THE THIRD BRANCH

LAX

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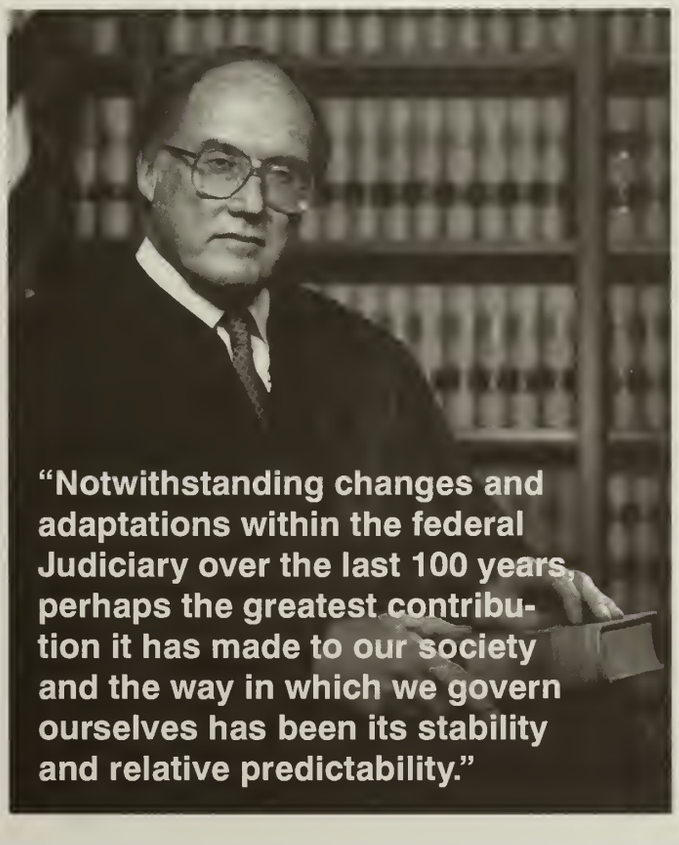
The 1999 Year-End Report on the Federal Judiciary

Overview

The 1999 Year-End Report on the Federal Judiciary—my 14th as Chief Justice—provides an opportunity to review the state of the Judiciary not only for the past year, but also to reflect briefly on its status this past century, which, I hasten to point out, has another year to run. Just ask the makers of *2001: A Space Odyssey*. Our society experienced enormous technological and industrial advances in the 20th century. We entered the century traveling in horse and buggy, on steamboat, or by rail, and we leave it thinking of man's landing on the moon as old news, to use but one example. Changes in the federal Judiciary in the 20th century may appear less extreme by comparison, but are nonetheless remarkable.

One hundred years ago, there were 108 authorized federal judgeships in the federal Judiciary, consisting of 71 district judgeships, 28 appellate judgeships, and 9 Supreme Court Justices. Today, there are 852—including 655 district judgeships, 179 appellate judgeships and 9 Supreme Court Justices. In 1900, 13,605 cases were filed in federal district courts, and 1,093 in courts of appeals. This past year, over 320,194 cases were filed in federal district courts, over 54,600 in courts of appeals, and over 1,300,000 filings were made in bankruptcy courts alone.

These changes in the federal Judiciary reflect not merely a growth in the population of the United States, but also have been in response to the increasing jurisdiction of federal courts. Some increase in federal jurisdiction has been a natural result of the industrialization and technological development and the corresponding regulation of it in America in the 20th century; some in recent years, however, has resulted from unnecessary federalization of traditional state law matters. Of course, technological advances have had other profound impacts on the Judiciary. A century that began with some federal judges still riding the circuits concludes with judges communicating by video conferencing, using a Federal Judicial Television Network, and in some instances reviewing briefs filed electronically.



Notwithstanding changes and adaptations within the federal Judiciary over the last 100 years, perhaps the greatest contribution it has made to our society and the way in which we govern ourselves has been its stability and relative predictability. These

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traits—consistent throughout the century—have been secured by the Judiciary's independence and are dependent on a healthy support of the other branches of government.

Public recognition of the strengths of the federal Judiciary is encouraging. In a February 1999 Gallop Poll, 80 percent of Americans surveyed stated that they had a "great deal" or "fair" amount of trust in the judicial branch of government, far exceeding figures for the other branches. And a February 1999 report of an American Bar Association nationwide survey on the American system of justice concluded that "at least conceptually, there is strong support for the justice system. The data indicated that 80 percent of all respondents either strongly agree or agree . . . that in spite of its problems, the American justice system is still the best in the world."

The public's views are a function of more than the structure of our government and the independence of the Judiciary. Those views are shaped by the dedication and hard work of federal judges who continue to dispense justice despite an increasing workload and a relatively decreasing salary. We are particularly indebted to our senior federal judges who continue to help with the courts' workload with little incentive other than devotion to public service.

The past year has been one of improvement in the Judiciary. Last year at this time, I singled out three significant problems facing the Judiciary that needed immediate attention: (1) the need to appoint all seven Commissioners of a vacant United States Sentencing Commission; (2) the continuing relative decline in judicial salaries; and (3) the growing caseload in the federal Judiciary. I noted that all three problems were soluble. This year, I extend thanks on behalf of the entire Judiciary to Congress and the Executive Branch for the significant progress we have made on two of the three problems, and for efforts made to address the third.

"Eliminating unwarranted federalization of crime will help control growth in federal courts and preserve them as courts of limited jurisdiction."

First, I am pleased to report that the political impasse on the appointments to the United States Sentencing Commission was overcome in 1999. All seven Commissioners were confirmed by the Senate in November, and U.S. Circuit Judge Diana E. Murphy of Minneapolis, Minnesota, is the new Chair. The Sentencing Commission, among other things, reduces disparity in sentencing, establishes sentencing policies and practices in federal courts, and advises Congress and the Executive Branch in the development of crime policy. This much-needed Commission may now address a backlog of work caused by the vacancies and can promulgate guidelines to implement a significant amount of sentencing and crime-related legislation enacted by the 105th Congress.

Second, for only the second time since 1993, I can report some adjustment in the salaries of federal judges. Effective today, federal judges will receive a 3.4 percent Employment Cost Index adjustment in accordance with the Ethics Reform Act of 1989 (2 U.S.C. § 461). The Judiciary is appreciative of the adjustment, but it should not be confused with a raise in salary. We must continue to work for more appropriate compensation for federal judges to maintain the quality and morale of the federal Judiciary.

And, third, I commend the Senate Government Affairs Committee and its Chair, Senator Fred Thompson, for holding hearings on May 6, 1999, on the issue of controlling the federalization of crimes that are better left to state laws and courts to handle. The hearings were held in part as a response to issues I raised in last year's Report, and focused also on the American Bar Association's Task Force on Federalization of Criminal Law, a bipartisan Task Force chaired by former Attorney General Edwin Meese. The Task Force concluded that the ultimate safeguard for maintaining our balanced Constitutional system must be a "principled recognition by Congress for the long-range damage to real crime control and to the nation's structure caused by inappropriate federalization." As Chairman Meese elaborated at the hearings, the

> "expanding coverage of federal criminal law, much of which has been enacted without any demonstrated or distinctive federal justification, is moving the nation rapidly towards two broadly overlapping, parallel, and essentially redundant sets of criminal prohibitions, each filled with different consequences for the same conduct. Such a system has little

to commend it and much to condemn it."

Eliminating unwarranted federalization of crime will help control growth in federal courts and preserve them as courts of limited jurisdiction. I urge the Congress to continue to examine this issue, and to refer to guidelines on federal courts' criminal jurisdiction set forth in the Long Range Plan for the Federal Courts adopted by the Judicial Conference in 1995 as detailed in my Year-End Report last year.

In the meantime, certain federal courts continue to feel the effects of an increased workload. Congress responded to this problem in 1999 by creating nine new judgeships—four in the Middle District of Florida, three in Arizona, and two in Nevada. The Judicial Conference of the United States seeks additional judgeships in approximately 25 percent of the judicial districts in the United States. Federal courts in U.S. border areas face a crisis in workload created by an unmanageable number of immigration and drug-related cases. The Judicial Conference has been seeking additional judgeships for a number of years, particularly in those areas most affected by such cases, including the Southern District of California, the Southern and Western Districts of Texas, and the Districts of Arizona and New Mexico. More judges are also needed in four Courts of Appeals in the country—the First, Second, Sixth, and Ninth Circuits need judges to meet their workloads and to maintain the quality of justice provided in those courts.

Clearly, the Judiciary does not advocate growth for growth's sake, but must respond to its workload. In that regard, the workload in some jurisdictions of the federal Judiciary is such that some vacancies will not need to be filled. Four vacancies are thus affected: the existing vacancy in the United States District Court for the District of Columbia, and prospective vacancies in the United States District Courts of the District of Delaware, the District of Wyoming, and the Southern District of West Virginia will not need to be filled. The Judicial Conference has so advised the Executive and Legislative Branches.

Panel Attorney Compensation

Some progress has been made on another issue I raised last year, but more work remains: in 1999, the Judiciary embarked on a major initiative to obtain funding to increase the rates of pay for private "panel" attorneys accepting appointments under the Criminal Justice Act (CJA). By statute, the Judiciary bears the responsibility for ensuring that defendants who cannot afford counsel in federal criminal cases receive legal representation. In 1986, Congress amended the CJA to authorize the Judicial Conference to set maximum hourly rates of up to $75 and to implement cost-of-living adjustments. While the Judicial Conference has determined that the $75 rate is needed in every judicial district, funding has not been available for its nationwide implementation, and in most judicial districts panel attorneys have been paid only $65 for hours in court and $45 for out-of-court time.

Inadequate compensation for panel attorneys is seriously hampering the ability of courts to recruit and retain qualified panel attorneys to provide effective representation. The maximum CJA hourly rates have been eroded by inflation and are substantially below prevailing rates in the legal profession. Accordingly, the Judiciary requested funding in fiscal year 2000 to make the $75 rate applicable in every district. Congress approved a $5 raise, to $70 in court, $50 out of court.

While providing some relief, compensation rates still do not meet many attorneys' non-reimbursable overhead costs. Adequate pay for appointed counsel is important to ensure that a defendant's constitutional right to counsel is fulfilled. Thus, there is widespread support among the components of the federal criminal justice system for the $75 rate, including judges, the Department of Justice, private bar associations, former federal prosecutors, and federal defenders.

Since 1984, most judicial districts have received only two $5 increases (including the one in fiscal year 2000). At its September 1999 session, the Judicial Conference decided to renew its request for the $75 rate in fiscal year 2001 in the event that Congress did not provide funding for that rate in fiscal year 2000. Because of the urgency of this need, once again, I respectfully ask Congress to make adequate compensation for panel attorneys a high priority, and to fund the Defender Services appropriation at a level sufficient to pay the $75 rate.

Information Assistance to Foreign Judiciaries

Representatives from judicial systems from around the world continue to seek to learn more about our Judiciary. This year more than 475 representatives of over 95 foreign judiciary systems formally visited the Supreme Court of the United States seeking information about our system of justice. Several other judicial entities also play an important role in educating international visitors and providing technical assistance to judicial systems worldwide, including the Federal Judicial Center, the Administrative Office of the U.S. Courts, and the International Judicial Relations Committee of the Judicial Conference.

Appellate Court Structure

Although the most effective way of preserving our federal Judiciary's ability to perform its function is by

restraining unnecessary expansion of its jurisdiction, structural adjustments are occasionally necessary as well. Last year, several members of the Senate introduced legislation to implement the December 1998 recommendations of the legislatively created Commission on Structural Alternatives for the Federal Courts of Appeals, chaired by retired Justice Byron R. White. I am grateful to Senator Charles Grassley and Representative Howard Coble for holding hearings on these recommendations, and I urge Congress to act on the Commission's proposals. Congress' immediate concern in creating the Commission was the size of the Court of Appeals for the Ninth Circuit. As requested, however, the Commission proposed legislation that would accommodate the inevitable growth of other courts of appeals as well, while preserving the regional circuits. I hope that Congress, which asked for this study, will give the recommendations full and complete consideration.

The Year in Review

The Federal Courts' Caseload

In 1999, there were 54,693 filings in the 12 regional courts of appeals. These figures include, for the first time, certain original proceedings. If original proceedings are not included, there has been a 3 percent decline in filings in the courts of appeals since last year. If included, however, there has been a 2 percent rise in filings in the courts of appeals in 1999. Overall growth in appellate court caseload this year was due to a 349 percent upsurge in original proceedings. This sudden expansion resulted from newly implemented reporting procedures, which more accurately measure the increased judicial workload generated by the Prisoner Litigation Reform Act and the Antiterrorism and Effective Death Penalty Act, both passed in 1996. Declines in filings were recorded for all other types of appeals with civil, criminal, bankruptcy, and administrative agency appeals decreasing 2 percent, 3 percent, 8 percent, and 14 percent, respectively.

District court activity was characterized by an increase in criminal filings and a smaller increase in civil filings. Criminal case filings rose 4 percent from 57,691 in 1998 to 59,923 in 1999, and the number of defendants grew 2 percent from 79,008 to 80,822. Criminal case filings per authorized judgeship went up from 89 to 93 cases. Civil filings changed little from the previous year, increasing 1 percent to 260,271. Filings in the U.S. bankruptcy courts dropped 6 percent from 1,436,964 to 1,354,376 and, in doing so, broke a four-year trend of rapid growth.

The current levels of criminal case and defendant filings are higher than in any year since 1933, the year the Prohibition Amendment was repealed. This year's increase, as last year's, was significantly impacted by filings related to drugs and illegal immigration in the southwestern border districts, although drug-related filings also increased in more than 50 other districts. Nationwide, immigration filings rose 14 percent to 10,641 cases, and drug filings rose 7 percent to 17,483. Weapons and firearms filings grew 20 percent to 4,367.

The increase in criminal filings resulted in a 2 percent gain to 80,154 in the number of defendants serviced by pretrial services. The number of defendants interviewed went up 1 percent, and the number of pretrial reports also increased 1 percent. Pretrial case activations have risen for five consecutive years, and this year's total is 43 percent higher than that for 1994. During this period, pretrial reports prepared rose 42 percent, persons interviewed grew 32 percent, and defendants released on supervision increased 25 percent.

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The number of persons on probation, which is less directly affected by criminal filings, went up by 4 percent. Supervised release following a period of incarceration now accounts for more than 60 percent of the probation population, and there is an average lag of several years before defendants found guilty and sentenced to prison appear in the probation numbers. Of the 59,450 persons serving terms of supervised release, 54 percent had been charged with a drug-related offense.

The overall 1 percent increase in filings of civil cases was related primarily to cases involving the United States as a plaintiff, while filings involving the U.S. as a defendant and private cases involving both federal question jurisdiction

(i.e., actions under the Constitution, laws, or treaties of the United States) and diversity of citizenship declined slightly.

Total U.S. cases increased 13 percent from 57,852 to 65,443, with filings involving the U.S. as plaintiff increasing 33 percent and filings involving the U.S. as a defendant declining less than 1 percent. The rise in U.S.-plaintiff filings was primarily a result of a 54 percent jump in cases related to the recovery of overpayments and enforcement of judgments. Student loan recoveries continued to climb sharply, growing from 14,080 filings in 1998 to 21,915 in 1999. This 56 percent rise reflects the continued intense debt collection procedures implemented by the Department of Education in the late 1990's.

The decrease in cases involving the U.S. as a defendant largely reflected a 4 percent decrease in Social Security cases and a 9 percent decline in motions to vacate sentence. Social Security disability insurance and supplemental security income filings each dropped, at 6 percent and 3 percent, respectively.

Motions to vacate sentence fell by 535 cases, likely the continued effect of the 1995 *Bailey v. United States* Supreme Court ruling restricting the imposition of enhanced penalties for using firearms.

Federal question jurisdiction and diversity of citizenship filings each declined, at 1 percent and 4 percent, respectively. Federal question jurisdiction fell from 146,827 to 144,898 (down 1,929 filings), mainly because filings related to personal injury cases decreased 13 percent, with product liability filings (mostly breast implant cases) dropping 58 percent. Habeas corpus petitions filed by state prisoners increased 9 percent. Diversity of citizenship filings declined from 51,992 to 49,793 (down 2,199 filings) as a result of a large reduction in the number of personal injury/product liability breast implant cases.

Prior to 1995, bankruptcy filings had declined for two years after eight years of continuous growth. This year's decline resulted from decreases in filings of both personal and business petitions, with drops in chapter 7 and chapter 13 petitions primarily responsible for the overall decline.

Following seven years of decline, filings of petitions under chapter 11, which represent about 1 percent of all bankruptcy filings, rose 2.5 percent. Filings under chapter 7, which accounted for 71 percent of all bankruptcy filings, fell 6.5 percent. Chapter 13 filings, which constituted 28 percent of all bankruptcies, declined 4 percent. Filings under chapter 12, which made up less than 0.1 percent of all bankruptcy filings, dropped 8 percent.

In 1999, some progress was made by the Senate and the President on judicial confirmations with 34 new judges confirmed. Although the 1999 confirmation rate did not match the rate accomplished in 1998 when 65 new judges were confirmed, the number of judicial vacancies has been reduced over the last two years.

The Supreme Court of the United States—Caseload Statistics

The total number of case filings in the Supreme Court increased from 6,781 in the 1997 Term to 7,109 in the 1998 Term—an increase of slightly more than 4.8 percent. Filings in the Court's *in forma pauperis* docket increased from 4,694 to 5,047—a 7.5 percent rise. The Court's paid docket decreased by 23 cases, from 2,085 to 2,062—a 1.1 percent decrease. During the 1998 Term, 90 cases were argued and 84 signed opinions were issued, compared to 96 cases argued and 93 signed opinions in the 1997 Term. Two cases from the 1998 Term were scheduled for re-argument in the 1999 Term.

Administrative Office of the United States Courts

The Administrative Office of the United States Courts celebrated its 60th anniversary this past year as the central support agency for the administration of the federal court system. A century ago, federal court administration was almost entirely decentralized. Each district court handled its own affairs, relying on the district's United States Marshal for some administrative services. For those necessarily centralized activities, such as submitting a budget request to Congress, the federal Judiciary had to rely upon the Department of Justice, the chief litigant in the federal courts. This arrangement presented problems obvious to both the courts and the Justice Department.

Congress established the Administrative Office in 1939 and stated its intention to "furnish the Federal Courts the administrative machinery for self-improvement, through which those courts will be able to scrutinize their own work and develop efficiency and promptness in their administration of justice." Since then, under the supervision of the Judicial Conference and the leadership of six directors, the Administrative Office has advanced the Judiciary's legislative agenda with Congress; secured funding to carry on the work of the courts; provided facilities, services, and supplies to support the needs of judicial officers and court staff; collected statistics and reported on the work of the courts; developed and implemented automated systems; and provided program leadership, oversight, and assistance.

Among the Administrative Office's key functions are preparing and submitting the Judiciary's budget to the Congress, and executing the budget. Because of the tight

budget caps for discretionary domestic spending imposed by the Balanced Budget Act of 1997, the fiscal year 2000 budget process was a challenging one for the Judiciary. Originally, neither the House nor the Senate appropriations bills provided enough funding to maintain court operations at 1999 service levels. Administrative Office Director Leonidas Ralph Mecham and his staff, the Judicial Conference Budget Committee Chair Judge John G. Heyburn II and members of the committee, and many others of us within the Judiciary led a successful effort to obtain substantially more appropriated funds than either the House or the Senate had originally allotted.

In the interest of continuing improvement and preparing for future needs, the Administrative Office is currently conducting or overseeing an unprecedented number of strategic studies of Judiciary programs and operations. An independent assessment of the Judiciary's space and facilities program by an outside consultant is under way to make recommendations for future facilities planning, budgeting, and management. Another expert consulting firm will be considering the future information technology needs of the courts and how the Judiciary can best organize and manage resources to carry out its information technology program to meet these needs.

An independent study of the court security program will consider ways to provide adequate security to the Judiciary more efficiently and effectively. Experts will conduct a strategic assessment of the probation and pretrial services programs to make recommendations to ensure the future quality and success of these programs.

Work measurement studies will be used to develop new staffing formulas for the appellate, district, and bankruptcy courts, as well as probation and pretrial services offices. Another study managed by the Administrative Office, the Federal Judicial Center and the Sentencing Commission is assessing judicial branch training needs.

Enhancing communications with the courts remains a high priority for the agency. The Administrative Office is the biggest user of the Federal Judicial Television Network, currently broadcasting 80 hours of live and taped educational and informational programming per month to more than 240 viewing sites located throughout the Judiciary. This year, agency staff redesigned the "J-Net," the Judiciary's intranet web site, making it easier for judges and court personnel to access time-sensitive and important information. Using the Judiciary's data communications network, the Administrative Office has begun sending official Administrative Office correspondence addressed to chief judges and other court executives by electronic mail. This provides for nearly instantaneous communication of important information.

The Administrative Office, working closely with court users, develops, implements, and supports new systems and technologies for the courts. One of the most significant projects under way is to replace automated systems and technology supporting the current case management systems in the appellate, district, and bankruptcy courts. These systems will have electronic filing capabilities, which will allow a court to receive, store, and retrieve documents in an electronic format, potentially reducing paper volume and enabling easier access to case information. In 1999, the agency completed implementation of an automated library management system and launched a web-based virtual law library. A web-based electronic public access network providing the public with access to court records and other information via the Internet was implemented. The Administrative Office is also in the midst of implementing new systems for jury administration, financial accounting, and the processing of criminal justice act payment vouchers.

The Federal Judicial Center

The Federal Judicial Center improves federal court operations through analysis and education.

This year, the FJC's Board, which I chair, selected Judge Fern M. Smith of San Francisco as the FJC's eighth Director. Judge Smith became a federal district judge in 1988. She brings a wealth of experience to the FJC, having served on both the federal and state bench, as well as having chaired the Judicial Conference's Advisory Committee on the Rules of Evidence from 1996-99.

FJC research and education helps the judicial branch deal with vexing policy questions created by modern litigation. FJC education programs provide federal judges the continuing education they need to manage their dockets effectively. They also offer a range of perspectives on complicated areas of the law and non-legal subjects that intersect with the law, such as economics.

To cite but two examples, the FJC's study of mass tort litigation constituted a major element of the volume submitted to me earlier this year by the Judicial Conference's Mass Tort Working Group. Under the direction of a Board of Editors chaired by Judge Stanley Marcus, the FJC is preparing a revision of its frequently used *Manual for Complex Litigation*.

Also, as decisions of the Supreme Court fix the responsibilities of

district judges to determine the admissibility of expert witness testimony, the FJC continues to assist judges in how to exercise these responsibilities. It is completing, for release next year, the second edition of its *Reference Manual on Scientific Evidence*. Over 75,000 copies of the first edition have now been printed by either the government or private publishers. The FJC is also updating its earlier monograph on effective utilization of visiting judges, which will help ensure maximum deployment of judicial resources.

The FJC uses technology to diversify the means by which it meets its responsibilities to educate judges and court employees. In 1999, the great majority of the over 30,000 participants who benefited from FJC education did so through alternatives to traditional classroom programs, thus minimizing travel costs.

The Federal Judicial Television Network, which the Center operates for the Judiciary, broadcast over 1,400 hours of educational and informational programming to federal courts nationwide. For one example, interactive FJC broadcasts helped probation and pretrial services officers supervise defendants and offenders through programs on substance abuse and the pharmacology of drugs.

The FJC has also used technology to promote understanding of federal court history. The FJC's web page will soon include a wealth of historical information, including the first complete list of all federal district and appellate judges and Justices, along with basic information about them and their courts. It will allow scholars and others to answer many questions about the men and women who have served on the federal bench and about the changes in the make up of the federal Judiciary over its 200-year history and in more recent times.

The United States Sentencing Commission

On November 10, 1999, the Senate not only confirmed the President's nomination of U. S. Circuit Judge Diana E. Murphy of Minneapolis, Minnesota, to be the new Chair of the U.S. Sentencing Commission, it also confirmed as new Commissioners Judge Ruben Castillo of Chicago, Illinois; Judge Sterling Johnson, Jr. of Queens, New York; Judge Joe Kendall of Dallas, Texas; Professor Michael O'Neill of Chevy Chase, Maryland; Judge William K. Sessions, III of Cornwall, Vermont; and Mr. John R. Steer of Fairfax Station, Virginia. These seven voting commissioners join ex officio members Mr. Michael J. Gaines and Mr. Laird C. Kirkpatrick. The Commission had been without any voting commissioners since October 31, 1998.

Judge Murphy is a judge of the U.S. Court of Appeals for the Eighth Circuit; Judge Castillo serves as a U.S. district judge for the Northern District of Illinois; Judge Johnson is a U.S. district judge for the Eastern District of New York; Judge Kendall serves as a U.S. district judge for the Northern District of Texas; Professor O'Neill is an assistant professor of law at George Mason University School of Law; Judge Sessions serves as a U.S. district judge for the District of Vermont; and John Steer had previously served as the general counsel of the Commission.

The Commission already has made a preliminary determination to focus its policy agenda on promulgating guideline amendments to implement the crime and sentencing-related legislation enacted by the 105th Congress. The Commission's shortened amendment cycle ends May 1, 2000.

In addition, as it has in the past, the Commission also proposes to resolve a limited number of conflicts among the circuit courts on sentencing guideline interpretation. The Commission is working with the Criminal Law Committee of the Judicial Conference, the United States Department of Justice, and other interested participants in the federal criminal justice system to identify which circuit conflict issues the Commission should resolve this amendment cycle, with the goal of enhancing the consistency with which the guidelines are applied.

In fiscal year 1999, the Commission also received documentation on more than 50,000 cases sentenced under the guidelines.

During fiscal year 1999, Commission staff trained approximately 3,304 individuals at 48 training sessions (including ongoing programs sponsored by the Federal Judicial Center and other agencies). Commission staff continue to work collaboratively with the Federal Judicial Center and the Administrative Office of the U.S. Courts to plan and develop educational and informational programming for the Federal Judicial Television Network. In May 1999, as part of the Commission's effort to address the long-established need for defense bar training, the Commission and the Federal Bar Association once again co-sponsored the Eighth Annual National Seminar on the Federal Sentencing Guidelines. During the year, the Commission's "HelpLine" provided guideline application assistance to approximately 200 calls per month.

In Memoriam

This year, the Judiciary and nation lost a friend and colleague when Harry A. Blackmun passed away on March 4, 1999. Justice Blackmun was appointed to the Supreme Court by President Richard M. Nixon and served from June 1970 until his

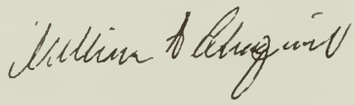
retirement in August 1994. During his 24 years on the Court, Justice Blackmun was careful and meticulous in his judicial work. He was also a thoughtful and compassionate man, who will be remembered for his integrity, his sense of justice, and his exemplification of decency and modesty.

Conclusion

Our judicial experiences in 1999 and throughout the 20th century have confirmed the wisdom of the fundamental structure provided for our government by our founders. It is a system that is capable of adjusting to change without altering its core functions. Although we can no more foresee the technological advances that will come in the 21st century than our predecessors did 100 years ago, we enter the new century with some confidence that the Judiciary can adapt to and utilize those developments based upon our past experiences. To ensure this, however, we must be careful that the fundamental structure of our federal Judiciary is not undermined either through neglecting our judges' needs or by expanding our courts' jurisdiction unnecessarily.

The Judiciary continues to prepare for the challenges it will surely face. I point to the Long Range Plan for the Federal Courts and the 1998 Report of the Commission on Structural Alternatives for the Federal Courts of Appeals chaired by retired Justice Byron White as but two relatively recent examples of forward thinking about the Judiciary.

Chief Justice Melville Fuller observed toward the close of the last century that, "the new century may be entered upon in the spirit of optimism . . . essential to the accomplishment of great ends." On balance, I believe I can make the same observation over 100 years later.



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And the Last Shall Be First...

The Senate confirmation of Judge Richard Linn to the Court of Appeals for the Federal Circuit went right down to the wire in the waning hours of the 106th Congress' first session. "I realized when the Senate confirmed me on November 19, just before they adjourned," said Linn, "that mine would be the last judicial confirmation of the 20th century." He mentioned that historical fact to his 13-year-old nephew, Christopher, whose great grandfather was Judge Orrin Lewis (E. D. Va.) and whose father and grandfather are attorneys. Christopher considered for a moment, then, with the legal acuity he'd obviously inherited, suggested his uncle therefore should be the first federal judge sworn in of the new century.

Judge Richard Linn is sworn in by Chief Judge H. Robert Mayer. Mrs. Patricia Linn holds the bible.

"I proposed to Chief Judge H. Robert Mayer that I be sworn in at the court on New Year's Eve and he was very supportive," said Linn, who couldn't have chosen a better time or location for his ceremony. The chambers of Chief Judge Mayer look out on the Washington Monument, where fireworks and other festivities were scheduled as part of the nation's millennium celebration.

In due course, family and friends gathered in Chief Judge Mayer's chambers. Judge Alan Lourie (Fed. Cir.) had synchronized his watch with the cesium clock in Colorado, to assure to the second the accurate time, and at the stroke of midnight Judge Linn placed his hand on the bible to take the oath. "Just at that moment the fireworks erupted around the Monument," relates Linn. "I was naturally focussed on the oath and making sure I didn't leave out something, but it was difficult with all the fireworks going off." With theatrical flair, a crescendo of fireworks broke over the Mall as Linn finished the oath. "I'll never, ever forget it," said Linn, the nation's first new federal judge in the brand new 21st century.

White House Requests Funds For Year 2001 Courthouses

The early news on the President's fiscal year 2001 budget is that there is about $500 million in the General Services Administration budget request earmarked for the Judiciary's courthouse construction program as well as a new courtroom sharing policy developed by the Office of Management and Budget. The funding is a change of heart for the White House and OMB, which has turned down GSA's requests for courthouse construction funds for the past three years. The action follows a top level White House meeting in December attended by Judges Jane Roth (3rd Cir.) and John Heyburn (W.D. Ky.), and Administrative Office Director Leonidas Ralph Mecham. The decision to fund these urgently needed courthouses also is due to early appeals by judges and Members of Congress with courthouse projects in, respectively, their districts and states. Administrative Office staff conducted a non-stop information campaign directed at congressional staff on why the courthouses are considered necessary. "After

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three years of funding neglect, the list of courthouse construction projects is long and the need for the facilities is even greater," said Mecham. "However, we've done our part to prioritize the projects, each of which adheres to the construction cost-savings and efficiencies of the *U.S. Courts Design Guide*. Now it's up to Congress."

The GSA budget request for courthouses has been reduced from original estimates based on a new courtroom sharing policy, developed by OMB, that would require the sharing of courtrooms at the ratio of two courtrooms for every three judges at a court location. When computing the ratio, the number of judges includes all active, senior, magistrate and bankruptcy judges. The policy affects all projects in the FY01 plan.

In March 1997, the Judicial Conference reaffirmed its policy on courtroom sharing that provides for one courtroom for each active district court judge. With regard to senior judges and to visiting judges, the policy sets forth a non-exclusive list of factors for circuit judicial councils to consider when determining the number of courtrooms needed at a facility. Courts are encouraged to provide for flexible and varied use of courtrooms.

The courthouses for which funding has been included in the President's FY01 budget are

Los Angeles, California.
Seattle, Washington.
Richmond, Virginia.
Gulfport, Mississippi.
Washington, D.C.
Miami, Florida.
Little Rock, Arkansas.

Y2K ? No Worries

So, the year 2000 is here and you're wondering what the fuss was all about.

"For the most part, Y2K was a non-event for the judicial community," Administrative Office Director Leonidas Ralph Mecham reported. "But this is the direct result of the hard work and preparation put into our Y2K efforts by people throughout the Administrative Office and the courts."

Howard Grandier, the Judiciary's Y2K Program Manager, was one of those people. He and his team spent countless hours checking nationwide computer systems and software applications, assisting courts as they made locally modified programs Y2K compliant, and, finally, preparing continuity plans to minimize possible service interruptions.

For Grandier, none of this was a waste of time or manpower. "I know that when we tested our nationally supported Integrated Case Management System, which is used in virtually every federal court, the system would not docket properly for events occurring in 2000. We made it Y2K compliant," said Grandier. "Similar testing was done on all the nationally supported applications, including the personnel/payroll and financial systems, and if they had not been fixed, there would have been problems."

A number of courts conducted system testing on New Year's Day. Judiciary support staff also were on-duty in Washington, as well as in the Technology Training and Support Center in San Antonio, Texas, to respond to any problems. According to Grandier, there were a few Y2K-related glitches reported for the nationally supported applications, but most were actually repaired by the on-site team that worked on New Year's Day.

Hatch Releases Report on Judicial Branch

Citing the special relationship the Senate Judiciary Committee enjoys with the judicial branch, committee chair, Senator Orrin Hatch (R-UT) released a Report on the State of the Federal Judiciary, in the last days of 1999.

Hatch concluded that, "At the end of the first session of the 106th Congress, the federal Judiciary is once again sufficiently staffed and funded to perform its function under Article III of the Constitution."

The report described the year's progress in four areas: the vacancy rate, the Sentencing Commission, funding, and jurisdiction of the courts.

By the end of the first session, the committee could report 56 judicial vacancies, "yielding a vacancy rate of just 6.6 percent—the lowest vacancy level since the expansion of the Judiciary in 1990."

Hatch's report also noted the confirmation in 1999 of all seven nominees to the U.S. Sentencing Commission. After a year without any commissioners, the report said, the commission faces substantial challenges, among them a number of circuit splits over interpretation of the guidelines. The commission also has a number of congressional directives to act upon, including penalties for sexual predators, and for the cloning of wireless telephones.

There was an overall funding increase for the judicial branch in 1999, "despite," Hatch said, "substantial budget pressures facing every branch of government." This modest increase allowed for the payment of a "long overdue" 3.4 percent cost-of-living increase for federal judges, the authority for the Administrative Office to pay increases in premiums for judges

over age 65 under the Federal Employees Group Life Insurance program, and a $5 per-hour increase in the fees paid to panel attorneys for services in representing indigent parties before federal courts.

Funding challenges remain, however. "While current law requires the Executive Branch to submit the Judiciary's annual budget request to Congress 'without change,' the Administration's Office of Management and Budget (OMB) has time after time decreased the Judiciary's current year operating budget request indirectly through the use of negative allowances," Hatch reported. "Moreover, the Administration has zeroed out the Judiciary's reasonable requests for courthouse construction funding for the last several years." Hatch said he joined with fellow Senators Thad Cochran (R-MS), Patrick Leahy (D-VT), Ted Stevens (R-AK), William Roth (R-DE) and Susan Collins (R-ME) to introduce the Federal Courts Budget Protection Act, which will allow the Judiciary to submit its operating budget and courthouse construction budget directly to Congress without approval by OMB.

In the report, Hatch noted that many have expressed concern over action by Congress that increases the scope of jurisdiction of the federal courts, a concern he says is well taken. "Congress should consider the impact on the resources and jurisdiction of the federal courts for each piece of legislation that it passes," the report stated, then went on to cite examples of some of the affirmative steps Congress has taken to reduce the federal caseload. Among these was the Prison Litigation Reform Act of 1995, which Hatch reported has helped to curb the "endless and often frivolous habeas petitions filed by prisoners," and the Antiterrorism and Effective Death Penalty Act of 1996, which has "helped curb the number of redundant habeas petitions that produced years of needless delays in capital cases."

Hatch also said two bills considered last session, H.R. 2112, the Multidistrict Jurisdiction Act, and S. 254, the Violent and Repeat Juvenile Offender Accountability Act of 1999, are examples of "consideration by Congress of impact on the federal courts." For example, S. 254, while it would create new federal crimes, avoids "numerous opportunities to increase federal jurisdiction over juvenile crimes by making grants to state court systems."

Hatch gave fair warning that even as Congress considers the impact of legislation on the courts, it must respond to technological breakthroughs and their consequent impact on national and international commerce with the appropriate legislation. "As the technology-driven economy expands, criminal practices become more sophisticated, and civil justice issues continue to unfold," said the report, "Congress will respond where appropriate to protect the interests of the American people. However, the Committee and Congress as a whole will continue to take into consideration the impact of legislation on the jurisdiction and resources of the federal courts and on our federal system."

USSC Commissioners Begin Work

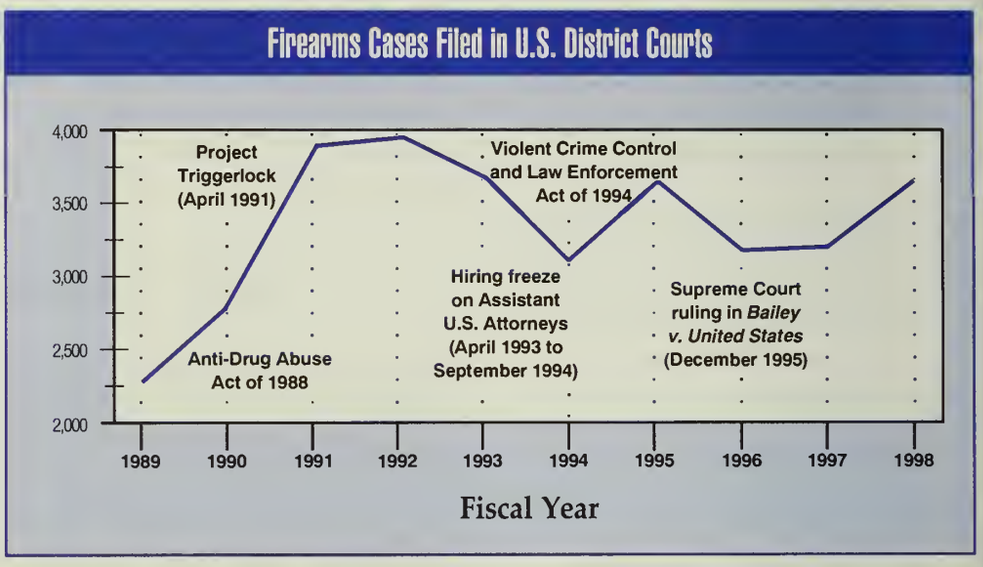
Photo by: Twin Lens Photo

Back at full strength at last, the newly appointed commissioners of the U.S. Sentencing Commission are making up for lost time. The USSC had been without commissioners since October 31, 1998. New members were confirmed November 10, 1999. Standing, left to right, are ex-officio commissioner Laird C. Kirkpatrick; Judge Joe Kendall (N.D. Tex.); vice-chair Judge William K. Sessions, III (D. Vt.); Judge Sterling Johnson, Jr. (E. D. N.Y.); Professor Michael O'Neill; and ex-officio commissioner Michael J. Gaines.

Seated, left to right, are vice-chair John R. Steer; chair Judge Diana E. Murphy (8th Cir.); and vice-chair Judge Ruben Castillo (N.D. Ill.).

Firearms Cases Rise in District Courts

The number of firearms cases filed in the U.S. district courts rose sharply between 1989 and 1991, and fluctuated between 3,000 and 4,000 cases filed per year from 1991 through 1998. By the end of the 10-year period, the number of cases had risen 61 percent, compared to a 25 percent increase overall for criminal cases, according to the Administrative Office. Policy decisions, new federal laws, and a Supreme Court ruling contributed to the fluctuations. By 1998, not only were more firearms cases entering the federal courts, but these cases involved more defendants and they took longer to resolve. With $7 million in fiscal year 2000 for the expansion of firearms prosecution projects and the enforcement of existing federal firearms laws, the impact on federal courts in the immediate future is likely to be significant.



Case Numbers Up

Firearms cases are a significant portion of the criminal caseload in districts throughout the nation, unlike, for example, immigration cases, which are concentrated in the southwest border districts. While the total number of firearms cases fluctuated within a range of 3,000 to 4,000 cases per year between 1991 and 1998, following the significant rise in filings between 1989 and 1991, the overall number of cases, the number of defendants per case, and the time required to close the cases increased.

From 1989 to 1998, firearms cases began to involve more defendants, with the ratio of defendants per case filed rising from 1.11 in 1989 to 1.22 in 1998. At the same time, the median time from filing to disposition for defendants charged with firearms offenses rose from 5.1 months to 7.1 months, an increase of 39 percent. By contrast, the median time for all defendants charged with felony offenses rose 23 percent. With the exception of a nominal decline in 1998, the median disposition time for firearms offenses increased every year, even in the years when the number of filings declined.

Overall, fewer defendants went to trial in district court between 1989 and 1998, even though both the number of defendants convicted and the conviction rate rose during that time. The rate of firearms defendants disposed after jury trials also declined, but at a much slower rate than for other offenses. In 1989, 17 percent of drug defendants were disposed of after jury trials, compared to 14 percent of firearms defendants. By 1998, 11 percent of firearms defendants resolved their cases via jury trials, compared to 7 percent of drug defendants. Defendants who have their cases resolved after a jury trial use significantly more court resources than those whose cases are resolved through guilty pleas or dismissals.

Along with the growing number of defendants per case, the case weight is also an indicator of the resource intensive nature of firearms cases. A case weight of 1.69 for firearms cases demonstrates the amount of time required by judges to resolve a firearms case in comparison to other types of cases. The average civil or criminal defendant would receive a weight of 1.0. The case weight of 1.69 for firearms defendants means that a judge will spend 70 percent more time on a firearms defendant than for the average civil case or felony defendant.

The number of firearms cases has grown significantly since 1989 and it is expected that the number of these cases brought into district court will continue to rise in the near future. Congress has earmarked $7 million from the Department of Justice (DOJ) appropriation for FY00 to "continue and expand intensive firearms prosecution projects, to enforce federal laws designed to keep firearms out of the hands of criminals, and to

enhance existing law enforcement efforts." President Clinton also has announced his intention to make enforcement of existing firearms laws a higher budget priority. Historically, initiatives such as these, including legislation, personnel increases, and changes in enforcement policies have led to more firearms cases filed in the federal courts.

Rise in Case Numbers Follows Legislation, Initiatives

District courts saw the first substantial increase in firearms cases since the 1970s following the passage of the Anti-Drug Abuse Act of 1988. A provision of this act enhanced the penalties for using certain firearms in connection with a crime of violence or drug trafficking. Following passage of the act, 244 agents were added to the Bureau of Alcohol, Tobacco and Firearms, and the DOJ had hired more than 600 additional prosecutors by 1990. These changes were followed by a 71 percent rise in the number of firearms cases filed in district courts in just two years.

A 1991 national policy initiative by DOJ, Project Triggerlock, had a similar effect. The initiative used federal firearms statutes to target the most dangerous violent criminals and it brought many defendants into federal court who might previously have been prosecuted at the state or local level. By 1992, firearms filings had hit what would be their peak within the 10-year period.

Following a DOJ hiring freeze that affected federal prosecutors, and FBI, DEA, Customs, and INS agents, firearms cases plunged for two consecutive years. When the freeze lifted at the end of 1994, filings of firearms cases increased 16 percent in 1995, due to a DOJ Anti-Violent Crime Initiative and the enactment of the Violent Crime Control and Law Enforcement Act. A 1995 ruling by the U.S. Supreme Court may have caused a two-year decline in firearms case filings in 1996. In *Bailey v. U.S.*, the Court held that enhanced penalties for using a firearm during a drug trafficking offense or crime of violence could not be applied unless a defendant actively used a firearm. But by 1998, firearms filings had risen 14 percent, mirroring an overall 15 percent increase in criminal cases.

Judiciary's Goal: Outstanding Service at Reasonable Cost

The Judiciary's continuing effort to operate as cost effectively as possible while maintaining superior service to the bench, bar, and public is documented in the fourth annual *Report to Congress on the Optimal Utilization of Judicial Resources*. Covering fiscal year 1999, the report also discusses initiatives ongoing in or planned for fiscal year 2000.

"The challenge has been to improve services and productivity, while reducing costs," said Administrative Office Director Leonidas Ralph Mecham. "And from very large national projects to more modest local activities, all of our program areas are contributing to the effort."

Among the initiatives for fiscal years 1999 and 2000, and beyond are the following:

Budgetary Actions

- A decision to limit growth in nationwide staffing, given tight government-wide spending levels, reduced the FY00 budget by about $89 million. In addition, in its FY01 budget request, the Judiciary requested only modest increases in court support staff to accommodate growing workload. This reduced the budget request by about $51 million. A decision not to request full-year funding for the new positions further reduced the request by $21 million.

- To minimize an expected funding shortfall in FY00, 189 court units around the country returned nearly $15 million in allotted FY99 funds that would have gone towards hiring needed staff, training, automation projects, and other activities.

Automation and Technology

- Between $11 and $12 million in personnel costs are avoided annually by requiring access only through Judiciary-administered national gateway connections. This national approach also avoids $6.5 million annually in hardware and software costs.

- Blanket purchasing agreements and other competitive contracts reduce the administrative burden on courts of acquiring personal computers and local-area network hardware, which translates to about $50,000 annually in efficiency savings.

- The acquisition of Judiciary-wide software licenses and support agreements produces discounts for large quantity purchases, and

*See **Optimal** on page 6*

Optimal continued from page 5

the Judiciary expects to avoid a total of about $2 million in costs in FY99 through FY01.

- Replacing with modern systems the aging telephone systems in the Thurgood Marshall Federal Judiciary Building and in 20 courts will consolidate service on fewer lines than required by alternative telephone solutions, and yield an annual cost avoidance of about $1.4 million while improving service to the public.

- Implementation of the final software modules of the Integrated Library System, a system for procuring lawbooks and maintaining inventories, enhanced the productivity of court library staff and improved library operations.

- Preliminary survey data show that courtroom technologies that include video-evidence presentation and videoconferencing produce efficiencies for the Judiciary, attorneys, and U.S. Marshals. A June 1998 study confirmed earlier views that technology in courtrooms can facilitate case management and decision-making, reduce trial time and litigation costs, and improve the quality of evidence presentation, fact-finding, jury attentiveness and understanding, and access to court proceedings.

- The increased use by the Judiciary of the Internet and its own Intranet site, the J-Net, has saved time and reduced printing, mailing, and distribution costs, since many national publications now are available on the web. Over 100 court units make available over the Internet filing information, local rules, jury instructions, judicial opinions, motion calendars, and a host of other items. The Internet also allows comments on proposed local rules. Probation and pretrial services officers use the Internet to research defendant histories and investigate cases. Internally, the Judiciary uses the J-Net for posting policies, procedures, manuals, publications, and other information.

Exploring the use of technologies to improve quality and efficiency continues to be a major Judiciary initiative.

- Implementation of one module of the Magistrate Judge Statistics Through Automated Records project produces personnel efficiencies of over $100,000 annually in FY00 and beyond.

- A new Bankruptcy Noticing Center contract expands services provided to the courts in support of the bankruptcy noticing function and reduces costs through a series of price reductions over the 10-year life of the contract. The new contract generated cost avoidances of over $700,000 in FY99. Projected cost avoidances for FY00 through FY03 total $5.5 million, subject to the actual number of bankruptcy filings and associated noticing requirements.

- A Productivity Improvement Exchange Web Site, available nationwide in FY99 for courts, now includes over 380 initiatives to save money, improve productivity, and increase efficiency or effectiveness.

- Software is being developed that will reduce the time spent on data gathering and analysis of demographic and employment dispute resolution statistical data, which may save the Judiciary about $100,000 annually.

- A new National Court Interpreter Database helps courts locate court interpreters speaking a multitude of languages for the over 217,000 court events that required the use of an interpreter in FY99.

- The Telephone Interpreting Program provides interpreter services from remote locations by telephone at about $29 per event, where on-site services ranged from $65 to $135 for a half-day, plus travel costs if the interpreter is not local. Anecdotal evidence shows that customer satisfaction with the Telephone Interpreting Program is high.

- Expanded use of hand-held drug testing devices to detect illicit

FJTN PROGRAM CALENDAR FOR
THE THIRD BRANCH

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MARCH

Adobe Acrobat
March 3, 11:00 a.m.; March 6, 1:00 p.m.; March 14, 8:30 a.m.; March 20, 2:00 p.m.; March 28, 3:30 p.m.

Advances in Drug Abuse and Addiction Research
March 15, 2:30 p.m.; March 16, 3:30 p.m.; March 30, 3:30 p.m.

Agricultural Bankruptcy
March 22, 8:30 a.m.; 1:00 p.m.; March 29, 12:00, 4:00 p.m.

Automated Document Production Program
March 6, 9:00 a.m.; March 31, 2:00 p.m

Avoiding Infectious Diseases
March 31, 12:00 p.m.

Bankruptcy Law Update
March 1, 8:30, 10:30 a.m.; 3:00 p.m.; March 15, 11:30 a.m.; March 22, 11:00 a.m., 2:00 p.m.; March 29, 8:30 a.m.; 1:00 p.m.

Basic Browser Usage
March 7, 2:30 p.m.; March 13, 12:00 p.m.; March 17, 2:30 p.m.

CM/ECF from the Deputy Clerk's Perspective
March 3, 10:00 a.m.; March 14, 11:30 a.m.; March 17, 9:30 a.m.; March 28, 11:30 a.m.; March 31, 3:00 p.m.

Court to Court (March 2000)
March 2, 8:30, 9:30, 10:30, 11:30 a.m.; 12:30, 1:30, 2:30, 3:30 p.m.; March 10, 11:00 a.m.; 4:00 p.m.; March 15, 8:30, 9:30, 10:30 a.m.; March 16, 8:30, 9:30 a.m.; March 23, 10:30, 11:30 a.m.; 3:30 p.m.

Drug Testing: Facts, Research, and Policy
March 16, 10:30 a.m.; March 24, 1:00 p.m.

EDR Procedural Overview
March 7, 8:30 a.m.

EDR Substantive Overview
March 7, 11:30 a.m.

Executive Briefing: Building Management Delegation
March 3, 2:00 p.m.; March 21, 4:00 p.m.; March 31, 11:00 a.m.

Executive Briefing: Travel Regulations
March 3, 8:30 a.m.; March 17, 1:00 p.m.

Federal Retirement Benefits for Court Personnel—Frequently Asked Questions
March 6, 10:00 a.m.; March 20, 9:00 a.m.

Home Confinement
March 6, 12:00 p.m.; March 17, 10:30 a.m.; March 27, 9:00 a.m.

In Camera (February/March)
Every Monday at 8:30 a.m.; every Tuesday at 4:30 p.m.

Introduction to *Sentry* for Probation and Pretrial Services Staff
March 3, 9:00 a.m.; March 13, 11:00 a.m.; March 28, 2:30 p.m.

The Law Clerk Appointment Process
March 21, 1:00 p.m. LIVE; March 31, 9:00 a.m.

Leadership 2000
Session 1: Basic Principles for a Collaborative Workplace, March 30, 1:00 p.m. LIVE

Maximizing Tax Savings Through Use of the Thrift Savings Plan (TSP)
March 28, 1:00 p.m. LIVE

NCIC 2000: Lessons Learned from Implementation in Four Districts
March 21, 11:30 a.m.; March 31, 10:00 a.m.

New Federal Court Reporter Orientation
March 20, 10:00 a.m.

Organization Design in the Courts
March 9, 8:30 a.m.; March 24, 10:30 a.m.

An Overview of Judiciary Compensation
March 7, 1:00 p.m. LIVE; March 13, 10:00 a.m.; March 17, 8:30 a.m.; March 21, 8:30 a.m.

Planning—How Do Your Benefits Meet Your Future Needs?
March 14, 1:00 p.m. LIVE; March 17, 1:30 p.m.; March 21, 9:30 a.m.; March 27, 10:00 a.m.; March 28, 10:30 a.m.

Pretrial Services Investigations and Reports Training
March 3, 12:00 p.m.

Removal Jurisdiction: Hot Topics
March 8, 8:30, 9:30, 10:30 a.m.; 3:00, 4:00 p.m.; March 10, 3:00 p.m.; March 15, 1:30, 4:00 p.m.; March 22, 9:30 a.m.; 4:00 p.m.; March 24, 3:00, 4:00 p.m.; March 29, 10:30 a.m.; 3:00 p.m.

Restitution: Determining Victims and Harms
March 10, 8:30 a.m.

Review of Travel Regulations for Support Staff
March 3, 2:30 p.m.; March 31, 1:00 p.m.

Sentencing Guidelines: Departure Analysis
March 1, 1:00 p.m. LIVE; March 30, 10:30 a.m.

Social Security Benefits for Employees Under Federal Employees Retirement System (FERS)
March 6, 11:30 a.m.; March 13, 9:00 a.m.; March 14, 4:00 p.m.; March 31, 4:00 p.m.

Social Security Benefits for Law Enforcement Officers
March 17, 11:30 a.m.; March 27, 2:00 p.m.

Special Needs Offenders: Reducing Risk Through Employment and Education
March 24, 8:30 a.m.

Structured On-the-Job Training
Part One: March 9, 1:00 p.m. LIVE; *Part Two:* March 16, 1:00 p.m. LIVE; *Part Three:* March 23, 1:00 p.m. LIVE

Supervising Individuals with a Dual Diagnosis
March 3, 3:30 p.m.; March 14, 10:30 a.m.

Survival Spanish
March 8, 12:00 p.m. (Session 1) LIVE; March 10, 12:00 p.m. (Session 2) LIVE

Survival Spanish: Cross-Cultural Training
March 9, 11:00 a.m.; 3:00 p.m.; March 23, 8:30 a.m.; March 30, 8:30 a.m.

Tech Talk: TCP/IP
March 3, 4:30 p.m.; March 7, 2:00 p.m.; March 17, 4:30 p.m.; March 31, 8:30 a.m.

Understanding My Social Security Benefits with a Civil Service Retirement System Annuity
March 6, 11:00 a.m.; March 13, 9:30 a.m.; March 20, 1:30 p.m.; March 31, 11:30 a.m.

WordPerfect 8/9 Macro Basics
Part One: March 6, 2:00 p.m.; March 13, 2:00 p.m.; March 20, 1:00 p.m.; March 27, 3:00 p.m. *Part Two:* March 7, 9:30 a.m.; March 14, 2:00 p.m.; March 21, 2:00 p.m.; March 28, 8:30 a.m.

WordPerfect Document Formatting
March 6, 4:00 p.m.

WordPerfect File Management
March 20, 11:30 a.m.

WordPerfect QuickFamily
March 13, 4:00 p.m.

WordPerfect Templates
March 27, 12:00 p.m.

Your Total Benefits Package
March 14, 9:30 a.m.; March 21, 10:30 a.m.; March 27, 11:00 a.m.

PLEASE POST

VACANCY ANNOUNCEMENTS
THE THIRD BRANCH
Vol. 32 Number 2 February 2000

BANKRUPTCY JUDGES, Eastern District of California, Fresno and Modesto
The U.S. Court of Appeals for the Ninth Circuit is recruiting for two positions on the Bankruptcy Court for the Eastern District of California. Chambers for the new bankruptcy judges will be in Fresno and Modesto, respectively. Service will commence September 2000 (Fresno) and November 2000 (Modesto). Applicants may apply for either or both vacancies. Qualifications include admission to practice, good standing bar membership, and at least 5 years of legal practice. Appointment for a bankruptcy judge is for 14 years, subject to possible reappointment. Salary: $129,996. Vacancy announcement and application forms are available via the court's website at www.ce9.uscourts.gov (click on Acareers@), or at all court clerks' offices in the Ninth Circuit, or by calling, faxing or writing the following numbers or address: voice, (415) 556-6158; fax, (415) 556-6179; mail, U.S. Courts for the Ninth Circuit, Office of the Circuit Executive, P.O. Box 193939, San Francisco, California 94119-3939 (Attn: Bankruptcy Recruitment-Fresno/Modesto). **Application deadline: March 31, 2000.**

BANKRUPTCY JUDGE, District of Massachusetts, Worcester
Applications are now being accepted for the position of U.S. Bankruptcy Judge for the District of Massachusetts at Worcester, Massachusetts, for a 14-year appointment. Salary: $129,996. To serve in this position, a person must be or must become a Massachusetts resident within three months of appointment. This requirement may be waived by the appointing authority upon a showing of good cause. Only those persons whose character, experience, ability and impartiality qualify them to serve in the federal Judiciary should apply. Application forms may be obtained from the Circuit Executive's Office or the Bankruptcy Clerk's Office in Boston, Massachusetts. To apply, please send an application form and full resume showing complete legal experience to Vincent Flanagan, Circuit Executive for the First Circuit, U.S. Courthouse, Suite 3700, 1 Courthouse Way, Boston Massachusetts, 02210. For more information, call Mr. Flanagan or Susan Krueger at (617) 748-9614. **Application deadline: March 3, 2000.**

CHIEF PROBATION OFFICER, Eastern District of Missouri
The U.S. District Court for the Eastern District of Missouri is seeking applicants for the position of Chief Probation Officer. A minimum of six years' management and specialized experience is required. A Juris Doctor or other relevant advanced degree is preferred. Details regarding qualifications are found at our web site, www.uscourts.gov. Salary: JSP 14-17 ($67,489-$177,530) commensurate with qualifications and current salary. Submit one original and four copies of resume and letter of application to Chief Judge Jean C. Hamilton, 1114 Market Street, 1st Floor, St. Louis, Missouri 63101. Telephone: (314) 539-3202. **Application deadline: February 29, 2000.**

CLERK OF COURT, U.S. District Court for the Eastern District of Tennessee
The U.S. District Court for the Eastern District of Tennessee is seeking qualified applicants for the position of Clerk of Court. This is a high-level managerial position under the direction of the court. Applicants must have a minimum of eight years of progressively responsible administrative experience, at least three years of which must have been in a position of substantial management responsibility. A law degree is required. Salary range: $111,631 to $122,263 (JSP-17). To apply please send an original and four copies of an application letter and resume to Chief U.S. District Judge R. Allan Edgar, P. O. Box 1748, Chattanooga, Tennessee 37401-1748. For more information, call (423) 752-5220. **Application deadline: March 15, 2000.**

CHIEF PROBATION OFFICER, Eastern District of Tennessee, Knoxville or Chattanooga
The U.S. District Court for the Eastern District of Tennessee seeks applicants for the position of Chief Probation Officer. Applicants must have a bachelor's degree from an accredited college or university. A degree in a related field is desirable. Applicants must be familiar with the federal sentencing guidelines and have managerial skills. A minimum of six years of progressively responsible experience in the investigation, supervision, counseling, and guidance of offenders in community correction, probation or pretrial programs is required. In addition, six years are required of progressively responsible administrative experience in public service or business, and a thorough understanding of organizational, procedural, and human aspects of managing an organization. Salary: $111,631 - $122,263. Applicants should submit one original and four copies of a letter of application and resume to The Honorable R. Allan Edgar, Chief U.S. District Judge, U.S. District Court, Eastern District of Tennessee, P. O. Box 1748, Chattanooga, Tennessee 37401-1748. **Application Deadline: March 15, 2000.**

drug use by persons under supervision is expected to produce annual savings of about $810,000 in FY99 to almost $2 million by FY03. The devices detect illicit use in less than 10 minutes, versus the 3-4 days of the traditional lab analysis, and cost about $3, compared to $8.40 to send and test at an off-site lab.

Defender Services Program

- The cost-management initiatives in capital habeas corpus cases, including the preparation of proposed defense litigation budgets with the aid of an automated case budget and management program to help anticipate and contain costs, and revised compensation request forms to give judges a complete payment history, have been incorporated into the official procedures guide. In the Ninth Circuit alone, the average annual cost per capital habeas corpus case went from $76,506 in 1996 to $47,675 in 1999. The Ninth Circuit has continued to reduce total costs while the number of representations has been growing.

- The use of national contracts to reduce defender office software costs has avoided costs of $350,000 in FY99 with the same expected in FY00 and beyond.

Court Security

- The development of a manual with consolidated guidelines on security system installation for use by the U.S. Marshals Service and security contractors is expected to avoid costs of about $450,000 in at least three courthouse projects. Additional cost avoidances are expected in new and renovated courthouses.

Education and Training

- Satellite broadcasting of training and informational programming, videoconferencing, and video and computer-based training programs, are expected to avoid significant travel costs in the coming years. For the video and computer-based training programs alone, this could reduce travel costs by about $160,000 annually.

Among the many ongoing or planned projects and programs in FY00, working groups or independent contractors will study and make recommendations on revised staffing allocation formulas, the application of the U.S. Marshals Service court security officers staffing formula, and the effectiveness and efficiency of the space and facilities, court security, automation, and probation and pretrial services programs. Over the next year or more, the Judiciary will begin the conversion of its Data Communications Network from a leased line to frame relay technology to increase speed, and will expand its Public Access Network to give the public better access to court information. Also, the Judiciary is exploring the use of remote technologies to assist in the supervision of defendants and offenders and is continuing to develop the electronic dissemination of information. In another effort, the Judiciary is in the process of implementing nationwide a single financial accounting system that will automate and streamline many financial recording and reporting activities.

Peanut Butter Bungle

Everyone has heard the one about the frivolous prisoner lawsuit filed over being served chunky peanut butter instead of the creamy variety. In fact, a December 1999 *Third Branch* article on the changing trends in prisoner petition filings quoted a congressional source on just such a peanut butter lawsuit. Well, not so fast. Judge Jon O. Newman (2nd Cir.), who is the author of an article* on pro se prisoner litigation, tells *The Third Branch* that particular case was not about preference in peanut butter, but about unfair docking of funds.

"The true facts," Newman wrote in his letter to *The Third Branch*, "are that the prisoner sued because the prison had wrongfully deducted the price of a jar of peanut butter, $2.50, from his commissary account. He had asked to have the wrong jar of peanut butter returned and replaced by what he had ordered, the prison guard took it back and promised to replace it the next day, the prisoner was transferred during the night to another prison, and his account remained debited for the $2.50 item that had been returned."

The money in question may seem inconsequential to most of us, but to a prisoner with extremely limited funds, it is not. However, the more important point, writes Newman, "is that those in positions of responsibility should not ridicule all prisoner lawsuits by perpetuating myths about some of them." Point taken.

*Jon O. Newman, "Pro Se Prisoner Litigation: Looking for Needles in Haystacks," 62 Brook. L. Rev. 519 (1996).

JUDICIAL MILESTONES

Appointed: Ronald M. Gould, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Ninth Circuit, January 3.

Appointed: Florence-Marie Cooper, as U. S. District Judge, U. S. District Court for the Central District of California, November 28.

Appointed: Richard K. Eaton, as Judge, U.S. Court of International Trade, January 3.

Appointed: Joan L. Cooper, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Western District of Kentucky, December 22.

Appointed: Marian F. Harrison, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Middle District of Tennessee, December 21.

Appointed: Jeffrey R. Hughes, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Western District of Michigan, January 6.

Appointed: Kristi D. Lee, as U.S. Magistrate Judge, U.S. District Court for the Southern District of Alabama, January 5.

Appointed: Virginia Anne Phillips, as U.S. District Judge, U.S. District Court for the Central District of California, December 27.

Elevated: Bankruptcy Judge Arthur B. Federman, to Chief Judge, U.S. Bankruptcy Court for the Western District of Missouri, succeeding Bankruptcy Judge Frank W. Koger, January 1.

Elevated: Bankruptcy Judge Judith K. Fitzgerald, to Chief Judge, U.S. Bankruptcy Court for the Western District of Pennsylvania, succeeding Bankruptcy Judge Warren W. Bentz, January 8.

Elevated: Bankruptcy Judge Marcia S. Krieger, to Chief Judge, U.S. Bankruptcy Court for the District of Colorado, succeeding Bankruptcy Judge Charles E. Matheson, January 5.

Elevated: Bankruptcy Judge John C. Ninfo, II, to Chief Judge, U.S. Bankruptcy Court for the Western District of New York, succeeding Bankruptcy Judge Michael J. Kaplan, January 1.

Elevated: Bankruptcy Judge Patricia C. Williams, to Chief Judge, U.S. Bankruptcy Court for the Eastern District of Washington, succeeding Bankruptcy Judge John A. Rossmeissl, June 15.

Senior Status: Court of Appeals Judge Stephen H. Anderson, U.S. Court of Appeals for the Tenth Circuit, January 1.

Senior Status: Court of Appeal Judge James L. Ryan, U.S. Court of Appeals for the Sixth Circuit, January 1.

Senior Status: Judge Patrick A. Conmy, U.S. District Court for the District of North Dakota, January 5.

Senior Status: Judge Alan Cooke Kay, U.S. District Court of the District of Hawaii, January 2.

Senior Status: Judge George M. Marovich, U.S. District Court for the Northern District of Illinois, January 2.

Senior Status: Judge Kenneth L. Ryskamp, U.S. District Court for the Southern District of Florida, January 1.

Senior Status: Judge George Kendall Sharp, U.S. District Court for the Middle District of Florida, January 1.

Senior Status: Judge John E. Sprizzo, U.S. District Court for the Southern District of New York, January 1.

Retired: Bankruptcy Judge Roland J. Brumbaugh, U.S. Bankruptcy Court for the District of Colorado, January 3.

Retired: Magistrate Judge John E. Dougherty, U.S. District Court for the Northern District of Georgia, January 1.

Retired: Magistrate Judge George T. Swartz, U.S. District Court for the Middle District of Florida, January 7.

Deceased: Senior Judge Charles M. Allen, U.S. District Court for the Western District of Kentucky, January 4.

Deceased: Bankruptcy Judge William J. O'Neill, U.S. Bankruptcy Court for the Northern District of Ohio, January 12.

Deceased: Senior Judge John M. Shaw, U.S. District Court for the Western District of Louisiana, December 24.

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JUDICIAL BOXSCORE

As of February 1, 2000

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Nominees	1
District Courts	
Vacancies	5
Nominees	1
Courts with Judicial Emergencies	2

For more information on vacancies in the federal Judiciary visit our website at www.uscourts.gov.

Slicing the FY 2000 Budget Pie

P.L. 106-113, the Consolidated Appropriations Act, appropriated $3.94 billion to the Judiciary for fiscal year 2000. This included a reduction for all federal agencies of .38 percent, which reduced the Judiciary's appropriation by approximately $14 million from the earlier conference agreement. Following the review and approval of the financial plans by the Judicial Conference Executive Committee, the funding provided to the courts of appeals, district courts, and other judicial services is divided up in support of staffing, services and programs.

Ninety-five percent of the FY00 budget (Figure 1) funds the courts of appeals, district courts, and other judicial services. The remaining 5 percent is divided between the Supreme Court, the Court of Appeals for the Federal Circuit, the Court of International Trade, the Administrative Office, the Federal Judicial Center, payments to the Judiciary Trust Fund, and the U.S. Sentencing Commission.

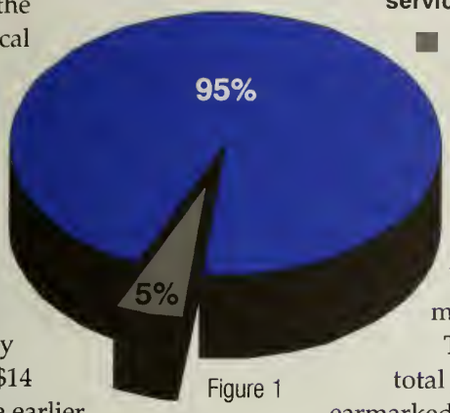

Figure 1

The 95 percent of the total Judiciary budget earmarked for the courts and other judicial services can be broken down further (Figure 2). Eighty-three percent is allocated to court salaries and expenses. Ten percent is for the operation of the federal public defender and community defender organizations, compensation for private attorneys representing indigent defendants, and fees of persons providing investigative, expert, and other services. Five percent of the funds going to the courts provides for court security; the procurement, installation, and maintenance of security equipment; and protective services including court security officers for the courts. With this funding, the U.S. Marshals Service administers the Judicial Facility Security Program. Two percent pays for fees and expenses of jurors.

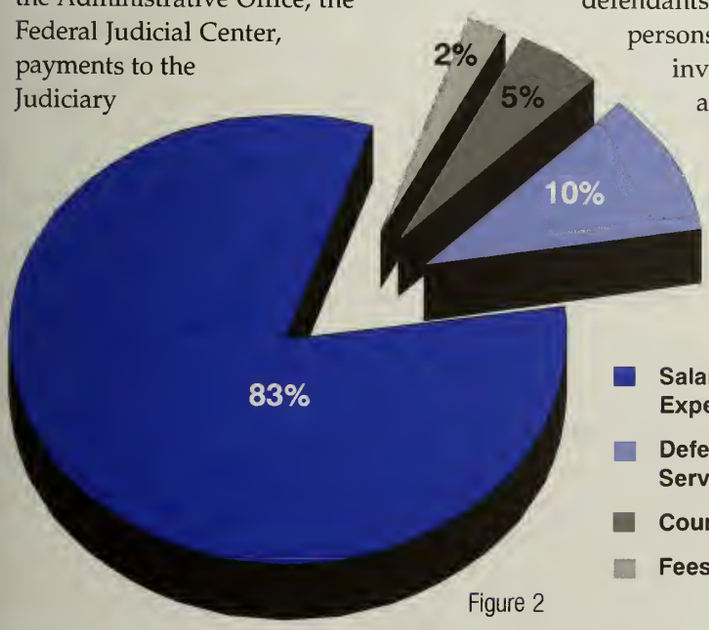

Figure 2

The 83 percent allotted to court salaries and expenses is further divided. (Figure 3) Fifty-two percent is allotted for the salaries and benefits of court personnel. Twenty-two percent goes to space and facilities, including space rental costs charged by General Services Administration; 9 percent for judges' salaries and benefits; and 10 percent for court operating expenses, including court support programs. Automation and technology in the courts receives 7 percent of the salaries and expenses pie and 1 percent is devoted to other court programs and reserves.

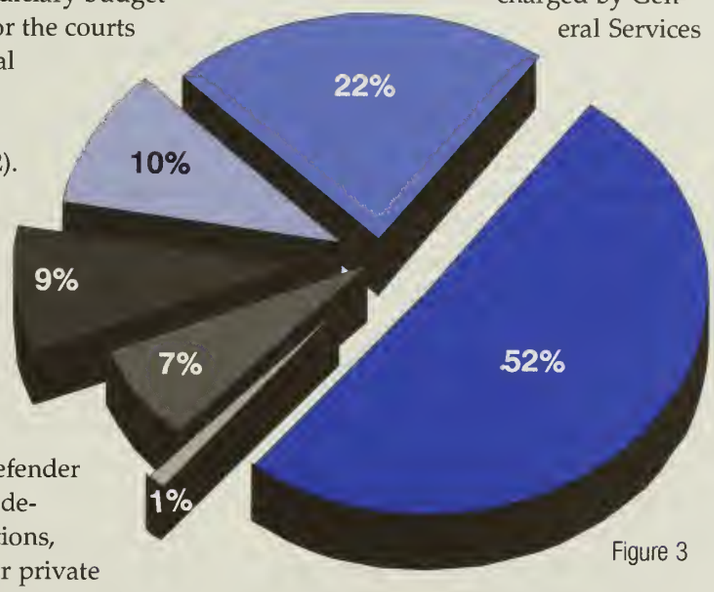

Figure 3

USMS Director John W. Marshall Talks Security

John W. Marshall was sworn in as the Director of the U.S. Marshals Service on February 1, 2000. He was previously U.S. Marshal in the Eastern District of Virginia, and he is the first black director of the USMS.

Q: What do you see as the most immediate challenge facing the United States Marshals Service (USMS)?

A: I'd like to break that down into internal and external challenges. Without a doubt, internally, the greatest challenge that I'm dealing with is our budget. Last year we were faced with a budget shortfall, which included a hiring freeze that has affected all of our offices.

It was clear we needed to change the way we formulate and execute the budget. This year, we've started a whole new budget review process we're calling a bottom-up review. We have support for this new program from the Hill and from the Department of Justice. We're looking at our headquarters components. Then we're going to be looking at our districts to see exactly the services provided and the amount of resources—monetary and staffing—needed around the country. Our bottom-up budget review is going to turn around the way that we ask for resources and lay a better foundation for requesting those resources. We're creating a new model for our districts to request resources, and with the terrific feedback we've received on this process, we think we're on the right track.

Externally, we're trying to be as proactive as we can with regard to our primary mission of protecting the federal Judiciary. As was evidenced last year with all the preparations for Y2K and the increase in the number of terrorism cases and terrorism-related threats, that's an area we need to concentrate on and do everything we can to be prepared.

An excellent train-the-trainer program that we have under way deals with the threat of chemical weapons. The trainers will go back to the districts to provide training to the court family on those types of threats. It's our job to be the leader in protecting the Judiciary, and to provide training to the court family as to what they can expect, how they should respond, and how we are going to respond.

I'm very honored to be in the position I am. I look forward to working with the Judiciary, to working with the Administrative Office, to make sure we're doing everything we can to safeguard and protect the federal Judiciary and the judicial system.

Q: You are the first U.S. Marshal to become Director of the U.S. Marshals Service. How has your previous experience prepared you for your role as Director?

A: Twofold. I have about 5 1/2 years of experience as a marshal in the Eastern District of Virginia, a very large and busy district. I've learned a lot about the U.S. Marshals Service and our role. In addition to overseeing a district operation, I've had quite a lot of dealings with our headquarters in Northern Virginia. I was chairman of the Leadership Council, which is a combination of U.S. Marshals and chief deputies from around the country, and I served in an advisory capacity to the U.S. Marshals Service Director. I've also been attending the Director's senior staff meetings for over a year. So I have a good feel for the Marshals Service operation in the field, in addition to knowing how the Marshals Service headquarters works. I also bring 14 years of experience with the state police in Virginia. Our deputies, our districts around the country, and even our headquarters to a certain extent, interact everyday with other local, state, and federal agencies in our fugitive investigations, our asset forfeiture program, and other programs. I bring a good mix of experience dealing with the federal Judiciary and agencies as a district marshal, along with my 14 years with the state police.

John W. Marshall

Q: What are the responsibilities and priorities of the USMS?

A: In addition to protecting the federal Judiciary, we obviously have a lot of other programs that we're involved in and that we're also very proud of. Probably the one that is most publicized is fugitive apprehension. I think that without a doubt we are the best in the country in doing that. We annually arrest more federal fugitives than all the other federal law enforcement agencies combined.

In the 20 years the witness security program has been in existence, we've

never lost a protected witness who followed the rules and stayed in the program. We've made tremendous strides in increasing the efficiency of our asset forfeiture program. We transport prisoners daily and it's a very efficient system. As a matter of fact, I recently visited our operation in Oklahoma City that is the hub for moving all the prisoners around the country.

I'm certainly very proud of all the operations that we conduct, but we were created with the federal Judiciary in the same act, and we have not lost sight that protecting the federal Judiciary remains our core responsibility.

Q: How would you assess the overall security of federal courthouses?

A: We go, I think, from one extreme to another. For example, in the Eastern District of Virginia, when I began in 1994, we were in a very beautiful, historic building in Old Town Alexandria. But as far as security, that building was a nightmare. There was no sally port; we unloaded prisoners right on the sidewalk. There was one elevator, no secure prisoner corridors, and just a lot of things that made our job very difficult. We went from that into the new Albert V. Bryan U.S. Courthouse in Alexandria in 1996, which has a secure sally port, separate prisoner transportation routes through the building, routes for the Judiciary and routes for the public, along with all other kinds of security. We really went from one extreme to the other, and saw the value of the latest in technology and security.

Unfortunately there still are a lot of courthouses around the country, a lot of the older courthouses, that are not set up structurally to adequately adjust to our security requirements. So that remains a concern and we certainly depend on Congress to fund security-related measures. I'll look forward to working with them because I know that ultimately the security of the Judiciary, the courthouses, and the court family, and the public is my responsibility and I'm going to do everything I can to improve that nationwide.

Q: What are some of the other challenges facing the judicial security program?

A: As I mentioned, we are dealing with threats of terrorism and threats directed toward members of the Judiciary. Our threat assessment system is very sophisticated. One of the first meetings I had, even prior to my confirmation as director, was with the threat assessment group. When I was a Marshal at the district level, we sent several inappropriate communications we'd received up here to headquarters for analysis. But I'd never really known what took place once that report made it to headquarters. The threat assessment group walked me through the process and I can assure the members of the Judiciary that when those types of communication are reported and forwarded to our headquarters, they are closely scrutinized. We have a very sophisticated system that gives us guidance as far as the level of the threat and taking appropriate action. That's one area in which we are very proactive and the Judiciary can have confidence in that program.

As far as other challenges that we face, we also are dealing with some staffing shortages, around the country. In the past, we haven't done a really good job of supporting our staffing request and that's why I'm confident that with this new budget process we're going to be able to better justify our resource request.

Q: The Marshals Service protects judges and courthouses. Has the nature of this work changed over the years and if so, how?

A: In the time I've been here, I think the number of threats has gone up. But a lot of that also may be attributed to getting the word out to the Judiciary that to be a threat it doesn't have to be direct, it may be anything that you deem an inappropriate communication. So that probably has a lot to do with the overall number of threats going up.

In the last five years, there has been an increase in dealing with terrorism around this country. I'll never forget: I was in a meeting of our court's security committee when the Alfred P. Murrah Federal Building was bombed in Oklahoma City. I think that incident in itself really shows the extent of terrorism and that we really need to be doing everything we can to safeguard our facilities and our Judiciary.

Q: Courts on the southwest border of the United States are experiencing huge caseload increases. What impact does this have on the Marshals who serve those districts and what is being done about it?

A: As far as my priorities, right below the budget and staffing problems, are the problems that we're dealing with in the southwest border districts. I've met with those five border marshals because I know they are going through a tough situation down there. As it is now, those five districts handle at least a third of our total prisoner population of all 94 districts. The Western District of Texas is averaging between the high 2,800 to 3,000 prisoners for that district alone. The Southern District

*See **Interview** on page 12*

Interview continued from page 11

of California is very close behind them. It has really taken its toll on us, both on the administrative side, which often is overlooked, and also operationally. In one district alone they're using between 40 and 50 different facilities to house prisoners. There's a lot of mileage involved. There's a lot of cost involved with paying for guards to help us move these prisoners, along with the hours put in, and the security problems related to that high volume of prisoners. So, it is a serious problem. As I said, we are operating under a limited hiring freeze, but recently I authorized 17 administrative positions to be distributed among those five districts to start to address their problems. We're also going to be making some requests to help out on the operational side.

Q: Have you outlined any initiatives you'd like to pursue during your tenure as Director?

A: In addition to the budget, and dealing with the border districts, there are some other issues that we are looking at. One of them is our promotional system. In the system we have in place now, it is time-consuming to fill a promotion. Our human resources division is working with some people from the field to see if we can streamline that process. For instance, if we have a chief deputy opening, right now we fill that opening and then, several months down the line, we fill the opening that that person left, and on down the line. So it takes at least a year to finally fill all the positions. I'd like to streamline that to where I can possibly fill all those promotions at once off a national list. We're exploring the feasibility of that, and I'd like us to move toward a little more efficient system for promotions.

We also have a funding issue, to make sure we have adequate funds to move these people when they are promoted. Once again, it's all budget driven.

We depend on vehicles nationwide, and we're driving a lot of high mileage vehicles. That is an area where we're really going to be making a push for funding. I met with Attorney General Reno on this, and she told me that putting our people in safe vehicles is very high on her priorities. I'm trying to work on ways to help support her efforts to make sure our vehicle fleet is a safe fleet.

THE THIRD BRANCH

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Southwest Border Courts' Situation Alarms Judiciary

Chief Judge Carolyn Dineen King (5th Cir.), at the podium, helped kick off the conference at which judges and court staff met to discuss solutions to the southwest border courts situation.

Chief probation and pretrial services officers talked about "shoveling cases" and "assembly line" justice. Judges worried aloud if, driven by necessity, cutting corners was good for the system. In the vernacular, that's the dilemma faced by the southwest border courts. Over 130 federal judges, chief probation and pretrial services officers, and clerks from the five district border courts met February 14-15 to discuss the worsening caseload situation in their courts and, hopefully, to find solutions. They also heard from a U.S. Senator who supports more resources for courts, prosecutors and prisons to handle the tidal wave of cases resulting from increased border anti-crime initiatives. The participants-only meeting was organized by the Administrative Office and the Federal Judicial Center, but the impetus for the meeting came from the judges themselves, led by Chief Judge Carolyn Dineen King (5th Cir.).

They came from the Southern and Western Districts of Texas, the District of Arizona, the District of New Mexico, and the Southern District of California; these are the courts where 26 percent of all federal court criminal filings—mostly drug and immigration cases—are now concentrated. According to some estimates, by the year 2002 the five southwest border districts will handle almost a third of all federal criminal cases in the entire United

*See **Border** on page 7*

Computer Security: How Safe Are We?

It's no news that the hackers are out there, and cyberattacks are on the rise. Last month, the Environmental Protection Agency took down its website to protect itself against hackers, and even the Department of Justice website has been "hacked." White House officials met last month with leaders of Internet and e-commerce companies, civil liberties organizations and security experts to announce actions to strengthen the Internet and computer network security, and Congress expects to hold hearings this session on computer security. The Attorney General has asked Congress for $37 million to expand Department of Justice staffing, training, and technological capabilities to fight against computer crime.

Where does the Third Branch of government stand in terms of its own cybersecurity?

In a way, the concern for computer security is a measure of how far the Judiciary has come in the acquisition and use of computer technology. A dozen years ago, the emphasis was on making personal computers widely available. Easy access was key,

*See **Cybersecurity** on page 2*

INSIDE

Cybersecurity continued from page 1

and passwords were seldom required. Sharing PCs was common.

Today, the Judiciary is connected by its PCs over a data communications network (DCN). The courts are opening up to a wide world of electronic case filing, electronic bankruptcy noticing, virtual libraries, electronic mail, and access to the Internet. Judge Royce C. Lamberth (D.D.C.), who has been involved with his court's Committee on Automation Policy since its earliest days, says that is the problem. "We have created a virtual world that is available to us at our desktops," said Lamberth. "But, therein lies the rub. With the entire world connected to us, we are more susceptible than ever to the risk of malicious actions by the many computer savvy individuals who will attempt to break into our systems."

Judge Edward W. Nottingham (D. Colo.), chair of the Judicial Conference Committee on Automation and Technology, agrees that with the expansion has come the realization that the Judiciary is vulnerable. "Our committee has been concerned with computer security for a long time," Nottingham said. "Among other measures, we've limited access to the Judiciary's Data Communications Network, and we've required internal access to the Internet through our approved gateways. We're taking precautions, but we're not allowing ourselves to become complacent. When major Internet sites can be disrupted by hackers as they have been recently, we need to stay vigilant." Nottingham recently formed a new subcommittee to focus on computer security matters across the country for the Judiciary.

Lamberth cautions that it is not just the hackers of the world who should concern us. Lax security by friends and court associates anywhere on the DCN can easily compromise information systems. According to a 1998 Computer Security Institute survey, 80 percent of reported security breaches were committed by employees or ex-employees. Some of these security breaches may be accidental or committed innocently enough: sharing a password with an unauthorized person, allowing easy access to PCs with sensitive information, maintaining "always on" Internet access, downloading free software applications incompatible with the operation of local PCs, or downloading files from a diskette or e-mail that contain a virus. Nothing malicious, yet all are abuses or outright breaches of security.

What can a court do? Start by assessing current security. In 1994, the courts of the District of Columbia Circuit asked the National Security Agency (NSA) to assess the security of its information systems. The study revealed areas the courts needed to address. But it doesn't take a computer whiz to pinpoint and deal with security threats. The D.C. District Court was among the first to establish a committee structure in which judges, unit managers, and technical staff come together to address the issues raised by the technological changes. The group follows five basic principles, as outlined by the General Accounting Office and later endorsed by the AO in information bulletins: assess security risks and determine needs; establish a central management focal point; implement appropriate policies and related controls; promote security awareness; monitor and evaluate policy and control effectiveness.

"Information technologies and security issues present a bewildering array of new and quickly changing concepts and terminology," said Lamberth, "that leave many of us inclined to defer these issues to our technical employees." He advises that it is not necessary to understand all the technical issues to properly manage the processes and procedures to protect critical information. The D.C. courts used the NSA study as a risk assessment tool and as a starting point for managing security improvements. Lamberth also suggests that courts share security concerns with employees. He points out that information security has not traditionally been a clear employee responsibility but that employees should be aware of their accountability.

The AO created the Computer Security and Independent Testing Office in 1996 to increase the focus on computer security. In keeping with the GAO principles, the office became the Judiciary's manage-

*See **Cybersecurity**, next page*

Computer security issues are very complex. The Administrative Office recommends that courts begin to address these systematically:

- Make computer security a priority perhaps under the auspices of an IT committee.
- Assign responsibilities for computer security at the unit and the court level.
- Draft and implement a written computer security policy for the court.
- Train all court employees on the policy and enforce it.
- Throughout the process, assess the risks, initially by reviewing the primary areas for improving security found on the computer security page of the J-Net.
- Report all real and suspected computer security incidents to the AO.
- Keep the policy up-to-date with the risks and countermeasures available.

Courts with questions or concerns about security issues may contact the AO's Office of Computer Security and Independent Testing for assistance.

Congress is Back and Busy

Official word is that in this presidential election year, Congress intends to end the second session of the 106th Congress October 6. So the push is on to accomplish as much as possible. Judicial confirmations and legislation on bankruptcy reform, victims' rights, private property rights, and asset forfeiture are a few of the areas in which Congress has acted.

Judicial Confirmations

The Senate confirmed Marsha Berzon and Judge Richard A. Paez (C. D. Calif.) to the Ninth Circuit, ending a wait that for Paez had stretched into four years. Paez was first nominated to the circuit in 1996, Berzon in 1998. By early March, this brought the total of judicial confirmations to a total of seven. The White House has sent three court of appeals and four district court nominations to the Senate for consideration. Conventional wisdom says that in an election year the pace of confirmations will slow, as Congress waits to see who will sit in the White House.

Bankruptcy Reform and Crack Cocaine

As expected, one of the first actions in the Senate in the new session was the consideration and passage of S. 625, the Bankruptcy Reform Act. The bill is expected to be conferenced with its House counterpart, H.R. 833, which was passed during the first session. Both bills contain provisions that would create 18 temporary bankruptcy judgeships and extend existing temporary bankruptcy judgeships in five districts. The Judicial Conference has urged the creation of 13 permanent and 11 temporary bankruptcy judgeships. The bill also contains a provision equalizing the penalties for crack and powder cocaine, by increasing the penalties for powder cocaine.

Private Property Rights

The Judicial Conference has made its concerns known to members of the House Judiciary Committee regarding H.R. 2372, the Private Property Rights Implementation Act of 2000. The House bill was introduced last session, as was a similar bill in the Senate, S. 1028, the Citizens Access to Justice Act of 1999. Both bills are intended to expedite access to the federal courts for injured parties whose rights and privileges under the Constitution have been deprived by agency actions at either the federal, state or local government level. Both bills could bring large numbers of takings cases into the federal courts, increasing judicial workload and contributing to backlogs. The House Judiciary Committee marked up H.R. 2372 in early March.

In a letter to Judiciary Committee members, the Judicial Conference noted that the House bill "would alter deeply ingrained federalism principles by prematurely involving the federal courts in regulatory proceedings involving property that have historically been decided by state and local administrative bodies or courts. By relaxing the current requirement of ripeness in takings cases and limiting a federal judge's ability to abstain from hearing certain cases, the bill also may adversely affect the administration of justice and delay the resolution of property claims."

Asset Forfeiture

During the first session, the House passed a civil asset forfeiture reform bill, H.R. 1658, sponsored by Judiciary Committee chair Henry J. Hyde (R-IL), that would substantially alter the rights of individuals from whom property has been seized by federal law enforcement agencies. Included among new rights that would be granted to indigent claimants is a right to appointed counsel funded by the Judiciary's Defender Services appropriation.

The Senate Judiciary Committee now has two forfeiture bills under consideration: S. 1931, introduced by committee chair Orrin G. Hatch (R-UT) and co-sponsored by ranking minority member Patrick J. Leahy (D-VT); and S. 1701, introduced by committee member Jeff Sessions (R-AL) and co-sponsored by committee member Charles Schumer (D-NY). S. 1931 would provide for appointed counsel for indigents, but only in those cases in which the seized property is the primary residence of the claimant or in which the claimant has been appointed counsel in a related criminal case. S. 1701 does not provide for appointed counsel for claimants.

Cybersecurity continued from page 2

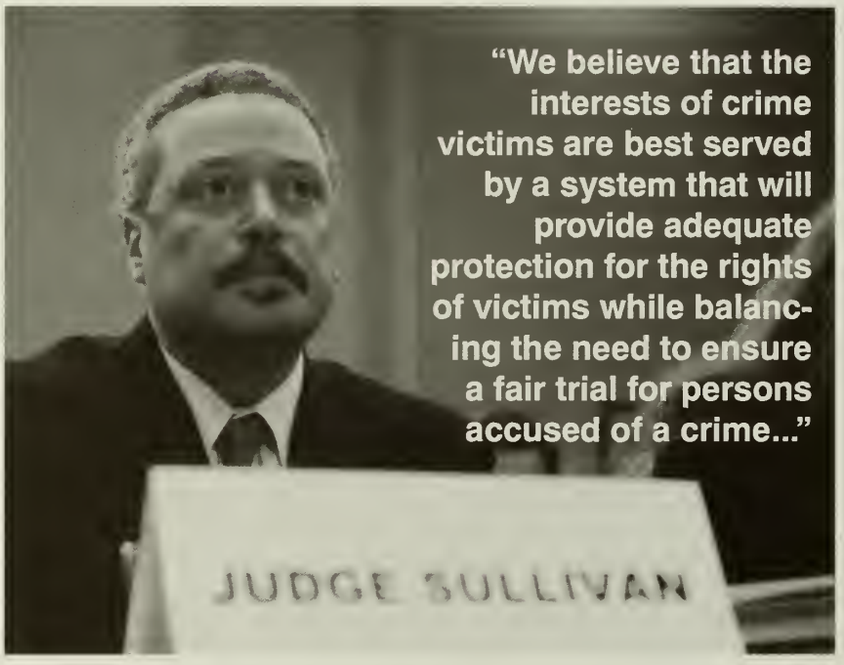
ment focal point for computer security policy issues. "One aspect of our mission," said office chief Frank Dozier, "is to assess overall court vulnerabilities. In part, we've accomplished this by performing joint NSA/AO information security assessments in several courts, which resulted in a document noting primary areas for improving computer security in courts." The CSIT Office has published an information bulletin for the courts that strongly encourages them to implement certain administrative controls regarding computer security. Dozier also noted that the computer security webpage on the Judiciary's Intranet website, the J-Net, has a number of items courts can use to assist them, including a list of ways to improve security and copies of computer security policy documents formulated by several courts. A Computer Security Handbook section, which when completed will provide online information on computer security topics, also is under construction.

Conference Urges Statutory Approach to Crime Victims' Rights

A representative of the Judicial Conference last month urged the House Subcommittee on the Constitution to pursue a statutory approach to a crime victims' rights initiative as opposed to a constitutional amendment. "A statutory approach," said Judge Emmet G. Sullivan (D.D.C.), "would allow all participants in the federal criminal justice system to gain experience with the principles involved without taking the unusual step of amending our nation's fundamental legal charter, with its concomitant application to the various state systems." Sullivan, a member of the Judicial Conference Committee on Criminal Law, chairs the Committee's Legislative Subcommittee.

In March 1997, the Judicial Conference resolved to take no position at that time on the enactment of a victims' rights constitutional amendment, but subsequently strongly endorsed a statutory approach over adoption of a victims' rights constitutional amendment. H.J. Res. 64, as introduced in the House, would amend the Constitution to protect the rights of crime victims.

Subcommittee chairman, Representative Charles T. Canady (R-FL) convened the hearing to hear both sides of the constitutional amendment argument. "Despite the growing number of federal and state statutes and state constitutional amendments that extend rights to victims of crime," said Canady in his opening statement, "victims' rights advocates contend that such measures provide an inadequate patchwork of protections. . . .Opponents of a victims' rights amendment argue that crime victims are already adequately protected and that a federal constitutional amendment could conflict with constitutional rights afforded to criminal defendants."



"We believe that the interests of crime victims are best served by a system that will provide adequate protection for the rights of victims while balancing the need to ensure a fair trial for persons accused of a crime..."

Five members of Congress testified, including Representatives James A. Barcia (D-MI) and Steve Chabot (R-OH), who co-sponsored H.J. Res. 64, and Senators Dianne Feinstein (D-CA.) and Jon Kyl (R-AZ.). Last session, the Senate Judiciary Committee endorsed the Crime Victims' Rights Constitutional Amendment, co-sponsored by Kyl and Feinstein.

Representative Robert C. Scott (D-VA) shared his views on the proposed amendment. "I believe we should be extremely reluctant to amend the Constitution in general, and the Bill of Rights in particular," said Scott. "Amending the Constitution should only occur in those rare instances where there exists a compelling need to establish rights that cannot be established by other means. . . .It is my understanding that all 50 states either have a victims rights constitutional amendment or victims rights statutes, so that virtually every provision in the proposed federal constitutional amendment is already law in 50 states. So we have a question of exactly which provisions need a constitutional amendment."

Testifying in support of a constitutional amendment was Andrea Rehkamp, the Executive Director of the Southwestern Ohio Chapter of Mothers Against Drunk Driving, described as the largest crime victims' assistance organization in the world. She argued, "As long as defendants' rights are specified in the U.S. Constitution and victims' rights are specified in state-by-state statutes, the victims' role in the justice system will always be that of second-class citizen."

In his testimony, Sullivan told the subcommittee that "the members of the federal Judiciary, like all Americans, share a profound concern for the victims of crime. . . . However, we believe that the interests of crime victims are best served by a system that will provide adequate protection for the rights of victims while balancing the need to ensure a fair trial for

persons accused of a crime but who are presumed to be innocent. That is our goal. It is one we should share together."

While H.J. Res. 64 appears to have less potential adverse impact on the federal Judiciary than previous amendment proposals, according to Sullivan a number of fundamental concerns remain. Among the most important of these are the kinds of crimes and victims to which the amendment will apply, the remedies for violations of the proposed rights, the implications that enforcement of the proposed rights have for our federal system, the need for exceptions to the proposed rights necessitated by considerations of the administration of justice, speedy trial rights of victims, and the allocation of responsibility for providing notice to victims.

"Many of the principles contemplated in H.J. Res. 64 represent a significant change in our criminal justice system, literally realigning the interests of defendants and victims, as well as the process by which criminal cases are adjudicated," Sullivan told the subcommittee. "The rights and protections heretofore afforded to citizens under the Constitution were largely part of the fabric of the law, well-known and understood by the Founding Fathers, while many of the concepts in the victims' rights area are largely untested, at least in the federal system. It could conceivably take years for a settled body of law and judicial administration to evolve. A statutory approach would accommodate this process."

Sullivan told the subcommittee that a statutory approach would also diminish or eliminate federal court involvement in the operations of the state criminal justice systems that would occur under a victims' rights constitutional amendment. Finally, unlike a constitutional amendment that could take years to ratify, a statutory approach is more certain and immediate, an advantage to victims.

Bruce Fein, former Associate Deputy Attorney General, Department of Justice, also testified in opposition to a constitutional amendment, calling it "gratuitous." "Nothing in the Constitution or in U.S. Supreme Court precedents handcuffs either Congress or the states in fashioning victims' rights statutes. . . ," said Fein. He also addressed the pro-amendment argument that state laws are disrespected or otherwise deficient. While admitting that there may be some truth in the first charge, Fein said, "The charge of deficient victims' rights laws seems unpersuasive, simply a shorthand for complaining that everything demanded by the victims' rights lobby was not incorporated by various legislative bodies." Finally, said Fein, "prudence should be the touchstone for all constitutional amendments, and by that measure H. J. Res. 64 has nothing to commend."

Judicial Business As Usual

Last year, says Senior Judge Max Rosenn (3rd Cir.), was one of the busiest in his career. That's a career in which he's heard over 4,000 cases, not counting those he mediated. "Fortunately," said Rosenn, "I get to the office every day." We all should be that energetic when we turn 90.

Senior Judge Max Rosenn (3rd Cir.)

On February 4th Rosenn observed his birthday and officially joined the ranks of nonagenarians. But he saw no reason to slacken the judicial pace. In celebration, he participated in a three-judge panel with Chief Judge Edward R. Becker, and Judge Marjorie O. Rendell, hearing arguments in a case. Becker and Rendell were in Philadelphia while Rosenn participated in the panel by videoconference from the William J. Nealon Federal Building and Courthouse in Scranton, Pennsylvania. "The [videoconferencing] technology is very useful under the circumstances," said Rosenn, who may be a role model for anyone who thinks they are too old to adopt new ways. Afterwards, the court family at Scranton celebrated his birthday with cake, before Rosenn flew off to a family reunion in South Carolina.

Rosenn was appointed to the Third Circuit Court of Appeals in 1970, taking senior status in 1981.

Report on Federal Law Enforcement Wants to Reverse Federalization Trend

Federalizing common crimes—crimes that historically were the responsibility of state and local law enforcement agencies—has placed U.S. society in danger of having federal law-enforcement resources spread much too thinly, according to a report to Congress from the Commission on the Advancement of Federal Law Enforcement. The commission was established in 1997 by the Antiterrorism and Effective Death Penalty Act to review and make recommendations to Congress on federal law-enforcement priorities for the 21st Century. It submitted its report to Congress last month.

While finding that federal law-enforcement agencies are among the finest in the world, the commission believes that several challenges threaten law enforcement's capacity to maintain and improve its system. It concluded that better coordination of law-enforcement operations and some consolidation of agencies is necessary; additional resources are required to combat terrorism; law enforcement needs to focus and coordinate its attack on global crime to match the sophistication of the drug cartels; and agency professionalism, integrity and accountability can be improved. Of particular interest to the Judiciary was the finding that the growth in the number of crimes considered federal is "startling," warning that if the trend continues, "the United States will develop the type of national police force that we have traditionally avoided."

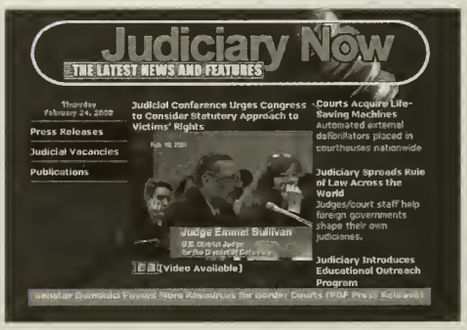
The commission said that "nearly 200 years of additions and revisions to the Federal Criminal Code have created an unwieldy and complex body of law, riddled with overlap, redundancy, inconsistencies, and unnecessary accretions." This situation "threatens to overwhelm federal law-enforcement capacities, just as dramatic and serious new law enforcement challenges grow in intensity." Steps must be taken to repair the damage to the law enforcement community at the federal, state and local levels caused by federalization of common crime.

"We recommend that Congress and the President enact a new Federalization Prevention Act," the report says, "to minimize federal intrusion into state and local law enforcement and reverse the recent trend toward federalizing crime." As part of the act, the commission advocates a review of the Federal Criminal Code (Title 18) over a five-year period to recommend changes. In addition, new provisions that define crimes as federal would expire after five years unless Congress acted to extend the definition.

Attorney General Janet Reno, who took exception to the commission's recommendation to consolidate agencies, told reporters at a weekly news briefing in February that it is important for there to be appropriate attention to federalism, recognizing that state and local law enforcement are on the front line and that they know their communities' needs and resources better than the federal agencies. Reno added, however, that there may be situations where the federal government can more effectively deal with decisions that cross state and district borders.

The Commission on the Advancement of Federal Law Enforcement was written into legislation following the Oklahoma City bombing and the Waco, Texas, incident. Former federal judge William H. Webster was named chair of the commission by Chief Justice William H. Rehnquist. The other members of the five-member commission were Victoria Toensing, a District of Columbia criminal defense lawyer, appointed by the Speaker of the House; Robert M. Stewart, a South Carolina law-enforcement officer, appointed by the President Pro Tempore of the Senate; Donald C. Dahlin, chair of the Department of Political Science at the University of South Dakota, appointed by the Minority Leader of the Senate; and Gilbert G. Gallegos, national president of the Fraternal Order of Police, appointed by the House Minority Leader.

Judiciary Now Debuts



The latest feature to be unveiled on the Judiciary's web site promotes instant access to the Judiciary's top news and features. The informative webpage can be reached from the Internet Homepage (www.uscourts.gov) by clicking on Judiciary Now. At press time, the page served up the latest statistics on judicial vacancies, live video of testimony on victims' rights legislation, and a rolling news ticker with headlines on the southwest border courts and the recent border courts conference, and on Law Day. Clicking on any of the headlines delivers more information on the topic.

FJTN PROGRAM CALENDAR FOR
THE THIRD BRANCH

Vol. 32 Number 3 March 2000

APRIL

Adobe Acrobat
April 3, 4:00 p.m.; April 11, 2:00 p.m.; April 21, 4:00 p.m.; April 25, 10:30 a.m.

Advances in Drug Abuse and Addiction Research
April 20, 8:30 a.m.

Agricultural Bankruptcy
April 5, 11:30 a.m.; 3:30 p.m.; April 19, 8:30, 9:30 a.m.

The Architecture of Antitrust
April 5, 10:00 a.m.; 2:00 p.m.; April 12, 11:30 a.m.; 1:00 p.m.; April 19, 12:30, 3:30 p.m.

Automated Document Production Program
April 4, 3:30 p.m.; April 17, 1:00 p.m.

Avoiding Infectious Diseases
April 11, 8:30 a.m.; April 17, 3:00 p.m.

Basic Browser Usage
April 7, 3:00 p.m.; April 10, 9:30 a.m.

CM/ECF from the Deputy Clerk's Perspective
April 3, 9:00 a.m.; April 7, 12:00 p.m.; April 11, 9:30 a.m.; April 17, 2:00 p.m.; April 25, 3:00 p.m.

Court to Court (March 2000)
April 13, 3:30 p.m.; April 27, 8:30 a.m.; 1:30, 2:30, 3:30 p.m.

Drug Testing: Facts, Research, and Policy
April 14, 2:30 p.m.; April 28, 12:30 p.m.

Effective Supervision of Adult Sex Offenders in the Community (NIC/CSOM)
April 13, 10:30 a.m.

EDR Procedural Overview
April 4, 8:30 a.m.

EDR Substantive Overview
April 4, 9:30 a.m.

Executive Briefing: Building Management Delegations
April 4, 3:00 p.m.; April 10, 9:00 a.m.

Executive Briefing: Travel Regulations
April 11, 11:30 a.m.

Federal Retirement Benefits for Court Personnel—Frequently Asked Questions
April 17, 11:00 a.m.; April 25, 9:30 a.m.

First Quarter Flexible Spending Account Statements and the Dependent Care Reimbursement Account
April 18, 1:00 p.m. LIVE; April 24, 3:00 p.m.

Home Confinement
April 7, 11:00 a.m.; April 21, 11:30 a.m.

In Camera
Every Monday at 8:30 a.m.; Every Tuesday at 4:30 p.m.

Introduction to Sentry for Probation and Pretrial Services Staff
April 3, 12:00 p.m.; April 10, 2:00 p.m.

The Law Clerk Appointment Process
April 3, 11:00 a.m.; April 7, 9:00 a.m.; April 21, 8:30 a.m.; April 24, 11:00 a.m.

Law Day 2000: Judicial Independence Is for You
April 27, 12:00 p.m. LIVE

Leadership 2000 Session 2: Moving from Conflict to Collaboration,
April 20, 1:00 p.m. LIVE

Maximizing Tax Savings Through Use of the Thrift Savings Plan (TSP)
April 10, 11:30 a.m.; April 18, 2:00 p.m.

NCIC 2000: Lessons Learned from Implementation in Four Districts
April 3, 1:00 p.m.; April 7, 2:00 p.m.; April 18, 8:30 a.m.; April 21, 12:30 p.m.; April 24, 4:00 p.m.

An Orientation to the Federal Court Leadership Program
April 13, 2:00 p.m. LIVE

Other Crimes, Wrongs, or Acts: Applying Federal Rule of Evidence 404(b), Parts One & Two
April 12, 8:30, 10:00 a.m.

Overview of Judiciary Compensation
April 3, 10:00 a.m.; April 7, 1:00 p.m.; April 18, 11:30 a.m.; April 24, 12:00 p.m.

Perspectives on Probation and Pretrial Services (April 2000)
April 6, 8:30, 9:30, 10:30 a.m.; 1:00, 2:00, 3:00, 4:00 p.m.; April 13, 8:30, 9:30 a.m.; April 28, 8:30, 9:30 a.m.

Planning—How Do Your Benefits Meet Your Future Needs?
April 3, 2:00 p.m.; April 7, 10:00 a.m.; April 11, 10:30 a.m.; April 17, 10:00 a.m.; April 21, 10:30 a.m.

Prison Litigation Reform Act Update
April 5, 8:30 a.m.; 12:30 p.m.; April 12, 2:30 p.m.; April 19, 2:00 p.m.

Restitution: Determining Victims and Harms
April 20, 10:00 a.m.

Review of Travel Regulations for Support Staff
April 3, 3:00 p.m.; April 18, 3:30 p.m.

Security for Judiciary Computer Users
April 17, 4:00 p.m.

Sentencing and Guidelines: Departure Analysis
April 14, 8:30 a.m.; April 27, 9:30 a.m.

Social Security Benefits for Employees under Federal Employees Retirement System (FERS)
April 11, 12:00 p.m.; April 17, 9:00 a.m.; April 21, 1:30 p.m.; April 25, 4:00 p.m.

Social Security: Process and Problems, Parts One & Two
April 26, 9:00, 11:00 a.m.; 1:00, 3:00 p.m.

Special Needs Offenders: Reducing Risk Through Employment and Education
April 14, 12:30 p.m.; April 28, 10:30 a.m.

Statistical Instructions for Reporting Bail Hearings and Reviews
April 11, 1:00 p.m. LIVE; April 18, 9:30 a.m.; April 21, 9:30 a.m.; April 25, 11:30 a.m.

Substance Abuse Assessment: What Works
April 25, 1:00 p.m. LIVE

Supervising Individuals with a Dual Diagnosis
April 4, 2:00 p.m.; April 18, 10:30 a.m.

Supreme Court 1998-99: The Term in Review, Parts One, Two, and Three
April 19, 10:30 a.m.

Taking the Interpreter's Oath to Heart
April 6, 11:30 a.m.; April 14, 10:30 a.m.; April 20, 3:00 p.m.

Understanding My Social Security Benefits with a Civil Service Retirement System Annuity
April 4, 11:30 a.m.; April 7, 8:30 a.m.; April 11, 4:00 p.m.; April 17, 9:30 a.m.

WordPerfect 8.0 Basics
April 21, 2:00 p.m.

WordPerfect Document Formatting
April 11, 3:00 p.m.; April 24, 1:00 p.m.

WordPerfect File Management
April 4, 12:00 p.m.

WordPerfect QuickFamily
April 24, 2:00 p.m.

WordPerfect Templates
April 10, 3:00 p.m.; April 24, 9:00 a.m.

Your Total Benefits Package
April 4, 10:30 a.m.; April 10, 1:00 p.m.; April 17, 12:00 p.m.; April 25, 8:30 a.m.

PLEASE POST

VACANCY ANNOUNCEMENTS
THE THIRD BRANCH
Vol. 32 Number 3 March 2000

ATTORNEY, Office of the Legislative Counsel, U.S. Senate

The Office of the Legislative Counsel of the U.S. Senate is seeking applicants for a full-time attorney position starting in the fall of 2000. The Office assists Senate Committees and Senators in drafting legislation at all stages in the legislative process. Attorneys draft legislation that carries out the policy of clients, while ensuring that drafts are technically correct, are as explicit and readable as possible, and are properly integrated into federal law.

Applicants must have a record of academic excellence, an ability to write clearly and concisely, no substantial participation with any political party or cause, and a belief that public service can be interesting, challenging, and offers the opportunity for a rewarding life-long career. Appointments are made solely on the basis of merit. Salary: $47,500 and generous health, retirement, and other benefits. A completed application consists of a resume, a transcript of law school grades, actual or estimated class standing, and a legal writing sample that is written solely by the applicant and is not published under the name of any other person. Applications should be addressed to Recruitment Committee, Office of the Legislative Counsel, U.S. Senate, Washington, D.C. 20510-7275. **Application deadline: April 14, 2000.**

ASSISTANT FEDERAL PUBLIC DEFENDER, District of Columbia

The Office of the Federal Public Defender for the District of Columbia has an opening for an assistant federal public defender. Salary based upon experience, within federal guidelines. Federal benefits. More than one position may be filled from this announcement. A cover letter and resume should be sent to A. J. Kramer, Federal Public Defender, 625 Indiana Avenue, N.W., Suite 550, Washington, D.C. 20004. **Application deadline: March 31, 2000.**

BANKRUPTCY JUDGESHIP, Central District of California

The U.S. Courts for the Ninth Circuit are recruiting to fill a vacancy on the Bankruptcy Court for the Central District of California. Chambers are maintained in Los Angeles, but travel will be required to hear a significant number of cases in other divisions. This is an open, competitive process. Qualifications include admission to practice, good standing bar membership, and at least 5 years of legal practice. Appointment is for 14 years, subject to possible reappointment. Salary is $129,996. Vacancy announcement and application forms are available via court website at www.ce9.uscourts.gov (click on "careers"). They are also available at all court clerks' offices in the Ninth Circuit or by calling, faxing or writing the following numbers or address: voice-(415) 556-6158; fax-(415) 556-6179; mail-U.S. Courts for the Ninth Circuit, Office of the Circuit Executive, P.O. Box 193939, San Francisco, CA 94119-3939, (Attn: Bankruptcy Recruitment-CD-CA). **Application deadline: April 14, 2000**

INVESTIGATOR/INTERPRETER POSITION, Des Moines, Iowa

Federal Public Defender of Iowa seeks applicants for investigator/interpreter position in Des Moines office. Applicants must have experience conducting interviews or investigations, law degree, or other equivalent training or experience. Must be able to communicate orally and in writing in English and Spanish, including interpreting legal documents. Excellent writing skills required. Position may require exposure to some dangerous situations. Excellent benefits. Salary $38,000 to $70,000 depending upon experience and skills. Submit resume and cover letter to Nick Drees, Federal Defender, 300 Walnut Street, Suite 295, Des Moines, Iowa 50309. No telephone inquiries. **Application deadline: May 7, 2000**

Border continued from page 1
States. Administrative Office Director Leonidas Ralph Mecham has given assistance to border courts in the form of additional positions and funds in clerks' and probation and pretrial services offices. Personnel from around the country have been encouraged to help out in the courts as temporary duty officers. But it's still not enough.

Senator Pete V. Domenici (R-NM) told conference participants, "While most Americans approve of the drug busts and the large-scale arrests of people seeking to enter this country illegally, I'm sure very few clearly understand the ripple effect these policies have on our court system." Domenici, who is chair of the Senate Budget Committee, said it is "unfair and shortsighted for Congress to demand more law enforcement at the border without a corresponding increase in judicial and prison resources." He expressed support for the Judicial Conference recommendation to create 13 new district judgeship positions in the southwest border courts, but made it clear action on this proposal probably will not occur until a new administration takes office next year. Until then, the Senator suggested, Congress could provide more court resources to lighten the load.


Sen. Pete V. Domenici (R-NM)

This was bad news for Chief Judge Marilyn Huff (S. D. Calif.) who says her court, which has no judicial vacancies, needs new judges. "We've squeezed all the fat—if there ever was any—out of the system," said Huff. "We've experimented with ways to handle the caseload. Visiting judges are wonderful, but they're not the same as judges who can take a full draw of cases. And our senior judges who help our district survive are extremely senior. What more can we do? The answer keeps coming back: We need new district judges." Statistics, according to Huff, show the caseload has gone up astronomically, while judicial resources remain flat. Only one of the five border courts has received new judgeships since 1990. Three were authorized for the District of Arizona last congressional session, but those positions are not filled, and recently two judges in the district took senior status. Other courts have similar problems, and at the conference judges from each district talked about how they were coping. Chief Judge King kicked off the conference, noting different techniques that were being used to handle similar problems. Chief Judge John E. Conway (D. N.M.), whose district hosted the conference, said he picked up some good ideas. "Hopefully, others did too," he said. "We all share problems, and our solutions are each a bit different."

The conference touched on different management concerns, for example, expediting jury selection so that jurors can avoid multiple trips to remote border locations; effectively using magistrate judges; locating and retaining qualified interpreters; providing adequate facilities where attorneys and defendants can meet; and managing the logistics of finding housing, transportation, and security for detainees, some of whom must be transported to the court from hundreds of miles away.

One initiative that was discussed addressed a common problem in the border courts: what to do with material witnesses. "A 'coyote' brings 20 Mexican citizens across the border," said King. "He's arrested, indicted, and two or three Mexicans are held as material witnesses. Some courts have held them in detention, often for several months. The District of New Mexico puts the material witnesses in halfway houses where they also can get jobs. In that district, there have been problems with witnesses disappearing in only one percent of the cases."

Even before the conference was over, King noted that some districts were holding their own mini-conferences to discuss problems and potential solutions. Conway said his district will be meeting this month in Las Cruces, New Mexico, one of the hardest hit of the border court locations. District clerks and probation and pretrial services officers plan to talk regularly about common problems. Representatives from the Department of Justice also spoke at the conference about its Border Patrol Initiative. In the just-completed Phase 1, which covered southern California and El Paso, DOJ claims the initiative has given it "effective control," with a sharp decline in local crime. Apprehensions in southern California, according to spokesmen, had started at 600,000 and were down to 200,000. Although many courts participating in the conference are inundated at even this level of apprehensions, the discussion, said King, at least "offered us the prospect of improved communication with DOJ at the local level."

Participants agreed that the conference was as candid as it was productive, and a planning group will compile a master list of recommendations. "People were given a perspective on what's actually happening throughout the border districts, which is something you don't get sitting in one court," said King. "We've improved communications among the courts. But in the end it is all about people and money. We need Congress to understand why we're asking for more judges, probation and pretrial officers, and clerks, and why they should support the Judiciary's budget."

JUDICIAL MILESTONES

Appointed: William Joseph Haynes, Jr., as U.S. District Judge, U.S. District Court for the Middle District of Tennessee, November 16.

Appointed: Ellen Segal Huvelle, as U.S. District Judge, U.S. District Court for the District of Columbia, January 12.

Appointed: Victor Marrero, as U.S. District Judge, U.S. District Court for the Southern District of New York, December 1.

Appointed: Charles A. Pannell, Jr., as U.S. District Judge, U.S. District Court for the Northern District of Georgia, December 1.

Appointed: Trish M. Brown, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the District of Oregon, December 3.

Appointed: Barbara J. Houser, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Northern District of Texas, January 20.

Appointed: Dennis W. Dohnal, as U.S. Magistrate Judge, U.S. District Court for the Eastern District of Virginia, January 31.

Appointed: Douglas N. Frazier, as U.S. Magistrate Judge, U.S. District Court for the Middle District of Florida, January 8.

Appointed: Margaret J. Kravchuk, as U.S. Magistrate Judge, U.S. District Court for the District of Maine, January 21.

Appointed: Christopher A. Nuechterlein, as U.S. Magistrate Judge, U.S. District Court for the Northern District of Indiana, January 10.

Appointed: Nita L. Stormes, as U.S. Magistrate Judge, U.S. District Court for the Southern District of California, January 3.

Appointed: Linda T. Walker, as U.S. Magistrate Judge, U.S. District Court for the Northern District of Georgia, January 2.

Elevated: Judge Mark W. Bennett, to Chief Judge, U.S. District Court for the Northern District of Iowa, succeeding Judge Michael J. Melloy, December 30.

Elevated: Judge Ernest C. Torres, to Chief Judge, U.S. District Court for the District of Rhode Island, succeeding Judge Ronald R. Lagueux, December 1.

Senior Status: Judge Ralph G. Thompson, U.S. District Court for the Western District of Oklahoma, December 16.

Retired: Senior Judge Martin Pence, U.S. District Court for the District of Hawaii, January 31.

Retired: Senior Judge Stanley Sporkin, U.S. District Court for the District of Columbia, January 15.

Retired: Bankruptcy Judge Tina L. Brozman, U.S. District Court for the Southern District of New York, January 31.

Retired: Magistrate Judge Eugene W. Beaulieu, U.S. District Court for the District of Maine, January 20.

Resigned: Bankruptcy Judge James L. Garrity, Jr., U.S. Bankruptcy Court for the Southern District of New York, December 15.

Deceased: Chief Judge D. Brook Bartlett, U.S. District Court for the Western District of Missouri, January 21.

Deceased: Senior Judge Harold H. Greene, U.S. District Court for the District of Columbia, January 29.

Deceased: Senior Judge Thomas J. MacBride, U.S. District Court for the Eastern District of California, January 6.

Deceased: Judge Jerome Turner, U.S. District Court for the Western District of Tennessee, February 12.

Deceased: Magistrate Judge Doyle A. Rowland, U.S. District Court for the Western District of Michigan, February 29.

THE THIRD BRANCH

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JUDICIAL BOXSCORE

As of March 1, 2000

Courts of Appeals	
Vacancies	25
Nominees	18
District Courts	
Vacancies	51
Nominees	19
Courts with Judicial Emergencies	22

For more information on vacancies in the federal Judiciary visit our website at www.uscourts.gov.

Judicial Center Launches First Ever Judges Database

The first ever public electronic database of federal judges who served over the last 200 years was launched last month by the Federal Judicial Center.

"We are making this unparalleled resource available to the public, the press, and the academic community, as well as within the Judiciary, to encourage study of the federal courts and greater understanding of their evolution and development," said FJC Director Judge Fern Smith.

The information, available at the FJC's Internet site, www.fjc.gov includes the years of judicial service, and information about the career and education of the more than 2,800 presidentially appointed judges who served in the federal courts from the establishment of the judicial branch in 1789 to the present. This information is one of several features of the FJC's new History of the Federal Judiciary site.

In addition to the judges' information, the site includes a Courts section, which contains the legislative histories of courts and circuits within the federal Judiciary, as well as lists of judges who served on each court and information on the location of official court records.

A section on Landmark Judicial Legislation presents the text of 21 statutes related to the organization and administration of the Judiciary, and includes short essays describing the historical significance of each act. Other features of the site are the online presentation of an exhibit of historic photographs of federal courthouses and a selection of reports on topics related to federal judicial history.

The database function in the Judges section of the site allows users to conduct various searches and organize data about Supreme Court justices and court of appeals and district court judges.

The materials presented on the site were compiled and written by the staff of the FJC's Federal Judicial History Office, which welcomes reference questions submitted at the site. For further information, call 202/502-4181 or e-mail uhistory@fjc.gov

Federal Rules of Practice and Procedure Material Now Available Online

The federal Judiciary has expanded its web site, www.uscourts.gov, to include information on the Federal Rules of Practice and Procedure. With just a click of the mouse, Internet users now can access the current rules, proposed amendments to the rules submitted for public comment, and approved proposed amendments pending review by the Supreme Court and Congress. This information is not currently available from any single source.

"We hope that lawyers and the public will welcome and take full advantage of the easy availability of rules-related material," said Judge Anthony Scirica, chair of the Judicial Conference Committee on Rules of Practice and Procedure. "This expanded web site furthers the Judiciary's commitment to providing full public access to all aspects of the federal rule-making process."

Also included on the site are working papers of the Judicial Conference Committee on Rules of Practice and Procedure and of the five advisory rules committees, including minutes of committee meetings, agenda reports, status charts on proposed rule amendments, a schedule of upcoming meetings and hearings, and a list of pending legislation affecting rules. Planned future additions include committee reports and copies of major studies undertaken by the rules committees regarding class action, mass tort, and attorney conduct rules projects.

Comments to proposed rules amendments also may be submitted electronically via this Internet site as part of a Judicial Conference pilot involving the Advisory Committees on Appellate, Bankruptcy, Civil, Criminal, and Evidence Rules.

The federal rules govern procedure, practice, and evidence in the federal courts. They set forth the procedures for the conduct of court proceedings and also serve as a pattern for the procedural rules adopted by many state courts. Congress has authorized the federal Judiciary to prescribe the rules of practice, procedure, and evidence for the federal courts, subject to the ultimate legislative right of Congress to reject, modify, or defer any of the rules.

When visiting www.uscourts.gov, click on About the U.S. Courts to access the federal rule-making information.

Conference Acts as Voice for Federal Trial Judges

Judge Richard H. Mills is the chair of the ABA Judicial Division, National Conference of Federal Trial Judges. He was appointed to the U.S. District Court for the Central District of Illinois in 1985 and took senior status in 1997.

Q: How would you describe the mission or role of the National Conference of Federal Trial Judges?

A: Our overall mission, of course, is to improve the administration of justice by reducing court delay, insuring that everyone has access to the judicial system, and that all litigants in need have competent counsel, and to instill in judges the necessity of conducting courtroom proceedings in an atmosphere that maintains the dignity of the court and recognizes the equality of all people. More specifically, the conference acts as the voice of federal trial judges within the American Bar Association and proposes initiatives in the best interest of federal trial courts. We present the view of the federal trial bench as to appropriate facilities and equipment for judges, advocate adequate compensation and other benefits for the Judiciary, and monitor appropriate security for judges and for courthouses.

One of our primary goals is to assure the competence of judges and the competence of lawyers who practice within the system. We are constantly promoting improvements in the jury system and have taken a key role in the increase of public understanding of and respect for the judicial system. In this regard, we encourage fair trials, free press conferences, and the participation of judges in educational programs on the judicial system. We are keenly aware that relationships among lawyers, among judges, and among judges and lawyers must constantly be improved.

Q: Does the NCFTJ interact with Judicial Conference committees?

A: Since the federal trial judges conference includes U.S. district, magistrate, and bankruptcy judges, our members frequently serve on various committees of the U.S. Judicial Conference. This affords an excellent liaison and sharing of ideas for solving common problems. NCFTJ has long adhered to the philosophy that it will not take a position that is contrary to that of the U.S. Judicial Conference on any particular issue that the Judicial Conference has acted upon.

As chair of the NCFTJ, I act as liaison to the ABA Standing Committee on Federal Judicial Improvements. That standing committee and our conference hold joint meetings at both the midyear and annual meetings of the ABA. Currently, we are working together for our next meeting in July in New York, and we plan to invite representatives of the U.S. Judicial Conference and the Administrative Office of the U.S. Courts to meet with us so that we may all exchange ideas and thoughts, find a way of unifying our collective efforts toward the common goal of the needs of the federal Judiciary, and discuss how we can better serve the public.

Q: Comparing a trial judge today with one sitting on the bench 20 years ago, what has changed the most, if anything? Are the concerns, issues, and workplace the same?

Judge Richard H. Mills

A: The increase in our caseloads—both civil and criminal—have skyrocketed over the last couple of decades. In my district, our caseload has increased almost 50 percent in the past 20 years. And in the past five years alone the 94 districts in the country have seen an increase of 8.9 percent. That works out to an average of some 496 cases per authorized judgeship. And the bankruptcy court statistics are even more staggering.

One particular area that also has changed is technology—a tool that is being utilized more and more to assist us in dealing with this avalanche of cases. NCFTJ has an extremely active technology committee composed of some of the most knowledgeable and driven federal judges in the country—those who know computers and high-tech thoroughly and who use it constantly in their courts. We have conducted programs on technology in the courts and will continue to place significant emphasis on this area as a real tool in case

management and handling the volume of work that every court across the land faces.

Q: Trial judges have come under intense fire from politicians and the public for decisions. How do (or should) trial judges deal with the criticism?

A: You know it is ironic that as we face these increasingly crushing caseloads, the public's perception of the legal profession, and respect for it, has never been lower. We simply have to do a better job of marketing the law and the legal system. Some of the ways that this can be accomplished, in our estimation, is for every judge to give clear reasons for his or her rulings, either orally from the bench or by way of a written order or memorandum. Judges and lawyers must get harnessed in tandem to provide outreach and educational programs for the public on how the system works and why everyone should have greater respect for the finest system of justice in the world. We all should encourage more school civics classes to come and visit our courts; we all must participate in Law Day programs in conjunction with the bar associations. NCFTJ strongly feels that all judges should be a resource for bar associations and other groups to be called upon for participation in programs that both tell and sell the American justice system.

We have become such a litigious society and because of all of the television programs involving the courts, prosecutions and police work, there is intense public interest in the system. It behooves us all to become part of the means by which the public is informed properly on the work of our system.

Q: Civility (the lack of it) appears to be an issue, not only in society at large, but within the courtroom. Does the NCFTJ have recommendations, guidelines or programs to encourage civility?

A: We recognize that civility is a very serious problem and we have participated in a number of programs addressing this issue over the past few years. In addition, we try to weave civility into virtually every program, whether it is on a substantive topic or a procedural one.

"Judges and lawyers must get harnessed in tandem to provide outreach and educational programs for the public on how the system works and why everyone should have greater respect for the finest system of justice in the world."

Since NCFTJ is made up of district, magistrate, and bankruptcy judges—by far the bulk of the federal Judiciary—civility is of constant and serious importance. We are very concerned about civility between the court and counsel, between judges, between counsel, and between trial and reviewing courts. Several circuits have created committees on civility and some have both adopted and published rules on civil conduct. I believe that the U.S. Court of Appeals for the Seventh Circuit was the first to report in this area and to adopt rules of civility.

Q: What programs and/or initiatives has the NCFTJ undertaken? What would you like to see the NCFTJ tackle in the future?

A: Our program committee is extremely active. At the 1999 annual ABA meeting in Atlanta, we presented a presidential showcase program entitled, A Judge's Role in Case Management: Gentle Facilitator or Pushy Intermeddler? And, in New York this year, another presidential showcase program will be given, Lawyering and Judging in the 21st Century: Understanding and Integrating the Legal and Scientific/Technological Thinking Processes Using Theoretical, Ethical, and Practical Considerations.

As I stated earlier, we view the federal trial Judiciary as a resource to assist in informing and educating the public about the courts and our system of justice. There are 940 U.S. district judges (active and senior), 495 U.S. magistrate judges, and 308 U.S. bankruptcy judges. What an impact these 1,743 judges could make if they would lead the way in community outreach to educate our youth and public in general. We are convinced that judges qua judges—federal, state, special court, ALJs, etc.—must become pro-active in educating the public.

Q: Congress continues to pass laws that increase the number of federal crimes. Meanwhile the federal caseload rises. What is the NCFTJ doing to help trial judges manage their workloads?

A: NCFTJ has served as a voice for federal trial judges to urge Congress to fill judicial vacancies, provide appropriate facilities, and address staff support and compensation. We have been working closely with the Standing Committee on Federal Judicial Improvements to achieve these goals.

In addition to utilizing technology to assist us in handling the federal criminal caseload, another tool is the expanded role of the U.S. magistrate

*See **Interview** on page 12*

Interview continued from page 11

judge. Several districts around the country have adopted local rules that permit the magistrate judge to take pleas of guilty in felony cases, select both criminal and civil juries for the district judge, and take grand jury returns. These are time-consuming duties, and such practice frees the district judge to handle other matters. Such rules also have another salutary side effect: encouraging "consents" to the magistrate judge. Although there are differing views, many believe that more magistrate judge positions should be created by the Judicial Conference rather than rely upon Congress to create additional district judgeships. Varying and innovative experiments around the country to improve case management are being tried in the 94 districts, and the Federal Judicial Center and the Administrative Office constantly are monitoring the new approaches.

Q: Does the NCFTJ receive input from state trial judges with similar problems? Is there some sharing of ideas or problems?

A: The ABA Judicial Division is composed of six conferences: federal trial judges, state trial judges, appellate judges (federal and state), special court judges, administrative law judges, and lawyers. This affords us a unique opportunity to not only discuss successes and failures at the state level but also with judges presiding over courts of limited jurisdiction. We also benefit from an exchange of ideas and views with the lawyers conference, whose membership includes court administrators, private practitioners, and attorneys from government agencies and large firms. This interaction puts NCFTJ in a very positive position of being able to funnel information from all levels of government regarding the problems and solutions facing the overall system of justice and not limited to only the federal system.

THE THIRD BRANCH

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Congress Pays Attention to Courthouse Issues

Judge Jane Roth (3rd Cir.) testified at congressional hearings last month on courthouse issues.

In what may stand as a record for a Judicial Conference representative, over a two week span last month, Judge Jane R. Roth (3rd Cir.) appeared before Congress three times, testifying before House and Senate authorizing subcommittees and a House appropriations subcommittee in her capacity as chair of the Judicial Conference Committee on Security and Facilities. All three times she spoke of the burgeoning caseload in the federal courts and the need for adequate facilities.

"The lack of sufficient space can cause great waste and inefficiency in court operations," Roth told the House Subcommittee on Economic Development, Public Buildings, Hazardous Materials and Pipeline Transportation in a hearing at which both federal judges and legislators testified. "In addition, security risks are a grave concern in all public buildings, including federal courthouses." At this House subcommittee hearing, five federal judges and nine congressmen added their voices to hers.

Making their views heard were Chief Judge John E. Conway (D. N.M.), Chief Judge Edward B. Davis (S.D. Fla.), Chief Judge Harry T. Edwards (D.C. Cir.), Chief Judge Terry J. Hatter Jr. (C.D. Calif.), Judge William M. Skretny (W.D. N.Y.), Representatives Bob Clement (D-TN), Phil English (R-PA), John J. LaFalce (D-NY), Richard Neal (D-MA), Jack Quinn (R-NY), George Radanovich (R-CA), Silvestre Reyes (D-TX), Robert Scott (D-VA), and Gene Taylor (D-MS). The judges and members of Congress urged the subcommittee to authorize 19 courthouse projects on the Judiciary's 5-year construction plan that will be ready in FY 2001 for design, site acquisition, or construction.

Roth also testified, with Chief

*See **Hearings** on page 7*

Judicial Conference Condemns OMB Courtroom Sharing Proposal

The Judicial Conference has voted to "strongly condemn the unilateral efforts of the Office of Management and Budget to impose a courtroom sharing policy on the judicial branch as an unwarranted and inappropriate intrusion into the constitutionally mandated independence of the Judiciary."

At its biannual meeting in Washington last month, the Conference voted to rescind the December 1999 decision of its Financial Disclosure Committee to withhold the release of judges' financial disclosure reports where the requester indicates the reports will be posted on the Internet. The Conference voted to instruct the chairs of its Codes of Conduct, Financial Disclosure, and Security and Facilities Committees to consider proposed legislative amendments to the Ethics in Government Act that would balance the public's need for information on judges' financial interests with judges' security needs.

Courtroom Sharing Action Outside OMB Authority

In its consideration of courtroom use, the Conference Committee on Security and Facilities

*See **Conference** on page 2*

INSIDE

Conference continued from page 1

noted that, historically, federal and state trial courts have allotted a courtroom for each active judge. The ready availability of a courtroom is essential to a judge's ability to perform his or her judicial duties. However, the President's fiscal year 2001 budget request assumes that three judges will share two courtrooms in all future federal courthouses. The immediate effect of OMB's action is the elimination of 27 out of 97 planned courtrooms in seven new courthouse projects.

The Director of the Administrative Office of the U.S. Courts has statutory responsibility to "provide" accommodations for the courts, and the General Services Administration (GSA) is "authorized and directed" by Congress to provide the accommodations requested by the AO Director. OMB does not have authority to determine the number of courtrooms to be provided in a courthouse or over the underlying policy governing courtroom utilization. Congress specifically assigned these responsibilities to the circuit judicial councils, which have authority to "approve" court accommodations as necessary.

Following consideration by several Judicial Conference committees and two studies on courtroom use and case management, in March 1997 the Judicial Conference reaffirmed its policy of providing one courtroom for each active district judge. The Conference also provided guidelines to circuit judicial councils when considering the number of courtrooms to approve for senior judges who do not draw caseloads requiring substantial use of a courtroom.

In its March 2000 report to the Judicial Conference, the Committee on Security and Facilities said, "This Committee strongly objects to the unilateral action of OMB in superimposing its courtroom sharing policy as a requirement for funding current and future courthouse projects since it has neither statutory authority nor experience and knowledge of the federal courts."

Supreme Court Justice Ruth Bader Gingsburg, FJC Director Judge Fern Smith, and AO Director Leonidas Ralph Mecham at the Supreme Court reception following the Judicial Conference meeting.

Courthouse Projects Included in the President's FY 2001 Budget Request

Courtrooms	Courtrooms Requested by GSA and Judiciary	Courtrooms Deleted by OMB
Los Angeles, California	33	9
Seattle, Washington	18	1
Richmond, Virginia	9	1
Gulfport, Mississippi	8	0
Washington, D.C.	9	4
Miami, Florida	16	8
Little Rock, Arkansas	12	4

Courthouse Projects *Not* Included in the President's FY 2001 Budget Request, but Included in the Judiciary's 5-Year Plan

*Eugene, Oregon	Las Cruces, New Mexico
Buffalo, New York	*Salt Lake City, Utah
Springfield, Massachusetts	Rockford, Illinois
El Paso, Texas	Cedar Rapids, Iowa
Mobile, Alabama	Nashville, Tennessee
Fresno, California	Erie, Pennsylvania
Norfolk, Virginia	Savannah, Georgia

**authorization not yet requested.*

New Procedures To Be Implemented on Financial Disclosure

In its consideration of judges' financial disclosure reports, the Conference adopted a policy that states that while the appropriate Conference committees review the issue, when the Disclosure Committee receives a request for a judge's report that may result in dissemination to the public, the Committee will invite the judge to review the information contained in the report. If the judge believes it appropriate, the judge may request redaction of "personal and sensitive information that is otherwise confidential and could endanger the officer or other person if obtained by any member of the

The Judicial Conference Executive Committee members, left to right, AO Director Leonidas Mecham, Judge Ralph G. Thompson (W. D. Okla.), Chief Judge Charles H. Haden II (S.D. W.Va.), Judge James M. Rosenbaum (D. Minn.), Committee chair Chief Judge Ralph K. Winter Jr. (2nd Cir.), Chief Judge Edward R. Becker (3rd Cir.), Chief Judge Juan R. Torruella (1st Cir.), Chief Judge Boyce F. Martin, Jr. (6th Cir.).

public hostile to the judicial officer." When the Disclosure Committee receives such a request, it will consult with the U.S. Marshals Service, and will grant or deny the judge's request after determining if the information sought to be redacted is not otherwise easily available to the public and could, if obtained by a hostile member of the public, endanger the judge or other person.

The Conference decided that on a permanent basis the Committee on Financial Disclosure will implement procedures requiring judges who believe redactions to be appropriate before public dissemination, to request such redactions when the annual disclosure form is filed. In deciding whether to grant such a request, the Committee will follow the procedures specified above.

Conference Acts on Committee Recommendations

In other action, the Conference also

- Adopted a zero tolerance policy for controlled substance use by probation and pretrial services officers. The policy underscores the Judiciary's commitment to maintain a drug-free workplace.

- Adopted a workplace drug testing program for probation and pretrial services, modeled after those used by executive branch agencies, which calls for random drug testing of five to 10 percent of all officers and officer assistants each year.

- Voted to oppose S. 1484, the proposed "Blind Justice Act of 1999", which would require both courts of appeals and district courts to assign all cases on a random basis, with limited exceptions for "related" and "technical" cases. The bill appears to require very extensive changes to existing court case assignment procedures. Every federal district court already has a random case assignment system. However, random assignment can, in certain circumstances, produce unequal workloads that could threaten a court's ability to manage its caseload in an effective and efficient manner.

- Amended the *U.S. Courts Design Guide* to provide that, for new construction or major renovation projects, ballistic-resistant glazing for windows be standard, unless the U.S. Marshals Service determines it is not needed.

- Elected to the Board of the Federal Judicial Center Judge Pauline Newman (Fed. Cir.), Judge Robert Bryan (W. D. Wash.), and Chief Judge Jean C. Hamilton (E. D. Mo.).

Judiciary Asks for Modest Increase in Fiscal Year 2001 Budget to Cope with Growing Needs

Growing criminal caseloads throughout the federal courts, particularly in the hard-pressed southwest border courts, have prompted the Judiciary to ask Congress for a modest increase in funding for fiscal year 2001.

"We need additional funding for all courts experiencing growing workloads," Judge John G. Heyburn II (W.D. Ky), chair of the Judicial Conference Committee on the Budget, told a House subcommittee last month. "Over the past several years the Congress has chosen to make enforcement of our drug and immigration laws a high priority," Heyburn said. "The law enforcement personnel you have funded are doing their jobs as evidenced by the explosion in the criminal caseload. We now have an imbalance in the system that only Congress can address. The long-term solution is to fully fund the Judiciary's modest budget request for fiscal year 2001." As Administrative Director Leonidas Ralph Mecham pointed out in his testimony, the federal Judiciary's budget is less than 2/10 of 1 percent of the nation's total budget.

Heyburn, with Judge Robert C. Broomfield of the U.S. District Court for the District of Arizona, one of the hardest hit of the border courts, Mecham, and Judge Fern Smith, Director of the Federal Judicial Center, appeared before the House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies. Subcommittee chair Harold Rogers (R-KY) particularly welcomed Smith in her first appearance before the

*See **Budget** on page 4*

Budget continued from page 3

subcommittee, then proceeded to hear testimony from the Judiciary's representatives on the need to provide a modest funding increase to the federal Judiciary to handle a tremendous growth in overall workload. Over the last four years, Rogers was told, criminal filings increased 28 percent; the number of criminal defendants increased 23 percent; and the number of pretrial services reports to the courts increased 24 percent, while offenders under supervised release increased by 12 percent.

"However," Heyburn testified, "because of funding constraints, funded court support staff required to handle this tremendous growth in workload has actually declined during this period. At a time when Congress continues to provide more resources to the Department of Justice, overall funded court staff are declining by 3 percent."

Rogers told Judiciary representatives that FY 2000 had been a difficult year for Congress as well as the Judiciary, "where we struggled to find every dollar we could for the courts and we still came up short." He warned that the prospects for FY 2001 "were about the same as last year."

The Judiciary is asking for a staffing increase in FY 2001 that is only 5 percent above FY 1998 funded levels, "a very modest increase when compared to the 28 percent increase in criminal filings," Heyburn told the subcommittee. The majority of the staffing increase would be for probation and pretrial services officers to handle the growing criminal workload. Nearly $258 million of the Judiciary's total request would fund base adjustments simply to continue current operations. The remainder, or $105 million, would provide some additional resources to the courts experiencing workload increases, especially those on the southwest border. The Judiciary is requesting a total FY 2001 appropriation for the courts of appeals, district courts, and other judicial services of $4.2 billion.

Federal Judicial Center Director Judge Fern M. Smith, Judge John G. Heyburn II (W. D. Ky.), Judge Robert C. Broomfield (D. Ariz.), and AO Director Leonidas Ralph Mecham testified at House FY 2001 budget hearings last month.

The Judiciary's budget request for FY 2001 includes

- a 9 percent increase in the defender services appropriation, or a total level of funding of $444 million, to handle a workload increase in Criminal Justice Act representations, and to increase the hourly rate paid to private panel attorneys. Panel attorneys have received only two hourly rate increases in 15 years, which is making it increasingly difficult for courts to recruit and retain qualified attorneys. The present rate of compensation does not cover the national average overhead costs for a private attorney.

- a 7 percent increase for court security, or a total level of funding of $215 million, which will include funding for additional court security officers in new or renovated facilities, replacement of outdated security systems, and the acquisition of digital radios as mandated by the National Telecommunications and Information Administration Organization Act.

- a total of $60 million for the fees of jurors program, a reduction from FY 2000 that reflects a projected decrease in juror days.

Heyburn expressed the Judiciary's deep concerns about the growing disparity in pay between the federal and private sectors. "This past fall, the Congressional Budget Office concluded that the pay and benefits of members of Congress, judges, cabinet officers, and members of the Senior Executive Service are less generous than those of executives at large and medium sized private firms," Heyburn said. "If the pay gap between the federal government and other employers continues to widen, the Judiciary and the political branches may find that they are unable to compete for the most talented individuals." Heyburn said the Judiciary was hopeful Congress would allow the mechanisms of the 1989 Ethics Reform Act to work, and that all top government officials would be provided a cost of living adjustment in fiscal year 2001.

Heyburn also urged Congress to fully fund the needs of the Administrative Office, the Federal Judicial Center, and the U.S. Sentencing Commission.

The AO requested a 7 percent increase over FY 2000 direct obligations. The funding will support current programs and improve services to the courts and to the public. "For the past several years," Mecham told the subcommittee, "the funding received by the Judiciary has not allowed the courts to grow to the level required to keep pace with their increasing workload. Because of this, the AO has been increasingly called upon to help in developing new systems and programs for the courts that will allow them to continue to provide quality services in spite of the fact that workload increases faster than resources. The AO is continuing to work at improving services to the courts and to the public."

Mecham cited a number of initiatives that focus on ensuring future

programs achieve the Judiciary's goals in a cost-effective way, including strengthened connections between long-range program planning and budgeting; updated work measurement formulas to reflect new work requirements, the impact of technology, and changing work processes for equitable court staffing; and a new financial management improvement program to elevate the overall financial skills level of AO and court personnel and to introduce financial process improvements and automated financial systems. The AO also has undertaken major studies of space and facilities and the Judiciary's rapidly expanding information technology program, and plans studies of probation and pretrial services system, court security services, and training needs throughout the Judiciary. "By taking advantage of new technologies, improving communication, and placing increased emphasis on long-range planning and budgeting, the AO continues to be innovative in providing support services to the Judiciary," said Mecham. Descriptions of these and other efficiencies are available at www.uscourts.gov/optimal00/optimal2000.pdf.

Funds for the Federal Judicial Center were requested by Judge Fern Smith, who sought a 7.5 percent increase in obligations, for a 2001 appropriation only slightly higher than its 1992 level. Smith said the "vast majority of our educational programs are done by distance learning," including the Federal Judicial Television Network, which the Center operates for the Judiciary. But "distance learning will never completely, and shouldn't completely, displace face-to-face learning." Chairman Rogers thanked the FJC and the AO for developing the FJTN. "I'm proud," he added, "of what the Center is now doing to save a lot of travel time."

Smith described the FJC's efforts to help courts develop education programs on critical problems, such as last February's southwest border courts conference. She also described the FJC's work to help judges implement complex statutes, manage scientific and technical lawsuits, as well as criminal litigation in which the government seeks the death penalty. The FJC, she added, conducts education and research to help courts implement alternative dispute resolution and meet the challenges of transnational litigation.

Federal Court Caseload Climbed Slightly in 1999

Bankruptcy Petitions Filings Fall

The caseload of the federal courts continued to climb in fiscal year 1999, although at a slower rate than in the two previous fiscal years, according to the *1999 Judicial Business of the U.S. Courts*, released by the Administrative Office. Overall, criminal and civil filings in the district courts increased. The number of pretrial services cases and the number of persons under supervision of the probation system also rose. Filings in the 12 regional courts of appeals increased due to a change in reporting procedure for original proceedings. Excluding original proceedings, appeals dropped. Bankruptcy petitions were the only filings to decline. However, with the exception of decreases in 1993 and 1994, bankruptcy filings have increased for nearly a decade and remain well above the one million mark.

Judicial Business of the U.S. Courts can be found on the Judiciary's website at www.uscourts.gov.

Filings in the U.S. Courts of Appeals

Filings in the 12 regional courts of appeals increased 2 percent to 54,693. The increase was caused by changes in the reporting procedures during 1999 related to the Antiterrorism and Effective Death Penalty Act and the Prison Litigation Reform Act. These changes caused a 349 percent surge in the total for original proceedings. In the courts of appeals, original proceedings are filed for the first time in the appellate courts; that is, they are not dependent on prior actions by lower courts or administrative agencies. Original proceedings include writs of mandamus or prohibition and other extraordinary writs.

Excluding original proceedings, total appeals filings declined 3 percent as filings of civil appeals fell 2 percent, criminal appeals fell 3 percent, bankruptcy appeals fell 8 percent, and administrative agency appeals fell 14 percent.

- Three of the 12 circuits reported overall increases in appeals.
- The reduction in civil appeals filings resulted from a 4 percent decrease in civil rights appeals and a 1 percent dip in prisoner petition appeals. The drop in prisoner petition appeals was due to a 17 percent reduction in motions to vacate sentence and a 10 percent decrease in prisoner civil rights appeals. Habeas corpus prisoner petition appeals rose 16 percent.
- Appeals involving pro se litigants rose 6 percent due to a 717 percent surge in pro se original proceedings, largely in response to the change in reporting procedures.
- Since 1995, filings of appeals (not including original proceedings) have risen 4 percent.

*See **Caseload** on page 6*

Caseload continued from page 5

Filings in the U.S. District Courts

Criminal Case Filings

Filings of criminal cases rose 4 percent from 57,691 to 59,923 in 1999, the highest number since 1933, when the Prohibition Amendment was repealed. This followed a 15 percent jump in criminal cases in 1998. In 1999, the combined filings of cases in the three largest criminal categories—drugs, fraud, and immigration—accounted for 60 percent of all criminal case filings, the same proportion as in 1998. However, the proportion of drug and immigration case filings rose and that of fraud case filings decreased.

- Drug case filings climbed 7 percent to 17,483, while the number of drug defendants increased 4 percent to 30,671.

- Immigration case filings in the overall criminal caseload climbed 14 percent to 10,641, while the number of immigration defendants grew 13 percent to 11,461. The majority of immigration cases were filed in district courts along the southwest border of the U.S.

- Five southwest border districts, the District Courts for the Districts of Arizona and New Mexico, the Western and Southern Districts of Texas, and the Southern District of California, received 27 percent of all criminal cases filed in the U.S. in 1999. This was attributable mostly to the large numbers of immigration and drug trafficking cases.

- Overall, fraud case filings declined 8 percent.

- Weapons and firearms case filings surged 20 percent from 3,641 to 4,367, and filings of defendants in such cases increased 15 percent from 4,441 to 5,114. These represent record highs for filings for these offenses and resulted in part because U.S. attorneys prosecuted in the federal courts defendants identified by state and local law enforcement agencies.

The number of defendants in criminal cases grew 2 percent from 79,008 to 80,822. The median case deposition time for criminal defendants rose from 5.6 months in 1998 to 5.9 months in 1999, probably because of the increased workload imposed by the large number of cases courts received in 1998.

Civil Case Filings

Civil filings in the U.S. district courts rose 1 percent in 1999 to 260,271. The overall increase in filings of civil cases was related primarily to a rise in cases with the U.S. as plaintiff. In 1999, filings of cases with the U.S. as a party increased 13 percent from 57,852 in 1998 to 65,443.

Filings with the U.S. as plaintiff rose 33 percent as a result of a 54 percent jump in cases related to the recovery of overpayments and enforcement of judgments. Student loan recovery filings rose 56 percent, because of debt collection procedures implemented by the U.S. Department of Education.

Filings with the U.S. as defendant remained essentially stable, dropping less than 1 percent. This decrease was related to a 4 percent reduction in Social Security cases and a 9 percent decline in motions to vacate sentence filed by federal prisoners. Social security disability insurance and supplemental security income filings dropped 6 percent and 3 percent, respectively. Motions to vacate sentence fell by 535 cases. The declines were largely offset by a 55 percent jump in federal habeas corpus filings.

- Federal question jurisdiction cases declined 1 percent, mainly because filings of personal injury cases decreased 14 percent, with product liability filings (mostly breast implant cases) declining 58 percent. However, habeas corpus petitions filed by state prisoners increased 9 percent.

- Diversity of citizenship filings fell 4 percent as a result of a large reduction in personal injury/product liability litigation involving breast implant cases.

Bankruptcy Filings

Bankruptcy filings in the Judiciary's fiscal year 1999 totaled 1,354,376, down 6 percent from the 1,436,964 bankruptcy filings for fiscal year 1998. With the exception of decreases in 1993 and 1994, bankruptcy filings have increased for nearly a decade. The reduction most likely resulted from last year's lower interest rates, low unemployment, and continued general economic prosperity, which enabled consumers to pay their debts more easily. Decreases in bankruptcy filings were seen in both nonbusiness and business petitions, which fell 5 percent and 18 percent, respectively. Drops also were reported in filings under all chapters except for Chapter 11, for which filings rose 2 percent.

Probation and Pretrial Services

On September 30, 1999, the total number of persons under supervision of the probation system was 97,190, a 4 percent rise over the number reported as of September 30, 1998. This year, persons under

FJTN PROGRAM CALENDAR FOR
THE THIRD BRANCH

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MAY

Adaptive Manager
May 18, 1 p.m. LIVE (Part One); May 25, 1 p.m.

Adobe Acrobat
May 5, 10 a.m.; May 8, 9 a.m.; May 16, 3 p.m.; May 23, 8:30 a.m.

Advances in Drug Abuse & Addiction Research
May 12, 3:30 p.m.

Agricultural Bankruptcy
May 10, 12 p.m.; May 31, 2:30 p.m.

The Architecture of Antitrust
May 17, 8:30 a.m.; May 24, 11:30 a.m.; May 31, 10 a.m.; 1 p.m.

Automated Document Production Program
May 1, 10 a.m.; May 9, 10:30 a.m.

Avoiding Infectious Diseases
May 5, 3 p.m.; May 8, 11 a.m.

Basic Browser Usage
May 15, 2 p.m.; May 22, 11 a.m.

Benefits Entitlements Under the Civil Service Retirement System for Law Enforcement Officers
May 23, 1 p.m. LIVE

CM/ECF from the Deputy Clerk's Perspective
May 5, 8:30 a.m.; May 9, 9:30 a.m.; May 19, 4 p.m.; May 23, 9:30 a.m.; May 30, 8:30 a.m.

Court Moves
May 23, 2:30 p.m.

Court to Court (March 2000)
May 11, 3 & 4 p.m.; May 25, 10:30, 11:30 a.m.

Drug Testing: Facts, Research, & Policy
May 11, 8:30 a.m.

Effective Supervision of Adult Sex Offenders in the Community
May 12, 10:30 a.m.; May 26, 11:30 a.m.

EDR Procedural Overview
May 19, 8:30 a.m.

EDR Substantive Overview
May 19, 9:30 a.m.

Executive Briefing: Building Management Delegations
May 5, 9:30 a.m.; May 8, 12:30 p.m.; May 30, 3p.m.

Executive Briefing: Travel Regulations
May 30, 12:30 p.m.

Federal Retirement Benefits for Court Personnel—Frequently Asked Questions
May 2, 10:30 a.m.; May 19, 3 p.m.

First Quarter Flexible Spending Account Statements & the Dependent Care Reimbursement Account
May 1, 9 a.m.; May 8, 4 p.m.; May 16, 11:30 a.m.; May 23, 10:30 a.m.; May 30, 2 p.m.

Home Confinement
May 2, 11:30 a.m.; May 8, 1 p.m.

In Camera
Every Monday at 8:30 a.m. (except May 29).
Every Tuesday at 4:30 p.m.

Introduction to *Sentry* for Probation & Pretrial Services Staff
May 5, 11 a.m.; May 9, 11:30 a.m.

The Law Clerk Appointment Process
May 1, 11 a.m.; May 5, 1 p.m.; May 16, 10:30 a.m.; May 22, 1 p.m.; May 30, 3:30 p.m.

Leadership 2000 Session 3: Personal Strategies for Navigating Change
May 11, 1 p.m. LIVE

Maximizing Tax Savings Through Use of the Thrift Savings Plan (TSP)
May 15, 11 a.m.

NCIC 2000: Lessons Learned from Implementation in Four Districts
May 2, 8:30 a.m.; May 8, 10 a.m.; May 19, 10:30 a.m.; May 30, 1 p.m.

Organization and Jurisdiction of the United States Bankruptcy Courts
May 24, 8:30 a.m.

Orientation to the Supervisors' Development Program
May 17, 1:30 p.m. LIVE

Other Crimes, Wrongs, or Acts: Applying Federal Rule of Evidence 404(b)
May 31, 3:30 p.m.

Overcoming Overload (PBS)
May 25, 3 p.m.

Overview of Judiciary Compensation
May 5, 2 p.m.; May 9, 8:30 a.m.; May 19, 11:30 a.m.; May 22, 10 a.m.

Perspectives on Probation and Pretrial Services (April 2000)
May 4, 8:30, 9:30 a.m.; May 11, 10:30, 11:30 a.m.; May 18, 3 & 4 p.m.

Planning—How Do Your Benefits Meet Your Future Needs?
May 2, 9:30 a.m.; May 22, 9 a.m.

Prison Litigation Reform Act Update
May 10, 8:30 a.m.; May 17, 12 p.m.; May 31, 8:30, 11:30 a.m.

Restitution: Determining Victims & Harms
May 26, 8:30 a.m.

Sentencing & Guidelines: Departure Analysis
May 4, 2:30 p.m; May 18, 10:30 a.m.; May 25, 8:30 a.m.

PBS Management Series—Since Strangling Isn't an Option: Managing Difficult People (PBS)
May 3, 12:55 p.m. LIVE

Social Security Benefits for Employees under Federal Employees Retirement System (FERS)
May 1, 4:30 p.m.; May 8, 12 p.m.; May 15, 1:30 p.m.; May 16, 4 p.m.

Social Security: Process & Problems
May 3, 8:30, 10:30 a.m.; 3 p.m.; May 10, 10 a.m.; 3 p.m.; May 17, 10 a.m.; 3 p.m.; May 24, 9:30 a.m.; 1 p.m.

Special Needs Offenders: Reducing Risk Through Employment & Education
May 4, 12:30 p.m.; May 12, 8:30 a.m.; May 26, 2 p.m.

Statistical Instructions for Reporting Bail Hearings & Reviews
May 2, 12:30 p.m.; May 9, 2 p.m.; May 15, 12:30 p.m.

Survival Spanish: Cross-Cultural Training
May 4, 10:30 a.m.; May 18, 8:30 a.m.

Taking the Interpreter's Oath to Heart
May 12, 1:30, 2, 2:30, 3 p.m.; May 24, 3, 3:30, 4, 4:30 p.m.

Tax Credit vs. Dependent Care Reimbursement Account
May 9, 1 p.m. LIVE; May 16, 2 p.m.; May 22, 3 p.m.; May 23, 11:30 a.m.

Understanding My Social Security Benefits with a Civil Service Retirement System Annuity
May 2, 1:30 p.m.; May 9, 4 p.m.; May 19, 12:30 p.m.; May 23, 4 p.m.

Using *Sentry* in Probation and Pretrial Services Investigation and Supervision Activities
May 16, 1 p.m. LIVE; May 22, 2 p.m.; May 30, 11:30 a.m.

WordPerfect 8.0 Basics
May 8, 2 p.m.

WordPerfect 8/9 Macro Basics, Parts
Part One: May 1, 2:30 p.m. LIVE; May 15, 9 a.m.
Part Two: May 2, 2:30 p.m. LIVE; May 16, 8:30 a.m.

WordPerfect Document Formatting
May 5, 4 p.m.

WordPerfect File Management
May 1, 12 p.m., May 19, 1 p.m.

WordPerfect QuickFamily
May 5, 12 p.m., May 22, 4 p.m.

WordPerfect Templates
May 30, 9:30 a.m.

Working with Multi-Party Cases
May 10, 1 p.m. LIVE

Your Total Benefits Package
May 9, 3 p.m.; May 15, 4 p.m.

PLEASE POST

VACANCY ANNOUNCEMENTS
THE THIRD BRANCH
Vol. 32 Number 4 April 2000

ADMINISTRATIVE ASSISTANT TO THE CHIEF JUSTICE, U.S. Supreme Court

Statutory position reports to the Chief Justice and assists him in his nonadjudicatory responsibilities. Primary duties include role of senior court manager, assisting Chief Justice in the internal management of the Supreme Court with responsibilities for personnel, budget, information systems, public information, general organization policy, and other administrative matters. Assists the Chief Justice in his responsibilities involving the Judicial Conference of the U.S., the Federal Judicial Center, the Administrative Office of U.S. Courts, and the Smithsonian Institution. Serves as the Chief Justice's liaison with the Executive Branch, Congress, and other state and private organizations involving the administration of justice; assists by drafting or editing speeches and articles. Substantial familiarity with the federal Judiciary is required as well as a law degree and at least seven years' relevant experience separately or in combination involving (1) the practice of law (2) court administration or (3) the management of complex organizations. Position requires excellent communication and leadership skills, as well as demonstrated administrative ability. Term: two years, renewable. Salary: Up to Executive Level III. Send a complete resume listing work experience, educational background, additional activities etc. to Supreme Court of the United States, 1 First Street NE, Personnel Office, Room 3, Washington, D.C., 20543. Telephone: (202) 479-3404. **Application deadline: May 15, 2000.**

CIRCUIT LIBRARIAN, U.S. Court of Appeals, Seventh Circuit

The Seventh Circuit Court of Appeals is seeking an energetic and creative librarian to serve as director of a library system, supporting federal courts in Illinois, Indiana, and Wisconsin. Administrative responsibilities include long-range planning, policy, and budget development and implementation, human-resource management, library automation, and space and facility operation. Applicants must have an MLS/MLIS from an ALA-accredited program and a JD from an ABA-accredited law school (law library employment may be substituted); a minimum of 7 years of progressively responsible library experience, at least 3 of which are at the administrative level. A comprehensive understanding of library operations and management concepts is essential, including experience with the Sirsi Unicorn Integrated Library System or other ILS, Westlaw, and Lexis. Excellent interpersonal, oral, and written communication skills and a customer-service orientation are a must. Salary: $86,000 to $101,000, depending on experience and qualifications, plus a federal benefits package. Please submit application letter, resume, and three professional references to Collins T. Fitzpatrick, Circuit Executive, Seventh Judicial Circuit, 219 South Dearborn Street, Room 2780, Chicago, Illinois 60604. **Application deadline: May 31, 2000.**

U.S. PUBLIC DEFENDER, District of Delaware

The U.S. Court of Appeals for the Third Circuit seeks applicants for the position of U.S. Public Defender for the District of Delaware. Appointment is for a four-year term. Salary: $121,900. Applicants should be members in good standing in the bar of each state in which admitted to practice; have a minimum of five years' criminal practice experience, preferably with significant federal criminal law experience, which demonstrates an ability to provide zealous representation of consistently high quality to criminal defendants; and have the ability to effectively administer the office, a reputation for integrity, and a commitment to the representation of those unable to afford counsel. The application form is available on the Third Circuit website, http://pacer.ca3.uscourts.gov, or by contacting Circuit Executive Office, Third Judicial Circuit, 22409 U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106-1721. Telephone: (215) 597-0718. Submit an original plus seven copies of the application including writing samples with each copy, and marked *Attention: Federal Public Defender Search Committee.* **Application deadline: May 1, 2000.**

EQUAL OPPORTUNITY EMPLOYERS

supervision for drug offenses increased 6 percent.

Persons serving terms of supervised release following their release from prison grew 8 percent. Overall, persons serving terms of supervised release made up 61 percent of all persons under supervision, compared to 58 percent one year earlier. Parole cases dropped 11 percent, and those involving mandatory release fell 10 percent. Probation officers prepared 192,904 investigative reports in 1999, a rise of 3 percent over last year.

In 1999, the number of defendants in cases activated in the pretrial services system increased 2 percent, to 80,154, consistent with the growth in criminal filings in district courts. Pretrial services officers interviewed 59,542 defendants and prepared 76,657 pretrial reports. In 1999, the number of defendants released increased 1 percent to 36,213. Of those released, 85 percent were placed into the custody of pretrial services officers, and 91 percent were released with restrictive conditions. The most frequently ordered restrictive conditions involved substance abuse testing and treatment and were imposed on 22 percent of activated defendants. House arrest and electronic monitoring were ordered for 7 percent of defendants.

***Hearings** continued from page 1*

Judges Davis, Edwards, and Hatter, before the Senate Committee on Environment and Public Works, Subcommittee on Transportation and Infrastructure, concerning the General Services Administration's (GSA) fiscal year 2001 Capital Investment and Leasing Program, including courthouse construction. Opening statements at that hearing were given by Senator Max Baucus (D-MT), Senator Barbara Boxer (D-CA), and Bob Peck, Commissioner, Public Building Service, GSA.

Roth's final hearing in March was before the House Appropriations Subcommittee on the Treasury, Postal Service and General Government. Subcommittee chair Representative Jim Kolbe (R-AZ) heard testimony on GSA's FY2001 appropriations, which includes courthouse construction.

FY 2001 is the first budget in four years that the Administration has requested funding for federal courthouse construction, but the President's budget included funds for just seven of the 19 projects on the Judiciary's 5-year plan. While Congress did appropriate funds for courthouses in FY 1999, a backlog of projects has resulted and many courts continue to operate in substandard conditions. These delays are costly in more ways than one. GSA estimates that construction costs are increasing 3-4 percent for each year of delay, with significantly higher escalation in some cases.

Chief Judges John E. Conway, Harry T. Edwards, Terry J. Hatter Jr., and Edward B. Davis (left to right) testified at congressional hearings. Judges Jane Roth, seated behind the panel, and Judge William M. Skretny also testified on courthouse issues.

The courthouse projects awaiting authorization in FY 2001 are generally in areas of the country where there is dynamic population growth, combined with increased law enforcement activities. While the criminal caseload in these areas has increased, the civil jurisdiction of the federal courts has broadened, and the number of bankruptcy filings also has risen substantially.

Older courthouses cannot accommodate modern courtroom technology features and often have problems with deteriorating heating and cooling systems as well as other building infrastructure problems. Further, judges and court staff are conducting court business in unsafe, overcrowded facilities. Security for jurors, witnesses, court employees, judges, and the public is compromised as they pass through the same hallways as individuals charged with serious crimes.

Roth and other Judiciary representatives also expressed concern over the Office of Management and Budget's (OMB) arbitrary decision to impose courtroom sharing on judges, nullifying the Judicial Conference policy of one courtroom per active judge and an adequate number of courtrooms to accommodate senior and visiting judges in each court. This decision resulted in the deletion of as many as half of the planned courtrooms in some of our nation's busiest courts. "[T]he doctrine of separation of powers creates serious constitutional concerns if the executive branch should attempt to establish judicial process and policy," Roth said.

Presently there is no research to support the concept of courtroom sharing, and none of the 50 state court systems has adopted courtroom sharing policies. Courtrooms are essential tools in the delivery of justice, allowing the timely dispensation of cases pending before the court and eliminating last minute delays. Minimal monetary gain would result from deleting a courtroom, but the cost to efficient court operations would be significant.

JUDICIAL MILESTONES

Appointed: Richard Linn, as Court of Appeals Judge, U.S. Court of Appeals for the Federal Circuit, January 1.

Appointed: Barbara M. G. Lynn, as U.S. District Judge, U.S. District Court for the Northern District of Texas, February 14.

Appointed: Joel A. Pisano, as U.S. District Judge, U.S. District Court for the District of New Jersey, February 16.

Appointed: Carla E. Craig, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Eastern District of New York, February 28.

Appointed: John E. Hoffman, Jr., as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Southern District of Ohio, February 25.

Appointed: Coleman Ray Mullins, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Northern District of Georgia, February 29.

Appointed: Michael G. Williamson, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Middle District of Florida, March 1.

Appointed: William H. Baughman, Jr., as U.S. Magistrate Judge, U.S. District Court for the Northern District of Ohio, February 16.

Appointed: Monica J. Benton, as U.S. Magistrate Judge, U.S. District Court for the Western District of Washington, February 28.

Appointed: William H. Baughman, Jr., as U.S. Magistrate Judge, U.S. District Court for the Northern District of Ohio, February 16.

Appointed: Boyd N. Boland, as U.S. Magistrate Judge, U.S. District Court for the District of Colorado, February 9.

Appointed: John A. Gorman, as U.S. Magistrate Judge, U.S. District Court for the Central District of Illinois, February 18.

Elevated: Judge Edward R. Korman, to Chief Judge, U.S. District Court for the Eastern District of New York, succeeding Judge Charles P. Sifton, March 19.

Elevated: Judge Michael B. Mukasey, to Chief Judge, U.S. District Court for the Southern District of New York, succeeding Judge Thomas P. Griesa, March 12.

Elevated: Judge Dean Whipple, to Chief Judge, U.S. District Court for the Western District of Missouri, succeeding Judge D. Brook Bartlett, January 22.

Elevated: Bankruptcy Judge Stuart M. Bernstein, to Chief Judge, U.S. Bankruptcy Court for the Southern District of New York, succeeding Bankruptcy Judge Tina L. Brozman, February 1.

Retired: Senior Judge Barbara K. Hackett, U.S. District Court for the Eastern District of Michigan, March 1.

Retired: Magistrate Judge Donald E. Abram, U.S. District Court for the District of Colorado, February 8.

Retired: Magistrate Judge Sharon E. Grubin, U.S. District Court for the Southern District of New York, February 29.

Retired: Magistrate Judge Robert J. Kauffman, U.S. District Court for the Central District of Illinois, February 17.

Resigned: Magistrate Judge Joel A. Pisano, U.S. District Court for the District of New Jersey, February 15.

Retired: Magistrate Judge David E. Wilson, U.S. District Court for the Western District of Washington, February 27.

Deceased: Senior Court of Appeals Judge Charles E. Wiggins, U.S. Court of Appeals for the Ninth Circuit, March 2.

Deceased: Senior Judge Aubrey E. Robinson, Jr., U.S. District Court for the District of Columbia, February 27.

Deceased: Magistrate Judge Doyle A. Rowland, U.S. District Court for the Western District of Michigan, February 29.

THE THIRD BRANCH

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JUDICIAL BOXSCORE

As of April 1, 2000

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Nominees	16
District Courts	
Vacancies	55
Nominees	22
Courts with Judicial Emergencies	20

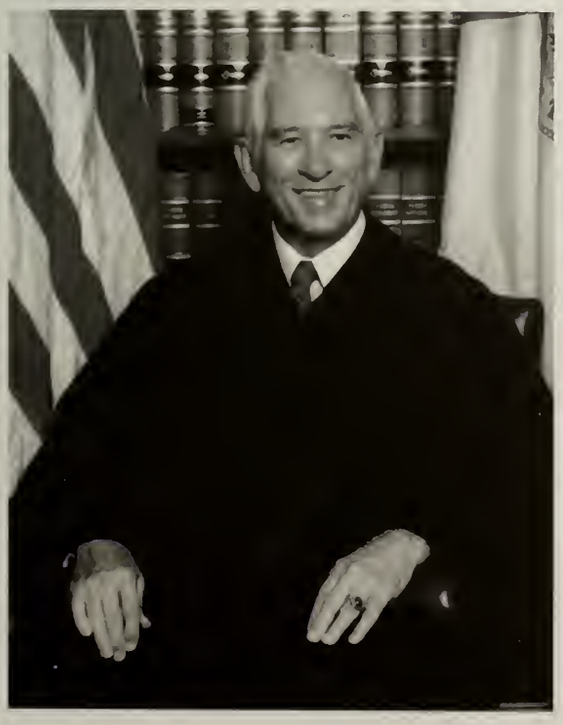
For more information on vacancies in the federal Judiciary visit our website at www.uscourts.gov.

AJS Honors Two Who Serve the Judiciary

The American Judicature Society has recognized two federal judges, who in their careers have improved the administration of justice.

Judge James Lawrence King (S. D. Fla.) has received the Eighteenth Annual Edward J. Devitt Distinguished Service to Justice Award. The award honors an Article III judge who, in an exemplary career, has made significant contributions to the administration of justice, the advancement of the rule of law, and the improvement of society as a whole.

King developed and promoted differentiated case tracking and management, which has helped the Southern District of Florida handle an ever-expanding criminal caseload. As a jurist, King has been praised as a defender of the rights of minorities, immigrants, and asylum seekers.



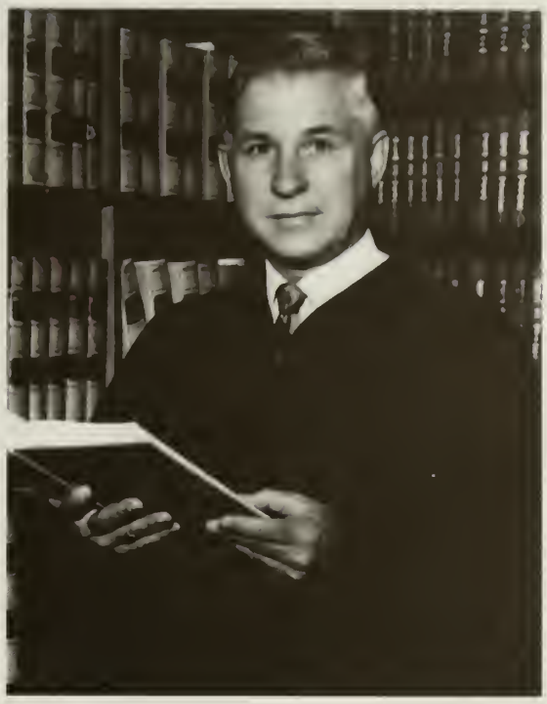
Judge James Lawrence King (S. D. Fla.)

At Chief Justice Warren E. Burger's behest, he studied the masters' system and English judicial procedures in London, and was instrumental in shaping the U.S. magistrate judge system. He has been a Judicial Conference member, and served on the Conference Committee On Long Range Planning. A former chief judge of the Southern District of Florida serving from 1984 to 1991, he also acted temporarily as chief judge for the administration of the U.S. District Court for the Canal Zone. King's career also encompasses service as a Florida state circuit judge.

In 1970, he was appointed to the federal bench, taking senior status in 1992. He continues to maintain the caseload of an active judge on his court. The federal courthouse at Miami, Florida, is named in his honor.

The Devitt Award, administered by the American Judicature Society, honors the late Judge Edward J. Devitt (D. Minn.). Justice Ruth Bader Ginsburg (S.C.), Judge James L. Oakes (2nd Cir.), and Judge Ortrie D. Smith (W. D. Mo.) served on this year's selection committee.

Judge Elmo B. Hunter (W. D. Mo.) is the recipient of the AJS Distinguished Service Award, an award that recognizes significant contributions to the work of the AJS and the nation in promoting the effective administration of justice. Hunter is the only individual in the 87-year history of AJS to serve both as its chair (1969-70) and president (1970-71). In his career, he also was a tireless advocate for judicial merit selection and public education about the courts.



Judge Elmo B. Hunter (W. D. Mo.)

Hunter is a former member of the Judicial Conference, and he chaired the Conference Committee on Court Administration from 1969 to 1987, also serving on its Subcommittee on Judicial Improvements. He was a member of the Conference Committee on Long Range Planning.

A former Missouri circuit court, court of appeals, and supreme court judge, in 1965 he was appointed to the federal bench, taking senior status in 1980. For his leadership in the federal Judiciary, Hunter received the Edward J. Devitt Distinguished Service to Justice Award in 1987.

The American Judicature Society is a nonpartisan, nonprofit organization that works to improve the administration of justice and protect judicial independence. Through research, educational programs, publications, and videos, AJS focuses primarily on ethics in the courts, judicial selection, the jury, court administration, and public understanding of the justice system.

Security and Facilities Dual Responsibilities for Judge Roth

Judge Jane Roth (3rd Cir.) is the chair of the Judicial Conference Committee on Security and Facilities. She was nominated to the U.S. District Court for Delaware in 1985 and elevated to the Third Circuit in 1991.

Q: Your Committee has a dual role with responsibility for both security and facilities. How do these two roles interrelate?

A: You can't effectively consider one without the other. How a courthouse is built has a great deal to do with the security you're going to have in that courthouse. That has become particularly apparent when we understand how having separate paths of circulation for the public, for judges and for prisoners in the courthouse is important in maintaining the security of the courthouse. So the structure of the building in which we're going to provide security is an important factor. To focus on one without the other is not going to solve problems.

Q: The Judicial Conference recently made a strong statement regarding the Office of Management and Budget and its policy on courtroom sharing. What was that statement and what led up to it?

A: The GSA budget request for courthouses has been reduced from its original estimates because of a new policy, developed by OMB, that would require the sharing of courtrooms at the ratio of two courtrooms for every three judges. The Judicial Conference has voted to "strongly condemn the unilateral efforts of the Office of Management and Budget to impose a courtroom sharing policy on the judicial branch, as an unwarranted and inappropriate intrusion into the constitutionally mandated independence of the Judiciary."

It is difficult for us to understand why OMB announced the policy. There was no consultation at all with the Judiciary prior to its announcement. We understand that OMB claims the policy is based upon a 1997 General Accounting Office survey and a RAND study. There is nothing, however, in either of these studies to support the courtroom sharing policy. There is a discussion at one point in the GAO study that a courtroom is used on approximately 65 percent of the days. Apparently, OMB conceives that courtrooms should be used 100 percent of the time and that, since 65 percent is about two-thirds of 100, having 2 courtrooms for every 3 judges would be maximum efficient utilization of courtrooms.

As a former district court judge, I realize how important it is for every active judge to have a courtroom available to schedule cases and proceedings well ahead of time. When I was on the district court, I had trials and arguments scheduled 6 to 8 months in advance. It was only by using this scheduling method that I was able to manage my caseload effectively. One of the advantages of this efficient type of case management is that the lawyers know when a case is coming to trial and frequently on the eve of trial the case is settled. When this occurs, the courtroom is dark on the day the trial was suppose to begin. But you realize the settlement would not have occurred if the courtroom had not been available for the scheduled trial.

The Judicial Conference policy is one courtroom for every active district judge and for every senior judge with a substantial caseload. Senior judges with reduced caseloads and visiting judges will share courtrooms. The judicial councils determine space needs and the Director of the Administrative Office, by statute, must provide adequate accommodations for the courts. The Administrative Office consults with GSA to determine the most effective and efficient method of providing the needed accommodations. GSA is then directed by statute to provide these facilities. There is not a role for OMB to insert itself into this process to change the court needs as they have been determined by the circuit judicial councils and by GSA.

Judge Jane Roth (3rd Cir.)

The courtroom sharing resolution, adopted by the Conference, was proposed by the Security and Facilities Committee. The Committee felt that the OMB policy raised serious constitutional implications because in essence it is the executive branch attempting to regulate how the judicial branch is going to conduct its judicial business. Certainly, the legislative branch has the power of the purse and they can allocate the amount of money for courthouse construction that they think appropriate. But for the executive branch to tell judges how courts will be run raises serious questions of separation of powers. It was on that basis that the Committee and the Conference took the strong stand that they did.

Q: OMB has inserted this policy into the White House Budget, and the Conference has made its statement. What happens now?

A: It is the role of Congress to authorize courthouses and to appropriate the money for their construction. Last month I testified before Congress on the need to construct the courthouses on our priority list, originally agreed to by us and GSA. I was joined by Chief Judge Harry T. Edwards (D.C. Cir.), Chief Judge John E. Conway (D. N.M.), Chief Judge Edward B. Davis (S.D. Fla.), Chief Judge Terry J. Hatter Jr. (C.D. Calif.), and Judge William M. Skretny (W.D. N.Y.), who testified about the need for the courthouses to be constructed in their districts. Our position, which we presented to the authorizing committees, both in the House and the Senate, and to the House appropriations committee, was that these courthouses are needed. They are needed in the size and the design proposed by the AO and approved by GSA in the prospectuses presented on the courthouses, without the restrictions placed by OMB.

We asked the subcommittees to authorize the courthouses as they had been submitted originally by GSA, with the addition of two projects that it now appears are ready to proceed immediately and that had not been on the GSA list. It is our request that all 19 courthouse projects at a cost of $800 million move forward in fiscal year 2001.

Q: What is the Judiciary, through GSA, asking for in FY 2001 for courthouse construction?

A: GSA asked for $700 million for courthouse construction. OMB cut it down from $700 to $488 million. There were two types of cuts. First, OMB picked projects 1 through 5 of the Judiciary's prioritized projects, then jumped to number 8, number 14, and left out the intervening projects. They also reduced the scope of all but one of these projects by the imposition of a courtroom-sharing policy. The whole time-consuming and expensive effort of redesigning some of these projects will create more delay that will put off their completion even longer and raise costs.

Q: OMB has imposed the courtroom sharing policy and reduced our FY 2001 budget request. Could OMB impose other restrictions?

A: Yes. Another device used by OMB is directed at the Judiciary's operating budget. Section 1105(b) of Title 31 provides that the executive branch must pass on to the legislative branch, without change, the budget requests of the judicial and legislative branches. However, even when the Judiciary's operating budget has been passed on without change, OMB has made a backhanded attack on the budget by a subterfuge known as 'negative allowances.' By this stratagem, OMB puts the money in with one hand and takes it out with the other. OMB asserts at the end of the budget that to balance it, a certain amount—say $150 million—must be eliminated. The suggestion is then made to the appropriators that all or part of the negative allowance amount be removed from the Judiciary's budget request. Negative allowances evade the statute. We believe that they also violate it.

The construction projects of the Judiciary have not had the statutory protection of § 1105(b) because courthouse construction requests are made by GSA, an executive agency. Due to the fact that these requests come from an executive agency, they are not protected from executive branch interference. The Federal Courts Budget Protection Act, introduced by Senator Thad Cochran (R-MS), provides that both the operating and the construction budgets of the Judiciary be presented directly to Congress. This would prevent OMB from changing the Judiciary's courthouse construction requests. The Federal Courts Budget Protection Act would not in any way evade the legislative oversight of the budget requests. The requests would go before the congressional authorizing and appropriating committees in exactly the same manner as they do now. Congress would maintain its same oversight. OMB also would have an opportunity to comment on our budget requests, but it could no longer arbitrarily cut them in favor of executive branch projects. The problem I mentioned of negative allowance is also covered in the Federal Courts Budget Protection Act. The Act specifically prohibits OMB from exercising negative allowances against the Judiciary's budget.

Q: Turning to court security, how would you describe the overall security of federal courthouses nationwide?

A: We are about to undertake a study of court security to make sure our security system is effective and well-conceived. Incidents at Oklahoma City and in Topeka, Kansas, are examples of how—even when you aren't expecting problems—tragedy can occur. Working with the U.S. Marshals Service, we try to make sure we are providing adequate security in courthouses. Security is, however, a matter of significant expense. The tension is constant between what the budget can provide and what security requires. That's one of the reasons why we have undertaken this study—to make sure we are balancing what needs to be done with an appropriate regard for financial responsibility.

Judicial Conference of the United States, March 14 2000

Seated: (LtoR) Chief Judge Juan R. Torruella (1st Cir.); Chief Judge Ralph K. Winter, Jr. (2nd Cir.); Chief Judge Edward R. Becker (3rd Cir.); Chief Judge J. Harvie Wilkinson III (4th Cir.); Chief Justice William H. Rehnquist; Chief Judge Carolyn Dineen King (5th Cir.); Chief Judge Boyce F. Martin, Jr. (6th Cir.); Chief Judge Richard A. Posner (7th Cir.); Chief Judge Roger L. Wollman (8th Cir.)

Standing, Second Row: (LtoR) Judge Joseph A. DiClerico, Jr. (D. NH); Chief Judge Charles P. Sifton (E.D. N.Y.); Chief Judge Donald E. Ziegler (W.D. Pa.); Chief Judge Harry T. Edwards (D.C. Cir.); Chief Judge Haldane Robert Mayer (Fed. Cir.); Chief Judge Procter R. Hug, Jr. (9th Cir.); Chief Judge Stephanie K. Seymour (10th Cir.); Chief Judge R. Lanier Anderson (11th Cir.); Chief Judge Charles H. Haden II (S.D. W.Va.); Judge Hayden W. Head, Jr. (S.D. Tex.)

Standing, Third Row: (LtoR) Judge Thomas A. Wiseman, Jr. (M.D. Tenn.); Judge Robert L. Miller, Jr. (N.D. Ind.); Judge James M. Rosenbaum (D. Minn.); Judge Judith N. Keep (S.D. Calif.); Judge Ralph G. Thompson (W.D. Okla.); Chief Judge Charles R. Butler, Jr. (S.D. Ala.); Chief Judge Norma H. Johnson (D. D.C.); Chief Judge Gregory W. Carman (Int'l Trade); Leonidas Ralph Mecham, Director, Administrative Office of the U.S. Courts.

THE THIRD BRANCH

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Vol. 32 Number 5 May 2000

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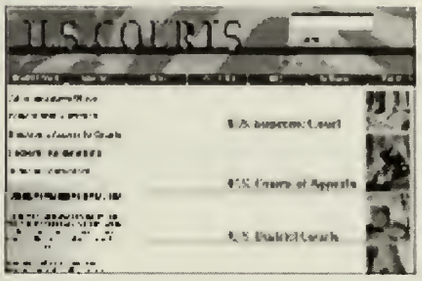

Click here to go to the Federal Judiciary homepage.

Speaker Hastert, Hyde Discuss COLA in 2001

House Speaker J. Dennis Hastert (R-IL) (at top of table) met with Judiciary representatives in May to discuss agenda-topping issues and legislation in the waning months of the 106th Congress. Speaking on behalf of the Judiciary were (left to right) Administrative Office Director Leonidas Ralph Mecham; Judge Wayne R. Andersen (N.D. Ill.) a member of the Judicial Confer- ence Committee on the Judicial Branch; Judge David R. Hansen (8th Cir.), chairman of the Committee on the Judicial Branch; and Judge Ann C. Williams (7th Cir.), president of the Federal Judges Association. Representative Henry J. Hyde (R-IL) (to the Speaker's left) also participated in the discussions. As chairman of the House Committee on the Judiciary, Hyde has had a long-standing interest in the Judiciary.

Among the topics discussed by the participants were judges pay and the Judiciary's appropriations. The Speaker again indicated his support for a 2001 COLA for members of Congress and judges. Despite last year's successful effort, both the Speaker and Chairman Hyde cautioned that this is an election year, which will make it even more difficult to get a COLA.

Next

THE THIRD BRANCH

Law Day Has Students Looking at Judicial Independence

High-school officials receive word a gun will be brought to their school. Using metal detectors, they search the students. The backpack of one student, who may have been singled out by a teacher, is searched and a quantity of drugs is found. In a subsequent hearing, the judge is asked by the defendant to rule on a motion to suppress the evidence, saying the search was illegal.

Meanwhile, news coverage shows parents strongly in favor of searches to protect their children, while others point to a student's right to privacy. One observer threatens judicial impeachment if the judge doesn't bow to public opinion. How would you rule?

That's the question nearly 2,000 high-school students were asked to answer when they took part in the federal Judiciary's Law Day celebration at 34 courthouses nationwide. While Fourth Amendment rights issues—the protection against unreasonable searches and seizures—were raised in this case, the students participating in the Law Day exercise were asked to focus on how community pressure may be exerted to influence a decision, and the role of judicial independence in that decision-making process. In the exercise they may have found just how important judicial independence is to the justice system.

"Students were asked to judge the case, not on their personal opinion, but on the rule of law," explained Judge Ann Williams (7th Cir.), who hosted the national broadcast from Washington, D.C. "They may feel strongly one way or the other on whether or not students should be searched. But no matter what their personal opinions, they must rule on the case based upon the law. It's a situation a judge faces every day." Williams and the many other federal judges involved in Law Day, hope the exercise helped students understand the constitutional constraints imposed on judicial decisions and the importance of judicial independence.

According to Rebecca Fanning, community outreach coordinator for the Administrative Office, students deliberately were exposed to the high emotions involved in the case. The students' natural inclination to identify with the accused student also was recognized. These factors were introduced to emphasize the difficult, often controversial nature of judicial decisions that may run contrary to public opinion but according to the rule of law. Federal judges, court staff, and members of the local legal communities were available at the participating federal courthouses to answer students' questions and share their observations on the process after the live national broadcast.

"The case," Williams said, "is sensitive, especially in light of violence in schools and the need to protect our children. Public opinion in this area can be very strong. We hoped to demonstrate that judges
must be free to make even controversial decisions as long as they are based upon the law. Judicial independence means judges are free from the influence of special interest groups, popular opinion, or political institutions. This is the only way confidence in the court system can be maintained."

The 90-minute broadcast from the Washington, D.C., studios of the Federal Judicial Television

Network featured moderators Williams and AO attorney Daniel A. Cunningham, with a student audience from the Presidential Classroom, a program that brings high-school students from around the country to see government at work.

Williams gave students in the broadcast audience the legal background on motions, including how similar cases had been decided in the past, and the rules of law the Supreme Court established and applied. In the subsequent tally of judicial decisions across the country 846 voted to grant the motion to suppress the evidence and 427 voted to deny the motion. Students also were asked to share some of the reasons behind their decision. "These were very well-informed students," said Cunningham following the broadcast. "I was impressed with how they grasped the issues involved and weighed the different factors."

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THE THIRD BRANCH

At Session Midpoint, an Update on Legislation

Both Houses of Congress continue to move legislation during the second session of the 106th Congress. Some bills, such as that on civil asset forfeiture, have passed and been signed into law. Others, such as the resolution to establish a constitutional amendment on victims' rights, have foundered after a long and contentious legislative history. As Congress now is more than halfway through the second session, the future of some bills may depend more upon the time remaining on Congress' calendar than on their relative legislative merits.

H.R. 1658, The Civil Asset Forfeiture Reform Act of 2000

The preamble to H.R. 1658, the Civil Asset Forfeiture Reform Act of 2000, best describes Congress' intent with this bill: "to provide a more just and uniform procedure for federal civil forfeitures." H.R. 1658 was passed by the House mid-way through the first session of the 106th Congress. In March of the second session, after negotiations among the House and Senate Judiciary Committees and the Department of Justice, the Senate passed its own version of the bill, which the House agreed to in April. The President signed the bill, P.L. 106-185, April 25, 2000.

Representative Henry Hyde (R-IL), the bill's sponsor, called H.R. 1658 "the culmination of a 7-year effort to reform our nation's civil asset forfeiture laws." Representative John Conyers (D-MI) said that while "it is important that we have asset forfeiture. . . this put it under controls that have not existed before." Among other provisions, the bill provides for the appointment of counsel for indigents if they are represented by appointed counsel in related criminal cases and for the payment of counsel by the Judiciary; the return of property pending final disposition of a civil forfeiture case if continued possession by the government would cause substantial hardship and a 30-day time limit for judges to act upon motions and complaints seeking release of this seized property; and for property owners to sue the federal government for compensation for damage to their property when they prevail in civil forfeiture actions. The bill would also require the government to prove, by a preponderance of the evidence, that the property is subject to forfeiture, not, as is currently the case, to simply make an initial showing of probable cause, that then shifts the burden of proof to the claimant.

"This bill," Hyde said, "is one we can all be proud of. It returns civil asset forfeiture to the ranks of respected law-enforcement tools that can be used without risk to the civil liberties and property rights of American citizens. We are all better off that this is so."

S. J. Res. 3, Victims' Rights Amendment

At the request of Senators Strom Thurmond (R-SC) and Charles E. Schumer (D-NY), Judge William W. Wilkins (4th Cir.), chair of the Judicial Conference Committee on Criminal Law, wrote to express the Conference view of S. J. Res. 3, the Victims' Rights Amendment to the Constitution. On numerous occasions, the Conference has made known its preference for a statutory approach as opposed to a constitutional amendment on victims' rights. Most recently, Judge Emmett Sullivan (D.D.C.) appeared as a representative of the Judicial Conference before

the House Subcommittee on the Constitution to testify on H.J. Res. 64, a constitutional amendment to protect the rights of crime victims. S. J. Res. 3 stalled on the Senate floor after debate and the bill's sponsors withdrew the legislation, effectively killing the proposal for the remainder of this Congress. However, the sponsors vowed to bring the legislation forward next year.

Juvenile Crime/Gun Control, H.R. 1501, S. 254

The stalled progress of the juvenile crime bill prompted House members last month to vote to urge House-Senate negotiators to meet soon. In August of the first session, the Senate took up H.R. 1501, substituted the text of its own bill, S. 254, then requested a conference on the bill with the House. Little progress has been seen since, largely because of controversial gun control provisions included in the Senate's version.

Project Exile, H.R. 4051

Last month, the House passed and sent to the Senate H.R. 4051, the Project Exile: The Safe Streets and Neighborhoods Act of 2000. According to the bill's sponsor, Representative Bill McCollum (R-FL), the bill would provide incentive block grants for state criminal justice systems totaling $100 million over 5 years. To qualify, a state must ensure a mandatory minimum 5-year prison sentence without parole for anyone who uses or carries a firearm during any violent crime or serious drug trafficking crime or for a previously convicted violent felon who is caught possessing a gun. The mandatory minimum sentence must be in addition to the punishment provided for the underlying crime. Last month, a similar bill, S. 2390, was introduced in the Senate.

McCollum cited the success in Richmond, Virginia of Project Exile, a program created in 1997. In that program, firearms offenses normally prosecuted in state court were prosecuted in federal court so that federal mandatory minimum firearms offense sentences would apply. Similar programs now have been adopted by many large U.S. cities nationwide. However, Representative Robert C. Scott (D-VA) argued that H.R. 4051 "goes down the failed road of mandatory minimum sentencing," saying there is no convincing evidence that mandatory minimums and Project Exile have reduced violent crime to any greater extent than the decrease in Virginia generally without Project Exile.

The Judicial Conference agreed to take no position on proposed legislation to expand intensive firearms prosecutions programs like Project Exile in Richmond. The Conference did recommend that any such legislation, if enacted, provide for a proportionate increase in judicial resources to the affected federal courts. While the Conference has not had the opportunity to consider H.R. 4051, the Conference opposes mandatory minimum sentences, as they undermine the U.S. Sentencing Guidelines by producing sentencing disparity.

H.R. 1869, the Stalking Prevention and Victim Protection of 1999

As introduced last year, H.R. 1869 substantially expands the current interstate stalking statute to cover e-mail and Internet communications. Under the bill's provisions, a federal court would issue at sentencing a protective order designed to protect the victim from further stalking by the convicted person. The House passed H.R. 1869 at the end of the first session. At the beginning of the second session, an identical bill (S. 2011), was introduced in the Senate, where it enjoys bipartisan support.

Asbestos Bill, H.R. 1283, S. 758

H.R. 1283 would establish within the Department of Justice a new Office of Asbestos Compensation (OAC), which would have jurisdiction over proceedings to determine if a claimant is entitled to compensation and the amount of the compensation for asbestos-related injuries. Claimants would need to meet specified medical criteria, in order to receive a certificate of medical eligibility. Only those with certificates could pursue compensation either within the OAC or in any state or federal court of competent jurisdiction. Administrative law judges within the OAC would conduct hearings and determine whether compensation is to be awarded and the amount, if the claim is not otherwise settled. H.R. 1283 permits review of the OAC's decisions in the U.S. Court of Federal Claims, with subsequent review by a court of appeals. The House Judiciary Committee reported the bill favorably by a vote of 18-15. However, the Department of Justice opposes H.R. 1283, and in the Senate, Majority Leader Trent Lott has indicated there will not be sufficient time to consider its related bill, S. 758, this year.

Private Property Rights, H.R. 2372, S. 1028

In February, Administrative Office Director Leonidas Ralph Mecham wrote on behalf of the Judicial Conference to express the Judiciary's concerns regarding H.R. 2372, which is intended to expedite federal court consideration of takings cases. The bill "would alter deeply ingrained federalism principles by prematurely involving the federal courts in regulatory proceedings involving property that have historically been decided by state and local administrative bodies or courts. By relaxing the current requirement of ripeness in takings cases and limiting a federal judge's ability to abstain from hearing certain cases, the bill also may adversely affect the administration of justice and delay the resolution of property claims." The Department of Justice and the Conference of Chief Justices also have communicated their objections to H.R. 2372. Nevertheless, the bill was passed by the House in March. No action has occurred on the related bill in the Senate, S. 1028.

Cocaine Penalties/Bankruptcy Reform Act H.R. 833

The House passed its bankruptcy reform bill, H.R. 833, in May 1999. The bill, while authorizing 18 new temporary bankruptcy judgeships and extending certain existing judgeships, also would impose certain requirements on bankruptcy clerks and the Administrative Office to collect data from bankruptcy filings to report to Congress, and to maintain access to debtors' federal tax returns. The Senate passed a companion bill, S. 625, containing similar requirements, but also including the Powder Cocaine Sentencing Act of 2000, which would reduce the threshold amounts necessary to trigger the mandatory minimum penalties for possession of cocaine to one-tenth of their current levels. In March 2000, Director Mecham wrote to members of the House and Senate Judiciary Committees expressing the Judicial Conference opposition to the mandatory minimum sentence and mandatory restitution provisions of H.R. 833. "If passed," Mecham wrote, "the Act would ultimately significantly increase the numbers of persons eligible for mandatory minimum sentences, further exacerbating the destructive effect mandatory minimums have upon the federal criminal justice system." The House and Senate now are informally conferencing their bills.

THE THIRD BRANCH

Gregg Advocates Funding for Domestic Drug War

Senator Judd Gregg (R-NH), chair of the Senate Appropriations Subcommittee on Commerce, Justice, State and the Judiciary, does not often speak in public about the funding needs of the Judiciary.

Senator Judd Gregg (R-NH)

Last month, however, when Gregg rose on the Senate floor to express his reservations regarding the President's request for $1.6 billion for Colombia to fight drugs, he made it clear where he believes funds should be allocated.

Gregg chairs the committee that funds the Judiciary and the Department of Justice, which includes the Immigration and Naturalization Service, the Border Patrol and the Drug Enforcement Administration. All these agencies, he said, "have a significant role in the issue of drug enforcement and especially as it affects our southern border." Gregg's concern was that while the White House has requested money earmarked for Colombia, an inadequate level of funds is requested for the DEA, Border Patrol, the Judiciary and others involved in the domestic war on drugs.

"The fact is we do not have the facilities that we need in order to adequately enforce our laws relative to drug dealers coming across the borders and drugs coming across the borders. We don't have the facilities to detain those people," Gregg said.

"The Judiciary has the same problem," Gregg went on to say. "There is a massive increase in the amount of caseload that the Judiciary along the southern border has to handle. Five district courts on the southwest border now handle 26 percent of all the federal criminal activity—26 percent of all the federal criminal activity—and a great deal of that is drug related."

"The border courts' basic caseload is four times that of the national average. Yet did the administration put money in to try to increase the capacity of those court systems to handle this wave of crime that is coming across the border, much of it drug-related? Absolutely not."

Gregg said significant amounts of funds should be reallocated to fund and support DEA, INS, and the Judiciary. "My point is simple and obvious," Gregg said. "Before we send $1.6 billion to Colombia, before we send this money down there so they can have more planes, goggles, and radar sensors, how about funding the American needs in the area of drug enforcement? How about funding our own law-enforcement community and our Judiciary so we can act adequately, interdict, and fight drugs in the United States?"

THE THIRD BRANCH

Director's Awards for 2000 Honor Four

Administrative Office Director Leonidas Ralph Mecham announced last month the four winners of the 2000 Director's Awards, the federal courts' highest awards for employees.

Brenda K. Argoe

Brenda K. Argoe, clerk of court for the U.S. Bankruptcy Court for the District of South Carolina, is the sole recipient of the 2000 Director's Award for Outstanding Leadership.

The winners of the Judiciary's Director's Award for Excellence in Court Operations are **Jesse D. Cannon Jr.**, assistant circuit executive for the U.S. Court of Appeals for the Fifth Circuit; **Barry K. Lander**, clerk of court for the U.S. Bankruptcy Court for the Southern District of California; and **F. Dan Wieser**, U.S. probation officer for the U.S. District Court for the Middle District of Florida.

In announcing the awards, Mecham said, "Our award winners obviously are people for whom their work is more than a job. They are enthusiastic and dedicated, and typically give more than 100 percent to every project they take on. They help the federal Judiciary run more efficiently, be more effective, and give better service."

Since 1989, 58 members of the Judiciary family have received Director's Awards. The first awards honored administrative excellence, but in 1992 the first awards for outstanding leadership were given. The sole Special Director's Award was given in 1996 to honor the heroic efforts of Clerk of Court Robert D. Dennis (W. D. Okla.) following the bombing of the Alfred P. Murrah Federal Building in Oklahoma City that also damaged the adjacent federal courthouse.

The **Director's Award for Outstanding Leadership**, given this year to **Brenda Argoe**, recognizes Judiciary managerial employees who have made long-term contributions to increase program effectiveness or reduce administrative costs. As the judges from her court noted in nominating Argoe, "She has made, and continues to make, valuable contributions in the areas of effective management, positive work environment, improved productivity, efficient utilization of financial resources, and good public relations, all of which reflect favorably on the court system. Her leadership, devotion, hard work, and intelligence have earned the respect of the public, her staff, her peers, and those in the Administrative Office who work with her on a regular basis and who utilize her resources in seeking effective management of the court system."

Under Argoe's management, the clerk's office in the U.S. Bankruptcy Court for the District of South Carolina not only has operated below budget during the past three fiscal years, it has also improved services and benefits to the court. The bankruptcy judges of the district nominated Argoe for a host of contributions including early

implementation of a pilot state-of-the-art financial accounting system; pioneering work in offering a case imaging system to internal court customers and external customers over the court's PACER webpage that eliminates the need to physically retrieve a case file; implementation of an automated calendaring program that schedules hearings and produces weekly court calendars, minute and appearance sheets; and a staff training and development program that has produced a highly skilled work force.

The **2000 Director's Award for Excellence in Court Operations** recognizes outstanding achievements in improving the operation of federal courts. Winning nominations must be for a specific operations improvement that resulted in cost savings, increased productivity, improved customer service, and judicial efficiencies. Three recipients were chosen this year.

Jesse D. Cannon Jr.

Barry K. Lander

F. Dan Wieser Jr.

As the Fifth Circuit's assistant circuit executive for space and facilities management, **Jesse D. Cannon, Jr.** helps appellate, district and bankruptcy courts identify space requirements, plan space, develop scopes of work, provide drawings, acquire space, monitor construction projects through completion, review requests for renovation and alteration of space, and monitor space funding. His services have resulted in more timely delivery of space at a lower cost to the government. His coordination of the many space projects has increased productivity while producing outstanding court facilities. Over the last decade he has been involved in the careful renovation of a historic courtroom in Beaumont, Texas; the design and construction of three new courthouses in the Southern District of Texas; the installation of electronic courtrooms in the Western and Middle Districts of Louisiana and the Northern District of Mississippi; and remodeling and expansion in district and bankruptcy courts throughout the Fifth Circuit.

Barry K. Lander, clerk of court for the U.S. Bankruptcy Court for the Southern District of California, was nominated for the award by the district's bankruptcy judges because of "his wide-ranging suggestions for innovations and improvements" to the case management/electronic case files (CM/ECF) program, "which have not only improved local use of the system and saved significant expense for our court but also resulted in transferable technology now used by other courts." Lander assisted in adding a bankruptcy noticing function to CM/ECF, an improvement that has eliminated the need to manually docket and scan 15,000 entries and images per year for his court alone. All prototype courts in CM/ECF now have this function. He also identified other changes to CM/ECF that improved accuracy in entering creditor information and efficiency in collecting fees, and that identified closed cases and relationships between associated cases. Lander was involved in the development of programs that ease searches for case files and that automatically assign meetings for judges and trustees.

F. Dan Wieser, Jr., U.S. probation officer in the U.S. District Court for the Middle District of Florida, received a Director's Award for his contributions to the automation of probation operations, within the Middle District of Florida and nationally. Among many projects, he wrote the program for and then aided in the development of a national probation case management system, and helped develop an automated program for tracking deadlines for presentence report processing. Wieser developed a program probation officers could use to do a "least intrusive" search of a computer owned by a person or persons under supervision whose computer online time or use had been restricted by the court. He also wrote a manual to assist probation officers in the use of the Internet as an investigative resource, and helped develop web programs to extract data from the Probation Automated Case Tracking Program. These contributions were made while Wieser was a line supervision officer carrying a full workload.

Nominations for the annual awards are made by members of the court family. Finalists are selected by a panel, who forward their recommendations to the Director. Award panelists this year were Judge Douglas H. Ginsburg (D.C. Cir.), Judge Thomas F. Hogan (D. D.C.) and Alton Ressler, Assistant Director of the AO Office of Human Resources and Statistics.

AO Seeks Judges Interested in Advisory Group Services

The Administrative Office is seeking the names of judges interested in assisting the agency in accomplishing its mission by serving on an AO advisory group. These groups—the peer advisory groups, court councils, and working groups—are composed of judges, court unit executives, and other court personnel. Their purpose is to provide the AO with advice from a court perspective on specific projects or on a broad range of issues. Two of the peer advisory groups are composed solely of bankruptcy judges and magistrate judges, respectively, and address matters specific to the interests of those judges. Article III judges have opportunities for service on various project-specific working groups and on the District or Appellate Court Advisory Councils. More details concerning these advisory groups may be found on J-Net under Advisory Forum.

If you are interested in serving on an advice-giving group, please contact Mike Dolan, Article III Judges Division, at (202) 502-1860; Frank Szczebak, Bankruptcy Judges Division, at (202) 502-1900; or Tom Hnatowski, Magistrate Judges Division, at (202) 502-1830.

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THE THIRD BRANCH

European Court of Justice Makes Historic Visit to Supreme Court

The Supreme Court welcomed the first official visit of the European Court of Justice to the United States last month. The court is the judicial body of the European Union.

Chief Justice William H. Rehnquist and the Associate Justices of the Court greet President of the Court of Justice Gil Carlos Rodriquez Iglesias and other members of the European Court.

The delegation was composed of President of the Court of Justice Gil Carlos Rodriguez Iglesias, five judges, three advocates general, and the registrar. In addition to its visit to justices of the U.S. Supreme Court and other members of the federal Judiciary, the European Court of Justice participated in a number of working sessions that included discussions on antitrust, affirmative action, and environmental law; Internet privacy and copyright issues; and multijurisdictional and multidisciplinary practice.

The European Court was established in 1952 and is based in Luxembourg. It is composed of 15 judges and 8 advocates general. The Court of Justice is the supreme judicial authority of the 15-member European Union states on matters governed by European community law. In 1998, a delegation from the Supreme Court, along with federal and state judges, attorneys, and law-school faculty, visited the Court of Justice.

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Domecini Supports Judiciary's Border Court Needs

Senator Pete V. Domenici (R-NM) has served in the Senate since 1973. Among other committee posts and assignments, he is the chair of the Senate Appropriations Subcommittee on Commerce, Justice, State, and the Judiciary.

Q: The Senate approved a $1.8 trillion budget plan for fiscal year 2001. What will this mean in terms of spending next year for domestic entities such as the Judiciary?

A: The Senate budget resolution I authored this year included $27.4 billion in budget authority and $28 billion in outlays for Function 750, the Administration of Justice account. This account includes funding for all federal law-enforcement activities and the Judiciary. The Senate resolution assumed substantial increases in funding for federal district courts and courts of appeals. It also assumed $700 million in new courthouse construction and site and design work under Function 800, the General Government account. This represents a $200 million increase over the amount included in President Clinton's budget for courthouse construction. The final conference agreement on the budget includes similar overall spending totals for Functions 750 and 800. However, any assumptions in the budget resolution are merely guidelines, and members of the relevant Appropriations Subcommittees have the discretion to follow them or disregard them as they choose.

Q: The Judiciary's budget is approximately two-tenths of one percent of the nation's total budget. As the smallest of the three branches of government, how should Congress treat the Third Branch's annual appropriations request?

A: Congress should respect the Judiciary's role as a co-equal branch of government and provide it with the resources it needs to perform its duties. And, I believe Congress has done a fair job in recent years when responding to funding requests by the Judiciary. I believe that the Budget and Appropriations Committees have always had an "open door" policy with the Judiciary and the Administrative Office of the U.S. Courts when discussing the budget needs of the federal courts.

Q: The Judiciary is in the unique position of being unable, for the most part, to control its own workload because the activities of the other branches contribute to our courts' caseloads. As Congress passes new laws and provides more resources to the Department of Justice, is it fair for the Judiciary to expect that it also will receive increased funding?

A: That certainly is a fair expectation , and as I said as much as the conference of federal southwest border district judges in Albuquerque earlier this year. When Congress passes more federal criminal laws, and places heightened importance on federal law enforcement, this has a ripple effect throughout our justice system, including the Judiciary. It is unfair and shortsighted for Congress to pass more federal criminal laws, particularly those related to narcotics smuggling and illegal immigration at our borders, and provide more funding for law enforcement, without a corresponding increase in judicial resources.

Q: The Federal Courts Budget Protection Act would allow the Judiciary to present its budget directly to Congress, without going through OMB. Are you in favor of this change?

A: I have not co-sponsored the Federal Courts Budget Protection or "OMB Bypass" bill. I am sensitive to the fact that OMB has used negative allowances and other gimmicks in recent years to reduce the Judiciary's budget in the President's annual submission to Congress. However, as I have stated above, I believe that Congress has had an open-door policy with the Judiciary in discussing its budgetary needs and that Congress has responded appropriately to those needs. The President's budget submission is merely the executive branch's proposed blueprint for government spending. Such documents have become increasingly political in recent years. When it comes right down to it, Congress has been able to respond directly to the Judiciary's needs in spite of the executive branch's politicization of the Judiciary's budget and without a direct budget submission by the Judiciary to the Congress.

Q: The President must send the Judiciary's budget to Congress without change. However, the Executive Branch has used "negative allowances" to indirectly reduce the Judiciary's budget in past years. As chair of the Budget Committee, do you find budget gimmicks like the negative allowances a help or a hindrance?

A: Clearly these gimmicks are a hindrance to the budget process. However, as I have stated, I think Congress has a pretty good idea of the needs of the Judiciary each year and does a good job responding to those needs in spite of the gimmicks.

Q: You recently spoke to judges gathered in Albuquerque, New Mexico, to discuss the southwest border courts situation. What are your concerns about the caseload situation in New Mexico?

A: The caseload situation along the entire southwest border has reached crisis proportions. The five federal border district courts (Southern District of California, Districts of Arizona and New Mexico, the Western and Southern Districts of Texas) now handle more than 25 percent of ALL of the criminal cases filed in the federal courts in the United States. That number most certainly will rise to over 30 percent in the next few years. Each of the southwest border districts have criminal caseloads which are double, triple, and in some cases four times the national average. In New Mexico, the federal court in Las Cruces handles 65 percent of all of the federal criminal matters in the state, yet does not have a single full-time district judge. I am

concerned that our justice system at the border will reach the point that it is so overwhelmed with cases that it will fail to function at all.

Q: What action did you propose in this crisis?

A: First, I support the Administrative Office's recommendation that Congress create 16 new federal judges for our border courts, and I expect that New Mexico would receive at least one new permanent federal judge under this proposal. I just think it will be difficult to see such a recommendation enacted until after the next Presidential election. I also support increased resources for the federal Judiciary and courthouse construction, and the recently-passed Concurrent Resolution on the Budget reflects that support. I also plan to work hard as a member of the Senate Commerce, Justice, State appropriations subcommittee to see that Congress provides for additional court personnel, including magistrates judges, U.S. Marshals, pretrial and probation officials and administrative support. Finally, I included $700 million for new courthouse construction and site/design work in the Budget Resolution. This funding would include $1.9 million for site acquisition and design of a new federal courthouse in Las Cruces.

Q: Courthouse construction has not been a White House priority in the past three budgets. You've indicated that you'll seek funding for a federal courthouse in Las Cruces. Why is this courthouse important to your state?

A: The current courthouse in Las Cruces is ill-equipped to serve as a federal court facility, much less handle the overwhelm ing criminal caseloads which have developed at the border. Detention facilities are inadequate, workplace and courtroom space are limited and there are serious safety concerns about the entire complex. The building only has one elevator, so judges, defendants, victims, witnesses, and visitors all must use the same one. Also, the parking facilities are not secure. This is unacceptable. I am concerned that this facility is a security nightmare waiting to happen. A new courthouse for Las Cruces is important not only to handle the court's ever-expanding caseload, but also to protect those who go to work there every day.

Q: Annually, the Judiciary submits a Report to Congress on the Optimal Utilization of Judicial Resources in which our efforts to bring greater economy and efficiency to the courts are detailed. How has this report and other efforts been received by Congress?

A: The Report to Congress on the Optimal Utilization of Judicial Resources, as well as the annual report outlining the Judicial Business of the United States Courts are two excellent ways that the Judiciary keeps Congress informed about management decisions which affect our federal court system. I have long believed that the best people to decide how to run our court system are the members of the Judiciary themselves. Our federal judges and their staffs, along with the Administrative Office of the U.S. Courts, are a group of bright, dedicated people who truly care about the admin-istration of justice. So these recommendations should carry a lot of weight with Congress. Also, in recent years because of the crush of the annual budget and appropriations process, Congress has reduced the amount of meaningful oversight it has

conducted into the workings of government, including the Judiciary. These reports are a way for the Judiciary to exercise oversight and help keep Congress updated on its activities.

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Judicial Milestones

Appointed: Richard A. Paez, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Ninth Circuit, March 17.

Appointed: Marsha S. Berzon, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Ninth Circuit, March 21.

Appointed: George D. Daniels, as U.S. District Judge, U.S. District Court for the Southern District of New York, April 17.

Appointed: Colleen A. Brown, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the District of Vermont, April 10.

Appointed: Robert L. Jones, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Northern District of Texas, April 4.

Appointed: Randolph J. Haines, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the District of Arizona, March 17.

Appointed: Susan D. Davis, as U.S. Magistrate Judge, U.S. District Court for the District of New Jersey, April 7.

Appointed: Monica J. Benton, as U.S. Magistrate Judge, U.S. District Court for the Western District of Washington, February 28.

Appointed: James P. O'Hara, as U.S. Magistrate Judge, U.S. District Court for the District of Kansas, April 17.

Appointed: Kimberly E. West, as U.S. Magistrate Judge, U.S. District Court for the Eastern District of Oklahoma, April 18.

Elevated: Judge Frederick J. Scullin, Jr., to Chief Judge, U.S. District Court for the Northern District of New York, vice Judge Thomas J. McAvoy, April 7.

Reappointed: Bankruptcy Judge James G. Mixon, as Chief Judge, U.S. Bankruptcy Court for the Eastern and Western Districts of Arkansas, through June 13, 2002.

Senior Status: Judge Donald J. Lee, U.S. District Court for the Western District of Pennsylvania, April 6.

Senior Status: Judge Roger G. Strand, U.S. District Court for the District of Arizona, April 28.

Retired: Senior Judge Sam C. Pointer, Jr., U.S. District Court for the Northern District of

Alabama, April 3.

Retired: Bankruptcy Judge John C. Akard, U.S. Bankruptcy Court for the Northern District of Texas, April 3.

Retired: Magistrate Judge Richard P. Cornish, U.S. District Court for the Eastern District of Oklahoma, April 16.

Retired: Magistrate Judge Joseph Schmitt, U.S. District Court for the Southern District of California, March 30.

Retired: Magistrate Judge Eugene W. Beaulieu, U.S. District Court for the District of Maine, January 20.

Resigned: Magistrate Judge Susan D. Davis, U.S. District Court for the District of New Jersey, April 6.

Deceased: Senior Judge Daniel Holcombe Thomas, U.S. District Court for the Southern District of Alabama, April 13.

Deceased: Judge Morton A. Brody, U.S. District Judge for the District of Maine, March 25.

Deceased: Senior Judge Edward J. Schwartz, U.S. District Court for the Southern District of California, March 22.

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JUDICIAL BOXSCORE

As of May 1, 2000

Courts of Appeals	
Vacancies	22
Nominees	16
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Vacancies	58
Nominees	28
Courts with	
Judicial Emergencies	21

For more information on vacancies in the Federal Judiciary visit our website at www.uscourts.gov.

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THE THIRD BRANCH

Supreme Court Website Latest in Electronic Initiatives

The Supreme Court of the United States launched its official website last month. The site, at www.supremecourtus.gov, was developed by the Court and the Government Printing Office (GPO) and is part of the GPO Access system.

"A presence on the Internet was a natural next step in providing Court information—from an official source—to the public," said Supreme Court Public Information Officer Kathy Arberg.

Initially, the Supreme Court web-site will provide on-line access to the court's 1999 Term slip opinions, 1999 Term orders, argument calendar, schedules, rules, bar admission forms and instructions, visitors' guides, case-handling guides, special notices, press releases, and general information. A link also will be provided to the Court's bench opinions on GPO Access. The bench opinion is the first version of an opinion, published immediately after the case's announcement by the Court from the bench. The slip opinion is a slightly later version of the bench opinion.

Information from the Court's auto-mated docket will be added to the website in the future. Slip opinions will be accessible on the Court's website usually within hours after the bench opinions are transmitted to Project Hermes subscribers. Bench opinions and orders will not appear on the court's website, but will be accessible on the day of their release through a link to GPO Access.

The Internet is just the latest avenue by which the Court distributes information electronically. In 1991, the court launched Project Hermes, an electronic system available only through subscription, that transmits the court's orders and bench opinions to legal publishers, news organizations, educational institutions, and government agencies, including GPO, moments after the materials are released. In 1996, the Court initiated its dial-up Bulletin Board System (BBS) (202-554-2570) to provide electronic access to its automated docket, slip opinions, and orders. In 1997, the Court implemented the Clerk's Automated Response System (CARS), by which callers can obtain the status of cases on the automated docket by dialing (202) 479-3034. The new website will replace the BBS, which will be phased out once the automated docket is added to the website. However, the website will not replace Hermes or CARS, and the Court will continue to publish and distribute its opinions in paper pamphlets and in the official United States Reports.

THE THIRD BRANCH

Newsletter of the Federal Courts

Vol. 32
Number 6
June 2000

Southwest Border Court Judges Tell Congress of Crisis

Seven judges from the U.S. southwest, shown in the photo at right, went to the Hill last month to tell Congress about the continuing crisis in the border courts. Chief Judge Carolyn Dineen King (5th Cir.) led Chief Judge George P. Kazen (S.D. Tex.), Judge Edward C. Prado (W.D. Tex.), Judge W. Royal Furgeson (W.D. Tex.), Chief Judge John E. Conway (D. N.M.), Chief Judge Stephen M. McNamee (D. Ariz.), and Chief Judge Marilyn Huff (S.D. California), who represented the five districts that currently handle 26 percent of all criminal case filings in the U.S. The southwest border courts report record numbers of federal prosecutions—drug prosecutions nearly doubled between 1994 and 1998 and immigration prosecutions increased fivefold. The average caseload per district judge in the southwest border courts is more than quadruple the national average. Since 1994, personnel for the U.S. Border Patrol increased by 99 percent, INS by 93 percent, DEA by 155 percent and FBI by 37 percent in the border courts. During that same period, however, judicial resources in the five districts increased a mere 4 percent, with probation and pretrial services resources increasing only 19 percent.

Members of the Congressional Southwest Border Caucus who met with the border court judges included Representative Solomon Ortiz (D-TX) standing above, and fellow member of the Congressional Border Caucus, Representative Silvestre Reyes (D-TX), and in photo left, Representatives Joe Baca (D-CA), Charles Gonzalez (D-TX), and Ruben Hinojosa (D-TX).

The delegation of federal judges first met with the members of the Congressional Southwest Border Caucus, then spent the day in private talks with congressional members including Senators John Kyl (R-AZ), Kay Bailey Hutchison (R-TX), and Representative Henry Bonilla (R-TX). Judges also met with staff from the offices of Senators John McCain (R-AZ), Diane Feinstein (D-CA), Barbara Boxer (D-CA), and Representative Randy Cunningham (R-CA).

Members of the bipartisan caucus are from congressional districts next to or near the U.S. southwest border, and meet to share concerns and solutions to mutual problems. Caucus members who met with the southwest

*See **Caucus** on page 2*

INSIDE

Cameras in Courtroom Provision Clouds Future of H.R. 1752

The Federal Courts Improvement Act, H.R. 1752, passed the House last month with many of the provisions that will help the Judiciary improve its effectiveness and efficiency, but also with an amendment that would allow cameras in federal courtrooms. The bill now goes to the Senate for consideration.

The bill contains, among others, provisions that would give magistrate judges contempt authority; increase certain bankruptcy filing fees; create certifying officers in the judicial branch; give the Judiciary authority to set, collect, and retain fees for the use of electronic filing, videoconferencing and electronic evidence presentation devices; allow participation of senior judges as members of the circuit judicial councils; modify jury selection; and increase the maximum compensation amounts for Criminal Justice Act attorneys, as well as for investigators, experts and other service providers. The House-passed bill also would establish an additional place of holding court in the Eastern District of Texas.

Before going to the House floor for the vote, however, several sections of the original bill were stripped out by the Subcommittee on Courts and Intellectual Property including provisions that would imply the parties' consent to a bankruptcy judge's findings; address the removal of certain cases under the Employee Retirement Income Security Act; eliminate in-state plaintiff diversity jurisdiction; lower to 60 the age at which Article III judges may take senior status; and change the authority of bankruptcy administrators.

Subsequently, the full House Judiciary Committee dropped a section of the bill that would have reversed the decision of the Supreme Court in the *Lexecon Inc. v. Milberg Weiss*. That section now is contained in a separate bill. An amendment was added that would allow individual presiding judges, with the consent of all parties, to permit cameras in courtrooms. The Judicial Conference would be allowed to establish guidelines for judges in making the determination. The draft Senate version of the Federal Courts Improvements Act, which has not yet been introduced, does not contain the cameras in courtrooms provision. At the end of a three-year pilot project on cameras in the courtroom in 1994, the Judicial Conference voted not to permit the taking of photographs and radio and television coverage of proceedings in U.S. district courts. Each court of appeals may decide for itself whether or not to permit cameras. Cameras in criminal proceedings are prohibited by the federal rules of criminal procedure.

Caucus continued from page 1

border court judges included Representative Solomon Ortiz (D-TX), co-chair of the caucus, and fellow members Silvestre Reyes (D-TX), Ruben Hinojosa (D-TX), Charles Gonzalez (D-TX), and Joe Baca (D-CA). When caucus members asked what relief was needed along the southwest border, King laid out a five-point plan asking for adequate funding for the entire Judiciary for fiscal year 2001; new judgeships; additional resources for the U.S. Marshals Service; more federal detention centers; and improved compensation for attorneys representing indigent defendants.

Congress Confirms 16 Judges

The Senate confirmed 16 federal judgeship nominees days before beginning its Memorial Day recess. This brings the total of Article III judgeship confirmations for this session to 23, seven in the appeal courts and 16 in the district courts.

On the day following the latest confirmations, the Senate Judiciary Committee met to consider still more nominations, holding hearings on four nominees. As of June 1, there were 35 pending nominations, with 66 vacancies.

Congress has yet to consider, however, the Federal Judgeship Act, S. 1145, introduced nearly a year ago by Senator Patrick Leahy (D-VT). No federal judgeship bill has been passed since 1990, although authorization for nine Article III judgeships was included in the consolidated spending bill for fiscal year 2000. Subsequently, a revised judgeship bill was sent to Congress to reflect that action, and also to withdraw a request for one temporary judgeship. In total, 11 appellate and 48 district judgeships are requested.

Every two years, the Judicial Conference submits its recommendations to Congress for additional federal judgeships, following its biennial judgeship survey of needs. Judicial Conference recommendations are based on a court's assessment of its need for additional judgeships, the caseload per judgeship, and other local factors having an impact on a court's judgeship needs. Since the last judgeship bill was passed, appeals filings in the federal courts have increased about 27 percent and the number of civil and criminal cases filed in the district courts increased more than 20 percent.

Judicial Panel On Multidistrict Litigation Reorganized

In its first reorganization since 1992, the Judicial Panel on Multidistrict Litigation has added four new appointees, while four current members will step down effective June 1. A new chair will head the panel effective December 1. In a letter to Panel members, Chief Justice William H. Rehnquist noted the importance of the Panel to the effective operation of the federal Judiciary and described the new system under which appointments to the Panel will be for a term of seven years, and new appointments will be staggered. Rehnquist also told Panel members that, "The mission of the Judicial Panel on Multidistrict Litigation has been carried out with distinction under your leadership for the past decade." He said the advantage of the reorganization would be that continuity is assured, "while constantly replenishing the membership with one new appointment annually, thus broadening participation."

Among the new appointments, Judge Wm. Terrell Hodges (M.D. Fla.) will serve a seven-year term; Judge Morey Sear (E.D. La.) will serve a six-year term; Chief Judge Julia Smith Gibbons (W.D. Tenn.) will serve a five-year term; and Judge Bruce M. Selya (1st Cir.) will serve a four-year term. Of the current Panel members, Judge John Keenan (S.D. N.Y.) will serve a three-year term, and Judge Louis Bechtle (E.D. Pa.) will serve a two-year term. The terms of the remaining Panel members, Judges Clarence A. Brimmer (D. Wyo.), William B. Enright (S.D. Calif.), John F. Grady (N.D. Ill.) and Barefoot Sanders (N.D. Tex.), who have served at least 7 ½ years, ended on June 1, 2000.

The chair of the Panel, Judge John Nangle (E.D. Mo.), will continue to serve until December 1, at which time Hodges will become chair. Rehnquist, in extending Nangle's term, noted the need for the chair's continued leadership as a statutory response is sought to the *Lexecon Inc. v. Milberg Weiss* decision during this Congress and to permit Nangle to orient Hodges as the new chair. Nangle has served as chair of the Panel since 1990.

At the last hearing before reorganization, the members of the Judicial Panel On Multidistrict Litigation were, seated left to right, Judge William B. Enright (S.D. Calif.), Panel Chair Judge John Nangle (E.D. Mo.), Judge Clarence A. Brimmer (D. Wyo.); and standing, left to right: Judge Louis Bechtle (E. D. Pa.), Judge John F. Grady (N.D. Ill.), Judge Barefoot Sanders (N.D. Tex.), and Judge John Keenan (S.D. N.Y.)

Looking back on the years of his chairmanship, Nangle noted the Panel began by developing policies to handle large numbers of related cases. "For example, with the large number of asbestos cases," observed Nangle, "we took a different route from previous Panels and centralized the cases before Judge Charles Weiner in the Eastern District of Pennsylvania. It wasn't a perfect solution, but it was the only one available in the judicial system—and the only one that worked. It allowed Judge Weiner to move serious cases through the system and, at the same time, to keep companies solvent." Nangle and his fellow Panel members developed additional factors to consider in centralizing cases, including the national character of some cases, and the availability of courts with good judges and less crowded dockets. "In the past, cases would overload the courts in New York or California," said Nangle. "We changed that to make better use of our judicial resources around the country. We also identified judges who were experts in case-related areas." Nangle also credits staff for the Panel's ability to handle an increasing number of cases over the years. The staff hasn't grown over the last decade, and some members have tenures of well over 20 years. "You don't find many staff that loyal and capable," Nangle said.

The Judicial Panel on Multidistrict Litigation was created by legislation in 1968 following an effort to coordinate almost 2,000 related cases pending in 36 districts—and containing over 25,000 claims—alleging a nationwide antitrust conspiracy among electrical equipment manufacturers. A national consensus evolved that the Panel was needed to streamline adjudication of related complex cases filed in multiple districts. According to statute, seven judges serve on the Panel, which presently meets every other month.

Judges' Legitimate Need for Security Cited by Chief Justice

The following are the remarks of Chief Justice William H. Rehnquist to the American Law Institute Annual Meeting, which met last month in Washington, D.C.

The Judicial Conference of the United States is, I think I can say without fear of contradiction, not a well known organization. But one of the decisions reached by the Conference at its meeting last March has attracted considerable public interest—a decision relating to the publication of federal judges' financial disclosure reports on the Internet. This afternoon I would like to tell you some of the background of these deliberations.

The Judicial Conference of the United States was created by statute back in 1922 and today is composed of the 13 chief judges of the federal courts of appeals, 13 elected district court representatives from each of the circuits, and the Chief Justice. The Conference is assisted in its work by 19 committees. It meets here in Washington semi-annually, in September and March.

The Conference oversees the operation of the Administrative Office of the federal courts, an organization ably headed by its Director, Leonidas Ralph Mecham—who has been in his position longer than I have been in mine. The Administrative Office furnishes support systems for the federal courts throughout the country.

The Judicial Conference passes upon many matters relating to the administrative side of the federal Judiciary. Some of them are quite arcane, and of virtually no interest to the general public; I remember at one meeting we debated whether the second secretary for the chief judge of a district court should have a personnel classification of GS-11 or GS-12. But the Judicial Conference also debates matters of great importance to the judges and speaks for the Judiciary with respect to pending legislation in Congress.

The Ethics in Government Act requires that federal judges, among other federal employees, must file financial reports annually. The Act mandates that federal judges file their reports with the Judicial Conference's Financial Disclosure Committee. It also sets forth the general content requirements of the

reports and provides for public access to the reports. There are, it seems to me, legitimate purposes served by the Act. Among them, insofar as judges are concerned, is to expose the judges' financial holdings to public scrutiny which assists judges in avoiding conflicts of interest. The requirement that publishing the full extent or even a range of the financial holdings may not be necessary because a judge should recuse himself whether he holds one share or a thousand shares of stock in a corporation that is a party in a case before his court. But few would argue that there is no need to publicize a list of judges' holdings for conflicts purpose.

Yet for all of the public benefits of the Ethics in Government Act, the Act also presents judges with troubling security issues as well and it may be in need of some legislative adjustments which I will discuss. The security issue presented by requirements in the Ethics in Government Act came to a head a few months ago when, pursuant to the Act's provisions for public access, a news organization sought copies of every Article III and federal magistrate judge's financial disclosure report for the express purpose of placing those reports on the organization's Internet website. The Financial Disclosure Committee of the Judicial Conference initially denied the company's request for all of the reports and withheld them from disclosure. Contrary to some press reports, the Financial Disclosure Committee's actions were not without some foundation.

First, in reviewing the company's request for the reports, the Financial Disclosure Committee concluded that the company's intentions to publish the reports on the Internet would contravene the requirements in the Act that prohibit disclosure to any person who has not made a written application. The written application requirement provides a mechanism to spot requests from individuals who have threatened judges. Additionally, the Committee thought that the all-encompassing request for Internet publication would thwart the Committee's authority to approve redactions of information in the reports when it determined (in consultation with the U.S. Marshals Service) that certain personal or sensitive information in the report could endanger the judge who filed the report.

Simply put, by placing all judges' financial disclosure reports on the Internet, there would no longer be a means to filter information on those reports that could endanger the indi-

vidual judge. And anyone who wanted the financial information about the judge—in particular, those individuals who may pose a threat to the judge—could obtain it on the Internet without the judge's (or the Committee's) knowledge and opportunity to redact sensitive information.

The Financial Disclosure Committee's concern for the safety of judges was a well-founded one. Unfortunately, there are too many examples of federal judges—particularly trial judges—having been the targets of violence and threats in our country. Three federal judges—Robert Vance of Alabama, Richard Daronco of New York and John Wood of Texas—have been killed in recent years. Trial judges in general are exposed to the criminal element in our society in ways that most federal employees who must file financial disclosure reports, such as Senators, Congressmen (and appellate judges for that matter) are not. Sentencing judges sit face to face with the criminal defendant. Some of the disclosure requirements in the Ethics in Government Act may also expose where a judge's spouse works, the spouse's income, where a family member is attending school if the school has made a loan to the student, or even where a judge may reside if, for example, the judge is on a condominium board. Thus the risks to federal trial judges are real and deserving of careful consideration. The Financial Disclosure Committee's view was overwhelmingly supported by the Federal Judges Association, consisting of several hundred members.

I should note at this point that all judges' financial disclosure reports have always been available to the public, but only by request to the Administrative Office. Typical requesters under this regime are reporters covering the courts, attorneys participating before cases before the courts, and perhaps an occasional litigant.

But, as many of you probably realize, publication on the Internet makes these statements "publicly available" not just to those who seek them out by way of request to the Administrative Office, but to anyone who wishes to make a "hit" on the Internet site. This surely illustrates one of the changes wrought by the so-called "technological revolution" and illustrates the difference between requiring some effort to acquire public information, and requiring virtually no effort to acquire it. It was this far broader disclosure—albeit of the same material—that raised the concerns of the judges and of the Financial Disclosure Committee.

Without in any way desiring to minimize or downgrade those concerns, when the matter came up for discussion at the March meeting of the Judicial Conference, a large majority of the members, myself included, felt that the Financial Disclosure Committee's willingness to withhold financial disclosure reports in their entirety—well intentioned as it might be—could not be supported in view of the statutory language. Congress specifically provided in the Ethics in Government Act an exemption from the prohibition on use of the reports for commercial purposes to "news and communications media for dissemination to the general public." That is to say that the news media can use the reports for "commercial purposes" to disseminate the reports to the public. And there are no exceptions to this for the Internet.

The statute also provides that the disclosure statements can be redacted if the Judicial Conference, in consultation with the U.S. Marshals Service, finds that "revealing personal and sensitive information could endanger" the judge. The reports may be redacted "only to the extent necessary . . . and for as long as the danger . . . exists." Clearly, these provisions contemplate some production of some portion of the reports at some point in time. They provide only for delay in production, conditions on the production, and redaction in the production of the reports, and do not provide for withholding the production entirely.

So the Executive Committee of the Judicial Conference, in cooperation with the Financial Disclosure Committee, undertook to prepare a set of regulations which would, in their view, fully conform to the current statute. These regulations are being designed to facilitate redacting the sensitive information in the reports to avoid an en masse production, that in the words of the statute, "could endanger" the judges.

The Judicial Conference may also request Congress to consider amendments to the Ethics in Government Act filing requirements so as to reduce security risks to federal judges. That Act already provides that individuals engaged in intelligence activities—such as the CIA, for example—need not make their reports publicly available. I don't think the Judicial Conference has any desire to obtain a complete exemption for judges, but simply wishes to assure its membership that their legitimate concerns are adequately addressed in the Act.

For the most part, the Judicial Conference of the United States operates in relative anonymity. Occasionally, however, an issue arises that captures the public's attention. With regard to the issue of posting all judges' financial disclosure statements on the Internet, I believe the Judicial Conference has acted responsibly and demonstrated a good faith effort to comply with a law that frankly poses some risks to judges. The Conference now hopes that Congress will also act responsibly and balance the legitimate needs for public disclosure of judges' financial holdings with the judges' needs for security.

Thank you for inviting me to be with you today.

Federal Courthouses Win NEA Recognition

Three federal courthouse facilities have won 2000 Federal Design Achievement Awards from the National Endowment for the Arts. The awards represent the highest level of achievement in the federal sector in all of the design disciplines. This year, they recognized 35 of 338 submissions from 71 federal agencies for excellence in architecture, historic preservation, engineering, graphic design, landscape architecture, product design, and urban design and planning.

The winning federal court facilities were the U.S. Courthouse in Boston, Massachusetts, for architecture; the U.S. Court of Appeals in San Francisco, California, for historic preservation; and the U.S. Courthouse Plaza in Minneapolis, Minnesota, for landscape architecture. Robert A. Peck, General Services Administration Public Buildings Service Commissioner, accepted the awards on behalf of GSA and the federal Judiciary. This year's award winners now are eligible for the Presidential Awards for Design Excellence, which recognize high quality of design based on international standards.

U.S. Courthouse, Boston, Massachusetts

Architecture

U.S. Courthouse
Boston, Massachusetts

"This new U.S. courthouse is a poignant demonstration of the ability of architecture to reflect powerful ideas and values that teach and engage the public. From its prominent waterfront site overlooking downtown Boston with its sweeping 373-foot long and 88-foot high Great Hall of glass to the small brick dome entrance to each of the courtrooms with their simple New England decor, the courthouse visibly expresses the solemnity, dignity, and openness of the American judicial system."

Credits: General Services Administration, New England Region; Pei Cobb Freed & Partners Architects LLP; Jung/Brannen Associates; Gruzen Samton; Cosentini Associates and LeMessurier Consultants

Historic Preservation

U.S. Court of Appeals
San Francisco, California

"While this opulent Beaux-Arts style building was one of the few downtown buildings to survive San Francisco's 1906 earthquake, it suffered extensive damage in the 1989 Loma Prieta earthquake and was closed. The GSA preserved and restored historic features while upgrading the structure and major systems to a modern level of quality and performance, including state-of-the art communications, HVAC, and electrical systems; enhanced work environments; and accessibility required by the Americans with Disabilities Act. A 45,000 square-foot addition housing a new law library,

U.S. Court of Appeals, San Francisco, California

FJTN PROGRAM CALENDAR FOR THIRD BRANCH

ber 6 June 2000

Adobe Acrobat
July 10, 10:30 a.m.; July 11, 11:30 a.m.

Advances in Drug A[illegible] and Addiction Research
July 6, 8:30 a.m.

Bankruptcy Law Up[illegible] (February 2000), Par[illegible]
July 5, 10:30 a.m.; 2:30 p[illegible]

Benefits Entitlemen[illegible] Service Retirement [illegible] Enforcement Office[illegible]
July 7, 1 p.m.; July 18, [illegible] a.m.; July 31, 10 a.m.

CM/ECF from the D[illegible] Perspective
July 25, 3:30 p.m.; July [illegible]

Contests & Competi[illegible] Instructional Tools
July 6, 10:00 a.m.; July [illegible] 10:30 a.m.

Court Moves
July 7, 9:30 a.m.; July 10[illegible]

Court to Court (Jun[illegible])
July 20, 2:30 p.m.

Drug Testing: Facts [illegible] Policy
July 13, 8:30 a.m.

Effective Supervision [illegible] Offenders in the Con[illegible] (NIC/CSOM)
July 14, 2 p.m.

Electronic Bankrupt[illegible] Phase II
July 3, 9 a.m.; July 7, 12 [illegible] July 31, 12 p.m.

FSA's: Use It or Lose [illegible]
July 7, 11:30 a.m.; July 1[illegible] 12:30 p.m.; July 17, 3 p.m.

Health Care Reimbur[illegible] Worksheet
July 3, 11 a.m.; July 7, 10[illegible] July 17, 1 p.m.; July 24, [illegible]

In Camera
Mondays at 8:30 a.m., Tuesdays at 4:30 p.m.

[illegible]ment Procedures for [illegible]s: Conducting a
[illegible]7, 10 a.m.; July 21, 1 [illegible]n.

[illegible]rocess and Problems
[illegible] p.m.; July 12, 11:30 a.m.

[illegible]nders: Reducing [illegible]loyment and

[illegible]ures for Reporting [illegible]ease at Bail Hear-
[illegible] 17, 12 p.m.; July 21, 12 [illegible]

[illegible]upervising the [illegible]er-Disordered [illegible]ender

[illegible]fits for Law [illegible]rs Under FERS
[illegible], 1:30 p.m.; July 18, 12 [illegible]; July 31, 1 p.m.

[illegible]uals with a Dual

[illegible]-2000: The Term in

[illegible]o Three
[illegible] p.m.; July 27, 8:30, 11 [illegible] a.m.; 12, 2:30 p.m.

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[illegible]ter's Oath to

July 6, 12:00, 12:30 p.m.; July 20, 3:30 p.m.

Tax Credit vs. Dependent Care Reimbursement Account
July 17, 9 a.m.; July 31, 2:30 p.m.

Tech Talk: Solaris Tools
Mondays at 4:30 p.m., Tuesdays at 8:30 a.m.

Three-Tier Architecture—Components of a Modern Web Site
July 11, 3:30 p.m.; July 17, 11 a.m.; July 21, 8:30 a.m.; July 24, 3:30 p.m.

Using *Sentry* in Probation and Pretrial Services Investigation and Supervision Activities
July 7, 2:30 p.m.; July 18, 10 a.m.

Web Page Design: Making Your Portal Work
July 25, 2 p.m.

WordPerfect 8.0 Basics
July 3, 2:30 p.m.

WordPerfect 8/9 Macro Basics Part One
July 24, 11 a.m.

Part Two
July 25, 11 a.m.

WordPerfect Document Formatting
July 3, 10 a.m.

WordPerfect File Management
July 10, 2:30 p.m.; July 21, 2 p.m.

WordPerfect QuickFamily
July 11, 10:30 a.m.

WordPerfect Templates
July 7, 3:30 p.m.

XML: Getting the Message (WatchIt.com)
July 3, 11:30 a.m.; July 10, 9:30 a.m.; July 11 9:30 a.m.

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Architecture

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Credits: General Services Administration, New England Region; Pei Cobb Freed & Partners Architects LLP; Jung/Brannen Associates; Gruzen Samton; Cosentini Associates and LeMessurier Consultants

Historic Preservation

U.S. Court of Appe

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Robert A. Peck, General Services Administration Public Buildings Service Commissioner, accepted the awards on behalf of GSA and the federal Judiciary. This year's award winners now are eligible for the Presidential Awards for Design Excellence, which

U.S. Court of Appeals, San Francisco, California

FJTN PROGRAM CALENDAR FOR
THE THIRD BRANCH

Vol. 32 Number 6 June 2000

JULY

Adobe Acrobat
July 10, 10:30 a.m.; July 11, 11:30 a.m.

Advances in Drug Abuse and Addiction Research
July 6, 8:30 a.m.

Bankruptcy Law Update (February 2000), Parts One and Two
July 5, 10:30 a.m.; 2:30 p.m.; July 19, 11:30 a.m.

Benefits Entitlements Under the Civil Service Retirement System for Law Enforcement Officers
July 7, 1 p.m.; July 18, 3:30 p.m.; July 25, 10 a.m.; July 31, 10 a.m.

CM/ECF from the Deputy Clerk's Perspective
July 25, 3:30 p.m.; July 31, 11 a.m.

Contests & Competitions as Instructional Tools
July 6, 10:00 a.m.; July 13, 3:00 p.m.; July 20, 10:30 a.m.

Court Moves
July 7, 9:30 a.m.; July 10, 9 a.m.; July 25, 1 p.m.

Court to Court (June 2000)
July 20, 2:30 p.m.

Drug Testing: Facts, Research, and Policy
July 13, 8:30 a.m.

Effective Supervision of Adult Sex Offenders in the Community (NIC/CSOM)
July 14, 2 p.m.

Electronic Bankruptcy Notification—Phase II
July 3, 9 a.m.; July 7, 12 p.m.; July 25, 9 a.m.; July 31, 12 p.m.

FSA's: Use It or Lose It
July 7, 11:30 a.m.; July 10, 12:30 p.m.; July 11, 12:30 p.m.; July 17, 3 p.m.; July 18, 3 p.m.

Health Care Reimbursement Account Worksheet
July 3, 11 a.m.; July 7, 10 a.m.; July 11, 9 a.m.; July 17, 1 p.m.; July 24, 1 p.m.

In Camera
Mondays at 8:30 a.m., Tuesdays at 4:30 p.m.

Judiciary Travel Management Center (TMC) Contract
July 10, 12 p.m.; July 11, 1 p.m.; July 18, 1:30, 2 p.m.; July 24, 1:30 p.m.

Knowledge Management: Enabling Technologies (WatchIt.com)
July 7, 2 p.m.; July 18, 2:30 p.m.; July 24, 2 p.m.

The Law Clerk Appointment Process
July 24, 10 a.m.

Memory Skills to Enhance Productivity
July 13, 1 p.m.

Minimizing the Risk of Employee Violence
July 20, 1 p.m.

NCIC 2000: Lessons Learned from Implementation in Four Districts
July 18, 9 a.m.; July 24, 2:30 p.m.

Organization Design in the Courts
July 13, 10:30 a.m.

Orientation to the Supervisors' Development Program
July 14, 10:30 a.m.

Overview of Judiciary Compensation
July 17, 3:30 p.m.; July 21, 11 a.m.

Perspectives on Probation and Pretrial Services (April 2000)
July 6, 3, 4 p.m.; July 20, 4 p.m.

Preparing for PACTS/ECM
July 3, 1:30 p.m.; July 7, 8:30 a.m.; July 18, 11 a.m.; July 31, 9 a.m.

Recurring Issues in Federal Death Penalty Cases Part One: Pretrial Phase, Part Two: Trial & Penalty Phases
July 12, 8:30 a.m.; 1:30 p.m.; July 19, 8:30 a.m.; 1:30 p.m.

Sentencing and Guidelines: Departure Analysis
July 14, 12 p.m.

Simplified Procurement Procedures for Treatment Services: Conducting a Needs Assessment
July 11, 2 p.m.; July 17, 10 a.m.; July 21, 1 p.m.; July 31, 3:30 p.m.

Social Security: Process and Problems Parts One & Two
July 5, 8:30 a.m.; 12:30 p.m.; July 12, 11:30 a.m.

Special Needs Offenders: Reducing Risk Through Employment and Education
July 14, 8:30 a.m.

Statistical Procedures for Reporting Detention and Release at Bail Hearings
July 3, 12:30 p.m.; July 17, 12 p.m.; July 21, 12 p.m.; July 24, 9 a.m.

Substance Abuse: Supervising the Addicted, Character-Disordered Defendant and Offender
July 6, 1 p.m.

A Summary of Benefits for Law Enforcement Officers Under FERS
July 10, 1 p.m.; July 17, 1:30 p.m.; July 18, 12 p.m.; July 21, 9:30 a.m.; July 31, 1 p.m.

Supervising Individuals with a Dual Diagnosis
July 21, 4 p.m.

Supreme Court 1999-2000: The Term in Review Parts One, Two, and Three
July 26, 8:30, 11 a.m.; 2 p.m.; July 27, 8:30, 11 a.m.; 2 p.m.; July 28, 9 a.m.; 12, 2:30 p.m.

Survival Spanish: Cross-Cultural Training
July 20, 8:30 a.m.

Taking the Interpreter's Oath to Heart
July 6, 12:00, 12:30 p.m.; July 20, 3:30 p.m.

Tax Credit vs. Dependent Care Reimbursement Account
July 17, 9 a.m.; July 31, 2:30 p.m.

Tech Talk: Solaris Tools
Mondays at 4:30 p.m., Tuesdays at 8:30 a.m.

Three-Tier Architecture—Components of a Modern Web Site
July 11, 3:30 p.m.; July 17, 11 a.m.; July 21, 8:30 a.m.; July 24, 3:30 p.m.

Using *Sentry* in Probation and Pretrial Services Investigation and Supervision Activities
July 7, 2:30 p.m.; July 18, 10 a.m.

Web Page Design: Making Your Portal Work
July 25, 2 p.m.

WordPerfect 8.0 Basics
July 3, 2:30 p.m.

WordPerfect 8/9 Macro Basics Part One
July 24, 11 a.m.

Part Two
July 25, 11 a.m.

WordPerfect Document Formatting
July 3, 10 a.m.

WordPerfect File Management
July 10, 2:30 p.m.; July 21, 2 p.m.

WordPerfect QuickFamily
July 11, 10:30 a.m.

WordPerfect Templates
July 7, 3:30 p.m.

XML: Getting the Message (WatchIt.com)
July 3, 11:30 a.m.; July 10, 9:30 a.m.; July 11, 9:30 a.m.

PLEASE POST

VACANCY ANNOUNCEMENTS
THE THIRD BRANCH
Vol. 32 Number 6 June 2000

FEDERAL PUBLIC DEFENDER, Eastern District of Virginia
The U.S. Court of Appeals for the Fourth Circuit, is accepting applications for the position of federal public defender for the Eastern District of Virginia. The term of appointment is four years. Salary: not to exceed $121,400. Applicants must be a member in good standing of the Virginia Bar or the bar of the state in which they are currently admitted to practice and have a minimum of five years of criminal practice, preferably with significant federal criminal trial experience. To receive a copy of the application materials, submit request in writing to Circuit Executive, U.S. Court of Appeals for the Fourth Circuit, 1100 East Main Street, Suite 617, Richmond, Virginia 23219-3517. **Application deadline: June 26, 2000.**

CLERK OF COURT–U.S. Bankruptcy Court, Northern District of Iowa
The official duty station is Cedar Rapids with a division of the court in Sioux City. The clerk functions as the court's chief administrative officer and is responsible for all aspects of its operation, including case processing, policy implementation and monitoring, training, long-range planning, budgeting, space and facilities, financial accounting, public relations, property and procurement, and management of a staff of 21. The clerk also is responsible for developing and maintaining a broad range of automation applications and serves as the court's liaison to the public, the bar, and other governmental agencies. Qualifications: applicants must possess a minimum of 10 years of progressively responsible management experience. Prior court experience is highly desirable. Annual salary range: a target JSP grade of 16 ($97,200 - $122,263). To apply, submit four copies of a detailed resume and salary history to Paul J. Kilburg, Chief Judge, U.S. Bankruptcy Court, 425 Second Street SE, Suite 800, P.O. Box 74890, Cedar Rapids, Iowa 52407. **Application deadline: Close of business June 30, 2000, or until the position is filled.**

DEPUTY-IN-CHARGE, Central District of California, Santa Ana, California
The U.S. District Court for the Central District of California is accepting applications for Deputy-in-Charge, Santa Ana. The deputy-in-charge reports directly to the clerk and chief deputy and works closely with the administrative management staff to develop short- and long-range improvement plans for the court, including the development, implementation, and refinement of office policies, procedures, and programs. The applicant must possess at least three years of progressively responsible professional, supervisory, or managerial experience. Federal court experience is a plus. Candidates must be computer literate. Completion of a bachelor's degree in business, criminal justice, management science, political science, or public administration also is required. Education from an accredited institution may be substituted for general experience. Salary: $42,338 to $96,729 per year (CL 28/01 to CL 30/61). To receive an employment application, application may be downloaded from our website at www.cacd.uscourts.gov, or call our 24-hour job information line at (213) 894-2904 and request it to be mailed or faxed directly to you. Applications should be submitted to: U.S. District Court, Human Resources Department, 312 North Spring Street, Room 535, Los Angeles, California 90012. **Application deadline: Open until filled**

GENERAL COUNSEL, U.S. Sentencing Commission, Washington, D.C.
The U.S. Sentencing Commission seeks applicants for the position of general counsel. The general counsel is the principal legal officer of the Commission and director of the Commission's legal unit. The general counsel reports to the staff director and, in coordination with the office directors, is responsible for the formulation of recommendations for Commission guideline priorities and policy actions. Applicants must have one year of specialized work experience, public or private, at a level at least equivalent to the GS-15 level in federal service. Applicants much possess a law degree from an accredited law school and be a member in good standing of the bar of a state, territory, the District of Columbia, the Commonwealth of Puerto Rico, or a federal court of general jurisdiction. Applicants must have an in-depth understanding of the federal sentencing guidelines, federal criminal law and criminal procedure and constitutional law. A strong familiarity with the Commission's organic statute, the agency's rule making process, and the federal legislative process is highly desirable. An overall working knowledge of other substantive legal areas necessary for the conduct of agency operations, including personnel and employment law, contract law, ethics laws, and administrative practices and procedures is essential. Excellent legal analysis and writing and editing skills are required. Salary: $115,811-$130,200. Applicants must submit a cover letter and detailed resume to Timothy B. McGrath, Staff Director, One Columbus Circle, N.E., Suite 2-500, Washington, D. C. 20002-8002, ATTN: Announcement No. 00-16. For further information contact Mark Fife at 202/502-4515. **Application deadline: August 25, 2000.**

offices, and support spaces was inserted in the central courtyard atrium."

Credits: General Services Administration, Pacific Rim Region; Skidmore, Owings & Merrill LLP

Landscape Architecture

U.S. Courthouse Plaza
Minneapolis, Minnesota

"Earth mounds, logs, and jack pine, symbols of Minnesota's cultural and natural history, are the design elements for the 50,000-square-foot plaza of the new U.S. Courthouse in downtown Minneapolis. Located over an underground garage, the plaza had to be designed using lightweight materials in containers sitting on the plaza. The plaza design serves as a transition from the new, modern federal courthouse to the Romanesque-style Old City Hall across the street and provides a memorable and inviting civic space for people to use."

Credits: General Services Administration, Great Lakes Region; Martha Schwartz, Inc.

U.S. Courthouse Plaza, Minneapolis, Minnesota

Internet and Electronic Case Filing Raise Privacy Concerns

The following article is based on remarks by Chief Judge D. Brock Hornby (D. Me.), chair of the Judicial Conference Committee on Court Administration and Case Management, to the Conference for Chief District Judges.

There's no doubt the Internet makes some tasks easier. Its easier to comparison shop, browse for information, and, incidentally, find out everything you'd ever want to know about nearly anyone, from what they paid for their new house to how their divorces are proceeding. In the long run, privacy and the Internet may prove to be mutually exclusive terms. But in the meantime, what are the privacy issues for the federal Judiciary, as more and more courts institute case management/electronic case filing (CM/ECF) and bring the ease of Internet access to court records?

"The privacy question is not one that will confront us some time in the distant future—it is here now and must be addressed," said the chair of the Judicial Conference Committee on Court Administration and Case Management (CACM), Chief Judge D. Brock Hornby (D. Me.). Hornby also would argue that "privacy" is too narrow a term, since other interests may be in conflict with unlimited electronic access. A few of the more obvious are law enforcement; physical security of cooperating defendants or victims; trade secrets of companies in commercial litigation; and keeping jurors free of access to the contents of pleadings during trial and deliberation.

These and other privacy issues may not be immediately apparent when considering CM/ECF. However, the goal of CM/ECF is to provide remote access through the Internet to all court dockets and pleadings. In the CM/ECF courts, pleadings generally are available on the Internet as soon as they are filed. Remote access to court files also is available in the 70 or so courts that are imaging pleadings. There is currently no fee for access and anyone can view the information in the electronic file. On the positive side CM/ECF saves lawyers' time, saves litigants' money, and saves the court from having to respond to numerous requests for information from court files, both at the court and by phone—and not just from parties and their lawyers, but also from the news media, and from business interests who collect court data.

"We have a long tradition of public access to case files in the federal courts with constitutional overtones," Hornby said.

Public access is a statutory requirement in bankruptcy courts. But, as the Supreme Court noted in the case of *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989), paper files in court record rooms previously have enjoyed a "practical obscurity."

"This 'practical obscurity' ends," said Hornby, "when the court records become easily accessible and

*See **Privacy** on page 9*

JUDICIAL MILESTONES

Appointed: Kermit Edward Bye, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Eighth Circuit, April 22.

Appointed: Gary R. Jones, as U.S. Magistrate Judge, U.S. District Court for the Middle District of Florida, May 1.

Appointed: Joseph Schmitt, as U.S. Magistrate Judge, U.S. District Court for the Southern District of California, March 31.

Elevated: Bankruptcy Judge Russell A. Eisenberg, to Chief Judge, U.S. Bankruptcy Court for the Eastern District of Wisconsin, succeeding James E. Shapiro, June 1.

Senior Status: Judge Robert E. Jones, U.S. District Court for the District of Oregon, May 1.

Senior Status: Judge Lawrence K. Karlton, U.S. District Court for the Eastern District of California, May 28.

Senior Status: Judge Filemon B. Vela, U.S. District Court for the Southern District of Texas, May 1.

Retired: Bankruptcy Judge John K. Pearson, U.S. Bankruptcy Court for the District of Kansas, May 21.

Resigned: Bankruptcy Judge Lisa H. Fenning, U.S. Bankruptcy Court for the Central District of California, April 30

Resigned: Magistrate Judge Gary R. Jones, U.S. District Court for the Northern District of Florida, April 30.

Deceased: Senior Judge David W. Williams, U.S. District Court for the Central District of California, May 6.

The Fifth Circuit helped honor the achievements of one of its own with the presentation by Administrative Office Associate Director Clarence A. Lee, Jr., of the 2000 Director's Award for Excellence in Court Operations to Jesse D. Cannon, Jr., Assistant Circuit Executive for Space and Facilities. Pictured from left to right are Circuit Executive Gregory A. Nussel, Chief Judge Carolyn Dineen King (5th Cir.), Jesse D. Cannon, Jr., and Lee.

THE THIRD BRANCH

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JUDICIAL BOXSCORE

As of June 1, 2000

Courts of Appeals	
Vacancies	20
Nominees	15
District Courts	
Vacancies	46
Nominees	20
Courts with "Judicial Emergencies"	22

For more information on vacancies in the federal Judiciary visit our website at www.uscourts.gov.

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searchable electronically from remote locations—anywhere in the world and at any time of the day or night. This end of 'practical obscurity' for court records raises a number of policy issues that have been referred by the Judicial Conference to the Committee on Court Administration and Case Management."

One policy issue is created by the very nature of the Internet. Recently, a data reseller who subscribes to Public Access to Court Electronic Records (PACER) learned that a case it had downloaded was later sealed by the court. The paper file was no longer available to the public at the courthouse, but the electronic file was still on the Internet. "This particular data reseller agreed to remove the case documents from its website when it received notification of the later sealing of the case," said Hornby. "But there may well be others who will not be so willing to cooperate—plus, the information may already be circulating on the web."

The full implementation of the PACER Internet fee may present a partial solution to the privacy issue, because Internet users seeking access to court files will then have to register with the PACER center and pay a fee for usage. This may discourage the casual Internet surfer, but the issue of limiting access to data remains because commercial interests such as data resellers and the media may register to use PACER to download information and then make case file documents available to anyone on their web sites.

CACM's Privacy and Public Access Subcommittee, with its liaisons from the Criminal Law, Civil and Criminal Rules, Bankruptcy and Automation Committees, is reviewing the policies of the electronic case file prototype courts, as well as of a number of the courts that employ imaging technology. It has heard presentations from privacy experts, academics, government agencies, and attorneys. The subcommittee already has identified privacy and access concerns that exist across the board, from criminal and civil cases to bankruptcy and administrative cases. Medical records, financial and personal information, plea agreements that might reveal who is cooperating in a case, trade secrets and proprietary information—all may be accessible.

For example, in the U.S. District Court for the Eastern District of New York, a district that currently uses electronic filing, the Social Security Administration requested and was granted a standing protective order prohibiting the electronic filing of administrative hearing transcripts and litigants' briefs due to concerns about identity theft and claimants' privacy interests. The Social Security Administration also supports legislation prohibiting the ready availability of Social Security numbers via electronic access.

The subcommittee also has identified several policy issues. Among them, whether there should be different policies for electronic access than for paper access; should specified categories (*e.g.*, criminal) be excluded from electronic access; should there be a waiting period before electronically filed information generally is accessible; and what to do about jurors surfing the web in the evenings during trial and deliberations and reviewing the pleadings in the case they are deciding?

According to Hornby, the subcommittee plans to address these and other questions, possibly in a public forum. "This is a complex issue," he said. "There are strong arguments on all sides, the technology is ever changing, and public sentiment is not yet well-defined."

INTERVIEW

Judge William W. Wilkins Jr. (4th Cir.)

Criminal Law Committee Chair Sees Active Role

Judge William W. Wilkins Jr. (4th Cir.) was appointed to the District Court for the District of South Carolina in 1981 and elevated to the Fourth Circuit Court of Appeals in 1986. He served as chair of the U.S. Sentencing Commission from 1985-94.

Q: What are the primary responsibilities of the Committee on Criminal Law and how does it function?

A: The committee has oversight responsibility for the probation and pretrial services system. The committee also monitors criminal law legislation, producing analyses and making recommendations to the Judicial Conference. In addition, the committee reviews sentencing-related issues and makes recommendations to the U.S. Senten-

*See **Interview** on page 10*

cing Commission on proposed amendments to the sentencing guidelines.

I have continued the past practice of appointing subcommittees to work in these primary areas of responsibility. Presently, our subcommittee chairs are Judge Gerald Rosen (E.D. Mich.), who chairs the Subcommittee on Program and Administration; Judge Emmet Sullivan (D.D.C.), who chairs the Subcommittee on Legislation; and Judge Phil Gilbert (S.D. Ill.), who chairs the Subcommittee on Sentencing Issues. Also, at every meeting we receive the views of the chair of the Chief Probation Officers Advisory Group, federal public defenders, and representatives from the Department of Justice, the Federal Bureau of Prisons, and the U.S. Sentencing Commission. At our meetings, we discuss in open session the merits of proposals of general interest.

Q: The U.S. Sentencing Commission finally has a full contingent of Commissioners. In your opinion, what should be the Commission's first priority?

A: I think the Commission is off to a good start. Judge Diana Murphy, the new Commission chair, and the other recently appointed commissioners have stated that their first priority is to address legislation enacted by Congress that directs certain changes in the guidelines or that otherwise warrants guideline amendments. With a hiatus of more than a year in which there were no voting commissioners, there was quite a lengthy list of legislative enactments that needed attention by the Commission. The second priority area that the new commissioners identified was that of resolving differing interpretations of guideline language among the courts of appeals. I agree with the new Commission's designation of these two areas for priority attention.

In addition, I would like to see the Commission update the analysis and report completed in August 1991 on the mandatory/minimum sentencing approach. This proved to be an excellent resource to use in convincing members of Congress that with the new guidelines system in place, mandatory/minimum sentences mandated by legislation were unnecessary and many times counterproductive to a fair, rational and evenhanded sentencing system.

Q: Do you anticipate the Criminal Law Committee working with the U.S. Sentencing Commission and, if so, how?

A: I think our committee will be working very closely with the Sentencing Commission. I have continued a practice first begun by Chief Judge Edward Becker (3rd Cir.) when he chaired this committee and I chaired the Sentencing Commission, of inviting the members of the Commission to participate in the committee's semi-annual meetings. And, our guidelines subcommittee no doubt will be meeting and corresponding with the Commission on more frequent intervals. We want to be very active in working with the Commission as it considers various changes in the guidelines, with the goal of assisting in improving the guidelines system.

Our committee also co-sponsors (along with the Commission, the Federal Bureau of Prisons, the Administrative Office, and the Federal Judicial Center) periodic National Sentencing Policy Institutes. The institutes, generally held every two years, are attended by judges representing every circuit and are designed to facilitate dialogue among the commissioners and judges on various sentencing matters. The committee also will serve as co-sponsor with the Commission for an Economic Crime Symposium planned for this fall.

Q: The committee has been asked to consider a proposal to authorize probation and pretrial officer assistants to carry firearms. What is the position of your committee?

A: Currently, approximately 83 districts have an approved firearms program, and approximately 2,700 probation and pretrial services officers are authorized to carry firearms in the performance of their official duties. While the Judicial Conference authorized the Administrative Office to amend certain aspects of the firearms regulations in consultation with the committee, neither the Administrative Office, the committee, nor the Conference have the authority to extend to officer assistants the right to carry firearms to the same extent as probation and pretrial services officers without an amendment to the statute.

I am informed that as a result of decentralized classification authority approved by the Judicial Conference in 1993, many chief probation and pretrial services officers developed new officer assistant position descriptions. Of the approximately 172 officer assistant positions throughout the country, some chiefs report that they have either promoted a clerical staff member to a more responsible position, or hired individuals who have little or no work experience or do not have college degrees (a requirement for an

officer position), or hired student interns to work as officer assistants. Several chiefs reported appointing officer assistants who met the criteria for officer positions. Other chiefs have appointed officer assistants to avoid the need for an FBI background investigation, something that is now required.

With respect to duties, some officer assistants perform all officer duties and supervise selected caseloads made up of administrative or low-risk offenders. Others are essentially "junior officers" or "trainees." Some assistants collect urine specimens and/or serve as lab technicians, conduct record checks, and prepare collateral investigations. Others perform mostly administrative or clerical functions. This issue and the proper use of assistants in general is the subject of current review by the Administrative Office. Of course in the meantime, chiefs who want officer assistants to carry firearms could be encouraged to develop or promote under competitive procedures those qualified officer assistants to officer positions to facilitate their eligibility to carry firearms. Our committee will withhold judgment on this issue until all of the facts are in.

Q: Congress has considered two ways in which to guarantee victims' rights—a constitutional amendment and legislation. What is the current status of the argument?

A: This has been a continuing debate in Congress for nearly four years—which best guarantees victims' rights, a constitutional amendment or legislation? The Judicial Conference prefers a statutory approach, which is certain and immediate, unlike a constitutional amendment that could take years to ratify. The Conference feels this statutory approach best serves the interests of crime victims, while diminishing federal court involvement in the operations of state criminal justice systems. Responding to their requests, I recently wrote to Senator Strom Thurmond (R-SC) and Senator Charles Schumer (D-NY) expressing the Conference's position. This past February, Judge Emmet Sullivan (D.D.C.) testified at a hearing before the House Judiciary Committee's Subcommittee on the Constitution for nearly three hours, successfully communicating the concerns of the Conference. In the Senate, supporters of a victims' rights constitutional amendment withdrew their legislation when it appeared no action would be taken in this session. However, new legislation will likely be introduced in the next Congress. So, the debate may be over for this session, but the question is far from settled.

"We want to be very active in working with the Commission as it considers various changes in the guidelines, with the goal of assisting in improving the guidelines system."

Q: As you know, the southwest border courts are in crisis. Five district courts along the border now handle 26 percent of all federal criminal filings in the United States. Will your committee play a role in addressing this situation?

A: Presentence and post-sentence reports are very important to the district courts and to the Bureau of Prisons. And, certain information about the sentences imposed is required by statute to be transmitted to the U.S. Sentencing Commission. As a result of increased prosecutions in our border courts, coupled with funding shortages in fiscal years 1999 and 2000, the judges, the clerks' offices, and probation and pretrial services staff in those districts have had a very difficult time keeping pace with the dramatically increasing workload. Our committee's former chair, Chief Judge George Kazen (S.D. Tex.), has firsthand experience with this problem. With the assistance of Chief Judge Carolyn Dineen King from the Fifth Circuit, the judges in this area of the country have been very successful in bringing this issue to the forefront and are making a special effort to support the Judiciary's budget requests in Congress. Our committee will be working to obtain from the Judiciary's appropriation an adequate allocation of funds for probation and pretrial services officers who are directly affected by this workload increase.

Q: If a member of the judicial branch has a matter that an individual wishes to bring to the attention of your committee, how is the best way to do it?

A: There are several ways. First, anyone can contact me directly. Second, the individual may want to contact one of our subcommittee chairs, depending on what the issue is. Finally, the individual may want to discuss the matter with one of the committee members in their locale. Other members of our committee are Judges Donetta Ambrose (W.D. Penn.), Thomas Brett (N.D. Okla.), William Catoe (D. S.C.), Sim Lake (S.D. Tex.), James Loken (8th Circuit), John Martin (S.D. N.Y.), David Mazzone (D. Mass.), William Moore (S.D. Ga.), and Wm. Fremming Nielsen (E.D. Wash.). We all solicit suggestions, ideas, and critical comments.

New Ambassador to South Africa Sworn in By Former Classmate

Photo left to right, Ambassador Delano Lewis, Gayle Carolyn Jones Lewis, Chief Judge John Conway (D. N.M.)

Among the more pleasant duties of a federal judge is the occasional administering an oath of office. Recently, Chief Judge John E. Conway (D. N.M.) had the agreeable task of swearing in former law school classmate Delano Lewis as the new Ambassador to South Africa. Lewis and Conway graduated together from Washburn University School of Law, Topeka, Kansas, in 1963.

After graduation, Lewis went on to serve in the government, first as an attorney with the U.S. Department of Justice and later the Equal Employment Opportunity Commission. He served in the U.S. Peace Corps, ultimately as Director of the Peace Corps' East and Southern Africa Division, and he also worked in the legislative branch as legislative assistant to Senator Edward Brooke of Massachusetts and Delegate Water E. Fauntroy of the District of Columbia. He was President and CEO of C&P Telephone for 21 years, and from 1994 to 1998, he was president and CEO of National Public Radio. He received the Distinguished Leadership Award and Media Spotlight Award from Amnesty International in 1997.

THE THIRD BRANCH

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THE THIRD BRANCH

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Senior Judges Give New Meaning to 'Volunteer'

District Judge Joe Fisher, a judicial nominee of President Dwight D. Eisenhower to the U.S. District Court for the Eastern District of Texas, died last month. He'd served 41 years on the federal bench and up until two weeks before he died, he still carried nearly half the caseload of an active judge. He was 90 years old.

Fisher was one of a cadre of judges across the country who, when they could opt for fishing trips and wintering in Florida or just plain doing nothing, continue to handle substantial court caseloads. It is fortunate for the Judiciary and taxpayers that they do.

"Senior judges do approximately 15-17 percent of the work of the federal Judiciary," said Administrative Office Director Leonidas Ralph Mecham. "In many circuits and districts, senior judges are indispensable to the proper conduct of judicial business." In fact the federal Judiciary depends on its senior judges to such a degree that if tomorrow all the senior judges decided to catch up on their lost leisure, the courts would need an additional 100 active judges to compensate for the loss of the senior judges. If Congress and the President chose not to create the new judgeships, the federal courts would grind to a halt.

If all the senior judges quit tomorrow—and no new judges were appointed—the Judiciary would grind to a halt.

Judge Max Rosenn on the Third Circuit Court of Appeals has been a senior judge for nearly 20 years. And he says he has more work now as a senior judge than when he came on the court in 1970. "The courts run much more efficiently," said Rosenn. "There's better planning and accelerated production. With technology such as computers, we get out a

See Senior on page 4

House Passes Appropriations Bill for Judiciary

The Judiciary's fiscal year 2001 appropriation passed the House before the July 4 recess, as part of H.R. 4690, the Commerce, Justice, and State, the Judiciary, and Related Agencies appropriations bill. The House gave the Judiciary a 6.6 percent increase over FY 2000 enacted appropriations, for a total appropriation of $4.2 billion. While the House level treats the Third Branch well in comparison to the budget allocation available and in comparison to most other agencies in the bill, it does not fund requested workload enhancements for additional staff to support workload increases nationally, and especially for the southwest border courts.

"We are truly appreciative of the funding provided by the House," said Administrative Office Director Leonidas Ralph Mecham, "especially considering the tight budget allocations. However, the House funding does not allow us to address our significant workload increases, in particular along the southwest border, or to fully fund other

See Appropriations on page 3

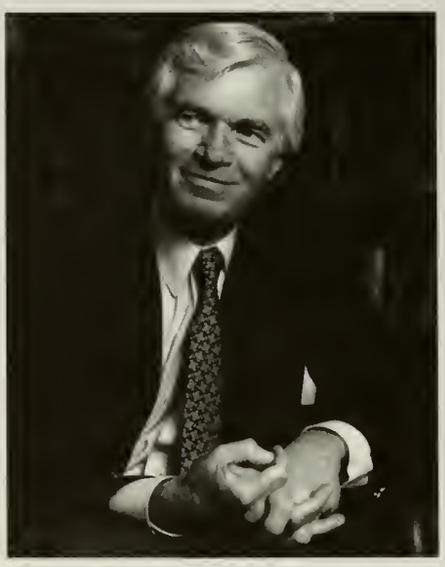
INSIDE

Budget Protection Bill Out of Committee, On to Full Senate

Thanks to the leadership of Senator Thad Cochran (R-MS), and support from Senator Joseph I. Lieberman (D-CT), the Senate Committee on Governmental Affairs last month favorably reported S. 1564, the Federal Courts Budget Protection Act. Chief Justice William Rehnquist wrote to Cochran to convey the appreciation of the Judicial Conference for his efforts and those of the bill's co-sponsors and to express his personal support for S. 1564.

The bill would allow the federal Judiciary to submit its annual budget directly to Congress, along with courthouse construction funding requests, without interference from the Office of Management and Budget (OMB). Currently the Judiciary's budget is submitted through the President to Congress, who must send it to Congress without change. In contrast, requests for courthouse funding are submitted by the General Services Administration through OMB to the White House and then on to Congress.

Under S. 1564, the Judiciary's budget, including courthouse construction requests, would be submitted directly to Congress, and the President must include it in the unified federal budget without making any changes in the budget, or from "imposing or otherwise recommending implementation of a negative allowance, rescission, or any other form of reduction or change to such estimates."



Senator Thad Cochran (R-MS)

S. 1564 would not alter the relationship the Judiciary enjoys with the General Services Administration, which would continue to develop courthouse budget requests, and preliminary planning, design, and cost estimates of future judicial branch construction, acquisition, and repair and alteration projects. Also the bill would not alter the role of congressional committees in reviewing courthouse construction requests.

Senators Orrin G. Hatch (R-UT), Patrick J. Leahy (D-VT), William V. Roth Jr. (R-DE.), Ted Stevens (R-AK) and Susan M. Collins (R-ME) are co-sponsors with Cochran of the bill.

Cochran, in an interview with *The Third Branch* last fall, called OMB budget request interference "an indirect way for the Administration to actually block access by the Congress to information from the Judiciary about its priorities for courthouse construction, where it thought the needs were the most important. And this is information that I thought the Congress had a right to have. It didn't have to approve every request that either the Judiciary or the Administration makes for funds for courthouse construction, but it needed to know where the courts thought the priorities were. So, I thought it was an interference, a gratuitous interference by the executive branch in the effort by the Judiciary to communicate with the Congress, and it ought not be tolerated."

Four times in the last decade, OMB has attempted to decrease the Judiciary's operating budget request indirectly through the use of negative allowances, and in the 1998, 1999, and 2000 budgets, OMB "zeroed out" the Judiciary's requests for courthouse construction funding. In the FY 2001 budget, OMB failed to follow the Judiciary-GSA priorities, reduced the courthouse construction request, and imposed an arbitrary courtroom sharing policy.

In his letter to Senator Thad Cochran, Chief Justice William Rehnquist wrote:

"It is the longstanding policy of Congress in title 31, United States Code, Section 1105(b) that the President, in submitting the annual proposed unified budget for the federal government, include the request of the judicial branch "without change." The attempted erosion of that fundamental principle in recent years by the Office of Management and Budget (OMB) would be remedied by the enactment of S. 1564.

Likewise, I believe it is manifestly appropriate for this same principle to be extended to the Judiciary's courthouse construction program, the only remaining portion of Judiciary funding that is still subject to presidential control through OMB. Congress should receive the annual request of the Judiciary for funding, including requests for the construction and repair of courthouses, without interference from the executive branch. The extent to which these requests are granted would continue to depend entirely on the discretion of Congress which would be unaffected by the enactment of S. 1564. The current role of the General Services Administration also would be fully preserved."

Appropriations continued from page 1
important initiatives, such as defender services and court security needs."

The Senate has yet to consider a FY 2001 appropriations bill for the Judiciary. In anticipation of Senate action, and because the Senate Subcommittee on Commerce, Justice, State, and the Judiciary has even less money to work with than the House, Bankruptcy Judge David Houston (N.D. Miss.) and Mecham met with Senate Majority Leader Trent Lott to discuss the Judiciary's funding for the coming fiscal year. (See page 12.) Senate meetings are scheduled with other congressional leaders.

Under the House-passed bill, Salaries and Expenses for the courts, the largest single appropriation account, would receive a 6.6 percent increase over FY 2000. This level is intended to allow the Judiciary to continue operating at current levels of operations. But as the House Appropriations Committee reported, "although the Committee is aware of the growth in workload facing federal courts nationally and especially along the southwest border," the funds made available "may fall short of the amounts needed to address the growing workload." No funds would be available for additional workload along the southwest border, or elsewhere.

Revised estimates also leave the Defenders Services account $26 million below the amount needed to fund currently anticipated workload or to increase panel attorney rates to $75 per hour. While not allowing for the full rate increase to $75 per hour, the House committee report was supportive of a $5 increase, to $75 in court/$55 out of court, the second consecutive year of such an increase.

The Court Security account also is underfunded, at $17.1 million below the request. With the House-provided funding, no money would be available for additional court security officers or for security equipment in new and renovated court facilities.

As the House considered H.R. 4690, the Commerce, Justice, and State, the Judiciary and Related Agencies appropriations bill for fiscal year 2001, Representative Clifford B. Stearns (R-FL) rose to offer the following statement:


Rep. Clifford B. Stearns (R-FL)

"...I would like to voice my concern over the state of federal judicial compensation. I believe that judges' salaries are falling below the minimum levels that are needed, not only in the interests of fairness, but also to ensure the continued quality of the federal Judiciary.

Over the past eight years, federal judges have experienced a 13 percent decline in the real value of their salaries. At the same time, their workload has remained at high levels. Salaries of federal judges have not just lagged behind the inflation indices.

As a result, judges' salaries no longer bear a reasonable relationship to that of the pool of lawyers from whom candidates for judgeships should be drawn. It has been widely reported that the first-year associates in law firms in metropolitan areas throughout the country are now earning $125,000 a year. It is therefore not surprising that even second- and third-year associates at most large law firms would have to take a pay cut, a pay cut to accept an appointment to the federal bench.

Public sector salaries may even be more relevant. The general counsel of the University of California receives a salary in excess of $250,000 annually, which is substantially greater than the pay of the Chief Justice of the United States.

The district attorneys of Los Angeles, for example, are paid $185,000. All of these salaries far exceed the salary of the United States Supreme Court Justices and Associate Justices, which are currently less than $182,000 and $174,000, respectively.

Additionally, a U.S. district judge salary is currently only $141,300. Increasingly, judges are choosing not to make the financial sacrifice to remain on the federal bench. As a result, our federal Judiciary is losing some of its most capable and dedicated men and women. Since January 1993, 40 Article III judges, judges whose positions are delegated in Article III of the U.S. Constitution and serve lifetime appointments subject to Senate confirmation, have resigned or retired from the federal bench. Many of these judges have retired to private practice.

The departure of experienced, seasoned judges undermines the notion of lifetime service and weakens our judicial system. If the issue of adequate judicial salaries is not soon addressed, I believe there is a real risk that the quality of the federal Judiciary, a matter of great and justified pride, will be compromised.

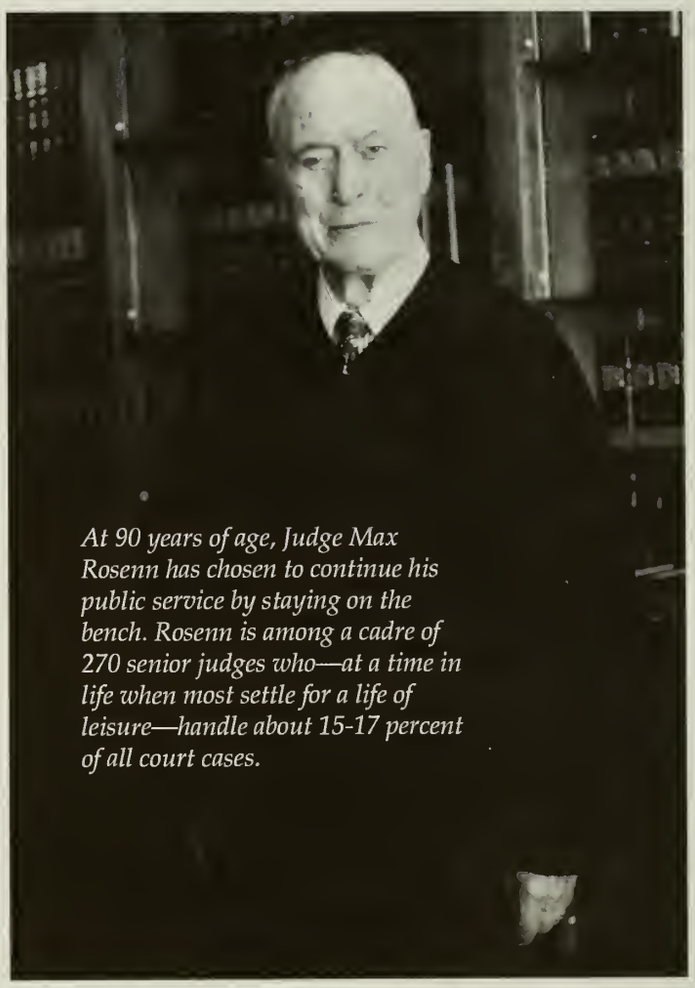
The President of the United States' salary goes up to $400,000 next year. Is it not about time the Supreme Court Justices' salaries go up, too?"

Senior continued from page 1

whole lot more cases." At 90 years of age, Rosenn takes pleasure in working. "I get a great deal of satisfaction in doing something useful," he said.

In 1999, 273 senior district judges terminated slightly over 17 percent of all civil and criminal defendant cases and conducted 19 percent of all trials. At the appellate level, 86 senior judges handled 15 percent of all participations in oral hearings and submissions on briefs. The contributions of senior judges have increased nearly every year.

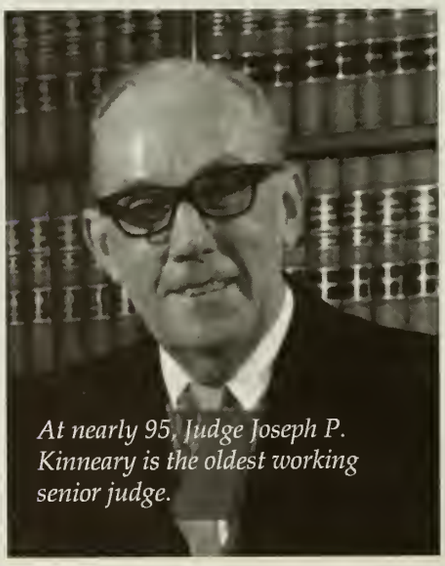
Judge Robert Sweet in the Southern District of New York carries a typical senior judge caseload. He cut his caseload by about a quarter when he took senior status. "Perhaps it's a bit lighter than an active judge," said Sweet, "but after 22 years of experience, I'm able to get a good grip on things relatively quickly and move the docket effectively." Many senior judges, while they may have reduced caseloads, contribute substantially in other ways, some with their involvement in non-case related court matters and others by taking visiting judge assignments. In 1999, as visiting judges, 82 senior judges helped terminate 1,190 civil cases and cases involving 459 criminal defendants. In 1999, at the circuit level, 73 senior appeals court judges and 129 senior district court judges helped dispose of 3,269 cases.



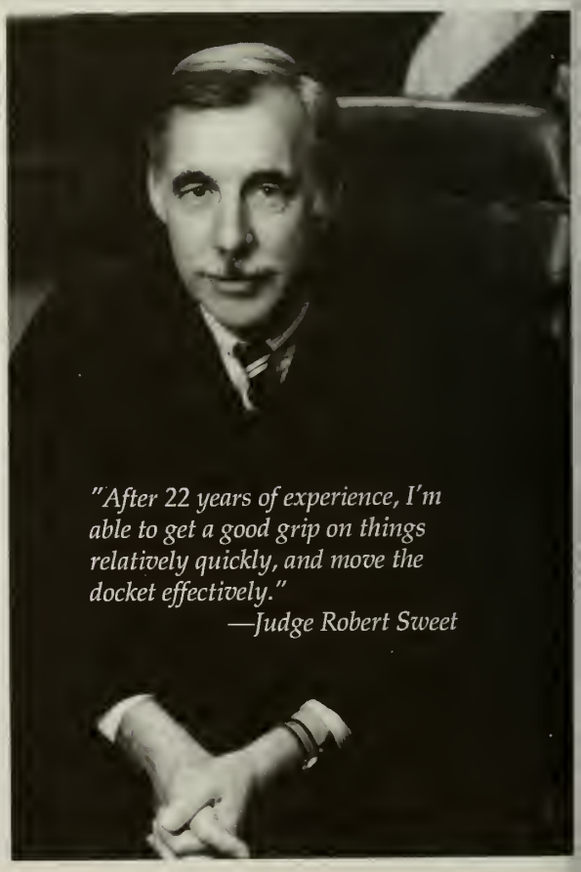
At 90 years of age, Judge Max Rosenn has chosen to continue his public service by staying on the bench. Rosenn is among a cadre of 270 senior judges who—at a time in life when most settle for a life of leisure—handle about 15-17 percent of all court cases.

Judge Milton Pollack, also a senior judge in the Southern District of New York, has served on the court 34 years and agrees with Sweet—experience counts. "I'm known for taking over long-delayed reassigned cases and telling the attorneys to come in next Monday and be ready for trial," said Pollack, who likes to clear up civil cases, particularly securities and trust cases that have been pending for a lengthy period. "The lawyers tell me they need more time, but I tell them I really don't have a lot of time at 93 ½ years old." His philosophy is that the harder you work, the longer you live. "This business of golf or Florida vacations is for the birds," says Pollack.

The rules didn't always allow judges to work after retirement. It wasn't until 1919 that legislation was enacted authorizing judges to retire at age 70 after 10 years of service, and continue to retain the judicial office and to perform duties in retired status. In 1948, Congress provided that judges



At nearly 95, Judge Joseph P. Kinneary is the oldest working senior judge.

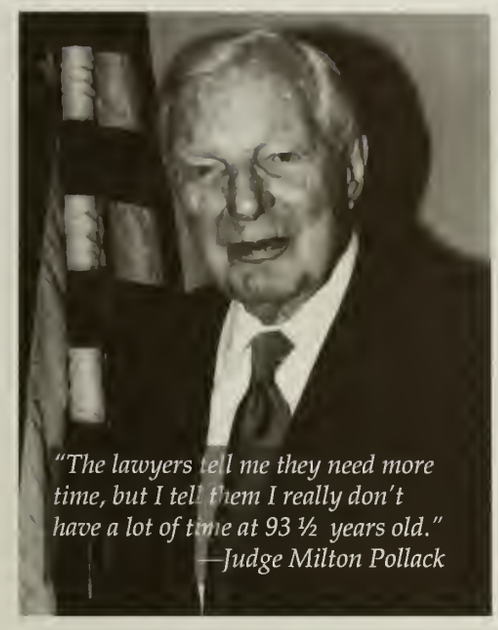


"After 22 years of experience, I'm able to get a good grip on things relatively quickly, and move the docket effectively."
—Judge Robert Sweet

retiring from active service would continue to receive the full judicial salary and in 1954, the retirement age became 65, with 15 years of service. Finally, in 1984, Congress established a sliding scale of age and service, commencing at age 65 with 15 years of service.

Statistics show that very few federal judges—only about 1.6 percent—take full retirement before reaching 15 years of service in active status. Even fewer opt for full retirement instead of senior status when they are eligible. And a few judges, such as the late Judge Giles Rich of the Court of Appeals for the Federal Circuit, do not take senior status even when they're eligible. Rich served over 40 years as an active judge becoming, at 95, the oldest active judge in history. Generally, however, slightly more than half of all federal judges take senior status within one month after becoming eligible. Seventy-five percent take senior status within a year. Slightly more than 8 percent delay the transition, working more than 20 years before taking senior status.

At nearly 95, Judge Joseph P. Kinneary of the U.S. District Court for the Southern District of Ohio, is the oldest working senior judge in the country. He feels, however, the senior judge versus active judge designation is unfortunate. "Senior to what," Kinneary asks, perhaps facetiously. "I think



"The lawyers tell me they need more time, but I tell them I really don't have a lot of time at 93 ½ years old."
—Judge Milton Pollack

I'm about as active as you can be. And as far as handling a lawsuit, it doesn't make a difference if I'm a so-called senior or a so-called active judge." Kinneary takes a 100 percent draw on criminal cases and an 80 percent draw on civil cases. He takes the criminal cases because that's what he likes to do. Times change, however, and he reflects that in the early days of his judgeship, the FBI frequently would bring interstate transportation cases before his court. Now, the majority of cases he sees involve drugs, or, on the civil side, controversies between big business interests. "But the nature of cases doesn't make a difference," Kinneary observes, "as long as you have good people on staff."

At 80, Judge Anthony Alaimo (S. D. Ga.) feels there's no difference between a senior judge and an active judge, except that in some courts, senior judges don't retain their voting rights on administrative matters. He remains very active, last year handling a global settlement for about 900 plaintiffs in a class action suit. "I think I try more cases than some active judges," he said. He admits sentencing is his least favorite duty, finding the U.S. Sentencing Guidelines too inflexible. Still, through choice, he carries a full caseload. "I'm like the old prize fighter," Alaimo relates, "every time the bell rings I come out of my corner."

If a judge, at retirement age, chooses to take senior status, he or she receives the salary of the office including any subsequent cost-of-living increases. A senior judge must meet certain workload certification requirements to receive any salary increases other than cost-of-living adjustments and work may include judicial work outside of the courtroom. Since federal judges

*See **Senior** on page 6*

United States Courts of Appeals and District Courts Work of Senior Judges

During the 12 Month Period Ended June 30, 1995-1999

Type of Activity	1995	1996	1997	1998	1999
Courts of Appeals					
All Participations in Oral Hearings and Submissions on Briefs	85,472	82,132	79,802	75,656	80,313
Senior Judges Only (1)	11,804	11,420	11,699	12,032	12,144
Percent of All	13.8	13.9	14.7	15.9	15.1
District Courts (2)					
All Civil Cases and Criminal Defendants Terminated	259,419	284,021	289,431	302,840	316,882
Senior Judges Only	38,626	41,323	48,543	51,646	54,498
Percent of All	14.9	14.5	16.8	17.1	17.2
All Trials Conducted	19,464	17,983	17,266	16,738	15,905
Senior Judges Only	3,686	3,389	3,524	3,462	3,058
Percent of All	18.9	18.8	20.4	20.7	19.2
All Hours in Trial	258,456	250,618	243,450	228,729	218,420
Senior Judges Only	46,328	43,231	47,167	46,673	40,447
Percent of All	17.9	17.2	19.4	20.4	18.5
All Hours in Other Proceedings	155,911	173,479	170,138	165,287	168,797
Senior Judges Only	25,839	31,812	35,103	34,248	33,394
Percent of All	16.6	18.3	20.6	20.7	19.8

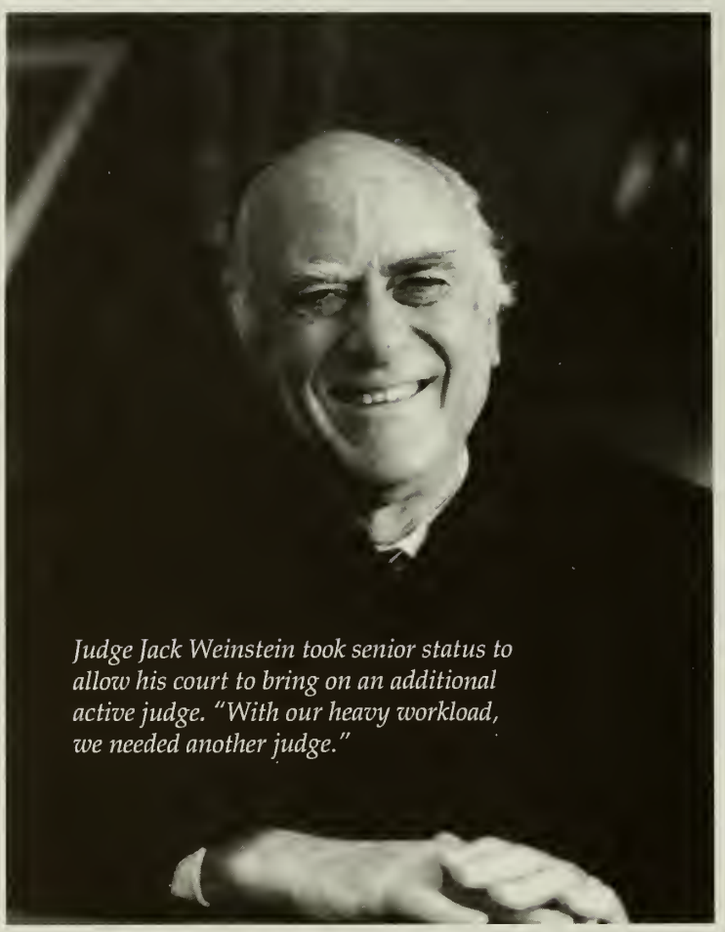
(1) In the Courts of Appeals for 1995-1999, "Senior Judges Only" represents resident senior circuit judges only.

(2) In the District Courts, the "Senior Judges Only" totals do not include the work of senior circuit judges in the district courts.

Senior continued from page 5
have received only two cost-of-living adjustments since 1993, and no other salary increases, senior judges obviously are not coming to work every day for the promise of a pay raise. They could just as easily stay home and receive their retirement pay. In effect, senior judges continue to do substantial work for no additional compensation.

Judge Edwin F. Hunter (W.D. La.), who turned 89 last February, claims he'd be bored if he didn't come to work. Judge Howard Turrentine (S.D. Calif.) jokes that he tried to stay home, but when he began suggesting housekeeping improvements, his wife convinced him to go back to work. In reality, the Southern District of California depends on its senior judges. The district is one of five southwest border courts that now handle 26 percent of all federal court criminal filings. "The Southern District of California has experienced a close to 60 percent increase in its caseload since 1995," said Chief Judge Marilyn Huff (S.D. Calif.). "Until Congress approves a judgeship bill, we are relying on our five senior judges to get us through." The Southern District of California is similar in that respect to many districts across the country where senior judges take up the workload created by lengthening judicial vacancies. They may have acquired the title of senior judge, but the need for their services remains the same as when they were active.

Turrentine, on one typical Monday morning, had six sentencings and three supervised release hearings. In a court that he says is "overburdened" with immigration and drug cases, he does everything an active judge would do.



Judge Jack Weinstein took senior status to allow his court to bring on an additional active judge. "With our heavy workload, we needed another judge."

Judge Edwin F. Hunter, who turned 89 last February, claims he'd be bored if he didn't come to work.

Senior Judge Jack Weinstein (E.D. NY) took senior status to allow his court to bring on an additional active judge. "With our heavy workload," said Weinstein, "we needed another judge." The 79-year old Weinstein continues to carry a full caseload of civil and criminal cases. Several years ago, he briefly stopped taking drug cases until there was what he calls "a more sensible enforcement policy on the guidelines" on the part of the U.S. Attorney's office. Weinstein also participates in the day-to-day administration of the court and he sits on the occasional appeal in the Second Circuit.

What it may come down to, in the words of Judge Sweet, is that senior judges use whatever skills they have, where they are most needed. Taking senior status also gives judges some flexibility, which may lead, at least in Sweet's case, to the opportunity to take a "busman's holiday." Sweet now has the time to respond to invitations to visit China and speak to judges and students there about the U.S. judicial system. In September he'll visit Albania to lecture on the federal Judiciary. Says Sweet, "Given the fact that federal judges at retirement have the option to do nothing, senior judges are a boon to the system. And being a senior judge is the most desirable job in the United States."

Adds Mecham, "How many employees would choose to come to work only to wrestle with difficult complex legal issues when they could instead get paid the same amount by staying at home? Senior judges are among the most unique public servants in the world. They give a new meaning to the word volunteer."

Aug. 15, 12:30 p.m.

Benefits Entitlements Under the Civil Service Retirement System for Law Enforcement Officers
Aug. 8, 3 p.m.; Aug. 14, 12:30 p.m.; Aug. 29, 2 p.m.

CM/ECF Decisions for Bankruptcy Courts
Aug. 8, 1 p.m. LIVE; Aug. 14, 10:30 a.m.; Aug. 18, 9 a.m.; Aug. 22, 12:30 p.m.; Aug. 29, 9:30 a.m.

Commuter Reimbursement (Part One)
Aug. 15, 2 p.m. LIVE; Aug. 22, 8:30 a.m.; Aug. 28, 9 a.m.

Contests & Competitions as Instructional Tools
Aug. 11, 8:30 a.m.

Court Moves
Aug. 8, 4 p.m.; Aug. 15, 9:30 a.m.; Aug. 18, 3:30 p.m.; Aug. 21, 9 a.m.

Court to Court (June 2000)
Aug. 11, 4 p.m.; Aug. 24, 1, 1:35, 2:10 p.m.; Aug. 31, 4 p.m.

Effective Supervision of Adult Sex Offenders in the Community
Aug. 11, 12 p.m.; Aug. 31, 12 p.m.

Electronic Bankruptcy Notification—Phase II
Aug. 1, 11 a.m.; Aug. 7, 3 p.m.; Aug. 15, 10 a.m.; Aug. 21, 3:30 p.m.; Aug. 28, 3 p.m.

Executive Briefing: Building Management Delegations
Aug. 8, 11 a.m.

FSA's: Use It or Lose It
Aug. 4, 9:30 a.m.; Aug. 18, 8:30 a.m.; Aug. 22, 12 p.m.; Aug. 28, 4 p.m.

Health Care Reimbursement Account Worksheet
Aug. 1, 4 p.m.; Aug. 7, 4 p.m.; Aug. 15, 9 a.m.; Aug. 29, 11:30 a.m.

Hurdling the Raised IT Performance Bar
12 p.m.; Aug. 21, 11:30 a.m.; Aug. 29, 10:30 a.m.

In Camera
Mondays at 8:30 a.m., Tuesdays at 4:30 p.m.

Judiciary Travel Management Center (TMC) Contract
Aug. 4, 9 a.m.; Aug. 7, 2:30 p.m.; Aug. 15, 8:30 a.m.; Aug. 22, 4 p.m.; Aug. 29, 4 p.m.

The Law Clerk Appointment Process
Aug. 1, 3 p.m.

Moving Information—Understanding PDF Files and Image Integrity for the U.S. Courts
Aug. 22, 2 p.m. LIVE; Aug. 29, 8:30 a.m.

Organization & Jurisdiction of the U.S. Bankruptcy Courts
Aug. 10, 4 p.m.; Aug. 23, 1 p.m.

Overview of Judiciary Compensation
Aug. 4, 3 p.m.; Aug. 18, 11 a.m.

Perspectives on Probation & Pretrial Services (Aug. 2000)
Aug. 9, 8:30, 9:30, 10:30, 11:30 a.m.; 12:30, 1:30, 2:30, 3:30 p.m.; Aug. 17, 12, 4 p.m.; Aug. 24, 12 p.m.; Aug. 31, 8:30, 9:30 a.m.

Preparing for PACTS/ECM
Aug. 1, 2 p.m.; Aug. 8, 10 a.m.; Aug. 18, 1 p.m.; Aug. 22, 3 p.m.; Aug. 29, 3 p.m.

Recurring Issues in Federal Death Penalty Cases: Part 1: Pretrial Phase, Part 2: Trial & Penalty Phases
Aug. 16, 8:30 a.m.; Aug. 23, 2 p.m.; Aug. 30, 11 a.m.

Restitution: Determining Victims & Harms
Aug. 17, 8:30 a.m.

Sentencing & Guidelines: A Conversation with Judge Diana Murphy
Aug. 17, 1 p.m.

Sentencing & Guidelines: Departure Analysis
Aug. 24, 8:30 a.m.

Simplified Procurement Procedures for

AUGUST

FJTN PROGRAM CALENDAR FOR
THE THIRD BRANCH

Vol. 32 Number 7 July 2000

Treatment Services: Conducting a Needs Assessment
Aug. 7, 12 p.m.; Aug. 14, 11:30 a.m.; Aug. 15, 3 p.m.; Aug. 21, 12:30 p.m.; Aug. 22, 9:30 a.m.; Aug. 28, 2 p.m.

Social Security Benefits for Employees under Federal Employees Retirement System
Aug. 7, 2 p.m.; Aug. 15, 4 p.m.

Social Security: Process & Problems
Aug. 23, 11 a.m.

Special Needs Offenders: Reducing Risk Through Employment & Education
Aug. 25, 8:30 a.m.

Statistical Procedures for Reporting Detention & Release at Bail Hearings
Aug. 4, 12 p.m.; Aug. 18, 10 a.m.; Aug. 21, 1:30 p.m.

A Summary of Benefits for Law Enforcement Officers Under FERS
Aug. 1, 9:30 a.m.; Aug. 8, 8:30 a.m.; Aug. 15, 11 a.m.; Aug. 18, 2 p.m.; Aug. 22, 10:30 a.m.

Supreme Court 1999-2000: The Term in Review (Parts 1, 2 & 3)
Aug. 2, 8:30, 11 a.m.; 2 p.m.; Aug. 3, 8:30, 11 a.m.; 2 p.m.; Aug. 10, 8:30 a.m.; 12 p.m.; Aug. 16, 11:30 a.m.; 2 p.m.; Aug. 23, 8:30 a.m.; Aug. 30, 8:30 a.m.; 2 p.m.

Survival Spanish for Probation & Pretrial Services Officers
Part 1: Aug. 10, 11 a.m.; 3 p.m.
Part 2: Aug. 11, 11 a.m.; 3 p.m.
Part 3: Aug. 17, 11 a.m.; 3 p.m.
Part 4: Aug. 24, 11 a.m.; 3 p.m.
Part 5: Aug. 25, 11 a.m.; 3 p.m.
Part 6: Aug. 31, 11 a.m.; 3 p.m.

Taking the Interpreter's Oath to Heart
Aug. 2, 1:30, 4:30 p.m.; Aug. 3, 1:30, 4:30 p.m.; Aug. 9, 4:30 p.m.; Aug. 10, 2:30 p.m.; Aug. 11, 10:30 a.m.; Aug. 16, 11 a.m.; 4:30 p.m.; Aug. 17, 2, 2:30 p.m.; Aug. 23, 4:30 p.m.; Aug. 24, 10:30 a.m.; 4, 4:30 p.m.; Aug. 25, 10:30 a.m.; 2, 2:30, 4, 4:30 p.m.; Aug. 30, 1:30, 4:30 p.m.; Aug. 31, 10:30 a.m.

Tech Talk
Mondays at 4:30 p.m.

Three-Tier Architecture—Components of a Modern Web Site
Aug. 4, 11 a.m.; Aug. 8, 11:30 a.m.; Aug. 14, 2:30 p.m.; Aug. 21, 2:30 p.m.

Understanding My Social Security Benefits with a Civil Service Retirement System Annuity
Aug. 1, 12 p.m.; Aug. 4, 8:30 a.m.

Using *Sentry* in Probation & Pretrial Services Investigation & Supervision Activities
Aug. 4, 4 p.m.

Web Page Design: Making Your Portal Work
Aug. 1, 8:30 a.m.; Aug. 7, 11 a.m.; Aug. 18, 4 p.m.; Aug. 21, 9:30 a.m.; Aug. 28, 10 a.m.

WordPerfect 8.0 Basics
Aug. 7, 9 a.m.

WordPerfect 8/9 Macro Basics
Part One: Aug. 28, 12 p.m.
Part Two: Aug. 29, 12 p.m.

WordPerfect Document Formatting
Aug. 7, 1 p.m.

WordPerfect File Management
Aug. 4, 1 p.m.

WordPerfect Templates
Aug. 14, 9 a.m.

Working with Multi-Party Cases
Aug. 25, 12 p.m.

Workplace Drug Testing
Aug. 1, 1 p.m. LIVE; Aug. 8, 2 p.m.; Aug. 14, 3:30 p.m.; Aug. 21, 10:30 a.m.; Aug. 28, 11 a.m.

PLEASE POST

VACANCY ANNOUNCEMENTS
THE THIRD BRANCH
Vol. 32 Number 7 July 2000

CLERK OF COURT, U.S. Bankruptcy Court for the Middle District of Florida

The U.S. Bankruptcy Court for the Middle District of Florida is seeking qualified applicants for the position of clerk of court. This is a high-level managerial position under the direction of the court. Applicants must have a minimum of 10 years of progressively responsible administrative experience; at least three years of which must have been in a position of substantial management responsibility. A bachelor's degree is required, and a law degree is encouraged but not required. Salary range: $111,631 to $122,263 (JSP-17). To apply please send an original and four copies of a detailed resume and salary history to Celia Rodenmeyer, Human Resources Manager, U.S. Bankruptcy Court, 801 N. Florida Avenue, Suite 727, Tampa, Florida 33602-3899. For more information, visit our website @ www.flmb.uscourts.gov. Telephone: (813) 301-5027. **Application deadline: August 11, 2000.**

BANKRUPTCY JUDGESHIP, Eastern District of New York, Brooklyn

The Second Circuit Judicial Council invites applications from highly qualified candidates for a bankruptcy judge position in the Eastern District of New York. The person selected will maintain chambers in Brooklyn, New York. The term of office is 14 years. Salary: $129,996 per annum. Basic qualifications must include admission to practice before the highest court of at least one state, the District of Columbia, or the Commonwealth of Puerto Rico; membership in good standing in every bar in which membership is held; and at least five years of legal practice experience. Application forms may be obtained by calling, writing or faxing a request to Office of the Circuit Executive, U.S. Courthouse, 40 Foley Square, Room 2904, New York, NY 10007. Phone: (212) 857-8700. Fax: (212) 857-8680. **Application deadline: 5:00 p.m., August 4, 2000.**

BANKRUPTCY JUDGESHIPS, District of Colorado, Denver

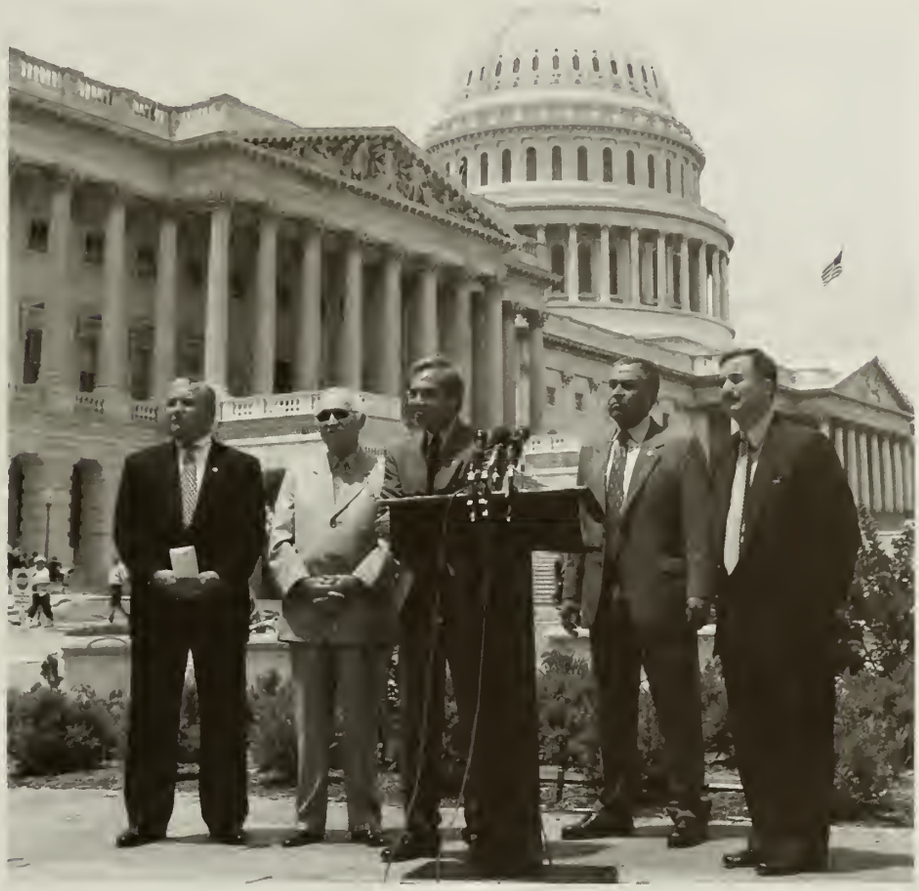
The U.S. Court of Appeals for the Tenth Circuit seeks applications from all highly qualified individuals for two U.S. bankruptcy judge positions in the District of Colorado at Denver. One position is currently vacant, and the other will become vacant December 31, 2000, upon retirement of the incumbent. Because it is anticipated that appointments to both positions will be made in early 2001, applications will be considered for both positions. Salary: $129,996 per annum. Further information and application forms may be obtained by writing to Robert L. Hoecker, Circuit Executive, Byron White U.S. Courthouse, Denver, Colorado 80257, by calling (303) 844-2073, or by visiting www.ck10.uscourts.gov. **Application deadline: August 31, 2000.**

Congress Wants New Judgeships for Southwest Border Courts

Five southwest border courts may get much needed judgeship positions to handle an overwhelming caseload if five senators and members of the House Southwest Border Caucus have their way.

Identical bills have been introduced in the Senate and the House that would create federal judgeships for southwest border courts. Senators Kay Bailey Hutchison (R-TX), Pete Domenici (R-MN), and Dianne Feinstein (D-CA) introduced S. 2730, the Southwest Border Judgeship Act of 2000 in mid-June. Senators Barbara Boxer (D-CA) and Jeff Bingaman (D-NM) are co-sponsors. Representative Charles Gonzalez (D-TX) and several fellow members of the House Southwest Border Caucus have co-sponsored H.R. 4704. Both bills would create eight permanent and five temporary Article III judgeships: two permanent in the Southern District of Texas, two permanent in the Western District of Texas, one temporary and three permanent in the Southern District of California, one temporary and one permanent in the District of New Mexico, and three temporary in the District of Arizona. These requested judgeships are identical to the additional judgeships recommended by the Judicial Conference. Arizona received three permanent judgeships last year in P.L. 106-113, the omnibus appropriations bill for fiscal year 2000. An omnibus judgeship bill, S. 1145, is pending in the Senate, which would create 69 appeals and district court judgeships.

Sponsors of the House and Senate bills point to the crisis that exists in the five southwest border courts, which handle 26 percent of all criminal cases in the U.S. "These courts are on the front line of the drug war," said Hutchison. "Nowhere in the United States is the need greater for more judges than along our southern border. We cannot tolerate a lack of judicial resources in our fight against the drug trade."



Members of the Congressional Southwest Border Caucus held a press conference last month to urge support for newly introduced bills in the House and Senate that would create additional judgeships for the border courts. Standing left to right are Representatives Silvestre Reyes (D-TX), Solomon Ortiz (D-TX), Charles Gonzalez (D-TX), Henry Bonilla (R-TX), and Ciro D. Rodriquez (D-TX).

"The federal courts along the U.S./Mexico border are simply overwhelmed with pending drug cases," Feinstein said. "This legislation would give the courts additional resources to handle the extraordinary workload. The end result will be more trials, more convictions, and a safer border."

Additional funds to fight border crime

In addition, $12 million for federal drug case prosecutions along the U.S./Mexico border is included in the emergency supplemental spending package recently passed by Congress. The funding will be divided evenly, with New Mexico, Arizona, California, and Texas each receiving $3 million. The funds, which are part of a U.S. Attorney grant program for local prosecutors, will reimburse county and city governments for court costs, county and district attorney costs, criminal proceedings expenditures, and indigent defense.

In its consideration of the Judiciary's fiscal year 2001 appropriations request, the House has not added any money, thus far, to address the workload of the southwest border courts. The Senate has not yet acted.

JUDICIAL MILESTONES

Appointed: Thomas L. Ambro, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Third Circuit, June 19.

Appointed: Timothy Belcher Dyk, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Federal Circuit, June 9.

Appointed: Julio M. Fuentes, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Third Circuit, May 15.

Appointed: John Antoon, II, as U.S. District Judge, U.S. District Court for the Middle District of Florida, June 2.

Appointed: Marianne O. Battani, as U.S. District Judge, U.S. District Court for the Eastern District of Michigan, June 9.

Appointment: James J. Brady, as U.S. District Judge, U.S. District Court for the Middle District of Louisiana, May 29.

Appointed: Roger L. Hunt, as U.S. District Judge, U.S. District Court for the District of Nevada, May 26.

Appointment: James D. Whittemore, as U.S. District Judge, U.S. District Court for the Middle District of Florida, May 27.

Appointed: Paul Game, Jr., as U.S. Magistrate Judge, U.S. District Court for the Central District of California, June 1.

Appointed: Susan Richard Nelson, as U.S. Magistrate Judge, U.S. District Court for the District of Minnesota, June 1.

Appointed: David E. Peebles, as U.S. Magistrate Judge, U.S. District Court for the Northern District of New York, May 22

Appointed: H. Kenneth Schroeder, Jr., as U.S. Magistrate Judge, U.S. District Court for the Western District of New York, June 1.

Appointed: Thomas J. Shields, as U.S. Magistrate Judge, U.S. District Court for the Southern District of Iowa, June 9.

Appointed: William D. Wall, as U.S. Magistrate Judge, U.S. District Court for the Eastern District of New York, June 1.

Appointed: Robert E. Nugent, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the District of Kansas, June 14.

Elevated: Judge Lewis T. Babcock, to Chief Judge, U.S. District Court for the District of Colorado, succeeding U.S. District Judge Richard P. Matsch, June 8.

Elevated: Bankruptcy Judge Russell A. Eisenberg, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the Eastern District of Wisconsin, succeeding Bankruptcy Judge James E. Shapiro, June 1.

Elevated: Bankruptcy Judge Gerald D. Fines, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the Central District of Illinois, succeeding Bankruptcy Judge William Altenberger, June 1.

Senior Status: U.S. Court of Appeals Judge Morton I. Greenberg, U.S. Court of Appeals for the Third Circuit, June 30.

Senior Status: U.S. District Judge Charles C. Lovell, U.S. District Court for the District of Montana, June 14.

Retired: Chief Judge Edward B. Davis, U.S. District Court for the Southern District of Florida, June 30.

Resigned: Magistrate Judge Roger L. Hunt, U.S. District Court for the District of Nevada, May 25.

Resigned: Magistrate Judge Thomas J. Shields, U.S. District Court for the Southern District of Iowa, June 8.

Deceased: Magistrate Judge John Lynn Caden, U.S. District Court for the Eastern District of New York, June 11.

Deceased: Judge Martin Pence, U.S. District Court for the District of Hawaii, May 29.

THE THIRD BRANCH

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JUDICIAL BOXSCORE

As of July 1, 2000

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Nominees	15
District Courts	
Vacancies	39
Nominees	21
Courts with "Judicial Emergencies"	21

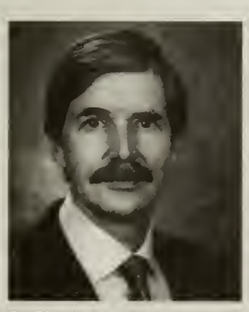
For more information on vacancies in the federal Judiciary visit our website at www.uscourts.gov.

Judicial Fellows Selected for 2000-2001 Program

Four Judicial Fellows have been selected to participate in the 2000-2001 Judicial Fellows Program. They are L. Karl Branting, who will be assigned to the Administrative Office; Jill Evans, who will be assigned to the Federal Judicial Center; Jennifer Segal, who will be assigned to the U.S. Sentencing Commission; and Barry Ryan, who will be assigned to the U.S. Supreme Court.

The Judicial Fellows Program was founded by Chief Justice Warren Burger in 1973, as a way in which to provide outstanding individuals from diverse professions and academic backgrounds with first-hand experience of the administration of the federal Judiciary. Fellowships are one-year appointments, beginning in August or September. Fellows are selected by the 12-member Judicial Fellows Commission, which looks for individuals who will receive long-term career benefits from the experience, and who are interested in improving the workings and public understanding of the federal judicial process.

L. Karl Branting is an associate professor in the Department of Computer Science at the University of Wyoming, where he has been a faculty member since 1990. In addition to Ph.D. and M.S. degrees in computer science from the University of Texas at Austin, he earned a J.D. degree from Georgetown University Law Center and a B.A. in philosophy from the University of Colorado. Branting was in private law practice from 1980 to 1982 and served as staff attorney for the Colorado Court of Appeals in Denver from 1983 to 1985. Among numerous fellowships and academic awards, he most recently received a German-American Fulbright Commission senior scholar grant for 1998-1999. Branting has taught and written extensively on law and information technology, recently publishing the book, *Reasoning with Rules and Precedents: A Computational Model of Legal Analysis.*


L. Karl Branting

Jill Evans has been, since 1994, an associate professor at the Cumberland School of Law, in Birmingham, Alabama, specializing in torts and environmental law. She was previously in private law practice, and from 1983-1984 was law clerk to Judge James E. Doyle (W.D. Wis.). She earned a degree in social ecology from the University of California, Irvine; a J.D. degree from Northwestern University School of Law; and a Master's degree in management from the J.L. Kellogg Graduate School of Management. Evans is a member of the ABA Section of Natural Resources, Energy, and Environmental Law and speaks frequently on environment and the law. She is the author of several law review articles including "Challenging the Racism in Environmental Racism: Redefining the Concept of Intent," and "The Lawyer as An Enlightened Citizen: Towards A New Regulatory Model in Environmental Law."


Jill Evans

Barry T. Ryan is vice president for university relations and professor of history at Point Loma Nazarene University, San Diego, California. He currently directs the Center for Teaching and Learning, and is chair of the faculty council and the Department of History and Political Science. Ryan received a Ph.D. in history from the University of California, Santa Barbara, and a J.D. from Boalt Hall School of Law, University of California, Berkeley. His areas of academic concentration include history, law, and theology, and he has developed proficiency in German, French, Italian, Spanish, and classical and medieval Latin. Ryan has published articles in *Thomas Jefferson Law Review, Agustinius, International Tax and Business Lawyer,* and *Studia Patristica.* He edited *A Collection of Readings in the History of European Society: 1300-1648.* He also has been a visiting scholar at the University of London.


Barry T. Ryan

Jennifer A. Segal is an assistant professor in the Department of Political Science, University of Kentucky. She earned her undergraduate degree in political science at the University of California, San Diego, and an M.A. and Ph.D in political science from Ohio State University. She has conducted extensive research in the fields of judicial politics and public law, focusing on federal courts and the mass media, representation, public opinion, and decision-making. Results of her studies are included in a recently published text, *Television News and the Supreme Court: All the News That's Fit to Air?* She has published articles on the federal courts and judges in *Political Research Quarterly, Judicature,* and *American Review of Politics.* Currently, she is investigating the impact of gender and judicial decision-making on the federal district courts.


Jennifer A. Segal

From Academics to the Bench, It's Another Side of the Law

From Professor of Law at Yale University, in 1982 Chief Judge Ralph K. Winter Jr. was appointed to the U.S. Court of Appeals for the Second Circuit. He has served on the Judicial Conference Advisory Committee on Civil Rules, as chair of the Advisory Committee on Rules of Evidence, and is currently chair of the Executive Committee.

Q: As a member of the Executive Committee since 1998, and its chair since October 1999, you've had the opportunity to view the workings of what may be the most unique and influential of all Conference committees. How does the committee work and what do you feel are its strengths?

A: The Executive Committee plays a valuable function in selecting issues for the consent agenda to be discussed at the biannual Conference meetings. It also plays a very valuable role in dealing with emergency matters, emergencies in the sense that a decision has to be made before another Conference meeting, or at a time when it would be impractical to have a conference call with the Conference members. Some of these issues may deal with legislation that is moving rapidly in Congress and the Judiciary may need to react to legislative changes that might affect the federal courts.

Certainly we thoroughly discuss any issue on which everyone is not agreed. The committee referring the issue to the Executive Committee, typically, will have done its homework, and if it is not a controversial issue there won't be much discussion. But if even a single member of the Executive Committee thinks it ought to be discussed, or if the Executive Committee is going to have to make a decision beyond whether it should be on the consent or the discussion calendar, or if the Executive Committee has to act on its own because there is an emergency, then it will be very thoroughly discussed.

Q: What is the Executive Committee's relationship with the other Conference committees?

A: We review reports and recommendations from the Conference committees. There are lots of reports of committees that are made for informational purposes only and reviewed by us in that light. When we get a recommendation from a committee, and it has to go to the Conference, the Executive Committee decides whether it should be on the consent or discussion calendar. That's 90-95 percent of our connection with committees.

Occasionally, we will become more involved in the committees' work and if some members of the Executive Committee have questions about particular projects, we may ask to meet with the members of a committee and the pertinent AO staff.

We had an unusual situation in a financial disclosure issue that arose recently, when the Committee on Financial Disclosure took a position that would lead to the Conference being sued, and quite rightly sought our opinion. The Executive Committee disagreed unanimously with the Financial Disclosure Committee, and the issues were then put to the Judicial Conference.

The financial disclosure issue was somewhat unusual because it was also a multi-committee issue involving not only the Committee on Financial Disclosure, but also the Committee on Codes of Conduct and the Committee on Security and Facilities.

Chief Judge Ralph K. Winter Jr. (2nd Cir.)

In drafting the new regulations on financial disclosure, the Executive Committee played an active role on substance, but also in coordinating the three committees. And it was necessary, in view of the litigation, for something to get done rather expeditiously. From my point of view, things turned out quite well, even though there were serious disagreements among the committees involved. The regulations are in place, I think they have tended to satisfy a lot of people, and I believe we have turned over 800 forms to the original requester.

Q: For a number of years you taught law. In fact, you were the William K. Townsend Professor of Law at Yale University. What prompted your move from teaching law in the classroom to interpreting the law on the bench?

A: Originally I was the quintessential academic. I was not interested in practice and although at one point, a year or two out of law school, I seriously considered an offer to practice law, I decided I wanted to be an academic. The university life seemed appealing to me and, in fact, I didn't take the bar exam until I was 13 years out of law school. It took something of a personal effort to put at risk my reputation by taking the bar exam, but I did it, including taking a bar review course, which actually turned out to be very valuable in giving me an overview of law after 13 years.

One thing I did in my academic career that had a real payoff was to teach around the curriculum. I taught what was an unusually varied arrangement of courses, constitutional law, torts, evidence, labor law, corporations, securities law, antitrust. That, it turned out, was fortuitous.

Also, before I went from the classroom to the bench, I had argued cases. I had had some experience, principally as a consultant in some cases, but also as lead counsel in *Buckley v. Valeo*, a decision that we hear more and more of because it declared various portions of the Federal Election Campaign Reform Act of 1974 unconstitutional.

At the time I went on the bench, the dean of the Yale Law School described it as a lateral move. But going on the bench offered me a wonderful opportunity to carry out many of the ideas I'd had as a professor and allowed me to see another side of the law that can be seen, really, only by doing it. It is something of a mystery what judges do and only those who have participated in the judicial system can understand it. It was a wonderful opportunity and I've never regretted for a moment taking it.

Q: You were Justice Thurgood Marshall's first law clerk when he sat on the Second Circuit.

A: That's right. I clerked on the District Court in Delaware for a very fine judge, Caleb Wright, whom I have still have contact with from time to time. Then I went to Yale and Thurgood Marshall was appointed to the Second Circuit and needed a law clerk. I had an office down the hall from Lou Pollack, who was a great friend of TM's. I went to New York and had an interview with him. I was married on a Friday and began work on a Monday. All of which is kind of wonderful, if you think about it. I mean, this was the Second Circuit and now, I'm back as chief judge of the Second Circuit. And recently I had the great pleasure of having a business meeting with John Marshall, whom I had known at a very young age and who is now Director of the United States Marshals Service, and who is Thurgood Marshall's son.

Thurgood Marshall and I became close and almost life-long friends. People think of him as an historic figure, which he was, but he was also a lawyer's lawyer, well known to be a very good lawyer in New York City. He was somebody who in terms of attitude and perspective and everything, I found to be a great experience. I was working for him seven years after *Brown*, right after he had left the Legal Defense Fund and just before the Civil Rights movement picked up the full head of steam that it got in the next couple of years. To listen to his stories, and hear him talk about these things, of course, was an absolutely fascinating experience.

Q: You have served on Judicial Conference rules committees continuously for a decade, from 1987 to 1997. On which committees did you serve? During those years what do you feel were the key accomplishments of the committees?

A: I was on the Advisory Committee on Civil Rules for six years and on the Advisory Committee on the Rules of Evidence four years as chair.

I'm most proud of having chaired a rules committee for four years, during which time almost no amendments were made to the rules. I have a very strong personal view of the rule-making process. I think it is a very good process, but I am concerned about the number of amendments to the rules, that perhaps the rules are being amended too often. I recognize that amendments of federal rules can have the beneficial effect of eliminating local rules of court, which have been burgeoning over the years. And I am also aware that some experienced lawyers and judges believe that the current pace of the amendment process is necessary to improve the system and address recent changes in caselaw or statutes, and also keep up with emerging technology. Nevertheless, I hope that my concerns can spark a general debate within the Judiciary on the appropriate overall rate of rules changes.

Q: You plan to take senior status this fall. Do you have any special plans or projects that you're looking forward to? You'll of course, continue to serve as a senior judge.

A: Well, I won't be chief circuit judge anymore. That will be a change. Somebody once told me that the two best moments of your life are the day you buy a boat and the day you sell it. In a similar vein, I have to say I'm glad I served as chief circuit judge and I'm even gladder its over.

I might write a book on corporation law. That's a possibility. I'm going to be sitting on a reduced schedule, and I expect for the next three years I'll teach a course at Yale each semester.

Majority Leader Hears Judiciary's Concerns

Bankruptcy Judge David W. Houston III (N.D. Miss.), Senate Majority Leader Trent Lott (R-MS) and Administrative Office Director Leonidas Ralph Mecham sat down recently to discuss Judiciary-wide issues, among them a COLA for judges.

Administrative Office Director Leonidas Ralph Mecham and Bankruptcy Judge David W. Houston III (N.D. Miss) met with Senate Majority Leader Trent Lott (R-MS) last month to discuss the Judiciary's funding prospects for fiscal year 2001. Just that week, the House Appropriations Committee had recommended the Judiciary receive a 6.6 percent increase in FY 2001. (See budget story on page 1.)

Houston and Mecham stressed that the Judiciary's workload has continued to increase, particularly in the southwest border courts, and that additional funding would be necessary to meet needs. They also urged a 3 percent cost-of-living adjustment for Congress and judges and Senator Lott is supportive. Houston and Mecham both thanked him for his successful efforts in gaining a COLA last year and for adding appropriations at the end of the session to more adequately fund the judicial branch. Also discussed at the meeting were funding for court construction; passage in the Senate of S. 1564, the Federal Courts Budget Protection Act; and judicial nominations. Lott, in turn, cautioned that tight funding, the limited time remaining in the session, and the politics of an election year might affect any or all of these issues.

THE THIRD BRANCH

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Judiciary Budget on Hold Until September

Congress recessed July 28 before the Senate could take up its version of H.R. 4690, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 2001. The House passed the appropriations bill in early July, giving the Judiciary a 6.6 percent increase over the fiscal year 2000 enacted appropriations. Although as *The Third Branch* went to press the Senate Appropriations Committee report was not available, it is understood that the Senate, when it takes up the bill again in mid-September, will be considering an appropriations bill with a 7.4 percent increase for the Judiciary.

When Congress returns in September, it will begin piecing together the funding puzzle of 12 appropriations bills, among them a bill funding the Judiciary.

"The Judiciary will receive a higher level of funding in the Senate bill than in the House bill," said Administrative Office Director Leonidas Ralph Mecham. "That is encouraging news, considering the Senate's current tight budget allocation. But we're hopeful we'll do better when the bill is conferenced between the House and the Senate, as we did last year. After all, the Judiciary still needs between a 9 and 10 percent increase in overall appropriations to fully fund our FY 2001 program requests."

The appropriations bill reported by the Senate Appropriations Committee is believed to include funds at a current services level for the Salaries and Expenses account. Court Security is funded at a slightly higher level than in the House, but still falls short of sufficient funding for existing Court Security Officer needs. For Defender Services, the Senate bill does not provide any funds for a panel attorney rate increase, and, in fact, funds may not be sufficient to cover the entire fiscal year for that account. And while the Senate appropriations bill

*See **Budget** on page 3*

COLA a Possibility in FY 2001

Counting chickens before they hatch is notoriously risky, but it is understandable if this far into the appropriations season, the Judiciary gives into the urge regarding a cost-of-living adjustment for judges. That is because the full Senate Appropriations Committee reported out its version of the FY 2001 Commerce, Justice, State and the Judiciary Appropriations bill with statutory language waiving section 140 of P.L. 97-92. The House Treasury, Postal appropriations bill provides members of Congress—and by extension federal judges—with a cost-of-living adjustment in January 2001. Indications are the COLA would give judges a 2.7 to 3 percent pay adjustment. This would be the third COLA for judges in the last four years.

"While these modest increases are necessary to stem the erosion in judges' pay caused by inflation," said Administrative Office Director Leonidas Ralph Mecham, "they do little to narrow the ever-widening gap between judicial and private sector compensation."

Congressional leaders support a COLA and an attempt to knock out a COLA in the House has been

*See **COLA** on page 3*

INSIDE

Judicial Conference Asks Congress for New Judgeships

Overburdened Southwest Border Courts Would Benefit

The Judicial Conference has sent a revised request for new judgeships to Congress with recommendations reflecting the impact of a growing caseload throughout the Judiciary, particularly the crisis faced by the southwest border courts, and the failure of a major judgeship bill to pass Congress in nearly a decade. The request follows an expedited consideration of new judgeship requests by the Judicial Conference and its Judicial Resources Committee timed, hopefully, to move a judgeship bill in the remaining weeks of the 106th Congress.

The Conference asks that Congress create 10 additional circuit judgeships, six permanent and four temporary; create 53 additional district judgeships, 30 permanent and 23 temporary; convert seven temporary district judgeships to permanent, and extend one temporary district judgeship for an additional five years. Temporary judgeships are created for a minimum time period, but where the first judicial vacancy occurring after that time period (seven years as requested by the Conference) is not filled.

"The last new judgeships created, nine in all, were contained in the fiscal year 2001 omnibus appropriations bill," said Administrative Office Director Leonidas Ralph Mecham. "Prior to that no new judgeships had been created since 1990, even though the Judiciary has experienced an unprecedented workload increase in that time."

In 1990, when the last judgeship bill, P.L. 101-650, was passed,

Judicial Conference Judgeship Recommendations

July 2000

Court	Currently Authorized	Judicial Conference Recommendation
COURTS OF APPEALS		
First	6	1T
Second	13	2P
Sixth	16	2P
Ninth	28	2P, 3T
DISTRICT COURTS		
AL-N	7	1P, 1T
AL-M	3	1P
AL-S	3	1T
AZ	11	1P/4T
CA-N	14	1P
CA-E	6	2P, T/P
CA-C	27	2T
CA-S	8	5P, 3T
CO	7	1P, 1T
FL-M	15	1P, 1T
FL-S	16	2P
HI	3	T/P
IL-C	3	T/P
IL-S	3	T/P
IN-S	5	1T
KY-E	4	1T
NE	3	T/P
NV	6	1T
NM	5	2P, 1T
NY-N	4	1T, T/P
NY-E	15	3P
NY-W	4	1T
NC-W	3	2P
OH-N	11	Extend T*
OR	6	1T
SC	9	1P
TX-E	7	1T
TX-S	18	2P
TX-W	10	3P, 1T
VA-E	9	2P, T/P
WA-W	7	1T

T: Temporary judgeship. Temporary judgeships are created for a minimum time period, but where the first judicial vacancy occurring after that time period is not filled.

P: Permanent judgeship.

T/P: Temporary judgeship made permanent.

* The first vacancy occurring 15 years or more after the confirmation date of the judge named to fill the temporary judgeship shall not be filled.

appeals filed in the federal courts totaled 40,898, civil cases stood at 217,879, and criminal cases totaled 48,904. By 1999, appeals cases filed had increased 34 percent to 54,693; civil cases increased 19 percent to 260,271, and criminal cases had risen 23 percent to 59,923.

But it is in the southwest border courts, where the need for additional judgeships has become most pressing. Five southwest district courts, the District of Arizona, the Southern District of California, the District of New Mexico, and the Districts of Southern and Western Texas, all would receive additional judgeships under the new recommendations. Together they handle 26 percent of all criminal case filings in the United States. The only one of these districts to receive any relief has been the District of Arizona, which received three permanent judgeships in the fiscal year 2001 appropriations bill. None of these new judge positions have been filled. The Southern District of California is so pressed for help, the Conference increased its judgeship recommendation from three permanent and one temporary judgeships to five permanent and three temporary judgeships.

The Conference last evaluated judgeship needs in 1999, based upon the biennial judgeship survey. The Conference considers many factors in making judgeship recommendations, including the court's own request, caseload guidelines that include weighted filings per judgeship for district courts, and a court's efforts and strategies to handle their judicial workload.

Budget continued from page 1

provides funds at or slightly above current services levels for the Supreme Court, the Court of International Trade, the Federal Circuit, and the Federal Judicial Center, the Administrative Office takes a 10 percent cut from the FY 2000 level. Funding at the Senate level would leave the AO over $8 million short of current services and would result in substantial reductions in AO staff. Chief Justice William H. Rehnquist and Judicial Conference Executive Committee chair, Chief Judge Ralph K. Winter, have written to members of the Senate Appropriations Committee saying the AO's work is vital to the Judiciary, that a projected 25 percent reduction in AO staff would adversely affect the judicial branch, and urging that the funds be restored to the AO.

Courthouse Funding

The Senate Committee on Environment and Public Works authorized 17 courthouses, all at full funding level for fiscal year 2001. The 17 courthouses are the same as the Judiciary/General Services Administration's priority courthouse project list. The House Committee on Transportation and Infrastructure authorized 16 of the 17 courthouses on the list, postponing one project for further consideration. Although authorizations are completed with the exception of the courthouse in Miami, Florida, construction funds still must be appropriated.

The Senate Appropriations Committee included funding for four courts in the bill making appropriations for the Treasury Department, the U.S. Postal Service, the Executive Office of the President, and certain Independent Agencies, but the money would not be available until fiscal year 2002—which essentially means there is no money for courthouses in fiscal year 2001 in the Senate bill. The full Senate has yet to consider the bill. The courthouses funded by the Senate Appropriations Committee are Los Angeles, CA; Seattle, WA; Richmond, VA; and Gulfport, MS.

The Treasury, Postal appropriations bill passed by the House did not contain courthouse funding.

Just before the August recess, there was a last-minute attempt to attach a quickly negotiated conference report on the Treasury, Postal appropriations bill to the House-Senate conference report on the legislative branch appropriations bill. Congress may attempt to bring this conference agreement up again in September. This agreement provides FY 2001 funding for the same four courthouses funded by the Senate Appropriations Committee and funds an additional four with advance 2002 money. The additional four courthouses are Washington, DC; Buffalo, NY; Springfield, MA; and Miami, FL. Administrative Office staff, members of Congress with proposed courthouses in their districts, and federal judges continue to work with members and staff of the key appropriations committees in support of the Judiciary's courthouse construction program. Hopefully, money will be found to fund courthouses in 2001.

COLA continued from page 1

defeated. But that does not mean a COLA for members of Congress and federal judges is a certainty. The appropriations bill must still pass the Senate and survive a conference by House and Senate, as has occurred in two of the past three years. However, anything can, and has, happened in that process.

Currently, judges may receive a pay adjustment only when the rates of General Schedule employees are adjusted and Congress waives section 140 of P.L. 97-92, which requires specific congressional approval of a COLA for judges, in addition to the normal appropriation process.

Hearing on Drugs Crossing Border Draws Federal Testimony

A House hearing on illegal drugs flooding the U.S. from Mexico drew testimony from a federal judge in the Western District of Texas on the troubles the federal courts face along the nation's southwest border. "Based on the explosive growth of the Pecos criminal docket, fueled by drug cases," Judge W. Royal Furgeson told the House Committee on Government Reform, Subcommittee on Criminal Justice, Drug Policy, and Human Resources, "I have the impression that there is such an overwhelming demand for illegal drugs in the United States that it is going to be difficult to stem the tide of illegal drug smuggling for the foreseeable future. My view is that the Pecos docket, like all border dockets, will continue to expand by double digit percentages each year throughout this decade."

Subcommittee chair Representative John L. Mica (R-FL) opened the hearing with a statement on the growing threat to the national security posed by international drug trafficking, particularly along the Mexico-U.S. border. "More than 60 percent of the cocaine on America's streets transits through our border with Mexico," said Mica. "DEA reports that Mexican black tar and other heroin seizures skyrocketed by more than 20 percent in just one year." Mica also referred to the flow of illegal immigrants across the southwest border who are used to smuggle drugs.

"Just last month," Mica said, "seven U.S. court judges, who represent the five districts that currently handle 26 percent of all criminal case filings in the U.S. southwest border courts, came to the Hill to tell Congress about the mounting crisis in their courts. These jurists reported that drug prosecutions nearly doubled between 1994 and 1998 while immigration prosecutions increased five fold."

Judge W. Royal Furgeson (W. D. Tex.) told the House Subcommittee on Criminal Justice, Drug Policy and Human Resources that criminal cases in the Pecos Division had increased 800 percent since 1995—most of which are drug cases.

Furgeson, who presides over the Pecos and Midland-Odessa Divisions of the Western District of Texas, travels the circuit sitting in both Midland and Pecos. He recounted that the criminal docket of the Pecos Division, just 45 criminal cases in 1995, had increased 800 percent by 1999. He expects over 600 criminal cases to be filed by the end of 2000, resulting in a 55 percent increase over 1999.

"These kinds of increases are not limited to the Pecos Division or even to federal courts along the Texas border," Furgeson told the subcommittee. "Indeed, they extend to the five federal judicial districts bordering Mexico (California-Southern, Arizona, New Mexico, Texas-Western and Texas-Southern)." According to Furgeson, the increase in criminal filings, most of which are drug cases, began with the implementation of the Southwest Border Initiative that increased personnel for the Border Patrol, Immigration and Naturalization Service, the DEA, and the FBI.

"It is a major frustration of the Judiciary that we have been unable to explain adequately to the Congress and to the American people that criminal activity on the border cannot be addressed simply by increasing law enforcement efforts on the border," Furgeson said. "Eventually, those arrested for crimes must come through the rest of the criminal justice system into the courts. If the courts do not have the resources to deal with the increases, the delivery of justice is jeopardized and eventually will be impaired." The Judiciary has attempted its own remedies including shifting personnel to overworked probation and pretrial services offices in the border courts and redirecting other judicial resources. Furgeson also made the following recommendations to Congress to address this crisis:

- Increase federal judgeships. It is not possible for border judges to handle 10 times the average workload of their counterparts and still maintain the quality of justice that we expect from our courts. New judgeships are a must for the border.

■ Increase the Judiciary's budget. The number of court support staff funded in fiscal year 2000 actually was three percent lower than that funded in FY 98 even though overall criminal filings increased 19 percent. The increase is required primarily to meet the needs of the federal courts on the border. Enacting the full request is exceedingly important, especially since we are now in a catch-up mode.

■ Add new courthouses. The Laredo, Texas courthouse is already unduly delayed and the courthouses in both El Paso and Las Cruces are hopelessly outdated, to the point of creating security concerns.

■ Adequately compensate court-appointed counsel. Extend the $75 per hour rate for both in-court and out-of-court services to counsel in the border courts because of the extraordinarily heavy burdens placed on these attorneys.

■ Add more deputy marshals for the U.S. Marshals Service. The U.S.M.S. has remained at essentially the same strength, and their numbers fall far short of what is necessary to ensure the safety of courthouse personnel and the public.

■ Build more federal pre-conviction detention facilities. In the Western District of Texas alone, over 3,000 defendants in custody are housed in 35 separate contract facilities spread over hundreds of miles.

■ Support local border prosecutors. Until the crush of federal border cases became so massive, federal and local prosecutors worked together well to divert less serious federal offenses into the state system. Such cooperation is no longer possible, at least without federal funding because the number of cases to be diverted is so large.

Also testifying at the hearing were representatives from DEA, the U.S. Customs Service, the U.S. Border Patrol, and local police.

Judicial Conference Opposes Bill to Strip Courts of Control of Employees' Firearms

Judge Emmet G. Sullivan, with AO Legislative Counsel Daniel Cunningham, greet Subcommittee chair Representative Bill McCollum (R-FL) before the hearing on H.R. 4423. Ranking minority member Representative Robert C. Scott (D-VA) is seated.

Judge Emmet G. Sullivan (D. D. C.), chair of the Judicial Conference Committee on Criminal Law, testified last month before the House Judiciary Subcommittee on Crime, which is considering H.R. 4423. Sullivan told Congress that the federal Judiciary "unequivocally opposes" H.R. 4423, which would strip the courts of the authority to supervise and direct their own probation or pretrial services officers regarding the use of their firearms. Officers in 84 judicial districts may carry firearms, while officers in the remaining 10 districts may not. "HR. 4423 would prohibit the employer and supervisor of these employees to direct, in any manner," said Sullivan, "the use of firearms in connection with their official duties. This will result in officers possessing carte blanche authority to carry a firearm whenever, wherever, and in whatever manner they see fit. To my knowledge, no other federal employee in America possesses such unbridled firearms authority."

Presently, probation and pretrial officers are authorized by federal law, with the approval of their courts, to carry weapons under rules and regulations prescribed by the Director of the Administrative Office. The Judiciary's firearms program for federal probation and pretrial services officers stresses rigorous training and certification requirements, objective justification for the need to carry firearms, and public safety.

Also testifying at the hearing were Judith M. De Santis, Executive Vice President of the Federal Law Enforcement Officers Association and Bob Ryan, Chief Probation Officer of the District of Massachusetts.

Pending Legislation Waits for Congress to Return

Congress went home—or to the national political conventions—in August, leaving behind a to-do list of legislation, including 12 appropriations bills, to deal with when members return around September 5. A tentative adjournment date of October 6 for the 106th Congress gives Congress just a month to complete its business. In addition to the appropriations bills funding the federal courts and courthouse construction, the Judiciary will be following the progress of these bills.

Bill	Legislative Status	Key Provisions
Bankruptcy Reform Bill	House passed H.R. 833, and Senate passed S. 625. The bill is being conferenced by Senate and House. The President has threatened to veto the bill.	The conference report would create 23 new temporary bankruptcy judgeships and require clerks to maintain tax returns and collect financial data on debtors.
Federal Judiciary Budget Protection Act	In the Senate, S. 1564 reported out of the Committee on Governmental Affairs.	Allows Judiciary to submit budget directly to Congress, including courthouse construction requests.
Judgeship Legislation	S. 1145 introduced in May 1999 by Senator Patrick Leahy. No action on bill. The Judicial Conference sent an updated request for Article III judgeships in August. An amended bill may be introduced in September by co-sponsors Senator Orrin Hatch and Leahy.	Contains Judicial Conference recommendations for Article III judgeships
	S. 2370 and H.R. 4704 introduced in June. Bills have support from Senate Republicans in border courts and House Southwest Border Caucus.	Bills would give the southwest border courts 8 permanent and 5 temporary judgeships.
Judicial Improvements Bill	H.R. 1752 passed by House. In the Senate, S. 2915 introduced in July.	House version would allow cameras in courtrooms during civil or criminal trials.
Juvenile Crime	H.R. 1501 passed the House, and S. 254 passed the Senate. A conference on the bills was held, but no action has occurred.	The Judicial Conference objects to federalizing criminal actions against juveniles. Traditionally, state and local courts deal with juveniles.
Methamphetamine Anti-Proliferation Act	House Judiciary Committee reported H.R. 2987 favorably. Similar legislation passed the Senate as part of the Bankruptcy Reform Bill.	Would increase penalties for methamphetamine possession and distribution.
Multidistrict Litigation	H.R. 2112 passed House and Senate. The bill has not been conferenced.	Contains language overturning *Lexecon Inc. v. Milberg Weiss.*
Class Action Legislation	H.R. 1875 passed by House. The Senate bill, S. 353, was reported favorably by the Judiciary Committee in June.	Grants federal courts original jurisdiction based on minimal diversity over a civil action brought as a class, with limited exceptions.
Stalking Prevention and Victim Protection Bill of 1999	House passed H.R. 1869. Companion bill, S. 2011, introduced in Senate where the Judiciary Committee is considering it.	Federal courts would issue protective orders to protect victims. Expands current statute to cover e-mail and Internet.
Victims Rights Constitutional Amendment	In the Senate S. J. Res. 3, and in the House H.J. Res. 64, have stalled. Vice President Gore recently endorsed a constitutional amendment.	Judicial Conference prefers a statutory approach.

FJTN PROGRAM CALENDAR FOR
THE THIRD BRANCH

Vol. 32 Number 8 August 2000

SEPTEMBER

Acrobat Forms, Security, & Web Capture
Sept. 5, 12:30 p.m.; Sept. 15, 3 p.m.; Sept. 18, 2:30 p.m.; Sept. 26, 9:30 a.m.

Adobe Acrobat
Sept. 29, 4 p.m.

Advances in Drug Abuse & Addiction Research
Sept. 8, 8:30 a.m.; Sept. 22, 1:30 p.m.

Bankruptcy Law Update
Sept. 27, 9, 10 a.m.; 12, 1, 2, 4 p.m.; Sept. 28, 9, 10 a.m.; 12, 1, 2, 4 p.m.

Benefits Entitlements Under the Civil Service Retirement System for Law Enforcement Officers
Sept. 1, 9:30 a.m.; Sept. 25, 3:30 p.m.

CM/ECF Decisions for Bankruptcy Courts
Sept. 5, 11 a.m.; Sept. 12, 3:30 p.m.; Sept. 18, 10 a.m.; Sept. 29, 8:30 a.m.

Commuter Reimbursement
Part One: Sept. 1, 4 p.m.; Sept. 11, 12 p.m.; Sept. 18, 3:30 p.m.; Sept. 25, 9 a.m.
Part Two: Sept. 29, 2 p.m. LIVE

Court Moves
Sept. 1, 3:30 p.m.; Sept. 5, 8:30 a.m.; Sept. 18, 11 a.m.; Sept. 29, 11 a.m.

Court to Court
Sept. 14, 10 a.m.

Criminal Statistics: Basic Procedures for Monthly Submissions
Sept. 12, 1 p.m. LIVE; Sept. 18, 1:30 p.m.; Sept. 19, 10:30 a.m.; Sept. 29, 9:30 a.m.

Drug Testing: Facts, Research, & Policy
Sept. 22, 8:30 a.m.

Electronic Bankruptcy Notification—Phase II
Sept. 5, 10 a.m.; Sept. 11, 1 p.m.; Sept. 25, 2:30 p.m.

Health Care Reimbursement Account Worksheet
Sept. 1, 9 a.m.; Sept. 11, 3 p.m.; Sept. 15, 1 p.m.; Sept. 25, 1 p.m.

Hurdling the Raised IT Performance Bar
Sept. 1, 2:30 p.m.; Sept. 25, 1:30 p.m.; Sept. 26, 10:30 a.m.

Information Technology (IT) Focus
Sept. 5, 12 p.m.; Sept. 15, 4 p.m.; Sept. 19, 8:30 a.m.; Sept. 29, 10:30 a.m.

Judiciary Travel Management Center Contract
Sept. 1, 8:30 a.m.; Sept. 5, 1:30 p.m.; Sept. 15, 4:30 p.m.

Moving Information—Understanding PDF Files and Image Integrity for the U.S. Courts
Sept. 15, 8:30 a.m.; Sept. 18, 9 a.m.; Sept. 25, 10 a.m.; Sept. 29, 3 p.m.

OOPS! Developing Dynamic Web Sites Using Objects
Sept. 26, 1 p.m. LIVE

Organization & Jurisdiction of the U.S. Bankruptcy Courts
Sept. 6, 12 p.m.; Sept. 7, 12 p.m.; Sept. 13, 12 p.m.; Sept. 20, 12 p.m.

Orientation Seminar for Federal Judicial Law Clerks (Parts 1 & 2)
Sept. 6, 8:30 a.m.; 1 p.m.; Sept. 7, 8:30 a.m.; 1 p.m.; Sept. 13, 8:30 a.m.; 1 p.m.; Sept. 20, 8:30 a.m.; 1 p.m.

Orientation to the Supervisors' Development Program
Sept. 14, 8:30 a.m.; Sept. 22, 12 p.m.

Overview of Judiciary Compensation
Sept. 15, 11 a.m.; Sept. 25, 12 p.m.

Perspectives on Probation & Pretrial Services (Aug. 2000)
Sept. 8, 10 a.m.; 2 p.m.; Sept. 14, 4 p.m.; Sept. 21, 4 p.m.

Preparing for PACTS/ECM
Sept. 1, 1:30 p.m.; Sept. 11, 9 a.m.; Sept. 15, 12 p.m.; Sept. 26, 3:30 p.m.

Realtime Writing Overview for Court Reporters
Sept. 19, 2 p.m. LIVE; Sept. 26, 8:30 a.m.

Sentencing and Guidelines: A Conversation with Judge Diana Murphy
Sept. 21, 12 p.m.; Sept. 22, 4 p.m.

Simplified Procurement Procedures for Treatment Services: Conducting a Needs Assessment
Sept. 1, 12:30 p.m.; Sept. 5, 3:30 p.m.; Sept. 12, 10:30 a.m.; Sept. 26, 11:30 a.m.

Social Security Benefits for Employees under Federal Employees Retirement System
Sept. 12, 3 p.m.; Sept. 19, 4 p.m.

Special Needs Offenders: Introduction to Cyber Crime
Sept. 21, 1 p.m. LIVE

Statistical Procedures for Reporting Detention & Release at Bail Hearings
Sept. 11, 11 a.m.; Sept. 29, 12:30 p.m.

Subject-Matter Jurisdiction: An Overview for Law Clerks
Sept. 6, 11 a.m.; 3:30 p.m.; Sept. 7, 11 a.m.; 3:30 p.m.; Sept. 13, 11 a.m.; 3:30 p.m.; Sept. 20, 11 a.m.; 3:30 p.m.

A Summary of Benefits for Law Enforcement Officers Under FERS
Sept. 5, 2 p.m.; Sept. 15, 1:30 p.m.; Sept. 19, 9 a.m.

Survival Spanish for Probation &Pretrial Services Officers
Sept. 8, 11 a.m.; 3 p.m.; Sept. 14, 11 a.m.; 3 p.m.; Sept. 21, 11 a.m.; 3 p.m.; Sept. 22, 11 a.m.; 3 p.m.; Sept. 27, 11 a.m.; 3 p.m.; Sept. 28, 11 a.m.; 3 p.m.

Taking the Interpreter's Oath to Heart
Sept. 6, 4:30 p.m.; Sept. 7, 4:30 p.m.; Sept. 8, 4, 4:30 p.m.; Sept. 13, 4:30 p.m.; Sept. 14, 12 p.m.; Sept. 20, 4:30 p.m.; Sept. 21, 10:30 a.m.; Sept. 22, 10:30 a.m.; Sept. 27, 8:30 a.m.; Sept. 28, 8:30 a.m.

Tech Talk
Mondays at 4:30 p.m. (except Sept. 4)

Three-Tier Architecture—Components of a Modern Web Site
Sept. 11, 2 p.m.; Sept. 12, 11:30 a.m.; Sept. 15, 9:30 a.m.

Time Management for Court Staff
Sept. 14, 1 p.m. LIVE

Understanding My Social Security Benefits with a Civil Service Retirement System Annuity
Sept. 15, 10:30 a.m.; Sept. 29, 1:30 p.m.

Web Page Design: Making Your Portal Work
Sept. 11, 3:30 p.m.; Sept. 25, 11 a.m.; Sept. 29, 11:30 a.m.

WordPerfect 8.0 Basics
Sept. 1, 10:30 a.m.

WordPerfect 8/9 Macro Basics
Part One: Sept. 18, 11:30 a.m.
Part Two: Sept. 19, 11:30 a.m.

WordPerfect File Management
Sept. 12, 8:30 a.m.

WordPerfect Templates
Sept. 26, 2 p.m.

Working with Multi-Party Cases
Sept. 8, 12 p.m.; Sept. 21, 8:30 a.m.

Workplace Drug Testing
Sept. 5, 9 a.m.; Sept. 11, 10 a.m.; Sept. 12, 2 p.m.; Sept. 19, 3 p.m.

PLEASE POST

VACANCY ANNOUNCEMENTS
THE THIRD BRANCH
Vol. 32 Number 8 August 2000

CLERK OF COURT, U.S. Bankruptcy Court, Southern District of New York

The U.S. Bankruptcy Court for the Southern District of New York seeks applicants for the position of clerk of court. A minimum of 10 years' progressively responsible management experience is required and prior court experience is desirable. Salary: JSP 16-17 ($102-033-$128-343). For further information check the website at www.nysb.uscourts.gov. Applicants should submit 10 copies of their resume, including cover letter, salary history, and job references on 3-hole punch paper to the Honorable Stuart M. Bernstein, Chief U.S. Bankruptcy Judge, U.S. Bankruptcy Court, SDNY, One Bowling Green, Department SBW, New York, New York 10004-1408. **Application deadline: Until filled.**

U.S. BANKRUPTCY JUDGESHIP, Eastern District of Pennsylvania, Philadelphia

The Judicial Council of the Third Circuit seeks applicants for the position of U.S. Bankruptcy Judge for the Eastern District of Pennsylvania, sitting in Philadelphia. The term of office is 14 years. Salary: $129,996 per annum. Applicants must be members in good standing of the highest court of at least one state, the District of Columbia, or the Commonwealth of Puerto Rico; have engaged in the active practice of law for at least five years; demonstrate outstanding legal ability and competence and a commitment to equal justice under the law; and indicate by their demeanor, character, and personality they would exhibit judicial temperament if appointed. The application form is available at http://pacer.ca3.uscourts.gov. Copies of application materials may be obtained through the Office of the Circuit Executive, Third Judicial Circuit, 22409 U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106-1721, or the Office of the Clerk of Court for the U.S. Bankruptcy Court in Philadelphia, PA. Completed applications, an original plus 12 copies, including writing samples, should be received by the Circuit Executive Office, marked Attention: Bankruptcy Judge Search Committee. **Application deadline: August 18, 2000.**

U.S. BANKRUPTCY JUDGESHIP, District of New Jersey, Newark or Trenton

The Judicial Council of the Third Circuit seeks applicants for the position of U.S. Bankruptcy Judge for the District of New Jersey, sitting in Newark or Trenton. The term of office is 14 years. Salary: $129,996 per annum. Applicants must be members in good standing of the highest court of at least one state, the District of Columbia, or the Commonwealth of Puerto Rico; have engaged in the active practice of law for at least five years; demonstrate outstanding legal ability and competence and a commitment to equal justice under the law; and indicate by their demeanor, character, and personality they would exhibit judicial temperament if appointed. The application form is available at http://pacer.ca3.uscourts.gov. Copies of application materials by be obtained through the Office of the Circuit Executive, Third Judicial Circuit, 22409 U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106-1721, or the Office of the Clerk of Court for the U.S. Bankruptcy Court in Newark, NJ. Completed applications, an original plus 12 copies, including writing samples, should be received by the Circuit Executive Office, marked Attention: Bankruptcy Judge Search Committee. **Application deadline: September 1, 2000.**

CLERK OF COURT, U.S. District Court, Northern District of Texas

The U.S. District Court for the Northern District of Texas seeks applicants for the position of clerk of court. Headquarters for the clerk's office is located in Dallas with divisions in Abilene, Amarillo, Fort Worth, Lubbock, San Angelo, and Wichita Falls. Candidates must have a minimum of 10 years of progressively responsible administrative experience with at least three years in a position of substantial management responsibility. A bachelor's degree is required; a postgraduate degree is preferred. Salary: JSP grade 18 ($124,336). For information, contact Alison Henley at (214) 753-2242. To apply, submit original and five copies of a resume and cover letter detailing salary history, related work experience, and specific information regarding organization in which you have played a leadership role. In addition please describe your management philosophy and provide examples of significant accomplishments. Submit applications to Clerk of Court Screening Committee, Human Resources - #00-25, c/o Human Resources Manager, U.S. District Clerk's Office, 1100 Commerce Street, Room 14A20, Dallas, Texas 75242.

Judicial Improvements Bill Introduced in the Senate

Urging his colleagues to join him in support of proposed improvements to the federal court system, Senator Charles E. Grassley (R-IA) introduced S. 2915, the Federal Courts Improvement Act of 2000, just days before the August recess. The House passed its own version of the bill, H.R. 1752, in May.

Both bills include provisions that would give magistrate judges contempt authority; increase certain bankruptcy filing fees; allow participation of senior judges as members of the circuit judicial councils; raise the maximum case compensation amounts for Criminal Justice Act (CJA) attorneys; and give the Judiciary authority to set, collect, and retain fees to facilitate the electronic presentation of cases. Unlike the House bill, S. 2915 does not contain provisions on judges' firearms training or authority for the presiding judge to allow media coverage of court proceedings.

The Senate bill also would provide CJA panel attorneys with reimbursement for reasonable costs associated with defending against a malpractice claim by a CJA client. "The Judicial Conference has expressed to me their concern over a growing trend of Criminal Justice Act panel attorneys being subject to unfounded suits by the defendants they previously represented and the financial damage these attorneys have to deal with when they must pay to defend themselves in these action," said Grassley. "These unfair costs have the potential of having a chilling effect on the willingness of attorneys to participate as panel attorneys and will only make it more difficult to obtain adequate representation for defendants."

For Judiciary, Political Activities are Subject to Restrictions

It's an election year. Time to vote for your favorite candidate. But perhaps you'd also like to show your support by attending a few party rallies, or placing a campaign poster or two in your front yard? Not if you're a judicial branch employee. Almost all judicial employees are covered by Canon 5A of the Code of Conduct for Judicial Employees, which restricts them from these and other partisan political activities.

To begin with, all judicial employees may exercise their rights as citizens, even in partisan elections. That includes registering as a member of a political party, registering and voting in a primary or general election, and privately voicing opinions about partisan political candidates and parties.

Judicial employees also may engage in nonpartisan political activities, so long as they do not reflect adversely on the employee's court or office, interfere with official duties, take place on duty or in the employee's workplace, or involve the employee's use of any federal resources. Subject to these restrictions, judicial employees may run for local nonpartisan office, endorse or contribute to nonpartisan candidates, campaign for nonpartisan candidates and causes, and undertake similar nonpartisan activities.

However, employees should not

- lead or hold office in a partisan political organization;
- publicly endorse a candidate by attending a partisan political convention or rally or by authorizing use of the employee's name;
- make speeches supporting or opposing a partisan organization or candidate;
- initiate or circulate a nominating petition for a partisan election;
- publicly display campaign posters, pictures, badges, buttons, or stickers for a partisan political candidate or organization;
- solicit funds for or contribute to a partisan organization or candidate;
- act as a recorder, watcher, challenger, or similar officer at the polls in a partisan political election; or
- run for partisan political office.

Special restrictions apply to judicial employees who serve on judges' personal staff or as court unit heads. These employees should not engage in partisan or nonpartisan political activities.

For further guidance, judicial employees may consult the Code of Conduct for Judicial Employees, Canon 5; Advisory Opinion No. 92; and the Compendium of Selected Opinions, § 7 (1999). Questions also may be referred to the Judicial Conference Committee on Codes of Conduct or the General Counsel's Office, Administrative Office.

JUDICIAL MILESTONES

Appointed: Richard C. Tallman, as U.S. Court of Appeal Judge, U.S. Court of Appeals for the Ninth Circuit, June 30.

Appointed: Kent J. Dawson, as U.S. District Judge, U.S. District Court for the District of Nevada, July 7.

Appointed: Phyllis J. Hamilton, as U.S. District Judge, U.S. District Court for the Northern District of California, July 7.

Appointed: Mary A. McLaughlin, as U.S. District Judge, U.S. District Court for the Eastern District of Pennsylvania, June 23.

Appointed: Berle M. Schiller, as U.S. District Judge, U.S. District Court for the Eastern District of Pennsylvania, June 6.

Appointed: George Z. Singal, as U.S. District Judge, U.S. District Court for the District of Maine, July 17.

Appointed: R. Barclay Surrick, as U.S. District Judge, U.S. District Court for the Eastern District of Pennsylvania, July 14,

Appointed: Petrese B. Tucker, as U.S. District Judge, U.S. District Court for the Eastern District of Pennsylvania, July 14.

Appointed: Cecelia G. Morris, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Southern District of New York, July 1.

Appointed: Geraldine Soat Brown, as U.S. Magistrate Judge, U.S. District Court for the Northern District of Illinois, June 19.

Appointed: J. Thomas Ray, as U.S. Magistrate Judge, U.S. District Court for the Eastern District of Arkansas, June 28.

Elevated: Judge Lawrence M. Baskir, to Chief Judge, U.S. Court of Federal Claims, succeeding Judge Loren A. Smith, July 11.

Elevated: Judge William J. Zloch, to Chief Judge, U.S. District Court for the Southern District of Florida, succeeding Judge Edward B. Davis, July 2.

Elevated: Judge Sue L. Robinson, to Chief Judge, U.S. District for the District of Delaware, succeeding Judge Joseph J. Farnan, Jr., July 1.

Elevated: Bankruptcy Judge Gerald H. Schiff, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the Western District of Louisiana, succeeding Bankruptcy Judge Henley A. Hunter, June 1.

Retired: Judge William G. Cambridge, U.S. District Court for the District of Nebraska, July 11.

Retired: Bankruptcy Judge Lawrence Ollason, U.S. Bankruptcy Court for the District of Arizona, June 30.

Retired: Bankruptcy Judge James F. Queenan, Jr., U.S. Bankruptcy Court for the District of Massachusetts, July 21.

Retired: Bankruptcy Judge David F. Snow, U.S. Bankruptcy Court for the Northern District of Ohio, July 24.

Retired: Magistrate Judge Carlyle E. Richards, U.S. District Court for the District of South Dakota, July 21.

Resigned: Magistrate Judge Lisa Cataldo, U.S. District Court for the District of Hawaii, July 1.

Resigned: Magistrate Judge Phyllis Jean Hamilton, U.S. District Court for the Northern District of California, July 6.

Deceased: Senior Judge Paul G. Hatfield, U.S. District Court for the District of Montana, July 3.

Deceased: Senior Judge Joe J. Fisher, U.S. District Court for the Eastern District of Texas, June 19.

THE THIRD BRANCH

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JUDICIAL BOXSCORE

As of August 1, 2000

Courts of Appeals	
Vacancies	20
Nominees	15
District Courts	
Vacancies	42
Nominees	37
Courts with "Judicial Emergencies"	21

For more information on vacancies in the federal Judiciary visit our website at www.uscourts.gov.

New Administrative Assistant at Supreme Court

Sally M. Rider (left) will serve as the administrative assistant to Chief Justice William H. Rehnquist. James C. Duff (right), her predecessor, is returning to private practice after serving with the Chief Justice for four years.

Chief Justice William H. Rehnquist has announced the selection of Sally M. Rider, Assistant U.S. Attorney and Deputy Chief of the Civil Division, Office of the U.S. Attorney for the District of Columbia, as his new administrative assistant. She succeeds James C. Duff, who served in the position for four years. Duff has accepted a partnership with Senator Howard Baker in the Washington, D.C., office of Baker, Donelson, Bearman and Caldwell.

Rider, 43, is the first woman to be appointed to the administrative assistant position, which was created by statute in 1972. Her two-year appointment began August 14. Her new duties include serving as the Court's chief of staff, aiding the Chief Justice in his internal management of the Court; providing research in support of the Chief Justice's public addresses and statements, and monitoring developments in the field of judicial administration and court reform. She also assists the Chief Justice with his other statutory responsibilities as head of the Third Branch of government, including his role as chairman of the Judicial Conference, as chairman of the Board of the Federal Judicial Center, and as chancellor of the Smithsonian Institution.

Rider began her legal career as staff counsel for the U.S. House of Representatives Committee on Interior and Insular Affairs from 1986 to 1987. From 1987 to 1990, she was a trial attorney with the Torts Branch, Civil Division of the Department of Justice. She was an Assistant U.S. Attorney in the Office of the U.S. Attorney for the District of Columbia from 1990 to 1995. Rider joined the legal staff in the Office of the Legal Adviser at the Department of State in 1995. In 1998, she was invited to return as Deputy Chief of the Civil Division of the Office of the U.S. Attorney for the District of Columbia. She received a bachelors degree in psychology from the University of Arizona, graduating Phi Beta Kappa in 1980. Rider received her law degree with high distinction in 1986 from the University of Arizona College of Law.

Sellers to Lead AO Public Affairs

Administrative Office Director Leonidas Ralph Mecham has appointed David A. Sellers Assistant Director for Public Affairs. Sellers, who has served as the Deputy Assistant Director for Public Affairs since 1997, succeeds Charles Connor.

Sellers brings his background as a legal affairs journalist and extensive experience in the federal Judiciary to the position. He worked for the Commonwealth of Pennsylvania, the District of Columbia Bar, and *The Washington Times* newspaper before joining the Administrative Office as its first Public Information Officer in 1987. He served as Acting Assistant Director when the Office of Public Affairs was created in 1997.

FJC Broadens Programs to Meet Judiciary's Needs

Judge Fern Smith was named Director of the Federal Judicial Center in 1999. Appointed to the U.S. District Court for the Northern District of California in 1988, Smith previously served as a judge for the Superior Court of the State of California, County of San Francisco, from 1986 to 1988, and was in private practice from 1975 to 1986.

Q: Congress has encouraged the Judiciary to use satellite broadcasts and videoconferencing to cut down on travel. How are judges adapting to that?

A: I think it's going to be a slow process. Congress is pushing it, in our case for education, and the Center is really trying to be responsive, and not just to save money. For a lot of training needs, distance education has real advantages apart from saving money. But judges, and I'm talking about trial judges here, have to learn their jobs differently than almost anybody else. As a new trial judge you get our initial orientation seminars, but, basically, you go out into your courtroom, or you sit in chambers by yourself and you do your job. It's not like Congress, for example, where you can be in committees or on the floor and watch how colleagues react. You really do your job by yourself. So there's something very important about being able to sit down, face to face, with other judges and get their opinions and exchange ideas.

Now that's not to say everything needs to be in person. And judges understand that time and money pressures mean that they can't be traveling constantly for every educational need. Still, it's been more difficult for judges than for staff to use the FJTN [Federal Judicial Television Network, ed.], and that's why we've been putting most of our broadcast emphasis on programs for staff. When you're in chambers or the courtroom and you have a very busy calendar, it's hard to schedule ahead and to stop in the middle of the day for a broadcast. Of course, judges can and do watch tapes of the broadcasts, but for a lot of reasons, in the long run, I think web-based education will overtake the FJTN as a distance education tool. If we could present a combination of some face-to-face programs, some broadcasts, and some web-based education, we would have a really good assortment that would fit all of these needs, and I hope respond to Congressional concerns as well.

Q: What areas of training are most in demand among court staff and judges? What does the FJC have planned for future education and training programs?

A: Let me start with the judges, because that's what I know best. New judges want orientation. A lot of them come straight from private practice and have no judicial training. Others come from a state court where they may have been in a specialized area. Some new judges have never done civil work, and others have never done criminal work. At that stage they need a general introduction to their new roles. Then there are experienced judges who get a big but relatively infrequent case—a judge who gets a huge environmental toxic tort, or a securities class action, or an intellectual property case, or a federal death penalty case for the first time. Those judges need help in that specific substantive area and right away. That's where the web-based education is really going to come in handy.

Judge Fern Smith

We want to develop a library of asynchronous training in various subjects so that a judge who has a case like this can go to the computer, and there will be forms, and examples, and suggestions, and maybe a video lecture, all indexed. So there's that challenge—what's known as knowledge management.

Most judges are interested in legislative and case law developments. Some judges have management responsibilities, for example, chief judges, so they're interested in what it takes to lead a court of independent judges. Other judges are interested in a broader perspective—things like the role of the judge in a democracy or developments in other disciplines and how they will affect the judicial process. We can't be all things to all people, so we have to assess what things are most important and respond to

as many needs as we can in one way or another.

Let me also say that the guidance we get from our Board and from our educational advisory committees is really important here.

Q: What about court staff?

A: Well, there we have a huge educational program, and the needs are really diverse, everything from supervising cyber crime offenders to negotiation as a part of organizational management to the skills deputy clerks need in working with multi-party cases. Last year, we had over 800 programs for court staff, almost 35,000 participants. Some of that's by in-person workshops but most of it's through the FJTN and locally sponsored seminars that use our packaged curricular programs. And again, our advisory committees of probation and pretrial services officers, clerks of courts—and of federal defenders, although they're not court staff—these people work very hard for us and I want to acknowledge that.

Q: The FJC is very visible on the Judiciary's internal intranet. How does that presence fit with the FJC's mission, and will this presence expand in the future?

A: We recently revamped, top to bottom, our internal judicial branch website on the DCN to make it a more active learning tool with on-line courses, three court staff education groups, many of our publications, schedules of courses, and the like. We want to use it much more—for example, expand the on-line computer conferences for staff and for judges too. This is the kind of asynchronous learning that a lot of the universities are starting to do because it allows people to be a part of a small group, to ask questions, to review answers, but not all at the same time.

We're in the process of revamping our Internet site also, to increase our education for the public about the judicial branch generally, both from a historical standpoint but also for people who are coming into contact with the federal courts. Our Federal Judicial History page on our website went on-line in the middle of February and we've have had over a million hits as of last week.

Of course, it takes money to develop these resources and hire staff who are skilled in these areas, and it's hard to compete with the private sector.

Q: Your district, the Northern District of California, includes Silicon Valley, which generates a lot of litigation involving scientific issues, and litigation involving scientific evidence may become more prevalent in federal courts. Has the FJC looked into this area?

A: You bet. As I visit the various circuits and talk to judges, I sense a growing impact of these technical cases around the country. And as our society becomes more and more dependent upon computers and technology, the number of cases involving these issues is going to grow tremendously. For the past several years, the FJC has been developing an increasing number of educational programs and research projects in that area, and it is something in which I have a strong interest, in great part because of where my roots are.

Our scientific evidence reference manual came out in 1994, and the second edition is almost ready. In a couple of weeks, we'll tape a six-segment FJTN program on *Daubert* and *Markman* hearings. As you know, *Daubert* is the Supreme Court case explaining the judge's role in determining whether or not particular expert testimony should be admitted, and *Markman* basically gives trial judges the responsibility of construing patents. This six-segment program is going to combine lectures on DNA, genetics, toxicology, and epidemiology, and we'll use them to show how a *Daubert* hearing or a *Markman* hearing might be structured.

Q: Most personnel in the courts know about FJC educational programs, but you also do considerable research.

A: Yes, about 40 active projects at the moment, mostly for Conference committees. Right now we're studying everything from electronic discovery to mass torts to whether the risk prediction indicator we developed for predicting offender recidivism also has pretrial uses.

Our research often serves as a real building block for our educational programs. I think sometimes our research people don't get enough credit for that part of it because they act behind the scenes. But what they contribute to the educational program is really quite significant. A guide we'll soon publish for judges on how to use ADR—and whether to use it—is a good example.

We've done a lot of research for the Bankruptcy Committee and a spin-off is a manual and video we're developing to explain the bankruptcy process to first-time, mainly pro se, filers. The idea is to relieve the people at the counter from having to provide the same basic information over and over.

We're also updating an older manual that we did on visiting judges and how to use them.

*See **Interview** on page 12*

Interview continued from page 11

Q: How does the Center work with the other two agencies in the judicial branch, the U.S. Sentencing Commission and the Administrative Office?

A: It's a collegial and cooperative relationship and, at times, collaborative. Our mandates are very different but we have the same goal—making the Judiciary a better system and helping the branch as a whole. We have a number of joint programs we're developing with the Sentencing Commission, including the next sentencing policy institute—the Commission and the Criminal Law Committee. I just did an interview with Judge Diana Murphy, the Commission's new chair, and that will be aired on the FJTN.

We work very closely with the AO. One of the instructional tools on our new website, for example, is the reimbursable work authorization project that we developed with the Space and Facilities Division. The recent southwest border conference was a tremendous success, not only because the AO and the FJC worked together and on a fairly quick response time, but because it also had another quality, which I refer to as vertical education. It took judges, probation and pretrial services officers, and court executives, and put them together to address certain common problems. I would like to see us do a little more of that.

It's been a pleasure working with the Commission and the AO. Ralph Mecham has been very helpful, and I appreciate all the courtesies that both groups have extended.

THE THIRD BRANCH

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THE THIRD BRANCH

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Cybercrime: New Way to Commit Old Crimes

Recently, the Internet Fraud Complaint Center, a joint creation of the FBI, the DOJ, and the National White Collar Crime Center, reported it had received 1,000 complaints of fraud each week since opening in May. It is estimated that by the time the center becomes fully automated later this year, it will be receiving more than 1,000 complaints a day. And that's only the Internet fraud cases. If the statistics are any indication of the overall volume, cybercrime is growing and, in the opinion of some federal law-enforcement officers, soon may rival the number of immigration and drug cases now flooding the southwest border courts. Unlike those crimes, the caseload will be spread across the entire country.

"Now we're seeing the usual run of counterfeiters, credit card fraud, and websites selling things they don't own," said Dan Wieser, probation officer in the Middle District of Florida. "Five years from now most crimes will somehow be computer-related. Crooks go where the money is—and it's in computers."

By definition, cybercrime involves a computer, even though it often isn't tracked as computer crime. For example, an offender may cross state lines to meet a minor he first contacted on-line, or a sex offender may download child pornography, but the crimes they commit are numbered statistically in categories such as sexual offenses or child pornography. Just like the elusive definition of obscenity, however, you know cybercrime when you see it.

In the very near future, experts believe most crimes will involve computers.

*See **Cybercrime** on page 6*

Judicial Conference Opposes Bill to Bring Cameras into Courts

A representative of the Judicial Conference told the Senate Judiciary Subcommittee on Administrative Oversight and the Courts that a bill to allow cameras in courtrooms could "seriously jeopardize" the rights of citizens to receive a fair trial.

Chief Judge Edward R. Becker (3rd Cir.) appeared before the subcommittee this month to express the Judiciary's strong opposition to cameras in the courtroom. The bill, S. 721, would allow media coverage of court proceedings.

"The Judicial Conference in its role as the policy-making body for the federal Judiciary has consistently expressed the view that camera coverage can do irreparable harm to a citizen's right to a fair and impartial trial. We believe that the intimidating effect of cameras on litigants, witnesses, and jurors has a profoundly negative impact on the trial process," Becker said. "Moreover, in civil cases cameras can intimidate civil defendants who, regardless of the merits of their case, might prefer to settle rather than risk damaging accusations in a televised trial."

Senate Judiciary Committee chair, Senator Orrin G. Hatch (R-

*See **Cameras** on page 2*

INSIDE

Cameras continued from page 1

UT), submitted a statement to the subcommittee in which he agreed that permitting cameras and electronic media in the courtroom could interfere with the federal courts' primary mission of dispensing justice. He also expressed concern about the "widespread distribution" of sensitive personal information about nonparties if S. 721 was enacted. "Importantly," said Hatch, "I believe that the federal judiciary has special expertise in this area and is entitled to a measure of deference."

Testifying before the subcommittee in support of the bill were Judge Nancy Gertner (D. Mass.); Associate Justice Hiller Zobel of Massachusetts; Professor Lynn Dennis Wardle of Brigham Young University; Dave Busiek, news director of KCCI Television in Des Moines, Iowa; and Ronald Goldfarb, an attorney and author.

A Federal Judicial Center study of a three-year Judicial Conference pilot program allowing electronic media coverage of civil proceedings in six district and two appellate courts, found that 64 percent of the participating judges reported that, at least to some extent, cameras make witnesses more nervous than they otherwise would be. In addition, 46 percent of the judges believed that, at least to some extent, cameras make witnesses less willing to appear in court.

Becker also pointed out that as an educational tool for the public, the Judiciary's own community outreach efforts have been more effective than proposed camera coverage in presenting basic educational information about the legal system. The Federal Judicial Center report concluded that of 90 news stories analyzed, there was an average of 56 seconds of courtroom footage per story, and most of the footage was voiced over by a reporter's narration. "Television news coverage appears simply to use the courtroom for a backdrop or a visual image for the news story which, like most stories on television," said Becker, "are delivered in short sound bites and not in-depth."

Chief Judge Edward R. Becker (3rd Cir.) (photo left) told the Senate Judiciary Subcommittee on Administrative Oversight and the Courts that after thoroughly studying the issue, the Judicial Conference takes the position that permitting cameras in federal trial courts is not in the best interests of justice. Also testifying before the subcommittee were (photo above, foreground) Associate Justice Hiller Zobel of Massachusetts, and Judge Nancy Gertner (D. Mass.).

Subcommittee chair, Senator Charles Grassley (R-IA), the sponsor of S. 721 with Senator Charles Schumer (D-NY), said the bill would "make it easier for every American taxpayer to see what goes on in the federal courts that they fund." He held that allowing cameras in the federal courtrooms is consistent with the Founding Fathers' intent that trials be held in front of as many people as choose to attend. Grassley also discounted arguments against cameras in federal courtrooms, saying witnesses' voices and faces could be disguised to ensure their safety, and the legislation would give presiding judges sole discretion to allow cameras. "All we're doing with this legislation," said Grassley, "is allowing a presiding judge to make decisions on how to run his or her courtroom and helping the American people fulfill their right to participate more fully in the judicial process."

The Judiciary has repeatedly examined the issue for over six decades. Criminal rules adopted in 1946 included a prohibition on electronic media coverage of criminal proceedings. In 1972, the Judicial Conference adopted a prohibition against "broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto. . ." that applied to criminal and civil cases. In 1988, the Conference revisited the issue and recommended the Judiciary begin the three-year pilot program allowing electronic media coverage. A 1994 examination of the data collected in the subsequent Federal Judicial Center study convinced the Judicial Conference that the potentially intimidating effect of cameras on some witnesses and jurors was cause for considerable concern. In 1996 the Conference again considered the issue and voted to strongly urge each circuit judicial council to adopt an order not to permit the taking of photographs or radio and television coverage of proceedings in

district courts. The Conference left it up to the appellate courts whether or not they would adopt similar rules, and all but two courts of appeals subsequently adopted prohibitions.

"This is not a debate about whether judges would be discomfited with camera coverage," Becker told the subcommittee. "Nor is it a debate about whether the federal courts are afraid of public scrutiny. They are not. . . . It is also not about increasing the educational opportunities for the public to learn about the federal courts or the litigation process. . . . Rather this is a decision about how individual Americans, whether they are plaintiffs, defendants, witnesses, or jurors, are treated by the federal judicial process. It is the fundamental duty of the federal Judiciary to ensure that every citizen receives his or her constitutionally guaranteed right to a fair trial. The Judicial Conference believes that the use of cameras in the courtroom could seriously jeopardize that right. It is that concern that causes the Judicial Conference of the United States to oppose enactment of S. 721."

To read Judge Edward Becker's full testimony, visit our website at www.uscourts.gov

Teacher's Institute Kicks Off

Among the courts participating in the Teachers Institute were the federal courts in Boise and Pocatello, Idaho, who video-conferenced their proceedings. Chief Judge B. Lynn Winmill presided.

The Judiciary's educational outreach initiative is reaching out to teachers, and through them, to students nationwide. Dubbed the "Federal Courts Teachers' Institute," the program uses the same approach taken in the Judiciary's Law Day celebration, in which student groups viewed a videotape of a case to understand and discuss issues of judicial independence. In the Institute, groups of teachers from the community meet at their area federal courthouse. Like the student groups, their video viewing is followed by discussions with judges, federal defenders, and prosecutors. Teachers also take copies of the videotape, lesson plans, and other instructional materials back to their own classrooms. Educational materials are available on the Judiciary's website, www.uscourts.gov, under "Courts to Classes," to help teachers incorporate information about the purpose, structure, and function of the federal courts into their classroom activities.

Throughout the year, more than 50 courthouses across the country are expected to hold Teachers Institutes; 8 courthouses kicked off the program on August 4.

Electronic Public Access at 10

Originally, electronic public access meant a simple phone line connection that let John or Joan Q. Public dial in for case information from an electronic bulletin board. It was barebones, but it saved a trip to the local federal court. Ten years later, the phone line is still operating, but now it is being used to surf to the courthouse door on the Internet, as attorneys and the public visit court websites to file cases, view dockets, or check court dates. Electronic public access has changed a lot in a decade, and the future promises even more.

Pre-1988, the electronic access experience in the federal courts was practically non-existent. "The only access to court records," said Chief Bankruptcy Judge J. Rich Leonard (E.D. N.C.), a member of the Judicial Conference Committee on Court Administration and Case Management, "was to queue up at the counter and mark the papers you wanted copied. Geographic proximity to the courthouse was important, which meant that small town practitioners away from the courts in the cities were limited in their federal practice."

All that was about to change, because federal courts across the country were beginning to use computers to manage basic case information. Computers made public access to certain court documents possible for the first time.

In September 1988, the Judicial Conference adopted a recommendation from the former Committee on Judicial Improvements to authorize "an experimental program of electronic access for the public to court information in one or more district,

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EPA continued from page 3
bankruptcy, or appellate courts in which the experiment can be conducted at nominal cost." Approximately half a dozen courts participated.

The official birthday of the electronic public access (EPA) program, however, came with P.L. 101-515, the Judiciary Appropriations Act of 1991, signed in November 1990. The Act gave the Judiciary the authority to establish access fees and therefore permitted nationwide expansion of the program since Congress had appropriated no funds for its operation. Electronic public access started in only a handful of courts, but good ideas catch on. In its report for the fiscal year 1993 Appropriations Act, the House appropriations committee noted, ". . . the Judiciary's investments in automation have resulted in enhanced service to the public and to other government agencies in making court records relating to litigation available by electronic media. . . .The Committee requests that the Judiciary equip all courts, as rapidly as is feasible, with the capability for making such records available electronically and for collecting fees for doing so. The Committee understands that approximately a third of current access to court records is by non-Judiciary, governmental agencies and believes that fees for access in these instances are desirable."

In 1997, Congress permitted the Judiciary to use fees for enhancements to electronic public access services. "This made EPA the only self-funded program of its kind in the Judiciary," said Mary Stickney, chief of the EPA program office at the Administrative Office. "No appropriated funds are used. The fees made the subsequent evolution of electronic public access possible." Currently, the EPA program manages the development, implementation, and enhancement of electronic public access systems in the Judiciary, with centralized billing, registration, and technical support services.

Electronic public access began with dial-in modems and electronic bulletin board systems but progressed rapidly to automated voice response systems, then to the Public Access to Court Electronic Records system or PACER. PACER provided access to court cases throughout the country to anyone with a computer and a modem.

"Nationwide, all but nine courts participate in PACER," said Stickney, "and even those nine offer some form of electronic access to court documents. Each year, PACER and other federal court services receive over seven million calls."

In 1997, the Judiciary added the U.S. Party/Case Index, a national index for U.S. district, bankruptcy, and appellate courts, with the capability to perform national or regional searches. At first a dial-up service, it was soon available on the Internet.

"The biggest expansion of electronic public access has been to the web," adds Stickney, "with PACER moving to a web environment in 1998. We had approximately 9,000 PACER accounts in 1994. In 1999, there were 30,000. But this year, with the movement to the web, we have over 67,000 registered users."

The very latest innovation is the Public Access Network, used in conjunction with Web PACER. It is a way for courts to host web sites without using outside providers, which makes for a more secure network.

"Electronic public access is the most dramatic improvement we've made in the way we offer services to the public," Leonard said. "It wasn't even conceivable 10 years ago. Yet today it has leveled the playing field for law firms and made federal practice more accessible. Immediate proximity to the courthouse and the ability to obtain copies of large files is not so critical. A law firm 150 miles away from the courthouse has the same access as a firm in the same city."

What do users want from electronic public access? Participants in focus groups wanted to be able to perform nationwide searches and access cases over the Internet. The EPA program consequently delivered with the U.S. Party/Case Index and Web PACER. Users said they'd like to view images of case documents, and thus icons have now been added to the PACER page indicating which courts allow users on the Internet to see images. "If the courts have imaging or electronic case filing capability," said Stickney, "users will be able to see actual documents in the case file."

Focus groups also have raised questions about privacy, and the availability of data is also a concern. The Committee on Court Administration and Case Management has formed a Privacy and Public Access Subcommittee to review the policies of Case Management/Electronic Case Filing prototype courts as well as those courts using imaging technology and to identify other policy issues.

The bottom line is that, 10 years from its inception, electronic public access is better, faster and cheaper. PACER's 7¢ per page cost on the Internet is less expensive than the 50¢ fee for copying in court. Recent innovations such as U.S. Party/Case Index provide more information, and now there is access to actual images of case documents. Courts can even add local reports in the web environment. What's next? Focus groups have said they'd like to receive automatic noticing when companies file for bankruptcy and view video presentations on the use of web products. These and other innovations may be just around the corner for electronic public access in the federal courts.

Federal Courts Sign On With E-Signatures

It was hailed as a revolution in Internet commerce when the Electronic Signatures in Global and National Commerce Act became Public Law 106-229 this summer. The act said an electronic signature on a contract or other record "may not be denied legal effect, validity, or enforceability" solely because is it in electronic form. In short, an e-signature is as good as the old-fashioned pen and ink variety.

P.L. 106-299 defines an electronic signature as "an electronic sound, symbol, or process attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record." The act is intended, in part, to protect consumers and promote e-commerce. Its impact on the federal courts may be felt largely in cases involving contracts that have been signed electronically. Court orders, notices, and other official court documents, including briefs and pleadings, are specifically exempt from the provisions of P.L. 106-299, but documents submitted in support of pleadings are not. Courts remain free to adopt local rules on e-signatures and, while these may vary, they all give further legal certainty that the use of an e-signature on a document is valid.

For all nine courts currently using the case management/electronic case files (CM/ECF) system and the 12 courts in various stages of CM/ECF start-up, a filer's act of entering a log-in name and password is deemed a "signature" of the electronic document that is being filed. "Over 70,000 cases and approximately 1 million documents have been accepted in these CM/ECF courts," said Gary Bockweg, Administrative Office project manager for CM/ECF. "The log-in and password signatures for those documents filed electronically have been adequate and we've had no instances of filers disowning their documents."

Courts meet the federal rules requirements of an "original" signature on documents filed with the court in different ways. On papers filed electronically, this requirement may be met with the log-in and password, and the signature indicated by s/ or /s. For documents, such as an affidavit that must be signed by an individual, the paper may be scanned in so that an electronic image is available and can be viewed. Or the actual signed document may be kept on file by the attorney or petitioner, and an abbreviated paper document that confirms the document was signed may be filed. Or the actual signed document may be held by the attorney as an officer of the court.

With the same options, judges may sign court orders. Their use of their log-in name and password to enter the system is their e-signature on the order. A judge may prefer to sign a paper document and scan the image into the computer system. The downside of this, of course, is that scanning takes time and also takes up more space on a computer system.

The process now in place for accepting and validating e-signatures seems to be adequate for today's needs, but that doesn't mean it always will be. Currently, private industry is looking at standards for e-commerce and e-signatures, and what they produce may, in turn, influence the federal courts. Certainly, as e-commerce becomes more prevalent, as people become more familiar with it, and as e-signature technology matures, federal courts probably will incorporate changing technology into the present process. Some options may be encryption, or documents that change their electronic identification each time they are modified. Several committees of the Judicial Conference are looking into the issues involved in e-signatures, including providing guidance to the courts on local rules. Right now, however, e-signatures in federal courts are no more, or less, acceptable than the pen and ink variety.

Administrative Office Director Leonidas Ralph Mecham (photo left) and Director of the U.S. Marshals Service John Marshall met this month to discuss issues of mutual concern. The U.S. Marshals Service, which provides security for federal judges and courthouses across the country, has experienced significant manpower shortages. The meeting touched on these shortages as well as other Marshal Service budget and security issues and their impact on the federal courts.

Cybercrime continued from page 1

"Cybercrime offenders are committing old crimes in new ways, " said Lanny Newville, senior pretrial services officer in the Western District of Texas. "It's easy to do things that were difficult previously. Computer scanners and high-quality color printers make crimes like forgery and counterfeiting easy. The how-tos are available on the Internet, if you know where to look." And, criminals may now commit those crimes in the privacy of their own homes, on their own computers.

The FBI and other law enforcement agencies are bringing increased focus on cybercrime. The Internet Fraud Complaint Center was established to address the growing problem of fraud cases occurring over the Internet. The IFCC provides a vehicle for victims around the country to report incidents of fraud on-line. The FBI is dedicating substantial funds to pursue these and other cybercrimes. "Whether we want it or not," said Tim Cadigan in the Administrative Office Federal Correction and Supervision Division, "the caseload is coming."

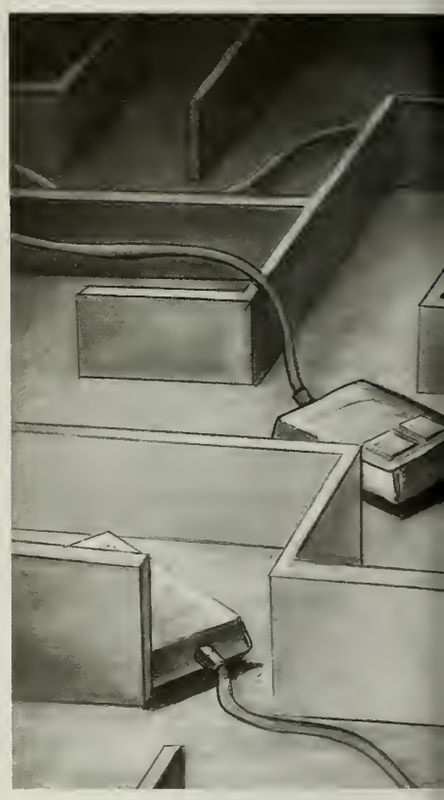
That raises the question, how will probation and pretrial services officers in federal courts cope with cybercriminals?

New Class of Offender Uses Computers

"I'm definitely not a cyber sleuth," said Larry Hawley, probation officer in the Central District of California. "The offenders we deal with are so far advanced in computers, and we aren't. What helps us is being computer literate and using computer experts as resources." Hawley also draws on the rapport he develops with his clients and 30 years as a probation officer.

Monica Hampton, a probation officer in the District of South Carolina, has a masters degree in computer resources and information management. The education gave her a greater interest in cybercrime. She believes it is imperative to keep up-to-date with technology to meet the changing needs of supervision. "Cyber criminals have nothing but time on their hands," Hampton said. "They are constantly upgrading their tools and skills, so we need to know what they're doing and using in order to properly supervise them. The majority of computer crimes we see today are the same conventional crimes we've seen in the past. The common criminal has just realized that by using the computer, in the commission of their offense, it can facilitate the process." Hampton located software that allows her to monitor on-line activity anonymously. It is proving useful in the supervision of an offender who had his own on-line business. The software allowed her to visit his website and monitor activity between him and his customers without being traced. "I wanted to ensure that he was remaining honest in his dealings, and this seemed to be the perfect tool," she said.

Paul Collette, a probation officer in the Southern District of New York, investigates offenders who've used computers to, for example, commit credit card fraud or send child pornography. "It's a new class of offender," he said, "someone who uses the Internet to commit sophisticated crime. One offender was an art dealer. He'd meet his victims on a website, contact them through e-mail, and convince them to send him art on consignment. Then he'd just take the art. When he's on probation, we'll need to monitor him closely."



Will probation officers serve as cyber sleuths? Probably not in the near future, but many officers have received formal training on computers and Internet investigations to monitor offenders.

To monitor offenders who are allowed by the court to keep their computers, Collette and other officers use software that tracks everything the offender is doing on-line by recording screen shots. Officers in the Southern District of New York visit the offenders every few days, view and export the screen shots to a disk, and take the data back to the office to review. How does an officer monitor an offender 24 hours a day? It is a never-ending battle.

"There once was one computer in the house or at work," Collette says. "Now there's access to computers at copy stores, or the library, or at friends' houses where offenders can surf anonymously. The Internet can be accessed via devices that were virtually unheard of two years ago, like cell phones, game consoles, and Palm Pilots. It's not hopeless, but we have to do the good old-fash-

VACANCY ANNOUNCEMENTS
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PUBLIC INFORMATION OFFICER, Ninth Circuit

The Office of the Circuit Executive of the U.S. Courts for the Ninth Circuit is currently accepting applications for the position of Public Information Officer. Salary: up to $75,000, depending on work experience, education, and prior salary history, and includes a 15.01 percent locality pay differential for the San Francisco bay area. This position is available immediately. The Public Information Officer is responsible for the design, development, and implementation of comprehensive program for communication with federal judicial and non-judicial personnel within and outside the Circuit, including the federal bar and other legal institutions, the media, and the public. Represents the Ninth Circuit Judicial Council, the circuit conference, and the various courts within the Ninth Circuit, as needed, on all matters of communication. At least five years of writing/editing experience, media relations and program management, consulting or research experience on public information and/or policy issues is required. An advanced degree in Public Relations, Public Policy Development, or related field is preferred. Please include a writing sample with application and resume. Submit letter of application and resume including salary history to: Office of the Circuit Executive, United States Courts for the Ninth Circuit, P.O. Box 193939, San Francisco, California 94119-3939 Attention: Public Information Officer/ Vacancy Announcement #00-10. Applications or resumes may be faxed (from a non-federal government fax line) to (415) 556-6179. Government franked envelopes may not be used to send resumes or applications. **Application deadline: until September 25, 2000 or until the position is filled.**

FEDERAL PUBLIC DEFENDER, Western District of Oklahoma

The U.S. Court of Appeals for the Tenth Circuit seeks qualified applicants for the position of Federal Public Defender for the Western District of Oklahoma with offices at Oklahoma City. A merit selection panel appointed by the chief circuit judge will review all applications, conduct personal interviews at its discretion, and make recommendations to the court of appeals. Application materials are available at www.ck10.uscourts.gov. They also may be obtained by writing the Circuit Executive for the Tenth Circuit, Byron White U.S. Courthouse, 1823 Stout Street, Denver, CO 80257. ATTN: FPD Recruitment – Western District of Oklahoma, or by calling 303/844-2073. **Application deadline: October 31, 2000**.

CLERK OF COURT, U.S. Bankruptcy Court, District of New Mexico at Albuquerque

The Court is comprised of two full-time judges and their staffs and the Office of the Clerk. The Clerk of Court manages an office of 31 deputy clerks and provides all administrative support services required by the Court including case processing, records management, financial management, budget preparation and execution, statistical analysis, procurement, space and facilities management, personnel management, and liaison services with other governmental and private organizations. Applicants are required to have 10 or more years progressively responsible administrative experience in public service or business that provided a thorough understanding of organizational, procedural, and human aspects in managing an organization. Undergraduate, postgraduate, and/or legal education may be substituted for experience. Salary: $97,200-122,263. Persons selected for an interview will be required to travel to Albuquerque at their own expense. Submit resume and cover letter detailing salary history and related work experience to Elizabeth Lucero, U.S. Bankruptcy Court, P.O. Box 546, Albuquerque, NM 87103-0546, or via e-mail at liz_lucero@nmcourt.fed.us. For a complete vacancy announcement, please visit our website at www.nmcourt.fed.us-employment, or call (505) 348-2475. **Application deadline: Resume review begins October 16, 2000, and the position will remain open until filled.**

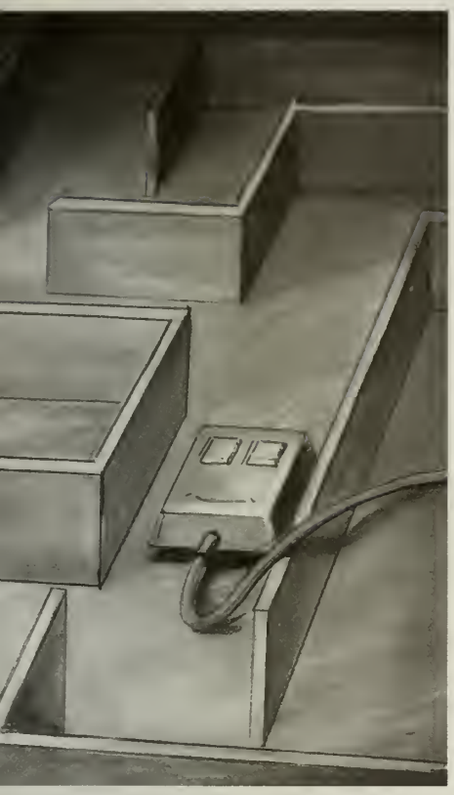
VACANCY ANNOUNCEMENTS
Continued on reverse side

CHIEF PROBATION OFFICER, District of Maryland

The Federal Court is seeking qualified applicants for the position of chief probation officer. The chief probation officer is the court unit executive who administers and manages federal probation and parole services within the District of Maryland. The chief probation officer operates under the direction of the chief judge and the court, and manages a staff of approximately 140 persons and a budget in excess of 10 million dollars. Applicant must have at least six years of specialized experience in personnel and budget management and in investigation, supervision, counseling, and guidance of offenders. Bachelor's degree in one of the social sciences or related field is required, advanced degree or JD is preferred. Salary range: $71,954-$124,862, depending upon qualifications and specialized experience. See the court's web site at *www.mdd.uscourts.gov* for complete details on duties, qualifications and requirements. To apply, send resume, cover letter, and salary history (original plus 6 copies) to: HR Specialist, 4415 U.S. Courthouse, 101 W. Lombard St., Baltimore, MD 21201, Attn: Chief Probation Officer Vacancy. **Application Deadline: October 20, 2000**.

U.S. BANKRUPTCY JUDGE, Northern District of Illinois, Chicago

The Judicial Council of the Seventh Circuit is seeking applicants for a bankruptcy judge position for the U.S. District Court for the Northern District of Illinois, headquartered in Chicago. Term of office: 14 years. Salary: $129,996. Applications may be obtained from the bankruptcy court clerk for the Northern District of Illinois, from the clerk of the U.S. Court of Appeals for the Seventh Circuit, or by accessing the court's website at www.ca7.uscourts.gov. Send applications to Collins T. Fitzpatrick, Circuit Executive, Judicial Council of the Seventh Circuit, 2780 U.S. Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604. **Application deadline: October 13, 2000.**



Offenders can surf anonymously, access computers at any copy shop or library, and generally make supervision difficult by constantly upgrading their skills and tools.

ioned gum shoe work. We have to monitor visually, keep tabs on devices and e-mail accounts, and ask for passwords." In his off-time, Colette also visits hacker sites and reads everything to do with new software.

Collette recommends that officers obtain training at the National White Collar Crime Center in West Virginia, which has a one-week course on Internet investigation and computers. For the districts and their pretrial services and probation officers, it also may become a matter of locating additional and sometimes specialized training and resources.

Wake-up Call on Cybercrime

"Law enforcement has been slow to wake up to the growth in cybercrime," said Wieser. "The Florida Department of Law Enforcement has a 6-8 week back-log on the examination of all computer equipment turned in at the state level. Federal law enforcement also is experiencing an increasing computer forensic workload. And computer examiners are hard to find. You can't take office automation people out into the field, so we will have to train officers."

Ana Whipple, a pretrial services officer in the Southern District of Florida, also thinks that the growing number of cybercrime cases developed by the FBI has caught the Judiciary off guard. "There are going to be hundreds of cases coming through," Whipple said. "Our system is still operating like it did 10 years ago and simply is not prepared for what we are going to face. The major challenge is to make the judicial officers understand the magnitude and scope of this problem. Then the court needs to give us direction and guidance on how far they want us to go in supervising these offenders." Whipple says probation and pretrial services officers must assure the court that offenders are not continuing to engage in illegal activities. They had better be prepared to talk intelligently to them, know what a hard drive looks like, and search for hidden files and images, as well as be familiar with pdas and all types of connectivity devices. "As pretrial services and probation officers," says Whipple, "we're all scrambling in different directions. The FBI and other agencies can give us forensic training, but most of us are not looking to be computer forensic experts. We are seeking tools to monitor these defendants/offenders while they are under our supervision whether on bond or after they are convicted. Training—the right type of training—and the resources would go a long way to addressing this problem."

In September, the Federal Judicial Center broadcast over the Federal Judicial Television Network, Special Needs Offenders: Introduction to Cyber Crime. The broadcast was followed by an on-line discussion. The FJC has published a bulletin on cybercrime that includes a listing of technical and training resources in computer forensics available to districts. The Administrative Office also offers courses in word processing and Internet/Intranet use for court staff who are new to computers.

Officers Face 'Technological' Mountain

"We don't have to be computer geeks and know how the offenders commit their crimes, "said Newville, " but we have to understand enough to intelligently tell the court what the situation is so that conditions can be set." Newville admits it is an uphill battle, with what he calls a "technological mountain" to get over. He compares the monitoring of cybercrime offenders to substance abuse monitoring. "We have to know what questions to ask, then follow up," Newville said. "We need to know how they use the computer at home, and work to make recommendations to the court that make sense without crossing the 'least restrictive' mandate of the Bail Reform Act. I have two sex offender cases where they are barred from any computer access. But when computers are everywhere, there's no way we can ensure 100 percent compliance."

Marc Stein, a probation officer in the Central District of California who has experience supervising a notorious cybercrime offender, says, "Yes, there's a certain amount of technical knowledge needed. However, you don't have to be a computer expert. You have to know people and how to help them avoid criminal behavior in the future." Combining traditional probation officer skills with new technology, Stein deals with the person first, then uses his technical knowledge to monitor computer use. "As my supervisor said to me regarding my first cybercrime offender, 'Approach him like he's just another criminal and it's computers, not drugs, that get him into trouble.'"

JUDICIAL MILESTONES

Appointed: Jay A. Garcia-Gregory, as U.S. District Judge, U.S. District Court for the District of Puerto Rico, August 1.

Appointed: Paul C. Huck, as U.S. District Judge, U.S. District Court for the Southern District of Florida, August 5.

Appointed: David M. Lawson, as U.S. District Judge, U.S. District Court for the Eastern District of Michigan, August 4.

Appointed: Beverly B. Martin, as U.S. District Judge, U.S. District Court for the Northern District of Georgia, August 4.

Appointed: James S. Moody, Jr., as U.S. District Judge, U.S. District Court for the Middle District of Florida, July 29.

Appointed: Gregory A. Presnell, as U.S. District Judge, U.S. District Court for the Middle District of Florida, August 2.

Appointed: John E. Steele, as U.S. District Judge, U.S. District Court for the Middle District of Florida, July 28.

Appointed: Thomas L. Perkins, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Central District of Illinois, July 20.

Appointed: Joel B. Rosenthal, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the District of Massachusetts, August 10.

Appointed: E. Clifton Knowles, as U.S. Magistrate Judge, U.S. District Court for the Middle District of Tennessee, July 7.

Appointed: Judith Gail Dein, as U.S. Magistrate Judge, U.S. District Court for the District of Massachusetts, July 31.

Elevated: Court of Appeals Judge Joel M. Flaum, to Chief Judge, U.S. Court of Appeals for the Seventh Circuit, succeeding Judge Richard A. Posner, August 1.

Elevated: Judge Johnnie B. Rawlinson, to U.S. Court of Appeals Judge, U.S. Court of Appeals for the Ninth Circuit, succeeding Judge Melvin Brunetti, July 26.

Elevated: Bankruptcy Judge Thomas E. Baynes, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the Middle District of Florida, succeeding Judge George L. Proctor, August 2.

Senior Status: Judge Robert B. Maloney, U.S. District Court for the Northern District of Texas, August 31.

Senior Status: Judge Loren A. Smith, U.S. Court of Federal Claims, July 10.

Retired: Bankruptcy Judge William F. Tuohey, U.S. Bankruptcy Court for the District of New Jersey, August 9.

Resigned: Magistrate Judge John E. Steele, U.S. District Court for the Middle District of Florida, July 27.

Deceased: Senior Judge Raymond J. Broderick, U.S. District Court for the Eastern District of Pennsylvania, August 6.

THE THIRD BRANCH

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JUDICIAL BOXSCORE

As of September 1, 2000

Courts of Appeals	
Vacancies	21
Nominees	15
District Courts	
Vacancies	42
Nominees	22
Courts with "Judicial Emergencies"	23

For more information on vacancies in the federal Judiciary visit our website at www.uscourts.gov.

Chief Justice Names Six New Committee Chairs, Extends Three Terms

Judge Lourdes G. Baird

Judge Edwin L. Nelson

Judge John W. Lungstrum

Six committees of the Judicial Conference have new chairs this fall. The appointments to replace chairs whose terms had expired were made by Chief Justice William H. Rehnquist, who at the same time extended the terms of three incumbent chairs. All committee chair terms began October 1, with one exception.

Judge Lourdes G. Baird (C.D. Calif.) succeeds Judge Edward B. Davis (S.D. Fla.) as chair of the Committee on the Administrative Office. Baird's term of office began July 1, 2000. Judge Edwin L. Nelson (N.D. Ala.) succeeds Judge Edward W. Nottingham (D. Colo.) as chair of the Committee on Automation and Technology. Judge John W. Lungstrum (D. Kan.) succeeds Chief Judge D. Brock Hornby (D. Me.) as chair of the Committee on Court Administration and Case Management. Judge James C. Cacheris (E.D. Va.) succeeds Judge Stanley S. Harris (D. D.C.) as chair of the Committee on Intercircuit Assignments. Bankruptcy Judge A. Thomas Small (E.D. N.C.) succeeds Judge Adrian G. Duplantier (E.D. La.) as chair of the Advisory Committee on Bankruptcy Rules. Judge David F. Levi (E.D. Calif.) succeeds Judge Paul Niemeyer (4th Cir.) as chair of the Advisory Committee on Civil Rules.

Three incumbent chairs will continue for an extended term of one year. They are Judge Will L. Garwood (5th Cir.), chair of the Advisory Committee on Appellate Rules; Judge William J. Bauer (7th Cir.), chair of the Committee to Review Circuit Council Conduct and Disability Orders; and Judge W. Eugene Davis (5th Cir.), chair of the Advisory Committee on Criminal Rules.

By delegation from the Judicial Conference, the Chief Justice makes all appointments to Conference committees and determines tenure. He is assisted by the Judicial Conference Secretary, AO Director Leonidas Ralph Mecham. Committee chairs, with the exception of the Executive, Judicial Branch, and Budget Committees, generally serve for a term of three years. Five to six years of cumulative committee service, including past committee assignments, is considered the maximum a member may serve.

Judge James C. Cacheris

Judge A. Thomas Small

Judge David F. Levi

Committee Takes on Issues From Judgeships to the Workforce

Judge Dennis G. Jacobs was appointed to the U.S. Court of Appeals for the Second Circuit in 1992. He is chair of the Judicial Conference Committee on Judicial Resources.

Q: What are the major challenges faced by the Judiciary in maintaining its workforce?

A: In a few words: competition in a tight labor market, loyalty to the institution, and flexibility of skills and resources to respond to change.

Over the years, we have done a good job of attracting and retaining a talented workforce committed to supporting the administration of justice. Competition for excellent people is always a factor, and today that competition is keen, especially as we seek out the people who can help us make the best use of the technological infrastructure that the Judiciary is putting in place. The Committee on Judicial Resources, in conjunction with other committees of the Judicial Conference, is committed to recommending compensation, benefits, and training programs that will attract and make the highest use of the people we need. The Judiciary continues to update its networks, systems, and applications to meet changing business requirements and ensure the security and integrity of sensitive information. Success in each of these endeavors depends on maintaining a trained, stable, and flexible workforce.

The Judiciary's commitment to technology is changing the skills needed by its workforce. In the last few years, we have had to hire trained systems personnel in a brutally tight labor market, and we have undertaken extensive training and support for judges and support staff so that they can use these systems effectively. One challenge is to hire people who have or can acquire the technological skills we now demand; at the same time, we need a stable workforce of people with integrity, strong institutional loyalty, and long-term commitment. Hiring and retaining such people is a tall order; we cannot expect to accomplish this without competing with the private sector in compensation and benefits, and we are going to have to accept and defend certain budget consequences of that commitment.

Immediately pressing is the crisis in the southwest border courts, where the mushrooming growth of criminal filings is exerting intense pressure on judges and clerks' offices. Automation support, training, personnel management and procurement are particularly difficult for these fast-growing courts, some in remote locations. The border courts are taking measures to cope with dramatic caseload increases. Visiting judges from other districts are helping. One successful experiment, using video conferencing and other technological aids, has been the conduct of bench trials by a judge sitting in chambers outside a district. Maybe there will be some long-term benefits from the techniques adopted to deal with this crisis, but it appears that until more help arrives the chief technique and resource for judges and clerks' offices will continue to be overwork. The Committee on Judicial Resources, through its Subcommittee on Judicial Statistics, has developed recommendations for additional judgeships in these critical places. The Judicial Conference has adopted those recommendations and sent them to Congress for consideration.

Judge Dennis Jacobs

Q: How does the Committee go about developing recommendations for additional judgeships?

A: The Committee's Subcommittee on Judicial Statistics has primary responsibility for conducting surveys of judgeship needs every other year for the Committee. The subcommittee asks that each court review its workload to determine if additional judgeships are needed, and if so, to complete a judgeship survey application to justify its request. The application includes questions about the volume and characteristics of the court's caseload, the court's use of senior and visiting judges, use by district courts of magistrate judges and alternative dispute resolution, and any other factors that may have had an impact on a court's judgeship needs.

In developing a recommendation for additional judgeships, the subcommittee thoroughly studies

each application as well as the recommendation from the judicial council of the circuit, reviews current caseload information from the Administrative Office, and weighs the caseload under standards established by the Judicial Conference. After consideration of information from all available sources, the subcommittee develops final recommendations for consideration by the full Committee on Judicial Resources. The Committee reviews the report from the subcommittee and develops final recommendations for consideration by the Judicial Conference. At the end of this process, the Conference recently approved recommendations to create 63 additional judgeships, 10 for courts of appeals, and 53 for district courts. Those recommendations were transmitted to Congress in draft legislation July 31, 2000.

Q: The Committee sent the most recent judgeship recommendations to the Judicial Conference on an expedited basis. Why?

A: The Judicial Conference recommendations that were pending before Congress earlier this year were based on the 1999 Biennial Survey of Judgeship Needs, which incorporated workload information through the year ended June 30, 1998. There have been major changes in the workload of several courts since that time. Under the normal schedule, we would have completed the 2001 Biennial Survey of Judgeship Needs at our December 2000 Committee meeting, and the judgeship recommendations would have been considered by the Judicial Conference in March 2001. However, there are some encouraging signs that the Senate may consider omnibus judgeship legislation—for the first time in nearly 10 years—before the end of the 106th Congress. The Committee felt that Congress in its deliberations should be apprised of the Judiciary's requirements based on current workload rather than on the information that is nearly two years old. The Committee, therefore, expedited the 2001 Judgeship Survey and submitted final judgeship recommendations to the Judicial Conference at the end of July.

Q: Has the Committee ever recommended a reduction in the number of existing judgeships or judges?

A: The Committee has not recommended a reduction in the number of authorized judgeships in any court. We have, however, recommended in several courts that existing or future judgeship vacancies not be filled. In March 1996, the Judicial Conference approved a recommendation from the Committee to include in the survey process a review of courts in which it may be appropriate to recommend elimination of judgeships or continuation of vacancies. In approving the process for conducting these reviews, the Conference adopted the policy that elimination of existing judgeships not be recommended except in circumstances where the situation in a court is unlikely in the foreseeable future to support the need for the current number of judgeships. Although the Committee has found situations where it has recommended not filling vacancies, it has not found circumstances that would support elimination of judgeship positions.

Q: There has been a lot of talk in the legislative and executive branches about managing human capital and the need for greater flexibility in the area of compensation and benefits. Has the Judiciary given any attention to these issues?

A: Like many other large employers, the Judiciary will need to replace a large segment of its workforce over the next few years as many of its baby boomer employees retire. Now is the time to focus on the problem that the current core federal employees' benefits package is no longer fully competitive with what is available in a thriving private sector.

Employees increasingly need and demand greater flexibility in their benefits, and employers who want to stay competitive are giving employees a longer menu of benefits. The Judiciary has launched a long-term effort to that end. This year, several new programs were introduced, an employee-pay-all long-term care insurance program and a flexible-benefit program that allows employees to pay employer-sponsored health care plan premiums and certain medical and dependent care expenses with pre-tax dollars.

These programs do not entail an employer contribution. Even so, enrollment is unusually brisk when compared to industry averages, which indicates to me keen interest among Judiciary employees and new hires in wider benefits options. The Judiciary will continue to aggressively pursue efforts to provide meaningful competitive benefits.

Q: During the past two years, the Committee on Judicial Resources has led an enormous work measurement effort to develop new staffing formulas to cover all court unit employees in the Judiciary. Can you tell us about the processes and results of this tremendous effort?

A: The Committee has been overseeing this mammoth project over a long period. The end

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Interview continued from page 11

product, not counting the volumes of raw data and reams of charts and memos, is 11 new staffing formulas. Applying those formulas to measured workloads would yield a total Judiciary workforce requirement of approximately 22,000 employees.

The initiative was a joint project between the courts and the Administrative Office. It brought together over 30 Administrative Office staff, 149 court-unit subject-matter experts, and almost 100 court unit executives. The Committee carefully reviewed and approved the methodology and resulting formulas. Court personnel were nominated to participate in work groups for studies conducted in each of the court units: appellate and circuit offices, district, bankruptcy, and probation and pretrial services. These groups developed and revised work center descriptions and participated in data collection. Data collection was performed at 24 district clerks' offices, 26 bankruptcy clerks' offices, and 25 probation and pretrial services offices including divisional offices. All 12 circuits were measured including all appellate court and circuit offices. Data collection was completed in November 1999. The databases were then subjected to analytical and statistical testing. Through regression analysis, staffing factors were selected to develop the formulas.

The Committee on Judicial Resources and court advisory groups were briefed throughout the process. After getting the support of all court advisory groups, and after final revisions, the reports were presented to the Committee on Judicial Resources and other appropriate Judicial Conference committees at their summer 2000 meetings. All staffing formulas were endorsed by the committees, and approved by the Judicial Conference at its September 2000 session.

Now that the staffing formulas are approved by the Judicial Conference, we will need to keep them current so that they are statistically sound, maintain their credibility with court unit heads and judges, and are defensible in Congress. To do that the Committee on Judicial Resources has directed the Administrative Office to update these formulas on a continual annual cycle in order that the Judiciary can be assured of accurate, up-to-date staffing formulas.

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Continuing Resolutions Go On, As Congress Enters Lame Duck Session

First, the 106th Congress was slated to adjourn by October 6, then the date was moved to mid-October. But by November 1—and 13 continuing resolutions later—it was clear to congressional leaders they'd finish their business in a "lame duck" session following the presidential elections.

The clock was still running on the "lame duck" 106th Congress when it returned to complete unfinished business in November.

Much of that unfinished business affects the Judiciary. The Commerce, Justice, State, the Judiciary and related agencies appropriations bill with the Judiciary's budget was delayed in Congress, then the President threatened a veto. It has not been sent to the President and may not be until all appropriations bills and other issues are resolved. A COLA for members of Congress and federal judges was likely until the Treasury-Postal Service appropriations bill, which also contained courthouse funding, was vetoed by the President. That bill has been returned to Congress. The fates of numerous pieces of key legislation are still undecided.

The Third Branch was caught up in the uncertain timetable of this Congress. The result is a combined October/November issue, with the promise of an expanded December issue. Next issue, hopefully, will contain all the news from this session of Congress.

Judicial Conference Opposes Sweeping Restrictions on Educational Programs

The Judicial Conference has voted to oppose legislation that would prohibit federal judges from accepting "anything of value in connection with a seminar" because the legislation is overly broad, would have unintended consequences, and has not been adequately studied. The Conference voted on this resolution and on other recommendations from its committees at the semi-annual meeting in September in Washington.

S. 2990, the Judicial Education Reform Act of 2000, was introduced in the Senate last July in reaction to a report by a private legal organization criticizing judges' attendance at privately funded educational seminars. The Judiciary has not had an opportunity to study carefully and comment on the pending legislation, nor has it been the subject of hearings.

The legislation "is overly broad; would have unintended consequences, such as prohibiting federal judges from reimbursed attendance at bar association meetings and law school

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INSIDE

Conference continued from page 1

seminars; raises potential constitutional issues, such as imposing an undue burden on speech; and would mandate an inappropriate censorship role for the Federal Judicial Center," the Conference said in a resolution it adopted. "The Center is charged by law with providing continuing education for judges and court personnel. For 32 years the Center has ably performed this task," the Executive Committee said in its report to the Conference.

In proposing the Conference resolution, the Executive Committee acknowledged the importance of public trust and confidence in the Judiciary "as the bedrock upon which our independent Judiciary depends." However, it also cautioned that the "First Amendment to the United States Constitution, itself, strongly counsels against undue and overly broad efforts to limit or restrict anyone's access to ideas."

S. 2990 directs the Center's Board to authorize government funding for judges to attend only "seminars that are conducted in a manner so as to maintain the public's confidence in an unbiased and fair-minded Judiciary." The FJC has not sought this expansive authority into a new area of controversy and has been provided with no road map for exercising it. In October, the Board adopted a statement opposing S. 2990 in its present form. The Board believes the bill "would transform the Center and its Board from designers and presenters of federal judicial education to investigators of judicial education programs," and "jeopardize the Center's ability to co-sponsor occasional educational programs that it presents in cooperation with law schools and other organizations. . ." The Board also stated that the Center needs adequate financial support to ensure that it can provide judges the full range of necessary orientation and continuing education programs, because judges should not have to rely solely on private organizations for their education.

While there clearly are important distinctions between the Judiciary and the other two branches of government, the proposed legislation would appear to subject judges to the most restrictive rules of any government officials. Existing legal and ethical provisions already restrict judges from accepting benefits from parties in litigation before them and provide for disqualification in any instance where a judge's impartiality might reasonably be questioned.

According to the Conference, "All of these thoughts suggest that a more prudent course for the courts, and those who are interested in judicial education, would be to have congressional hearings

Representative Henry J. Hyde Lauded as Friend of the Judiciary

At a Supreme Court reception last month, the Judicial Conference recognized the long and distinguished service of Representative Henry J. Hyde (R-IL), out-going chairman of the House Committee on the Judiciary since 1994. A resolution passed by the Conference and presented to Hyde read, in part,

"After twenty-six years of distinguished service in the House of Representatives, Henry Hyde has become a respected leader of national prominence. He is widely admired for his honesty and sound judgment, unfailingly displayed with humor and civility.

[H]is record of accomplishments there bear witness to an unwavering respect for the Constitution of the United States and an abiding belief in the rule of law. Henry Hyde is sensitive to the position of the Judicial Conference on legislation affecting the judiciary, and on such matters, has been a source of wise counsel to judges. He recognizes the independence of the Judicial Branch, has vigorously supported improvements in the administration of justice, and has worked to provide appropriate and equitable compensation and benefits to judges and their staffs.

Chief Justice William H. Rehnquist presents a framed copy of the Judicial Conference resolution to Representative Henry J. Hyde (R-IL).

The legacy of the Honorable Henry Hyde, as a Member of Congress, as a leader of the Committee on the Judiciary, and as a valued friend to the federal judiciary will endure for many years to come."

The Judicial Conference honored the distinguished service of Representative Henry J. Hyde (R-IL) with a reception at the Supreme Court attended by many members of the Supreme Court, the Judicial Conference and its committees, and members of Congress. Among them were (above) Supreme Court Justice Antonin Scalia and Chief Judge J. Harvie Wilkinson III (4th Cir.); (photo above right) Administrative Office Director Leonidas Ralph Mecham, Judge John Heyburn (W. D. Ky.) and Chief Judge Charles Haden II (S. D. W. Va.); and (photo right) U.S. Sentencing Commission chair Judge Diana Murphy, Chief Judge Procter Hug Jr. (9th Cir.) and Chief Judge D. Brock Hornby (D. Me.).

on this question, followed by study and review of those proposals that may come forward. This is not a time for hasty legislation that may well be more dangerous than the concerns it is designed to allay."

In other action:

- Since its previous session in March, the Judicial Conference approved a recommendation for the creation of new Article III judgeships and transmitted the recommendation to Congress. The current request is for six permanent and four temporary circuit judgeships; 30 permanent and 23 temporary judgeships; the conversion of seven temporary district judgeships to permanent; and the extension of one temporary judgeship. Senate Judiciary Committee chair, Senator Orrin G. Hatch (R-UT), and ranking minority member, Senator Patrick Leahy (D-VT), reported to the Conference they would co-sponsor a bill incorporating its judgeship recommendations, and S.3071, the Federal Judgeship Act of 2000 subsequently was introduced in the Senate. The last omnibus judgeship bill was enacted in December 1990. Last year nine judgeships were authorized in an appropriation bill in an attempt to address the heavy workload of the southwest border courts and 10 new judgeships have been included in the yet-to-be passed fiscal year 2001 Commerce, Justice, State, the Judiciary and related agencies appropriations bill.
- Voted to encourage federal courts to post their local rules on their own web sites and if they do not have a local web site, to develop one even if only to post their local rules. The intent is to link the local sites to the Judiciary's web site, www.uscourts.gov, so that there will be a single source for all local rules that is easily accessible by the bench, bar, and public. Approximately 52 district courts, 59 bankruptcy courts, and eight courts of appeals maintain Internet sites that contain their local rules.
- Approved the proposed staffing formulas for the appellate court and circuit clerks' offices, and the district clerks', the district court pro se law clerks', the probation and pretrial services', and the bankruptcy clerks' offices, necessary to perform their judicial support functions, for implementation in fiscal year 2001.
- Approved a recommendation to seek funds in fiscal year 2002 for a panel attorney hourly rate of $113. The rates in most judicial districts for Criminal Justice Act attorneys are $70 in-court/$50 out-of-court as of January 1, 2000.

A $75 rate for in-court and out-of-court work is paid district-wide or in specified court locations in 14 judicial districts. CJA attorneys in most judicial districts have received only two $5 increases since the provision authorizing the $60 in-court/$40 out-of-court rates was enacted in 1984, over 15 years ago.

Judge Ralph K. Winter Honored

On behalf of the Judicial Conference, Chief Justice William H. Rehnquist presented Judge Ralph K. Winter Jr. with a resolution celebrating his years of leadership.

As Judge Ralph K. Winter Jr. prepared to take senior status October 1, 2000, and step down both as chief judge of the U.S. Court of Appeals for the Second Circuit and as chair of the Executive Committee, the Judicial Conference passed a resolution celebrating his "outstanding, insightful and politically astute leadership." Noting that his tenure as chair of the Executive Committee came at a time when many complex issues were addressed by the Committee, including the release to the media of Article III judges' financial disclosure reports, the resolution read, in part,

"Judge Winter's confident leadership, firm resolve, and spirit of openness fostered understanding and mutual respect for differing opinions, enabling a satisfactory conclusion to this difficult issue and numerous others before the Executive Committee in the past year. All the while, Judge Winter displayed his characteristic warmth and keen sense of humor."

"In coordination with the Committees on Financial Disclosure, Codes of Conduct, and Security and Facilities, Judge Winter ably led the Executive Committee in seeking a course for the Conference that would accommodate public access to information regarding the financial interests of judicial officers, in full compliance with the Ethics in Government Act of 1978, and at the same time ensure the safety and security of judges and their families."

Winter joined the Judicial Conference in July 1997, and the Executive Committee in April 1998. He had served as chair of the Advisory Committee on the Federal Rules of Evidence and as a member of the Civil Rules Committee.

Lack of Judgeships Prompts Judicial Emergency

In a general order signed by every active judge in the Southern District of California, a judicial emergency in the district has been declared by Chief Judge Marilyn L. Huff (S. D. Cal.) over the acute need for judgeships. "Due to the heavy criminal felony caseload and lack of new judgeships, the district continues to rank as one of the busiest courts in the nation," Huff wrote in the order. But with the death of two senior judges, the remaining eight active judges and five senior judges—one of whom was recently injured in a car accident and another who will soon turn 87—Huff said the district can no longer handle its criminal caseload.

"We have the highest weighted caseload per judge in the country, " said Huff, "magnified by the high number of criminal cases. These are particularly demanding because of speedy trial concerns." The weighted caseload filings in the Southern District of California numbered 1,029 in 1999. Generally, the Judicial Conference will consider a request for additional judgeships from a court when the weighted caseload exceeds 430 per authorized judgeship. The Conference has recommended that the Southern District of California receive eight new judgeships, five permanent and three temporary.

"This was the highest number of new judgeships recommended for any court in the nation," Huff said in declaring the judicial emergency. "Despite the Judiciary's recommendation, no new judgeships have been created for our district in pending judgeship legislation. Consequently, the

needs of the litigants in our district for new judgeships have not been met. Without new judgeships, the district will operate under judicial emergency procedures as required by the needs of justice."

The fiscal year 2001 Commerce, Justice, State and the Judiciary appropriations bill still pending in Congress contains 10 new judgeships but ignores the Southern District of California's judgeship needs. Despite urgent requests by Huff, Administrative Office Director Leonidas Ralph Mecham, and others, no new judgeships have been authorized by Congress for the district since 1990.

In the past, according to Huff, senior judges were able to handle the overflow criminal cases. In 1998, senior judges handled about 50 percent of the criminal jury trials. In the first eight months of 2000, and before an automobile accident in August, one senior judge handled 600 sentencings. It is not expected that he will be able to return to his former level of activity. Two active judges also have had medical and family disabilities that have reduced their availability for criminal trials. If the court is unable to provide sufficient trial judges in the future, criminal cases may be dismissed.

"If any court in the United States can make a case for new judgeships," said Huff, "it is ours."

Article III Judgeship Recommendations

Court	Currently Authorized	Judicial Conference Recommendation	CJSJ** Proposed
Courts of Appeals			
First	6	1T	
Second	13	2P	
Sixth	16	2P	
Ninth	28	2P, 3T	
District Courts			
AL-N	7	1P, 1T	
AL-M	3	1P	
AL-S	3	1T	
AZ	11	1P/4T	1
CA-N	14	1P	
CA-E	6	2P,T/P	
CA-C	27	2T	
CA-S	8	5P, 3T	
CO	7	1P, 1T	
FL-M	15	1P,1T	
FL-S	16	2P	1
HI	3	T/P	
IL-C	3	T/P	
IL-S	3	T/P	
IN-S	5	1T	
KY-E	4	1T	1
NE	3	T/P	
NV	6	1T	1
NM	5	2P, 1T	1
NY-N	4	1T, T/P	
NY-E	15	3P	
NY-W	4	1T	
NC-W	3	2P	
OH-N	11	Extend T*	
OR	6	1T	
SC	9	1P	1
TX-E	7	1T	
TX-S	18	2P	1
TX-W	10	3P,1T	1
VA-E	9	2P,T/P	1
WA-W	7	1T	
WIS-E.	2	0	1

T: Temporary judgeship. *Temporary judgeships are positions created for a minimum time period, but where the first judicial vacancy occurring after that time period is not filled.*
P: Permanent judgeship.
T/P: Temporary judgeship made permanent.
* The first vacancy occuring 15 years or more after the confirmation date of the judge named to fill the temporary judgeship shall not be filled.
** Commerce, Justice, State, the Judiciary and Related Agencies appropriations bill for fiscal year 2001.

New Federal Judgeships Still a Possibility in Lame Duck Session

There was no lack of judgeship bills in the 106th Congress. Senators Patrick Leahy (D-VT) and Orrin Hatch (R-UT) co-sponsored S. 3071, the Federal Judgeship Act of 2000, which included the latest Judicial Conference judgeship recommendations. Also introduced this session were S. 2730 and H.R. 4704, both titled the Southwest Border Judgeship Act of 2000, and both of which would create judgeships for the border courts. But by the end of the 106th Congress, none of these bills had made it to a floor vote. Instead, a provision creating 10 new judgeships was attached to the Commerce, Justice and State, the Judiciary, and Related Agencies Appropriation bill, which passed both

Houses. Four of five border courts would each receive one judgeship under the current appropriations bill. However, as *The Third Branch* went to press, the President had indicated he would veto the appropriations bill for other reasons. When Congress returns in lame duck session in mid-November, the Judiciary may ask Congress to once again take up any or all of the judgeship bills, in addition to the judgeships now included in the appropriations bill, leaving the status of new judgeships uncertain.

Even as he introduced S. 3071 in September, Hatch acknowledged the difficulties ahead. "Given that there are only a few weeks remaining in this Congress, it is going to be difficult to achieve consensus on a comprehensive judgeship bill. Nevertheless, it is important that the views of the Judicial Conference on the issue of judgeships be brought to the attention of the Congress and given the appropriate level of consideration." S. 3071 would create 10 circuit judgeships and 53 district judgeships, a response to the Judicial Conference revised and expedited request for new judgeships sent to Congress in August. The recommendations reflected the impact of a growing caseload throughout the Judiciary, particularly in the southwest border courts, and the failure of a major judgeship bill to pass Congress in nearly a decade.

"Implicit in our legislation," said Leahy, "is acknowledgment that the federal Judiciary does not just have 64 current vacancies with nine on the horizon, but that even if all those vacancies were filled, the federal Judiciary would remain 70 judges short of those it needed to manage its workload, try the cases and provide the individual attention to matters that have set a high standard for the administration of justice in our federal system. In other words, considering vacancies and taking into account the judgeships authorized by our bill, the federal Judiciary is today in need of more than 130 more judges."

AO Wins ABA Law Day Award

The Administrative Office Law Day program, Judicial Independence Is for You, has won a 2000 Outstanding Law Day Activity Award, given by the American Bar Association Standing Committee on Public Education. The annual award will be presented at the ABA's midyear meeting in 2001.

On Law Day 2000, satellite technology linked more than 1,300 high-school seniors at 34 federal courthouses around the country. The students were asked to consider, then decide amid simulated public pressure, a case in a mock trial featuring a search and seizure case arising from a fictitious school incident. The 90-minute broadcast from the Washington, D.C., studios of the Federal Judicial Television Network featured moderators Judge Ann Williams (7th Cir.) and AO attorney Daniel A. Cunningham, with a student audience. Students' decisions and the rationales for their decisions were shared via satellite, fax, and Internet during the broadcast. Federal judges, court staff, and members of the local legal communities were available at the participating federal courthouses to answer students' questions and share their observations on the process after the live national broadcast.

The AO's award-winning Law Day program featured a 90-minute broadcast that reached student audiences across the country. Moderators were Judge Ann Williams (7th Cir.) and the AO's Daniel Cunningham.

Law Day was established in 1958 to celebrate and strengthen the American heritage of liberty, justice, and equality under the law.

VACANCY ANNOUNCEMENTS
THE THIRD BRANCH
Vol. 32 Number 10 October/November 2000

U.S. MAGISTRATE JUDGESHIPS, Central District Of California

The United States Judicial Conference has authorized the appointment of five full-time magistrate judges for the Central District of California. The U.S. District Court for the Central District of California is authorized to hold court in Los Angeles, Santa Ana, and Riverside. It is anticipated that four of the positions currently recruited will be designated to Los Angeles, with one of these positions also available for service in Riverside. Salary: $129,996. The term of office is eight years. To be qualified for appointment, applicant must: 1) Be a member in good standing of the bar of the highest court of a state, District of Columbia, Commonwealth of Puerto Rico, or Virgin Islands of the United States, and have been engaged in active law practice at least 5 years. The court may consider, as substitute experience for the active practice of law, any combination of the following: state judicial officer; federal judicial officer; attorney for federal or state agencies; law clerk to any judicial officer (limited to two years); other legal experience considered suitable by a majority of the court; 2) Be competent to perform all duties; of good moral character; emotionally stable and mature; committed to equal justice under law; in good health; patient; courteous, and capable of deliberation and decisiveness; 3) Less than 70 old; and 4) not related to a district court judge of the appointing court at time of initial appointment, as specified in 28 U.S.C. 458. Application forms may be obtained from Human Resources Department, U.S. District Court, 312 N. Spring Street, Room 535, Los Angeles, CA 90012. Phone (213) 894-2012, and at: www.cacd.uscourts.gov. An original and 16 hard copies of the court's application form must be received by the Human Resources Department. **Application deadline: November 17, 2000.**

FEDERAL PUBLIC DEFENDER, District of South Dakota

An additional Assistant Federal Public Defender position in our Sioux Falls branch office has become available. As with the other two new lawyer positions recently advertised, this position involves criminal litigation in federal district and appellate courts on behalf of indigent persons. Excellent writing ability and recent, substantial criminal trial experience necessary. Submit resume and three references to Robert Van Norman, FPD, 703 Main Street, 2nd Floor, Rapid City, SD 57701. Fax: 605-343-1498. No phone calls. **Application deadline: November 17, 2000.**

FEDERAL PUBLIC DEFENDER, Northern and Eastern Districts of Oklahoma

The U.S. Court of Appeals for the Tenth Circuit seeks qualified applicants for the position of federal public defender for the Northern and Eastern Districts of Oklahoma with offices at Tulsa, Oklahoma. A merit selection panel appointed by the chief circuit judge will review all applications, conduct personal interviews in its discretion, and make recommendations to the court of appeals. Application materials are available on the court's web site: www.ck10.uscourts.gov. They also may be obtained from the clerk of the U.S. District Court for the Northern or Eastern District of Oklahoma, by writing the circuit executive for the Tenth Circuit, Byron White U.S. Courthouse, 1823 Stout Street, Denver, CO 80257, Attn: FPD Recruitment – Northern and Eastern Districts of Oklahoma, or by calling 303-844-2073. **Application deadline: December 1, 2000.**

ASSISTANT FEDERAL PUBLIC DEFENDER, District of Columbia

The Office of the Federal Public Defender for the District of Columbia has an opening for an assistant federal public defender. Salary based upon experience, within federal guidelines. Ability to speak Spanish is preferred. Send a cover letter and resume to A. J. Kramer, Federal Public Defender, 625 Indiana Avenue, N.W., Suite 550, Washington D.C. 20004. **Application deadline: November 30, 2000.**

VACANCY ANNOUNCEMENTS
Continued on reverse side

BANKRUPTCY JUDGE, District of Utah

The U.S. Court of Appeals for the Tenth Circuit invites applications from highly qualified candidates for a 14-year appointment as U.S. bankruptcy judge for the District of Utah at Salt Lake City to fill a judgeship that will become vacant March 15, 2001. Current Salary: $129,996. The qualification standards and application form are available on the court's web site at www.ck10.uscourts.gov. Copies may also be obtained from the Circuit Executive, Byron White U. S. Courthouse, 1823 Stout Street, Denver, CO 80257, 303-844-2073. **Application deadline: December 29, 2000.**

FEDERAL PUBLIC DEFENDER, Southern District of West Virginia

The U.S. Court of Appeals for the Fourth Circuit, is now accepting applications for the position of federal public defender for the Southern District of West Virginia. The term of appointment is four years. Salary: not to exceed $121,400.00. Applicants must be a member in good standing of the West Virginia State Bar or the Bar of the state in which they are currently admitted to practice and have a minimum of five years of criminal practice, preferably with significant federal criminal trial experience. To receive a copy of the application materials promptly submit request in writing to Circuit Executive, U.S. Court of Appeals, Fourth Circuit, 1100 East Main Street, Suite 617, Richmond, Virginia 23219-3517. **Application deadline: December 18, 2000.**

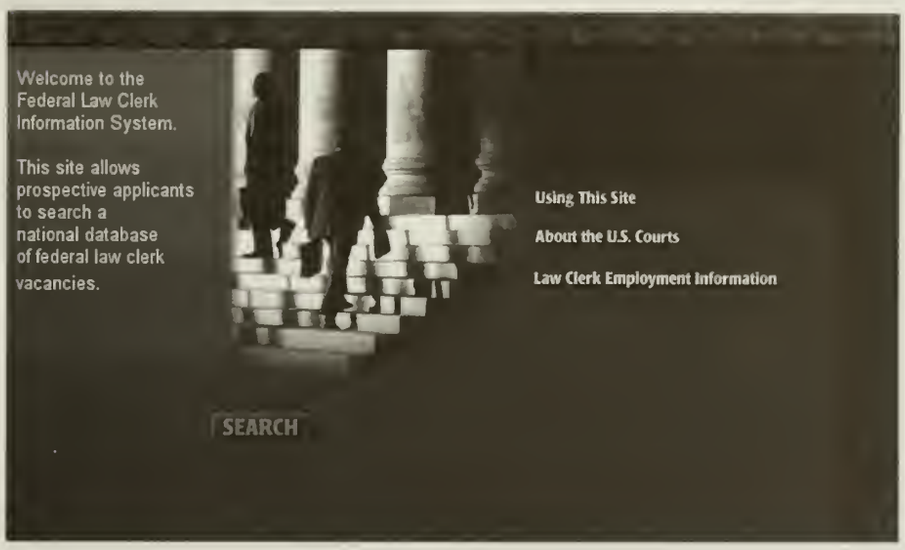
The Hunt for a Federal Law Clerkship Goes On-Line

Finding a law clerk position with a federal judge has often depended on luck and good timing: good timing because vacancies filled swiftly and luck because identifying every judge with an opening was nearly impossible. But the search just got easier. The Federal Law Clerk Information System (FLCIS), a new database accessible through the Internet and launched last month, allows prospective applicants to locate opportunities on-line through the federal Judiciary's website at www.uscourts.gov.

"Federal judicial law clerk positions are highly coveted," said Administrative Office Director Leonidas Ralph Mecham. "This new web site should meet the needs of both judges and law students since it creates a level playing field by giving all interested parties equal access to the same information. It also opens up the selection process to a potentially broader range of candidates from different law schools and parts of the country." Within days of FLCIS going live, over 300 positions had been entered by federal judges at both the district court and court of appeals levels. To review the law clerk vacancy announcements, potential applicants go to www.uscourts.gov, and click on Federal Law Clerk Information System. No password is needed, and no fee is charged for public, read-only access to the database. Applicants can search for vacancies by location, by specific court, or by the individual judge.

Law schools have been notified of the new FLCIS site, and in recent weeks, all federal judges in the country received detailed instructions on entering their law clerk vacancy information. Some of the information available may include the court's address, a contact person, how applications should be submitted, and when interviews will take place. Special requirements also may be noted. Judge Fred I. Parker (2nd Cir.) encourages applications from "individuals with life experiences beyond academia." Chief Judge D. Brock Hornby (D-Me.) and Judge Edward W. Nottingham (D. Colo.) are looking for law clerks with "accuracy and attention to detail." Several judges, such as Judge Milton I. Shadur (N.D. Ill.) and Judge Diana E. Murphy (8th Cir.) prefer law clerks with a sense of humor, or at least, notes Judge Michael M. Mihm (C. D. Ill.) "a willingness to laugh at my jokes." Judge Warren J. Ferguson (9th Cir.) would like a law clerk with a "commitment to social justice," and Judge J. Owen Forrester (N.D. Ga.) is in search of law clerks "with independence of thought, broad non-legal work experience, and good interpersonal skills." Judge Myron H. Thompson (M.D. Ala.) simply hopes for someone with "the ability to write and reason."

FLCIS was created at the suggestion of the Executive Committee of the Judicial Conference and was developed by the AO. FLCIS allows staff in judges' chambers to post information about upcoming or existing law clerk vacancies and information on judges' hiring practices that can be accessed by prospective applicants. FLCIS also tells judges which applicants already have accepted other positions or otherwise taken themselves out of consideration for an unfilled clerkship.



The website of the Federal Law Clerk Information System contains information on federal clerkship opportunities across the country.

Judge Ralph Winter, former chairman of the Executive Committee, said, "This web site should bring some civility to what has been a frantic law clerk hiring season. I believe it will be a tremendously useful tool for both judges and law clerk applicants. I did not have time last fall to do interviewing and therefore postponed hiring for the 2001-2002 term until now. Once I posted the vacancies on the website, I was contacted by a large number of applicants, many of whom were superb candidates."

JUDICIAL MILESTONES

Appointed: John W. Darrah, as U.S. District Judge, U.S. District Court for the Northern District of Illinois, September 1.

Appointed: Nicholas G. Garaufis, as U.S. District Judge, U.S. District Court for the Eastern District of New York, August 28.

Appointed: Joan Humphrey Lefkow, as U.S. District Judge, U.S. District Court for the Northern District of Illinois, September 1.

Appointed: Gerard E. Lynch, as U.S. District Judge, U.S. District Court for the Southern District of New York, August 31.

Appointed: Laura Taylor Swain, as U.S. District Judge, U.S. District Court for the Southern District of New York, August 31.

Appointed: Robert E. Gerber, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Southern District of New York, September 5.

Appointed: Eileen W. Hollowell, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the District of Arizona, September 19.

Appointed: Norbert J. Garney, as U.S. Magistrate Judge, U.S. District Court for the Western District of Texas, September 11.

Appointed: Jay R. Irwin, as U.S. Magistrate Judge, U.S. District Court for the District of Arizona, August 16.

Appointed: George C. Kosko, as U.S. Magistrate Judge, U.S. District Court for the District of South Carolina, September 6.

Appointed: Alia Moses Ludlum, as U.S. Magistrate Judge, U.S. District Court for the Western District of Texas, August 9.

Appointed: John E. Simko, as U.S. Magistrate Judge, U.S. District Court for the District of South Dakota, September 1.

Elevated: Judge James A. Parker, to Chief Judge, U.S. District Court for the District of New Mexico, succeeding Judge John E. Conway, September 2.

Deceased: Senior Judge Marion T. Bennett, U.S. Court of Appeals for the Federal Circuit, September 6.

Deceased: Senior Judge William P. Copple, U.S. District Court for the District of Arizona, September 14.

Deceased: Senior Judge David N. Edelstein, U.S. District Court for the Southern District of New York, August 19.

Deceased: Senior Judge Joseph C. Howard, U.S. District Court for the District of Maryland, September 16.

Deceased: Senior Judge Seybourn H. Lynne, U.S. District Court for the Northern District of Alabama, September 10.

Deceased: Judge Francis D. Murnaghan, Jr., U.S. Court of Appeals for the Fourth Circuit, August 31.

Director's Awards Nominations Sought

Do you know a court employee who deserves national recognition? Someone who has made your court's operations run smoother, or who always does difficult jobs right? Then nominate him or her for the 2001 Director's Awards.

The Director's Award for Excellence in Court Operations will recognize employees whose efforts have improved the function of the courts. The Director's Award for Outstanding Leadership recognizes managerial employees who have made long-term contributions to the administration of the federal Judiciary.

Nomination forms will be sent to all payroll certifying officers for distribution to employees, and will be in pdf format on the J-Net in the Human Resources Program Desk. Nominations must be received by the AO's Human Resources Division by January 8, 2001

For more information, contact J.J. FitzGerald, AO Human Resources Division. Telephone: (202) 502-3217.

THE THIRD BRANCH

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JUDICIAL BOXSCORE

As of November 1, 2000

Courts of Appeals	
Vacancies	24
Nominees	17
District Courts	
Vacancies	42
Nominees	24
Courts with "Judicial Emergencies"	22

For more information on vacancies in the federal Judiciary visit our website at www.uscourts.gov.

Haden Named Chair of Judicial Conference Executive Committee

Chief Justice William H. Rehnquist has named Chief Judge Charles H. Haden II (S.D. W.Va.) as chairman of the Executive Committee of the Judicial Conference. Haden succeeds Judge Ralph K. Winter (2nd Cir.), who served as chair of the Committee for the past year before taking senior status on September 30. Haden currently serves on the 27-member Judicial Conference and its Executive Committee.

"Judge Winter did a fine job as chairman of the Executive Committee and the Judicial Conference thanks him for his valuable service," said Chief Justice Rehnquist. "I am confident that Judge Haden also will be an able and successful chairman."

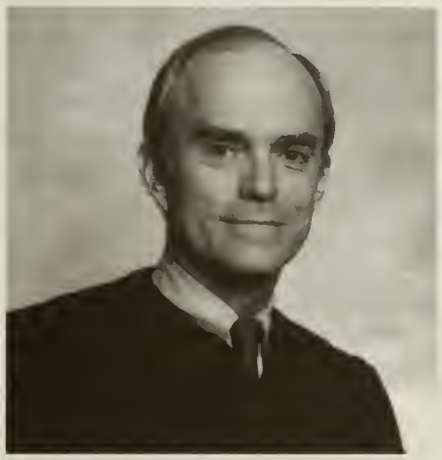
Chief Judge Charles H. Haden II (S.D. W.Va.)

Haden was appointed to the U.S. District Court for the Southern and Northern Districts of West Virginia in 1975 by President Gerald Ford. He became chief judge of the Southern District in 1982 and continues to serve as chief, making him the longest-serving chief district judge in recent history.

Haden has served in all three branches of the West Virginia state government. He was a member of the House of Delegates of the state legislature, the State Tax Commissioner, and a justice on the West Virginia Supreme Court of Appeals. He also practiced law for eight years. Haden was born in 1937 in Morgantown, W.Va., and has lived in the state his entire life.

Two New Members Appointed to Executive Committee

Chief Judge Carolyn Dineen King (5th Cir.)



Chief Judge Charles R. Butler, Jr. (S.D. Ala.)

Two vacancies on the Executive Committee created when Judges Ralph K. Winter Jr. (2nd Cir.) and Ralph Thompson (W.D. Okla.) left the Conference, have been filled by the appointment of Chief Judge Carolyn Dineen King (5th Cir.) and Chief Judge Charles R. Butler, Jr. (S.D. Ala.). The appointments were made by Chief Justice William H. Rehnquist, who makes all appointments to Judicial Conference committees and determines tenure. Also serving on the Executive Committee are Chief Judge Edward R. Becker (3rd Cir.), Chief Judge Boyce Martin (6th Cir.), Judge James M. Rosenbaum (D. Minn.) and Chief Judge Juan R. Torruella (1st Cir.). Administrative Office Director Leonidas Ralph Mecham serves as an ex-officio member of the Committee.

Become A Part of Judges' Secretaries Advisory Group

The Administrative Office is seeking the names of judges' secretaries, judicial assistants, and those providing secretarial and administrative support to judges who are interested in being considered for service on the Judges' Secretaries Advisory Group. The group, composed of 12 secretaries and judicial assistants with representation from each circuit and court level, advises the Director of the Administrative Office on matters related to judges' secretaries, judicial assistants, and others who provide secretarial and administrative support to judges. Interest-in-service questionnaires are available under "Advisory Forum" on the J-Net home page (http://156.119.80.10/advisory/index.html) or by e-mailing Maritzah_Cayemitte@ao.uscourts.gov. Questions may be directed to Townsend Robinson, Chair of the Judges' Secretaries Advisory Group, at 202-502-1170.

Judges Key to Work of ABA

Martha W. Barnett, President of the American Bar Association, is a partner in the law firm of Holland & Knight LLP. She is the second female president of the ABA and was the first woman to chair the ABA's policy-making House of Delegates. She has held leadership positions in a variety of ABA entities from 1990 to the present.

Q: The ABA is an association that must appeal to a diverse and changing profession. What are some of the programs and initiatives that specifically might interest federal judges?

A: The ABA feels very strongly that the participation of state and federal judges in the life and work of the association is critical to the work of the ABA. Their voice is one that needs to be heard. We try to make sure that judges know that and also that our programs are of interest because their participation is critical. We have a Judicial Division that is a natural "home" for our judicial members. Among other things, the division produces educational materials, training, and programs for judges. In addition, we have several presidentially appointed committees, which add focus to specific issues facing judges. These entities, some of whose members are judges, help the Association formulate policy on issues affecting the Judiciary. For example, we have a Standing Committee on Judicial Independence, which developed a model program for use by bars to respond to unjust criticism of judges. Our Standing Committee on Federal Judicial Improvements recently developed policy supporting legislation that would allow the federal Judiciary to submit its budget directly to Congress.

One of our highest legislative priorities is to help insure judicial independence—fighting for the prompt filling of judicial vacancies, opposing "court-stripping" measures, and working for increased federal judicial compensation.

Q: As the new President of the American Bar Association, what initiatives will you pursue?

A: In addition to continuing our perennial efforts in Congress to ensure judicial independence and to support the Legal Services Corporation, I will be focusing my attention on a number of initiatives. The ABA has long been committed to the equal participation in the profession by women and minorities. During the past year, Bill Paul, the immediate past president, made the signature piece of his administration increasing diversity in the profession. I have institutionalized that effort by creating a presidential task force on diversity that Bill Paul has agreed to chair. It is housed in the Office of the President to make sure that people understand how important the effort is.

We're going to continue the legal opportunities scholarship but we're going to look at other ways to address issues that relate to minority participation in the profession, both at the entry level as well as success and retention once someone is a lawyer. Ensuring diversity in the courts through minority clerkships and the like is an important piece of this.

Another initiative is a national call to action that I've issued to implement a moratorium on

Martha W. Barnett, ABA President

executions. We had a program where we invited a broad spectrum of people on all sides of the death penalty debate to come together and talk about the need for and how to implement a moratorium.

I'm going to hold a women's leadership summit in April next year to look at a number of different issues related to women in the profession. Women now constitute 52 percent of the entering classes at law schools nationally. The number of practicing lawyers who are women is rapidly approaching 35 or 40 percent of the profession. Women have achieved leadership roles, at the bar association level, in their law firms, in law schools , in corporate America, and all the different places lawyers practice. With that comes a responsibility to use that position in a constructive way for women and for society. This summit will bring together women leaders to talk about questions such as the obligations for women in the next decade.

The final initiative is the Futures Initiative. I've created a

commission on the future of the legal profession to look at most particularly the impact of globalization and technology on the practice of law; to answer what it means to be a lawyer and to practice law; to validate the core principles that we all acknowledge, such as independence and loyalty and confidentiality and integrity and competence. We need to ask where the profession is going and how we are going to preserve the role of lawyers as officers of the court, with responsibilities not just to their clients but to the administration of justice. This is going to be an exciting commission and will probably last more than the one year of my term as president.

Q: The pay of federal judges, as you know, is lagging well behind that of others in the legal professions, to the point where many attorneys just out of law schools could earn more than a federal judge. Where does the ABA stand on this issue?

A: The facts are that judicial salaries have not kept pace with inflation, or with salary increases in the profession, or with the economy. There are two reasons for this: first, Congress has not provided judges with regular cost-of-living adjustments (COLAs), and second, there is no mechanism for the periodic review of salaries of judges and other high-level governmental officials. As a result, judicial salaries simply do not reflect the value of our judges to the country or to the system of justice that we all hold so dear. The ABA has long advocated for better judicial salaries both in Congress and with the Executive Branch, when relevant. We've called for systematic reviews and changes, and have worked with Congress to get judicial salaries raised.

Simply put, judicial salaries today are neither fair nor adequate. Compensation adjustment is the right thing to do professionally, and it's the smart thing to do in order to get the quality of people we all want and need on our courts. The ABA will continue to vigorously advocate for better judicial salaries.

Q: Judicial vacancies in the district and appeals courts are of great concern. They stood at 63 toward the end of the 106th Congress, and by the time Congress convenes in January that number will certainly be higher. How do vacancies affect lawyers and litigants?

A: It certainly diminishes the effectiveness of the constitutional promise of access to federal courts. When you have vacancies in a court, the judges who are sitting often wind up with overwhelming caseloads, which they simply cannot handle. Vacancies impact, in a very fundamental way, access to justice and access to the courts. In some jurisdictions, civil dockets have been suspended in order to allow judges to hear pending criminal cases within the time limits set by the Speedy Trial Act.

The ABA works on this issue all the time. We monitor vacancies on the federal bench and work with Congress on a daily basis to make sure attention is given to filling these vacancies. It is our view that the judicial selection and confirmation process is one of the most important functions of the President of the United States, the Senate Judiciary Committee, and the U.S. Senate. By failing to fill vacancies in a timely fashion, they are failing in their obligations to the citizens of the country. What we've tried to impress on them is that it is time to exhibit leadership, put aside partisan politics, and look at what is in the best interests of the country in this area. We constantly urge the President and the Senate to work together to fill these vacancies expeditiously. We certainly work through our Standing Committee on the Federal Judiciary to provide prompt evaluations when names are submitted.

Q: It seems that protecting judicial independence often falls to the bar. Does the ABA have a role in educating the public and others about the importance of judicial independence?

A: The ABA has an important role in educating the public and others about the importance of judicial independence. When I grew up, we all took civics and government classes and learned about the separation of powers, the three branches of government, and the concept of an independent judicial branch of government. I think many people don't get that same grounding in their early days and really have lost sight of how critical to a democracy it is to have an independent judiciary. So the ABA views our role at least in part as an educational one. We have a division of public education that has been very active in Law Day activities, and in putting on programs that focus on this issue. We formed a Standing Committee on Judicial Independence that is now looking at things like the impact of campaign finance on judicial independence. Of course that doesn't affect federal judges, but it attacks the integrity of the whole judicial branch.

Judicial Conference of the United States, September 19, 2000

Seated: (LtoR) Chief Judge Juan R. Torruella (1st Cir.); Chief Judge Ralph K. Winter, Jr. (2nd Cir.); Chief Judge Edward R. Becker (3rd Cir.); Chief Judge J. Harvie Wilkinson III (4th Cir.); Chief Justice William H. Rehnquist; Chief Judge Carolyn Dineen King (5th Cir.); Chief Judge Boyce F. Martin, Jr. (6th Cir.); Chief Judge Joel M. Flaum (7th Cir.); Chief Judge Roger L. Wollman (8th Cir.).

Standing, Second Row: (LtoR) Judge Joseph A. DiClerico, Jr. (D. NH); Judge Charles P. Sifton (E.D. NY); Chief Judge Donald E. Ziegler (W.D. Pa.); Chief Judge Harry T. Edwards (DC Cir.); Chief Judge Haldane Robert Mayer (Fed. Cir.); Chief Judge Procter R. Hug, Jr. (9th Cir.); Chief Judge Sephanie K. Seymour (10th Cir.); Chief Judge R. Lanier Anderson (11th Cir.); Chief Judge Charles H. Haden II (S.D. W.Va.); Judge Hayden W. Head, Jr. (S.D. Tex.).

Standing, Third Row: (LtoR) Judge Robert L. Miller, Jr. (N.D. Ind.); Judge Thomas A. Wiseman, Jr. (M.D. Tenn.); Judge Judith N. Keep (S.D. Cal.); Judge Ralph G. Thompson, (W.D. Okla.); Judge James M. Rosenbaum (D. Minn.); Chief Judge Charles R. Butler, Jr. (S.D. Ala.); Judge Thomas F. Hogan (D. DC; Chief Judge Gregory W. Carman, International Trade; Leonidas Ralph Mecham, Director, AOUSC.

THE THIRD BRANCH

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THE THIRD BRANCH

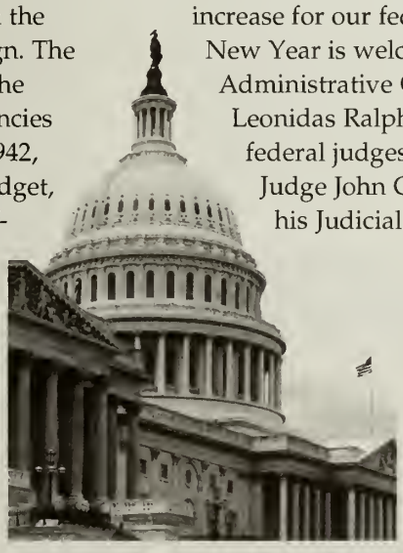
Newsletter of the Federal Courts

Vol. 32
Number 11
December 2000

106th Congress Ends

A COLA for Judges, New Judgeships and Judiciary Funding in Final Bills

With the presidential election resolved, Congress finally wrapped up its own business and headed home. The 106th Congress ended December 15 with the passage of the final appropriations bills, which the President is expected to sign. The Commerce, Justice, State, the Judiciary and Related Agencies appropriations bill, H.R. 4942, contains the Judiciary's budget, clears the way for a cost-of-living adjustment for judges, and creates 10 new Article III judgeships. The Treasury, Postal Service and General Government appropriations bill, included as part of the Omnibus Consolidated Appropriations Act, H.R. 4577, includes funding for courthouse construction.



In other legislation of interest to the Judiciary, last month Congress passed the Federal Courts Improvement Bill, which has been signed into law. It also passed the Bankruptcy Reform bill, which was subsequently vetoed by the President. Finally, in the last hours of the 106th Congress, a bill to modify the affect of the *Lexecon* decision was passed by the House and sent to the Senate. However, the Senate adjourned without taking action on the bill.

"After several months of uncertainty, the final passage of the Judiciary's budget and the prospect of a well-deserved cost-of-living increase for our federal judges in the New Year is welcome news," said Administrative Office Director Leonidas Ralph Mecham. "Many federal judges, in particular Judge John G. Heyburn and his Judicial Conference Budget Committee, with Chief Justice William Rehnquist stepping in during the critical end game, as well as Administrative Office staff, fought what at times may have seemed an uphill battle to deliver our budgetary message to Congress. In fact, before the House and Senate conference on our budget, we faced significant shortages in our appro-

*See **Budget** on page 2*

Federal Courts Improvement Act of 2000 Becomes Law

The Federal Courts Improvement Act of 2000 was signed into law as Public Law 106-518 by President Clinton on November 13. In addition to provisions enhancing the Judiciary's effectiveness and efficiency, the Act is notable for a provision it does not contain. The act was passed by Congress without a provision that would have allowed cameras in courtrooms with the consent of all parties. The House version of the Federal Courts Improvement Act, H.R. 1752, included the provision. The Senate version, S. 2915, did not.

At a hearing on S. 721, a separate bill to allow cameras in courtrooms, Chief Judge Edward R. Becker (3rd Cir.) expressed the Judiciary's strong opposition to cameras in the courtroom, and the chairman of the Senate Judiciary Committee, Senator Orrin Hatch (R-UT).

In the House, Representative Howard Coble (R-NC), chair of the House Judiciary Subcommittee on Courts and Intellectual Property, co-sponsored H.R. 1752, with ranking subcommittee member Howard L. Berman (D-CA).

See Act on page 3

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priation. The fight for a COLA for judges also was on-going, and the outcome was frequently in doubt. However, I'm happy to report success on both fronts. In addition, the Judiciary begins 2001 with sufficient funding in our Salaries and Expenses appropriations account to fully implement the new staffing formulas approved by the Judicial Conference in September, effectively lifting a two-year freeze on new staffing."

The Judiciary's Budget

Three months into the 2001 fiscal year, the Judiciary still was being funded through continuing resolutions—21 in all. The CRs give budgetary authority at FY 2000 levels to federal departments and programs until regular appropriations bills are enacted. Despite talk among a few conservatives of yet another continuing resolution lasting until September 2001, in the end Congress passed, and sent to the President, the remaining appropriations bills. H.R. 4942 funds the Judiciary at the House-Senate conference report levels of $4.3 billion, less a .22 percent (.0022) government-wide rescission. The final levels amount to an 8 percent increase over FY 2000 appropriations. For the Salaries and Expenses account, appropriations provided are sufficient to fully fund the court allotments approved in the interim financial plan by the Executive Committee in September. Nationally, court allotments grew by 14 percent over FY 2000 allotments and provide for 1,559 new court support staff. Fees of Jurors is fully funded for 2001, and the appropriated funds for Defender Services is sufficient to fund federal defender organization needs and a $5 rate increase to $75 in-court and $55 out-of-court per hour for panel attorneys, effective later in the new year. Court Security, however, is underfunded by about $16 million, and the appropriations allow for only current services for the Administrative Office and the Federal Judicial Center. As this newsletter went to press, President Clinton had not yet signed H.R. 4942, but he promised that he would.

Judicial Pay

The Commerce, Justice, State, the Judiciary and Related Agencies appropriations bill contained the required waiver of section 140 of P.L. 97-92, clearing the way for judges to receive a 2.7 percent Employment Cost Index (ECI) adjustment along with members of Congress and Executive Schedule employees on January 1, 2001. Annual cost-of-living adjustments are automatic for Members of Congress and Executive Schedule government employees unless legislation denying the increase is passed.

This will be the first election year ECI since 1992. Judges will have received ECI increases in 3 of the past 4 years, following a period of 4 years in which there were no increases.

Revised Pay Rates as of January 1, 2001

Chief Justice	$186,300
Associate Justices	$178,300
Circuit Judges	$153,900
District Judges	$145,100
Judges, U.S. Court of International Trade	$145,100
Judges, U.S. Court of Federal Claims	$145,100
Bankruptcy Judges	$133,492
Magistrate Judges (Full-Time)	$133,492

Judgeships

The Commerce, Justice, State appropriations bill also included a provision creating 10 new district court judgeships. In July, the Judicial Conference transmitted to Congress a revised request for six permanent judgeships and four temporary judgeships for the courts of appeals and 30 permanent district judgeships and 23 temporary district judgeships. The Conference also recommended that seven temporary district judgeships be made permanent and that one be extended. On September 19, 2000, Senators Orrin Hatch (R-UT) and Patrick Leahy (D-VT) introduced the Judicial Conference proposal as S. 3071, but that bill failed to move in the 106th Congress. Congress last created new judgeships in 1999, including 9 in the omnibus appropriations bill. These were the first since the Judgeship Act of 1990 was passed.

New Judgeships

District	Authorized in H.R. 4942
Arizona	1
Southern District of Florida	1
Eastern District of Kentucky	1
New Mexico	1
Nevada	1
South Carolina	1
Southern District of Texas	1
Western District of Texas	1
Eastern District of Virginia	1
Eastern District of Wisconsin	1

Courthouses

The Treasury, Postal Services appropriations bill, included in the final omnibus appropriations bill, contains $559 million in funding for eight new courthouse construction projects, four in fiscal year 2001 and four more in 2002. The 2001 courthouses are in Los Angeles, California; Seattle, Washington; Richmond, Virginia; and Gulfport, Mississippi. Funding for four more courthouse projects in Washington, D.C.; Buffalo, New York; Springfield, Massachusetts; and Miami, Florida, is also

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and held hearings before his subcommittee at which Judge Harvey Schlesinger (M.D. Fla.), chair of the Judicial Conference Committee on the Administration of the Magistrate Judges System, testified. Magistrate Judges Joel B. Rosen (D. NJ) and Robert B. Collings (D. Mass.), of the Federal Magistrate Judges Association, also testified in support of the Judiciary's position.

The House passed H.R. 1752 in May, 2000. In July 2000, Senator Charles E. Grassley (R-IA) introduced S. 2915, which was passed by the Senate on October 19. That bill was passed by the House with modifications on October 25, 2000 and returned to the Senate, where it passed October 27, 2000. It was then sent on to the White House, and the President signed the bill into law as P.L. 106-518.

P.L. 106-518 broadens the authority of magistrate judges by

- Expanding their civil and criminal contempt authority. Magistrate judges now may punish by fine or imprisonment any misbehavior occurring in their presence, and they also have been given additional civil and criminal contempt authority in civil consent and misdemeanor cases. The provision limits the penalties imposed, but provides the authority for magistrate judges to maintain order in their courtrooms and to enforce their orders.

- Eliminating the requirement that a defendant consent to the authority of a magistrate judge in Class B misdemeanor cases that do not involve a motor vehicle offense. Previously, the consent of the defendant was not required in Class B misdemeanor cases charging a motor vehicle offense, Class C misdemeanor cases, and infractions. The consent of the defendant was required in all other Class B misdemeanor cases. Under the new law, consent is not required in any petty offense cases.

Senator Charles E. Grassley (R-IA)

Representative Howard Coble (R-NC)

- Permitting magistrate judges to preside over Class A misdemeanor cases that involve juvenile defendants and to provide magistrate judges with the authority to sentence juvenile defendants to terms of imprisonment in misdemeanor cases. With this amendment, magistrate judges now have the same authority over juvenile defendants as they have over adult defendants, i.e., they may preside in petty offense cases without the defendant's consent, and they may preside in Class A misdemeanor cases with the defendant's consent.

The enacted legislation also will allow the establishment of magistrate judge positions in the district courts of Guam and the Northern Mariana Islands and allow senior judges to participate in circuit judicial councils. In addition, the act gives the Director of the Administrative Office authority to appoint certifying officials in court units, which will aid the implementation of a Judiciary-wide financial accounting system.

Among other changes in bankruptcy court proceedings, P.L. 106-518 will

- Increase certain bankruptcy fees, increasing the fee for filing bankruptcy petitions under chapter 9 from $300 to $800 and make the fees for converting a chapter 7 or chapter 13 bankruptcy case to chapter 11 equal to the filing fee for chapter 11.

- Make permanent the statutory authority for bankruptcy administrators in Alabama and North Carolina.

In court operations, the Federal Courts Improvement Act of 2000 permits the chief judge to authorize the clerk of the court, under the supervision of the court, and if provided for in the court's jury selection plan, to determine whether persons are qualified, unqualified, exempt, or excused from jury service. Before this change, the Jury Act required the chief judge, or a designated judge, to make this determination.

P.L. 106-518 amended the Criminal Justice Act (CJA), effective November 13, 2000, to increase the case compensation maximum amounts for panel attorneys. If any representational services were provided on or after November 13, 2000, the new case maximums apply to the entire representation, including services performed before that date. If all representational services were completed before November 13, 2000, the former case maximums apply. Panel attorneys now also may be reimbursed for expenses reasonably incurred in defending against actions alleging malpractice in furnishing representational services under the CJA.

Judiciary Asks For Comment on Issue of Internet Privacy

Case files, long presumed to be open for public inspection and copying unless sealed by court order, often contain private or sensitive information. As federal courts make the transition from paper to electronic case files, the Judicial Conference is studying the privacy and security implications of what will be vastly wider public access.

As part of that study, public comment is being sought.

Creation of electronic files, already begun in some federal courts, is part of a new system called Case Management/Electric Case Files (or CM/ECF). The system gives each court the option to allow lawyers and parties to file their documents over the Internet.

The courts plan to provide public access to those electronic files, primarily through a web-based Public Access to Court Electronic Records (PACER). That means court files, not just docket sheets, soon may be viewed, printed or downloaded, for 7 cents an Internet page, by anyone at any time through the Internet.

The new technology has sparked the Judiciary's review of its public-access policies.

Bankruptcy debtors must divulge intimate details of their financial affairs. In other courts, case files may contain medical records, personnel files, tax returns or proprietary information. Should electronic case files be protected from unlimited public disclosure, or should they be treated the same as paper files? What should be the Judiciary's response to the growing ability to obtain court documents without being physically present at a courthouse?

What is the appropriate scope of judicial branch action, if any, on these issues?

"The Judiciary has recognized that it would be appropriate to consciously formulate a policy in order to formally consider whether or not this ease of access should alter the traditional presumption of openness," said Judge John W. Lungstrum (D. Kan.). He chairs the Conference Subcommittee on Privacy and Electronic Access to Case Files.

"Public comment is being sought precisely because this study involves formulation of a policy that directly implicates the interests of the public," Lungstrum said. "Potential litigants and attorneys, the media, and those who have a commercial interest in the content of court records, for example, all have a stake in the process."

"Although the subcommittee thus far has received considerable input from privacy experts, academics, and government agencies, the benefits of providing the public at large a forum to comment are considerable," he added. "The Judiciary faces a sensitive and very important policy decision, and it believes that the decision should be based on as wide ranging and open a process as possible."

Various policy options may be recommended for Conference consideration.

For civil case files, the subcommittee led by Lungstrum has included these for public comment:

- Maintain the presumption that all filed documents that are not ordered sealed are available both at the courthouse and electronically.

Lawyers and pro-se litigants would have to protect their interests on a case-by-case basis through motions to seal specific documents, or through motions to exclude certain documents from electronic availability. Judges would have the discretion to protect privacy and security interests.

- Define what documents should be included in the "public file" accessible either at the courthouse or electronically.

Paper and electronic access would be treated equally, with an assumption that specific sensitive information would be excluded from public access. The challenge would be in defining what information should be included in the public file and what information should be omitted.

- Establish "levels of access" to certain electronic case file information.

Software would be used to restrict electronic access to certain documents, triggered either by the identity of the individual seeking access or the nature of the documents to which access is sought, or both. Judges, court staff, parties, and counsel would have unlimited remote access to all electronic case files.

- Seek an amendment to one or more of the Federal Rules of Civil Procedure to account for privacy and security interests.

For criminal case files, these options may be recommended:

- Do not provide any electronic public access.

This approach would exclude criminal case files from the ECF component of the new CM/ECF system based on highly sensitive information in these files. Some may feel that any legitimate need for electronic access to criminal case information is outweighed by safety and security concerns. For example, co-defendants would have easy access to information about a defendant's cooperation, potentially leading to intimidation and harassment. Access to preliminary criminal information, such as warrants or indictments, could severely hamper law enforcement and prosecution efforts.

■ Provide limited electronic public access to criminal case files.

This approach would restrict access to such documents as plea agreements, unexecuted warrants, certain pre-indictment information and presentence reports.

These options may be considered for bankruptcy case files:

■ Seek an amendment to Section 107 of the Bankruptcy Code.

Federal law currently requires access to all material filed with bankruptcy courts and gives judges limited sealing authority. One option is amending the law to specify that only "parties in interest" may obtain access to certain information and to let judges provide protection from disclosures based on privacy and security concerns.

■ Require less information on petitions or schedules and statements.

■ Restrict use of Social Security, credit card and other account numbers.

■ Segregate certain sensitive information from the public file by collecting it on separate forms that will be protected from unlimited public access and made available only to the courts, to the U.S. trustees and to parties in interest.

These options may be recommended for appellate cases:

■ Apply the same access rules to appellate courts that apply to trial courts.

■ Treat documents that were sealed or restricted at the trial level with the same protections at the appellate level, subject to a party's appeal of such treatment in the appellate court.

Under the subcommittee's aegis, a web site has been created to detail the various possible options and to receive feedback from the public. Comments can be submitted up to 5 p.m., January 26, 2001. All must include the name, mailing address and phone number of the commentator.

Electronic comments, highly encouraged, may be submitted to www.privacy.uscourts.gov or e-mailed to Privacy_Policy_Comments@ao.uscourts.gov.

Regular mail should be addressed to the Administrative Office of the U.S. Courts, Court Administration Policy Staff, Attn: Privacy Comments, Suite 4-560, Thurgood Marshall Federal Judiciary Building, Washington, D.C., 20544.

Commentators also have been asked to indicate whether they are interested in participating in a public hearing, if one is held. Would-be commentators were told, however, that it may not be possible to honor all requests to speak at any such hearing.

After public comment is received, four Judicial Conference committees will review it and continue their considerations of appropriate policy. The Conference could address the matter at its September 2001 meeting.

Judiciary Issues High on FBA List

Leaders of the Federal Bar Association visited the Administrative Office this month to discuss issues of mutual interest to the association and the Judiciary. The FBA has been a strong supporter of improved judicial pay, community outreach, courthouse construction funding, and other related areas. Left to right are Jack D. Lockridge, Executive Director of the FBA; Robert A. McNew, FBA President; Bruce L. Moyer, Director of Government Relations for the FBA; Steve Tevlowitz of the Administrative Office who staffs the Judicial Conference Committee on the Judicial Branch; and AO Director Leonidas Ralph Mecham.

Financial Accounting Package for Tomorrow Changes Courts Today

Over the next four years, federal courts across the country will scrap a variety of financial systems. In their place, the courts will put a single financial accounting system that can provide consistent, reliable, auditable, and timely financial data. All 94 district courts—over 400 court units—are slated to have the new system up and running before June 2004. By February, 24 districts and one court of appeals will use the system that appropriately has been dubbed FAS_4T, the Financial Accounting System for Tomorrow.

The District of South Carolina went live with FAS_4T in October 1999. The transition to the new system went well, according to Bankruptcy Court Clerk Brenda Argoe, who has found much to like about FAS_4T. "On our old system, if you wanted to place an order, or audit a budget line item, you had to find a stand-alone terminal and check the records. Now, I don't have to wait for the paper copy to reach me or even leave my desk. I can approve vouchers and purchase orders right at my terminal and electronically send them on to the district clerk's office. We have a tracking mechanism for receivables, and we can respond to inquires on the budget. For us, FAS_4T has been good."

The ultimate goal of FAS_4T is better financial management. All the courts on FAS_4T will interface with the Administrative Office's central accounting system, which will allow prompt and accurate budget analysis and accountability. It is a financial accounting package that eases reporting and record-keeping and integrates well with other court systems. Eventually, rather than just consolidating and reconciling data, financial managers will have the tools to analyze performance, predict program trends, and obtain timely operating data—all of which will improve decision-making and result in the optimal use of resources.

FAS_4T is improving accountability, reducing duplicate data entry, eliminating redundant systems, and moving the courts towards a paperless system.

District of Maine Magistrate Judge and Clerk of Court Bill Brownell recalls his initial concerns that the automated FAS_4T might overwhelm court staff. "We were a manual court that did all our financial work on paper ledgers. But FAS_4T is saving us time with our procurement work, as well as our budget work. Once we enter the data for a purchase order there's very little paperwork to do. FAS_4T can show what checks have been processed and outstanding purchase orders. From the perspective of a small, manual court, we're very happy," Brownell said.

The bankruptcy court in the Western District of New York, where Mary Ann Fanning is financial administrator, was one of the earliest courts to implement FAS_4T. "The best aspect of the financial system is the uniformity," said Fanning. "Before, all the courts had different ways of doing things. On FAS_4T, everyone will be doing the same thing across the country." In addition to uniformity, Fanning has found that FAS_4T offers other advantages to her court. "Because it's all electronic now, there are more eyes checking the procurements or accounts payable—and its

VACANCY ANNOUNCEMENTS
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CIRCUIT EXECUTIVE, Court of Appeals for the First Circuit

The Judicial Council for the First Circuit seeks applications from qualified persons for the position of Circuit Executive. The Circuit Executive, working under the direction of the Chief Circuit Judge, administers nonjudicial activities of the court of appeals, including personnel, budget and finance, property control, and automation and telecommunication services. The Circuit Executive provides staff support for, and serves as secretary to, the Circuit Judicial Council in its various functions. In addition, the Circuit Executive serves as liaison to the Administrative Office of the U.S. Courts, the Federal Judicial Center, other federal courts, and the courts of the various states in which the circuit is located, the marshal's office, state and local bar associations, civic groups, news media, and other private and public groups concerned with the administration of the circuit. Successful candidates should have a minimum of 10 years' progressively responsible administrative experience, including at least five years in a position of substantial responsibility; experience in federal courts is preferred. A postgraduate degree in public, business, or judicial administration or a JD or LL.B degree may be substituted for up to two years of administrative experience. A JD or LL.B degree is desirable but not required. Successful candidates must also demonstrate strong analytical communication and interpersonal skills, and experience with automated systems is highly useful. Salary: up to $130,200. The duty station is Boston, Massachusetts. The desired starting date is July 1, 2001. Applicants should send five copies of a resume and salary history to the Circuit Executive Search Committee, c/o Susan Krueger, Assistant Circuit Executive, U.S. Courthouse, Suite 3706, One Courthouse Way, Boston, Massachusetts 02210. Phone 617-748-9614. **Application deadline: 5:00 p.m., February 6, 2001.**

CLERK OF COURT, Court of Appeals for the First Circuit

The Court of Appeals for the First Circuit seeks applications from qualified persons for the position of Clerk of Court. The Clerk of the Court of Appeals is appointed by and reports to the judges of the court of appeals. The clerk is responsible for the management of the clerk's office, which has general responsibility for case management, records maintenance, statistical reporting, and the implementation of the Federal Rules of Appellate Procedure and the local rules of the Court of Appeals. The clerk serves on certain court committees and is in some instances the court's representative in various liaison functions. Successful candidates should have a minimum of progressively responsible experience, including at least three years in a position of substantial responsibility; experience in federal courts is preferable. A postgraduate degree in public, business or judicial administration or a JD or LL.B degree may be substituted for up to two years of administrative experience. The experience of an attorney in the practice of law may substitute for administrative or management experience on a year-to-year basis. A JD or LL.B degree is normally essential. Successful candidates also must demonstrate strong analytical, communication, and interpersonal skills, and experience with automated systems is highly useful. Salary: up to $126,774. The duty station is Boston, Massachusetts. The desired staring date is July 1, 2001. Applicants should send five copies of a resume and salary history to the Clerk of Court Search Committee, c/o Susan Krueger, Assistant Circuit Executive, U.S. Courthouse, Suite 3706, One Courthouse Way, Boston, Massachusetts, 02210. Phone: 617-748-9614. **Application deadline: 5:00 p.m., February 6, 2001.**

not taking longer. Eventually, this system should replace all our paper," she said.

One monthly report already has been eliminated in paper form in the bankruptcy court for North Dakota, which went live with the system in May 2000. Dianne Schmitz, Chief Deputy Bankruptcy Clerk for the court, sees FAS_4T supporting a standardized process throughout the courts and creating consistency in financial practices. She hopes this will lead to standardized financial reports. "FAS_4T meets established financial regulations and requirements, and it enables a court to move toward electronic funds transfer, for a truly paperless court. But its real beauty," said Schmitz, "is that FAS_4T lets the court maintain and enforce internal controls and accountability."

FAS_4T is a government financial system that passes the General Services Administration's rigorous testing for certified compliance with the Joint Financial Management Improvement Program's core financial standards, and it makes the Judiciary compliant with the requirements of the U.S. Treasury and General Accounting Office. It strengthens internal controls and provides information to manage locally and report at a national level. It also provides an audit trail that conforms to generally accepted government accounting principles and practices.

From a central accounting perspective, FAS_4T will eliminate numerous inefficient processes, redundant systems, duplicate data entry and accompanying reconciliations. Over half the courts submit paper reports and transactions monthly to the AO that must be entered manually into the central accounting system. FAS_4T will eliminate these inefficiencies. "Before FAS_4T, data needed to be rekeyed into the system by the AO after the district courts already had entered the information," said Chief Probation Officer Claire Cooper, in the District of Maine. "If there was a mistake, you manually had to go back through the bills and vouchers to find it. There are fewer human errors with FAS_4T because the AO doesn't have to re-enter the data from the district court. We also won't need to run copies of supporting documentation to be sent to the district court."

Bill Blevins, Bankruptcy Clerk for the Eastern and Western Districts of Arkansas, agrees that FAS_4T has cut down on the sometimes endless paper shuffling. "We've been able to cut out a lot of the repetitive paperwork," said Blevins. "You sign a voucher or a purchase order once, and it's processed. Then I can get right on FAS_4T to check its progress."

Unlike other financial systems used by the courts, FAS_4T interfaces with the Judiciary's jury management system, central accounting system, and soon will interface with the integrated library system. Eventually, it also will be compatible with the Case Management/Electronic Case Filing system now being adopted by federal courts. However, making the change to FAS_4T, much less taking advantage of all its components, can be a daunting prospect without help. That has been taken care of, too.

"The AO listened to suggestions from the courts for improving FAS_4T and also for streamlining the transition process," said James McCormack, District Clerk for the Eastern District of Arkansas, whose court went live with FAS_4T in May 2000. "For us, it was a pretty seamless transition," McCormack said. "Of course, we did our homework, verified what we could, and talked to people in courts who were actually using FAS_4T. And, our mentor court, Arizona, just did a great job."

All courts adopting FAS_4T now have mentors to help them—courts that already are using the system. Financial administrators from mentoring courts spend time at transitioning courts. "The mentoring aspect of FAS_4T is critical," said Argoe, whose court has mentored two other courts. "The mentors understand how court business runs, and they can tell a new court how they deal with issues and problems." Brownell agrees. His court is now mentoring the District Court for the District of Columbia. "The mentoring process is invaluable," said Brownell. "When our mentoring court's staff arrived at our court, they showed us how to use FAS_4T in real life, along with the short cuts they'd found and how to get the most out of the system."

Clearly, courts that have adopted FAS_4T appreciate the system's advantages, and it may be a compliment to the flexibility of the system that they are now suggesting further enhancements to the package. FAS_4T users have recommended that future versions expand report writing capabilities, and add civil and criminal accounting modules, modules that track cash functions, and connectivity to web-based systems. According to Phil McKinney, chief of the AO's Accounting and Financial Systems Division, who has overseen the development and implementation of FAS_4T, enhancements are down the line. A FAS_4T user group has been formed to advise on functional and operations issues, and a software review board also has been established. These groups will provide a forum for information exchange among the courts and help prioritize recommended improvements to the software. Bill Blevins summarized the anticipation neatly. "We have our foundation," said Blevins. "Now we can focus on what else we want to accomplish."

JUDICIAL MILESTONES

Appointed: Dennis M. Cavanaugh, as U.S. District Judge, U.S. District Court for the District of New Jersey, September 20.

Appointed: Susan R. Bolton, as U.S. District Judge, U.S. District Court for the District of Arizona, October 20.

Appointed: Michael J. Reagan, as U.S. District Judge, U.S. District Court for the Southern District of Illinois, October 23.

Appointed: James A. Teilborg, as U.S. District Judge, U.S. District Court for the District of Arizona, October 17.

Appointed: James K. Coachys, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Southern District of Indiana, October 1.

Appointed: Allan L. Gropper, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Southern District of New York, October 4.

Appointed: Adriana Arce-Flores, as U.S. Magistrate Judge, U.S. District Court for the Southern District of Texas, October 10.

Appointed: Ellen S. Carmody, as U.S. Magistrate Judge, U.S. District Court for the Western District of Michigan, October 10.

Appointed: Stephen G. Larson, as U.S. Magistrate Judge, U.S. District Court for Central District of California, October 2.

Appointed: F. Bradford Stillman, as U.S. Magistrate Judge, U.S. District Court for the Eastern District of Virginia, October 1.

Appointed: Bernardo P. Velasco, as U.S. Magistrate Judge, U.S. District Court for the District of Arizona, September 29.

Appointed: Anthony R. Mautone, as U.S. Magistrate Judge, U.S. District Court for the District of New Jersey, October 12.

Elevated: Court of Appeals Judge John Walker, Jr. to Chief Judge, U.S. Court of Appeals for the Second Circuit, succeeding Judge Ralph K. Winter, October 1.

Elevated: Judge Joseph F. Anderson, Jr., to Chief Judge, U.S. District Court for the District of South Carolina, succeeding Judge C. Weston Houck, October 1.

Elevated: Judge Glen H. Davidson, to Chief Judge, U.S. District Court for the Northern District of Mississippi, succeeding Judge Neal Biggers, October 2.

Elevated: Judge G. Patrick Murphy, to Chief Judge, U.S. District Court for the Southern District of Illinois, succeeding Judge J. Phil Gilbert, October 3.

Elevated: Judge Fred Van Sickle, to Chief Judge, U.S. District Court for the Eastern District of Washington, succeeding Judge Wm. Fremming Nielson, September 1.

Elevated: Bankruptcy Judge Gregory F. Kishel, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the District of Minnesota, succeeding Judge Dennis D. O'Brien, October 1.

Senior Status: Chief Judge Neal Biggers, U.S. District Court for the Northern District of Mississippi, October 1

Senior Status: U.S. Court of Appeals Judge James R. Browning, U.S. Court of Appeals for the Ninth Circuit, September 1.

Senior Status: Judge John E. Conway, U.S. District Court for District of New Mexico, September 1.

Senior Status: Judge Patrick J. Duggan, U.S. District Court for the Eastern District of Michigan, September 29.

Senior Status: Court of Appeals Judge Ralph K. Winter, Jr., U.S. Court of Appeals for the Second Circuit, September 30.

Senior Status: Judge Alfred M. Wolin, U.S. District Court for the District of New Jersey, September 18.

Deceased: Senior Court of Appeals Judge Wilbur F. Pell, Jr., U.S. Court of Appeals for the Seventh Circuit, September 25.

Deceased: Senior Judge Halbert O. Woodward, U.S. District Court for the Northern District of Texas, October 3.

Deceased: Bankruptcy Judge Joseph W. Hedrick, Jr., U.S. Bankruptcy Court for the Eastern District of California, September 23.

Deceased: Magistrate Judge Robert B. O'Connor, U.S. District Court for the Western District of Texas, September 26.

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JUDICIAL BOXSCORE

As of December 1, 2000

Courts of Appeals	
Vacancies	25
Nominees	17
District Courts	
Vacancies	42
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For more information on vacancies in the federal Judiciary visit our website at www.uscourts.gov.

Judiciary Loses Last of Truman Appointees

The last of the federal judges appointed by President Harry S. Truman died this year. During his administration, 1945-1952, Harry S. Truman appointed 142 federal judges. Judge David N. Edelstein, in the District Court for the Southern District of New York, and Judge Seybourn H. Lynne, in the District Court for the Northern District of Alabama, were the last two active judges appointed in the Truman years. Edelstein, who was nominated in 1951 and confirmed by the Senate in 1952, died in August at the age of 90. Lynne died in September at the age of 93. He was appointed in 1946.

Their "class" included four Supreme Court justices, Chief Justice Frederick Vinson, Justice Harold H. Burton, Justice Tom C. Clark, and Justice Sherman Minton; Judge William Henry Hastie (3rd Cir.), the first African American appointed to the federal bench; and Judges Richard Taylor Rives (5th & 11th) and James Skelly Wright (E. D. La.), who were instrumental in the advancement of civil rights in the South. Lynne also was one of the Southern judges who broke ground in the civil rights movement. He wrote the opinion in 1963 that prevented then-Governor George Wallace from barring African Americans from the University of Alabama, and which brought the country Wallace's symbolic stand in the schoolhouse door. Well loved and respected in Decatur, at Lynne's death a former clerk told the *Birmingham News* that Lynne not only knew the names of his 40 past law clerks, their spouses, and their children, he also knew their birth dates. The federal courthouse in Decatur, Alabama, is named for him.

Judge David N. Edelstein

Judge Seybourn H. Lynne

Edelstein also was no stranger to controversy. He presided over the government's antitrust case against IBM—a case that took some 43 years. He was involved in the equally contentious government case against the International Brotherhood of Teamsters and the subsequent supervision of the union. An Associated Press story at the time of his death recounts that when several wholesale bakers were convicted of price-fixing, he ordered them to provide the needy with $1,200 worth of free food each week for two years.

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appropriated in the bill but cannot be obligated until fiscal year 2002. The bill also includes funding in the coming year for repairs and alterations on nearly a dozen courthouse projects.

Bankruptcy Reform Bill

One piece of legislation of interest to the Judiciary to be passed by Congress in its lame duck session also was packed with provisions some of which were opposed by the Judicial Conference. In early December, the Senate passed the Bankruptcy Reform Act of 1999, H.R. 2415, and sent the bill to the White House. The House had passed the bill in October and sent it on to the Senate for its consideration. On the plus side, the bill included 23 new bankruptcy judgeships and extended the terms of five existing temporary judgeships. The Judicial Conference had recommended the creation of 24 new bankruptcy judgeships, conversion of two temporary judgeships to permanent judgeships, and extension of the terms of three other existing temporary judgeships.

The bill contains several provisions the Conference opposes. Among these are provisions that would allow direct appeals to circuit courts from the decisions of bankruptcy judges; impose a duty upon bankruptcy clerks to maintain tax returns filed by debtors; impose a duty upon bankruptcy clerks and the Administrative Office to collect statistical data from bankruptcy filings and report such data to Congress; and revise filing fees in chapter 7 and chapter 13 cases and reduce by approximately $25 million over five years that portion of the revenue generated by such fees that is allocated to the Judiciary under current law. These provisions were included in the final bill despite appeals by Administrative Office Director Leonidas Ralph Mecham, a letter voicing strong opposition from the chief judges of 11 of the circuit courts of appeals, and efforts by AO staff to communicate Conference concerns to Hill staff.

The President pocket-vetoed the bill, thus defeating the legislation for the 106th Congress.

Panel's Long-Time Chair Steps Down

Judge John F. Nangle was appointed to the U.S. District Court for the Eastern District of Missouri in 1973. He stepped down as chair of the Judicial Panel On Multidistrict Litigation in December.

Q: You've served as the chairman of the Judicial Panel on Multidistrict Litigation since 1990. What are the panel's statutory responsibilities?

A: The Panel's current responsibilities arise under 28 USC § 1407. The need for having one district judge preside over, in one docket, a number of cases that had been filed in numerous district courts around the country became apparent in 1968. At that time, a large number of electrical equipment cases had been filed in many districts around the country. Circuit Judge Murrah and other leading jurists persuaded Congress that the centralization of such cases before one judge was truly necessary, especially in complex civil litigation. As a result, § 1407 was enacted granting the Panel, in civil cases, authority to centralize, before one transferee judge, cases from various districts around the country which involved one or more common questions of fact.

Q: How does the Panel carry out those responsibilities?

A: Normally, matters are brought before the Panel by motion of one or more of the parties in such litigation. The Panel rules set out the procedure for briefing, holding hearings, and deciding on the question of whether or not centralization of such cases is appropriate. In handling these dockets, the Panel holds hearings every two months. The docket, at such hearings, may cover from 15 to 25 contested matters. Usually, each such docket contains a large number of cases within it. As of September 2000, over 161,000 actions were subjected to § 1407 determinations. These dockets may include antitrust matters, security fraud cases, product liability cases, major airplane crashes, and patent litigation, just to name a few of the subjects.

Q: What are some of the other notable complex cases that have come before your Panel?

A: The asbestos cases are the best-known cases that we have centralized. This was done by the Panel in 1991 after prior Panels on five occasions had refused to centralize such cases. As Panel chairman, I had been contacted by a number of federal judges around the country who were deeply concerned about the large volume of asbestos cases being filed in their districts. Accordingly, the Panel, acting with its sua sponte power, set a special all-day hearing for all the parties involved. We, thereafter, determined to centralize all of the asbestos cases before Judge Weiner in the Eastern District of Pennsylvania. Since accepting this assignment, Judge Weiner has performed exceedingly well in the handling of this massive caseload—he has been able to keep to a minimum the corporations involved from going into bankruptcy, while at the same time assuring the plaintiffs with the most serious cases a fair and speedy resolution of their case. Some plaintiffs' lawyers have not been overjoyed with this procedure because their individual cases

Judge John F. Nangle

may not have proceeded as quickly as the more serious cases. On the other hand, Judge Weiner has miraculously disposed of approximately 63,500 separate cases, which translates into over 5,000,000 separate claims.

Other significant complex docket would include the silicon gel breast implant cases, the Michael Milken/Drexel Burnham cases, the Keating Savings and Loan cases, and major airplane crashes such as Flight 800 off Long Island, the airplane crash in which Secretary of Commerce Ron Brown died in Croatia, the ValuJet crash in the Florida Everglades, and the recent Swissair crash near Nova Scotia.

More recently, we have considered and transferred the Bridgestone/Firestone/Ford cases, the Phen-Fen cases, the Humana HMO cases, the Microsoft civil cases, and Holocaust cases in their many forms.

Q: Could you describe some of the advantages of centralizing a group of cases before one judg

A: In a situation where a number of complex civil cases have been filed in various districts around the country, which

cases contain common questions of fact (and law), it is obvious that such cases can be best handled by one judge. This judge can control discovery, rule on motions to dismiss and motions for summary judgment, and organize the case much more economically than 10 or 15 judges could do. He will have one document depository, avoid duplicative depositions and other discovery measures, and, importantly, avoid the distinct possibility of having conflicting decisions in separate circuits if the cases are not centralized.

Q: How has the Panel's choice of transferee district evolved since 1990?

A: The Ford/Firestone cases may be a good example of how the Panel's choice of district has developed during my term. Let's say cases were filed in several districts, including California-Northern, Illinois-Northern, and New York-Southern. Previously, the Panel likely would have assigned the cases to one of the three named districts because perhaps one of them had more documents, or the company being sued may be located there, or because most of the witnesses or lawyers might be in one district. After 1990, we began to consider other factors in selecting a transferee district.

In the Ford/Firestone matters, we followed what might be called a neutral approach. In this hotly contested matter, we wanted to avoid the perception that any of the parties might be favored and decided not to send it to any of the districts that the parties desired. Instead, we wanted to make sure that we secured an outstanding judge in a good geographical location, and we thus selected Chief Judge Sara Evans Barker in Indiana. We followed the same procedure basically in the silicon breast implant cases, which were sent to Judge Sam Pointer, who, like Chief Judge Barker, did not have any pending cases on that particular docket.

Twelve or 15 years ago, the Panel likely would have sent these cases to one of the requested districts because the documents were in that district or because most witnesses were located in that district. A large factor in being able to change this policy arises out of the great technological advances made with computers, copying and storing documents, etc. As a result, many cases can be assigned to virtually any district.

In the past, I would estimate that a large portion of our dockets contained parties and attorneys who wanted to go to California, New York, Illinois-Northern, or the Eastern District of Pennsylvania. Instead of overloading those districts, we have been successful in using the services of outstanding judges across the country who are not in these major metropolitan districts. This has truly enabled us to develop a splendid pool of potential transferee judges who would otherwise have been overlooked.

Q: How has Congress responded to the Supreme Court's *Lexecon* decision?

A: I personally believe the *Lexecon* decision to be correct, even though our practice had been otherwise for 30 years. During those 30 years, we allowed the transferee judge, if they felt it was in the best interest of the parties and witnesses and in the interest of justice, to retain the cases for trial. Obviously, that gives the judge the necessary power to control the cases and ultimately settle them or secure some other kind of resolution. The *Lexecon* decision held that the transferee judge could not retain the cases for trials. The Panel and its staff have been helping transferee judges in many ways to avoid the full impact of the *Lexecon* decision but it certainly has crippled the Panel's ability to function as it was initially intended to function.

I will not go into all of the details but Judge Barefoot Sanders, Mike Blommer of the AO, and I have spent an unbelievable amount of time in working with Congress in an attempt to secure an amendment to § 1407 which will return the "self-transfer" power to the transferee judge. Both the Senate and House have approved our statutory recommendation in response to the *Lexecon* decision, but it bogged down just as it reached final passage form. I still have high hopes that our proposed amendment (H.R. 2112) will be passed before this Congress adjourns.

Q: You stepped down as chair of the Panel on December 1. What are your plans for the future?

A: I plan to keep working as a judge. Work on the Panel has certainly been one of the most enjoyable undertakings I have ever been involved in. However, 10 years is more than enough, and I am truly honored to be replaced by a judge of the caliber of Terry Hodges.

I expect to continue sitting with the 11th Circuit at least once a year and the 8th Circuit at least once a year. I still have a significant group of complex cases in my old district, the Eastern District of Missouri, and I handle a docket in my present home, the Southern District of Georgia. If things lighten up by next summer, I would think seriously of helping out some of the districts in the border states that are truly hard pressed. One of the things that I have learned as Panel chairman in dealing with all 94 districts over these past 10 years is that any requests for new district judges be scrutinized carefully.

I love the work. I have enjoyed judging. I've enjoyed the repartee with lawyers and other judges and trial work. And as long as I enjoy it and my mind and body permit me to keep going, I'll do it.

Law-Related Education Has Hearing at Boston Courthouse

The Boston courthouse hosted the annual conference of the Massachusetts Association for Law-Related Education this fall. Teachers and a class of high-school students from nearby Milford, Massachusetts, participated in two panels, one on search and seizure issues and another on the rights of criminals and victims. U.S. District Judge Patti B. Saris, the court's education liaison, was the moderator on both panels. Participants also heard about the resources available to educators on the federal Judiciary. In the photo (above) panelists from left to right, Assistant U.S. Attorney Timothy Q. Feeley, Judge Saris, Magistrate Judge Marianne B. Bowler, and Federal Public Defender Miriam Conrad discuss search and seizure. In the photo (left) Chief Judge William G. Young leads students and teachers through a discussion on criminals' and victims' rights.

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2000 YEAR-END REPORT ON THE FEDERAL JUDICIARY

Overview

The 2000 Year-End Report on the Federal Judiciary is my 15th report as Chief Justice. Despite the seesaw aftermath of the Presidential election, we are once again witnessing an orderly transition of power from one Presidential administration to another. This Presidential election, however, tested our Constitutional system in ways it has never been tested before. The Florida State courts, the lower federal courts and the Supreme Court of the United States became involved in a way that one hopes will seldom, if ever, be necessary in the future.

I am pleased to report that a federal courts improvement bill was enacted for the first time in four years. The Act includes nearly 30 provisions covering a wide range of issues of importance to federal court operations. Thanks are due to Congress for creating ten new district judgeships and for confirming 39 judges during the last year, including three in Arizona, one of the Southwestern states where judges are so urgently needed. I hope that the 107th Congress will take action on the Judicial Conference's request to establish ten additional court of appeals judgeships, 44 additional district court judgeships and 24 new bankruptcy judgeships.

Chief Justice William H. Rehnquist

Although Congress responded to many of the Judiciary's legislative priorities during this year, I will focus in this report on what I consider to be the most pressing issue facing the Judiciary: the need to increase judicial salaries. I will also discuss proposed legislation that would effectively bar judges from attending privately sponsored seminars.

Judicial Compensation

One key to the independence of the federal Judiciary is that Article III of the Constitution of the United States guarantees federal judges tenure during good behavior and prohibits reducing their compensation while in office. Yet the federal courts of course depend on Congress for funding, including any increase in judicial compensation.

At the Constitutional Convention, the framers saw the necessity of allowing periodic increases in judicial salaries. Although the original draft of the compensation clause of Article III contained a prohibition on either decreasing or increasing the salary of a sitting judge, the delegates to the Convention recognized that freezing judges' salaries would be unworkable and would nullify the protections of life tenure. The delegates agreed that Congress ought to be able "to increase salaries as circumstances might require . . . ." They noted three independent factors that could

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justify raising judicial salaries: inflation, an increased workload or societal expectations. As Alexander Hamilton explained:

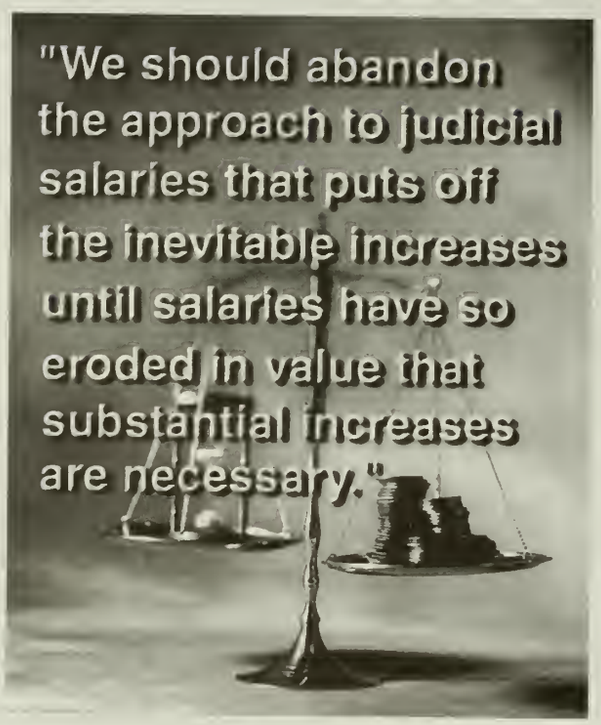
It will readily be understood, that the fluctuations in the value of money and in the state of society, rendered a fixed rate of compensation [for judges] in the Constitution inadmissible. What might be extravagant to-day, might in half a century become penurious and inadequate.[2]

The delegates also recognized that the Judiciary would require persons "of the first talents" and that to attract them the pay would have to be substantial.[3] Today, all of these factors point to the need for a salary increase for the Judiciary.

I recognize that the salaries of federal judges are higher than average salaries in many occupations, and that some may be skeptical of the need to raise the salaries of judges who already earn more than $140,000 per year. But in order to continue to provide the nation a capable and effective judicial system we must be able to attract and retain experienced men and women of quality and diversity to perform a demanding position in the public service. The fact is that those lawyers who are qualified to serve as federal judges have opportunities to earn far more in private law practice or business than as judges.

In order to continue to attract highly qualified and diverse federal judges—judges whom we ask and expect to remain for life—we must provide them adequate compensation. To paraphrase a statement made by George Mason at the Constitutional Convention, I fear that otherwise the question will be not who is most fit to be chosen, but who is most willing to serve. We cannot afford a Judiciary made up primarily of the wealthy.

We should abandon the approach to judicial salaries that puts off the inevitable increases until salaries have so eroded in value that substantial increases are necessary. The Commission on Executive, Legislative and Judicial Salaries (known as the "Quadrennial Commission") was devised in 1967 to solve this problem through an independent commission of private sector members that would recommend to the President appropriate salary changes for the Judiciary as well as the Congress and senior Executive Branch officers. 2 U.S.C. §§ 351 *et seq.* The President was to take these recommendations into account in making his salary recommendations to Congress. Unless Congress acted to disapprove them within 30 days, the salary rates recommended by the President would be implemented.



The Quadrennial Commission, whose members were appointed every four years by the President, the Speaker of the House, the President of the Senate and the Chief Justice, first met in 1968. Although the President's recommendation to Congress was less than the Commission's recommendation, it was implemented in 1969. The 1973 Quadrennial Commission's recommendation and the President's recommendation based upon it were not implemented. The 1977 Quadrennial Commission for the first time recommended different rates of pay for Level II Executive Branch officers ($60,000), Members of Congress ($57,500) and court of appeals judges ($65,000). The President recommended $57,500 for all three categories, which was implemented in 1977.

The 1981 Quadrennial Commission's recommendation and that of the President were not implemented. The 1985 Quadrennial Commission made no salary recommendations, but the 1987 Quadrennial Commission recommended that the rates of pay for Level II Executive Branch officers, Members of Congress and court of appeals judges be raised to $135,000; the President recommended $89,500 for Level II Executive Branch employees and Members of Congress, and $95,000 for court of appeals judges.[4] The recommendations were implemented in 1987. The 1989 Quadrennial Commission's recommendation and the President's recommendation based upon it were not implemented, but they laid the groundwork for the enactment later that year of the Ethics Reform Act.

In addition to the Quadrennial Commissions, in 1975 Congress enacted the Executive Salary Cost-of-Living Adjustment Act, which gave

[1] *2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, p. 44 (Max Farrand ed., 1911) (hereinafter Farrand).*

[2] *The Federalist No. 79 (Lodge ed. 1908), pp. 491-492.*

[3] *2 Farrand, at 429.*

[4] *The Quadrennial Commission's mandate was to recommend salary changes for the Judiciary as well as Congress and senior Executive Branch employees. For simplicity, I have referred only to its recommendations for Level II Executive Branch employees, Members of Congress and court of appeals judges.*

judges, Members of Congress and high-level Executive Branch officials the same automatic cost-of-living adjustments accorded to other federal employees, unless specifically rejected by Congress. In practice, however, Congress frequently rejected or reduced the cost-of-living adjustments due under the Act. In 1981, Congress enacted section 140 of Public Law No. 97-92, which requires specific congressional action to give judges cost-of-living adjustments.

As the President noted in transmitting his 1989 salary recommendations to Congress, "[e]very one of the Commissions that has met over the past 20 years concluded that a pay increase for key Federal officials was necessary." Cong. Rec., vol. 135, pt. 1, p. 251, Jan. 19, 1989. The President also noted that the 1989 Quadrennial Commission had "documented both the substantial erosion in the real level of Federal executive pay . . . since 1969 and the recruitment and retention problems that have resulted, especially for the Federal judiciary." Id. Because neither the Quadrennial Commissions' recommendations nor cost-of-living adjustments were regularly implemented, periodic crises in federal pay continued to arise.

The Ethics Reform Act of 1989, Public Law No. 101-194, was the latest effort to resolve this problem. It provided a cost-of-living adjustment that year, followed by a pay raise the following year, for a total increase in judicial pay of nearly 35 percent. The Act also provided for yearly upward adjustments (automatic unless rejected by Congress for Members of Congress and Executive Branch officers, but still requiring legislation for judges) based upon the Employment Cost Index (ECI). Since 1993, however, there have been only three adjustments in the salaries of federal judges—2.3 percent adjustment in 1998, a 3.4 percent adjustment in 2000 and a 2.7 percent adjustment effective today. The 1989 Act also replaced the Quadrennial Commission with a different form of commission; that commission has never even met.

Although the Judiciary is appreciative of any upward adjustment, these small and infrequent increases have once again allowed federal judicial salaries to erode. This unfortunate situation should not continue. As in the late 1980s, we are facing a critical moment in judicial compensation. The need for increased compensation for federal judges has been raised in 13 of the last 19 Year-End Reports, yet during that time judicial salaries have not even kept pace with inflation. And they have been far outpaced by salaries of lawyers in the private sector.

Twenty years ago, those lawyers who were appointed to the federal bench from private practice earned an average of about $131,000 just prior to their appointments. As of January 1, 2001, our federal district court judges make $145,100 and our court of appeals judges are paid $153,900 per year. Yet many partners in top firms in large cities now make in excess of $500,000 per year. It is no wonder that during the 1990s, 54 federal district court and court of appeals judges left the bench. While we cannot say that these judges left because of salary concerns alone, this number compares with 41 judges during the 1980s and just three during the 1960s.

If the federal Judiciary had received the ECI adjustments called for by the Ethics Reform Act of 1989, district court judges would now be paid about $159,300 and court of appeals judges $168,900. Instead, the compensation of federal judges continues to lag far behind both inflation and the spiraling compensation of attorneys in private practice. Many judicial law clerks, who work for federal judges for one or two years immediately after graduating from law school, leave their clerkships to work for top firms in big cities and immediately make as much as the judges for whom they clerked. While most of these law clerks have been out of law school for only a year or two, our federal judges are necessarily already experienced attorneys when they are appointed. Becoming a federal judge is an honor and a privilege, and requires a devotion to public service. But even the most devoted public servant should be fairly compensated.

Toward the end of the 106th Congress, there was a move to repeal the ban on honoraria for judges imposed by the Ethics Reform Act of 1989, in an effort to ameliorate the effect of lagging salaries and Congress's failure to implement cost-of-living adjustments envisioned by the Act. This move was met with an outcry against what some feared would create the appearance of impropriety, even though any honoraria would be governed by the strict standards of the Code of Conduct for United States Judges, just as they had been before 1989. Yet many of those who condemned any effort to repeal the honoraria ban recognized the genuine need to increase salaries for the federal Judiciary.

The 107th Congress has a real opportunity to solve the problem of inadequate judicial compensation, particularly in light of the current budgetary surplus. First, Congress should act to pass legislation to restore foregone ECI adjustments by increasing judicial salaries by 9.6 percent and the President should sign this legislation. Second, because judges are appointed for life and expected to remain on the bench, increases in judicial compensation should not be tied to increases for non-career public servants. Third, future Ethics Reform Act increases for the Judiciary should be automatic. Finally, some form of the Quadrennial Salary Commission should be revived in order to advise Congress and the President periodically as to appropriate compensation for senior gov-

ernment officials. I am hopeful that during the next year, we can work together to bring about a lasting solution to ensuring consistent, adequate compensation for the Judiciary.

Privately Sponsored Seminars

Last July, after a private organization issued a report critical of judges' attending private educational seminars at the expense of the seminar sponsors, legislation was introduced that would prohibit federal judges from accepting "anything of value in connection with a seminar." The Judicial Education Reform Act of 2000, known as the Kerry-Feingold Bill (S. 2990 (106th Cong.)) would give the Board of the Federal Judicial Center the power to authorize government funding for judges to attend only those "seminars that are conducted in a manner so as to maintain the public's confidence in an unbiased and fair-minded judiciary."

The assignment to the FJC Board—or to any government board—of authority that is tantamount to deciding what seminars or educational meetings federal judges may attend—and to decide it under the extraordinarily vague standard set out above—has most of the elements commonly associated with government censorship. Such a proposal seems quite out of place in this country, with its tradition of freedom of speech and of the press. As Justice Holmes famously noted (in his dissent in *Abrams v. United States*, 250 U.S. 616, 630 (1919)), "the ultimate good desired is better reached by free trade in ideas" than by censorship.

Existing legal and ethics provisions properly restrict judges from accepting benefits from parties to litigation before them and provide for disqualification in any instance where a judge's impartiality might reasonably be questioned. The current financial disclosure requirements also ensure that information regarding attendance at private seminars at the expense of the seminar sponsors is available to the public.

At its meeting in September, the Judicial Conference of the United States opposed the Kerry-Feingold Bill, noting that it is overly broad, raises potential constitutional issues and would mandate an inappropriate censorship role for the Federal Judicial Center. Subsequently, the FJC Board also opposed the bill. In addition to the reasons cited by the Judicial Conference, the FJC Board explained that the legislation would jeopardize the Federal Judicial Center's ability to cosponsor seminars with law schools and other organizations, as it occasionally does now. The legislation is also opposed by the Federal Judges Association and the deans of a number of law schools.

The Federal Judicial Center's mandate is to provide continuing education for federal judges and court personnel—and for over 30 years the Center has ably performed this task. Later in this report, I describe the range of programs for judges presented by the Center last year. Nevertheless, the Center cannot provide every federal judge education each year on the wide array of subjects that judges may confront, including topics primarily of local concern. Seminars organized by law schools, bar associations and other private organizations are a valuable source of education in addition to that provided by the Federal Judicial Center. The effect of S. 2990 would be dramatically to restrict the information made available to federal judges through seminars by requiring that the content of that information and the identities of its presenters be weighed against a prediction of public confidence in fair-mindedness. This is contrary to the public interest in encouraging an informed and educated Judiciary, and contrary to the American belief in a free trade in ideas.

The Year in Review

Information Assistance to Foreign Judiciaries

As I have noted in previous Year-End Reports, many representatives of foreign judicial systems continue to turn to our Judiciary for education and technical assistance. This year over 900 representatives from more than 60 foreign judicial systems formally visited the Supreme Court of the United States seeking information about our system of justice. The Federal Judicial Center, the Administrative Office of the United States Courts, and the International Judicial Relations Committee of the Judicial Conference have been instrumental in providing international visitors with information, education and technical assistance to improve the administration and independence of foreign courts and enhance the rule of law. At the same time, we have gained valuable insights into our own judicial system by exchanging information with these foreign visitors.

The Federal Courts' Caseload

In Fiscal Year 2000, filings in the 12 regional courts of appeals were essentially static, growing by four cases from the previous year to 54,697.[5] In the district courts, civil filings showed a similar pattern, declining by less than 1 percent to 259,517 cases,[6] while criminal filings rose for the sixth straight year.[7] The increase in criminal filings was echoed by a 7 percent gain in the number of defendants requiring pretrial services.[8] The number of persons on probation, which is less directly affected by criminal filings, went up by 3 percent.[9] Filings in U.S. bankruptcy courts continued a decline that began last year, falling 7 percent from 1,354,376 to 1,262,102.[10]

The number of judicial confirmations increased 40 percent from 25 in 1999 to 35 in Fiscal Year 2000, while the count of vacancies grew from 62 as of September 30, 1999, to 66 one year later. In addition to the 35 confirmations mentioned above, the Senate confirmed four judicial nominees on October 3.

The Supreme Court of the United States—Caseload Statistics

The total number of case filings in the Supreme Court increased from 7,109 in the 1998 Term to 7,377 in the 1999 Term—an increase of 3.8 percent. Filings in the Court's *in forma pauperis* docket increased from 5,047 to 5,282—a 4.7 percent rise. The Court's paid docket increased by 31 cases, from 2,061 to 2,092—a 1.5 percent increase. During the 1999 Term, 83 cases were argued and 79 were disposed of in 74 signed opinions, compared to 90 cases argued and 84 disposed of in 75 signed opinions in the 1998 Term. No cases from the 1999 Term were scheduled for reargument in the 2000 Term.

The Administrative Office of the United States Courts

The Administrative Office of the United States Courts serves as the central support agency for the administration of the federal court system. Among the Administrative Office's most important responsibilities are preparing, under the guidance and direction of the Judicial Conference and its Committee on the Budget, the Judiciary's annual budget request, and subsequently submitting that request to Congress. Because the Judiciary's appropriations bill is included with those of the Departments of Commerce, Justice, State and certain other federal agencies, the Judiciary's budget was once again delayed this year because of policy differences between the Congress and the President. Although these issues had nothing to do with the federal courts, the uncertain budget situation had the potential to jeopardize the effective and efficient operation of the Judicial Branch. Ultimately, however, under the leadership of the Judicial Conference's Budget Committee, chaired by Judge John G. Heyburn, II, and Administrative Office Director Leonidas Ralph Mecham, the Judiciary fared well in the Fiscal Year 2001 appropriations bill. The 8

[5] *Original proceedings increased 18 percent, and criminal appeals rose 4 percent, which offset declines in filings of bankruptcy, civil, and administrative agency appeals, down 9 percent, 2 percent, and 1 percent, respectively.*

[6] *The decline in civil filings in the U.S. district courts was only 754 cases or three-tenths of 1 percent. Though the total number was essentially unchanged, specific areas of civil litigation experienced significant increases and decreases. Federal question litigation declined 3 percent, falling by more than 5,000 cases. This was chiefly attributable to a 40 percent overall decline in personal injury cases, mostly related to asbestos and breast implant filings. Diversity of citizenship filings also fell, declining by 2 percent to 48,626, largely due to decreases in personal injury/product liability filings. Offsetting these declines were increases in U.S. plaintiff or defendant actions which grew 9 percent, rising from 65,443 to 71,109 cases. U.S. plaintiff cases increased 10 percent, primarily because filings involving contract actions grew by 9 percent. Recovery of overpayments related to defaulted students loans, increasing from 21,816 to 24,329, was the primary reason for the overall contract action increase. The number of filings with the U.S. as defendant also rose, for the most part attributable to a 14 percent increase in social security filings and a 9 percent rise in prisoner petitions. The Social Security Administration devoted resources to clearing a backlog and, as a result, social security supplemental security income cases increased 19 percent, or by more than 1,000 cases, and disability insurance cases increased 11 percent, rising by more than 700 cases. Prisoner petitions related to motions to vacate sentence rose 10 percent while habeas corpus prisoner petitions grew by 8 percent.*

[7] *Filings of criminal cases rose 5 percent to 62,745, and the number of defendants increased 4 percent to 83,963. Fiscal Year 2000 cases and defendant numbers are the highest since 1933, when the Prohibition Amendment was repealed. This caseload growth raised the criminal cases per authorized judgeship from 93 to 96, in spite of nine additional Article III judgeships created in November 1999. Immigration and firearms cases were chiefly responsible for the increase, with immigration filings growing by 1,509 cases, a 14 percent rise over last year, and firearms filings growing by 1,020 cases, a 23 percent jump over last year. The courts received 12,150 immigration cases, 63 percent of which were in five Southwestern border districts—Southern District of California, District of Arizona, Southern and Western Districts of Texas, and District of New Mexico. For the fourth straight year, weapons and firearms filings rose, with the district courts receiving 6,223 defendants in 5,387 firearms cases. These filings amounted to 9 percent of all criminal case filings, two percentage points more than they did last year.*

[8] *In Fiscal Year 2000, the number of defendants entering into the pretrial services system increased to 85,617, while the number of defendants interviewed went up 6 percent and the number of pretrial reports prepared increased 7 percent. During the past five years, pretrial reports prepared and cases requiring pretrial services each rose 35 percent, persons interviewed grew 26 percent, and defendants released on supervision increased 22 percent. Cases requiring pretrial services have risen each year since 1994, and this year's total is 53 percent higher than that for 1994.*

[9] *There is an average lag of several years before defendants found guilty and sentenced to prison appear in the probation numbers. Supervised release following a period of incarceration continues to account for a growing percentage of the probation population, now standing at 64 percent. Of the 63,793 persons serving terms of supervised release, 54 percent had been charged with drug-related offenses.*

[10] *Following four years of continuous growth, during which filings first exceeded the one-million mark, declines in filings of both personal and business bankruptcy petitions have been reported for the past two years. Drops in Chapter 7 and Chapter 13 petitions were primarily responsible for the overall decline. Filings under Chapter 11, which represent about 1 percent of all bankruptcy filings, were the only ones showing an increase, up 9 percent; those filings, however, generally require more judge involvement than do the filings under other chapters of the bankruptcy code. Chapter 7 filings, which constituted 70 percent of all bankruptcy filings, dropped 9 percent. Filings under Chapter 13, which accounted for 30 percent of all bankruptcies, fell 1 percent. Filings under Chapter 12 plunged 32 percent since provisions of the code expired on July 1.*

percent funding increase will enable the Judiciary, for the first time in two years, to hire new staff. This will come as especially welcome news to the Southwestern border courts, which have experienced a 125 percent increase in criminal caseload over the past three years.

Because much of the Judiciary's budget is expended for the salaries of its personnel, the Judiciary devotes considerable attention to developing scientifically derived staffing formulas based on the functions and work requirements of the different court offices. In order to ensure staffing formulas reflect current work, they are updated periodically. After an intensive study of all major staffing formulas, new formulas were developed and implemented this year. The new staffing formulas reflect efficiencies realized in all program areas since the last formulas were developed, as well as new work.

An independent comprehensive study of the Judiciary's space and facilities program was completed this year. The consultant's report described numerous program achievements, including actions to achieve savings in the space and facilities program, a useful *U.S. Courts Design Guide*, and an effective long-range facilities planning process. Due to the efforts of the Judicial Conference's Committee on Security and Facilities, chaired by Judge Jane R. Roth, the Administrative Office and the General Services Administration, Congress approved funding for eight critically needed courthouse construction projects totaling $559 million over the next two years.

A top priority of the Administrative Office is developing and implementing new technologies and systems that enhance the management and processing of information and the performance of court business functions. Implementation of a new system for processing Criminal Justice Act panel attorney payment vouchers was completed this year, and agency staff continued to deploy new systems for jury administration and financial accounting.

This past year, development work continued on case management/electronic case file systems that will replace the current core case management systems for the appellate, district and bankruptcy courts. These new systems have the potential to change dramatically court operations because they will also include electronic case filing capabilities which will reduce the volume of paper case files. Today's technological capabilities that allow relatively easy access to information require careful consideration of issues related to security and privacy. Because court documents often contain private or sensitive information, the Administrative Office, under the guidance of the Judicial Conference Committee on Court Administration and Case Management, is studying the privacy and security implications of electronic case files. Also, the Committee on Rules of Practice and Procedure is considering changes to the federal rules to accommodate the practicalities of digital processes.

In 2000, the Administrative Office launched the federal law clerk information system, a new data base accessible through the Judiciary's Internet Web site that allows prospective law clerk candidates to obtain information about upcoming or existing employment opportunities as law clerks to federal judges. Within days of the system going live, information on more than 300 law clerk positions was posted on the Web site.

Community outreach programs are an important means of increasing the public's understanding of the federal Judiciary. This year, more than 1,300 high school seniors at 34 court locations across the country participated in a Law Day program sponsored by the Administrative Office called Judicial Independence and You. The program won an Outstanding Law Day Activity Award from the American Bar Association's Standing Committee on Public Education.

The Federal Judicial Center

One element of an effective and independent judicial system is a capacity to provide its judges the continuing education they need to do their jobs. Within the federal judicial system, that is the major role of the Federal Judicial Center. Along with the Judicial Conference, the FJC's Board, which I chair, last year cautioned against proposals, such as the Kerry-Feingold Bill I discussed previously, that would unduly restrict judges' ability to attend privately funded educational programs. That caution, however, should not diminish the essential role of the FJC and the financial support that it needs. Law schools and public policy organizations cannot, and should not be expected to, offer judges education in the full range of their responsibilities.

Federal judges today face cases involving complicated statutes and factual assertions, many of which straddle the intersections of law, technology, and the physical, biological and social sciences. FJC education programs and reference guides help judges sort out relevant facts and applicable law from the panoply of information with which the adversary system bombards them. The FJC thus contributes to the independent decisionmaking that is the judge's fundamental duty.

Last year the FJC presented nine orientation seminars for new judges on basic topics such as civil and criminal procedure, case management, sentencing, evidence and ethics. Twelve three-day continuing education programs each covered multiple areas such as law and the Internet, employment law, sentencing, habeas corpus, prisoner litiga-

tion and capital case litigation, as well as the new evidence and procedure rules, electronic discovery, statistics, genetics, relations with the media and ethics. Eleven other programs, from two to four days long, each dealt exclusively with a specific subject, such as intellectual property, employment law, environmental law, case management, bankruptcy law or mediation.

These programs were designed and coordinated by the FJC's staff of judicial education specialists, with guidance from the FJC's Board and advisory groups of judges. The FJC also presents a few joint programs with law schools. Last year it worked with the University of Alabama, Boalt Hall at the University of California and the Georgetown Law Center. For every program, the FJC has two main goals: to ensure that the curriculum includes the competing aspects of the topic, and that it is up-to-date on both substantive law and procedure.

The FJC has been particularly responsive to the Supreme Court's trilogy of decisions, starting with *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), which requires judges to inquire more vigorously into the reliability of all expert testimony, while honoring the jury's fact-finding role. In 2000, the FJC released the second edition of its nationally recognized *Reference Manual on Scientific Evidence*. The *Manual* does not instruct judges about what evidence to admit or exclude. Instead, it helps judges identify and narrow issues in areas ranging from multiple regression analysis, to epidemiology, to engineering practices and methods. Because the *Manual* is easily available on the FJC's Web site and from commercial publishers, it also helps lawyers deal with complex evidence. In addition, this year a series of programs on the federal Judiciary's satellite television network will help judges analyze scientific evidence under the *Daubert* standards and also under *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996), which expands judges' responsibilities in patent cases.

FJC programs also reach other topics, such as recent broadcasts on the ramifications of the Supreme Court's decision last term in *Apprendi v. New Jersey*, 530 U.S. 446 (2000), a forthcoming online collection of materials to assist judges assigned federal death penalty prosecutions, and a handbook for judges on the strengths and weaknesses of various types of alternative dispute resolution mechanisms and how to implement court-based "ADR" effectively.

The United States Sentencing Commission

At an investiture ceremony held at the Supreme Court of the United States on January 5, 2000, I administered the oath of office to the seven new members of the United States Sentencing Commission. The new Commission consists of Judge Diana E. Murphy (chair), Judge Ruben Castillo (vice chair); Judge William K. Sessions, III (vice chair), Mr. John R. Steer (vice chair), Judge Sterling Johnson, Jr., Judge Joe Kendall, and Professor Michael E. O'Neill. These seven voting commissioners are joined by *ex-officio* members Mr. Michael J. Gaines and Mr. Laird C. Kirkpatrick. The Commission announced on March 9 the appointment of Timothy B. McGrath as its new staff director. Mr. McGrath had served as the Commission's interim staff director for the 18 months prior to his appointment.

The Commission on May 1, 2000, sent to Congress a number of amendments to the federal sentencing guidelines that will significantly increase penalties for some serious crimes. Many of the newly enacted guideline provisions are in response to congressional concerns and address such serious crimes as the improper use of new technology in copyright and trademark violations, sexual offenses against children, methamphetamine trafficking, identity theft, cell phone cloning, telemarketing fraud and firearms offenses.

Co-sponsored by the U.S. Sentencing Commission and the Federal Bar Association, the Ninth Annual National Seminar on the Federal Sentencing Guidelines was held May 3-5 in Clearwater Beach, Florida. Presentations were made on a variety of topics including the fraud and theft guidelines, restitution, drug issues, firearms offenses, immigration offenses, criminal history, relevant conduct and grouping of multiple counts. The seminar was attended by 368 people, primarily U.S. probation officers and defense attorneys.

The Commission announced on August 8 its priorities for the amendment cycle ending May 1, 2001. The priorities include work on an economic crimes package; money laundering; counterfeiting; further responses to the Protection of Children from Sexual Predators Act of 1998; firearms; nuclear, chemical and biological weapons; unauthorized compensation and related offenses; offenses implicating the privacy interests of taxpayers; the initiation of a review of the guidelines relating to criminal history; and the initiation of an analysis of the operation of the "safety valve" guidelines.

On October 12 and 13, the Commission presented its Third Symposium on Crime and Punishment in the United States. The symposium, "Federal Sentencing Policy for Economic Crimes & New Technology Offenses," focused on current economic crime sentencing and the ways in which new technologies have impacted the landscape of criminal activity. The Commission co-sponsored this symposium with the Committee on Criminal Law of the Judicial Conference, the ABA White

Collar Crime Committee and the National White Collar Crime Center.

I commend Judge Murphy and the staff of the United States Sentencing Commission, as well as Director Mecham and the staff of the Administrative Office of the United States Courts and Judge Fern Smith and the staff of the Federal Judicial Center, for their sustained contribution to an independent and effective Judiciary.

Conclusion

For several years, I have noted that we would have to continue to work to increase compensation for federal judges to maintain the quality and morale of the federal Judiciary. I look forward to working with the 107th Congress and the President to resolve this continuing problem.

Despite all of the challenges we face, the Judiciary can look back upon 2000 as a year of many accomplishments. We have learned to be more efficient and are in the forefront of innovative initiatives such as electronic filing and distance learning. Supported by hard-working staff, federal judges continue to administer justice day in and day out, notwithstanding an increasing workload and a salary whose real value has eroded substantially over the past decade. We can be proud that our courts continue to serve as a standard of excellence around the world.

Finally, I offer my best wishes to President-elect Bush and Vice President-elect Cheney and to the members of the 107th Congress, just as I extend my best wishes to President Clinton and Vice President Gore and to those legislators who have concluded their elective service. And I extend to all my wish for a happy New Year.

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Report Outlines Erosion in Judicial Salaries

Bars Urge Congress, President to Increase Judicial Salaries

Erosion of federal judges' pay threatens the quality and independence of the judicial branch, states a new report issued jointly by the American Bar Association and Federal Bar Association and formally received by Chief Justice William H. Rehnquist.

The report, among other recommendations, urges Congress and President George W. Bush to quickly increase judicial salaries by 9.6 percent to make up for judges not receiving cost-of-living adjustments in five of the past eight years.

"Judicial salaries have not kept pace with inflation and, as a result, have suffered a 13.4 percent decline in purchasing power during the same period," the report says. "This erosion in judicial pay has deprived judges (many of whom accepted significantly reduced compensation to become a judge) of the prospect of salary stability during their tenure on the bench."

At the Supreme Court this month, Chief Justice William H. Rehnquist (photo right) received the report "Federal Judicial Pay Erosion" from Federal Bar Association President Robert McNew (photo center) and American Bar Association President Martha Barnett (photo left).

The report was released publicly during a February 13 news conference at the Supreme Court building, immediately after ABA President

*See **Pay** on page 2*

Judicial Conference Again Asks for New Judgeships to Meet Court Needs

The 107th Congress had barely settled down to business when the Judicial Conference asked Congress to introduce legislation creating new Article III judgeships. The request was transmitted formally in a letter this month to leaders in the House and Senate.

"A judgeship bill is one of the Judiciary's top priorities for this Congress," said Administrative Office Director Leonidas Ralph Mecham. "Past requests have failed to provide the judgeships we so urgently need throughout the courts to meet growing caseloads. Although Congress has given us a few judgeships in some of the southwest border courts, this partial remedy is like applying a Band-Aid to a hemorrhage. The needs of the federal courts must be addressed across the board, from Alabama to Washington if 'justice for all' is to be meaningful."

The recommended legislation would add six permanent judgeships and four temporary judgeships to the courts of appeals, add 23 additional permanent judgeships and 21 temporary

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INSIDE

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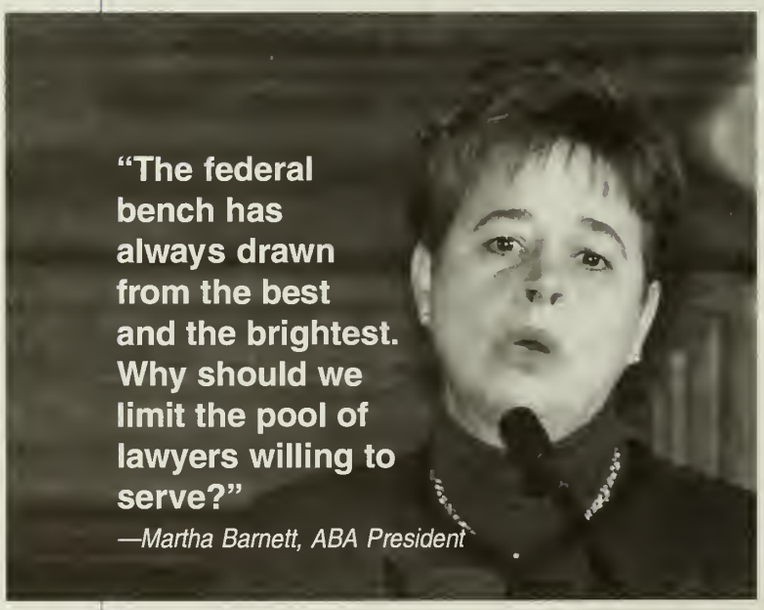
Martha Barnett and FBA President Robert McNew presented it to the Chief Justice.

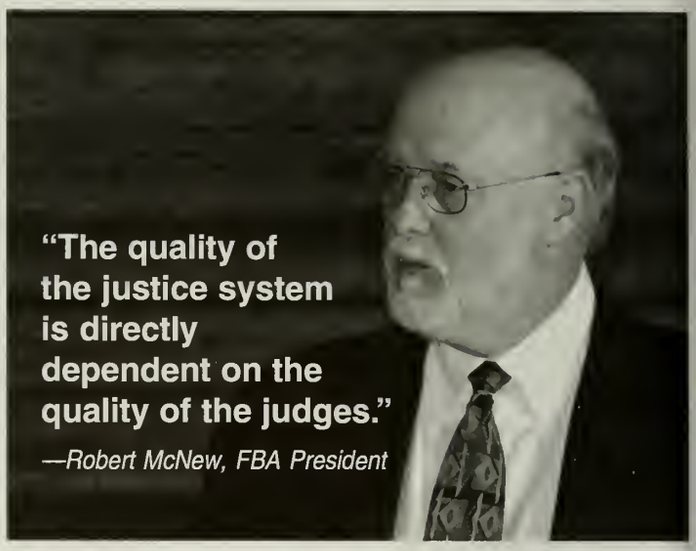
Reiterating the view he expressed in his 2000 *Year-End Report on the Federal Judiciary*, Chief Justice Rehnquist called the need to increase judicial salaries "the most pressing issue facing the federal Judiciary."

"I've read the report, and I think it does a very fine job of explaining just what's happened over the past few years to the Judiciary in terms of pay, and why it really is essential that we do something to turn this around," the Chief Justice said.

Stating that the nation must continue to have "a capable and effective judicial system," Chief Justice Rehnquist added: "If we continue to allow the pay of federal judges to lag so far behind both inflation and the spiraling compensation of attorneys in private practice, we risk ending up with a Judiciary that falls short of this goal."



ABA President Barnett said, "The federal bench has always drawn from the best and the brightest," and warned against judicial compensation becoming a decisive factor for many in choosing to go, or stay, on the bench. "Why should we, because of financial disincentives, limit the pool of lawyers willing to serve on the federal bench?" she said.



FBA President McNew said, "The quality of the justice system is directly dependent on the quality of the judges."

The two bar associations said they collaborated to issue the report "because of their conviction that the current salaries of federal judges have reached such levels of inadequacy that they threaten to impair the quality and independence of the Third Branch."

Stating that the new administration and the 107th Congress "have a unique opportunity to work together to break the downward cycle of pay erosion that undermines the fairness and adequacy of judicial compensation," the report calls for legislation to restore the Employment Cost Index adjustments for fiscal years 1995-1997 and 1999 by increasing judicial salaries and those with which they are linked by 9.6 percent. "This will help remedy the salary erosion that judges, members of Congress and high-level Executive Branch officials have suffered since 1993," the report says.

A major step toward fairness in compensation, the report says, would be congressional enactment of legislation that effectively delinks the salaries of members of Congress from those of judges and top-level executive branch officials. It notes that such a remedy "admittedly may be politically difficult."

The report urges Congress and the president to take these affirmative steps:

- Devote increased attention to the critical need to provide meaningful financial rewards for public service, particularly for high-level executive branch officials, Congress and the Judiciary.

- Make a public commitment to work together to permit the current annual pay adjustment process for judges, members of Congress, and high-level Executive Branch officials to work annually and automatically, as envisioned by the Ethics Reform Act of 1989.

- Repeal Section 140 of P.L. 97-92, which requires explicit congressional approval of any pay adjustment for the federal Judiciary, to allow the pay-setting mechanism for the federal Judiciary established by the Ethics Reform Act of 1989 to operate as intended.

- Enact legislation to re-establish a salary review commission, similar to past Quadrennial Commissions, to

recommend pay rates for members of Congress, judges, and appointed officials in top executive positions on a regular and periodic basis. Any such commission should be adequately funded and its members appointed promptly to ensure that it is operational within a few months of its creation.

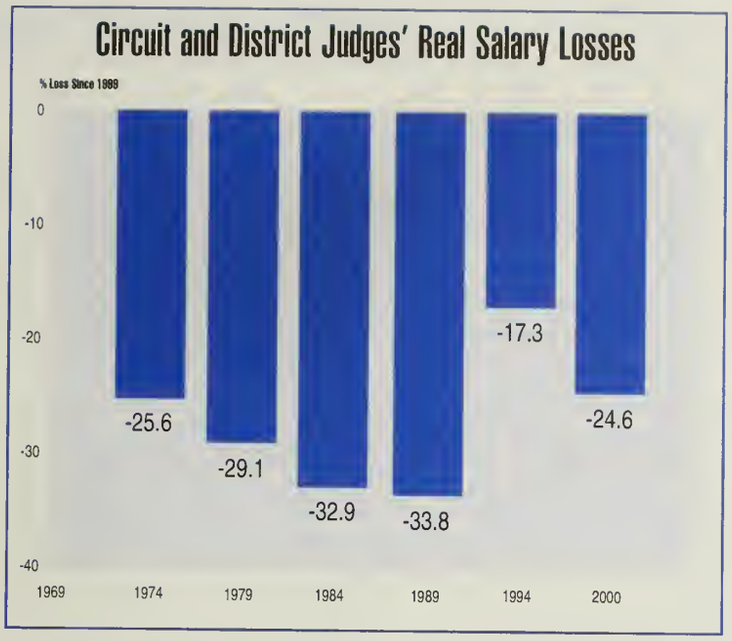
"The specter of declining salary in real terms discourages potential candidates from seeking appointment to the bench," the report says. "Qualified attorneys who lack the independent means to meet current and future financial obligations are especially likely to be deterred by the prospect of a salary that does not even keep pace with inflation. Regrettably, the socio-economic pluralism of the federal bench is jeopardized by declining judicial compensation."

The report also states that inadequate judicial pay deters candidates from seeking appointment to the bench, discourages judges from remaining on the bench, and threatens the constitutional guarantee of undiminished salary.

"The constitutional guarantees of life tenure and an undiminished salary were designed to protect the independence of the federal Judiciary. In today's environment, neither guarantee is secure," the report says. "While erosion of pay may not legally constitute a diminution in salary, it undermines the purpose of the guarantee."

The report notes that while judicial salaries have not kept up with inflation, private sector salaries of top attorneys have risen dramatically. "Even though rendering public service and serving in a lifetime appointment are intangible benefits that compensate for the reduced salary levels associated with the bench, the disparity between judicial salaries and those of their peers has reached unacceptable levels," it states.

The ABA/FBA report in its entirety is posted at the Judiciary's website, www.uscourts.gov. Users can click on "What's New" to find "Federal Judicial Pay Erosion."



According to the report, "The specter of declining salary in real terms discourages potential candidates from seeking appointment to the bench."

House Bill Introduced on Judges' Pay

Representative Judy Biggert (R-IL) has introduced the Federal Judicial Fairness Act of 2001 that, if passed, would allow judges' salaries to regain ground lost over nearly a decade and improve the retention and recruitment of federal judges by increasing their compensation.

"Excellent jurists do not agree to serve in the federal Judiciary because of the pay, but because they want to serve their country," said Biggert. "At the same time, we want our judges to afford to serve their country and make certain that the Judiciary is not open only to those who can afford it." Biggert noted that 54 judges have left the federal bench in the 1990s, compared with only three in the 1960s. "Absent a change in the way we compensate these judges," she said, "the superior quality of our judicial system may deteriorate over time."

The bill would give federal judges a one-time 9.6 percent adjustment in compensation to partially restore the Employment Cost Index adjustments denied to judges since January 1993. It would repeal Section 140 of P.L. 97-92, which provides that judges receive salary increases only as the result of specific legislative action or when Congress affirmatively authorizes an annual salary increase for judges. The House bill also would allow judicial salaries to be adjusted automatically on an annual basis, using the methodology provided under the Ethics Reform Act of 1989. This would effectively delink judges' salaries from those of members of Congress and the Executive Schedule. A judge's Employment Cost Index adjustment would not exceed a comparable adjustment in the rates of the General Schedule.

Judgeships continued from page 1

judgeships to the district courts, convert seven existing temporary judgeships to permanent positions, and extend one existing temporary judgeship. It also would confer Article III status on the judgeships authorized for the Northern Mariana Islands and the Virgin Islands.

Congress has failed to pass a major judgeship bill since 1990. Instead, judgeship needs have been addressed piecemeal, first in 1999 with the creation of nine judgeships in the omnibus appropriations act, and again in 2000 when 10 new Article III judgeships were included in the Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Act. The Judicial Conference last sent a request to Congress in July 2000, asking for six permanent judgeships and four temporary judgeships for the courts of appeals, and 30 permanent district judgeships and 23 temporary district judgeships. The Conference also recommended that seven temporary district judgeships be made permanent and one be extended. The Judicial Conference Judicial Resources Committee conducts biennial surveys of judgeship needs in the federal courts, making recommendations for new judgeships after considering such factors as a court's caseload, its expressed need for new judgeships, and factors in the caseload that might make the current need for additional judgeships temporary.

Article III Judgeship Recommendations

Court	Currently Authorized	Judicial Conference Recommendation	S. 147	H.R. 272
Courts of Appeals				
First	6	1T		
Second	13	2P		
Sixth	16	2P		
Ninth	28	2P, 3T		
District Courts				
AL-N	7	1P, 1T		
AL-M	3	1P		
AL-S	3	1T		
AZ	12	4T	4T	4T
CA-N	14	1P		
CA-E	6, 1T	2P, T/P		
CA-C	27	2T		
CA-S	8	5P, 3T	5P, 3T	5P, 3T
CO	7	1P, 1T		
FL-M	15	1P, 1T		
FL-S	17	1P		
HI		3, 1T	T/P	
IL-C	3, 1T	T/P		
IL-S	3, 1T	T/P		
IN-S	5	1T		
NE	3, 1T	T/P		
NM	6	1P, 1T	1P, 1T	1P, 1T
NY-N	4, 1T	1T, T/P		
NY-E	15	3P		
NY-W	4	1T		
NC-W	3	2P		
OH-N	11, 1T	Extend T*		
OR	6	1T		
TX-E	7	1T		
TX-S	19	1P	1P	1P
TX-W	11	2P, 1T	2P, 1T	2P, 1T
VA-E	10, 1T	1P, T/P		
WA-W	7	1T		

T: Temporary judgeship. Temporary judgeships are created for a minimum time period, but where the first judicial vacancy occurring after that time period is not filled.

P: Permanent judgeship.

T/P: Temporary judgeship made permanent.

*** The first vacancy occurring 15 years or more after the confirmation date of the judge named to fill the temporary judgeship created in 1990 shall not be filled.**

Border Court Judgeship Bills Introduced in House and Senate

Judgeship bills addressing the needs of the border courts also have been introduced in the House and Senate. Representative Randy "Duke" Cunningham (R-CA) introduced H.R. 261, the Southern California Federal Judgeship Act of 2001. The bill would authorize eight additional district judgeships in the Southern District of California. Cunningham said that the district ranks as the busiest court in the nation by number of criminal felony cases filed and total number of weighted cases per judge. According to the U.S. Customs Service, "as much as 33 percent of the illegal drugs and 50 percent of the cocaine smuggled into the United States from Mexico enters through this court district."

Similarly, citing "an unparalleled surge of cases" and the lack of resources to handle them in their judicial districts, Senators Dianne Feinstein (D-CA), and Kay Bailey Hutchinson (R-TX), with cospon-

sors Senators Jon Kyl (R-AZ), Jeff Bingaman (D-NM), Barbara Boxer (D-CA), Phil Gramm (R-TX), and Pete Domenici (R-NM), introduced S. 147, the Southwest Border Judgeship Act of 2001. The bill would follow Judicial Conference recommendations and create nine permanent and nine temporary judgeships for the five southwestern border districts of the Southern District of California, the Districts of Arizona and New Mexico, the Western District of Texas, and the Southern District of Texas. All five border courts currently are among the top 10 most burdened districts in the country in terms of weighted caseload.

"While these courts have faced an ever-rising caseload, their resources have remained stagnant," said Feinstein. Kyl agreed with Feinstein that "due to the growing population and caseload in the border districts, additional judgeships are sorely needed." He, however, believes that all 18 judgeships in the bill, not just nine, should be permanent because growth of both population and caseload are expected to continue.

Feinstein noted the Southern District of California took the "unprecedented step" in October 2000 of declaring a judicial emergency. "The court's criminal caseload is the heaviest in the nation," said Feinstein, "with 55 trials per judge for the year 2000. In civil cases, many judges no longer hear oral arguments; they base their opinions solely on written briefs." Feinstein said that Chief Judge Marilyn Huff (S.D. Calif.) had attempted to deal with the overwhelming caseload by asking seven retired judges to return to the bench. Unfortunately, two of these judges died recently.

"The Southern District of California and other border districts cannot continue to function effectively with a skeleton crew of judges," said Feinstein. "The crisis in San Diego, in particular, has reached a point where citizen access to justice is being threatened. It is imperative that Congress act proactively to address this shortage of resources."

In the House, Representative Charles A. Gonzalez (D-TX) led the Congressional Border Caucus with members Representatives Henry Bonilla (R-TX), Susan Davis (D-CA), Solomon Ortiz (D-TX), Bob Filner (D-CA), Ed Pastor (D-AZ), Ciro Rodriguez (D-TX), and Silvestre Reyes (D-TX), chair of the Congressional Hispanic Caucus, in introducing H.R. 272, a bill to increase the number of federal judgeships along the United States-Mexico border. "This bill would offer some much needed relief, expediting prosecutions and alleviating caseloads," said Gonzalez, "by authorizing an additional 18 federal judgeships in the five U.S. district courts along the U.S.–Mexico border."

Federal judges from the border courts in Texas, New Mexico, Arizona, and California met with the caucus last year to keep Congress informed on the continuing crisis.

Judiciary Goes to Congress with Courthouse Construction List

Over the past four years, the White House has eliminated or substantially reduced the Judiciary's request to the General Services Administration (GSA) for courthouse projects. This year, the Judicial Conference decided to take the initiative and formally notify both the new Administration and Congress of the courthouse requirements the Judiciary has submitted to GSA for fiscal year 2002, and to do so earlier in the process, before the President has finalized his budget considerations.

Funding for courthouse construction projects is normally included in the GSA portion of the President's Budget. In spite of solid and compelling justification from the Judiciary, from FY 1998 through FY 2000, no funds for courthouse projects were included in the President's budget request, and Congress was only able to provide funding in one of those years (FY 1999). FY 2001 was the first budget in four years in which the White House actually incorporated funding for federal courthouse construction. Even then, only seven of the 21 projects on the Judiciary's five-year plan were included—and only at reduced levels. Congress ultimately funded eight, but funds for four of the projects cannot be obligated until the beginning of FY 2002.

"While, in the end, we were able to obtain funding from Congress for courthouse projects in fiscal years 1999 and 2001," said Judge Jane Roth, chair of the Judicial Conference Committee on Security and Facilities, "it was only through extraordinary efforts by numerous judges and staff members. For FY 2002, rather than let the Administration be the only voice for us on this important issue, we are sending the relevant appropriations and authorizing committee chairmen and congressional leaders a statement on our courthouse needs, with justifications. We hope this will be a more persuasive argument in our efforts." GSA and OMB will receive the Judiciary's courthouse project plan at the same time as congressional leaders.

Last year, Roth appeared before congressional subcommittees three times in less than a month, to testify on the need for adequate facilities.

*See **Construction** on page 9*

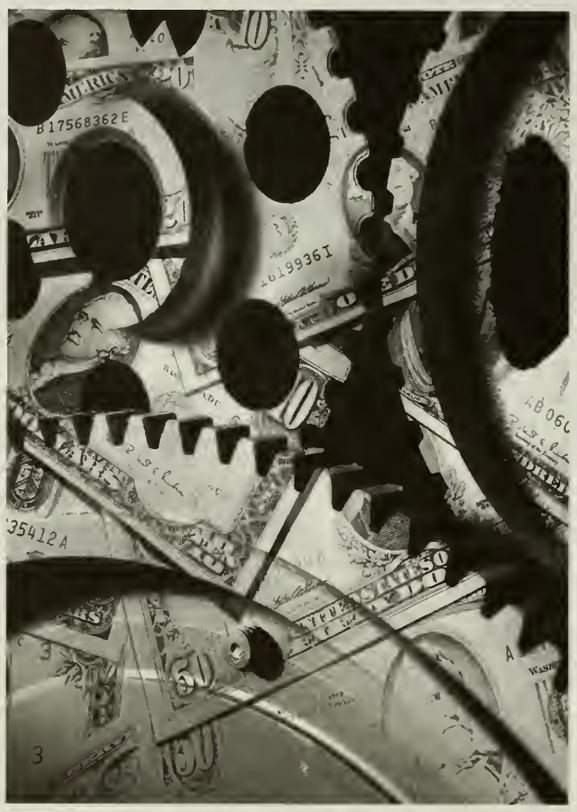
Federal Courts Report on Optimal Utilization of Resources

In a federal courthouse, a bankruptcy clerk is able to use the Internet for transactions made by the Bankruptcy Noticing Program. The Internet connection replaces the old modem dial method, saving money and allowing the more reliable transmission of notices—at a fraction of the time. Postage costs also were significantly reduced when Internet, e-mail and fax options were introduced to the Bankruptcy Noticing Program in fiscal year 2000. This, and other features of the Bankruptcy Noticing Program will create a projected $1.2 million in cost avoidances for the Judiciary in FY 2001.

That's just one example of how the federal Judiciary is improving productivity and efficiency and reducing costs. In the Judiciary's fifth annual *Report to Congress on the Optimal Utilization of Judicial Resources*, there are dozens more. As this report notes, the Judiciary is being a good steward of public funds while improving public service.

For example, at the court where the bankruptcy clerk is on the Internet, the court executive might be checking e-mail for an important memo from the Administrative Office. In FY 2000 the Judiciary began to send official policy directives, time-sensitive documents, and other important information to chief judges or court unit executives, fully formatted and signed via electronic mail rather than sending paper memos. The switch reduces printing and postage costs by at least $20,000 annually.

Meanwhile, in the clerk's office, staff are calculating juror payments using the Jury Management System, an automated software system that also prints and scans qualification questionnaires and summonses, and tracks jurors, among other things. Our sample court is just one of 51 courts using the system, which is expected to go to all 94 courts nationwide by 2002. The system, which reduces errors caused by redundant data entry, gives immediate access to juror statistics. Reducing outsourcing of these functions also is saving the Judiciary $800,000 in FY 2001. And if there's a question about this system or any other software application, staff simply put in a call to the automation help desk, which has been consolidated from five into one facility, and which now supports all national applications.



Improved productivity and efficiency are reducing costs throughout the federal court

The clerk of court's office also is receiving dozens of case filings from attorneys—none of whom are standing in line at the court. Instead, they may be miles away, in their own offices, making use of the Case Management/Electronic Case Files System to send and retrieve case documents over the Internet. In turn, the court uses the case management component to make case intake and docketing, scheduling, and notices to litigants and the public more efficient. With the electronic file component, litigants will be able to search, locate, retrieve, and deliver case documents electronically.

A version of the system is installed already in 14 bankruptcy courts and seven district courts. The Judiciary expects to complete testing of the bankruptcy version and begin nationwide implementation in early 2001.

Upstairs from the clerk's office, staff in a judge's chambers are going on-line to post an available law clerkship. The Judiciary developed a national database to save time and help judges and law students with the annual process of hiring law clerks.

Even staffing in the courthouse has been scrutinized to improve balance between the work and the staffing resources required. In FY 2000, the Judiciary revised all staffing formulas for court support offices, conducting work measurement studies in the appellate court, district and bankruptcy clerks' offices, and probation and pretrial services offices. Under the new formulas, which reflect new work requirements and the impact of automation and changes in work procedures, there is a more accurate distribution of staffing requirements.

Courtroom use in our hypothetical courthouse has not been exempted from cost-consciousness. A study of the Judiciary's space and facilities program has found that new courtroom policies adopted in

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CHIEF PROBATION OFFICER, Southern District of California, San Diego
The U.S. District Court for the Southern District of California is seeking a court unit executive responsible for the management of the U.S. Probation Office of the court, serving San Diego and Imperial counties. Minimum qualifications include six years' progressively responsible experience in the investigation, supervision, counseling, and guidance of offenders in community correction, probation and/or pretrial programs. Bachelor degree required. Successful applicants must undergo a full field background investigation by the FBI and must submit to pre-employment drug testing as a condition of employment. Random drug screening and updated background investigations are conducted every five years. Salary: $75,429 - $130,901, commensurate with experience. Visit the district court website at www.casd.uscourts.gov for more information. Send cover letter, resume, and references to Human Resources Department, Clerk's Office, U.S. District Court, 880 Front Street, Rm 4290, San Diego, CA 92101-8900. **Application deadline: March 1, 2001**

CHIEF, FEDERAL DEFENDER TRAINING BRANCH, Washington, D.C.
The Defender Services Division of the Administrative Office of the U.S. Courts seeks applicants for the position of Branch Chief, Federal Defender Training Branch. The Branch Chief will have supervisory and managerial responsibility for the branch's mission of providing training and related support services to attorneys appointed to represent criminal defendants under the Criminal Justice Act in the nation's 94 federal judicial districts. Applicants must possess a law degree from a law school accredited by the ABA and be a member of the bar or a state, territory, the District of Columbia, the Commonwealth of Puerto Rico, or a federal court of general jurisdiction. Three years of specialized experience also are required post J.D. or LLB, which includes providing legal advice or training involving criminal defense, the interpretation of statutes, regulations, decisional law and opinions, and/or the preparation of legal memoranda, opinions, legislative proposals, and congressional testimony. Salary: $87,867 - $129,630. For additional information and application information visit the Judiciary's website at www.uscourts.gov. **Application deadline: Open Until Filled**.

U.S. BANKRUPTCY JUDGE, Northern District of Texas, Fort Worth
The U.S. Court of Appeals for the Fifth Circuit seeks applications from all highly qualified candidates for a 14-year appointment as a U.S. Bankruptcy judge for the Northern District of Texas at Fort Worth. The position may require regular overnight travel to other divisions within the district. The selection process will be confidential and competitive. Salary: $133,492. Only those persons with a law degree whose character, experience, ability, and impartiality qualify them to serve in the judicial branch should apply. Those interested in applying should write to Gregory A. Nussel, Circuit Executive, U.S. Court of Appeals, Fifth Circuit, 600 Camp Street, Room 300, New Orleans, Louisiana 70130, for the qualification standards and an application form. Alternatively, these materials are available at www.ca5.uscourts.gov. **Application deadline: March 30, 2001.**

CLERK OF COURT, U.S. Bankruptcy Court for the Northern District of Illinois
The U.S. Bankruptcy Court for the Northern District of Illinois seeks applications from qualified persons for the position of clerk of court. The clerk of the bankruptcy court is appointed by and reports to the judges of the bankruptcy court. The clerk is responsible for the management of the clerk's office, which has general responsibility for case management, records maintenance, statistical reporting, and the implementation of the Federal Rules of Bankruptcy Procedure and the local rules of the bankruptcy court. Successful candidates should have a minimum of 10 years of progressively responsible management experience, including at least three years in a position of substantial responsibility; experience in federal courts is preferable. Applicants must have an undergraduate degree. A postgraduate degree in public, business, or judicial administration or a JD or LLB degree may be substituted for up to two years of administrative experience. The experience of an attorney in the practice of law may substitute for administrative or management experience on a year-to-year basis. Successful candidates also must demonstrate strong analytical, communication, and interpersonal skills, and experience with automated systems is highly useful. Salary: up to $132,888. The duty station is Chicago, Illinois. The desired starting date is July 1, 2001. Applicants should send an original and 5 copies of a resume, job references, and salary history to the Clerk of Court Search Committee, c/o Judge John H. Squires, 219 South Dearborn Street, Suite 656, Chicago, IL 60604. **Application deadline: March 31, 2001.**

CHIEF DEPUTY, Northern District of Texas, Dallas
The U.S. District Court for the Northern District of Texas seeks applicants for the position of chief deputy. Candidates must have a minimum of six years of progressively responsible administrative experience with at least three years in a position of substantial management responsibility. A bachelor's degree is required. Law degree preferred. Salary: JSP-15/16 ($87,450 to $129,019). To apply, submit a resume and cover letter detailing: 1) salary history, 2) related work experience, 3) specific information regarding organizations in which you have played a leadership role (budget, number of employees, composition of personnel, functions managed, etc.). In addition, please describe your management philosophy and provide examples of significant accomplishments. Submit to Human Resources #01-04, c/o Human Resources Manager, U.S. District Clerk's Office, 1100 Commerce Street, Room 14A20, Dallas, Texas, 75242. For information, contact Alison Henley at 214/753-2242. **Application deadline: March 31, 2001**

EQUAL OPPORTUNITY EMPLOYERS

1997 save money—in FY 2001, an estimated $48 million. In particular, the provision of courtrooms for senior judges for 10 years resulted in a reduction in the number of courtrooms planned for new facilities. Other recommendations will promote effectiveness, efficiency, and fiscal stewardship. In the past year the Judiciary has reduced space and rental costs. In FY 2000, a total of 15,800 square feet was released by closing facilities and/or sharing existing courtrooms and chambers in state or local courthouses, saving the Judiciary about $160,000 in rental payments to GSA in FY 2000.

In our busy courthouse, one bankruptcy courtroom has a television monitor and a video camera in addition to the bankruptcy judge and attorneys. In this hearing, the parties are separated by several hundred miles, but they're participating in the hearing by videoconference. In the district courts, videoconferencing is being used in pretrial, civil, and criminal proceedings, prisoner matters, sentencing, settlement conferences, arraignments, and witness appeals. Videoconferencing saves travel time and reduces security risks in transporting prisoners. At the appellate level, oral arguments may be heard using videoconferencing, again saving time and the cost of travel.

Television monitors also are in use just down the hall in the courthouse, but in a very different role. Judicial employees at the court are participating in classroom instruction on a popular word-processing program. Also on the agenda is a program for probation and pretrial services officers on the special needs of offenders. Programs transmitted over the distance learning network, the Federal Judicial Television Network, allow employees to receive instruction without traveling to training sessions. It is expected that the use of distance-learning technologies to train court staff on two new automation systems will reduce travel expenses by about $860,000 annually. In addition, the Judiciary is working with other government agencies with similar networks to share equipment and a satellite services provider, as well as reduce costs. To date, more than 200 federal court sites are equipped for videoconferencing.

Behind the scenes at our courthouse, the Judiciary continues to improve the automation infrastructure for greater efficiencies. System applications are being consolidated on single servers, and the old mainframe tape technology for backup and recovery is being replaced with a high-capacity, high-performance tape subsystem. A new contract covering long-distance voice and data communications services will provide lower costs for voice and data communications services as well as new network management services not previously available. A new Human Resources Management Information system is replacing the current personnel, payroll, and subsidiary systems with a modern, adaptable, and integrated software package. Once fully implemented, the system will reduce staff time spent on data entry, processing personnel actions, manually tracking data, and locating information—plus reduce the amount of printing, copying, postage, long distance calls, and faxes.

The Judiciary is committed to continuing and expanding efforts to identify savings and improve the administration of justice. Among other additional initiatives the Judiciary has

- Continued a review of court security officer staffing standards to ensure resources are used efficiently.
- Used data from the Integrated Library System to successfully negotiate pricing arrangements for lawbooks with major publishers, substantially reducing spending.
- Renegotiated computer-assisted legal research services with West Group for an additional four years for substantial cost avoidances.
- Developed a website to assist individual courts in designing and managing their internal control programs and establish dollar limits and restrictions on types of purchases for travel and purchase card programs.
- Followed recommendations from a court-wide postage review that will convert court units to commercial meters and institute a number of efficiencies that should allow the units to manage their postage-related activities more effectively.

To read the complete *Report to Congress on the Optimal Utilization of Judicial Resources*, visit the Judiciary's website at www.uscourts.gov.

Outside Earned Income Ceiling Increased

With the recent cost-of-living adjustment for federal judges comes a corresponding increase in the ceiling applicable to outside earned income.

The Ethics Reform Act prohibits high-ranking government officials from having outside earned income exceeding "15 percent of the annual rate of basic pay for Level II of the Executive Schedule." See 5 U.S.C. App. § 501(a). The basic pay for Executive Schedule Level II employees increased to $145,100 effective January 1, 2001, which is the same salary district court judges receive. As a consequence, the ceiling on outside earned income also increased to $21,765 in 2001, from its previous level of $21,195 in 2000.

JUDICIAL MILESTONES

Appointed: Linda K. Caracappa, as U.S. Magistrate Judge, U.S. District Court for the Eastern District of Pennsylvania, November 17.

Appointed: Thomas C. Holman, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Eastern District of California, December 16.

Elevated: Court of Appeals Judge Mary M. Schroeder, to Chief Judge, U.S. Court of Appeals for the Ninth Circuit, succeeding Judge Procter Hug, Jr., December 1.

Elevated: Bankruptcy Judge Wm. Thurmond Bishop, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the District of South Carolina, succeeding Judge J. Bratton Davis, October 1.

Senior Status: U.S. Court of Appeals Judge Emmett Ripley Cox, U.S. Court of Appeals for the Eleventh Circuit, December 18.

Senior Status: Court of Appeals Judge Bobby R. Baldock, U.S. Court of Appeals for the Tenth Circuit, January 26.

Senior Status: Judge S. Jay Plager, U.S. Court of Appeals for the Federal Circuit, November 30.

Senior Status: Court of Appeals Judge Laurence H. Silberman, U.S. Court of Appeals for the D.C. Circuit, November 1.

Senior Status: Judge Robert J. Bryan, U.S. District Court for the Western District of Washington, November 1.

Senior Status: Judge James C. Fox, U.S. District Court for the Eastern District of North Carolina, January 31.

Senior Status: Judge Paul V. Gadola, U.S. District Court for the Eastern District of Michigan, January 31.

Senior Status: Judge J. Spencer Letts, U.S. District Court for the Central District of California, December 19.

Senior Status: Judge Thomas C. Platt, Jr., U.S. District Court for the Eastern District of New York, February 1.

Senior Status: Judge Morey L. Sear, U.S. District Court for the Eastern District of Louisiana, October 31.

Senior Status: Judge Jack D. Shanstrom, U.S. District for the District of Montana, January 30.

Senior Status: Judge G. Thomas Vanbebber, U.S. District Court for the District of Kansas, December 31.

Senior Status: Judge Henry R. Wilhoit, Jr., U.S. District Court for the Western District of Kentucky, December 31.

Retired: Judge J. Robert Elliott, U.S. District Court for the Middle District of Georgia, December 31.

Retired: Magistrate Judge Katherine H. Baker, U.S. District Court for the Western District of Texas, November 30.

Retired: Magistrate Judge David L. Core, U.S. District Court for the Northern District of West Virginia, November 30.

Retired: Magistrate Judge Raymond J. Durkin, U.S. District Court for the Middle District of Pennsylvania, September 30.

Retired: Magistrate Judge Jerry D. Hogg, U.S. District Court for the Southern District of West Virginia, October 31.

Retired: Magistrate Judge William T. Prince, U.S. District Court for the Eastern District of Virginia, September 30.

Retired: Bankruptcy Judge Robert L. Bayt, U.S. Bankruptcy Court for the Southern District of Indiana, September 30.

Retired: Chief Bankruptcy Judge J. Bratton Davis, U.S. Bankruptcy Court for the District of South Carolina, October 1.

Retired: Bankruptcy Judge Herbert A. Ross, U.S. Bankruptcy Court for the District of Alaska, September 30.

Retired: Bankruptcy Judge David E. Russell, U.S. Bankruptcy Court for the Eastern District of California, December 15.

THE THIRD BRANCH

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JUDICIAL BOXSCORE

As of February 1, 2001

Courts of Appeals	
Vacancies	29
Nominees	9
District Courts	
Vacancies	62
Nominees	0
Courts with "Judicial Emergencies"	28

For more information on vacancies in the federal Judiciary visit our website at www.uscourts.gov.

Construction continued from page 5

She, other judges, and Director Leonidas Ralph Mecham and his Administrative Office staff worked throughout the budget process to educate Hill members and staff on these courthouse projects. They warned Congress that delays in courthouse construction have created a backlog of projects, which affects court operation and significantly increases costs. The GSA estimates that construction costs are increasing 3 to 10 percent for each year of delay. At a hearing last April before the House Subcommittee on Economic Development, Pubic Buildings, Hazardous Materials and Pipeline Transportation, Roth said, "the lack of sufficient space can cause great waste and inefficiency in court operations." She also cited the additional security risks that are a concern in overcrowded and aging courthouses.

Courthouse Project Plan for 2002
($ in millions)

Fresno, CA	Const.	$121.2
Erie, PA	Const.	30.7
Eugene, OR*	Const.	75.2
El Paso, TX	S&D	11.1
Mobile, AL	S&D	11.3
Norfolk, VA	S&D	11.8
Las Cruces, NM	S&D	4.1
Salt Lake City, UT*	Const.	76.5
Little Rock, AR	D/C	75.0
Rockford, IL	S&D	4.9
Cedar Rapids, IA	S&D	15.1
Nashville, TN	S&D	14.3
Savannah, GA**	Const.	46.5
Ft. Pierce, FL*	S&D	4.5
Jackson, MS*	S&D	12.3
Austin, TX*	S&D	8.5
San Diego, CA*	D	14.3
Cape Girardeau, MO*	Const.	36.9
Orlando, FL*	Const.	71.3
San Jose, CA*	D	19.4
		$664.8

S=Site
D=Design
Const=Construction
*** Require authorization in the House and Senate**
**** Requires authorization in the House.**

FY 2002 Courthouse Project Plan

After considering such factors as the year the building is projected to be out of space, security concerns, the number of additional judges who could not be housed in the current facility, and operational considerations, the Judicial Conference unanimously approved on January 30, 2001, an updated Five-Year Courthouse Project Plan. The FY 2002 projects need funding, and some require congressional authorization. Funding also will be needed to provide additional space at the courthouse under construction in Brooklyn, NY. In addition to the projects list for FY 2002, four projects for which funding was provided in GSA's fiscal year FY 2001 appropriations need their funding levels adjusted for inflation. These projects are in Washington, D.C.; Buffalo, New York; Springfield, Massachusetts; and Miami, Florida.

March 16 Public Hearing Planned on Internet Access to Court Files

An eight-member Judicial Conference subcommittee will conduct a public hearing next month on the privacy and security implications of public access to federal court documents via the Internet.

The Subcommittee on Privacy and Electronic Access to Case Files will hear testimony Friday, March 16, from invited witnesses during a four-hour hearing (8:30 a.m.-12:30 p.m. EST) in the Judicial Conference Center, Thurgood Marshall Federal Judiciary Building, in Washington, D.C.

Judge John W. Lungstrum (D-Kan.) will preside over the hearing in his role as subcommittee chair. He also chairs the Judicial Conference Committee on Court Administration and Case Management.

The federal Judiciary's Case Management/Electronic Case Files (CM/ECF) project is designed to replace aging docketing and case management systems in more than 200 bankruptcy, district, and appellate courts by 2005. It also will let courts file documents in electronic format and accept filings over the Internet.

Case files, long presumed to be open for public inspection and copying unless sealed by court order, often contain private or sensitive information. Creation of electronic files means they may be viewed, printed, or downloaded by anyone, at any time, through the Internet.

The Judiciary is trying to fashion a policy on public access by deciding whether electronic case files should be protected from unlimited public disclosure or be treated the same as paper files.

Over a three-month period (November-January), the subcommittee received 244 comments from organizations and individuals. Those comments are posted at www.privacy.uscourts.gov.

Prototype CM/ECF systems have been in use in four district courts and five bankruptcy courts for several years. So far, more than 1.5 million documents in more than 130,000 cases are on CM/ECF systems in these courts. More than 5,000 attorneys have filed documents over the Internet.

The four district courts are the Western District of Missouri, the Eastern District of New York, the Northern District of Ohio, and the District of Oregon. The five bankruptcy courts are the District of Arizona, the Southern District of California, the Northern District of Georgia, the Southern District of New York and the Eastern District of Virginia.

Interview with Judge Diana E. Murphy, Chair of the United States Sentencing Commission

Judge Diana E. Murphy was appointed to the U.S. Court of Appeals for the Eighth Circuit in 1994. She was named chair of the U.S. Sentencing Commission by President Clinton in 1999, with a term expiring October 31, 2005.

Q: Tell us a little bit about the new commissioners.

A: We are fortunate to have a very able group of commissioners.[1] The Sentencing Reform Act, our authorizing statute, requires that at least three of the seven voting members of the Commission be federal judges. For the first time there are five judges on the Commission, all with experience in actually applying the guidelines in sentencing criminal defendants. The other commissioners also have had significant experience with the guidelines—one as former general counsel of the Commission and the other as a criminal law professor and formerly counsel to the Senate Judiciary Committee. There are also two *ex officio* non-voting members of the Commission—the representative of the Attorney General and the chair of the U.S. Parole Commission. We all have two goals in common: to strengthen the Commission's working relationship with Congress, the Judiciary, and the federal criminal justice community, and to maintain and improve the federal sentencing guideline system. Our diverse life experiences enrich our understanding of the tasks before us.

Q: How do you decide what goes on the Commission's agenda?

A: We develop our agenda with input from a variety of sources. Congress enacts new criminal statutes and frequently directs the Sentencing Commission to consider changes to the guidelines. When we started last year, we faced a backlog of crime legislation and directives that needed attention. We understood that it was important to the Commission's credibility and good working relationships to address this business right away. On May 1, 2000, we submitted to Congress 15 amendments to the guidelines that cover a wide range of criminal conduct of public concern, including use of computers in sexual crimes against children, identity theft and wireless telephone cloning, electronic theft and copyright infringement, and methamphetamine trafficking. These amendments went into effect on November 1, 2000, without congressional intervention.

Another very important responsibility, delegated to the Commission by the Supreme Court in *Braxton v. United States*, is to resolve circuit conflicts on guideline interpretation. During our first amendment cycle we learned how challenging this work can be, and we resolved to develop criteria to assist us in selecting which conflicts to address. We consider factors such as potential impact on defendants and on sentencing disparity, the number of court decisions involved in the conflict, and the effect of the divergent rulings. The Criminal Law Committee of the Judicial Conference also recommends conflicts for resolution by the Commission.

We put items on our agenda on our own initiative, too, or because of suggestions of judges and other interested groups. Last May we held a retreat to reflect on the work we had just completed and to plan for the coming amendment cycle and beyond. Included on this year's agenda are a comprehensive reassessment of the economic crimes guidelines, money laundering, counterfeiting, sexual predators, and various drug and firearms issues. We also are reviewing possible adjustments to the safety valve and to criminal history categories.

Judge Diana E. Murphy

Q: What groups do you work with on a regular basis?

A: There are several groups we communicate with on a regular basis. We meet formally with the Criminal Law Committee twice a year to discuss topics of mutual interest and also cooperate with it on other programs, such as the National Sentencing Policy Institute held in Phoenix last September, co-sponsored by the Federal Judicial Center. During the amendment cycle, we receive input from various advisory groups, the Probation Officers Advisory Group, the Practitioners Advisory Group, and the Federal Public Defenders Working Group. We have close communication with the Department of Justice and regularly obtain informa-

tion from relevant federal agencies and concerned groups of all kinds. Throughout the amendment process, we hold regular public meetings, publish in the *Federal Register* for comment our proposed agenda and our proposed amendments, and conduct a public hearing in March.

Q: How do you get input from federal judges?

A: One of our main priorities has been to expand the dialogue the Commission has with judges. We take every opportunity to meet with judges and listen to their concerns and ideas. Invite us, and we will come! Individual commissioners have gone to meetings in the First, Second, Fifth, Sixth, Eighth, and Tenth Circuits, and as a group we have met with judges in Massachusetts and Arizona. Through such meetings, we gain a better understanding of the issues facing judges. Because of our meeting with some of the border judges we were prepared to explain the increase in downward departures related to their enormous caseloads when called to testify in the Senate in October. As a result of that Arizona meeting and another in the Fifth Circuit in November, the Commission is now reexamining the immigration guidelines. We want judges to inform us of any problems with the guidelines, and we want to respond in a constructive manner where we can. We have created a new way to communicate with judges as a result of a dialogue with Judge Avern Cohn: all of our published notices now are available through the Judiciary's internal website.

Q: You have mentioned Congress several times. What contact do you have with Congress?

A: Part of our formal relationship with Congress involves testifying before various committees. At our confirmation hearing before the Senate Judiciary Committee we were asked questions about our knowledge of the guidelines and our experience with them, including our own departure records. In October we testified before the Senate Criminal Justice Oversight Subcommittee about our work and in response to subcommittee concerns about downward departures. In May we presented testimony before the House Governmental Reform Subcommittee on Criminal Justice, Drug Policy, and Human Resources. That subcommittee was interested in the Commission's views on mandatory minimum sentences, which it has consistently opposed, and possible changes to the drug laws. On a less formal basis, commissioners and staff meet with members and their staff to discuss sentencing policy and guideline options. We also talk with members of both the House and Senate and their staffs about our budget request and the resources needed to do our work.

Q: How does the Commission go about the work of formulating guidelines?

A: Much work goes into making guidelines! Our able staff begins the process by providing background papers and briefings on each topic on our agenda, including analysis of sentencing data. The commissioners discuss the policy implications of various options and provide staff with drafting directions. Sometimes we have experts attend our meetings to broaden our understanding. We get feedback from the advisory groups, from our published notices, from public hearings, and from symposia such as the one we initiated in October on economic crimes and new technology offenses. We also are required by statute to consider prison impact. The commissioners spend considerable time deliberating before voting on guideline proposals. Sometimes it is clear which option makes the most sense, but more often it takes considerable time to consider all the implications of each. History has shown that it is critical to send to Congress amendments that have the support of all or most of the commissioners. This takes time and may involve compromise.

Q: What do you see as longer term projects?

A: Certain kinds of work cannot be completed in one amendment cycle. The Department of Justice has suggested that the Commission relook at criminal history categories, recidivism data, and the safety valve. The Criminal Law Committee has suggested that the Commission update its August 1991 report to Congress, *Mandatory Minimum Penalties in the Federal Criminal Justice System*, and a variety of other constituents, including members of Congress, have suggested that the Commission further study the drug statutes and guidelines. The Commission itself has undertaken a study on the operation of the guidelines to mark the 15-year anniversary of their use, which will be in the fall of 2002. Since their implementation in November 1987, the guidelines have been used to sentence over 400,000 defendants. We plan to review their operation in light of the statutory purposes of sentencing, which include crime control, ending disparity in sentencing, and provision for certain, fair, and uniform punishment.

[1]The members of the new commission are Judge Diana E. Murphy, Chair (Eighth Circuit); Judge Ruben Castillo, Vice Chair (Northern District of Illinois); Judge William K. Sessions, III, Vice Chair (District of Vermont); John R. Steer, Vice Chair (former General Counsel); Judge Sterling Johnson, Jr. (Eastern District of New York); Judge Joe Kendall (Northern District of Texas); Professor Michael O'Neill (George Mason University); Michael Gaines, *Ex Officio* (Chair, U.S. Parole Commission); and Laird Kirkpatrick, *Ex Officio* (Department of Justice).

Judge Honored by VA for Work With Homeless Vets

The Department of Veterans Affairs recently honored Judge Harry Pregerson (9th Cir.) for his work with homeless veterans. Acting Secretary of Veterans Affairs Hershel Gober (photo left) presented Pregerson (photo right) with a token of appreciation etched with the VA seal.

The 77-year old Pregerson has been active since 1972 with organizations that provide housing, employment, and rehabilitation services for homeless vets. Pregerson is himself a war veteran, and was severely wounded in the battle of Okinawa during World War II.

In addition to working to provide affordable housing, Pregerson founded the Bell Homeless Shelter at a federal supply center in southeast Los Angeles County. One-third of Bell Shelter's clients are veterans. He partnered with charities, veterans groups, labor organizations, the General Services Administration, and then Mayor Tom Bradley to start the Westwood Transitional Village, which provided furnished apartments for homeless families, with preference given to veterans. Pregerson also helped start the Salvation Army's Haven Program, which arranges housing and provides support services for homeless vets.

Recently, he helped bring together judges and law enforcement and county officials to create a "homeless court." The court can clear an offender's record of minor violations providing an incentive to complete a rehabilitation program and return to a productive life.

Pregerson worked in private law practice and served as a judge of the Los Angeles Municipal Court and Superior Court before President Johnson appointed him in 1967 to the U.S. District Court for the Central District of California. He was appointed to the U.S. Court of Appeals for the Ninth Circuit in 1979 by President Carter.

THE THIRD BRANCH

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