern District of California

Tenth Circuit:

Chief Judge Deanell Reece Tacha
Judge Alan B. Johnson,
District of Wyoming

Eleventh Circuit:

Chief Judge J. L. Edmondson
Chief Judge Robert L. Hinkle,
Northern District of Florida

District of Columbia Circuit:

Chief Judge Douglas H. Ginsburg
Chief Judge Thomas F. Hogan,
District of Columbia

Federal Circuit:

Chief Judge Paul R. Michel

Court of International Trade:

Chief Judge Jane A. Restani

The following Judicial Conference committee chairs attended the Conference session: Circuit Judges Julia Smith Gibbons, Roger L. Gregory, Marjorie O. Rendell, and David Bryan Sentelle; and District Judges Joseph F. Bataillon, Susan C. Bucklew, Paul G. Cassell, Dennis M. Cavanaugh, W. Royal Furgeson, Jr., John Gleeson, D. Brock Hornby, Howard D. McKibben, Lee H. Rosenthal, John R. Tunheim, and Thomas I. Vanaskie. Bankruptcy Judge A. Thomas Small and Magistrate Judge John M. Roper, Sr., were also in attendance. Gregory A. Nussel of the Fifth Circuit represented the circuit executives.

James C. Duff, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Jill C. Sayenga, Deputy Director; William R. Burchill, Jr., Associate Director and General Counsel; Laura C. Minor, Assistant Director, and Wendy Jennis and Jeffrey A. Hennemuth, Deputy Assistant Directors, Judicial Conference Executive Secretariat; Cordia A. Strom, Assistant Director, Legislative Affairs; and David A. Sellers, Assistant Director, Public Affairs. District Judge Barbara Jacobs Rothstein and John S. Cooke, Director and Deputy Director of the Federal Judicial Center, and District Judge Ricardo H. Hinojosa and Judith W. Sheon, Chair and Staff Director of the United States Sentencing Commission, were in attendance at the session of the Conference, as was Jeffrey P. Minear, Administrative Assistant to the Chief Justice. The 2006-2007 Supreme Court Fellows also observed the Conference proceedings.

Attorney General Alberto R. Gonzales addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice. Senators Patrick J. Leahy, Arlen Specter, and Jeff Sessions and Representatives John Conyers, Jr., Lamar S. Smith, and Howard Coble spoke on matters pending in Congress of interest to the Conference.

REPORTS

Mr. Duff reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office (AO). Judge Rothstein spoke to the Conference about Federal Judicial Center (FJC) programs, and Judge Hinojosa reported on Sentencing Commission activities. Judge Gibbons, Chair of the Committee on the Budget, Judge Furgeson, Chair of the Committee on Judicial Resources, and Judge Bataillon, Chair of the Committee on Space and Facilities, gave a joint report on the judiciary's ongoing cost-containment efforts, and Judge Hornby, Chair of the Committee on the Judicial Branch, reported on the current judicial pay restoration initiative.

ELECTIONS

The Judicial Conference elected to the Board of the Federal Judicial Center, each for a term of four years, Judge David O. Carter of the District Court for the Central District of California to succeed Judge James A. Parker of the District Court for the District of New Mexico, and Judge Philip M. Pro of the District Court for the District of Nevada to succeed Judge Sarah S. Vance of the District Court for the Eastern District of Louisiana.

EXECUTIVE COMMITTEE

JUDICIAL COMPENSATION

In order to address a crisis in judges' compensation, highlighted in Chief Justice Roberts' *2006 Year-End Report on the Federal Judiciary*, the Committee on the Judicial Branch recommended that the Judicial Conference endorse "an immediate and substantial increase in judicial salaries." Because of the current interest in Congress in considering judicial pay legislation, the Executive Committee approved the recommendation on behalf of the Conference on an expedited basis. This revised policy statement supersedes the Conference's more specific endorsement of a 16.5 percent increase in judicial salaries (*see* JCUS-SEP 03, p. 27). The new formulation takes into account the continuing decline in real judicial compensation, affords the judiciary flexibility to pursue a pay raise that more fully meets its needs, and accommodates the interests of the other two branches of government.

FIVE-YEAR SELF-EVALUATION AND JURISDICTIONAL REVIEW

Every five years, each committee of the Judicial Conference must recommend to the Executive Committee, with a justification, whether it should be maintained or abolished (JCUS-SEP 87, p. 60). Pursuant to this mandate, each committee completed and submitted to the Executive Committee for consideration at the latter's February 2007 meeting a self-evaluation questionnaire, which expressed the committee's views about its continuation, mission, functions, and structure. The Executive Committee made no changes to the committee structure itself, but tentatively agreed to make revisions to the jurisdictional statements of the following committees (largely based on suggestions of the committees themselves): Committee on Codes of Conduct, Committee on Defender Services, Committee on Judicial Security, Committee to Review Circuit Council Conduct and Disability Orders, and Committee on Space and Facilities. The changes were either technical or clarifying or made explicit a responsibility for subject areas that the committee already handled. In addition, at the request of the Committee to Review Circuit Council Conduct and Disability Orders, the Executive Committee agreed to change the name of that committee and determined that it be called the "Committee on Judicial Conduct and Disability." Chairs were provided an additional opportunity for comment, and revisions were made final in March 2007.

CONFERENCE-APPROVED LEGISLATIVE PROPOSALS

Every two years, at the beginning of a new Congress, each Conference committee considers Conference-endorsed legislative proposals within its jurisdiction that have not yet been enacted to determine whether the judiciary should pursue those proposals in the new Congress. At its February 2007 meeting, the Executive Committee reviewed the determinations of other committees as to which legislative proposals should be pursued in the 110th Congress. In addition, the Committee reviewed the one proposal within its own jurisdiction—establishment of a Judicial Conference Foundation to receive and expend private contributions in support of official programs (JCUS-MAR 95, p. 6)—and determined not to pursue the proposal in the present Congress.

MISCELLANEOUS ACTIONS

The Executive Committee—

- Approved final fiscal year (FY) 2007 financial plans for the four major judiciary appropriations accounts—Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners;

- Endorsed an inflation-based increase in the alternative maximum daily subsistence allowance for judges on official travel, and asked the Judicial Branch Committee to review existing policies on reimbursement of travel subsistence expenses;

- Acted on behalf of the Judicial Conference to approve requests under the budget check process (*see* JCUS-SEP 04, pp. 35-36; JCUS-MAR 06, p. 27) for courthouse and other judiciary space in Salt Lake City, Utah; Raleigh, North Carolina; Spartanburg, South Carolina; Philadelphia, Pennsylvania; and Brunswick, Georgia, with the understanding that any additional rent accruing from the projects will be charged against the respective circuit's share of the space rental budget cap approved by the Judicial Conference for FYs 2009 through 2016 (*see* JCUS-SEP 06, p. 10);

- Declined to approve a space request under the budget check process from the District Court of the Northern Mariana Islands in Saipan, and asked the Judicial Council of the Ninth Circuit to consider alternatives to that request;

- On behalf of the Judicial Conference, authorized a technical correction to proposed restyled Civil Rule 6(d) before the restyling package approved by the Conference in September 2006 was transmitted to the Supreme Court;

- On behalf of the Judicial Conference and on recommendation of the Committee on Codes of Conduct, designated the United States Supreme Court and the Codes of Conduct Committee as the entities authorized to issue certificates of divestiture to justices of the Supreme Court and other judicial officers, respectively, when appropriate under section 1043 of the Internal Revenue Code as amended by section 418 of the Tax Relief and Health Care Act of 2006 (Pub. L. No. 109-432, div. A); and

- Made referrals to Conference committees as follows: (a) asked the Committee on Court Administration and Case Management to consider the adequacy of juror attendance fees and to explore measures with regard to the summoning of potential jurors that could make jury service less burdensome and more cost-effective; (b) asked the Judicial Resources Committee to consider issues related to court reporters; (c) asked the Committee on Codes of Conduct to develop illustrative standards, criteria, or examples to guide judges in making recusal decisions related to attendance at privately funded educational seminars; (d) asked the Committee on Financial Disclosure to consider consolidation, simplification, or clarification of the multiple, overlapping reporting requirements imposed on judges who attend such seminars; and (e) asked the Committee on Judicial Conduct and Disability to address implementation of the report of the Chief Justice's Judicial Conduct and Disability Act Study Committee (*see infra*, "Judicial Conduct and Disability Act Study Committee Report," pp. 19-20).

COMMITTEE ON THE ADMINISTRATIVE OFFICE

WIRETAP REPORTS

The Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. § 2519, requires the Administrative Office to report to Congress annually the number, nature, and disposition of federal and state applications for orders approving the interception of wire, oral, or electronic communications (wiretap orders), based on reports submitted to it by federal and state judges and the Department of Justice. The Department of Justice is seeking legislation to extend its statutory deadline for reporting data on wiretap orders to the Administrative Office, stating that the current deadline leaves it insufficient time to provide accurate data. On recommendation of the Committee, the Conference agreed to support the Department of Justice in securing such an extension provided that the legislation include a commensurate extension of the judiciary's deadline for submitting the annual wiretap report to Congress.

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it discussed the results of a survey the AO conducted in 2006 of Judicial Conference members, committee chairs, chief judges, court unit executives, and federal defenders, which was intended to assist the AO in focusing on the judiciary's most important issues and requirements. The Committee will participate in an internal review Director Duff is conducting of the AO's structure and services. The Committee discussed at length its key role in the judiciary's system for oversight and review, including its oversight of the AO's audit, review, and investigation services.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

ADDITIONAL JUDGESHIPS

Pursuant to 28 U.S.C. § 152(b), the Judicial Conference submits periodic recommendations for new bankruptcy judgeships to Congress. In March 1991, the Conference adopted a policy that provides for a national survey of judgeship needs every two years and establishes criteria for evaluating requests for additional bankruptcy judgeships (JCUS-MAR 91, pp. 12-13). Based on the 2006 biennial survey of judgeship needs, the Committee on the Administration of the Bankruptcy System recommended that the Judicial Conference authorize the Administrative Office to transmit to Congress proposed legislation to create three additional bankruptcy judgeships for the Eastern District of Michigan and one for the Northern District of Mississippi, and to convert one existing temporary position to permanent in each of the following districts: Eastern District of Michigan, Southern District of Georgia, Southern District of Illinois, and Western District of Tennessee. The Conference adopted the Committee's recommendations. Because the long-term impact of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Pub. L. No. 109-8) on bankruptcy filings is not yet known, the Committee will monitor filing levels and initiate a new survey at the end of 2007, if warranted.

CHAPTER 7 TRUSTEE COMPENSATION

In September 1991, the Judicial Conference agreed to seek legislation to ensure that trustees who serve in cases converted to chapter 7 of the Bankruptcy Code receive compensation equivalent to that received by trustees serving in cases originally filed under chapter 7 (JCUS-SEP 91, p. 53). Subsequently, the Judicial Conference amended the Bankruptcy Court Miscellaneous Fee Schedule to provide for full compensation to chapter 7 trustees in cases converted from other chapters of the Code (JCUS-SEP 06, p. 14). Since the goal of the 1991 position has been achieved, on recommendation of the Committee, the Conference agreed to rescind its 1991 position to seek legislation.

COMMITTEE ACTIVITIES

The Bankruptcy Committee reported that it decided to study further a request by the Director of the Executive Office for United States Trustees for Judicial Conference approval of the mandatory use of data-enabled forms. It also decided, as a long-range planning matter, to monitor the current Administrative Services Methods Analysis Program effort to identify and share information on best practices among the courts in performing various functions. In addition, the Committee discussed the involvement of bankruptcy judges on Judicial Conference committees and at Conference sessions, and received status reports on various topics, including recent activities of its Subcommittee on Fees and Revenue Enhancement, the Advisory Committee on Bankruptcy Rules, the Administrative Office's Bankruptcy Judges Advisory Group, and the Federal Judicial Center.

COMMITTEE ON THE BUDGET

CHAPTER 7 TRUSTEE PAYMENTS

In March 2004, the Judicial Conference agreed to seek legislation to simplify the accounting procedures associated with chapter 7 trustee payments (JCUS-MAR 04, p. 8). Subsequently, it was determined that the desired modifications could be achieved without legislation. Therefore, on recommendation of the Budget Committee, the Conference rescinded its March 2004 position.

SALARIES AND EXPENSES ACCOUNT BUDGET CAP

In March 2006, the Judicial Conference approved, in concept, the establishment of an annual budget cap on growth in space rental costs, and in September 2006, set that cap at an average annual growth rate of 4.9 percent for fiscal years 2009 through 2016 (JCUS-MAR 06, pp. 10-11; JCUS-SEP 06, p. 10). At this session, the Conference adopted a recommendation of the Budget Committee to set an overall cap on annual increases in the Salaries and Expenses account for fiscal years 2009 through 2017 at an average of 8.2 percent over prior year appropriations. This cap will allow funding of expenses classified as mandatory and hold rent to the 4.9 percent space cap; discretionary elements in the account will have to be reduced accordingly to bring requirements within the levels of the overall budget cap.

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it continues to be concerned about the long-term financial health of the judiciary and spent considerable time discussing internal and external actions that will impact future budgets. The Committee continues to view the judiciary's two-pronged approach—congressional outreach and cost containment—as critical to protecting the independence of the judiciary and securing adequate funding from the Congress. To that end, the Committee remains steadfast in its desire to implement budget caps for all of the judiciary's major accounts including Defender Services and Court Security.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in September 2006, the Committee received 43 new written inquiries and issued 43 written advisory responses. During this period, the average response time for requests was 18 days. In addition, the Committee chair received and responded to 43 informal inquiries from colleagues, and individual Committee members responded to 192 such inquiries.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

COURTROOMS FOR SENIOR JUDGES

In July 2006, the House Transportation and Infrastructure Committee passed a resolution as part of its authorization of a courthouse construction project, directing the Judicial Conference to, among other things, revise the *U.S. Courts Design Guide* within one year to provide for one courtroom for every two senior judges in new construction projects. The Court Administration and Case Management Committee, in conjunction with the Space and Facilities Committee, recommended that the Conference take no action at this time on this portion of the resolution, with the understanding that the two Conference committees and the Administrative Office will continue to work with the House committee to address this issue in conjunction with an ongoing study of courtroom usage, and that the Space and Facilities Committee will be mindful of the resolution in reviewing proposed courthouse construction projects. The Conference adopted the Court Administration and Case Management Committee's recommendation.

PLACES OF HOLDING COURT

Southern District of Iowa. The Southern District of Iowa recently relinquished its courtroom space in Council Bluffs, Iowa, and moved into a significantly smaller space as a cost-containment measure. The new space is sufficient for hearings and bench trials, but not for occasional civil jury trials. The District of Nebraska courthouse in Omaha is located five miles from Council Bluffs, and is convenient to the Southern District of Iowa jury pool and bar, and the District of Nebraska has agreed to allow the Southern District of Iowa to hold these civil trials in its Omaha courthouse. At the request of the Southern District of Iowa and on recommendation of the Committee, the Conference agreed to seek legislation to allow that district occasionally to hold civil trials upon party consent in Omaha, Nebraska, with the understanding that this legislative proposal will be narrowly tailored to fit the unique circumstances of the request.

Western District of Texas. On recommendation of the Committee, the Conference rescinded its September 2003 endorsement of legislation to amend 28 U.S.C. § 124(d) to move Hudspeth County from the Pecos Division to the El Paso Division of the Western District of Texas (*see* JCUS-SEP 03, p. 8) .

The Western District of Texas had advised the Committee that the change is no longer necessary.

ELECTRONIC ACCESS TO DIGITAL AUDIO RECORDINGS

The Conference adopted a recommendation of the Committee to endorse a pilot project in selected districts, for 6 to 12 months, to allow digital audio recordings to be accessible through the Case Management/Electronic Case Files (CM/ECF) system and to make them available to the public through the judiciary's Public Access to Court Electronic Records (PACER) program. Such recordings are already available for purchase at clerks' offices.

SEALED CASES AND DOCUMENTS

Noting that the CM/ECF system has a proven record of security and success in managing sealed court records, the Committee recommended that the Conference endorse the sealing functionality of the CM/ECF system and encourage courts to use that functionality. The Committee also recommended that the Conference strongly urge courts to ensure that, in response to queries about sealed cases, the CM/ECF message reads "case under seal" rather than "case does not exist." The Conference adopted the Committee's recommendations.

ELECTRONIC TRANSCRIPTS POLICY

In September 2005, the Conference asked the Court Administration and Case Management Committee to work with the Defender Services Committee to evaluate the impact on the defender services program of the judiciary's policy concerning public access to electronic transcripts, and to determine whether to recommend changes to the policy (JCUS-SEP 05, p. 16). At this session, the Court Administration and Case Management Committee, in consultation with the Defender Services Committee, recommended revisions to that policy to clarify (a) the scope of an attorney's responsibility with regard to redacting personal identifying data from electronic transcripts, (b) the role of standby counsel to pro se defendants in the redaction process, (c) the scope of the "hold harmless" provision for failure to redact or for redaction errors, to make clear that it includes attorneys, and (d) issues relating to CJA panel attorney appointment,

compensation, and reimbursement for performing duties required under the policy. The Conference approved the recommendation.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it discussed the ongoing courtroom usage study, which is being conducted for the Committee by the FJC, and the Committee's efforts to keep Congress fully informed on the study's progress; its extensive work with the Space and Facilities Committee regarding the implementation of the Conference's criteria for recommending the closure of non-resident facilities (JCUS-MAR 06, p. 28); and its responsibilities relating to management of the judiciary's records. With regard to the last item, the Committee strongly supported the Administrative Office's new initiative to create records disposition schedules for the courts' electronic case files and the ongoing initiative to provide courts with the flexibility to destroy or retain all presently existing paper case files after they have been scanned into the courts' electronic dockets.

COMMITTEE ON CRIMINAL LAW

RE-ENTRY SERVICES

The Director of the Administrative Office has explicit authority under 18 U.S.C. § 3672 to contract for re-entry services for those federal offenders under post-conviction supervision who are dependent on alcohol and/or drugs or who suffer from a psychiatric disorder. In September 2005, the Judicial Conference agreed to seek legislation to expand that authorization to allow the Director to contract for services (e.g., medical, educational, emergency housing, and vocational training) and other re-entry interventions for post-conviction offenders generally (JCUS-SEP 05, p. 19). At this session, the Criminal Law Committee recommended that such legislation be expanded to cover individuals under pretrial supervision and also to include authority for the Director to expend funds for emergency re-entry services. Such authority would enhance probation and pretrial services officers' ability to work with defendants and offenders re-entering the community. The Conference adopted the Committee's recommendation.

SEPARATION OF JUDGMENT AND STATEMENT OF REASONS

The judgment forms for criminal cases include an attached statement of reasons, which sets forth the reasons a sentence was imposed. Because it may include sensitive information about whether a defendant's substantial assistance served as a basis for the sentence, the statement of reasons is not disclosed to the public (*see* JCUS-MAR 01, p. 17). The Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (PROTECT Act), Pub. L. No. 108-21, amended 18 U.S.C. § 3553(c) to require that courts describe with specificity in the written judgment the reasons relied on when departing from sentencing guidelines and amended 28 U.S.C. § 994(w) to require that a statement of reasons for the sentence (including reasons for any departure) be submitted to the U.S. Sentencing Commission. The USA PATRIOT Improvement and Reauthorization Act of 2005, Pub. L. No. 109-177, further amended 28 U.S.C. § 994(w) to require that the statement of reasons be submitted to the Sentencing Commission on forms issued by the Judicial Conference and approved by the Sentencing Commission. The consequence of these provisions is that the statement of reasons form, which is neither available to the public nor locally modifiable, would appear to be a required part of the judgment form, which is generally available to the public and may be modified locally. To alleviate problems this creates for clerks' offices, on recommendation of the Committee, the Conference agreed to seek legislation that would authorize the recording of the statement of reasons in a document separate from the judgment form.

PROVISIONAL HIRING OF PROBATION AND PRETRIAL SERVICES OFFICERS

Under a policy initiated in 1973, probation and pretrial services officers could not be placed on the payroll prior to completion of a pre-employment background investigation unless the AO Director determined that an emergency situation required immediate appointment. In September 2002, the Conference adopted a policy requiring background investigations and checks in the courts for positions not already covered by previously approved policies. As part of that policy, court unit executives and federal public defenders were given authority to hire staff provisionally prior to completion of the background check (JCUS-SEP 02, pp. 52-53). In order to alleviate workload demands on district and AO staff without compromising the officer

selection process, the Criminal Law Committee recommended that the Judicial Conference delegate to the chief judge of each district court authority similar to that now available to court unit executives and public defenders, to (a) waive the requirement that the initial background investigation of probation and pretrial services officers and officer assistants be completed prior to commencing employment; and (b) provisionally appoint probation officers and officer assistants and approve pretrial services officers and officer assistants, without prior approval of the Director of the Administrative Office, pending completion of the required background investigation. The Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that in November 2006, Judge Reggie Walton, a committee member, testified on behalf of the Conference before the United States Sentencing Commission about the impact on the administration of justice of the disparity between crack-cocaine and powder-cocaine sentences. He cited the Conference policy supporting the reduction of the disparity (*see* JCUS-SEP 06, p. 18), emphasizing the importance of ensuring both that justice is served and that the public appearance of justice is preserved. The Committee reviewed the existing Conference policy on searches and seizures conducted by probation officers, and is considering the implications of updating the policy. At the request of the Committee, staff in the Administrative Office convened a meeting of representatives of the AO, the Sentencing Commission, the Bureau of Prisons, the Federal Bureau of Investigation, and the Bureau of Immigration and Customs Enforcement to discuss the viability of automating the transmission of sentencing documents.

COMMITTEE ON DEFENDER SERVICES

COMMITTEE ACTIVITIES

The Committee on Defender Services, in collaboration with the Committee on Court Administration and Case Management, endorsed changes to the Judicial Conference policy on electronic access to official transcripts (*see supra*, "Electronic Transcripts Policy," pp. 12-13). At the request of the Executive Committee, the Committee on Defender Services made recommendations as to which outstanding Judicial Conference-approved

legislative proposals relating to defender services should be pursued in the next Congress. The Committee also received status reports on defender services program cost-containment initiatives, including recent progress on two of them: (a) establishing a source to provide objective case-budgeting assistance to judges, and (b) requesting that the Department of Justice use an expedited process for determining whether to eliminate the death penalty as an option in certain cases.

COMMITTEE ON FEDERAL-STATE JURISDICTION

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it received an update from a representative of the Social Security Administration (SSA) on the implementation of a new disability claims process in that agency's Boston Region, which began on August 1, 2006. The Committee also continued its discussion of proposed legislation, not yet introduced in Congress, that would affect the jurisdiction of the Court of International Trade, shifting to that court some categories of cases currently heard in the federal district courts. The Committee was also briefed on the capital habeas corpus study being undertaken by the Administrative Office and the Federal Judicial Center. The Committee discussed with a representative of the Advisory Committee on Evidence Rules the federalism implications of proposed Federal Rule of Evidence 502, which would govern the consequences of disclosing privileged or protected matters.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that it assisted the Judicial Conference in pursuing legislation to restore the judiciary's authority to redact judicial officers' financial disclosure reports for security reasons, and to make the financial disclosure obligations of judicial officers more consistent with the role of the judiciary and judges' recusal obligations under 28 U.S.C. § 455. At the request of the Executive Committee (*see supra*, "Miscellaneous Actions," pp. 6-7), the Committee began a comprehensive review of judicial branch ethics policies relating to judicial attendance at expense-paid private seminars, and the correlation of the various reporting

requirements triggered by judicial attendance at such events. The Committee also reported that as of December 31, 2006, it had received 4,260 financial disclosure reports and certifications for calendar year 2005, including 1,358 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 378 reports from bankruptcy judges; 566 reports from magistrate judges; and 1,958 reports from judicial employees.

COMMITTEE ON INFORMATION TECHNOLOGY

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it reviewed the *Judiciary Information Technology Fund Annual Report*, which describes sources of funds, obligations, and unobligated balances. The Committee focused on the significant accumulation of unobligated balances, which in large measure reflects the cumulative results of cost-containment initiatives and the success of the CM/ECF system in the district and bankruptcy courts. It adopted a multi-part strategy to reduce future unobligated balances, including expanding the use of Electronic Public Access funds. The Committee also supported proposed changes to the advanced information technology training program for judges, including moving from a national to a local delivery model. The Committee also endorsed the creation of an "IT Associates" exchange program that would allow both court and Administrative Office managers to identify and utilize, on a temporary basis, the expertise and skills of information technology employees from the Administrative Office or courts, respectively, to accomplish specific tasks or projects.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that, during calendar year 2006, 132 intercircuit assignments were undertaken by 80 Article III judges and one retired associate justice. The Committee continued to disseminate information about intercircuit assignments to increase awareness and facilitate the use of visiting judges, and it aided courts requesting assistance by identifying and obtaining judges willing to take assignments.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its involvement in rule of law and judicial reform activities throughout the world, highlighting those in Asia, Latin America, Eastern Europe, and the Russian Federation. The Committee further reported on its continued participation in the rule of law component of the Library of Congress's Open World Program for Russian and Ukrainian jurists visiting the United States. In addition, the Committee reported on foreign delegations of jurists and judicial personnel receiving briefings at the Administrative Office, and on the Korean judge observation program and other rule of law programs taking place in the United States.

COMMITTEE ON THE JUDICIAL BRANCH

JUDGES' TRAVEL

In order to maintain compliance with income tax laws, the Committee on the Judicial Branch recommended, and the Judicial Conference adopted, a revision to section F.1 of the Travel Regulations for United States Justices and Judges (*Guide to Judiciary Policies and Procedures*, vol. 3, ch. C-5, ex. A) to require judicial travelers to submit receipts or other documentary evidence to substantiate their claims for reimbursement of certain official travel expenses.

FEDERAL EMPLOYEES' GROUP LIFE INSURANCE

In March 2002, the Conference agreed to seek legislation to require the federal government to pay all the costs associated with active and senior Article III judges' and congressional members' Federal Employees' Group Life Insurance (FEGLI) premiums (JCUS-MAR 02, p. 20). Citing significant executive branch opposition to and little congressional support for an employer-pay-all FEGLI benefit for a narrow category of federal employees, the Committee recommended that the Conference rescind its March 2002 position, and the Conference agreed.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it has devoted its priority attention to securing an immediate and substantial increase in judicial salaries, consistent with the Chief Justice's *2006 Year-End Report on the Federal Judiciary* (*see also supra*, "Judicial Compensation," p. 4). In other efforts to promote judicial independence, the Committee continues to take affirmative steps to enhance interbranch communications, as well as to maintain communications with the bar and the media. It also continues to give substantial attention to judicial benefits matters.

COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY[1]

JUDICIAL CONDUCT AND DISABILITY ACT STUDY COMMITTEE REPORT

In 2004, Chief Justice William H. Rehnquist appointed a committee, chaired by Associate Justice Stephen G. Breyer, to study the implementation of the Judicial Conduct and Disability Act of 1980. The Judicial Conduct and Disability Act Study Committee (the Breyer Committee) issued its report in September 2006, and the Executive Committee subsequently asked the Committee on Judicial Conduct and Disability to review and make recommendations to the Conference on any actions that should be taken concerning the report (*see supra*, "Miscellaneous Actions," pp. 6-7).

Conference Authority to Review Committee Decisions. The Breyer Committee recommended that the Conference consider clarifying the scope of the Conference's authority to review Judicial Conduct and Disability Committee decisions. Noting that its own authority is entirely derivative of the Conference's authority and that, therefore, any Committee decision is reviewable by the Conference, the Judicial Conduct and Disability Committee recommended that the Conference direct it to prepare for Conference consideration a rule, pursuant to 28 U.S.C. §§ 331 and 358(a), that clarifies the authority of the Judicial Conference to review on its own initiative any Judicial Conduct and Disability Committee decision, including orders

[1]Prior to March 12, 2007, this Committee was known as the Committee to Review Circuit Council Conduct and Disability Orders (*see supra*, "Five-Year Self-Evaluation and Jurisdictional Review," p. 5).

granting or denying petitions for review in misconduct proceedings. The rule would also make clear that no complainant or judge who is the subject of a complaint would have any right to invoke such review. The Conference adopted the Committee's recommendation.

Other Breyer Committee Recommendations. In order to achieve the goals set forth by the Breyer Committee and fulfill its own mission, the Judicial Conduct and Disability Committee recommended that the Conference authorize and direct the Committee to develop, and present to the Conference for approval, comprehensive guidelines, and, as necessary, additional rules pursuant to 28 U.S.C. §§ 331 and 358(a), to implement the Judicial Conduct and Disability Act in a consistent manner throughout the federal court system. The Committee indicated that chief judges, circuit judicial councils, and circuit staff should be provided specific binding guidance on an array of difficult, substantive, procedural, and administrative issues identified in the Breyer Committee report. In addition, clerks' offices and circuit judicial councils should be required to transmit specified material to the Committee so that it has a sufficient basis for monitoring implementation. The Conference adopted the Committee's recommendation.

JURISDICTION TO CONSIDER PETITIONS FOR REVIEW

In its April 28, 2006 opinion, *In re Opinion of Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders*, 449 F.3d 106 (U.S. Jud. Conf. 2006), the Judicial Conduct and Disability Committee expressed the view that it does not have jurisdiction to review a circuit judicial council's affirmance of a chief judge's dismissal of a conduct and disability complaint where a special investigating committee under 28 U.S.C. § 353 had not been appointed. Believing, upon reconsideration, that such authority does exist, the Committee recommended that the Judicial Conference direct it to prepare for Conference consideration a rule, pursuant to 28 U.S.C. §§ 331 and 358(a), that explicitly authorizes the Committee on Judicial Conduct and Disability to examine whether a misconduct complaint requires the appointment of a special committee, upon dismissal of the complaint by the chief judge under 28 U.S.C. § 352(b), or upon the denial of a petition for review of the complaint by the circuit judicial council under 28 U.S.C. § 352(c). The Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Judicial Conduct and Disability reported that it continues to carry out its responsibilities with regard to considering petitions for review of final actions by circuit judicial councils on complaints of misconduct or disability of federal judges.

COMMITTEE ON JUDICIAL RESOURCES

ARTICLE III JUDGESHIP NEEDS

Additional Judgeships. The Committee on Judicial Resources considered requests and justifications for additional judgeships in the courts of appeals and the district courts as part of its 2007 biennial judgeship survey process. Based on its review, and after considering the views of the courts and the circuit councils, the Committee recommended that the Judicial Conference authorize transmittal to Congress of a request for the addition of 13 permanent and 2 temporary judgeships in the courts of appeals, and for the addition of 38 permanent and 14 temporary judgeships, the conversion to permanent status of 5 existing temporary judgeships, and the extension of 1 existing temporary judgeship for an additional 5 years in the district courts. The Conference adopted the Committee's recommendations, agreeing to transmit the following request to Congress in lieu of any previously submitted Article III judgeship requests ("P" denotes permanent; "T" denotes temporary; "T/P" denotes conversion of temporary to permanent; "T/E" denotes extension of temporary):

COURTS OF APPEALS

First Circuit	1P
Second Circuit	2P
Third Circuit	2P
Sixth Circuit	1P
Eighth Circuit	2P
Ninth Circuit	5P, 2T

DISTRICT COURTS

New York (Eastern)	3P
New York (Western)	1P
New Jersey	1T
South Carolina	1P
Virginia (Eastern)	1P
Texas (Eastern)	1P
Texas (Southern)	2P
Texas (Western)	1P
Ohio (Northern)	1T/E
Indiana (Southern)	1P
Iowa (Northern)	1T
Minnesota	1P
Missouri (Eastern)	1T/P
Missouri (Western)	1P
Nebraska	1P
Arizona	4P, 1T, 1T/P
California (Northern)	2P, 1T
California (Eastern)	4P
California (Central)	4P, 1T
Hawaii*	1T/P
Idaho	1T
Nevada	1T
Oregon	1P, 1T
Washington (Western)	1P
Colorado	1P, 1T
Kansas*	1T/P
New Mexico	1P, 1T, 1T/P
Utah	1T
Alabama (Middle)	1T
Florida (Middle)	4P, 1T
Florida (Southern)	2P, 1T

* If the temporary judgeship lapses before it is converted, Congress would be asked for one additional permanent judgeship.

Judgeship Vacancies. As part of the biennial survey of judgeship needs, workloads in district and appellate courts with low weighted caseloads are reviewed for the purpose of determining whether to recommend to the President and Senate that an existing or future judgeship vacancy not be filled.

The Conference adopted a Committee recommendation that Congress be advised that the existing vacancy in the District of Wyoming and the next judgeship vacancy occurring in the Eastern District of Louisiana should not be filled, based on the consistently low weighted caseloads in these districts.

ACCESS TO JUDGES' PERSONAL DATA

The Human Resources Management Information System (HRMIS) is the judiciary's automated personnel and payroll system, housing, among other things, personal benefits and retirement data for judges and judiciary employees. Currently court staff (primarily human resources managers and specialists) have "view-only" access to standard personal data (e.g., benefits and retirement information) for judiciary employees. They have not had access of any kind to judges' data because of security concerns. After determining that HRMIS has passed comprehensive independent and self-administered security testing, and in order to provide judges with the same level of personnel service as that received by judiciary employees, the Judicial Resources Committee recommended that the Conference authorize the Administrative Office to provide certain court staff with view-only access to judges' personal data in the judiciary's automated personnel and payroll system, subject to the following conditions:

a. the chief judge of each participating court, or his or her designee, makes a determination that access be provided with respect to data for all the judges in a particular court;

b. each participating court designates which staff is to be provided access; and

c. each participating court establishes procedures to ensure the security of the judges' data.

The Conference adopted the Committee's recommendation.

LAW CLERK QUALIFICATIONS

Since 2003, the Judicial Conference has expanded the qualifications standards for chambers law clerks, for purposes of establishing grade eligibility, to include experience as a pro se law clerk (JCUS-SEP 03, p. 28), a staff attorney (JCUS-MAR 04, p. 20), and a bankruptcy appellate panel law

clerk (JCUS-SEP 06, p. 27). Because there is no reason to distinguish death penalty law clerk experience for this purpose from that gained while employed in these other positions, the Committee recommended, and the Conference approved, an expansion of the qualifications standards for chambers law clerks to credit death penalty law clerk experience in establishing grade eligibility.

PRO SE LAW CLERKS

In March 2002, the Judicial Conference adopted a stabilization policy for allocating pro se law clerk positions, which provides that the number of such positions in a court will be reduced only if the number of prisoner filings does not support the court's allocated positions under the staffing formula for two consecutive years (JCUS-MAR 02, p. 22). Due to a greater than usual increase in prisoner petition filings for the 12-month period ending in June 2005 (likely a result of the Supreme Court's decisions in *Blakely v. Washington* and *United States v. Booker/United States v. Fanfan*), followed by a return to "normal" levels for the period ending June 2006, many districts are currently over strength and, under the existing stabilization policy, would be required to reduce their on-board staffing levels by December 2007. Noting that a new staffing formula for pro se law clerks is in development and may require courts that downsize to rehire immediately, the Judicial Resources Committee recommended, and the Conference approved, a temporary modification to the stabilization factor for the pro se law clerk allocation for courts with over-strength positions in fiscal year 2007. Starting with fiscal year 2008, the number of allocated positions will only be reduced if the number of prisoner filings does not support the allocated positions under the pro se law clerk staffing formula for three consecutive years. The two-year requirement will resume once a new pro se law clerk staffing formula is in place. As with the two-year stabilization policy, if an over-strength position is vacated, the court will not be allowed to refill that vacancy.

ELECTRONIC COURT REPORTER OPERATOR

Individual requests for additional staffing resources for the Court of Federal Claims are made to the Conference, through the Judicial Resources Committee, whenever the court determines a need. Noting that an increasing number of the court's judges are using electronic sound recording in lieu of contract court reporters to take the official court record, the chief judge of the Court of Federal Claims requested one additional full-time deputy clerk

position to be used for an electronic court recorder operator. On recommendation of the Committee, the Conference approved the request for a period of three years, with the understanding that any extension of the position or authorization of any other clerk's office position in this court would occur only in accordance with an authorized staffing formula based on a work measurement study by the Administrative Office.

INFORMAL RECOGNITION AWARDS

Non-monetary "informal recognition" awards are given to employees for performance that may not merit a larger award but is recognized by supervisors or peers as contributing significantly to the mission of the court by improving internal or external customer service or increasing efficiency. The cost of an informal recognition award has generally not been permitted to exceed $50 per court employee, per year. *Guide to Judiciary Policies and Procedures*, vol. 1, ch. 10, subch. 1451.2.F.4.c(1). In response to concerns from the courts that this limit does not provide enough flexibility for courts to acknowledge outstanding individual and team performance, service, and acts, the Committee recommended, and the Conference agreed, that the non-monetary informal recognition award cap should be raised from $50 to $100, per court employee, per year.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that the portion of its report to the September 2007 Judicial Conference dealing with the court compensation study will be made available for court comment before it is submitted to the Conference. In addition, the Committee endorsed a change in the work measurement methodology employed to develop staffing formulas to (a) use a combination of "core modeling" and other measurement techniques to reflect better the courts' full staffing requirements; and (b) use court-reported data that are validated through simultaneous measurement by the Administrative Office. The Committee voiced strong support for the background checks and investigations program for courts and federal public defender organizations.

COMMITTEE ON JUDICIAL SECURITY

FEDERAL PROTECTIVE SERVICE

The Committee on Judicial Security cited serious concerns about the ability of the Federal Protective Service (FPS) to provide the judiciary with adequate services, working equipment, detailed billing records, justification for current costs, and projections for future costs that would allow for proper budgeting. The Committee therefore recommended that the Conference support the efforts of the United States Marshals Service, through administrative and/or legislative remedies, to assume the security functions currently performed by the FPS in courthouses, as appropriate, and the associated funding. The Conference approved the Committee's recommendation.

HOMELAND SECURITY PRESIDENTIAL DIRECTIVE-12

Homeland Security Presidential Directive-12 (HSPD-12), signed by President Bush in August 2004, establishes a mandatory standard for a secure and reliable form of identification, known as the Personal Identity Verification (PIV) card, to be issued by the federal government to its employees and contractors (including contractor employees). These cards will be used initially only for visual identification purposes, but eventually could be used with electronic card readers to provide access to government facilities and computer networks. HSPD-12 applies only to executive branch personnel but, as a practical matter, the judiciary is affected by the directive because it is housed in facilities owned or leased by the General Services Administration and is protected by the Marshals Service, and both of these agencies must comply with HSPD-12. Without PIV cards, judges, clerks, and other court personnel might not have after-hours access to their buildings and, during regular business hours, may be required to enter the building on the same terms as members of the general public, which could affect the judiciary's service to the public. On recommendation of the Committee, the Conference endorsed judiciary participation in the HSPD-12 program.

COMMITTEE ACTIVITIES

The Committee on Judicial Security reported that it discussed continuing progress on updating the court security officer (CSO) formula, transferring responsibility for court security officer medical standards to the Marshals Service, and completing a memorandum of understanding with the Marshals Service regarding the settlement of court security officer lawsuits related to the CSO medical standards. In addition, the Committee was briefed on the status of the home intrusion detection systems program and other pending issues by the Director of the Marshals Service.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee on the Administration of the Magistrate Judges System and the recommendations of the Director of the Administrative Office, the respective district courts, and the judicial councils of the circuits, the Judicial Conference approved the following changes in positions, salaries, locations, and arrangements for full-time and part-time magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

FIRST CIRCUIT

District of Rhode Island

Made no change in the number, location, or arrangements of the magistrate judge positions in the district.

SECOND CIRCUIT

Northern District of New York

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

FOURTH CIRCUIT

Western District of North Carolina

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

District of South Carolina

1. Increased the salary of the part-time magistrate judge position at Aiken from Level 6 ($12,755 per annum) to Level 4 ($38,271 per annum); and

2. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

FIFTH CIRCUIT

Northern District of Texas

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

SIXTH CIRCUIT

Eastern District of Michigan

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Western District of Michigan

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Middle District of Tennessee

Made no change in the number, location, or arrangements of the magistrate judge positions in the district.

EIGHTH CIRCUIT

Eastern District of Missouri

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

NINTH CIRCUIT

Western District of Washington

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

TENTH CIRCUIT

District of Kansas

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

District of Wyoming

Increased the salary of the full-time magistrate judge position at Yellowstone National Park from 55 percent of the maximum salary of a full-time magistrate judge ($83,591 per annum) to 80 percent ($121,587 per annum).

ELEVENTH CIRCUIT

Northern District of Florida

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

COMMITTEE ACTIVITIES

The Magistrate Judges Committee reported that pursuant to the September 2004 Judicial Conference policy regarding the review of magistrate judge position vacancies (JCUS-SEP 04, p. 26), the Committee chair approved filling existing or upcoming vacancies in six courts during the

period between the Committee's June 2006 and December 2006 meetings, and at its December 2006 meeting the full Committee determined that one magistrate judge position vacancy should be filled. The Committee discussed, from a long-range planning perspective, the involvement of magistrate judges in court governance and reaffirmed its existing long-range goal for voting membership of magistrate judges at all levels of the court governance structure. The Committee communicated with the Judicial Panel on Multidistrict Litigation to urge the Panel to invite magistrate judges to its yearly conference for active transferee district judges.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF CIVIL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference a technical amendment to subdivision (6)(a) of Rule C (In Rem Actions: Special Provisions) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, together with a Committee Note explaining its purpose and intent. The Judicial Conference approved the proposed amendment and authorized its transmittal to the Supreme Court for consideration with a recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law.

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure approved for publication proposed amendments to Civil Rules 13(f), 15(a), and 48. The Committee also approved in principle the recommendation of the Advisory Committee on Bankruptcy Rules to publish for public comment proposed amendments to Bankruptcy Rules 7052 and 9021 and proposed new Bankruptcy Rule 7058. The Advisory Committees on Bankruptcy, Criminal, and Evidence Rules are reviewing comments from the public submitted on amendments proposed in August 2006 to their respective sets of rules. The proposals include amendments implementing the Crime Victims' Rights Act, 18 U.S.C. § 3771, and amendments implementing the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Pub. L. No. 109-08), which are based substantially on the interim bankruptcy rules.

COMMITTEE ON SPACE AND FACILITIES

FIVE-YEAR COURTHOUSE PROJECT PLAN

In order to address a growing backlog of construction projects on the judiciary's annual Five-Year Courthouse Project Plan, in September 2003, the Judicial Conference froze the plan as adopted in that year until not more than $500 million of courthouse projects remained on the first-year list (JCUS-SEP 03, pp. 37-38). Since that time, courthouse project requests have been submitted to the Conference for approval one year at a time. At this session, in response to strong support expressed in Congress for resumption of Five-Year Courthouse Project Plans, the Committee proposed, and the Conference endorsed (subject to revisions related to project costs, funding phases, or congressional action), a Five-Year Courthouse Project Plan for FYs 2008-2012. No projects without congressional authorizations and/or appropriations are included in the plan. Moreover, it is anticipated that the projected rent for all the projects in the plan will fit within the rent budget cap of 4.9 percent annual growth approved by the Judicial Conference (JCUS-SEP 06, pp. 10).

BUDGET CHECK PROCESS

Since September 2004, the Judicial Conference has maintained an interim budget check process for all pending space requests to ensure that alternative space, future rent implications, and affordability by the judiciary are considered prior to project approval (*see* JCUS-SEP 04, pp. 35-36; JCUS-MAR 06, p. 27). Pursuant to that process, and on recommendation of the Committee, in consultation with the Budget Committee, the Conference approved 10 space requests. The annual rent that will be generated by these requests will be charged against, and is anticipated to fit within, the 4.9 percent annual budget cap on space rental growth. (*See also supra*, "Miscellaneous Actions," pp. 6-7).

U.S. COURTS DESIGN GUIDE

As noted above, in July 2006 the House Committee on Transportation and Infrastructure passed a resolution that requires courtroom sharing for senior judges (*see supra*, "Courtrooms for Senior Judges," p. 11). This resolution also directs the Judicial Conference to approve specifically each departure (also referred to as an exception) from the *U.S. Courts Design*

Guide relating to a courthouse construction project that would result in additional costs. It also requires that justification for the departure, with a cost estimate, be provided to GSA, which would then recommend whether the relevant House and Senate committees should approve the departure. In order to curtail costly departures from the *Design Guide*, and to comply with the House Committee resolution, the Space and Facilities Committee recommended that, for prospectus-level courthouse projects, Conference approval be required, after review by the Space and Facilities Committee, for any departure from the *Design Guide* approved by a circuit judicial council that would result in additional estimated costs (including additional rent payment obligations). In addition, so that Congress fully understands why departures are being sought for individual projects, the Committee recommended that if a departure is approved by the Conference, the chair of the circuit's space and facilities committee or the chief judge or project judge requesting construction that exceeds *Design Guide* criteria must be willing, if requested by the Committee on Space and Facilities, to appear before Congress concerning funding for such construction. After discussion, the Conference adopted the Committee's recommendations.

NAMING COURTHOUSES

In order to establish consistency in naming conventions for federal courthouses, the Committee recommended and the Conference approved the following conventions:

a. For a facility occupied solely by a federal court, the title "United States Courthouse" should be used;

b. For a multi-tenant facility that includes at least one courtroom, the title "United States Courthouse and Federal Building" or "United States Courthouse and Post Office" should be used; and

c. When naming a building after a judge, the title "Honorable" or "Judge" should not be used.

COMMITTEE ACTIVITIES

The Committee on Space and Facilities reported that with regard to criteria for the closure of non-resident facilities, it reconsidered and agreed to include additional data elements to calculate the effectiveness score for the facilities. In addition, the Committee agreed to change the relative weight given to the operating cost score as compared to the effectiveness score when calculating an overall closure score. The Committee also considered changes to its jurisdictional statement, reviewed Conference-approved legislative proposals dealing with space issues, updated and endorsed its long-range strategic plan, and was briefed on the rent budget cap and rent validation initiatives.

FUNDING

All of the foregoing recommendations that require the expenditure of funds for implementation were approved by the Judicial Conference subject to the availability of funds and to whatever priorities the Conference might establish for the use of available resources.

Chief Justice of the United States
Presiding

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

September 18, 2007

The Judicial Conference of the United States convened in Washington, D.C., on September 18, 2007, 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 Michael Boudin
Judge Ernest C. Torres,
District of Rhode Island

Second Circuit:

Chief Judge Dennis Jacobs
Chief Judge Kimba M. Wood,
Southern District of New York

Third Circuit:

Chief Judge Anthony J. Scirica
Chief Judge Garrett E. Brown, Jr.,
District of New Jersey

Fourth Circuit:

Chief Judge Karen J. Williams
Judge David C. Norton,
District of South Carolina

Fifth Circuit:

Chief Judge Edith Hollan Jones
Judge Glen H. Davidson,
Northern District of Mississippi

Sixth Circuit:

Chief Judge Danny J. Boggs
Judge Charles R. Simpson III,
Western District of Kentucky

Seventh Circuit:

Chief Judge Frank H. Easterbrook
Judge Wayne R. Andersen
Northern District of Illinois

Eighth Circuit:

Chief Judge James B. Loken
Judge Lawrence L. Piersol,
District of South Dakota

Ninth Circuit:

Chief Judge Mary M. Schroeder
Judge Charles R. Breyer,
Northern District of California

Tenth Circuit:

Chief Judge Deanell Reece Tacha
Judge Alan B. Johnson,
District of Wyoming

Eleventh Circuit:

Chief Judge J. L. Edmondson
Chief Judge Robert L. Hinkle,
Northern District of Florida

District of Columbia Circuit:

Chief Judge Douglas H. Ginsburg
Chief Judge Thomas F. Hogan,
District of Columbia

Federal Circuit:

Chief Judge Paul R. Michel

Court of International Trade:

Chief Judge Jane A. Restani

The following Judicial Conference committee chairs and incoming committee chairs attended the Conference session: Circuit Judges Julia Smith Gibbons, Roger L. Gregory, Robert H. Henry, David Bryan Sentelle, Carl E. Stewart, Richard C. Tallman, and Ralph K. Winter, Jr., and District Judges Joseph F. Bataillon, Paul G. Cassell, Dennis M. Cavanaugh, W. Royal Furgeson, Jr., John Gleeson, D. Brock Hornby, Mark R. Kravitz, Barbara M.G. Lynn, Howard D. McKibben, Gordon J. Quist, Lee H. Rosenthal, George Z. Singal, Ortrie D. Smith, John R. Tunheim, Thomas I. Vanaskie, and Thomas S. Zilly. Bankruptcy Judge A. Thomas Small and Magistrate Judge John M. Roper, Sr., were also in attendance. Gregory A. Nussel of the Fifth Circuit represented the circuit executives.

James C. Duff, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Jill C. Sayenga, Deputy Director; William R. Burchill, Jr., Associate Director and General Counsel; Laura C. Minor, Assistant Director, and Jeffrey A. Hennemuth and Wendy Jennis, Deputy Assistant Directors, Judicial Conference Executive Secretariat; Cordia A. Strom, Assistant Director, Legislative Affairs; and David A. Sellers, Assistant Director, Public Affairs. District Judge Barbara Jacobs Rothstein and John S. Cooke, Director and Deputy Director of the Federal Judicial Center, and District Judge Ricardo H. Hinojosa and Judith W. Sheon, Chair and Staff Director of the United States Sentencing Commission, were in attendance at the session of the Conference, as was Jeffrey P. Minear, Administrative Assistant to the Chief Justice. Scott Harris, Supreme Court Counsel, and the 2007-2008 Supreme Court Fellows also observed the Conference proceedings.

Acting Attorney General Peter D. Keisler and Solicitor General Paul D. Clement addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice. Senators Patrick J. Leahy and Jeff Sessions and Representative John Conyers, Jr., spoke on matters pending in Congress of interest to the Conference.

REPORTS

Mr. Duff reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office (AO). Judge Rothstein spoke to the Conference about Federal Judicial Center (FJC) programs, and Judge Hinojosa reported on Sentencing Commission activities. Judge Hornby, Chair of the Committee on the Judicial Branch, presented a report on the judicial salary restoration initiative, and Chief Judge Bataillon, Chair of the Committee on Space and Facilities, reported on the Los Angeles courthouse construction project.

ELECTION

The Judicial Conference elected to membership on the Board of the Federal Judicial Center Judge William B. Traxler, Jr., of the Court of Appeals for the Fourth Circuit, to fill the unexpired term of Chief Judge Karen J. Williams of the same court.

EXECUTIVE COMMITTEE

RESOLUTIONS

Outgoing Chairs. The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution recognizing the substantial contributions made by the Judicial Conference committee chairs whose terms of service end in 2007:

> The Judicial Conference of the United States recognizes with appreciation, respect, and admiration the following judicial officers:
>
> **HONORABLE MARJORIE O. RENDELL**
> Committee on the Administration of the Bankruptcy System
>
> **HONORABLE HOWARD D. McKIBBEN**
> Committee on Federal-State Jurisdiction
>
> **HONORABLE W. ROYAL FURGESON, JR.**
> Committee on Judicial Resources

HONORABLE DAVID F. LEVI
Committee on Rules of Practice and Procedure

HONORABLE THOMAS S. ZILLY
Advisory Committee on Bankruptcy Rules

HONORABLE LEE H. ROSENTHAL
Advisory Committee on Civil Rules

HONORABLE SUSAN C. BUCKLEW
Advisory Committee on Criminal Rules

HONORABLE JERRY E. SMITH
Advisory Committee on Evidence Rules

Appointed as committee chairs by the Chief Justice of the United States, these outstanding jurists have played a vital role in the administration of the federal court system. These judges served with distinction as leaders of their Judicial Conference committees while, at the same time, continuing to perform their duties as judges in their own courts. They have set a standard of skilled leadership and earned our deep respect and sincere gratitude for their innumerable contributions. We acknowledge with appreciation their commitment and dedicated service to the Judicial Conference and to the entire federal judiciary.

Memorial Resolution. The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution in memory of Karen Siegel, former Administrative Office Assistant Director for the Office of Judicial Conference Executive Secretariat.

The Judicial Conference of the United States notes with sadness the death of Karen K. Siegel on June 5, 2007, in North Bethesda, Maryland. At the time of her retirement in January 2005, Karen was serving at the Administrative Office as Assistant Director for the Office of Judicial Conference Executive Secretariat.

The Judicial Conference secretariat was created in 1987 to help implement the Conference's restructuring and committee reorganization, and Karen was selected to head the new office.

With a relatively new Chief Justice and AO Director, this was a period of transition for the Conference that required a fresh look at how the AO would provide staff support to the Conference and its committees. Karen developed a system of internal AO coordination and review to ensure that Conference sessions would run smoothly and committee staff support would be of the highest caliber. Through her leadership, commitment to the institution, unfailing energy, and hard work, this system – which she honed regularly as Conference procedures became increasingly complex – has been an unqualified success. Each Judicial Conference session reflected the exceptional level of care and concern with which Karen attended to its details.

As part of her responsibilities, Karen served as principal staff and counsel to the Executive Committee of the Judicial Conference. Members of that committee relied on her extraordinary intelligence, excellent judgment, and depth of institutional knowledge, and saw her contributions to their work as invaluable. Respect for her keen insight and intuition extended beyond the members of that committee, and her counsel was sought frequently by judges, including many Conference members and committee chairs, and others in the judicial system. But it was Karen's personal warmth, spirit, and lack of pretense that turned these working relationships into enduring friendships.

Members of the Judicial Conference will miss this friend and advisor. As a sign of its admiration, affection, and respect, the Judicial Conference conveys its heartfelt sympathies to Karen's family – her husband, Mark, and daughters, Andrea and Joanna.

MISCELLANEOUS ACTIONS

The Executive Committee also—

- Approved, on behalf of the Judicial Conference and on recommendation of the Committee on Court Administration and Case Management and the Committee on Information Technology, an annual report on deferred court compliance with section 205 of the

E-Government Act of 2002, Public Law No. 107-347, and authorized its transmittal to Congress;

- Approved, on behalf of the Judicial Conference, a recommendation to the President of the United States that District Judge Ricardo H. Hinojosa (S.D. Tex.) be reappointed as Chair of the United States Sentencing Commission for a six-year term;

- Agreed, on behalf of the Conference and on recommendation of the Court Administration and Case Management Committee, to oppose a Government Accountability Office proposal that would require the judiciary to provide to the Department of Health and Human Services certain personal information of individual bankruptcy filers, on the ground that providing such information would be inconsistent with the judiciary's role as an objective adjudicator of creditors' claims and because the information could be obtained from another executive branch agency, the Executive Office for U.S. Trustees, in the Department of Justice;

- Agreed, on behalf of the Conference and on recommendation of the Committee on Judicial Resources, that Congress should be asked not to include the judicial branch in pending legislation (the Telework Enhancement Act of 2007, S. 1000, 110th Congress) that would redefine telework as it applies to federal employees and would change eligibility and other requirements of the national telework program, and that the Conference's statement to Congress should emphasize the judiciary's support for the program and offer continued assessments and reports on the judiciary's current telework program;

- Acted on behalf of the Judicial Conference and on recommendation of the Committee on Space and Facilities to approve, under the budget check process (JCUS-SEP 04, pp. 35-36; JCUS-MAR 06, p. 27), requests for court space in Rochester, New York; Syracuse, New York; and Terre Haute, Indiana, with the understanding that the respective projects will fit within the Conference's 4.9 percent annual rent budget cap;

- Approved, on behalf of the Conference and on recommendation of the Committee on Space and Facilities, the request of the Eleventh Circuit Judicial Council to close the non-resident facility at Thomasville in the Middle District of Georgia;

- Pending final congressional action on the judiciary's appropriations for fiscal year 2008, approved interim financial plans for fiscal year 2008 for the Salaries and Expenses, Defender Services, Fees of Jurors and Commissioners, and Court Security accounts, and endorsed a strategy for distributing court allotments among the court programs;

- Agreed to encourage openness among Conference committees and urge committees to share their agenda materials with other committees, upon request or in areas of mutual interest, except where confidentiality is required;

- Asked the Committee on the Judicial Branch to develop a simplified set of reporting requirements with respect to judges' non-case related travel, referred to the Committee on Judicial Resources a proposal to revisit the September 2005 Judicial Conference policy limiting court executive salaries to the salary paid to district judges (*see* JCUS-SEP 05, p. 29), and asked the Committee on Defender Services to consider whether it would be appropriate to develop nationwide standards or guidelines for payments under the Criminal Justice Act for expert services in capital cases; and

- Approved technical revisions to *The Judicial Conference of the United States and its Committees*, a document codifying Conference and committee practices and procedures.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it reviewed actions taken to strengthen judicial compliance with ethical obligations, and firmly reiterated its position that the judiciary's strong oversight systems obviate the need for an inspector general. The AO Director discussed with the Committee the important role it plays in overseeing the judiciary's audit, review, and investigative assistance functions. In addition, the Committee was briefed on significant issues and initiatives in the facilities and security programs. After reviewing nominations submitted by judges, court managers, and AO managers, the Committee selected two AO employees to receive the Leonidas Ralph Mecham Award for Exemplary Service to the Courts.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

MEGA CASE CLAIMS PROCEDURES

Section 156(c) of title 28, United States Code, permits a court to utilize facilities or services, either on or off the court's premises, to provide notices, dockets, calendars, and other administrative information to parties in bankruptcy cases, as long as the costs of the facilities and services are borne by the estate. Questions have been raised about whether claims must be filed with the clerk of court pursuant to Bankruptcy Rule 5005(a)(1) before being transmitted to the third-party processor. Noting that such an interpretation would prevent full effectuation of the statutory authority granted in 28 U.S.C. § 156(c), the Committee on the Administration of the Bankruptcy System recommended that the Judicial Conference amend its guidelines[1] to clarify that claims in bankruptcy mega cases may be filed directly with a third party processor employed at the expense of the estate. The Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Bankruptcy Committee reported that it endorsed tools recommended by the AO Director's bankruptcy staffing working group that may assist clerks in adjusting staffing levels as necessary in the aftermath of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, and it reemphasized support for maintaining the bankruptcy clerks' staffing structure. In addition, the Committee expressed support for the rapid development and deployment of a new bankruptcy administrator automated case management system (BACMS) and approved a recommendation that the AO Director exercise his delegated authority (JCUS-MAR 06, p. 9) to revise the judiciary's guidelines for consumer credit counseling applications to permit bankruptcy administrators to require applicants to waive confidentiality of any proceeding before the Internal Revenue Service concerning their tax-exempt status.

[1]The relevant provisions, entitled "Guidelines on Use of Outside Facilities and Services," can be found in the *Guide to Judiciary Policies and Procedures*, vol. 5, ch. 19, at ex. 1. They were adopted by the Conference in March 1989 (JCUS-MAR 89, p. 9).

COMMITTEE ON THE BUDGET

FISCAL YEAR 2009 BUDGET REQUEST

After careful consideration of the funding levels proposed by the program committees and the continuing constrained budget environment, the Budget Committee recommended to the Judicial Conference a fiscal year 2009 budget request to Congress that is 6.2 percent above assumed appropriations for fiscal year 2008. The Conference approved the budget request subject to amendments necessary as a result of (a) new legislation, (b) actions of the Judicial Conference, or (c) any other reason the Executive Committee considers necessary and appropriate.

BUDGET CAPS

In an effort to contain costs, over the last two years the Judicial Conference has approved budget caps on annual growth in space rental costs (JCUS-SEP 06, p. 10) and on overall annual growth in the Salaries and Expenses account (JCUS-MAR 07, p. 10). At this session, on recommendation of the Budget Committee, the Conference continued this effort. For fiscal years 2010 through 2017, it set a cap on defender services requirements, excluding panel attorney rate increases above annual inflation, at an average annual growth rate of 7.5 percent, to bring the defender services requirements from approximately $780 million in fiscal year 2007 to $1.6 billion in fiscal year 2017. Also for fiscal years 2010-2017, it set a cap on court security requirements at an average annual growth rate of 6.6 percent.

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it approved a resolution commending the program committees for their work on cost containment. In addition, the Committee approved updates to non-salary funding formulas for the courts. The Budget Committee was briefed by Chief Judge Joseph Bataillon, Chair of the Space and Facilities Committee, on the Los Angeles courthouse project.

COMMITTEE ON CODES OF CONDUCT

CERTIFICATE OF DIVESTITURE REGULATIONS

The Tax Relief and Health Care Act of 2006, Public Law No. 109-42, permits judges (and certain of their relatives and trustees) who divest property in order to comply with conflict of interest requirements to elect to postpone the tax recognition of resulting capital gains by investing in qualified replacement property within a 60-day period. To qualify for the tax deferral, judges must first obtain a certificate of divestiture from the Judicial Conference or its designee. In December 2006, the Executive Committee, on behalf of the Conference, designated the Supreme Court to issue certificates for the Chief Justice and associate justices and the Codes of Conduct Committee to issue certificates for all other covered judges (JCUS-MAR 07, p. 6). At this session, on recommendation of the Committee on Codes of Conduct, the Judicial Conference approved regulations establishing procedures for the issuance of certificates of divestitures. These regulations are based in large part on regulations developed by the Office of Government Ethics for the executive branch.

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in September 2006, the Committee received 37 new written inquiries and issued 36 written advisory responses. During this period, the average response time for requests was 19 days. In addition, the Committee chair received and responded to 44 informal inquiries from colleagues, and individual Committee members responded to 204 such inquiries.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

ELECTRONIC TRANSCRIPTS

In September 2003, the Judicial Conference adopted a policy requiring courts that make electronic documents remotely available to the public also to make prepared electronic transcripts of court proceedings available remotely (JCUS-SEP 03, pp. 16-17). In September 2005, after studying the potential

impact of the policy on court reporter compensation, the Conference adopted an implementation plan that, upon passage of authorizing legislation, would have raised the Public Access to Court Electronic Records (PACER) fee for access to transcripts and allocated a portion of that fee to court reporters who create the transcripts (JCUS-SEP 05, pp. 15-16). At this session, noting that the legislation needed to effectuate the plan has yet to be enacted, thereby thwarting implementation of the program, the Committee on Court Administration and Case Management, in consultation with the Committees on Judicial Resources, Information Technology, and Defender Services, and with input from several Administrative Office advisory groups, recommended that the Conference approve a new implementation plan as follows:

a. A transcript provided to a court by a court reporter or transcriber will be available at the office of the clerk of court for inspection only, for a period of 90 days after it is delivered to the clerk;

b. During the 90-day period, a copy of the transcript may be obtained from the court reporter or transcriber at the rate established by the Judicial Conference, the transcript will be available within the court for internal use, and an attorney who obtains the transcript from the court reporter or transcriber may obtain remote electronic access to the transcript through the court's CM/ECF system for purposes of creating hyperlinks to the transcript in court filings and for other purposes; and

c. After the 90-day period has ended, the filed transcript will be available for inspection and copying in the clerk's office and for download from the court's CM/ECF system through the judiciary's PACER system.

The Conference approved the plan as well as the Committee's recommendation that the Conference (a) delegate to the Committee the authority to revise existing Conference policies to conform with this policy and (b) direct the Administrative Office to issue guidance to the courts on implementation of the policy.

PACER

The Federal Depository Library program, administered by the Government Printing Office (GPO), provides free public access to government information at over 1000 designated federal depository libraries located throughout the United States and its territories. In response to a request from the GPO, the Committee recommended that the Conference

approve the establishment of a joint pilot project between the GPO and the AO, for a period not to exceed two years, that would provide free public access to court records through the PACER system at approximately 15 depository libraries and allow an opportunity to assess the impact of this access on PACER revenues. The Committee noted that providing such availability is consistent with the mission of the judiciary's Electronic Public Access (EPA) program to facilitate electronic public access to documents at a reasonable cost. The Conference adopted the Committee's recommendation.

ELECTRONIC PUBLIC ACCESS FEE EXEMPTION

On recommendation of the Committee, the Conference agreed to amend the Electronic Public Access Fee Schedule to include court-appointed *pro bono* attorneys among those individuals who may, upon a showing of cause, be exempted from EPA fees when acting in the matter to which they have been appointed. Since a court-appointed *pro bono* attorney is usually provided with a free copy of the case file through the mail, which requires the clerk's office to download, sort, and package the materials, granting the attorneys PACER access to the case file could result in a cost savings to the judiciary.

JURY ADMINISTRATION

Jury Service. The Judicial Conference adopted a Court Administration and Case Management Committee recommendation to encourage district courts to examine how jurors are summoned in their districts and to consider adopting changes, if local circumstances permit, regarding how long jurors are on call and/or how frequently jurors are required to serve, so as to make service on juries less burdensome.

Employer Retaliation. To emphasize the serious nature of jury service, the Committee recommended that the Judicial Conference seek an amendment to 28 U.S.C. § 1875(b)(3) to increase from $1,000 to $5,000 the maximum amount of the civil penalty that may be imposed on employers who retaliate against employees for performing jury duty, and to include an option for community service. The Conference adopted the Committee's recommendation.

PLACES OF HOLDING COURT

At the request of the District of Minnesota and the Eighth Circuit Judicial Council, and on recommendation of the Committee, the Judicial Conference agreed to seek legislation to amend 28 U.S.C. § 103(6) to add Bemidji as a place of holding court in the Sixth Division of the District of Minnesota.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it considered the impact the E-Government Act of 2002 and pending federal rules relating to privacy protections for electronic case files will have on existing Conference policy. In addition, the Committee is seeking the views of interested groups, including courts, media, law enforcement, and prosecution and defense attorneys, on whether restrictions should be placed on the electronic availability of plea agreements through the PACER system. The Committee also recommended a proposed budget for law books and computer assisted legal research for fiscal year 2009, and had an extensive discussion relating to the congressionally mandated courtroom usage study, which is being conducted by the Federal Judicial Center at the request of this Committee.

COMMITTEE ON CRIMINAL LAW

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that, building upon earlier discussions, it viewed a demonstration of an automated statement of reasons prototype, developed by the Eastern District of North Carolina. The Committee also discussed ways to draw upon empirical research and cost-benefit analyses in preparing the Committee's budget request and in making programmatic resource decisions. Finally, the Committee began consideration of possible modifications to the search and seizure guidelines for probation officers promulgated by the Judicial Conference in 1993 (JCUS-MAR 93, p. 13), based on preliminary recommendations of the Search and Seizure Working Group, a group comprised of chief and deputy chief probation and pretrial services officers.

COMMITTEE ON DEFENDER SERVICES

DEATH PENALTY AUTHORIZATION

In order to reduce unnecessary costs associated with death-eligible cases in which the Department of Justice ultimately recommends that the death penalty not be sought, the Committee recommended that the Judicial Conference amend chapter VI of the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, vol. 7, *Guide to Judiciary Policies and Procedures*, to add a guideline encouraging district courts to set deadlines for stages of the death penalty authorization process. The proposed guideline was developed in consultation with the Department of Justice. The Conference approved the recommendation.

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it considered a Budget Committee proposal for establishing a specific cap on growth of the Defender Services appropriation (*see supra*, "Budget Caps," p. 10). In addition, the Defender Services Committee supported two proposals from the Committee on Judicial Resources: a 10-percent increase in transcript rates and a new intermediate rate for 14-day delivery of transcripts (*see infra*, "Transcript Rates," pp. 23-24). The Defender Services Committee also endorsed a policy that personnel benefits for community defender organization (CDO) employees should be comparable to those provided to federal public defender organization (FPDO) employees, and that requires CDOs to conform their leave, holiday, and work week policies to those applicable to FPDOs. The Committee also approved federal defender organization budgets and grants under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17).

COMMITTEE ON FEDERAL-STATE JURISDICTION

JURISDICTIONAL IMPROVEMENTS PROJECT

The Committee on Federal-State Jurisdiction recommended that the Judicial Conference seek legislation to correct two anomalies in the jurisdictional statutes as part of the Committee's continuing jurisdictional improvements project.

Derivative Removal Jurisdiction. In 1986, Congress amended 28 U.S.C. § 1441 to provide that a state court's lack of jurisdiction does not bar the removal of any civil action otherwise within the jurisdiction of the federal district courts. When the provision was subsequently renumbered in 2002, the phrase "under this section" was added, suggesting that removal under other statutes might be barred if the state court lacked jurisdiction. Believing that this substantive change was an unintended consequence of a minor language change, the Committee recommended that the Conference seek legislation to clarify that a state court's lack of jurisdiction does not bar the removal of any civil action otherwise within the jurisdiction of the federal district courts, whether removal is sought under 28 U.S.C. § 1441 or any other federal statute. The Conference adopted the Committee's recommendation.

Class Action Fairness Act of 2005. Similarly, in order to correct what it believed was a drafting error in the Class Action Fairness Act of 2005, the Committee recommended that 28 U.S.C. § 1453(c) be amended to clarify that the time for the filing of an appeal from an order remanding a class action to state court under the Act is "not more than" (rather than "not less than") seven days after the remand order is entered. The Conference agreed to seek legislation to accomplish this end.

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it reviewed several proposed legislative provisions, including a provision related to venue in patent cases to address perceived problems of forum shopping, a provision addressing jurisdiction over interlocutory appeals of district court determinations regarding the construction of claims in infringement actions, and judicial review provisions included in pending immigration reform legislation. In addition the Committee discussed and, based on existing Conference positions, determined to express opposition to, provisions included in whistleblower legislation that would eliminate the exclusive jurisdiction of the United States Court of Appeals for the Federal Circuit over review of final decisions of the Merit Systems Protection Board involving whistleblower claims under 5 U.S.C. § 7703(b). The Committee also received a report on the priorities of the state courts and was briefed on preliminary findings of the capital habeas corpus study being undertaken by the Administrative Office and the Federal Judicial Center.

COMMITTEE ON FINANCIAL DISCLOSURE

REDACTION REGULATIONS

The Judicial Disclosure Responsibility Act, Public Law No. 110-24, enacted in May 2007, reinstated through December 31, 2009, the Judicial Conference's authority to redact personal and sensitive information from financial disclosure reports. It also expanded the number of items the judiciary is required to report annually to Congress regarding the use of this redaction authority, and explicitly provided the same redaction protection to a filer's family as was heretofore provided to the filer. On recommendation of the Committee, the Judicial Conference adopted conforming amendments to the Regulations of the Judicial Conference of the United States on Access to Financial Disclosure Reports Filed by Judges and Judiciary Employees Under the Ethics in Government Act of 1978, as Amended. The Conference also removed a provision from the regulations referring to a redaction review panel whose term had expired and has not been renewed.

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported on its efforts to secure legislation restoring the judiciary's redaction authority (*see* above) and addressing the legitimate security concerns of the judiciary regarding the public dissemination of personal information. The Committee concluded an Executive Committee-requested review of overlapping judicial branch reporting requirements relating to judicial attendance at expense-paid private seminars and published a comparative analysis chart outlining those requirements. As of July 6, 2007, the Committee had received 3,950 financial disclosure reports and certifications for calendar year 2006, including 1,271 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 349 reports from bankruptcy judges; 528 reports from magistrate judges; and 1,802 reports from judicial employees.

COMMITTEE ON INFORMATION TECHNOLOGY

LONG RANGE PLAN FOR INFORMATION TECHNOLOGY IN THE FEDERAL JUDICIARY

Pursuant to 28 U.S.C. § 612 and on recommendation of the Committee on Information Technology, the Judicial Conference approved the fiscal year 2008 update to the *Long Range Plan for Information Technology in the Federal Judiciary*. Funds for the judiciary's information technology program will be spent in accordance with this plan.

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it endorsed a collaboration between the Federal Judicial Center and the Administrative Office to provide and support a network of local information technology trainers. With respect to implementation of the Report on Network Privacy and Security (JCUS-SEP 05, p. 27), the Committee endorsed a policy to ensure the security of the judiciary's Data Communications Network when wireless technologies are being used and a policy for handling security incidents. The Committee also endorsed, for public comment, a draft network management policy that would enable cost-effective use of the judiciary's networks while ensuring privacy and security of court information. The Committee reviewed fiscal year 2008 and 2009 resource requirements for the Judiciary Information Technology Fund and urged that the flexibility inherent in the fund be employed so that unobligated funds in the current and following fiscal years are used to finance a portion of any future unfunded requirements.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that 90 intercircuit assignments were undertaken by 66 Article III judges (including a retired associate justice) from January 1, 2007 to June 30, 2007. The Committee disseminated information about intercircuit assignments to increase awareness and facilitate the use of visiting judges and aided courts requesting assistance by identifying and obtaining judges willing to take assignments.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its involvement in rule of law and judicial reform activities throughout the world, highlighting those in Africa, Asia and the Pacific Basin, Central Asia, Eastern Europe, Latin America, the Middle East, and the Russian Federation. A representative from the State Department's Bureau of Democracy, Human Rights and Labor reported to the Committee about the progress of the National Strategic Dialogue in Saudi Arabia in which an Article III judge is participating. The Committee also received a report from an American Bar Association representative about the World Justice Project initiative to create a multi-national movement "mainstreaming" the rule of law into the operation, development, and planning of other disciplines.

COMMITTEE ON THE JUDICIAL BRANCH

JUDGES' TRAVEL

Reconciliation of Travel Advances. On recommendation of the Committee on the Judicial Branch, the Judicial Conference approved an amendment to section C.2. of the Travel Regulations for United States Justices and Judges, *Guide to Judiciary Policies and Procedures*, vol. 3, ch. C-5, ex. A, to include an express requirement that a judge repay the portion of a travel advance that is in excess of the judge's substantiated expenses. Although such repayments are presumably made as a matter of course, an explicit provision in an employer's travel expense reimbursement plan is required to comply with income tax laws.

Technical Corrections. The Judicial Conference also adopted, on recommendation of the Committee, two technical corrections to the judges' travel regulations. Section E.3.d. of the regulations was amended to replace an inadvertent reference to the General Services Administration (GSA) locality per diem and meals and incidental expenses (M&IE) rates with the correct reference to the Judicial Conference's flat rate M&IE allowance. In addition, section F of the regulations was amended to delete an anachronistic requirement for judges to submit duplicate copies of their completed travel vouchers.

MENTAL HEALTH PROFESSIONALS

In its September 2006 report, the Judicial Conduct and Disability Act Study Committee (Breyer Committee), established by Chief Justice William H. Rehnquist to study the implementation of the Judicial Conduct and Disability Act of 1980, recommended the establishment of a program to make mental health professionals available to assist with problems of judicial conduct or disability. The Judicial Conference, on recommendation of the Committee on the Judicial Branch, responded by asking the Director of the Administrative Office to work cooperatively with circuit judicial councils to make such professional assistance available (1) to chief judges nationally, regionally, locally or using already existing state or federal programs, when these chief judges confront problematic behavior among colleagues, and (2) to judges who may become disabled or have other problems affecting their work.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it continues to pursue vigorously meaningful salary relief for judges. In recent months, the Committee has sought to inform the political branches, legal associations, and other diverse outside organizations on the impact the declining value of judges' pay is having on judicial independence, as well as on the morale and retention of judicial officers. The Committee resolved to continue working closely with the First Amendment Center on planning and conducting regional programs for judges and journalists. In addition, the Committee continues to monitor the implementation of the Judicial Conference policy on privately funded seminars.

COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY

JUDICIAL CONDUCT AND DISABILITY ACT STUDY

Following the issuance of the Breyer Committee's report discussed above, the Executive Committee asked the Judicial Conduct and Disability Committee to review and make recommendations to the Conference regarding implementation of the recommendations in that report (JCUS-MAR 07, p. 7). At this session, the Judicial Conduct and Disability Committee recommended that the Judicial Conference direct the circuit judicial councils to take

whatever action is necessary and appropriate, and to order the courts within their circuits as needed, to implement the following Breyer Committee recommendations:

a. Recommendation 5: The judicial councils should ask courts in the circuits to encourage the creation of committees of local lawyers whose senior members can serve as intermediaries between individual lawyers and the formal complaint process.

b. Recommendation 6: Judicial councils should require all courts covered by the Act to provide information about filing a complaint on the homepage of the court website and take other steps to publicize the Act.

c. Recommendation 7: Circuit councils, through their circuit executives or the clerks of court, should take steps to ensure the submission of timely and accurate information about complaint filings and terminations.

The Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Judicial Conduct and Disability reported that it has two petitions for review under advisement concerning circuit council conduct and disability proceedings. In addition, the Committee released for public comment a draft set of Rules Governing Judicial Conduct and Disability Proceedings.

COMMITTEE ON JUDICIAL RESOURCES

SAVED GRADE AND SAVED PAY PLAN

The Saved Grade and Saved Pay Plan was designed to offer salary and grade protection to employees who are downgraded through no fault of their own. In 2004, the plan was eliminated, prospectively, in the course of formulating a short- and long-term cost-containment strategy for the judiciary and the fiscal year 2006 budget request (JCUS-SEP 04, pp. 6-7, 10). At this session, the Conference adopted a recommendation of the Committee on

Judicial Resources to reinstate the saved pay provisions of the plan to provide courts and federal public defender organizations flexibility to restructure, as necessary, to become more efficient and effective without negatively affecting the salaries of their employees.

BONUSES

Staffing Bonus. On recommendation of the Committee, the Judicial Conference approved a centrally funded staffing bonus of up to 15 percent of basic pay (which includes base pay and locality pay), not to exceed $10,000, for employees in courts staffed over a target level who relocate to take positions in courts in a different commuting area that are staffed under the target level. Similar to a bonus program in effect during the period of downsizing in the courts in fiscal years 1994 and 1995 (JCUS-MAR 94, p. 4; JCUS-SEP 94, p. 60), such bonuses are intended to minimize the impact of possible staff reductions on court operations and staff.

Recruitment, Retention and Relocation Bonuses. The recruitment and retention bonus program approved by the Judicial Conference in 2001 applies only to key Court Personnel System (CPS) information technology positions in the courts (JCUS-MAR 01, p. 26). At this session, on recommendation of the Committee, the Conference agreed to extend the program to hard-to-fill CPS positions generally, to be paid for with decentralized funds. In addition, the Committee recommended, and the Conference approved, establishing relocation bonuses for hard-to-fill CPS positions, also using decentralized funds.

BACKGROUND CHECKS AND INVESTIGATIONS

Federal Public Defenders. The September 2002 Judicial Conference policy on background checks and investigations for courts and federal public defender organizations (FPDOs) requires that federal public defender background investigations, conducted both prior to appointment and as part of five-year reinvestigations, be performed by the Office of Personnel Management (OPM) (JCUS-SEP 02, pp. 52-53). Noting that, unlike other court and FPDO personnel, federal public defenders are not provisionally appointed pending completion of background investigations, and that the time OPM was taking to complete the pre-appointment investigations caused hardship both to the individuals being investigated and to the FPDOs, the Judicial Resources Committee, at the request of the Defender Services

Committee, recommended that the Conference modify the policy to authorize the Federal Bureau of Investigation (or another suitable vendor) to conduct initial background investigations for new federal public defender selectees. The Conference approved the Committee's recommendation.

Contractors. The General Services Administration requires that all contractors performing cyclical facilities maintenance and moving services in court facilities either have a background check or be escorted by a court employee. Previously, GSA had arranged to have a National Agency Check and Inquiries (NACI) background check conducted for each such contractor hired by the courts. Since GSA no longer arranges for these checks, and these contractors are not covered by the Conference's September 2002 policy on background checks and investigations, on recommendation of the Committee, the Conference agreed to modify the policy to authorize background checks for contractors who perform cyclical facilities maintenance and moving services, and to permit the NACI to be used as the background check for these contractors.

Selection of Vendors. The Committee recommended that the Conference delegate to the Administrative Office the authority to select the most appropriate vendor(s) to conduct background checks and investigations in the future. This would allow the AO the flexibility to select the vendor who can provide the best level of services for courts and federal public defender organizations. The Conference adopted the Committee's recommendation.

TRANSCRIPT RATES

Rate Increase. Federal official court reporter compensation derives from both a base salary and the income generated by sale of original transcripts and copies. In order to ensure that court reporter income keeps pace with inflation, the Committee recommended, and the Conference approved, an increase of 10 percent to original and copy transcript fee rates to be effective in fiscal year 2008, subject to the availability of funding.

New 14-Day Delivery Rate. Because of the wide gap between ordinary (30-day) and expedited (7-day) transcript delivery times, the Committee recommended that the Conference adopt an additional category for the delivery of transcripts within 14 days, with the rate set at the mid-point between the rates authorized for expedited and ordinary delivery. The

Conference adopted the Committee's recommendation, to be effective in fiscal year 2008.

COURT INTERPRETERS

Based on established criteria, the Committee recommended, and the Conference approved, two additional Spanish staff court interpreter positions for the Southern District of California and one additional Spanish staff court interpreter position for the District of New Mexico for fiscal year 2009. Accelerated funding in fiscal year 2008 was authorized for the additional Spanish staff court interpreter position for the District of New Mexico. Also on recommendation of the Committee, the Conference declined to authorize one Spanish staff court interpreter position for the Southern District of Iowa.

COURT COMPENSATION

As part of the judiciary's long-term cost-containment strategy approved by the Judicial Conference in September 2004, the Judicial Resources Committee conducted a study to explore reasonable opportunities to limit future compensation growth in the federal courts. The study covered biweekly-paid employees in the Judiciary Salary Plan (JSP) and the Court Personnel System.[2] In an effort to ensure full transparency, during the conduct of the study the Committee obtained extensive input from judges and court personnel, and the proposed recommendations were twice posted for comment from the courts before they were finalized. The Committee noted that in making its recommendations set forth below, it considered over two thousand comments and made every effort to balance the need to contain future salary costs with the need to attract and maintain a highly qualified work force.

[2] The Committee also looked at the court reporter pay system, but because that system has a unique compensation structure that includes both salary and transcript income, the Committee decided not to review it at this time. A later study is contemplated. In addition, the Committee on Defender Services is conducting a separate study of compensation in defender offices.

Court Personnel System Benchmarks. The Committee recommended replacing existing CPS benchmarks[3] with new benchmarks that more accurately reflect the current job duties and responsibilities performed in the courts. The Committee noted that accurate benchmarks are critical to an equitable, prudent, and competitive compensation structure. The proposed benchmarks were developed through extensive surveys, focus groups, and discussions that included peer groups of employees, court managers, and judges and were vetted throughout the judiciary. The Conference adopted the Committee's recommendation.

CPS Salary Progression Policy and Funding/National Performance Guidelines. When allocating decentralized funds to court units, a standard formula is used that adds 1 percent to each court's salary budget allocation to be applied to salary increases. These funds allow court units to, among other things, pay for default step increases that are given as a matter of course to employees performing at acceptable levels. The Committee recommended that the standard formula amount allocated to the courts for salary increases be reduced to .75 percent, resulting in an immediate savings of .25 percent of each unit's budget. It further recommended that the number of automatic default step increases be reduced, thereby slowing automatic salary progression, but that unit executives be given greater discretion to grant step increases based upon each employee's overall contribution, allowing highly contributing employees to move toward the top of their grades more rapidly. Finally, the Committee recommended that national performance guidelines be developed to assist executives in making decisions about pay increases. The Conference adopted the Committee's recommendations.

Leave Act Coverage for New Term Chambers Law Clerks. For law clerks covered by the Leave Act (5 U.S.C. ch. 63), the court is required to account for their daily hours of work and absences, and at the conclusion of their terms, pay them for any unused annual leave. In 1988, Congress enacted legislation giving the judiciary the authority to exclude law clerks from Leave Act coverage. The legislation provided that law clerks were exempt from provisions of the Act unless specifically included by the appointing judge or local rule of court (*see, e.g.*, 28 U.S.C. § 752, governing law clerks for district

[3]Benchmarks are standards of measurement that describe a specific CPS classification level and serve as "notches on a ruler." Courts classify their positions above, equal to, or below the benchmarks, and they assign classification levels accordingly.

judges). On recommendation of the Committee, the Conference agreed to discourage Leave Act coverage for new term chambers law clerks (i.e., those whose appointments are effective October 1, 2007, or later).

Career Law Clerks. In 1978 the Judicial Conference adopted a resolution stating that the best interests of the judiciary are served through continuation of the traditional practice of appointing recent graduates as law clerks for periods of one to two years (JCUS-SEP 78, p. 49). At this session, the Committee reported that, since that time, there has been substantial growth in the number of career law clerks within the judiciary, resulting in increased salary and benefit expenses, greater disparity in costs from one chambers to another, fewer opportunities to promote diversity, and fewer opportunities for new lawyers to experience service in the judiciary early in their careers. To address these issues, the Committee recommended that, subject to certain terms and conditions, all judges in the federal courts be limited to one full-time equivalent (FTE) career law clerk per chambers. After discussion and modification of some of the terms and conditions, the Conference agreed, effective September 18, 2007, to limit judges to one FTE career law clerk per chambers, subject to the following:

a. In a chambers where there is currently more than one FTE career law clerk, those law clerks will be able to retain career status, with the assent of the judge, as long as they continue to work in the chambers where they are currently employed.

b. Any part-time career law clerk whose hours are subsequently increased (further exceeding the one FTE) will revert to a term designation at that time.

c. No individual will be permitted to serve in the judiciary for more than four years in a term law clerk capacity.

d. Commitments made to specific individuals prior to September 18, 2007, that explicitly state in writing a commitment to career law clerk status will be honored.

e. These limitations shall not prevent a judge who has one FTE career law clerk from hiring, as an additional career law clerk, a person who, as of September 18, 2007, is serving as a career law clerk to another judge when that judge dies, retires from office, or otherwise becomes ineligible to employ the career law clerk.

Pay Parity Based on Experience. Chambers law clerks hired with experience gained outside the judiciary are often able to earn significantly more than clerks who gained their work experience within the judiciary because the former group is eligible for salary matching when they enter judicial service. In order to achieve salary parity between these two groups and recognize the value of public service, the Committee recommended that the Conference replace law clerk salary matching with pay parity based on experience, with the provisos that incoming law clerks who have prior federal experience may be eligible to match their highest rate of federal pay and that commitments made to specific individuals prior to September 18, 2007, that explicitly stated in writing a commitment to an advanced step salary, will be honored. After discussion, the Conference adopted the Committee's recommendation with an effective date of September 18, 2007.

Chambers-Level Budgets. In response to a motion made on the Conference floor during the discussion of the terms and salaries of chambers law clerks, the Conference agreed to direct the appropriate Judicial Conference committee(s) to study the establishment of chambers-level budgets as a long-term court compensation measure that would accord judges discretion in determining their staffing needs.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it endorsed the use of the Online System for Clerkship Application and Review (OSCAR) as a non-mandatory, automated, national law clerk hiring program and the incorporation of the existing Federal Law Clerk Information System into OSCAR. The Committee requested that the Administrative Office conduct simultaneously a work measurement study of the pro se law clerk program and the district court clerks' offices and develop a revised pro se law clerk staffing formula with options to include and not include social security appeals. The Committee also requested that the Administrative Office conduct a study of judiciary employment dispute resolution (EDR) plans that contain variations from the Model EDR Plan in order to determine a strategy for assisting courts in ensuring that their plans are aligned with the original intent of the Model EDR Plan.

COMMITTEE ON JUDICIAL SECURITY

COURT SECURITY COMMITTEES

The Committee on Judicial Security recommended that the Judicial Conference modify its policy on the composition and mission of court security committees to (1) clarify and increase the membership; (2) clearly define the mission statement; and (3) encourage more frequent meetings. Specifically, the Committee recommended, and the Conference agreed to, the following:

a. that the membership list of court security committees be amended to—

(1) designate the chief district judge (or judge designee) as chair;

. (2) state that each court of appeals and each bankruptcy court be represented by a judge or judge designee;

(3) provide that a designee may represent the United States attorney; and

(4) include as members the federal public defender, the chief probation officer, and the chief pretrial services officer, or their respective designees, and a Federal Protective Service government-employee representative.

b. that the mission of court security committees—

(1) include three focus areas: assessing the adequacy of district-wide court security, ensuring the effective and efficient use of court security resources while preserving the right to a public trial, and ensuring oversight of the court's emergency preparedness program; and

(2) provide that committees meet as often as necessary to ensure that they identify and address security problems before an emergency occurs and that a minimum of two formal meetings per calendar year is highly recommended.

COMMITTEE ACTIVITIES

The Committee on Judicial Security reported that it discussed the Budget Committee's request to impose a cap on the court security account. The Committee recommended that the Budget Committee propose a budget cap of 8.8 percent for fiscal year 2009 and a budget cap of 6.6 percent for fiscal years 2010 through 2017 to the Judicial Conference (*see supra*, "Budget Caps," p. 10). The Committee was also briefed by the United States Marshals Service on the status of a pilot project to study the feasibility and costs of the Marshals Service assuming, as appropriate, the court security functions currently performed by the Federal Protective Service in courthouses, as well as the associated funding.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

SELECTION AND APPOINTMENT REGULATIONS

To conform with the principles embodied in the judiciary's Model Equal Employment Opportunity and Employment Dispute Resolution Plans, the Committee on the Administration of the Magistrates Judges System recommended that the Conference amend Section 3.03(d) of the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges, as follows:

> Sec. 3.03(d). The panel shall examine all applications and may, in its discretion, personally interview applicants. The panel shall make an affirmative effort to identify and give due consideration to all qualified applicants ~~including women and members of minority groups~~ *without regard to race, color, age (40 and over), gender, religion, national origin, or disability*.

The Conference adopted the Committee's recommendation.

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee on the Administration of the Magistrate Judges System and the recommendations of the Director of the Administrative Office, the district courts, and the judicial councils of the circuits, the Judicial Conference approved the following changes in the number, salaries, locations, and arrangements for full-time and part-time magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

FIRST CIRCUIT

District of Massachusetts

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

District of Maine

Discontinued the clerk-magistrate judge position in the district.

SECOND CIRCUIT

District of Connecticut

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

THIRD CIRCUIT

Middle District of Pennsylvania

1. Increased the salary of the part-time magistrate judge position at Williamsport from Level 6 ($12,755 per annum) to Level 5 ($25,512 per annum); and

2. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

FOURTH CIRCUIT

Northern District of West Virginia

1. Converted the part-time magistrate judge position at Martinsburg to full-time status; and

2. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

EIGHTH CIRCUIT

District of Minnesota

1. Authorized an additional full-time magistrate judge position at Minneapolis or St. Paul; and

2. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

NINTH CIRCUIT

Northern District of California

Increased the salary of the part-time magistrate judge position at Eureka from Level 2 ($63,786 per annum) to Level 1 ($70,165 per annum).

TENTH CIRCUIT

Eastern District of Oklahoma

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

ELEVENTH CIRCUIT

Middle District of Florida

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Southern District of Florida

1. Discontinued the part-time magistrate judge position at Key West; and

2. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

ACCELERATED FUNDING

On recommendation of the Committee, the Judicial Conference agreed to designate for accelerated funding in fiscal year 2008 the new full-time magistrate judge positions at Martinsburg, West Virginia, and Minneapolis or St. Paul, Minnesota.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that, pursuant to the September 2004 Judicial Conference policy regarding the review of magistrate judge position vacancies (JCUS-SEP 04, p. 26), during the period between the Committee's December 2006 and June 2007 meetings, the Committee chair approved filling nine existing or upcoming vacancies in eight district courts, and, at its June 2007 meeting, the full Committee determined that one magistrate judge position vacancy should be filled. The Committee adopted revised strategic issues for the magistrate judges system to help focus future deliberations and planning. In furtherance of the Committee's long-range goal of voting membership of magistrate judges at all levels of the court governance structure, the Committee recommended that the membership of magistrate judges be increased on certain Judicial Conference committees.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rules. The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 1005 (Caption of Petition), 1006 (Filing Fee), 1007 (Lists, Schedules, Statements, and other Documents; Time Limits), 1009 (Amendments of Voluntary Petitions, Lists, Schedules, and Statements), 1010 (Service of Involuntary Petition and Summons; Petition For Recognition of a Foreign Nonmain Proceeding), 1011 (Responsive Pleading or Motion in Involuntary and Cross-Border Cases), 1015 (Consolidation or Joint Administration of Cases Pending in Same Court), 1017 (Dismissal or Conversion of Case; Suspension), 1019 (Conversion of a Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to a Chapter 7 Liquidation Case), 1020 (Small Business Chapter 11 Reorganization Case), 2002 (Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee), 2003 (Meeting of Creditors or Equity Security Holders), 2007.1 (Appointment of Trustee or Examiner in a Chapter 11 Reorganization Case), 2015 (Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status), 3002 (Filing Proof of Claim or Interest), 3003 (Filing Proof of Claim or Equity Security Interest in Chapter 9 Municipality or Chapter 11 Reorganization Cases), 3016 (Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case), 3017.1 (Court Consideration of Disclosure Statement in a Small Business Case), 3019 (Modification of Accepted Plan in a Chapter 9 Municipality or Chapter 11 Reorganization Case), 4002 (Duties of Debtor), 4003 (Exemptions), 4004 (Grant or Denial of Discharge), 4006 (Notice of No Discharge), 4007 (Determination of Dischargeability of a Debt), 4008 (Filing of Reaffirmation Agreement; Statement in Support of Reaffirmation Agreement), 5001 (Courts and Clerks' Offices), 5003 (Records Kept By the Clerk), 6004 (Use, Sale, or Lease of Property), 7012 (Defenses and Objections — When and How Presented — By Pleading or Motion — Motion for Judgment on the Pleadings), 7022 (Interpleader), 7023.1 (Derivative Actions), 8001 (Manner of Taking Appeal; Voluntary Dismissal; Certification to Court of Appeals), 8003 (Leave to Appeal), 9006 (Time), 9009 (Forms), and 9024 (Relief from Judgment or Order) and new Bankruptcy Rules 1021 (Health Care Business Case), 2007.2 (Appointment of Patient Care Ombudsman in a Health Care Business Case), 2015.1 (Patient Care Ombudsman), 2015.2 (Transfer of Patient in Health Care Business Case),

2015.3 (Reports of Financial Information on Entities in Which a Chapter 11 Estate Holds a Controlling or Substantial Interest), 5008 (Notice Regarding Presumption of Abuse in Chapter 7 Cases of Individual Debtors), and 6011 (Disposal of Patient Records in Health Care Business Case). These amendments and new rules were accompanied by committee notes explaining their purpose and intent. Most of the amendments and new rules are based on interim bankruptcy rules, which were distributed to the courts in 2005 with the recommendation that they be adopted locally to implement the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Pub. L. No. 109-8) until the Federal Rules of Bankruptcy Procedure could be amended. A handful of additional amendments and new rules were submitted to address provisions of the 2005 Act that did not require immediate implementation. The Judicial Conference approved the proposed amendments and new rules and authorized their transmission to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

Bankruptcy Official Forms. The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed revisions to Bankruptcy Official Forms 1 (Voluntary Petition), 3A (Application to Pay Filing Fee in Installments), 3B (Application for Waiver of the Chapter 7 Filing Fee for Individuals Who Cannot Pay the Filing Fee in Full or in Installments), 4 (List of Creditors Holding 20 Largest Unsecured Claims), 5 (Involuntary Petition), 6 (Schedules), 7 (Statement of Financial Affairs), 9A-I (Notice of Bankruptcy Case, Meeting of Creditors, & Deadlines), 10 (Proof of Claim), 16A (Caption (Full)), 18 (Discharge of Debtor), 19 (Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer), 21 (Statement of Social-Security Number or Individual Taxpayer-Identification Number (ITIN)), 23 (Debtor's Certification of Completion of Postpetition Instructional Course Concerning Personal Financial Management), and 24 (Certification to Court of Appeals by All Parties), together with committee notes explaining their purpose and intent. Most of the revisions to the Official Forms are technical and conforming to the 2005 Act. The Judicial Conference approved the revised Official Forms with an effective date of December 1, 2007.

The Committee also submitted to the Judicial Conference proposed new Bankruptcy Official Forms 25A ([Name of Proponent]'s Plan of Reorganization, Dated [Insert Date]), 25B ([Name of Proponent]'s Disclosure Statement, Dated [Insert Date]), 25C (Small Business Monthly Operating Report), and 26 (Periodic Report Regarding Value, Operations and Profitability of Entities in which the Estate of [Name of Debtor] Holds a Substantial or Controlling Interest) with a recommendation that they be

approved to take effect on December 1, 2008, to coincide with the above-mentioned rules amendments, which are anticipated to take effect on the same day. The Conference adopted the Committee's recommendation.

FEDERAL RULES OF CRIMINAL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Criminal Rules 1 (Scope; Definitions), 12.1 (Notice of an Alibi Defense), 17 (Subpoena), 18 (Place of Prosecution and Trial), 32 (Sentencing and Judgment), 41 (Search and Seizure), 45 (Computing and Extending Time), 60 (Victims' Rights), and new Criminal Rule 61 (Title), together with committee notes explaining their purpose and intent. The proposed amendments and new rule (with the exception of the amendment to Criminal Rule 41 and technical amendment to Criminal Rule 45) implement the Crime Victims' Rights Act (18 U.S.C. § 3771). The Judicial Conference approved the amendments and new rule and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF EVIDENCE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed new Evidence Rule 502 (Attorney-Client Privilege and Work Product; Limitations on Waiver), together with a committee note explaining its purpose and intent. The Committee proposed Evidence Rule 502 after the chairman of the House Judiciary Committee requested that the Judicial Conference initiate the rulemaking process to address concerns about privilege waivers. Since any rule creating, establishing, or modifying an evidentiary privilege requires legislation (28 U.S.C. § 2074(b)), the Committee recommended that the Judicial Conference transmit proposed Rule 502 directly to Congress with a recommendation that it be enacted into law. The Conference adopted the Committee's recommendation.

The Committee on Rules of Practice and Procedure also submitted to the Judicial Conference a proposed report to Congress on the necessity and desirability of amending the Federal Rules of Evidence to codify a "harm to child" exception to the marital privileges, in accordance with the Adam

Walsh Child Protection and Safety Act of 2006 (Pub. L. No. 109-248). The Conference approved the report and authorized its transmittal to Congress.

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it approved for publication proposed amendments to simplify and reduce inconsistencies in the computation of time periods under more than 90 time-counting provisions in the Federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure. The Committee also approved for publication proposed amendments and/or additions to the Appellate Rules, Bankruptcy Rules and Official Forms, Civil Rules, Criminal Rules, Rules Governing § 2254 Cases, and Rules Governing § 2255 Proceedings. The comment period for all the proposed changes expires on February 15, 2008.

COMMITTEE ON SPACE AND FACILITIES

RENT BUDGET ALLOTMENTS

In September 2004, the Judicial Conference adopted a space budget check process as an interim rent cost-control mechanism for all pending space requests until implementation of a rent budget cap could be completed (JCUS-SEP 04, pp. 35-36). In September 2006, the Judicial Conference approved a provisional rent budget cap allowing an average annual rate of growth of 4.9 percent in rent payments to the General Services Administration for fiscal years 2009 through 2016 (JCUS-SEP 06, p. 10), but a mechanism to implement the cap in each circuit was still needed. At this session, the Committee recommended adoption of a circuit-level rent budget allotment methodology that would enable the judiciary to translate the annual 4.9 percent cap into circuit-level rent budgets and replace the interim budget process. On recommendation of the Committee, and in lieu of the interim budget check process, the Conference—

a. Approved a rent allotment methodology consisting of three components (A, B, and C).

b. Delegated to the Committee on Space and Facilities the authority to establish and amend business rules that would govern the rent allotment methodology approved by the Judicial Conference.

c. Agreed that all newly constructed courthouses or annexes, build-to-suit lease projects, requests for General Services Administration feasibility studies, and prospectus-level repair and alteration projects must have the approval of the Committee and Conference as Component B projects.

d. Agreed that requests for Component B funding for necessary chambers and courtrooms for judges taking senior status, replacement judges, and new (additional) judgeships must have the approval of the Committee.

e. Agreed that non-prospectus projects that will utilize Component C funds are not subject to Committee and Conference approval unless the circuit judicial council's space action involves an exception to *U.S. Courts Design Guide* standards.

FIVE-YEAR COURTHOUSE PROJECT PLAN

In March 2007, the Judicial Conference approved a Five-Year Courthouse Project Plan for FYs 2008-2012 (JCUS-MAR 07, p. 31). Noting that there was an immediate need for expansion space for judges at the courthouse in Greenbelt, Maryland, the Committee recommended that the Conference endorse adding an annex for that courthouse to the Five-Year Courthouse Project Plan. The Conference adopted the Committee's recommendation.

BUDGET CHECK PROCESS

Pursuant to the budget check process discussed above (*see* "Rent Budget Allotments," pp. 36-37), and on recommendation of the Space and Facilities Committee, in consultation with the Budget Committee, the Conference approved 13 space requests. The annual rent to be generated by these requests will be charged against, and is anticipated to fit within, the 4.9 percent annual budget cap on space rental growth adopted by the Conference.

COMMITTEE ACTIVITIES

The Committee on Space and Facilities reported that it endorsed a space and facilities budget request for FY 2009 in the amount of $1.1 billion.

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

March 11, 2008

The Judicial Conference of the United States convened in Washington, D.C., on March 11, 2008, 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 Michael Boudin
Judge Ernest C. Torres,
District of Rhode Island

Second Circuit:

Chief Judge Dennis Jacobs
Chief Judge William K. Sessions III,
District of Vermont

Third Circuit:

Chief Judge Anthony J. Scirica
Chief Judge Garrett E. Brown, Jr.,
District of New Jersey

Fourth Circuit:

Chief Judge Karen J. Williams
Chief Judge James P. Jones,
Western District of Virginia

Fifth Circuit:

Chief Judge Edith Hollan Jones
Judge Sim Lake,
Southern District of Texas

Sixth Circuit:

Chief Judge Danny J. Boggs
Judge Thomas M. Rose,
Southern District of Ohio

Seventh Circuit:

Chief Judge Frank H. Easterbrook
Judge Wayne R. Andersen,
Northern District of Illinois

Eighth Circuit:

Chief Judge James B. Loken
Judge Lawrence L. Piersol,
District of South Dakota

Ninth Circuit:

Chief Judge Alex Kozinski
Judge Charles R. Breyer,
Northern District of California

Tenth Circuit:

Chief Judge Robert H. Henry
Judge Alan B. Johnson,
District of Wyoming

Eleventh Circuit:

Chief Judge J. L. Edmondson
Judge Myron H. Thompson,
Middle District of Alabama

District of Columbia Circuit:

Chief Judge David Bryan Sentelle
Chief Judge Thomas F. Hogan,
District of Columbia

Federal Circuit:

Chief Judge Paul R. Michel

Court of International Trade:

Chief Judge Jane A. Restani

The following Judicial Conference committee chairs attended the Conference session: Circuit Judges Julia Smith Gibbons, Roger L. Gregory, Carl E. Stewart, and Richard C. Tallman, and District Judges Joseph F. Bataillon, Julie E. Carnes, Dennis M. Cavanaugh, John Gleeson, Janet C. Hall, Robert L. Hinkle, D. Brock Hornby, Mark R. Kravitz, Barbara M.G. Lynn, Gordon J. Quist, Lee H. Rosenthal, George Z. Singal, Ortrie D. Smith, Laura Taylor Swain, John R. Tunheim, and Thomas I. Vanaskie. Bankruptcy Judge David S. Kennedy and Magistrate Judge Robert B. Collings were also in attendance. Millie Adams of the Eighth Circuit represented the circuit executives.

James C. Duff, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Jill C. Sayenga, Deputy Director; William R. Burchill, Jr., Associate Director and General Counsel; Laura C. Minor, Assistant Director, and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat; Cordia A. Strom, Assistant Director, Legislative Affairs; and David A. Sellers, Assistant Director, Public Affairs. District Judge Barbara Jacobs Rothstein and John S. Cooke, Director and Deputy Director of the Federal Judicial Center, and District Judge Ricardo H. Hinojosa and Judith W. Sheon, Chair and Staff Director of the United States Sentencing Commission, were in attendance at the session of the Conference, as was Jeffrey P. Minear, Administrative Assistant to the Chief Justice. Scott Harris, Supreme Court Counsel, and the 2007-2008 Supreme Court Fellows also observed the Conference proceedings.

Solicitor General Paul D. Clement addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice. Senators Patrick Leahy, Arlen Specter, and Richard J. Durbin and Representatives John Conyers, Jr., and Lamar S. Smith spoke on matters pending in Congress of interest to the Conference.

REPORTS

Mr. Duff reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office (AO). Judge Rothstein spoke to the Conference about Federal Judicial Center (FJC) programs, and Judge Hinojosa reported on Sentencing Commission activities. Judge Hornby, Chair of the Committee on the Judicial Branch, presented a report on the judicial salary restoration initiative, and Judge Tunheim, Chair of the Committee on Court Administration and Case Management, presented a preliminary report on a study of courtroom use.

EXECUTIVE COMMITTEE

LONG-RANGE PLANNING

The Executive Committee considered the Judicial Conference's long-range planning process and how to revitalize it. Preferring not to initiate a large-scale planning effort similar to that which produced the *Long Range Plan for the Federal Courts* in 1995, the Committee determined to pursue with the Chief Justice the creation of a new strategic and operational planning process that would involve Conference committees and operate under the oversight of the Executive Committee.

COMMITTEE MATTERS

The Executive Committee referred three items to other committees for further consideration. It asked the Committee on Judicial Resources to reexamine the September 2005 Judicial Conference policy limiting court executive salaries to the salary paid to district judges (see JCUS-SEP 05, p. 29). In addition, it asked the Committee on Court Administration and Case Management to review the impact on judiciary policy and practice of recent legislation regarding senior district judge participation in local court governance and, as it pursues initiatives to move official records to electronic media, to ensure that the judiciary will continue to have access to its older records, including those preserved in obsolete formats.

MISCELLANEOUS ACTIONS

The Executive Committee—

- Approved on behalf of the Conference a request of the Committee on Judicial Resources to expand the Conference's saved pay policy to include unit executives and others whose pay would be reduced by a management action placing the employees under a different salary plan or pay table;

- Approved on behalf of the Conference revisions to Bankruptcy Official Forms 1, 22A, 22B, and 22C, to be effective January 1, 2008;

- Approved final fiscal year 2008 financial plans for the Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners accounts;

- Agreed on behalf of the Conference to amend the *U.S. Courts Design Guide* to delete time frame references from two planning assumptions used for projecting certain space requirements;

- Based on requests from the respective committees, agreed to seek the Chief Justice's approval for expanding the Judicial Security Committee's membership to include regional circuit representation and the Bankruptcy Committee's membership to include an additional bankruptcy judge on a permanent basis as well as regional circuit representation by Article III judge members;

- Agreed that the Rules Committee (or its Civil Rules Advisory Committee) communicate the Committee's concerns to Congress regarding the proposed "Sunshine in Litigation Act," S. 2449, 110th Congress, after coordinating with the Administrative Office; and

- Approved a resolution on behalf of the Conference honoring Chief Judge Thomas F. Hogan's outstanding service as Chair of the Executive Committee.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it was briefed on, and expressed its support for, efforts underway to improve the Administrative Office's communications with the courts. These efforts include a review of the Administrative Office's advisory structure; a redesign of the *Guide to Judiciary Policies and Procedures*; and improvements to the J-Net. In connection with its review of the implementation of the 1995 *Long Range Plan for the Federal Courts,* the Committee expressed its belief that consideration of administrative structures and responsibilities, including the appropriate mix of decentralization and centralization, should continue to be a strategic concern and expressed its support for development of an integrated strategic planning process. The Committee was briefed on the activities of the Office of Judicial Conference Executive Secretariat, major AO initiatives, and AO audit and review activities.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

OFFICIAL DUTY STATION

On the recommendation of the Bankruptcy Committee and in accordance with 28 U.S.C. § 152(b)(1), the Judicial Conference approved a request of the Second Circuit Judicial Council to redesignate the official duty station of Bankruptcy Judge Stephen D. Gerling, from Utica to Utica, Syracuse, or Albany, in the Northern District of New York.

COMMITTEE ACTIVITIES

The Bankruptcy Committee reported that it heard from its members who serve in liaison roles to other Conference committees on topics including law clerk recruitment, diversity, work measurement, and the courtroom use study. The Committee also received reports on matters of interest from the Chair of the Advisory Committee on Bankruptcy Rules, the Chair of the Administrative Office's Bankruptcy Judges Advisory Group, the President of the National Conference of Bankruptcy Judges, and a representative of the Federal Judicial Center.

COMMITTEE ON THE BUDGET

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it adopted a statement on congressional outreach that memorializes the role of the Budget Committee in preparing the annual budget request as well as a strategy for obtaining resources from Congress. In addition, in response to direction from the Judicial Conference (*see* JCUS-SEP 07, p. 27), the Committee recommended that the AO Director create a working group, chaired by a Budget Committee member, to examine the establishment of chambers-level budgets as a long-term court compensation measure that would accord judges discretion to determine their staffing needs. The Budget Committee also reported that it intends to discuss program-based budgeting in the judiciary at its January 2009 meeting and asked AO staff to prepare materials.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in September 2007, the Committee received 52 new written inquiries and issued 51 written advisory responses. During this period, the average response time for requests was 17 days. In addition, the Committee chair received and responded to 54 informal inquiries from colleagues, and individual Committee members responded to 228 such inquiries.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

PRIVACY POLICY

In September 2001, the Judicial Conference adopted a privacy policy that allowed remote access to most electronic case files once certain personal information had been redacted (JCUS-SEP/OCT 01, pp. 48-50; *see also* JCUS-SEP 03, pp. 15-16 and JCUS-MAR 04, p. 10). Since that time, new federal rules of appellate, bankruptcy, civil, and criminal procedure have been adopted pursuant to the E-Government Act of 2002 also to address privacy

and security concerns relating to public access to electronic documents. After reviewing the new federal rules, which are based in large part on the Conference's privacy policy, the Committee on Court Administration and Case Management was of the view that most of the Conference policy was superseded and that only two elements remain. The first establishes procedures for redacting transcripts of court proceedings, which continues to be relevant under the new rules. The second is a list of documents to be excluded from public criminal case files, which is referenced in the Rules Committee notes to the new criminal E-Government rule. After proposing minor amendments to these provisions, the Court Administration and Case Management Committee recommended a revised privacy policy for public access to electronic case file documents consisting of these two provisions. The Conference approved the recommendation.

BANKRUPTCY COURT MISCELLANEOUS FEE SCHEDULE

Noting that the Bankruptcy Court Miscellaneous Fee Schedule had undergone several revisions over the last decade, and as a result had become lengthy and very complicated, the Court Administration and Case Management Committee, in consultation with the Committee on the Administration of the Bankruptcy System, recommended that the Judicial Conference consider proposed changes to clarify items, delete an obsolete fee (and renumber the schedule accordingly), and make stylistic changes to comport with current editorial standards. No substantive amendments were considered. The Conference approved the recommendation and directed the Administrative Office to amend the schedule to read as set forth below.

Bankruptcy Court Miscellaneous Fee Schedule
(Issued in accordance with 28 U.S.C. § 1930(b))

The fees included in the Bankruptcy Court Miscellaneous Fee Schedule are to be charged for services provided by the bankruptcy courts.

- The United States should not be charged fees under this schedule, with the exception of those specifically prescribed in Items 1, 3 and 5 when the information requested is available through remote electronic access.

- Federal agencies or programs that are funded from judiciary appropriations (agencies, organizations, and

individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. § 3006A, and bankruptcy administrators) should not be charged any fees under this schedule.

(1) For reproducing any document, $.50 per page. This fee applies to services rendered on behalf of the United States if the document requested is available through electronic access.

(2) For certification of any document, $9.
For exemplification of any document, $18.

(3) For reproduction of an audio recording of a court proceeding, $26. This fee applies to services rendered on behalf of the United States if the recording is available electronically.

(4) For filing an amendment to the debtor's schedules, lists of creditors, or mailing list, $26, except:
- The bankruptcy judge may, for good cause, waive the charge in any case.
- This fee must not be charged if –
  - the amendment is to change the address of a creditor or an attorney for a creditor listed on the schedules; or
  - the amendment is to add the name and address of an attorney for a creditor listed on the schedules.

(5) For conducting a search of the bankruptcy court records, $26 per name or item searched. This fee applies to services rendered on behalf of the United States if the information requested is available through electronic access.

(6) For filing a complaint, $250, except:
- If the trustee or debtor-in-possession files the complaint, the fee should be paid by the estate, if there is an estate.
- This fee must not be charged if –
  - the debtor is the plaintiff; or
  - a child support creditor or representative files the complaint and submits the form required by § 304(g) of the Bankruptcy Reform Act of 1994.

(7) For filing any document that is not related to a pending case or proceeding, $39.

(8) Administrative fee for filing a case under Title 11 or when a motion to divide a joint case under Title 11 is filed, $39.

(9) For payment to trustees pursuant to 11 U.S.C. § 330(b)(2), a $15 fee applies in the following circumstances:
- For filing a petition under Chapter 7.
- For filing a motion to reopen a Chapter 7 case.
- For filing a motion to divide a joint Chapter 7 case.
- For filing a motion to convert a case to a Chapter 7 case.
- For filing a notice of conversion to a Chapter 7 case.

(10) In addition to any fees imposed under Item 9, above, the following fees must be collected:
- For filing a motion to convert a Chapter 12 case to a Chapter 7 case or a notice of conversion pursuant to 11 U.S.C. § 1208(a), $45.
- For filing a motion to convert a Chapter 13 case to a Chapter 7 case or a notice of conversion pursuant to 11 U.S.C. § 1307(a), $10.

The fee amounts in this item are derived from the fees prescribed in 28 U.S.C. § 1930(a).

If the trustee files the motion to convert, the fee is payable only from the estate that exists prior to conversion.

If the filing fee for the chapter to which the case is requested to be converted is less than the fee paid at the commencement of the case, no refund may be provided.

(11) For filing a motion to reopen, the following fees apply:
- For filing a motion to reopen a Chapter 7 case, $245.
- For filing a motion to reopen a Chapter 9 case, $1000.
- For filing a motion to reopen a Chapter 11 case, $1000.
- For filing a motion to reopen a Chapter 12 case, $200.
- For filing a motion to reopen a Chapter 13 case, $235.
- For filing a motion to reopen a Chapter 15 case, $1000.

The fee amounts in this item are derived from the fees prescribed in 28 U.S.C. § 1930(a).

The reopening fee must be charged when a case has been closed without a discharge being entered.

The court may waive this fee under appropriate circumstances or may defer payment of the fee from trustees pending discovery of additional assets. If payment is deferred, the fee should be waived if no additional assets are discovered.

The reopening fee must not be charged in the following situations:

- to permit a party to file a complaint to obtain a determination under Rule 4007(b); or
- when a debtor files a motion to reopen a case based upon an alleged violation of the terms of the discharge under 11 U.S.C. § 524.

(12) For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, $45.

(13) For a check paid into the court which is returned for lack of funds, $45.

(14) For filing an appeal or cross appeal from a final judgment, $250.

This fee is collected in addition to the statutory fee of $5 that is collected under 28 U.S.C. § 1930(c) when a notice of appeal is filed.

Parties filing a joint notice of appeal should pay only one fee.

If a trustee or debtor in possession is the appellant, the fee must be payable only from the estate and to the extent there is any estate realized.

Upon notice from the court of appeals that a direct appeal or direct cross-appeal has been authorized, an additional fee of $200 must be collected.

(15) For filing a case under Chapter 15 of the Bankruptcy Code, $1000.

This fee is derived from and equal to the fee prescribed in 28 U.S.C. § 1930(a)(4) for filing a case commenced under Chapter 11 of Title 11.

(16) The court may charge and collect fees commensurate with the cost of providing copies of the local rules of court. The court may also distribute copies of the local rules without charge.

(17) The clerk shall assess a charge for the handling of registry funds deposited with the court, to be assessed from interest earnings and in accordance with the detailed fee schedule issued by the Director of the Administrative Office of the United States Courts.

(18) For filing a motion to divide a joint case filed under 11 U.S.C. § 302, the following fees apply:

- For filing a motion to divide a joint Chapter 7 case, $245.
- For filing a motion to divide a joint Chapter 11 case, $1000.
- For filing a motion to divide a joint Chapter 12 case, $200.
- For filing a motion to divide a joint Chapter 13 case, $235.

These fees are derived from and equal to the filing fees prescribed in 28 U.S.C. § 1930(a).

(19) For filing the following motions, $150:

- To terminate, annul, modify or condition the automatic stay;
- To compel abandonment of property of the estate pursuant to Rule 6007(b) of the Federal Rules of Bankruptcy Procedure; or
- To withdraw the reference of a case or proceeding under 28 U.S.C. § 157(d).

This fee must not be collected in the following situations:

- For a motion for relief from the co-debtor stay;
- For a stipulation for court approval of an agreement for relief from a stay; or
- For a motion filed by a child support creditor or its representative, if the form required by § 304(g) of the Bankruptcy Reform Act of 1994 is filed.

ELECTRONIC PUBLIC ACCESS FEE SCHEDULE

The current versions of the Case Management/Electronic Case Files (CM/ECF) system and the Public Access to Court Electronic Records (PACER) system no longer provide direct dial-up remote access because of expanded accessibility through the internet. Accordingly, on the Committee's recommendation, the Conference agreed to amend the Electronic Public Access Fee Schedule to eliminate reference to dial-up access fees.

RECORDS MANAGEMENT

Courts of Appeals/Bankruptcy Appellate Panels. In March 2005, the Judicial Conference endorsed a proposed agreement between the National Archives and Records Administration (NARA) and the Administrative Office that paper case files in bankruptcy and district courts utilizing the national CM/ECF system need not be retained for archival purposes after they have been scanned in their entirety into the CM/ECF system (JCUS-MAR 05, pp. 11-12). This disposition authority was subsequently approved by NARA. Courts of appeals and bankruptcy appellate panels have now begun implementation of the CM/ECF system and should have similar authority. On recommendation of the Committee, the Conference agreed to pursue authority for courts of appeals and bankruptcy appellate panels to dispose of paper records received after December 1, 2006, that are converted to Portable Document Format (PDF) for use in CM/ECF. If the authority is obtained, these courts would not need to retain paper records for archival purposes after they have been scanned in their entirety into the CM/ECF system.

Probation and Pretrial Services. A recently released feature of the Probation/Pretrial Services Automated Case Tracking System (PACTS) allows PDF electronic images of documents to be categorized and stored in PACTS in a secure but convenient fashion. In light of this new capability, the Committee recommended that the Conference endorse authority providing that probation and pretrial services offices utilizing PACTS need not retain paper records for archival purposes after they have been scanned in their entirety into PACTS, except for the following documents, which must continue to be maintained: original Sex Offender Registration Acknowledgment Forms, Monthly Supervision Reports (MSR), and any other documents bearing the defendant's/offender's original signature, which have been submitted under oath or include a warning that false statements may be punishable pursuant to 18 U.S.C. § 1001. The Conference adopted the Committee's recommendation.

PLACES OF HOLDING COURT

At the request of the Southern District of Iowa and on recommendation of the Committee, the Judicial Conference rescinded its March 2007 decision to seek legislation to allow that district occasionally to hold civil trials upon party consent in Omaha, Nebraska (*see* JCUS-MAR 07, p. 11). The district informed the Committee that, because of a change in circumstances, it no longer needed use of the space in the Omaha courthouse.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that, among other things, it reviewed the Federal Judicial Center's preliminary report on courtroom usage and outlined several possible policy options that could be considered by the Committee and the liaison committees at their summer 2008 meetings, and by the Judicial Conference in September 2008. In addition, the Committee declined to endorse the Department of Justice's proposal to prohibit public internet access to plea agreements, but it agreed to inform courts of the need to consider adopting local policies on plea agreements while emphasizing that such policies should be the least restrictive to promote legitimate public access. The Committee also decided to establish May 15, 2008, as the date by which all district courts should be compliant with the Conference's electronic transcripts policy.

COMMITTEE ON CRIMINAL LAW

SEARCH AND SEIZURE AUTHORITY

In March 1993, the Judicial Conference adopted Model Search and Seizure Guidelines to guide probation officers when conducting searches and seizures pursuant to conditions of probation or supervised release (JCUS-MAR 93, p. 13). At this session, after extensive review of these procedures, and to ensure the safety of officers and of others at a search scene, the Committee on Criminal Law recommended that the Conference seek legislation that would provide to probation officers conducting searches the same powers available to traditional law enforcement officers to control and direct third parties when safety considerations require. The Committee also recommended that the Conference seek legislation that would permit probation officers, whether in a search context or otherwise, to arrest, based on probable

cause, persons who assault, resist, or impede the officer in the performance of official duties. The Conference adopted the Committee's recommendations.

JUVENILE PRETRIAL SUPERVISION

Currently, there is no clear statutory authority permitting probation or pretrial services officers to supervise juveniles who are released pending adjudication. Pretrial services officers do, however, have authority to supervise juveniles after the disposition stage of proceedings, for example pending an appeal or a petition for a writ of certiorari, and to supervise adult defendants prior to conviction and sentencing. Noting that juveniles who are released prior to disposition may be in need of supervision, and that more juveniles might be released pending adjudication if supervision were an option, the Committee recommended that the Judicial Conference seek legislation that would authorize pretrial services supervision for juveniles released prior to the disposition stage of the proceedings. The Conference adopted the Committee's recommendation.

SUPERVISION OF FEDERAL OFFENDERS MONOGRAPH

On recommendation of the Committee, the Judicial Conference approved revisions to the *Supervision of Federal Offenders*, Monograph 109, to reflect current knowledge in the fields of substance abuse, mental health treatment, and community corrections. The changes are intended to provide officers with practical guidance that has proven to be effective in reducing recidivism rates for offenders.

HOME CONFINEMENT PROGRAM MONOGRAPH

The Committee recommended that the Judicial Conference amend *The Federal Home Confinement Program for Defendants and Offenders,* Monograph 113, to provide more comprehensive guidance on the use of location monitoring technologies for supervision purposes, including Global Positioning System (GPS) technology. These revisions would shift the focus from monitoring defendants and offenders in their homes with single-point location monitoring technology to monitoring these individuals both in their homes and in the community. Since such technology can also be utilized to monitor the location of offenders and defendants who are not subject to home confinement but who nonetheless are subject to conditions of release that limit

their whereabouts, the Committee also recommended that the title of the monograph be changed to *The Location Monitoring Program*. The Conference adopted the Committee's recommendations.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that, exercising its delegated authority to make technical, non-controversial changes to the official forms for judgments in a criminal case (JCUS-MAR 04, p. 13), it created an attachment to forms AO 245, 245D, 245H, and 245I to be filed separately. The attachment will satisfy the requirement of 18 U.S.C. § 3612 that personal identifiers must be included on judgments while simultaneously satisfying the E-Government Act of 2002's requirement that personal identifiers be redacted from public documents. The Committee also amended the Guidelines for U.S. Probation and Pretrial Services Officers Supervising Persons Who Have Been Exposed to the Human Immunodeficiency Virus (HIV) or Who Have Acquired Immune Deficiency Syndrome (AIDS), authorizing the recording of defendant and offender HIV or AIDS diagnoses in confidential records within the electronic Probation/Pretrial Services Case Tracking System as well as within traditional paper records.

COMMITTEE ON DEFENDER SERVICES

ADMINISTRATIVE DEPORTATION PROCEEDINGS

On recommendation of the Committee on Defender Services, the Judicial Conference approved revisions to paragraph 2.01E(5) of the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, vol. 7, *Guide to Judiciary Policies and Procedures*. These revisions reflect the restructuring of the Immigration and Naturalization Service and resulting changes in statutory terminology regarding immigration proceedings.

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that, after discussing the impact of remote detention facilities on the Defender Services program, it decided to request the assistance of the Committee on Judicial Security in conveying concerns to the U.S. Marshals Service and the Office of the Federal Detention Trustee regarding contracts for the housing of pretrial detainees. In

addition, the Defender Services Committee approved pursuing a contract to survey judges, Criminal Justice Act (CJA) panel attorneys, and federal defenders about program effectiveness and quality of representation. The Committee voted to support compensation, at the non-capital CJA panel attorney hourly rate, for the panel attorney members of the Defender Services Advisory Group, for the time they spend attending Administrative Office advisory or working group meetings and Committee meetings.

COMMITTEE ON FEDERAL-STATE JURISDICTION

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reviewed provisions in proposed legislation to amend the Prison Litigation Reform Act and to limit the enforceability of certain arbitration agreements, as well as proposed changes to administrative procedures for review of claims for Social Security disability benefits. It also received a report on issues of concern to state courts, particularly court security and judicial independence, and discussed ways it could be more active in pursuing federal-state judicial relations. The Committee was briefed on the preliminary analysis of a study of capital habeas corpus proceedings being undertaken by the Administrative Office and the Federal Judicial Center and discussed proposed Department of Justice regulations related to the certification of states under chapter 154 of title 28, United States Code, which establishes time limits for federal judicial review of capital habeas petitions.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported on its efforts to obtain an extension of the judiciary's redaction authority for financial disclosure reports (Congress has recently extended it through December 31, 2011), and that it continues to work with the Administrative Office to encourage Congress to enact permanent redaction authority for the judiciary. The Committee began development of a system for the electronic filing and management of financial disclosure reports. As of December 31, 2007, the Committee had received 4,288 financial disclosure reports and certifications for calendar year 2006, including 1,361 reports and certifications from Supreme Court justices, Article

III judges, and judicial officers of special courts; 377 reports from bankruptcy judges; 569 reports from magistrate judges; and 1,981 reports from judicial employees.

COMMITTEE ON INFORMATION TECHNOLOGY

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that with respect to implementation of the Report on Network Privacy and Security (JCUS-SEP 05, p. 27), it endorsed a policy statement establishing a framework for the national information technology program, along with baseline security and privacy recommendations. It also reported that the effort to identify and implement cost-effective service delivery models has come to a successful conclusion with the consolidation of servers for several national systems, which will result in cost savings or avoidances totaling millions of dollars over the next five years. The Committee made decisions on fiscal year 2008 Edwin L. Nelson Local Initiatives Program grants and determined that grants should have a two-year limit. In addition, the Committee reported that it will work with the Committee on Space and Facilities to develop a long-range plan to address the judiciary's communication infrastructure.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that 98 intercircuit assignments were undertaken by 68 Article III judges from July 1, 2007 to December 31, 2007. During calendar year 2007, 189 intercircuit assignments were processed by the Committee and approved by the Chief Justice, an increase of more than 26 percent over the last five years. The Committee continued to disseminate information about intercircuit assignments, and it aided courts requesting assistance by identifying and obtaining judges willing to take assignments.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its involvement in rule of law and judicial reform activities throughout the world, highlighting those in Africa, Asia and the Pacific Basin, Canada, Central Asia, Europe, Latin America, the Middle East, and the Russian Federation. The Committee received reports from the U.S. State Department's Office of the Coordinator of Assistance to Europe and Eurasia, the Director of the U.S. Agency for International Development's Democracy and Governance Office, and the Director of the U.S. Department of Justice's Overseas Prosecutorial Training and Development Office. The Committee also received a special report from the founding dean and chancellor of the new Peking University School of Transnational Law in Beijing, China.

COMMITTEE ON THE JUDICIAL BRANCH

JUDICIAL SURVIVORS' ANNUITIES SYSTEM

Open Season. At the request of the Committee on the Judicial Branch, the Administrative Office initiated a study of the Judicial Survivors' Annuities System (JSAS) to determine whether JSAS is equitable in its coverage and cost when compared to other survivor benefit programs. After considering this study, the Committee recommended that the Judicial Conference seek legislation that would authorize a one-time open season for judges who previously opted not to enroll in JSAS, with the following conditions: (a) such enrollees, while in active or senior status, would be required to pay 2.75 percent of future pay (instead of the 2.2 percent for current enrollees) to maintain the current employer contribution of 1.48 percent, and (b) these new enrollees would be permitted to make a deposit equaling approximately 2.75 percent of salary, plus 3 percent annual, compounded interest, for the last 18 months of prior service, to receive the credit for prior judicial service required for immediate coverage and protection of the enrollees' survivors. The Conference adopted the Committee's recommendation.

Restoration of Survivors' Annuities. Currently, a spouse's JSAS annuity rights are forfeited if he or she remarries before attaining age 55. A bill pending in the 110th Congress would amend 28 U.S.C. § 376(h)(2) to restore a judicial survivor's spousal annuity upon the termination or dissolution of a subsequent remarriage by annulment, death, or divorce and would also

provide for a lump sum retroactive payment dating back to termination of the survivor's annuity. On recommendation of the Committee, which noted that survivor benefits for other federal employees provide for restoration of benefits beginning on the date the remarriage ended, and not the date benefits terminated, the Conference agreed to seek legislation that would permit the resumption of periodic payments of JSAS survivor benefits following termination of a judicial survivor's remarriage, but would limit any lump-sum retroactive payments to the time beginning on the date the survivor's remarriage ended by death, divorce or annulment and ending on the date on which periodic annuity payments resumed.

JUDGES' TRAVEL REGULATIONS

Same-Day Travel. The Committee recommended, and the Judicial Conference approved, an amendment to section E.4 of the Travel Regulations for United States Justices and Judges, *Guide to Judiciary Policies and Procedures*, vol. 3, ch. C-5, ex. A, to clarify and specify the nature and amount of a judge's entitlement to reimbursement for the expenses of meals and incidentals incurred in same-day travel.

Tips to Parking Attendants. On recommendation of the Committee, the Conference approved an amendment to section F.2. of the judges' travel regulations specifically to authorize reimbursement of judges for the cost of tips to parking attendants.

Inter-District Meetings. The Conference also agreed to a recommendation of the Committee to amend section B.3 of the judges' travel regulations to add a new subsection giving chief judges in states with multiple districts the discretion to hold one inter-district meeting annually. Judges who attend such a meeting may be reimbursed for their transportation and subsistence expenses.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that, consistent with the priorities of the Chief Justice and the Judicial Conference, it continues to devote substantial attention to judicial salary restoration. The Committee is working closely with the Chief Justice's Ad Hoc Committee on Judicial Salaries to secure enactment of judges' pay restoration legislation. The Committee also reported on matters related to judicial benefits and on its

efforts to improve public knowledge about the role of the federal courts and the importance of an independent judiciary.

COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY

RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS

In September 2006, the Judicial Conduct and Disability Act Study Committee, known as the Breyer Committee, established by Chief Justice William H. Rehnquist, issued a report and recommendations regarding implementation of the Judicial Conduct and Disability Act. Among its responses to that report, in March 2007, the Judicial Conference directed the Committee on Judicial Conduct and Disability to develop comprehensive guidelines and rules as needed to implement the Judicial Conduct and Disability Act consistently in all federal courts. At this session, the Committee proposed, and the Conference approved under 28 U.S.C. § 358, Rules for Judicial-Conduct and Judicial-Disability Proceedings, which are binding and operate uniformly, nationwide, superseding any conflicting judicial council rules. The rules were subjected to extensive review and comment from judges, court staff, and the general public prior to their adoption.

COMMITTEE ACTIVITIES

The Committee on Judicial Conduct and Disability reported that it issued two decisions in January 2008 on petitions for review of circuit council conduct and disability orders. It currently has a matter under advisement upon certification from a circuit council.

COMMITTEE ON JUDICIAL RESOURCES

COMPENSATORY TIME

In March 1996, the Judicial Conference adopted a compensatory time policy for court employees, which, though optional as to whether courts allow compensatory time, mandates that certain elements be included in the policies of those court units that do (JCUS-MAR 96, p. 28). At this session, on recommendation of the Committee on Judicial Resources, the Conference

adopted three changes to the policy in order to provide courts with more flexibility in the use of compensatory time. These changes (a) allow courts to provide compensatory time when employees are required to travel outside of their normal work schedules; (b) reduce the minimum time increment for compensatory time from one hour to 15 minutes; and (c) extend the period for using compensatory time from six months to one year. The compensatory time policy can be found in vol. 1, ch. 10, subchap. 1550.2 of the *Guide to Judiciary Policies and Procedures*.

SICK LEAVE CREDIT FOR FERS EMPLOYEES

Nearly all federal employees are covered by one of two statutory retirement systems – the Federal Employees Retirement System (FERS) or the Civil Service Retirement System (CSRS). CSRS employees, unlike FERS employees, receive service credit if they retire with unused sick leave balances. The Committee noted that this benefit provides an incentive to CSRS employees to use their sick leave prudently and results in less absenteeism and greater productivity. In response to a recent expression of interest on the part of some members of Congress in amending FERS to allow some form of sick leave credit, the Committee recommended that the Conference express to the congressional sponsors and the Office of Personnel Management the support of the judiciary for changes to improve the crediting of unused sick leave for employees who retire under FERS. The Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it strongly supports taking a conservative approach to fiscal year 2008 and 2009 budget issues and continuing to promote cost-containment initiatives. It unanimously agreed that, if judicial salary restoration were approved by Congress in 2008, no change to the current interim executive compensation policy would be necessary since the policy adequately provides for additional locality pay to judiciary executives, especially in high-cost areas. The Committee did, however, request that a study of executive compensation be conducted and that the results be presented at its December 2008 meeting. The Committee also asked its ad hoc diversity subcommittee to review the judiciary's Model Employment Dispute Resolution (EDR) Plan, as well as court EDR plans, to provide proposals for dealing with variances between courts' EDR plan

coverage and the Model EDR Plan, and to determine whether revisions to the Model EDR Plan are needed.

COMMITTEE ON JUDICIAL SECURITY

COMMITTEE ACTIVITIES

The Committee on Judicial Security reported that it authorized the United States Marshals Service (USMS) to initiate a pilot program at seven sites in furtherance of the action taken by the Conference in March 2007 to "support the efforts of the [USMS], through administrative and/or legislative remedies, to assume the security functions currently performed by the Federal Protective Service in courthouses, as appropriate, and the associated funding" (JCUS-MAR 07, p. 26). The pilot program will test the feasibility of having all perimeter security guarding and equipment and systems monitoring under the authority and control of the district U.S. marshal, in order to provide courts with more efficient and operationally effective perimeter security. The Committee also considered the use of electronic communications devices in courthouses and made recommendations to the Committee on Court Administration and Case Management on updating guidance on this subject, and it approved new credentials for circuit executives.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

APPOINTMENT REGULATIONS

The Committee on the Administration of the Magistrate Judges System recommended that the Judicial Conference amend section 3.03(b) of the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges to provide that a court or merit selection panel may publicize the names of applicants for magistrate judge positions, with the applicants' written permission, for the purpose of soliciting comments from the bar and the public. The Conference adopted the Committee's recommendation.

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee on the Administration of the Magistrate Judges System and the recommendations of the Director of the Administrative Office, the respective district courts, and the judicial councils of the circuits, the Judicial Conference approved the following changes in positions, salaries, locations, and arrangements for full-time and part-time magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

FIRST CIRCUIT

District of Maine

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

SECOND CIRCUIT

Western District of New York

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

SEVENTH CIRCUIT

Southern District of Illinois

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Western District of Wisconsin

Made no change in the number, location, or arrangements of the magistrate judge positions in the district.

TENTH CIRCUIT

District of Wyoming

1. Increased the salary of the part-time magistrate judge position at Casper from Level 6 ($13,073 per annum) to Level 4 ($39,227 per annum).

2. Increased the salary of the part-time magistrate judge position at Green River from Level 7 ($6,534 per annum) to Level 6 ($13,073 per annum).

3. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that pursuant to the September 2004 Judicial Conference policy regarding the review of magistrate judge position vacancies (JCUS-SEP 04, p. 26), during the period between the Committee's June 2007 and December 2007 meetings, the Committee chair approved filling nine magistrate judge position vacancies, and, at its December 2007 meeting, the full Committee determined that four magistrate judge position vacancies should be filled. The Committee discussed a problem identified in the FBI background investigation procedure required for all magistrate judge selectees and voted to advise the FBI to include in its investigation instructions a statement that nothing in the instructions should be construed as requiring the selectee to provide names of prosecutors, law enforcement personnel, or others in particular positions, even where the selectee knows no such individuals. The Committee voted not to recommend a change in the regulation that limits credit for law clerk service to two years in determining the five-year active practice of law requirement for selection as a magistrate judge.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it approved for publication proposed amendments to Appellate Rule 29; Bankruptcy Rules 1007, 1019, 4004, and 7001; and Criminal Rules 5, 12.3,

and 21. The amendments are expected to be published for comment in August 2008. The Advisory Committees on Appellate, Bankruptcy, Civil, and Criminal Rules are reviewing comments to 91 rules amendments published in August 2007, which are intended to simplify and reduce inconsistencies in the computation of time periods under the procedural rules and would extend virtually all short time deadlines under the rules to account for elimination of weekends and holidays in computing relevant time periods.

COMMITTEE ON SPACE AND FACILITIES

ASSET MANAGEMENT PLANNING

In March 2006, the Judicial Conference approved, in concept, asset management planning (AMP) as an objective methodology to enhance the judiciary's long-range facilities planning process and as the new methodology for scoring and placing courthouse projects on a five-year courthouse project plan (JCUS-MAR 06, p. 25). Asset management planning identifies the costs and benefits of alternative space housing strategies to determine the best strategy to meet a district's or circuit's current and future operational needs. At this session the Committee recommended that the Conference approve the nine key features of the AMP methodology and delegate to the Committee the authority to establish and amend the business rules that will govern the AMP methodology. The Conference adopted the Committee's recommendation.

BUILDING MANAGEMENT DELEGATION PROGRAM

In September 2005, the Judicial Conference determined to end the judiciary's participation in a building management delegation program under which two district courts had assumed from the General Services Administration (GSA) management responsibilities for certain court facilities (JCUS-SEP 05, p. 41). At this session, the Conference, on recommendation of the Committee, agreed to rescind its decision to terminate the judiciary's participation in GSA's building delegation program only for the Hugo L. Black Courthouse in Birmingham, Alabama, with the understanding that (a) annual costs incurred by the judiciary will not exceed those appraised operation costs estimated by GSA; and (b) in the event of a catastrophic event or natural disaster warranting repair to the building, the management of the building will

be returned to GSA if funding cannot be obtained by the judiciary to repair the facility.

EXCEPTIONS TO THE *U.S. COURTS DESIGN GUIDE*

On July 19, 2006, the House Committee on Transportation and Infrastructure passed a resolution that, among other things, requires the judiciary to provide GSA with a list of each exception to the *U.S. Courts Design Guide* relating to a courthouse construction project that would result in additional costs, along with a justification for the exception and a cost estimate, for GSA to submit to Congress, along with its recommendation as to whether the relevant House and Senate committees should approve the exception. Since the judiciary and GSA have not always agreed on what constitutes an exception to the *Design Guide*, the AO and GSA have worked together to identify a mutually agreeable list of exceptions, both for projects already on the Five-Year Courthouse Project Plan (plus an ongoing Los Angeles project) and for future projects. With regard to nine projects that fall into the former category, the Committee reviewed a list of exceptions identified by GSA (and in one case by the Administrative Office) and approved the list with objections noted as to those items on which the judiciary and GSA still disagree. The Committee recommended that the Judicial Conference approve the list and the objections noted to certain of those exceptions, with the understanding that the judiciary will continue to discuss these objections with GSA. The Conference adopted the Committee's recommendation.

FIVE-YEAR COURTHOUSE PROJECT PLAN

After taking into consideration the projects that received full funding in the final fiscal year 2008 appropriations bill for GSA, the Committee recommended that the Conference approve a Five-Year Courthouse Project Plan for FYs 2009-2013 that includes in the FY 2009 column of the plan the unfunded projects from 2008 plus the first two projects in terms of score from the 2009 column of the FYs 2008-2012 plan to replace the two projects funded by Congress in FY 2008. The Conference approved the Committee's recommendation.

SPECIAL PROCEEDINGS COURTROOMS

Prior to 2002, the *U.S. Courts Design Guide* permitted special proceedings courtrooms as needed if they were located at district headquarters and in a building with at least four standard courtrooms. In 2002, the Judicial Conference added language that also permitted special proceedings courtrooms for new courthouses planned with fewer than four district judge courtrooms in "states with small, widely dispersed populations" (JCUS-SEP 02, p. 64). Noting that it was difficult for GSA and the Committee to quantify population demographics objectively to determine what constitutes a state with a small, widely dispersed population, the Committee recommended that the Conference rescind its 2002 policy and that the *U.S. Courts Design Guide* policy on providing a special proceedings courtroom read as follows:

> A special proceedings courtroom shall be considered an exception if it is provided at a location other than the district headquarters or if there are fewer than four district judge courtrooms (even in a headquarters locations). Provision of more than one such courtroom in any facility is also considered an exception.

The Conference approved the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Space and Facilities reported that it updated the Conference on the status of the circuit rent budget (CRB) allotment program, noting that fiscal year 2008 is the pilot year for the program. Pursuant to the procedures established for the CRB program, the Committee considered and approved one request for chambers for a replacement judge for the Fifth Circuit Court of Appeals in Houston, Texas. The Committee also updated the Conference on the progress of the rent validation program, specifically the steps the Committee and AO are taking to ensure that the local courts are in a position to maintain the accuracy of the information upon which rent is based.

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

Special Session
June 17, 2008

The Judicial Conference of the United States convened in special session by telephone conference call on June 17, 2008, 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 participated:

First Circuit:

Chief Judge Sandra L. Lynch
Judge Ernest C. Torres,
District of Rhode Island

Second Circuit:

Chief Judge Dennis Jacobs
Chief Judge William K. Sessions III,
District of Vermont

Third Circuit:

Chief Judge Anthony J. Scirica
Chief Judge Garrett E. Brown, Jr.,
District of New Jersey

Fourth Circuit:

Chief Judge Karen J. Williams
Chief Judge James P. Jones,
Western District of Virginia

Fifth Circuit:

Chief Judge Edith Hollan Jones
Judge Sim Lake,
Southern District of Texas

Sixth Circuit:

Chief Judge Danny J. Boggs
Judge Thomas M. Rose,
Southern District of Ohio

Seventh Circuit:

Chief Judge Frank H. Easterbrook
Judge Wayne R. Andersen,
Northern District of Illinois

Eighth Circuit:

Chief Judge James B. Loken
Judge Lawrence L. Piersol,
District of South Dakota

Ninth Circuit:

Judge Charles R. Breyer,
Northern District of California

Tenth Circuit:

Chief Judge Robert H. Henry
Judge Alan B. Johnson,
District of Wyoming

Eleventh Circuit:

Chief Judge J. L. Edmondson

District of Columbia Circuit:

Chief Judge David Bryan Sentelle
Chief Judge Royce C. Lamberth,
District of Columbia

Federal Circuit:

Chief Judge Paul R. Michel

Court of International Trade:

Chief Judge Jane A. Restani

Also present for this session of the Conference were Judge Ralph K. Winter, Jr., Chair of the Committee on Judicial Conduct and Disability, and from the Administrative Office of the United States Courts (AO), James C. Duff, Director; William R. Burchill, Jr., Associate Director and General Counsel; Bret G. Saxe, Assistant General Counsel; Laura C. Minor, Assistant Director, and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat; and David A. Sellers, Assistant Director, Office of Public Affairs. Jeffrey P. Minear, Administrative Assistant to the Chief Justice, attended as well.

PROCEEDINGS UNDER THE JUDICIAL CONDUCT AND DISABILITY ACT

The Chief Justice called this special teleconference session of the Judicial Conference to consider a certificate issued on December 20, 2007, by the Judicial Council of the Fifth Circuit pursuant to 28 U.S.C. § 354(b)(2)(A), conveying a determination that Judge G. Thomas Porteous, Jr., of the United States District Court for the Eastern District of Louisiana had engaged in conduct that might constitute one or more grounds for impeachment under Article II of the United States Constitution. On February 13, 2008, this matter, *In re*: *Complaint of Judicial Misconduct against United States District Judge G. Thomas Porteous, Jr. under the Judicial Conduct and Disability Act of 1980*, was referred to the Committee on Judicial Conduct and Disability, which in June 2008 issued a report with recommendations to the Judicial

Conference, as required by the rules adopted by the Judicial Conference for processing such complaints.

In advance of the teleconference, the members of the Judicial Conference were given copies of the Judicial Conduct and Disability Committee's report and recommendations, as well as documents from the record of the proceedings before the Fifth Circuit Judicial Council. The report and recommendations included a proposed certification to the House of Representatives that consideration of impeachment may be warranted.

At the teleconference, the Chief Justice afforded each member of the Conference the opportunity to comment upon the proposed certification. After discussion and on recommendation of the Committee, the Conference agreed to certify to the House of Representatives, pursuant to 28 U.S.C. § 355(b)(1), the Conference's determination that consideration of impeachment may be warranted, to transmit to the House of Representatives records of the proceedings, and to adopt and include the following certificate:

> Pursuant to 28 U.S.C. § 355(b)(1), the Judicial Conference of the United States certifies to the House of Representatives its determination that consideration of impeachment of United States District Judge G. Thomas Porteous (E.D. La.) may be warranted. This determination is based on evidence provided in the Report by the Special Investigatory Committee to the Judicial Council of the United States Court of Appeals for the Fifth Circuit and the Report and Recommendations of the Committee on Judicial Conduct and Disability. Said certification is transmitted with the entire record of the proceeding in the Judicial Council of the Fifth Circuit and in the Judicial Conference of the United States.
>
> The determination is based on substantial evidence that:
>
> a. Judge Porteous repeatedly committed perjury by signing false financial disclosure forms under oath in violation of 18 U.S.C. § 1621. This perjury concealed the cash and things of value that he solicited and received from lawyers appearing in litigation before him. Parts F(1)(a), (2)(a), and G of Report of the Committee are incorporated by reference.

b. Judge Porteous repeatedly committed perjury by signing false statements under oath in a personal bankruptcy proceeding in violation of 18 U.S.C. §§ 152(1)-(3), 1621, as well as Canons 1 and 2A of the Code of Conduct for United States Judges. This perjury allowed him to obtain a discharge of his debts while continuing his lifestyle at the expense of his creditors. His systematic disregard of the bankruptcy court's orders also implicates 11 U.S.C. § 521(a)(3) and 18 U.S.C. § 401(1). Parts F(1)(c), (2)(c), and G of the Report of the Committee are incorporated by reference.

c. Judge Porteous wilfully and systematically concealed from litigants and the public financial transactions, including but not limited to those designated in (d), by filing false financial disclosure forms in violation of 18 U.S.C. § 1001, 5 U.S.C. App. 4 § 104, and Canon 5C(6) of the Code of Conduct for United States Judges, which require the disclosure of income, gifts, loans, and liabilities. This conduct made it impossible for litigants to seek recusal or to challenge his failure to recuse himself in cases in which lawyers who appeared before him had given him cash and other things of value and for the Fifth Circuit Judicial Council and the Judicial Conference to determine the full extent of his solicitation and receipt of such cash and things of value. Parts F(1)(a), (b), (2)(a), (b), and G of the Report of the Committee are incorporated by reference.

d. Judge Porteous violated several criminal statutes and ethical canons by presiding over *In re: Liljeberg Enters. Inc. v. Lifemark Hosps. Inc.*, No. 2:93-cv-01784, rev'd in part by 304 F.3d 410 (5th Cir. 2002). In that matter, which was tried without a jury, he denied a motion to recuse based on his relationship with lawyers in the case, in violation of 28 U.S.C. § 455 and Canons 3C(1) and 3D of the Code of Conduct for United States Judges. In denying the motion, he failed to disclose that the lawyers in question had often provided him with cash. Thereafter, while a bench verdict was pending, he solicited and received from the lawyers appearing before him illegal gratuities in the form of cash and

other things of value in violation of 18 U.S.C. § 201(c)(1)(B). This conduct, undertaken in a concealed manner, deprived the public of its right to his honest services in violation of 18 U.S.C. §§ 1341, 1343, and 1346, and constituted an abuse of his judicial office in violation of Canons 5C(1) and 5C(4) of the Code of Conduct for United States Judges. Parts F(1)(b), (2)(b), and G of the Report of the Committee are incorporated by reference.

e. Judge Porteous made false representations to gain the extension of a bank loan with the intent to defraud the bank and causing the bank to incur losses in violation of 18 U.S.C. §§ 1014 and 1344. Parts F(1)(d), (2)(d), and G of the Report of the Committee are incorporated by reference.

f. The conduct described in (a) through (e) has individually and collectively brought disrepute to the federal judiciary.

Executed this 17th day of June, 2008.

Since a certificate under 28 U.S.C. § 354(b)(2)(A) does not automatically conclude or suspend an ongoing misconduct proceeding before a judicial council, on recommendation of the Committee, the Conference also agreed to authorize the Committee to invite the Judicial Council of the Fifth Circuit to make an express decision on whether (a) to continue at this time or suspend proceedings pursuant to 28 U.S.C. § 354 regarding sanctions for misconduct by Judge Porteous under the Judicial Conduct and Disability Act; and (b) to direct that, under section 354(a)(2)(A)(i), no further cases be assigned to Judge Porteous for two years or until final action regarding impeachment and removal from office by the Congress, if earlier than two years.

Chief Justice of the United States
Presiding

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

September 16, 2008

The Judicial Conference of the United States convened in Washington, D.C., on September 16, 2008, 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 Sandra L. Lynch
Judge Ernest C. Torres,
District of Rhode Island

Second Circuit:

Chief Judge Dennis Jacobs
Chief Judge William K. Sessions III,
District of Vermont

Third Circuit:

Chief Judge Anthony J. Scirica
Chief Judge Garrett E. Brown, Jr.,
District of New Jersey

Fourth Circuit:

Chief Judge Karen J. Williams
Chief Judge James P. Jones,
Western District of Virginia

Fifth Circuit:

Chief Judge Edith Hollan Jones[1]
Judge Sim Lake,
Southern District of Texas

Sixth Circuit:

Chief Judge Danny J. Boggs
Judge Thomas M. Rose,
Southern District of Ohio

Seventh Circuit:

Chief Judge Frank H. Easterbrook
Judge Wayne R. Andersen,
Northern District of Illinois

Eighth Circuit:

Chief Judge James B. Loken
Judge Lawrence L. Piersol,
District of South Dakota

Ninth Circuit:

Judge Sidney R. Thomas[2]
Judge Charles R. Breyer,
Northern District of California

Tenth Circuit:

Chief Judge Robert H. Henry
Judge Alan B. Johnson,
District of Wyoming

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[1]Due to a weather emergency, Chief Judge Jones and Judge Lake participated by telephone.

[2]Designated by the Chief Justice.

Eleventh Circuit:

Chief Judge J. L. Edmondson
Judge Myron H. Thompson,
Middle District of Alabama

District of Columbia Circuit:

Chief Judge David Bryan Sentelle
Chief Judge Royce C. Lamberth,
District of Columbia

Federal Circuit:

Chief Judge Paul R. Michel

Court of International Trade:

Chief Judge Jane A. Restani

The following Judicial Conference committee chairs or chair substitutes attended the Conference session: Circuit Judges Arthur J. Gajarsa, Julia Smith Gibbons, Roger L. Gregory, M. Margaret McKeown, Carl E. Stewart, and Richard C. Tallman, and District Judges Joseph F. Bataillon, Julie E. Carnes, Dennis M. Cavanaugh, John Gleeson, Janet C. Hall, Robert L. Hinkle, D. Brock Hornby, Henry E. Hudson, Mark R. Kravitz, Barbara M.G. Lynn, J. Frederick Motz, Gordon J. Quist, Lee H. Rosenthal,[3] George Z. Singal, Ortrie D. Smith, Laura Taylor Swain, John R. Tunheim, and Thomas I. Vanaskie. Bankruptcy Judge David S. Kennedy and Magistrate Judge Robert B. Collings were also in attendance. Millie Adams of the Eighth Circuit represented the circuit executives.

James C. Duff, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Jill C. Sayenga, Deputy Director; William R. Burchill, Jr., Associate Director and General Counsel; Laura C. Minor, Assistant Director, and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat; Cordia

[3] Due to a weather emergency, Judge Rosenthal participated by telephone.

A. Strom, Assistant Director, Legislative Affairs; and David A. Sellers, Assistant Director, Public Affairs. District Judge Barbara Jacobs Rothstein, Director, and John S. Cooke, Deputy Director, Federal Judicial Center, and District Judge Ricardo H. Hinojosa, Chair, and Judith W. Sheon, Staff Director, United States Sentencing Commission, were in attendance at the session of the Conference, as was Jeffrey P. Minear, Administrative Assistant to the Chief Justice. Scott Harris, Supreme Court Counsel, and the 2008-2009 Supreme Court Fellows also observed the Conference proceedings.

Attorney General Michael B. Mukasey addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice. Senators Patrick Leahy, Arlen Specter, and Jeff Sessions and Representative John Conyers, Jr., spoke on matters pending in Congress of interest to the Conference.

REPORTS

Mr. Duff reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office (AO). Judge Rothstein spoke to the Conference about Federal Judicial Center (FJC) programs, and Judge Hinojosa reported on United States Sentencing Commission activities. Judge Hornby, Chair of the Committee on the Judicial Branch, presented a report on the judicial salary restoration initiative, and Judge Gibbons, Chair of the Committee on the Budget, presented a report on judiciary appropriations and other budget matters.

EXECUTIVE COMMITTEE

RESOLUTION

The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution recognizing the substantial contributions made by the Judicial Conference committee chairs whose terms of service end in 2008:

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

HONORABLE GORDON J. QUIST
Committee on Codes of Conduct

HONORABLE JOHN GLEESON
Committee on Defender Services

HONORABLE ORTRIE D. SMITH
Committee on Financial Disclosure

HONORABLE THOMAS I. VANASKIE
Committee on Information Technology

HONORABLE ROYCE C. LAMBERTH
Committee on Intercircuit Assignments

HONORABLE ROBERT H. HENRY
Committee on International Judicial Relations

HONORABLE DAVID B. SENTELLE
Committee on Judicial Security

Appointed as committee chairs by the Chief Justice of the United States, these outstanding jurists have played a vital role in the administration of the federal court system. These judges served with distinction as leaders of their Judicial Conference committees while, at the same time, continuing to perform their duties as judges in their own courts. They have set a standard of skilled leadership and earned our deep respect and sincere gratitude for their innumerable contributions. We acknowledge with appreciation their commitment and dedicated service to the Judicial Conference and to the entire federal judiciary.

SENIOR DISTRICT JUDGE PARTICIPATION IN COURT GOVERNANCE

The Court Security Improvement Act of 2007 (Pub. L. No. 110-177), enacted in January 2008, contained two provisions that expand the role in court governance of district court judges who take senior status under 28 U.S.C. § 371(b). However, the provisions differ on whether these judges must meet a workload requirement in order to exercise a statutory right to participate in the selection of magistrate judges. Noting the confusion in the

courts caused by the contradictory provisions, and the need for expeditious resolution of the discrepancy before the 110th Congress adjourns, the Committee on Court Administration and Case Management asked the Executive Committee to approve on behalf of the Conference a recommendation that the Conference seek repeal of section 504, which does not contain a workload requirement. The Executive Committee approved the recommendation. (*See also infra*, "Senior Judge Participation in Court Governance," pp. 11-12; 29-30.)

MISCELLANEOUS ACTIONS

The Executive Committee —

- Approved, on behalf of the Judicial Conference and on recommendation of the Committee on Court Administration and Case Management and the Committee on Information Technology, an annual report to Congress on deferred court compliance with section 205 of the E-Government Act of 2002, and authorized transmittal of that report to Congress as specified in the Act;

- On recommendation of the Committee on the Administration of the Magistrate Judges System and on behalf of the Conference, authorized an additional full-time and an additional part-time magistrate judge position for the District of Arizona and accelerated funding for the positions to help address a dramatic caseload increase related to enhanced immigration enforcement;

- Approved on behalf of the Conference a recommendation of the Space and Facilities Committee that the Cedar Rapids, Iowa courthouse construction project be designated a judicial space emergency and that the General Services Administration be encouraged not to expend significant money to remediate for re-occupancy by the court the old courthouse, which has been severely damaged by flooding;

- Pending congressional action on the judiciary's appropriations for the next fiscal year, approved fiscal year (FY) 2009 interim financial plans for the Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners accounts and endorsed a strategy for distributing court allotments among the court programs;

- Established a short-term ad hoc advisory committee to take the first steps in reviewing the judiciary's long-range planning process;

- Agreed to a request of the Chair of the Committee on Rules of Practice and Procedure to recommend to the Chief Justice that the Civil Rules Advisory Committee be expanded to include an additional Article III judge and that a district judge slot on the Bankruptcy Rules Advisory Committee be converted to a slot for a private-sector attorney;[4]

- Endorsed revised attorney admission fund guidelines that incorporate updates and clarifications and asked the Administrative Office to promulgate them, and referred two suggested policy changes to the guidelines to the Committee on Court Administration and Case Management for its consideration; and

- Asked the Committee on Court Administration and Case Management to take the lead, in consultation with other interested committees, on a study of the impact on court space of streamlining court operations and processes through the use of technology or other means.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it received an extensive briefing on the AO's audit and investigations responsibilities. The Committee emphasized that conducting thorough and comprehensive financial audits and ensuring that corrective actions are taken to address any noted deficiencies are critical functions of the AO. The Committee also reported that it reviewed and endorsed a proposal to revise the Administrative Office's advisory process. In addition, after reviewing nominations submitted by judges, court managers, and AO managers, the Committee selected three AO employees to receive the Leonidas Ralph Mecham Award for Exemplary Service to the Courts.

[4]The Chief Justice subsequently approved the request.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

COMMITTEE ACTIVITIES

The Bankruptcy Committee reported that it considered a recommendation of its Subcommittee on Judgeships regarding the continued need for existing bankruptcy judgeships. It also endorsed the proposed new staffing formula for bankruptcy clerks' offices approved by the Judicial Conference at this session (*see infra*, "Staffing Formulas," p. 24), and voted to recommend to the Budget Committee that funding in FY 2010 remain at the FY 2009 adjusted current services levels for the three areas within the Bankruptcy Committee's jurisdiction. In addition, the Committee received status reports from its members who serve in liaison roles to other Conference committees on law clerk recruitment, diversity, work measurement, and courtroom use study projects.

COMMITTEE ON THE BUDGET

FISCAL YEAR 2010 BUDGET REQUEST

After careful consideration of the funding levels proposed by the program committees, the Committee on the Budget recommended to the Judicial Conference a fiscal year 2010 budget request to Congress that is 7.4 percent above assumed appropriations for fiscal year 2009. This request is consistent with the budget caps approved by the Judicial Conference for the various accounts within the judiciary's budget. The Conference approved the budget request subject to amendments necessary as a result of (a) new legislation, (b) actions of the Judicial Conference, or (c) any other reason the Executive Committee considers necessary and appropriate.

CAPITAL INVESTMENT FUND

In order to provide courts with greater flexibility in the management of their resources, the Budget Committee proposed that the Judicial Conference establish a fund that would allow courts to carry forward moneys saved from a previous fiscal year to use in future years to fund major and multi-year projects. In accordance with the Committee's recommendation, the

Conference agreed to establish a Capital Investment Fund pilot program for a four-year period beginning in fiscal year 2009, subject to congressional approval, which would allow participating court units to do the following:

a. Voluntarily return funds for deposit into the Capital Investment Fund up to a maximum at any given time of $50,000;

b. Utilize funds deposited into the Capital Investment Fund in subsequent fiscal years, once the Executive Committee has approved the national Salaries and Expenses financial plan and final allotments have been transmitted to the courts; and

c. Expend funds deposited into the Capital Investment Fund specifically for, and limited to, tenant alterations, cyclical facilities maintenance, non-judicial furniture, capital goods, courtroom technology, and multi-year contracts for services that enhance major projects and acquisitions.

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it endorsed changes to the Cost Control Monitoring System, the funding formula used to issue salary allotments to the courts. These changes included updating salary baselines, modifying national average salaries for bankruptcy court and court interpreter positions, and adding a locality adjustment factor to national average salaries for courts in high-cost areas. The Committee also discussed the work measurement process used to develop court staffing formulas and endorsed updates to the information technology infrastructure and law enforcement funding formulas.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that it continues to work on revisions to the Code of Conduct for United States Judges for consideration by the Conference in March 2009. It also indicated that since its last report to the Judicial Conference in March 2008, the Committee received 39 new written inquiries and issued 37 written advisory responses. During

this period, the average response time for requests was 15 days. In addition, the Committee chair received and responded to 69 informal inquiries from colleagues, and individual Committee members responded to 278 such inquiries.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

COURTROOM USAGE STUDY

In response to a request from Congress, the Court Administration and Case Management Committee asked the Federal Judicial Center to conduct an independent and comprehensive study of courtroom use in the district courts. Based on the findings of this study, the Committee, after consultation with several other Conference committees, recommended that the Conference adopt several policy changes with regard to courtroom usage to be applied to new courthouse construction and to construction of additional courtrooms in existing buildings. After discussion and in accordance with the Committee's recommendations, the Conference agreed to —

a. Direct the Committee on Court Administration and Case Management – in consultation with the Committee on Space and Facilities – to develop appropriate regulations for the *U.S. Courts Design Guide* regarding the assignment of courtrooms for senior judges to reflect a policy that provides one courtroom for every two senior judges, recognizing that the application of this policy for some senior judges who maintain a high caseload may require closer examination and the development of a standard, objective, and narrowly tailored exemption policy.

b. Direct the Committee on Court Administration and Case Management – in consultation with the Committee on Space and Facilities and the Committee on the Administration of the Magistrate Judges System – to develop appropriate regulations for the *U.S. Courts Design Guide* to implement a courtroom sharing policy for magistrate judges, balancing the need to maintain the flexibility afforded to district courts to utilize magistrate judge resources to meet local needs with the ability to standardize space planning on a national basis, and ensuring the efficient use of courtrooms without sacrificing the availability of immediate access to a courtroom.

c. Direct the Committee on Court Administration and Case Management – in consultation with the Committee on Space and Facilities – to assess the feasibility of, and to develop an appropriate policy implementing, courtroom sharing among non-senior district judges in large courthouses (i.e., courthouses with more than ten non-senior district judges).

d. Direct the Committee on Court Administration and Case Management to study the usage of bankruptcy courtrooms and, if usage levels so indicate, develop – in consultation with the Committee on Space and Facilities and the Committee on the Administration of the Bankruptcy System – an appropriate sharing policy for bankruptcy courtrooms.

e. Adopt the proposed "Report on the Usage of Federal District Court Courtrooms" as the position of the Conference and transmit it, in conjunction with the Federal Judicial Center's study on courtroom use, to the House Committee on Transportation and Infrastructure's Subcommittee on Economic Development, Public Buildings and Emergency Management, as an explanation of the Conference's views on the FJC's study.

SENIOR DISTRICT JUDGE PARTICIPATION IN COURT GOVERNANCE

As previously noted (*see supra*, "Senior District Judge Participation in Court Governance," pp. 5-6), the Court Security Improvement Act of 2007 contains contradictory provisions relating to the statutory right of district judges who take senior status under 28 U.S.C. § 371(b) to participate in the selection of magistrate judges. Under section 503 of that Act, these judges may elect to participate in magistrate judge selection if in the preceding calendar year they performed an amount of work equal to or greater than the amount of work an average judge in active service on that court would perform in six months. Section 504 authorizes senior district judges to participate in the appointment of magistrate judges without reference to a workload requirement. As also noted *supra*, the Executive Committee authorized seeking legislation to repeal section 504, which does not include a workload requirement. To assist the courts in implementing the Act despite the conflicting provisions, the Conference agreed to issue the following

guidance recommended by the Court Administration and Case Management Committee:

a. That the 50 percent workload requirement for senior judges set forth in section 503 should apply to governance activities (including appointing magistrate judges) while legislative repeal of section 504 is being sought; and

b. That the 50 percent workload requirement should be based on the amount of work actually performed by a senior judge within the district, but that courts, at their discretion, may include work performed by the senior judge outside the district to assist courts in need.

See also infra, "Senior District Judge Participation in Court Governance," pp. 29-30.

MISCELLANEOUS FEES

In March 2008, the Judicial Conference amended the Bankruptcy Court Miscellaneous Fee Schedule to clarify and make stylistic changes to fee items to comport with current editorial standards. No fee amounts were changed. At this session, on recommendation of the Committee, the Conference approved similar technical and style revisions to the Court of Appeals Miscellaneous Fee Schedule and the District Court Miscellaneous Fee Schedule, which now read as follows:

Court of Appeals Miscellaneous Fee Schedule
(Issued in accordance with 28 U.S.C. § 1913)

The fees included in the Court of Appeals Miscellaneous Fee Schedule are to be charged for services provided by the courts of appeals.

- The United States should not be charged fees under this schedule, except as prescribed in Items 2, 4, and 5 when the information requested is available through remote electronic access.

- Federal agencies or programs that are funded from judiciary appropriations (agencies, organizations, and

individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. § 3006A, and bankruptcy administrators) should not be charged any fees under this schedule.

(1) For docketing a case on appeal or review, or docketing any other proceeding, $450.

- Each party filing a notice of appeal pays a separate fee to the district court, but parties filing a joint notice of appeal pay only one fee.

- There is no docketing fee for an application for an interlocutory appeal under 28 U.S.C. § 1292(b) or other petition for permission to appeal under Fed. R. App. P. 5, unless the appeal is allowed.

- There is no docketing fee for a direct bankruptcy appeal or a direct bankruptcy cross appeal, when the fee has been collected by the bankruptcy court in accordance with item 14 of the Bankruptcy Court Miscellaneous Fee Schedule.

(2) For conducting a search of the court of appeals records, $26 per name or item searched. This fee applies to services rendered on behalf of the United States if the information requested is available through remote electronic access.

(3) For certification of any document, $9.

(4) For reproducing any document, $.50 per page. This fee applies to services rendered on behalf of the United States if the document requested is available through remote electronic access.

(5) For reproducing recordings of proceedings, regardless of the medium, $26. This fee applies to services rendered on behalf of the United States if the recording is available through remote electronic access.

(6) For reproducing the record in any appeal in which the court of appeals does not require an appendix pursuant to Fed. R. App. P. 30(f), $71.

(7) For retrieving a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, $45.

(8) For a check paid into the court that is returned for lack of funds, $45.

(9) For copies of opinions, a fee commensurate with the cost of printing, as fixed by each court.

(10) For copies of the local rules of court, a fee commensurate with the cost of distributing the copies. The court may also distribute copies of the local rules without charge.

(11) For filing:

- Any separate or joint notice of appeal or application for appeal from a bankruptcy appellate panel, $5;

- A notice of the allowance of an appeal from a bankruptcy appellate panel, $5.

(12) For counsel's requested use of the court's videoconferencing equipment in connection with each oral argument, the court may charge and collect a fee of $200 per remote location.

(13) For original admission of an attorney to practice, including a certificate of admission, $150. For a duplicate certificate of admission or certificate of good standing, $15.

District Court Miscellaneous Fee Schedule
(Issued in accordance with 28 U.S.C. § 1914)

The fees included in the District Court Miscellaneous Fee Schedule are to be charged for services provided by the district courts.

- The United States should not be charged fees under this schedule, with the exception of those specifically prescribed in Items 2, 4 and 5, when the information requested is available through remote electronic access.

- Federal agencies or programs that are funded from judiciary appropriations (agencies, organizations, and individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. § 3006A, and bankruptcy administrators) should not be charged any fees under this schedule.

(1) For filing any document that is not related to a pending case or proceeding, $39.

(2) For conducting a search of the district court records, $26 per name or item searched. This fee applies to services rendered on behalf of the United States if the information requested is available through electronic access.

(3) For certification of any document, $9. For exemplification of any document, $18.

(4) For reproducing any record or paper, $.50 per page. This fee applies to paper copies made from either: (1) original documents; or (2) microfiche or microfilm reproductions of the original records. This fee applies to services rendered on behalf of the United States if the record or paper requested is available through electronic access.

(5) For reproduction of an audio recording of a court proceeding, $26. This fee applies to services rendered

on behalf of the United States if the recording is available electronically.

(6) For each microfiche sheet of film or microfilm jacket copy of any court record, where available, $5.

(7) For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, $45.

(8) For a check paid into the court which is returned for lack of funds, $45.

(9) For an appeal to a district judge from a judgment of conviction by a magistrate judge in a misdemeanor case, $32.

(10) For original admission of an attorney to practice, including a certificate of admission, $150. For a duplicate certificate of admission or certificate of good standing, $15.

(11) For copies of the local rules of court, a fee commensurate with the cost of distributing the copies. The court may also distribute copies of the local rules without charge.

(12) For the handling of registry funds deposited with the court, the clerk shall assess a fee from interest earnings and in accordance with the detailed fee schedule issued by the Director of the Administrative Office of the United States Courts.

(13) For filing an action brought under title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, Pub. L. No. 104-114, 110 Stat. 785, $5,431. (This fee is in addition to the filing fee prescribed in 28 U.S.C. § 1914(a) for instituting any civil action other than a writ of habeas corpus.)

DISTRICT OF NORTH DAKOTA

Section 114 of title 28, United States Code, establishes the District of North Dakota as one judicial district comprised of four divisions, enumerates the counties within each division, and sets out the places of holding court for these divisions. In order for the district to have greater flexibility in adjusting the workload among the judges of the court, the Committee, at the request of the district court, recommended that the Conference seek legislation to amend 28 U.S.C. § 114 to eliminate references to the divisions and counties in the District of North Dakota, while maintaining language providing that North Dakota constitutes one judicial district and that court be held at Bismarck, Fargo, Grand Forks, and Minot. The Conference approved the Committee's recommendation.

DATA TRANSFER TO BANKRUPTCY CASE TRUSTEES

In March 1989, the Judicial Conference authorized the bulk electronic transfer of data from bankruptcy courts to the Department of Justice's Executive Office for U.S. Trustees (EOUST), with the understanding that the EOUST could not sell or otherwise distribute the data to other entities (JCUS-MAR 89, p. 20). With the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, bankruptcy case trustees must collect and report additional data from bankruptcy case files. To facilitate the work of the case trustees and at the request of the EOUST, the Conference adopted a Committee recommendation to permit the EOUST and bankruptcy administrators to transfer to trustees in bankruptcy cases (or their agents) data received from the judiciary's Case Management/Electronic Case Files (CM/ECF) system without application of the Electronic Public Access fee. Such a transfer is limited to the data that the case trustees are required to provide in final reports filed in bankruptcy cases, and the EOUST, the case trustees and their agents, and the bankruptcy administrators are not permitted to otherwise transfer or sell such data.

RECORDS DISPOSITION SCHEDULE FOR ELECTRONIC CASE FILES

Pursuant to regulations adopted by the National Archives and Records Administration (NARA) in December 2007, if an electronic record replaces

either a permanent hard copy record or a hard copy record that has both temporary and permanent elements, a previously approved hard copy permanent disposition authority may be applied to the entire electronic record (36 C.F.R. § 1228.31(b)(1)(i) and (ii)). Since all appellate case files are classified as permanent under existing records schedules, and virtually all district and bankruptcy cases contain at least one permanent element under such schedules (i.e., the docket sheet), the Committee recommended that the Conference notify NARA that the judiciary will apply the previously approved hard copy permanent disposition authority to appellate, district, and bankruptcy court electronic case file records in accordance with 36 C.F.R. § 1228.31(b)(1). The Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it considered, among other things, implementation of the Judicial Conference's access plan for electronic transcripts of court proceedings; the measures used to rank courts with respect to case processing and how more assistance could be provided to the "most congested courts"; and the future of electronic case management systems in bankruptcy and district courts. The Committee also considered and endorsed several budget items, including a fiscal year 2010 records management program funding request and a fiscal year 2010 libraries and computer-assisted legal research funding request, both of which have been provided to the Budget Committee.

COMMITTEE ON CRIMINAL LAW

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that, in coordination with the AO's Forms Working Group, it considered and approved technical revisions to several national forms (AO forms 199A, 199B, 199C, 245B, and 472) to conform to statutory amendments, new privacy requirements, and policy changes previously approved by the Conference. As part of its continuing exploration of evidence-based practices, the Committee also discussed the use of programs modeled on problem-solving courts (e.g., drug courts and diversion courts) in the federal system, paying particular attention to post-conviction reentry court programs. The Committee has asked the

Federal Judicial Center to conduct a study of existing federal programs and to report its findings at a future meeting of the Committee.

COMMITTEE ON DEFENDER SERVICES

CASE-BUDGETING PILOT PROJECT

In September 2005, the Judicial Conference approved a three-year pilot project for the Defender Services appropriation to fund a position in up to three circuits to support the case-budgeting process (JCUS-SEP 05, p. 21). Preliminary reports indicate that the case-budgeting attorneys are helping to contain costs and to improve the management of high-cost Criminal Justice Act (CJA) representations. However, in order to ensure that the project is evaluated effectively, the Committee on Defender Services recommended that the Judicial Conference extend the time period of the pilot project by one year. The Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), it approved federal defender organization FY 2009 budgets and grants totaling $518 million. The Committee also reported that it reviewed data from the first phase of an ongoing project to update a 1998 report on the cost, availability, and quality of defense representation in federal death penalty cases. In addition, the Committee received a status report on the follow-up actions from a 15-district audit of the system for processing CJA payments to panel attorneys and interpreters.

COMMITTEE ON FEDERAL-STATE JURISDICTION

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it was briefed on the work of the Ninth Circuit's Pacific Islands Committee and discussed a draft report prepared by the Government Accountability Office related to the establishment of a federal judicial presence in American Samoa. The Committee also discussed ways to more fully implement its charge to

serve as a conduit of communication between the federal and state courts and identified possible areas of federal-state cooperation that would require coordination with other Judicial Conference committees, such as working with the state courts to improve the ability of federal and state courts at the local levels to share files electronically. It continued its discussion of capital habeas corpus petitions, focusing on ways the federal and state courts can improve coordination between the two court systems related to capital litigation. The Committee also continued its review of legislation that would amend the Prison Litigation Reform Act.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that it included a self-audit function in the most recent release of the Financial Disclosure Report Software that allows filers to check their reports prior to submission and avoid inadvertent errors such as inconsistent income data and missing or incorrect codes. The use of the self-audit feature will be included in the Committee's development of a system for electronic filing and records management of reports. As of July 8, 2008, the Committee had received 3,942 financial disclosure reports and certifications for calendar year 2007, including 1,209 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 331 reports from bankruptcy judges; 519 reports from magistrate judges; and 1,883 reports from judicial employees.

COMMITTEE ON INFORMATION TECHNOLOGY

LONG RANGE PLAN FOR INFORMATION TECHNOLOGY

Pursuant to 28 U.S.C. § 612 and on recommendation of the Committee on Information Technology, the Judicial Conference approved the fiscal year 2009 update to the *Long Range Plan for Information Technology in the Federal Judiciary*. Funds for the judiciary's information technology program will be spent in accordance with this plan.

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it reviewed a status report on the information technology (IT) projects and initiatives funded through the Judiciary Information Technology Fund and asked that the information be made available to the court community on the J-Net. The Committee also reviewed and endorsed revisions to the IT infrastructure formula used to provide IT funds to the courts and agreed that an IT-related component of the existing law enforcement formula should be established beginning in fiscal year 2009. The Committee asked the Administrative Office to work with two courts that have developed calendaring systems to provide national support for those systems. The Committee received information about, and approved implementation of, port-to-port encryption of e-mail on the judiciary's data communications network.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that 79 intercircuit assignments were undertaken by 61 Article III judges from January 1, 2008 to June 30, 2008. The Committee recommended to the Chief Justice changes to the Guidelines for Intercircuit Assignments (including changes to the operating procedures) and agreed to distribute a revised questionnaire to all Article III judges in order to update the Committee's roster of judges willing to take intercircuit assignments. To increase awareness and facilitate the use of visiting judges, the Committee continued to disseminate information about intercircuit assignments and aided courts requesting assistance by identifying and obtaining judges willing to take assignments.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its involvement in rule of law and judicial reform activities throughout the world. The U.S. State Department, the United States Agency for International Development, and the U.S. Department of Justice Overseas Prosecutorial

Development and Training Office reported about the progress of rule of law efforts. A special presentation by the World Bank's Lead Public Sector Specialist for the Europe and Central Asia Region focused on the Bank's support for justice sector reform in 17 countries in Europe and Central Asia, including the Russian Federation, Croatia, and Bulgaria.

COMMITTEE ON THE JUDICIAL BRANCH

JUDICIAL SURVIVORS' ANNUITIES SYSTEM

In March 2008, after considering a study conducted by the Administrative Office on the Judicial Survivors' Annuities System (JSAS) coverage and cost, the Conference determined to seek legislation authorizing a one-time open season for judges who previously opted not to enroll in JSAS, with certain conditions. The JSAS study had also examined a September 1990 position of the Judicial Conference (JCUS-SEP 90, p. 85; *see also* JCUS-MAR 91, p. 19) to seek legislation allowing survivors of judicial officers to continue Federal Employees Health Benefits (FEHB) program enrollment regardless of whether the judicial officer participated in JSAS. At this session the Committee recommended that, in light of the Conference's endorsement of an open season to enroll in JSAS, the Conference should rescind its September 1990/March 1991 position supporting legislation to allow a federal judge's survivors to continue FEHB program enrollment whether or not the judge participated in JSAS. The Conference adopted the Committee's recommendation.

JUDGES' TRAVEL REGULATIONS

Meetings with Governmental Agencies and Associations. On recommendation of the Committee on the Judicial Branch, the Judicial Conference amended section B.3. of the Travel Regulations for Justices and Judges to clarify and simplify the procedure for approving judges' attendance at governmental meetings that are held within the geographic boundaries of a court. Also on the Committee's recommendation, the Conference clarified that portion of section B.3. pertaining to meetings of non-governmental organizations to substitute the phrase "colleges and universities, schools" for the terms "educational institutes" and "educational institutions" to clarify which organizations were intended to be covered in that section.

Security-Related Travel. On recommendation of the Committee, the Judicial Conference approved an amendment to section B.3. of the judges' travel regulations to specifically authorize reimbursement for judges and their dependents for the expenses of security-related travel.

Travel Interruptions. The Committee recommended and the Conference approved an amendment to section A.3. of the judges' travel regulations to expressly authorize reimbursement of judges for expenses of transportation, lodging, meals, and incidentals that may result from the judges' inability to complete their official travel due to illness or injury.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it continues to give high priority to securing the enactment of judicial salary restoration legislation and a 2009 Employment Cost Index pay adjustment for judges. The Committee also devoted considerable attention to benefits matters. In addition, the Committee continues to work closely with the Freedom Forum's First Amendment Center on planning and conducting regional programs for judges and journalists.

COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY

COMMITTEE ACTIVITIES

The Committee on Judicial Conduct and Disability reported that it adopted a uniform docket numbering scheme for judicial conduct and disability complaints, as required under Rule 8(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Related efforts now proceeding under the Committee's direction include (a) developing a process to monitor activity under the Judicial Conduct and Disability Act and the Rules for Judicial-Conduct and Judicial-Disability Proceedings; (b) assessing the Rules, after initial experience, for whether they may need to be adjusted; (c) preparing online resource materials, including a compendium of authorities; (d) responding to courts' inquiries; and (e) developing a new online system for the gathering and reporting of statistical data on complaints under the Act and Rules.

COMMITTEE ON JUDICIAL RESOURCES

STAFFING FORMULAS

Based on rigorous work measurement studies conducted by the Administrative Office, the Committee on Judicial Resources recommended, and the Judicial Conference approved, new staffing formulas for the offices of bankruptcy clerks, circuit librarians, conference attorneys, and circuit executives, for implementation in fiscal year 2009. The new formula for bankruptcy clerks' offices represents the first systematic adjustment to the method for estimating bankruptcy staffing needs since the Bankruptcy Abuse Prevention and Consumer Protection Act's impact on workload became apparent. The new formulas for the appellate court and circuit offices are the first adjustments to these offices' staffing formulas since fiscal year 2001.

TWO-PERCENT PRODUCTIVITY ADJUSTMENT

Included among the cost-containment strategies approved by the Judicial Conference in September 2004 (*see* JCUS-SEP 04, pp. 5-7) was a two-percent productivity adjustment to be applied cumulatively (through fiscal year 2009) to certain outdated staffing formulas. However, citing to a confluence of factors, including increased work requirements in appellate court and district clerks' offices, combined with possible decreased court allotments resulting from implementation of new salary funding formulas, the Committee concluded that imposition of a two-percent productivity adjustment in fiscal year 2009 might create salary shortfalls that would be difficult for some offices to sustain. The Committee therefore recommended that the Conference eliminate the additional two-percent productivity adjustment in fiscal year 2009 for the offices of the appellate clerks, staff attorneys, bankruptcy appellate panel clerks, and district clerks. The Conference adopted the Committee's recommendation.

PRO SE LAW CLERKS

In March 2002, the Judicial Conference adopted a stabilization policy for allocating pro se law clerk positions whereby the number of allocated positions in a court would only be reduced if the number of prisoner filings did not support those positions under the staffing formula for two years in a row (JCUS-MAR 02, p. 22). In March 2007, the Conference temporarily extended the stabilization period to three years, beginning in fiscal year 2008,

with the two-year period to resume once a new pro se law clerk staffing formula was in place (JCUS-MAR 07, p. 24). Noting that a new staffing formula will not be available until fiscal year 2010 and that some districts with over-strength positions might have to downsize only to rehire after the new formula is developed, the Committee recommended that the Conference approve the retention of encumbered over-strength pro se law clerk positions through fiscal year 2009, with the understanding that, in accordance with the pro se law clerk stabilization policy, if an over-strength position is vacated, a court would not be authorized to refill that vacancy. The Conference approved the Committee's recommendation.

COURT PERSONNEL SYSTEM

Benchmarks. As part of the judiciary's long-term cost-containment strategy approved by the Judicial Conference in September 2004, the Judicial Resources Committee conducted a court compensation study to explore fair and reasonable opportunities to limit future compensation costs. Based on that study, in September 2007, the Conference approved a Committee recommendation to replace existing Court Personnel System (CPS) benchmarks with new benchmarks that more accurately reflect current job duties and responsibilities performed in the courts (JCUS-SEP 07, pp. 24-25). To implement this recommendation, at this session, the Committee recommended, and the Conference approved, effective January 5, 2009, titles and classification levels for forty new benchmarks, updated minimum qualification requirements, and a revised procedure for classifying CPS supervisory and managerial positions. Further, with regard to on-board employees, the Conference agreed that CPS employees will remain in their current classifications unless the court takes a personnel action that changes an individual employee's position, or the court decides to apply the new benchmarks to the entire court unit or a portion of the court unit where all employees are performing a particular function, e.g., all financial positions. In the latter case, the decision to apply the new benchmarks to current employees must be made in a consistent, nondiscriminatory manner based on sound business principles.

CPS Salary Progression Policy. In September 2007, the Judicial Conference agreed to modify the CPS salary progression policy to reduce the number of automatic default step increases and to give unit executives greater discretion to grant step increases based upon each employee's overall contribution. It also directed that national performance guidelines be developed to assist executives in making decisions about pay increases

(JCUS-SEP 07, p. 25). At this session, the Committee recommended that the Conference approve performance management guidelines for local implementation along the lines set forth by the Committee. However, noting that the October 2009 date envisioned for full implementation of the new policy was unrealistic, it also recommended modification of the implementation time line to delay pay linkage until October 2010, while maintaining October 2009 as the date for implementation of the other aspects of the policy. In addition, the Committee determined that three existing salary progression policies had been superseded or were inconsistent with the new salary progression policy. Consequently, it recommended that the pay-for-performance policy adopted by the Judicial Conference for CPS employees in 1996 be eliminated, and that the quality-step-increase program (which has been suspended since 1993) and the longevity bonus program (which has been suspended since 2005) be eliminated for CPS and Judiciary Salary Plan (JSP) employees. The Conference adopted the Committee's recommendations.

STAFF COURT INTERPRETER POSITIONS

Conversion from CPS to JSP. Noting that staff court interpreter positions are highly specialized and present unique challenges for fitting into the new CPS salary progression policy due to the difficulties in making meaningful distinctions on the fundamental elements of the interpreters' work, the Committee recommended that the Conference approve the conversion of the staff court interpreter position from the CPS to the JSP, effective October 13, 2008. It also recommended the creation of a JSP landmark standard with a target grade of JSP-14 for all staff court interpreter positions and the establishment of a grade JSP-15 for supervisory court interpreter positions. The Conference adopted the Committee's recommendations.

Additional Positions. Using established criteria, the Committee recommended, and the Conference approved, one additional Spanish staff court interpreter position each for the Central District of California, the District of New Mexico, the District of Oregon, and the Western District of Texas, for fiscal year 2010, based on the Spanish language interpreting workloads in these courts. Also on the Committee's recommendation, the Conference declined to authorize one Spanish staff court interpreter position for the District of Connecticut. Accelerated funding in fiscal year 2009 was authorized for the additional Spanish staff court interpreter positions approved for the District of New Mexico and the Western District of Texas.

TYPE II DEPUTIES

Ninth Circuit Court of Appeals. Courts of appeals are permitted to have only one Type II deputy position per unit at a JSP-16 level unless the Judicial Conference finds that an additional Type II deputy is needed based on unique circumstances and individual justification provided by the court. Citing extraordinary circumstances in the Ninth Circuit Court of Appeals, the Committee recommended that the Conference authorize a second JSP-16 Type II chief deputy clerk position for the appellate clerk's office in that circuit, using existing decentralized funding. The Conference adopted the Committee's recommendation.

Courts of Appeals Generally. Since September 2004, district and bankruptcy courts with 10 or more judgeships may obtain a second Type II deputy position, funded with the court's decentralized funds, upon notification to the Administrative Office, and without Conference approval. Noting that the complexity and scope of responsibilities assigned to appellate court unit executives have changed substantially over the years, especially with the advent of CM/ECF, and that a policy similar to that for district courts may be appropriate for the courts of appeals, the Committee recommended that the Conference adopt a policy authorizing any clerk's office in an appellate court with 12 or more authorized judgeships and a minimum staffing level of 75 full-time equivalents (validated by the appellate clerk's office staffing formula at 100 percent) to establish a second JSP-16 Type II chief deputy clerk position, using its decentralized funds, upon notification to the Administrative Office. The Conference approved the Committee's recommendation

ALTERNATIVE DISPUTE RESOLUTION

In March 1998, the Judicial Conference approved "basic" and "robust" staffing factors for clerk's office positions performing duties related to alternative dispute resolution (ADR) (JCUS-MAR 98, pp. 20-21). The basic staffing factor was intended to apply to most district courts' ADR programs, while the robust factor was intended for a limited number of courts with extensive ADR programs. Based on the number of cases participating in the ADR program in the Northern District of Ohio, and on the number of hours spent processing these cases, the Committee recommended that the Conference approve that district's request for application of the robust staffing factor for clerk's office positions with duties related to ADR. The Conference adopted the Committee's recommendation.

ENTRY AND EXIT SURVEYS

In order to assist the judiciary in recruiting and retaining highly qualified employees, the Committee recommended that the Conference approve the concept and implementation of detailed national entry and exit surveys for employees in the courts and federal public defender organizations, and encourage their use. The Conference adopted the Committee's recommendation.

HUMAN RESOURCES LEGISLATION

On recommendation of the Committee, the Conference agreed to express to Congress the support of the judiciary for the concepts contained in bills pending in the 110th Congress that would provide paid parental leave (H.R. 5781), clarify the method for computing annuities under the Civil Service Retirement System that are based on part-time service (H.R. 2780), and amend title 5, United States Code, to facilitate the re-employment of annuitants (H.R. 3579).

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it recommended to the Committee on the Budget an FY 2010 budget request of 7.5 percent above the FY 2009 baseline for that portion of the budget over which the Judicial Resources Committee exercises responsibility. This request is within the guidelines issued by the Budget Committee chair, but is about $20 million short of the fiscal year 2010 total requirements level. To resolve the shortfall, the Judicial Resources Committee recommended a proportionate reduction of authorized work units based on each program area's FY 2010 budget request. In addition, the Committee, in consultation with the Criminal Law Committee, endorsed a one-year moratorium on adopting new staffing formulas for probation and pretrial services offices, to allow the Administrative Office the opportunity to correlate work measurement results and case-weighting factors. The Committee also postponed consideration of revisions to the court reporter salary structure until December 2008 in order to obtain a broader view of the court reporter salary situation.

COMMITTEE ON JUDICIAL SECURITY

COMMITTEE ACTIVITIES

The Committee on Judicial Security reported that it began work with the Defender Services and Criminal Law Committees to identify and resolve issues arising from housing pretrial detainees in jail facilities located great distances from the courthouse. Members and staff from the three committees met in July 2008 with representatives from the U.S. Marshals Service, the Federal Bureau of Prisons, the Office of the Federal Detention Trustee, and other criminal justice system staff to establish the scope of the problem. The Committee was also briefed on the status of the perimeter security pilot program at seven courthouses and considered the results of a survey of judges on court and judicial security.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

SENIOR DISTRICT JUDGE PARTICIPATION IN COURT GOVERNANCE

As noted *supra* (*see* "Senior Judge Participation in Court Governance," pp. 5-6; 11-12), sections 503 and 504 of the Court Security Improvement Act of 2007 are inconsistent on the issue of whether senior district judges must meet a workload requirement in order to exercise a statutory right to participate in the selection and appointment of United States magistrate judges. Since, notwithstanding this inconsistency, at least some senior district judges are now statutorily eligible to participate in the appointment process, the Magistrate Judges Committee recommended, and the Conference agreed, that the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges be amended to (a) remove the word "active" from "active district judges" in sections 3.01, 3.02(a), 4.01, 6.02, and 6.03(c) (those provisions addressing who participates in the appointment process) and (b) add the following language to the introduction:

> References to district judges in sections 3.01, 3.02(a), 4.01, 6.02, and 6.03(c) of these regulations include all active district judges and, as determined by the court, either all senior judges or those senior judges who performed in the preceding calendar

year an amount of work equal to or greater than the amount of work an average judge in active service on that court would perform in six months, and who elect to exercise such powers. [Ed. Note: There is a conflict in the law as it relates to senior judges voting on the appointment of magistrate judges. *See* 28 U.S.C. §§ 296 and 631(a), as amended January 7, 2008. The Executive Committee, on behalf of the Judicial Conference, is seeking the repeal of Section 504 of the Court Security Improvement Act of 2007, which amended 28 U.S.C. § 631(a) to allow all senior judges to participate in the appointment of magistrate judges.]

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee on the Administration of the Magistrate Judges System and the recommendations of the Director of the Administrative Office, the district courts, and the judicial councils of the circuits, the Judicial Conference approved the following changes in the number, salaries, locations, and arrangements for full-time and part-time magistrate judge positions. *See also* "Miscellaneous Actions," p. 6. Changes with a budgetary impact are to be effective when appropriated funds are available.

SECOND CIRCUIT

Eastern District of New York

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

District of Vermont

Made no change in the location or arrangement of the magistrate judge position in the district.

THIRD CIRCUIT

District of New Jersey

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

2. Authorized an additional full-time magistrate judge position at Trenton; and

3. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

Middle District of Pennsylvania

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

2. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

FOURTH CIRCUIT

District of Maryland

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

Western District of Virginia

1. Increased the salary of the part-time magistrate judge position at Harrisonburg from Level 4 ($39,227 per annum) to Level 1 ($71,919 per annum); and

2. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

FIFTH CIRCUIT

Northern District of Mississippi

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Eastern District of Texas

1. Authorized an additional full-time magistrate judge position for the district, to be located at Sherman;

2. Redesignated the full-time magistrate judge position at Sherman as Sherman or Plano; and

3. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

SIXTH CIRCUIT

Eastern District of Kentucky

1. Redesignated the full-time magistrate judge position at Ashland as Pikeville or Ashland; and

2. Authorized the full-time magistrate judge position at Pikeville or Ashland to serve in the adjoining Western District of Virginia and the adjoining Eastern District of Tennessee.

Eastern District of Tennessee

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Western District of Tennessee

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

2. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

SEVENTH CIRCUIT

Southern District of Indiana

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

Eastern District of Wisconsin

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

EIGHTH CIRCUIT

Western District of Arkansas

1. Authorized an additional full-time magistrate judge position for the court, to be located at Fayetteville;

2. Discontinued the part-time magistrate judge position at Harrison; and

3. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

District of South Dakota

Increased the salary of the part-time magistrate judge position at Aberdeen from Level 6 ($13,073 per annum) to Level 4 ($39,227 per annum).

ELEVENTH CIRCUIT

Middle District of Georgia

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

ACCELERATED FUNDING

On recommendation of the Committee, the Judicial Conference agreed to designate for accelerated funding in fiscal year 2009 the new full-time magistrate judge positions at Camden and Trenton in the District of New Jersey; Harrisburg in the Middle District of Pennsylvania; Sherman in the Eastern District of Texas; Memphis in the Western District of Tennessee; and Fayetteville in the Western District of Arkansas.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that it asked the Executive Committee to authorize, on behalf of the Judicial Conference and on an expedited basis, one new full-time and one new part-time magistrate judge position for the District of Arizona and accelerated

funding for the new positions effective immediately. The Executive Committee approved the recommendations (*see supra*, "Miscellaneous Actions," p. 6). Pursuant to the September 2004 Judicial Conference policy regarding the review of magistrate judge position vacancies (JCUS-SEP 04, p. 26), during the period between the Committee's December 2007 and June 2008 meetings, the Committee chair approved filling eight full-time and four part-time magistrate judge position vacancies. At its June 2008 meeting, the Committee decided to defer until December 2008 decisions on two courts' requests to fill vacancies in magistrate judge positions so that the Committee could have the benefit of additional information provided by district-wide reviews of the courts.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

TIME COMPUTATION PROJECT

Rules Amendments. The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to 91 time-counting provisions in the Federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure to simplify and reduce inconsistencies in the computation of time periods under the procedural rules. The proposed new rules adopt a "days-are-days" approach to computing time periods, i.e., intermediate weekends and holidays and not just work days are counted regardless of the length of the specified period. To further simplify time-counting, most periods of less than 30 days would be changed to 7, 14, 21, and 28-day periods wherever possible so that deadlines usually fall on weekdays. To account for the effect of including intermediate weekends and holidays in calculating time periods, the proposed amendments would also extend short time deadlines. The Judicial Conference approved the amendments and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

Statutory Amendments. The time-computation methodology used in the federal procedural rules applies to time periods set in statutes that affect court proceedings, unless the statutes themselves specify how to compute time. If the proposed rules amendments discussed above are adopted, they would have the effect of shortening statutory time periods because intermediate weekends and holidays would no longer be excluded. In order to accommodate the changes that would result from the proposed amendments, the Committee recommended that the Conference seek legislation to adjust the

time periods in 29 statutory provisions affecting court proceedings. The Conference adopted the Committee's recommendation.

FEDERAL RULES OF APPELLATE PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Appellate Rules 4 (Appeal as of Right — When Taken), 22 (Habeas Corpus and Section 2255 Proceedings), and 26 (Computing and Extending Time), and proposed new Rule 12.1 (Remand After an Indicative Ruling by the District Court on a Motion for Relief That is Barred by a Pending Appeal), together with Committee Notes explaining their purpose and intent. The Judicial Conference approved the amendments and new rule and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law. *See also supra*, "Time Computation Project," p. 34.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 2016 (Compensation for Services Rendered and Reimbursement of Expenses), 4008 (Filing of Reaffirmation Agreement; Statement in Support of Reaffirmation Agreement), 7052 (Findings by the Court), 9006 (Time), 9015 (Jury Trials), 9021 (Entry of Judgment), 9023 (New Trials; Amendment of Judgments), and proposed new Rule 7058 (Entering Judgment in Adversary Proceeding), together with Committee Notes explaining their purpose and intent. Many of these changes are technical or conforming in nature. The Judicial Conference approved the proposed amendments and new rules and authorized their transmission to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law. *See also supra*, "Time Computation Project," p. 34.

The Committee also submitted to the Judicial Conference proposed revisions to Bankruptcy Official Forms 8, 9F, 10, 23, and Exhibit D to Official Form 1, and proposed new Official Form 27. The Judicial Conference approved the revised forms to take effect on December 1, 2008, with the exception of new Official Form 27, which will take effect on December 1,

2009, to coincide with the anticipated effective date of the proposed amendment to Bankruptcy Rule 4008.

FEDERAL RULES OF CIVIL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Civil Rules 13 (Counterclaim and Crossclaim), 15 (Amended and Supplemental Pleadings), 48 (Number of Jurors; Verdict), and 81 (Applicability of the Rules in General; Removed Actions), and proposed new Rule 62.1 (Indicative Ruling on a Motion for Relief That is Barred by a Pending Appeal), together with Committee Notes explaining their purpose and intent. The Judicial Conference approved the proposed amendments and new rule and authorized their transmittal to the Supreme Court with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law. *See also supra*, "Time Computation Project," p. 34.

FEDERAL RULES OF CRIMINAL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Criminal Rules 7 (The Indictment and the Information), 32 (Sentencing and Judgment), 32.2 (Criminal Forfeiture), and 41 (Search and Seizure) and Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts[5] and of the Rules Governing Section 2255 Proceedings for the United States District Courts, together with Committee Notes explaining their purpose and intent. The Judicial Conference approved the amendments and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law. *See also supra*, "Time Computation Project," p. 34.

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it approved publishing for public comment proposed amendments to Appellate

[5]Rule 11 of the Rules Governing Section 2254 Cases was amended by renumbering existing Rule 11 as Rule 12 and substituting new language in Rule 11.

Rules 1 and 29, and Appellate Form 4; Bankruptcy Rules 1007, 1014, 1015, 1018, 1019, 4004, 7001, and 9001, and proposed new Rules 1004.2 and 5012; Civil Rules 26 and 56; Criminal Rules 5, 12.3, 15, 21, and 32.1; and Evidence Rule 804. The comment period expires on February 17, 2009. Publication of proposed restyled Evidence Rules 101-415 has been deferred until the entire Federal Rules of Evidence have been approved for publication.

COMMITTEE ON SPACE AND FACILITIES

CIRCUIT RENT BUDGET ALLOTMENTS - COMPONENT B PROJECTS

Procedure. In September 2007, the Judicial Conference adopted a circuit rent budget allotment methodology that divides the judiciary's rent bill into three components (JCUS-SEP 07, pp. 36-37). "Component B" of the rent bill funds newly constructed courthouses or annexes, build-to-suit lease projects, requests for General Services Administration (GSA) feasibility studies, and prospectus-level repair and alteration projects (which require Committee and Conference approval), as well as necessary chambers and courtrooms for judges taking senior status, replacement judges, and new judgeships (which require only the approval of the Committee). At this session, on recommendation of the Committee, the Judicial Conference approved the following process for approval of Component B project requests: 1) all decisions made by the Committee on Space and Facilities' Rent Management Subcommittee will be provided to circuit judicial councils for comment prior to the full Committee's consideration of the recommendations; 2) all comments received will be provided to the full Committee; and 3) appeals of full Committee actions will be considered by the Judicial Conference.

Eastern District of Pennsylvania. The Conference adopted a recommendation of the Committee to approve, as a Component B project, a request from the Eastern District of Pennsylvania for a new build-to-suit leased courthouse in Lancaster, Pennsylvania, contingent on the district taking nine specific space actions releasing space that would offset the anticipated rent increase involved with adding the new courthouse.

COMMITTEE ACTIVITIES

The Committee on Space and Facilities reported that it endorsed the Court Administration and Case Management Committee's recommendations to the Judicial Conference with regard to the courtroom usage study (*see supra*, "Courtroom Usage Study," pp. 10-11). The Committee also directed AO staff to continue to work with GSA to reform the procurement process for build-to-suit leased courthouses.

FUNDING

All of the foregoing recommendations that require the expenditure of funds for implementation were approved by the Judicial Conference subject to the availability of funds and to whatever priorities the Conference might establish for the use of available resources.

Chief Justice of the United States
Presiding

The amount requested for GSA rent is approximately two percent below the 4.9 percent rent budget cap. In addition, in response to a request from the court in Birmingham, Alabama, the Committee agreed to consider at its December 2007 meeting whether it should ask the Conference to revisit its September 2005 decision (JCUS-SEP 05, p. 41) to terminate the judiciary's participation in the building management delegation program.

FUNDING

All of the foregoing recommendations that require the expenditure of funds for implementation were approved by the Judicial Conference subject to the availability of funds and to whatever priorities the Conference might establish for the use of available resources.

Chief Justice of the United States
Presiding

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

March 17, 2009

The Judicial Conference of the United States convened in Washington, D.C., on March 17, 2009, 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 Sandra L. Lynch
Judge Ernest C. Torres,
District of Rhode Island

Second Circuit:

Chief Judge Dennis Jacobs
Chief Judge William K. Sessions III,
District of Vermont

Third Circuit:

Chief Judge Anthony J. Scirica
Chief Judge Harvey Bartle III,
Eastern District of Pennsylvania

Fourth Circuit:

Chief Judge Karen J. Williams
Chief Judge James P. Jones,
Western District of Virginia

Fifth Circuit:

Chief Judge Edith Hollan Jones
Judge Sim Lake,
Southern District of Texas

Sixth Circuit:

Chief Judge Danny J. Boggs
Judge Thomas M. Rose,
Southern District of Ohio

Seventh Circuit:

Chief Judge Frank H. Easterbrook
Judge Wayne R. Andersen,
Northern District of Illinois

Eighth Circuit:

Chief Judge James B. Loken
Judge Lawrence L. Piersol,
District of South Dakota

Ninth Circuit:

Judge Sidney R. Thomas[1]
Judge Charles R. Breyer,
Northern District of California

Tenth Circuit:

Chief Judge Robert H. Henry
Judge Alan B. Johnson,
District of Wyoming

Eleventh Circuit:

Chief Judge J. L. Edmondson
Judge Myron H. Thompson,
Middle District of Alabama

[1]Designated by the Chief Justice.

District of Columbia Circuit:

Chief Judge David Bryan Sentelle
Chief Judge Royce C. Lamberth,
District of Columbia

Federal Circuit:

Chief Judge Paul R. Michel

Court of International Trade:

Chief Judge Jane A. Restani

The following Judicial Conference committee chairs attended the Conference session: Circuit Judges Bobby R. Baldock, Julia Smith Gibbons, Roger L. Gregory, Michael S. Kanne, M. Margaret McKeown, Carl E. Stewart, Richard C. Tallman, and John Walker, Jr., and District Judges Joseph F. Bataillon, Julie E. Carnes, Dennis M. Cavanaugh, Rosemary M. Collyer, Claire V. Eagan, Janet C. Hall, Robert L. Hinkle, D. Brock Hornby, Mark R. Kravitz, Barbara M.G. Lynn, Lee H. Rosenthal, Charles R. Simpson III, George Z. Singal, Laura Taylor Swain, and John R. Tunheim. Bankruptcy Judge David S. Kennedy and Magistrate Judge Robert B. Collings were also in attendance. Karen Greve Milton of the Second Circuit represented the circuit executives.

James C. Duff, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Jill C. Sayenga, Deputy Director; William R. Burchill, Jr., Associate Director and General Counsel; Laura C. Minor, Assistant Director, and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat; Cordia A. Strom, Assistant Director, Legislative Affairs; and David A. Sellers, Assistant Director, Public Affairs. District Judge Barbara Jacobs Rothstein and John S. Cooke, Director and Deputy Director of the Federal Judicial Center, and District Judge Ricardo H. Hinojosa and Judith W. Sheon, Chair and Staff Director of the United States Sentencing Commission, were in attendance at the session of the Conference, as was Jeffrey P. Minear, Counselor to the Chief Justice. Scott Harris, Supreme Court Counsel, and the 2008-2009 Supreme Court Fellows also observed the Conference proceedings.

Attorney General Eric Holder addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice. Senators Patrick Leahy, Arlen Specter, and Jeff Sessions and Representatives Lamar S. Smith, Henry C. Johnson,

Jr., and Howard Coble spoke on matters pending in Congress of interest to the Conference.

REPORTS

Mr. Duff reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office (AO). Judge Rothstein spoke to the Conference about Federal Judicial Center (FJC) programs, and Judge Hinojosa reported on Sentencing Commission activities. Judge Julia Smith Gibbons, Chair of the Committee on the Budget, presented a report on judiciary appropriations and other budget matters.

EXECUTIVE COMMITTEE

CONFERENCE-APPROVED LEGISLATIVE PROPOSALS

At the beginning of each biennial Congress, the committees of the Judicial Conference are asked to review all of the Conference-endorsed legislative proposals within their respective jurisdictions that have not been enacted to determine whether the judiciary should pursue or defer action on those proposals in the new Congress. At its February 2009 meeting, the Executive Committee reviewed the one outstanding legislative proposal within its own jurisdiction: establishment of a Judicial Conference Foundation to receive and expend private contributions in support of official programs (JCUS-MAR 95, p. 6). The Committee determined that there were existing mechanisms for accepting contributions to benefit the federal judicial system and there appeared to be no reason at this time for the Judicial Conference to have a separate foundation. On recommendation of the Committee, the Conference rescinded its March 1995 decision to pursue legislation to create such a foundation.

The Executive Committee also reviewed the determinations of other committees as to which legislative proposals within their jurisdictions should be pursued or deferred in the 111th Congress and decided to ask the Court Administration and Case Management Committee to revisit that committee's decision that the judiciary not pursue at this time a $10 increase in the daily juror attendance fee, which has not been raised since 1990.

BANKRUPTCY JUDGESHIPS

Vacancies. In accordance with 28 U.S.C. § 152(b)(3), the Judicial Conference conducts a biennial review of all judicial districts to assess the continuing need for authorized bankruptcy judgeships. By December 31 of each even-numbered year, the Conference must report to Congress whether any authorized bankruptcy judgeship position should be eliminated when a vacancy exists by reason of resignation, retirement, removal or death. Based on the results of the 2008 biennial review, the Committee on the Administration of the Bankruptcy System recommended that the Judicial Conference (a) recommend to Congress that no statutorily approved bankruptcy judgeship be eliminated; and (b) advise the Second, Third, Eighth, and Ninth Circuit Judicial Councils, as appropriate, that they not fill bankruptcy judgeship vacancies in the Districts of New York (Eastern), Pennsylvania (Eastern), South Dakota, Iowa (Northern), Alaska, California (Northern), California (Central), and Oregon that may occur because of death, resignation, retirement, or removal, unless there is a demonstrated need to do so, particularly if the weighted caseload per authorized judgeship, calculated without such vacant judgeship, is less than 1,000 weighted filings per judgeship. In order to meet the statutory deadline for 2008, the Executive Committee agreed to act on an expedited basis on behalf of the Conference to approve the Bankruptcy Committee's recommendations.

Additional Judgeships. The Judicial Conference also conducts a biennial survey to evaluate requests for additional bankruptcy judgeships and transmits its recommendations to Congress, which establishes the number of bankruptcy judgeships in each judicial district (28 U.S.C. § 152(b)(2)). Having completed the 2008 biennial survey in all but a handful of courts, the Bankruptcy Committee asked the Executive Committee to act on behalf of the Conference on an expedited basis to approve and transmit recommendations for additional bankruptcy judgeships to Congress. The Bankruptcy Committee recommended, and the Executive Committee approved, seeking legislation to (a) convert 22 existing temporary bankruptcy judgeships to permanent status and extend the time period for one temporary judgeship for an additional five years, and (b) authorize nine additional bankruptcy judgeships in the following districts (the numbers in parentheses are the number of judgeships recommended): Eastern and Western Districts of Arkansas (1), Middle District of Florida (1), Northern District of Georgia (2), Eastern District of Michigan (3), Northern District of Mississippi (1), and District of Nevada (1).

MISCELLANEOUS ACTIONS

The Executive Committee —

- Approved on behalf of the Conference a recommendation of the Court Administration and Case Management Committee to extend a pilot program on electronic access to digital audio recordings by one year, through December 2009, so that data from up to five additional courts could be included;

- On recommendation of the Committee on Rules of Practice and Procedure, approved on behalf of the Conference two items to take effect on December 19, 2008 to implement the National Guard and Reservists Debt Relief Act of 2008, Pub. L. No. 110-438: (a) revisions to Official Bankruptcy Form 22A and (b) distribution to the district courts of proposed Interim Bankruptcy Rule 1007-I, with a recommendation that it be adopted through a local rule or standing order;

- Approved technical adjustments to the fiscal year 2010 budget request;

- Approved final fiscal year 2009 financial plans for the Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners accounts;

- On recommendation of the Committee on Federal-State Jurisdiction and on behalf of the Conference, approved a resolution commemorating the 60th anniversary of the Conference of Chief Justices (CCJ) so that the resolution could be presented to the CCJ at its midyear meeting in January 2009;

- On recommendation of the Space and Facilities Committee, approved on behalf of the Conference a request from the Judicial Council of the District of Columbia Circuit for circuit rent budget Component B funding for replacement of existing building systems in the E. Barrett Prettyman Courthouse so that funding for the courthouse renovations project could be included in the General Services Administration Capital Construction Program for fiscal year 2011;

- In light of an increased weighted caseload in the Eastern District of Louisiana, agreed on behalf of the Conference and at the

recommendation of the Committee on Judicial Resources to rescind the Conference's March 2007 recommendation (JCUS-MAR 07, pp. 22-23) that a judgeship vacancy in that district not be filled;

- On recommendation of the Committee on the Administration of the Magistrate Judges System and on behalf of the Conference, authorized the addition of two full-time magistrate judge positions, one each for the Southern and Western Districts of Texas, and the conversion from part-time to full-time status of a magistrate judge position in the Northern District of California, along with accelerated funding for these positions, to address urgent needs in those districts;

- Approved several modifications to the sections of *The Judicial Conference of the United States and its Committees* addressing the use by Judicial Conference committees of subcommittees and approved a guide on the use of subcommittees for distribution to Conference committee chairs; and

- Approved on behalf of the Conference a resolution commemorating the fiftieth anniversary of the Judicial Conference's Committee on the Budget.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it reviewed and expressed support for various internal control and audit-related activities, including successful follow-up actions to address audit findings and plans to increase the frequency of audits of national accounts and programs if sufficient funding is available. In addition, it discussed a proposed strategic direction for the AO and ways the Committee could assist the AO in achieving its objectives. The Committee also proposed actions regarding wiretap reporting requirements.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

BANKRUPTCY ADMINISTRATOR PROGRAM

Pursuant to statute, the Judicial Conference established bankruptcy administrators in the six judicial districts in Alabama and North Carolina as independent, non-judicial officers within the judicial branch to perform essentially the same trustee and estate administration oversight tasks as those performed by United States trustees in all other districts. There are some duties bankruptcy administrators cannot perform, however, because they do not have the same statutory authority as the United States trustees. To address this discrepancy, in March 1995, the Judicial Conference agreed to seek legislation that would authorize bankruptcy administrators to appoint trustees, examiners, and committees; fix compensation and percentage fees for standing trustees; and serve as trustees, when necessary (JCUS-MAR 95, pp. 11-12). The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 has since granted additional duties and powers to the United States trustees, not all of which were also granted to bankruptcy administrators. At this session, the Committee on the Administration of the Bankruptcy System recommended that, along with the authorities already being pursued, the Judicial Conference seek legislation that would authorize, as appropriate, the additional duties and powers for bankruptcy administrators conferred on the United States trustees in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. The Conference adopted the Committee's recommendation.

OFFICIAL DUTY STATION

On the recommendation of the Bankruptcy Committee and in accordance with 28 U.S.C. § 152(b)(1), the Judicial Conference approved a request from the First Circuit Judicial Council to redesignate the official duty station of Chief Bankruptcy Judge Henry J. Boroff from Worcester to Springfield in the District of Massachusetts and to delete Springfield as an additional place of holding court in that district.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Bankruptcy System reported that it asked the Executive Committee to take emergency action on

behalf of the Judicial Conference to seek legislation regarding additional bankruptcy judgeships (*see supra* "Bankruptcy Judgeships," p. 5). In addition, the Bankruptcy Committee recommended to the Committee on the Judicial Branch that legislation be sought to amend the Article III judges' retirement program to allow credit for up to five years service as a magistrate judge or bankruptcy judge to meet the retirement program's age and service requirements (*see also* "Committee Activities," p. 31). The Committee also received updates on the work of its subcommittees on automation, estate administration, and long-range planning and status reports on the activities of the Advisory Committee on Bankruptcy Rules, the Administrative Office's Bankruptcy Judges Advisory Group, and the Federal Judicial Center.

COMMITTEE ON THE BUDGET

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it continues to be concerned about the long-term financial health of the judiciary and spent considerable time discussing internal and external actions that will impact future budgets. The Committee plans to begin consideration of revisions to the Salaries and Expenses budget cap at its July 2009 meeting, given the changed fiscal climate, and will continue to encourage the program committees of the Judicial Conference to examine ways to contain costs. Other items that were discussed included the defender services budget, a proposed tenant alterations allotment formula, and the judiciary's long-range planning process.

COMMITTEE ON CODES OF CONDUCT

CODE OF CONDUCT FOR UNITED STATES JUDGES

On recommendation of the Committee on Codes of Conduct, the Judicial Conference adopted a revised Code of Conduct for United States Judges, to be effective July 1, 2009. The revisions are intended to significantly improve and update the ethical guidance contained in the Code.

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in September 2008, the Committee received 44 new written inquiries and issued 40 written advisory responses. During this period, the average response time for requests was 16 days. In addition, the Committee chair received and responded to 93 informal inquiries from colleagues, and individual Committee members responded to 160 such inquiries.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

USE OF INTERNET MATERIALS IN OPINIONS

Concerned that internet-based materials cited in judicial opinions could easily be changed or lost if not preserved, and that hyperlinks to commercial databases in opinions might create an appearance of preference for a particular service provider, the Committee on Court Administration and Case Management recommended that the Conference approve suggested practices for courts on the use of internet citations in judicial opinions. On recommendation of the Committee, the Judicial Conference approved the following:

a. That all internet materials cited in final opinions be considered for preservation. Each judge, however, should retain the discretion to decide whether the specific cited resource should be captured and preserved.

b. That the Administrative Office work with the Committee on Court Administration and Case Management to develop guidelines to assist judges in making the determination of which citations to preserve. The guidelines will discuss considerations for citation to internet resources, criteria for evaluating whether to capture cited internet resources, the process of capturing and maintaining cited internet resources, and the use of hyperlinks to commercial databases in final opinions.

c. That chambers staff be involved in the process of preserving internet resources. This will ensure that cited internet resources are captured

and preserved at the time they are viewed and relied upon by the judge. While each chambers should determine the best method of adjusting its workflow to allow it to efficiently preserve the information it deems important, the suggested guidelines regarding the process of capturing and maintaining internet materials should be used to assist them in this process.

d. That cited and preserved internet resources be made available on a non-fee basis, as is done with final opinions in PACER and on court websites.

e. That the judiciary avoid including in final opinions working hyperlinks that lead directly to materials contained within commercial vendor databases to prevent a stated or implied endorsement or preferential treatment. To the extent that a court determines that such hyperlinks are to be used in opinions, it is recommended that an appropriate disclaimer be provided.

SEALED CASES

In order to provide the public with information regarding the existence of sealed district court cases, the Committee recommended that the Conference approve the inclusion, on CM/ECF-generated reports of cases, of the case number and generic name (e.g., "Sealed versus Sealed") for each sealed case, and that individual courts determine the additional information about sealed cases (such as initials of the assigned judge, date of filing, or number of days the case has been pending) that should be made available to the public. The Conference adopted the Committee's recommendation.

TRANSCRIPTS OF *VOIR DIRE* PROCEEDINGS

Noting that transcripts of *voir dire* proceedings often include personal, sensitive, or even embarrassing information, the Committee recommended that the Conference adopt guidance to the courts, to be used in both civil and criminal cases, on how information is elicited from prospective jurors during *voir dire*, when a *voir dire* transcript should be created, and if created, what kind of public access to the transcript should be provided. The Committee recommended that the guidance should —

a. Ask courts to examine the manner in which they conduct *voir dire* proceedings in civil and criminal cases, and suggest that judges (1) inform jurors that they have the right to approach the bench to share personal information in an on-the-record *in camera* conference with the attorneys; and (2) make efforts to limit references on the record to potential jurors' names by assigning and using numbers for each juror;

b. Remind courts of the existing judiciary policy that *voir dire* transcripts not be created unless specifically requested (*Guide to Judiciary Policies and Procedures*, Volume 6, Chapter 17, Section 17.5.3.a);

c. Ask judges to balance, once a transcript is created, the right to public access to transcripts with the jurors' right to privacy – consistent with applicable circuit case law – and, only if appropriate, to seal the transcript; and

d. Suggest that when sealing, judges consider whether to seal (1) the transcripts of the entire *voir dire* proceeding, which would be docketed separately from the rest of the trial transcript; or (2) the transcripts of the bench conferences with potential jurors, docketed separately from the rest of the transcripts of *voir dire*. The guidance should inform the courts, however, that this last option would require additional work for court reporters in creating and docketing a separate transcript of the bench conferences held during *voir dire*.

The Conference approved the Committee's recommendation.

RECORDS DISPOSITION SCHEDULES

Disposition of court records is controlled by records disposition schedules established jointly by the Judicial Conference and the National Archives and Records Administration (NARA) (28 U.S.C. § 457). As part of the judiciary's cost-containment initiative, the Committee on Court Administration and Case Management undertook a review of the records disposition schedules to determine how to reduce the fees the judiciary pays to NARA for storing records at regional Federal Records Centers (FRCs), which are interim storage facilities. Under current records disposition schedules, closed case files are generally held between 20 and 40 years at FRCs before they are either destroyed (if they are classified as temporary) or transferred to the National Archives (if they are classified as permanent), where no fees are

charged. Based on its review, and after receiving input from the Administrative Offices's appellate, bankruptcy and district clerks advisory groups, the Committee recommended that the Judicial Conference take the following actions to reduce or avoid storage time at the FRCs:

a. Approve revisions to the records disposition schedules (to be endorsed by NARA) to provide that —

(1) courts of appeals permanent records be stored at the courthouse for up to one year after the case mandate has issued, or longer, as space permits, and then be transferred to the National Archives, bypassing storage time at the FRCs;

(2) temporary bankruptcy court records that currently have a 20-year FRC retention period be destroyed 15 years after case closing;

(3) bankruptcy court permanent records be stored at the courthouse for up to one year, or longer, as space permits, and then transferred to the National Archives, bypassing storage time at the FRCs;

(4) district court temporary records be destroyed 15 years after case closing; and

(5) district court permanent records be stored at the courthouse for up to one year, or longer, as space permits, and then transferred to the FRC, with transfer to the National Archives 15 years after case closing; and

b. Through the Administrative Office, initiate action, as soon as these recommended changes have been approved, to apply the new disposition schedules to both permanent records currently at the FRCs, moving them to the National Archives, and temporary records currently stored at the FRCs.

The Conference adopted the Committee's recommendations.

ATTORNEY ADMISSIONS

On recommendation of the Committee, the Conference approved a policy requiring all courts to adopt the following two safeguards for verifying bar admission of attorneys seeking to be admitted to the court:

a. An admission form that gathers sufficient information to allow the court to verify the state bar admission status of an applicant; and

b. A procedure for verifying that the information on the forms is correct.

COURT OF FEDERAL CLAIMS MISCELLANEOUS FEE SCHEDULE

The Conference adopted a recommendation of the Committee to amend the Miscellaneous Fee Schedule for the Court of Federal Claims to include a fee of $26 for the reproduction and sale of digital audio recordings. Such a fee is already included in the fee schedules for the appellate, district, and bankruptcy courts. The following paragraph will be added to the Court's fee schedule:

> (9) For reproduction of an audio recording of a court proceeding, $26. This fee applies to services rendered on behalf of the United States, if the recording is available electronically.

COURTROOM SHARING

In September 2008, the Judicial Conference directed the Court Administration and Case Management Committee, in consultation with the Committee on Space and Facilities, to develop appropriate regulations for the *U.S. Courts Design Guide* regarding the assignment of courtrooms for senior judges to reflect a policy that provides one courtroom for every two senior judges, but that includes a standard, objective, and narrowly tailored exemption policy for some senior judges with high caseloads (JCUS-SEP 08, p. 10). At this session, with the concurrence of the Space and Facilities Committee, the Court Administration and Case Management Committee

recommended, and the Conference adopted, the following courtroom sharing policy for senior judges:

SHARING POLICY FOR SENIOR JUDGES IN NEW COURTHOUSE AND COURTROOM CONSTRUCTION

In 2008, the Judicial Conference revised its courtroom allocation planning assumptions for senior judges. The policy provides one courtroom for every two senior district judges in new courtroom construction projects. In the event this sharing arrangement would cause substantial difficulty in the effective and efficient disposition of cases, however, a court, as a whole, with the approval of its circuit judicial council, may seek an individual exemption to this sharing policy from the Judicial Conference's Space and Facilities Committee. Such exemptions should be considered the exception and not the rule.

To be considered for an exemption, a court must first show a per-active-judge caseload that, absent special circumstances, meets, if not exceeds, the standard established by the Judicial Conference for the consideration of the creation of a new judgeship.* Thereafter, a court should demonstrate that deviation from the basic sharing policy of one courtroom for two senior judges is necessary, based on the following:

a. An assessment of the number and type of courtroom events anticipated to be handled by the senior judge that would indicate that sharing a courtroom would pose a significant burden on the effective and efficient management of that judge's docket.

b. The estimated number of years the senior judge for whom an exemption is sought would need a courtroom after taking senior status, along with a description of how the district has historically utilized senior judges.

c. An assessment of the current complement of courtrooms and their projected use in the facility and throughout the district, to reaffirm the necessity of constructing an additional courtroom.

d. Whether a special proceedings, visiting judge, or other courtroom is available for the senior judge's use in the new or existing facility.

* This standard is currently 430 weighted filings per authorized district judgeship assuming the addition of a judgeship. In courts with fewer than five authorized judgeships, the standard is 500 weighted filings per existing authorized district judgeship.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it considered the future of electronic case management systems in bankruptcy and district courts and indicated its strong support for the development of new systems. It also considered a number of issues relating to case management, including assistance to congested courts, streamlining case management procedures in capital habeas corpus cases, multidistrict litigation case management, and Civil Justice Reform Act report modifications. In addition, the Committee discussed the increased number of cases with national security-related issues in the federal courts and will work with the Department of Justice, as well as judges who have handled these cases, to develop case management guidance for the courts.

COMMITTEE ON CRIMINAL LAW

STACKING OF FIREARMS COUNTS

Section 924(c) of title 18, United States Code, provides for additional mandatory minimum penalties of 5 to10 years for the use or carrying of a firearm during the commission of a crime of violence or a drug trafficking offense (and 10 to 30 years for certain types of firearms). It also provides for an enhanced penalty of 25 years, or even life imprisonment in some circumstances, for a second or subsequent conviction under the same section. However, the statute does not specify whether the enhanced penalty is triggered by conviction of a second count in the same indictment (i.e., stacking of counts), or only if the prior conviction preceded commission of the second offense, as is true for some statutes. In the case of *Deal v. United States*, 508 U.S. 129 (1993), the Supreme Court determined that two § 924(c) counts in

one indictment can trigger the second or subsequent conviction portion of the statute, resulting in a substantially longer sentence. In light of the Conference's long-standing position that mandatory minimum sentences can produce results contrary to the interests of justice, and that stacking counts compounds that risk, the Committee on Criminal Law recommended that the Conference seek an amendment to 18 U.S.C. § 924(c) to preclude the stacking of counts and make clear that additional penalties apply only when, prior to the commission of such offense, one or more convictions of such person have become final. The Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that it endorsed the use of biometric authentication technology (i.e., fingerprint readers) for automated kiosks at which standardized data will be collected from defendants and offenders reporting to their probation or pretrial services officers. The Committee also discussed the status of guidelines to assist chief probation and pretrial services officers who wish to contract or expend funds for certain reentry services as authorized by the Second Chance Act of 2007 (Pub. L. No. 110-199) and the Judicial Administration and Technical Amendments Act of 2008 (Pub. L. No. 110-406). In addition, the Committee was briefed on the results of a Federal Judicial Center study of reentry programs within the federal judiciary, and considered the relationship between reentry programs and evidence-based practices.

COMMITTEE ON DEFENDER SERVICES

CASE COMPENSATION MAXIMUMS FOR SERVICE PROVIDERS OTHER THAN COUNSEL

In March 1993, the Judicial Conference approved seeking legislation that would authorize the Conference to set case compensation maximums for Criminal Justice Act (CJA) panel attorneys and investigative, expert, and other service providers (JCUS-MAR 93, p. 27). In March 1995, the Conference reaffirmed its support for this position but also authorized seeking alternative legislative options for securing periodic adjustments of case maximums, including legislation authorizing the Conference to make immediate and periodic adjustments to the statutory maximums in proportion to CJA attorney compensation rate increases (JCUS-MAR 95, pp. 18-19). At this session, the

Committee recommended that the March 1995 position be revised to expand the options for measures by which case maximums for service providers other than counsel may be calculated. The Conference agreed to revise the position to state that immediate and automatic adjustments to the service provider maximums can be made by reference to measures such as increases to the attorney compensation rates, cumulative Employment Cost Index adjustments, or similar objective standard.

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it received a status report on the efforts of an ad hoc working group (which includes a liaison from the Committee) to address issues related to the housing of pretrial detainees in facilities located at significant distances from courthouses. In addition, in order to more effectively address workload associated with automated litigation support for federal defender organizations and Criminal Justice Act panel attorneys, the Committee authorized (subject to the availability of funding) the creation of two positions to supplement the efforts of the program's national litigation support administrator. The Committee also considered Defender Services-related legislative initiatives that it believes the judiciary should pursue in the 111th Congress.

COMMITTEE ON FEDERAL-STATE JURISDICTION

JURISDICTIONAL IMPROVEMENTS PROJECT

In September 2003, the Judicial Conference agreed to seek legislation amending 28 U.S.C. § 1446(a) to replace the specific reference to Rule 11 of the Federal Rules of Civil Procedure with a generic reference to the rules governing pleadings and motions in civil actions in federal courts to avoid confusion should the numerical order of the rules ever be changed (JCUS-SEP 03, pp. 22-23). Noting that the recent restyling of the Civil Rules maintained the continuity of the numbers and that future revisions would likely respect the integrity of the numbering as well, the Committee recommended that the Conference rescind this position, and the Conference agreed.

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it received a briefing from the Federal Judicial Center regarding prisoner litigation and discussed legislation introduced in the 110th Congress that would have amended provisions of the Prison Litigation Reform Act. The Committee also discussed ways the federal and state courts could improve coordination between the two court systems related to capital habeas corpus litigation. The Committee continued its discussion of efforts to begin a dialogue with local state-federal judicial councils to share information on issues of mutual interest. The Committee also discussed comments on the draft Federal Courts Jurisdiction and Venue Clarification Act that had been received from legal organizations and law professors.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that it continues to enhance the financial disclosure report (FDR) software, and currently is overseeing development of a system for electronic filing and records management of financial disclosure reports. Analysis of the calendar year 2007 financial disclosure reports reflects that use of the new self-audit function in the FDR software improved the quality of the reports and reduced the volume of correspondence between the Committee and filers. As of January 5, 2009, the Committee had received 4,348 financial disclosure reports and certifications for calendar year 2007, including 1,329 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 366 reports from bankruptcy judges; 572 reports from magistrate judges; and 2,081 from judicial employees.

COMMITTEE ON INFORMATION TECHNOLOGY

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it received information regarding, and expressed support for, plans to develop the next generation of the Case Management/Electronic Case Files (CM/ECF) systems

and urged that this initiative, as well as improvements to various public access systems, and continued courtroom technology allotments be kept in mind as future budget requests are developed. With respect to the Edwin L. Nelson Local Initiatives Program, the Committee made decisions on fiscal year 2009 grants, and discussed ongoing efforts to redesign the Ed's Place website so that judges, judicial assistants, clerks, and other non-technical staff could obtain information more easily on locally developed applications that meet their needs. The Committee also reviewed a draft set of guidelines that could serve as a basis for facilitating a more collaborative approach to shared application development and support in the judiciary, and discussed potential projects that could be used to test the concept.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that 97 intercircuit assignments were undertaken by 71 Article III judges from July 1, 2008 to December 31, 2008. During the full calendar year 2008, 176 intercircuit assignments were processed by the Committee and approved by the Chief Justice. To increase awareness and facilitate the use of visiting judges, the Committee continued to disseminate information about intercircuit assignments and aided courts requesting assistance by identifying and obtaining judges willing to take assignments.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its involvement in rule of law and judicial reform activities throughout the world. The Committee also discussed its continued participation in the rule of law component of the Library of Congress' Open World Program for jurists from Russia, Ukraine, Azerbaijan, Georgia, Kyrgyzstan, Moldova, Tajikistan and Turkmenistan. In addition, the Committee reported on hosting foreign delegations of jurists and judicial personnel in relation to briefings at the Administrative Office of the United States Courts, activities with agencies in the executive branch, and other rule of law programs taking place in the United States.

COMMITTEE ON THE JUDICIAL BRANCH

JUDGES' TRAVEL REGULATIONS

On recommendation of the Committee on the Judicial Branch, the Judicial Conference amended sections H.2.b. and H.2.c. of the Travel Regulations for United States Justices and Judges to clarify the circumstances under which judges are eligible for evacuation, safe haven, and other special allowances.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it continues to give high priority to securing automatic and annual cost-of-living salary adjustments for judges. The Committee also continues to devote considerable attention to benefits matters and to examining ways of improving communications with the political branches. In addition, the Committee continues to monitor the implementation of the Judicial Conference policy on privately reimbursed seminars.

COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY

COMMITTEE ACTIVITIES

The Committee on Judicial Conduct and Disability reported that it has chosen a methodology, and is now finalizing a plan, for screening of complaint-related orders to systematize its review of activity under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364. Furthermore, under the Committee's direction, two data-management measures, necessitated by last year's adoption of Rules for Judicial-Conduct and Judicial-Disability Proceedings, have been implemented: an electronic repository of the complaint-related documents that courts must now submit and new software for reporting statistics on complaints under the Act. The Committee continues to monitor action on Breyer Committee recommendations, oversee the preparation of various informational products, arrange for informational presentations to be given at programs for judges, and consider issues and inquiries regarding the Judicial Conduct and Disability Act and the Rules.

COMMITTEE ON JUDICIAL RESOURCES

ADDITIONAL ARTICLE III JUDGESHIPS

Additional Judgeships. The Committee on Judicial Resources considered requests and justifications for additional judgeships in the courts of appeals and the district courts as part of its 2009 biennial judgeship survey process. Based on its review, and after considering the views of the courts and the circuit councils, the Committee recommended that the Judicial Conference authorize transmittal to Congress of the following request: for the courts of appeals, the addition of nine permanent and three temporary judgeships, and for the district courts, the addition of 38 permanent and 13 temporary judgeships plus conversion to permanent status of five existing temporary judgeships and extension of one existing temporary judgeship for an additional five years. After discussion, the Conference adopted the Committee's recommendations, agreeing to transmit the following request to Congress ("P" denotes permanent; "T" denotes temporary; "T/P" denotes conversion of temporary to permanent; "T/E" denotes extension of temporary):

COURTS OF APPEALS

First Circuit	1P
Second Circuit	2P
Third Circuit	1P, 1T
Sixth Circuit	1P
Eighth Circuit	1T
Ninth Circuit	4P, 1T

DISTRICT COURTS

New York (Eastern)	1P, 1T
New York (Southern)	1P, 1T
New York (Western)	1P
New Jersey	1P
South Carolina	1P
Virginia (Eastern)	1T
Texas (Eastern)	1P, 1 T/P
Texas (Southern)	2P
Texas (Western)	4P
Ohio (Northern)	1T/E
Indiana (Southern)	1P

Iowa (Northern)	1T
Minnesota	1P, 1T
Missouri (Eastern)	1T/P
Nebraska	1T
Arizona	1P, 1T, 1T/P
California (Northern)	4P, 1T
California (Eastern)	4P, 1T
California (Central)	4P, 1T
Idaho	1T
Oregon	1P
Washington (Western)	1P
Colorado	1P
Kansas*	1T/P
New Mexico	1P, 1T/P
Alabama (Middle)	1T
Florida (Middle)	4P, 1T
Florida (Southern)	3P

* If the temporary judgeship lapses before it is converted, Congress would be asked for one additional permanent judgeship.

Judgeship Vacancies. As part of the biennial survey of judgeship needs, workloads in district and appellate courts with low weighted caseloads are reviewed for the purpose of determining whether to recommend to the President and Senate that an existing or future judgeship vacancy not be filled. On recommendation of the Committee, the Conference agreed to advise the President and the Senate that the existing judgeship vacancy in the District of Wyoming and the next judgeship vacancy occurring in the District of Massachusetts not be filled based on the consistently low weighted caseloads in these districts.

JUDICIARY SALARY PLAN
INITIAL PAY SETTING

The initial pay-setting rules for Court Personnel System (CPS) employees permit a court to set pay at any step within the full performance range of the appropriate classification level, at the discretion of the court, when an applicant has unusually high or unique qualifications and/or because of a special need of the court for the applicant's services. This flexibility can be applied to all candidates except for applicants from the federal judiciary,

who qualify only after a 90-day break in service. The initial pay-setting rules for non-chambers Judiciary Salary Plan (JSP) employees[2] and federal public defender organization graded positions are more complicated and place more constraints on the discretion of the court. On recommendation of the Committee, the Judicial Conference approved applying the CPS rules for initial pay setting, including the 90-day-break-in-service rule for federal judiciary applicants, to non-chambers JSP positions (excluding pro se, death penalty, and bankruptcy appellate panel law clerks) and graded federal defender organization employees, in lieu of the current salary matching rules. Pro se, death penalty, and bankruptcy appellate panel law clerks will continue to be subject to the current JSP salary matching rules.

LAW CLERK QUALIFICATION REQUIREMENTS

The current qualification standard for a law clerk to a federal judge permits granting credit for the time spent in a bar examination preparatory course, up to a maximum of six weeks, toward the one year of legal work experience that is needed to qualify for the JSP-12 grade level. Noting that a law clerk who successfully passes the bar examination through independent preparation is penalized and that there is no clear rationale for considering bar preparation as creditable experience in the practice of law, the Committee recommended that the Conference discontinue the practice of counting time spent in a bar examination preparatory course toward the legal work experience requirement for the JSP-12 grade level for law clerks. The Conference adopted the Committee's recommendation, to go into effect on August 31, 2009.

UNIT EXECUTIVE/DEPUTY DESIGNEE POSITION

In order to provide for overlap between incoming and outgoing unit executives and Type II deputies and thereby support the orderly transition of responsibilities, the Judicial Conference adopted a recommendation of the Committee to establish designee positions in the JSP subject to the following conditions:

[2]These employees include unit executives, Type II deputies, court staff law clerks, and court interpreters.

a. A designee position may be utilized for the selectee for either a unit executive or a Type II deputy position;

b. A designee position is not applicable to, or available for, candidates who are being promoted within their current court units;

c. A designee position should be established using decentralized funds. However, a unit may request supplemental funding for a period of up to 30 days for a designee position, if local funds are unavailable to fund the full period desired; and

d. A designee position may be established for a maximum period of three months regardless of the source of funding.

EMPLOYMENT OF RELATIVES

In September 2007, the Judicial Conference amended the judiciary policy on step increases for CPS employees from one based primarily on longevity to one that, beginning October 2010, will permit step increases to be granted at the discretion of the supervisor (JCUS-SEP 07, p. 25). Noting that 5 U.S.C. § 3110(b) prohibits a public official from advancing or advocating a relative for advancement, the Committee recommended that the Conference also amend its policy regarding employment of relatives in courts and federal public defender organizations to provide the following with regard to CPS positions:

a. Unit executives, managers, and supervisors may not approve a discretionary step increase or render a performance evaluation for any employee who is a relative of that unit executive, manager, or supervisor (applying the definition of "relative" in 5 U.S.C. § 3110(a)(3)); and

b. For any prospective employment or organizational changes or actions, courts may not place or retain an employee in a position within the supervisory chain of a supervisor, manager, or unit executive who is a relative of the employee.

The Conference adopted the Committee's recommendations.

RETIRED LAW ENFORCEMENT OFFICER RE-EMPLOYMENT

Under Judicial Conference policy, a retired law enforcement officer may be appointed as a re-employed annuitant for a period of up to 18 months when it is clearly demonstrated that such re-employment is justified (JCUS-MAR 59, p. 295; JCUS-MAR 79, pp. 15-16). To address a rising trend to re-employ retired law enforcement officers for multiple 18-month periods, the Judicial Conference adopted a recommendation of the Committee to amend its policy regarding re-employment of annuitants to (a) make explicit that a retired law enforcement officer may be re-employed for only a single period for a maximum of 18 months, and (b) provide that all such re-employments must meet one of the following two criteria: (1) well-qualified candidates other than the retired law enforcement officer are not available (as evidenced by the results of a vacancy announcement); or (2) the experience, knowledge, or competencies of the retired law enforcement officer are critical to the court's ability to respond to an emergency.

TELEWORK OFFICIAL DUTY STATION

Under current policy set forth in the *Guide to Judiciary Policies and Procedures*, Vol. 1, Ch. 10, Subch. 1610.1, the court, chambers, court unit, or federal public defender organization is the official duty station for teleworking employees. The Committee recommended the policy be amended to provide that the official duty station of a teleworking employee would be the court/defender organization location only where the employee was required to report to that location at least once per week on a regular and recurring basis. The telework site would be the official duty station for employees who are not so required. The Committee recommended other changes to the telework policy, including those related to reimbursement for travel from the telework site to the employing court and relocations. After discussion, the Conference recommitted the recommendations to the Committee for further consideration.

AWARD PROGRAMS

Noting that some courts are looking for ways to recognize employee accomplishments without resorting to costly cash awards, the Committee recommended that the Conference amend its employee recognition program

policy with regard to providing or paying for meals at awards programs. The Conference adopted the Committee's recommendation to amend the policy as follows:

A court may use appropriated funds —

a. For food and beverages (excluding alcohol) for an award ceremony as long as such expenditures are for the purpose of enhancing an award program and limited to reasonable amounts, not to exceed the dinner component of the meal and incidental expense allowance (under the Federal Travel Regulations) for the ceremony location, per employee attending the event;

b. To provide a meal to an employee as an informal recognition award, either alone or in conjunction with other informal or formal recognition; and

c. To pay the meal expenses of award nominees and their supervisors who are invited to attend award ceremonies sponsored by entities outside the judiciary.

FITNESS/WELLNESS PROMOTION INCENTIVES

Under 5 U.S.C. § 7901, government agencies may establish a health services program to promote and maintain the physical and mental fitness of employees. Many courts and federal defender organizations have sponsored fitness and wellness educational programs, such as smoking cessation, weight management, stress management, nutrition, walking clubs, and fitness activity challenges. Citing to potential beneficial effects of health promotion programs in the workplace, including enhanced employee productivity and reduced absenteeism, the Committee recommended that courts and federal defender organizations be authorized to use decentralized funds for the purchase of fitness/wellness-related items (limited to the Internal Revenue Service definition of *de minimis* fringe benefits) for employees who agree to participate or have participated in fitness/wellness activities, as allowed under 5 U.S.C. § 7901. The Conference adopted the Committee's recommendation.

HUMAN RESOURCES MANAGEMENT INFORMATION SYSTEM

The Human Resources Management Information System (HRMIS) has several applications that have recently been deployed or are in the process of being deployed that provide "self-service" tools for courts and federal public defender organization employees, making personnel records that had previously been available only in paper also available online. The Committee recommended that paper copies of personnel documents that are available online no longer be provided to courts, noting that universal use of online tools will generate significant cost savings. The Judicial Conference agreed that, effective six months after the HRMIS Electronic Official Personnel Folder (eOPF) application is fully deployed, paper copies of all documents filed in the eOPF, as well as leave and earnings statements, Payroll Certifying Officer reports, Notices of Health Premiums Due, Step Increase Certifications, Notifications of Leave Without Pay, and Personal Services for the National Courts reports, and any similar documents that are available online, will no longer be provided to courts, including active and senior judges, and federal public defender organizations.

JUDGE-ORDERED TRANSCRIPTS

Section 753(b) of title 28, United States Code, sets forth the duties and responsibilities of official court reporters, including the responsibility to provide certified transcripts without charge to a requesting judge. With regard to transcript requests from parties, section 753(f) provides that court reporters may charge and collect fees from parties ordering transcripts at rates prescribed by the court, subject to the approval of the Judicial Conference. The Conference has set maximum transcript rates based in part on whether the transcript is an original (currently $3.65 per page for ordinary delivery, i.e., delivery within 30 days) or a copy ($.90 per page for ordinary delivery). Questions have been raised as to whether the original or copy fee applies when a party requests a transcript that was originally produced at the request of a judge. Noting that providing a transcript to a judge is considered part of a reporter's official duties for which the reporter is paid an annual salary, the Committee agreed that only one original transcript can be produced and that all subsequent orders for the same transcript are copies for which the lower fee would apply. On recommendation of the Committee, the Conference amended its transcript fee policy to make explicit that official court reporters

may charge only copy fees for transcripts provided to parties when the original transcript was produced at the request of a judge.

COURT REPORTER TOUR OF DUTY

In September 1987, the Judicial Conference adopted a policy that required a court that places some of its reporters on a regular tour of duty (i.e., established work hours) to place all reporters in the same location on regular tours of duty. The policy allowed courts for good and sufficient reasons, when approved by their judicial councils, to exempt any reporters on staff at the time of adoption of the policy (JCUS-SEP 87, p. 63). The Southern District of Iowa, which had already exempted one of its three court reporters in Des Moines as provided for in the policy, requested an additional exemption for a second reporter, the third reporter being on a regular tour of duty. The court has indicated that the exemption would be applied to the incumbent reporter only. On recommendation of the Committee, the Conference approved the exemption for the Southern District of Iowa at its Des Moines location from the Conference's September 1987 policy.

LAW CLERK STUDENT LOANS

On recommendation of the Committee, the Judicial Conference rescinded its March 2001 position to seek legislation deferring repayment of both principal and interest on federally insured educational loans for full-time chambers law clerks during clerkships, for a period not to exceed three years of service (JCUS-MAR 01, pp. 26-27). The underlying statute providing for deferral of student loan interest has been substantially amended to eliminate occupation-specific deferrals.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it was provided with a detailed briefing on the results of an executive compensation study and will receive an analysis of the pros and cons of the recommendations in the report from a working group of judges and unit executives established to assist the Committee in evaluating the report. The Committee deferred action again on a revised pay structure for court reporters, and asked the Administrative Office to provide additional information, including a single recommended proposal. The Committee chair emphasized that increased diversity of the

judiciary's workforce is one of the most important issues confronting the Committee, and its ad hoc subcommittee on diversity presented an overview of its efforts since the last Committee meeting.

COMMITTEE ON JUDICIAL SECURITY

COMMITTEE ACTIVITIES

The Committee on Judicial Security reported that it had in-depth discussions regarding its role in overseeing the formulation and execution of the court security budget. The Committee also discussed its concerns regarding the amount of personal information about judges that is posted on courts' official external websites. The Committee will offer guidance to courts and judges on posting biographical information on court-specific websites.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

WAIVER OF MAGISTRATE JUDGE APPLICANT REQUIREMENT

On recommendation of the Committee on the Administration of the Magistrate Judges System, the Judicial Conference agreed to grant a request from the Western District of Wisconsin for a waiver of the two-year limit on credit for law clerk service that may be used toward the five-year active practice of law requirement for magistrate judge applicants under section 1.01(b)(4) of the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges. The waiver will allow the incumbent clerk of court in that district to serve as the clerk of court/magistrate judge.

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee on the Administration of the Magistrate Judges System and the recommendations of

the Director of the Administrative Office, the respective district courts, and the judicial councils of the relevant circuits, the Judicial Conference determined to —

a. Discontinue the clerk of court/magistrate judge position at Shreveport in the Western District of Louisiana effective March 15, 2009, the date of the incumbent's retirement, and make no other change in the number, locations, or arrangements of the magistrate judge positions in that district.

b. Make no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the following courts: Eastern District of North Carolina, Eastern District of Virginia, Eastern District of Arkansas, District of Montana, District of Nevada, Northern District of Oklahoma, and Southern District of Alabama.

See also supra, "Miscellaneous Actions," p. 7.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that because of an immediate need for three new full-time magistrate judge positions in the Southern and Western Districts of Texas and the Northern District of California, the Executive Committee acted on behalf of the Judicial Conference on an expedited basis to authorize those positions as well as accelerated funding, effective immediately (*see supra*, "Miscellaneous Actions," p. 7). Pursuant to the September 2004 Judicial Conference policy regarding the review of magistrate judge position vacancies (JCUS-SEP 04, p. 26), during the period between the Committee's June 2008 and December 2008 meetings the Committee chair approved filling six full-time magistrate judge position vacancies. At its December 2008 meeting, the full Committee approved filling four magistrate judge position vacancies. The Committee also agreed to reiterate its support for pursuing a proposal to provide Article III retirement credit for service as a magistrate judge or bankruptcy judge (*see also* "Committee Activities," p. 9).

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it approved for publication a proposed amendment to Bankruptcy Rule 6003 and proposed style amendments to Evidence Rules 501-706, although publication of the proposed restyled Evidence Rules will be deferred until the entire set of Federal Rules of Evidence has been restyled. The Advisory Committees on Appellate, Bankruptcy, Civil, Criminal, and Evidence Rules are reviewing comments from the public submitted on amendments proposed in August 2008 to their respective sets of rules. The proposals include amendments to Civil Rule 26 on the discovery of expert witnesses and Civil Rule 56 on summary judgment. The Advisory Committee on Civil Rules held three public hearings on those proposed amendments and heard testimony from over 50 witnesses.

COMMITTEE ON SPACE AND FACILITIES

FIVE-YEAR COURTHOUSE PROJECT PLAN FOR FYS 2010-2014

On recommendation of the Committee on Space and Facilities, the Judicial Conference approved the Five-Year Courthouse Project Plan for FYs 2010-2014, which, with one exception, moves the projects from the previous five-year plan up by one year. The exception is the deletion of the Cedar Rapids, Iowa project, which was declared a judicial space emergency in 2008 as a result of significant flood damage, and has already been funded by Congress.

TENANT ALTERATIONS FORMULA

The Committee on Space and Facilities, in consultation with the Budget Committee, recommended, and the Judicial Conference approved, a tenant alterations formula that uses rentable square footage (weighted at 50 percent) and authorized staff (weighted at 50 percent) to determine tenant alterations requirements. This formula is intended to provide a more accurate representation of the courts' tenant alterations requirements.

CIRCUIT RENT BUDGET PROGRAM - COMPONENT B PROJECTS

The circuit rent budget program, which was approved by the Judicial Conference in September 2007 (JCUS-SEP 07, pp. 36-37), divides the judiciary's rent requirements into three components (A, B, and C). "Component B" projects, which include all newly constructed courthouses or annexes, build-to-suit lease projects, requests for GSA feasibility studies, and prospectus-level repair and alteration projects, generally require Judicial Conference approval.[3] At this session, the Conference took the following actions with regard to Component B projects.

Feasibility Studies. After conducting an urgency evaluation of the 33 projects that were subject to the 2004 two-year moratorium on courtroom construction (JCUS-SEP 04, pp. 34-35), the Committee recommended that the Conference approve GSA feasibility studies for the following four projects, which were identified as the most urgent: Philadelphia, Pennsylvania; St. Thomas, U.S. Virgin Islands; Des Moines, Iowa; and Chattanooga, Tennessee. The Conference approved the Committee's recommendation.

Build-to-Suit Lease Project. On recommendation of the Committee, the Judicial Conference approved a lease-construct courthouse for Clarksburg, West Virginia, subject to the conditions set forth below, at a rental cost not to exceed the rent cap to be established by the Space and Facilities Committee —

a. The district must commit in writing that the replacement judge for the current active district judge in Clarksburg, who is expected to take senior status in 2009, will be assigned to the Clarksburg division;

b. The space program will provide for two courtrooms and three chambers;

[3]Necessary chambers and courtrooms for judges taking senior status, replacement judges, and new judgeships are also "Component B" projects, but require only Committee approval.

c. The court recognizes that the USMS will in all likelihood face difficulty in obtaining the funds to build out detention cells in the project;

d. No circuit rent budget Component B funding will be provided for an interim space solution in the existing building in the time before the lease-construct project is delivered; and

e. The lease-construct procurement will adhere to the new process to be piloted in Lancaster, Pennsylvania.

COMMITTEE ACTIVITIES

The Committee on Space and Facilities reported that it discussed the status of development of a repair and alterations appendix to the *U.S. Courts Design Guide* to be used to provide greater clarity in renovation projects. A draft of the appendix will be presented to the Committee at its June 2009 meeting. The Committee also discussed lease-construct courthouses and how changes in the method used by GSA to procure these buildings could prove beneficial to the judiciary.

FUNDING

All of the foregoing recommendations that require the expenditure of funds for implementation were approved by the Judicial Conference subject to the availability of funds and to whatever priorities the Conference might establish for the use of available resources.

Chief Justice of the United States
Presiding

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

Special Session
June 9, 2009

The Judicial Conference of the United States convened in special session by telephone conference call on June 9, 2009, 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 participated:

First Circuit:

Chief Judge Sandra L. Lynch
Judge Mary M. Lisi,
District of Rhode Island

Second Circuit:

Chief Judge Dennis Jacobs
Chief Judge William K. Sessions III,
District of Vermont

Third Circuit:

Chief Judge Anthony J. Scirica
Chief Judge Harvey Bartle III,
Eastern District of Pennsylvania

Fourth Circuit:

Chief Judge Karen J. Williams
Chief Judge James P. Jones,
Western District of Virginia

Fifth Circuit:

Chief Judge Edith Hollan Jones
Judge Sim Lake III,
Southern District of Texas

Sixth Circuit:

Chief Judge Danny J. Boggs
Judge Solomon Oliver, Jr.,
Northern District of Ohio

Seventh Circuit:

Chief Judge Frank H. Easterbrook
Judge Wayne R. Andersen,
Northern District of Illinois

Eighth Circuit:

Chief Judge James B. Loken
Judge Lawrence L. Piersol,
District of South Dakota

Ninth Circuit:

Judge Charles R. Breyer,
Northern District of California

Tenth Circuit:

Chief Judge Robert H. Henry
Judge Alan B. Johnson,
District of Wyoming

Eleventh Circuit:

Chief Judge Joel F. Dubina
Judge Myron H. Thompson
Middle District of Alabama

District of Columbia Circuit:

Chief Judge David Bryan Sentelle
Chief Judge Royce C. Lamberth,
District of Columbia

Federal Circuit:

Chief Judge Paul R. Michel

Court of International Trade:

Chief Judge Jane A. Restani

Also present for this session of the Conference were, from the Administrative Office of the United States Courts (AO), James C. Duff, Director; William R. Burchill, Jr., Associate Director and General Counsel; Bret G. Saxe, Assistant General Counsel; Laura C. Minor, Assistant Director, and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat; and David A. Sellers, Assistant Director, Office of Public Affairs. Jeffrey P. Minear, Counselor to the Chief Justice, attended as well.

PROCEEDINGS UNDER THE JUDICIAL CONDUCT AND DISABILITY ACT

The Chief Justice called this special teleconference session of the Judicial Conference to determine whether to certify to the House of Representatives, under 28 U.S.C. § 355(b), that consideration of impeachment of United States District Judge Samuel B. Kent may be warranted based on (1) a certification issued by the Judicial Council of the Fifth Circuit on May 27, 2009, pursuant to 28 U.S.C. § 354(b)(2)(A), that Judge Kent had engaged in conduct that might constitute grounds for impeachment, and/or (2) the Conference's own independent awareness of a felony conviction of Judge Kent.

On February 23, 2009, Judge Kent of the Southern District of Texas pleaded guilty in that court to a single count of obstruction of justice, a felony, in violation of 18 U.S.C. § 1512(c)(2). A judgment of conviction in the matter was entered on May 11, 2009, when the court sentenced Judge Kent to

33 months' imprisonment and ordered him to surrender on June 15, 2009. The time for Judge Kent to file a notice of appeal of his sentence passed without the filing of such notice and without the filing of any post-judgment motion.

On May 27, 2009, the Fifth Circuit Judicial Council submitted its certification to the Judicial Conference pursuant to 28 U.S.C. § 354(b)(2)(A) that Judge Kent "has pled guilty to obstruction of justice in violation of 18 U.S.C. § 1512(c)(2) and has thus by his own admission engaged in conduct which constitutes one or more grounds for impeachment under Article II of the Constitution...." At the same time, the Council declared moot any reopening of the Judicial Conduct and Disability Act proceeding against Judge Kent as the judge had voluntarily moved out of his chambers and ceased handling cases, and Chief Judge Edith Hollan Jones issued and published a letter denying Judge Kent's request that he be certified for disability retirement under 28 U.S.C. § 372(a).

In advance of the teleconference, the members of the Judicial Conference were given copies of relevant documents from the record of the proceedings before the Fifth Circuit Judicial Council and from the court proceedings on Judge Kent's guilty plea and sentence. At the teleconference, the Chief Justice afforded each member of the Conference the opportunity to comment upon a proposed certification. After discussion, the Conference agreed to certify to the House of Representatives, pursuant to 28 U.S.C. § 355(b)(1)-(2), the Conference's determination that consideration of impeachment may be warranted, to transmit to the House of Representatives relevant portions of the proceedings, and to adopt and include the following certificate:

> TO THE SPEAKER, UNITED STATES HOUSE OF REPRESENTATIVES:
>
> Pursuant to 28 U.S.C. § 355(b), the Judicial Conference of the United States certifies to the House of Representatives its determination that consideration of impeachment of United States District Judge Samuel B. Kent, of the Southern District of Texas, may be warranted. Having been informed that Judge Kent was convicted of a felony, and that the judgment has become final by the exhaustion or termination of all rights of direct judicial review, the Conference, under Rule 1 of its *Rules for the Processing of Certificates from Judicial Councils that a*

Judicial Officer Has Engaged in Conduct that Might Constitute Grounds for Impeachment, accepts the judgment as conclusive and has determined in its discretion to issue this certificate.

The Conference's determination in this matter is based on

(1) the court record in Case No. 4:08-cr-00596, *United States v. Samuel B. Kent*, filed in the Southern District of Texas at Houston, which reflects Judge Kent's February 23, 2009, plea of guilty to obstruction of justice in violation of 18 U.S.C. § 1512(c)(2); the resulting judgment of conviction, dated May 11, 2009, in which Judge Kent is sentenced to a term of 33 months' imprisonment; and the absence of any timely notice of appeal of that judgment; and

. (2) the certification of the Fifth Circuit Judicial Council, premised on the judgment of conviction in said case, that Judge Kent has engaged in "conduct which constitutes one or more grounds for impeachment under Article II of the Constitution."

This certificate is transmitted with the certification of the Fifth Circuit Judicial Council and relevant portions of the court record.

In sum, Judge Kent has stipulated, as the basis for his plea of guilty, that

a. in August 2003 and March 2007, he engaged in non-consensual sexual contact with a person ("Person A") without her permission;

b. from 2004 through at least 2005, he engaged in non-consensual sexual contact with a person ("Person B") without her permission; and

c. in connection with a judicial misconduct complaint against him, he testified falsely before a Fifth Circuit special investigative committee regarding his unwanted, non-consensual sexual contact with Person B, by

understating the extent of that contact and by falsely stating that it had ended after Person B told him it was unwelcome.

Judge Kent's conduct and felony conviction, as described above, have brought disrepute to the Judiciary.

Executed this 9th day of June, 2009.

Chief Justice of the United States
Presiding

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

September 15, 2009

The Judicial Conference of the United States convened in Washington, D.C., on September 15, 2009, 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 Sandra L. Lynch
Chief Judge Mary M. Lisi,
District of Rhode Island

Second Circuit:

Chief Judge Dennis Jacobs
Chief Judge William K. Sessions III,
District of Vermont

Third Circuit:

Chief Judge Anthony J. Scirica
Chief Judge Harvey Bartle III,
Eastern District of Pennsylvania

Fourth Circuit:

Chief Judge William B. Traxler, Jr.
Chief Judge James P. Jones,
Western District of Virginia

Fifth Circuit:

Chief Judge Edith Hollan Jones
Judge Sim Lake III,
Southern District of Texas

Sixth Circuit:

Chief Judge Alice M. Batchelder
Judge Solomon Oliver, Jr.,
Northern District of Ohio

Seventh Circuit:

Chief Judge Frank H. Easterbrook
Judge Wayne R. Andersen,
Northern District of Illinois

Eighth Circuit:

Chief Judge James B. Loken
Judge Lawrence L. Piersol,
District of South Dakota

Ninth Circuit:

Judge Charles R. Breyer,
Northern District of California

Tenth Circuit:

Chief Judge Robert H. Henry
Judge Alan B. Johnson,
District of Wyoming

Eleventh Circuit:

Chief Judge Joel F. Dubina
Judge Myron H. Thompson,
Middle District of Alabama

District of Columbia Circuit:

Chief Judge David Bryan Sentelle
Chief Judge Royce C. Lamberth,
District of Columbia

Federal Circuit:

Chief Judge Paul R. Michel

Court of International Trade:

Chief Judge Jane A. Restani

The following Judicial Conference committee chairs attended the Conference session: Circuit Judges Bobby R. Baldock, Julia Smith Gibbons, Roger L. Gregory, M. Margaret McKeown, Carl E. Stewart, Richard C. Tallman, and John Walker, Jr., and District Judges Joseph F. Bataillon, Dennis M. Cavanaugh, Claire V. Eagan, Janet C. Hall, Robert L. Hinkle, D. Brock Hornby, Mark R. Kravitz, Barbara M.G. Lynn, J. Frederick Motz, Lee H. Rosenthal, Charles R. Simpson III, George Z. Singal, Laura Taylor Swain, and John R. Tunheim. Bankruptcy Judge David S. Kennedy and Magistrate Judge Robert B. Collings were also in attendance, and Karen Milton of the Second Circuit represented the circuit executives.

James C. Duff, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Jill C. Sayenga, Deputy Director; William R. Burchill, Jr., Associate Director and General Counsel; Laura C. Minor, Assistant Director, and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat; Cordia A. Strom, Assistant Director, Legislative Affairs; and David A. Sellers, Assistant Director, Public Affairs. District Judge Barbara Jacobs Rothstein, Director, and John S. Cooke, Deputy Director, Federal Judicial Center, and District Judge Ricardo H. Hinojosa, Acting Chair, and Kenneth P. Cohen, General Counsel, United States Sentencing Commission, were in attendance at the session of the Conference, as was Jeffrey P. Minear, Counselor to the Chief Justice. The 2009-2010 Supreme Court Fellows also observed the Conference proceedings.

Attorney General Eric Holder addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice. Senators Patrick Leahy, Jeff Sessions, and Sheldon Whitehouse and Representatives John Conyers, Jr., and Lamar S. Smith spoke on matters pending in Congress of interest to the Conference.

REPORTS

Mr. Duff reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office (AO). Judge Rothstein spoke to the Conference about Federal Judicial Center (FJC) programs, and Judge Hinojosa reported on United States Sentencing Commission activities. Judge Gibbons, Chair of the Committee on the Budget, presented a report on judiciary appropriations and other budget matters.

EXECUTIVE COMMITTEE

RESOLUTION

The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution recognizing the substantial contributions made by the Judicial Conference committee chairs whose terms of service end in 2009:

> The Judicial Conference of the United States recognizes with appreciation, respect, and admiration the following judicial officers:
>
> **HONORABLE ROGER L. GREGORY**
> Committee on the Administrative Office
>
> **HONORABLE JOHN R. TUNHEIM**
> Committee on Court Administration and Case Management
>
> **HONORABLE DENNIS M. CAVANAUGH**
> Committee on the Administration of the Magistrate Judges System
>
> **HONORABLE CARL E. STEWART**
> Advisory Committee on Appellate Rules
>
> **HONORABLE JOSEPH F. BATAILLON**
> Committee on Space and Facilities

Appointed as committee chairs by the Chief Justice of the United States, these outstanding jurists have played a vital role in the administration of the federal court system. These judges served with distinction as leaders of their Judicial Conference committees while, at the same time, continuing to perform their duties as judges in their own courts. They have set a standard of skilled leadership and earned our deep respect and sincere gratitude for their innumerable contributions. We acknowledge with appreciation their commitment and dedicated service to the Judicial Conference and to the entire federal judiciary.

UNITED STATES SENTENCING COMMISSION

The Executive Committee recommended, and the Judicial Conference approved by mail ballot, the following names of judges for presentation to the President for appointment, subject to the advice and consent of the Senate, to fill current and upcoming vacancies on the United States Sentencing Commission: Charles R. Breyer, Northern District of California; Claire V. Eagan, Northern District of Oklahoma; Ricardo S. Martinez, Western District of Washington; Lawrence L. Piersol, District of South Dakota; Patti D. Saris, District of Massachusetts; and Lawrence S. Stengel, Eastern District of Pennsylvania.

MISCELLANEOUS ACTIONS

The Executive Committee —

- On recommendation of the Committee on Court Administration and Case Management and the Committee on Information Technology and on behalf of the Conference, approved an annual report to Congress on court compliance with section 205 of the E-Government Act of 2002, authorized transmittal of that report to Congress as specified in the Act, and, because all courts are now in compliance with section 205, agreed that this would be the final report made to Congress under section 205;

- Pending final congressional action on the judiciary's appropriations for the next fiscal year, approved fiscal year 2010 interim financial plans for the Salaries and Expenses, Defender Services, Court Security, and

Fees of Jurors and Commissioners accounts, and endorsed a strategy for distributing court allotments among the court programs;

- Declined a request for an exception to Section B.3.a.(4) of the Travel Regulations for United States Justices and Judges to allow reimbursement of travel expenses for a magistrate judge from the Southern District of Florida to travel to Amsterdam, the Netherlands, to preside over depositions in a multiditrict litigation proceeding pending before him;

- On recommendation of the Committee on Court Administration and Case Management, approved on behalf of the Conference a request from the Judicial Panel on Multidistrict Litigation that electronic public access (EPA) fees established pursuant to 28 U.S.C. § 1932 be waived temporarily so that the Panel can provide electronic public access to docket sheets and other information of the Panel while a system for collecting EPA fees is being developed;

- Approved on behalf of the Conference the pursuit of four additional bankruptcy judgeships, one each in the Southern District of West Virginia, Northern District of Florida, Western District of North Carolina, and Eastern District of California, and the extension of one temporary judgeship in the Middle District of North Carolina, which, when added to those judgeships approved earlier in 2009 (JCUS-MAR 09, p. 5), results in a total request to Congress for 13 additional bankruptcy judgeships, 22 conversions from temporary to permanent, and two extensions of temporary bankruptcy judgeships;

- On recommendation of the Committee on the Administration of the Magistrate Judges System, approved on behalf of the Conference, two additional magistrate judge positions (along with associated funding) for the Eastern District of California, one at Sacramento and one at Fresno, to address the unrelenting growth in the district's prisoner caseload; and

- Modified the jurisdictional statement of the Committee on the Administrative Office and renamed it the Committee on Audits and Administrative Office Accountability in order to focus its oversight responsibilities on the significant areas of audit, review, and investigative assistance.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it was briefed on key activities of the AO and actions related to the AO's strategic plan, including the redesign of the *Guide to Judiciary Policies and Procedures*, court/AO staff-exchange initiatives, and the status of pandemic and emergency planning for the judiciary and the AO. The Committee was briefed on audit, review, and investigation activities and discussed the Committee's role regarding the AO's strategic objective to provide increased support for management review, audit, and internal control programs. After reviewing nominations submitted by judges, court managers, and AO managers, the Committee selected two AO employees to receive the Leonidas Ralph Mecham Award for Exemplary Service to the Courts.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

OFFICIAL DUTY STATION

At the request of the Ninth Circuit Judicial Council and on recommendation of the Committee on the Administration of the Bankruptcy System, the Judicial Conference agreed to transfer the official duty station for the vacant bankruptcy judgeship position in the Eastern District of California from Bakersfield to Sacramento. This change will allow for a more even distribution of the judicial workload among the district's three divisions.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Bankruptcy System reported that it asked the Executive Committee to take expedited action on behalf of the Judicial Conference to seek four additional bankruptcy judgeships (*see supra*, "Miscellaneous Actions," pp. 5-6). The Committee also recommended to the Committee on Court Administration and Case Management that it (1) defer a request for consolidation of the district and bankruptcy clerks' offices in the Southern District of Illinois (*see infra*, "Committee Activities," pp. 12-13); (2) forward to the Conference proposed

amendments to the Bankruptcy Court Miscellaneous Fee Schedule (*see infra*, "Miscellaneous Fees," pp. 11-12); and (3) adopt proposed procedural revisions to the bankruptcy noticing guidelines, with certain edits. Pursuant to a March 2009 decision of the Conference to seek legislation authorizing bankruptcy administrators to perform similar duties and powers, as appropriate, to those conferred on the United States trustees by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (JCUS-MAR 09, p. 8), the Committee endorsed specific powers and duties that should be included in such legislation.

COMMITTEE ON THE BUDGET

FISCAL YEAR 2011 BUDGET REQUEST

After careful consideration of the funding levels proposed by the program committees, the Committee on the Budget recommended to the Judicial Conference a fiscal year 2011 budget request to Congress that is 5.9 percent above assumed appropriations for fiscal year 2010. This request is consistent with the budget caps approved by the Judicial Conference for the various accounts within the judiciary's budget. The Conference approved the budget request subject to amendments necessary as a result of (a) new legislation, (b) actions of the Judicial Conference, or (c) any other reason the Executive Committee considers necessary and appropriate.

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it endorsed a funding mechanism to provide annual funding to probation and pretrial services offices to support court-ordered services authorized by the Second Chance Act of 2007 (Pub. L. No. 110-199) and requested a cost-benefit analysis by the Criminal Law Committee of the use of these funds after three years. The Committee also expressed support for a recommendation of the Criminal Law Committee to assess the efficacy and cost-effectiveness of reentry court programs (*see infra*, "Reentry Court Programs," p. 13). In addition, recognizing the ongoing efforts of the Judicial Resources Committee to update the staffing formulas used to calculate court support staffing requirements, the Budget Committee committed to working with both that committee and the Criminal Law Committee to develop formulas that are fair and incorporate the

workload needs of the courts but that also consider efficiencies associated with information technology improvements, best practices, and other cost-containment initiatives.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in March 2009, the Committee received 33 new written inquiries and issued 34 written advisory responses. During this period, the average response time for requests was 18 days. In addition, the Committee chair received and responded to 99 informal inquiries from colleagues, and individual Committee members responded to 86 such inquiries.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

COURTROOM SHARING

After comprehensive study of courtroom use in the district courts, in September 2008, the Conference adopted several policy changes with regard to courtroom use to be applied to new courthouse construction and to construction of additional courtrooms in existing buildings (JCUS-SEP 08, pp. 10-11). Among those actions taken was a direction to the Court Administration and Case Management Committee – in consultation with the Committee on Space and Facilities and the Committee on the Administration of the Magistrate Judges System – to develop appropriate regulations for the *U.S. Courts Design Guide* to implement a courtroom sharing policy for magistrate judges. The Conference asked that the policy balance the need to maintain flexibility in the district courts to utilize magistrate judge resources to meet local needs with the ability to standardize space planning on a national basis, and to ensure the efficient use of courtrooms without sacrificing the availability of immediate access to a courtroom. At this session, this Committee, in consultation with the appropriate committees, recommended, and the Conference agreed to adopt, the following policy concerning courtrooms for magistrate judges:

SHARING POLICY FOR MAGISTRATE JUDGES IN NEW COURTHOUSE AND COURTROOM CONSTRUCTION

New courtrooms for magistrate judges will be provided as follows:

a. In courthouses with one or two magistrate judges, one courtroom will be provided for each magistrate judge.

b. In courthouses with three or more magistrate judges, one courtroom will be provided for every two magistrate judges. In addition, one courtroom will be provided for magistrate judge criminal duty proceedings. In courthouses where the application of this formula will result in a fraction (i.e., those with an odd number of magistrate judges), the number of courtrooms allocated will remain at the next lower whole number.

Exemption Policy

In the event this sharing arrangement would cause substantial difficulty in the effective and efficient disposition of cases, a court, as a whole, with the approval of its circuit judicial council, may seek an individual exemption to this sharing policy from the Judicial Conference's Space and Facilities Committee. Such exemptions should be considered the exception and not the rule.

To be considered for an exemption, a court must first show that the magistrate judge's courtroom is in use over 75 percent of the work day for case-related purposes. Thereafter, a court should demonstrate that deviation from the basic sharing policy is necessary, based on the following:

a. An assessment of the number and type of courtroom events anticipated to be handled by the magistrate judge that would indicate that sharing a courtroom would pose a significant burden on the secure, effective and efficient management of that judge's docket.

b. An assessment of how the district has historically utilized its magistrate judges, supported by actual courtroom use data.

c. An assessment of the current complement of courtrooms and their projected use in the facility and throughout the district, to reaffirm the necessity of constructing an additional courtroom.

d. Whether a special proceedings, visiting judge, or other courtroom is available for the magistrate judge's use in the new or existing facility.

ATTORNEY ADMISSION FUNDS

A court's attorney admission funds may be used when appropriated funds may not legally be used and the expenditure will "inure to the benefit of the members of the bench and the bar in the administration of justice." On recommendation of the Committee, the Conference modified its Guidelines for Attorney Admission Funds Maintained by the Courts of the United States, *Guide to Judiciary Policies and Procedures*, vol. 1, ch. 7, part M, to permit the use of such funds to pay for meals and refreshments for judges and judiciary employees when attending, at their duty stations, in a non-official capacity, an event that benefits the bench and the bar in the administration of justice.

MISCELLANEOUS FEES

Bankruptcy Court Miscellaneous Fee Schedule. In March 2008, the Judicial Conference amended the Bankruptcy Court Miscellaneous Fee Schedule to clarify items and make stylistic changes to comport with current editorial standards (JCUS-MAR 08, pp. 8-12). No substantive amendments were considered. As the courts have implemented the new schedule, several additional amendments have been suggested to correct unintentional omissions and to further clarify the schedule. At this session, on recommendation of the Committee, the Conference amended the following items: (a) Item 4, to clarify that the fee applies only to filing amendments to the debtor's schedules of creditors, and not to other schedules; (b) Items 6 and 14, to conform the language in these sections, both of which provide that these

fees should be paid by the estate when a trustee or debtor-in-possession is the filer; (c) Item 11, to reincorporate an exception to the reopening fee based on administrative error, which had been unintentionally omitted in previous schedules; (d) Item 14, to clarify that interlocutory appeals are included under this item; (e) Item 15, to correct a statutory reference that establishes a filing fee for Chapter 15 cases; and (f) Item 18, to include the phrase "motion filed by the debtor," which had been unintentionally omitted.

United States Court of Federal Claims Fee Schedule. At the request of the Court of Federal Claims, the Committee recommended, and the Conference approved, amendments to that court's fee schedule to make it consistent with the District Court Miscellaneous Fee Schedule. Item 1 was amended to increase the Court of Federal Claims' filing fee for civil actions from $250 to $350 to match the district court filing fee, and two fees were added to match similar charges in the district courts: Item 10, a $39 fee for filing or indexing a document not in a case for which a filing fee has been paid, and Item 11, a $45 fee for retrieval of a record from a remote location.

CIVIL JUSTICE REFORM ACT REPORTS

The Committee considered a recommendation from the Institute for the Advancement of the American Legal System that Civil Justice Reform Act (CJRA) reports be made available free of charge on the judiciary's public website. Noting that access to CJRA reports benefits the public and satisfies the intent of Congress in enacting the CJRA, and that the fees generated by distributing CJRA reports for a fee through PACER are minimal, the Committee recommended that all Civil Justice Reform Act reports created after September 30, 2009, be made available to the public without charge on the judiciary's public website, www.uscourts.gov. The Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it considered, among other things, the development of the next generation of the judiciary's Case Management/Electronic Case Files (CM/ECF) system, issues relating to the courts' compliance with the E-Government Act, and revisions to the Civil Litigation Management Manual. The Committee also considered and, after consultation with the Bankruptcy

Committee, rejected a proposal from the Seventh Circuit Judicial Council to consolidate the district and bankruptcy courts of the Southern District of Illinois, noting that the proposal, if resubmitted, should include the participation of an active judge of that district's bankruptcy court.

COMMITTEE ON CRIMINAL LAW

REENTRY COURT PROGRAMS

Increasing numbers of federal courts are implementing or have expressed an interest in initiating reentry programs for federal offenders modeled on state problem-solving "courts" (e.g., drug courts and diversion courts). The Committee noted that there are numerous variations in such programs and insufficient research on which techniques have proven successful. In light of its commitment to the use of evidence-based practices, the Committee on Criminal Law recommended that the Judicial Conference endorse the commissioning of a study to assess the efficacy and cost-effectiveness of reentry court programs, and ask the Committee to consider the results of this study in recommending any appropriate model programs. The Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that it reviewed expenditure guidelines designed to help implement the AO Director's contracting and expenditure authority established by the Second Chance Act of 2007, Pub. L. No. 110-199, and the Judicial Administration and Technical Amendments Act of 2008, Pub. L. No. 110-406, and forwarded them to the Director for approval. In addition, pursuant to the authority delegated to the Committee by the Conference to make "technical, conforming, and noncontroversial amendments to monographs" (JCUS-MAR 06, p. 15), the Criminal Law Committee approved updates to Monograph 110, *Judicial Officers Reference to Alternatives to Detention and Conditions of Release*. The Committee also discussed the status of actuarial risk-needs instruments being developed by the AO for use in pretrial and post-conviction supervision.

COMMITTEE ON DEFENDER SERVICES

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it reviewed the results of recent professional surveys of federal judges and panel attorneys, showing, among other things, that many courts have been experiencing difficulties locating available, qualified panel attorneys for non-capital Criminal Justice Act (CJA) appointments. The Committee was also informed of the status of three ongoing Defender Services information technology projects: the Electronic CJA Voucher Processing System, the National CJA Voucher Training Program, and the Federal Defender Case Management System. Under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), the Committee approved FY 2010 budgets and grants for federal defender organizations.

COMMITTEE ON FEDERAL-STATE JURISDICTION

DIVERSITY JURISDICTION

In response to a request from the Executive Committee that Conference committees consider the continued viability of older legislative positions that have not been pursued in Congress for some time, the Committee on Federal-State Jurisdiction considered, among other positions, the Conference's longstanding support for the abolition of general diversity jurisdiction (JCUS-MAR 77, pp. 8-9; JCUS-SEP 77, p. 52; JCUS-MAR 78, pp. 7-8; JCUS-SEP 79, p. 66; JCUS-MAR 86, p. 17).[1] Noting that many of the circumstances that served as the underpinning for the position no longer prevail and that abolition of diversity jurisdiction may not reflect a consensus of the federal judiciary today, the Committee recommended that the position be rescinded. The Conference approved the recommendation.

[1]The Conference has adopted several other positions that would narrow access to federal diversity jurisdiction, without eliminating it entirely. Those positions are not addressed here.

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported on continued efforts to engage in dialogue with local state-federal judicial councils on matters of mutual interest. The Committee also reviewed the Hague Convention on Choice of Court Agreements, which would make choice of forum agreements in international civil and commercial contracts more readily enforceable in signatory countries. The Committee also discussed provisions in proposed whistleblower protection legislation that would eliminate the exclusive jurisdiction of the Court of Appeals for the Federal Circuit to review final decisions of the Merit Systems Protection Board in whistleblower cases, and would create a new private right of action for de novo review of whistleblower claims in the federal district courts.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that it is overseeing the development of a system for the electronic filing and management of financial disclosure reports. Analysis of the calendar year 2008 financial disclosure reports reflects that use of the self-audit function in the financial disclosure report software continues to improve the quality of the reports and reduce the volume of correspondence between the Committee and filers. As of July 7, 2009, the Committee had received 3,963 financial disclosure reports and certifications for calendar year 2008, including 1,199 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 334 reports from bankruptcy judges; 521 reports from magistrate judges; and 1,909 reports from judicial employees.

COMMITTEE ON INFORMATION TECHNOLOGY

LONG RANGE PLAN FOR INFORMATION TECHNOLOGY

Pursuant to 28 U.S.C. § 612 and on recommendation of the Committee on Information Technology, the Judicial Conference approved the fiscal year 2010 update to the *Long Range Plan for Information Technology in the*

Federal Judiciary. Funds for the judiciary's information technology program will be spent in accordance with this plan.

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it discussed plans to develop the next generation of the Case Management/Electronic Case Files system, focusing on an effort to define a recommended software architectural structure and a development methodology to ensure the next generation will be integrated, flexible, and modular in nature. The Committee also received an update on, and reaffirmed support for, development of a more collaborative approach to shared application development and support in the judiciary. In addition, the Committee received information about and expressed its support for efforts under way to streamline contracting for both wireless cellular management services and information technology security services.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that 144 intercircuit assignments were undertaken by 95 Article III judges from January 1, 2009 to June 30, 2009. The Committee also reported on its Special Work Assistance Taskforce (SWAT) approach to intercircuit assignments. In light of the success of the SWAT approach in the Middle District of Florida and the Southern District of New York, the Committee agreed to continue to find creative ways to utilize intercircuit assignments to assist overburdened courts. In addition, the Committee continued to disseminate information about intercircuit assignments and aid courts requesting assistance by identifying and obtaining judges willing to take assignments.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its involvement in rule of law and judicial reform throughout the world, highlighting activities in Africa, Asia, Latin America and the Caribbean, Europe, and Eurasia, as well as briefings at the Administrative Office for foreign delegations of jurists and judicial personnel. The Committee further reported on its continued participation in the rule of law component of the Library of Congress' Open World Program for jurists from Russia, Ukraine, Azerbaijan, Georgia, Kyrgyzstan, Moldova, Tajikistan and Turkmenistan. In addition, the Committee reported about rule of law activities involving the Federal Judicial Center, the U.S. State Department, the U.S. Agency for International Development, and the U.S. Department of Justice.

COMMITTEE ON THE JUDICIAL BRANCH

JUDGES' TRAVEL REGULATIONS

Renting/Maintaining an Abode at a Temporary Duty Location. Section E.2.g. of the Travel Regulations for United States Justices and Judges, *Guide to Judiciary Policies and Procedures*, vol. 3, ch. C-5, ex. A, provides alternative methods for judges on official travel to claim the actual expense of maintaining an abode at a temporary duty location. On recommendation of the Committee on the Judicial Branch, the Conference amended the provision regarding reimbursement, where official business is the principal reason for maintaining the abode, to provide that (a) costs should be calculated based on the monthly, rather than the annual cost; and (b) in lieu of the actual prorated cost of lodging, a judge could elect to claim a per diem allowance, provided it is the lesser of the two amounts.

Meals at Authorized Judicial Meetings. On recommendation of the Committee, the Judicial Conference approved an amendment to section E.2.f. of the judges' travel regulations to apply limits to judges' reimbursement for meals incident to an authorized judicial meeting held at the official duty station as follows (new language is underlined):

f. *Reimbursement for subsistence expenses incident to an authorized judicial meeting held at a judge's official duty station*–A judge who attends an authorized judicial meeting held in the city where the judge's official duty station is located may, if such expenses would be reimbursable in connection with a meeting held in another location, be reimbursed for the actual cost of meals incidental to the meeting, provided that the judge's attendance at the meal function is necessary to full participation in essential formal discussions, lectures or speeches concerning the business of the meeting. The expense of meals incident to authorized judicial meetings held at the official duty station should be reasonable and should reflect the nature of the function. In general, the aggregate cost of such meals should not exceed $100 per day; however, in those instances where a judge attends a circuit judicial conference at the official duty station, the judge may claim reimbursement for the actual cost of meals up to $150 per day. By referring to this section on any voucher claiming such meals, the judge certifies compliance with these criteria.

Note: From an Internal Revenue Service perspective, for meals to qualify as a reimbursable business expense, they must be ordinary and necessary and not lavish and/or extravagant.

Same-Day Travel. The Committee recommended, and the Conference approved, an amendment to section E.4.d. of the judges' travel regulations to substitute the General Services Administration's locality Meals and Incidental Expenses reimbursement rate for the flat-rate previously authorized in March 2008 (JCUS-MAR 08, p. 20) for meals and incidental expenses incurred in same-day travel.

Additional Leg Room. To accommodate judges with special physical needs, the Committee recommended that the Conference amend section D.2.a.(1) of the judges' travel regulations to authorize judges, under certain conditions, to upgrade to seats with additional legroom. The Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it continues to focus its priority attention on securing automatic and annual cost-of-living salary adjustments for judges. The Committee also gave substantial attention to judicial benefits matters. Education of the public, especially the news media, on the judiciary and the role of judges in society remains a priority of the Committee. In addition, the Committee continues to monitor the implementation of the Judicial Conference policy on privately reimbursed seminars.

COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY

COMMITTEE ACTIVITIES

The Committee on Judicial Conduct and Disability reported that it has under advisement two petitions for review of circuit judicial council orders on complaints under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364. The Committee is also studying procedural and policy issues brought to light by early experience under the Conference's 2008 Rules for Judicial-Conduct and Judicial-Disability Proceedings. While continuing to address courts' inquiries regarding the Act and the Rules, the Committee is developing an infrastructure to support the Committee's expanded monitoring function and is preparing informational products to help judges perform their roles in the complaint process.

COMMITTEE ON JUDICIAL RESOURCES

STAFFING FORMULAS

New Formulas. Based on rigorous work measurement studies conducted by the Administrative Office, the Committee on Judicial Resources recommended, and the Judicial Conference approved, new staffing formulas for the offices of district clerks, appellate clerks, bankruptcy appellate panel clerks, and staff attorneys and for the bankruptcy administrator program, for implementation beginning in fiscal year 2010.

The Conference also adopted the Committee's recommendation for a new formula for pro se law clerks for implementation in fiscal year 2010. That formula uses only prisoner cases to create formula factors; however, to protect small courts with minimal but important pro se law clerk workload and to avoid termination of any on-board pro se law clerks, the formula provides a 1.0 full-time equivalent minimum to those districts earning any pro se law clerk credit under the formula. The Conference also agreed to "grandfather" current pro se law clerks in their present positions on a court-by-court basis until the number of on-board pro se law clerks equals the number authorized by the staffing formula. Encumbered positions will not be available for backfill after the departure of the incumbent, unless supported by application of the formula.

Formula Adjustment. The Judicial Conference approved a new staffing formula for bankruptcy clerks' offices in September 2008 (JCUS-SEP 08, p. 24). Based on an initial analysis of the impact of the new formula on staffing levels in those offices, concern was expressed that the new formula might have a disproportionate impact on smaller courts that could not take advantage of economies of scale. To address this concern, the Committee recommended a sliding scale, no-cost adjustment that fine-tunes the formula to take into account local circumstances. The Conference approved the adjustment for use until the next update of the basic formula.

WORK MEASUREMENT METHODOLOGY

The current work measurement methodology used to develop staffing formulas for court units produces "full requirements" for those units, i.e., the staff size necessary to perform, without overtime or omission, the work assigned to the respective office, based on a consensus-built hierarchy of tasks and procedures, performed by workers with average experience, training, efficiency, and effectiveness. The Committee recommended that the Conference endorse the current process of developing full staff requirements through consensus-developed, empirically derived, and transparently coordinated work measurement formulas, and the Conference agreed.

COURT REPORTER COMPENSATION

In September 2007, as part of a cost-containment initiative, and after conducting a comprehensive court compensation study, the Judicial

Conference agreed to alter the pay progression policy for Court Personnel System employees to decrease the emphasis on the longevity component. Court reporter salaries were omitted from this change with the understanding that court reporter salaries would be considered at a later date. At this session, with the goal of pursuing cost containment while at the same time ensuring that court reporters are treated fairly, the Committee recommended that the Judicial Conference approve retention of longevity pay for all currently employed official court reporters, and elimination of longevity pay for future official court reporters, beginning on October 11, 2009. The Conference adopted the Committee's recommendation.

COURT INTERPRETER POSITIONS

Using established criteria, the Committee recommended, and the Conference approved, one additional Spanish staff court interpreter position beginning in fiscal year 2011 for the Southern District of Florida, based on the Spanish language interpreting workload in that court.

VOLUNTARY SEPARATION

On recommendation of the Committee, the Judicial Conference agreed to make permanent the current Voluntary Separation Incentive Payment (buyout) and Voluntary Early Retirement Authority programs beginning in fiscal year 2010. The decision to implement either of these programs each fiscal year within the judiciary will be at the discretion of the Director of the Administrative Office based upon business needs and in accordance with existing Conference policy. The purpose of these programs is to provide courts and federal public defender organizations maximum flexibility in addressing reorganization and downsizing needs to achieve strategic goals and enhance mission effectiveness.

COMPENSATORY TIME

In order to encourage employees to use accrued compensatory time promptly, the judiciary's policy has been to require that court employees use compensatory time before using any accrued annual leave (*Guide to Judiciary Policies and Procedures*, vol.1, ch.10, subch.1550.2). In situations where an employee has "use or lose" annual leave, this requirement can result in the

employee having to forfeit annual leave. To address this issue, on recommendation of the Committee, the Conference agreed to amend the policy to permit exceptions on a case-by-case basis, as approved by the chief judge or unit executive, as appropriate, or his/her designee.

PAY SETTING

The Salary Matching/Advanced In-Step Appointment Policy, *Guide to Judiciary Policies and Procedures*, vol. 1, ch. 10, subch. 1338.2, excludes the use of salary matching and advanced-in-step appointment authorities in the case of employees of the courts or federal public defender organizations transferring within the judiciary (or for certain employees transferring to the judiciary from other branches of the federal government) unless there has been a break in service of at least 90 days. To address concerns that this policy works to the detriment of employees who are working under time-limited or part-time employment, the Committee recommended that the Conference amend the 90-day break-in-service requirement contained in the Judiciary Salary Plan salary matching and Court Personnel System advanced in-step rules to exempt candidates for court and federal public defender organization graded positions whose employment with the federal government during the 12 months preceding the new appointment has been (a) under a temporary (including temporary-indefinite) or term appointment or (b) a part-time appointment and the employee is moving to a full-time appointment. The Conference adopted this recommendation and also agreed that, consistent with the current policy that precludes salary matching for chambers law clerk positions, such positions would not be affected by this change.

BAR EXAMINATION PREPARATORY COURSE

In March 2009, the Conference approved discontinuation of the practice of crediting the time spent in a bar examination preparatory course toward the legal work experience required to qualify for the JSP-12 grade level for law clerks (JCUS-MAR 09, p. 24). At this session, noting the absence of a clear rationale for crediting bar examination preparatory course time as legal work experience, the Committee recommended discontinuation, effective October 11, 2009, of the practice of crediting such time toward the legal work experience needed to be placed at a higher grade/classification level for staff attorneys, circuit mediators, court attorneys, and any other

professional legal position classified under the Judiciary Salary Plan or Court Personnel System. The Conference approved the recommendation.

HUMAN RESOURCES LEGISLATION

On recommendation of the Committee, the Conference agreed to express to Congress the judiciary's support for the concepts contained in bills pending in the 111th Congress that would (a) amend the Internal Revenue Code of 1986 as it pertains to long-term care insurance (in a manner that would allow the judiciary to take pre-tax deductions for long-term care premiums), and (b) amend title 5, United States Code, to allow former employees who return to government to re-deposit their Federal Employees Retirement System contributions.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that in response to a request from the Executive Committee chair "to ensure that cost containment remains a high priority" in the judiciary, it asked the Administrative Office to develop additional cost-containment proposals for consideration by the Judicial Resources Committee at its December 2009 meeting. The Committee also discussed draft executive compensation policy proposals reviewed by the Executive Compensation Working Group. The Committee asked the Administrative Office to refine and clarify the proposals and present them to the Committee for further consideration at its December 2009 meeting. The Committee unanimously agreed to approve a one-year moratorium on adopting and implementing new staffing formulas for probation and pretrial services offices in order to allow the Administrative Office to conduct a new work measurement study and develop weighted staffing formulas.

COMMITTEE ON JUDICIAL SECURITY

COURTROOM SECURITY SURVEILLANCE CAMERAS

Security surveillance cameras are currently in use in courtrooms throughout the country. They are programmed to record automatically movement occurring within the viewing range of the camera, allowing court security personnel to monitor remotely the well of the courtroom and the

judge's point of egress. On recommendation of the Committee on Judicial Security, the Conference agreed to take the following actions with regard to security recordings produced by these cameras:

a. Approve for transmission to the U.S. Marshals Service (USMS) a proposed memorandum of understanding (MOU) that provides policy and procedural guidance for the creation, retention, use, and disposal of courtroom video recordings, and establishes that—

(1) Video (not audio) recordings of transmissions of courtroom proceedings for security purposes shall be made on a continuous and uninterrupted basis;

(2) The judiciary retains, and obtains by assignment from the USMS, full and sole ownership and control over all aspects of the courtroom video recordings;

(3) The chief judge of the district in which the recording is made is vested with the authority to release a courtroom video recording for security purposes; and

(4) In the event of a security incident, immediate release of a courtroom video recording for law enforcement purposes may be determined to be necessary by the district U.S. marshal, or his or her designee, with the approval of the chief judge, if feasible;

b. Delegate to the Committee the authority to make technical and non-controversial amendments to the MOU as necessary (before or after its execution by the USMS) consistent with the basic policies set forth in the Committee's report to this Conference session; and

c. Support the development and transmission to the National Archives and Records Administration of a records disposition schedule for the routine courtroom surveillance recordings as set forth in the MOU.

COMMITTEE ACTIVITIES

The Committee on Judicial Security reported that it had in-depth discussions with the USMS regarding court security officer (CSO) contract

solicitations. The Committee would like the USMS to incorporate additional safeguards in its contracting process to help avoid doing business with another financially unstable company such as USProtect, a former CSO provider that was forced into involuntary bankruptcy in March 2008. In addition, the Committee, in concert with the AO, has completed the production of Project 365: Security Starts With You, a digital video disk that will be provided to all judges, and is suitable for viewing by judges' family members and staff.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

SELECTION AND APPOINTMENT REGULATIONS

In recognition of the importance of promoting diversity within the magistrate judges system, the Committee on the Administration of the Magistrate Judges System recommended that the Conference amend the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges to—

a. add the following language to section 2.01:

> To encourage applications from all qualified individuals, the court is encouraged to transmit the public notice to state and local bar associations and interest groups that focus on women and minorities. The court should also consider utilizing national publications and the judiciary's J-Net Job Vacancies site; and

b. add a new subsection 3.02(e), as follows:

> To further efforts to achieve diversity in all aspects of the magistrate judge selection process, the court is encouraged to appoint a diverse merit selection panel.

The Conference adopted the Committee's recommendations.

PER DIEM FOR RECALLS OVER ONE MONTH

In March 2000, the Judicial Conference amended the ad hoc and extended service recall regulations for retired magistrate judges to impose caps of 75 percent and 60 percent of maximum per diem travel reimbursement on out-of-district full-time recalls for terms of over one month and three months, respectively. In practice, however, these limits can leave magistrate judges with inadequate reimbursement for travel and subsistence expenses, and the procedure for waiver has proven to be cumbersome and time-consuming. To address these issues, the Committee recommended, and the Conference agreed to adopt, amendments to sections 13(a) and (b) of the ad hoc and extended service recall regulations to remove the per diem limits, provided, however, that the Director may impose reasonable limits on the reimbursement of these expenses.

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee on the Administration of the Magistrate Judges System and the recommendations of the Director of the Administrative Office, the district courts, and the judicial councils of the circuits, the Judicial Conference approved the following changes in the number, salaries, locations, and arrangements of full-time and part-time magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

FIRST CIRCUIT

District of New Hampshire

1. Authorized a clerk/magistrate judge position at Concord; and

2. Made no change in the location or arrangement of the existing magistrate judge position in the district.

SECOND CIRCUIT

Northern District of New York

Increased the salary of the part-time magistrate judge position at Plattsburgh from Level 5 ($26,881 per annum) to Level 4 ($40,325 per annum).

THIRD CIRCUIT

District of New Jersey

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

2. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

FOURTH CIRCUIT

District of South Carolina

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

2. Discontinued the part-time magistrate judge position at Aiken upon the expiration of the term of the current incumbent on March 31, 2011; and

3. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

FIFTH CIRCUIT

Southern District of Mississippi

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

SIXTH CIRCUIT

Eastern District of Kentucky

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Western District of Kentucky

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Northern District of Ohio

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

SEVENTH CIRCUIT

Northern District of Illinois

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

2. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

Central District of Illinois

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

Northern District of Indiana

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

EIGHTH CIRCUIT

Southern District of Iowa

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

NINTH CIRCUIT

Southern District of California

1. Authorized an additional full-time magistrate judge position at San Diego; and

2. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

District Court for the Northern Mariana Islands

Authorized a clerk/magistrate judge position at Saipan.

TENTH CIRCUIT

District of New Mexico

1. Increased the salary of the part-time magistrate judge position at Roswell from Level 5 ($26,881 per annum) to Level 3 ($53,767 per annum); and

2. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

District of Utah

1. Increased the salary of the part-time magistrate judge position at St. George from Level 4 ($40,325 per annum) to Level 2 ($67,210 per annum); and

2. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

See also supra, "Miscellaneous Actions," pp. 5-6, for two new full-time magistrate judge positions, one each at Sacramento and Fresno in the Eastern District of California, approved on an expedited basis by the Executive Committee on behalf of the Conference.

ACCELERATED FUNDING

On recommendation of the Committee, the Judicial Conference agreed to designate for accelerated funding effective April 1, 2010 the new full-time magistrate judge positions at Newark in the District of New Jersey, Florence in the District of South Carolina, and Chicago in the Northern District of Illinois, and to designate for accelerated funding effective October 1, 2009 the new full-time magistrate judge position at San Diego in the Southern District of California. *See also supra*, "Miscellaneous Actions," pp. 5-6, for accelerated funding approved on an expedited basis by the Executive Committee, on behalf of the Conference, for positions in Sacramento and Fresno in the Eastern District of California.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that it discussed the development of a magistrate judge courtroom sharing policy and communicated its views to the Committee on Court Administration and Case Management. The Committee also reported that pursuant to the September 2004 Judicial Conference policy regarding the review of magistrate judge position vacancies (JCUS-SEP 04, p. 26), during the period between the Committee's December 2008 and June 2009 meetings, the Committee chair approved filling one part-time and seven full-time magistrate judge position vacancies. At its June 2009 meeting, the Committee approved filling three additional magistrate judge position vacancies.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF APPELLATE PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Appellate Rules 1 (Scope of Rules; Title), 4 (Appeal as of Right — When Taken), and 29 (Brief of an

Amicus Curiae), and to Form 4 (Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis), together with committee notes explaining their purpose and intent. The Judicial Conference approved the proposed rules and form amendments and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 1007 (Lists, Schedules, Statements, and Other Documents; Time Limits), 1014 (Dismissal and Change of Venue), 1015 (Consolidation or Joint Administration of Cases Pending in Same Court), 1018 (Contested Involuntary Petitions; Contested Petitions Commencing Ancillary Cases; Proceedings to Vacate Order for Relief; Applicability of Rules in Part VII Governing Adversary Proceedings), 1019 (Conversion of a Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to a Chapter 7 Liquidation Case), 4001 (Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements), 4004 (Grant or Denial of Discharge), 5009 (Closing Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, and Chapter 13 Individual's Debt Adjustment Cases), 7001 (Scope of Rules of Part VII), and 9001 (General Definitions), and new Rule 5012 (Agreements Concerning Coordination of Proceedings in Chapter 15 Cases), together with committee notes explaining their purpose and intent. The Judicial Conference approved the proposed rules amendments and new rule and authorized their transmission to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

The Committee also submitted to the Judicial Conference proposed revisions to Exhibit D to Official Form 1 (Voluntary Petition) and Official Form 23 (Debtor's Certification of Completion of Postpetition Instructional Course Concerning Personal Finance Management). The Judicial Conference approved the revised forms to take effect on December 1, 2009.

FEDERAL RULES OF CIVIL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Civil Rules 8 (General Rules of Pleading), 26 (Duty to Disclose; General Provisions Governing Discovery), and 56 (Summary Judgment) and Illustrative Form 52 (Report of the Parties' Planning Meeting), together with committee notes explaining their purpose and intent. The Judicial Conference approved the proposed rules and form amendments and authorized their transmittal to the Supreme Court with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF CRIMINAL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Criminal Rules 12.3 (Notice of a Public-Authority Defense), 15 (Depositions), 21 (Transfer for Trial), and 32.1 (Revoking or Modifying Probation or Supervised Release), together with committee notes explaining their purpose and intent. The Judicial Conference approved the proposed amendments and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF EVIDENCE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference a proposed amendment to Evidence Rule 804 (Hearsay Exceptions; Declarant Unavailable), together with a committee note explaining the amendment's purpose and intent. The Judicial Conference approved the proposed amendment and authorized its transmittal to the Supreme Court for its consideration with a recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law.

STANDING ORDER/LOCAL RULES

On recommendation of the Committee, the Conference approved Guidelines for Distinguishing Between Matters Appropriate for Standing

Orders and Matters Appropriate for Local Rules and for Posting Standing Orders on a Court's Web Site, and agreed that the guidelines be transmitted to the courts, along with an explanatory report.

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it approved publishing for public comment proposed amendments to Bankruptcy Rules 2003, 2019, 3001, 4004, and 6003, new Bankruptcy Rules 1004.2 and 3002.1, and proposed amendments to Bankruptcy Official Forms 22A, 22B, and 22C; proposed amendments to Criminal Rules 1, 3, 4, 6, 9, 32.1, 40, 41, 43, and 49 and new Criminal Rule 4.1; and Restyled Evidence Rules 101-1103. The restyling of the Evidence Rules is the fourth in a series of comprehensive style revisions to simplify, clarify, and make more uniform all of the federal rules of practice, procedure, and evidence. The comment period expires on February 16, 2010.

COMMITTEE ON SPACE AND FACILITIES

U.S. COURTS DESIGN GUIDE: RENOVATION AND ALTERATION APPENDIX

The Committee on Space and Facilities recommended, and the Judicial Conference approved, a Renovation and Alteration Appendix to the *U.S. Courts Design Guide*. The Appendix is intended to address the unique challenges and opportunities that arise when a court makes major renovations or alterations to an existing building. Since the Appendix supersedes a chapter on courtroom renovation and alteration endorsed by the Conference in March 2004 (JCUS-MAR 04, pp. 28-29), the Conference rescinded its March 2004 position.

BALLISTIC GLAZING

In March 2000, the Conference amended the *U.S. Courts Design Guide* to provide that for new construction or major renovation projects, the ballistic-resistant glazing standard for windows in all courtrooms and chambers, regardless of where they are located in the courthouse, should be UL Standard 752, Level IV (which is classified as a bullet-resistant product

capable of stopping one shot from a .30 caliber rifle), unless the U.S. Marshals Service determined that ballistic-resistant glazing was not needed. Based on new information gleaned on this topic from the security industry, the USMS, and other security experts, the Committee recommended that the Conference amend the ballistic-glazing requirement contained in the *U.S. Courts Design Guide* to read as follows:

> Ballistic-resistant glazing, UL Standard 752, Level IV, may be considered for a judge's private office within the chambers suite after full disclosure has been made to the court of the relevant risks, inconsistencies, costs, and alternatives including, but not limited to, the following:
>
> a. The risk, and inconsistency with applicable blast criteria, arising from the fact that ballistic-resistant glazing may turn into a lethal projectile in the event of a blast;
>
> b. The risk that emergency workers may find it difficult to break through ballistic-resistant glazing during rescue efforts;
>
> c. The necessity of factoring the costs associated with structural reinforcements and materials supporting ballistic-resistant glazing into the overall cost estimate;
>
> d. The fact that ballistic-resistant glazing may appear different from standard windows and thereby create a security risk by identifying a target;
>
> e. The likelihood that windows with ballistic-resistant glazing will not be operable except for maintenance purposes;
>
> f. The finding by security experts that keeping a target from view, using window-coverings, architectural features or other low-cost measures is often the most effective deterrent to a targeted on-site attack; and
>
> g. The decision to install ballistic-resistant glazing is subject to funding availability.

The Conference adopted the Committee's recommendation.

FIVE-YEAR COURTHOUSE PROJECT PLAN

On recommendation of the Committee, the Judicial Conference approved the Five-Year Courthouse Project Plan for FYs 2011-2015, which moves the projects from the previous five-year plan back by one year and removes the Austin, Texas project, which was funded in 2009.

U.S. COURTS DESIGN GUIDE EXCEPTION

The District of Maryland moved its Central Violations Bureau (CVB) docket to the courthouse located in Greenbelt, Maryland when its lease agreement with the State of Maryland expired. Because of the unique nature of the CVB docket, the Committee recommended, and the Conference agreed to approve, an exception to the *U.S. Courts Design Guide* to allow construction of a magistrate judge courtroom of 2,440 square feet at the Greenbelt, Maryland courthouse.

COMMITTEE ACTIVITIES

The Committee on Space and Facilities reported that the budget request for the space and facilities program for fiscal year 2011 was $1.16 billion. The Committee also reported that it concurred in the recommendation of the Committee on Court Administration and Case Management regarding a courtroom sharing policy for magistrate judges (*see supra*, "Courtroom Sharing," pp. 9-11). The Committee also approved an appeal process for long-range facilities plans prepared under the Asset Management Planning (AMP) process, as well as an amendment to the AMP Business Rules regarding how courtrooms and chambers should be provided for roving judges, i.e., judges who have more than one duty station.

FUNDING

All of the foregoing recommendations that require the expenditure of funds for implementation were approved by the Judicial Conference subject to the availability of funds and to whatever priorities the Conference might establish for the use of available resources.

Chief Justice of the United States
Presiding

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

March 16, 2010

The Judicial Conference of the United States convened in Washington, D.C., on March 16, 2010, 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 Sandra L. Lynch
Chief Judge Mark L. Wolf,
District of Massachusetts

Second Circuit:

Chief Judge Dennis Jacobs
Chief Judge William K. Sessions III,
District of Vermont

Third Circuit:

Chief Judge Anthony J. Scirica
Chief Judge Harvey Bartle III,
Eastern District of Pennsylvania

Fourth Circuit:

Chief Judge William B. Traxler, Jr.
Chief Judge James P. Jones,
Western District of Virginia

Fifth Circuit:

Chief Judge Edith Hollan Jones
Judge Sim Lake,
Southern District of Texas

Sixth Circuit:

Chief Judge Alice M. Batchelder
Judge Solomon Oliver, Jr.,
Northern District of Ohio

Seventh Circuit:

Chief Judge Frank H. Easterbrook
Chief Judge Richard L. Young,
Southern District of Indiana

Eighth Circuit:

Chief Judge James B. Loken
Judge Rodney W. Sippel,
Eastern District of Missouri

Ninth Circuit:

Chief Judge Alex Kozinski
Judge Charles R. Breyer,
Northern District of California

Tenth Circuit:

Chief Judge Robert H. Henry
Judge Robin J. Cauthron,
Western District of Oklahoma

Eleventh Circuit:

Chief Judge Joel F. Dubina
Judge Myron H. Thompson,
Middle District of Alabama

District of Columbia Circuit:

Chief Judge David Bryan Sentelle
Chief Judge Royce C. Lamberth,
District of Columbia

Federal Circuit:

Chief Judge Paul R. Michel

Court of International Trade:

Chief Judge Jane A. Restani

The following Judicial Conference committee chairs attended the Conference session: Circuit Judges Bobby R. Baldock, Julia Smith Gibbons, Michael S. Kanne, M. Margaret McKeown, Jeffrey S. Sutton, and Richard C. Tallman, and District Judges Julie E. Carnes, Rosemary M. Collyer, Claire V. Eagan, Janet C. Hall, Robert L. Hinkle, D. Brock Hornby, Mark R. Kravitz, Barbara M.G. Lynn, J. Frederick Motz, Donald C. Pogue, Michael A. Ponsor, Julie A. Robinson, Lee H. Rosenthal, Charles R. Simpson III, George Z. Singal, and Laura Taylor Swain. Bankruptcy Judge Rosemary Gambardella and Magistrate Judge Anthony J. Battaglia were also in attendance. Collins Fitzpatrick of the Seventh Circuit represented the circuit executives.

James C. Duff, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Jill C. Sayenga, Deputy Director; William R. Burchill, Jr., Associate Director and General Counsel; Laura C. Minor, Assistant Director, and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat; Cordia A. Strom, Assistant Director, Legislative Affairs; and David A. Sellers, Assistant Director, Public Affairs. District Judge Barbara Jacobs Rothstein and John S. Cooke, Director and Deputy Director of the Federal Judicial Center, and Judith W. Sheon, Staff Director of the United States Sentencing Commission, were in attendance at the session of the Conference, as was Jeffrey P. Minear, Counselor to the Chief Justice. The 2009-2010 Supreme Court Fellows also observed the Conference proceedings.

Acting Deputy Attorney General Gary Grindler addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice. Senators Jeff Sessions and Sheldon Whitehouse and Representatives John Conyers, Jr., and Henry C. Johnson, Jr., spoke on matters pending in Congress of interest to the Conference.

REPORTS

Mr. Duff reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office (AO). Judge Rothstein spoke to the Conference about Federal Judicial Center (FJC) programs, and Judge Sessions, in his capacity as chair of the United States Sentencing Commission, reported on Sentencing Commission activities. Judge Julia Smith Gibbons, Chair of the Committee on the Budget, presented a report on budget matters.

ELECTION

The Judicial Conference elected to membership on the Board of the Federal Judicial Center Judge Edward Prado of the Court of Appeals for the Fifth Circuit to succeed Chief Judge William R. Traxler, Jr., of the Court of Appeals for the Fourth Circuit.

EXECUTIVE COMMITTEE

TRIBAL LAW AND ORDER ACT OF 2009

The proposed Tribal Law and Order Act of 2009, S. 797 and H.R. 1924 (111th Congress), addresses the administration of criminal justice in Indian country. Three committees of the Judicial Conference considered portions of the bill and two committees, the Criminal Law Committee and the Defender Services Committee, determined to make recommendations to the Judicial Conference regarding select provisions. So that the judiciary's views would not be mooted by intervening legislative action, the Executive Committee was asked to consider the recommendations on an expedited basis. The Executive Committee agreed to act on behalf of the Conference with regard to one of two recommendations made by the Criminal Law Committee. It approved a recommendation that the Judicial Conference oppose any legislation that would establish litigation priorities among different kinds of criminal cases brought in the federal courts or that would supplant in any way the time limits presently set by the Speedy Trial Act, 18 U.S.C. § 3161 et seq. With regard to the remaining recommendation of the Criminal Law Committee and the recommendation of the Defender Services Committee, the Executive Committee determined that they should be considered and

discussed by the full Conference at the March 2010 session. *See infra*, "Tribal Law and Order Act of 2009," pp. 10-11, 12.

MISCELLANEOUS ACTIONS

The Executive Committee —

- Approved final fiscal year 2010 financial plans for the Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners accounts;
- Approved technical adjustments to the judiciary's fiscal year 2011 budget request;
- Approved on behalf of the Conference an updated Five-Year Courthouse Project Plan for Fiscal Years 2011-2015 for submission to Congress;
- Asked the Defender Services Committee to consider, in consultation with the Budget and Federal-State Jurisdiction Committees, issues raised in a letter concerning federal defender representation of defendants in state court capital habeas corpus proceedings; and
- Asked the Judicial Resources Committee to develop a statement about employment dispute resolution hearing officers' duties.

COMMITTEE ON AUDITS AND ADMINISTRATIVE OFFICE ACCOUNTABILITY[1]

COMMITTEE ACTIVITIES

The Committee on Audits and Administrative Office Accountability reported that it had an in-depth discussion of how to carry out its revised jurisdiction. It determined to enhance its oversight of the audit program, including having regular direct contact with auditors; approved a plan to assess the AO's program review responsibilities, standards, objectives and

[1]Previously known as the Committee on the Administrative Office.

practices; and determined that the AO should update and reissue internally the publication, *The Federal Judiciary's Oversight and Review System*, originally published at the request of the Committee in December 2005.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

OFFICIAL DUTY STATION

On recommendation of the Bankruptcy Committee, and in accordance with 28 U.S.C. § 152(b)(1), the Judicial Conference approved a request of the Fourth Circuit Judicial Council to transfer the official duty station for Chief Judge Randy Doub in the Eastern District of North Carolina from Wilson to Greenville and to designate Wilson as an additional place of holding court. Also on the Committee's recommendation, and in accordance with § 230.10 of Volume 9 of the *Guide to Judiciary Policy*,[2] the Conference approved the transfer of the duty station of the bankruptcy administrator in the Eastern District of North Carolina from Wilson to Raleigh, subject to the approval of the Judicial Council of the Fourth Circuit.

RECALL OF BANKRUPTCY JUDGES

At the request of the Committee, the Conference agreed that recommendations regarding recall of bankruptcy judges would be withdrawn.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Bankruptcy System reported that it voted unanimously to recommend to the Budget Committee that the existing system of budgeting for chambers staff be maintained. It also approved a recommendation of its Subcommittee on Technology and Statistics that certain additional bankruptcy data be transmitted to the Inter-University Consortium for Political and Social Research at the University of Michigan. In addition, the Committee discussed several issues related to judicial

[2]Previously known as the *Guide to Judiciary Policies and Procedures*.

resources, including efforts to make more efficient use of the bankruptcy judge recall program and to promote greater use of intercircuit assignments of bankruptcy judges.

COMMITTEE ON THE BUDGET

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it continues to be concerned about the long-term financial health of the judiciary and spent considerable time discussing internal and external actions that will impact future budgets. Given the current difficult fiscal environment, the Committee plans to work with the program committees to begin consideration of revising the annual budget cap of 8.2 percent for the Salaries and Expenses account. The Committee also discussed the judiciary's most recent long-range budget estimates (through fiscal year 2019) and noted that sizable shortfalls in the Salaries and Expenses account are projected. Consequently, the judiciary's two-pronged approach of cost containment and congressional outreach, which has been critical to the judiciary's recent financial success, will be even more important in the coming years.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in September 2009, the Committee received 40 new written inquiries and issued 41 written advisory responses. During this period, the average response time for requests was 18 days. In addition, the Committee chair responded to 150 informal inquiries, individual Committee members responded to 132 informal inquiries, and Committee counsel responded to 389 informal inquiries.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

CIVIL LITIGATION MANAGEMENT MANUAL

In March 2001, the Judicial Conference approved publication of the *Civil Litigation Management Manual*, which provides information on litigation management, cost and delay reduction techniques, and alternative dispute resolution programs, as required by the Civil Justice Reform Act of 1990 (*see* 28 U.S.C. § 479(c)) (JCUS-MAR 01, p. 15). To fulfill its obligation under the Act to update periodically the *Civil Litigation Management Manual*, at this session, on recommendation of the Committee on Court Administration and Case Management, the Conference approved a revised version of the *Manual* that updates the relevant statutes and rules, describes changes in civil practice since 2001, and provides more current advice and references on civil case management. In addition, the Conference delegated to the Court Administration and Case Management Committee the authority to make technical and/or conforming, non-controversial amendments to the *Manual.*

COURTROOM SECURITY SURVEILLANCE RECORDINGS

In September 2009, the Judicial Conference approved the development and transmission to the National Archives and Records Administration (NARA) of a records disposition schedule for routine courtroom security surveillance recordings, consistent with the terms of a memorandum of understanding (MOU) to be entered into by the judiciary and the U.S. Marshals Service establishing guidance on the creation, retention, use, and disposal of such recordings (JCUS-SEP 09, pp. 23-24). At this session, on recommendation of the Committee and consistent with the terms of the MOU, the Conference approved a records disposition schedule for routine courtroom security surveillance recordings that provides for a retention period of 14 to 30 days before disposal of the recordings, as well as the authority, in the case of a security incident, for the security video to be maintained until the conclusion of the investigation or such time as determined by order of the chief judge of the court.

ELECTRONIC PUBLIC ACCESS FEE SCHEDULE

In order to encourage use of the Public Access to Court Electronic Records (PACER) system by the public, in March 2001 the Judicial Conference provided that users would not be billed until their accounts totaled at least $10 in a one-year period, thus allowing free access to at least 125 pages of court filings (JCUS-MAR 01, pp. 12-13). To increase the amount of data available without charge, at this session the Committee recommended, and the Conference agreed, that users would be allowed to accrue $10 in free usage quarterly, instead of yearly, before they would be charged. The Conference therefore amended Item I of the Electronic Public Access Fee Schedule to read, in part, as follows: "No fee is owed under this provision until an account holder accrues charges of more than $10 in a quarterly billing cycle."

PUBLIC ACCESS TO DISTRICT AND BANKRUPTCY COURT OPINIONS

On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference approved a one-year pilot project with the Government Printing Office (GPO), involving no more than 12 courts, to provide public access to court opinions through GPO's FDsys system, which is an advanced, internet-based digital system that allows searches across opinions and across courts. The Conference also agreed to delegate to the Committee the authority to extend the pilot program for up to one additional year, if necessary to ensure that sufficient data is collected to evaluate the program.

ELECTRONIC ACCESS TO DIGITAL AUDIO RECORDINGS

In March 2007, the Judicial Conference established a pilot program to evaluate the feasibility of making digital audio recordings of court hearings available to the public through PACER (JCUS-MAR 07, p. 12). After reviewing the results of the program and concluding that providing such access did not adversely affect the performance of the judiciary's information technology systems and that it improved public access, the Committee recommended that the Judicial Conference—

a. Allow courts, at the discretion of the presiding judge, to provide access to digital audio files via PACER;

b. Establish a fee for public access to such recordings commensurate with the maximum fee for downloading a single file from PACER (currently $2.40); and

c. Delegate to the Administrative Office the authority to establish appropriate language in the Electronic Public Access Fee Schedule to effectuate this fee.

The Conference adopted the Committee's recommendations.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it created a subcommittee to oversee the progress of Phase I of the Next Generation of CM/ECF. The Committee also discussed how it could assist courts and judges with handling the increasing number of terrorism-related cases. In that regard, the Committee endorsed revisions to the judiciary's security procedures under the Classified Information Procedures Act, which will be forwarded to the Chief Justice, who must approve the procedures in consultation with the Attorney General, Director of National Intelligence, and Secretary of Defense.

COMMITTEE ON CRIMINAL LAW

TRIBAL LAW AND ORDER ACT OF 2009

As discussed above, the Criminal Law Committee made two recommendations to the Judicial Conference regarding the proposed Tribal Law and Order Act of 2009. The first recommendation, to oppose establishment of litigation priorities among different kinds of criminal cases brought in the federal courts, was adopted by the Executive Committee on behalf of the Conference. *See* "Tribal Law and Order Act of 2009," pp. 4-5. The second recommendation, to oppose any legislation that would expand tribal court sentencing authority beyond one year of imprisonment, was discussed at the Conference session along with a related recommendation from the Defender Services Committee to urge Congress to incorporate in

legislation applying to Indian tribal criminal adjudications certain bedrock principles of the right to counsel that are part of the federal and state systems. After discussion, the Conference adopted a recommendation, offered as a substitute for both the Criminal Law and Defender Services Committees' recommendations, that the Conference would take no position on pending tribal court legislation but would communicate to Congress concerns about the impact on the federal courts of portions of the legislation, as set forth in a draft letter presented to the Conference. In that letter, the Conference stated:

> After careful consideration, the Judicial Conference of the United States, which is the policy-making body of the Judicial Branch, has decided not to take a position as to whether the Congress should increase tribal sentencing authority from one to three years, and it defers to Congress as to its determination on this matter of Indian tribal authority.
>
> The Judicial Conference nevertheless notes that enactment of the proposed legislation, which would effectively give tribal courts felony jurisdiction over a number of common offenses, could result in increased petitions to the federal courts for habeas corpus relief from tribal court action. The absence of procedural requirements in tribal courts poses difficulties for federal habeas courts reviewing tribal proceedings. For example, the absence of a record could render it difficult for a federal court to evaluate challenges to tribal convictions. In addition, the procedural and substantive differences between federal and tribal law may complicate federal court assessments of whether certain tribal convictions qualify as predicate offenses for federal sentencing purposes.
>
> We can offer no simple solution for addressing those concerns. We nevertheless respectfully request that your committee take account of those factors in your consideration of the proposed legislation.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that pursuant to authority delegated to the Committee by the Judicial Conference (JCUS-MAR 06, p. 15), it endorsed stylistic modifications to Monograph 110, *Judicial Officer's Reference on Alternatives to Detention and Conditions of Release,*

and Monograph 113, *The Federal Location Monitoring Program for Defendants and Offenders*. The Committee also reported that it endorsed the use of alphanumeric user identification ("user ID") and password verification to facilitate the use of electronic monthly reporting by a defendant or offender as an alternative to the collection of paper forms bearing a defendant's or offender's "pen and ink" signature. Finally, the Committee reported that the Federal Judicial Center has agreed to conduct a study to assess the efficacy and cost effectiveness of federal reentry court programs and has designed a multi-year research project to that end.

COMMITTEE ON DEFENDER SERVICES

COMMUNITY DEFENDER ORGANIZATION BENEFITS

On recommendation of the Committee on Defender Services, the Judicial Conference approved a community defender organization severance pay policy that is based on the policy applicable to federal public defender organization employees. If a community defender organization decides to adopt a severance pay plan, it must conform to this policy.

TRIBAL LAW AND ORDER ACT OF 2009

The Committee on Defender Services made a recommendation with regard to the proposed Tribal Law and Order Act of 2009, S. 797, H.R. 1924 (111th Congress) urging Congress to incorporate in legislation applying to Indian tribal criminal adjudications certain bedrock principles of the right to counsel that are part of the federal and state systems. As discussed above (*see supra*, "Tribal Law and Order Act of 2009," pp. 4-5), the Executive Committee, which had been asked to act on the recommendation on an expedited basis, determined that the recommendation should be discussed by the full Conference at the March 2010 session. After discussion, the Conference approved a substitute motion in lieu of this recommendation and a related Criminal Law Committee recommendation, agreeing to take no position on pending tribal court legislation, but to communicate to Congress concerns about the impact on the federal courts of portions of the legislation, as set forth in a draft letter presented at the Conference session. *See supra*, "Tribal Law and Order Act of 2009," pp. 10-11.

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it received a report on a federal defender compensation study containing recommendations for achieving closer salary and benefits parity with comparable positions in the United States attorneys' offices, and it endorsed for FY 2010 those recommendations that could be accomplished within the existing budgetary allocations to individual federal defender organizations. The Committee also discussed the role of its Defender Services Budget Subcommittee in reviewing federal defender organizations' requests for additional funds to support "mega-cases." In addition, the Committee considered and declined to approve a request from the District of Idaho to establish a Coeur d'Alene branch office of the community defender organization serving the district because the current level of Criminal Justice Act appointments did not warrant the increased expense.

COMMITTEE ON FEDERAL-STATE JURISDICTION

DIVERSITY JURISDICTION

In response to a request from the Executive Committee, the Federal-State Jurisdiction Committee has been considering the continued viability of older Judicial Conference-approved legislative positions that have not been pursued in Congress for some time. At this session, it reviewed the Conference's 1990 position supporting elimination of non-economic damages from the calculation of the amount in controversy for cases based on diversity jurisdiction under 28 U.S.C. § 1332 (JCUS-SEP 90, p. 60). Noting that the judiciary had not pursued the position in Congress in over ten years and that it was extremely unlikely that the position would be viewed favorably by Congress, the Committee recommended that the position be rescinded. The Conference approved the recommendation.

PRISON ABUSE REMEDIES ACT

The proposed Prison Abuse Remedies Act, H.R. 4335 (111th Congress), would amend the Prison Litigation Reform Act of 1995 (PLRA) to reduce some of the restrictions that the PLRA placed on the filing of civil rights actions by prisoners alleging prison abuse. After reviewing the

proposed legislation, the Committee recommended that the Conference take no position on H.R. 4335, or similar legislation, with the exception of opposition to the provision that would amend 28 U.S.C. § 1915(b) to eliminate the requirement in current law that a prisoner proceeding *in forma pauperis* be assessed the filing fee upon the filing of a civil action. It further recommended that should Congress proceed to modify the current filing fee requirement, the Conference should respectfully urge Congress to retain the requirement for the assessment of fees upon the filing of a civil action, with allowance for the refund of filing fees for those actions that are not dismissed under 28 U.S.C. § 1915A, 28 U.S.C. § 1915(e)(2), or 42 U.S.C. § 1997e(c)(1). The Conference adopted the Committee's recommendations.

HAGUE CONVENTION ON CHOICE OF COURT AGREEMENTS

In response to a request from the United States Department of State, the Committee conducted a review of the Hague Convention on Choice of Court Agreements, which was signed by the United States in January 2009 and awaits Senate ratification and the adoption of implementing legislation. Under the terms of the Convention, ratifying Nation-States agree that their courts will give effect to clauses in international commercial contracts in which the parties select a particular nation's courts as the forum for adjudication of disputes arising from the contract. With regard to proposed federal legislation to implement the Hague Convention, on recommendation of the Committee, the Judicial Conference, consistent with principles of federalism, agreed to—

a. Support the inclusion of language to provide that actions do not, solely by virtue of the fact that they have been brought for the resolution of contract disputes or for the enforcement of judgments of other courts under the Hague Convention, qualify for federal question jurisdiction;

b. Oppose the inclusion of language that would allow parties to remove actions brought pursuant to the Hague Convention to federal court at any time, but support the application of current law governing removal to such actions; and

c. Oppose the inclusion of language that would provide for federal district court interlocutory review of state court decisions concerning conflicts between the federal and state statutes implementing the Hague Convention.

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it was continuing its efforts to facilitate the exchange of information and ideas among local state-federal judicial councils. The Committee continues to monitor the status of regulations to certify states for expedited review of federal capital habeas corpus petitions and also is continuing its dialogue with state supreme court chief justices concerning improvements in capital habeas corpus litigation in both the federal and state court systems. The Committee also received a report on the status of legislation addressing procedures for claiming the state secrets privilege. In addition, a representative of the Department of Justice gave a presentation on efforts to enact comprehensive immigration reform legislation and such legislation's potential impact on the federal courts.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that it continues to enhance the financial disclosure report (FDR) software, and also is overseeing development of a system for the electronic filing and records management of financial disclosure reports. Analysis of the calendar year 2008 financial disclosure reports reflects that use of the enhanced self-audit function in the FDR software continues to improve the quality of the reports and reduce the volume of correspondence between the Committee and filers. As of December 31, 2009, the Committee had received 4,421 financial disclosure reports and certifications for calendar year 2008, including 1,338 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 365 reports from bankruptcy judges; 582 reports from magistrate judges; and 2,136 reports from judicial employees.

COMMITTEE ON INFORMATION TECHNOLOGY

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it discussed efforts to lay the foundation for an improved communications infrastructure

and endorsed the concept of developing and managing an enterprise-wide internet telephone service the courts could use at their option. The Committee endorsed providing e-mail accounts and access to the J-Net on the judiciary's data communications network (DCN) to retired bankruptcy and magistrate judges who are subject to recall. Along with other updates, the Committee heard reports on development of the next generation of the Case Management/Electronic Case Files (CM/ECF) systems; current issues within the Electronic Public Access program; and a project to create an electronic Criminal Justice Act voucher processing system. It also awarded five grants to local courts to promote the development of local technology solutions that may be shared with other court units.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that 99 intercircuit assignments were undertaken by 70 Article III judges from July 1, 2009, to December 31, 2009. The Committee also reported that for the full calendar year 2009, 238 intercircuit assignments were processed by the Committee and approved by the Chief Justice, the highest number in the last 20 years. During this time, the Committee continued to disseminate information about intercircuit assignments and aided courts requesting assistance by identifying and obtaining judges willing to take assignments.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its involvement in rule of law and judicial reform throughout the world, highlighting activities in Africa, Asia and the Pacific Basin, Latin America and the Caribbean, the Middle East, Europe, and Eurasia. The Committee further reported on its continued participation in the rule of law component of the Library of Congress' Open World Program for jurists from Russia, Ukraine, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, and Turkmenistan. In addition, the Committee reported about rule of law activities involving the Federal Judicial Center, the U.S. State Department, the U.S. Agency for International Development, the U.S. Department of Justice, the World Bank,

the AO Office of Defender Services, and United States court administrators. Finally, the Committee reported on hosting foreign delegations of jurists and judicial personnel for briefings at the Administrative Office.

COMMITTEE ON THE JUDICIAL BRANCH

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it continues to pursue possible avenues for improving judicial compensation and benefits, notwithstanding the constrained budget climate. The Committee also reported that it continues to consider ways to improve judicial-legislative communications. Educating the public, especially the media, on the role of judges and the judiciary in society remains a priority of the Committee.

COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY

COMMITTEE ACTIVITIES

The Committee on Judicial Conduct and Disability reported that on October 26, 2009, it issued a decision on a petition for review of a circuit judicial council order on a complaint under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364, and that it has under advisement a petition for review of a judicial council order on two complaints under the Act. The Committee also reported that it continues to address courts' inquiries and to develop resources and infrastructure in support of the Committee's responsibilities.

COMMITTEE ON JUDICIAL RESOURCES

EXECUTIVE COMPENSATION

In September 1993, the Judicial Conference approved locality pay for the courts to be provided in the same amounts, in the same areas, and at the same time as is approved for the executive branch. This had the effect of imposing a locality pay cap on salaries of circuit executives and Judicial Salary Plan (JSP) positions graded at JSP-16 through JSP-18 at the equivalent

of level III of the Executive Schedule, which was the locality pay cap for the executive branch Senior Executive Service (SES) (JCUS-SEP 93, p. 50). In 2005, when changes to the executive branch salary structure made locality pay caps no longer applicable to the SES, the Conference agreed to approve, as an interim measure, the application of locality pay for unit executives up to the salary of a district judge, to be applied at the request of the chief judge on behalf of the court, as set forth on what have become known as optional pay tables (JCUS-SEP 05, p. 29). Aggregate pay, which includes bonuses and awards on top of basic pay and locality pay, had already been capped at the salary of a district judge (JCUS-SEP 03, p. 30). In 2007, in response to a request to reconsider the pay caps, the Committee authorized the conduct of a comprehensive study of executive compensation. Four proposals that evolved from that study were considered by the Conference and are discussed below.

Pay Cap Exception for National Judiciary Awards. Unit executives at or near the aggregate pay cap, which as noted above is the salary of a district judge, are ineligible to receive some or all of the cash payments that accompany national judiciary awards. For those executives, these awards have become largely honorary. On recommendation of the Committee, the Conference approved lifting the current aggregate pay cap for court employees only to allow receipt of the full amount of a national judiciary award.

Grading Formulas. The judiciary determines maximum grades for district clerks of court, bankruptcy clerks of court, and chief probation and pretrial services officers through application of grading formulas (also known as court-sizing formulas). The formulas for district and bankruptcy clerks are based on the number of judgeships and authorized work units (AWUs) at a court; the formula for chief probation and pretrial services officers is based solely on the numbers of AWUs. The grades are recalculated annually, which can lead to grade volatility as workload rises and falls. In order to reduce that volatility, the Committee recommended, and the Conference approved, the following revised procedures when a grade reduction for a court unit executive is supported by application of the grading formula:

a. Calculate a three-year average using the data from the current year and from the two previous years;

b. Retain the current grade if the three-year average falls above the respective threshold;

c. Retain the current grade for a one-year grace period if the three-year average falls below the respective threshold by less than five percent of the threshold;

d. Downgrade the position at the end of the one-year grace period if the new three-year average remains below the threshold; and

e. Downgrade the position if the original three-year average falls more than five percent below the threshold.

Pay Stratification. Noting that there is currently no differentiation in the pay potential for circuit and court unit executives at the JSP-16 through JSP-18 levels, the Committee expressed concern that should the salary of a district judge increase other than through ordinary annual pay adjustments, there could be an uncontrolled upward migration of pay rates for unit executives on the optional pay tables. The Committee therefore recommended, and the Conference approved, the following stratified pay caps for application to the optional pay tables for circuit and court unit executives should the salary of a district judge increase (other than through anticipated annual Employment Cost Index-based pay adjustments), with the understanding that the aggregate pay cap of court employees cannot exceed the salary of a district judge:

a. EX-I ($196,700 in 2009) as the cap for circuit executive positions and court unit executive positions at JSP-18;

b. EX-II ($177,000 in 2009) as the cap for court unit executive positions at JSP-16 and JSP-17; and

c. EX-III ($162,900 in 2009) as the cap for court unit executive positions at JSP-15 and below.

Annual Leave Accrual. Currently, unit executives only begin to earn eight hours of leave per pay period after they have accrued 15 years of creditable service. On recommendation of the Committee, the Judicial Conference agreed to seek legislation to allow unit executives to accrue eight hours of annual leave per pay period prospectively, regardless of the length of service, similar to what is provided to executives in the executive branch.

COURT PERSONNEL SYSTEM PROMOTION POLICY

In September 2004, the Conference modified the promotion rule for Court Personnel System (CPS) employees to afford court units greater flexibility when determining the salary of employees being promoted to a higher classification level (JCUS-SEP 04, p. 22). Instead of a set rate of six percent over current salary, the Conference allowed court units to establish a local promotion policy that set the increase for a fiscal year at a uniform, unit-wide rate of not less than three percent nor more than six percent. At this session, on recommendation of the Committee, the Conference agreed to give court units even greater latitude by setting at one percent the minimum salary promotion rate, to be applied for a fiscal year at a uniform, unit-wide rate in keeping with existing policy.

MODEL EMPLOYMENT DISPUTE RESOLUTION PLAN

On recommendation of the Committee, the Judicial Conference approved revisions to the *Model Employment Dispute Resolution Plan* adopted for the federal judiciary in 1997. Revisions incorporated in the 2010 *Model Employment Dispute Resolution Plan* include (a) specifying procedures for handling claims involving judges; (b) extending the definition of harassment beyond sexual harassment to apply to all types of discrimination; (c) creating a special reporting process for wrongful conduct to bring these matters quickly to management's attention even outside of the employment dispute resolution process; (d) allowing for summary dismissals throughout the process; and (e) clarifying the provisions regarding confidentiality.

RETIRED LAW ENFORCEMENT OFFICER RE-EMPLOYMENT

The District of Hawaii requested an exception to the March 2009 Conference policy limiting re-employment of a retired law enforcement officer to a single period of a maximum of 18 months (JCUS-MAR 09, p. 26). Without the exception, the district would lose its chief and deputy chief probation officers within four months of each other. On recommendation of the Committee, the Conference approved the request and allowed the district to re-employ its deputy chief probation officer for a second 18-month period from November 1, 2010 to April 30, 2012.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it continued its discussion of executive compensation, requesting that the Administrative Office explore several additional options for Committee review, including increasing the number and amount of national judiciary awards, establishing centralized funding to pay the relocation expenses of internal judiciary candidates who are filling circuit and court unit executive positions, and developing through its advisory structure one or more options for measuring executive performance. The Committee also requested that the Administrative Office and the Federal Judicial Center explore together the need to provide additional training opportunities and professional development programs for unit executives.

COMMITTEE ON JUDICIAL SECURITY

COMMITTEE ACTIVITIES

The Committee on Judicial Security reported that it discussed the security implications of internet social networking by judiciary employees and expressed support for the efforts of the Committee on Codes of Conduct to develop guidelines and model policies on such internet use for courts to consider. At the request of the Committee, the Administrative Office Director appointed an ad hoc working group to develop and implement strategies to mitigate the misuse and abuse of judges' names used as domain names on the internet when it is believed that a judge's security is being compromised.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

SELECTION AND APPOINTMENT REGULATIONS

The Judicial Conference's selection and appointment regulations for magistrate judges require that magistrate judge applicants have actively practiced law for at least five years. The court may consider other legal experience as a substitute for the active practice of law, except that if that other experience is as a law clerk to any judge, credit is limited to two years. This limitation is intended to ensure, among other things, that magistrate judge

applicants are seasoned and experienced attorneys. However, staff attorney and pro se law clerk experience has not been subject to this limitation. Noting that the duties of staff attorneys and pro se law clerks are similar to the duties of elbow law clerks and could, in fact, be seen as more limited in scope than the elbow law clerk position, the Committee recommended that the Judicial Conference amend Section 1.01(b)(4) of the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges to provide that only two years of experience as a staff attorney or pro se law clerk in a court may be used toward meeting the five-year active-practice-of-law requirement. The Conference adopted the Committee's recommendation.

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee on the Administration of the Magistrate Judges System and the recommendations of the Director of the Administrative Office, the respective district courts, and the judicial councils of the relevant circuits, the Judicial Conference determined to make the following changes regarding the magistrate judge positions in the District of North Dakota:

a. Redesignate the part-time magistrate judge position at Grand Forks, Devils Lake, or Minnewaukan as Grand Forks;

b. Authorize the part-time magistrate judge position at Grand Forks to exercise adjoining district jurisdiction in the District of Minnesota; and

c. Make no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

The Conference also agreed to make no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the following courts: Southern District of New York, Western District of Pennsylvania, Southern District of West Virginia, Eastern District of Louisiana, Northern District of Iowa, District of Alaska, District Court of Guam, District of Hawaii, and Middle District of Alabama.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that pursuant to the September 2004 Judicial Conference policy regarding the review of magistrate judge position vacancies (JCUS-SEP 04, p. 26), during the period between the Committee's June 2009 and December 2009 meetings, the Committee chair approved filling fourteen full-time magistrate judge position vacancies. At its December 2009 meeting, the full Committee approved filling two additional magistrate judge position vacancies. The Committee also agreed to share with the Ad Hoc Advisory Committee on Judiciary Planning some ideas in response to a draft strategic plan for the federal judiciary circulated by the Ad Hoc Committee.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that the Advisory Committee on Civil Rules is sponsoring a major conference at Duke University School of Law in May 2010 to consider the current civil litigation process and whether any changes are needed to the Federal Rules of Civil Procedure to achieve just, cost-effective, and timely disposition of cases. The Advisory Committees on Bankruptcy, Criminal, and Evidence Rules are reviewing comments from the public submitted on amendments proposed in August 2009 to their respective sets of rules. The proposals include a comprehensive restyling of the Federal Rules of Evidence.

COMMITTEE ON SPACE AND FACILITIES

COMMITTEE ACTIVITIES

The Committee on Space and Facilities reported that it approved a change to the Circuit Rent Budget (CRB) Business Rules to allow more flexibility for "Component C" spending and amended the business rules and CRB Program Manual to reflect the courtroom-sharing policies previously approved by the Judicial Conference for senior and magistrate judges (see JCUS-MAR 09, pp. 14-16; JCUS-SEP 09, pp. 9-11). The Committee also approved amendments to the Asset Management Planning (AMP) Business

Rules to specify treatment of general building conditions in the facility benefit assessment structure, to reflect the September 2009 Judicial Conference policy on courtroom sharing for magistrate judges, and to provide clarification to current rules.

FUNDING

All of the foregoing recommendations that require the expenditure of funds for implementation were approved by the Judicial Conference subject to the availability of funds and to whatever priorities the Conference might establish for the use of available resources.

Chief Justice of the United States
Presiding

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

March 16, 2010

The Judicial Conference of the United States convened in Washington, D.C., on March 16, 2010, 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 Sandra L. Lynch
Chief Judge Mark L. Wolf,
District of Massachusetts

Second Circuit:

Chief Judge Dennis Jacobs
Chief Judge William K. Sessions III,
District of Vermont

Third Circuit:

Chief Judge Anthony J. Scirica
Chief Judge Harvey Bartle III,
Eastern District of Pennsylvania

Fourth Circuit:

Chief Judge William B. Traxler, Jr.
Chief Judge James P. Jones,
Western District of Virginia

Fifth Circuit:

Chief Judge Edith Hollan Jones
Judge Sim Lake,
Southern District of Texas

Sixth Circuit:

Chief Judge Alice M. Batchelder
Judge Solomon Oliver, Jr.,
Northern District of Ohio

Seventh Circuit:

Chief Judge Frank H. Easterbrook
Chief Judge Richard L. Young,
Southern District of Indiana

Eighth Circuit:

Chief Judge James B. Loken
Judge Rodney W. Sippel,
Eastern District of Missouri

Ninth Circuit:

Chief Judge Alex Kozinski
Judge Charles R. Breyer,
Northern District of California

Tenth Circuit:

Chief Judge Robert H. Henry
Judge Robin J. Cauthron,
Western District of Oklahoma

Eleventh Circuit:

Chief Judge Joel F. Dubina
Judge Myron H. Thompson,
Middle District of Alabama

District of Columbia Circuit:

Chief Judge David Bryan Sentelle
Chief Judge Royce C. Lamberth,
District of Columbia

Federal Circuit:

Chief Judge Paul R. Michel

Court of International Trade:

Chief Judge Jane A. Restani

The following Judicial Conference committee chairs attended the Conference session: Circuit Judges Bobby R. Baldock, Julia Smith Gibbons, Michael S. Kanne, M. Margaret McKeown, Jeffrey S. Sutton, and Richard C. Tallman, and District Judges Julie E. Carnes, Rosemary M. Collyer, Claire V. Eagan, Janet C. Hall, Robert L. Hinkle, D. Brock Hornby, Mark R. Kravitz, Barbara M.G. Lynn, J. Frederick Motz, Donald C. Pogue, Michael A. Ponsor, Julie A. Robinson, Lee H. Rosenthal, Charles R. Simpson III, George Z. Singal, and Laura Taylor Swain. Bankruptcy Judge Rosemary Gambardella and Magistrate Judge Anthony J. Battaglia were also in attendance. Collins Fitzpatrick of the Seventh Circuit represented the circuit executives.

James C. Duff, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Jill C. Sayenga, Deputy Director; William R. Burchill, Jr., Associate Director and General Counsel; Laura C. Minor, Assistant Director, and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat; Cordia A. Strom, Assistant Director, Legislative Affairs; and David A. Sellers, Assistant Director, Public Affairs. District Judge Barbara Jacobs Rothstein and John S. Cooke, Director and Deputy Director of the Federal Judicial Center, and Judith W. Sheon, Staff Director of the United States Sentencing Commission, were in attendance at the session of the Conference, as was Jeffrey P. Minear, Counselor to the Chief Justice. The 2009-2010 Supreme Court Fellows also observed the Conference proceedings.

Acting Deputy Attorney General Gary Grindler addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice. Senators Jeff Sessions and Sheldon Whitehouse and Representatives John Conyers, Jr., and Henry C. Johnson, Jr., spoke on matters pending in Congress of interest to the Conference.

REPORTS

Mr. Duff reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office (AO). Judge Rothstein spoke to the Conference about Federal Judicial Center (FJC) programs, and Judge Sessions, in his capacity as chair of the United States Sentencing Commission, reported on Sentencing Commission activities. Judge Julia Smith Gibbons, Chair of the Committee on the Budget, presented a report on budget matters.

ELECTION

The Judicial Conference elected to membership on the Board of the Federal Judicial Center Judge Edward Prado of the Court of Appeals for the Fifth Circuit to succeed Chief Judge William R. Traxler, Jr., of the Court of Appeals for the Fourth Circuit.

EXECUTIVE COMMITTEE

TRIBAL LAW AND ORDER ACT OF 2009

The proposed Tribal Law and Order Act of 2009, S. 797 and H.R. 1924 (111th Congress), addresses the administration of criminal justice in Indian country. Three committees of the Judicial Conference considered portions of the bill and two committees, the Criminal Law Committee and the Defender Services Committee, determined to make recommendations to the Judicial Conference regarding select provisions. So that the judiciary's views would not be mooted by intervening legislative action, the Executive Committee was asked to consider the recommendations on an expedited basis. The Executive Committee agreed to act on behalf of the Conference with regard to one of two recommendations made by the Criminal Law Committee. It approved a recommendation that the Judicial Conference oppose any legislation that would establish litigation priorities among different kinds of criminal cases brought in the federal courts or that would supplant in any way the time limits presently set by the Speedy Trial Act, 18 U.S.C. § 3161 et seq. With regard to the remaining recommendation of the Criminal Law Committee and the recommendation of the Defender Services Committee, the Executive Committee determined that they should be considered and

discussed by the full Conference at the March 2010 session. *See infra*, "Tribal Law and Order Act of 2009," pp. 10-11, 12.

MISCELLANEOUS ACTIONS

The Executive Committee —

- Approved final fiscal year 2010 financial plans for the Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners accounts;
- Approved technical adjustments to the judiciary's fiscal year 2011 budget request;
- Approved on behalf of the Conference an updated Five-Year Courthouse Project Plan for Fiscal Years 2011-2015 for submission to Congress;
- Asked the Defender Services Committee to consider, in consultation with the Budget and Federal-State Jurisdiction Committees, issues raised in a letter concerning federal defender representation of defendants in state court capital habeas corpus proceedings; and
- Asked the Judicial Resources Committee to develop a statement about employment dispute resolution hearing officers' duties.

COMMITTEE ON AUDITS AND ADMINISTRATIVE OFFICE ACCOUNTABILITY[1]

COMMITTEE ACTIVITIES

The Committee on Audits and Administrative Office Accountability reported that it had an in-depth discussion of how to carry out its revised jurisdiction. It determined to enhance its oversight of the audit program, including having regular direct contact with auditors; approved a plan to assess the AO's program review responsibilities, standards, objectives and

[1]Previously known as the Committee on the Administrative Office.

practices; and determined that the AO should update and reissue internally the publication, *The Federal Judiciary's Oversight and Review System*, originally published at the request of the Committee in December 2005.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

OFFICIAL DUTY STATION

On recommendation of the Bankruptcy Committee, and in accordance with 28 U.S.C. § 152(b)(1), the Judicial Conference approved a request of the Fourth Circuit Judicial Council to transfer the official duty station for Chief Judge Randy Doub in the Eastern District of North Carolina from Wilson to Greenville and to designate Wilson as an additional place of holding court. Also on the Committee's recommendation, and in accordance with § 230.10 of Volume 9 of the *Guide to Judiciary Policy*,[2] the Conference approved the transfer of the duty station of the bankruptcy administrator in the Eastern District of North Carolina from Wilson to Raleigh, subject to the approval of the Judicial Council of the Fourth Circuit.

RECALL OF BANKRUPTCY JUDGES

At the request of the Committee, the Conference agreed that recommendations regarding recall of bankruptcy judges would be withdrawn.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Bankruptcy System reported that it voted unanimously to recommend to the Budget Committee that the existing system of budgeting for chambers staff be maintained. It also approved a recommendation of its Subcommittee on Technology and Statistics that certain additional bankruptcy data be transmitted to the Inter-University Consortium for Political and Social Research at the University of Michigan. In addition, the Committee discussed several issues related to judicial

[2]Previously known as the *Guide to Judiciary Policies and Procedures*.

resources, including efforts to make more efficient use of the bankruptcy judge recall program and to promote greater use of intercircuit assignments of bankruptcy judges.

COMMITTEE ON THE BUDGET

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it continues to be concerned about the long-term financial health of the judiciary and spent considerable time discussing internal and external actions that will impact future budgets. Given the current difficult fiscal environment, the Committee plans to work with the program committees to begin consideration of revising the annual budget cap of 8.2 percent for the Salaries and Expenses account. The Committee also discussed the judiciary's most recent long-range budget estimates (through fiscal year 2019) and noted that sizable shortfalls in the Salaries and Expenses account are projected. Consequently, the judiciary's two-pronged approach of cost containment and congressional outreach, which has been critical to the judiciary's recent financial success, will be even more important in the coming years.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in September 2009, the Committee received 40 new written inquiries and issued 41 written advisory responses. During this period, the average response time for requests was 18 days. In addition, the Committee chair responded to 150 informal inquiries, individual Committee members responded to 132 informal inquiries, and Committee counsel responded to 389 informal inquiries.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

CIVIL LITIGATION MANAGEMENT MANUAL

In March 2001, the Judicial Conference approved publication of the *Civil Litigation Management Manual*, which provides information on litigation management, cost and delay reduction techniques, and alternative dispute resolution programs, as required by the Civil Justice Reform Act of 1990 (*see* 28 U.S.C. § 479(c)) (JCUS-MAR 01, p. 15). To fulfill its obligation under the Act to update periodically the *Civil Litigation Management Manual*, at this session, on recommendation of the Committee on Court Administration and Case Management, the Conference approved a revised version of the *Manual* that updates the relevant statutes and rules, describes changes in civil practice since 2001, and provides more current advice and references on civil case management. In addition, the Conference delegated to the Court Administration and Case Management Committee the authority to make technical and/or conforming, non-controversial amendments to the *Manual.*

COURTROOM SECURITY SURVEILLANCE RECORDINGS

In September 2009, the Judicial Conference approved the development and transmission to the National Archives and Records Administration (NARA) of a records disposition schedule for routine courtroom security surveillance recordings, consistent with the terms of a memorandum of understanding (MOU) to be entered into by the judiciary and the U.S. Marshals Service establishing guidance on the creation, retention, use, and disposal of such recordings (JCUS-SEP 09, pp. 23-24). At this session, on recommendation of the Committee and consistent with the terms of the MOU, the Conference approved a records disposition schedule for routine courtroom security surveillance recordings that provides for a retention period of 14 to 30 days before disposal of the recordings, as well as the authority, in the case of a security incident, for the security video to be maintained until the conclusion of the investigation or such time as determined by order of the chief judge of the court.

ELECTRONIC PUBLIC ACCESS FEE SCHEDULE

In order to encourage use of the Public Access to Court Electronic Records (PACER) system by the public, in March 2001 the Judicial Conference provided that users would not be billed until their accounts totaled at least $10 in a one-year period, thus allowing free access to at least 125 pages of court filings (JCUS-MAR 01, pp. 12-13). To increase the amount of data available without charge, at this session the Committee recommended, and the Conference agreed, that users would be allowed to accrue $10 in free usage quarterly, instead of yearly, before they would be charged. The Conference therefore amended Item I of the Electronic Public Access Fee Schedule to read, in part, as follows: "No fee is owed under this provision until an account holder accrues charges of more than $10 in a quarterly billing cycle."

PUBLIC ACCESS TO DISTRICT AND BANKRUPTCY COURT OPINIONS

On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference approved a one-year pilot project with the Government Printing Office (GPO), involving no more than 12 courts, to provide public access to court opinions through GPO's FDsys system, which is an advanced, internet-based digital system that allows searches across opinions and across courts. The Conference also agreed to delegate to the Committee the authority to extend the pilot program for up to one additional year, if necessary to ensure that sufficient data is collected to evaluate the program.

ELECTRONIC ACCESS TO DIGITAL AUDIO RECORDINGS

In March 2007, the Judicial Conference established a pilot program to evaluate the feasibility of making digital audio recordings of court hearings available to the public through PACER (JCUS-MAR 07, p. 12). After reviewing the results of the program and concluding that providing such access did not adversely affect the performance of the judiciary's information technology systems and that it improved public access, the Committee recommended that the Judicial Conference—

a. Allow courts, at the discretion of the presiding judge, to provide access to digital audio files via PACER;

b. Establish a fee for public access to such recordings commensurate with the maximum fee for downloading a single file from PACER (currently $2.40); and

c. Delegate to the Administrative Office the authority to establish appropriate language in the Electronic Public Access Fee Schedule to effectuate this fee.

The Conference adopted the Committee's recommendations.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it created a subcommittee to oversee the progress of Phase I of the Next Generation of CM/ECF. The Committee also discussed how it could assist courts and judges with handling the increasing number of terrorism-related cases. In that regard, the Committee endorsed revisions to the judiciary's security procedures under the Classified Information Procedures Act, which will be forwarded to the Chief Justice, who must approve the procedures in consultation with the Attorney General, Director of National Intelligence, and Secretary of Defense.

COMMITTEE ON CRIMINAL LAW

TRIBAL LAW AND ORDER ACT OF 2009

As discussed above, the Criminal Law Committee made two recommendations to the Judicial Conference regarding the proposed Tribal Law and Order Act of 2009. The first recommendation, to oppose establishment of litigation priorities among different kinds of criminal cases brought in the federal courts, was adopted by the Executive Committee on behalf of the Conference. *See* "Tribal Law and Order Act of 2009," pp. 4-5. The second recommendation, to oppose any legislation that would expand tribal court sentencing authority beyond one year of imprisonment, was discussed at the Conference session along with a related recommendation from the Defender Services Committee to urge Congress to incorporate in

legislation applying to Indian tribal criminal adjudications certain bedrock principles of the right to counsel that are part of the federal and state systems. After discussion, the Conference adopted a recommendation, offered as a substitute for both the Criminal Law and Defender Services Committees' recommendations, that the Conference would take no position on pending tribal court legislation but would communicate to Congress concerns about the impact on the federal courts of portions of the legislation, as set forth in a draft letter presented to the Conference. In that letter, the Conference stated:

> After careful consideration, the Judicial Conference of the United States, which is the policy-making body of the Judicial Branch, has decided not to take a position as to whether the Congress should increase tribal sentencing authority from one to three years, and it defers to Congress as to its determination on this matter of Indian tribal authority.
>
> The Judicial Conference nevertheless notes that enactment of the proposed legislation, which would effectively give tribal courts felony jurisdiction over a number of common offenses, could result in increased petitions to the federal courts for habeas corpus relief from tribal court action. The absence of procedural requirements in tribal courts poses difficulties for federal habeas courts reviewing tribal proceedings. For example, the absence of a record could render it difficult for a federal court to evaluate challenges to tribal convictions. In addition, the procedural and substantive differences between federal and tribal law may complicate federal court assessments of whether certain tribal convictions qualify as predicate offenses for federal sentencing purposes.
>
> We can offer no simple solution for addressing those concerns. We nevertheless respectfully request that your committee take account of those factors in your consideration of the proposed legislation.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that pursuant to authority delegated to the Committee by the Judicial Conference (JCUS-MAR 06, p. 15), it endorsed stylistic modifications to Monograph 110, *Judicial Officer's Reference on Alternatives to Detention and Conditions of Release,*

and Monograph 113, *The Federal Location Monitoring Program for Defendants and Offenders*. The Committee also reported that it endorsed the use of alphanumeric user identification ("user ID") and password verification to facilitate the use of electronic monthly reporting by a defendant or offender as an alternative to the collection of paper forms bearing a defendant's or offender's "pen and ink" signature. Finally, the Committee reported that the Federal Judicial Center has agreed to conduct a study to assess the efficacy and cost effectiveness of federal reentry court programs and has designed a multi-year research project to that end.

COMMITTEE ON DEFENDER SERVICES

COMMUNITY DEFENDER ORGANIZATION BENEFITS

On recommendation of the Committee on Defender Services, the Judicial Conference approved a community defender organization severance pay policy that is based on the policy applicable to federal public defender organization employees. If a community defender organization decides to adopt a severance pay plan, it must conform to this policy.

TRIBAL LAW AND ORDER ACT OF 2009

The Committee on Defender Services made a recommendation with regard to the proposed Tribal Law and Order Act of 2009, S. 797, H.R. 1924 (111th Congress) urging Congress to incorporate in legislation applying to Indian tribal criminal adjudications certain bedrock principles of the right to counsel that are part of the federal and state systems. As discussed above (*see supra*, "Tribal Law and Order Act of 2009," pp. 4-5), the Executive Committee, which had been asked to act on the recommendation on an expedited basis, determined that the recommendation should be discussed by the full Conference at the March 2010 session. After discussion, the Conference approved a substitute motion in lieu of this recommendation and a related Criminal Law Committee recommendation, agreeing to take no position on pending tribal court legislation, but to communicate to Congress concerns about the impact on the federal courts of portions of the legislation, as set forth in a draft letter presented at the Conference session. *See supra*, "Tribal Law and Order Act of 2009," pp. 10-11.

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it received a report on a federal defender compensation study containing recommendations for achieving closer salary and benefits parity with comparable positions in the United States attorneys' offices, and it endorsed for FY 2010 those recommendations that could be accomplished within the existing budgetary allocations to individual federal defender organizations. The Committee also discussed the role of its Defender Services Budget Subcommittee in reviewing federal defender organizations' requests for additional funds to support "mega-cases." In addition, the Committee considered and declined to approve a request from the District of Idaho to establish a Coeur d'Alene branch office of the community defender organization serving the district because the current level of Criminal Justice Act appointments did not warrant the increased expense.

COMMITTEE ON FEDERAL-STATE JURISDICTION

DIVERSITY JURISDICTION

In response to a request from the Executive Committee, the Federal-State Jurisdiction Committee has been considering the continued viability of older Judicial Conference-approved legislative positions that have not been pursued in Congress for some time. At this session, it reviewed the Conference's 1990 position supporting elimination of non-economic damages from the calculation of the amount in controversy for cases based on diversity jurisdiction under 28 U.S.C. § 1332 (JCUS-SEP 90, p. 60). Noting that the judiciary had not pursued the position in Congress in over ten years and that it was extremely unlikely that the position would be viewed favorably by Congress, the Committee recommended that the position be rescinded. The Conference approved the recommendation.

PRISON ABUSE REMEDIES ACT

The proposed Prison Abuse Remedies Act, H.R. 4335 (111th Congress), would amend the Prison Litigation Reform Act of 1995 (PLRA) to reduce some of the restrictions that the PLRA placed on the filing of civil rights actions by prisoners alleging prison abuse. After reviewing the

proposed legislation, the Committee recommended that the Conference take no position on H.R. 4335, or similar legislation, with the exception of opposition to the provision that would amend 28 U.S.C. § 1915(b) to eliminate the requirement in current law that a prisoner proceeding *in forma pauperis* be assessed the filing fee upon the filing of a civil action. It further recommended that should Congress proceed to modify the current filing fee requirement, the Conference should respectfully urge Congress to retain the requirement for the assessment of fees upon the filing of a civil action, with allowance for the refund of filing fees for those actions that are not dismissed under 28 U.S.C. § 1915A, 28 U.S.C. § 1915(e)(2), or 42 U.S.C. § 1997e(c)(1). The Conference adopted the Committee's recommendations.

HAGUE CONVENTION ON CHOICE OF COURT AGREEMENTS

In response to a request from the United States Department of State, the Committee conducted a review of the Hague Convention on Choice of Court Agreements, which was signed by the United States in January 2009 and awaits Senate ratification and the adoption of implementing legislation. Under the terms of the Convention, ratifying Nation-States agree that their courts will give effect to clauses in international commercial contracts in which the parties select a particular nation's courts as the forum for adjudication of disputes arising from the contract. With regard to proposed federal legislation to implement the Hague Convention, on recommendation of the Committee, the Judicial Conference, consistent with principles of federalism, agreed to—

a. Support the inclusion of language to provide that actions do not, solely by virtue of the fact that they have been brought for the resolution of contract disputes or for the enforcement of judgments of other courts under the Hague Convention, qualify for federal question jurisdiction;

b. Oppose the inclusion of language that would allow parties to remove actions brought pursuant to the Hague Convention to federal court at any time, but support the application of current law governing removal to such actions; and

c. Oppose the inclusion of language that would provide for federal district court interlocutory review of state court decisions concerning conflicts between the federal and state statutes implementing the Hague Convention.

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it was continuing its efforts to facilitate the exchange of information and ideas among local state-federal judicial councils. The Committee continues to monitor the status of regulations to certify states for expedited review of federal capital habeas corpus petitions and also is continuing its dialogue with state supreme court chief justices concerning improvements in capital habeas corpus litigation in both the federal and state court systems. The Committee also received a report on the status of legislation addressing procedures for claiming the state secrets privilege. In addition, a representative of the Department of Justice gave a presentation on efforts to enact comprehensive immigration reform legislation and such legislation's potential impact on the federal courts.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that it continues to enhance the financial disclosure report (FDR) software, and also is overseeing development of a system for the electronic filing and records management of financial disclosure reports. Analysis of the calendar year 2008 financial disclosure reports reflects that use of the enhanced self-audit function in the FDR software continues to improve the quality of the reports and reduce the volume of correspondence between the Committee and filers. As of December 31, 2009, the Committee had received 4,421 financial disclosure reports and certifications for calendar year 2008, including 1,338 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 365 reports from bankruptcy judges; 582 reports from magistrate judges; and 2,136 reports from judicial employees.

COMMITTEE ON INFORMATION TECHNOLOGY

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it discussed efforts to lay the foundation for an improved communications infrastructure

and endorsed the concept of developing and managing an enterprise-wide internet telephone service the courts could use at their option. The Committee endorsed providing e-mail accounts and access to the J-Net on the judiciary's data communications network (DCN) to retired bankruptcy and magistrate judges who are subject to recall. Along with other updates, the Committee heard reports on development of the next generation of the Case Management/Electronic Case Files (CM/ECF) systems; current issues within the Electronic Public Access program; and a project to create an electronic Criminal Justice Act voucher processing system. It also awarded five grants to local courts to promote the development of local technology solutions that may be shared with other court units.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that 99 intercircuit assignments were undertaken by 70 Article III judges from July 1, 2009, to December 31, 2009. The Committee also reported that for the full calendar year 2009, 238 intercircuit assignments were processed by the Committee and approved by the Chief Justice, the highest number in the last 20 years. During this time, the Committee continued to disseminate information about intercircuit assignments and aided courts requesting assistance by identifying and obtaining judges willing to take assignments.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its involvement in rule of law and judicial reform throughout the world, highlighting activities in Africa, Asia and the Pacific Basin, Latin America and the Caribbean, the Middle East, Europe, and Eurasia. The Committee further reported on its continued participation in the rule of law component of the Library of Congress' Open World Program for jurists from Russia, Ukraine, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, and Turkmenistan. In addition, the Committee reported about rule of law activities involving the Federal Judicial Center, the U.S. State Department, the U.S. Agency for International Development, the U.S. Department of Justice, the World Bank,

the AO Office of Defender Services, and United States court administrators. Finally, the Committee reported on hosting foreign delegations of jurists and judicial personnel for briefings at the Administrative Office.

COMMITTEE ON THE JUDICIAL BRANCH

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it continues to pursue possible avenues for improving judicial compensation and benefits, notwithstanding the constrained budget climate. The Committee also reported that it continues to consider ways to improve judicial-legislative communications. Educating the public, especially the media, on the role of judges and the judiciary in society remains a priority of the Committee.

COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY

COMMITTEE ACTIVITIES

The Committee on Judicial Conduct and Disability reported that on October 26, 2009, it issued a decision on a petition for review of a circuit judicial council order on a complaint under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364, and that it has under advisement a petition for review of a judicial council order on two complaints under the Act. The Committee also reported that it continues to address courts' inquiries and to develop resources and infrastructure in support of the Committee's responsibilities.

COMMITTEE ON JUDICIAL RESOURCES

EXECUTIVE COMPENSATION

In September 1993, the Judicial Conference approved locality pay for the courts to be provided in the same amounts, in the same areas, and at the same time as is approved for the executive branch. This had the effect of imposing a locality pay cap on salaries of circuit executives and Judicial Salary Plan (JSP) positions graded at JSP-16 through JSP-18 at the equivalent

of level III of the Executive Schedule, which was the locality pay cap for the executive branch Senior Executive Service (SES) (JCUS-SEP 93, p. 50). In 2005, when changes to the executive branch salary structure made locality pay caps no longer applicable to the SES, the Conference agreed to approve, as an interim measure, the application of locality pay for unit executives up to the salary of a district judge, to be applied at the request of the chief judge on behalf of the court, as set forth on what have become known as optional pay tables (JCUS-SEP 05, p. 29). Aggregate pay, which includes bonuses and awards on top of basic pay and locality pay, had already been capped at the salary of a district judge (JCUS-SEP 03, p. 30). In 2007, in response to a request to reconsider the pay caps, the Committee authorized the conduct of a comprehensive study of executive compensation. Four proposals that evolved from that study were considered by the Conference and are discussed below.

Pay Cap Exception for National Judiciary Awards. Unit executives at or near the aggregate pay cap, which as noted above is the salary of a district judge, are ineligible to receive some or all of the cash payments that accompany national judiciary awards. For those executives, these awards have become largely honorary. On recommendation of the Committee, the Conference approved lifting the current aggregate pay cap for court employees only to allow receipt of the full amount of a national judiciary award.

Grading Formulas. The judiciary determines maximum grades for district clerks of court, bankruptcy clerks of court, and chief probation and pretrial services officers through application of grading formulas (also known as court-sizing formulas). The formulas for district and bankruptcy clerks are based on the number of judgeships and authorized work units (AWUs) at a court; the formula for chief probation and pretrial services officers is based solely on the numbers of AWUs. The grades are recalculated annually, which can lead to grade volatility as workload rises and falls. In order to reduce that volatility, the Committee recommended, and the Conference approved, the following revised procedures when a grade reduction for a court unit executive is supported by application of the grading formula:

a. Calculate a three-year average using the data from the current year and from the two previous years;

b. Retain the current grade if the three-year average falls above the respective threshold;

c. Retain the current grade for a one-year grace period if the three-year average falls below the respective threshold by less than five percent of the threshold;

d. Downgrade the position at the end of the one-year grace period if the new three-year average remains below the threshold; and

e. Downgrade the position if the original three-year average falls more than five percent below the threshold.

Pay Stratification. Noting that there is currently no differentiation in the pay potential for circuit and court unit executives at the JSP-16 through JSP-18 levels, the Committee expressed concern that should the salary of a district judge increase other than through ordinary annual pay adjustments, there could be an uncontrolled upward migration of pay rates for unit executives on the optional pay tables. The Committee therefore recommended, and the Conference approved, the following stratified pay caps for application to the optional pay tables for circuit and court unit executives should the salary of a district judge increase (other than through anticipated annual Employment Cost Index-based pay adjustments), with the understanding that the aggregate pay cap of court employees cannot exceed the salary of a district judge:

a. EX-I ($196,700 in 2009) as the cap for circuit executive positions and court unit executive positions at JSP-18;

b. EX-II ($177,000 in 2009) as the cap for court unit executive positions at JSP-16 and JSP-17; and

c. EX-III ($162,900 in 2009) as the cap for court unit executive positions at JSP-15 and below.

Annual Leave Accrual. Currently, unit executives only begin to earn eight hours of leave per pay period after they have accrued 15 years of creditable service. On recommendation of the Committee, the Judicial Conference agreed to seek legislation to allow unit executives to accrue eight hours of annual leave per pay period prospectively, regardless of the length of service, similar to what is provided to executives in the executive branch.

COURT PERSONNEL SYSTEM PROMOTION POLICY

In September 2004, the Conference modified the promotion rule for Court Personnel System (CPS) employees to afford court units greater flexibility when determining the salary of employees being promoted to a higher classification level (JCUS-SEP 04, p. 22). Instead of a set rate of six percent over current salary, the Conference allowed court units to establish a local promotion policy that set the increase for a fiscal year at a uniform, unit-wide rate of not less than three percent nor more than six percent. At this session, on recommendation of the Committee, the Conference agreed to give court units even greater latitude by setting at one percent the minimum salary promotion rate, to be applied for a fiscal year at a uniform, unit-wide rate in keeping with existing policy.

MODEL EMPLOYMENT DISPUTE RESOLUTION PLAN

On recommendation of the Committee, the Judicial Conference approved revisions to the *Model Employment Dispute Resolution Plan* adopted for the federal judiciary in 1997. Revisions incorporated in the 2010 *Model Employment Dispute Resolution Plan* include (a) specifying procedures for handling claims involving judges; (b) extending the definition of harassment beyond sexual harassment to apply to all types of discrimination; (c) creating a special reporting process for wrongful conduct to bring these matters quickly to management's attention even outside of the employment dispute resolution process; (d) allowing for summary dismissals throughout the process; and (e) clarifying the provisions regarding confidentiality.

RETIRED LAW ENFORCEMENT OFFICER RE-EMPLOYMENT

The District of Hawaii requested an exception to the March 2009 Conference policy limiting re-employment of a retired law enforcement officer to a single period of a maximum of 18 months (JCUS-MAR 09, p. 26). Without the exception, the district would lose its chief and deputy chief probation officers within four months of each other. On recommendation of the Committee, the Conference approved the request and allowed the district to re-employ its deputy chief probation officer for a second 18-month period from November 1, 2010 to April 30, 2012.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it continued its discussion of executive compensation, requesting that the Administrative Office explore several additional options for Committee review, including increasing the number and amount of national judiciary awards, establishing centralized funding to pay the relocation expenses of internal judiciary candidates who are filling circuit and court unit executive positions, and developing through its advisory structure one or more options for measuring executive performance. The Committee also requested that the Administrative Office and the Federal Judicial Center explore together the need to provide additional training opportunities and professional development programs for unit executives.

COMMITTEE ON JUDICIAL SECURITY

COMMITTEE ACTIVITIES

The Committee on Judicial Security reported that it discussed the security implications of internet social networking by judiciary employees and expressed support for the efforts of the Committee on Codes of Conduct to develop guidelines and model policies on such internet use for courts to consider. At the request of the Committee, the Administrative Office Director appointed an ad hoc working group to develop and implement strategies to mitigate the misuse and abuse of judges' names used as domain names on the internet when it is believed that a judge's security is being compromised.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

SELECTION AND APPOINTMENT REGULATIONS

The Judicial Conference's selection and appointment regulations for magistrate judges require that magistrate judge applicants have actively practiced law for at least five years. The court may consider other legal experience as a substitute for the active practice of law, except that if that other experience is as a law clerk to any judge, credit is limited to two years. This limitation is intended to ensure, among other things, that magistrate judge

applicants are seasoned and experienced attorneys. However, staff attorney and pro se law clerk experience has not been subject to this limitation. Noting that the duties of staff attorneys and pro se law clerks are similar to the duties of elbow law clerks and could, in fact, be seen as more limited in scope than the elbow law clerk position, the Committee recommended that the Judicial Conference amend Section 1.01(b)(4) of the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges to provide that only two years of experience as a staff attorney or pro se law clerk in a court may be used toward meeting the five-year active-practice-of-law requirement. The Conference adopted the Committee's recommendation.

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee on the Administration of the Magistrate Judges System and the recommendations of the Director of the Administrative Office, the respective district courts, and the judicial councils of the relevant circuits, the Judicial Conference determined to make the following changes regarding the magistrate judge positions in the District of North Dakota:

a. Redesignate the part-time magistrate judge position at Grand Forks, Devils Lake, or Minnewaukan as Grand Forks;

b. Authorize the part-time magistrate judge position at Grand Forks to exercise adjoining district jurisdiction in the District of Minnesota; and

c. Make no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

The Conference also agreed to make no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the following courts: Southern District of New York, Western District of Pennsylvania, Southern District of West Virginia, Eastern District of Louisiana, Northern District of Iowa, District of Alaska, District Court of Guam, District of Hawaii, and Middle District of Alabama.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that pursuant to the September 2004 Judicial Conference policy regarding the review of magistrate judge position vacancies (JCUS-SEP 04, p. 26), during the period between the Committee's June 2009 and December 2009 meetings, the Committee chair approved filling fourteen full-time magistrate judge position vacancies. At its December 2009 meeting, the full Committee approved filling two additional magistrate judge position vacancies. The Committee also agreed to share with the Ad Hoc Advisory Committee on Judiciary Planning some ideas in response to a draft strategic plan for the federal judiciary circulated by the Ad Hoc Committee.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that the Advisory Committee on Civil Rules is sponsoring a major conference at Duke University School of Law in May 2010 to consider the current civil litigation process and whether any changes are needed to the Federal Rules of Civil Procedure to achieve just, cost-effective, and timely disposition of cases. The Advisory Committees on Bankruptcy, Criminal, and Evidence Rules are reviewing comments from the public submitted on amendments proposed in August 2009 to their respective sets of rules. The proposals include a comprehensive restyling of the Federal Rules of Evidence.

COMMITTEE ON SPACE AND FACILITIES

COMMITTEE ACTIVITIES

The Committee on Space and Facilities reported that it approved a change to the Circuit Rent Budget (CRB) Business Rules to allow more flexibility for "Component C" spending and amended the business rules and CRB Program Manual to reflect the courtroom-sharing policies previously approved by the Judicial Conference for senior and magistrate judges (see JCUS-MAR 09, pp. 14-16; JCUS-SEP 09, pp. 9-11). The Committee also approved amendments to the Asset Management Planning (AMP) Business

Rules to specify treatment of general building conditions in the facility benefit assessment structure, to reflect the September 2009 Judicial Conference policy on courtroom sharing for magistrate judges, and to provide clarification to current rules.

FUNDING

All of the foregoing recommendations that require the expenditure of funds for implementation were approved by the Judicial Conference subject to the availability of funds and to whatever priorities the Conference might establish for the use of available resources.

Chief Justice of the United States
Presiding

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

September 14, 2010

The Judicial Conference of the United States convened in Washington, D.C., on September 14, 2010, 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 Sandra L. Lynch
Chief Judge Mark L. Wolf,
District of Massachusetts

Second Circuit:

Chief Judge Dennis Jacobs
Chief Judge William K. Sessions III,
District of Vermont

Third Circuit:

Chief Judge Theodore A. McKee
Chief Judge Harvey Bartle III,
Eastern District of Pennsylvania

Fourth Circuit:

Chief Judge William B. Traxler, Jr.
Judge James P. Jones,
Western District of Virginia

Fifth Circuit:

Chief Judge Edith Hollan Jones
Judge Sim Lake III,
Southern District of Texas

Sixth Circuit:

Chief Judge Alice M. Batchelder
Chief Judge Solomon Oliver, Jr.,
Northern District of Ohio

Seventh Circuit:

Chief Judge Frank H. Easterbrook
Chief Judge Richard L. Young,
Southern District of Indiana

Eighth Circuit:

Chief Judge William Jay Riley
Judge Rodney W. Sippel,
Eastern District of Missouri

Ninth Circuit:

Chief Judge Alex Kozinski
Judge Charles R. Breyer,
Northern District of California

Tenth Circuit:

Chief Judge Mary Beck Briscoe
Judge Robin J. Cauthron,
Western District of Oklahoma

Eleventh Circuit:

Chief Judge Joel F. Dubina
Judge Myron H. Thompson,
Middle District of Alabama

District of Columbia Circuit:

Chief Judge David Bryan Sentelle
Chief Judge Royce C. Lamberth,
District of Columbia

Federal Circuit:

Chief Judge Randall R. Rader

Court of International Trade:

Chief Judge Jane A. Restani

The following Judicial Conference committee chairs attended the Conference session: Circuit Judges Bobby R. Baldock, Julia Smith Gibbons, Michael S. Kanne, M. Margaret McKeown, Jeffrey S. Sutton, and Richard C. Tallman, and District Judges Julie E. Carnes, Rosemary M. Collyer, Janet C. Hall, Robert L. Hinkle, D. Brock Hornby, George H. King, Mark R. Kravitz, Barbara M.G. Lynn, J. Frederick Motz, Donald C. Pogue, Michael A. Ponsor, Julie A. Robinson, Lee H. Rosenthal, Charles R. Simpson III, George Z. Singal, and Laura Taylor Swain. Bankruptcy Judge Rosemary Gambardella and Magistrate Judge Anthony J. Battaglia were also in attendance, and Collins Fitzpatrick of the Seventh Circuit represented the circuit executives.

James C. Duff, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Jill C. Sayenga, Deputy Director; William R. Burchill, Jr., Associate Director and General Counsel; Laura C. Minor, Assistant Director, and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat; Cordia A. Strom, Assistant Director, Legislative Affairs; and David A. Sellers, Assistant Director, Public Affairs. District Judge Barbara Jacobs Rothstein, Director, and John S. Cooke, Deputy Director, Federal Judicial Center, and Judith W. Sheon, Staff Director, United States Sentencing Commission, were in attendance at the session of the Conference, as was Jeffrey P. Minear, Counselor to the Chief Justice. Scott Harris, Supreme Court Counsel, and the 2010-2011 Supreme Court Fellows also observed the Conference proceedings.

Acting Deputy Attorney General Gary Grindler addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice. Senators Patrick Leahy and Jeff Sessions spoke on matters pending in Congress of interest to the Conference.

REPORTS

Mr. Duff reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office (AO). Judge Rothstein spoke to the Conference about Federal Judicial Center (FJC) programs, and Chief Judge Sessions, in his capacity as Chair of the United States Sentencing Commission, reported on Sentencing Commission activities. Judge Gibbons, Chair of the Committee on the Budget, presented a special report on the budget outlook.

EXECUTIVE COMMITTEE

RESOLUTION

The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution recognizing the substantial contributions made by the Judicial Conference committee chairs whose terms of service end in 2010:

> The Judicial Conference of the United States recognizes with appreciation, respect, and admiration the following judicial officers:
>
> **HONORABLE DONALD C. POGUE**
> Committee on Audits and Administrative Office Accountability
>
> **HONORABLE BARBARA M. G. LYNN**
> Committee on the Administration of the Bankruptcy System
>
> **HONORABLE JULIE E. CARNES**
> Committee on Criminal Law
>
> **HONORABLE CHARLES R. SIMPSON III**
> Committee on International Judicial Relations
>
> **HONORABLE LAURA TAYLOR SWAIN**
> Advisory Committee on Bankruptcy Rules

HONORABLE ROBERT L. HINKLE
Advisory Committee on Rules of Evidence

Appointed as committee chairs by the Chief Justice of the United States, these outstanding jurists have played a vital role in the administration of the federal court system. These judges served with distinction as leaders of their Judicial Conference committees while, at the same time, continuing to perform their duties as judges in their own courts. They have set a standard of skilled leadership and earned our deep respect and sincere gratitude for their innumerable contributions. We acknowledge with appreciation their commitment and dedicated service to the Judicial Conference and to the entire federal judiciary.

JUDICIARY STRATEGIC PLANNING

In 2008, with the permission of the Chief Justice, the Executive Committee formed an Ad Hoc Advisory Committee on Judiciary Planning to propose a new planning process for the federal judiciary. The group, which was comprised of current and former Conference committee chairs and members of the Executive Committee, as well as court executives, also took on the role of developing a new strategic plan that would potentially replace the *Long Range Plan for the Federal Courts* adopted by the Conference in 1995 (*see* JCUS-SEP 95, pp. 38-63). After two years of work and extensive consultation within the judiciary, in August 2010, the Ad Hoc Advisory Committee proposed a strategic plan that was intended to serve as a broad action agenda addressing judiciary trends, issues, challenges, and opportunities. Beginning with restatements of the vision, mission, and core values of the judiciary, the plan identifies seven key issues and sets forth 13 strategies and more than 30 goals by which the judiciary could address those issues. The Ad Hoc Advisory Committee also made several recommendations with regard to an approach to planning.

On recommendation of the Executive Committee, and after discussion, the Judicial Conference approved the proposed *Strategic Plan for the Federal Judiciary,* as well as a recommended approach to planning, both with minor changes recommended by the Executive Committee on the Conference floor. With regard to the planning approach, the Conference agreed that—

a. The Executive Committee chair may designate for a two-year renewable term an active or senior judge, who will report to that Committee, to serve as the judiciary planning coordinator. The planning coordinator will have responsibility to facilitate and coordinate the strategic planning efforts of the Judicial Conference and its committees.

b. With suggestions from Judicial Conference committees and others, and the input of the judiciary planning coordinator, the Executive Committee will identify issues, strategies, or goals to receive priority attention over the next two years.

c. The committees of the Judicial Conference will integrate the *Strategic Plan for the Federal Judiciary* into committee planning and policy development activities.

d. For every goal in the *Strategic Plan*, a mechanism to measure or assess the judiciary's progress will be developed.

e. Any substantive changes to the *Strategic Plan* will require the approval of the Judicial Conference, but the Executive Committee will have the authority, as needed, to approve technical and non-controversial changes to the *Strategic Plan*. A review of the *Strategic Plan* will take place every five years.

f. The new *Strategic Plan for the Federal Judiciary* will supersede the December 1995 *Long Range Plan for the Federal Courts* as a planning instrument to guide future policy-making and administrative actions within the scope of Conference authority. This action, however, should not be interpreted as an across-the-board rescission of the individual Conference policies articulated in the recommendations and implementation strategies of the earlier plan.

MISCELLANEOUS ACTIONS

The Executive Committee —

- Approved a statement on behalf of the Conference in reaction to pending legislation – as it related to the judiciary – that would have clarified the Government Accountability Office's (GAO's) ability to

enforce its existing authority to see records and expanded its interview authority, as well as its power to make and retain copies of agency records; and endorsed pursuit of formal protocols for GAO's interactions with the judiciary;

- Declined to recommend action by the Judicial Conference on a request for Conference review of a Judicial Conduct and Disability Act complaint that had been dismissed and for which the petition for review had been denied by the Committee on Judicial Conduct and Disability, on delegation from the Conference;

- Pending final congressional action on the judiciary's appropriations for fiscal year (FY) 2011, approved FY 2011 interim financial plans for the Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners accounts, and endorsed a strategy for distributing court allotments among the court programs;

- Discussed challenges faced by the judiciary with regard to its courthouse construction program and decided to form an ad hoc group of judges to discuss how the judiciary should approach these challenges; and endorsed a letter to be sent by the Director of the Administrative Office on behalf of the judiciary to the President regarding FY 2012 funding for new federal courthouse construction projects.

COMMITTEE ON AUDITS AND ADMINISTRATIVE OFFICE ACCOUNTABILITY

COMMITTEE ACTIVITIES

The Committee on Audits and Administrative Office Accountability reported that it was briefed on the scope, methodology, findings, and identified risks in recent audits. It also reviewed an analysis of audit data over the past ten years, which showed a downward trend in the average number of audit findings since the implementation of numerous enhancements to the judiciary's financial management, audit, and internal control programs over the last decade. Noting that the minority of court units which do not complete annual internal control evaluations tend to have more audit findings, the Committee asked the AO to consider how best to encourage those courts to

complete the annual self-evaluations. The Committee selected two AO employees to receive the Leonidas Ralph Mecham Award for Exemplary Service to the Courts, and the Committee determined to expand the award's scope to recognize career excellence and outstanding leadership.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

BANKRUPTCY JUDGESHIP VACANCIES

In accordance with 28 U.S.C. § 152(b)(3), the Judicial Conference conducts a comprehensive review of all judicial districts every other year to assess the continuing need for authorized bankruptcy judgeships. By December 31 of each even-numbered year, the Conference reports its recommendations to Congress for the elimination of any authorized bankruptcy judgeship position that can be eliminated when a vacancy exists by reason of resignation, retirement, removal, or death. On recommendation of the Bankruptcy Committee, which relied on the results of the 2010 continuing needs survey, the Judicial Conference agreed to take the following actions:

a. Recommend to Congress that no bankruptcy judgeship be statutorily eliminated; and

b. Advise the Eighth Circuit Judicial Council with regard to the District of South Dakota and the Northern District of Iowa and the Ninth Circuit Judicial Council with regard to the District of Alaska to consider not filling vacancies in those districts that currently exist or may occur by reason of resignation, retirement, removal, or death, until there is a demonstrated need to do so.

CRITERIA FOR ADDITIONAL BANKRUPTCY JUDGESHIPS

In March 1991, the Judicial Conference adopted a policy statement regarding the standards to be used for considering requests for additional bankruptcy judgeships. At the same time, the Conference adopted bankruptcy case weights developed by the Federal Judicial Center to be used in administering those standards (JCUS-MAR 91, pp. 12-13). The Federal Judicial Center recently developed new case weights that reflect the effects of

economic, technological, and legislative developments since 1991 (such as the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005) on the judicial time needed to process bankruptcy cases. The Committee recommended that the Conference adopt the new case weights to be used for assessing judgeship needs. The Committee also recommended that the Conference revise the 1991 policy statement to (a) make non-substantive changes to the standards for evaluating additional bankruptcy judgeship needs; (b) add standards for evaluating requests for conversion of temporary judgeships to permanent; and (c) incorporate the standards the Conference has approved for use in the biennial continuing needs surveys. The Conference approved the Committee's recommendations.

OFFICIAL DUTY STATIONS

On recommendation of the Bankruptcy Committee and in accordance with 28 U.S.C. § 152(b)(1), the Judicial Conference took the following actions regarding official duty stations:

a. Approved a request from the Ninth Circuit Judicial Council to designate in the Central District of California Santa Ana as the duty station for two of the vacant bankruptcy judgeships in that district and Riverside as the duty station for the four bankruptcy judges currently serving at that location; and

b. Approved a request from the Second Circuit Judicial Council to designate Burlington as the duty station for the bankruptcy judgeship in the District of Vermont.

BANKRUPTCY ADMINISTRATOR REGULATIONS

On recommendation of the Bankruptcy Committee, the Judicial Conference approved revisions to the Regulations of the Judicial Conference of the United States Governing the Bankruptcy Administrator Program that clarify language and consolidate sections that were duplicative. The regulations appear in Volume 9, Chapter 2, of the *Guide to Judiciary Policy*.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Bankruptcy System reported that it agreed unanimously to recommend to the Budget Committee that funding in FY 2012 for recalled bankruptcy judges and temporary law clerks remain at the FY 2011 projected current services levels. At the request of the Budget Committee, the Bankruptcy Committee also discussed the programmatic impact of a proposal to lower the budget cap for the Salaries and Expenses account, and had no objection to the proposal.

COMMITTEE ON THE BUDGET

FISCAL YEAR 2012 BUDGET REQUEST

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After careful consideration of the funding levels proposed by the program committees, the Committee on the Budget recommended to the Judicial Conference a fiscal year 2012 budget request to Congress that is 4.7 percent above assumed appropriations for FY 2011. This request contains funding to meet the essential, increasing workload needs of the judiciary while taking into consideration the limited funding that Congress is likely to have available. The Conference approved the budget request subject to amendments necessary as a result of (a) new legislation, (b) actions of the Judicial Conference, or (c) any other reason the Executive Committee considers necessary and appropriate.

COMMITTEE ACTIVITIES

The Committee on the Budget reported that in light of the current and projected austere fiscal outlook, its FY 2012 budget recommendation would provide funding for only what is essential to support the judiciary's mission. In addition, noting that it expects that budgets in the next several cycles will be tighter than in the current cycle, the Budget Committee asked Administrative Office staff to develop alternative budget cap proposals that are lower than the current 8.2 percent annual budget cap for the Salaries and Expenses account adopted by the Judicial Conference in March 2007 (JCUS-MAR 07, p. 10). Any proposals will be provided to the program committees in advance of their December 2010 meetings for their input. The Budget Committee commended the program committees for their

cost-containment initiatives to date and noted that the long-term financial health of the judiciary will be aided by future cost-containment efforts that provide tangible cost savings or avoidances.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in March 2010, the Committee received 17 new written inquiries and issued 17 written advisory responses. During this period, the average response time for requests was 22 days. In addition, the Committee chair responded to 159 informal inquiries, individual Committee members responded to 133 informal inquiries, and Committee counsel responded to 358 informal inquiries.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

CAMERAS IN THE COURTROOM PILOT PROJECT

On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference authorized a pilot project to evaluate the effect of cameras in district court courtrooms, of video recordings of proceedings therein, and of publication of such video recordings. The pilot project will proceed in accordance with the tenets outlined below, and is subject to definition and review by the Committee. In addition, the Committee will request that a study of the pilot be conducted by the Federal Judicial Center.

a. The pilot will be national in scope and consist of up to 150 individual judges from districts chosen to participate by the Federal Judicial Center, in consultation with the Court Administration and Case Management Committee. The pilot project should include a national survey of all district judges, whether or not they participate in the pilot, to determine their views on cameras in the courtroom. .

b. The pilot will last up to three years, with interim reports prepared by the Federal Judicial Center after the first and second years.

c. The pilot will be limited to civil cases only.

d. Courts participating in the pilot will record proceedings, and recordings by other entities or persons will not be allowed.

e. Parties in a trial must consent to participating in the pilot.

f. Recording of members of a jury will not be permitted at any time.

g. Courts participating in the pilot should – if necessary – amend their local rules (providing adequate public notice and opportunity to comment) to provide an exception for judges participating in the Judicial Conference-authorized pilot project.

h. The Court Administration and Case Management Committee is authorized to issue and amend guidelines to assist the pilot participants.

I. The Administrative Office is authorized to provide funding to the courts with participating judges – if needed – for equipment and training necessary to participate in the pilot.

PACER ACCESS TO CERTAIN BANKRUPTCY FILINGS

Under the Judicial Conference policy on privacy and public access to electronic case files, bankruptcy filings should include only the last four digits of filers' social security numbers on their petitions and other public documents (JCUS-SEP/OCT 01, pp. 48-50). However, documents filed prior to implementation of the policy in 2003 are still available on the Public Access to Court Electronic Records (PACER) system and contain the debtors' full social security numbers, creating privacy concerns. To address those concerns, on recommendation of the Committee, the Judicial Conference agreed to amend its privacy policy to restrict public access through PACER to documents in bankruptcy cases that were filed before December 1, 2003 and have been closed for more than one year, with the following conditions:

a. The docket sheet and docket information would remain available to the general public via PACER.

b. Any party who has filed a notice of appearance in an individual case would have Case Management/Electronic Case Files (CM/ECF) system or PACER access to all filings in that case.

c. All filings in such cases would remain accessible at the clerks' offices, except those under seal.

d. Access to documents in bankruptcy case appeals filed in the district courts, bankruptcy appellate panels, or courts of appeals for bankruptcy cases filed before December 1, 2003, would be similarly restricted.

The Conference also agreed to delegate to the Court Administration and Case Management Committee the authority to develop implementation guidance for the courts to effectuate this policy. This guidance will include encouraging courts to establish a method to accept requests for copies of documents in these cases.

CENTRAL VIOLATIONS BUREAU
PETTY OFFENSE CASES

Petty offense cases committed on federal property are processed by the judiciary's Central Violations Bureau (CVB). In order to facilitate management of such cases, the Administrative Office is working to integrate CVB data into the CM/ECF system and make such cases accessible through PACER. However, because standard CVB violation notices contain personal identifiers such as social security numbers, full birth dates, and full home addresses, the Committee recommended that the Conference endorse the approach of providing courts with redacted and unredacted versions of the CVB violation notice, with participant access to the unredacted version, and public access through PACER to the redacted version. The Conference adopted the Committee's recommendation.

RECORDS MANAGEMENT

The Committee recommended that the Judicial Conference adopt a revised district court records disposition schedule for civil cases that sets retention periods for non-trial civil cases largely by case type. Under this schedule, it is estimated that half of the closed case files currently in storage at federal retention centers (for which storage fees are charged) would be immediately eligible for disposal, which would lead to reductions in storage fees. The Conference adopted the revised retention schedule.

PACER TRAINING PROGRAM

In September 2007, the Judicial Conference approved a pilot project to provide free public access to PACER at Federal Depository Libraries (FDLs) (JCUS-SEP 07, pp. 12-13). However, that program was suspended when a PACER security vulnerability was discovered. At this session, the Committee recommended, and the Conference approved, the establishment of a program involving the Government Printing Office, the American Association of Law Libraries, and the Administrative Office, that would provide training and education to the public about the PACER service, and would exempt from billing the first $50 of quarterly usage by a library participating in the program.

COURT LIBRARIES AND LIBRARY SERVICES

At the request of the Committee, the Administrative Office undertook a comprehensive study of court libraries and library services focusing on the role for libraries in the digital age, options for change, and consideration of potential savings. Based on the results of that study, and after receiving significant input from circuit librarians, subject matter experts, judges, and legal researchers, among others, the Committee made a number of recommendations, which were approved by the Conference as follows:

a. With regard to library collections, agreed to—

(1) Ask that the Committee establish guidelines to discourage maintaining subscriptions to regional reporters, state case law reporters, and specialty reporters in libraries and advise circuit

librarians to consider significantly reducing the number of subscriptions to the federal reporters in staffed libraries, especially West's Federal Supplement. If there is a concern that legal research services for the public/litigants or bar would be hindered if case law reporters are not available in the library, the local court(s) should consider using attorney admission funds to maintain the subscriptions.

(2) Request that the circuit librarians conduct and lead a comprehensive assessment of usage and need in the headquarters library and each satellite library or shared collection. The assessment should involve local judges, legal researchers, and any relevant circuit library committees; consider if infrequently used categories of materials identified by the library survey results could be eliminated; and include an analysis of duplication. A summary of the assessment should be reported to the Committee.

(3) Ask that the Committee establish guidelines discouraging subscriptions to case law reporters for newly appointed judges and existing judges.

b. With regard to the number and size of libraries, agreed to request that the circuit judicial councils, working with circuit librarians, library committees, and relevant judges, review satellite libraries to assess the continuing need for each library. In addition, they should review more closely libraries that serve fewer than 10 judges and report to this Committee whether those libraries will remain open or are targeted either for closure or reduction in size and collection. Consideration should be given to the circuit library program as a whole and the impact of closure of any satellite on the remaining libraries and the judges and others served.

NATIONAL VACCINE ACT PROPOSAL

The National Childhood Vaccine Injury Act of 1986 establishes a procedure to compensate vaccine-injured individuals through use of vaccine special masters within the United States Court of Federal Claims. Special masters conduct hearings and issue findings of fact and conclusions of law, and their determinations are appealable to Court of Federal Claims judges and

then to the Court of Appeals for the Federal Circuit. To address significant backlogs in processing these cases, the Court of Federal Claims has proposed legislation that would (a) assign vaccine claims directly to Court of Federal Claims judges, who could then hear the cases or refer them to vaccine judges; (b) rename vaccine special masters as vaccine judges; (c) authorize vaccine judges to issue a recommended decision, or with the consent of the parties, hear and enter judgement; (d) with the consent of the parties, authorize appeal of the vaccine judge's decision directly to the Court of Appeals for the Federal Circuit; and (e) authorize the Court of Federal Claims clerk instead of the chief special master to assume responsibility for the managerial aspects of the vaccine judges. After considering the proposal, the Committee recommended that the Judicial Conference decline to endorse renaming vaccine special masters as vaccine judges in light of the limited jurisdiction of those officers, but endorse the remaining concepts proposed by the Court of Federal Claims. The Conference adopted the Committee's recommendations.

TRANSLATED FORMS

The Judicial Conference declined to approve a motion to recommit an information item regarding the translation of court forms for voluntary use by district courts in civil cases.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that given the current economic climate, it determined to defer until June 2011 its cyclical review of miscellaneous fee schedules regarding increases for inflation. The Committee continued to provide policy guidance and oversight in the development of the functional requirements for the next generation CM/ECF software. It also endorsed an updated policy on wireless communication devices in courthouses and asked for review of the policy by the Judicial Security Committee. In addition, the Committee expressed support for the Codes of Conduct Committee's recently issued resource packet to assist courts in developing guidelines for employees on the use of social media.

COMMITTEE ON CRIMINAL LAW

SEARCH AND SEIZURE

Guidelines. On recommendation of the Committee on Criminal Law, the Judicial Conference approved guidelines entitled, "Search and Seizure Guidelines for United States Probation Officers in the Supervision of Offenders on Supervised Release or Probation," to replace model search and seizure guidelines adopted in 1993 (JCUS-MAR 93, p. 13). The new guidelines reflect developments in case law, best practices, and updates to administrative policies and procedures.

Use-of-Force Policy. In September 2002, the Judicial Conference approved a use-of-force continuum to govern self-defense responses by probation and pretrial services officers (JCUS-SEP 02, p. 44). Noting that certain provisions of that policy might conflict with provisions in the new search and seizure guidelines, the Committee recommended that the Conference approve revisions to the use-of-force policy to allow officers to manage searches as permitted by the new guidelines. The Conference approved the Committee's recommendation.

THE SUPERVISION OF FEDERAL DEFENDANTS, MONOGRAPH 111

On recommendation of the Committee, the Judicial Conference approved revisions to Monograph 111, *The Supervision of Federal Defendants*. The monograph, which provides guidance to officers who supervise defendants on pretrial release, was updated to reflect current knowledge in the field of substance abuse and mental health treatment.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that it discussed the status of the implementation of actuarial risk-needs instruments developed by the AO for use in pretrial and post-conviction supervision, consistent with the Committee's ongoing commitment to evidence-based practices. In addition, the Committee reviewed the results of several preliminary studies of the

effectiveness of certain evidence-based practices that have been implemented by the courts.

COMMITTEE ON DEFENDER SERVICES

COMMUNITY DEFENDER ORGANIZATION MODEL CODE OF CONDUCT

On recommendation of the Committee on Defender Services, the Judicial Conference approved a Model Code of Conduct for Federal Community Defender Employees, which is based on the code of conduct applicable to federal public defender organization employees, but modified appropriately for non-profit criminal defense organizations. The Conference also approved a new paragraph to be added to the community defender organization (CDO) grant and conditions document that requires CDOs to adopt the code, absent an approved variance from the AO. Finally, the Conference delegated to the Defender Services Committee the authority to make future adjustments to the CDO code that are substantially in accord with the code of conduct applicable to federal public defenders.

LITIGATION SUPPORT

The Committee recommended and the Conference approved revisions to the Criminal Justice Act (CJA) Guidelines, *Guide to Judiciary Policy*, Volume 7A, § 320.70.40, and the corresponding sample model order, to streamline and clarify the procedures for CJA panel attorneys to request and acquire computer hardware and software for use in CJA representations.

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that, under delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), it approved FY 2011 budgets and grants for federal defender organizations. The Committee also approved funding for the establishment of a federal public defender organization in the Northern District of Alabama, to be headquartered in Birmingham, with a staffed branch office in Huntsville and a staffing level of six assistant federal public defenders. The Committee reviewed an update to the 1998 report, "Federal Death Penalty Cases:

Recommendations Concerning the Cost and Quality of Defense Representation" (the "Spencer Report"), and endorsed updated commentary to the original recommendations and public dissemination of the report, as updated.

COMMITTEE ON FEDERAL-STATE JURISDICTION

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it discussed with the Legal Adviser for the Department of State the position adopted by the Judicial Conference in March 2010 regarding federal legislation to implement the Hague Convention on Choice of Court Agreements. The Committee also reviewed proposed legislation to authorize the High Court of American Samoa to exercise federal criminal jurisdiction, and determined to recommend no change in the 1996 Judicial Conference position expressing a preference for a territorial court in the event Congress chooses to extend federal jurisdiction to the territory. In addition, the Committee reviewed a legislative proposal to establish standards for state court actions on child custody orders affecting military personnel deployed overseas. Noting that the Judicial Conference has opposed legislation that would result in child custody cases being brought in federal court, the Committee asked the AO Director to transmit a letter to Congress suggesting that it consider an amendment to the proposed measure that would clarify the exclusion of such cases from federal courts.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that as of July 1, 2010, it had received 4,015 financial disclosure reports and certifications for calendar year 2009, including 1,215 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special jurisdiction courts; 339 reports from bankruptcy judges; 534 reports from magistrate judges; and 1,927 reports from judicial employees. The Committee continues to oversee the development of a system for the electronic filing and records management of financial disclosure reports. The system will work in conjunction with the financial disclosure report software currently used to produce these reports.

COMMITTEE ON INFORMATION TECHNOLOGY

LONG RANGE PLAN FOR INFORMATION TECHNOLOGY

Pursuant to 28 U.S.C. § 612 and on recommendation of the Committee on Information Technology, the Judicial Conference approved the fiscal year 2011 update to the *Long Range Plan for Information Technology in the Federal Judiciary*. Funds for the judiciary's information technology program will be spent in accordance with this plan.

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it endorsed a number of information technology (IT) program initiatives designed to enhance communication and collaboration with the courts, provide the courts with key IT services and support, and strengthen the reliability and capability of the judiciary's IT infrastructure. The Committee discussed ongoing initiatives including the next generation CM/ECF architecture study, the development of functional requirements for the next generation CM/ECF system, and the development of an electronic vouchering system for Criminal Justice Act panel attorneys. The Committee received a presentation on how information in digital form is transforming the writing of judicial opinions and discussed the potential implications of this trend.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that 112 intercircuit assignments were undertaken by 89 Article III judges from January 1, 2010, to June 30, 2010. During this time, the Committee continued to disseminate information about intercircuit assignments and aided courts requesting assistance by identifying and obtaining judges willing to take assignments.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its involvement in rule of law and judicial reform throughout the world, highlighting activities in Asia and the Pacific Basin, Latin America and the Caribbean, the Middle East, Europe, and Eurasia. The Committee further reported on its participation in the rule of law component of the Library of Congress' Open World Program for jurists from Russia, Ukraine, Georgia, Kazakhstan, Kyrgyzstan, Moldova, and Tajikistan, and in activities involving the Federal Judicial Center, the Department of State, the Agency for International Development, the Department of Justice, the Patent and Trademark Office, the AO Office of Defender Services, and U.S. court administrators. The Committee also received an analysis of current rule of law and judicial reform issues in Eastern Europe and the Balkans from the Minister of Justice of the Republic of Slovenia.

COMMITTEE ON THE JUDICIAL BRANCH

JUDGES' TRAVEL REGULATIONS

The Judicial Conference approved an amendment to the Travel Regulations for United States Justices and Judges, *Guide to Judiciary Policy*, Vol. 19, § 220.30.10(g), to provide that a chief district judge, with the concurrence of the circuit judicial council, may authorize a senior district judge who lives within the territorial boundaries of the court to which the judge was originally commissioned, reimbursement for enhanced transportation, lodging, and subsistence expenses (e.g., airfare, lodging, and three meals per day) when it is in the interest of the administration of justice (e.g., due to a shortage of judge power or case backlog). The amendment is intended to address a situation where the judge's residence, although within the court's territorial boundaries, may be located outside the commuting area of the court.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it continues to consider ways to maintain and enhance the independence and dignity of the federal judicial office. The Committee also considered steps that may be taken to improve the total compensation of federal judges. The Committee continues to examine ways to improve judicial-legislative communications, and educating the public, especially the media, on the judiciary and the role of judges in society remains a priority of the Committee.

COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY

COMMITTEE ACTIVITIES

The Committee on Judicial Conduct and Disability reported that on April 12, 2010, it issued a Memorandum of Decision on a petition for review of a circuit judicial council order on a complaint under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364. In addition, the Committee has issued a set of complaint filing instructions for courts to post online. The Committee continues to address courts' inquiries and to develop resources and infrastructure in support of the Committee's responsibilities.

COMMITTEE ON JUDICIAL RESOURCES

JUDICIARY SALARY PLAN PAY-SETTING FLEXIBILITY

With limited exceptions, the salary for applicants from outside the federal civil service is set at step 1 of the Judiciary Salary Plan (JSP) grade to which they are appointed. On recommendation of the Committee on Judicial Resources, the Judicial Conference affirmed the interpretation and application of the Judiciary Salary Plan (JSP) non-chambers pay-setting flexibility that would allow an applicant for a court unit executive or second-in-command (e.g., Type II chief deputy/deputy chief) JSP position to be appointed at step 1 or above in a grade lower than the highest grade for which the individual is qualified, subject to the following policy provisions:

a. The salary for the higher step may not exceed the corresponding salary for step 1 of the higher grade for which the individual is qualified;

b. If such an employee is subsequently promoted in less than one year from the individual's appointment date, the promotion may not result in the individual's salary exceeding the highest grade and step for which the individual was initially eligible;

c. For individuals appointed using this flexibility, the two-step increase JSP promotion rule may not be applied until the employee has worked at the grade and step to which the individual is appointed for one year; and

d. The position must be announced at all possible grades that the appointing officer is considering for the appointment.

This pay flexibility allows a court to offer a salary that is not at the highest possible grade or salary for that applicant, but may still be competitive because it is at a higher step than could otherwise be offered in the lower grade.

JUDICIAL ASSISTANT/ COURT REPORTER POSITION

On recommendation of the Committee, and in accordance with 28 U.S.C. § 753(a), the Judicial Conference approved the addition of court reporter duties to the judicial assistant position in the chambers of Judge Roberto A. Lange in the District of South Dakota based on the circumstances presented by the court and because it is in the public interest. The approval is limited to the present incumbent judicial assistant in Judge Lange's chambers. The judicial assistant-court reporter is required to follow all statutory requirements and Judicial Conference policies related to court reporting, as well as the Code of Conduct for Judicial Employees, when providing court reporting services to the court and the litigants.

COURT INTERPRETER POSITIONS

Using established criteria, the Committee recommended and the Conference approved one additional Spanish staff court interpreter position each for the Southern District of California and the District of New Mexico

and two additional Spanish staff court interpreter positions for the Western District of Texas for fiscal year 2012, based on the Spanish language interpreting workload in these courts. Accelerated funding in fiscal year 2011 was authorized for the one additional Spanish staff court interpreter position for the District of New Mexico and the two additional Spanish staff court interpreter positions for the Western District of Texas.

TELEWORK POLICY

On recommendation of the Committee, the Judicial Conference amended its telework policy for courts and federal public defender organizations as it relates to teleworkers who work permanently from remote locations to change the official duty station for locality pay purposes to the site where the employee spends the majority of his or her time in the performance of official duties, and to clarify travel and relocation policies for such employees. Specifically, the Conference revised the current telework policy to —

a. Define "official duty station" as the telework site for an employee who is not required to report to the employing court or federal public defender organization at least twice each biweekly pay period on a regular and recurring basis (other than during temporary telework, e.g., during a medical recovery period), and as the site of the employing court or organization for any employee who reports to the court or organization at least twice each biweekly pay period on a regular and recurring basis;

b. Provide that a court or federal public defender organization should establish in its telework policy generally, and in each telework agreement specifically, what, if any, travel reimbursement is authorized when an employee travels to the employing court or organization; and

c. Clarify that relocation expenses are not authorized when the official duty station changes as a result of the initiation of full-time telework, or modification or termination of a telework agreement.

EMPLOYMENT DISPUTE RESOLUTION

On recommendation of the Committee, the Conference adopted the following policy statement regarding a judge's role when presiding in an employment dispute resolution (EDR) proceeding:

a. EDR proceedings are strictly administrative and are not "cases and controversies" under Article III of the Constitution;

b. Judges presiding in EDR matters are functioning in an administrative rather than judicial capacity;

c. Judges' decisions in EDR matters must be in conformance with all statutes and regulations that apply to the judiciary, and judges in the EDR context have no authority to declare such statutes or regulations unconstitutional or invalid; and

d. Judges presiding in EDR matters may not compel the participation of or impose remedies upon agencies or entities other than the employing office which is the respondent in such matters.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it submitted to the Committee on the Budget a fiscal year 2012 budget request that represents a 5.4 percent increase over the fiscal year 2011 assumed appropriations. In order to stay within the guidelines recommended by the Budget Committee for 2012, the request was based on a re-computation of the staffing formulas using only the fastest 70 percent of the work measurement data at the category level of work (e.g., civil cases, Chapter 7 bankruptcy cases). The Committee also established as Committee policy its intent to use category-level formula adjustments as a cost-containment mechanism for developing its budget request each year when budget guidance establishes a ceiling lower than would be derived using the work measurement formulas at 100 percent of requirements. The Committee asked the Administrative Office to conduct studies on the alternative dispute resolution program, death penalty law clerks, and court sizing formulas, and present the results to the Committee at its June 2011 meeting.

COMMITTEE ON JUDICIAL SECURITY

COMMITTEE ACTIVITIES

The Committee on Judicial Security reported that it discussed and concurred with the Space and Facilities Committee's recommendation that the Conference endorse the concept of the establishment of a Capital Security Program (*see infra*, "Capital Security Program," p. 30). The Committee also reported on the development of a guide for judges who have had false liens filed against them, which provides easy-to-follow instructions on requesting representation and taking appropriate action.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee on the Administration of the Magistrate Judges System and the recommendations of the Director of the Administrative Office, the district courts, and the judicial councils of the circuits, the Judicial Conference approved the following changes in the number, locations, salaries, and arrangements of magistrate judge positions in the respective district courts. Changes with a budgetary impact are to be effective when appropriated funds are available.

SEVENTH CIRCUIT

Southern District of Indiana

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

2. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

EIGHTH CIRCUIT

District of Minnesota

1. Authorized an additional full-time magistrate judge position at Minneapolis or St. Paul; and

2. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

NINTH CIRCUIT

Central District of California

1. Authorized an additional full-time magistrate judge position at Santa Ana or Riverside; and

2. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

District of Nevada

1. Authorized an additional full-time magistrate judge position at Las Vegas; and

2. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

The Conference also agreed to make no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the District of Puerto Rico; District Court of the Virgin Islands; District of Nebraska; District of South Dakota; Southern District of Georgia; and District of Columbia.

ACCELERATED FUNDING

On recommendation of the Committee, the Judicial Conference agreed to designate for accelerated funding, effective April 1, 2011, the new full-time magistrate judge positions at Indianapolis in the Southern District of Indiana;

Minneapolis or St. Paul in the District of Minnesota; Santa Ana or Riverside in the Central District of California; and Las Vegas in the District of Nevada.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that under the September 2004 Judicial Conference policy regarding the review of magistrate judge position vacancies (JCUS-SEP 04, p. 26), during the period between the Committee's December 2009 and June 2010 meetings, the Committee chair approved filling nineteen full-time magistrate judge position vacancies. At its June 2010 meeting, the full Committee approved filling one vacancy and deferred action on another vacancy pending further review at its December 2010 meeting. The Committee also reviewed a report on long-range planning for the magistrate judges system and agreed to consider, at its December 2010 meeting, several long-range planning issues identified in the report.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF APPELLATE PROCEDURE

Rules Amendments. The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Appellate Rules 4 (Appeal as of Right — When Taken) and 40 (Petition for Panel Rehearing), together with committee notes explaining their purpose and intent. The Judicial Conference approved the proposed rules amendments and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

Statutory Amendment. The Committee also recommended seeking legislation to amend 28 U.S.C. § 2107, consistent with the proposed amendment to Appellate Rule 4, to clarify and make uniform the treatment of the time to appeal in all civil cases in which a federal officer or employee is a party. The Conference adopted the Committee's recommendation.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rules Amendments. The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 2003 (Meeting of Creditors or Equity Security Holders), 2019 (Representation of Creditors and Equity Security Holders in Chapter 9 Municipality and Chapter 11 Reorganization Cases), 3001 (Proof of Claim), 4004 (Grant or Denial of Discharge), 6003 (Interim and Final Relief Immediately Following the Commencement of the Case — Applications for Employment; Motions for Use, Sale, or Lease of Property; and Motions for Assumption or Assignment of Executory Contracts), and new Rules 1004.2 (Petition in Chapter 15 Cases) and 3002.1 (Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence), together with committee notes explaining their purpose and intent. The Judicial Conference approved the proposed rules amendments and new rules and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

Forms Amendments. The Committee also submitted to the Judicial Conference proposed revisions to Official Forms 9A, 9C, 9I, 20A, 20B, 22A, 22B, and 22C. The Judicial Conference approved the revised forms to take effect on December 1, 2010.

FEDERAL RULES OF CRIMINAL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Criminal Rules 1 (Scope; Definitions), 3 (The Complaint), 4 (Arrest Warrant or Summons on a Complaint), 6 (The Grand Jury), 9 (Arrest Warrant or Summons on an Indictment or Information), 32 (Sentencing and Judgment), 40 (Arrest for Failing to Appear in Another District or for Violating Conditions of Release Set in Another District), 41 (Search and Seizure), 43 (Defendant's Presence), and 49 (Serving and Filing Papers), and new Rule 4.1 (Complaint, Warrant, or Summons by Telephone or Other Reliable Electronic Means), together with committee notes explaining their purpose and intent. The Judicial Conference approved the proposed amendments and new rule and authorized their transmittal to the Supreme Court for its consideration with a recommendation

that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF EVIDENCE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed restyled Evidence Rules 101-1103, together with committee notes explaining their purpose and intent. The restyling of the Evidence Rules is the fourth in a series of comprehensive style revisions to simplify, clarify, and make more uniform all of the federal rules of practice, procedure, and evidence. The Judicial Conference approved the proposed restyled rules amendments and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it approved publishing for public comment proposed amendments to Bankruptcy Rules 3001, 7054, and 7056, proposed revisions of Bankruptcy Official Forms 10 and 25A, and a proposed new attachment and supplements to Bankruptcy Official Form 10, and proposed amendments to Criminal Rules 5 and 58, and a new Criminal Rule 37. The comment period expires on February 16, 2011.

COMMITTEE ON SPACE AND FACILITIES

CAPITAL SECURITY PROGRAM

Noting that there are many court facilities that have serious operational and security deficiencies, but might not qualify for funding for a new courthouse, the Committee recommended that the Judicial Conference endorse the concept of a Capital Security Program to assist such courts. The program, which would be a collaborative effort between the judiciary and GSA, would fund the retrofitting of certain types of physical security enhancements at locations that are suitable for such improvements. The Conference adopted the Committee's recommendation.

FIVE-YEAR COURTHOUSE PROJECT PLAN

On recommendation of the Committee, the Judicial Conference approved the *Five-Year Courthouse Project Plan for FYs 2012-2016,* which (a) adds the courthouse in Los Angeles, California, to the first year of the plan (FY 2012) as it is the only judicial space emergency that has not yet been built and is the judiciary's highest space priority; and (b) includes two new projects in the last year of the plan (FY 2016) for which it has been determined sufficient funding exists under the Judicial Conference's rent cap.

FEASIBILITY STUDIES

Requests for GSA feasibility studies must be approved by the Judicial Conference as Component B projects under the judiciary's circuit rent management program (JCUS-SEP 07, pp. 36-37). After reviewing requests for feasibility studies using asset management planning (a methodology approved by the Conference, *see* JCUS-MAR 08, p. 26) and determining urgency scores for each project, the Committee recommended that the Conference approve GSA feasibility studies for the projects in the following three locations: Hartford, Connecticut; Winston-Salem/Greensboro, North Carolina; and Clarksburg, West Virginia. The Conference approved the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Space and Facilities reported that it advised the Administrative Office on procedures for responding to out-of-cycle circuit rent budget Component B requests for housing for newly confirmed judges, and clarified the process through which its space planning and rent management subcommittees deal with requests for feasibility studies. The Committee also discussed the status of the first three tenant alterations projects (in Des Moines, Iowa; Chicago, Illinois; and Washington, D.C.) planned by the courts under the newly granted congressional authorization for the GSA to delegate to the judiciary the authority to perform tenant alterations projects costing up to $100,000.

FUNDING

All of the foregoing recommendations that require the expenditure of funds for implementation were approved by the Judicial Conference subject to the availability of funds and to whatever priorities the Conference might establish for the use of available resources.

Chief Justice of the United States
Presiding

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

March 15, 2011

The Judicial Conference of the United States convened in Washington, D.C., on March 15, 2011, 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 Sandra L. Lynch
Chief Judge Mark L. Wolf,
District of Massachusetts

Second Circuit:

Chief Judge Dennis Jacobs
Judge Carol Bagley Amon,[1]
Eastern District of New York

Third Circuit:

Chief Judge Theodore A. McKee
Chief Judge Harvey Bartle III,
Eastern District of Pennsylvania

Fourth Circuit:

Chief Judge William B. Traxler, Jr.
Chief Judge James P. Jones,
Western District of Virginia

[1]Designated by the Chief Justice as a substitute for Chief Judge Raymond J. Dearie, who was unable to attend.

Fifth Circuit:

Chief Judge Edith Hollan Jones
Chief Judge Sarah Vance,
Eastern District of Louisiana

Sixth Circuit:

Chief Judge Alice M. Batchelder
Judge Thomas A. Varlan,
Eastern District of Tennessee

Seventh Circuit:

Chief Judge Frank H. Easterbrook
Chief Judge Richard L. Young,
Southern District of Indiana

Eighth Circuit:

Chief Judge William Jay Riley
Judge Rodney W. Sippel,
Eastern District of Missouri

Ninth Circuit:

Chief Judge Alex Kozinski
Chief Judge Robert S. Lasnik,
Western District of Washington

Tenth Circuit:

Chief Judge Mary Beck Briscoe
Judge Robin J. Cauthron,
Western District of Oklahoma

Eleventh Circuit:

Chief Judge Joel F. Dubina
Judge Myron H. Thompson,
Middle District of Alabama

District of Columbia Circuit:

Chief Judge David Bryan Sentelle
Chief Judge Royce C. Lamberth,
District of Columbia

Federal Circuit:

Chief Judge Randall R. Rader

Court of International Trade:

Chief Judge Donald C. Pogue

The following Judicial Conference committee chairs attended the Conference session: Circuit Judges Bobby R. Baldock, Julia Smith Gibbons, Michael S. Kanne, M. Margaret McKeown, Diarmuid F. O'Scannlain, Jeffrey S. Sutton, Richard C. Tallman, and John Walker, Jr.; District Judges Robert Holmes Bell, Rosemary M. Collyer, Joy Flowers Conti, Sidney A. Fitzwater, Janet C. Hall, D. Brock Hornby, David A. Katz, George H. King, Mark R. Kravitz, J. Frederick Motz, Michael A. Ponsor, Julie A. Robinson, Lee H. Rosenthal, and George Z. Singal; and Bankruptcy Judge Eugene R. Wedoff. Attending as the magistrate judge and bankruptcy judge observers, respectively, were Judge Anthony J. Battaglia[2] and Bankruptcy Judge Rosemary Gambardella. Cathy Catterson of the Ninth Circuit represented the circuit executives.

James C. Duff, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Jill C. Sayenga, Deputy Director; William R. Burchill, Jr., Associate Director and General Counsel; Laura C. Minor, Assistant Director, and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat; Cordia A. Strom, Assistant Director, Legislative Affairs; and David A. Sellers, Assistant Director, Public Affairs. District Judge Barbara Jacobs Rothstein and John S. Cooke, Director and Deputy Director of the Federal Judicial Center, and District Judge Patti B. Saris and Brent Newton, Chair and Deputy Staff Director of the United States Sentencing Commission, were in attendance at the session of the Conference, as was Jeffrey P. Minear, Counselor to the

[2]Judge Battaglia was confirmed as a district judge on March 7, 2011.

Chief Justice. The 2010-2011 Supreme Court Fellows also observed the Conference proceedings.

Deputy Attorney General James Cole addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice. Senators Patrick J. Leahy, Charles E. Grassley, Amy Klobuchar, and Thad Cochran, and Representatives Lamar Smith, John Conyers, Jr., Howard Coble, Steve Cohen, and Harold Rogers, spoke on matters pending in Congress of interest to the Conference.

REPORTS

Mr. Duff reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office (AO). Judge Rothstein spoke to the Conference about Federal Judicial Center (FJC) programs, and Judge Saris reported on United States Sentencing Commission activities. Judge Julia Smith Gibbons, Chair of the Committee on the Budget, presented a report on the budget outlook.

ELECTION

The Judicial Conference elected to membership on the Board of the Federal Judicial Center for a term of four years Chief Judge James F. Holderman, Jr., of the District Court for the Northern District of Illinois and Chief Judge Kathryn H. Vratil of the District Court for the District of Kansas to succeed Judge David O. Carter of the District Court for the Central District of California and Judge Philip M. Pro of the District Court for the District of Nevada.

EXECUTIVE COMMITTEE

JUDICIARY STRATEGIC PLANNING

At its September 2010 session, on recommendation of the Executive Committee, the Judicial Conference approved the *Strategic Plan for the Federal Judiciary,* as well as the Committee's recommended approach to strategic planning (JCUS-SEP 10, pp. 5-6). That approach includes provision for designation by the Executive Committee chair of an Article III judge to

serve as judiciary planning coordinator. In late September 2010, Judge Charles R. Breyer was appointed for a two-year term as the long-range planning coordinator with responsibility for facilitating and coordinating the strategic planning efforts of the Judicial Conference and its committees. In early 2011, the Executive Committee identified four strategies and one goal from the *Strategic Plan* that will serve as judiciary-wide priorities for the next two years.

RESIDENCY REQUIREMENT FOR JUDGES OF THE FEDERAL CIRCUIT

A provision in pending patent reform legislation (S. 23, 112th Cong.) would repeal the current requirement set forth in 28 U.S.C. § 44(c) that active judges on the U.S. Court of Appeals for the Federal Circuit reside within fifty miles of the District of Columbia. Noting that the judges of the Federal Circuit, who believe that the residency requirement significantly enhances the court's decisional capabilities, unanimously favor retaining the requirement, the Court Administration and Case Management Committee recommended that the Conference oppose legislation that would repeal the residency requirement. Because the legislation was moving quickly through Congress, the Executive Committee acted on behalf of the Conference and approved the recommendation.

MISCELLANEOUS ACTIONS

The Executive Committee —

- Determined that the Administrative Office's Online System for Clerkship Application and Review (OSCAR) working group is the entity that should advise judges each year of the law clerk hiring dates;

- Reviewed the determinations of the other Conference committees as to whether the judiciary should pursue in the 112th Congress, or defer pursuit of, Conference-approved legislative proposals within those committees' jurisdictions;

- On recommendation of the Committee on the Administration of the Magistrate Judges System and on behalf of the Judicial Conference, approved one additional magistrate judge position for the District of Arizona at Phoenix and accelerated funding for that position, effective

immediately, and made no other changes affecting magistrate judge positions in that district;

- Approved adjustments to the judiciary's fiscal year 2012 budget request;

- On recommendation of the Committee on Rules of Practice and Procedure and on behalf of the Conference, approved the *Second Report of the Judicial Conference of the United States on the Adequacy of Privacy Rules Prescribed Under the E-Government Act of 2002* for transmission to Congress;

- Delegated to the Director of the Administrative Office the authority to provide to Congress a list of district courts recommended by the Conference for additional judgeships, in order of weighted filings per judgeship, without further approval by the Committee, as the Director routinely provides such lists to Congress in the ordinary course of duties (*see also infra*, "Additional Judgeships for Courts with the Greatest Need," p. 22); and

- On recommendation of the Committee on Court Administration and Case Management, approved new language to be added to the end of the District Court and Bankruptcy Court Miscellaneous Fee Schedules to enable courts to assess a charge for investment services when registry funds are invested directly by the judiciary's Court Registry Investment System with the United States Treasury's Bureau of Public Debt, to be assessed from interest earnings at a rate of 2.5 basis points.

COMMITTEE ON AUDITS AND ADMINISTRATIVE OFFICE ACCOUNTABILITY

COMMITTEE ACTIVITIES

The Committee on Audits and Administrative Office Accountability reported that it received detailed briefings from two of the judiciary's independent audit firms regarding audits of the judiciary's national contracts and national accounts and programs. The contract audit firm found that overall contract oversight is sufficient, and the financial audit firm rendered a positive "unqualified" opinion on all of the financial statements and found no instances of failure to comply with applicable laws, regulations, and contracts.

The Committee discussed at length an auditor recommendation regarding formal channels to allow employees to anonymously report fraud, waste, and abuse, and determined that it would be beneficial and appropriate to communicate to all employees the existence of current channels available within the judiciary for reporting such concerns.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

BANKRUPTCY JUDGESHIPS

Additional Judgeships. The Judicial Conference conducts a biennial survey to evaluate requests for additional bankruptcy judgeships and transmits its recommendations to Congress, which establishes the number of bankruptcy judgeships in each judicial district (28 U.S.C. § 152(b)(2)). Based on the 2010 biennial survey of judgeship needs, and on recommendation of the Committee on the Administration of the Bankruptcy System, the Judicial Conference agreed to recommend to Congress the addition of 49 bankruptcy judgeships (48 permanent and one temporary), the conversion of 28 temporary judgeships to permanent status, and the extension of two temporary judgeships for an additional five years.

Criteria. In September 2010, the Judicial Conference codified the standard to be used in evaluating requests for conversion of temporary judgeships to permanent. At this session, on recommendation of the Committee, the Conference clarified that standard to expressly state that the 1,500 weighted filings per judgeship threshold is calculated assuming the loss of one judgeship. The standard was amended to read as follows:

> Generally, it is expected that, in addition to other judicial duties, a bankruptcy district should have an annual weighted caseload of at least 1,500 per judgeship, when computed using currently authorized judgeships minus one, to justify converting an existing temporary judgeship to permanent status.

INTERCIRCUIT ASSIGNMENT GUIDELINES

In order to allow more flexibility and promote greater use of intercircuit assignments, the Committee recommended that the Guidelines for the Intercircuit Assignment of Bankruptcy Judges be revised so that (a) only the district, and not the whole circuit, that lends a bankruptcy judge to another circuit cannot borrow from another circuit during that period, and (b) a district, upon approval of the circuits involved, may seek to borrow a visiting judge from a geographically contiguous district in another circuit before attempting to meet its needs from within its own circuit if such assignment would be less expensive and more efficient. The Committee also recommended several technical changes to update and clarify the regulations. The Conference approved the proposed changes.

PLACE OF HOLDING COURT

On recommendation of the Bankruptcy Committee, and in accordance with 28 U.S.C. § 152(b)(1), the Judicial Conference approved a request from the Tenth Circuit Judicial Council and the District of Utah to authorize the designation of St. George as an additional place of holding bankruptcy court in the District of Utah.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Bankruptcy System reported that it provided the Budget Committee with its views on adjusting the budget cap on the judiciary's Salaries and Expenses account (*see infra*, "Salaries and Expenses Account Budget Cap," p. 9). In addition, the Committee informed the Committee on Court Administration and Case Management that it endorsed the concept of truncating debtors' full Social Security numbers on the notice of meeting of creditors. The Committee also advised the Federal-State Jurisdiction Committee that it declined to endorse a legislative proposal to include bankruptcy judges among those Ninth Circuit federal judges permitted to serve on courts of the freely associated compact states (*see infra*, "Federal Judicial Service on Courts of the Freely Associated Compact States," p. 14).

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COMMITTEE ON THE BUDGET

SALARIES AND EXPENSES ACCOUNT BUDGET CAP

In March 2007, the Judicial Conference set an overall cap on annual increases in the Salaries and Expenses account for fiscal years 2009 through 2017 at an average of 8.2 percent over prior-year appropriations (JCUS-MAR 07, p. 10). At this session, after receiving input from the program committees, the Budget Committee recommended that the Conference lower the budget cap from 8.2 percent to 5.2 percent as a cost-control measure and to demonstrate to Congress that the judiciary is committed to continuing to contain growth in its requirements. The Conference agreed to the 5.2 percent cap for the Salaries and Expenses account for fiscal years 2013 through 2017.

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it continues to be concerned about the long-term financial health of the judiciary in this period of fiscal austerity. The Committee is committed to a renewed focus on cost containment, including identifying several multi-jurisdictional issues that it plans to discuss with program committees that could lessen the gap between the judiciary's estimated budget requirements and the assumed funding levels for the foreseeable future. Noting the importance of the judiciary's two-pronged approach of cost containment and congressional outreach, the Committee emphasized that the judiciary remains committed to seeking only the funding that is absolutely necessary to perform its judicial responsibilities.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in September 2010, the Committee received 29 new written inquiries and issued 28 written advisory responses. During this period, the average response time for requests was 16 days. In addition, the Committee chair responded to 205 informal inquiries, individual Committee members responded to 123 informal inquiries, and Committee counsel responded to 336 informal inquiries.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

RECORDS DISPOSITION SCHEDULES

Criminal case files. The Committee on Court Administration and Case Management recommended that the Judicial Conference adopt a revised district court records disposition schedule for criminal case files that closely tracks the changes in the schedule for civil cases adopted by the Conference in September 2010 (JCUS-SEP 10, p. 14). Among other things, the new schedule adds cases related to treason and national security to the list of cases designated as permanent. It also reduces from 25 to 15 years after closure the time that criminal case files remain at Federal Records Centers (FRCs) before they are destroyed or sent to the National Archives and Records Administration (NARA), thereby reducing the storage fees the judiciary pays to NARA. The Conference adopted the Committee's recommendation.

Bankruptcy case files. On recommendation of the Committee, the Conference also revised the bankruptcy court records disposition schedule. The new schedule designates additional types of cases as permanent, including 25 percent of the case files closed in nine judicial districts, the districts to be selected each year on a rotational basis. The intent of this provision is to retain a national sampling of bankruptcy cases in every decade. The new schedule also reduces from 25 to 15 years the minimum time cases must be retained after closure.

SCANNING PAPER CASE FILES INTO CM/ECF

Closed paper case files. When older paper case files that have been transferred to a Federal Records Center are requested for review at a court, the court often scans the documents into the case management/electronic case files (CM/ECF) system and then destroys the paper records, rather than return them to the FRC. However, since many of these documents were filed prior to the adoption of the judiciary's privacy policies and rules, they may contain personal identifiers that compromise the privacy of the parties. To address this concern, on recommendation of the Committee, the Conference endorsed the practice of scanning into CM/ECF older paper files stored at FRCs when they are requested for viewing, but agreed to require that courts restrict remote public access to those files and allow public access only at the clerk's office public terminal or counter.

Open fugitive criminal case files. Fugitive criminal case files contain information that is normally restricted from remote public access. Noting that the CM/ECF system has seven levels of access ranging from public availability to completely sealed, the Committee recommended that the Conference endorse the scanning of open fugitive criminal case files into CM/ECF under the appropriate restriction levels. This would allow courts to destroy the paper copies and manage the cases electronically while at the same time protecting sensitive information. The Conference adopted the Committee's recommendation.

Sealed case files. In March 2007, the Judicial Conference endorsed a sealing functionality in the CM/ECF system and encouraged courts to manage electronically all cases and documents under seal (JCUS-MAR 07, p. 12). At this session, noting that several courts' vaults for sealed records have exceeded capacity, the Committee recommended that the Conference endorse the scanning into CM/ECF, under the appropriate restriction level, of sealed paper case files and documents stored at the court. The Conference adopted the Committee's recommendation.

ELECTRONIC PUBLIC ACCESS FEE EXEMPTION

The Electronic Public Access (EPA) Fee Schedule provides for exemptions for persons or classes of persons, including individual researchers associated with educational institutions, upon a showing that an exemption is necessary to avoid unreasonable burdens and to promote public access to information. However, any user granted an exemption must agree not to sell the data for profit and not to transfer data unless expressly authorized by the court. Despite these restrictions, researchers associated with educational institutions are increasingly redistributing court information through internet-based databases, without express court permission, and in some instances may stand to gain financially from such redistribution. Therefore, the Committee recommended, and the Conference approved, a modification of the EPA fee schedule to include the following sentence: "For individual researchers, courts must also find that the defined research project is intended for academic research purposes, and not for commercial purposes or internet redistribution."

OPINION PILOT PROJECT

In March 2010, the Judicial Conference approved a pilot project with the Government Printing Office (GPO), involving no more than 12 courts, to

provide public access to court opinions through GPO's Federal Digital System (FDsys), which is an advanced, internet-based digital system that allows searches across opinions and across courts (JCUS-MAR 10, p. 9). At this session, the Conference adopted a recommendation of the Committee to expand the pilot program to include up to 30 additional courts, to ensure that sufficient data is collected to evaluate the program.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it identified key issues to be included in the final guidelines for the cameras-in-the-courtroom pilot project, and established parameters for the FJC's study of the pilot. The Committee reviewed a draft of the FJC's bankruptcy courtroom use study. It also reviewed policy recommendations of its CM/ECF subcommittee and continued to provide oversight in the development of the Next Generation CM/ECF software. In addition, the Committee reconstituted its privacy subcommittee to consider the use of a debtor's full Social Security number in certain bankruptcy pleadings and the recommendations contained in two Rules Committee reports relating to sealing documents and the privacy rules. A recommendation of the Committee to the Judicial Conference on senior judge participation in en banc panels was withdrawn for further consideration.

COMMITTEE ON CRIMINAL LAW

FEDERAL SUPERVISION OF SEX OFFENDERS

On recommendation of the Committee on Criminal Law, the Judicial Conference approved a new policy governing probation and pretrial services officers' management of sex offenders. The new policy is intended to give probation and pretrial services officers a broad overview of sex offender management principles.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that it discussed a proposed work measurement formula for probation and pretrial services offices, along with a proposed case weighting supplement, and provided input to the

Committee on Judicial Resources (*see infra*, "Staffing Formulas," p. 26). In addition, the Committee endorsed a proposal to create a secure interconnection between the judiciary and Department of Justice so that select data elements related to the work of probation and pretrial services officers could be exchanged. This proposal was forwarded to the Committee on Information Technology for its consideration.

COMMITTEE ON DEFENDER SERVICES

CASE-BUDGETING ATTORNEYS

In September 2005, the Judicial Conference approved a pilot project for the Defender Services account to fund a position in up to three circuits to support the case-budgeting process (JCUS-SEP 05, p. 21). An FJC study of the pilot project concluded that the program contained costs and did not diminish (and even improved) the quality of representation and that the savings achieved by the program were greater than the costs. At this session, on recommendation of the Committee, the Conference agreed to approve the utilization of circuit Criminal Justice Act (CJA) case-budgeting attorney positions, the continued funding for the three current case-budgeting attorneys, and expansion in the number of positions. The Conference further agreed that the case-budgeting attorney positions will be structured as circuit unit employees that are funded by the Defender Services account and will operate pursuant to a Memorandum of Understanding that will include an advisory role for the Administrative Office in the appointment, management, and oversight of the position, with the understanding that the circuit has the ultimate authority in the selection, retention, and management of the position. Expansion of the number of case-budgeting attorneys will occur incrementally, subject to the Committee's approval and the availability of funding.

CLEMENCY REPRESENTATION

Criminal Justice Act panel attorneys, as well as federal defender organizations, provide representation with Defender Services funding in state clemency proceedings. To foster uniformity in practices related to the appointment and compensation of counsel for CJA representation in such proceedings, the Committee recommended, and the Judicial Conference

approved, policy guidance on this issue, to be included in the CJA guidelines, *Guide to Judiciary Policy* (*Guide*), Vol. 7A, § 680.

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it received a detailed report on the recently completed federal defender organization (FDO) case weighting study and approved a process for calculating budgets for fiscal year 2012 that is based on weighted cases opened during a 12-month period. Citing the austere fiscal circumstances predicted for the judiciary, the Committee deferred authorization of several proposals for achieving parity between compensation offered by FDOs and that offered by U.S. attorneys' offices, although it noted its continuing support for the Judicial Conference policy regarding such parity.

COMMITTEE ON FEDERAL-STATE JURISDICTION

FEDERAL JUDICIAL SERVICE ON COURTS OF THE FREELY ASSOCIATED COMPACT STATES

Section 297 of title 28, United States Code, authorizes the Chief Justice or the chief judge of the Ninth Circuit to assign a circuit or district judge of that circuit, with the consent of the judge, to serve temporarily as a judge of any duly constituted court of the freely associated compact states (the Republic of Marshall Islands, the Republic of Palau, and the Federated States of Micronesia), if so requested by the compact state. The Marshall Islands has proposed an amendment to this statute to also permit non-Article III judges to provide such service, which proposal the Ninth Circuit Judicial Council and its Pacific Islands Committee support. After consulting the Committee on the Administration of the Bankruptcy System and the Committee on the Administration of the Magistrate Judges System, the Committee on Federal-State Jurisdiction recommended that the Judicial Conference support an amendment to 28 U.S.C. § 297 to specify that, in addition to circuit and district judges, magistrate judges and territorial judges may be assigned

temporarily to provide service to the freely associated compact states.[3] The Conference approved the recommendation.

FELA AND JONES ACT CASES

In September 1990, and again in September 1995 as part of the *Long Range Plan for the Federal Courts*, the Judicial Conference endorsed repeal of the Federal Employers' Liability Act (FELA), which provides injured railroad employees with a cause of action against their employers for negligence, and the Jones Act, which provides a similar remedy for seamen (JCUS-SEP 90, p. 82; JCUS-SEP 95, p. 43). Implementation Strategy 12a of the *Long Range Plan* notes that states have proven effective in resolving worker compensation disputes in other industries and occupations and that federal jurisdiction was therefore not warranted in FELA and Jones Act cases. However, as indicated by the Committee, this position is likely to meet with opposition in Congress and has not been pursued in Congress in over 15 years. In addition, FELA and Jones Act cases make up a very small part of the federal docket. Therefore, the Committee recommended that the Conference rescind its position in support of repeal. The Conference approved the recommendation.

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it discussed the questions raised by interested stakeholders regarding implementation of the Hague Convention on Choice of Court Agreements. In particular, the Committee addressed concerns raised regarding that part of the Judicial Conference position that would oppose the creation of federal question jurisdiction to recognize judgments of foreign courts if such jurisdiction was based solely on the action arising under the Convention. Members also discussed the likely impact on the federal judiciary of provisions in proposed comprehensive immigration reform legislation. In addition, the Committee reviewed legislation that would establish special procedures for expeditiously resolving lawsuits filed against individuals who are seeking to assert their

[3]The Bankruptcy Committee declined to support inclusion of bankruptcy judges in the statute because of the dire need for additional bankruptcy judges. The Magistrate Judges Committee endorsed the proposal.

First Amendment rights of freedom of speech and right to petition for redress of grievances.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that as of December 31, 2010, the Committee had received 4,517 financial disclosure reports and certifications for calendar year 2009, including 1,355 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 389 reports from bankruptcy judges; 621 reports from magistrate judges; and 2,152 reports from judicial employees. The Committee adopted a modified version of the CM/ECF system as a vehicle for electronic filing because this approach would provide the greatest measure of security and control over development, and it would be the most fiscally responsible approach for both short- and long-term use. The Committee continues to work to extend the December 31, 2011 sunset of the judiciary's authority to redact information from financial disclosure reports when releasing such information could endanger a judge or judicial employee.

COMMITTEE ON INFORMATION TECHNOLOGY

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it endorsed a set of best security practices for new technologies and encourages courts to follow them; agreed to encourage courts to implement the nationally supported solutions to a security vulnerability in the Public Access to Court Electronic Records (PACER) system; and endorsed guidance for the acquisition by courts of iPhones and iPads. In light of the austere budget climate, the Committee also determined that funding for new grants under the Edwin L. Nelson Local Initiatives program would be suspended for the next two years. The Committee discussed a number of ongoing information technology initiatives, including new services for the courts that both strengthen the judiciary's information technology program and promote cost containment, the next generation network and national telephone service, and the next generation case management system.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that 88 intercircuit assignments were undertaken by 71 Article III judges from July 1, 2010 to December 31, 2010, bringing the total for the full calendar year 2010 to 197 intercircuit assignments that were processed by the Committee and approved by the Chief Justice. The Committee also reported that a modernized version of the Intercircuit Assignments Database System was implemented to provide electronic routing of documents and to expand user access to include chief judges, circuit executives, and courts of appeals clerks. In addition, the Committee continued to disseminate information about intercircuit assignments and aided courts requesting assistance by identifying and obtaining judges willing to take assignments.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its involvement in rule of law and judicial reform throughout the world, highlighting activities in Africa, Asia and the Pacific Basin, Latin America and the Caribbean, the Middle East, Europe, and Eurasia. The Committee further reported on its continued participation in the rule of law component of the Library of Congress' Open World Program for jurists from Russia, Ukraine, Georgia, Kazakhstan, Kyrgyzstan, and Moldova, and international rule of law work by U.S. federal defenders and court administrators. In addition, the Committee reported about rule of law activities involving the Federal Judicial Center and several executive branch agencies. The Committee also reported on briefings at the Administrative Office for delegations of foreign jurists and judicial personnel.

COMMITTEE ON THE JUDICIAL BRANCH

CREDIT FOR SERVICE AS A NON-ARTICLE III JUDGE

The Judicial Conference has previously endorsed seeking legislation that would establish Article III status for the territorial district courts of the Northern Mariana Islands and Guam (JCUS-SEP 03, p. 8; JCUS-SEP 94, p. 51; JCUS-MAR 94, p. 19). On recommendation of the Committee, the Conference, at this session, agreed that if the Conference pursues such legislation, it should also seek legislation to provide that in the event the incumbent judges of those courts are confirmed as Article III judges, their service as judges in their respective territorial district courts would be included in computing, under sections 371 and 372 of Title 28, United States Code, their aggregate years of judicial service. In 1964, the Conference supported similar legislation with regard to service of a judge on the District Court of the Territory of Alaska, who was subsequently confirmed as an Article III judge when Alaska attained statehood (JCUS-SEP 64, pp. 61-62).

JUDICIAL WELLNESS

On recommendation of the Committee on the Judicial Branch, the Judicial Conference agreed to request and encourage circuit judicial councils to consider establishing "judicial wellness" committees that would be charged with accomplishing objectives substantially similar to the following: (a) promoting health and wellness among judges by creating programs (educational or otherwise), policies, and/or practices that provide a supportive environment for the maintenance and restoration of health and wellness; and (b) providing information to judges on judicial retirement issues, including disability retirement**.**

NONFOREIGN COST-OF-LIVING ALLOWANCES

In 1979, the Judicial Conference endorsed the position that, as a matter of equity, officers and employees in the judicial branch should receive the same cost-of-living allowances (COLAs) provided in the executive branch for officers and employees serving outside the continental United States or in Alaska (JCUS-SEP 79, p. 73). Judiciary employees have been receiving these COLAs, called "nonforeign" COLAs, but legislation was needed to authorize such payments to judges. Obtaining such legislation was therefore placed on

the judiciary's legislative agenda. However, under the Defense Authorization Act of 2010, Public Law No. 111-86, nonforeign COLAs are being phased out and replaced with locality-based comparability payments. Consequently, the Committee determined that the Conference's 1979 position endorsing the payment of cost-of-living allowances to federal judges serving outside the continental United States or in Alaska (nonforeign COLAs) is no longer relevant and should be rescinded. The Conference adopted the Committee's recommendation.

TRAVEL REGULATIONS FOR JUSTICES AND JUDGES

Alternative Allowance. On recommendation of the Judicial Branch Committee, the Judicial Conference amended section 250.30.40 of the Travel Regulations for United States Justices and Judges (*Guide*, Vol. 19, Ch. 2) to clarify that for overnight travel, in lieu of claiming a per diem allowance for the locality where temporary duty is performed, a judge may claim the cost of lodging plus the maximum General Services Administration (GSA) per diem allowance for meals and incidental expenses, currently $71, provided that the sum total does not exceed 150 percent of the authorized per diem allowance. This change is intended to distinguish the overnight travel allowance for meals and incidental expenses from that for same-day travel, which is the relevant locality GSA allowance, currently ranging from $46 to $71.

Government/Third Party-Provided Lodging and/or Meals. The Committee recommended that the Conference approve an amendment to section 250.40.20 of the Travel Regulations for United States Justices and Judges (*Guide*, Vol. 19, Ch. 2) to clarify that when the government or a third party pays directly for a judge's lodging and/or meals, the judge should take an appropriate reduction in the judges' subsistence/per diem allowance. The Conference adopted the Committee's recommendation.

Reimbursement of Travel Attendants. Currently travel attendants who accompany judges with special needs so that they can perform official business are limited to reimbursement for lodging and meals at the GSA locality per diem rate, which is not always sufficient to cover their actual expenses of subsistence. The Judiciary Staff Travel Regulations (*Guide*, Vol. 19, Ch. 4) allow travel attendants to claim actual expenses. On recommendation of the Committee, the Conference agreed to amend section 240.10 of the Travel Regulations for United States Justices and Judges (*Guide*, Vol. 19, Ch. 2) to authorize reimbursement of judges' travel attendants on an

actual expense basis (in lieu of a per diem allowance), consistent with the provisions of section 420.30.40 of the Judiciary Staff Travel Regulations.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it continues to consider ways to inform the other branches of the federal government, news media, members of the bar, and citizens in general, of the role of the federal judiciary and to bring to their attention the needs of judges and courts, as well as the problems judges face in discharging their duties. The Committee also reported on problems and developments related to compensation and benefits of federal judges.

COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY

COMMITTEE ACTIVITIES

The Committee on Judicial Conduct and Disability reported that as of January 25, 2011, it had no pending petitions for review of circuit judicial council orders on complaints under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364. The Committee and its staff have continued to address courts' inquiries regarding the Act and the Conference's Rules for Judicial-Conduct and Judicial-Disability Proceedings, and to develop processes and informational resources to support the Committee's monitoring function.

COMMITTEE ON JUDICIAL RESOURCES

ARTICLE III JUDGESHIPS

Additional Judgeships. The Committee on Judicial Resources considered requests and justifications for additional judgeships in the courts of appeals and the district courts as part of its 2011 biennial judgeship survey process. Based on its review, and after considering the views of the courts and the circuit judicial councils, the Committee recommended that the Judicial Conference authorize transmittal to Congress of the following request: for the courts of appeals, the addition of eight permanent judgeships and one temporary judgeship, and for the district courts, the addition of 53 permanent

and 18 temporary judgeships, plus the conversion to permanent status of eight existing temporary judgeships. The Conference adopted the Committee's recommendations, agreeing to transmit the following request to Congress ("P" denotes permanent; "T" denotes temporary; "T/P" denotes conversion of temporary to permanent):

Courts of Appeals

Second Circuit	2P
Third Circuit	1P
Sixth Circuit	1P
Ninth Circuit	4P, 1T

District Courts

New York (Eastern)	2P
New York (Southern)	1P, 1T
New York (Western)	1P, 1T
New Jersey	1P
Pennsylvania (Middle)	1T
Virginia (Eastern)	1T
Texas (Eastern)	1P, 1 T/P
Texas (Southern)	4P
Texas (Western)	4P, 1T
Indiana (Southern)	1P
Minnesota	1P, 1T
Missouri (Eastern)	1T/P
Missouri (Western)	1T
Nebraska	1T
Arizona	4P, 1T, 1T/P
California (Northern)	4P, 1T
California (Eastern)	6P, 1T
California (Central)	8P, 1T, 1T/P
California (Southern)	2P, 1T
Idaho	1P
Nevada	1P, 1T
Oregon	1T
Washington (Western)	1P
Colorado	1P, 1T
Kansas*	1T/P
New Mexico	1P, 1T, 1T/P
Alabama (Northern)	1T/P

Florida (Middle)	5P, 1T
Florida (Southern)	3P, 1T/P

* If the temporary judgeship lapses, the Judicial Conference's recommendation would be amended to one additional permanent judgeship.

Judgeship Vacancies. As part of the biennial survey of judgeship needs, workloads in district and appellate courts with low-weighted caseloads are reviewed for the purpose of determining whether to recommend to the President and Senate that an existing or future judgeship vacancy not be filled. On recommendation of the Committee, the Conference agreed to recommend to the President and the Senate that the next judgeship vacancy in the District of Massachusetts not be filled, based on the three-year low-weighted caseload in that district.

Additional Judgeships for Courts with the Greatest Need. Noting that the judiciary's ability to handle its workload effectively and expeditiously is dependent upon having an appropriate number of Article III judges, and that Congress has not passed nationwide judgeship legislation since 1990, the Committee recommended that the Judicial Conference authorize the Director of the Administrative Office to focus Congress' attention on those courts determined to have the greatest need based on specific parameters. On recommendation of the Committee, by mail ballot concluded on January 24, 2011, the Conference agreed that the Director, subject to the approval of the Executive Committee, may (a) pursue separate legislation for Conference-approved additional judgeships for district courts that have 700 or more weighted filings per authorized judgeship, averaged over a three-year period, and that are utilizing all available judicial resources and procedures; and (b) provide to Congress a list of the district courts recommended by the Conference for additional judgeships, in order of weighted filings per judgeship (*see also supra*, "Miscellaneous Actions," pp. 5-6).

Filling Vacancies in Courts with the Greatest Need. Prolonged judgeship vacancies place significant burdens on the courts by increasing the workloads of those judges available for duty and diminishing the courts' ability to discharge their responsibilities. This problem is particularly acute in districts with extraordinarily high caseloads. Accordingly, on recommendation of the Committee, by mail ballot concluded on January 24, 2011, the Judicial Conference agreed that the Director of the Administrative Office, subject to the approval of the Executive Committee, may encourage the President and the Senate to fill judgeship vacancies on a priority basis in

specific district courts that are using all available judicial resources and procedures and that have either (a) more than one authorized judgeship and only one on-board active judge; or (b) a judicial vacancy pending 18 months or longer and 700 or more weighted filings per active judge (authorized judgeships minus judge vacancies), using statistics for the last fiscal year.

COURT LAW CLERK POSITIONS

In response to a request from the Eastern District of California for additional law clerks to help the court manage an exceptionally high workload, the Committee on Judicial Resources recommended that the Judicial Conference establish a new court law clerk position in the Judiciary Salary Plan (JSP). These law clerks would be on court rather than chambers staff so that they could assist the entire court with its workload. The effectiveness of the new position in facilitating case resolution in high-workload courts would be assessed at the end of a three-year test period to determine if the position should be retained. Courts selected to participate in this test phase would have to meet the following three criteria evidencing high workload: the court must (a) have greater than 300 case filings per elbow law clerk (assuming two elbow law clerks per chambers), (b) appear on the list of courts recommended for additional judgeships, and (c) appear on the "most congested courts" list. Only two courts, the Eastern District of California and the Western District of New York, meet these three criteria and would therefore be eligible for positions under this test program. Based on the Committee's recommendation, the Conference agreed to —

a. Establish a "court law clerk" position in the JSP using a specified qualifications standard. Each position requires Conference authorization, and each appointment will not exceed JSP-13, step 1, and is temporary, not to exceed three years on court staff rolls;

b. Allocate ten court law clerk positions to the Eastern District of California and one court law clerk position to the Western District of New York based on the criteria set forth above, for a test period of three years; and

c. Request the Administrative Office to devise a set of statistical criteria by which to evaluate at the end of three years whether the addition of the court law clerks enabled more expeditious case resolution in the Eastern District of California and the Western District of New York.

TERM LAW CLERKS

In September 2007, the Judicial Conference adopted a policy that stated that no individual will be permitted to serve in the judiciary for more than four years in a term law clerk capacity (JCUS-SEP 07, p. 26). The limitation was intended to continue the traditional practice of appointing recent law school graduates as law clerks, reduce disparity in costs from one chambers to another, promote diversity, and allow more young lawyers to experience service in the federal judiciary. A question has since been raised about whether a court could extend a term law clerk's tenure by switching the law clerk with a career law clerk for up to an additional four years, after which the original career law clerk would resume the career law clerk position and the original term law clerk would be terminated. On recommendation of the Committee, the Conference affirmed that under the September 2007 policy limiting the tenure of term law clerks to four years, courts are not permitted to switch term law clerks with career law clerks or with incumbents of other attorney positions.

TEMPORARY AND TERM EMPLOYEES

Temporary and term appointments in the judiciary fall into three broad categories, temporary appointments of limited duration, temporary appointments of indefinite duration, and term appointments (currently limited to two positions, elbow law clerks and staff attorneys). Each type of position carries different benefits, ranging from full to no benefits. In September 2007, the Judicial Conference approved a four-year limit on judiciary service for term law clerks (JCUS-SEP 07, p. 26). Subsequently, the Administrative Office undertook a review of all temporary and term positions in the courts and federal public defender organizations, noting that there is no national policy in the judiciary on the use of temporary appointments. Based on this review and after receiving input from the AO's Human Resources Advisory Council, the Committee recommended that the Conference take the following actions with regard to temporary and term appointments in courts and federal public defender organizations:

a. Limit temporary appointments prospectively to two categories: (1) one year or less; and (2) at least one year and one day;

b. Limit to four years all temporary and term appointments, including those for temporary bankruptcy law clerks, temporary law clerks funded by the Temporary Emergency Fund, and term staff attorneys;

c. Provide that extensions would be allowed to temporary or term appointments so long as the total period of service in that position does not exceed a maximum duration of four years; and

d. Exclude from these requirements (i) positions that have statutory appointment limitations, e.g., federal public defenders; (ii) land commissioners due to the infrequent, intermittent nature of the work; and (iii) positions that have Conference policy appointment limitations, such as term law clerks; certain re-employed annuitants; temporary medical, maternity, and extended military leave replacements in chambers; and chambers staff temporarily retained after separation of a judge.

In addition, the Committee recommended that the Conference eliminate the temporary indefinite appointment type, converting all such appointments to temporary appointments not to exceed four years from the date of Conference approval of this action and, where appropriate, allow courts and federal public defender organizations to designate such positions as permanent. The Conference adopted the Committee's recommendations.

PRINCIPAL SECRETARY TO A CHIEF CIRCUIT JUDGE

A principal secretary to a chief circuit judge may be temporarily promoted from JSP-11 to JSP-12 if he or she has one year of service as a secretary to a circuit judge and upon a showing of exceptional circuit-wide duties and responsibilities. The temporary promotion becomes permanent after two years (JCUS-SEP 98, p. 80). The same qualification standards apply to the principal secretary to the chief judge of the Court of International Trade (JCUS-SEP 04, p. 24). On recommendation of the Committee, the Judicial Conference clarified its September 1998 policy to state that (a) the JSP grade 12 may only be "carried" from the position of principal secretary to a chief circuit judge to the position of secretary to a federal judge in the chambers of that same chief circuit judge upon that judge stepping down from the chief judge position; and (b) the assistant or additional secretaries in chambers may not be switched with the principal secretary to attain JSP-12 once the principal secretary acquires permanent JSP-12 status. This would not preclude a chief circuit judge from appointing an assistant or additional secretary to the

principal secretary position if the principal secretary has separated from the chief circuit judge's chambers. The policy was also amended to expressly incorporate the principal secretary to the chief judge of the Court of International Trade.

STAFFING FORMULAS

Probation and Pretrial Services Offices. Based on a work measurement study conducted by the Administrative Office, the Committee recommended, and the Judicial Conference approved, a staffing formula for probation and pretrial services offices for implementation beginning in fiscal year 2012, as well as a case-weighting supplement to the staffing formula, to determine future staffing requirements in probation and pretrial services offices. The case-weighting supplement will allow staff allocation to reflect local variations in the supervised population with regard to risk level and criminogenic needs. This is the first systematic adjustment to the probation and pretrial services offices staffing formula since 2004.

Court of Federal Claims Clerk's Office. The Committee recommended, and the Judicial Conference approved, a staffing formula for the clerk's office of the United States Court of Federal Claims for implementation beginning in fiscal year 2012, based on an AO work measurement study. This is the first staffing formula for this court.

ALTERNATIVE DISPUTE RESOLUTION

In March 1998, the Judicial Conference approved "basic" and "robust" staffing factors for district clerk's office positions performing duties related to alternative dispute resolution (ADR) (JCUS-MAR 98, pp. 20-21). The basic staffing factor was intended to apply to most district courts' ADR programs, while the robust factor was intended for a limited number of district courts with extensive ADR programs. A request from the Western District of New York for application of the robust staffing factor was initially denied by the Committee in December 2009, but subsequently the Committee agreed to study the criteria used to apply the staffing factors and deferred further action on the district's request pending the study's completion. The district sought reconsideration of the deferral. At this session, the Committee reported that the study will take longer than expected and that the Western District of New York, as well as the District of Idaho (which had also recently requested application of the robust factor and had workload and ADR requirements

comparable to those of the Western District of New York), were on the "most congested courts" list and the list of courts requiring additional judgeships due to extremely high workload. Therefore, the Committee decided to recommend approval of the robust staffing factor for two years for these two districts pending completion of the ADR work measurement study and a working group's analysis and suggestions. The Conference approved the Committee's recommendation.

COURT PERSONNEL SYSTEM PAY BAND FOR STUDENT TRAINEES

Currently, the minimum classification level within the Court Personnel System (CPS) at which an individual may be appointed requires a high school diploma or equivalent. In order to provide circuit and court units with the ability to employ students in CPS positions on a temporary basis, during vacation periods, or on a part-time basis during school, the Committee recommended, and the Conference approved, the following:

a. That a pay band be established in the Court Personnel System for student trainees who are employed on a temporary basis during vacation periods or on a part-time basis while in school;

b. That the qualification requirements for entry to the pay band be the conditions identified in the minimum age requirement for high school students, as outlined in the *Guide to Judiciary Policy*, Vol. 12, Ch. 5, § 520.30.20(c), Employment, High School Student;

c. That an individual may be appointed into an ungraded Court Personnel System student trainee position at a base salary anywhere from a rate equivalent to the federal minimum wage rate up to a rate equal to that of a classification level (CL)-21, step 1; and

d. That the appointing officer have the discretionary authority to adjust pay within the band.

REALTIME TRANSCRIPT FEES

To address the disparity in costs for realtime transcript services charged to the first ordering party ($3.05 per page) compared to that charged to subsequent parties ($1.20 per page), the Committee recommended that the

Judicial Conference amend the maximum fees for realtime services so that all parties to a case who receive a realtime feed pay the same amount for the services that are received. The Committee recommended that the fees be based on the number of feeds provided by a certified realtime court reporter as follows:

- One feed, the ordering party pays $3.05 per page;
- Two to four feeds, each party receiving a feed pays $2.10 per page;
- Five or more feeds, each party receiving a feed pays $1.50 per page.

The Conference approved the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it asked the Administrative Office to conduct a review of the amount, distribution, and use of the Temporary Emergency Fund, which provides funding for judges to hire additional chambers staff to assist with temporary work emergencies, and to provide an analysis and options to the Committee at its December 2011 meeting. The Committee approved a proposed schedule for work measurement studies in the courts and procedural steps for conducting the studies to maintain staffing formula currency. The Committee also asked the Administrative Office to conduct a work measurement study to measure all pro se law clerk work associated with prisoner, non-prisoner pro se, and social security cases, and to freeze the pro se law clerk allocation at current levels, pending the results of the study. The Committee received an update on efforts to increase diversity in the judiciary's workforce, including through forming partnerships with external organizations, such as the Just the Beginning Foundation.

COMMITTEE ON JUDICIAL SECURITY

INTERNET SECURITY

Based on recommendations from an Administrative Office working group whose mission was to develop strategies to mitigate the misuse of judges' names as domain names on the internet, as well as to address other

internet threats to judges, the Committee recommended that the Conference take the following actions:

a. Endorse the Seventh Circuit librarian's program, procedure and protocol as a national model program wherein circuit librarians would monitor traditional media and the internet, including blogs and accessible social media sites for mentions of federal judges (circuit, district, magistrate, and bankruptcy) from their circuits, including threats and/or inappropriate communications, and urge circuit librarians, judges, and circuit judicial councils to consider adopting and implementing the model program locally. Under this program —

(1) Librarians and others who locate a threat or inappropriate communication should forward it immediately to the judge and the local U.S. Marshals Service (USMS) district office;

(2) Judges may choose not to participate, or may prefer to have chambers staff conduct the searches; and

(3) The librarians' role is one of data gathering only and the primary responsibility for threat response, evaluation, and investigation remains with the USMS;

b. With regard to domain name issues, encourage judges to consult with their librarians if the judges want routine searches performed to determine if their names have been registered as domain names. Librarians will also alert the judges to whom they are assigned if their routine monitoring of the internet for judicial mentions uncovers the potential misuse of a judge's name as a domain name; and

c. With regard to ensuring that threats are reported to the USMS, urge each circuit librarian to coordinate with individual judges and the local USMS district office to assist in implementing the USMS protocol for reporting information located by the librarians that contains sensitive personal information about a judge or a judge's family or that could be interpreted as threatening (Protocol for Judges and the U.S. Marshals Service, May 21, 2010).

The Conference adopted the Committee's recommendations.

COMMITTEE ACTIVITIES

The Committee on Judicial Security reported that it discussed its work to expand and formalize the provision of security awareness training for judges through workshops, videos, and panel discussions. In addition, the Committee was briefed on the status of the perimeter security pilot program at the seven courthouses where the U.S. Marshals Service has assumed responsibility for perimeter security guarding and equipment. The Committee was advised that further congressional direction is required to define the future of the program.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

SELECTION AND APPOINTMENT REGULATIONS

Senior Judge Participation. Sections 503 and 504 of the Court Security Improvement Act of 2007, Public Law No. 110-177, were inconsistent on the issue of whether senior district judges must meet a workload requirement in order to enjoy a statutory right to participate in the selection and appointment of United States magistrate judges. Following enactment of the Court Security Improvement Act, the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges were amended to note the conflict in the law (JCUS-SEP 08, pp. 29-30). This conflict has now been resolved with the enactment of the Federal Judiciary Administrative Improvements Act of 2010, Public Law No. 111-174. To reflect this statutory change, on recommendation of the Committee on the Administration of the Magistrate Judges System, the Conference amended the selection and appointment regulations to provide that senior judges with at least a 50 percent workload in the preceding calendar year may participate in the selection of new magistrate judges.

Section 3.02(d). Under section 3.02(d) of the selection and appointment regulations for magistrate judges, a person who has served on a merit selection panel for a court may not be considered for a subsequent magistrate judge position by that court for a period of one year after completion of such service, unless the Committee on the Administration of the Magistrate Judges System grants a waiver. To clear up any ambiguity as to

when the one-year period begins and ends, the Conference approved a recommendation of the Committee to amend section 3.02(d) to specify that one year must elapse between the earlier of when a former panel submitted its report to the court or when the member of that panel now seeking a position resigned, and the date by which applications for a subsequent vacancy are due to be submitted to the court, for that former merit selection panel member to be considered for the subsequent magistrate judge position.

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee on the Administration of the Magistrate Judges System and the recommendations of the Director of the Administrative Office, the respective district courts, and the judicial councils of the relevant circuits, the Judicial Conference determined to make the following changes regarding magistrate judge positions.

EIGHTH CIRCUIT

Western District of Missouri

1. Authorized the magistrate judge positions at Kansas City in the Western District of Missouri to exercise adjoining district jurisdiction in the District of Kansas, and the magistrate judge positions at Kansas City in the District of Kansas to exercise adjoining district jurisdiction in the Western District of Missouri (*see infra*, "District of Kansas," p. 32); and

2. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the Western District of Missouri.

NINTH CIRCUIT

District of Alaska

1. Decreased the salary of the part-time magistrate judge position at Ketchikan from Level 6 ($13,439 per annum) to Level 7 ($6,716 per annum);

2. Discontinued the part-time magistrate judge position at Kodiak upon the retirement of the incumbent or December 31, 2011, whichever occurs sooner; and

3. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

Central District of California

Made no change in the location, salary, or arrangements of the part-time magistrate judge position at Santa Barbara.

District of Oregon

1. Increased the salary of the part-time magistrate judge position at Pendleton from Level 5 ($26,881 per annum) to Level 3 ($53,767 per annum); and

2. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

TENTH CIRCUIT

District of Kansas

Authorized the magistrate judge positions at Kansas City in the Western District of Missouri to exercise adjoining district jurisdiction in the District of Kansas, and the magistrate judge positions at Kansas City in the District of Kansas to exercise adjoining district jurisdiction in the Western District of Missouri (*see supra*, "Western District of Missouri," p. 31).

The Judicial Conference agreed to make no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the following districts: Eastern District of Pennsylvania, Southern District of Ohio, Eastern District of Washington, District of Colorado, Western District of Oklahoma, and Northern District of Georgia.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that under the September 2004 Judicial Conference policy regarding the review of magistrate judge position vacancies (JCUS-SEP 04, p. 26), during the period between the Committee's June 2010 and December 2010 meetings, the Committee chair approved filling fourteen magistrate judge position vacancies in twelve district courts. At its December 2010 meeting, the full Committee approved filling three magistrate judge position vacancies. The Committee also received a progress report from a subcommittee on long-range planning for the magistrate judges system.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it approved for publication proposed amendments to the Federal Rules of Appellate and Criminal Procedure. The proposed amendments to Appellate Rules 13, 14, and 24 would clarify procedures for taking a permissive interlocutory appeal from the United States Tax Court and would more accurately reflect the status of the Tax Court as a court. The proposed amendment to Criminal Rule 11 would expand the colloquy under that rule to advise a defendant of possible immigration consequences when the judge accepts a guilty plea. The proposed rule amendments are expected to be published for public comment in August 2011.

COMMITTEE ON SPACE AND FACILITIES

COMMITTEE ACTIVITIES

The Committee on Space and Facilities reported that it approved two changes to the asset management planning business rules to help ensure that the Committee's consideration of GSA feasibility study requests for recommendation to the Judicial Conference does not occur prematurely and to encourage timely approval of long-range facilities plans. The Committee also approved a request for chambers for a newly appointed Fourth Circuit judge. The Committee was updated on the status of the three pilot tenant alterations

projects (in Des Moines, Iowa; Chicago, Illinois; and Washington, D.C.) planned by the courts under the newly granted congressional authorization for the GSA to delegate to the judiciary the authority to perform tenant alterations projects costing up to $100,000.

FUNDING

All of the foregoing recommendations that require the expenditure of funds for implementation were approved by the Judicial Conference subject to the availability of funds and to whatever priorities the Conference might establish for the use of available resources.

Chief Justice of the United States
Presiding

Blank