

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

September 19, 1995

The Judicial Conference of the United States convened in Washington, D.C., on September 19, 1995, 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
Judge Charles L. Brieant,
Southern District of New York

Third Circuit:

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

Fourth Circuit:

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

Fifth Circuit:

Chief Judge Henry A. Politz
Chief Judge Morey L. Sear,
Eastern District of Louisiana

Sixth Circuit:

Chief Judge Gilbert S. Merritt
Judge S. Arthur Spiegel
Southern District of Ohio

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 J. Clifford Wallace
Chief Judge Wm. Matthew Byrne, Jr.,
Central District of California

Tenth Circuit:

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

Eleventh Circuit:

Chief Judge Gerald B. Tjoflat
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 Dominick L. DiCarlo

Circuit Judges R. Lanier Anderson III, and Otto R. Skopil, Jr., and District Judges Maryanne Trump Barry, Robert C. Broomfield, Richard P. Conaboy, J. Owen Forrester, Julia S. Gibbons, D. Lowell Jensen, Stanley Marcus, Barefoot Sanders, Donald E. Walter, and Ann C. Williams attended the Conference session. Circuit Executives Vincent Flanagan, Steven Flanders, Toby Slawsky, Samuel W. Phillips, Lydia Comberrel, 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 Orrin G. Hatch and Joseph R. Biden, Jr., and Representatives Harold Rogers and Patricia S. Schroeder spoke on matters pending in Congress of interest to the Conference. Solicitor General Drew S. Days III addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice.

L. 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, Congressional, External and Public Affairs; Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat; Jeffrey A. Hennemuth, Chief, Long Range Planning Office; and David A. Sellers, Public Information Officer. 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 Harvey Rishikof, Administrative Assistant to the Chief Justice; Mary Ann Willis, Supreme Court Staff Counsel; Timothy McGrath, Executive Assistant to the Chairman, United States Sentencing Commission; and Paul W. Cobb, R. Barry Ruback, Alex Wohl, and Sarah Wilson, Judicial Fellows.

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 Conaboy, Chairman of the United States Sentencing Commission, reported on Sentencing Commission activities.

LONG RANGE PLAN FOR THE FEDERAL COURTS

REVIEW OF THE PROPOSED PLAN

At its March 1995 session, the Judicial Conference received a *Proposed Long Range Plan for the Federal Courts* from the Committee on Long Range Planning and adopted procedures for considering the 101 recommendations and 77 implementation strategies in the proposed plan (JCUS-MAR 95, pp. 23-24). Individual Conference members were afforded a four-week period to review the document and identify those recommendations and strategies requiring further study by a Conference committee before final action would be taken. Any items not so identified would receive Conference approval without further action.

In accordance with those procedures, more than half of the recommendations and implementation strategies in the proposed plan were approved as of April 12, 1995, without change.¹ Action on the other 48 recommendations and 38 strategies was deferred pending further consideration. Because several of those items involved purely technical issues, the Executive Committee, after consulting with Conference members, approved them on the Conference's behalf with minor, non-substantive revisions (see *infra* "Long Range Plan," p. 63). The remaining items were referred, for study and report at the September session, to the 11 committees with jurisdiction over the respective topics.² In September, the Conference received reports from the

¹ The following items in the proposed plan were approved as of April 12, 1995, without change (numbers refer to recommendations in the *Proposed Plan* dated March 1995): Recommendations 19, 21, 26, 31-32, 34-41, 43, 45-47, 50-51, 53-64, 77-88, 91, 93-95, 97, and 99-101; Implementation Strategies 32a-32b, 35a-35d, 39a, 39d-39e, 45a-45b, 46a-46b, 53a-53b, 58a-58b, 63a-63d, 81a-81b, 91a-91c, 93a-93e, 94a-94c, and 99a-99e. Recommendations 69 and 71 were also approved initially without change, but that approval was rescinded at the September 1995 session (see *infra* notes 6 and 7).

² The following committees were assigned primary responsibility for studying and reporting to the Conference on the remaining items in the proposed plan:

- Committee on the Administration of the Bankruptcy System: Recommendations 22, 23, and 28; Implementation Strategies 28a-28b

reviewing committees proposing dispositive action on all pending items in the proposed plan.

THE APPROVED PLAN

Based on the above-described actions, the following recommendations and implementation strategies constitute the *Long Range Plan for the Federal Courts* approved by the Judicial Conference through September 1995. Where the Conference deleted certain recommendations and strategies from the proposed plan, the deletion is indicated and subsequent items renumbered with the former designation (from the March 1995 version considered by the Conference) appearing in brackets.

Recommendation 1: Congress should be encouraged to conserve the federal courts as a distinctive judicial forum of limited jurisdiction in our system of federalism. Civil and criminal jurisdiction should be assigned to the federal courts only to further clearly defined and justified national interests, leaving to the state courts the responsibility for adjudicating all other matters.

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- Committee on Court Administration and Case Management: Recommendations 18, 27, 42, 49, 52, 74-75, 89-90, and 96; Implementation Strategies 39c, 42a-42b, 49a-49b, 52a(3), 52b(3)-(4), 52c(3), 52c(4) (in part), 52c(5), and 94d
 - Committee on Criminal Law: Recommendations 4 and 33; Implementation Strategies 4a-4c
 - Committee on Defender Services: Recommendation 92; Implementation Strategies 92a-92g
 - Executive Committee: Recommendations 44 and 48; Implementation Strategies 44a, 45c, 52a(1)-(2), 52b(1)-(2), 52c(1)-(2), and 52c(4) (in part)
 - Committee on Federal-State Jurisdiction: Recommendations 7, 8, 10, 12-15, 17, 20, and 25; Implementation Strategies 12a-12c
 - Committee on Intercircuit Assignments: Recommendation 65
 - Committee on the Judicial Branch: Recommendations 29, 66, 70, and 72; Implementation Strategies 70a-70c
 - Committee on Judicial Resources: Recommendation 73
 - Committee on the Administration of the Magistrate Judges System: Recommendations 24, 67, and 68.

In addition, some of these committees and the Committee on the Budget were asked to review certain of these items and provide advisory views to the committees with primary responsibility.

Recommendation 2: In principle, criminal activity should be prosecuted in a federal court only in those instances in which state court prosecution is not appropriate or where federal interests are paramount. Congress should be encouraged to allocate criminal jurisdiction to the federal courts only in relation to the following five types of offenses:

- (a) The proscribed activity constitutes an offense against the federal government itself or against its agents, or against interests unquestionably associated with a national government; or the Congress has evinced a clear preference for uniform federal control over this activity.
- (b) The proscribed activity involves substantial multistate or international aspects.
- (c) The proscribed activity, even if focused within a single state, involves a complex commercial or institutional enterprise most effectively prosecuted by use of federal resources or expertise. When the states have obtained sufficient resources and expertise to adequately control this type of crime, this criterion should be reconsidered.
- (d) The proscribed activity involves serious, high-level, or widespread state or local government corruption, thereby tending to undermine public confidence in the effectiveness of local prosecutors and judicial systems to deal with the matter.
- (e) The proscribed activity, because it raises highly sensitive issues in the local community, is perceived as being more objectively prosecuted within the federal system.

Recommendation 3: Congress should be encouraged to review existing federal criminal statutes with the goal of eliminating provisions no longer serving an essential federal purpose. More broadly, a thorough revision of the federal criminal code should be undertaken so that it conforms to the principles set forth in Recommendation 2 above. In addition, Congress should be encouraged to consider use of "sunset" provisions to require periodic reevaluation of the purpose and need for any new federal offenses that may be created.

Recommendation 4: Congress and the executive branch should be encouraged to undertake cooperative efforts with the states to develop a policy to determine whether offenses should be prosecuted in the federal or state systems.

Implementation Strategies:

4a There should be an increase in federal resources allocated to state criminal justice systems for prosecution of matters now handled by federal prosecutors because of lack of state resources.

4b The practice of cross-designating both federal and state prosecutors to gain efficiencies of prosecution should be increased.

4c State courts should be authorized to adjudicate certain federal crimes for which there currently is no statutory grant of concurrent jurisdiction.

Recommendation 5: The executive branch should be encouraged to develop standards on which the Justice Department will base the promulgation of prosecutorial guidelines. Specifically, standards should be considered—

- (a) that are consistent with sound jurisdictional boundaries for federal criminal prosecution as described in Recommendation 2; and
- (b) under which the potential for harsher federal sentencing policies and greater capacity in the federal prisons would be insufficient grounds, by themselves, to warrant prosecution under a federal, rather than a state, criminal statute.

Recommendation 6: Congress should be encouraged to exercise restraint in the enactment of new statutes that assign civil jurisdiction to the federal courts and should do so only to further clearly defined and justified federal interests. Federal court jurisdiction should extend only to civil matters that—

- (a) arise under the United States Constitution;
- (b) deserve adjudication in a federal judicial forum because the issues presented cannot be dealt with satisfactorily at the state level and involve either (1) a strong need for uniformity or (2) paramount federal interests;
- (c) involve the foreign relations of the United States;
- (d) involve the federal government, federal officials, or agencies as plaintiffs or defendants;
- (e) involve disputes between or among the states; or
- (f) affect substantial interstate or international disputes.

Recommendation 7: Congress should consider seeking to reduce the number of federal court proceedings in which jurisdiction is based on diversity of citizenship through the following measures:

- (a) eliminating diversity jurisdiction for cases in which the plaintiff is a citizen of the state in which the federal district court is located; and
- (b) otherwise limiting diversity jurisdiction by—
 - (1) amending the statutes conferring original and removal jurisdiction on the district courts in diversity actions to require that parties invoking diversity jurisdiction plead specific facts showing that the jurisdictional amount-in-controversy requirement has been satisfied;
 - (2) raising the amount-in-controversy level and indexing the new floor amount to the rate of inflation; and/or
 - (3) amending the statutory specification of the jurisdictional amount to exclude punitive damages from the calculation of the amount in controversy.³

Recommendation 8: The states should be encouraged to adopt certification procedures, where they do not currently exist, under which federal courts (both trial and appellate) could submit novel or difficult state law questions to state supreme courts.

Recommendation 9: Congress and the agencies concerned should be encouraged to take measures to broaden and strengthen the administrative hearing and review process for disputes assigned to agency jurisdiction, and to facilitate mediation and resolution of disputes at the agency level.

Implementation Strategies:

9a Legislation should be requested to improve the adjudicative process for Social Security disability claims by establishing a new mechanism for administrative review of administrative law judge decisions and limiting the scope of appellate review in the Article III courts.

³ In approving Recommendation 7, the Judicial Conference agreed that the commentary on this item would acknowledge the long-standing Conference policy in favor of abolishing diversity jurisdiction.

9b Legislative and other measures should be pursued to give agencies the requisite authority and resources to review and, where possible, achieve final resolution of disputes within their jurisdiction.

Recommendation 10: Where constitutionally permissible, Congress should be encouraged to assign to administrative agencies or Article I courts the initial responsibility for adjudicating those categories of federal benefit or regulatory cases that typically involve intensive fact-finding.

Recommendation 11: Congress should be encouraged to enact legislation to—

- (a) generally prohibit agencies from adopting a policy of non-acquiescence to the precedent established in a particular federal circuit; and
- (b) require agencies to demonstrate special circumstances for relitigating an issue in an additional circuit when a uniform precedent has been established already in multiple courts of appeals.

Recommendation 12: Congress should be encouraged to refrain from providing federal district court jurisdiction over disputes that primarily raise questions of state law or involve workplace injuries where the state courts have substantial experience. Existing federal jurisdiction in these matters should be eliminated in favor of dispute-resolution or compensation mechanisms available under state law.

Implementation Strategies:

12a Congress should be encouraged to eliminate federal court jurisdiction over work-related personal injury actions, such as that provided by the Federal Employers' Liability Act and the Jones Act, where the states have proven effective in resolving worker compensation disputes in other industries and occupations.

12b The jurisdiction of the federal courts to adjudicate routine claims for benefits under Employee Retirement Income Security Act (ERISA) employee welfare benefit plans should be abolished, except when application or interpretation of federal statutory or regulatory requirements are at issue.

12c Any new cooperative federal-state program to establish national standards for employee benefits (e.g., health care) should designate state courts as the primary forum for review of benefit denial claims. However, any such program should include establishment of an administrative remedial process that must be exhausted before a state court action may be filed.

Recommendation 13: When legislation is considered that may affect the federal courts directly or indirectly, Congress should take into account the judicial impact of the proposed legislation, including the increased caseload and resulting costs for the federal courts.

Recommendation 14: In considering measures that would shift jurisdiction away from the federal courts or provide new jurisdiction through the establishment of concurrent jurisdiction, Congress should also be encouraged to consider and address the impact of the proposed legislation on the states. Specifically, it should be urged to—

- (a) consult with state authorities and state judicial leaders in defining any new limits on federal jurisdiction; and
- (b) provide federal financial and other assistance to state justice systems to permit them to handle the increased workload that would result from the reduction or elimination of existing federal court jurisdiction or the creation of new concurrent jurisdiction.

[Former Recommendation 15, concerning discretionary access to the federal courts, has been deleted.]

Recommendation 15 [former 16]: The growth of the Article III judiciary should be carefully controlled so that the creation of new judgeships, while not subject to a numerical ceiling, is limited to that number necessary to exercise federal court jurisdiction.

Implementation Strategies

15a [former 16a] The limited jurisdiction of the federal courts should be preserved as described in Recommendations 1 through 12.

15b [former 16b] The Judicial Conference should employ up-to-date, comprehensive methods to evaluate judgeship needs.

15c [former 16c] The need for additional judgeships should be reduced through control of federal court caseloads as described in this plan (including the appropriate reallocation of cases to state courts and other forums), and by operational improvements in the courts that increase efficiency without sacrificing either quality in the judicial work product or access to the remedies available only in a federal forum.

Recommendation 16 [former 17]: The federal appellate function should be performed primarily in:

- (a) a generalist court of appeals established in each regional judicial circuit; and
- (b) a Court of Appeals for the Federal Circuit with nationwide jurisdiction in certain subject-matter areas.

Recommendation 17 [former 18]: Each court of appeals should comprise a number of judges sufficient to maintain access to and excellence of federal appellate justice. Circuit restructuring should occur only if compelling empirical evidence demonstrates adjudicative or administrative dysfunction in a court so that it cannot continue to deliver quality justice and coherent, consistent circuit law in the face of increasing workload.

Recommendation 18 [former 19]: To the extent practicable, workload should be equalized among judges of the courts of appeals nationally.

Recommendation 19 [former 20]: The United States Supreme Court should continue to be the sole arbiter of conflicting precedents among the courts of appeals.

Recommendation 20 [former 21]: In general, the actions of administrative agencies and decisions of Article I courts should be reviewable directly in the regional courts of appeals. For those cases in which the initial forum for judicial review is the district court, further review in the court of appeals should be available only on a discretionary basis except with respect to constitutional matters and questions of statutory or regulatory interpretation.

Recommendation 21 [former 22]: The existing mechanism for review of dispositive orders of bankruptcy judges should be studied to determine what appellate structure will ensure prompt, inexpensive resolution of bankruptcy cases and foster coherent, consistent development of bankruptcy precedents.

Recommendation 22 [former 23]: Pending completion of the study of bankruptcy appellate structure recommended above, the dispositive orders of bankruptcy judges should be reviewable directly in the court of appeals in those cases where the district court or bankruptcy appellate panel (BAP) certifies that such review is needed immediately to establish legal principles on which subsequent proceedings in the case may depend.

Recommendation 23 [former 24]: Where parties to a civil action have consented to the case-dispositive authority of a magistrate judge, judgments entered in such actions should be reviewable only in the courts of appeals, and not by a district judge.

Recommendation 24 [former 25]: Except in certain limited contexts (*i.e.*, bankruptcy proceedings, international trade matters, and claims against the federal government), the primary trial forum for disputes committed to federal jurisdiction should be a generalist district court whose judges are affiliated with, and required to reside in, the court's general geographic region, and whose facilities are reasonably accessible to litigants, jurors, witnesses, and other participants in the judicial process.

Recommendation 25 [former 26]: The judicial districts should continue to be allocated among and within the states so that each district comprises a single state or part of a state.

Recommendation 26 [former 27]: The impact of district alignment on access to the courts and efficient judicial administration should be studied periodically. Any such study should examine the functional and administrative costs and benefits which merger or division of districts would produce.

Recommendation 27 [former 28]: Each district court should continue to include a bankruptcy court consisting of fixed-term judges with expertise in the field of bankruptcy law.

Implementation Strategies

27a [former 28a] The bankruptcy court should exercise the original jurisdiction of the district court in bankruptcy matters to the extent constitutionally and statutorily permissible.

27b [former 28b] Congress should be encouraged to clarify the authority of the bankruptcy courts. For example, legislation should be enacted that expressly recognizes the civil contempt power of bankruptcy judges and also affords them limited jurisdiction to hold litigants or counsel criminally liable for misbehavior, disobedience, or resistance to a lawful order.

[Former Recommendation 29, concerning potential Article III status for bankruptcy judges, has been deleted.]

Recommendation 28 [former 30]: Rules of practice, procedure, and evidence for the federal courts should be adopted and, as needed, revised to promote simplicity in procedure, fairness in administration, and a just, speedy, and inexpensive determination of litigation.

Implementation Strategies:

28a [former 30a] Rules should be developed exclusively in accordance with the time-tested and orderly process established by the Rules Enabling Act.

28b [former 30b] The national rules should strive for greater uniformity of practice and procedure, but individual courts should be permitted limited flexibility to account for differing local circumstances and to experiment with innovative procedures.

28c [former 30c] In developing rules, the Judicial Conference and the individual courts should seek significant participation by the interested public and representatives of the bar, including members of the federal and state benches.

Recommendation 29 [former 31]: The Judicial Conference should continue and strengthen efforts to express judicial concerns about sentencing policy.

Recommendation 30 [former 32]: The legal standards for criminal sentencing should encourage both uniformity of practice and attention to individual circumstances.

Implementation Strategies:

30a [former 32a] Congress should be encouraged not to prescribe mandatory minimum sentences.

30b [former 32b] The United States Sentencing Commission should be encouraged to develop sentencing guidelines that—

- (1) afford sentencing judges the ability to impose more alternatives to imprisonment;*
- (2) encourage departures from guideline levels where factual differences should appropriately be taken into account; and*
- (3) enable sentencing judges to consider within the guideline scheme a greater number of offender characteristics.*

Recommendation 31 [former 33]: A well supported and managed system of highly competent probation and pretrial services officers should be maintained in the interest of public safety and as a necessary source of accurate, adequate information for judges who make sentencing and pretrial release decisions.

Recommendation 32 [former 34]: In the interests of promoting justice and fairness, all aspects of the administration and operation of the jury system—grand juries, criminal, petit, and civil—should continue to be studied and improved.

Recommendation 33 [former 35]: Steps must be taken to confront the growing demands pro se litigation places on the federal courts.

Implementation Strategies:

33a [former 35a] A broad-based study, with participation from within and outside the courts, should be conducted to evaluate the impact of pro se litigation and recommend changes.

33b [former 35b] Alternative avenues for pro se prisoner litigation should be explored.

33c [former 35c] The courts should develop workable standards for addressing the substantive and procedural problems presented by pro se prisoner litigation.

33d [former 35d] The district courts should make more effective use of pro se law clerks.

Recommendation 34 [former 36]: The federal court system should continue to study possible shifting of attorneys' fees and other litigation costs in particular categories of cases.

Recommendation 35 [former 37]: The courts of appeals should exchange information on appellate case management.

Recommendation 36 [former 38]: The federal court system should collect and analyze information on various courts of appeals' case management practices.

Recommendation 37 [former 39]: The courts of appeals should adopt internal procedures and organizational structures to promote the effective delivery of high-quality appellate justice and to maintain the consistency of circuit law.

Implementation Strategies:

37a [former 39a] There should be further development of appellate adjudicative programs, such as the Civil Appeals Management Plan ("CAMP").

37b [former 39b] Innovative management of appeals should continue and be expanded as needed.

37c [former 39c] Appellate courts should consider the use of nonjudicial staff and adjunct judicial officers to handle certain routine matters that do not involve the appellate review function reserved to Article III judges.

37d [former 39d] Opinions should be restricted to appellate decisions of precedential import. A uniform set of procedures and mechanisms for access to court of appeals opinions, guidelines for publication or distribution, and clear standards for citation should be developed.

37e [former 39e] Internal efforts to maintain the consistency of circuit law should be continued and enhanced.

Recommendation 38 [former 40]: The district courts should enhance efforts to manage cases effectively.

Recommendation 39 [former 41]: District courts should be encouraged to make available a variety of alternative dispute resolution techniques, procedures, and resources to assist in achieving a just, speedy, and inexpensive determination of civil litigation.

Recommendation 40 [former 42]: In the interests of administrative efficiency, accountable resource utilization, and effective external relations, the present distribution of governance authority among the national, regional (circuit), and individual court levels should be preserved. Governance structures and mechanisms should continue to strike a careful balance among individual judge autonomy, local court initiative and control, and coordination of effort.

Implementation Strategies:

40a [former 42a] The judicial branch should obtain funding for the operation of the courts solely through appropriations administered by the Administrative Office of the United States Courts and expended under the direction and supervision of the Judicial Conference of the United States. Appropriated funds should not be obtained directly by a circuit council or any other regional or local body.

40b [former 42b] The agencies of judicial administration at the national level should continue to decentralize administrative responsibility wherever appropriate, while maintaining sufficient oversight to ensure that courts are accountable for the proper use of the authority vested in them.

Recommendation 41 [former 43]: The Chief Justice of the United States should remain the head of the federal judicial system, retaining the traditional authority and responsibility of that office in matters of judicial administration.

Recommendation 42 [former 44]: Consistent with the authority conferred by Congress, the Judicial Conference of the United States should continue to develop policy and exercise oversight with respect to matters of judicial branch administration in which a unified national approach is necessary and appropriate. The Conference should continue to focus attention on broad-scale policies and critical issues.

[Former Implementation Strategy 44a, concerning periodic evaluation of Judicial Conference procedures, has been deleted.]

Recommendation 43 [former 45]: The leadership role of the Judicial Conference's Executive Committee should be enhanced.

Implementation Strategies:

43a [former 45a] The Executive Committee should be allowed a more active role in steering the Conference and acting on its behalf.

43b [former 45b] Consideration should be given to at least partial reduction in the chair's judicial workload, so as to offset the time required for performance of administrative duties.

[Former Implementation Strategy 45c, concerning expansion of Executive Committee membership, has been deleted.]

Recommendation 44 [former 46]: The Judicial Conference should continue to rely on a broad committee structure for policy development. It should strengthen the committees' ability to provide sound advice and needed information.

Implementation Strategies:

44a [former 46a] Membership in Conference committees should continue to rotate periodically, to provide new and diverse perspectives while at the same time preserving the insight, experience, and legislative contacts that come with long-term committee service.

44b [former 46b] The Conference should afford the committee chairs a meaningful role in relevant Conference debates and an opportunity to meet together at least once a year.

Recommendation 45 [former 47]: The number of judges participating in the Judicial Conference and its committees should not increase in proportion to growth in the judiciary overall.

Recommendation 46 [former 48]: The Administrative Office of the United States Courts and the Federal Judicial Center should retain their separate institutional status and respective missions. The officially adopted policies of the Judicial Conference represent the view of the judicial branch on all matters and should be respected as such by the Administrative Office and the Federal Judicial Center when dealing with members of Congress or the executive branch.

Recommendation 47 [former 49]: The basic organization and authority of governance institutions at the regional and individual court levels should be retained.

Implementation Strategies:

47a [former 49a] Circuit judicial councils should continue to provide administrative coordination and oversight to all courts within the respective regional circuits.

47b [former 49b] The chief judges of the courts of appeals and district courts should continue to be selected on the basis of seniority subject to statutory limitations on age and tenure.

Recommendation 48 [former 50]: To assist the governance process and enforce its decisions, the judicial branch should continue to develop and enhance the capabilities of court administrators and managers.

Recommendation 49 [former 51]: All judicial governance institutions should continue to develop and integrate long range planning capabilities into their policy-making processes.

Recommendation 50 [former 52]: There should be broad, meaningful participation of judges in governance activities at all levels.

Implementation Strategies:

50a [former 52a] District judges should be afforded the opportunity to participate effectively in national and regional governance. To that end—

[Former Implementation Strategy 52a(1), concerning eligibility to vote in the election of district judges to the Judicial Conference, has been deleted.]

(1) [former (2)] district judge members of the Judicial Conference should be afforded a term of service comparable to the average tenure of chief circuit judges (i.e., five years); and

(2) [former (3)] each circuit judicial council should have an equal number of district judge and circuit judge members, including the chief circuit judge.

50b [former 52b] Senior judges should be afforded a greater opportunity to participate in governance. To that end—

(1) senior judges should be expressly authorized to serve on the Judicial Conference;

(2) senior judges should be authorized to serve on the Board of the Federal Judicial Center;

(3) senior judges should be authorized to serve on circuit judicial councils; and

(4) individual courts should take appropriate steps to include senior judges in local governance mechanisms.

50c [former 52c] Non-Article III judges should be afforded the opportunity for meaningful participation in governance. To that end—

[Former Implementation Strategy 52c(1), concerning bankruptcy judge and magistrate judge participation in the Judicial Conference, has been deleted.]

(1) [former (2)] the Board of the Federal Judicial Center should include a magistrate judge as well as a bankruptcy judge; and

[Former 52c(3), concerning bankruptcy judge and magistrate judge participation in the circuit judicial councils, has been deleted.]

[Former 52c(4), concerning territorial district judge participation in the Judicial Conference and circuit judicial councils, has been deleted.]

(2) [former (5)] individual district courts should take appropriate steps to involve bankruptcy judges and magistrate judges in local governance.

Recommendation 51 [former 53]: Administration of federal court facilities, programs, or operations should be the sole province of the judicial branch.

Implementation Strategies:

51a [former 53a] Executive branch responsibility for the following programs should be transferred to the institutions of judicial governance or agencies operating under their supervision:

- *judicial space and facilities program;*
- *court and judicial security program; and*
- *bankruptcy estate administration (i.e., the U.S. trustee system).*

51b [former 53b] Responsibility for developing and presenting to Congress requests for funding of the federal courts and agencies of judicial administration should remain solely within the judicial branch.

Recommendation 52 [former 54]: The judicial branch should continue to develop and enhance a mechanism for effective coordination and review in budget formulation and execution.

Recommendation 53 [former 55]: The existing mechanisms for judicial discipline should be retained. In particular, the impeachment process should continue to be the sole method of removing Article III judges from office.

Recommendation 54 [former 56]: The federal courts must have resources adequate to ensure the proper discharge of their constitutional and statutory mandates.

Recommendation 55 [former 57]: Congress, when enacting legislation affecting the federal courts, should appropriate sufficient funds to accommodate the cost to the courts of the impact of new legislation.

Recommendation 56 [former 58]: Federal judges should receive adequate compensation as well as cost-of-living adjustments granted to all other federal employees.

Implementation Strategies:

56a [former 58a] Section 140 of Public Law No. 97-92 should be repealed.

56b [former 58b] The current practice of linking judicial and congressional pay raises should be ended.

Recommendation 57 [former 59]: Congress should include budget appropriations for the constitutionally mandated functions of federal courts as part of the non-discretionary federal budget.

Recommendation 58 [former 60]: The federal courts, including the bankruptcy courts, should be funded primarily through general appropriations.

Recommendation 59 [former 61]: Incentives should be created to allow the courts to attract and retain the best-qualified persons as judges and eliminate disincentives to long judicial service. Federal judges should be encouraged to stay on the bench for the lifetime tenure that the Constitution contemplates and guarantees.

Recommendation 60 [former 62]: Service-year credit toward benefits vesting for service already rendered as federal judicial officers should be awarded to bankruptcy and magistrate judges elevated to the Article III bench.

Recommendation 61 [former 63]: Adequate security protection should be provided for judges and court personnel at all court facilities and when they are away from the courthouse.

Implementation Strategies:

61a [former 63a] Where necessary, home security systems and portable emergency communications devices should be provided.

61b [former 63b] New judges and their families should receive security briefings.

61c [former 63c] Training for judges in security should be made available.

61d [former 63d] Judges and probation officers should receive information whenever prisoners are released. The notification should include an assessment of the violent nature of the prisoner and the potential risk he or she poses to judicial branch personnel.

Recommendation 62 [former 64]: Standards and procedures for the assignment of circuit, district, magistrate, and bankruptcy judges to perform judicial duties in other jurisdictions should be flexible.

Recommendation 63 [former 65]: The courts should use senior and recalled judges—a significant portion of federal judge power—as much as needed to achieve the goal of carefully controlled growth.⁴

Recommendation 64 [former 66]: The value of senior judge status should be recognized, and policies and procedures that affect senior judges should be periodically reviewed, in order to insure that senior judge status is an attractive alternative.

Recommendation 65 [former 67]: Magistrate judges should perform judicial duties to the extent constitutionally permissible and consistent with sound judicial policy. Individual districts should retain flexibility, consistent with the national goal of effective utilization of all magistrate judge resources, to have magistrate judges perform judicial services most needed in light of local conditions and changing caseloads.

Recommendation 66 [former 68]: Magistrate judges should be vested with a limited contempt power to punish summarily for misbehavior committed in their presence, and to punish for disobedience or resistance to their lawful orders in civil cases referred to them for disposition with the consent of the parties.

Recommendation 67 [former 69]: Attention should be given to the problem of frequent, prolonged judicial vacancies in the federal courts. The executive branch and the Senate should be encouraged to fill vacancies promptly, and the judicial branch should utilize procedures and policies to mitigate the impact of vacancies on the capacity of the courts to conduct judicial business.

⁴ This item was approved on the Conference's behalf by the Executive Committee on September 20, 1995.

Implementation Strategies:

67a [former 69a] Delays in filling judicial vacancies should be reduced by encouraging retiring judges and those taking senior status to provide substantial (i.e., six-month or one-year) advance notice of that action.

67b [former 69b] Statistics should be maintained concerning the number, length, and impact of judicial vacancies (including data which relates to judicial emergencies) in each court, and benchmarks or timelines should be created for the nomination and confirmation of all judges. The judicial branch should publicize all vacancies extending beyond these limits, and all data on judicial emergencies, to Congress and the President by means of semi-annual reports.

67c [former 69c] Procedures for the temporary assignment of judges should emphasize the importance of providing assistance to courts with vacant judgeships.

67d [former 69d] Procedures and policies governing the transaction of court business should seek to address special circumstances arising as a result of prolonged judicial vacancies. Among other things, rules governing the number of visiting or senior judges serving on panels in the courts of appeals should be held in abeyance during the existence of vacancies on a court constituting a judicial emergency.⁵

[Former Recommendation 70 (including Implementation Strategies 70a-70c), concerning methods for expediting judicial appointments, has been deleted.]

[Former Recommendation 71, concerning benchmarks for timely nomination and confirmation of judges, has been deleted.]⁶

[Former Recommendation 72, concerning presidential use of "recess" appointments, to fill judicial vacancies, has been deleted.]

[Former Recommendation 73, concerning use of "floater" judgeships to mitigate the impact of judicial vacancies, has been deleted.]

⁵ This recommendation and its four implementation strategies were approved at the September 1995 session in lieu of the former Recommendation 69, concerning advance notice of judicial retirements, which the Conference previously approved as of April 12, 1995.

⁶ This recommendation originally received Conference approval as of April 12, 1995, but it was rescinded when a new version of Recommendation 69 was approved at the September session (see *supra* note 1).

[Former Recommendation 74, concerning use of Civil Justice Reform Act advisory groups to address the impact of prolonged vacancies in individual districts, has been deleted.]

[Former Recommendation 75, concerning expanded use of senior and visiting judges on appellate panels in courts with vacancies, has been deleted.]

Recommendation 68 [former 76]: To match responsibility with authority, the budget execution function should be further decentralized so that each court may control spending of appropriated funds to meet its needs.

Recommendation 69 [former 77]: Use of court-related technology should be expanded to improve the ability of the federal courts to provide efficient, fair, and comprehensible service to the public.

Recommendation 70 [former 78]: The courts must remain current with emerging technologies and how they can be employed to improve the administration of justice generally.

Recommendation 71 [former 79]: The judicial branch should maintain a comprehensive space and facilities program, giving careful attention to economy in a time of austerity.

Recommendation 72 [former 80]: To achieve economies of scale, eliminate unnecessary duplication, and otherwise improve administrative efficiency and effectiveness, the courts should study alternative methods of organizing and allocating judicial support functions.

Recommendation 73 [former 81]: To refine both operations and policy, the federal courts should define, structure and, as appropriate, expand their data-collection and information-gathering capacity.

Implementation Strategies:

73a [former 81a] To obtain better data for reporting, policy-making, and planning purposes, the Judicial Conference should establish a steering group to coordinate and define the process. Members of the group should include representatives from all primary data sources, judicial branch users, and outside researchers.

73b [former 81b] This steering group should:

- (1) *Conduct a data needs assessment that includes but is not limited to: courts of appeals, district courts, and bankruptcy courts; magistrate judge reporting; Administrative Office program reporting; research; budgetary impact analysis; and long range planning.*
- (2) *Inventory and catalog data collection efforts. Utilize recent surveys conducted by Conference committees and other organizations.*
- (3) *Evaluate the ability of current statistical data holdings to support planning and policy.*
- (4) *Determine how best to collect and maintain such data. Determine how best to organize and manage such efforts. Determine training requirements.*
- (5) *Design the most appropriate single or coordinated network of data bases.*

Recommendation 74 [former 82]: The courts should maintain and foster high-quality judicial support services.

Recommendation 75 [former 83]: The courts should improve working conditions and arrangements for all court support personnel.

Recommendation 76 [former 84]: High-quality continuing education for judges should focus on the law, case management (including use of appropriate dispute-resolution processes), and cultural diversity.

Recommendation 77 [former 85]: All federal court staff should be trained to ensure outstanding service to the public through adopting a "customer service" approach to justice. They should be educated regularly in the use of court technology.

Recommendation 78 [former 86]: Since both intentional bias and the appearance of bias impede the fair administration of justice and cannot be tolerated in federal courts, federal judges should exert strong leadership to eliminate unfairness and its perception in federal courts.

Recommendation 79 [former 87]: Federal judges and all court personnel should strive to understand the diverse cultural backgrounds and experiences of the parties, witnesses, and attorneys who appear before them.

Recommendation 80 [former 88]: Justice should be made fully accessible to individuals with disabilities. Facilities should be constructed or renovated to ensure physical access and to remove attitudinal barriers to providing full and equal justice to those with disabilities.

Recommendation 81 [former 89]: Court interpreter services should be made available in a wider range of court proceedings in order to make justice more accessible to those who do not speak English and cannot afford to provide these services for themselves.

Recommendation 82 [former 90]: Litigants should pay reasonable filing fees, and certain services above a basic level should be funded by reasonable user fees.

Recommendation 83 [former 91]: Federal defender organizations should be established in all judicial districts (or combined districts), where feasible, to provide direct representation to financially eligible criminal defendants and serve as a resource to private defense counsel who provide such representation.

Implementation Strategies:

83a [former 91a] Full-time federal defenders should train and serve as a resource to panel attorneys, thus assuring competence of appointed counsel.

83b [former 91b] A study should be conducted to determine whether guidelines may be developed to enable federal defender organizations to represent more than one defendant in a multi-defendant case, if such representation is otherwise appropriate.

83c [former 91c] Federal defender organizations should represent individuals who present more complicated issues or otherwise require more defense resources.

Recommendation 84 [former 92]: Highly qualified, fairly compensated, and optimally sized panels of private attorneys should be created to furnish representation in those cases not assigned to a defender organization.

Implementation Strategies:

84a [former 92a] The federal courts should establish local qualification standards, provide better training, and seek improved compensation for panel attorneys.

84b [former 92b] To improve the quality of representation, adequate funding should be obtained so that the Administrative Office, in coordination with the federal defenders, the Federal Judicial Center, the United States Sentencing Commission, bar associations, and local courts, can provide panel attorneys with the training needed to assure effective assistance of counsel to their clients.

84c [former 92c] In districts and locations where it is not feasible to establish a federal defender organization, the courts should be encouraged and afforded sufficient funding to establish panel attorney support offices which can provide the needed advice and assistance.

84d [former 92d] The Judicial Conference should continue its efforts to obtain sufficient funding to permit compensation rates to be adjusted up to the maximum amount authorized by law.

84e [former 92e] The federal courts should continue to seek authority under the Criminal Justice Act to establish and modify dollar limitations on panel attorney and other compensation.

84f [former 92f] Adequate funding for the defender services program should be secured by ensuring that the program is efficient and well-managed.

84g [former 92g] Courts should be discouraged from peremptorily reducing fees to panel attorneys and should strive to create a system that ensures fair compensation to such attorneys.

Recommendation 85 [former 93]: Provision of counsel should be increased for civil litigants, and mechanisms, including legal aid societies and similar organizations, for handling indigent and pro se cases in federal courts should be enhanced.

Implementation Strategies:

85a [former 93a] Bar associations should be encouraged to promote pro bono programs to make civil counsel available to assist litigants who otherwise would have to represent themselves in federal courts. Funding sources should be developed for provision of legal assistance by legal aid societies and similar organizations.

85b [former 93b] Law schools should be encouraged to expand legal clinics to provide competent counsel for prisoner claims, and to low and moderate income persons in need of counsel.

85c [former 93c] Federal courts should adopt local rules authorizing law students involved in legal clinics to represent—with appropriate supervision—parties in need of counsel in federal courts.

85d [former 93d] Special mechanisms should be created to handle pro se cases efficiently. The frequency of pro se filings, and the frequency of repeat filings by particular litigants, should be tracked through the judiciary's statistical system to allow informed assessment of the amount and impact of judge time and court resources devoted to pro se filings.

85e [former 93e] Through the use of centralized staff operating under court supervision, district courts and courts of appeals should continue to screen pro se cases.

Recommendation 86 [former 94]: The judicial branch should act to enhance understanding of the federal courts and ensure that the fundamentals of the litigation process are understood by all who use it. The federal courts should encourage feedback from the public on how successfully the judicial branch meets public expectations about the administration of justice.

Implementation Strategies:

86a [former 94a] Information on using the courts should be provided through community institutions and in formats aimed at an increasingly diverse citizenry.

86b [former 94b] Judicial outreach programs should be brought to educational and community organizations and other public institutions.

86c [former 94c] Relations with the bar and law schools should be maintained and enhanced by participating in legal education and training programs and activities that enlist those institutions in educating the public about the legal system.

86d [former 94d] Press and public access to court proceedings should be presumptively unrestricted, but access should be balanced with the court's primary mission to administer justice.

Recommendation 87 [former 95]: Public understanding of the nature and significance of the federal judiciary's role in the constitutional order (and the constraints under which the judiciary functions) should be improved.

Recommendation 88 [former 96]: A comprehensive program should be developed to educate jurors about the role and function of federal courts.

Recommendation 89 [former 97]: The judiciary should seek public support on specific issues where the objective is approved by the Judicial Conference and where the issue has wide acceptance among the judiciary as a whole.

Recommendation 90 [former 98]: Mechanisms should be established or simplified to receive and address public complaints about improper treatment by judges, attorneys, or court personnel in federal court proceedings and operations.

Recommendation 91 [former 99]: Positive communication and coordination between the judicial branch and the executive and legislative branches should be enhanced.

Implementation Strategies:

91a [former 99a] The Chief Justice should annually deliver an address to the nation regarding the state of the federal judiciary.

91b [former 99b] Congress should be encouraged to require the legislative staff of all substantive congressional committees and the Offices of Legislative Counsel in the Senate and the House of Representatives, when reviewing proposed legislation for technical problems, to satisfy to the greatest extent possible a legislative "checklist."

91c [former 99c] Judicial branch representatives should continue to hold periodic meetings with Justice Department officials and members of Congress to discuss matters of common interest.

91d [former 99d] A permanent National Commission on the Federal Courts should be created, consisting of members from the executive, legislative, and judicial branches of the federal government, and members from the state judiciary and academic world, to study on a continuing basis and to make periodic recommendations regarding a number of issues concerning the federal courts including, but not limited to, their appropriate civil and criminal jurisdiction.

91e [former 99e] All courts of appeals should be encouraged to participate in the pilot project to identify technical deficiencies in statutory law and to inform Congress of same.

Recommendation 92 [former 100]: The federal and state courts should communicate and cooperate regularly and effectively.

Recommendation 93 [former 101]: The federal courts should work closely with the bar to enhance the quality of representation, to elicit support for needed improvements in the courts, and to generate better understanding of the special role of the federal courts in the justice system.

EXECUTIVE COMMITTEE

LONG RANGE PLAN

In the months preceding the September 1995 Judicial Conference session, the Executive Committee took action to facilitate Conference review of the *Proposed Long Range Plan for the Federal Courts* by referring to the appropriate Conference committees the proposed plan's recommendations and implementation strategies that had been identified for further study by Conference members. In addition, the Committee adopted, on behalf of the Conference, a procedure for finalizing and distributing the *Long Range Plan* subsequent to the Conference's September 1995 session. This procedure authorizes the Conference Secretary, after consulting with the relevant Conference committees, to revise the commentary and other text in the *Long Range Plan*, as appropriate, in light of the actions taken by the Conference at this session, and to publish the approved *Long Range Plan for the Federal Courts* by the end of calendar year 1995 and distribute it publicly.

The Executive Committee also approved, on behalf of the Judicial Conference and after consultation with all members of the Conference, technical amendments to a number of *Long Range Plan* recommendations and implementation strategies. These amendments satisfied the concerns raised by the Judicial Conference members who had asked (prior to April 11, 1995) that the items be further studied prior to Conference action. The recommendations and implementation strategies that were approved by the Committee as amended are as follows (numbers refer to recommendations in the *Proposed Plan* dated March 1995): Recommendations 1, 2, 3, 5, 6, 9 (including Implementation Strategies 9a and 9b), 11, 16 (including Implementation Strategies 16a-16c), and 30 (including Implementation Strategies 30a-30c), Implementation Strategy 39b, and Recommendations 76 and 98. See also *supra* "Review of the Proposed Plan," pp. 38-39.

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 impending vacancies on the United States Sentencing Commission:

For reappointment:

Judge A. David Mazzone, District of Massachusetts

For appointment, vice Judge Julie Carnes, Northern District of Georgia:

Judge Diana E. Murphy, Eighth Circuit Court of Appeals

Judge Donald E. O'Brien, Northern District of Iowa

Judge William B. Enright, Southern District of California

LEGISLATION

The Executive Committee considered, at the request of the relevant Conference Committees, a number of legislative proposals pending in the 104th Congress for which immediate comment or review by the Judicial Conference was required:

- The Litigation Impact Statements Act of 1995 (S. 250). This bill would require the Administrative Office to prepare a litigation impact statement on all legislation reported out of congressional committees or on any bill for which an analysis was requested by a Senator. On recommendation of the Committee on the Administrative Office, the Executive Committee approved the following:

That the Judicial Conference support and encourage congressional interest in considering the impact of proposed legislation on the federal judiciary while working to modify the "Litigation Impact Statements Act of 1995" so that any requirement imposed on the Administrative Office is restricted to the assessment of federal judiciary impact of bills that have a significant impact on the federal judiciary.

- Stop Turning Out Prisoners Act (S. 400 and Title III of H.R. 667). The Executive Committee considered this legislation, which deals with prisoner civil rights litigation, at the behest of the Committee on Federal-State Jurisdiction, and determined to send a letter to the Congress: 1) advising that, except for section 301(e) dealing with special masters (which the Conference opposes (JCUS-MAR 95, pp. 28-29)), the Conference takes no position

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generally on the pending bills; and 2) informing the Congress of the potential impact of the Act on judiciary resources, potential problems in judicial administration, the federalism concerns implicated, separation of powers questions, and the implications of the Rules Enabling Act.

- Regulatory Reform Legislation. On recommendation of the Committee on Court Administration and Case Management, the Executive Committee took no position on regulatory reform bills pending in the 104th Congress, but did agree that Congress should be apprised of the potential impact certain regulatory reform proposals would have on the federal judiciary.
- Proposed Changes to the Civil Service Retirement System and the Federal Employees Retirement System (H.R. 1215). At the request of the Judicial Resources Committee, the Executive Committee considered proposed changes to the federal employee retirement systems which would increase judiciary employee retirement contributions and change the method for computing retirement benefits. In that connection, the Executive Committee approved transmission to Congress of the following:

The Judicial Conference expresses its deep concern about the proposed changes to the federal employee retirement systems in H.R. 1215. We believe that this unprecedented treatment of employees who have relied upon their present retirement program will have a detrimental impact on court operations by adversely affecting employee morale, retention of current employees, and recruitment of future employees.

RESOLUTIONS

On recommendation of the Executive Committee, the Judicial Conference adopted the following resolution in recognition of the substantial contributions made by the Conference committee chairs who completed their terms of service on October 1, 1995:

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

HONORABLE R. LANIER ANDERSON
Committee on Codes of Conduct

HONORABLE GUSTAVE DIAMOND
Committee on Defender Services

HONORABLE STANLEY MARCUS
Committee on Federal-State Jurisdiction

HONORABLE MICHAEL M. MIHM
Committee on International Judicial Relations

HONORABLE OTTO R. SKOPIL, JR.
Committee on Long Range Planning

HONORABLE ROBERT C. BROOMFIELD
Committee on Security, Space and Facilities

Appointed as committee chairmen by Chief Justice 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 in their regular capacities as judges in their own courts. They have set a standard of skilled leadership and earned our deep respect and sincere gratitude for their innumerable contributions. We acknowledge with appreciation their commitment and dedicated service to the Judicial Conference and to the entire federal judiciary.

* * * * *

The Judicial Conference, on recommendation of the Executive Committee, adopted the following resolution in memory of the late Chief Justice Warren E. Burger:

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

WARREN E. BURGER

Retired Chief Justice of the United States, on June 25, 1995, in Arlington, Virginia.

September 19, 1995

Chief Justice Burger served with distinction on the federal bench for thirty years, as a judge of the United States Court of Appeals for the District of Columbia Circuit from 1956 to 1969 and as Chief Justice of the United States from 1969 to 1986, during which time he served as Presiding Officer of this Conference. His devotion to the improvement of the administration of justice was legendary, and he left a legacy of administrative reforms from which we benefit today. Upon his retirement in 1986, Chief Justice Burger tirelessly and diligently led the nation in observing the 200th anniversary of the *Constitution of the United States of America*, playing a pivotal role in educating and inspiring younger generations to revere the *Constitution* as a treasured inheritance to be protected and preserved.

His reputation as a jurist, a scholar, and an esteemed colleague will be forever a part of the history of this Conference and a grateful nation. The members of the Judicial Conference convey their heartfelt sympathies to Chief Justice Burger's family.

* * * * *

The Executive Committee, on behalf of the Judicial Conference, adopted the following memorial resolution for Judge Richard Chambers of the Court of Appeals for the Ninth Circuit:

The Judicial Conference of the United States acknowledges with sorrow the death of the Honorable

RICHARD H. CHAMBERS

of the United States Court of Appeals for the Ninth Circuit, in Tucson, Arizona, on October 21, 1994.

Born on November 7, 1906, Judge Chambers dedicated forty-one years of his professional life to the federal judiciary. He served as Chief Judge of the Ninth Circuit and, as such, was a member of the Judicial Conference of the United States for seventeen years, a remarkable tenure matched by few. While serving on several Conference committees, including the Executive Committee, the Committee on Judicial Statistics, and the Pacific Territories Committee, Judge Chambers provided the wisdom needed to meet the challenges of a burgeoning judiciary. His personal interest in and promotion of the history of the United States courts, and in particular

courthouses and furnishings, leave us a rich heritage of treasured artifacts and buildings. His steadfast manner, together with his insightful wit, rendered Judge Chambers a nationally respected legend in his own time.

The members of the Judicial Conference of the United States convey their deepest sympathy to Judge Chambers' wife and family.

* * * * *

On recommendation of the Executive Committee⁷, the Judicial Conference adopted the following resolution in recognition of L. Ralph Mecham's tenth anniversary as Director of the Administrative Office:

On the occasion of his tenth anniversary as Director of the Administrative Office of the United States Courts, the Judicial Conference of the United States pays tribute to L. Ralph Mecham for his many notable accomplishments. Director Mecham's distinguished leadership has served to reshape and strengthen the Administrative Office of the United States Courts to meet current and anticipated challenges. Among his many achievements are the construction and occupation of the Thurgood Marshall Federal Judiciary Building; the decentralization and automation of numerous court operations and funding; and the forging of solid, positive relationships between the judiciary and the United States Congress.

The members of the Conference express their sincere appreciation and utmost regard to L. Ralph Mecham for his devoted service to the federal judiciary over the past ten years, and we look forward to our continued association for years to come.

MISCELLANEOUS ACTIONS

The Executive Committee:

- Reaffirmed the current policy limiting payment of relocation expenses of overseas law clerks to \$5000; restricted reimbursement to mandatory items, specifically excluding the shipment of automobiles; made a limited exception

⁷ Director Mecham did not participate in the Committee's consideration of this matter.

to the policy on shipment of automobiles for four individuals scheduled to begin clerkships in Puerto Rico in 1995, who had acted in reliance on their receiving the reimbursement; agreed that appropriate steps should be taken in advance of any authorization for reimbursement to an overseas law clerk, to ensure adherence to the \$5000 limit; denied requests for reimbursement of relocation expenses in two instances where it determined exceptions to the policy were not warranted; and approved a waiver of the repayment of reimbursement funds which had been paid erroneously to an individual;

- Agreed to request reprogramming of up to \$10 million from the Salaries and Expenses appropriations account for additional court security expenses;
- Approved requests from the Committee on International Judicial Relations to 1) enter into a Participating Agency Service Agreement (PASA) with the United States Agency for International Development, Rule of Law Section of the Democracy and Governance Center to co-sponsor a judicial training seminar and a Conference of the Organization of Supreme Courts of the Americas; and 2) sponsor judicial training seminars for judges from Argentina and from Ukraine;
- Transferred the official duty station of a bankruptcy judge from Beaumont to Plano, Texas; designated Beaumont as an additional place of holding bankruptcy court; and deleted Plano as an additional place of holding bankruptcy court. The Committee also agreed to transfer the official duty station of a bankruptcy judge from Miami to Fort Lauderdale, Florida;
- Approved a change in the effective date from August 1, 1995 to October 22, 1995, of a new \$15 bankruptcy court miscellaneous fee (to be earmarked for trustees) previously approved by the Judicial Conference (JCUS-MAR 95, p. 16);
- Approved, at the request of the Defender Services Committee, the early release of a death penalty representation report (see *infra* "Death Penalty Representation," pp. 78-81) for use in the ongoing appropriations process;
- Agreed to waive section 3.02(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 to permit an individual to apply for a full-time magistrate judge position in the Western District of New York;

- Referred to an appropriate Conference committee the question of whether a comprehensive review of title 28 of the United States Code should be made and, if so, how it might be accomplished;
- Agreed to send a letter to the Conference of Chief Justices reiterating the Judicial Conference's longstanding support for the State Justice Institute; and
- Reviewed a report of its Ad Hoc Committee on Legislative Relations and Coordination.⁸

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it unanimously approved a resolution in appreciation of a decade of service by the Director of the Administrative Office. In addition, the Committee considered Administrative Office personnel support services during the period when law clerks are hired; evaluation and assessment activities; the role of the Administrative Office in providing investigative assistance to the courts; and several proposals to improve the *Guide to Judiciary Policies and Procedures (Guide)*.

COMMITTEE ON AUTOMATION AND TECHNOLOGY

LAWBOOKS

Based on the results of a study on the use of libraries and lawbooks in the courts, the Committee on Automation and Technology recommended that the *Guide to Judiciary Policies and Procedures*, Chapter VIII, Part M, "Lawbooks Available to Judges," be amended to delete certain legal publications. The Judicial Conference approved the amendment and agreed to eliminate funding for:

- 1) Continuations in non-resident judges' chambers in locations where there is a satellite or circuit headquarters library and when appropriate computer-assisted legal research (CALR) support is available;

⁸At its September 20, 1995, meeting, the Executive Committee tabled this report.

- 2) Subscriptions to *Federal Practice Digest* in chambers collections;
- 3) Subscriptions to *Shepards' Citations* in chambers collections (reaffirming a prior Conference policy on this publication); and
- 4) Subscriptions in satellite libraries to regional reporters outside of their respective circuits.

For courts that choose to do so, reprogramming of funds to maintain subscriptions is authorized when central funds are not provided.

In addition, the Conference endorsed a requirement that circuit librarians provide to judges an annual inventory of chambers collections, including continuations costs.

LOCALLY DEVELOPED CASE MANAGEMENT APPLICATIONS

In order to ensure that courts utilizing locally developed case management systems are provided with funding for the costs of operating their systems on par with funding provided to courts with a nationally supported case management system, the Judicial Conference, on recommendation of the Automation and Technology Committee, adopted the following certification policy, effective January 1, 1996:

Locally developed case management applications that have been certified by the Committee on Automation and Technology as functionally equivalent to national case management applications (meeting minimum functional requirements and conforming to national requirements with respect to statistical reporting) will be provided funding for automation supplies, maintenance and cyclical replacement costs. Any migration from a nationally supported case management application to a locally developed case management application must be cost-neutral to the Judiciary Automation Fund.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

BANKRUPTCY JUDGESHIPS

Under 28 U.S.C. § 152(b)(2), the Judicial Conference is required to submit recommendations for new bankruptcy judgeships to Congress, which determines the

number of judgeships for each judicial district. In September 1993, as the result of a 1993 biennial bankruptcy judgeship survey, the Judicial Conference approved 19 additional bankruptcy judgeship positions (JCUS-SEP 93, pp. 40-41), but Congress has not acted on the judiciary's request. Based on its 1995 biennial survey, the Committee on the Administration of the Bankruptcy System recommended and the Judicial Conference agreed that, in lieu of its September 1993 proposal, the Conference will transmit to Congress proposed legislation to create 11 additional bankruptcy judgeships, either temporary or permanent,⁹ as follows:

New York, Eastern - 1 Temporary
New York, Northern - 1 Temporary
New Jersey - 1 Temporary
Pennsylvania, Eastern - 1 Temporary
Maryland - 1 Permanent
Michigan, Eastern - 1 Temporary
California, Central - 4 Permanent
Florida, Southern - 1 Temporary

TEMPORARY JUDGESHIP LEGISLATION

The Bankruptcy Judgeship Act of 1992 (Pub. L. No. 102-361), which first authorized temporary bankruptcy judgeships, linked the term of each temporary judgeship to the date of enactment of the Act (August 26, 1992). As a result, because substantial delays may occur between the effective date of the authorizing act and the time new judges actually take office to fill newly created positions, a district could lose most or all of the benefit of an authorized temporary judgeship position. To remedy this situation, the Judicial Conference approved a Bankruptcy Committee recommendation that it seek legislation to amend section 3(b) of the Bankruptcy Judgeship Act of 1992 as follows (proposed new language is in italics; language to be omitted is lined through):

VACANCIES.--The first vacancy in the office of bankruptcy judge in each of the judicial districts set forth in subsection (a), resulting from the death, retirement, resignation, or removal of a bankruptcy judge, and occurring 5 years or more after the *appointment* date of the ~~enactment of this Act~~ *judge named to fill the temporary judgeship position*, shall not be filled. In the case of a vacancy resulting from

⁹The designation of a judgeship in this list as temporary or permanent is subject to change should updated statistics warrant.

the expiration of the term of a bankruptcy judge not described in the preceding sentence, that judge shall be eligible for reappointment as a bankruptcy judge in that district.

COMMITTEE ON THE BUDGET

FISCAL YEAR 1997 BUDGET REQUEST

In recognition of congressional funding constraints, the Budget Committee anticipated the need to provide a funding level lower than that proposed by the program committees and recommended an alternative budget request. The Judicial Conference approved the alternative budget request for fiscal year 1997, modified to include an additional \$12 million for new non-prospectus space in 1996. This budget request is approved 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 Conference discussed the need to reduce space rental costs and tasked the Security, Space and Facilities and Budget Committees to work with the Administrative Office to devise a plan, for approval by the Judicial Conference at its March 1996 session, to reduce the future growth of overall space rental costs, including prospectus and non-prospectus projects. The circuit judicial councils and court units will be given an opportunity to provide input into the development of the plan. In addition, the Conference agreed that funding for fiscal year 1997 non-prospectus space projects will be offset on a national basis.

BUDGET DECENTRALIZATION

On recommendation of the Budget Committee, the Judicial Conference agreed to expand reprogramming authority to allow circuit judicial councils to reprogram funds between Temporary Emergency Fund Authorization (TEFA) and tenant alterations. The reprogramming guidelines were amended to allow circuit judicial councils to reprogram funds between TEFA and tenant alterations beginning in October, 1995 (FY 1996), provided that prior notification of reprogrammings over \$5,000 (both into and out of tenant alterations) be given to the Administrative Office's Space and Facilities Division and that all tenant alterations accomplished because of this transfer authority fall within the space standards included in the *United States Courts Design Guide*.

COMMITTEE ON CODES OF CONDUCT

CODES OF CONDUCT

The Committee on Codes of Conduct, after extensive study and opportunity for comment from judges and judiciary personnel, proposed a new consolidated code of conduct for judicial employees which combined into a single code five of the six existing judicial employee codes, expanded coverage of the code to include virtually all judicial employees, and updated, streamlined and clarified existing code provisions. The Judicial Conference approved the new Code of Conduct for Judicial Employees and repealed the existing codes of conduct for clerks, probation and pretrial services officers, circuit executives, staff attorneys and law clerks, effective January 1, 1996.

The Committee recommended retaining a separate code of conduct for federal public defenders and expanding the code to cover all federal public defender employees. (Administrative employees in federal public defender offices had not been covered under the former code.) The Judicial Conference approved the revised Code of Conduct for Federal Public Defender Employees, to replace the existing Code of Conduct for Federal Public Defenders, effective January 1, 1996.

The new codes will be published in the *Guide to Judiciary Policies and Procedures*.

POLITICAL ACTIVITIES GUIDELINES

On recommendation of the Committee, the Judicial Conference agreed to rescind its September 1943 resolution on political activities, set forth in the *Guide to Judiciary Policies and Procedures*, Volume II, Chapter VII, Part D, and to replace the Political Activities Guidelines, found in Subchapter 1733.1, Chapter X, Volume I of the *Guide*, with a reference to appropriate portions of Volume II of the *Guide*. The 1943 resolution and the related guidelines are unnecessary because existing employee codes of conduct have long imposed more restrictive standards on political activities and provide adequate replacement.

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report, it received 37 new written inquiries and issued 35 written advisory responses. The Chairman received and responded to 59 telephone inquiries. In addition, individual Committee members responded to 49 inquiries from their colleagues.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

SERVICES TO PERSONS WITH COMMUNICATIONS DISABILITIES

The judiciary has long been on record as supporting full access to judicial proceedings by all segments of the disabled community. See, e.g., JCUS-SEP 94, p. 50 (use of appropriated funds for sign language interpreters); JCUS-SEP 94, p. 68 (accessibility of courtrooms and related judiciary facilities). In an effort to improve access by individuals who are deaf or hearing-impaired and persons with other communications disabilities, the Judicial Conference, modifying a recommendation of the Court Administration and Case Management Committee, adopted a policy that all federal courts should provide reasonable accommodations to persons with communications disabilities. The Conference further agreed to require courts to provide, at judiciary expense, sign language interpreters or other appropriate auxiliary aids to deaf and hearing-impaired participants in federal court proceedings in accordance with guidelines prepared by the Administrative Office. This requirement does not apply to spectators, nor does it apply to jurors, whose qualifications for service are determined under other provisions of law.¹⁰ The guidelines to implement these policies will be developed by the Administrative Office, under the supervision and subject to the approval of the Court Administration and Case Management Committee and the Conference.

VIDEOCONFERENCING PILOT PROGRAMS

There are currently three active videoconferencing pilot programs in the district courts (Middle District of Louisiana, Western District of Missouri, and Eastern District of Texas), all involving prisoner civil cases, and one pilot in a bankruptcy court (Western District of Texas), which were scheduled to sunset on September 30, 1995. On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference agreed to extend the pilots in three of the courts (Middle District of Louisiana did not request an extension) for an additional six months to cover the period until the Committee submits to the Conference its evaluation of the videoconferencing pilot program. In addition, because the preliminary results from the pilot courts are promising, the Conference delegated authority to the Committee to expand videoconferencing to five additional district courts to conduct prisoner civil rights hearings according to criteria established by the

¹⁰This language reflects a technical amendment made by the Executive Committee on September 20, 1995.

Committee. However, funds will not be expended for this expansion until the Conference has had the opportunity to review the Committee's evaluation of the pilot program.

JUROR QUALIFICATION QUESTIONNAIRE

The Jury Selection and Service Act at 28 U.S.C. § 1865(b)(1) requires a potential juror to have "resided for a period of one year within the judicial district" in order to be qualified to serve on a federal grand or petit jury. To clarify that the residency requirement is met if jurors have a "substantial nexus" with the community in which they serve (allowing jurors who spend the winter in other parts of the country to serve in their home states), the Conference approved a Committee recommendation to revise the residency question on juror qualification forms to read as follows: "Has your primary residence for the past year been in this state?"

MISCELLANEOUS BANKRUPTCY FEES

On recommendation of the Court Administration and Case Management Committee, the Judicial Conference approved the following technical amendment to item 21 of the bankruptcy court miscellaneous fee schedule to clarify that the \$60 fee charged for filing a motion to withdraw the reference "of a case" applies to motions to withdraw reference of "proceedings" as well as "cases." The amendment also makes a technical change in accordance with Rule 1001 of the Federal Rules of Bankruptcy Procedure (new language is in italics; language to be omitted is lined through).

- (21) For filing a motion to terminate, annul, modify, or condition the automatic stay provided under § 326(a) of title 11, a motion to compel abandonment of property of the estate pursuant to ~~Bankruptcy Rule~~ *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), \$60.

FEES CHARGED TO CHILD SUPPORT CREDITORS

To minimize confusion and inconsistency in collecting and waiving fees charged to child support creditors or their representatives, the Judicial Conference approved the recommendation of the Court Administration and Case Management Committee that it:

- 1) Amend item 21 of the bankruptcy court miscellaneous fee schedule to provide that no fee is to be charged for the filing of a motion for relief from the automatic stay by a child support creditor or representative of such creditor who files a form that contains information detailing the child support debt, its status, and other characteristics, as prescribed by § 304(g) of the Bankruptcy Reform Act of 1994;
- 2) Amend item 6 of the bankruptcy court miscellaneous fee schedule to provide that no fee is to be charged for the filing of a complaint initiating an adversary proceeding by a child support creditor or representative who files the form described in subsection 1 above; and
- 3) Recommend enactment of legislation to clarify § 304(g) to provide for waiver of various statutory filing fees, such as the fee for filing an involuntary petition or for filing a notice of appeal, if filed by a child support creditor or representative of such creditor.

ALIEN ASYLUM PROCEDURE AMENDMENT

A proposed amendment to immigration reform legislation (H.R. 2202, 104th Congress) would have significantly altered the current alien asylum process, transferring thousands of additional cases into the federal courts of appeals. In addition, it would have made the initial decision of the asylum officer the final administrative decision, providing courts of appeals an inadequate record for review. On recommendation of the Committee, the Judicial Conference agreed to communicate to Congress its serious concern over the alien asylum procedure amendment to immigration reform legislation.

COMMITTEE ON CRIMINAL LAW

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that it had discussed a number of issues including the designation of inmates for the Intensive Confinement Program, the development of a new model for evaluating the risk of recidivism posed by offenders, the need for a fully integrated case management information system for probation and pretrial services offices, and the upcoming 1996 guidelines cycle of the United States Sentencing Commission.

COMMITTEE ON DEFENDER SERVICES

DEATH PENALTY REPRESENTATION

The Committee submitted a Report on Death Penalty Representation which describes the process for the review of death sentences in habeas corpus proceedings, the role of Criminal Justice Act (CJA) panel attorneys and post-conviction defender organizations in those proceedings, and the relationship of federal proceedings to state court procedures for the review of death sentences. The Judicial Conference approved the report, including the recommendations set forth therein, as follows:

- 1) Post-Conviction Defender Organization (PCDO) funding should be continued so that PCDOs may continue to play a vital role in providing representation in capital habeas corpus cases.
- 2) PCDO grant requests should propose methods of providing more direct representation (as opposed to consultation services), unless the PCDO can demonstrate that providing more direct representation is not cost-effective. "Direct representation" means that a PCDO staff attorney appears in court as counsel or co-counsel of record.
- 3) The *Guide for Appointment of Counsel in Criminal Cases* should provide that courts in districts served by a PCDO should consider appointing a PCDO staff attorney as counsel or co-counsel in capital habeas corpus cases. The *Guide* should also recommend that when two attorneys are appointed, the court should consider appointing one from the district's PCDO rather than two private attorneys.
- 4) PCDOs should *not* be funded to provide "heavy consultation" services in cases in which the PCDO is not counsel or co-counsel of record. Heavy consultation services include, but are not limited to, reviewing records, researching case-specific legal issues, drafting pleadings, investigating claims, and providing detailed case-specific advice to counsel, if such tasks take a substantial amount of time. When such services are required to ensure effective representation, the PCDO should seek appointment as counsel or co-counsel.
- 5) PCDOs should continue to be funded to provide "light consultation" services when their staff attorneys do not appear as counsel or co-counsel of record. Light consultation services are those that a lawyer in private practice would typically seek from another lawyer who specializes in a particular field of law.

When *two* private attorneys are appointed as counsel, the PCDO should provide only minimal consultation assistance.

- 6) PCDOs should continue to receive funding to support efforts to recruit counsel to represent inmates and, where desirable, funding to support continuing legal education in death penalty and capital habeas law.
- 7) PCDO grants should be tied to a specific commitment regarding the pending caseload that its staff attorneys will maintain. Initially, PCDOs should calculate their workload on the assumption that each staff attorney can maintain a caseload of at least four to six direct representation cases at any given time. If a PCDO's staff cannot handle this caseload, the PCDO should be required to explain why. A challenge to a single conviction or sentence, regardless of the number or forums of the judicial proceedings, should count as just *one* case.

The Defender Services Committee should decide, following further study, whether this preliminary view as to caseload is reasonable.

- 8) Staff of the Administrative Office of the U.S. Courts should study PCDO recordkeeping and reporting requirements and practices. This study should recommend to the Committee on Defender Services improvements that would facilitate assessing PCDO needs, monitoring PCDO compliance with caseload commitments, and controlling PCDO cost. The study should address the following suggestions:
 - a. All judicial proceedings attacking a single conviction and death sentence should be considered *one* case. Thus, PCDOs would be expected to record no more than one case for each death row inmate they represent unless the inmate has been sentenced to death in more than one proceeding.
 - b. All PCDOs should use standard definitions for direct representation and consultation cases. "Direct representation" should include *only* cases in which a PCDO staff attorney appears as counsel or co-counsel of record.
 - c. PCDO grant requests should include a description of the PCDO's caseload and totals from time and expense records, covering all categories of work. PCDO internal records should provide an auditor with at least the following information: (1) each staff attorney's pending caseload; (2) both annual and cumulative time and expense

records for each case in which the PCDO is providing either direct representation or consultation services; (3) records allocating case activity and cost between federal court and state court; and (4) both annual and cumulative time and expense records for all non-case-specific work, including, for example, recruitment of counsel and lawyer training.

- d. For the jurisdiction they serve, PCDOs should be able to provide annual "snapshots" of the status of all death row inmates' challenges to their death sentences. The snapshots should show (1) the jurisdiction's total death row population; (2) how many inmates have counsel; (3) how many inmates have challenges pending; (4) whether those challenges are direct appeals or collateral proceedings; and (5) in what courts those challenges are pending.
- 9) The Defender Services Committee should, in consultation with the Administrative Office of the U.S. Courts, revise the current *Draft Guidelines for Determining Whether an Activity Constitutes Federal Work* to clarify for what services federal grant funds can be spent.
- 10) Judges should be encouraged to ensure that private counsel seek PCDO expertise before undertaking time-consuming or costly litigation tasks.
- 11) The *Guide for Appointment of Counsel in Criminal Cases* should provide that courts are encouraged to require appointed counsel to submit (*ex parte*) a proposed litigation budget for court approval. The budget would serve purposes comparable to those served by private retainer agreements by confirming both the court's and the attorney's expectations as to compensable fees and expenses.
- 12) Counsel requesting fees and expenses should provide the judge or magistrate judge considering the request a complete history of prior payments made in the case. The form or the voucher should be revised to include a space for this history.
- 13) Courts should be encouraged to employ the case management techniques used in complex civil litigation to control costs in federal capital habeas corpus cases.
- 14) The Federal Judicial Center should be asked to offer judges training in case management techniques (including establishing case budgets and reviewing compensation claims) applicable to federal capital habeas corpus cases.

- 15) Federal and state judges should foster communication and cooperation among all those involved in capital litigation. For example, circuits should consider sponsoring state/federal conferences for lawyers (including state attorneys general, PCDO attorneys, and private attorneys) and state and federal judges to discuss issues affecting capital litigation.
- 16) The Defender Services Committee should consider contracting with an author to write capital habeas corpus handbooks for use as research tools. The handbooks, if they are to replace current research materials, should describe the state of the law in each federal circuit and death penalty jurisdiction.

In addition, the Conference approved a recommendation by the Committee on Defender Services that the Central District of California institute a four-year pilot project to establish a unit within the federal public defender organization to provide representation in federal capital habeas corpus proceedings.

COMMUNITY DEFENDER AND POST-CONVICTION DEFENDER ORGANIZATIONS

The Judicial Conference approved a number of amendments to the grant and conditions documents for traditional community defender organizations and post-conviction defender organizations. The amendments, many of which would more closely subject the grantee organizations to policies which are applicable to federal public defender organizations, include, *inter alia*, the following:

- 1) New requirements for the maintenance of financial records and employee time records (Clause 7);
- 2) Provision for an annual audit of financial records, by an accounting firm or firms under a contract with the Administrative Office (continued use of local accountants for financial services necessary for the operation of the grantee is provided for during the transition to the national contract auditor) (Clause 8);
- 3) A requirement for the return of unexpended grant funds within 60 days of the end of the fiscal year (Clause 5);
- 4) A requirement that property and services be procured in a manner that promotes open and competitive procedures (Clause 11);
- 5) A prohibition against nepotism (Clause 19); and

- 6) A prohibition against the private practice of law by employees of the organization (new Clause 21).

DEFENDER ORGANIZATION FUNDING REQUESTS

The Committee on Defender Services is authorized to approve funding requests for defender organizations on behalf of the Judicial Conference. Since the March 1995 Conference session, the Committee approved a total increase of \$626,400 in the fiscal year 1995 budgets of federal public defender organizations, and a total increase of \$436,700 in the fiscal year 1995 grants for community defender organizations.

PANEL ATTORNEY COMPENSATION

The Defender Services Committee, pursuant to the authority delegated to it by the Judicial Conference (JCUS-SEP 91, p. 57), approved a maximum rate of \$75 per hour for both in-court and out-of-court services of appointed counsel for the District of Maine, the Western District of Arkansas, the District of Nebraska, and the Eastern District of Virginia. This brings to 93 the number of districts for which an alternative CJA panel attorney compensation rate of \$75 per hour has been authorized. Due to funding limitations, alternative rates have been implemented in only 16 of these districts.

COMMITTEE ON FEDERAL-STATE JURISDICTION

COURT OF FEDERAL CLAIMS

The Committee on Federal-State Jurisdiction reviewed several legislative proposals which would significantly expand the jurisdiction and remedial powers of the Court of Federal Claims. The Committee recommended that the Judicial Conference:

- 1) Oppose legislative provisions that would grant the Court of Federal Claims authority to invalidate Acts of Congress or agency regulations;
- 2) Oppose legislative provisions that would authorize the Court of Federal Claims to grant injunctive and declaratory relief in any case over which the Court of Federal Claims has subject matter jurisdiction;

- 3) Oppose legislative provisions that would grant the Court of Federal Claims jurisdiction over "ancillary tort claims" in cases otherwise within the Court of Federal Claims' jurisdiction; and
- 4) Oppose legislative provisions that would repeal 28 U.S.C. § 1500 if the repeal is not accompanied by a provision for stay or transfer of duplicative claims. This represents a modification of a prior Conference position simply opposing repeal of § 1500 (JCUS-MAR 92, p. 22).

The Judicial Conference approved the recommendations of the Committee.

LEGISLATION TO MITIGATE LITIGATION

S. 136, 104th Congress, would amend title 1 of the United States Code by adding a new section 7 that would "clarify the effect and application of legislation" by deeming all future law 1) to be prospective only; 2) not to create a private cause of action; and 3) not to preempt state law. The proposed section would further provide that these presumptions govern unless a law specifies otherwise by express reference to the rule of the new section intended to be negated. On recommendation of the Committee on Federal-State Jurisdiction, the Judicial Conference supported generally S. 136, the goals and focus of which are consistent with Conference policy (see JCUS-SEP 90, p. 61), and more specifically:

- 1) Endorsed the first presumption concerning prospective application and the second presumption regarding the creation of private causes of action;
- 2) Endorsed in principle the third presumption concerning the preemption of state law, but noted that constitutional concerns are raised that should be studied further; and
- 3) Suggested that the language "by express reference to the paragraph of this section intended to be negated" be deleted from the proposed section 7 so that the presumptions will apply unless a law simply "specifies otherwise."

REVIEW OF STATE LAWS ADOPTED BY REFERENDUM

H. R. 1170, 104th Congress, would require three-judge panels to consider applications for interlocutory or permanent injunctions restraining the enforcement, operation, or execution of state laws adopted by referendum on the ground of unconstitutionality. Under the bill, the three-judge panels must expedite consideration

of the action, and their decisions would be appealable directly to the Supreme Court. On recommendation of the Committee on Federal-State Jurisdiction, the Judicial Conference endorsed the following resolution in opposition to H.R. 1170:

The Judicial Conference opposes H.R. 1170 (104th Congress) and reaffirms its opposition to three-judge panels generally, including the requirement of such panels for applications for interlocutory or permanent injunctions restraining the enforcement, operation, or execution of state laws adopted by referendum on the ground of unconstitutionality, for the following reasons:

Three-judge district courts continue to be generally cumbersome and problematic forums for the consideration of claims. Although the Judicial Conference has previously endorsed legislation requiring three-judge courts for reapportionment cases, those cases deal with the structure, not the outcome, of the democratic process, often in conditions of great urgency because of pending scheduled elections that cannot practicably be postponed. Such cases should not become the template for expanded use of three-judge courts in other contexts. Regardless of the number of cases that could be instituted under the proposed legislation, the Judicial Conference considers the concept of three-judge courts to be inconsistent with sound judicial administration.

In addition, the requirement that the three-judge panel expedite consideration of applications for injunctions that would be filed under H.R. 1170 is unnecessary. Such priority already exists under 28 U.S.C. § 1657, which requires all courts to expedite any actions for temporary or preliminary injunctions, among other specified cases. Beyond those actions identified in section 1657, the Judicial Conference continues to oppose the imposition of litigation priority or expediting requirements in civil cases.

Furthermore, mandating direct review by the Supreme Court of such cases disrupts carefully crafted and well-settled procedures for the consideration of appeals from the district court. Such review bypasses the screening that occurs at the court of appeals level and circumvents the development of legal interpretations through the various circuits. Direct review also may lead to incomplete records being placed before the Supreme Court as well.

Injunctions appealed to a court of appeals already are required to be expedited pursuant to 28 U.S.C. § 1657. In addition, under

28 U.S.C. § 2101(e), the Supreme Court currently has the authority to grant an application for a writ of certiorari prior to the entry of judgment by the court of appeals when direct review is deemed appropriate. Bypassing intermediate appellate review prior to ultimate consideration of constitutional issues by the Supreme Court is an extraordinary measure that should be left to the discretion of the Supreme Court in the exercise of its constitutional responsibilities.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that as of July 13, 1995, it had received 2,803 financial disclosure reports and certifications for the calendar year 1994, including 1,195 reports and certifications from Article III justices and judges, 324 from bankruptcy judges, 441 from magistrate judges, and 845 from judicial employees.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that during the period from January 1, 1995, to June 30, 1995, 85 intercircuit assignments, undertaken by one retired associate justice and 64 Article III judges were recommended by the Committee and approved by the Chief Justice.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported that plans are proceeding for the second Conference of the Organization of Supreme Courts of the Americas to be held October 23-27, 1995, in Washington, D.C.

COMMITTEE ON THE JUDICIAL BRANCH

SENIOR JUDGES

On recommendation of the Committee on the Judicial Branch, the Judicial Conference endorsed the following resolution:

The Judicial Conference recognizes that senior judges provide an invaluable resource to the federal courts. Senior judges should be provided the same level of respect and deference as their active colleagues, and should suffer no diminution in status because of their retirement from active service. Senior judges should be treated for all purposes exactly like active judges except to the extent otherwise required by statute or policy of a circuit judicial council.

In addition, the Judicial Conference voted to recommit for review by the Committee on the Judicial Branch the issue of whether to rescind a 1964 Judicial Conference resolution which requires senior judges to be designated on an annual basis to sit in their own districts (JCUS-SEP 64, p. 59). The policy has also been applied to circuit judges.

NATIONAL COMMISSION ON JUDICIAL DISCIPLINE AND REMOVAL

The Committee on the Judicial Branch reviewed three recommendations of the National Commission on Judicial Discipline and Removal which had not yet been considered by the Judicial Conference. Modifying the first recommendation to limit the period of time the tolling provision could operate, the Committee recommended approval of the Commission's recommendations. The Conference concurred, agreeing to:

- 1) Request that Congress consider enacting a statute which provides that (a) upon conviction of a felony involving a crime of moral turpitude subject to punishment by imprisonment of one year or more, a federal judge shall cease to accrue credit, through age or years of service, toward retirement under the "Rule of 80"; (b) such tolling shall not operate for more than two years subsequent to the resolution of all appeals by a convicted judge; and (c) if conviction is reversed on appeal or set aside on collateral attack, a judge should have service credit restored, absent impeachment in the interim;

- 2) Urge circuit judicial councils to consider programs of judicial evaluation in the federal courts, and recommend to circuit judicial councils that a judicial evaluation program be designed to insure as much statistical reliability and confidentiality as possible, and that the information provide constructive criticism of the individual judge; and
- 3) Urge each circuit judicial council to adopt a mandatory self-reporting rule that requires federal judges to inform their respective chief judge, on a confidential basis, whenever they have been indicted, arrested, or informed that they are the target of a federal or state criminal investigation for a crime which is subject to punishment by imprisonment of one year or more.

In March 1994, the Judicial Conference approved in principle a Commission recommendation that it promulgate a uniform policy on the limitations a judicial council should impose on a judge who is personally implicated in the criminal process, and it directed that the issue be referred to a committee to draft an implementing policy (JCUS-MAR 94, p. 30). The Committee on the Judicial Branch reviewed the matter and proposed the following model policy, which the Judicial Conference adopted, urging that it be implemented by the circuit judicial councils:

- 1) Federal judges who are indicted or formally charged for any offense which is subject to punishment by imprisonment of one year or more shall have all of their criminal cases reassigned, and may be permitted to continue with their civil dockets and administrative duties until it is determined that they must devote their time primarily to their own defense; and
- 2) Federal judges who have been implicated in a criminal process by way of arrest, or informed that they are the target of a federal or state criminal investigation for a crime which is subject to punishment by imprisonment of one year or more, may be permitted to continue with their criminal and civil dockets and administrative duties until the judicial council determines, after considering all the circumstances, to adopt the limitations which the nature of the investigation and charges justify.

COMMITTEE ON JUDICIAL RESOURCES

RELEASE OF JUDGE-SPECIFIC DATA

At its March 1995 session, the Judicial Conference endorsed the current practice prohibiting the disclosure of judge-specific information from national statistical databases pending additional study by the Committee on Judicial Resources

(JCUS-MAR 95, pp. 21-22). Upon further review, the Committee concluded that if information about individual judges is to be released, this should be done locally, rather than nationally, since court staff are in a better position to provide current and accurate information about circumstances related to specific judges or cases. The Conference adopted the Committee's recommendation to reaffirm the March 1995 policy.

DISTRICT CLERKS' STAFFING FORMULA - NATURALIZATION FACTOR

The current staffing formula for district clerks' offices, approved by the Conference in September 1992 (JCUS-SEP 92, p. 72), includes a staffing factor to support naturalization activities. Implementation of the Immigration Act of 1990 resulted in a shift in responsibility from the clerks' offices to the Department of Justice for many of the clerical and administrative functions related to naturalization. A staffing measurement study was conducted, and a new naturalization staffing factor was developed. On recommendation of the Judicial Resources Committee, the Judicial Conference approved the proposed work factor for naturalization in the district clerks' offices to be effective with the fiscal year 1996 allocation.

BANKRUPTCY CLERKS' STAFFING FORMULA - BANKRUPTCY NOTICING CENTER

In order to assess the staffing impact of the Bankruptcy Noticing Center (BNC) on the current bankruptcy clerks' staffing formula, a work measurement study was conducted. The study indicated that in two areas, noticing and metered mail, processing times were significantly different due to the use of the BNC, and revised factors were developed in these areas. The Judicial Conference endorsed the Judicial Resources Committee's recommendation that the proposed noticing and metered mail factors for the bankruptcy clerks' staffing formula be approved, to be implemented as courts transition their noticing to the BNC. Full implementation for all courts is expected in fiscal year 1997.

PREARGUMENT CONFERENCE ATTORNEYS

In September 1994, the Judicial Conference approved requests from two courts of appeals to fund upgrades of preargument attorneys (JCUS-SEP 94, pp. 56-57). The upgrades were based on the fact that both senior and line attorneys perform equal mediation work, and that the mediation function should be the determining factor for compensation. In order to assist other courts of appeals in funding similar upgrades

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for line conference attorneys, the Judicial Conference, on recommendation of the Judicial Resources Committee:

- 1) Raised the target grade for line conference attorneys in the Ninth and Eleventh Circuits to the JSP-16 level, provided funding for one line conference attorney in each of these circuits at the JSP-16 level, and provided funding for remaining line attorneys at the JSP-15 level.
- 2) Agreed that, upon request of the court made prior to implementation of the Court Personnel System (CPS) in that court, funding will be provided centrally:
 - a. at the JSP-16 level for one line conference attorney in each court of appeals (*i.e.*, one attorney in addition to the chief conference attorney); and
 - b. at the JSP-15 level for all remaining line conference attorneys in that court.

Following implementation of CPS in any court of appeals which has not received such funding for conference attorney positions under the Judiciary Salary Plan, comparable funding will be provided by the Administrative Office upon request of the court.

The Judicial Conference also agreed that the staffing level for conference attorney offices in the courts of appeals would not be capped at 84 percent.

ELECTRONIC COURT RECORDER OPERATORS

At its March 1995 session, the Judicial Conference approved the allocation of electronic court recorder operator positions for active district judges (who choose electronic sound recording as the method of recording court proceedings) in the same manner as the allocation of official court reporter positions (JCUS-MAR 95, p. 22). To eliminate any disincentive to the use of electronic sound recording in bankruptcy courts, the Judicial Conference approved a Judicial Resources Committee recommendation that the allocation of electronic court recorder operator staffing credit for bankruptcy judges be made in the same manner as the allocation of contract court reporting services and funded at the same percentage level. In addition, the Conference agreed that electronic court recorder operator staffing credit for bankruptcy judges would be provided as part of the bankruptcy clerks' staffing formula based on a factor of 1.25 hours of credit for every judge-court hour.

PRO SE LAW CLERK PROGRAM

In September 1994, the Judicial Conference approved in principle a policy that the pro se law clerk program would no longer be a component of the clerk's office. Rather, the chief judge of each district will appoint and supervise the pro se law clerks in the district, but may delegate that authority to another judicial officer or the clerk. The Conference further determined to refer issues raised by the implementation of this policy to the Judicial Resources Committee (JCUS-SEP 94, p. 48).

At this session, the Judicial Conference, on recommendation of the Judicial Resources Committee, agreed to remove the factor for pro se law clerk work from the district clerks' staffing formula and to allocate pro se law clerk positions directly to the chief judges of the district courts. Pro se legal positions will be allocated according to the same criteria currently included in the formula (at 100 percent of formula, one position is allocated for 211 prisoner petitions) and at the same staffing levels approved for positions in the district clerks' offices (84 percent in fiscal year 1996). The support position of pro se writ clerk will continue to be allocated through the formula to the clerks' offices, along with overhead staffing credit to support the pro se law clerk program. In addition, the Conference agreed to exclude pro se law clerk positions from the Court Personnel System and, consequently, from the Cost Control Monitoring System, and also from the budget decentralization program. Pro se law clerks will remain covered by the Judiciary Salary Plan grading, qualification, and compensation system that currently applies to them.

CIRCUIT EXECUTIVES' OFFICES

The Judicial Conference approved a Judicial Resources Committee recommendation that five additional permanent positions in circuit executives' offices be included in the fiscal year 1997 budget request, as follows: two each in the Third and Sixth Circuits and one in the Eleventh Circuit.

STAFF SUPPORT TO RECALLED BANKRUPTCY JUDGES

The Judicial Conference approved a proposal of the Committee on Judicial Resources that the Conference recommend that each circuit judicial council develop its own written guidelines for setting staffing levels for recalled bankruptcy judges. These guidelines would, *inter alia*, enable bankruptcy judges considering recalled status to know in advance the level of staff support they could expect.

LAW CLERK POSITION FOR THE DISTRICT OF NEW MEXICO

The Judicial Conference, on recommendation of the Judicial Resources Committee, approved a permanent law clerk position for the District of New Mexico to provide staff support for the court's caseload of water rights cases.

**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 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

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

SECOND CIRCUIT

Northern District of New York

Redesignated the official location of the full-time magistrate judge position in Watertown as Watertown or Albany or Binghamton.

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.

District Court of the Virgin Islands

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

Western District of Louisiana

Increased the salary of the part-time magistrate judge position at Monroe from Level 6 (\$10,320 per annum) to Level 4 (\$30,960 per annum).

SIXTH CIRCUIT

Southern District of Ohio

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

SEVENTH CIRCUIT

Western District of Wisconsin

Discontinued the part-time magistrate judge position at Eau Claire.

EIGHTH CIRCUIT

Northern District of Iowa

- 1) Converted the part-time magistrate judge position at Sioux City to full-time status;
- 2) Increased the salary of the part-time magistrate judge position at Sioux City from Level 4 (\$30,960 per annum) to Level 1 (\$56,760 per annum), effective October 1, 1995, until such time as a full-time magistrate judge is appointed at Sioux City; and
- 3) Made no change in the location or arrangements of the other magistrate judge position in the district.

District of Minnesota

Designated the full-time magistrate judge position at Duluth, in the District of Minnesota, to serve in the adjoining Western District of Wisconsin in accordance with 28 U.S.C. § 631(a).

NINTH CIRCUIT

Eastern District of California

- 1) Discontinued the part-time magistrate judge position at Yreka;
- 2) Reduced the salary of the part-time magistrate judge position at Redding from Level 4 (\$30,960 per annum) to Level 5 (\$20,640 per annum); and
- 3) Made no change in the number, locations, salaries or arrangements of the other magistrate judge positions in the district.

District of Hawaii

- 1) Authorized an additional part-time magistrate judge position at Honolulu at Level 2 (\$51,600 per annum);
- 2) Upon the appointment of a part-time magistrate judge at Honolulu, discontinued the part-time magistrate judge positions at Hilo and Wailuku; and

- 3) 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 Bend from Level 7 (\$5,160 per annum) to Level 2 (\$51,600 per annum).

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

District of Utah

- 1) Redesignated the official location of the part-time magistrate judge position at Cedar City as St. George; and
- 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 Alabama

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

Middle District of Florida

- 1) Authorized an additional full-time magistrate judge position at Jacksonville; and

- 2) Made no change in the number, locations, 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.

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. The Judicial Conference approved a recommendation by the Committee to designate the new magistrate judge positions at Denver, Colorado, and Jacksonville, Florida, for accelerated funding in fiscal year 1996.

**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 Rules 21 (Writs of Mandamus and Prohibition Directed to a Judge or Judges and Other Extraordinary Writs), 25 (Filing and Service), and 26 (Computation and Extension of Time) of the Federal Rules of Appellate Procedure. The proposed amendments were accompanied by Committee notes explaining their purpose and intent. The Conference approved the amendments for transmission to the Supreme Court for consideration, with the recommendation that they be approved by the Court and transmitted to Congress pursuant to law.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 1006 (Filing Fee), 1007 (Lists, Schedules and Statements; Time Limits), 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), 2015 (Duty to Keep Records), 3002 (Filing Proof of Claim or Interest), 3016 (Filing of Plan and Disclosure Statement in Chapter 9 Municipality and Chapter 11

Reorganization Cases), 4004 (Discharge), 5005 (Filing), 7004 (Process, Service of Summons, Complaint), 8008 (Filing and Service), and 9006 (Time), together with Committee notes explaining their purpose and intent. The Conference approved these amendments and authorized their transmittal to the Supreme Court for consideration, with the recommendation that they be adopted by the Court and transmitted to Congress pursuant to law.

FEDERAL RULES OF CIVIL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Rules 5 (Service and Filing of Pleadings and Other Papers) and 43 (Taking of Testimony) of the Federal Rules of Civil Procedure. Committee notes explaining their purpose and intent were transmitted with the proposals. The Conference approved these amendments and authorized their transmittal to the Supreme Court for consideration, with the recommendation that they be approved by the Court and transmitted to Congress pursuant to law.

Asked by a Conference member to review the determination of the Committee to publish for comment a proposed amendment to Civil Rule 47 dealing with attorney-conducted voir dire, the Conference declined to take action.

FEDERAL RULES OF CRIMINAL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference a proposed amendment to Rule 32 (Sentence and Judgment) of the Federal Rules of Criminal Procedure, together with Committee notes explaining its purpose and intent. The Conference approved the amendment, authorizing its transmittal to the Supreme Court for consideration, with the recommendation that it be adopted by the Court and transmitted to Congress pursuant to law.

The Committee also proposed an amendment to Criminal Rule 16 (Discovery and Inspection) that would have established parallel reciprocal disclosure provisions for the prosecution and the defense regarding the testimony of an expert witness on the defendant's mental condition. It also would have required the government, seven days before trial, to disclose to the defense the names of government witnesses and their statements, unless it believed in good faith that pretrial disclosure of this information might threaten the safety of a person or risk the obstruction of justice. The Judicial Conference disapproved the proposed amendment.

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Asked by a Conference member to review the determination of the Committee to publish for comment a proposed amendment to Criminal Rule 24 dealing with attorney-conducted voir dire, the Conference declined to take action.

COMMITTEE ON SECURITY, SPACE AND FACILITIES

COURT FACILITIES STUDY

The Committee on Security, Space and Facilities, as part of a study on the efficient use of court facilities, surveyed district courts and circuit judicial councils as to whether there existed courthouse facilities not occupied by a resident, full-time judicial officer, which could be returned to the General Services Administration (GSA). Six facilities were identified by the courts and circuit councils as no longer needed. Under 28 U.S.C. § 462(f), the Judicial Conference must approve the closure of court accommodations before the Director of the Administrative Office notifies GSA that the facilities are no longer needed. On recommendation of the Committee, the Judicial Conference approved the release of court facilities at Pueblo, Colorado; Ponca City, Oklahoma; Easton, Pennsylvania; Paris, Texas; Montpelier, Vermont; and Wausau, Wisconsin.

COURT SECURITY

In light of an increased emphasis on security, the Committee on Security, Space and Facilities reviewed a GSA draft policy on criminal history background checks for GSA contract employees working in federal buildings, including personnel involved in guarding, cleaning, and maintaining buildings. The Committee recommended, and the Judicial Conference concurred, that the General Services Administration be encouraged to amend proposed guidelines on background investigations to require that: (1) all background checks of GSA contract personnel working in court areas include a review of criminal records maintained by the state when not precluded by applicable law; and (2) no contract employee be allowed to work in court areas until such time as the required background check has been completed.

Multi-tenant federal facilities that house court operations pose a unique security concern for the United States Marshals Service. In recognition of the security risks posed and additional costs incurred when security screening posts are established at multiple locations within a facility, the Judicial Conference strongly encouraged the General Services Administration and respective court security committees to take

whatever steps are necessary to insure provision of a uniform high level of security at all multi-tenant facilities that house judicial officers and court operations. The Conference further determined that the Committee on Security, Space and Facilities and the Administrative Office should coordinate with the GSA and the United States Marshals Service to identify these facilities and take appropriate actions to enhance the level of security at these locations, with an emphasis on requiring ingress screening in such facilities.

The General Services Administration is responsible for providing perimeter security at federal office buildings. The level of perimeter security provided is based on the results of a GSA-conducted physical security survey process, which treats each facility as if it were a standard office building. Because court facilities are not standard office-type buildings, the Committee recommended that the Judicial Conference encourage the General Services Administration, working in conjunction with the United States Marshals Service, to amend the risk assessment process used to determine the level of security to be provided at the perimeter of a building housing the judiciary so that the unique security risks of court facilities are addressed at every federal facility housing courts or judicial officers. The Conference concurred in this recommendation.

UNITED STATES COURTS DESIGN GUIDE

In September 1994, the Judicial Conference approved revisions to the *United States Courts Design Guide (Design Guide)* related to the Americans with Disabilities Act (ADA) (JCUS-SEP 94, p. 68). It subsequently appeared that some of the text related to the ADA required further clarification. In addition, other modifications to the *Design Guide* were necessary. On recommendation of the Committee on Security, Space and Facilities, the Judicial Conference approved changes to the *Design Guide* including revisions pertaining to accessibility, accommodation of juries in bankruptcy courts, alternative dispute resolution suites, and computer-related needs.

FIVE-YEAR PLAN OF COURTHOUSE CONSTRUCTION PROJECTS

At its March 1995 session, in response to congressional criticism and urgent requests for a priority listing, the Judicial Conference approved a recommendation of the Committee on Security, Space and Facilities to develop a five-year plan of courthouse construction projects. After opportunity for input from each circuit judicial council, the Committee recommended a plan for the projects needed by the judiciary in the fiscal years 1996-2000, assuming that the same amount of funding that has been made available by the Congress in previous fiscal years will be made available in the

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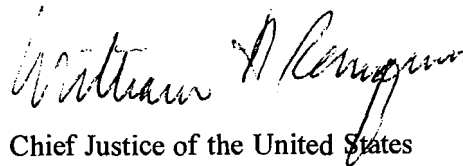
future. The Judicial Conference approved the five-year plan of courthouse construction projects, so that the General Services Administration can use the plan as a tool for determining when housing needs at a particular location should be addressed.

FUNDING

All of the foregoing recommendations which require the expenditure of funds for implementation were approved by the Judicial Conference subject to the availability of funds, and subject to whatever priorities the Conference might establish for the use of available resources.

RELEASE OF CONFERENCE ACTION

The Conference authorized the immediate release of matters considered by this session where necessary for legislative or administrative action.



Chief Justice of the United States
Presiding

December 28, 1995