

**STATEMENT OF  
L. RALPH MECHAM, DIRECTOR  
ADMINISTRATIVE OFFICE  
OF THE  
UNITED STATES COURTS**



**BEFORE THE  
SUBCOMMITTEE ON  
INTELLECTUAL PROPERTY AND  
JUDICIAL ADMINISTRATION**

**OF THE  
COMMITTEE ON THE JUDICIARY  
U.S. HOUSE OF REPRESENTATIVES**

**MARCH 21, 1991**

**BIOGRAPHICAL SKETCH  
L RALPH MECHAM  
DIRECTOR  
ADMINISTRATIVE OFFICE OF THE U.S. COURTS**

L. Ralph Mecham was appointed Director of the Administrative Office on July 15, 1985. He is a member of the Board of Directors of the Federal Judicial Center and the Judicial Fellows Commission, and is Secretary to the Judicial Conference of the United States. He earned his B.S. degree with "highest honors" at the University of Utah, his J.D. degree at George Washington University, and holds an M.P.A. from Harvard. He was awarded a congressional fellowship to Harvard in 1963 and a graduate fellowship by Harvard in 1965.

He was Washington representative for Atlantic Richfield Company, Vice President of The Anaconda Company, Federal Co-Chairman of the Four Corners Regional Commission (a Presidential appointment), member of the Federal Advisory Council for Economic Development, Special Assistant to the U.S. Secretary of Commerce, and served as Vice President of the University of Utah from 1965-1969. He also served as Administrative Assistant to a U.S. Senator.

He is a member of the American, Utah, District of Columbia, and Federal Bar Associations. He served for 11 years on the University of Utah National Advisory Committee, most recently as Chairman, and is active in charitable and church service.

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**MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:**

Thank you, Mr. Chairman, and members of this subcommittee for the opportunity to appear before you today to discuss the Administrative Office of the United States Courts. I am pleased to have this chance to tell you about the challenges of judicial administration and some of the recent activities of the Administrative Office. I am honored to be here with the Honorable Charles Clark, chairman of the Executive Committee of the Judicial Conference, and Director Schwarzer of the Federal Judicial Center. Accompanying me are members of the Executive Staff of the agency:

James E. Macklin, Jr., Deputy Director  
William R. Burchill, Jr., General Counsel  
Arthur White, Acting Legislative and Public Affairs Officer  
Peter G. McCabe, Assistant Director for Program Management  
Edwin L. Stoorza, Jr., Assistant Director for Automation and Technology  
Raymond A. Karam, Assistant Director for Administration  
Clarence A. Lee, Jr., Assistant Director for Planning, Evaluation and Statistics  
Karen K. Siegel, Office of the Judicial Conference Secretariat

**I. INTRODUCTION**

First of all, I would like to express my appreciation for the assistance this subcommittee has provided to the Judiciary over the years, and especially for your assistance in acquiring needed legislative change, particularly in the areas of judgeships, and critical pay and retirement legislation.

Although I am here to talk about the Administrative Office, it is impossible to do so without discussing the agency's relation to the Federal Judiciary as a whole. The Administrative Office exists to provide services to an independent and effective Judiciary. In its fifty-two years, the Administrative Office has tried to serve the courts well as they have experienced enormous growth and change. There has been relatively little change in the structure of the courts to cope with the demands of modern judicial administration, and the implications for the Administrative Office have been significant. Changing technology, caseload growth, the increasing size of the Federal Bench, and legislative changes have combined to create an environment requiring constant administrative actions to meet new demands.

During my five and one-half year tenure, I have tried to focus attention on using the agency's limited resources to improve support to the Judiciary in response to the changing needs and priorities of the judicial system. This task has been a challenging one. Over the years, the agency's share of the Judiciary's budget has been getting smaller and smaller as the Judiciary grew. In 1990, we received a much needed increase in personnel, but despite this increase, as a percentage of total Judiciary

personnel, we remain at the lowest point ever. Each new assignment or change in priorities requires reexamination of our activities as we have no redundancies built into our staff. Many key responsibilities are handled by only one individual, and often the absence of a single person has a severe impact on program activity. Our successes are dependent on our dedicated staff who make personal sacrifices to accomplish our mission.

I think there is value in remaining small, but responsibilities that might belong to an entire Bureau in the Executive Branch, may in the Administrative Office be assigned to only a handful of staff. For example, our Probation and Pretrial Services Division, with a mere staff of 38, administers the probation and pretrial services programs for 415 offices nationwide. The 5,884 officers and other staff in the probation and pretrial services offices provide supervision, drug testing, treatment programs for substance abuse and mental health, halfway house placements, and electronic monitoring to approximately 110,000 individuals. In addition, these offices conduct over 210,000 investigations for the courts and the U.S. Parole Commission each year.

Management of such a "minimalist" organization requires constant shifting of priorities to ensure that we continue to deliver the services of most importance. Of key importance is our staff support to the Judicial Conference and its committees which, together with the Congress, set policies for the Judiciary. In addition, I have reached out to the judges and court managers to help redefine priorities for the Administrative Office. The agency has established numerous advisory committees of court personnel to assist us in designing programs and services to meet their needs.

We have undertaken a program to decentralize those functions best performed in the courts so that we can devote our resources to the critical program development and support functions. As with many organizations, however, the demands for services far outweigh our ability to satisfy them. We try to change as quickly as possible to anticipate needs and respond to demands as we perform our basic mission of providing service to the Judiciary.

The Federal Courts Study Committee, which included as members the distinguished former chairman of this subcommittee as well as the Honorable Carlos J. Moorhead, undertook an ambitious effort to examine issues confronting the Judiciary now and in the future. The **Report of the Federal Courts Study Committee**, issued April 2, 1990, will continue to provide useful input to the Judiciary agenda for some time to come, and many committees of the Judicial Conference and the Administrative Office divisions are already at work in recommended areas. The Judicial Conference established a new Committee on Long Range Planning in response to the Committee recommendation that a permanent long-range planning mechanism be established in the Federal Judiciary. We have also expanded our ability to prepare analyses of impact proposed legislation would have on the Judiciary, as recommended. I was

particularly pleased that the Federal Courts Study Committee commended the Administrative Office "for the many positive changes of recent years." In addition, the Federal Courts Study Committee endorsed the agency's need for additional resources. Specifically, the Committee recommended:

Congress should increase funding for the Administrative Office. Increases in the federal judicial workload, and additional statutory responsibilities, have created in turn a dramatic increase in the Administrative Office's workload and responsibilities. The funding and personnel available to the Administrative Office, however, have not kept pace with the rest of the judicial budget....The Administrative Office's work is also increasing in complexity....The Office thus needs more senior professionals to accomplish more work with comparatively fewer resources....

## **II. ADMINISTRATIVE OVERVIEW**

I would like to review for the subcommittee the administrative structure of the Federal Judiciary and the Administrative Office.

### **A. FEDERAL JUDICIAL ADMINISTRATION**

#### **Courts of the United States**

The United States court system consists of the Supreme Court, 13 United States Courts of Appeals, the Court of International Trade, the United States Claims Court, 94 United States District Courts, 90 United States Bankruptcy Courts, and other special courts.

#### **Judicial Conference of the United States**

The Conference of Senior Circuit Judges was created by the Congress in 1922, to "...serve as the principal policy making body concerned with administration of the United States Courts." In 1948, Congress enacted legislation changing the name to the Judicial Conference of the United States. The fundamental purpose of the Judicial Conference is to make policy for the administration of the United States courts.

The Conference operates through a network of committees created to address and advise on a wide variety of subjects such as automation, personnel, probation and sentencing, procurement, space, security, and judicial salaries and benefits. The Director of the Administrative Office serves as Secretary to the Judicial Conference and is supervised by the Judicial Conference in the performance of his duties as the

administrative officer of the courts. In turn, the Administrative Office provides legal and staff support to the Judicial Conference and its committees. In 1990 approximately 70 staff years of support were devoted to these purposes, up from 37 staff years just three years ago.

## **B. ADMINISTRATIVE OFFICE**

Moving now to the Administrative Office, I will describe our mission and structure. The mission, structure and functions of the agency have been shaped by the changing needs of the Federal Judiciary. This has meant that since its creation by an Act of Congress in 1939, the Administrative Office has been in a state of continual evolution.

When I first came to the Administrative Office, then Chief Justice Burger appointed an Ad Hoc Advisory Committee of Judges on the Administrative Office, chaired by Judge Devitt, to advise on ways to improve the agency's effectiveness in serving the courts. With the Committee's recommendations in hand, I began working immediately on identifying ways to implement changes that would lead to the suggested improvements, and along the way, discovered additional areas in need of change.

Many of the inadequacies I found in the agency were the result of insufficient resources. The agency had fallen woefully behind in its ability to support the courts. Its staff, its budget, and its organizational structure were insufficient to meet the demands placed upon it. Planning and management systems needed substantial upgrading.

To remedy these shortcomings, we set a number of broad goals for the agency. They are:

- \* improving service performance and delivery;
- \* modernizing both Administrative Office and court management systems and planning capabilities (including the installation of modern automated systems);
- \* improving communication with judicial officers and staff;
- \* decentralizing operating functions where appropriate; and
- \* eliminating internal and external regulatory impediments to effective Administrative Office and court management.

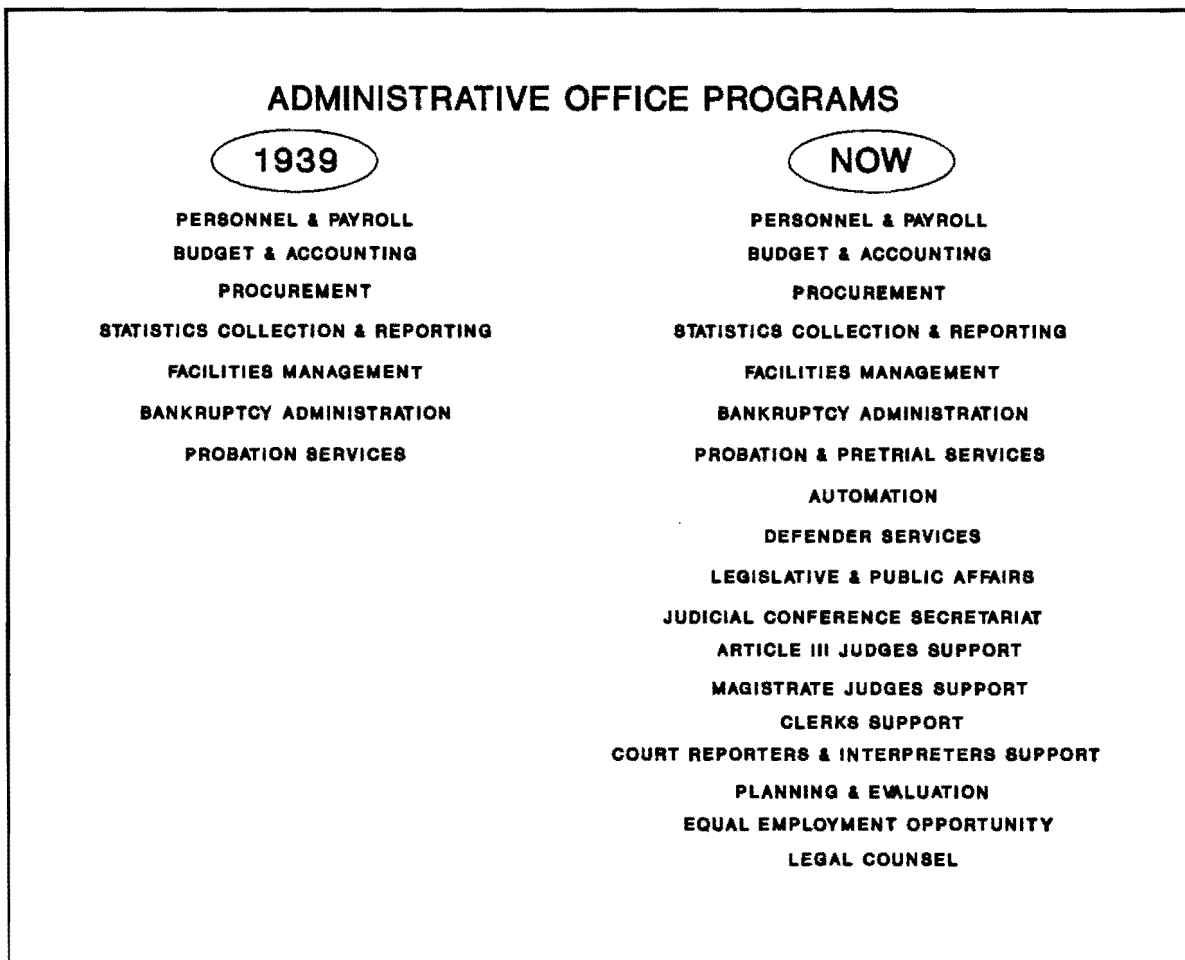


We have made progress in all of these areas, however, more remains to be done. These goals will continue to guide the work of this agency for several years to come.

I have established a planning and management objectives system to monitor our progress toward achieving these goals. Under this system, each division and office identifies long-range goals and establishes objectives for the coming year. Periodically, I meet with division and office staff to evaluate the progress we have made. This enables us to focus our limited resources on the most important objectives.

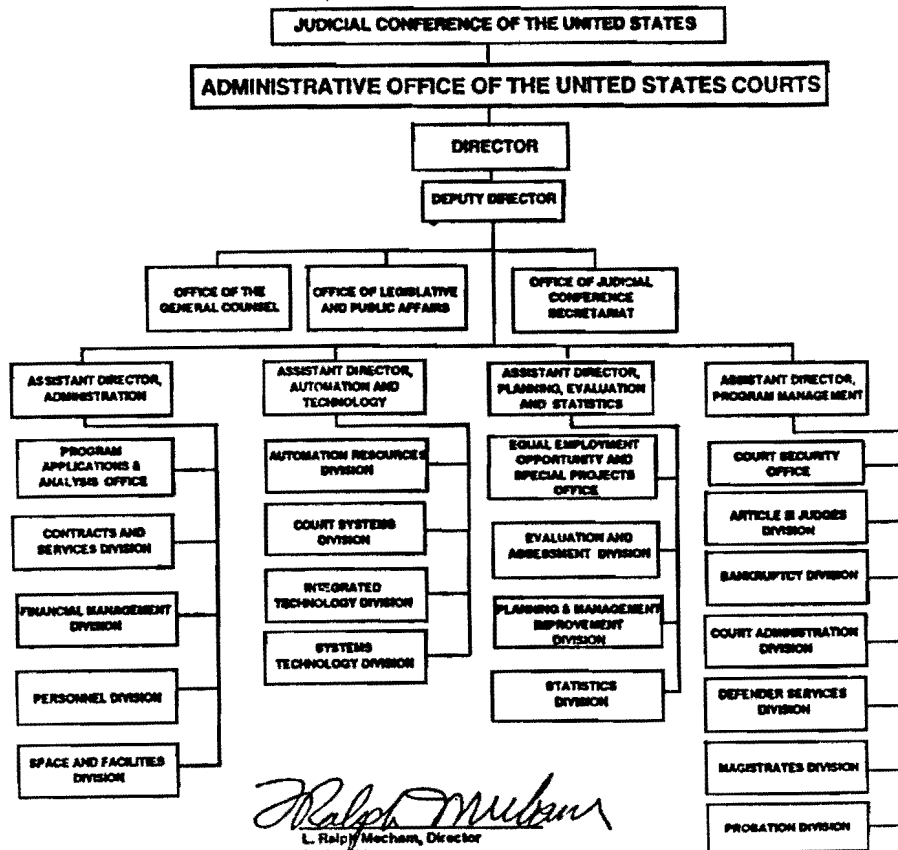
The Administrative Office has evolved from an agency that was narrowly focussed on providing classic administrative services in the areas of procurement, facilities management, payroll, accounting, budget, statistics collection, and personnel to an agency that also provides complex legal, program, management, and automation services to a greatly expanded judicial family. As you can see from the chart below, our responsibilities have increased significantly since 1939.

**CHART 1.**



In carrying out these responsibilities, I am assisted by my Deputy Director and Executive staff. Four of the nine members of the Executive staff head the staff offices of General Counsel, Legislative and Public Affairs, Judicial Conference Secretariat, and Planning, Evaluation and Statistics; and three head line organizations grouped into the areas of: Administration; Automation and Technology; and Program Management. I am about to make some changes to improve the distribution of responsibilities among my Executive staff.

**CHART 2**



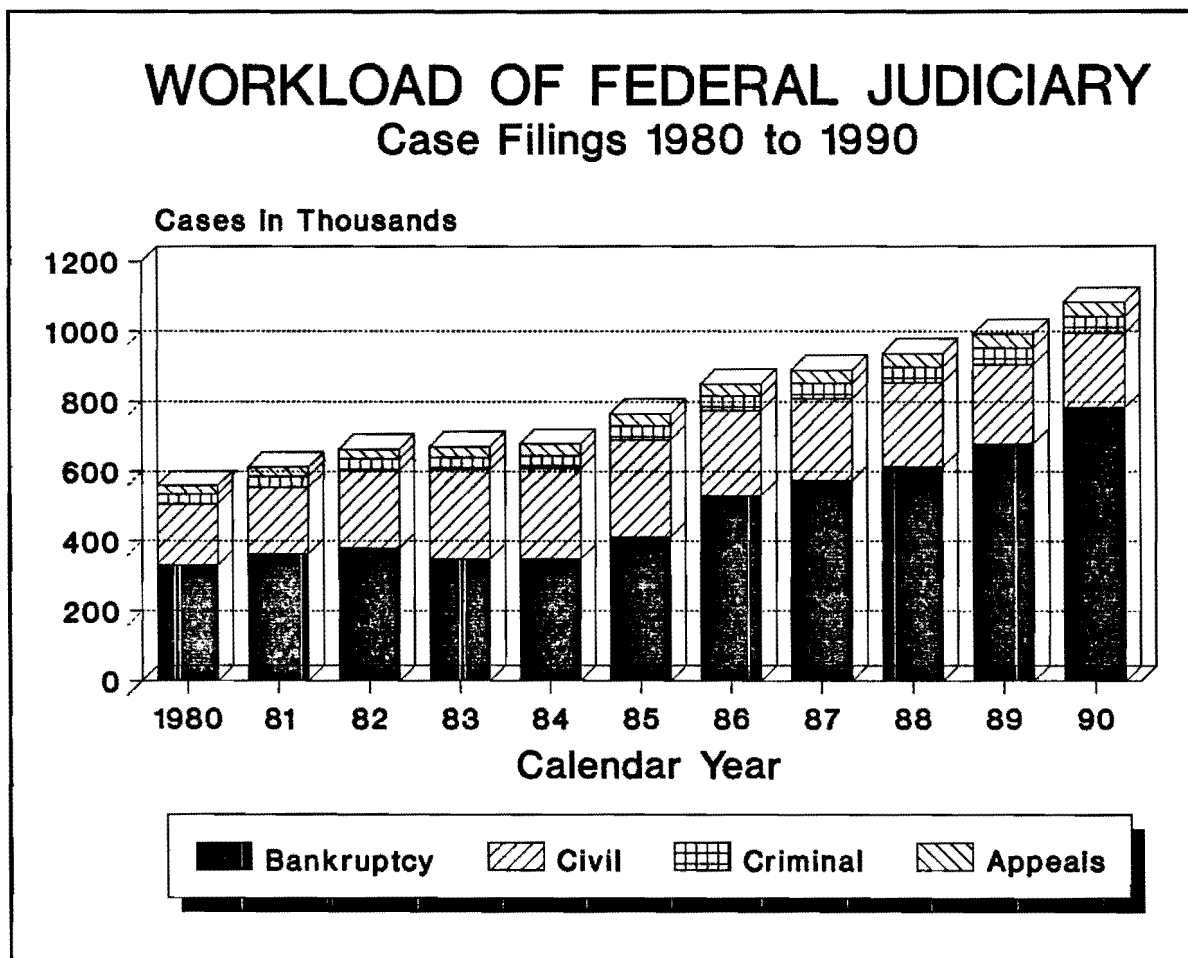
Assuming passage of our 1991 supplemental, there are 658 permanent positions authorized for the Administrative Office and 217 reimbursable positions primarily for support of court automation. These employees provide support to the approximately 26,000 employees of the Judiciary and assist in administering a budget of approximately \$2 billion.

### III. GROWTH IN THE WORKLOAD OF THE FEDERAL COURTS AND THE ADMINISTRATIVE OFFICE

#### A. GROWTH IN FEDERAL CASELOAD

I would now like to discuss some of the workload changes that have affected the Administrative Office and its ability to serve the courts in recent years. It should come as no surprise to the members of this subcommittee that the last ten years have been a period of remarkable growth in the workload of the federal courts. In 1990, for the first time, the courts recorded over 1 million filings, including civil, criminal, bankruptcy, and appeals cases.

CHART 3.



Total filings in 1990 were more than 90% above the number filed in 1980. Unfortunately, personnel resources, particularly those of the Administrative Office, have not kept pace. It is also interesting to note that although the Judiciary's appropriation has increased each year, the amount of funds available per case, in constant dollars, has decreased. In addition, new legislation and new programs place an ever-increasing burden on existing Judiciary personnel. Let me take a closer look at how the dramatic increases in filings have affected the appeals courts, the district courts, and the bankruptcy courts.

### **U.S. Courts of Appeals**

The Federal Courts Study Committee concluded that the federal appellate courts are in a "crisis of volume." Although the recent authorization of 11 additional judgeships will ease some of the strain, the number of judgeships have not nearly kept pace with the workload. Even if the 11 new judgeships are included, there were 738 appeals filed per panel in 1990, nearly 35% more than in 1980. With continued growth in drug-related appeals, appeals of sentences under the Sentencing Guidelines, and prisoner petitions, particularly habeas corpus death penalty appeals, appeals filings could reach 50,000 within the next five years. Consequently, the appeals courts will continue to push productivity to maximum levels.

### **U.S. District Courts**

With the authorization of 74 additional district court judgeships, the total number of filings per judgeship in 1990 (400) is only slightly above what it was in 1980 (396). However, it will be several years before all of these positions are filled. Additionally, the raw numbers do not take into account the fact that the nature of the workload has changed considerably. Dramatic rises in complex multi-defendant criminal drug cases and other drug-related cases, such as civil actions involving seizure of property, more than offset substantial declines in recovery and social security cases because these latter cases demand only a minimum amount of a judge's time. For example, the pending criminal caseload has risen 149% since 1980. The district courts, therefore, must continue to modernize and streamline procedures to keep pace with the incoming workload.

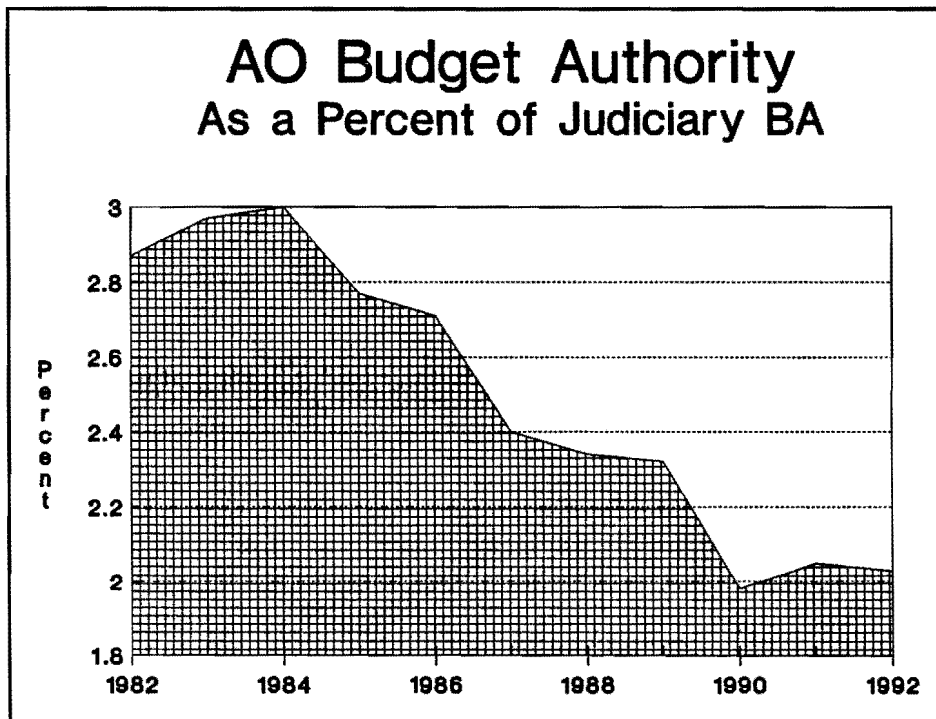
### **U.S. Bankruptcy Courts**

The bankruptcy courts are being buried under an avalanche of filings and related paperwork. A total of 782,960 bankruptcy petitions were filed during 1990, 15% more than one year ago and an astonishing 136% more than in 1980. Bankruptcy filings will continue to grow and may reach 1,000,000 within five years. Unless more bankruptcy judges are authorized, and soon, severe reductions in the level of service will occur.

## B. IMPACT ON THE ADMINISTRATIVE OFFICE

The substantial increases in the courts' workload have dramatically increased demands on the Administrative Office. Unfortunately, the resources available to the Administrative Office have not kept pace. During the 1970s and early 1980s, the staff and budget of the Administrative Office increased at a rate consistent with that of the Judiciary. Since then, however, the staff and budget of the Administrative Office have declined steadily relative to the growth of the entire Judiciary. For example, the Administrative Office's budget authority as a percentage of the overall Judiciary budget authority has declined from 3% in 1984 to just over 2% today (not including funding for reimbursable court automation positions). Although one percentage point may not seem significant, to an agency the size of the Administrative Office, this has been a significant loss.

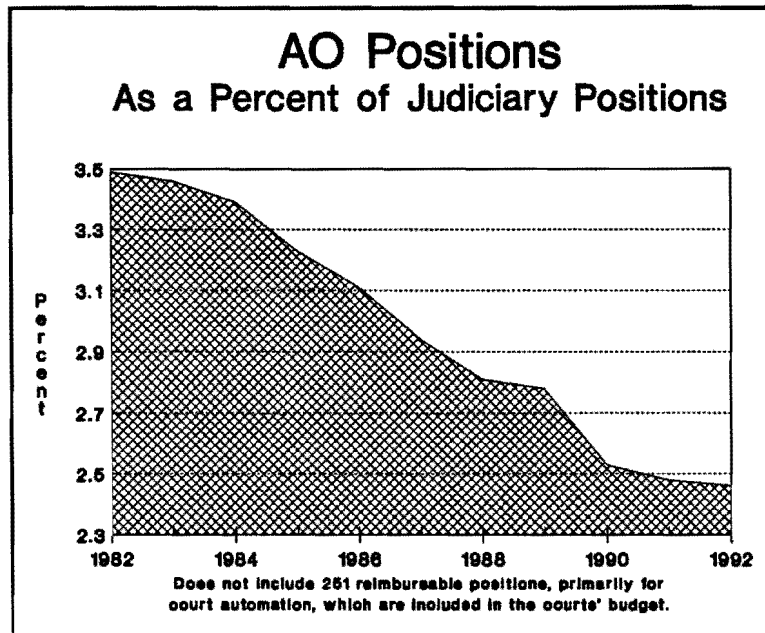
CHART 4.



Similarly, the growth of the Administrative Office staff has been stunted in comparison with the courts. In 1982, the Administrative Office accounted for approximately 3.5% of the total Judiciary staff. This is expected to drop to 2.4% in

1992, a 31% decrease. This figure does not take into account the 251 reimbursable positions, which are funded by the courts' budget, and are primarily for court automation support.

**CHART 5.**



The ratio of court employees serviced by the Administrative Office, is therefore projected to be 41:1 in 1992. This represents a 41% increase from the 29:1 ratio in 1982. This increase in court personnel serviced per Administrative Office employee would be significant even if the agency's responsibilities had just remained constant, but this is not the case. The scope of the Administrative Office's responsibilities has increased due to new legislative and Judicial Conference requirements. The 85 new judgeships, recently approved by the Congress, and their respective staffs, are desperately needed by the courts, but they will place additional responsibilities on the Administrative Office.

Since the future will continue to place new demands on the Administrative Office, ways must be found to utilize staff and resources more effectively. In reviewing the implications of growing service needs of the courts in a time of fiscal restraint, the Administrative Office is using its existing resources to meet priority needs. I would now like to discuss three specific areas of focus for the Administrative Office which will ultimately result in serving better the courts' needs. These areas are decentralization of administrative activities, budget decentralization and automation support.

## **Decentralization of Administrative Activities**

Decentralization of administrative functions has been an essential component of Administrative Office resource and program management. Functions best performed at the local level have been delegated to court managers. Given the growth in the courts, the volume of transactions and pieces of paper requiring processing was increasing beyond Administrative Office capabilities. In many cases, central operations were inadequate and ineffective. Sufficient resources were not available centrally in the Administrative Office to perform many of these tasks properly, and to design systems, provide program guidance, and monitor administrative programs in the courts. The immediate demands of providing operational service to the courts consumed limited Administrative Office resources, and service to the courts was unacceptable. Without large increases in Administrative Office staff, decentralization was the only answer.

Decentralization has not only improved performance, but it has also improved the overall economy and effectiveness of operations. Errors and oversights that occurred due to high volume central operations are minimized at the local level because of the lower volume and specific knowledge available within the court. For the most part, these functions have been assumed with little or no impact on court staffing levels, as aspects of these functions were already being performed by the courts. Those scarce Administrative Office resources previously devoted to processing paper are now being more properly directed toward essential systems development, program guidance and monitoring to ensure compliance with policies and regulations. The demands for central program management continue to tax the limited staff available.

This program will result in reducing the anticipated growth in Administrative Office staff that would have been required without it, but will not result in absolute reductions.

## **Budget Decentralization**

One of the most significant areas of decentralization has been in budget management. Budget decentralization is intended to put maximum flexibility for selected budget classes of expenditures in the hands of court operating officials, while allowing for the necessary coordination of national policies and standards. In October 1987, under the direction of the Committee on the Budget, the Administrative Office decentralized selected budget classes to five pilot courts. These five courts now have authority to manage virtually all funds except the salaries of judges and their chambers staff and can plan, prioritize and reallocate available funds to meet their own greatest needs.

One of the most positive outcomes of the pilot program has been an enhanced sense of cooperation between the various court units. Each office develops and controls its own budget. This has improved local management and the pilot courts are being run more efficiently than ever before. Again, full implementation of budget decentralization would allow the Administrative Office to develop, coordinate and monitor national policies and standards. Last week, the Judicial Conference recently approved the expansion of budget decentralization to 20 additional courts beginning October 1991, with further expansion to the remaining courts in 1992 and 1993.

### **Automation Support**

The creation of the Judiciary Automation Fund in fiscal year 1990 has allowed the Judiciary to make significant progress in meeting its automation goals and objectives as outlined in the ***Long Range Plan for Automation of the U.S. Courts***. The Fund serves as a stable, multi-year source of funding for the expansion, management, and use of automation throughout the Judiciary.

For years, the Judiciary was behind the technology curve. Judges did not have access to the legal research systems available in most mid-size law firms. With the infusion of automation funds over the last few years, the Judiciary is beginning to catch up. Fiscal year 1990 was a pivotal year for all aspects of the Judiciary's automation program. To date, the Judiciary has completed delivery of electronic docketing and case management systems to more than 50% of the courts, and 42 courts are using the automated Court Financial System. It is estimated that approximately 14,000 PCs have been acquired by the courts, and Computer Assisted Legal Research (CALR) has been installed in every judges' chambers. The implementation of the Probation and Pretrial Services Automated Case Tracking System will begin in fiscal year 1991.

The focus for 1991 and beyond is the continuing installation of electronic docketing and case management systems to the courts, the further acquisition of office automation equipment, and the installation of a nationwide data communications network. The Judiciary recently awarded the contract for the network to IBM. The network will give the Administrative Office greater ability to support the data processing and office automation initiatives of the Judiciary by speeding communications between the individual courts, the Federal Judicial Center and the Administrative Office.

Under the direction of the Judicial Conference Committee on Automation and Technology, a panel of experts is currently conducting an independent assessment



of the automation policies and operations of the Judiciary. This will ensure that the Administrative Office and the Judiciary are proceeding in a manner that will best meet their needs. In addition, the Administrative Office has created a new Technology Enhancement Office, which will keep abreast of new technological developments. This Office will identify, study, develop, evaluate, and demonstrate new technologies and procedural innovations that will benefit the federal courts.

Automation is an area where the Administrative Office makes extensive use of advisory committees composed of court staff to receive feedback on how the various systems are working in the courts and what changes are needed to improve the level of service. The resulting crosstalk has greatly improved communication and coordination between the courts and the Administrative Office. The impact of automation is far-reaching, and the national deployment of sophisticated computer programs and hardware in the federal courts will enhance significantly the level of services delivered to the bench, the bar, and the public.

#### **IV. HIGHLIGHTS OF ACTIVITIES OF THE ADMINISTRATIVE OFFICE**

As you can see, the Administrative Office is evolving into a highly professional organization providing broad services to the Judiciary in the areas of automation, program management and policy assistance while increasing autonomy to local court managers. Opportunities for improvement are being researched and implemented. In this context then, let me now describe recent activities of the Administrative Office directed toward accomplishing the goals set out. You have all received copies of the report entitled **ACTIVITIES OF THE ADMINISTRATIVE OFFICE: 1990 Report of the Director**, submitted with my testimony. Reports such as this are now prepared to achieve our goal of improving communication with judicial officers and staff. I hope you will also find it useful. I would like to highlight briefly some of the Administrative Office's most important accomplishments, some of which have occurred since the report's issuance.

##### **Judicial Impact Assessments**

New legislation often results in significant new work for the Administrative Office and the courts. In the past, the Judiciary and the Administrative Office often found ourselves overwhelmed by legislative demands. In an effort to anticipate the effects of new legislation and inform the Congress of the potential impact on the Judiciary, the Administrative Office has expanded its capacity to prepare judicial impact assessments to give early warning of the resource and jurisdiction implications of important Legislative and Executive Branch proposals on the Judiciary. Impact statements also have been used to aid Judicial Conference

committees in their deliberations on issues and in congressional testimony. Some recent legislation for which judicial impact statements have been prepared include: civil justice reform; thrift and bank fraud prosecution; mandatory drug testing of defendants on post-conviction release; and indicting state and local drug offenders in federal court one day a month.

We stand ready to provide whatever information or assistance you might find helpful in your consideration of legislation affecting the Judiciary. The purposes of both branches can only be enhanced by full and complete communication and cooperation.

### **Civil Justice Reform Act Implementation**

The Civil Justice Reform Act requires the implementation of civil justice expense and delay reduction plans in all district courts within three years. While the Act authorized up to \$25 million for implementation of the plans, no funds were appropriated for this purpose. The Judiciary has requested a supplemental appropriation of \$7.8 million for initial implementation in fiscal year 1991 and \$20.5 million for implementation in fiscal year 1992. The Judicial Conference, the Administrative Office, and the Federal Judicial Center are devoting significant resources to ensure effective implementation of the Act. At its March meeting, the Judicial Conference selected the 10 pilot courts.

The Judicial Conference assigned primary responsibility for implementation to its Committee on Court Administration and Case Management. Under the direction of the Committee, the Administrative Office has prepared several memoranda to all district court judges containing a complete overview and analysis of the effects of the Act, including advice on the appointment of advisory groups, the use of reporters, and the selection of pilot courts. Administrative Office staff have addressed Judicial Conference committees, circuit council meetings, circuit clerks' meetings, clerks' advisory committees, Federal Judicial Center clerk seminars and Administrative Office user groups on all aspects of implementation of the Act. The Administrative Office addresses questions from judges and clerks on a daily basis. The Judiciary and the Administrative Office are committed to making this legislation a success.

### **Staffing Allocation Studies**

Adequate staffing in the courts is critical to effective judicial administration. The Administrative Office is reviewing all current staffing allocation formulas to ensure that the courts are adequately staffed to perform their mission. Approximately 17,000 positions in the courts are allocated based on workload-driven formulas. These include the probation and pretrial services offices and the circuit, district and

bankruptcy clerks' offices. The existing formulas are out of date; the new formulas will include all changes in work, technology and program requirements.

### **Court Operations and Administration Surveys**

An important function of the Administrative Office is to offer assistance to individual courts in administrative and program areas. The administrative units of the Administrative Office have completed 7 (of a total of 12) Court Operations and Administration Surveys to assess the state of administrative operations in the courts and identify opportunities for improving the guidelines and support provided by the Administrative Office to the courts. The Administrative Office provides other management assistance to the courts through regularly scheduled program reviews and in response to specific requests for assistance.

### **Review of Judicial Space Standards**

In conjunction with the congressionally chartered National Institute for Building Sciences, a team of consultants has just completed a functional review of the space requirements for all judicial units over the past three years. From that project we now have a document, *The U.S. Courts Design Guide*, that serves a number of purposes: it helps court personnel understand the attributes of the space they need to do their jobs; it describes those attributes in such a way that design architects and builders can translate the requirements into finished space; it provides a definitive standard against which cost estimates can be calculated; and since it was developed with full participation by all units of the Judiciary, it assists the Judiciary in disciplining itself in future projects through peer review of requirements and costs. The revised space standards were approved by the Judicial Conference in March 1991. We expect the General Services Administration (GSA) to adopt this new guide.

### **Long Range Facility Planning for the Judiciary**

In accordance with Judicial Conference policy, each district is required to develop long term facility plans, coordinated and integrated at the district level. The plans are based on projections of caseload at 5, 10 and 30-year intervals. The space needed is evaluated against the ability of current facilities to expand. The result is an inventory of space needs over a 30-year period. To date, 22 planning sessions have been conducted. The GSA is using these plans to develop projections of construction needs. When all the plans are completed in about 18 months, we will have a total inventory of projects, both large and small, needed to house the courts for 30 years if current caseload trends continue. We will also be able to provide Congress with a 5-year projection of the Judiciary's space

requirements for its priority setting and to show how one project in a district relates to others.

### **Judiciary Office Building**

One of the goals set for me by the Chief Justice when I became Director was to find the means to consolidate all Administrative Office staff. Our employees are currently housed in seven locations. This situation causes severe logistical problems. In April 1990, ground was broken for the new Judiciary Office Building located adjacent to Union Station on Massachusetts Avenue. To ensure that the building meets the Judiciary tenants' future space requirements, all Judiciary tenants actively participated in planning the new building. We anticipate occupancy in the Fall of 1992. The building is ahead of schedule and under budget. We thank this subcommittee for its support of this project.

### **Contract Audit Program**

In February 1990, the Administrative Office, with participation by court officials, awarded a contract to a private accounting firm to supplement our own program to conduct financial audits of the courts. The program is now well underway and has been very successful. The contractor assistance will enable us to conduct cyclical financial audits of the courts every two years rather than four to five years, as had previously been the case.

### **Administrative Office Personnel Act**

Until last year, the Administrative Office was subject to Executive Branch control over our personnel system, despite the independent personnel system in the courts. Legislation to establish a comprehensive personnel system for employees of the Administrative Office of the U.S. Courts was signed into law by the President on October 30, 1990, an action made possible by the support of this subcommittee. I have appointed an Executive Steering Committee to oversee the development and implementation of the system, and more than 100 Administrative Office employees volunteered to serve on four subcommittees to develop the regulations and procedures that will govern the system. I anticipate that it will take about two years to develop fully a replacement personnel system.

Prior to this legislation, we were severely constrained in the methods we had for developing the best and brightest employees of the Administrative Office and the courts. This legislation will allow the Judiciary to move employees with ease from the Administrative Office to the courts and vice versa. This increased flexibility will greatly enhance the Administrative Office's ability to meet the future needs of the

courts. We are deeply appreciative of the Congress' recognition and support of our unique needs in this area.

### **Judiciary Staff Salary Plan Review**

Under the direction of the Judicial Conference Committee on Judicial Resources, the Administrative Office has contracted with the Hay Group for an extensive review of the Judiciary Salary Plan (JSP), the courts' personnel system. The Federal Judiciary has grown tremendously in the last decade, more than doubling in size since 1980, yet a comprehensive review had not been made to ensure that the JSP continues to be a fair system that pays employees fairly according to their job responsibilities, and that it is as market competitive as budget realities permit. Given the tremendous growth in automation, the expanding workload, and new legislative requirements, we know that the jobs performed by court employees today differ greatly from the jobs performed ten years ago. We want to be certain that the classification and compensation system we use is flexible enough to retain and motivate the highly capable people now on staff and to attract the work force we will need in the future.

### **Administrative Office/Federal Judicial Center Task Forces**

Last June, the Director of the Federal Judicial Center, Judge Schwarzer, and I established two task forces to coordinate efforts in areas where both agencies have significant activity and in which there is some overlap: education and training, and research. The education and training task force has completed a report on training requirements for judicial employees, which is the basis for the proposed \$8 million increase in training funds the Judiciary is seeking in the fiscal year 1992 budget. Education and training is fundamental to the proper administration of justice. Judges must stay abreast of evolving legal doctrines and case management techniques. Judges and senior managers must develop and refine management and administrative practices, skills and techniques. Managers must ensure that their employees are adequately trained and possess the technical skills to perform their jobs. The need for more extensive training in the courts to keep up with the rapid changes in judicial administration is crucial.

Both agencies are involved in research projects and often share information and ideas. The research task force has been meeting and has agreed on a plan for improved coordination of research projects.

### **Creation of Article III Judges Division**

We recently created an Article III Judges Division to serve as a troubleshooter and ombudsman for Article III and Claims Court judges and to act as a nationwide

center for assistance in case management, chambers automation needs, court governance, and rule-making. It will assist in the analysis of judicial resource needs, provide counsel and staff support to selected committees of the Judicial Conference and maintain liaison with professional associations, Executive Branch agencies, and state courts.

In general, the Article III Judges Division will serve as the focal point for the needs and concerns of Article III and Claims Court judges and will enhance the services that we provide to judges and their immediate staff. It will provide services similar to those furnished for many years to bankruptcy and magistrate judges by their respective divisions.

### **Court Manuals**

In an effort to improve the efficiency and effectiveness of court staff, and assist judges in administering the business of their courts, the Administrative Office has placed renewed emphasis on the provision of court manuals. Such manuals are now intended to be more sophisticated guidelines introducing some of the most efficient court administration techniques. A major revision of the Probation and Pretrial Services Manual was updated and distributed last year. Sixteen of the nineteen chapters of the magistrate judges' portion of the ***Guide to Judiciary Policies and Procedures*** have been revised and distributed, with the remaining three chapters to be completed by September 1991. A separate legal manual for magistrate judges is also being prepared and should be completed by December 1991.

A program manual for bankruptcy clerks was prepared and published last June. A new docket management procedures manual for bankruptcy judges should be completed by the end of the year, as should a complete revision of the Bankruptcy Forms Manual, incorporating the changes in the bankruptcy rules which will become effective in August.

### **Bankruptcy Administrator Program**

The Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 established the United States trustee program on a permanent, nationwide basis. The program is now operational in all but six of the 90 districts. In those six judicial districts for the states of Alabama and North Carolina, the Judiciary-based bankruptcy administrator program performs similar estate administration oversight functions.

Reports received from bankruptcy judges, bankruptcy clerks, practitioners, and litigants on the operation of the bankruptcy administrator program have been

uniformly positive. All six bankruptcy administrators have established a reputation for effective and responsive administration of bankruptcy estates. The Judicial Improvements Act of 1990 extended the Bankruptcy Administrator Program for 10 years.

Both systems of bankruptcy estate administration were reviewed during the past year. The Federal Courts Study Committee recommended, and the Judicial Conference reaffirmed its position, that Congress should reconstitute United States trustees as independent statutory officers in the Judicial Branch.

### **Establishment of New Federal Defender Offices**

Federal defender organizations provide a cost-efficient alternative to Criminal Justice Act (CJA) private panel representation and consistently furnish high quality representation to CJA defendants. The Administrative Office plans to conduct studies to evaluate the feasibility of establishing defender organizations in all judicial districts not currently served by one. Feasibility studies for the following districts were initiated and/or completed during the past year: Indiana (Southern), Montana, New York (Western), Tennessee (Eastern), Texas (Eastern), Utah, Virginia (Eastern), and Wyoming.

### **Death Penalty Resource Centers**

The Administrative Office provides administrative support in connection with the establishment and operation of death penalty resource center/community defender organizations. The concept of death penalty resource centers, jointly funded through grants under the Criminal Justice Act (CJA), and through non-CJA sources, is an outgrowth of circuit task force studies which began in 1986 to address the problem of the large increase in the number of death penalty cases entering the Federal system.

Resource centers monitor the status of death penalty cases pending in the districts they serve, recruit attorneys to represent death-sentenced Federal habeas petitioners, and provide assistance and expert advice to counsel appointed in death penalty cases. Each center also represents a number of death-sentenced petitioners directly. The centers also maintain brief banks and serve as clearinghouses of information on death penalty issues. In providing these services, resource centers facilitate the ability of Federal courts to locate attorneys willing and able to provide CJA representation in death penalty cases, foster continuity of representation, and improve the quality and cost-effectiveness of death penalty representation.

In the past year and one-half, the Administrative Office assisted in establishing operational resource centers in Illinois and Missouri. The Committee on Defender

Services has approved funding for new resource centers in Pennsylvania and Ohio. The Administrative Office is continuing efforts to improve procedures for monitoring the operation of resource centers.

### **Study of the Jurisdiction of Magistrate Judges**

The Judiciary would not be able to keep up with growing caseloads without the critical services of magistrate judges. Responding to a recommendation of the Federal Courts Study Committee, the Administrative Office has commenced a study of magistrate judge jurisdiction under the Magistrates Act and the Constitution. This study will involve a detailed examination of the legislative history of the Magistrates Act and the parameters of magistrate judge authority under Article III of the Constitution, as well as surveying the spectrum of case law dealing with magistrate judge jurisdiction. We expect that the study will result in recommendations to the Judicial Conference for legislative changes.

### **Pilot Drug Testing Project**

The Anti-Drug Abuse Act of 1988 required drug testing of defendants in criminal cases in eight pretrial services districts. To the extent feasible such testing was to be completed before the defendant made an initial appearance before a judicial officer. The eight district pilot drug testing project was completed December 31, 1990. A total of 8,162 individuals were tested for drugs under the pilot program. A final report on the effectiveness of the demonstration program and recommendations as to whether mandatory drug testing of defendants should be made more general and permanent will be presented to the Congress by March 31, 1991.

The Act also requires as an additional, mandatory condition of probation and supervised release for offenses committed on or after January 1, 1989, that any defendant convicted of a felony refrain from any illegal use of any controlled substance and submit to periodic drug tests for use of controlled substances at least once every 60 days. A total of 718 individuals became eligible for this testing and were tested a total of 4,979 times during the project.

### **Pretrial Detention**

Congress initially concluded that the detention provisions of the Bail Reform Act of 1984 would affect a limited number of cases. With dramatic increases in the number of drug cases in the courts, however, detention has become widely used.

The Judicial Conference Committee on Criminal Law and Probation Administration surveyed each district in 1990 regarding recent problems the courts



are experiencing associated with the heavy use of pretrial detention. Forty-five of the surveyed districts reported "serious problems" with detention. Approximately 38% of all defendants are detained pending trial at an annual cost of \$98 million. Awaiting the arrival of prisoners from distant jails causes court scheduling problems and often necessitates continuances. Prisoners complain of problems in obtaining access to legal counsel as well as to probation/pretrial services officers.

The Administrative Office plans to review the impact of detention by analyzing data from 20 of the 45 districts that reported serious problems with detention in the 1990 survey. Administrative Office staff also plan to assess effective measures to reduce detention by analyzing how pretrial services are administered in districts with detention rates significantly below the current national average of 38%.

### **Guide on Alternatives to Detention**

Under the direction of the Committee on Criminal Law and Probation Administration, the Administrative Office is preparing a guide describing alternatives to detention. The guide, which should be ready after June 1991, will discuss several alternatives to detention, including halfway house placement, electronic monitoring, residential substance abuse, mental health treatment, and pretrial services supervision. The guide will describe each alternative, its purpose, advantages and limitations, impact on failure to appear, community safety, and funding availability. It is intended to assist magistrate judges and district judges in making bail determinations.

### **Pretrial Services Offices**

Pretrial services officers assist judicial officers in making bail decisions by providing information on defendants who have been interviewed and investigated before the initial hearing. As of March 1991, pretrial services had been established in each district, with 35 districts having separate pretrial services offices.

During 1990, pretrial services officers activated cases for 46,103 defendants in U.S. district courts, an 11% increase over 1989. This rise in cases activated can be attributed mainly to the 11% increase in the number of reports prepared for defendants charged by complaint before U.S. magistrate judges. Pretrial services officers interviewed 88% of the total number of cases activated and completed prebail reports in 86% of these cases as of October, 1990. Even though the number of cases was up substantially this year, there are still defendants who are not interviewed prior to the bail hearing. In some cases, there is insufficient time between arrest and the bail hearing, and in others there is no pretrial or probation officer in the location.

The number of pretrial diversion cases (with conditions agreed to by the defendant and the U.S. government prior to or at the initial hearing) continued to increase during 1990. There were 2,467 pretrial diversion cases activated, a 3% increase from 1989. Approximately, 84% of the total pretrial diversion cases involved agreements reached before defendants were formally charged in court. Probation and pretrial officials see this trend as an indication that they are successfully identifying the appropriate candidates for supervision before involvement in formal hearings and trials.

### **Pretrial Services Supervision Project**

At its December 1990 meeting, the Committee on Criminal Law and Probation Administration endorsed an Administrative Office proposal to develop a supervision model for pretrial services. Administrative Office program staff plan to organize a task force to develop a supervision model based on the statutory responsibilities of pretrial services. The model will include extensive use of alternatives to detention, e.g., electronic monitoring, halfway house placement, and field work. The model will be implemented in several districts and evaluated by the ability of pretrial services to meet its statutory responsibilities and by the effect on the detention rate and rate of flight and arrest on release.

## **V. NEW LEGISLATION NEEDED**

While it is evident that we have a full plate of ongoing projects and new studies in addition to our regular workload, there are also some legislative goals we would like to pursue. Our most important legislative priority is passage of our full 1992 Budget Request. Without adequate funding, the Judiciary will not be able to perform its critical mission. We greatly appreciate the letter of support the Committee on the Judiciary sent to the Budget Committee regarding our fiscal year 1992 budget request. In addition, we will be requesting legislative changes in several major areas. Of utmost priority will be legislation granting real property authorities for the Judicial Branch, providing additional bankruptcy judges, and reforming the Judicial Survivors Annuity System.

### **Real Property Bill**

The provision of space and facilities is the only administrative area in which the Judiciary, a separate and independent branch of government, is fully dependent on another branch of government. We believe the needs of the Judiciary in this area should remain the concern of the Congress, but not the Executive Branch. Executive Branch policies are often not sufficiently responsive to the unique needs of

the Judiciary and we are seeking legislation to grant the Judiciary its own real property authorities.

The Judiciary should be able to set its own priorities, and be in control of the planning and funding of its projects, without intervention by the GSA and the Office of Management and Budget. Be assured, however, that we do not wish to set up our own GSA, and are prepared to give GSA first refusal on the construction of Judiciary space and facilities projects. We just want to manage the process.

### **Bankruptcy Judgeships**

Another priority is the creation of new bankruptcy judgeships. Although the precise number of judgeships is not yet settled, legislation to create 14 judgeships has been introduced in the Senate. The Judicial Conference has approved a new case weighting system for determining the need for bankruptcy judgeships. As a result, the Bankruptcy Committee recently directed the Administrative Office to undertake an expedited national survey of the courts to assess the current need for new judgeships. It appears that the new case weighting system will indicate that more bankruptcy judges are needed than the current Judicial Conference recommendation of 14. We expect the Judiciary will submit a revised request for bankruptcy judges to the Congress by early July.

### **Judicial Survivors Annuity System Reform**

A major legislative priority for the Federal Judiciary in the 102nd Congress will be reform of the Judicial Survivors Annuity System (JSAS). The present system is costly and compares unfavorably with survivorship plans of other Federal employees.

Participation in the JSAS costs 5 percent of a judge's salary or annuity. Under the statute, Congress intended that the government would fund between 5 percent and 9 percent of the salaries of participating judicial officials. During the 1988, 1989, and 1990 fiscal years, no government contributions were made to the JSAS because the contributions of judges were sufficient to keep the plan fully funded.

Three out of every four newly appointed Article III judges rejects the JSAS, while only 77 of the approximately 600 bankruptcy judges and magistrate judges have elected to participate in the JSAS. I look forward to working with this subcommittee to create a more equitable system of survivorship protection for the spouses and dependents of judicial officers.

## **Asbestos**

This past September, Chief Justice William Rehnquist appointed an Ad Hoc Committee on Asbestos Litigation chaired by Judge Thomas Reavley of the Fifth Circuit. The report of the committee, as approved by the Judicial Conference, is included to be inserted in the record. The report illustrates the growing number of asbestos cases that are being filed in the federal and state courts and recognizes that this is a national problem that cannot be solved without a national solution. The federal courts are continuing to grapple with the complex issues presented by asbestos litigation and we are hopeful that Congress will consider examining the asbestos issue in an attempt to formulate a solution that is fair and equitable to all concerned.

## **Multiparty-multiforum Legislation**

The Judicial Conference supported the multiparty-multiforum proposal contained in H.R. 3406 as introduced by Mr. Kastenmeier in the last Congress. As Judge Schwarzer testified on November 15, 1989, in his capacity as Chairman of the Committee on Federal-State Jurisdiction, the Judicial Conference approved in principle the creation of federal jurisdiction based on minimal diversity to consolidate in the Federal courts multiple litigation in state and federal courts involving personal injury or property damage arising out of a single event or occurrence. The Judicial Conference looks forward to working with the subcommittee on this important and innovative approach to consolidation of cases.

## **Legislative Recommendations of the Judicial Conference Based on Federal Courts Study Committee Report**

Although the Congress passed some of the recommendations of the Federal Courts Study Committee in last year's Judicial Improvements Act of 1990, the Judicial Conference recommends enactment of the following provisions which were left out of last year's legislation:

- raising the jurisdictional amount for diversity jurisdiction from \$50,000 to \$75,000 and indexing it for inflation;
- amending language regarding prisoner civil rights suits so that the time period for exhaustion of administrative remedies is increased and more flexibility is given with respect to the statutory minimum requirements imposed on the states;

- amending the bankruptcy statute to provide that a bankruptcy judge's finding becomes final unless a party objects within 30 days of that finding;
- abolishing the Temporary Emergency Court of Appeals; and,
- providing that National Labor Relations Board orders be self-enforcing.

### **Other Legislation**

We also share your concern regarding the proliferation of mandatory minimum sentences. The Judicial Conference, as you know, adopted a resolution opposing mandatory minimum sentences at its March 1990 meeting, and we have been working with Members of Congress and the United States Sentencing Commission to eliminate mandatory minimums. The Sentencing Reform Act was intended to create a comprehensive and rational Federal sentencing system. Statutory provisions requiring mandatory minimum sentences on certain offenses subvert that purpose.

The Judicial Conference is also interested in the progress of bills to reform the civil Racketeer Influenced and Corrupt Organizations (RICO) statute (18 U.S.C. 1964(c)). We have respectfully recommended to Congress that the impact of such cases on the federal judicial workload justifies significantly narrowing the scope of civil RICO.

We will seek an increase in the amount of money reimbursed to the Judiciary for the expenses of collecting fines. We also will ask for authorization for reimbursement of the Judicial Branch, out of funds in the Department of Justice Asset Forfeiture Fund, for certain expenses incurred in connection with adjudications of asset forfeitures and the furnishing of home detention services and equipment.

Efforts will also continue to repeal Section 140 of Public Law 97-92 so that judges will receive automatic annual cost-of-living adjustments, just as all other federal employees and officials do.

The Judicial Conference has approved proposed legislation to exclude income received by retired Supreme Court justices from teaching from the current 15% ceiling on outside earned income, consistent with the treatment Congress approved last year for senior Article III judges.

In addition, we will seek technical language changes to conform various provisions of Title 28 with changes made in the removal statutes by the Judicial Improvements and Access to Justice Act of 1988.

## **VI. CONCLUSION**

I hope this testimony gives a sense of the breadth and scope of Administrative Office activities. As we move through the 1990s the organization and objectives of the agency will continue to evolve as we carry out our mission to serve the Judiciary. We will continue our program of decentralizing administrative responsibilities to court managers, who at the local level are better placed to carry them out effectively. We will continue to move forward to bring modern technology to the courts to assist in managing growing caseloads. We will try to ensure that the courts have sufficient resources and that court staff have the information, tools and training necessary to accomplish their work.

Mindful of our responsibilities to provide administrative guidance and leadership to the courts and support to the Judicial Conference, I assure this subcommittee that we will remain ever vigilant in seeking ways to perform our responsibilities more effectively.

In closing, I thank the subcommittee for this opportunity to describe some of the accomplishments of the Administrative Office as well as some of the issues and challenges confronting us. I also thank you for the great interest and support this subcommittee has provided to the Judiciary and the Administrative Office over the years.