



THE THIRD BRANCH

Federal Courts Study Committee Appointed, Invites Suggestions

On Dec. 22, Chief Justice William H. Rehnquist announced the appointment of a 15-member Federal Courts Study Committee chaired by Judge Joseph F. Weis, Jr. (3d Cir.) of Pittsburgh, Pa. The Committee was authorized by the Judicial Improvements and Access to Justice Act, Pub. L. No. 100-702, to examine problems facing the federal courts and to develop a long-range plan for the future of the federal judiciary. The Committee is to consider alternative methods of resolving disputes, evaluate the structure and administration of the federal court system, weigh methods of resolving intracircuit and intercircuit conflicts in the courts of appeals, and consider the types of disputes resolved by the federal courts. The Committee may conduct hearings and estab-

lish advisory panels and subcommittees. It will operate over a 15-month period commencing in January 1989.

"The task this committee will undertake is one of enormous importance to the immediate and long-term future of the Judiciary," the Chief Justice said.

The Committee, which exists under the Judicial Conference of the United States, will submit a final report to the President, the Congress, the Judicial Conference, the Conference of Chief Justices, and the State Justice Institute. It will cease to exist 60 days after reporting.

Other Committee members are J. Vincent Aprile II, General

See STUDY COMMITTEE, page 8



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Chief Justice Issues 1988 Year End Report on Judiciary

On Jan. 2, Chief Justice William H. Rehnquist issued his 1988 Year End Report on the Judiciary. The report focused on judicial workload and compensation; court jurisdiction and administration; legislative activities; and financial resources available to the courts. Some highlights of the report are described below.

Judicial workload. The Chief Justice noted that the federal judicial workload increased at every level in 1988, with pending caseloads continuing to mount. This increase (an ever larger percentage of which is

See CHIEF JUSTICE'S REPORT, page 5

President Endorses Quadrennial Commission Recommendations Substantially Raising Top Federal Salaries

President Reagan on Jan. 5 signed the recommendation of the 1989 Commission on Executive, Legislative and Judicial Salaries, known as the Quadrennial Commission, that "salary levels for top federal officials be set at approximately the same amount in constant dollars as the salary established for the same positions in 1969, with appropriate adjustments to maintain current relationships among the various positions." According to the Office of Management and Budget, costs of the recommended judicial system increases in FY90, less revenues returned to the government, would be \$76.7 million.

The Commission concluded that the best way to measure the adequacy of present salary levels was

to compare them with the salary levels that the President recommended to Congress in 1969, based on the report of the first Quadrennial Commission (which levels Congress allowed to go into effect).

The Commission held hearings in Washington, D.C., on Nov. 10 and 11 (see *The Third Branch*, December 1988), where it heard testimony describing inadequate judicial compensation as the greatest factor in decisions to retire from the bench or to decline judicial positions, surpassing as a factor in such decisions pressure from the nearly doubled caseload and from the increased personal

See SALARIES, page 4

Inside . . .

- FJC Publishes Anthology of Research on Appealsp. 2
- Funds for Prison Constructionp. 2
- Federal Employees Regain Common-Law Immunity..p. 3

Taiwan Judicial Delegation Visits FJC



Officials from Taiwan (Republic of China) conducting an inquiry into judicial education and court administration visited the Federal Judicial Center on Dec. 13. The officials, who were from the Ministry of Justice (executive branch) and Judicial Yuan (judicial branch), met with FJC personnel as part of a three-week tour of U.S. courts, court administration training facilities, and continuing legal education centers under the auspices of the Asia Foundation. Pictured above are (l. to r.) Wang Ting-Maw, Director, Personnel Department, Judicial Yuan; Wang Yu-Ching, Chief Judge, Yuan-Lin District Court; Wang Chia-Yi, Secretary General, Judicial Yuan; Judge John C. Godbold, Director, Federal Judicial Center; Lu Yu-Wen, Vice-Minister, Ministry of Justice; Sam Chang, translator; and Lin Sea-Yau, Director, Department of Academic Affairs, Judicial Personnel Training Institute.

Anthology of Research on Managing Appeals In Federal Courts Published by FJC

The FJC has published *Managing Appeals in Federal Courts*. This volume is an anthology, the preparation of which began during the directorship of Professor A. Leo Levin. It is edited

by Michael Tonry of the Castine Research Corporation and Robert A. Katzmann of the Brookings Institution. The volume gathers selected writings on the subject of handling appeals, selected from 25 published and unpublished reports supported by the Center on this topic during the last 15 years. Eighteen of these reports are reprinted in whole or in part. The introduction to each of the five parts of the anthology provides a description or summary of the reports not reprinted. The book provides an overview of Center research in the field in one convenient volume.

To receive a copy, please write to Information Services, 1520 H St., N.W., Washington, DC 20005, enclosing a self-addressed mailing la-

\$95.4 Million in Forfeiture Proceeds Transferred to Prison Construction

The Department of Justice has transferred from the Assets Forfeiture Fund to the Bureau of Prisons \$95.4 million in proceeds from forfeited assets of drug traffickers and organized crime figures. The transferred funds will be used for the repair and construction of prison facilities at Atlanta, Ga., and Oakdale, La., where Mariel Cuban prisoners rioted in 1987; construction of detention facilities in Puerto Rico, Fort Worth, Tex., and Tallahassee, Fla.; and for upgrading security from level one to level two at the Lompoc, Cal., prison camp.

The Marshals Service has in custody properties subject to forfeiture valued at more than \$704 million, ranging from cash, precious metals and jewelry, boats, aircraft, and motor vehicles to residential and commercial properties, including horse farms, recording studios, golf courses, banks, historic mansions, restaurants, and stores. Forfeited property is disposed of by commercial sale, transfer to law enforcement agencies for official use, and by destruction or scrap, as appropriate.

bel, preferably franked. The book weighs 4 lbs. Please do not send an envelope.

Because of the expense of a publication this size, the Center is not able to offer multiple copies of the book. Should you require additional copies, they may be purchased through the Government Printing Office. Please write to Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20401, requesting *Managing Appeals in Federal Courts*, stock number 027-000-01319-8. The price is \$39.00. Should someone outside the judiciary express interest in a copy to you, please refer them to the Government Printing Office. ■



BULLETIN OF THE FEDERAL COURTS

THE **THIRD** BRANCH

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Co-editors

Alice O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center. Peter G. McCabe, Assistant Director, Program Management, Administrative Office of the U.S. Courts.

Judicial Conference Executive Committee Changes Announced by Chief Justice

The Chief Justice has appointed Chief Judge Charles Clark (5th Cir.) as Chairman of the Executive Committee of the Judicial Conference of the United States, effective Jan. 1. This was the result of Judge Wilfred Feinberg's decision to step down as Chief Judge of the Second Circuit. He leaves the Judicial Conference after eight years of service to the Conference and as Chief Judge of the Second Circuit. The Chief Justice expressed his gratitude and noted the high regard and respect Judge Feinberg has earned during his judicial career, which was borne out during his tenure as a Conference member and as Chairman of the Executive Committee.

Chief Judge Clark has been a Conference member since 1981 and a member of the Executive Committee since 1984. "Your active par-

ticipation and experience with the work of the Conference and the Executive Committee will assure a smooth transition," noted the Chief Justice in his letter of appointment.

Judge Sarah Evans Barker (S.D. Ind.), the district judge representative from the Seventh Circuit, has been appointed as a member of the Executive Committee, to fill the vacancy created by Judge Feinberg's departure.

Nearly one-third of all committee members' terms were scheduled for rotation on Oct. 1, 1988. The Chief Justice has completed this appointment cycle and a listing of all members of the Judicial Conference and its committees will be published by the Conference Secretariat shortly. ■

Gun Purchasers Identification System

The Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, contains a provision ordering the Department of Justice to develop by late December 1989 a system that will permit gun dealers to ascertain whether a prospective purchaser of firearms is a convicted felon. The Department must also have plans to expand the system by late June 1989 to advise gun dealers whether a purchaser is ineligible for other reasons, i.e., mental illness or drug abuse. The system is variously envisioned by its proponents as utilizing a toll-free telephone hot line or the Automated Fingerprint Identification System, a computerized system for scanning and comparing latent fingerprints with prints on file, or some combination of those means.

Federal Employees' Common-Law Immunity from Personal Liability Restored by Legislation

The Federal Employees Liability Reform and Tort Compensation Act of 1988, Pub. L. No. 100-694, provides an exclusive remedy against the federal government for suits based upon negligent and wrongful acts or omissions of federal employees committed within the scope of their employment. The Act reverses the rule of *Westfall v. Erwin*, 56 U.S.L.W. 4087 (U.S. Jan. 13, 1988), which had eroded the common-law tort immunity previously available to federal employees. Congress acted to restore the viability of the Federal Tort Claims Act as the proper remedy for federal employee torts and to prevent personal tort litigation against federal employees, citing the deleterious impact such litigation would have upon agencies trying to accomplish their missions.

The legislation adds the judicial and legislative branches to coverage previously extended only to the executive branch. The Act excepts civil actions brought for violations of the Constitution or for violations of statutes authorizing actions against individual federal employees.

The Attorney General may certify that an employee was acting within the scope of his or her office or employment at the time of the incident out of which the claim arose, thus conclusively establishing the scope of office or employment for the purpose of removal, requiring that any action or proceeding that commences upon the claim does so against the United States, and requiring substitution of the United States

as party defendant. Upon the Attorney General's certification, the action shall be removed to the U.S. district court where the action was brought.

If the Attorney General refuses certification, the employee may petition the court to so find and certify; upon the court doing so, the United States becomes substituted as party defendant, and the action may be removed to federal district court. If the court finds that the employee was not acting within the scope of the office or employment, an action that commenced in state court shall be remanded.

By the terms of the Act the federal government gives up no defenses to any such action. ■

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SALARIES, from page 1

danger judges face. The Commission cited constitutional provisions that federal judges serve during good behavior and that their compensation not be diminished during their service as being designed to protect judicial independence from the other two branches of the government. These provisions, together with the American practice of drawing judges from all social classes, were described by the Commission as being basic to the fact that "the American public places more trust in our diversified and independent judiciary to define and uphold its rights than do the citizens of other democracies."

The 1989 Commission joined previous Quadrennial Commissions in noting the erosion of the real purchasing power of judicial salaries by approximately 35 percent in the past 20 years. It noted that the United States pays federal judges less than other leading nations pay comparable officials and that Great Britain and Canada, the common-law systems most like our own, pay "significantly more." The Commission found that the current state of affairs was threatening to diminish the quality of justice in this country by dissuading the best and the brightest in all sectors of our society from service on the federal bench.

The Commission made no recommendation on bankruptcy judges' and magistrates' salaries, which are no longer within its jurisdiction, having been set by statute at 92 percent of the compensation for federal district court judges. Circuit executive compensation is established by the Judicial Conference, not to exceed Executive Schedule Level IV.

In reference to the executive branch, the Commission found federal salary ranges were not competitive when compared with equivalent private sector positions, and they found compression within

Selected Judicial and Executive Salary Recommendations*

	1989 Salaries	Proposed Salaries
<i>Judicial Branch</i>		
Chief Justice	115,000	175,000
Associate Justice	110,000	165,000
U.S. Courts of Appeals, Military Appeals**	95,000	140,000
U.S. District Courts, Claims Court, Court of Int'l Trade, Tax Court**	89,500	135,000
Director, AO	89,500	135,000
Deputy Director, AO	80,700	120,000
<i>Executive Branch</i>		
Executive Schedule, Level I	99,500	155,000
Level II	89,500	135,000
Level III	82,500	125,000
Level IV	80,700	120,000
Level V	75,500	115,000

Source of data: Office of Management and Budget.

*Excerpted from *Fairness for Our Public Servants*, The Report of the 1989 Commission on Executive, Legislative and Judicial Salaries, app. C, at 41 (U.S. Government Printing Office Dec. 1988).

**Not part of the judicial branch.

the overlapping pay systems "when salaries at the upper end of one pay system are capped by the lowest salary of another. A further problem occurs when incremental increases such as cost of living adjustments or bonuses raise an employee's base pay, and the disparity between pay levels diminishes, further moving all salaries closer to their maximum.

"Administrative judiciary personnel, such as Administrative Law Judges and Board of Contract Appeals Judges, are particularly subjected to the compression in the General Schedule. These positions lie primarily in the supergrades of the General Schedule, and salary compression has made it difficult to recruit candidates for administrative law judicial vacancies from

among members of the Senior Executive Service and officials of the General Schedule," the Commission stated.

The Commission found that statutes prohibit a Senior Executive Service member from having a base salary that exceeds Level IV of the Executive Schedule; General Schedule employees are restricted from having base salaries that exceed Level V of the Executive Schedule. With performance bonuses, in-grade increases, and other benefits, administrators' compensation in the Executive Schedule pay system is often exceeded by that of their subordinates, the Commission reported, and without significant Executive Schedule increases, the problem will be exacerbated. ■


CHIEF JUSTICE'S REPORT, from page 1

made up of complex cases) makes it difficult for the judiciary to maintain its high standard, he said. Appellate case volume has increased 20 percent in the last four years, with a 14 percent increase in criminal appeals in 1988 alone, and the Sentencing Reform Act appeal options will likely increase this burden.

He had special praise for the voluntary service of the senior judges, who "assisted the courts in closing 10 percent more cases on a yearly basis than would have been possible without their efforts."

New judgeships. In early 1989, the Judicial Conference of the United States will recommend that Congress create 59 new district court and 14 new appeals court judgeships, and the Chief Justice said that "there is an urgent need for Congress to take prompt action on the Conference's recommendation." He thanked the executive and legislative branches for their efforts in nominating and confirming new judges, which have kept the months with vacant judgeships at the lowest number since 1984. There were 26 federal judicial vacancies when Congress recessed on Oct. 22, 1988 (18 district court and 8 appeals court).

Judicial benefits. The Chief Justice reported on the findings and recommendations of the 1989 Quadrennial Commission (see *The Third Branch*, December 1988, p. 1, and p. 1 of this issue) and asserted his endorsement of the increased compensation that the Commission has recommended. Those increases, "if accepted by the President and Congress, will represent an important investment in the quality of American justice," which he noted is "the real issue."

Legislation. The Chief Justice reported on legislation by the 100th Congress that affected the judicial branch, commenting on the good working relationship between Con-

gress and the judiciary and noting Congress's willingness to address the needs of the judicial branch.

New committees. Two new Judicial Conference committees were described in the Year End Report. The Ad Hoc Committee on Federal Habeas Corpus Review of Capital Sentences is to consider the "substantial logistical problems posed by habeas corpus petitions seeking review of state criminal convictions in capital cases." The Committee is chaired by Justice Lewis F. Powell, Jr. (retired), and includes among its members judges from the Fifth and Eleventh Circuits, where the preponderance of such cases occur. (See *The Third Branch*, September 1988, p. 11.)

The Federal Courts Study Committee will review issues and problems facing the federal courts and will develop a long-range plan for them. The 15-member Committee will rely on the cooperation and contributions of the judiciary, other elements of the legal profession, and research organizations so as "to enhance the administration of justice through the courts." (See *The Third Branch*, November 1988, p. 1 and p. 1 of this issue.)

Appellate judges conference. The Chief Justice noted the Bicentennial Conference of U.S. Appellate Judges, sponsored by the FJC in Washington, D.C., last October. The conference was in commemoration of the bicentennial of the Constitution and the Bill of Rights and was the first opportunity for all appellate judges to meet and confer on critical issues affecting the federal appellate courts. (See *The Third Branch*, November 1988, p. 2.)

Supreme Court. The Chief Justice had special words of welcome for Justice Anthony M. Kennedy, who came to the Supreme Court "after a distinguished career of 13 years on the Ninth Circuit Court of Appeals."

Copies of the the Chief Justice's Year End Report are available from Information Services at the FJC. ■

CALENDAR

- Jan. 4-6 Judicial Conference Committee on Criminal Law and Probation Administration
- Jan. 5-6 Judicial Conference Committee on Bankruptcy Administration
- Jan. 8-12 District Court Chief Deputies Workshop
- Jan. 11-13 Judicial Conference Committee on Defender Services
- Jan. 12 Judicial Conference Committee on the Judicial Branch
- Jan. 16-17 Judicial Conference Committee on Space and Facilities
- Jan. 17-18 Judicial Conference Committee on Codes of Conduct
- Jan. 19-20 Judicial Conference Advisory Committee on Bankruptcy Rules
- Jan. 19-20 Judicial Conference Committee on Rules of Practice and Procedure
- Jan. 19-20 Judicial Conference Committee on Judicial Ethics
- Jan. 21 Judicial Conference Committee on Federal-State Jurisdiction
- Jan. 23 Judicial Conference Committee on Intercircuit Assignments
- Jan. 27-28 Judicial Conference Committee on the Budget
- Jan. 30 Judicial Conference Special Committee on Habeas Corpus Review of Capital Sentences

CORRECTION

The correct date of the 1989 Judicial Conference of the Court of Appeals for the Federal Circuit is May 24. The date listed in the December 1988 issue is incorrect.

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THE SOURCE

The publications listed below may be of interest to readers. Only those preceded by a checkmark are available from the Center. When ordering copies, please refer to the document's author and title or other description. Requests should be in writing, accompanied by a self-addressed mailing label, preferably franked (but do not send an envelope), and addressed to Federal Judicial Center, 1520 H St., N.W., Washington, DC 20005.

Administrative Office of the U.S. Courts, *Federal Court Management Statistics, 1988*.

Epstein, Jeremy G., *English Discovery: Simpler and Cheaper*, National Law Journal, Nov. 28, 1988, at 17, col. 1.

Kaplan, David A., *The Camera Is Proving Its Case in the Courtroom*, New York Times, Dec. 18, at H37, col. 1.

Lawrence, Glenn R., *Panel Discussion on Major Issues in Court Administration*, 35 Federal Bar News & Journal 405 (1988).

Peterson, Richard W., *Jury Selection in Federal Court: A Perspective from the Judiciary*, 35 Federal Bar News & Journal 398 (1988).

Peterson, Richard W., *The Court Moves West: A Study of the United States Supreme Court Decisions of Appeals from the United States Circuit and District Court of Iowa, 1846-1882* (South Side Press of the Midlands 1988).

Rehnquist, William H., *1988 Year End Report on the Judiciary* (1989).

Secola, Joseph P., *The Judicial Review of John Marshall and Its Subsequent Development in American Jurisprudence*, 18 Lincoln Law Review 1 (1988).

Sturgess, Garry, and Philip Chubb, *Judging the World* (Butterworth Legal Publishers 1988).

Volkomer, Walter E., *Judge Jerome Frank: The Legal Realist as Jurist*, 60 New York State Bar Journal 38 (Dec. 1988).

Winkler, Karen J., *Controversial Judge and Legal Theorist Jumps into the Debate on Law and Literature*, Chronicle of Higher Education, Dec. 7, 1988, at A5, col. 2 (profiling Judge Richard A. Posner of the 7th Cir.)

Positions Available

Judge, U.S. Bankr. Court, M.D. Fla. (Orlando). 11th Cir. Court of Appeals is receiving applications for a 14-year appointment for bankruptcy judge at Orlando, Fla. Salary \$82,340 per annum. Complete public notice available from clerks of district and bankruptcy courts, M.D. Fla., and Circuit Executive in Atlanta. Interested persons may contact these clerks or Norman E. Zoller, Circuit Executive, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth Street, Atlanta, GA 30303, telephone (404) 331-5724, for further information and application forms. Application must be received at the Circuit Executive's office by Jan. 27, 1989.

Deputy Clerk, Fed. Cir. Receives and initiates processing of new cases. Requires knowledge of office clerical practices. Progressively responsible clerical or administrative experience, understanding of specialized terminology, and demonstrated ability to apply rules and regulations desirable, particularly in context of experience in law firms

or legal counsel offices, or in financial, educational or social service organizations. Open until filled. Salary commensurate with education and experience to JSP 7, \$18,726 per annum. Submit SF 171 and résumé to Francis X. Gindhart, Clerk, U.S. Court of Appeals for the Federal Circuit, 717 Madison Place, N.W., Washington, DC 20439.

U.S. Bankr. Court, S.D.N.Y. is interviewing for three positions. Each is open until filled. Send résumé to attention of Cecelia Lewis, Clerk of the Bankruptcy Court, One Bowling Green, 6th Floor, New York, NY 1004-1408. Telephone for information to (212) 791-2247.

Admin. Ass't. Requires 2 years clerical experience, 55 wpm typing, knowledge of word processing, organizational skills for processing and filing legal documents, and good pr for dealing with the public, the bar, and the media. Up to JSP-10 (\$34,136).

Property and Procurement Ass't. Requires good organizational skills. Purchases essential equipment, supplies, and services for judges and staff. Up to JSP-10 (\$34,136).

Systems Administrator. Requires crea-

tivity and skills for maintaining close working relationship with judges and professionals. Challenging opportunity to be instrumental in developing automation systems and procedures. Up to JSP-11 (\$37,510).

Chief Deputy Clerk, 9th Cir. Responsible for case management, finance, personnel, statistics, and automated information systems. Requires 6 years' progressively responsible administrative experience in public service or business, at least 3 in position of substantial management responsibility; bachelor's degree in management or related area. Prefer specialized experience in court administration and a law degree. Up to JSP-15 (\$74,303), depending upon prior experience and education. Closes Jan. 31 or when filled. Submit résumé with salary history and letter addressing scope of managerial experience with emphasis on court administration to Clerk, U.S. Court of Appeals, P.O. Box 547, San Francisco, CA 94101-0547.

EQUAL OPPORTUNITY EMPLOYERS



Tenth Annual Circuit Librarians Conference Held in Washington, D.C., in November



The Tenth Annual Conference of Circuit Librarians, organized by the Legal Research and Library Services Branch, Court Administration Division of the AO, was held Nov. 1-3 in Washington, D.C. Conferees pictured above are (l. to r.) Kay Duley (5th Cir.), Patricia Thomas (AO), Patricia McDermott (Fed. Cir.), Jean Willis (3d Cir.), Karen Moss (1st Cir.), Kathy Welker (6th Cir.), Margaret Evans (2d Cir.), Jan Wishinsky (7th Cir.), Nancy Lazar (D.C. Cir.), J. Terry Hemming (10th Cir.), Ann Fessenden (8th Cir.), Leonard Klein (FJC), Linda Holz (AO), Elaine Fenton (11th Cir.), Francis Gates (9th Cir.), and Peter Frey (4th Cir.).

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NOTEWORTHY

Withdrawal of consent to trial by magistrate must be timely. A federal defendant who has consented to be tried before a magistrate may withdraw that consent, but the withdrawal must be timely, the Ninth Circuit has ruled. *U.S. v. Mortensen*, No. 87-3072 (9th Cir. Nov. 4, 1988). A trial before a magistrate ended in a mistrial; the defendant moved, unsuccessfully, to withdraw his consent to a non-judge trial the morning a retrial was to begin. The appeals court recognized a presumption that consent to trial before a magistrate continues after a mistrial but said that "consent can be withdrawn by the defendant if done in a timely manner." Without trying to quantify what would be "timely," the court said that "a withdrawal motion is timely when granting the motion would not unduly interfere with or delay the proceedings." The motion in *Mortensen* fails under that standard, the court concluded.

ABA Litigation Section publishes guide to Rule 11 practice. The Committee on Trial Practice of the American Bar Association Section on Litigation has drafted "Standards and Guidelines for Practice under Rule 11 of the Federal Rules of Civil Procedure." The publication was inspired by concerns about uneven judicial application of Rule 11 and attorneys' lack of understanding of some issues and ramifications arising under the rule. Using reported Rule 11 decisions illustrating application differences between judges and between the federal districts, the committee's standards and guidelines propose uniform approaches to the rule's major issues. The Section Council on Sept. 17 approved publication of the standards and guidelines by West Publishing Co. in *Federal Rules Decisions*.

Parole hearings can now be conducted by a single examiner. The U.S. Parole Commission has amended the hearing procedural rules under 28 C.F.R. Part 2 pursuant to recent amendment of 18 U.S.C. § 4208(g). Striking the re-

quirement for a personal conference of the parole applicant and "the Commissioners or examiners conducting the proceeding," the statute now requires "a representative of the Commission" to explain the reasons for denial of parole in conference with the parole applicant. See Pub. L. No. 99-546, § 58(b), 100 Stat. 3612 (1986). The legislative history indicates the drafters' intention to permit one-examiner hearings so as to stretch the resources of the Parole Commission. While the Parole Commission says that it continues to find two-examiner hearings preferable, it has amended its regulations to conform, effective Dec. 15. ■

THE **THIRD** BRANCH

PERSONNEL

CIRCUIT JUDGES

Elevation

James L. Oakes, Chief Judge, 2d Cir., Jan. 1

Senior Status

Pierce Lively, 6th Cir., Dec. 31
Gerald W. Heaney, 8th Cir., Jan. 1

DISTRICT JUDGES

Elevations

Franklin S. Billings, Jr., Chief Judge, D. Vt., Dec. 28

Michael A. Telesca, Chief Judge, W.D.N.Y., Jan. 1

Richard P. Conaboy, Chief Judge, M.D. Pa., Jan. 2

H. Russell Holland, Chief Judge, D. Alaska, Jan. 2

Alex T. Howard, Jr., Chief Judge, S.D. Ala., Jan. 19

Senior Status

Prentice H. Marshall, N.D. Ill., Oct. 19

Gerald J. Weber, W.D. Pa., Dec. 30
James M. Fitzgerald, M.D. Pa., Jan. 1

William J. Nealon, M.D. Pa., Jan. 1

Deaths

William G. Juergens, S.D. Ill., Dec. 7

James H. Meredith, E.D. Mo., Dec. 8

COURT OF INTERNATIONAL TRADE

Death

Paul P. Rao, Nov. 30

BANKRUPTCY JUDGE

Death

Lionel H. Silverman, M.D. Fla., Dec. 24

STUDY COMMITTEE, from page 1

Counsel, Department of Public Advocacy, Frankfort, Ky.; Judge Jose A. Cabranes (D. Conn.); Chief Justice Keith M. Callow, Supreme Court of Washington; Chief Judge

Levin H. Campbell (1st Cir.); Assistant Attorney General Edward S. G. Dennis, Jr., Criminal Division, U.S. Department of Justice; Sen. Charles E. Grassley (R-Iowa); Morris Harrell of Locke, Purnell, Rain & Harrell, Dallas, Tex.; Sen. Howell Heflin (D. Ala.); Rep. Robert W. Kastenmeier (D-Wis.); Judge Judith N. Keep (S.D. Cal.); Prof. Rex E. Lee, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; Rep. Carlos J. Moorhead (R-Cal.); Diana Gribbon Motz of Frank, Bernstein, Conway & Goldman, Baltimore, Md.; and Judge Richard A. Posner (7th Cir.).

Judge Weis requests interested parties to submit proposed topics and areas of study to the Committee in care of William K. Slate II, Staff Director, Federal Courts Study Committee, Room 22716, U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106. ■



BULLETIN OF THE FEDERAL COURTS

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THE THIRD BRANCH

Chief Justice Addresses ABA, Seeks Ways to Ease Burdens on Federal, State Courts

On Feb. 7, Chief Justice Rehnquist addressed the midyear meeting of the American Bar Association. He suggested changes in both state and federal courts, and he invited members of the bar to join the federal judiciary in the effort to bring about greater efficiency in case processing in order to ease the increasing burdens on both court systems. He focused on three major areas: the future of the federal courts, the need for reform of federal habeas review of capital sentences, and the need for higher pay for federal judges.

The future of the courts. The Chief Justice reported that the

federal courts were adapting to technological changes and taking advantage of the use of magistrates, bankruptcy judges, and law clerks, but that the contributions of personnel at those levels were not enough to cope with increasing caseloads. Furthermore, he noted, creation of more such positions is not necessarily the answer. For example, more law clerks means more supervisory work for a judge. Whereas he urged Congress to take action on the Judicial Conference request for more judgeships, he pointed out

See CHIEF JUSTICE, page 6

Federal Courts Study Committee Meets to Formulate Plans

The Federal Courts Study Committee met Feb. 3 in Washington, D.C. Opening remarks were made by Judge Joseph F. Weis, Jr., Chairman, and by Prof. Daniel J. Meador, a University of Virginia law professor and former Assistant Attorney General who headed a Department of Justice office on improvements in the administration of justice.

The Committee discussed the issues to be considered as it formulates plans to carry out its mandate to take a fresh look at the structure and operation of the federal courts.

By the end of March the Committee will hold what Judge Weis called "outreach" hearings in Boston, Atlanta, Chicago, and Pasadena. Individuals and groups, particularly personnel of the judicial branch as well as those who practice in the federal courts, are invited to bring to the Committee their recommendations of areas for Committee inquiry and suggestions of ways to improve the existing court system.

Three subcommittees were formed to examine such basic issues as (1) the structure of the federal court system; (2) the role of the federal courts, and their relationships with state courts and other governmental entities that perform judicial functions; and (3) the workload of the federal

See COURTS COMMITTEE, page 5

Judiciary Expresses Regret, Concern Over Congress's Disapproval of Salary Increases

Officials of the judicial branch have expressed concern over the effect on the judiciary of Congress's rejection of the proposed judicial salary increases. The recommended raises would have benefited approximately 1,150 judges and other designated personnel in the judicial branch.

The Chief Justice said, "I deeply regret the congressional action which has prevented the federal judges in this country from receiving a well-deserved pay raise. Our federal judiciary has an enviable reputation for competence and integrity. We will not be able to attract and retain the kind of judges we need to maintain this standard unless we pay our judges fairly and equitably."

Increased judicial and senior federal employee compensation was disapproved by Congress Feb. 7 when the House abandoned an earlier plan to allow the raises to become effective Feb. 8 and then roll back congressional increases to approximately 30 percent. The Senate had declined to approve the 51 per-

cent increase recommendations of the Quadrennial Commission, which had the urgent support of the Chief Justice and leaders of judicial and legal professional groups, and the endorsements of Presidents Reagan and Bush.

Judge Robert H. Hall (N.D. Ga.), president of the Federal Judges Association, said, "The Federal Judiciary has been dealt a devastating blow. The salary adjustments recommended to the Congress by the Quadrennial Commission and former President Reagan would have merely restored to federal judges the economic power they enjoyed in 1969. Federal judges have been denied many of the cost of living increases given to other federal employees between 1969 and 1989. Even though the United States Constitution provides that 'the salaries of federal judges shall not be diminished during their continuance in office,' the fact is that inflation

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Inside . . .

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Judge Starr Nominated to Be Solicitor General of U.S.p. 3

THE THIRD BRANCH

Ninth Circuit Tests New Electronic System That Provides Public Access to Court Information

The Ninth Circuit Court of Appeals recently announced a new electronic bulletin board system, called the Appeals Court Opinion Posting System (ACOPS). The system is part of an FJC demonstration project to give the public access to appellate court information.

The system allows anyone with a computer and appropriate communications software to obtain the most current information on court activities by dialing the court's ACOPS computer. ACOPS offers users the opportunity to review and electronically receive the full text of recently published slip opinions and orders. The five separate directory offerings are: (1) opinion-today (all published slip opinions and orders released each court day at 10 a.m. PST); (2) opinion-30 (published slip opinions and orders released within the past 30 days); (3) oral argument calendars (8-week preview calendars without judicial assignments, and 1-week calendars with panel assignments); (4) 9th Circuit court rules and procedures; and (5) public notices (general information and press releases).

Access to the four telephone lines is on a first-come, first-served basis. Each user is limited to 45 minutes per day; use of the system is presently offered free of charge. First-time users complete a short electronic questionnaire and select their own password.

The system permits easy inspection of listed directories and bulletins, offers various types of assistance, and allows users to function in novice or expert mode. Each directory permits users to survey the entire file list or just those files added since the user's last inspection. An information brochure available from the 9th Circuit by telephoning (415) 556-5441 or the FJC by telephoning (202) 786-6273 fully describes the variety of information and functions available.

ACOPS is the fourth public electronic access project recently introduced by the FJC. The other three are a computer-generated voice synthesis system (Voice Case Information System) that is answering more than 100,000 case information requests annually in three bankruptcy courts (see *The Third Branch*, August 1988, at 1); a touch-screen case information service installed at the counter in a clerk's office (see

Notice to Clerks

Removal bonds were abolished effective Nov. 19, 1988, when 28 U.S.C. § 1446(d) was repealed by the Judicial Improvements and Access to Justice Act of 1988, Pub. L. No. 100-702.

The new \$50,000 diversity jurisdiction predicate amount becomes effective May 18. It applies to all cases filed on or after that date.

The Third Branch, September 1988, at 3); and PACER (Public Access to Court Electronic Records), an electronic dial-in-access service to U.S. District Court civil dockets that provides access to computerized official court dockets virtually 24 hours a day (see *The Third Branch*, October 1988, at 2). ACOPS will be evaluated during the year, and the FJC report on evaluations of these four public access projects is planned for publication early next year. ■

Supreme Court Selects Shelley Dowling As the New Court Librarian

The Supreme Court has chosen as its new Librarian Shelley L. Dowling, former head of Public Services at Georgetown University Law Library. Mrs. Dowling replaces Stephen G. Margeton, who left to become Librarian at Catholic University School of Law. Mrs. Dowling was selected by the Court after a national search and assumed her responsibilities on Jan. 17.

Previously, Mrs. Dowling was a law librarian at the University of Missouri-Kansas City School of Law for six years. Her career began nearly 20 years ago in the Cornell University library system.

Mrs. Dowling has held elective office within the American Association of Law Libraries, coordinated several programs for their annual meetings, and executed a series of committee assignments. She has published book reviews and taught advanced legal research and computer-assisted legal research to law students.

A graduate of the University of Missouri-Kansas City School of Law, Mrs. Dowling also has a Master's Degree in Library Science from Rutgers University.

She is married to Patrick Dowling, a lawyer. They have two children. ■



Shelley L. Dowling

BULLETIN OF THE FEDERAL COURTS

THE THIRD BRANCH

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Co-editors

Alice O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center. Peter G. McCabe, Assistant Director, Program Management, Administrative Office of the U.S. Courts.



Supreme Court Upholds 1984 Sentencing Reform Act, Sentencing Commission, and Guidelines

On Jan. 18 the Supreme Court ruled 8-1 to uphold the constitutionality of the Sentencing Reform Act of 1984, the U.S. Sentencing Commission it created, and the Sentencing Guidelines issued by the Commission. *Mistretta v. U.S.*, No. 87-7028 (U.S. Jan. 18, 1989) (Blackmun, J.).

The Court found that Congress had not delegated excessive legislative power to the Sentencing Commission, nor had it violated the constitutional principle of separation of powers by establishing the Commission within the judicial branch instead of in the executive, by requiring federal judges to serve on the Commission and to share their sentencing authority with nonjudges on the Commission, or by giving the President power to appoint and remove (for cause) and the Senate power to confirm Commission members.

The Court said that devising a system of "proportionate penalties for hundreds of different crimes by a vir-

tually limitless array of offenders is precisely the sort of intricate, labor-intensive task for which delegation to an expert body is especially appropriate."

The Court found that the Sentencing Commission's "extrajudicial activities" were "central to the mission of the Judicial Branch" and "not more appropriate for another Branch," and held that there was no impediment to placing the Commission, charged with promulgating guidelines for the exercise of a judicial function (sentencing), in the judicial branch.

The Court found that the composition of the Commission did not impair the judiciary in performing their duties. The Court noted "one paramount consideration: that the Sentencing Commission is devoted exclusively to the development of rules to rationalize a process that has been and will continue to be performed exclusively by the Judicial Branch." ■



Judge Kenneth Starr Is President's Nominee for Solicitor General

President Bush announced Feb. 2 that Judge Kenneth W. Starr (D.C. Cir.) will be his nominee to be Solicitor General of the United States.

Judge Starr was appointed to the bench in 1983 after serving as counselor to former Attorney General William French Smith from 1981.

He clerked for Chief Justice Warren E. Burger. Later he joined the Los Angeles law firm where both he and Smith became partners.

"The Office of the Solicitor General is a law office of great distinction and high responsibility. Should the U.S. Senate see fit to confirm me, I shall very much look forward to working under the able leadership of Attorney General Thornburgh in carrying on this vitally important work," said Judge Starr. ■

Winning Plans Selected in Design Competition for New Judiciary Office Building

On Jan. 3, Sen. Daniel Patrick Moynihan (D-N.Y.) announced that plans by architect Edward Larrabee Barnes had been selected as the design for the proposed Judiciary Office Building. Sen. Moynihan was a principal sponsor of the legislation authorizing the building.

Barnes's design features the same white granite exterior as the adjacent Union Station, an all-glass entry, and an off-center sky-lighted atrium facing Columbus Circle, which runs in front of Union Station. The design conforms to the exterior appearance guidelines established in the competition, with 520,000 gross square feet of area above grade and an 80-foot height. Congress authorized the Architect of the Capitol, George M. White, to select a developer-architect team from among five competing teams to design and construct

the building. Mr. White named a jury who unanimously selected the proposal by Mortimer Zuckerman's Bos-

See JUDICIARY BUILDING, page 8



Models of Union Station (left) and the Judiciary Office Building (right) facing Union Station Plaza.

LEGISLATION

Bills which have been introduced in the 101st Congress that may be of interest to the judicial branch are listed below.

House resolutions, unless otherwise noted, were referred to the Committee on the Judiciary.

• **H.R. 25** and **S. 20**, which are identical to the 100th Congress-passed **S. 508** (vetoed by President Reagan), and the Reagan administration-sponsored substitute, all characterized as "whistleblower protection" bills, were all referred to the Senate Committee on Governmental Affairs and the House Committee on Post Office and Civil Service.

• **H.R. 55** is a bill to amend 18 U.S.C. § 1030 to provide penalties for using programs with harmful hidden commands that interfere with computer operations.

• **H.R. 90** would increase rewards in the Department of Justice and Customs Service forfeiture funds for information on drug offenses; it was referred also to the Committee on Ways and Means.

• **H.R. 105** would establish national criteria for death penalties in cases of espionage and treason. **H.R. 380**, **S. 32**, and **S. 36** would reform procedures for imposition of capital punishment.

• **H.R. 128** would provide for the mandatory registration of handguns.

• **H.R. 170** would amend the Federal Rules of Evidence to provide an explicit exception in child abuse cases.

• **H.R. 199** would establish a federal right to parental support of children and confer jurisdiction for enforcement upon certain federal courts regardless of the child's residence.

• **H.R. 213**, which would transfer authority to determine pay levels of administrative law judges to the Commission on Executive, Legislative and Judicial Salaries from the

Office of Personnel Management, was referred to the Committee on Post Office and Civil Service.

• **H.R. 287** would create civil and criminal penalties for alteration of computer hardware or software with the objective of disabling a computer either through loss of stored data or interference with proper function.

• **H.R. 359** would regulate interstate commerce by providing for uniform treatment of selected product liability problems; was sent jointly to the Committees on Energy and Commerce and the Judiciary. **H.R. 362** would establish a limitation on bringing such actions based upon the useful life of the product; was referred to the Committee on the Judiciary. **S. 132** is also on tort law reform.

• **H.R. 364**, a balanced budget amendment, was sent to the Committee on the Judiciary.

• **H.R. 381** imposes mandatory penalties on those convicted of violent felonies on persons over 65 years of age.

• **H.R. 596** creates the federal offense of treasonous espionage, the unauthorized disclosure of classified information detrimental to national security for profit.

• **H. Res. 12, 13, 14** appoint and authorize the managers for impeachment proceedings related to Judge Alcee L. Hastings (S.D. Fla.) with notice to the Senate.

• **H. Con. Res. 25**, which would impose a modified freeze on federal spending in FY1990, was referred to the Committee on Government Operations.

All the following proposed amendments of the Constitution, unless otherwise noted, were referred to the Committee on the Judiciary:

• **H.J. Res. 1** would provide equal rights to women;

• **H.J. Res. 14** is concerned with compelling defendant testimony in criminal cases, restricting use of

prior convictions, and discovery of evidence against the defendant.

• **H.J. Res. 15** limits the length of service of members of Congress and federal judges.

• **H.J. Res. 66** would amend the Constitution to limit the terms of office of the judges and justices of the federal courts.

• **H.J. Res. 18** would permit the President to grant a pardon only after conviction of the recipient.

• **H.J. Res. 20**: Many bills and resolutions have been introduced that address compensation for members of Congress, typically providing for increased Congressional compensation only upon recorded votes or for delay of effective dates to the following Congress, or predicating any increase upon a balanced budget. In a similar vein, **H.R. 171** would rescind the Federal Election Campaign Act of 1971 provision which permits some congressmen to use excess campaign funds for personal purposes.

• **H.J. Res. 45** would allow voluntary school prayer.

• **H.J. Res. 48** would establish English as the official language of the United States.

• **H.J. Res. 49** would prohibit compelling children to attend any school other than the one closest to their homes.

• **H.J. Res. 50**, **S. 6**, and **S. 21** would allow line-item veto of appropriations bills.

• **S. 26**, which would provide supplemental appropriations to fully fund the Anti-Drug Abuse Act of 1988, was sent to the Committee on Appropriations.

• **S. 87** would limit application of the exclusionary rule.

• **S. 88** and **S. 271** would reform procedures for collateral review of criminal judgments.

• **S. 93** would establish an Intercircuit judicial panel.

• **S. 180** would authorize the incarceration in federal prisons of state prisoners sentenced as habitual criminals. ■

NOTEWORTHY

Recruiting manual available. The D.D.C. Clerk's Office has published a comprehensive 28-page recruiting manual for federal courts, *Recruiting and Interviewing Guidelines*.

It has sample interview questions, tests, EEO information, and a flow-chart containing procedures to be followed from the vacancy announcement through notification of unsuccessful candidates for positions. Much of the material was developed in-house, although some was adapted from other courts, and it includes FJC materials. Copies are available from Val Pulley, Personnel Officer, at FTS 535-3515 or (202) 535-5394.

Bankruptcy case files of historical interest to be preserved. AO Director Ralph Mecham has asked all bankruptcy chief judges to assist the National Archives and Records Administration in preserving bankruptcy case files of historical interest that are eligible for disposal. The archivists need lists of appropriate cases commenced under the Bankruptcy Acts of 1898 and 1978, giving the case name, case number, and year in which commenced, if the information is available.

The list should include (1) mega cases, such as *Penn Central*, *Johns Manville*, and *A.H. Robbins*; (2) cases that prompted major Supreme Court rulings on bankruptcy law, such as *Northern Pipeline*, *Bildisco*, and *Whiting Pools*; (3) cases in which major local industries or institutions were liquidated or reorganized; and (4) a sampling of representative consumer or small business cases. Lists should be sent to Charles Summers, AO Records Management Section, Contracts & Services Division, by Feb. 28.

Leave sharing outside the judiciary is permissible. AO Director Ralph Mecham has issued a memorandum to all chief judges clarifying leave-sharing implementation regulations. In it he says that, as required

COURTS COMMITTEE, from page 1

courts, and how and whether the federal judiciary and its personnel are adequately prepared to fulfill their obligations. The Committee will draw on available research and information, utilize outside expertise, and gather information from a broad spectrum of sources, including the hearings. The AO and FJC will contribute to this effort, as will bar and professional associations and community service organiza-

tions. The subcommittees will develop proposals for full Committee consideration.

Interested persons are requested to send their ideas and information to the attention of the Committee director, William K. Slate II, 22716 U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106, telephone FTS 597-3320, (215) 597-3320, (FTS FAX) 597-3350.

Also present at the meeting were AO Director Ralph Mecham and FJC Director John C. Godbold. ■



Federal Courts Study Committee members pictured above are (L-R), seated: Assist. Att'y General Edward S. G. Dennis, Jr. (U.S. Dep't of Justice); Prof. Rex E. Lee (J. Rueben Clark Law School, Brigham Young Univ.); Judge Judith N. Keep (S.D. Cal.); Judge Joseph F. Weis, Jr., Chairman; Rep. Carlos Moorhead (R-Cal.); Chief Judge Levin H. Campbell (1st Cir.); Rep. Robert W. Kastenmeier (D-Wis.); Morris Harrell, Esq.

(Locke, Purnell, Rain & Harrell, Dallas); standing: William K. Slate II (Director); Judge Jose A. Cabranes (D. Conn.); Chief Justice Keith M. Callow (Sup. Ct. of Wash.); J. Vincent Aprile II (Gen. Couns., Ky. Dep't of Pub. Advoc.); Diana Gribbon Motz, Esq. (Frank, Bernstein, Conway & Goldman, Baltimore); Judge Richard A. Posner (7th Cir.); Sen. Howell Heflin (D-Ala.); and Sen. Charles E. Grassley (R-Iowa).

by 5 U.S.C. § 6334(c), OPM regulations at 630.906(e) state: "A leave recipient's employing agency may accept the transfer of annual leave from leave donors employed by one or more other agencies."

Each agency, meaning each court and each Federal Public Defender Office, may draft its implementing

regulations to allow or to prohibit leave transfer between other agencies in other branches, and nothing issued by the OPM or the AO restricts leave sharing to components of the judiciary. For assistance with questions on leave sharing, contact David Croyle, AO Division of Personnel, FTS 633-6113. ■

THE THIRD BRANCH

CHIEF JUSTICE, from page 1

that more judges on the district court level means a proportional increase in the number of cases appealed to the circuit courts, and "a price is paid in the development of a coherent body of circuit law when we get beyond a certain point. . . . Even if additional district and circuit judges could accommodate additions to the federal case load, the Supreme Court of the United States cannot accommodate it."

Congress has in the past imposed venue over new causes of action in the federal courts, and it appears that this will continue. The Chief Justice warned that the Supreme Court is already having difficulty discharging its responsibility to maintain a uniform body of federal law and "that difficulty would be increased beyond the breaking point by new federal causes of action." "It would surely make imperative in the very near future the creation of a national court of appeals to assist us in the task." He urged the entire legal profession to ask "where is the judge power going to come from?" when looking at the creation of new federal causes of action, particularly since "without any increase in federal jurisdiction at all, the steady increase in population which our nation experiences will produce an increase in the judicial workload."

The Chief Justice suggested possible areas, though indicating no preference, where there could be curtailment of federal jurisdiction: in diversity cases; in FELA and Jones Act cases; review of Social Security claims and other cases involving review of agency actions; and in civil RICO actions. He emphasized that this would not be "a major reshaping of the nature of federal jurisdiction," but rather a process of "remitting to the state courts from the federal courts business very similar to that which state courts regularly handle now."

The Chief Justice noted the establishment by Congress last Novem-

ber of the Federal Courts Study Committee, and urged the appropriate ABA sections to make their views known to the Committee. (Judge Joseph F. Weis, Jr., the Committee chairman, has announced that he will hold regional hearings. For a related story, see p. 1 of this issue.)

Reform of habeas corpus. On the topic of habeas reform, the Chief Justice repeated what he said in an address to the Conference of Chief Justices last year, that he is not suggesting a "wholesale reshaping of the nature of this jurisdiction, but modest changes which will impose some structure on a system which at present often proves to be chaotic and drawn out unnecessarily." It would take "a bold person," he remarked, "to say that this system could not be improved." The Chief Justice has appointed a Judicial Conference committee, chaired by retired Justice Lewis F. Powell, Jr., which has a circuit judge and a district judge from the Fifth and Eleventh Circuits, the circuits with the most experience with capital cases.

The Chief Justice stated that "the flaw in the present system is not that capital sentences are set aside by federal courts, but that litigation ultimately resolved in favor of the state takes literally years [T]he time elapsed between the commission of the crime and the date of execution in capital murder cases averages 8 years nationally, and more than 13 years in some states. . . . I am sure that the committees studying this question will come up with useful suggestions as to how this problem may be solved. I think if we give the states an incentive to provide counsel for habeas petitioners, and require that all federal claims be consolidated in one petition and filed within a reasonable time after the conclusion of direct review, the system will be considerably improved."

The ABA has a task force cur-

rently studying death penalty habeas corpus cases, co-chaired by Judge Alvin B. Rubin (5th Cir.) and Chief Justice Malcolm Lucas (Sup. Ct. Cal.), and including Acting Chief Judge Barefoot Sanders (N.D. Tex.) and Clerk of Court John Greacen (4th Cir.). The committee will report by April of 1990 on their findings.

Judicial compensation. The Chief Justice's final comments were on compensation of federal judges. He commended the ABA, and especially President Robert D. Raven, for "the dedicated assistance given the federal judges in this very necessary endeavor to provide them with fair and equitable remuneration." He pointed out that increased compensation for the federal judiciary is a necessity if the federal courts are to keep experienced and capable judges, who have given up more lucrative positions to render their dedicated service. Their purchasing power at present salary levels has been eaten away by inflation for over 20 years.

Following the Chief Justice's speech, the ABA House of Delegates unanimously passed a resolution reading as follows:

RESOLVED that the compensation currently paid to the federal judiciary is grossly insufficient, inadequate and inappropriate;

RESOLVED FURTHER, that a crisis is looming in the nation's justice system if immediate steps are not taken at least to restore the erosion which has occurred in judicial salaries in the past two decades;

RESOLVED FURTHER, that the American Bar Association urges Congress to permit the judicial salaries recommended by Presidents Reagan and Bush and the 1988 Commission on Executive, Legislative and Judicial Salaries to go into effect.

Copies of the Chief Justice's remarks are available from Information Services, 1520 H St., N.W., Washington, DC 20005. ■

RAISES, from page 1

over the past 20 years has reduced the real purchasing power of those salaries by 30 percent. Congress has refused to grant the necessary increases, and the result is a real reduction in those salaries.

"Today the morale of the federal judiciary is at an all time low. Many federal judges will be making plans to resign from the bench and return to private practice.

"The future of a strong, independent federal judiciary is at stake. Something must be done. The responsibility lies with the Congress and the President."

Judge Frank M. Coffin (1st Cir.), Chairman of the Judicial Conference Committee on the Judicial Branch, said, "The votes last Tuesday seriously compromised the judiciary's ability to attract and keep top quality judges. I have no doubt that morale has hit rock bottom. I share the hopes of my colleagues that we may yet see some substantial remedial action. I am heartened by the President's statement that he will be working with House and Senate leadership to develop proposals for some level of pay increase, and that he expressed his special concern about compensation for members of the federal judiciary."

American Bar Association President Robert Raven, speaking at the ABA Midyear Meeting in Denver, Feb. 7, said, "Congress's rejection today of federal pay increases quells a political firestorm over raising Congressional salaries but foments a serious problem within the federal judiciary." He called the result "devastating for our judiciary in the long run." He said, "The 1967 Federal Pay Act was enacted to prevent exactly what has happened. The Quadrennial Commission was established to set adequate compensation through nonpartisan, careful evaluation, not a highly charged political process."

The American Bar Association and American Bar Foundation gave research and testimony to the Quadrennial Commission indicating that a very large number of judges, par-

ticularly minority and younger judges without independent financial means, might leave the bench if a substantial increase in compensation was not granted.

Judge A. Leon Higgenbotham, Jr. (3d Cir.) said, "I've had calls from six judges in my own circuit, all under 60, who say that they are giving serious consideration to leaving the bench. A disproportionate number of the resignations will come from judges without affluent personal backgrounds, [especially] minority judges."

The Senior Executives Association, an organization of members of the Senior Executive Service (high-

ranking federal agency managers), that he had no intention of introducing legislation to raise salaries of judges and senior executives under that system. Rep. Vic Fazio (D-Cal.) said that a "growing group" in Congress was willing to sever the link. Former Senator Charles McC. Mathias (R-Md.) said, "The one thing a selfless Congress can do is divorce their pay from the rest of the federal establishment."

Fred Wertheimer, President of Common Cause, a public interest lobby that supported the recommended raises while they were linked with eliminating honoraria and payments from special interests, said that a system would have to be

"The votes . . . seriously compromised the judiciary's ability to attract and keep top quality judges. I have no doubt that morale has hit rock bottom."

Judge Frank M. Coffin (1st Cir.), Chairman of the
Judicial Conference Committee on the Judicial Branch

ranking federal agency managers), sent President Bush a letter Jan. 26, pointing out that their research has shown that about half their active executives could retire this year, that many will leave if the raise is denied, and that the costs of their pensions and paying their replacements would exceed the costs of the raises. Association President Carol Bonosaro said, "Federal executives won't strike or protest. They'll vote with their feet."

Several bills to modify the mechanism now in operation have been introduced and more are said to be planned, prompted primarily by criticism of the unique system Congress has established to effect increases for federal judges, senior federal managers, and members of Congress without having to vote for them. One criticism of the method is the linkage of increases in compensation of the judiciary and federal managers with the limitations on congressional compensation. Sen. Ted Stevens (R-Alaska) said that the present system "had no future" and

devised for automatic, regular, modest pay increases.

Lloyd Cutler, who chaired the Quadrennial Commission and vigorously supported the recommended pay increases, said, "The public outcry against the raise was against any increase of any size for any branch of the government." He counseled a response of doing "nothing for a considerable period."

President Bush said that he had "special concern about the level of compensation for members of our federal judiciary" and that he favored "some level" of increase for them. A White House spokesman had no information on possible administration recommendations for raises for the judiciary or senior federal employees.

Rep. Steny Hoyer (D-Md.), one of the few who voted to approve the raises, said that the salary question would have to be addressed again soon and that cost-of-living increases might be proposed in an appropriations bill scheduled for consideration in June. ■

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JUDICIARY BUILDING, from page 3

ton Properties of Boston and Washington, D.C., and architect Edward Larabee Barnes and Associates of New York.

The jury found the Barnes design the most successful balance of complementing and completing the Union Station Plaza ensemble, with Union Station and the Old Post Office Building grouped around the Plaza and station access on Capitol Hill. A large plaza and sidewalks will connect the buildings, and landscaping will be used to further soften and tie the structures together visually.

The Chief Justice reviewed the decision and approved it, as required by law. The building will include office space for retired justices of the Supreme Court, agencies of the judicial branch, including the AO and FJC, and a parking garage. Completion is scheduled for July 1992. ■

PERSONNEL

CIRCUIT JUDGES

Senior Status

Frank M. Coffin, 1st Cir., Feb. 1

Deaths

Albert B. Maris, 3d Cir., Feb. 7

James Hunter III, 3d Cir., Feb. 10

DISTRICT JUDGES

Elevation

James P. Churchill, Chief Judge,

E.D. Mich., Feb. 7

Senior Status

Elsijane T. Roy, E.D. & W.D. Ark.,
Dec. 31

William Brevard Hand, S.D. Ala.,
Jan. 19

J. Foy Guin, Jr., N.D. Ala., Feb. 2

Deaths

Timothy S. Hogan, S.D. Ohio,
Jan. 30

Phillip Pratt, Chief Judge, E.D.
Mich., Feb. 7

MAGISTRATES

Appointment

William C. Sherrill, Jr., N.D. Fla.,
Dec. 1

CALENDAR

Feb. 1-3 Seminar for AO Mid-Level Managers

Feb. 3 Judicial Conference Federal Courts Study Committee

Feb. 13-15 Seminar for Clerks, U.S. Courts of Appeals

Feb. 13-17 Seminar for New Chief and Deputy Chief Probation Officers

Feb. 15-16 Judicial Conference Executive Committee

Feb. 15-17 Seminar for Chief Deputy Clerks of U.S. Circuit Courts

Feb. 22-24 Seminar for Bankruptcy Judges

Feb. 22-24 Automation Training for Court Managers



BULLETIN OF THE FEDERAL COURTS

THE **THIRD** BRANCH

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THE THIRD BRANCH

President Bush Appoints Commission to Study Ways To Strengthen Ethics Laws for Federal Employees

Earlier this year, President George Bush established the President's Commission on Federal Ethics Law Reform, a bipartisan panel with a mandate to study ways to strengthen ethics laws covering federal employees. Saying that he wanted "a fresh look," the President asked the commission to recommend ethical standards that (1) are exacting enough to ensure that public office holders act with the utmost integrity; (2) are fair, objective, and consistent with common sense; (3) apply to all three branches of the federal government; and (4) avoid unreasonably restrictive requirements that might discourage able citizens from entering public service.

The commission has reached tentative agreement on its recommendations to the President. These pro-

posed recommendations, which would require new legislation and regulations to become effective, include the following.

Create a joint congressional ethics office. This office would be modeled on the Congressional Budget Office and would handle filings, review disclosure statements, and review potential conflicts. The commission explained that a joint endeavor could "ensure uniformity" and would better maintain "an independent base from which it could conduct meaningful recommendations."

Impose "revolving door" limitations. Retiring members of Congress and their top staffers could not represent clients before their respective legislative bodies for a year. Retiring

See ETHICS COMMISSION, page 6

Federal Courts Study Committee Announces Schedule of Hearings

The Federal Courts Study Committee has set the following dates and locations for public outreach meetings at which they hope to hear from state and federal judges, members of the academic community, the bar, and the public.

- Mar. 20 Pasadena, Cal.
- Mar. 22 Chicago, Ill.
- Mar. 23 Boston, Mass.
- Mar. 31 Atlanta, Ga.

Each of the regional meetings will be held in a federal courthouse and will be open to the public and media. Invited guests will be asked to present brief statements regarding possible areas of study for the committee and to respond to questions from committee representatives. Members of the committee will preside over the hearings.

"In order to be responsive to the needs and concerns of the courts and the community, the committee deems it essential to assess the views of those who have an interest and stake in the future of the federal courts," said Judge Joseph Weis, Jr. (3d Cir.), chairman of the committee. "We hope that the information gathered in these open forums will assist the Study Committee in charting a

See COURTS STUDY, page 6

Judges Wisdom and Tuttle to Receive 1989 Devitt Distinguished Service to Justice Award

Judge John Minor Wisdom (5th Cir.) and Judge Elbert Parr Tuttle (11th Cir.) have been named the 1989 recipients of the Devitt Distinguished Service to Justice Award.

They are best known for decisions written by them, or in which they participated, that abolished state



Judge Wisdom

barriers to voting rights and civil rights for southern blacks during the civil rights struggles of the 1960s and 1970s.

Judge Tuttle was appointed to the Fifth Circuit on Aug. 4, 1954, by President Eisenhower. He was chief

judge from 1960 to 1967 and took senior status in 1968. On Oct. 1, 1981, he was assigned to the newly created Eleventh Circuit. He served on the Judicial Conference of the United States from 1961 to 1967, and was on several of its committees. Before his appointment to



Judge Tuttle

the bench, he was general counsel of the Department of the Treasury. He served in the Georgia National Guard, the U.S. Army, and the U.S. Army Reserve, retiring as brigadier general. He practiced law in Atlanta

See DEVITT AWARD, page 2

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Committee on Bicentennial of Constitution Plans Observances of Judiciary Act and Bill of Rights

The Judiciary Act of 1789 and the Bill of Rights will be featured themes of the 1989 circuit judicial conferences. The circuits have been provided with sample programs, and aid in selecting speakers for each conference has been offered through the auspices of the Judicial Conference Committee on the Bicentennial of the Constitution.

Additional committee plans for observance of the Bicentennial of the Constitution include the following:

- Bicentennial banners, similar to the one pictured here at right, may be displayed on federal courthouses. The committee is exploring the development of a standard banner and has authorized partial funding for the display.
- The National Archives will be printing posters on illustrative cases in the history of the federal courts for exhibition in courthouse lobbies. It will receive committee assistance in developing poster content, and in

publicizing and distributing the exhibit. The committee endorsed display of the exhibit in 225 federal courthouses and approved matching funds to encourage production of regional exhibits to supplement the National Archives exhibit.

- Hofstra University will construct on their grounds a public "Bill of Rights Plaza," which will include a bronze plaque containing the first 10 amendments as its centerpiece. The committee will hold the plaque's copyright and will offer a copy of the plaque to each federal court.
- A brochure on the Judiciary Act of 1789 and the evolution of the federal courts will be developed for mass distribution.
- A research grants program to foster scholarship on the early history of the federal courts and related topics is being developed.
- Producing a television series in association with the American Judicature Society is being discussed. ■



DEVITT AWARD, from page 1

for approximately 30 years, with interruptions for public and military service.

Judge Wisdom was appointed to the Fifth Circuit on June 27, 1957, by President Eisenhower. He took senior status in 1977. He was a member of the Judicial Conference of the United States, serving on the Advisory



BULLETIN OF THE FEDERAL COURTS

THE THIRD BRANCH

Published monthly by the Administrative Office of the U.S. Courts and the Federal Judicial Center. Inquiries or changes of address should be directed to 1520 H St., N.W., Washington, DC 20005

Co-editors

Alice O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center. Peter G. McCabe, Assistant Director, Program Management, Administrative Office of the U.S. Courts.

Committee on Appellate Rules and the Judicial Panel on Multidistrict Litigation, which he chaired for five years. He has served as a judge of the Special Court under the Regional Rail Reorganization Act of 1973 and as its presiding judge since 1986. He has practiced law in New Orleans, taught law at Tulane University, and served as a member of the President's Commission on Government Contracts. During World War II he served in the Army Air Corps and attained the rank of lieutenant colonel.

Since 1982, the Devitt Award has been given annually for distinguished service as a federal judge. It is presented by West Publishing Co. Selections this year were made by a committee composed of Supreme Court Justice Sandra Day O'Connor, Chief Judge Wilfred Feinberg (2d Cir.), and Judge Edward J. Devitt (D. Minn.), for whom the award is named. ■

Access to Justice Will Be 1989 Law Day Theme

The American Bar Association, national originator of Law Day USA, observed each May 1, encourages event planners to direct their activities toward increasing access to justice for all citizens and urges all citizens to become better informed about the legal system.

The ABA has prepared a detailed *Planning Guide* to aid those conducting Law Day programs and the Association makes available many educational and promotional materials. Further information is available from Law Day USA, American Bar Association, 8th Floor, 750 North Lake Shore Drive, Chicago, IL 60611, tel. (312) 988-6134.



State Justice Institute Funds ABA Projects on Habeas, Search Warrant Review, Child Abusers

The ABA Section of Criminal Justice has announced three new projects funded by grants from the State Justice Institute.

Federal habeas corpus review of death penalty cases. The ABA will conduct an 18-month study of the special problems associated with federal habeas corpus review of state court criminal convictions involving the death penalty. A joint state-federal task force composed of judges, prosecutors and defense attorneys, and court administrators will look at ways to make the review process "more rational." The task force will hold hearings in Dallas, San Francisco, and Atlanta, and its final report will include recommendations to federal and state courts, legislators, and executive branch officials concerning the death penalty review process.

Judge Alvin Rubin (5th Cir.) and California Chief Justice Malcolm Lucas will co-chair the task force. Prof. Ira Robbins of American University's Washington College of

Law will serve as reporter, and Tom C. Smith of the ABA Section of Criminal Justice will serve as project director.

Guidelines for magistrates and judges in reviewing search warrant applications. A six-person task force will develop guidelines and commentary to provide state judges and magistrates with practical guidance on the process, as well as the substance, of search warrant review. Prof. Sheldon Krantz of the University of San Diego School of Law will chair the project. Prof. Gerald M. Caplan of George Washington University School of Law will serve as reporter and Betty Harth, section administrator, will serve as project director.

Examination of the probation response to sexual abusers of children. Another ABA project is to study how already burdened probation departments cope with the responsibilities of supervising probationers convicted of sexually abusing children.

See RESEARCH GRANTS, page 8

Administrative Office Undertakes Studies in Court Work Measurement/Staffing Allocation

On Feb. 10, AO Director L. Ralph Mecham announced the initiation of a series of work measurement/staffing allocation studies to determine needs for supporting personnel in the courts. The studies will result in new staffing formulas to be used in the judiciary's budget requests and in allocating staff to clerks' offices, probation offices, and pretrial services offices. The current staffing formulas, which were adopted several years ago, are out of date and are being reevaluated at the direction of the Judicial Conference of the United States.

The studies will be conducted by Booz-Allen & Hamilton, Inc., a consulting firm experienced in work measurement projects. The AO's Of-

fice of Planning and Evaluation will coordinate the studies, with extensive input from other AO divisions and court personnel.

Four separate work measurement studies will be conducted. The first, a review of probation and pretrial services offices, is under way. A study of the district court clerks' offices will begin in July 1989, followed by studies of the circuit clerks' offices and bankruptcy clerks' offices.

Each study will be divided into six phases and will take approximately 11 months to complete. The first phase will be the development of a comprehensive description of the various tasks performed in each office. The second and third phases will involve developing and ad-

New Audiovisual Media Catalog Available from FJC

The Center has published the 1988 *Catalog of Audiovisual Media Programs*. This edition lists audiocassettes, videocassettes, instructional software, and films available for loan (only to federal judicial personnel) from the media library of the Center's Information Services.

Catalog items are grouped by subject matter and include recordings of Center seminars and workshops, specially produced Center media programs, and programs from commercial sources and from other government agencies. Not all, or even most, presentations at Center seminars are listed; programs have been selected for inclusion based on topicality and level of past use. The catalog includes an index of titles.

Copies of the catalog are being distributed to a large segment of the federal judiciary, including judges, magistrates, clerks, circuit and district executives, chief probation and pretrial services officers, offices of senior staff attorneys and federal public and community defenders, librarians, and court training coordinators. Other federal judicial personnel may obtain a copy by writing to Information Services, 1520 H St., N.W., Washington, D.C. 20005. Please enclose a self-addressed mailing label, preferably franked, but do not send an envelope. The catalog weighs 6 oz.

ministering a questionnaire to be completed by all court employees in order to obtain task and time data on the work they perform. The fourth and fifth phases will entail analysis of the responses to the questionnaire and visits to selected court sites to verify the data. The sixth phase will be the preparation of a final report, which will include procedural flowcharts, recommendations for improvements, and proposed new staffing formulas. ■

THE THIRD BRANCH

Catalog of Available Court-Developed PC Software Compiled from Survey Responses

The FJC's Innovations and Systems Development Division has published a *Catalog of Personal Computer Software Developed Within the Federal Courts*. The catalog was compiled from entries submitted by software developers in the courts who participated in a PC usage survey conducted last summer (see *The Third Branch*, November 1988, at 2).

The catalogue lists 141 court-developed programs and gives a brief description of each, along with the name of a court "sponsor" who is willing to provide additional information to interested callers.

One copy of the catalog was sent to each of the clerks of court and to each circuit and district executive. Additional copies can be obtained by sending a request to PC Software Catalog, Innovations and Systems Development Division, Federal Judicial Center, 1520 H Street, N.W., Washington, DC 20005.

The catalog will also be available in electronic form by mid-March. The electronic form consists of a FoxBASE database with report scripts and can be downloaded from the division's bulletin board system by calling (FTS/202) 633-6256. ■

LEGISLATION

Senate Judiciary Committee subcommittee assignments were announced Feb. 3. They were, in part: Courts and Administrative Practice: Heflin (chairman), Metzenbaum, Kohl, Grassley, and Thurmond; Constitution: Simon (chairman), Metzenbaum, DeConcini, Kennedy, Specter, and Hatch; and Technology and the Law: Leahy (chairman), Kohl, and Humphrey.

Bills introduced in Congress of interest to the federal judiciary include the following. Unless otherwise noted, they were referred to the respective committees on the judiciary.

- **Pay raise.** Since President Bush signed the Resolution of Disapproval passed by Congress to disapprove the pay raises for federal judges, members of Congress, and senior federal employees on Feb. 7, only two new bills have been filed on the issue.

H.R. 1061, which would repeal section 225 of the Federal Salary Act of 1967, was introduced Feb. 22 by Rep. Barney Frank (D-N.Y.). Section 225 is the provision establishing the Commission on Executive, Legislative and Judicial Salaries, known as the Quadrennial Commission, and repealing it would return the determination of

those matters to Congress to handle like any other federal employee compensation.

H.R. 1132 was filed Feb. 28 by Rep. Constance Morella (R-Md.). Speaking on the floor of the House, she said that the bill will grant a 20 percent raise "to all offices and positions covered by section 225 of the Federal Salary Act of 1967, except for Members of Congress," and that it will provide for a study of pay relationships among several salary plans that cover senior federal employees. She called the bill a "temporary, but immediate, measure," and said that she offered it "with the hope that those who are affected will consider this as good faith recognition of their endeavors."

The bills were referred to the House Committee on Post Office and Civil Service.

- **S. 327**, which would amend 18 U.S.C. to allow using mail and wire fraud statutes in corruption cases against government officials and others in cases other than those where the government could show that the intent had been to steal public property. "This bill reverses *McNally* by creating a new public corruption statute that will be used to bring charges against anyone who attempts to deprive the citizens of the United States

Positions Available

Ass't to Cir. Exec., 7th Cir. Duties include involvement in all matters relating to court administration; development and implementation of improved court operations, programs, and facilities; management of computerization of the circuit, and its district and bankruptcy courts. Requires ability to initiate, plan, and manage court administration projects without direct supervision and to conduct and report on statistical studies and procedures; record of progressively responsible experience demonstrating practical and theoretical knowledge of management. Law degree, familiarity with DOS computer systems and computer literacy not required but would be important considerations. Open until filled. Salary, depending on qualifications and experience, up to JSP 14, from \$48,592 to \$63,172. Submit résumé to Collins T. Fitzpatrick, Circuit Executive, Seventh Circuit Court of Appeals, 219 S. Dearborn St., Chicago, Ill. 60604.

Clerk, Bankr. Ct., E.D. Mich. Serves as chief administrative officer of the court, headquartered in Detroit with divisional offices in Bay City and Flint. Responsible for managing administrative activities of court, consisting of 4 bankruptcy judges and staff of 67. Requires at least 10 years' progressively responsible administrative experience, at least 3 in position of substantial management responsibility. Prefer prior experience in judicial or public administration. Active legal practice experience (public or private sector); law, postgraduate administrative, and undergraduate degrees may be substituted for some experience. Applicants should submit 5 copies of résumé or SF-171 to John P. Mayer, Court Executive, 704 U.S. Courthouse, Detroit, Mich. 48226.

EQUAL OPPORTUNITY EMPLOYERS

or of any State of the honest services of a public official, anyone who attempts to corrupt the election process, or any public official or employee who subverts the administration of a public agency by providing the agency with false information," said Sen. Joseph Biden (D-Del.), the principal sponsor.

- **S. 419 and H.R. 1048**, which are bills to provide for collection of data about crimes motivated by race, religion, ethnicity, or sexual orientation.

See LEGISLATION, page 8



Judiciary Budget Testimony Given to House Subcommittee by Judges, Judiciary Officers

The House Committee on Appropriations, Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies hearing on Feb. 7 featured testimony from Judge Richard S. Arnold (8th Cir.); Chief Judge Howard T. Markey (Fed. Cir.); Chief Judge Edward D. Re (U.S. Court Int'l Trade); Chief Judge Owen M. Panner (D. Or.); Director L. Ralph Mecham and Assistant Director for Administration Raymond A. Karam of the AO; and FJC Director John C. Godbold.

Speaking on behalf of the Budget Committee of the Judicial Conference, Judge Arnold testified in detail about the constantly expanding workload, giving examples of federal legislation that increased both workload and expenditures beyond the control of the judiciary. He described the judiciary's financial crisis and how "funding levels which degrade the Judiciary's ability to respond to those who properly seek redress in the courts, directly impair the citizens' rights themselves."

NOTEWORTHY

Federal Prison Industries bid rigging cases concluded. Civil claims against Irving Reich Inc. and its president, Gary Zeitlin, and Jack Spector Inc. and its owner/president, Lucile Raphael, for rigging bids on Federal Prison Industries contracts were settled with recovery of \$425,000, the Department of Justice announced Dec. 23. The civil claims were based on charges that the parties prepared and submitted collusive, noncompetitive, and rigged bids

on contracts for the sale of processed nylon fiber let by the Bureau of Prisons, Federal Prisons Industries Inc., at Leavenworth, Kansas from 1979 to 1987. Separate criminal proceedings against the same parties had been concluded in February 1988 with pleas of guilty. Zeitlin served six months in prison and Raphael served three months. Defendants paid a total of \$700,000 in criminal fines.

Federal government entitled to restitution for costs of trial aborted by juror misconduct. The Third Circuit ruled Dec. 22, 1988, in *U.S. v. Hand*, No. 885334, that under the Victim and Witness Protection Act, 18 U.S.C. § 3663, the federal government is entitled to the same rights as other victims who sustain economic losses. A juror in a multiple-defendant criminal trial improperly accepted flowers, exchanged notes, and engaged in telephone conversations with one of the defendants during the trial. She was the lone voter for acquittal of that defendant, leading to a mistrial of charges against him.

Her misconduct invalidated the convictions gained against the other defendants.

She pled guilty to a contempt charge based on these actions, and as a condition of probation, she was ordered to pay restitution to the federal government in the amount of \$46,850, the value of the salaries of the government employees during

Study on Budgetary Impact of Possible Diversity Changes Published

The Center has published *The Budgetary Impact of Possible Changes in Diversity Jurisdiction*, by Anthony Partridge of the Research Division.

This 58-page report estimates the impact of the 1988 amendments to diversity-of-citizenship jurisdiction and the potential impact of the following unenacted proposals: elimination of diversity, restricting diversity to suits involving alien parties, measuring the jurisdictional amount in "actual damages," changing the definition of corporate citizenship, and barring diversity suits by plaintiffs in their home states.

Copies of the report are available from Information Services, 1520 H St., N.W., Washington, D.C. 20005. Please send a self-addressed, franked mailing label, but do not send an envelope. The report weighs 6 oz.

the "wasted" trial. The court said that this is a "concrete, significant financial loss," comparable to that of misappropriated food stamps and welfare payments, which the government previously has been allowed to recover under the same authority. The amount represented a proportional fraction of the annual salary of two assistant U.S. attorneys and two DEA agents for preparation and conduct of the trial, their travel and lodging costs, witness fees, and expenses of the Marshals Service. The appeal was only on the issue of restitution.

The improper conduct of the juror became known through the appeals of the convicted codefendants, who claimed denial of due process because of her improper contacts with their codefendant. The district court held an evidentiary hearing and vacated the convictions of those still contesting their guilt. (Several of the convicted entered into plea bargains in

PERSONNEL

CIRCUIT JUDGES

Nominations

Ferdinand F. Fernandez, 9th Cir., Feb. 28

Pamela Ann Rymer, 9th Cir., Feb. 28

Elevation

Sam Ervin III, Chief Judge, 4th Cir., Feb. 14

DISTRICT JUDGES

Nominations

Robert Bonner, C.D. Cal., Feb. 28

Melinda Harmon, S.D. Tex., Feb. 28

Vaughn R. Walker, N.D. Cal., Feb. 28

See NOTEWORTHY, page 7

THE THIRD BRANCH

COURTS STUDY, from page 1

course for its work."

The full committee will meet again Apr. 10 to review the findings from the hearings. Subcommittees will reconvene immediately after the full committee meets.

C-SPAN plans to cover three of the four public hearings and is trying to arrange coverage of the fourth. It will also cover the Apr. 10 meeting of the full committee.

The committee was mandated by Pub. L. No. 100-702 to review all the problems and issues currently facing the federal courts, to make rec-

ommendations on meeting those issues, and to develop a plan for the future of the judiciary. The committee seeks recommendations of areas of inquiry and advice on improving the court system from the state and federal judiciary, the bar, and others interested in the federal courts. Interested parties are asked to participate in the hearings and to communicate directly with the Federal Courts Study Committee to the attention of the director, William K. Slate II, 22716 U.S. Courthouse, 601 Market St., Philadelphia, PA 19106, tel. (FTS) 597-3320, (215) 597-3320, (FTS FAX) 597-3350. ■

ETHICS COMMISSION, from page 1

federal judges and senior judicial branch employees would be barred from practicing before the court in which they served.

Ban honoraria. One recommendation would extend to all three branches of the federal government a ban on honoraria for speaking and writing about matters that are part of one's federal position. If approved, this recommendation would prevent federal judges and former members of Congress from writing about their experiences in office.

Cap outside earnings. The commission recommends setting a uniform ceiling on outside earnings like that which currently applies to top officials of the executive branch.

Set new disclosure requirements. Another recommendation would extend financial disclosure reporting in all three branches to include mortgage and other personal debts now exempted, and would increase the valuation categories for reporting holdings.

Amend conflict of interest laws. The commission believes that amending the current conflict of interest law to provide some misdemeanor penalties might encourage application of these laws, which now are infrequently invoked.

Extend the independent counsel

statute. The commission recommends that the statute be extended to cover members of Congress.

Griffin B. Bell, attorney general in the Carter administration, and Malcolm R. Wilkey, Jr., a retired senior judge of the Court of Appeals for the District of Columbia and ambassador to Uruguay, are cochairmen of the commission. The members are Lloyd N. Cutler, former White House counsel in the Carter administration and chairman of the 1989 Quadrennial Commission; Fred F. Fielding, former counsel to President Reagan; Jan W. Baran, general counsel to the Bush-Quayle campaign committee; Judith Bello, former counsel to the Office of the U.S. Trade Representative; Harrison H. Schmitt, former Apollo astronaut and U.S. senator (R-N.M.); and Robert James Woolsey, an expert on procurement who served as President Carter's under secretary of the Navy and as counsel of the Senate Armed Services Committee.

After receiving the panel's report in early March, the President plans to propose new ethics legislation. Last November, former President Reagan used a pocket veto on ethics legislation when Congress was not in session, and President Bush then indicated that he would offer his own bill if elected. ■

CALENDAR

Mar. 14-15 Judicial Conference of the United States

Mar. 16-17 Judicial Conference Advisory Committee on Bankruptcy Rules

Correction

The 50th D.C. Circuit Conference will be held in Williamsburg, Va., June 4-6.

THE BOARD OF THE FEDERAL JUDICIAL CENTER

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United States Court of Appeals for the Fifth Circuit

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United States Court of Appeals for the Ninth Circuit

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Federal Judicial Center

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THE SOURCE

The publications listed below may be of interest to readers. Only those preceded by a checkmark are available from the Center. When ordering copies, please refer to the document's author and title or other description. Requests should be in writing, accompanied by a self-addressed mailing label, preferably franked (but do not send an envelope), and addressed to Federal Judicial Center, 1520 H St., N.W., Washington, DC 20005.

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Tuttle, Elbert P., & Dean W. Russell, *Preserving Judicial Integrity: Some Comments on the Role of the Judiciary Under the "Blending" of Powers*, 37 *Emory Law Journal* 587 (1988).

Wasby, Stephen L., *Justice Harry A. Blackmun in the Burger Court*, 11 *Hamline Law Review* 183 (1988).

Weis, Joseph F., Jr., *The Constitution's Second Century: The Shift in Emphasis from Property Rights to Personal Rights*, 26 *Duquesne Law Review* 1 (1987).

NOTEWORTHY, from page 5

the interim, as did others later, all to reduced charges.)

Court of Military Appeals permits filming. In late February, the U.S. Court of Military Appeals allowed ABC News to film oral arguments in two drug testing cases. It was an experiment arranged with the approval of Chief Judge Robinson O. Everett, with a view to determining whether it is possible to videotape a proceeding without disturbing it. The Judicial Conference of the United States prohibitions on cameras in the courtroom do not apply to the Court of Military Appeals.

Law school enrollments rise; women and minorities gain. The American Bar Association consultant on Legal Education announced Feb. 17 that law school enrollment increased 2.3 percent in 1988 over 1987, that women now comprise 42 percent of law students, and that minorities rose to 11.6 percent of law students.

THE **THIRD** BRANCH

LEGISLATION, from page 4

- **S. 379**, which would amend 18 and 29 U.S.C. to eliminate and establish an alternative to the exclusionary rule in federal criminal proceedings.

- **H.R. 983**, which would amend 28 U.S.C. to provide for selection of grand and petit jurors from other than voter registration lists.

- **H.R. 1046**, which would amend chapter 96 of the Code (civil RICO provisions), was introduced on Feb. 22 with 38 sponsors. It would, in most instances, limit the available remedy to single damages and attorneys' fees.

Automatic treble damages would be limited to federal, state, and specified local government plaintiffs and to

plaintiffs proceeding against a defendant previously convicted of a RICO predicate offense.

Other specified local government units, plaintiffs injured by federal insider trading law violations, and consumers defrauded in certain transactions may be awarded actual damages as well as discretionary punitive double damages. ■

RESEARCH GRANTS, from page 3

The terms of probation often include specific conditions that the offender have no contact with the child victim, obtain employment, make restitution for the victim's counseling expenses, and receive treatment.

The project will explore, at four undetermined sites and with a national

survey, whether compliance rates are greater in those jurisdictions in which revocation is utilized more frequently than in those where it is seldom invoked.

The objectives of the study are (1) to examine compliance with the conditions of probation, (2) to examine the rate of recidivism among child abusers on probation, and (3) to de-

velop cost-efficient suggestions for improving probation department monitoring of convicted sexual abusers of children.

Dr. Barbara Smith is the principal investigator for the project; Susan Hillenbrand, the director of the ABA Criminal Justice Section Victim/Witness Project, is the project's senior staff associate. ■



BULLETIN OF THE FEDERAL COURTS

THE **THIRD** BRANCH

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Chief Justice and Judicial Conference Call For 30 Percent Judicial Pay Increase Now, Periodic Cost-of-Living Adjustments

Chief Justice William H. Rehnquist, chairman of the Judicial Conference of the United States, met with the press on Mar. 15 to report the Judicial Conference's "urgent unanimous" resolution, formed at its meeting the day before, to seek an immediate 30 percent increase in compensation for judges, coupled with provision for periodic cost-of-living adjustments like those given other federal personnel. Speaking at the Judicial Conference's request, he called the issue of adequate judicial compensation the single greatest problem facing the judiciary today. He cited particularly the enormous erosion in federal judges' purchasing power because of failure to adjust their pay for inflation, and the increasing difficulty of attracting and retaining highly qualified

lawyers to the federal bench as the disparity between judicial salaries and attorney compensation becomes "ever more pronounced, whether the attorneys are in private practice, in corporate law departments, in law schools, or in other legal fields." The tradition of life service by federal judges is endangered by these developments, he warned, and failure "to adequately address this issue poses

Federal Judicial Salaries

	Current	Proposed
Chief Justice	\$115,000	\$149,500
Associate Justices	110,000	143,000
Circuit Judges	95,000	123,500
District Judges	89,500	116,350

Source: Administrative Office of the U.S. Courts.

the most serious threat to the future of the judiciary and its continued operations that I have observed."

See CHIEF JUSTICE, page 2

Judicial Conference Selects Monroe G. McKay as New Member of Federal Judicial Center Board

The Judicial Conference of the United States has elected Judge Monroe G. McKay to the Board of the Federal Judicial Center.

Judge McKay has served on the Tenth Circuit since December 1977. At the time of his appointment to the federal bench, he was a profes-



Monroe G. McKay

sor of law at the J. Reuben Clark Law School at Brigham Young University, where he had taught since 1974. After graduating from the University of Chicago Law School in 1960, he clerked for Arizona Supreme Court Justice Jesse A. Udall and then practiced law in Phoenix. From 1966 to 1968, he served as director of the Peace Corps in Malawi.

Judge McKay will fill the position on the Board previously held by Judge Alvin B. Rubin (5th Cir.), whose term expired Mar. 28. ■

Judicial Conference Semi-Annual Meeting Decisions Announced

Approved Defenders' Code of Conduct; Will Consider Judges' Off-Site Security

The Judicial Conference of the United States held its semi-annual meeting in Washington, D.C., on Mar. 14. It considered resolutions and reports concerning judicial branch operations, including those noted below. Decisions requiring expenditures were taken subject to availability of funds and to priorities.

The following are some of the conferees' actions:

- Resolved to seek legislation to increase judicial compensation by 30 percent and to provide that judicial officers receive periodic cost-of-living adjustments like those received by other federal personnel. (See related story on this page.)

- Recommended that Congress amend 28 U.S.C. § 152(a) to allow the judicial council of a circuit to permit a bankruptcy judge whose term has expired to continue to perform the duties of the office for 180 days or until appointment of a successor.

- Approved a revised Code of Conduct for Federal Public Defenders.

See JUDICIAL CONFERENCE, page 6

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 Reform Recommendations3

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 Administrative Excellence7

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Circuit and District Judge Departures by Year

Year	Number
1958	0
1959	0
1960	0
1961	1
1962	0
1963	1
1964	0
1965	0
1966	0
1967	1
1968	0
1969	0
1970	2
1971	0
1972	0
1973	1
1974	7
1975	2
1976	3
1977	1
1978	4
1979	2
1980	3
1981	3
1982	3
1983	3
1984	7
1985	5
1986	4
1987	7
1988	3

Note: Departures include resignations before retirement as well as retirements from office under 28 U.S.C. § 37(a). Judges who retire under 28 U.S.C. § 37(b) by electing senior status are not included in these figures.

Source: Administrative Office of the U.S. Courts.

CHIEF JUSTICE, from page 1

Noting that President Bush had said a salary increase for the judiciary was overdue, the Chief Justice said that he and the Judicial Conference felt they must now ask the President and Congress for their support for increased compensation or "the federal judiciary as we know it cannot continue to meet the high standards the public has come to expect."

"We see now we have less ability to attract experienced lawyers, especially those practicing in large cities, to the federal judgeships."

After his remarks, the Chief Justice responded to questions from the press. When asked how the Conference arrived at the 30 percent figure, he said that they had thought the 50 percent increase originally suggested by the Quadrennial Commission was, in fact, justified, but that they recognized that there had been a negative public reaction to that great an increase. Asked if he could cite any empirical evidence that the quality of the judiciary has already suffered as a result of low pay, he said that there was no proof, only anecdotal indica-

tions, that salaries were the reason. He pointed to documentation of the rising rate of judges' leaving the bench for private practice. He also described how he and others had heard from many lawyers who felt they could not afford to accept nomination to the federal bench. Part of the great strength of the federal court system has been the diverse mix and the quality of the people who come into it, and "we see now we have less abil-

ity to attract experienced lawyers, especially those practicing in large cities, to the federal judgeships."

The Chief Justice reiterated that the approximately 900 judges and judicial officers involved "need equity, and we feel we would be remiss if we did not press at this time. We hope Congress will act."

The Judicial Conference has conveyed its message to Congress, particularly to the leadership of the committees in both houses that are already considering pending legislation on judicial compensation. ■



BULLETIN OF THE FEDERAL COURTS

THE THIRD BRANCH

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Co-editors

Alice O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center. Peter G. McCabe, Assistant Director, Program Management, Administrative Office of the U.S. Courts.



The Bicentennial of the U.S. Constitution was celebrated in Detroit's U.S. Courthouse Mar. 6 with the above-pictured cake bearing 200 candles. About 300 celebrants re-

ceived copies of the Constitution and heard remarks in praise of the federal judiciary. Following the festivities, the balance of the cake was donated to the homeless of Detroit. ■



Ethics Commission Suggests Simplification, Uniformity, Adding Misdemeanor and Civil Penalties to Reform Federal Ethics Laws

The President's Commission on Federal Ethics Law Reform reported Mar. 9 that they "believe that public officials want to follow ethical rules, and that they will do so if the laws are clearly delineated, equitable, uniform across the board, and justly administered." The commission made the following recommendations for strengthening existing law and regulations, noting particularly that the judiciary is already subject to both the Code of Ethics for Government Service and the Code of Judicial Conduct for U.S. Judges.

- Extend basic ethics law (18 U.S.C. § 208) and regulations to officers and employees of all three branches of the federal government, except members of Congress.

- Establish a coordinating committee of ethics officials of the three branches to simplify the process of presidential appointments by reducing the number and complexity of required forms.

- Equalize disclosure requirements among the three branches. Extend disclosure requirements to include loans from relatives and mortgage loans (now exempt), and to change the disclosure valuation categories, adding a category of over \$1 million.

- Give tax relief to government officials divesting themselves of assets to avoid actual or potential conflicts of interest.

- Consider establishment of a White House Ethics Council.

- Direct the Office of Government Ethics to consolidate all executive branch standards into a uniform, single set of regulations, and issue them in a comprehensive ethics manual. Permit individual agencies to supplement these standards with stricter standards, with the approval of the Office of Government Ethics. Recommend that all agencies offer annual ethics

See ETHICS LAW REFORM, page 6

Special Masters Hearing Vaccine Injury Compensation Claims in U.S. Claims Court

Eight special masters are hearing death and disability claims filed in the U.S. Claims Court under the National Vaccine Injury Act (42 U.S.C. §§ 300aa-1 to 300aa-34), under which compensation became available Oct. 1, 1988.

The Act created the National Vaccine Injury Compensation Program to compensate for deaths and injuries arising from inoculations. Victims may be compensated for medical, rehabilitative, and custodial care expenses, and actual and anticipated lost earnings, to the extent that they have not otherwise been reimbursed. They may also be awarded compensation for pain and suffering, attor-

neys' fees, and costs. Victims are paid from a trust fund financed by an excise tax imposed on the covered vaccines. There is now about \$100 million in the fund.

As required by the language of the statute, the Claims Court has designated the special masters to hear cases "for the convenience of the parties around the country." These masters submit findings of fact and conclusions of law to the court, which may enter judgment, remand for further proceedings, or institute a trial de novo. By law, cases must be concluded within 365 days of the filing

See VACCINE COMPENSATION, page 4

FJC Continues Pilot-Testing the New Generation of Microcomputers for ICMS

Last year, major advances were made in the power of desktop microcomputers. Manufacturers began selling machines that had faster processor speeds, faster (cached) memory, and faster, bigger hard disks. These 386/25 microcomputers could be used not only as super personal computers, but also as powerful multi-user computers.

The FJC's Innovations and Systems Development Division began experiments to determine if a single 386/25 could support the Integrated Case Management Systems (ICMS), which the FJC had previously developed on larger, more expensive computers. The new microcomputers were seen as a possible vehicle for greatly reducing the hardware costs of installing ICMS in smaller courts.

In June 1988, the FJC began a pilot project to test the 386/25 systems, and by October they were installed in three bankruptcy courts to run ICMS-BANCAP. Excellent work by the bankruptcy pilots in N.D. Miss., E.D. Okla., and S.D.W. Va., along with the Texas Western Training Center, enabled all three pilots to begin live operation in December. The system has proved successful, and the performance of the 386/25 has exceeded all early expectations.

The FJC is now preparing to install 386/25 microcomputers in four pilot district courts to run ICMS-CIVIL. Both the Arizona and Texas Western Training Centers will work with the pilot courts in E.D.N.C., M.D. Pa., D. Utah, and E.D. Wash. The AO will also participate in the project, and soon they will adopt the 386/25 microcomputer as a standard ICMS hardware option.

The larger district pilots represent courts with as many as 35 employees and over 2,000 case filings per year. Success in those pilots would indicate that a 386/25 system could potentially support ICMS in approximately half of the federal courts.

The systems will be installed in May, and the courts are scheduled to begin live ICMS-CIVIL operations in July 1989.

THE THIRD BRANCH

VACCINE COMPENSATION, from page 3 date. The special masters are Gary Golkiewicz (chief), Paul Baird, Bryan Bernstein, Lavon French, David Gerard, George Hastings, Denis Hauptly, and Elizabeth Wright.

The Act requires claimants to submit probative evidence with their claims. Discovery is streamlined, and the masters encourage an open, informal process designed to bring out all the facts early.

The Act designates as respondent the Secretary of Health and Human Services, who is represented by the Department of Justice. Cases are screened using medical and legal resources, and where the facts and evidence are clear that a plaintiff qualifies for compensation, claims are not contested. In some cases, HHS may seek additional independent advice from medical and other experts in deciding whether to contest a claim.

Under the Act, specified reactions occurring in victims within a given period of time after inoculation create a presumption of causation by the inoculation unless the respondent can show another cause. The Act establishes a preponderance of the evidence standard of proof.

A party dissatisfied with a Claims Court judgment may obtain review in the Federal Circuit, or may remove the claim from the compensation system altogether and sue for damages in state or federal district court. In such a suit, the first step is to prove manufacturer liability, a hurdle avoided in the Claims Court process, and one that has precluded recovery in many of these cases in the past.

The Act grants retroactive relief to parties injured before Oct. 1, 1988, who have not previously received an

award (including those who sued and lost) and others whose cases may be pending now in state and federal courts. These parties may bring their claims into the compensation system by filing new cases in the Claims Court, or by removal of cases pending elsewhere, by Oct. 1, 1990. All 96 pending Claims Court cases arose from inoculations given before the Act's effective date. Estimates of the potential retroactive cases range from 900 to 5,000. Since attorneys who represent vaccine-injury plaintiffs often

have many such clients, they are entering their claims into the new process gradually to avoid docketing pressures.

Chief Special Master Golkiewicz says that estimates vary as to the number of cases that may arise from inoculations given after Oct. 1, 1988, with the Centers for Disease Control, the Congressional Budget Office, the

American Trial Lawyers Association, and others offering estimates ranging from 180 to 600 a year. Claims Court decisions as to whether vaccines may be a causative factor in Sudden Infant Death Syndrome will have a significant impact on the caseload.

Vaccines for seven common childhood diseases have been found to cause unpredictable adverse reactions in some people, and tort-law remedies for such injuries had undesirable consequences. In some cases, there were large jury awards, and manufacturers raised prices or stopped producing vaccines entirely for fear of tort liability. In other cases, injured parties went uncompensated for lack of proof of negligence. As a result, there is some parental resistance to compulsory vaccination, leading to an increased incidence of the diseases in unprotected persons. ■

Estimates of the number of cases that may arise from inoculations given after Oct. 1, 1988, range from 180 to 600 a year, but Claims Court decisions on whether vaccines are a cause of Sudden Infant Death Syndrome will have a significant impact on caseload.

PERSONNEL

CIRCUIT JUDGE

Senior Status

Harrison L. Winter, 4th Cir., Feb. 15

DISTRICT JUDGE

Elevation

Michael A. Telesca, Chief Judge, W.D.N.Y., Jan. 1

MAGISTRATE—FULL-TIME

Appointment

William W. Deaton, Jr., D.N.M., Feb. 28

CALENDAR

- April 3-5 Judicial Conference Advisory Committee on Judicial Improvements
- Apr. 6-8 Conference of Chief District Judges
- Apr. 7-8 Brookings Institution Conference on Judicial Administration
- Apr. 10 Federal Courts Study Committee
- Apr. 17-18 Judicial Conference Committee on the Administrative Office
- Apr. 18-19 Judicial Conference Subcommittee on Statistics
- Apr. 27-29 Judicial Conference Advisory Committee on Civil Rules
- Apr. 30-May 2 Eighth South Pacific Judicial Conference
- Apr. 30-May 2 Seventh Circuit Conference
- May 7-9 Fifth Circuit Conference
- May 7-9 Eleventh Circuit Conference
- May 10-12 Sixth Circuit Conference
- May 17-19 Judicial Conference Advisory Committee on Bankruptcy Rules
- May 18-19 Judicial Conference Advisory Committee on Criminal Rules
- May 22-24 Federal Judges Association Meeting
- May 24 Federal Circuit Conference
- May 30-June 1 Judicial Conference Committee on Court Security



LEGISLATION

Newly filed bills of interest to the judicial branch include the following. Unless otherwise noted, they were referred to the respective congressional committees on the judiciary.

- **H.R. 129** would prohibit court orders that limit the availability to the public of information about product safety in product liability suits. Rep. Cardiss Collins (D-Ill.), in introducing the bill, criticized the practice of requiring plaintiff's attorneys to destroy or return to the manufacturer any product safety evidence produced in discovery.

- **H.R. 1179** and **S. 594** would unite all federal administrative law judges into a corps, with divisions for (1) communications, public utility, and transportation regulations; (2) safety and environmental regulations; (3) labor; (4) labor relations; (5) health and benefits programs; (6) securities, commodities, and trade regulation; and (7) general programs and grants. The agency would be directed by a chief administrative law judge appointed by the President with the advice and consent of the Senate.

Rep. Austin J. Murphy (D-Pa.) and Sen. Howell Heflin (D-Ala.), in introducing the bills, said that distancing ALJs from the departments would cure one of the oldest problems of the administrative hearing system: litigant doubts about judicial impartiality. Rep. Murphy quoted one pro se litigant who asked how he could expect to win his case, when the agency was at once his accuser, prosecutor, and judge. By removing agency power over ALJs' office space, support staff, and promotional opportunities, both the fact and appearance of due process and judicial impartiality could be served. Proponents say that unification also would allow assigning ALJs in ways that reduce workload disparities, allow ALJs the intellectual stimulation of hearing a greater variety of cases, reduce travel expenses, and save money by consolidating docketing

offices, libraries, and other presently duplicated facilities and resources.

- **H.R. 1197** would provide a death penalty for killing federal officers, including U.S. marshals, judges, attorneys, and FBI agents.

- **H.R. 1215** would eliminate special privileges accorded prison industries in federal agency purchases.

- **H.R. 1239** would limit application of the exclusionary rule.

- **H.R. 1256** would eliminate the parental exception to kidnapping in violation of a valid custody order.

- **H.R. 1389** would prohibit possession of firearms in federal court facilities except by members of the U.S. Marshal's Service and authorized security personnel.

- **H.R. 1409** would impose a four-year post-employment restriction on lobbying on behalf of foreign governments and corporations by high-ranking federal employees, including members of Congress, "privity to sensitive trade and national security data."

- **H.R. 1464** and **H.R. 1477** would provide procedures for imposition of the death penalty.

- **S. 533** would create a federal child victim's bill of rights, would permit children to testify outside the courtroom and via recorded deposition, would restrict the number of times they could be interviewed, and would shield their identities.

- **S. 590** would prohibit injunctive relief or an award of damages against a judicial officer for action taken in a judicial capacity. It was introduced by Sen. Heflin and seven cosponsors with the explanation that it was intended to reverse the rule of *Pulliam v. Allen*.

- **S. 591** and **S. 592** would amend Fed. R. Crim. P. 24(a) and Fed. R. Civ. P. 47(a), respectively, to allow attorneys a minimum of 30 minutes per side to orally examine prospective jurors during voir dire. Both bills contain provisions to which the Judicial Conference of the United States and the AO have objected in previous bills on the same issue.

- **H. Conf. Res. 66** calls for creation of an International Criminal

Anthony Partridge to Retire, FJC Research Division

Anthony Partridge, deputy director of the Research Division, who has been at the FJC for 15 years, is retiring. Mr. Partridge is known for his contributions to numerous FJC publications: on advocacy quality in federal courts, civil appeals management, sentencing, the Speedy Trial Act of 1974, and, most recently, *The Budgetary Impact of Possible Changes in Diversity Jurisdiction*.

Before coming to the FJC, Mr. Partridge was with the Office of Economic Opportunity, where he held several positions, including deputy general counsel.

Thomas E. Willging, who has been on the research staff for five years, will become the deputy director of the division on May 1.

Court with jurisdiction over internationally recognized crimes of terrorism, international narcotics trafficking, genocide, and torture. It was referred to the Committee on Foreign Affairs.

- **H.J. Res. 169** would designate Apr. 8, 1989, as "Chief Justice Earl Warren Day."

- **H.J. Res. 208** would designate the week of Apr. 9, 1989, as "Crime Victims Week"; it was referred to the Committee on Post Office and Civil Service.

- **S. 20**, the Whistleblowers Protection Act of 1989, passed the Senate Mar. 16, the House Mar. 21, and was presented to the President Apr. 3. It passed in a form reflecting the views of the American Bar Association and the Congressional Research Service, and compromising on provisions preferred by the original sponsors, the Merit Systems Protection Board, and the Justice Department. ■

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JUDICIAL CONFERENCE, from page 1

- Referred action on recommendations of the President's Ethics Commission to the Judicial Conference Executive Committee in consultation with the Committees on Codes of Conduct and Judicial Ethics.

- Agreed that the director of the AO, in consultation with the Court Security Committee, the U.S. Marshal's Service, and other appropriate agencies, should explore the need for "off-site" physical security of judicial officers and their families and approved adding representatives of bankruptcy and circuit courts to district court security committees.

- Approved submission of legislation to reauthorize appropriations for the director of the AO to contract for substance abuse and psychiatric treatment for offenders for three additional years.

- Delegated to the Committee on Criminal Law and Probation Administration the authority to approve and transmit to Congress the report required by the Anti-Drug Abuse Act of 1988 evaluating the impact of drug-related criminal activity on the federal judiciary.

- Authorized formation of "expert consultant" panels to assist appointed counsel in districts lacking death penalty resource centers.

- Recommended that circuit judicial councils consider setting guidelines for compensation of attorneys in federal capital cases and death penalty habeas corpus cases, and report to the Defender Services Committee by May 15, 1989, on any such action taken.

- Recommended to Congress that fees generated by public access to court records be credited to the judiciary's appropriations account.

- Resolved not to disseminate or sell court data obtained by U.S. trustees' offices through NIBS and BANCAP automated systems for the trustees' internal use only.

- Selected 10 courts to participate in an experiment in one-step summoning and qualification of jurors.

- Delegated authority to review local appellate court rules to the Committee on Rules of Practice and Procedure, retaining the authority to modify and abrogate such rules.

- Approved new and amended rules of the Federal Rules of Appellate Procedure, the Federal Rules of Criminal Procedure, and the Federal Rules of Bankruptcy Procedure, and transmitted them to the Supreme Court for its consideration, with a recommendation that they be approved by the Court and transmitted to Congress. ■

ETHICS LAW REFORM, from page 3

awareness and compliance training. Treat the Executive Office of the President as a single agency for the purposes of post-employment restrictions.

- Give the President authority to grant waivers in the interest of national security. Give the Office of Government Ethics, rather than individual agencies, authority to make rules and grant individual waivers under the ethics law.

- Have Congress appoint an independent ethics official to head a permanent ethics office to "investigate allegations of misconduct, report findings publicly to the ethics committee of the appropriate house, and recommend appropriate sanctions."

- Add the legislative branch to independent counsel jurisdiction to investigate and prosecute alleged violations of ethics laws.

- Apply existing criminal prohibitions against supplementing government salaries to all three branches. Enact administrative,

civil, and misdemeanor penalties to augment the existing felony penalties and to encourage enforcement.

- Give the Attorney General authority to seek injunctive relief from impending and ongoing violations of post-employment restrictions. Enhance administrative debarment procedures for violations.

- Bar all federal employees and members of Congress from accepting honoraria. Create uniform controls on acceptance of gifts by federal employees.

- Place a uniform (not yet defined) limit on outside income earned by federal employees. Give the President authority "to exempt categories of earned income from the cap that do not present significant issues of ethical propriety or interfere with the full performance of job duties."

- Bar government officials from serving on boards of directors of commercial enterprises operating for profit, including family businesses, whether or not compen-

sated, and subject such service to nonprofit organizations to review on a case-by-case basis.

- Extend current restrictions on negotiation for employment to members of Congress and employees of the legislative and judicial branches.

- Bar former members of Congress, judges, and senior staff of the legislative and judicial branches from lobbying or practicing before former colleagues for one year after leaving government, without regard to whether compensation is received for the representation (with an exception for self-representation).

- Create a two-year post-employment bar for executive and legislative personnel on disclosure of certain non-public information.

New legislation and regulations will be required to implement the regulations. President Bush has indicated that he will offer a bill drawing on the commission's recommendations soon. ■



Jesse E. Clark, Richard Miklic, Richard J. Westman, and Charles W. Vagner Named to Receive Director's Award for Administrative Excellence

Two U.S. district court clerks, one deputy court clerk, and one U.S. probation officer were announced Mar. 22 as the winners of the Director's Award for Administrative Excellence by L. Ralph Mecham, director of the AO.

Jesse E. Clark, clerk (S.D. Tex.), Richard Miklic, deputy clerk (S.D. Fla.), Richard J. Westman, supervisory U.S. probation officer (C.D. Cal.), and Charles W. Vagner, clerk (W.D. Tex.) were cited for "outstanding contributions to the efficiency and day-to-day operations of not only the court in which they work, but of the entire federal judiciary," by Mr. Mecham. "Their ideas are creative, cost-efficient and worthy of national recognition."

Each applicant was evaluated in terms of the potential replication of his or her project in other courts; dollar savings; how the process contributed to improved administration of the courts; the extent to which the accomplishment will have a lasting impact on the courts; originality; and the degree of sensitivity or difficulty.

Miklic and Westman initiated and implement a pilot project involving intensive supervision of 100 parolees through electronic monitoring. If implemented nationwide, the savings over incarceration or halfway house use would exceed \$40 million and avoid new prison construction.

Vagner played a leading role in automating federal court operations for almost two decades and established the first Integrated Court Management Systems Training Center in San Antonio, "a model for other courts" embarking on automation programs.

Clark set up the Court Registry Investment System, which allows courts to independently purchase, hold, redeem, and sell U.S. Treasury securities. His pilot program lets courts achieve the highest risk-free

rate of return while meeting liquidity needs at no cost to the administering court, saving money and time while enhancing security for the court's registry fund.

Recipients of the awards are given an engraved plaque and \$5,000 cash. Nearly 20,000 federal court employees were eligible for the award. (AO staff were not eligible.)

Award recipients were selected by a panel composed of Chief Judge Howard Markey (Fed. Cir.) (chairman), Noel Augustyn, administrative assistant to the Chief Justice, and Raymond Karam, assistant director for administration of the AO.

THE SOURCE

The publications listed below may be of interest to readers. Only those preceded by a checkmark are available from the FJC. When ordering copies, please refer to the document's author and title or other description. Requests should be in writing, accompanied by a self-addressed mailing label, preferably franked (but do not send an envelope), and addressed to Federal Judicial Center, 1520 H St., N.W., Washington, DC 20005.

Dorsen, Norman, *The Role and Performance of the United States Supreme Court in Protecting Civil Liberties*, 31 *Arizona Law Review* 1 (1989).

Edwards, Harry T., *Regulating Judicial Misconduct and Divining "Good Behavior" for Federal Judges*, 87 *Michigan Law Review* 765 (1989).

Falconer, Neil E., & Mark Herrmann, *Legislation Enacted in November Alters Law Governing Removal*, *National Law Journal*, Mar. 13, 1989, at 18.

Gleeson, A. M., *The Rule of Law and the Independence of the Judiciary*, 1 *Judicial Officers Bulletin* 1 (Feb. 1989) (Judicial Commission of New South Wales publication).

Lucal, Jane B., *The Quiet Revolution:*

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Computerization of Court Systems for the Twenty-first Century, 14 *Ohio Northern University Law Review* 169 (1987).

McGrath, James P., *Federal, Executive, Legislative, and Judicial Compensation: The Situation and Choices for the 101st Congress* (Congressional Research Service, Library of Congress, 1989).

1989 National Directory of Felony Sentencing Services, *The Sentencing Project* (Washington, D.C. 1989).

Norton, Jerry E., *Government Attorneys' Ethics in Transition*, 72 *Judicature* 299 (1989). ■

THE THIRD BRANCH

Positions Available

Administrative Assistant to the Chief Justice of the United States. Statutory position. Reports to the Chief Justice, providing administrative assistance in the Chief Justice's nonadjudicatory responsibilities, including the Judicial Conference of the United States, the Federal Judicial Center, and the Administrative Office of the U.S. Courts. Serves as liaison with the executive and legislative branches, state and private organizations, and the Smithsonian Institution. Assists in preparation of addresses and publications; participates in the Chief Justice's internal management of the Supreme Court, including budget, general organization policy, personnel, and other administrative matters. Qualifications: J.D. or Ph.D. preferred; 10 years' relevant experience; demonstrated administrative ability and superior organizational skills; excellent communication and leadership talents; familiarity with the judiciary; commitment for two years only. Salary commensurate with experience. Closing date Apr. 28, 1989. Send a complete

résumé, listing work experience, educational background, extracurricular activities, etc., and no more than three letters of reference to Personnel Office, Supreme Court of the United States, Washington, DC 20543 (tel. (202) 479-3404).

* * *

Chief Deputy Clerk, U.S. Bankr. Court (E.D. Cal.). Executive position reporting to clerk of court. Responsible for assisting in supervision, management, and planning of office operations. Requires six years' progressively responsible administrative experience, at least three of which must have been in position of substantial management responsibility. Requires comprehensive understanding of modern management techniques and systems together with demonstrated ability to supervise people. Prefer experience in judicial or legal administration. Requires bachelor's degree in business, public, or judicial administration or related discipline from accredited college or university. May substitute similar graduate degree or law degree for some experience, or substitute experience for some of educational requirement. Salary \$41,121-\$57,158, depending on qualifications.

Closes Apr. 28. Submit application and/or résumé, including salary history, to Richard G. Heltzel, Clerk, U.S. Bankruptcy Court, 650 Capitol Mall, Sacramento, CA 95814, Attn: Colleen Johnson, Personnel Officer.

* * *

Chief Deputy Clerk, U.S. Bankr. Court (S.D. Ind.). Oversees operations and manages subordinate supervisory personnel of the clerk's office. Requires bachelor's degree and thorough working knowledge of Bankruptcy Code and Rules; three years' progressively responsible administrative, professional, investigative, or technical experience, three years' specialized experience, and thorough knowledge of the basic concepts, principles, policies, and theories of management. Advanced degree may be substituted for two years of specialized experience. Open until filled. JSP 11-14 (\$28,852-\$57,158 annually). Submit résumé or SF-171 and several writing samples, marked confidential, to Beth Simpson, 123 U.S. Courthouse, 46 East Ohio St., Indianapolis, IN 46204.

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THE THIRD BRANCH

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THE THIRD BRANCH

Courts Study Committee Forms Subcommittees And Advisory Panels to Address Specific Issues

The Federal Courts Study Committee was formed to survey the federal court system and recommend modifications to meet the needs of the federal judiciary's third century.

During March, the committee held four public hearings, in Pasadena, Chicago, Atlanta, and Boston. At these hearings, it received testimony and written submissions from

representatives of numerous bar and community groups and governmental agencies, federal and state court judges and court system personnel, public defenders, attorneys in private practice, and academics. Nearly 100 of the written submissions have been excerpted for member use.



Shown at the Federal Courts Study Committee meeting are (left to right) Judge Judith Keep, Judge Joseph F. Weis, Jr., Rep. Carlos Moorhead, and Rep. Robert W. Kastenmeier.

The committee has formed three subcommittees to address specific areas:

- A subcommittee on the role of the federal courts and their relations with the state courts, with Judge Richard A. Posner (7th Cir.) as chairman and Professor Larry B. Kramer (University of Chicago Law School) as reporter;

- A subcommittee on the structure of the federal courts, with Chief Judge Levin H. Campbell (1st Cir.) as chairman and Special Master Denis J. Hauptly (U.S. Claims Court) as reporter;

See STUDY COMMITTEE, page 2

Chief Judges of Federal District Courts Gather at Center Conference in Phoenix

The Federal Judicial Center conference of chief judges of the district courts, which was held April 5 to 8 in Phoenix, was apparently the first time in the history of the federal judiciary that all chief district judges had an opportunity to confer and consider their common problems as managers of their courts. All but 10 of the 94 districts were represented.

The conference agenda had four elements:

- Reports on national developments affecting the district courts, including legislative and budgetary prospects and the work of the Federal Courts Study Committee. Judge Joseph F. Weis, Jr. (3d Cir.), chairman of the Federal Courts Study Committee,

and Judge Richard S. Arnold (8th Cir.), chairman of the Judicial Conference Budget Committee, spoke during this phase of the program, as did AO Director L. Ralph Mecham, Deputy Director James E. Macklin, and Assistant Director for Administration Raymond A. Karam.

- A presentation on how district courts can use magistrates to maximum effectiveness. Judge Joseph W. Hatchett (11th Cir.), chairman of the Committee on the Administration of the Magistrates System, was the moderator for the presentation, which included comments from teams of chief judges and magistrates from D. Or. and M.D. Fla.

See CHIEF JUDGES, page 2

Increased Judicial Compensation a Necessity, Chief Justice Tells House Committee

On May 3, Chief Justice William H. Rehnquist testified before the House Committee on Post Office and Civil Service on the need for a judicial pay increase. The Chief Justice said that "the inadequacy of current judicial salaries is the single greatest problem facing the judicial branch today. In my view, the failure adequately to address this problem poses the most serious threat to the future of the judiciary, and its continued operations, that I have observed in my 17 years of judicial service." He noted that he was aware that in Washington, D.C., everyone wants to see evidence of the "cataclysmic disaster that surely must be in the making," and he said that he was aware that the crisis in judicial compensation did not have "the graphic impact of an Alaskan oil spill." This is a quiet crisis, he said, one with effects that are "gradual and insidious rather than sudden and explosive," but its quiet nature does not detract from its seriousness.

The Chief Justice submitted copies of the Judicial Conference's recommended legislation. Its first objective is to accomplish an immediate, substantial salary increase for

See TESTIMONY, page 7

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THE THIRD BRANCH

CHIEF JUDGES, from page 1

- Analysis of thorny management problems that chief district judges face. The participants met in three groups arranged according to court size to exchange ideas on preferred solutions to hypothetical case problems developed by the FJC. The analysis then continued in two

plenary sessions. One set of case problems illuminated such situations as uncooperative colleagues and employee grievances. Another set presented aspects of the district court's relations with the bar and the news media.

- Elective sessions on seven aspects of the chief judge's role.



(Left to right) Raymond A. Karam, assistant director for administration at the AO, and Judge Richard S. Arnold (8th Cir.), chairman of the Judicial Conference Budget Committee, discuss their conference presentation on the federal judicial budget with a conference participant.

Participants chose from sessions on grand jury management, courtwide measures for dealing with prisoner petitions, problems of district courts with "traveling judges," relations with the bankruptcy court, court security matters, programs for the news media, and implementing the Criminal Justice Act. ■

STUDY COMMITTEE, from page 1

- A subcommittee on the workload of the federal courts, with Judge Jose A. Cabranes (D. Conn.) as chairman and Professor Thomas D. Rowe, Jr. (Duke Law School) as reporter.

The subcommittees are forming advisory panels so as to broaden their bases of information and their perspectives. The panel for the subcommittee on workload has been named. The members are Judge Leonard I.

Garth (3d Cir.); Judge J. Clifford Wallace (9th Cir.); Judge David R. Hansen (N.D. Iowa); Chief Justice Ellen Ash Peters, Supreme Court of Connecticut; Conrad K. Harper, Esq., Simpson, Thacher & Bartlett, New York (member, Council of the American Law Institute); George A. Davidson, Esq., Hughes Hubbard & Reed, New York (president, Legal



Sen. Charles E. Grassley (R-Iowa) (left) and Chief Judge Levin H. Campbell confer at the meeting of the Federal Courts Study Committee on Apr. 10.

Aid Society of New York); Robert N. Chatigny, Esq., Hartford (member, American Trial Lawyers Association); Robert S. Banks, Esq., Latham & Watkins, New York; Laurence Gold,

Report on Rule 11 Published by FJC

The FJC has published *The Rule 11 Sanctioning Process*, by Thomas Willing of the Center's Research Division. This 200-page report is based on interviews with judges and lawyers in eight districts. The author describes his methodology and reports his empirical findings, discussing issues relating to the rule's possible chilling effects and its potential for creating satellite litigation, as well as the nature and adequacy of procedures used to implement the rule.

Federal judicial personnel may request a copy of the report by writing to Information Services, Federal Judicial Center, 1520 H St., N.W., Washington, D.C. 20005. Please enclose a self-addressed mailing label, preferably franked, but do not send an envelope. The report weighs 12 oz.

Because of expected demand for this report, the Center has arranged for the Government Printing Office to sell copies. Should lawyers or others outside the judiciary ask you how they can get a copy, please tell them to write to Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, requesting *The Rule 11 Sanctioning Process*, stock number 027-000-01326-1. Orders may be placed by calling GPO at (202) 783-3238. The price is \$6.00.

general counsel, AFL-CIO, Washington, D.C.; Ralph S. Tyler, chief, Litigation Civil Division, Office of the Attorney General, Baltimore; Professor Geoffrey C. Hazard, Jr., Yale Law School; Professor Edward H. Cooper, University of Michigan Law School; Professor E. Donald Elliott, Yale Law School; Professor Linda J. Silberman, New York University School of Law.

The full committee will meet again on June 5 to hear from the advisory panels and to review the work in progress. Further meetings are planned in July, September, October, November, and December, when the committee will review a draft report. ■

BULLETIN OF THE FEDERAL COURTS

THE THIRD BRANCH

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Co-editors

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center. Peter G. McCabe, Assistant Director, Program Management, Administrative Office of the U.S. Courts.



Linda Mullenix, Kevin Jones, and Robert George Selected to Be 1989-1990 Judicial Fellows

Linda S. Mullenix, G. Kevin Jones, and Robert P. George will be the 1989-1990 Judicial Fellows.

Linda Mullenix is a tenured associate professor of law at Catholic University School of Law (Washington, D.C.), where she teaches federal trial practice, estates, and professional responsibility. She received a B.A. from the City College of New York in 1971, and a M. Phil. (1974) and a Ph.D. (1977)



Linda Mullenix

from Columbia, all in political science. In 1980 she received a J.D. from Georgetown University Law Center. Her previous academic positions have been at Loyola Law School (Los Angeles), American University, George Washington University, Fordham University, City College of New York, Cooper Union for the Advancement of Science and Art, New York Institute of Technology, and the University of Maryland European Division, Ramstein, Germany. She has been employed by and practiced law with the EPA and two Washington, D.C., law firms. Her research and writing have been extensive, particularly on issues of federal court jurisdiction and federal trial practice. Professor Mullenix will serve her fellowship at the FJC.

Kevin Jones is a senior attorney-advisor in the Office of the Solicitor, U.S. Department of the Interior, in Salt Lake City. He joined the Department of the Interior in 1980. He received a B.S. in 1974 and a J.D. in 1977 from Brigham Young, an LL.M. in energy law from the University of Utah College of Law in 1984,



Kevin Jones

and was an S.J.D. candidate at the University of Virginia School of Law in 1986. His legal studies have concentrated on natural resources, energy, and American Indian law. He was a judicial intern at the U.S. Supreme Court, a research assistant at the Alaska Supreme Court, and served as legislative assistant for energy policy on the staff of Sen. Ted Stevens (R-Alaska). He taught at the University of Alaska-Anchorage, School of Justice; Brigham Young University's J. Reuben Clark School of Law and Department of Political Science; and Utah Technical College. He has written extensively on natural resources law, particularly the conflicting interests in mineral exploitation, fishing rights, and environmental issues, and on the impact of Alaskan oil and gas exploration and production upon Native Alaskans. Mr. Jones will serve his fellowship at the AO.

Robert George, currently a visiting fellow at Oxford University, is an assistant professor in the Politics Department at Princeton. He received a B.A. from Swarthmore in 1977, a M.T.S. from Harvard in 1981, a J.D. from Harvard Law School in 1981, and a D. Phil. from Oxford in 1986. In addition to his academic positions at Princeton and Oxford, he has lectured at Hamilton College, Catholic University (Washington, D.C.), and the Riverside House of Studies in New York, and has served as visiting examiner at Swarthmore. His research, writing, and teaching have focused on issues involving natural law, morality, individual rights and collective interests, current medicolegal issues, and politics and future Supreme Court appointments. Professor George will serve his fellowship at the Supreme Court. ■



Robert George

LEGISLATION

Legislation that may be of interest to judicial branch personnel is noted below. Unless otherwise stated, these bills were referred to the judiciary committee in the house in which they were filed.

H.R. 1653, H.R. 1665, H.R. 1666, and S. 696 all were filed in the past month on the issue of judicial compensation. See page 1 for a story on the Chief Justice's testimony before the congressional committee considering those bills.

H.R. 1620, the Judicial Discipline and Impeachment Reform Act of 1989, was introduced by Reps. Robert W. Kastenmeier (D-Wis.) and Carlos Moorhead (R-Cal.). It would amend provisions of 28 U.S.C. relating to judicial discipline, and establish a commission to study the problems and issues surrounding appointment and tenure of Article III judges, including discipline and removal. H.R. 1930, to amend § 371 of 28 U.S.C., concerning compensation of justices and judges in senior status, was also introduced by Reps. Kastenmeier and Moorhead.

Judges Frank M. Coffin (1st Cir.), Walter K. Stapleton (3d Cir.) (chairman of the Judicial Conference Committee on Codes of Conduct), and John C. Godbold (director of the FJC) testified Apr. 27 at the House Judiciary Committee's Subcommittee on Courts, Intellectual Property and the Administration of Justice concerning legislation before the committee.

The House passed H. 20, the Federal Employees Political Activities Act (the Hatch Act amendments) on Apr. 17, and it is now pending in the Senate Governmental Affairs Committee. The form that passed had 310 co-sponsors, including all members of the House Committee on Post Office and Civil Service. Its terms had been achieved through negotiations conducted mostly during the 100th Congress, and it was identical to the bill that the House passed in that

See LEGISLATION, page 6

THE THIRD BRANCH

FJC to Fund Judges' Attendance at Chicago and Harvard Programs

To supplement its own educational programs, in June the FJC will fund attendance by members of the judicial branch at the University of Chicago Law School and Harvard Law School.

The University of Chicago Law School program, from June 12 to 16, will be available to approximately 40 participants and is exclusively for federal district and circuit judges, with faculty drawn from the law school. Subjects included in the curriculum are in the areas of constitutional law, criminal law, federal courts and procedure, and commercial law.

The Harvard Law School Program, from June 11 to 24, will be taught by members of the Harvard faculty and will be attended by private and government attorneys as well as federal and state judges. Over 30 courses will be offered in such areas as administrative law, constitutional law, procedure and evidence, taxation, and business-oriented courses such as antitrust and securities. By decision of the FJC Board, Article III judges, bankruptcy judges, and full-time magistrates are eligible for FJC support to attend for either one or two weeks. ■

PERSONNEL

DISTRICT JUDGES

Deaths

Stephen S. Chandler, W.D. Okla., Apr. 27

Lloyd F. MacMahon, S.D.N.Y., Apr. 8

Correction

Judge Harrison Winter was incorrectly listed in the personnel column last month as having taken senior status. Judge Winter, who stepped down as chief judge of the Fourth Circuit on Feb. 15, remains in active duty status.

NOTEWORTHY

Celebration of Bicentennial of U.S. Constitution continues. The second year of the National Bicentennial Competition on the Constitution and Bill of Rights is proceeding in schools in all 50 states, the District of Columbia, Commonwealth of Puerto Rico, and the Territories of the Virgin Islands, Guam, and American Samoa.

National finals in the competition are May 1 to 3 in Washington, D.C. Many federal judges, bar associations, attorneys, and federal court personnel have volunteered their assistance in the program both years.

Mass litigation: Do aggregative procedures work? The RAND Corporation recently published a note that questions whether aggregative trial procedures in mass litigation produce quick and effective claims resolutions and equitable outcomes. Using an Agent Orange case and an asbestos class action, Molly Selvin and Mark A. Peterson conducted research that led to "Resolution of Mass Torts: A Framework for Evaluation of Aggregative Procedures," published in RAND's Institute for Civil Justice. They plan to continue to examine other mass torts, defined as litigation with many plaintiffs suing common defendants for injuries allegedly caused by the same accident, product, or substance. Over 680,000 claims

arose out of the cases keyed on DES, Dalkon Shield, Bendectin, DDT, asbestos, Agent Orange, the MGM Grand Hotel fire, the DuPont Plaza Hotel fire, and the Hyatt Regency skywalk collapse.

The authors acknowledge that many claims can be resolved rela-

tively quickly using aggregative mass tort procedures, but ask if certain aggregative mass tort procedures "present special threats to the fairness of the justice system." Among the questions raised, which continued research seeks to resolve, are these:

- Are defendants faced with many claims forced to make significant settlements even when liability is dubious?
- Are outcomes inconsistent?
- Is compensation related to the seriousness of injuries?
- Do more culpable defendants bear heavier burdens?

AO lists certified Spanish/English interpreters. The AO has issued an updated roster of over 280 certified interpreters for Spanish/English proceedings in the federal courts. Most of those named have verified addresses and telephone numbers listed, but the AO has asked for assistance in obtaining that information for several additional persons listed. Call Edward J. Baca, Court Administration Division, FTS/202 633-6151, if you have that information or any questions on interpreter use.

Eight district courts begin drug testing program. Under the aegis of the Anti-Drug Abuse Act of 1988, eight federal district courts are undertaking a two-year demonstration project whereby all persons arrested

See NOTEWORTHY, page 6



Newly elevated Chief Judge Michael A. Telesca (W.D.N.Y.) (left) and Chief Judge H. Russell Holland (D. Alaska) visited the Federal Judicial Center on Apr. 14 for an orientation as to its services.



Interest in Judicial Administration and Continuing Education Brought Visitors from 34 Countries to Federal Judicial Center in 1988

Judges, court administrators, and academicians from other countries have frequently shown interest in the Federal Judicial Center's work in judicial administration. During 1988, the Center had visitors from 34 countries, ranging in size from Barbados and Oman to Canada, the People's Republic of China, and the Soviet Union.

These visitors, often accompanied by interpreters, share many concerns, particularly in the following areas:

(1) *Court automation.* Adapting modern technology to automate court systems is a primary concern of most foreign court officials who visit the

the Guidelines were put into place and how they operate. Processing of complex cases, mass torts, and cases with international aspects also generate substantial interest.

(3) *Education and training.* Some of the foreign visitors are interested in the Center's techniques for orientation and continuing judicial education, including designing seminars for new judges, developing standardized bench books, teaching on site, using videotapes and audiotapes, and conducting in-court orientation programs.

(4) *Research.* Issues that have been the subject of Center research and



Briefing for Swedish Judicial Administrators. Participating in a briefing Apr. 5 were (left to right) Gary Bockweg, FJC; Tomas Stahre, Deputy Director General, National Courts Administration of Sweden; Ulf G. Berg, Data inspectorate of Sweden; Ellen Bartelt, AO; and Stephen P. Levenson, AO.

Center. Visitors are interested in designing systems to help administrators manage cases, and organizing data bases to assure quick, accurate legal research and to provide access to legal memoranda that have been written over the years. Training staff members to use these systems efficiently is also a concern.

(2) *Case processing and sentencing.* Many of the foreign visitors want to know how criminal cases, particularly drug cases, are processed in the U.S. courts. The visitors are often familiar with the Sentencing Guidelines and the Supreme Court decision upholding guideline sentencing. They wish to know more about why

writing are also of concern to foreign visitors. These include asbestos cases, handling of protracted and complex cases, and innovative means of managing litigation, such as the procedures established in the National Vaccine Injury Act of 1986.

Many countries that in the past have not had funding for continuing judicial education or have not thought it necessary are now forming organizations like the FJC. Representatives from several such countries have said they are developing programs patterned, at least in part, on their observations during their visits to the Center and while studying other aspects of our judiciary. ■

CALENDAR

- May 1-2 Judicial Conference Committee on Pacific Territories
- May 3 Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders
- May 7-9 Fifth and Eleventh Circuits Joint Conference
- May 10-12 Sixth Circuit Conference
- May 17-19 Judicial Conference Advisory Committee on Bankruptcy Rules
- May 18-19 Judicial Conference Advisory Committee on Criminal Rules
- May 22-23 Judicial Conference Committee on Federal-State Jurisdiction
- May 24 Federal Circuit Judicial Conference
- May 22-24 Federal Judges Association Annual Meeting
- May 30-June 1 Judicial Conference Committee on Court Security
- June 1-2 Judicial Conference Committee on Administration of the Bankruptcy System
- June 1-2 Judicial Conference Committee on Administration of the Magistrates System
- June 4-6 District of Columbia Circuit Conference
- June 5-6 Judicial Conference Committee on Judicial Resources
- June 19-20 Judicial Conference Committee on Space and Facilities
- June 19-21 Judicial Conference Committee on Judicial Improvements
- June 20-22 Judicial Conference Committee on Defender Services
- June 21-23 Judicial Conference Committee on Criminal Law and Probation Administration
- June 22 Judicial Conference Committee on Codes of Conduct
- June 23 Judicial Conference Committee on the Judicial Branch
- June 23 Judicial Conference Special Committee on Habeas Corpus Review of Capital Sentences
- June 29-July 1 Fourth Circuit Judicial Conference

Positions Available

Bankr. Judges, D. Alaska and D. Ariz. Two newly created bankruptcy judgeships, opening Oct. 1. Require admission to practice and membership in good standing before highest court in at least one state; at least five years' experience in active practice of law; demonstrated legal competence, integrity, and demeanor appropriate to the bench. May consider judicial or other legal experience as substitute for some legal practice experience. Salary \$82,340. Fourteen-year terms. Will be domiciled in Anchorage, Alaska, and either Tucson or Phoenix, Arizona. Closes June 2. For information and application forms, contact Office of the Circuit Executive, Ninth Circuit Court of Appeals, P.O. Box 42068, San Francisco, CA 92142-2068, telephone (415) 556-9693.

* * * *

Federal Public Defender, N.D. Tex. Provides federal criminal defense services to persons unable to afford counsel. Staff headquartered in Dallas with branch office in Ft. Worth. Requires admission, good standing in the State Bar of Texas or bar where currently admitted; at least five years' criminal practice, preferably with significant federal criminal trial experience; reputation for integrity and commitment to representation of the indigent; ability to effectively administer office. Salary \$70,740. Four-year term. Closes June 1. Submit application to Nancy Doherty, Clerk, U.S. District Court, 1100 Commerce St., Room 14A20, Dallas, TX 75242.

* * * *

Chief Deputy Clerk, 2d Cir. Requires bachelor's degree and graduate degree in law, government, public, business, or judicial administration; six years' progressively responsible administrative experience in public or private service. Closes June 1. Salary \$57,158 to \$74,303. Send résumé by June 1 to Elaine B. Goldsmith, Clerk, U.S. Court of Appeals for the Second Circuit, 40 Foley Square, New York, NY 10007.

* * * *

Ass't Systems Manager, Bankr. Court, S.D. Cal. Aids systems manager in supervision of all automated systems in the court, including BANCAP and the PC systems: specifying and evaluating

equipment, developing and managing systems, including operation and maintenance of hardware and software, modifications and enhancements, and training. Requires three years of general and two years of specialized experience in administrative, supervisory, professional, or technical position. Advanced education can be substituted for some experience. Preferred experience should include responsibility for support of a UNIX-based system, UNIFY data base, or other system with wide user base. Expertise in UNIX, SOL, C, networking, and MS-DOS highly desirable. Open until filled. Salary \$23,846 to \$34,580, depending on qualifications. Submit SF 171, sample of technical writing, college transcripts for educational substitute for experience, and current performance evaluation to Personnel—Confidential (ASM), Personnel Office, U.S. Bankruptcy Court, 940 Front St., Room 5N26, San Diego, CA 92189-0020, telephone FTS 895-6428.

* * * *

Attorney-Advisor, U.S. Tax Court. Serves as assistant tax editor. Assists reporter in production of Tax Court publications: editorial review of slip opinions; selection and preparation of digests on legal issues in published opinions; and preparation of subject-matter master classification system for the index-digests. Assists in preparation of Tax Court Reports, Rules of Practice, and related materials. Requires thorough knowledge of the Tax Court and its rules, regulations, and procedures, and of other governmental agencies as they relate to the court's activities. Requires demonstrated judgment, initiative, and originality regarding the program activities of the reporter's office and handling personnel matters. Requires specialized legal knowledge and experience in tax law, in all legal research methods, and in printing practices and GPO procedures. Must possess the judgment and demeanor to work effectively with opinion authors and other court personnel, government agencies, the press, and the public. Requires law degree, bar membership. Closes May 19. Salary \$34,580 to \$53,460, depending on qualifications and experience. Submit SF-171 and current performance evaluation to U.S. Tax Court, Personnel Office, Room 146, 400 Second St., N.W., Washington, DC 20217.

EQUAL OPPORTUNITY EMPLOYERS

NOTEWORTHY, from page 4

for federal crimes and all defendants on probation or supervised release in those districts will be tested regularly for drug abuse. The districts taking part are E.D. Ark., D.N.D., D. Nev., D. Minn., S.D.N.Y., M.D. Fla., and W.D. Tex.

The demonstration project's purposes are (1) to provide objective verified information on possible drug abuse when considering pretrial release or imposition of drug treatment as a condition for such release, and (2) to monitor possible drug use as it may relate to commission of new drug-related crimes by persons on court-supervised release. The project seeks to determine whether there is a correlation between drug use by released court-supervised offenders and such conduct as bail jumping or commission of further crimes.

The Probation Department will test its clients a minimum of once every 60 days during the first year of release to determine whether they refrain from drug use.

In S.D.N.Y., Chief Judge Charles L. Brieant said that reports will go to Congress on the effectiveness of the demonstration project and on the desirability of expanding such drug testing. ■

LEGISLATION, from page 3

session by a vote of 305 to 112. As the bill stands, federal employees and postal workers could run for political office without taking leave, raise funds, campaign, and manage campaigns. If a campaign for office interfered with duty, a candidate would have to take leave. Political activities would still be prohibited while on duty, inside federal buildings, in uniform, or in a federal vehicle. No taxpayer funds could pay for political activity. Ethical strictures would continue to bar using government information not available to the public for political purposes and would prohibit use of position to influence others to make political contributions or to vote a certain way. ■



TESTIMONY, from page 1

federal judges. This should not be termed a pay "raise," he said, for although caseload growth warrants a raise, it is instead only "a partial recapture of the tremendous decline in purchasing power that has affected judicial salaries over the last 20 years." It does not, he pointed out, attempt to amend 28 U.S.C. § 225, the Federal Salary Act of 1967, by reformulating the Quadrennial Commission process.

The second objective is the adoption of a routine cost-of-living adjustment mechanism, which "could well obviate the need for the sort of sizable 'catch-up' increases proposed by past quadrennial salary commissions, which have proved unacceptably controversial."

The Chief Justice noted that if COLAs had been used to adjust judicial pay over the past 20 years, that pay would now be in the same range the current proposal seeks to reach. "Protecting judicial salaries from the steady erosion of inflation is both a fair and practical alternative," said the Chief Justice. He stated that it is the view of the Judicial Conference that "30 percent for federal judges is both publicly acceptable and fully justified."

The proposed salary increases are for Article III judges, and those increases would have the effect of increasing salaries for Claims Court judges, bankruptcy judges, and full-time federal magistrates, all of whose salaries are linked by statute to the salary of a district judge.

In addition to his testimony and the recommended legislation, the Chief Justice entered into the record the Apr. 27 statements of Judges

Frank M. Coffin (1st Cir.), Walter K. Stapleton (3d Cir.), and John C. Godbold (director of the FJC) before the House Judiciary Subcommittee on Courts, Intellectual Property and the Administration of Justice. He also entered *Simple Fairness: The Case for Equitable Compensation of the Nation's Federal Judges*, a report on judicial compensation prepared in 1988 by the Judicial Conference of the United States. (See Legislation, page 3).

Several bills related to judicial compensation have been introduced in the last month.

Rep. Frank R. Wolf (R-Va.) has filed H.R. 1653, and Rep. Benjamin L.

Cardin (D-Md.) has filed H.R. 1665, both to amend § 225 of the Federal Salary Act of 1967, which establishes the Quadrennial Commission and the mechanism that sets pay for Article III judges, senior executives, and Congress. Rep. Barney Frank (D-Mass.) has filed H.R. 1666, advocating a 30 percent judicial salary increase and future cost-of-living adjustments. The House bills were referred to the Committee on Post Office and Civil Service. Sen. Orrin G. Hatch (R-Utah) introduced S. 696, which would combine those approaches by removing judicial officers from the Quadrennial Commission system, give them an immediate 30 percent raise, and tie future cost-of-living adjustments for them to the General Schedule. His bill was referred to the Committee on Governmental Affairs.

In Congress, there are now over 30 pending bills that would either grant an immediate raise in some

The Chief Justice noted that if COLAs had been used to adjust judicial pay over the past 20 years, that pay would now be in the same range the current proposal seeks to reach. "Protecting judicial salaries from the steady erosion of inflation is both a fair and practical alternative."

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amount or change the current mechanism to facilitate raising the compensation of the federal judiciary.

A recent *New York Times* editorial ("Release the Captive Judges," Apr. 6, at A30, col. 1) urged removal of judicial salary increases from the Quadrennial Commission process and immediate enactment of a "long overdue" raise. It noted the Chief Justice's call for a 30 percent increase and President Bush's imminent recommendation of a 25 percent increase. ■

THE THIRD BRANCH

THE SOURCE

The publications listed below may be of interest to readers. Only those preceded by a checkmark are available from the Center. When ordering copies, please refer to the document's author and title or other description. Requests should be in writing, accompanied by a self-addressed mailing label, preferably franked (but do not send an envelope), and addressed to Federal Judicial Center, 1520 H St., N.W., Washington, DC 20005.

Barnhizer, David R., *Prophets, Priests, and Power Blockers: Three Fundamental Roles of Judges and Legal Scholars in America*, 50 *University of Pittsburgh Law Review* 127 (1988).

✓Burger, Warren E., Robert P. Murrian, B. Waugh Crigler, & Bruce Ledewitz, *Tribute to Judge Robert L. Taylor*, 55 *Tennessee Law Review* vii (1988).

Edwards, Harry T., *Regulating Judicial Misconduct and Divining "Good Behavior" for Federal Judges*, 87 *Michigan Law Review* 765 (1989).

Feinberg, Wilfred, *Remarks on the Contributions of Senior Federal Judges*, Meeting of the New York Patent Law Association, Mar. 31, 1989.

Goldberg, Arthur J., *The Death Penalty Revisited*, 16 *Hastings Constitutional Law Quarterly* 1 (1988).

Grey, Lawrence, *How to Guarantee a Mediocre Judiciary*, *New York Times*, Apr. 4, at A27, col. 2.

H. Rep. No. 100-11243, 100th Cong. (1988) (Report on the activities of the Committee on the Judiciary of the House of Representatives during the 100th Congress).

The Judges of the United States Court of Appeals for the Tenth Circuit, 65 *Denver University Law Review* x (1988).

Markey, Howard T., *On the Present Deterioration of the Federal Appellate Process: Never Another Learned Hand*, 33 *South Dakota Law Review* 371 (1989).

Rehnquist, William H., *An Independent Judiciary: Bulwark of the Constitution*, 9 *Northern Illinois University Law Review* 1 (1988).

Rosenberg, Maurice, *Resolving Disputes Differently: Adieu to Adversary Justice?*, 21 *Creighton Law Review* 801 (1987-1988).

Scalia, Antonin, Louis H. Pollak, & Orrin G. Hatch, *Essays in Constitu-*

tional Interpretation, 57 *University of Cincinnati Law Review* 847 (1989) (three linked essays and an introduction by Tom Gerety).

Schiffman, Robert P., *Does Justice Require a Career Judiciary?*, 72 *Judicature* 265 (1989).

S. Rep. No. 101-12, 100th Cong., (1989). (Report on the activities of the Committee on the Judiciary of the United States Senate during the 100th Congress).

✓Skoler, Daniel L., *The Elderly and Bankruptcy Relief: Problems, Protections, and Realities*, 6 *Bankruptcy Developments Journal* 121 (1989).

Spaeth, Harold J., *Consensus in the Unanimous Decisions of the U.S. Supreme Court*, 72 *Judicature* 274 (1989).

Stevens, John Paul, *Thomas E. Fairchild Inaugural Lecture*, University of Wisconsin School of Law, Sept. 9, 1988.

Supreme Court Symposium, 8 *St. Louis University Public Law Review* 1 (1989).

Symposium, The Fiftieth Anniversary of the Federal Rules of Civil Procedure, 63 *Notre Dame Law Review* 597 (1988).



BULLETIN OF THE FEDERAL COURTS

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THE THIRD BRANCH

Federal Judges Meet President and Chief Justice, Discuss Compensation Crisis, Complex Litigation

The Federal Judges Association held its second national conference for Article III judges in Washington, D.C., from May 22 to 24. The conference provided the assembled judges an opportunity to meet with members of

the other branches of government and to discuss issues of concern to the judiciary.

The opening session was a meeting at the Supreme Court, where Chief Justice Rehnquist spoke on issues affecting the federal courts, judicial workloads, and the federal judges personally. He noted the value of organizations like the Federal Judges Association as constructive vehicles for judicial inquiry and expression.

In his remarks, the Chief Justice made special reference to the necessity for better salaries for the federal judges, and the conference featured a session devoted to this topic. Participants met with Lloyd N. Cutler, chairman of the 1989 Quadrennial Commission; Robert D. Raven, president of the American Bar Association; Judge Frank M. Coffin

See JUDGES ASSOCIATION, page 6



Pictured at the Federal Judges Association meeting are (l. to r.) outgoing president Judge Robert H. Hall (N.D. Ga.), and Judge Diana E. Murphy (D. Minn.), who was elected president on May 21.

Compensation of Federal Judiciary Continues To Command Congressional Attention

The federal judicial pay issue continues to compel congressional attention, as members offer new bills and committees receive testimony and consider the bills before them.

On May 10, Judge Frank M. Coffin (1st Cir.), chairman of the Judicial Conference Committee on the Judicial Branch, testified before the House Committee on Post Office and Civil Service, saying, "The action we request is not that we be awarded a pay increase but that the Congress and the President take action toward lessening the annual amount of real loss of compensation that we, you, and the Executive Branch have sustained over the past two decades." He revealed to the committee the results of an anonymous May 1988 survey of all 710 active circuit judges, district judges, and judges on the Court of International Trade, a survey with 90 percent returns. Nearly 44 percent of those responding re-

ported a decline in their standard of living since coming on the bench, 61 to 63 percent had a loss in savings and increased debt, and more than half had been forced to sell assets. Saying that it is harder to gather statistical evidence on the difficulty of attracting qualified judicial nominees, and echoing the anecdotal evidence supplied by the Chief Justice, and by other judicial and American Bar Association representatives who have testified before Congress and the Quadrennial Commission, Judge Coffin noted that, "While judges are willing to trade top compensation for the satisfactions of the judicial life, they see no merit in being near the bottom in compensation." The median income of law firm partners with 25 years of experience is over \$157,000; the average salary of corporate general counsels is over \$234,000; the nine-month salary for a professor at

See JUDICIAL PAY, page 6

Impact of Drug-Related Criminal Case Activity Reported to Congress

The Judicial Conference of the United States recently reported to Congress on the impact of drug-related criminal activity on the federal courts, with recommendations as to the resources the courts will need to meet that impact. The Conference's report, which was required by the Anti-Drug Abuse Act of 1988, found that drug-related crime exerts tremendous pressure on the court system.

Caseload burdens

Since 1980, drug-related criminal case filings have increased by 229 percent, compared with a 56 percent increase in criminal case filings generally and a 42 percent increase in federal case filings overall.

Drug-related criminal cases now constitute 24 percent of criminal filings and 44 percent of criminal trials.

The Conference report projected an increase of up to 5,300 drug-related criminal cases involving 9,900 defendants by 1991 as a result of the Anti-Drug Abuse Act of 1988. (This increase is partly a result of increased prosecution and law enforcement resources.)

Special problems in drug cases

Drug cases tend to involve multiple transactions, multiple defendants, and complicated factual and legal

See DRUG-IMPACT REPORT, page 2

Inside . . .

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Court Interpreter Act Amendments Implemented ...	7

THE THIRD BRANCH

DRUG-IMPACT REPORT, from page 1

issues, and are thus generally more complex than most other kinds of cases. The report noted that because they are so complex, drug cases generally require more judicial and supporting staff time than do civil cases or other types of criminal cases.

Future resource demands

Anticipated judicial branch resource requirements from the Anti-Drug Abuse Act of 1988 alone will range up to an additional \$92 million for the 1991 fiscal year. This figure covers additional magistrates, probation and pretrial services officers, pretrial social services, substance-abuse treatment, interpreters, defender services, juror fees, court staff and clerks of court, court security, and program support. It does not include the costs of additional Article III judges and their staff, the report emphasized.

The death penalty provisions of the Act's title VII will require special funding by Congress.

Insufficient funding

The report stated that some recent federal statutes were not sufficiently funded to cover their impact on the judiciary. These acts, which have had, and will continue to have for the foreseeable future, a major impact on the volume of cases in the criminal justice system, are the Pretrial Services Act of 1982, the Victim and Witness Protection Act of 1982, the Criminal Fine Enforcement Act of 1984, the Comprehensive Crime

Control Act of 1984 (including the Bail Reform and Sentencing Reform Acts, the Comprehensive Forfeiture Act, and the 1984 Drug Enforcement Amendments), the Drug and Alcohol Dependent Offenders Treatment Act of 1986, the Anti-Drug Abuse Act of 1986, the Criminal Fine Improvements Act of 1987, and the Anti-Drug Abuse Act of 1988.

An additional 2,200 support positions and \$269 million will be required to meet the "bare bones" needs of the judicial branch's 1989 caseload.

Additional magistrate positions could relieve the demand on judges, for they can perform many duties not constitutionally limited to Article III judges. The report recommends that funding requests for these additional magistrate positions should be accelerated.

Inadequate funding has prevented the probation system from full implementation of substance-abuse treatment programs and electronic monitoring, which are less costly alternatives to incarceration. Moreover, the lack of funds has caused deterioration of the probation system for lack of personnel at all levels and lack of equipment.

Efficient automated systems have been developed for the courts to promote case management, improve service to the public, and improve staff productivity. These systems can provide full electronic docketing, case tracking, statistical reporting, noticing, attorney admissions, court reporter services, jury management, and financial procedures. However, the report noted that because adequate funds have not been provided to install and operate these systems, most courts and all probation and pretrial services offices still operate without them. Many judges and magistrates lack personal computers for their staffs.

Judgeships

Congress has not yet acted on the 1984, 1986, or 1988 biennial judgeship surveys, leaving staffing of the Article III bench at levels based on 1982 caseloads. The report noted that re-

quirements before enactment of the Anti-Drug Abuse Act of 1988 included 14 more courts of appeals judgeships, 59 more district judgeships, and conversion of 6 temporary judgeships to permanent status. These requirements will increase as a result of new demands for felony drug case trials.

The report found that Article III judicial vacancies have a negative impact on the system, and the executive and legislative branches should take steps to accelerate the nomination and confirmation process to fill those judgeships promptly. There are now 43 vacancies, according to Administrative Office records. ■

CALENDAR

- June 1-2 Judicial Conference Committee on the Administration of the Bankruptcy System
- June 1-2 Judicial Conference Committee on the Administration of the Magistrates System
- June 4-6 District of Columbia Circuit Judicial Conference
- June 5-6 Judicial Conference Committee on Judicial Resources
- June 19-20 Judicial Conference Committee on Space and Facilities
- June 19-21 Judicial Conference Committee on Judicial Improvements
- June 20-22 Judicial Conference Committee on Defender Services
- June 21-23 Judicial Conference Committee on Criminal Law and Probation Administration
- June 22 Judicial Conference Committee on the Codes of Conduct
- June 23 Judicial Conference Committee on the Judicial Branch
- June 29-July 1 Fourth Circuit Judicial Conference
- July 10-13 Ninth Circuit Judicial Conference
- July 13-14 Judicial Conference Committee on Judicial Ethics
- July 17-18 Judicial Conference Committee on Rules of Practice and Procedure
- July 18-21 Eighth Circuit Judicial Conference
- July 27-28 Judicial Conference Committee on the Bicentennial of the Constitution
- July 31-Aug. 1 Judicial Conference Committee on the Budget

BULLETIN OF THE FEDERAL COURTS

THE THIRD BRANCH

Published monthly by the Administrative Office of the U.S. Courts and the Federal Judicial Center. Inquiries or changes of address should be directed to 1520 H St., N.W., Washington, DC 20005

Co-editors

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center. Peter G. McCabe, Assistant Director, Program Management, Administrative Office of the U.S. Courts.



Federal Courts Study Committee Meets, Names Two Additional Advisory Panels

The Federal Courts Study Committee has formed two additional advisory panels to aid in its survey of the federal courts and its planning for the judicial branch's third century.

The advisory panel for the subcommittee on the roles and relationships of the federal courts includes Professor John Donahue (Northwestern University School of Law), Andrew Frey, Esq. (Washington, D.C.), Kenneth Geller, Esq. (Washington, D.C.), Bankruptcy Judge Robert Ginsberg (N.D. Ill.), Judge Patrick Higginbotham (5th Cir.), Professor A. Leo Levin (University of Pennsylvania Law School), Professor Jerry Mashaw (Yale Law School), Professor Daniel Meltzer (Harvard Law School), Alan Morrison, Esq. (Washington, D.C.), Judge Jon Newman (2d Cir.), and Professor Judith Resnik (Yale Law School). Dr. Russell Wheeler (Federal Judicial Center) will serve as assistant reporter; Professor Larry B. Kramer (University of Chicago) is the reporter.

The subcommittee on the structure of the federal courts has named to its

advisory panel Judge Charles Clark (5th Cir.), Professor Daniel Meador (University of Virginia School of Law), Judge Robert Peckham (N.D. Cal.), Professor Maurice Rosenberg (Columbia University School of Law), Professor Steven Burbank (University of Pennsylvania Law School), Robert Katzmann, Esq. (Brookings Institution), Judge William Young (D. Mass.), Judge Robert Keeton (D. Mass.), Theodore Lidz, Esq. (AO), Karen Siegel, Esq. (Office of the Judicial Conference Secretariat), Circuit Executive Steven Flanders (2d Cir.), Circuit Executive Vincent Flanagan (1st Cir.), and Duane Lee, Esq. (AO).

Professors Sara Sun Beale and Richard Marcus, both of Duke Law School, have been named associate reporters for the subcommittee on the workload of the federal courts.

The committee met June 5 in Washington, D.C., at the FJC to receive reports of the advisory panels and review the the subcommittees' work in progress. Another meeting of the full committee is scheduled for July 31. ■

ABA Issues Discussion Draft of Changes to Model Code of Judicial Conduct

In May, the American Bar Association Standing Committee on Ethics and Professional Responsibility released a discussion draft of changes in the Model Code of Judicial Conduct. The first complete reexamination of the Model Code since 1972, it resulted from two years of public hearings, written submissions, and efforts by a committee chaired by William F. Womble, Esq., of Winston-Salem, N.C. The draft is being widely circulated, and comment is invited at a series of hearings scheduled for Aug. 7 in Honolulu at the ABA Annual Meeting, Sept. 8 in San Francisco, and Sept. 22 in Washington, D.C. Thereafter, a final draft will be submitted to the ABA House of Delegates for approval at the

February 1990 meeting. If adopted, it will become ABA policy and will be circulated to the federal and state governments for consideration.

Committee Chairman M. Peter Moser, Esq., of Baltimore, said, "Changes are proposed in the code to offer greater guidance to judges and to help the public understand the standards of conduct they can expect of judges. The code provides a framework for upright behavior by judges on and off the bench. The revisions attempt to improve the code in light of current thinking."

The revision includes the following additions and changes:

- A preamble stating that the code supplements general ethical

See MODEL CODE, page 4

Long Range Automation Plan for the Federal Courts Updated

The Judicial Conference Committee on Judicial Improvements has approved the 1989 update of the Long Range Plan for Automation of the U.S. Courts. In adopting the plan, the committee reaffirmed its commitment to the UNIX-based electronic docketing systems (New AIMS, BANCAP, CIVIL/CRIMINAL). That commitment is predicated on adequate funding on an annual basis: If the funds are not made available, the committee, by necessity, will be required to reconsider the automation plan.

The commitment to the UNIX-based system is based on many factors, the most important being its versatility, the need for uniformity in automation, and the fact that the judicial branch does not have the funds or personnel to support more than one system. The National Interim Bankruptcy System (NIBS) will continue to be supported on a limited basis, but the committee has established a high priority for BANCAP and hopes to have all bankruptcy courts on BANCAP by the end of FY92.

Personal computers are still needed in some of the smaller courts, and the committee has established the provision of three personal computers and one laser printer to all district and bankruptcy courts not already so equipped as its first priority for funding in FY90. Later this fiscal year, the AO will ask chief judges to identify those clerk's offices for the early FY90 deliveries, providing funding is available.

The judicial branch possesses proven automated systems of demonstrated effectiveness in the federal appellate, district, and bankruptcy courts. All that is needed to extend the benefits of automation to all courts is funding, the committee reported.

THE THIRD BRANCH

LEGISLATION

If not otherwise noted, the newly introduced bills listed below were referred to the judiciary committee of the originating body.

- **S. 948** would divide the Ninth Circuit into two circuits, with Arizona, California, and Nevada composing the Ninth, and Alaska, Hawaii, Idaho, Montana, Oregon, Washington, Guam, and the Northern Mariana Islands making up a new Twelfth Circuit. In introducing the bill, Sen. Slade Gorton (R-Wash.) said that the Ninth has 28 judges (12 more than the next largest circuit, and 13 more than the Judicial Conference of the United States believes is workable) and a 1988 caseload of 6,334 (2,003 more than the next largest caseload). Its appellate filings increased by 30 percent during 1988. Sixty percent of the filings were from California, but litigation is expanding rapidly in the Northwest. Sen. Mark O. Hatfield (D-Or.) noted that at the present

rate of increase, the caseload of the Ninth Circuit in 1995 would be double what it was in 1980. One of the by-products of this growth and immensity, Sen. Gorton noted, is decreased consistency and possible reduced administrative efficiency. Sen. Hatfield said that merely adding judges would not solve the problems, which include frequent backlogs, overworked judges, and "the increased likelihood of intracircuit conflicts." Sen. Conrad Burns (R-Mont.) said that the precedent for splitting the Ninth Circuit was already set by the division of the Fifth, and that "it is not fair or in the best interest of the judicial process" for citizens of states such as Montana to suffer because California, "like the population centers on both coasts, continues to experience an economic and population boom." Sen. Gorton, speaking for himself and the co-sponsors, Sens. Hatfield and Burns and Sens. Bob Packwood (R-Or.), James McClure (R-Idaho), Frank Murkowski (R-Alaska), and Ted Stevens (R-Alaska), said that

they would be "particularly interested in hearing the preferences of our colleagues from those jurisdictions other than California which remain in the Ninth Circuit under this bill, as to whether they would prefer transfer to the proposed new circuit."

The headquarters of the new Twelfth Circuit would be Portland and Seattle; the headquarters of the Ninth Circuit would continue in San Francisco. Judges of the former Ninth Circuit would be reassigned according to the locations of their pre-division official stations. Senior judges of the former Ninth Circuit could elect their circuit assignments. The seniority of judges of both circuits would date from their dates of commission as judges of the former Ninth Circuit.

In 1973, on the recommendation of the Judicial Conference of the United States, the Congressional Commission on Revision on the Federal Court Appellate System advised splitting the Ninth Circuit, and the American Bar Association adopted an approving resolution.

- **H.R. 2030** would create an additional district judgeship in the District of Oregon. In support of his bill, Rep. Peter A. DeFazio (D-Or.) said that, while the Judicial Conference recommends that Article III district judges have no more than 400 cases per year, in 1988 each judge in Oregon had 514 cases.

- **H.R. 2057** would amend the Bankruptcy Code provisions on swap agreements.

- **H.R. 2190** would provide civil and criminal forfeitures for mail and wire fraud.

- **H.R. 2102** would provide the death penalty for certain murders. **H.R. 2196** affects sentencing for capital offenses.

- **H.R. 2221** would set an 80 percent excise tax on honoraria for speeches by members of Congress and others; it was referred to the Committee on Ways and Means.

- **H.R. 2337**, the Government-wide Ethics Act of 1989, would

See LEGISLATION, page 5

MODEL CODE, from page 3

standards that all attorneys and judges should observe and stating general principles has been added.

- A section of terminology has been added.

- Language has been changed to be gender-neutral.

- A statement of an express judicial duty to hear and decide assigned matters has been added.

- The circumstances and safeguards permitting ex parte judicial communication with one side in a matter have been clarified.

- Strengthening and clarifying language has been added to the general requirement of judicial impartiality, to expressly prohibit judges from using words or conduct that show bias or prejudice based on race, sex, religion, or national origin, and to recognize a judge's supervisory responsibility to ensure that court personnel and lawyers refrain from such words or conduct.

- The prohibition against membership in invidiously discriminating private clubs has been moved from commentary.

- A provision has been added requiring judges to report serious misconduct by other judges or lawyers, but retaining discretion in less serious circumstances to take such actions as referral to substance abuse programs.

- Clarifying language concerning fundraising activities and endorsements was added to the section on political activity.

- Creation of an advisory body in each jurisdiction to give judges advance guidance about the propriety of contemplated conduct was recommended in the commentary.

Additional information and copies of the discussion draft are available from George Kuhlman, ABA Ethics Counsel, 750 Lake Shore Dr., Chicago, IL 60611, telephone (312) 988-5300. ■

LEGISLATION, from page 4

amend the Ethics in Government Act of 1978 provisions for disclosure of assets and liabilities and for maintenance of assets in a qualified blind trust. It would also amend the post-employment provisions of 18 U.S.C. § 207 to include federal judges and senior employees of the judicial branch, giving supervisory authority over those persons to the Judicial Ethics Committee of the Judicial Conference of the United States. H.R. 2267, the Post-Employment Restrictions Act of 1989, also amends the post-employment restrictions found in 18 U.S.C. § 207, placing a two-year limit on the activities and communications of employees of the executive branch, "any special Government employee," and employees of independent federal agencies in representing any person or interest in dealings with the federal government, including in the federal courts. Similar one-year limitations are imposed on members of Congress and on officers and employees of the legislative branch. In both bills exceptions are made for appearances to give testimony, personal representation (i.e., in tax and pension matters), and the performance of official duties as an elected or appointed official of another governmental entity or research facility. The range of sanctions created by the Act includes injunctive relief, suspension and debarment, civil fines, and criminal fines and imprisonment.

- H.R. 2292 would authorize judicial review of actions under Chapter 6 of 5 U.S.C., concerning small businesses and required regulatory flexibility analyses.

- H.R. 2332 would create two additional district judgeships in Connecticut.

- H.R. 2337 would impose certain ethical obligations on federal officers and employees and give them equitable treatment; it was referred to the Committees on the Judiciary, Post Office and Civil

ABA Publishes Criminal Justice Mental Health Standards

The American Bar Association has recently published its Criminal Justice Mental Health Standards, culminating a five-year effort undertaken by the ABA in conjunction with seven inter-disciplinary task forces involving 79 lawyers and mental health professionals. Participants included representatives of the American Psychiatric Association, the American Psychological Association, the American Orthopsychiatric Association, the National Sheriff's Association, the National Mental Health Association, the National Alliance for the Mentally Ill, and the ABA Commission on the Mentally Disabled. (See *The Third Branch*, Sept. 1988, at 3.)

The standards were designed for use by lawyers, courts, and clini-

cians, and as a teaching resource for the legal and mental health professions. They address the full range of criminal justice system contacts with persons with mental illness and mental retardation, from non-criminal behavior, pretrial evaluation, and development and use of expert testimony, to sentencing and long-term involvement.

The 102 standards have been approved by the ABA's House of Delegates.

Copies of the 500-page soft-cover edition are available in limited numbers from the American Bar Association, Order Fulfillment Department, RE: PC No. 509-0041, 750 North Lake Shore Dr., Chicago, Illinois 60611, telephone (312) 988-5555.

Service, House Administration, Ways and Means, Armed Services, and Rules.

- H.R. 2497 would authorize and encourage federal agencies to use mediation, conciliation, arbitration, and other techniques for dispute resolution. S. 971, which has similar provisions, was referred to the Committee on Governmental Affairs.

- S. 820, the Juror Protection Act of 1989, would extend existing juror protections against threats and violence to the period after jurors are discharged.

- H.R. 20, amending the Hatch Act, was passed by the House and sent to the Senate, where the bill has been referred to the Governmental Affairs Committee.

- Under consideration in committees. Proposed amendments to the Federal Rules of Bankruptcy Procedure, the Federal Rules of Appellate Procedure, and the Federal Rules of Criminal Procedure were transmitted to the House by letters of the Chief Justice on Apr. 26. A report of amendments to the Sentencing Guidelines was transmitted to the House by letter of the chair-

man of the U.S. Sentencing Commission on May 1. The House Committee on Banking, Finance and Urban Affairs received on May 1 by letter from the director of the AO an annual report on matters pertaining to the Right to Financial Privacy Act of 1978.

The Senate Judiciary Committee on May 3 received the following Executive Communications: from the chairman of the Sentencing Commission, EC-1045, transmitting a report of guidelines amendments and the reasons for them; from the Chief Justice, transmitting amendments, as adopted by the Supreme Court, to the Federal Rules of Criminal Procedure (EC-1048), the Federal Rules of Appellate Procedure (EC-1049), and the Bankruptcy Rules (EC-1050); from the director of the AO, EC-1052, transmitting the annual report on applications for court orders made to federal and state courts for permission to intercept wire, oral, or electronic communications during 1988, and EC-1053, transmitting the annual report of the AO and reports of the proceedings of the Judicial Conference held during 1988. ■

THE THIRD BRANCH

JUDGES ASSOCIATION, from page 1

(1st Cir.), chairman of the Judicial Conference Committee on the Judicial Branch; Sen. Strom Thurmond (R-S.C.); Sandra Stuart, chief of staff for Rep. Vic Fazio (D-Cal.); Lee Liberman, deputy counsel to the President; and Tom Railsback, the Association's Washington coordinator.

In remarks at a White House meeting with conference members, President Bush also touched on judicial salaries. He said he was disturbed to learn from retired Chief Justice Warren Burger that more federal judges had resigned in the past 20 years than in the previous 175, and that he was distressed over the loss of judges with great potential who left because of financial pressures, particularly pressures to provide for the educational needs of their children. The President gave his assurances that he would do what he could to promote better judicial compensation. At the same time, he said, there were fiscal and political problems that could not be easily and quickly solved.

The conference also featured information and discussions on managing the problems of complex case management, RICO, and mass tort litigation. Fred Friendly, director of the Columbia University Seminars on Media and Society, and Professors Arthur Miller, Charles Nesson, and Charles Ogletree of Harvard Law School presented a program on the First Amendment and the courts, the media, and the public. There were also program contributions from Attorney General Richard L. Thornburgh, CIA Director William Webster, FBI Director William S. Sessions, Rep. Patricia Schroeder (D-Colo.), and AO Director L. Ralph Mecham.

Judge Diana E. Murphy (D. Minn.) was elected president of the Association on May 21. She succeeds Judge Robert H. Hall (N.D. Ga.).

In her acceptance speech, Judge Murphy said, "The Federal Judges Association's reason for being is to assure the highest quality of justice for the people of the United States. To a large part, this depends upon the judiciary's ability to attract highly quali-

fied men and women to lifetime judicial service." This becomes increasingly difficult, she said, when the "average personal income for member attorneys of the American Bar Association is \$117,800, or almost 30 percent more than federal trial judges earn. Nominees to the federal bench frequently give up incomes of \$200,000 to \$300,000. This is a substantial sacrifice when you consider a lifetime commitment."

The Association chose as vice presidents Judges Louis C. Bechtle (E.D. Pa.), Frank A. Kaufman (D. Md.), and Thomas A. Wiseman, Jr. (M.D. Tenn.); as secretary, Chief Judge Thomas C. Platt, Jr. (E.D.N.Y.); as treasurer, Judge Betty B. Fletcher (9th Cir.); and as executive committee members, Judges Robert Hall (N.D. Ga.), Hubert L. Will (N.D. Ill.), Juan G. Burciaga (D.N.M.), Richard S. Arnold (8th Cir.), and Chief Judge Owen M. Panner (D. Or.). ■

JUDICIAL PAY, from page 1

a top law school is over \$100,000, he said.

On Apr. 25, AO Director L. Ralph Mecham transmitted to the House of Representatives a draft of proposed legislation to restore federal judicial compensation eroded by inflation and to establish the procedure for adjusting future compensation. The draft, Executive Communication 1050, was referred jointly to the Committees on Post Office and Civil Service and the Judiciary.

Five new bills have been added to those addressing this problem. H.R. 2048 would amend § 225 of the Federal Salary Act of 1967 to change the years in which the Quadrennial Commission meets, to require record votes on pay adjustments under § 225, and to delay the effective date of approved pay increases. S. 821, the Federal Pay Accountability Act of 1989, would repeal § 225 and require congressional action to grant pay increases to those covered by § 225, require a roll call vote on congressional pay increases, delay the effective date of a congressional pay raise until after a general election, and void the COLA allocations for members of Congress. H.R. 2181 seeks to restore

PERSONNEL

CIRCUIT JUDGES

Confirmations

Ferdinand F. Fernandez, 9th Cir.,
May 18
Pamela Ann Rymer, 9th Cir., May 18

Resignation

Kenneth W. Starr, D.C. Cir., May 26

DISTRICT JUDGES

Confirmations

Robert C. Bonner, C.D. Cal., May 18
Melinda Harmon, S.D. Tex., May 18

Death

Howard F. Corcoran, D.D.C., May 11

MAGISTRATES, FULL-TIME

Appointments

Edward H. Keith, D. Me., Mar. 20
Jack Sherman, Jr., S.D. Ohio, Apr. 1

judicial compensation lost to inflation and to establish a procedure for future adjustments.

S. 1116 and S. 1117 were filed June 2 by Sen. Christopher Dodd (D-Conn.). S. 1116 proposes an immediate pay increase for "non-legislative branch personnel," as defined by the Quadrennial Commission. S. 1117 proposes an increase for members of Congress and legislative branch personnel, in increments of 10 percent per annum for four years beginning Jan. 1, 1990, while concurrently phasing out honoraria. A critical aspect of these two bills is that provisions for judicial and executive salaries are separated from those for the legislative branch. Sen. Dodd said, "we should no longer hold the livelihood, integrity, and valued talent of personnel in the judicial and executive branches hostage to our own indecision," and that "the bottom line is this: Our scientists and judges are worth more than they are paid. And our country's future demands that we be able to attract the best talent to fill our judicial chambers and our laboratories."

The bills were referred to the Committees on Post Office and Civil Service, Judiciary, Rules, and House Administration. ■

Court Interpreter Qualification Process Amended, Navajo and Haitian Creole Certification Planned

The federal courts are now permitted to use interpreters who have not completed the certification procedure, but who have been shown by other means to be able to meet the criteria for service as interpreters. Such "otherwise qualified" interpreters were authorized under the Court Interpreters Amendments Act of 1988.

When the court interpreter program was established 10 years ago, Congress intended that it certify interpreters in eight specific languages. The Judicial Conference of the United States preferred more flexibility when setting priorities for expenditures, wanting to base certification decisions on the need for interpretation in various languages, balanced against the administrative costs of certification.

Determining who meets the criteria of the "otherwise qualified" category is expected to be less costly per interpreter than the regimen of certification tests. For example, people may have experience in simultaneous translation with the United Nations or the Department of State, or they may have abilities recognized by an interpreters' association.

A revised, second edition of regulations is being prepared to implement the Act. Portions of the clerks' procedural manual will also address the use of interpreters in the program.

Applicants for certification are tested on written and oral interpretation, both consecutive and simultaneous. Developing certification tests is complicated, for interpreters must be able to translate with exactitude and in the various dialects within a language while accurately reflecting a speaker's nuances and level of formality. A rough summary or synopsis of a speaker's statements is not adequate in court interpretation.

Certification is an expensive process, and to date only Spanish interpreters have been certified. The expense of certification can be justified for interpreters of that language because 90 to 95 percent of court interpretation is in Spanish.

Experience has shown, said Edward Baca of the AO Court Administration Division interpreter program, that education and background in a language are not necessarily adequate preparation for interpretation. Besides being able to read, understand, and speak a language and to convert into and out of its American-English equivalent, interpreters must be able to memorize and to maintain concentration in the give-and-take of court proceedings. Dialects and regional variations exist in all languages; there are over 20 such variants in Spanish alone. Only 307 of the roughly 10,000 people who have taken the written examination in Spanish interpreting have met the certification requirements, despite having studied Spanish or coming from a Spanish-speaking family.

Navajo and Haitian Creole are the languages next most often requiring interpretation, and there are plans to certify interpreters in those languages. It is going to be especially difficult to prepare tests for these languages, according to Baca, for both are undocumented languages.

Interpreters in about 60 languages are required from time to time. Demand for the Pacific Rim languages group, which includes Asian languages, is growing the fastest.

The court system has difficulty competing with private business and other government agencies in attracting and retaining qualified interpreters, said Mr. Baca. ■

THE SOURCE

The publications listed below may be of interest to readers. Only those preceded by a checkmark are available from the Center. When ordering copies, please refer to the document's author and title or other description. Requests should be in writing, accompanied by a self-addressed mailing label, preferably franked (but do not send an envelope), and addressed to Federal Judicial Center, 1520 H St., N.W., Washington, DC 20005.

Center for Public Resources, *Bhopal to Bridgeport: Judges in Mega-Cases, 7 Alternatives* 81 (1989).

Dreyfuss, Rochelle Cooper, *The Federal Circuit: A Case Study in Specialized Courts*, 64 *New York University Law Review* 1 (1989).

Klingsberg, David, *Focus on Key Issues, Use of Tandem Witnesses Contribute to Successful ADR in Antitrust Cases*, 3 *Alternate Dispute Resolution Report* 172 (1989).

Seventh Circuit Symposium: The Federal Courts and the Community, 64 *Chicago-Kent Law Review* 435 (1988).

Slinger, Michael J., Lucy Salsbury Payne, and James Lloyd Gates, Jr., *The Senate Power of Advice and Consent on Judicial Appointments: An Annotated Research Bibliography*, 64 *Notre Dame Law Review* 106 (1989).

Pretrial Services Planning Meeting Held at FJC



Pictured at a recent meeting of the Pretrial Services Subcommittee of the Judicial Conference Committee on Criminal Law and Probation Administration at the FJC are (left to right) Barbara Meierhoefer (FJC), Harold D. Wooten (AO), Judge Stanley S. Harris (D.D.C.), Judge James Carr (M.D. Ohio), Judge James Cacheris (E.D. Va.), and (right foreground) Judge Edward Becker (3d Cir.) and (left foreground) Daniel B. Ryan (AO).

Positions Available

Chief Deputy Clerk, D. Or. Responsible directly to the clerk, with substantial delegated responsibility for operation of the office; develops and implements procedures and programs for case management and monitoring, records management, financial/fiscal management, and juror management. Selects or recommends personnel and initiates or supervises long-term projects. Requires six years' progressively responsible experience in administration and thorough knowledge of management concepts and application. Degree(s) in business, public or court administration, or law are preferred. Some education and experience may be substituted for other requirements. Open until filled. Salary \$41,121 to \$57,158. Submit applications or résumés to Clerk, U.S. District Court, 503 U.S. Courthouse, 620 SW Main St., Portland, OR 97205, (FTS/503) 326-6388 or 326-6383.

* * * *

Director of Office Operations, Office of the Clerk, C.D. Cal. Position is that of the third-ranking manager in the office of the court clerk. Responsible for the overall management of cases processed. Duties include management of case filing, indexing, maintaining court records and exhibits, entering judgments, and issuing writs, bench warrants, and other processes. Provides general direction and supervision to the intake, civil docketing, criminal docketing,

appeals and records/reproduction work units, which consist of 52 employees. Requires three years' experience applying managerial principles, policies, and practices. Open until filled. Salary \$41,121 to \$53,460. Submit application and résumé to Personnel Office, U.S. District Court, 312 N. Spring St., Room G-8, Los Angeles, CA 90012, (FTS/213) 894-2904.

* * * *

Chief Deputy Clerk, D. Utah. Serves as day-to-day manager of court-support operations, supervising a staff of 21 and reporting to the clerk of court. Manages the receipt, filing, storage, archiving, and disposition of all official case-related records submitted to the office. Responsible for financial management, preparation of statistical reports, and overseeing procurement and management of facilities in liaison with GSA. Manages distribution of responsibilities among the operational units of the office. Requires law degree from an accredited law school, three years' experience in public or private sector in administrative or management position and a further three years' experience with substantive mid-level management responsibilities. Court- or law-related experience, demonstrated working knowledge of civil/criminal procedure, and application of automated systems are preferred. Salary \$34,580 to \$48,592. Starts July 1, 1989. Open until filled. Submit application (cover letter, SF-171, and/or education and

employment history) to U.S. District Court, 204 U.S. Courthouse, 350 South Main St., ATTN: CDC, Salt Lake City, UT 84101-2180.

* * * *

Staff Counsel, Legal Office, Supreme Court. Prepares memoranda for the justices on procedural and substantive motions, undertakes legal research projects, and assists with circuit work as requested by the justices. Provides legal services for the justices and court officers on matters including personnel, contracts, proposed amendments of rules, and correspondence. Works with outside counsel on legislation and litigation of concern to the Supreme Court. Provides legal advice to the Supreme Court Police. Requires law degree, three years' practice experience, preferably including federal and constitutional law; experience with appellate courts helpful. Requires demonstrated ability to perform high-quality legal work with minimum supervision and within specified time limits, and excellent analytical, research, and writing skills. Salary from SCP-13/1 (\$41,121) to SCP-14, depending on prior experience and salary history. A commitment of two or three years is expected. Closes July 7. Submit application to Jennifer Eby, Personnel Manager, Supreme Court of the United States, Rm. 3, Washington, DC 20543, (FTS/202) 479-3404.

EQUAL OPPORTUNITY EMPLOYERS



BULLETIN OF THE FEDERAL COURTS

THE THIRD BRANCH

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THE THIRD BRANCH

Congress Weighs Pay, Ethics, Post-Employment Restrictions Affecting Judicial Branch

Congress continues to weigh bills that would, if passed, affect federal judicial compensation, ethical strictures, and limitations on post-employment activities.

• **Ethics, post-employment restrictions.** Congressional committees this month heard testimony on the effects of post-employment restrictions on recruiting and retaining federal employees. Sen. Rudy Boschwitz (R-Minn.) cited a *Wall Street Journal* editorial that described current post-employment restrictions as "so absurd that we are losing the best people in the executive branch and soon may wreck the judiciary." He concluded that the proposal to extend these restrictions to the judiciary

"would do nothing to improve ethics while sabotaging our justice system by shooting down our brightest stars." He referred to the S. 1116 proposal to couple a raise for the judiciary of 10% per year for four years with imposition of an outside income ceiling of 15% of base salaries. Critics of proposals to extend current executive branch restrictions to the judicial branch are concerned that inadequate distinctions are being made between the traditionally approved sources of outside earnings for judges, such as scholarly writing and lecturing to legal organizations,

See LEGISLATION, page 6

Felony Jury Selection Not an "Additional Duty" of Magistrates, Supreme Court Holds

The Federal Magistrates Act permits district courts to assign powers and duties to magistrates, including "such additional duties as are not inconsistent with the Constitution and laws of the United States." 28 U.S.C. § 636(b)(3). On June 12, the Supreme Court held in *Gomez v. U.S.*, No. 88-5014, that Congress did not intend those additional duties to include presiding over selection of felony trial juries without the consent of defendants.

Defendants were members of a larger group charged in a multiple-count indictment for cocaine trafficking; they and several co-defendants elected to stand trial. The district judge assigned a federal magistrate to preside over jury selection, and their counsel objected. After a telephone conference with the district judge, the magistrate conducted voir dire (as was the practice in that district), introduced the prospective jurors to the offenses charged, instructed them on points of law, and gave them the usual admonitions. When counsel for defendants appeared before the district judge several days later, they re-

See MAGISTRATES, page 2

Lawrence H. Averill, Jr., to be Administrative Assistant to the Chief Justice of the United States

Lawrence H. Averill, Jr., dean of the School of Law, University of Arkansas at Little Rock, has been announced as the new Administrative Assistant to the Chief Justice, effective August 1989.

Dean Averill was selected from over 180 candidates for the position, which carries a two-year commitment. The Administrative Assistant assists the Chief Justice with many non-judicial responsibilities. By law, the Chief Justice serves as chairman of the Judicial Conference of the United States and of the Board of the Federal Judicial Center. He is also a member of the Smithsonian Institution Board of Regents and exercises general oversight of the Administrative Office of the U.S. Courts, as well as supervising the internal management of the Supreme Court.

Since 1982, Dean Averill has been at the law school at Little Rock. His teaching career started at the University of Wyoming College of Law in 1965, where he served as associate dean and professor of law. He has also been a visiting professor of law at several universities. He is a



Lawrence H. Averill, Jr.

graduate of Indiana University; he holds a law degree from American University and a masters of law from George Washington University. He is a member of the American Law Institute and an academic fellow of the American College of Probate Counsel.

Noel J. Augustyn, the incumbent Administrative Assistant, will become of counsel with the Washington, D.C., law firm of Seyfarth, Shaw, Fairweather & Geraldson in August. ■

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THE THIRD BRANCH

Draft Revisions to ABA Standards Relating to Court Organization Circulated

The ABA Judicial Administration Division Council is circulating draft revisions of the ABA *Standards Relating to Court Organization* for comment. The standards were originally adopted in 1974, and the proposed revisions are being circulated in preparation for their submission to the ABA House of Delegates at the 1990 midyear meeting.

New standards are proposed on judicial performance evaluations, collective bargaining for non-judicial personnel, court use of technology, and discouraging the use of judges pro tempore. Extensive revisions have been proposed for several other standards.

Comments and suggestions should be sent to the reporter, Professor Harry O. Lawson, University of Denver College of Law, 1900 Olive St., Denver, CO 80220, by Sept. 15. The draft revisions can be obtained from Ernest S. Zavodnyik, Staff Director, Judicial Administration Division, American Bar Association, 750 North Lake Shore Dr., Chicago, IL 60611.

MAGISTRATES, from page 1

newed their objections to the magistrate's role in jury selection without challenging any specific juror. The judge overruled their objections, saying that he would review any of the magistrate's rulings de novo. After trial and conviction, each defendant was sentenced on several charges, and they appealed.

BULLETIN OF THE FEDERAL COURTS

THE THIRD BRANCH

Published monthly by the Administrative Office of the U.S. Courts and the Federal Judicial Center. Inquiries or changes of address should be directed to 1520 H St., N.W., Washington, DC 20005

Co-editors

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center. Peter G. McCabe, Assistant Director, Program Management, Administrative Office of the U.S. Courts.

Defendants made no special claim of prejudice; they asserted only that the magistrate had no power to conduct voir dire and jury selection. A divided Second Circuit rejected their claim.

The Supreme Court granted certiorari, citing a conflict with the Fifth Circuit holding in *U.S. v. Ford*, 824 F.2d 1430 (1987). (The Eighth Circuit has followed the Fifth; the Ninth Circuit has followed the Second; and other circuits have rejected similar challenges on procedural grounds.)

After reviewing the history and development of the office of magistrate, the Court found a gradual enlargement of the role magistrates were authorized to play. Having identified a "carefully defined grant of authority to conduct trials of civil matters and of minor criminal cases," the Court construed the grant as an "implicit withholding of the authority to preside at a felony trial."

The Court explained its reasoning: "The legislative history, with its repeated statements that magistrates should handle subsidiary matters to enable district judges to concentrate on trying cases, and its assurances that magistrates' adjudicatory jurisdiction had been circumscribed in the interests of policy as well as constitutional constraints, confirms this inference. Similar considerations lead us to conclude that Congress also did not contemplate inclusion of jury selection in felony trials among a magistrate's additional duties."

Although a criminal trial does not commence for purposes of the double jeopardy clause until a jury is impaneled and sworn, said the Court, voir dire has been determined to be a critical stage of the proceedings of a criminal trial at which a defendant has the right to be present. That Congress appears to consider jury selection as part of felony trials is apparent from, inter alia, the 1975 passage of the Speedy Trial Act, 18 U.S.C. § 3161 et seq. (1982 ed. & Supp. V), and the placement of the rules pertaining to criminal petit juries in a chapter entitled *Trial*. It was hardly likely, the opinion continued,

that Congress would fail to establish procedural guidance or judicial review over jury selection if it meant that to be one of the additional duties of magistrates. The Court also noted that Congress did not even mention jury selection in the Federal Magistrates Act. We "harbor serious doubts" that a judge could conduct a meaningful review of jury selection by a magistrate, for the court must "scrutinize not only spoken words but also gestures and attitudes of all participants to ensure the jury's impartiality," said the Court.

The Court also rejected the government's urging that any error in this case was harmless, absent allegation of specific prejudice as a result of the magistrate's conducting the voir dire. "Among those basic fair trial rights that 'can never be treated as harmless' is a defendant's 'right to an impartial adjudicator, be it judge or jury,'" responded the Court, quoting *Chapman v. California*, 386 U.S. 18 (1967). "Equally basic is a defendant's right to have all critical stages of a criminal trial conducted by a person with jurisdiction to preside. Thus harmless-error analysis does not apply in a felony case in which, despite the defendant's objection and without any meaningful review by a district judge, an officer exceeds his jurisdiction by selecting a jury." ■

CALENDAR

- July 10-13 Ninth Circuit Judicial Conference
- July 13-14 Judicial Conference Committee on Judicial Ethics
- July 17-18 Judicial Conference Committee on Rules of Practice and Procedure
- July 18-21 Eighth Circuit Judicial Conference
- July 27 Judicial Conference Special Committee on Habeas Corpus Review of Capital Sentences
- July 27-28 Judicial Conference Committee on the Bicentennial of the Constitution
- July 31 Federal Courts Study Committee
- July 31-Aug. 1 Judicial Conference Committee on the Budget
- Aug. 24-25 Judicial Conference Executive Committee

Absolute Immunity in Judicial and Parole Process Communications Protect Judge and Prosecutor

Immunity derived from their roles as witnesses in the quasi-judicial parole-granting process protected a Texas state trial court judge and prosecutor, said the Fifth Circuit in *Johnson v. Kegans*, No. 87-2352, on Apr. 24.

A prisoner claimed that the judge and the district attorney tried to get his period of incarceration lengthened in order to retaliate for his civil rights suit. He did not state in his complaint that the judge and prosecutor informed the parole board of the lawsuits, or allege that they made

any false statements to the parole board; he only claimed that their statutorily mandated letters to the parole board "prejudiced" him in "parole matters."

The district court found that the prisoner had no constitutional right to parole, that the judge and prosecutor were absolutely immune from suit, and dismissed the action as frivolous under 38 U.S.C. § 1915(d).

At the Fifth Circuit, the majority held that the actions complained of were "intimately connected with both the judicial process and the quasi-judicial parole-granting process," and that the judge and prosecutor were entitled to absolute immunity. "It is well established that judges are absolutely immune from liability for judicial acts that are not performed in clear absence of all jurisdiction, however erroneous the act and however evil the motive. Prosecutors and other necessary participants in the judicial process enjoy absolute 'quasi-judicial' immunity from liability for initiating prosecutions and other acts 'intimately associated with the judicial phase of the criminal process,'" said the court, citing *Imbler v. Pachtman*, 424 U.S. 128 (1976).

The court said that, while it was not altogether clear in *Johnson* that the acts complained of were "judicial" or "prosecutorial," it is clear that sentencing is a judicial act. While the power to grant parole is executive, "the functioning of a parole board . . . is quasi-judicial," and when prosecutors or probation officers provide information relevant to sentencing or recommend sentences, they are clearly performing prosecutorial or quasi-judicial acts.

"Judges, who impose sentences, and prosecutors, who best know the state's case against a defendant and recommend sentences, have a continuing official interest in the execution of a sentence, due, no doubt, in part to their superior knowledge of the inmate and the crime for which he was convicted." The court said

Handbook on Jury Use in Federal District Courts Published by Center

The FJC has published *Handbook on Jury Use in the Federal District Courts*, prepared by the Center's Division of Special Educational Services, with considerable help from several district court clerks.

The main purpose of the handbook is to explain basic concepts of administering federal juries. The handbook describes statutory requirements, Judicial Conference policies, and various procedures used in the district courts. Although the handbook is intended primarily for jury staff, district judges who are assigned to serve as jury judges may find it informative.

Two copies of the handbook are being sent to each chief district judge, and two copies are being sent to each clerk of court, with the suggestion that the chief judge give the jury judge a copy and the clerk give the jury clerk a copy. Federal judicial personnel may request a copy of the handbook by writing to Information Services, Federal Judicial Center, 1520 H St., N.W., Washington, D.C. 20005. Please enclose a self-addressed mailing label, preferably franked, but do not send an envelope. The report weighs 7 oz.

that Texas recognizes this, requiring local trial officials to provide to the parole board, and requiring the board to secure, "all pertinent information relating to the prisoner." The board's own rules require it to notify the trial judge and prosecutor that parole or clemency is being considered by the board or by the governor. "These rules recognize the continuing official role of the judge and prosecutor in the execution of sentence," said the court, and "whether we label these acts judicial or prosecutorial or a quasi-judicial equivalent to a witness or probation officer, they are functionally the sort of actions that deserve the protection of absolute immunity."

See IMMUNITY, page 4

PERSONNEL

CIRCUIT JUDGES

Appointed

Ferdinand F. Fernandez, 9th Cir., May 24
Pamela Ann Rymer, 9th Cir., May 24

Senior Status

Collins J. Seitz, 3d Cir., June 1
Edward S. Smith, Fed. Cir., June 1

DISTRICT JUDGES

Elevation

Joseph J. Longobardi, Chief Judge, D. Del.,
July 1

Appointed

Melinda Harmon, S.D. Tex., June 7
Robert C. Bonner, C.D. Cal., June 19

Senior Status

Martin F. Loughlin, D.N.H., May 15
Marion J. Callister, D. Idaho, June 6
John T. Curtin, W.D.N.Y., July 1

Deaths

Edmund L. Palmieri, S.D.N.Y., June 15
William C. Keady, N.D. Miss., June 16
Donald S. Voorhees, W.D. Wash., July 7

BANKRUPTCY JUDGES

Appointments

Edward J. Ryan, E.D.N.Y., Apr. 3
Clive W. Bare, E.D. Ky., May 29
David T. Stosberg, W.D. Ky., June 30

Expiration of Appointment

Duane J. Kelleher, M.D. Fla., June 2

Death

Dennis J. Stewart, W.D. Mo., June 16

Publication Seeks Information on Court Facilities

A monograph is planned to supplement *The American Courthouse: Planning and Design for the Judicial Process*, published in 1972. The ABA, the National Center for State Courts, the Conference of State Court Administrators, and the National Center for Juvenile Justice are seeking information on court facilities built or renovated since 1972. Submissions of new courthouses, administrative law hearing facilities, and moot courts; major additions and renovations of existing

courthouses; and historic courthouses that have been restored and renovated are being sought. For more information, contact Ernest S. Zavodnyik, Staff Director, Judicial Administration Division, American Bar Association, 750 North Lake Shore Dr., Chicago, IL 60611, or Michael Cohn, Director, Design Programs, American Institute of Architects Committee on Architects for Justice, The Octagon, 1735 New York Ave., N.W., Washington, D.C. 20006.

NOTEWORTHY

Filing by FAX or computer. The AO General Counsel has issued the following statement after receiving a number of inquiries about filing by FAX or by computer: "We have consistently advised that filing by FAX or computer is not authorized by the Federal rules. Although the Federal rules do not specifically preclude such filing, Federal Rules of Civil Procedure 5(e) and 11 would appear to require the filing of an original document with an original signature. We have been unable to find any case law, or any commentary, on this issue. In addition, [we are] advised by the Local Rules Project of the Committee on Rules of Practice and Procedure that they are not aware that any district court has promulgated local rules on this subject. Pending such developments, we think that the best interpretation of the Federal rules is that facsimile filing is not authorized."

Bankruptcy clerks were instructed a year ago not to accept FAX or any other facsimiles for filing.

The print used on facsimile paper is inclined to fade, particularly on exposure to direct sunlight, which makes such documents unsuitable for filing.

Drug testing sites announced. A

demonstration program of mandatory drug testing will include E.D. Ark., D. Minn., and D.N.D., the Judicial Conference of the United States has announced. Probation personnel will test criminal defendants before their initial appearance before judicial officers as well as persons on probation and supervised release arising out of post-Jan. 1, 1989, offenses. Testing of the first group will commence once testing equipment is installed and personnel are trained in its use. Testing of the second group will be phased in gradually, using existing drug testing practices and contracts.

The program was created to implement provisions of the Anti-Drug Abuse Act of 1988. ■

IMMUNITY, from page 3

The court noted that the Supreme Court has discussed with apparent approval lower court decisions giving absolute immunity to parole board members, saying that they have been described as "serving essentially 'as an arm of the sentencing judge.'" *Cleavinger v. Saxner*, 474 U.S. 193 (1985), quoting *Sellers v. Procutier*, 641 F.2d 1295 (9th Cir. 1981). The Fifth Circuit said that if parole decision making is immune because it is an extension or arm of judicial sentencing, "then those whose official

THE SOURCE

The publications listed below may be of interest to readers. Only those preceded by a checkmark are available from the Center. When ordering copies, please refer to the document's author and title or other description. Requests should be in writing, accompanied by a self-addressed mailing label, preferably franked (but do not send an envelope), and addressed to Federal Judicial Center, 1520 H St., N.W., Washington, DC 20005.

Birch, Cristin, *Automation in the U.S. Courts*, 36 Federal Bar News & Journal 238 (Winter 1989).

Burbank, Stephen B. (reporter), *Rule 11 in Transition: The Report of the Third Circuit Task Force on Federal Rule of Civil Procedure 11* (American Judicature Society 1989).

Cole, Charles D., *Judicial Independence in the United States Federal Courts*, 13 Journal of the Legal Profession 183 (1988).

Fitzpatrick, Collins T., *New Ideas on Selecting Law Clerks*, Judges' Journal 33 (Winter 1989).

Godbold, John C., *Twenty Pages and Twenty Minutes*, 15 Litigation 3 (Spring 1989).

Robel, Lauren K., *The Myth of the Disposable Opinion: Unpublished Opinions and Government Litigants in the United States Courts of Appeals*, 87 Michigan Law Review 940 (1989).

Rosenblum, Victor G. (moderator), *Impeaching Federal Judges: Where Are We and Where Are We Going?*, 72 Judicature 359 (1989) (transcript of panel discussion, American Judicature Society meeting, Feb. 4, Denver).

Symposium on Judicial Ethics, 2 Georgetown Journal of Legal Ethics 589 (Winter 1989).

roles in the judicial sentencing process lead them also to participate in the parole decision-making process should enjoy no less immunity than that afforded for their participation in the judicial process," and that to deny such immunity to the judge or prosecutor who furnishes such information to the parole board would be "wholly anomalous." ■



Judicial Review of Agency Statutory Interpretations, Immigration Procedures Among Recommendations of Administrative Conference

At its June meeting, the Administrative Conference of the United States (ACUS) agreed on six recommendations, which were printed this month in the *Code of Federal Regulations*. Of special interest to the federal courts are the recommendations related to judicial review of agency statutory interpretations and the recommendations on immigration procedures.

Judicial acceptance of agency statutory interpretations. According to the report of the ACUS Committee on Judicial Review, the federal courts have not been consistent in acceptance or nonacceptance of administrative agency interpretations of the statutes they administer: One federal court will accept an agency's interpretation of a statute, while another will reject it. To date, the only guidance from the Supreme Court is *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984), which involved rule making and which laid out a general guide on how to deal with agency interpretations of statutes.

After over two years of study, the Committee on Judicial Review made initial recommendations, but they were not agreed on, and further study was ordered by the membership. The final language now reads: "The Conference recommends that agencies use certain procedures when they adopt interpretations of statutes that are intended to be definitive on judicial review under the deference test set forth by the U.S. Supreme Court in *Chevron U.S.A. v. Natural Resources Defense Council*."

Asylum adjudication procedures. Another ACUS committee has been reviewing growing problems for the Immigration and Naturalization Service in all aspects of the asylum program. The committee concluded that there is a conflict between the American tradition of offering a ref-

uge for those persecuted elsewhere and the demand for national control over the entry of aliens.

The committee recognized that there would be problems because of growing numbers of people entering this country. During the 1970s, the United States received 2,000 applications for asylum each year; by 1988, approximately 60,000. The Immigration and Naturalization Service projects that 100,000 applications will be received during 1989. The committee also recognized that "well-founded fear of persecution"—part of the statutory requirement for asylum—is far from self-defining. It pointed out that the Attorney General does not act alone in this complex area; the Secretary of State and the United Nations High Commissioner for Refugees are also involved.

The committee's final recommendations are introduced with the following language: "The Attorney General should adopt regulations creating a new asylum adjudication process that would eliminate much of the duplication and division of responsibility associated with the current complicated system. Resources should be applied to enhance the professionalism, independence, and expertise of the adjudicators, and to assure fair and expeditious adjudications, so that genuine refugees may be speedily given a secure status and unqualified applicants, absent circumstances which would allow them to remain in this country, may be promptly deported."

An important part of the recommendations relates to judicial review. After lengthy discussions, with participation by representatives from the State and Justice Departments, the recommendations adopted state that "judicial review of asylum denials should be available as part of the review . . . for orders of deportation or exclusion. [A]rrangements . . .

1990-1991 Judicial Fellows Applications Invited

The Judicial Fellows Commission has issued an invitation for applications for the 1990-1991 fellowships.

The Judicial Fellows Program chooses two or three fellows to spend a year, beginning each September, in Washington, D.C., at the Supreme Court, the Federal Judicial Center, or the Administrative Office of the U.S. Courts. Candidates should have at least one postgraduate degree and two or more years of successful professional experience. They should be familiar with the federal judicial system, have an interest in the administration of justice, and show promise of making a contribution to the judiciary.

Fellows receive stipends based on salaries for comparable federal government work and on their salary histories.

Application materials should be submitted by Nov. 15.

The program, patterned after the White House and Congressional Fellowships, was established in 1972.

Information about the Judicial Fellows Program and the application procedures is available from Vanessa Yarnall, associate director of the program, Supreme Court of the United States, Room 5, Washington, D.C. 20543, telephone (FTS/202) 479-3374.

should be made to combine . . . the record of proceedings before the Asylum Board with that of the regular deportation or exclusion proceedings before the immigration judges and the Board of Immigration Appeals."

ACUS recommendations are only advisory. The ACUS was formed to study the administrative procedures followed by federal agencies and make recommendations to the President, Congress, and the Judicial Conference of the United States. ■

LEGISLATION, from page 1

and the congressional honoraria-generating activities and executive branch revolving-door patterns of employment that raised the issue.

• **Judicial compensation.** Previously filed bills continued to be considered in committees, and the new Speaker of the House, Rep. Thomas S. Foley (D-Wash.), indicated that he favors the gradual, phased-in approach in S. 1116 and S. 1117. In S. 1116 "non-legislative branch personnel," as defined by the Quadrennial Commission, would immediately gain phased-in increases over a period of four years and in S. 1117, members of Congress and legislative branch personnel would also receive pay increases in increments of 10% annually for four years (see *The Third Branch*, June 1989, at 6).

With a June 13 hearing, the House Judiciary Committee Subcommittee on Courts, Intellectual Property, and the Administration of Justice continued consideration of H.R. 1620, the Judicial Discipline and Impeachment Reform Act of 1989, and H.R. 1930, to require certification of a certain workload by senior justices and judges to qualify them for certain salary increments.

The following are among recently filed bills; unless otherwise noted, they were referred to the judiciary committee of the originating body.

• **H.R. 2529** requires mandatory minimum sentences for unlawful possession of a firearm by a convicted felon, fugitive, or controlled substance user and for a person involved in the transfer of a stolen firearm; increases penalties for general federal firearms violations; and increases the enhanced penalties for possession of a firearm in connection with crimes of violence or drug trafficking offenses. **H.R. 2631** imposes a mandatory seven-year sentence for such offenses and has other features similar to those of H.R. 2529.

• **H.R. 2536** would amend 28 U.S.C. § 2608(a) to narrow the discretionary function exception to the Federal Tort Claims Act.

• **H.R. 2514** would guarantee that federal employees making contribu-

tions to the thrift savings plan are protected from agency errors, and would remove restrictions on certain types of investments of plan funds.

• **H.R. 2538** and **S. 1108** would create another opportunity for federal employees to elect coverage under the federal employees' retirement system and exempt those so electing from the new government pension offset provisions of the Social Security Act. The bills were referred to the House Committees on Post Office and Civil Service and on Ways and Means and the Senate Committee on Governmental Affairs, respectively.

• **H.R. 2704** would amend the Juvenile Justice and Delinquency Prevention Act of 1974 to require that, as a condition for receiving federal grants, states treat all juveniles who are 15 or older as adults for purposes of determining criminal liability for certain violent crimes; it was referred to the Committee on Education and Labor.

• **H.R. 2739** would limit the authority of a state to tax a nonresident on federal employment income earned in a federal area located within the borders of two or more contiguous states.

• **S. 1114** would amend the Bankruptcy Code to provide that a stay not apply to state property taxes.

• **S. 1193**, the Drug Dependent Offender Rehabilitation Act, authorizes an additional \$15 million for FY1991 and 1992 to provide "high intensity inpatient substance abuse treatment" to drug-dependent offenders and would create a program of supervised release for nonviolent inmates who complete treatment. It requires the Bureau of Prisons, "to the extent possible," to isolate drug-dependent offenders undergoing treatment from the general prison population and to avoid returning them there after treatment. Sen. Daniel Patrick Moynihan (D-N.Y.), a sponsor, said that, on Jan. 1, 1988, the federal prisons were 62% above capacity, that 43% of released offenders are rearrested within three years, and that it is the drug-dependent released offender who is most likely to be a recidivist. Drug dependency is a treatable condi-

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tion, he said; effective drug treatment programs in prison have been shown to reduce recidivism, and as there are only four separate unit programs presently operating in federal prisons, this bill is needed to create new programs and intensive post-release supervision.

• **S. 1259** would amend 18 U.S.C. § 3143 to require detention of a person convicted of a violent crime pending sentence or appeal.

• **H.J. Res. 294** proposes a constitutional amendment to require automatic removal of federal judges upon conviction of a serious crime. The sponsor, Rep. George E. Sangmeister (D-Ill.), said that its purpose is to "spare

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American taxpayers from paying the salary and exorbitant investigation costs that precede a convicted judge's impeachment." He described the impeachment process as "too long, too redundant, and too costly." H.J. Res. 312 would amend the Constitution to permit Congress to grant bodies in the judicial branch power to remove judges for cause.

- **The Comprehensive Violent Crime Control Act of 1989** was sent to the Senate by President George Bush on June 15. Its major provisions, he said, would improve the criminal justice system as follows: (1) further restrict legal access to firearms by felons whose rights of citizenship have been restored; punish more severely those who use semiautomatic weapons in committing a violent or drug felony; and enhance penalties for stealing a firearm; (2) establish procedures to institute a death penalty for drug-related murder; (3) impose restrictions on magazines and feeding devices for assault weapons; (4) establish a program of mandatory drug testing for defendants on post-conviction supervised release; (5) limit imposition of the exclusionary rule to "intentional violations"; (6) "restore an appropriate degree of finality to state and federal criminal convictions" by restricting post-conviction habeas litigation in addition to direct appeals with imposition of one- or two-year limitations, except for "rights newly created or facts newly discovered"; and (7) authorize supplemental appropriations for Justice Department use in law enforcement, prosecution, and prison capacity expansion. "These appropriations authorizations, along with the increased funding I have requested for the Judiciary and the Bureau of Alcohol, Tobacco and Firearms in the Department of the Treasury—a total government-wide increase of about \$1.2 billion in 1990—will make possible a tougher, more vigorous, and more effective fight against violent crime," said President Bush.

- **S. 517, the Indian Civil Rights Act**

Amendments of 1989, would grant jurisdiction to federal courts to enforce the rights secured by the Indian Civil Rights Act of 1968, negating the effect of *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978). The bill would provide federal district court jurisdiction of complaints of denials of those civil rights enumerated in § 202 of the 1968 Act and prohibit tribal use of the defense of sovereign immunity in civil actions brought to enforce compliance. Individuals or the Attorney General would gain the right of action in federal district courts for declaratory injunctions and other equitable relief on failure of a tribe to comply with the 1968 Act's protections of individual civil rights, provided the aggrieved individual first exhausted the available trial remedies if they are timely and reasonable under the circumstances. Relief can be granted against a tribe, a tribal organization, or tribal official.

The federal courts are to accord due deference to tribal court interpretation of tribal laws and customs whenever they are at issue.

In introducing the bill, Sen. Orrin G. Hatch (R-Utah), sponsor, traced the history of federal court involvement in the enforcement of Native Americans' rights as U.S. citizens and as citizens of the states where they reside. He noted that tribal governments are not bound by the federal and state constitutions (which they predate), that they do not incorporate the traditional checks and balances of coequal branches, and that the real power in tribal government generally lies in the tribal council and its standing committees. Tribal courts exist in only half of tribal governments, are generally of limited jurisdiction, and lack independence from the tribal council, he said.

Under Congress's plenary power to regulate commerce with the Indian tribes, the Senate Judiciary Committee held hearings from 1960 to 1967 into complaints of civil rights violations by tribal governments. Their documentation of civil rights abuses under color of tribal government authority led to

the enactment of the Indian Civil Rights Act of 1968, which applies the protections of substantial portions of the Fourteenth Amendment and the Bill of Rights to tribal government. The bill contained such concessions to traditional tribal cultural and religious values as omitting the prohibition against establishment of religions, and omitting the requirement that counsel be provided to indigent defendants.

The Act was enforced by both tribal and federal courts for 10 years, and each of the federal circuits that had occasion to do so inferred a private right of action in federal court to enforce the Act's provisions. However, the Supreme Court decided in *Santa Clara Pueblo v. Martinez* that the Act does not provide for a waiver of sovereign immunity or a private right of action for individuals in federal court. The Court found that the two competing purposes of the Act were to promote tribal self-government and to protect individuals from tribal abuse of power. The Court refused to resolve the conflict by reading into the Act a federal court right of action that it did not explicitly contain.

The 1984 Presidential Commission on Indian Reservation Economies, the U.S. Commission on Civil Rights, and the Department of Justice have received numerous complaints and evidence of violations of individual civil rights and abuses of power by some tribal governments.

- **Committee reports on H.R. 1278 and S. 774**, the savings and loan recapitalization and reform bills, have been released by the House Committees on Banking, Finance and Urban Affairs, Rules, and Judiciary. The bills, now in conference, are of concern to the judicial branch because both the House and Senate versions contained a \$50 million supplemental appropriation for the Department of Justice to investigate and prosecute those whose activities precipitated the many thrift failures. The House version had \$15 million for the federal courts to deal with the anticipated fraud cases, while the Senate version had no funds. ■

THE THIRD BRANCH

Positions Available

Bankr. Judge, D. Idaho. Anticipated vacancy in Boise. Requires admission to practice and membership in good standing before highest court in at least one state; at least five years' experience in the active practice of law; demonstrated legal competence, integrity, and demeanor appropriate to the bench. May consider judicial or other legal experience as substitute for some legal practice experience. Fourteen-year term. Salary \$82,340. Closes Sept. 8. For information and application forms, contact Office of the Circuit Executive, U.S. Courts for the Ninth Circuit, P.O. Box 42068, San Francisco, CA 94142-2068, telephone (FTS/415) 556-9693.

Chief Deputy Clerk, D. Utah. Serves as day-to-day manager of court-support operations, supervising a staff of 21 and reporting to the clerk of court. Manages the receipt, filing, storage, archiving, and disposition of all official case-related records submitted to the office. Responsible for financial management, preparation of statistical reports, overseeing procurement, and managing facilities in liaison with GSA. Manages distribution of responsibilities among the operational units of the office. Requires law degree from an accredited law school, three years' experience in public or private sector in administrative or management position, and a further three years' experience with substantive mid-level management responsibilities. Court- or law-related experience, demonstrated working knowledge of civil and criminal procedure and of application of automated systems are preferred. Salary \$34,580 to \$48,592. Closes Aug. 31. Submit application

(cover letter, SF-171, and/or education and employment history) to U.S. District Court, 204 U.S. Courthouse, 350 South Main St., ATTN: CDC, Salt Lake City, UT 84101-2180.

District Court Executive, E.D.N.Y. Chief administrative officer of the federal district court headquartered in Brooklyn, consisting of twelve active and five senior district judges, six bankruptcy judges, six magistrates, and totaling about 400 employees. Responsibilities include administrative management of non-judicial functions of the court and its component offices: budget, space and facilities, statute analysis, local rules, reports, personnel, court's security program, liaison and public relations with other agencies, the bar, and the public, and projects requested by the judges. Requires demonstrated executive ability and judgment, creative leadership, and experience in modern business and management techniques, including capacity to plan and implement improvements in managing the business of the court. Requires undergraduate degree and a demonstrated substantial interest in judicial administration. Graduate degree in business or public administration or in law, formal training and managerial experience in court management are desirable. Closes Sept. 1. Salary range \$67,038 to \$75,500, depending on qualifications. Submit résumé, detailed description of relevant experience, and cover letter to Steven Flanders, Circuit Executive, Second Circuit, 1803 U.S. Courthouse, New York, NY 10007.

Clerk of Court, D. Neb. Responsible for all administrative support services for the federal district courts, consisting of over 80 judicial officers and staff: case processing, records management, financial management, budget

preparation and execution, procurement, space and facilities management, personnel, and liaison with other agencies and organizations. Requires 10 years' progressively responsible administrative experience in public service or business, at least three of which must have been in a position of substantial management responsibility. Experience in judicial administration or the law, familiarity with computer systems and applications desirable. Education and legal practice experience may be substituted for some experience. Closes July 31. Salary range starts at \$57,158. Submit three copies of résumé and cover letter to Hon. Lyle E. Strom, Chief Judge, U.S. District Court, P.O. Box 607, Omaha, NB 68101.

Deputy-in-Charge, Docketing Support Services, Clerk's Office, S.D.N.Y. Manages all docketing units and related departments, including orders, appeals, and magistrates clerical office: long-range schedules, priorities, and deadlines, answering inquiries, and preparing reports related to docketing. Requires U.S. citizenship, three years' general and three years' specialized experience, with a record of progressive responsibility, gaining knowledge and applying management skills. A thorough knowledge of civil and criminal docketing is expected. Undergraduate and graduate degrees may be substituted for some experience. Salary range to JSP-12 (\$34,580 to \$44,957), depending on qualifications. Submit résumé to Personnel Office, U.S. District Courthouse, S.D.N.Y., Room 21, 40 Centre St., New York, NY 10007.

EQUAL OPPORTUNITY EMPLOYERS

BULLETIN OF THE FEDERAL COURTS

THE THIRD BRANCH

Vol. 21 No. 7 July 1989

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THE THIRD BRANCH

JCUS Advisory Committees on Civil, Appellate, And Bankruptcy Rules Propose Revisions

The Judicial Conference Advisory Committee on Civil Rules has proposed a substantial package of amendments to the Federal Rules of Civil Procedure. Rules 4 (process), 45 (subpoena), and 56 (summary judgment) would each be substantially rewritten, a new Rule 4.1 would be added, and substantive changes would be made in several other rules.

The Advisory Committee on Appellate Rules has recommended amendments to Fed. R. App. P. 4, 28, 30, and 34.

The Advisory Committee on Bankruptcy Rules has suggested a comprehensive package of amendments to the Bankruptcy Rules to implement the provisions of the Bankruptcy Judges, U.S. Trustees, and Family Farmer Bankruptcy Act of 1986. The Act established the U.S. Trustee sys-

tem on a nationwide, permanent basis and created a new Chapter 12 of the Bankruptcy Code to provide financial relief for family farmers. The proposed revisions to the rules also include provisions necessary to implement the Retiree Benefits Bankruptcy Protection Act of 1988. In addition, the Advisory Committee has incorporated in the proposed revisions various suggestions to improve the rules submitted by judges and attorneys and by the members and reporter of the committee.

The Conference's Standing Committee on Rules of Practice and Procedure has submitted the proposals to bench and bar for public comment. Public hearings on the proposed revisions in the Bankruptcy Rules will be

See RULES REVISIONS, page 7

Features of Federal Judicial Pay Bill, H.R. 2181, Detailed

On July 20, Rep. Robert Kastenmeier (D-Wis.) spoke in support of H.R. 2181, a bill he and Rep. Carlos Moorhead (R-Cal.) introduced May 2 at the request of the Judicial Conference of the United States. The bill would give federal judges a 30% pay raise to restore buying power lost through inflation, and establishes a system for adjusting future compensation to avoid repetition of that erosion. Rep. Kastenmeier said, "The growing number of judicial resignations, as well as evidence of increasing difficulty in recruiting to judicial office eminent lawyers representing a cross-section of the legal profession and of American society, persuade me that Congress must promptly revisit the issue of fair compensation for federal office holders, despite its clear political volatility." He continued, "I do not view this bill as by any means the exclusive vehicle for legislative consideration but offer it only as one alternative that may be considered along with other measures to provide needed compensation relief."

Increases in the bill are for Article III federal judges. If enacted, it will also raise the compensation of bankruptcy judges and magistrates, judges of the U.S. Tax Court, the U.S. Claims Court, and the U.S. Court of Military Appeals, whose salaries are linked to those of

See JUDICIAL PAY BILL, page 6

House Panel Hears Testimony on Post-Employment Restrictions for Bankruptcy Judges and Magistrates

Judge Walter K. Stapleton (3d Cir.), Chief Bankruptcy Judge George C. Paine II (M.D. Tenn.), and U.S. Magistrate John Paul Godich (S.D. Ind.) testified June 28 before the House Judiciary Committee's Subcommittee on Administrative Law and Governmental Relations on H.R. 2267, the Post-Employment Restrictions Act of 1989.

Judge Stapleton, the chairman of the Committee on Codes of Conduct of the Judicial Conference of the United States, prefaced his testimony by saying that the Judicial Conference has not had occasion to address the specific provisions of the bill, but would do so at its September session. He asked that the record remain open to receive Conference comments. He based his testimony on the recommendation the committee will make to the Conference at the September session.

Judge Stapleton told the subcommittee about judicial branch concerns that H.R. 2267 would discourage qualified attorneys from accepting appointments as bankruptcy judges and federal magistrates because of the strict limitations on their professional activities on expiration of the limited terms of those offices.

He explained that since bankruptcy is a court-based legal practice specialization, such specialized attorneys need access to the bankruptcy courts in order to return to the practice of law, as they generally do upon completing their fixed, 14-year terms. The particular characteristics of bankruptcy judgeships—a fixed term and a court-centered specialization—persuade the committee that relief should be granted from the imposition of a one-year post-employ-

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POST-EMPLOYMENT, from page 1

ment restriction on bankruptcy judges.

Magistrates serve a fixed, four-year term, and those who serve part-time may maintain a private practice so long as it does not interfere with their official duties. "It would seem anomalous to prohibit after judicial employment ceases that which is permitted during judicial employment," said Judge Stapleton. These positions do not have significant economic appeal for practicing lawyers, he noted. "Over 40% of part-time magistrates receive compensation of \$5,000 or less per year," he said, and upon becoming a magistrate one acquires virtually all the disabilities of a judge. Getting qualified persons to accept such appointments frequently is difficult, and the Committee on Codes of Conduct fears additional post-employment restrictions would deter most qualified persons.

Chief Judge Paine, the president of the National Conference of Bankruptcy Judges, testified that during their tenure, bankruptcy judges immerse themselves solely in a highly specialized field of law; after government service, it is their primary skill. "Unlike other legal specialists who may spend their professional lives without ever filing a suit, bankruptcy by its very nature requires its practitioners to make an appearance in court for every client in almost every case. Simply put, shutting the bankruptcy courthouse doors to my colleagues and me would deny us our

livelihood when our terms end." He added, "Faced with the prospect of not working for a year, I would have to resign before such a law became effective."

If H.R. 2267 were to be enacted, he forecast a wave of resignations before the effective date and a subsequent paucity of qualified persons to accept appointments to the bankruptcy bench. Judge Paine told the subcommittee that the 284 bankruptcy judges are managing a caseload of over a million cases, and that the Judicial Conference has said that more persons are directly affected by the actions of the federal bankruptcy courts than by all of the other federal courts combined.

He said that the laws and ethical strictures in place already prohibit former judges from appearing in matters that came before them and restrict ex parte contacts with current judges and former colleagues. He requested that bankruptcy judges be excepted from a post-employment practice prohibition.

Magistrate Godich, the president of the National Council of U.S. Magistrates, reviewed the conduct regulations already applicable to federal judicial officers. He said that, while the National Council of U.S. Magistrates supports in principle legislative efforts to assure the highest standards of ethical conduct in all branches of the federal government, it urges Congress to give due consideration to existing safeguards and the unique positions of magistrates and Article I judges within the federal judiciary. The council requested that Congress exempt from any new legislation those magistrates who actively seek but fail to achieve reappointment, and that post-employment limitations be drafted narrowly to cover only particular lawsuits, as opposed to categories of litigation or individual clients. During the course of a term of office, a magistrate will rule on motions involving at one time or another most major U.S. corporations, he said, and the bill should not preclude subsequent representation of one of those corpo-

CALENDAR

- Aug. 21-23 Workshop for Calendar Clerks and Records Management Clerks of the U.S. Circuit Courts
- Aug. 24-25 Judicial Conference Executive Committee
- Aug. 28-30 Juror Utilization and Management
- Aug. 28-30 Workshop for Docketing Supervisors of the U.S. Bankruptcy Courts
- Aug. 29-Sept. 1 Workshop for New Training Coordinators
- Sept. 6-8 Tenth Circuit Judicial Conference
- Sept. 6-8 Workshop for Procurement Managers
- Sept. 7-9 Second Circuit Judicial Conference
- Sept. 10-12 Third Circuit Judicial Conference
- Sept. 10-12 Workshop for Bankruptcy Administrator Program Personnel
- Sept. 11-14 Video Orientation Seminar for New Magistrates
- Sept. 13-15 Workshop for Financial Deputies of the U.S. Bankruptcy Courts
- Sept. 18 Federal Courts Study Committee
- Sept. 18-20 Seminar for Chief Bankruptcy Judges
- Sept. 20-21 Judicial Conference of the United States
- Sept. 25-28 Workshop for Chief Deputies of the U.S. Bankruptcy Courts
- Sept. 27-29 Workshop for Judges of the Eleventh Circuit

rations because of a ruling in a different case some years before.

The President's Commission on Federal Ethics Law Reform identified no problems that would suggest a need for additional ethics legislation for the judiciary, but nevertheless recommended that ethics rules be applicable to the three branches alike. In March, at the request of President George Bush, the Judicial Conference committee responded to the new recommendations, strongly opposing them.

The full House Judiciary Committee is expected to consider the bill in the fall. ■



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THE THIRD BRANCH

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Co-editors

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center. Peter G. McCabe, Assistant Director, Program Management, Administrative Office of the U.S. Courts.



FJC Underwrites Two Programs for Judges

The Federal Judicial Center underwrote the attendance of over 80 federal judicial officers at two law school educational programs this summer.

The Center and the University of Chicago Law School jointly sponsored an experimental program for Article III judges from June 12 to 16 at the law school. Thirty-eight federal judges attended presentations in constitutional law, federal courts and procedure, criminal law, statistics, corporate and securities law (takeovers and insider trading), banking, sentencing, and recent developments in the law of consent decrees. Sixteen Chicago law school faculty participated.

Approximately 50 Article III judges, bankruptcy judges, and magistrates were among those attending the Harvard Law School Program of Instruction for Lawyers, held June 11 to 24. They participated in courses and colloquia taught by 29 members of Harvard's law faculty on topics ranging from administrative and regulatory law to antitrust and securities, international and comparative law, taxation, constitutional law, and procedural law.

Senate Committee Hears JCUS Views on Impact of Puerto Rico Status Legislation on Federal Courts

In July, the Senate Committee on Energy and Natural Resources asked the Judicial Conference of the United States for its views on pending legislation regarding the Commonwealth of Puerto Rico. The legislation, S. 712, gives residents the choice of independence, statehood, or commonwealth status. Parts of the legislation would profoundly alter federal court operations and judicial selection for Puerto Rico. One element of particular concern to the Judicial Conference was a requirement that at the request of a

party any federal court proceeding be conducted in Spanish.

Because legislative session time constraints prevented submitting the Senate committee's request to the Judicial Conference for plenary review at its forthcoming meeting in September, the pending legislation was reviewed by the Judicial Conference Executive Committee, based on recommendations of the Committee on Federal-State Jurisdiction and the chairmen of the Judicial Im-

See PUERTO RICO STATUS, page 6

Grants for Research on Federal Judicial History Announced by JCUS Bicentennial Committee

The Committee on the Bicentennial of the Constitution of the Judicial Conference of the United States announced a summer stipend program to support research on the history and evolution of the federal courts.

The awards consist of an honorarium of \$8,000 and a \$2,000 travel and expense grant. Up to five stipends will be awarded. The competition is open to scholars in any relevant discipline, including but not limited to history, political science, and law. Applicants must have a terminal degree in their field, but academic affiliation is not required. Preference will be given to applicants with a clear intention to publish. The committee assumes that grantees will undertake no other major professional activity (e.g., summer school teaching) during the period covered by the award. Recipients will be asked to file a brief report on the research undertaken during the term of the grant, to acknowledge the assistance of the Judicial Conference Bicentennial Committee in any published work, and to supply a copy of any publication resulting from the grant.

Any topic in the field of federal judicial history is eligible for consid-

eration, but the committee encourages proposals that focus on federal courts other than the Supreme Court. Topics that explore the interaction between the state and the federal judiciaries are also welcome, but projects that deal exclusively with state courts or federal administrative law processes are not eligible.

Applications must be received by Dec. 15 for grants to be awarded in May. Winners will be selected by committee members on the advice of a panel of scholars, and will be announced by Feb. 15.

Applicants should submit the following:

- a description of the overall research project, including a summary of the work completed so far (not to exceed five pages);
- a statement of research goals to be achieved during the summer of the grant (not to exceed two pages);
- a list of the research sites to be visited, with a tentative budget;
- a curriculum vitae;
- two letters of recommendation.

Applications should be sent to Judge Frank X. Altamari, U.S. Court of Appeals for the Second Circuit, Uniondale Ave. at Hempstead Turnpike, Uniondale, NY 11553. ■

PERSONNEL

CIRCUIT JUDGES

Senior Status

Edward S. Smith, Fed. Cir., June 1

Alvin B. Rubin, 5th Cir., July 1

Death

Don N. Laramore, Fed. Cir., Aug. 9

DISTRICT JUDGES

Senior Status

Walter T. McGovern, D. Wash., May 16

Murray M. Schwartz, D. Del., July 24

COURT OF CLAIMS JUDGES

Resignation

John L. Napier, July 31

Death

Philip R. Miller, July 27

BANKRUPTCY JUDGE

Death

Dennis J. Stewart, W.D. Mo., June 16

THE THIRD BRANCH

LEGISLATION

The following were among recently filed bills; unless otherwise noted, they were referred to the judiciary committee of the originating body.

- **H.R. 2868** would create an additional S.D. Fla. judgeship.
- **H.R. 2884** would replace the Legal Services Corporation with a Legal Services Administration in the Office of Justice Programs in the Department of Justice.
- **H.R. 2890** would redesignate the federal buildings and courthouse in East St. Louis, Ill., as the Melvin Price Federal Courthouse; it was referred to the Committee on Public Works and Transportation.
- **H.R. 2891** would provide additional exceptions to the immunity from attachment or execution enjoyed by property of a foreign state.
- **H.R. 2985** would provide special prisons as a sentencing option.
- **H.R. 2899** would make certain positions on the U.S. Sentencing Commission part-time, beginning Oct. 1.

- **H.R. 2918** would delay the effective date of an amendment of the Controlled Substances Act that prohibits transfers of forfeited property by the Attorney General to state and local law enforcement agencies if such transfers circumvent state law. It was referred jointly to the Committee on Energy and Commerce and the Judiciary Committee.

- **H.R. 3007** would amend the Contract Services for Drug Dependent Federal Offenders Act of 1978 to authorize additional appropriations.

- **S. 971**, the Administrative Dispute Resolution Act, would authorize and encourage federal agencies to use mediation, conciliation, arbitration, and other ADR techniques. Each agency would be required to designate a senior official as an ADR specialist, and to review contracts, grants, and other agreements to maximize ADR utilization. It amends the Administrative Procedure Act.

- **S. 1327** would provide for a federal district court to sit in Hopkinsville, Ky., where there is already a facility containing office and judicial space, a federally approved jail, a U.S. magistrate, and an FBI

office.

- **S. 1365** would amend the Omnibus Control and Safe Streets Act of 1968 to authorize grants to states for demonstration projects on innovative alternatives to incarceration of offenders convicted of nonviolent and drug-related crimes. In introducing the bill, Sen. Dan Coats (R-Ind.) said that in dealing with non-violent drug offenders, to date only two "futile approaches have been used: already overcrowded prisons and wrist-slapping." This bill funds boot camps for first-time drug offenders, places where he envisions applying a new national policy: "a reintroduction of our children to the values and virtues of self-restraint and moral discernment" and enforcement of "credible stigmas and disincentives—reinforcing habits of self-restraint through the power of the law." Included in the program are drug treatment, literacy education, and job training.

- **S. 1393** directs the Secretary of Defense to give priority to the Federal Bureau of Prisons in transferring any surplus real property or facility being closed or realigned. On the Senate floor, Sen. Harry Reid (D-Nev.) said that the Justice Department reports that 44% of current prison inmates are incarcerated for drug crimes, and they project that in 1995 some 94,000 offenders will be incarcerated, 65,000 for drug crimes. He expressed his personal frustration with Congress's failure to fund the Omnibus Anti-Drug Act passed in 1986 and his fear that future drug offenders will be punished only with a criminal record and a fine unless prison capacity to incarcerate them is created very soon. His recommendation is that the resources at hand — the military installations that will be closed — be adapted to meet criminal justice needs. The bill was referred to the Committee on Armed Services.

- **S. 1400**, the Product Liability Reform Act, would establish uniform product liability standards nationwide. It has strong bi-partisan support, and is described as giving U.S.

Firm Pledges Pro Bono Assistance to S.D.N.Y.

Chief Judge Charles L. Brieant (S.D.N.Y.) has announced that, in response to a request to the bar from the court, the firm of Paul, Weiss, Rifkind, Wharton & Garrison has agreed to represent pro bono all pro se prisoners in the court's backlog of such cases. There are some 55 cases that have passed initial scrutiny and have been determined by a judge to appear to have sufficient merit to warrant appointment of counsel but which have been without counsel for six months or more. The cases are primarily prisoners' rights claims and other fact-intensive matters.

The court had attempted without success to obtain federal funding for a special counsel pilot program after attempts to secure voluntary pro bono counsel had been fruitless. Chief Judge Brieant asked the Pro Se

Litigation Committee of the court to approach the private bar for assistance, and Paul, Weiss responded by agreeing to undertake representation of all the cases identified by the court as part of the backlog. Cameron Clark, Esq., of the firm said, "We are pleased to have been called upon to help solve a serious problem afflicting a court in which we practice and upon which we make demands every day. We expect these cases to provide our younger lawyers with significant courtroom experience and they have responded enthusiastically to our request for volunteers." Mr. Clark said that all the cases would be staffed with one associate and a supervising partner and that the firm would seek the advice and counsel of prisoners' rights experts of the Legal Aid Society. ■

NOTEWORTHY

Inadvertent jury service of challenged venireman held harmless error. The Fifth Circuit held in *U.S. v. Bilecki*, No. 88-2960, on June 23 that the inadvertent seating on a jury of a venireman the defense had struck by peremptory challenge is harmless error absent a defense showing of prejudice. The majority grounded its ruling in the Fed. R. Crim. P. 51 requirement that objections be timely, saying that defense counsel was in the best position to note the error and that the time to correct it was when the jury was seated. The court also found that because the juror was qualified to serve but had been stricken by peremptory challenge, there was no plain error under Rule 52(b).

Federal employees may sue under revised qui tam statute. Recent revisions of the qui tam statute, 31 U.S.C. § 3730, cannot be read as a blanket exclusion of government employees as initiators of such suits, a district court held in *Erickson ex rel. U.S. v. American Institute of Biological Sciences*, No. 88-1022 (E.D. Va. July 7, 1989).

A qui tam suit is one brought by an individual who sues in the name of the United States for wrongs committed against the government. As incentive, the statute provides financial rewards for citizens whose prosecutions expose fraud by government contractors.

In *Erickson*, the qui tam action was initiated by a federal employee on evidence that the contractor, a private, nonprofit organization, had submitted false claims to a federal agency. The federal employee reported the alleged contract violations and misconduct to his superiors and to the procurement office, submitting a written report of the evidence he had gathered. The agency investigated but decided not to pursue the matter.

The government elected not to enter the suit and filed an amicus brief arguing that the statute's legislative history militates against permitting government employees to maintain qui tam actions.

The court found that the statute restricts qui tam actions by federal employees in four specific circumstances. First, members of the armed forces may not bring actions against

other members. Second, actions may not be brought against members of Congress, judges, and senior members of the executive branch "if the action is based on evidence or information known to the Government when the action was brought." Third, such suits may not be "based upon allegations of transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the Government is already a party." Fourth, the qui tam plaintiff must be the "original source" of the information.

The court found that neither the statute nor the legislative history addresses government employees as a class, and that Congress meant the 1986 revisions to expand the class of qui tam plaintiffs to enhance the effort to stem fraud on the government. The court found that "government employees are included in the general universe of permissible qui tam plaintiffs unless they fall into one of the four excluded groups." In fact, the court found that the original False Claims Act for some 80 years allowed qui tam actions by government employees; not until 1943 did Congress

See NOTEWORTHY, page 7

LEGISLATION, from page 4

exporters a tool to deal with the soon-to-be-unified European Economic Community trading bloc. It would supersede state law but withhold federal court jurisdiction, enact a "clear and convincing evidence" burden of proof, offer an expedited procedure for product liability settlements, encourage use of ADR processes, and establish uniform standards for product seller liability, punitive damages, and statutes of limitations. It would also offset workers' compensation benefits received against awards, make liability for noneconomic damages several only (not joint), and create defenses based on claimant drug or alcohol use. It was referred to the Committee on Commerce, Science, and Transportation.

- S. 1403, the Senior Executives Salary Act of 1989, would grant a 25% pay increase to high-level Cabinet and departmental personnel and members of the Senior Executive Service in January 1990, in addition to the contemporaneous SES pay increase derived from their tie to pay rates for Executive Schedule Level IV. It would create a system for providing "critical position pay authority" for no more than 200 positions in the executive branch to enable the federal service to compete with public sector compensation. The rationale is that these steps will aid in overcoming the difficulties in getting and retaining senior scientific, expert, technological, and professional executives, and will remedy the erosion of those pay rates over the past 20 years. There is an additional, controversial, requirement that SES personnel be re-certified

each three years, requiring a demonstration of outstanding performance. The legislation was referred to the Committee on Governmental Affairs, where hearings have begun.

Other congressional actions:

- On July 13 the Senate Committee on Veterans Affairs ordered favorably reported S. 1243, a bill to establish a retirement and survivor benefit program for judges of the new U.S. Court of Veterans Appeals. In the House, the Committee on Veterans Affairs reported out H.R. 2727, the Court of Veterans Appeals Judges Retirement Act and H.R. 2486, on veterans' readjustments appointments.

- H.R. 801, a bill to designate the U.S. Court of Appeals Building in Atlanta as the Elbert P. Tuttle Court of Appeals Building, passed the House on July 28. ■

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PUERTO RICO STATUS, from page 3

provements and Criminal Law Committees. Judicial Conference views on the legislation were presented to the Senate committee in testimony by Judge Stephen G. Breyer (1st Cir.) and written submissions by AO Director L. Ralph Mecham. Chief Judge Levin H. Campbell (1st Cir.) and Judge Juan R. Torruella (1st Cir.) testified only on the Spanish-language option and federal court operations in the District of Puerto Rico and the First Circuit.

On Aug. 2, the Senate committee ordered reported out a substantially amended bill, which no longer contained the Spanish-language requirement but still had certain provisions affecting the federal courts.

Appointment of federal officers, including judges. The original bill would have required the President to appoint federal officers serving in Puerto Rico subject to Senate confirmation, including judges, "from a list of eligible candidates recommended by the Governor of the Commonwealth of Puerto Rico." The Judicial Conference opposed this requirement, noting its conflict with the appointment powers of the President under Article II of the Constitution. In its current form, the bill requires the President to consult with the governor of Puerto Rico but does not restrict nominees to a list prepared by the governor; the Judicial Conference opposes this provision.

Applicability of federal statutes and regulations to Puerto Rico. In its original form, S. 712 would have held any federal statute or agency regulation inapplicable in Puerto Rico unless, among other requirements, it had "proper regard for the economic, cultural, ecological, geographic, demographic, and other local conditions" or unless it was certified by Congress as being of an "overriding national interest." The Judicial Conference opposed these provisions because, as Director Mecham stated, with their broad

scope and effect on many federal statutes and regulations, "they would create considerable uncertainty about the state of the law and are likely to lead to litigation" and an increased workload of the federal courts. The provision is not in the current version of the bill.

Transfer of cases. In its original form, the bill would have transferred federal cases arising under the Puerto Rico Federal Relations Act to the District Court for the District of Columbia. The Judicial Conference, through Director Mecham, opposed the transfer provision because it would impose a heavy additional burden on the district court and Court of Appeals for the District of Columbia, which "already has an especially difficult caseload because of its heavy administrative agency docket." The Conference also noted jurisdictional problems, conflicts with accepted notions of venue, and the burden on parties forced to use a distant forum. Judge Torruella said the bill proposed "effectively depriving 3.2 million U.S. citizens and residents of Puerto Rico of an accessible forum in which to seek vindication for violations of federal laws," with a "chilling effect" resulting from the specter of increased costs, inconvenience of a distant venue, and loss of a jury of their peers. He added that the removal proposals seemed to be "forum shopping of an unprecedented nature." The current form of the bill does not contain the transfer provisions.

In its current form, the bill would also

- transfer ownership of the federal courthouse in Old San Juan to the Commonwealth of Puerto Rico unless the President finds that it is not in the national interest to do so (a provision the Judicial Conference opposes); and
- provide for a three-judge federal court, to be designated by the chief judge of the First Circuit, to adjudicate the overall validity of the outcome of the referendum on the status of Puerto Rico. ■

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JUDICIAL PAY BILL, from page 1

Article III judges. Future compensation adjustments in the bill are accomplished by linking federal judicial pay to the current mechanism for adjustment of civil service retirement annuities.

In response to questions on the progress and prospects of federal judicial pay increase legislation, on July 31, Rep. Moorhead said that the House leadership has placed a hold on all pay bills. He thinks that there can be no action until fall, at which time he believes the House leadership will schedule action on pending pay and ethics legislation as a package. ■

THE SOURCE

The publications listed below may be of interest to readers. Only those preceded by a checkmark are available from the Center. When ordering copies, please refer to the document's author and title or other description. Requests should be in writing, accompanied by a self-addressed mailing label, preferably franked (but do not send an envelope), and addressed to Federal Judicial Center, 1520 H St., N.W., Washington, DC 20005.

Bakke, Holly, & Maureen Solomon, *Case Differentiation: An Approach to Individualized Case Management*, 73 *Judicature* 17 (June-July 1989).

Bartels, John R., *United States District Courts En Banc—Resolving the Ambiguities*, 73 *Judicature* 40 (June-July, 1989).

Bilecki, Dennis, *A More Efficient Method of Jury Selection for Lengthy Trials*, 73 *Judicature* 43 (June-July 1989).

Bodenheimer, Edgar, *Cardozo's*

Views on Law and Adjudication Revisited, 22 *U.C. Davis Law Review* 1095 (1989).

Bordens, Kenneth S., & Irwin A. Horowitz, *Mass Tort Civil Litigation: The Impact of Procedural Changes on Jury Decisions*, 73 *Judicature* 22 (June-July, 1989).

Brown, Paul W., *Morrissey Revisited: The Probation and Parole Officer as Hearing Officer*, 53 *Federal Probation* 13 (June 1989).

Coffin, Frank M., *Grace Under Pressure: A Call for Judicial Self-Help*, 50 *Ohio State Law Journal* 399 (1989).

Esposito, Joseph P., *Center Provides Continuing Judicial Education*, 14 *Litigation News* 4 (June 1989) (on the Federal Judicial Center).

Feinberg, Wilfred, *Is Diversity Jurisdiction an Idea Whose Time Has Passed?*, 61 *New York State Bar Journal* 14 (July 1989).

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Hall Law Review 188 (1989).

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NOTEWORTHY, from page 5

amend the law to exclude actions based on evidence already in the possession of the United States, effectively if not explicitly excluding government employees as plaintiffs. The 1986 revisions abolished the exclusion of actions based on evidence in government possession, creating instead the specific exclusions and requiring the plaintiff to be the original source of the evidence.

Identification of armed defendants sought. Federal Bureau of Prisons Director J. Michael Quinlan wants information identifying offenders whose history shows possession or use of firearms during commission of crimes. That information will be included in pre- and post-sentence investigation reports. The Bureau is considering increased review procedures for such offenders in designating the type of facility for service of sentence and will severely restrict furloughs and other community activities for such offenders.

Judges asked to alert their clerks to career opportunities in Office of Legislative Counsel. The House of Representatives Office of Legislative Counsel, created in 1919, provides drafting services for House committees and is involved in drafting virtually all House legislation, regardless of the proponents' political parties. In urging judges to alert their clerks to opportunities in this office, David Meade, the recently appointed legislative counsel of the House of Repre-

sentatives, said the presence of a number of former judicial clerks in this office assures a greater sensitivity to courts' problems in interpreting legislation.

The office is like a law firm in many respects. Its new lawyers begin as associates, at a starting salary of \$45,000, and after two years they are considered to be associate counsel, rather like partners in a law firm. They work in substantive issue areas and acquire their own clientele. ■

RULES REVISIONS, from page 1

held in San Francisco on Jan. 18, 1990, in Washington, D.C., on Feb. 1, 1990, and in Dallas on Feb. 15, 1990. Persons and organizations wishing to submit comments or to speak at the hearings should write to James E. Macklin, Jr., secretary to the Standing Committee. The deadline for written comments is Feb. 20, 1990. Those

wishing to appear at the public hearings must notify the secretary at least 14 days before the hearing at which they wish to be heard.

Public hearings on the proposed civil rules amendments will be scheduled for early 1990, and notice of times and places will be announced shortly. ■

THE THIRD BRANCH

Positions Available

Deputy Clerk (Information), Fed. Cir. Responsible for responding to inquiries from many sources, including media, attorneys, and litigants. Answers procedural questions, receives and responds to over-the-counter filings, provides requested copies of opinions and case materials, provides information to attorneys on admission procedures, and performs other duties as assigned. Requires clerical or administrative experience relevant to duties, such as might be gained in a law office or a judicial system. Education above high school level may substitute for some experience. Law students invited to apply. Two or more persons may share position. Salary to SJP 6, \$17,542, commensurate with education and experience. Submit SF-171 and résumé to Francis X. Gindhart, Clerk, U.S. Court of Appeals for the Federal Circuit, 717 Madison Place, N.W., Washington, D.C. 20439.

Clerk, Bankr. Court, S.D. Ohio. Responsible for the clerk's office administrative activities of the bankruptcy court, consisting of seven bankruptcy judges and a staff of 74, at its locations in Cincinnati, Columbus, and Dayton. Knowledge of and experience in using automated systems desirable. Requires 10 years' progressively responsible administrative experience in public service or business, at least three in position of substantial management responsibility. May substitute undergraduate and graduate degrees in public, business, or judicial administration, and active practice of law in public or private sector for some experience. Open until filled. Salary range \$57,158-\$67,038 (JSP 15/16). Applicants should submit SF-171, Personnel Qualification Statement, and additional information at applicant's discretion to U.S. Bankruptcy Judge William A. Clark, 8th Floor, 200 West Second

St., Dayton, OH 45402; application and envelope should be marked "Clerk's Position."

Assistant Federal Public Defender, S.D.W. Va. Membership in West Virginia State Bar required, either by next examination or reciprocity. Criminal trial experience and excellent writing skills desirable. Federal salary and benefits; range of compensation depends on qualifications and experience. Position precludes private practice. To apply, send résumé, references, and two writing samples to Ira R. Kirkendoll, Federal Public Defender, 2307 U.S. Courthouse, 500 Quarrier St., Charleston, WV 25301.

Chief Deputy Bankruptcy Clerk, D. Colo. Manages administrative functions of bankruptcy court under supervision of the bankruptcy judges. Requires bachelor's degree, minimum of six years' progressively responsible administrative experience in public or private sector, including minimum of three years in a position of substantial management responsibility. Advanced degree in management or judicial administration, or law degree desirable. Salary \$34,580-\$57,158 (JSP 12/15). Opens Aug. 15; closes Sept. 15 or when filled. To apply, send résumé to Personnel, Office of the Clerk, U.S. Bankruptcy Court, 1845 Sherman St., Room 400, Denver, CO 80203-1190.

Clerk-designee, D. Or. Prior to retirement of clerk, clerk-designee will be responsible for day-to-day operation of clerk's office. Will manage all administrative activities, including personnel matters, budget, reports, data processing, procurement, finance, jury, docketing, all records functions of the office, and recommending court policies and procedure to the judges. Requires minimum of 10 years' progressively

responsible administrative experience, at least three years in a position of substantial management responsibility. A bachelor's or graduate degree in public, business, or judicial administration, a law degree, or experience in the practice of law may be substituted for some experience. Open until filled. Salary range \$41,121-\$57,158 (JSP 13/15), depending upon qualifications. Submit applications to the Clerk, U.S. District Court, 503 Gus J. Solomon U.S. Courthouse, 620 SW Main St., Portland, OR 97205. For information call (503) 326-6388 or FTS 423-6388.

Operations Manager (Administrative Support), Clerk's Office, S.D.N.Y. Oversees the orderly functioning of the following operating units within the clerk's office: finance, records and files, supply and reproduction, and docketing services (including orders and appeals, judgments, and magistrates unit). Coordinates the work of various sections and resolves problems that arise within the clerk's office. Advises clerk and chief deputy clerk regarding office policies and procedures, participates in budget preparation. Encourages good relations between the clerk's office and the bar, other agencies, and the public. Requires U.S. citizenship, three years' general experience and three years' specialized experience in progressively responsible administrative, technical/professional role, and strong writing skills. Graduate education in management or the law may be substituted for some experience. New position. Salary range to JSP 13 (\$41,121-\$53,460). Closes Sept. 15. Submit résumé, SF-171, and writing sample to Personnel Office, U.S. District Court, S.D.N.Y., U.S. Courthouse, Room 21, 40 Centre St., New York, NY 1007; state position title on envelope and application materials.

EQUAL OPPORTUNITY EMPLOYERS

 BULLETIN OF THE FEDERAL COURTS
THE THIRD BRANCH

Vol. 21 No. 8 August 1989

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THE THIRD BRANCH

Seven Newly Appointed Bankruptcy Judges Meet for Orientation Program at FJC

Seven newly appointed bankruptcy judges and nominees met at the Center in Washington, D.C., Aug. 14-17 for orientation. The program was moderated by Bankruptcy Judges Robert E. Ginsberg (N.D. Ill.), chairman of the FJC Bankruptcy Education Committee, and Paul A. Mannes (D. Md.), and used for the first time a set of revised videotapes tailored for such programs by the

Center's Special Educational Services Division.

Bankruptcy judges' orientation programs feature such topics as the services available from the AO and the FJC, the U.S. Trustee program, calendar management, the art of judging, the structure and jurisdiction of the bankruptcy courts, and issues within the substantive and procedural purview of bankruptcy courts. ■

Judicial Branch Obtains Funds in Supplemental Appropriation

On June 30, Congress passed and President Bush signed Pub. L. No. 101-45, containing FY89 supplemental appropriations. Title I, Dire Emergency Supplementals and Transfers, included \$4 million for "fees of jurors and commissioners to strengthen drug law enforcement at the local level." An additional \$2.3 million was appropriated for the Judicial Officers' Retirement Fund.

The law also authorizes transfer of unused obligation balances available under Defender Services to other judiciary uses upon compliance with reprogramming provisions. Congress has approved such a reprogramming request, reflecting the supplemental requests submitted earlier in the year, to transfer \$43,855,000. The transferred funds are divided as follows:

- Courts of appeals, district courts, and other judicial services—salaries and expenses: \$35,550,000; fees of jurors and commissioners: \$4,865,000; court security: \$1,000,000.
- Administrative Office of the U.S. Courts—salaries and expenses: \$2,000,000.
- Federal Judicial Center—salaries and expenses: \$440,000.

See APPROPRIATIONS, page 2



Pictured left to right at the August 14-17 orientation for newly appointed bankruptcy judges and nominees at the FJC: (back row) Bankruptcy Judges C. Timothy Corcoran (M.D. Fla.), David T. Stosberg (W.D. Ky.), Frank R. Monroe (Houston), Donald R. Sharp (Alexandria, La.), Ronald B. King (W.D. Tex.); (front row) Dorothy D.T. Eisenberg (E.D.N.Y.) and Robert E. Ginsberg (N.D. Ill.), who served as moderator. Not pictured: J. Vincent Aug (S.D. Ohio) and co-moderator Paul A. Mannes (D. Md.).

Federal Judicial Center Foundation Board Named

All seven members of the board of the Federal Judicial Center Foundation have now been named.

In January, the Chief Justice appointed the Hon. Philip W. Tone, a former judge of the Court of Appeals for the Seventh Circuit, to a five-year term as board chairman. He also appointed Robert S. Banks, Esq., and Erwin N. Griswold, Esq., to two-year terms.

In July, E. William Crotty, Esq., and Richard M. Rosenbaum, Esq., were appointed by the President Pro Tempore of the Senate for five-year and three-year terms, respectively.

In August, board members Benjamin L. Zelenko, Esq., and Laurie L. Michel, Esq., were appointed by the

Speaker of the House for five-year and three-year terms, respectively.

The Federal Judicial Center Foundation was established by § 301 of the Judicial Improvements and Access to Justice Act of 1988, Pub. L. No. 100-702. The Foundation is a private, non-profit corporation of the District of Columbia. Members of the Foundation board serve without remuneration and may not be active or senior federal or state judges. The Foundation has the sole authority to accept gifts to support the work of the Center. It may not accept conditional gifts, except for gifts designated to support specific projects that have previously been approved by the Center's Board. ■

Inside . . .

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Judicial Conference co-sponsors 200th anniversary observance of Judiciary Act of 17897

Poster Exhibit to Be Distributed for Bicentennial of the Constitution

The Judicial Conference Committee on the Bicentennial of the Constitution is supporting distribution of a poster exhibit entitled *And Justice for All! In September, the National Archives' Regional Archives System will be sending this exhibit to the principal places of holding court within the various districts so it can be dis-*

played for the bicentennial of the Judiciary Act of 1789.

The 12 full-color posters that make up the exhibit, each 24 x 36 inches, discuss the Judiciary Act of 1789, the federal court system, and specific cases chosen to accompany pictures of related artifacts and documents from the holdings of the Regional Archives.

PERSONNEL

CIRCUIT JUDGES

Nomination

Conrad K. Cyr, 1st Cir., Aug. 4

Senior Status

Spottswood W. Robinson III, D.C. Cir., Aug. 31

DISTRICT JUDGES

Nominations

Rebecca Beach Smith, E.D. Va., Aug. 4

Marvin J. Garbis, D. Md., Aug. 4

Death

Gerald J. Weber, W.D. Pa., Aug. 28

BANKRUPTCY JUDGE

Appointment

C. Timothy Corcoran III, M.D. Fla., Aug. 14

CALENDAR

- Sept. 6-8 Tenth Circuit Judicial Conference
- Sept. 6-8 Workshop for Procurement Managers
- Sept. 7-9 Second Circuit Judicial Conference
- Sept. 10-12 Third Circuit Judicial Conference
- Sept. 10-12 Workshop for Bankruptcy Administrator Program Personnel
- Sept. 11-14 Video Orientation Seminar for New Magistrates
- Sept. 13-15 Workshop for Financial Deputies of the U.S. Bankruptcy Courts
- Sept. 18 Federal Courts Study Committee
- Sept. 18-20 Seminar for Chief Bankruptcy Judges
- Sept. 20-21 Judicial Conference of the United States
- Sept. 21-22 The Judiciary Act of 1789: A Bicentennial Conference
- Sept. 25-28 Workshop for Chief Deputies of the U.S. Bankruptcy Courts
- Sept. 27-29 Workshop for Judges of the Eleventh Circuit
- Oct. 12-13 Conference for Metropolitan Chief Judges
- Oct. 16-18 Workshop for Judges of the Seventh Circuit
- Oct. 23-27 Case Western Reserve Law School Program
- Oct. 30 Federal Courts Study Committee

APPROPRIATIONS, from page 1

Courts of appeals, district courts, and other judicial services. Of the \$35,550,000 for courts' salaries and expenses, \$6 million will pay rental charges assessed by the General Services Administration, and \$6.5 million is needed to fund essential alteration projects on rented properties. As a result of the increasing drug-related caseload, \$1 million has been reserved for drug aftercare programs and \$200,000 for pretrial services contracts. Data processing and office automation costs required \$3.4 million for essential replacements and upgrades, and an additional \$2.5 million to enable the courts to maintain current staffing levels. Severe cutbacks have been made this fiscal year for travel, printing, supplies, equipment maintenance, purchase of equipment and furniture, and law-book acquisition, and the rising drug

caseload indicates shortfalls in the areas of contract interpreters and court reporting services. Part of the funds have been used to restore allocations in these areas to acceptable levels and provide for emergency requirements (approximately \$8.5 million). The remaining \$7.5 million provided for some critical needs, such as restoring some funds to the drastically curtailed court automation programs and providing for higher staffing levels in clerks offices and in probation and pretrial services needed to handle the increased workload.

The \$4,865,000 transferred to cover fees of jurors and commissioners was a response to recent data showing that \$8,865,000 was required to meet project obligations and deal with the impact of the sentencing guidelines and the higher drug caseload, with its attendant demands for jurors. The \$4 million balance of that amount was part of the emergency supplemental.

The court security appropriation restored funding for scheduled basic security system installations at 134 court locations.

Administrative Office of the U.S. Courts. The AO supplemental will be used to administer new sentencing guidelines implementation in the courts and to purchase office automation equipment.

Federal Judicial Center. The \$440,000 for the FJC will fund training required to implement guideline sentencing. ■

BULLETIN OF THE FEDERAL COURTS

THE THIRD BRANCH

Published monthly by the Administrative Office of the U.S. Courts and the Federal Judicial Center. Inquiries or changes of address should be directed to 1520 H St., N.W., Washington, DC 20005.

Co-editors

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center. Peter G. McCabe, Assistant Director, Program Management, Administrative Office of the U.S. Courts.

LEGISLATION

Congress adjourned in mid-August to return Sept. 6. Before they left, members finalized some legislative initiatives and continued to work on others.

- **Pub. L. No. 101-73**, formerly H.R. 1278, the thrift industry restructuring and regulatory package, was signed by President Bush on Aug. 9. The enforcement component contains supplemental authorizations for both the judicial branch (\$10 million annually for FY90-92) and the Department of Justice (\$65 million annually for FY90-92, plus \$10 million annually for civil enforcement). Civil penalties for violations by banks, thrifts, credit unions, and individuals associated with them have been greatly enhanced, in some instances to a maximum of the amount misapplied or \$5 million daily, whichever is greater. Criminal penalties for individuals now have maximums of \$1 million fines, 20 years in prison, or both. The statute of limitations for bank fraud has been lengthened to 10 years; grand jury information disclosure provisions have been amended. RICO now applies to bank fraud, permitting property seizures, federal and private suits for treble damages, and relaxing some statutes of limitations. Disclosure of grand jury information concerning banking law violations is permitted for use in investigating and litigating bank fraud cases to financial institution regulatory agency personnel on showing of "substantial need" and pursuant to a court order; and to Justice Department civil attorneys. The Act requires the Department of Justice to establish a special fraud prosecution office in the Northern District of Texas through 1992 to deal with moribund savings and loans.

- On Aug. 11, President Bush signed the government health benefits legislation, H.R. 2705/S. 1276, now **Pub. L. No. 101-76**. The law concerns the method for computing

government contributions to federal employee premiums, which will rise an average of 13.3% in January.

- The Subcommittee on Crime of the House Committee on the Judiciary held a hearing Aug. 1 on H.R. 2374, Correctional Alternatives Act of 1989, and received testimony from Richard Miklic, Deputy Chief U.S. Probation Officer (S.D. Fla.), Rep. Charles B. Rangel (D-N.Y.), representatives of the Department of Justice, the New Jersey corrections department, and the public.

- **Federal judicial vacancies:** 13 in the courts of appeals, 36 in the district courts, and one on the Court of International Trade, a total of 50 federal judicial vacancies. To date during the 101st Congress, four nominations have been confirmed and three are pending before the Senate Judiciary Committee.

Selected newly filed bills are listed below; unless otherwise noted, they were referred to the judiciary committee of the originating body.

- H.R. 3157 would amend Title VII of the Civil Rights Act of 1964 with respect to establishing and rebutting a prima facie violation of the Act; it was referred to the Committee on Education and Labor.

- H.R. 3163 would establish a new judicial district in California, the western district, to consist of Riverside, San Bernardino, and Orange counties. Rep. William E. Dannemeyer (D-Cal.) said that, according to the AO, as currently constituted the central district is ranked among the top four districts in the country in every meaningful caseload category, and it has the nation's "single heaviest caseload" in such categories as civil cases commenced, pending, and terminated. He also noted that, while the average federal court district contains 2.4 million people, the central district serves over 13 million. The new western district would serve 4.2 million and would be seated in Santa Ana. The reduced central district would remain in Los Angeles. ■

Judge Participation Sought in Juror Study

The American Judicature Society is asking for the assistance of judges nationwide in a study of procedures to improve the effectiveness of juries. The Society has received a grant from the State Justice Institute to examine the consequences of allowing jurors to take notes during trial for their own use and to submit questions to be asked of witnesses.

Jurors have problems with understanding and attention in certain types of cases, such as those involving complex issues and fact patterns or sophisticated technology, and in extremely lengthy trials. It has been suggested that permitting jurors to participate more actively might encourage their focus on the proceedings and enhance their understanding of evidence. The usefulness of juror note taking and questioning is being debated. A study was conducted in Wisconsin, and participating judges reported no negative impact upon their cases. The Society will now conduct a similar study nationwide.

Participating judges will allow juror note taking during all phases of trial. The notes will be on pads provided by bailiffs and will be collected by bailiffs during recesses. Jurors will be permitted to direct written questions to each witness after direct and cross-examination is complete. (The judge will examine these questions. If one is objectionable, it will not be asked, and the jury will be instructed that no adverse inference is to be drawn from the ruling.) Participating judges will also complete a questionnaire after each trial during the experiment.

The study will be conducted through fall 1989. The researchers in charge are Drs. Steven Penrod and Larry Heuer, whose pilot investigation in Wisconsin was reported in *Increasing Jurors' Participation in Trials: A Field Experiment with Jury Notetaking and Question Asking*, 12 *Law & Human Behavior* 231 (Sept. 1988). For further information on the experiment, call Dr. Heuer at (312) 491-5241.

THE THIRD BRANCH

ABA Annual Meeting, House of Delegates Actions Reported

Several actions taken at the 1989 annual meeting of the American Bar Association, held in August, are of interest to the federal judiciary.

Mass torts. Dissatisfied with the existing system of tort law in both state and federal courts, in 1987 the ABA created the Commission on Mass Torts, with 12 members who are state and federal judges, law professors, and attorneys experienced in mass tort litigation, class action cases, and product liability cases. After two years of study, the commission submitted a 117-page report (including a separate dissenting statement by one commissioner) to the House of Delegates for approval.

Part of the report is a bill proposed for submission to Congress, calling for legislation that would create a federal judicial panel to handle cases that are defined as "a single incident disaster," such as those resulting from airplane crashes or the Agent Orange and asbestos cases. The bill would create a panel of seven circuit and district judges, to be designated by the Chief Justice.

Whenever at least 100 civil tort actions, each involving a claim in excess of \$50,000, are pending in federal or state courts, the panel would be authorized to declare them mass tort litigation. The panel could then transfer some or all of those cases to any federal district court for coordinated or consolidated proceedings. The report cautions that the panel, in considering these transfers to one district, should give consideration to 10 listed matters, including the number of state or federal courts where tort actions are pending, the extent of common issues, the status of cases pending in state or federal courts, the desires of the parties, how and to

what extent the facts have been developed through discovery or other means, the interests of the state and federal judicial systems in avoiding duplicative litigation, and the availability of a single state forum to handle certain cases.

The federal court selected by the panel to handle the consolidated cases would decide which state's law should be followed. Punitive damages claims would be consolidated, and only one judgment could be entered for or against a defendant. Any damages would be apportioned among the plaintiffs.

After debate and objections to portions of the report, a motion was carried to defer action on the matter. The earliest this could come about would be at the next meeting of the House of Delegates in February of 1990.

The National Conference of Federal Trial Judges voted in favor of the report.

Federal security standards. The only government-wide standard on security clearances for federal employees is contained in an implementing section of 5 U.S.C. §§ 7531, 7532. Having no further direction than this, most government agencies have set their own standards for investigations, adjudications, and appeals. In January 1989, a draft executive order covering these matters (but not applying to the National Security Administration or the CIA) was circulated to some agencies. Members of Congress have expressed concern about the draft, and six members of the House of Representatives sent a joint letter to ask President Bush not to sign an executive order that adopts the standards contained in the present draft. The ABA House of Delegates also disapproves the draft order and approved a resolution urging that "Congress enact legislation providing uniform general standards of due process and equal treatment for the security clearance process."

ABA Seeks Greater Judicial and Public-Sector Attorney Participation

The ABA Special Advisory Committee on Programs for Public Service Lawyers and a counterpart committee of the Litigation Section are conducting surveys to determine how to increase ABA participation by government and public-sector attorneys, who have historically had a low rate of involvement in the Association.

The surveys also seek to discover to what extent government agencies encourage or discourage outside professional activities, including allowing administrative leave.

Preliminary results from such groups as the National Association of Attorneys General and the U.S. Attorneys' Council suggest that cost is a factor. Under consideration are a separate membership or fee structure for the target groups, and whether ABA programs are of interest to public-sector attorneys.

Comments and suggestions about ways to expand public-sector attorney participation in the ABA or the Litigation Section can be addressed to George Beall, Esq., 111 South Calvert St., Baltimore, MD 21202.

Legislation affecting senior judges. The ABA Board of Governors unanimously adopted a resolution opposing H.R. 1930. That bill allows all senior judges to receive cost-of-living (COLA) raises whether or not they perform any judicial work, but precludes them from receiving non-COLA increases unless certain minimum requirements are met. The bill sets up a specific certification process, requiring, among other things, that a justice or a judge has met, during the preceding calendar year, at least one of the following criteria: (1) carried a caseload involving courtroom work equal to or greater than the amount of work "which an average judge in active service would perform in three months"; or (2) performed substantial judicial duties not involving court-

Reminder

The amendment of Fed. R. Bankr. P. 9006(a) became effective Aug. 1.

room work (settlements, opinion writing, etc.) "which an average judge in active service would perform in three months"; or (3) performed a combination of the types of work set forth in the first two requirements that in the aggregate equals at least three months; or (4) performed substantial administrative duties directly related to the operation of the courts equal to the full-time work of an employee of the judicial branch. Once a senior judge fails to be certified, he or she can never again qualify for non-COLA salary increases.

The resolution of the ABA Board of Governors, submitted by the Judicial Administration Division at the request of the National Conference of Federal Trial Judges, reads in part, "While a policy [regarding the senior judges] is not unreasonable, legislation such as H.R. 1930 is unwise, counterproductive, and contrary to the spirit of judicial independence and separation of powers."

Ethics. H.R. 2337, an ethics act pending in the House of Representatives, would apply to all three branches of the federal government, with criminal penalties for violations. The House of Delegates approved a resolution to oppose H.R. 2337.

In March 1989, Chief Judge Charles Clark, as chairman of the Executive Committee of the Judicial Conference of the United States, sent a letter to President Bush expressing Conference opposition to the act, stating that "inclusion of the federal judiciary is unnecessary as there are no significant problems with the current government standards for the federal judiciary."

In 1973, the Judicial Conference reviewed and adopted the ABA Code of Judicial Conduct, with a few amendments that recognized differences between state and federal courts. The resulting Code of Judicial Conduct for U.S. Courts applies to all Article III judges and all full-time bankruptcy judges and magistrates.

Alternative dispute resolution. The House of Delegates approved a resolution supporting the continued

Revised Edition of Law Clerk Handbook Published by FJC

A new edition of the Law Clerk Handbook, prepared by Judge Alvin B. Rubin (5th Cir.) and Laura B. Bartell, is now available to federal judicial personnel from the FJC.

The handbook is a near total revision of the 1977 handbook, which Judge Rubin also coauthored. It is in paperback format rather than loose-leaf, in response to comments from users of the first edition, and the eight chapters in the 1977 version

have been reduced to five. One chapter is devoted to legal research and writing. The handbook is designed for clerks to appellate and district judges, bankruptcy judges and magistrates.

Copies of the book are being sent to all circuit and district court judges, bankruptcy judges, judges of the Claims Court and Court of International Trade, full-time magistrates, and clerks of court.

use of and experimentation with alternative dispute resolution (ADR) techniques both before and after a case is filed.

The Pound Conference of 1976, cosponsored by the ABA and the Judicial Conference of the United States, put special emphasis on alternatives to litigation and was the beginning of a drive to seek relief from heavy caseloads by using such alternatives. At this year's annual meeting, Harvard Law Professor Frank Sander, chairman of the ABA's committee on ADR and a participant in the Pound Conference, reported many significant developments in this area. For example, a survey made

in 1988 reveals that 60% of law schools are teaching ADR; bar associations at all levels have committees and programs on ADR; more than 200 court-annexed programs have been implemented in state and federal courts; and 20 state legislatures have enacted laws encouraging or requiring programs on ADR.

The ABA resolution endorsed the continued use of ADR, including techniques such as early neutral evaluation, mediation, arbitration, summary jury trials, and mini-trials.

For the full text of resolutions or for further information on ABA actions, call or write Alice O'Donnell at the FJC (tel. FTS/202 633-6359). ■

Use of Rule 12(b)(6) Focus of New Study

Use of Rule 12(b)(6) in Two Federal District Courts, by Thomas Willging of the Research Division, is now available from the FJC.

This 20-page paper is a report on a study the Center undertook, at the request of the Advisory Committee on Civil Rules of the Judicial Conference of the United States and its reporter, Professor Paul Carrington, to examine the possible effects of abrogating Fed. R. Civ. P. 12(b)(6), which allows the defense of "failure [of a complaint] to state a claim upon which relief can be granted." Mr. Willging looked at three issues with which the committee was concerned:

(1) Has Rule 12(b)(6) practice increased in recent years? The study revealed that such practice has di-

minished between 1975 and 1988.

(2) Do Rule 12(b)(6) motions fail to lead to case dispositions? In the study sample of case terminations in 1988, the ruling on the Rule 12(b)(6) motion led to termination in 3% of the cases.

(3) Has Rule 11 had an effect on Rule 12(b)(6) cases? The study found little evidence of this.

After considering the data in Mr. Willging's report at its April 1989 meeting, the Advisory Committee decided not to change Rule 12(b)(6).

To receive a copy of the report, please write to Information Services, 1520 H St., N.W., Washington, DC 20005, enclosing a self-addressed mailing label, preferably franked, but do not send an envelope. The report weighs 4 oz.

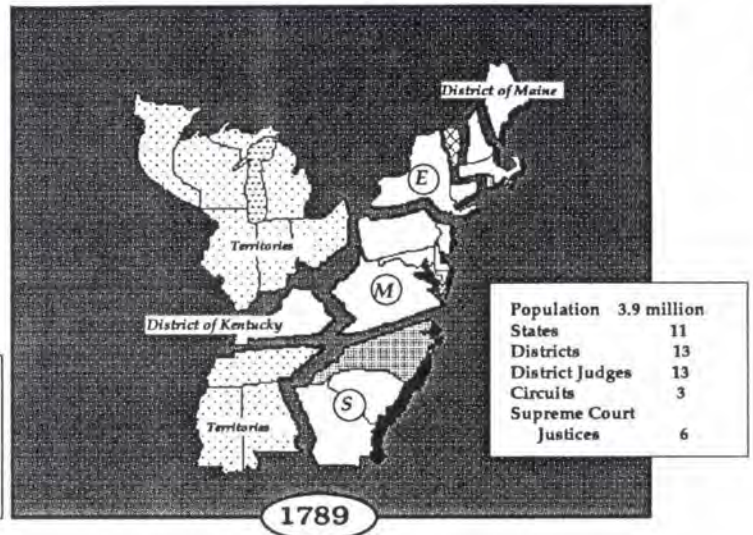
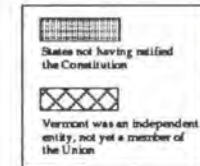
THE THIRD BRANCH

Creating the Federal Judicial System Available for Observance of Bicentennial of Judiciary Act of 1789

To commemorate the bicentennial year of the First Judiciary Act, signed September 24, 1789, the Federal Judicial Center has published *Creating the Federal Judicial System* by Russell R. Wheeler and Cynthia Harrison.

This 33-page historical survey is illustrated by 12 maps that describe the growth and evolution of the districts and circuits. The text explains the provisions of the 1789 statute, the compromises it embodies, and the conditions and debates that led to the passage of the Evarts Act in 1891, which established the three-tiered system that characterizes federal court structure today. The authors note, however, that the federal court system still carries the stamp of its original inventors: "a separate set of courts for the national government, deciding matters of national interest, and arranged geographically according to state boundaries."

Copies of *Creating the Federal Judicial System* are being mailed to all judges of appellate, district, and bankruptcy courts, magistrates, and clerks of courts. Additional copies may be requested by writing to Information Services, Federal Judicial Center, 1520 H St., N.W., Washington, DC 20005. Please enclose a self-

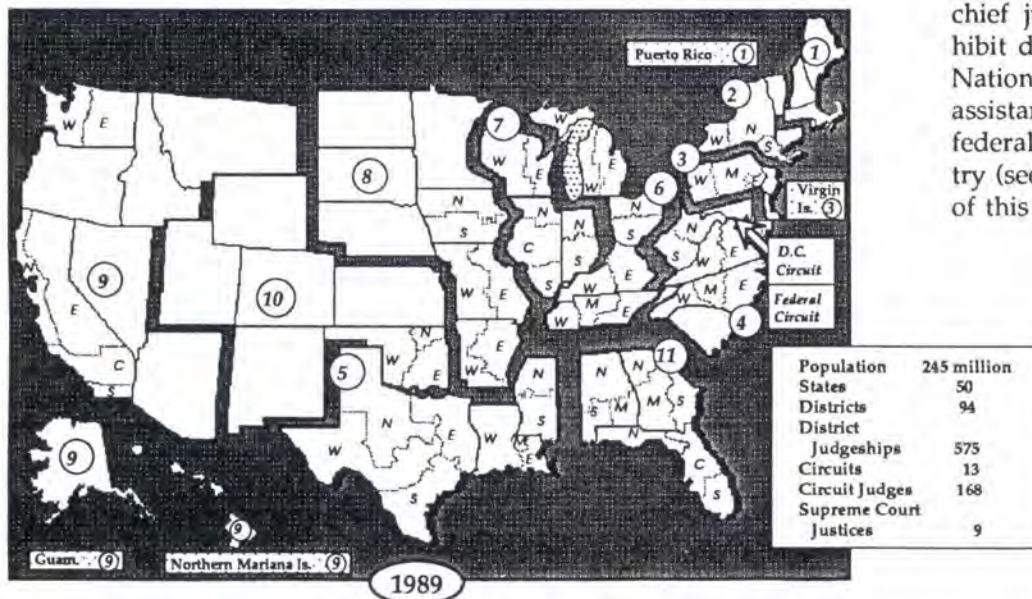


The first map in *Creating the Federal Judicial System* shows the judicial system in 1789 after the First Judiciary Act, which created 13 districts and placed 11 of them in 3 circuits: the Eastern, Middle, and Southern. Each district had a district court, a trial court with a single district judge and primarily admiralty jurisdiction. Each circuit had a circuit court, which met in each district of the circuit and was composed of the district judge and two Supreme Court justices. The circuit courts exercised primarily diversity and criminal jurisdiction and heard appeals from the district courts in some cases.

addressed mailing label, preferably franked, but do not send an envelope. The publication weighs 5 oz.

The FJC publication complements the brochure entitled *The Bicentennial of the Federal Judicial System*, which was prepared for the bicentennial observance through the efforts of the Committee on the Bicentennial of the

United States Constitution of the Judicial Conference of the United States, and which is suitable for distribution to community and school groups. These brochures are being delivered to courthouses around the country by the Administrative Office of the U.S. Courts. Judge Damon Keith, chairman of the Bicentennial Committee, has also written to each chief judge about the 12-poster exhibit designed and produced by the National Archives with Committee assistance, which will be sent to most federal courthouses across the country (see the announcement on page 2 of this issue).



The final map shows today's federal judicial system: one jurisdictional circuit (the Federal Circuit), 12 geographical circuits, and 94 districts serving a population of 245 million.

THE SOURCE

The publications listed below may be of interest to readers. Only those preceded by a checkmark are available from the Center. When ordering copies, please refer to the document's author and title or other description. Requests should be in writing, accompanied by a self-addressed mailing label, preferably franked (but do not send an envelope), and addressed to Federal Judicial Center, 1520 H St., N.W., Washington, DC 20005.

Barrett, Edward L. Jr., *Why Does Our Constitution Survive?—A Long-term View of the Supreme Court*, 60 *University of Colorado Law Review* 299 (1989).

Cole, George F., *Innovations in Collecting and Enforcing Fines*, 215 *NIJ Reports* 2 (July/August 1989).

Davis, Howard A., *Slowing the Flow of Colorado River: The Doctrine of Abstention to Promote Judicial Administration*, 12 *Illinois Bar Journal* 649 (1989).

Gwyn, William B., *The Indeterminacy of the Separation of Powers and the Federal Courts*, 57 *George Washington Law Review* 474 (1989).

Higginbotham, Patrick E., *Stays of Execution: A Search for Predictability and Rationality*, 20 *Texas Tech Law Review* vii (1989).

Lawrence, Glenn Robert, *New Programs for the Administrative Judiciary in Education, Immigration & Housing Discrimination Law*, 36 *Federal Bar News & Journal* 314 (1989).

Marcus, Richard L., *Completing Equity's Conquest? Reflections on the Future of Trial Under the Federal Rules of Civil Procedure*, 50 *University of Pittsburgh Law Review* 725 (1989).

McMunigal, Kevin C., *Disclosure and Accuracy in the Guilty Plea Process*, 40 *Hastings Law Journal* 957 (1989).

Quint, Peter E., *Reflections on the Separation of Powers and Judicial Review at the End of the Reagan Era*, 57 *George Washington Law Review* 427 (1989).

Starr, Kenneth W., "Returning to Learned Hand's Farm," Remarks Before the Institute of Judicial Administration, American Bar Association, Honolulu, Hawaii, Aug. 5, 1989.

Starr, Kenneth W., "The Supreme

Second Circuit Finds That Use of CAMP Increases Appeals Settlements

Chief Judge James L. Oakes (2d Cir.) announced Aug. 11 that the Civil Appeals Management Plan (CAMP) has brought about a new high rate of amicably resolved appeals. For the statistical year ending June 30, two senior lawyers on the court's staff achieved an 11% increase in cases terminated by settlement or similar means. These settled cases represent approximately 20% of the circuit's total workload.

CAMP was begun in 1973, anticipating the current alternative dispute resolution movement. Under

CAMP, a staff attorney is assigned each appeal soon after it is filed. The attorney brings the parties together to define the issues, sets a schedule for pursuing the appeal, and explores possibilities for settlement.

Chief Judge Oakes says that the program settles more cases than two judges could manage in a year, that direct costs to the judicial branch are less than one third those of running two judges' chambers, and that litigants' costs are significantly reduced. ■

Judiciary Act Bicentennial Conference to be Co-Sponsored by Judicial Conference, Supreme Court Historical Society, Georgetown University Law Center

The Bicentennial Committee of the Judicial Conference of the United States, the Supreme Court Historical Society, and Georgetown University will jointly sponsor the Bicentennial Conference on the Judiciary Act of 1789. The conference will be held Sept. 21 to 22 at Georgetown University Law Center, with special sessions at the Supreme Court and the Senate. Seating will be limited for the Court and Senate sessions.

The conference will focus on the Judiciary Act of 1789 and on the 200-year history and present status of the

Constitution and the federal courts. The program will feature at least three justices of the Supreme Court (including Chief Justice Rehnquist), judges, lawyers, scholars, and members of Congress. The speakers will examine the origins of the federal judiciary and how the federal courts have over the years interpreted the principles of the Constitution.

There is no fee for conference attendance, but reservations are necessary. For information on registering to attend, call (202) 687-1789. ■

Court, the Constitution, and the Rule of Law," Remarks Before the American Judicature Society, Honolulu, Hawaii, Aug. 5, 1989.

Stewart, Eugene L., *Procedural Issues and Remedies in the Administration and Judicial Resolution of Customs and International Trade Cases: The Role of Sanctions, Contempt, Assessment of Costs, and Extraordinary Legal Remedies in Reforming Practice Before the Court of International Trade*, 3 *Florida International Law Journal* 341 (1988).

Symposium: The Future of Federal Litigation, 50 *University of Pittsburgh Law Review* 701 (1989).

The United States Courts of Appeals: Reexamining Structure and Process After a Century of Growth, Report of the Standing Committee on Federal Judicial Improvements (American Bar Association 1989).

Walker, John M. Jr., *Decisionmaking in Government: A Personal Perspective*, 36 *Federal Bar News & Journal* 333 (1989). ■

OCT 13 1989

Positions Available

Bankr. Judge, S.D. Tex. Requires impartiality, experience, ability, and character of caliber to serve in federal judiciary. Requires admission to practice and bar membership in good standing in at least one state. Selection process will be confidential and competitive. Appointment for 14-year term to be served at Houston. Closing date Oct. 10. For application, write Mrs. Lydia G. Comberrel, Circuit Executive, U.S. Court of Appeals, Fifth Circuit, 600 Camp St., New Orleans, LA 70130.

* * *

Bankr. Clerk, N.D. Ala. Under direction of the five judges of court, manages operations of bankruptcy court clerk's office and its staff of 63 at offices in Birmingham, Tuscaloosa, Decatur, and Anniston. Responsible for policies and procedures, personnel, budget, procurement, and data processing. Requires 10 years' progressively responsible administrative experience in public service or business, with three years in position of substantial management responsibility. Experience with computer systems helpful. University education in accounting, judicial, public, or business administration or law desirable. May consider education and experience, particularly active practice of law, as

substitutes for other requirements. Salary JSP 16, \$67,038-\$75,500. Closing date Oct. 10. To apply, submit five sets of cover letter and SF-171 to Hon. George S. Wright, Chief Bankruptcy Judge, N.D. Alabama, P.O. Box 3226, Tuscaloosa, AL 35403.

* * *

Bankr. Clerk, S.D. Ohio. Performs high-level management supervision over 70 employees under the direction of the seven bankruptcy judges in district offices in Cincinnati, Columbus, and Dayton. Requires management skills to fulfill statutory duties, 10 years' experience in public or private administrative management, including three years at supervisory level. Computer and automation experience is desirable. A degree in public, business, or judicial administration, or law, and active law practice experience may be substituted for some experience. Closes Sept. 30. Salary range \$57,158-\$67,038. Send applications in triplicate, consisting of SF-171 and additional information at applicant's discretion, to Clerk's Position, c/o Hon. William A. Clark, U.S. Bankruptcy Judge, Room 812, 200 W. Second St., Dayton, OH 45402.

* * *

Ass't Librarian/CALR, 9th Cir. Pro-

vides legal and general reference service to judges, court staff, and other library users. Assists in collection development, maintenance, and utilization, and performs other library duties as assigned. Requires MLS degree from accredited institution, at least two years' progressively responsible experience demonstrating ability to perform legal research, including use of LEXIS/WESTLAW. U.S. citizenship required. Open until filled. Salary range JSP 9/11, \$23,846-\$28,852, depending on qualifications. Send résumé, including three references and salary history, to Librarian, Court of Appeals for the Ninth Circuit, U.S. Courts Library, U.S. Courthouse, 940 Front St., San Diego, CA 92189.

* * *

Staff Director, U.S. Sentencing Commission. Federal excepted service. Requires experience in management and criminal law, criminal justice, or other relevant public policy. Coordinates all staff activities, including guideline promulgation and research. Salary to \$80,700. Closes Sept. 29. Send résumé and pertinent documentation to Mary Hogya, Director of Administration, U.S. Sentencing Commission, Suite 1400, 1331 Pennsylvania Ave., N.W., Washington, DC 20004.

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BULLETIN OF THE FEDERAL COURTS

THE THIRD BRANCH

Vol. 21 No. 9 September 1989

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THE THIRD BRANCH

Habeas Corpus Committee Recommends Single Course of Collateral Review in Capital Cases

One course of state and federal collateral review, with competent counsel provided to indigent defendants under capital sentences, free of the time pressures of impending executions, has been recommended to resolve problems in the present habeas corpus procedure. At the Supreme Court on Sept. 21, retired Associate Justice Lewis F. Powell, Jr., chairman of the Judicial Conference Ad Hoc Committee on Federal Habeas Corpus in Capital Cases, released the committee's report. The previous day it had been submitted to the Judicial Conference, which received the report and authorized its



Justice Lewis F. Powell, Jr.

release, discharged Justice Powell's committee, and scheduled further consideration of the report for its next meeting in March 1990.

The report concerns procedures allowing post-conviction challenges to state criminal convictions in federal court. These federal challenges, known as collateral review, follow direct appeal of the conviction to the highest criminal court in the state (and sometimes to the Supreme Court on a petition for certiorari), and exhaustion of state habeas procedures.

In the report, the committee said, "Capital cases should be subject to

See H ABEAS REPORT, page 2

FJC Plans for the 1990s; Search Committee for New Director Appointed

One of the first items of business for the Federal Judicial Center as it enters the 1990s will be the selection of a new director to assume office after the current director, Judge John C. Godbold, reaches the statutory mandatory retirement age for service as director in March 1990.

The Center is the research, development, and training arm of the federal judicial system. It was created by Congress in 1967 (28 U.S.C. §§ 620-629), on the recommendation of the Judicial Conference. Its statutory purpose is "to further the development and adoption of improved judicial administration" in the courts of the United States. 28 U.S.C. § 620(a). Among its functions, it provides educational and training programs and services for federal judicial branch personnel; produces educational audio and video media and publications; undertakes empirical and exploratory research on federal judicial processes and court management and develops recommendations to present for the consideration of the Judicial Conference and its committees; designs and tests new technologies, especially computer systems, that are useful for case management and court administration; and provides staff, research, and planning as-

See FJC PREPARES, page 5

Internship Program for Court and AO Mid-Level Management Announced

The AO has created a management intern program for court and AO mid-level managers. The program will provide for rotational assignments of mid-level managers within the AO to broaden their experience. It will also involve an exchange of mid-level managers between the courts and the AO for periods of up to 12 months. Court employees participating in the program will gain a system-wide perspective on issues, policies, and procedures affecting the federal court system. AO employees serving in the field will gain an enhanced understanding of the operational aspects of court programs in the field.

The goals of the program are: (1) to strengthen leadership throughout the federal court system; (2) to increase awareness and understanding among the participants of the functions and mission of the

courts and the AO and to show how these interrelate within the agency, the courts, and Congress; (3) to facilitate a planned program of individual development for career employees; (4) to stimulate the growth of promising employees in the courts and the AO by exposing them to a range of activities designed to broaden perspectives and expand management skills; and (5) to provide an opportunity for these individuals to apply locally developed perspectives and expertise in the administration of national programs.

Court employee interns. Court employees will be brought to divisions within the AO; at the initial stages of the program, they will be assigned to the Court Administration Division. As the program develops and is evaluated, other divisions will

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HABEAS REPORT, from page 1

one complete and fair course of collateral review in the state and federal system, free from the time pressure of impending execution, and with the assistance of competent counsel for the defendant. When this review has concluded, litigation should end."

The committee found that there is nearly unanimous agreement among the many groups and individuals it consulted that the present system is unacceptable, although there is little agreement on how to remedy the situation. The committee said, "Our present system of multi-layered state and federal appeal and collateral review has led to piecemeal and repetitious litigation, and years of delay between sentencing and a judicial resolution as to whether the sentence was permissible under the law." The "resulting lack of finality undermines public confidence in our criminal justice system."

Justice Powell gave his own view, saying, "The present system of unlimited and multiple appeals just isn't working. If we can't make it work, then we ought to abolish capital punishment." He added, "The United States has the highest murder rate in the world by far. My opinion is that capital punishment will be abolished in the United States because it is not being enforced. It produces so many collateral problems."

The committee found that 37 states



Pictured left to right are Chief Judge Charles Clark (5th Cir.), L. Ralph Mechem, AO Director, and Judge Richard S. Arnold (8th Cir.) discussing the judiciary's 1990 budget on Sept. 20 at the meeting of the Judicial Conference of the United States.

have capital sentence laws, that over 2,200 convicted murderers are awaiting execution, and that the average time between conviction and execution is over eight years. "Delay of this magnitude is hardly necessary for fairness or for thorough review," the committee report stated.

A major problem has been the need for qualified counsel to represent indigent prisoners at all stages. While federal law mandates appointment of counsel in federal habeas litigation in capital cases and some states supply such counsel for post-conviction collateral review, in many states counsel are not appointed.

The present system provides no incentive for prisoners to pursue collateral relief until an execution date is set, at which time litigation and review commence under pressure.

The committee proposes new federal statutory procedures for federal habeas corpus review of capital cases:

- Each state could bring its capital case collateral review within the committee-proposed legislation by providing competent counsel for inmates on state collateral review, thus making participation optional with each state.

- An automatic stay of execution would remain in place during the federal habeas proceedings, or until the prisoner has failed to file a petition within the allotted time of six months, within which federal habeas review must be pursued, commencing with the appointment of counsel for the prisoner or a prisoner's refusal of appointed counsel. That six-month limitation would be tolled during state court proceedings and upon fil-

ing a federal habeas petition. Thus the proposal should substantially relieve both litigants and the judiciary by essentially eliminating stay-motion litigation, the committee determined. (Six months is a longer period than the time allowed for appeals in state and federal systems or for seeking certiorari review in the Supreme Court, noted the committee.)

- Upon completion of the entire state and federal collateral process with the assistance of competent counsel, absent a colorable showing of factual innocence and extraordinary circumstances, subsequent and successive federal habeas petitions would not be the basis for further stays of execution or grants of relief.

- Immediate presentation of new claims in federal court would be permitted in extraordinary circumstances.

The committee was formed in June 1988 to study the operation of habeas corpus review in cases involving the death penalty. The Chief Justice charged the committee to inquire into "the necessity and desirability of legislation directed toward avoiding delay and the lack of finality" in capital cases in which the prisoner had counsel or had been offered counsel. Committee members were Justice Powell (chairman), Chief Judge Charles Clark (5th Cir.), Judge Paul H. Roney (11th Cir.), Chief Judge William Terrell Hodges (M.D. Fla.), and Judge Barefoot Sanders (N.D. Tex.). Professor Albert M. Pearson (University of Georgia Law School) was the reporter, and William R. Burchill, Jr. (AO General Counsel) was the secretary. ■



BULLETIN OF THE FEDERAL COURTS

THE THIRD BRANCH

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Co-editors

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center. Peter G. McCabe, Assistant Director, Program Management, Administrative Office of the U.S. Courts.

Administrative Office Marks 50th Anniversary

The Administrative Office of the U.S. Courts will celebrate its 50th anniversary on Nov. 6.

Before establishment of the AO in 1939, the Department of Justice had provided the courts with support services such as payroll, personnel, procurement, budgeting, accounting, and statistics. Proposals to separate the courts from the Department of Justice's administrative support were voiced in the Judicial Conference as early as 1926 and developed over the course of the next decade. A Conference committee presented a broad plan in 1936 to place the administration of the courts in a newly created agency within the judicial branch. Legislative efforts, however, were delayed by the controversy over

President Roosevelt's 1937 legislation to restructure the Supreme Court with additional justices. In 1938, Attorney General Homer S. Cummings in his annual report proposed legislation to create an independent administrative structure for the courts, stating: "An efficacious administrative machinery is as necessary in the courts as it is in other branches of Government and in private enterprise. . . . The [Judicial Conference] . . . does not and cannot act as a continuous administrative body. It is highly desirable that provision be made for a permanent administrative officer, with adequate assistance, to devote his entire time to supervision of the administrative side of the

See AO 50TH ANNIVERSARY, page 6

Committee Considers Relaxing Prohibition of Cameras in Courtrooms

On Sept. 20, the Judicial Conference of the United States Ad Hoc Committee on Cameras in the Courtroom reported for general Conference reaction its tentative conclusion that the rules governing cameras in the courtroom should be relaxed somewhat. The Conference and the committee will solicit additional views on the proposals, and the committee's final recommendations will be submitted to the Conference for action at the March 1990 meeting.

In 1988, the Conference authorized six courts to experiment with videotaping as a means of taking the official record. At the same time, the Conference permitted the experimental use of videoconferencing of initial appearances and arraignments (pleas of not guilty only), and of prisoner civil rights and habeas corpus cases. In addition, the Conference agreed to allow the U.S. Marshals Service to monitor courtroom proceedings by closed-circuit video equipment, finding no conflict with Canon 3A(7) of the Code of Conduct for United States Judges because no tape recordings would be made.

Those activities, and a proposed revision by the American Bar Association of its Code of Judicial Conduct, prompted the appointment of the Ad Hoc Committee in October 1988 to review Canon 3A(7) and to monitor the ABA's progress. In an interim report last March, the committee noted that "the ABA's broadcasting/televising/recording/photographing rules were considerably broader than those applicable in the federal courts," and it reported a preliminary view that "the current language was unduly restrictive."

The committee now reports a unanimous belief that the subject is inappropriate for inclusion in a code of ethics, recommending that Canon 3A(7) be stricken from the Code of Conduct and included instead in the

See CAMERA RULES, page 7

Federal Court System Caseload: Drug-Related Cases Place Burden on Court Resources

The Administrative Office of the U.S. Courts announced Sept. 21 the latest information on federal court workloads.

Drug cases. The largest increase was in pending drug cases. In 1989, the federal courts of appeals, district courts, probation offices, and related operations processed a record number of drug-related cases.

District court filings of drug cases jumped 270% from 1980 to 1989, and in each of the last two years they have increased more than 15% while other criminal filings have declined. In the courts of appeals, drug cases represented 47% of appeals in 1987 and had risen to nearly 55% in 1989.

Federal probation offices, which provide treatment to drug-dependent offenders, have seen the demand for that service more than double over the past five years.

Criminal cases. Criminal case filings rose only 3% in the past year, reflecting the following statistics: homicide cases, up 18%; securities and exchange fraud, up 166%; gambling and lottery offenses, up 53%; drunk driving and traffic cases, up

7%; sex offenses, down 36%; passport fraud, down 28%.

Cases commenced per judgeship, 80, is the highest this decade. Terminations rose 2% in 1989. However, the number of pending cases has reached a record level, more than double that of 1980, and is now at 30,907.

Civil cases. Civil cases filed in the federal district courts fell by 3%, declining for the third time in four years. The decline is attributable to a reduction in government filings to recover overpayments of benefits, collect defaulted student loans, enforce judgments, and to fewer claims for Social Security benefits brought against the federal government. The latter category fell 33%. The largest single category of civil case filings remains prisoner petitions; 41,390 were filed in 1989, of which nearly 25,000 were civil rights petitions. Disregarding prisoner civil petitions, civil filings have risen steadily since 1982.

Bankruptcy cases. Bankruptcy court case filings have risen 8%, with

See COURT CASELOADS, page 4

THE THIRD BRANCH

LEGISLATION

The following new bills have been introduced since Congress returned from the August recess; unless otherwise indicated, they were referred to the judiciary committee in the originating house.

- **H.R. 3238** would amend the Controlled Substances Act to provide for life imprisonment or the imposition of the death penalty for certain drug trafficking offenses. It was jointly referred to the Committees on the Judiciary, Energy, and Commerce.

- **H.R. 3319** would adjust the compensation of federal employees in high-cost urban and suburban areas to reflect their higher cost of living; it was referred to the Committee on Post Office and Civil Service.

- **H.R. 3322** would enhance penalties for use of certain shotguns and semi-automatic weapons during crimes of violence or drug trafficking.

- **H.R. 3324** and **S. 1631** create technical amendments of the Bankruptcy Code.

- **S. 1492**, amending the Anti-Drug Abuse Act of 1988, would eliminate a court's discretion in denying various federal benefits upon conviction of certain drug offenses. It would mandate a denial of eligibility for public assistance programs, grants and loans, but not benefits to which one becomes entitled by contributions, such as Social Security.

- **S. 1609** would create an additional district judgeship in the District of Nebraska.

- **S. 1629**, the Torture Victim Protection Act of 1989, would give aliens and U.S. citizens a federal cause of action against persons engaging in torture and extra-judicial killing under actual or apparent color of authority of a foreign nation. Sen. Arlen Specter (R-Pa.), the sponsor, said that the caseload impact would be negligible; he introduced an identical bill in 1987.

- **S. 1638** would require each prisoner released on probation, parole, or supervised release to pass at least two periodic drug tests during the period

MANAGEMENT INTERNS, from page 1

also accept applications, and participants may receive cross-branch experience throughout the course of the internship. Assignments may include, but are not limited to, the following: (a) participating in system-wide evaluation, development, and implementation of program areas, (b) assisting the Judicial Conference of the United States by preparing committee agenda items and supporting materials, participating in on-site program evaluations, and serving as liaison with advisory committees, (c) assisting regional administrators, and (d) participating in court management and technical assistance teams.

Applicants may, with the permission of their court, apply for internships of three, six, nine, or twelve months. Courts that permit employees to participate must commit to use those employees in the same position

of supervision.

- **S. 1666** would increase the annual salaries of federal justices and judges. **S. 1667** would restore the compensation lost to inflation over the past 20 years and establish a procedure for future adjustments to avoid a recurrence. Both bills were referred to the Committee on Governmental Affairs.

- **S. Res. 180**, commemorating the 200th anniversary of the Bill of Rights, was considered and agreed to on Sept. 20.

- On the Senate floor on Sept 6, Senate Majority Leader George J. Mitchell (D-Me.) reviewed nominations pending in various Senate committees to fill judicial, executive, and international board vacancies. He spoke primarily of executive branch positions, saying that 90% were confirmed within two months of submission. Three pending judicial nomination came to the Senate Judiciary Committee Aug. 4, and he said that there were then 46 judicial vacancies. Additional nominations have been submitted since Sen. Mitchell spoke (see Personnel at p. 8). ■

or a position of equal or greater responsibility upon their return. Courts will be given a compensatory position to replace their staff person during the internship.

Mid-level managers at JSP-12 and above in district, appellate, and bankruptcy courts who intend to remain in the federal system substantially beyond the period of internship are eligible to apply. Interns will receive travel and per diem expenses, and may receive additional assistance for the longer internships.

AO employee interns. Employees at the GS-12 level and above will be eligible for consideration for assignments of up to one year in the courts. An employee who accepts such an assignment remains on the AO payroll and will receive the same special per diem and travel expenses as court employee interns.

For additional information and application instructions for court employees, contact Robert Lowney, Court Administration Division, tel. (FTS) 633-6221. Clerks in courts who want to propose training assignments for AO employees should call Joyce Savage, the AO's personnel officer, at (FTS) 633-6116. ■

COURT CASELOADS, from page 3

nearly 643,000 petitions filed in 1989, the largest source of new cases in the federal court system. Business filings declined for the second consecutive year, and they are now at the lowest level since 1984. A 10% increase in non-business filings offset that decline; non-business petitions represent 90% of the bankruptcy caseload. Chapter 7 filings, 70% of the caseload, are up 8% from 1988 and nearly double the number of five years ago. Chapter 13 filings also rose, but Chapter 11 filings declined for the third straight year. Chapter 12 filings, representing family farmer reorganizations, dropped for the second year. Because filings continue to exceed dispositions, the bankruptcy court system has an all-time high of 879,340 pending cases. ■

Graduate Program for Judges Announced

The University of Virginia Law School is receiving applications for the next class in its Graduate Program for Judges, scheduled to begin in the summer of 1990. The program is designed for federal and state appellate judges. Judges of federal district courts will also be considered for admission, although only a few places are available to trial judges. Total enrollment is limited to 30.

This academically oriented program of judicial education is taught mainly by full-time law faculty members at the university. Its focus is on historical, jurisprudential, inter-disciplinary, and comparative material. Judges who successfully complete the program receive the degree of Master of Laws in the Judicial Process.

The program requires attendance at two consecutive summer resident sessions of six weeks each at the law school. The 1990 session will run from June 25 through Aug. 3. The deadline for application is Jan. 17, but preference may be given to applications submitted earlier. Funds in the program are sufficient to cover all expenses of federal judges who enroll.

Application forms and information can be obtained from the program director, Professor Daniel J. Meador, University of Virginia Law School, Charlottesville, VA 22901, tel. (804) 924-3947.

FJC PREPARES, from page 1

sistance to the Judicial Conference and its committees.

Thus, the Center's primary constituency consists of the Judicial Conference and the more than 21,000 persons now in the federal judicial system, including active and senior judges, bankruptcy judges, magistrates, circuit and district court executives, defenders, staff attorneys, probation officers, clerks of court, librarians, and administrative and clerical personnel.

Federal Courts Study Committee Announces Hearings on Draft Report

The Federal Courts Study Committee met in Washington, D.C., Sept. 18 to 19 to receive preliminary reports from its three subcommittees, weigh contributions of the advisory panels, and begin reaching consensus on the issues to be addressed in its report. Final subcommittee reports are due Oct. 16.

The committee has conducted a survey of district judges regarding chambers practices and the Sentencing Guidelines. The response rate was about 75%, and the results are being analyzed.

On Sept. 19, the committee announced that public hearings to receive reaction on the draft report will be held at Des Moines, Jan. 18; Madison, Jan. 19; Dallas, Jan. 22; Miami, Jan. 23; Salt Lake City, Jan. 25; Seattle, Jan. 26; San Francisco, Jan. 29; New York, Jan. 30; and Washington, D.C., Jan. 31.

Plans are for the draft report of the

full committee to be published in mid-December. It will be mailed to all those who appeared at the four public hearings held last spring and to law schools, bar associations, civic and public service organizations, and other interested parties. Views have been sought from a diverse group outside the legal profession, including the Ford Foundation, the AFL/CIO, the American Medical Association, and the National Science Foundation.

The committee will submit its final report to the President, Congress, the Conference of Chief Justices, the State Justice Institute, and the Judicial Conference of the United States by July 2.

Parties interested in receiving the draft report should contact the Federal Courts Study Committee, U.S. Courthouse, Independence Mall West, 601 Market St., Philadelphia, PA 15219, tel. (FTS/215) 597-3320. ■

The Center has had five directors during its 22 years of service to the federal courts. Retired Supreme Court Justice Tom C. Clark was the Center's first director. He was followed by Judge Alfred P. Murrah, former chief judge of the Tenth Circuit; Judge Walter E. Hoffman (E.D. Va.); Professor A. Leo Levin (University of Pennsylvania Law School); and Judge Godbold, former chief judge of the Fifth Circuit and the Eleventh Circuit. The Center's directors are appointed by and serve at the pleasure of the Center's governing Board, which by statute is chaired by the Chief Justice and includes the director of the AO and six judges elected by the Judicial Conference of the United States.

At the last meeting of the Board in September 1989, the Chief Justice appointed a committee to make recommendations for the selection of a new director. The committee members are Judge Ruggero J. Aldisert (3d Cir.), chairman (a former Board

member); Judge David D. Dowd, Jr. (N.D. Ohio) (a current Board member); and Chief Bankruptcy Judge Martin V. B. Bostetter, Jr. (E.D. Va.) (also a former Board member).

Persons interested in submitting suggestions for a new director or who would be interested in the position may contact any member of the committee. Their addresses are:

Circuit Judge Ruggero J. Aldisert,
Chairman
6144 Calle Real
Santa Barbara, CA 93117-2053
Tel. (805) 967-6616

District Judge David D. Dowd, Jr.
510 Federal Building & U.S. Courthouse
2 S. Main St.
Akron, OH 44308
Tel. (216) 375-5834, (FTS) 292-5834

Chief Bankruptcy Judge Martin V. B. Bostetter, Jr.
206 N. Washington St., Suite 410
Alexandria, VA 22314
Tel. (FTS/703) 557-3867 ■



Anglo-American Legal Exchange Group Pictured at Supreme Court

Shown on Sept. 18 at the Supreme Court, are (left to right) Judge J. Clifford Wallace (9th Cir.), Justice Anthony M. Kennedy (U.S. Supreme Court), Mr. Justice Webster (High Court, U.K.), Michael Hawthorne (Kingston on Thames County Court, U.K.), Sir Gordon Slynn (European Communities Court of Justice), Justice Sandra Day O'Connor (U.S. Supreme Court), Nigel Wilkinson, Esq. (London), Lord Bridge of Harwich (Lord of Appeal, U.K.), Thomas Legg (Permanent

Secretary to the Lord Chancellor, Clerk of the Crown, U.K.), Chief Justice Ellen Peters (Supreme Court, Conn.), Morris Harrell, Esq. (Dallas), Lord Griffiths (Lord of Appeal, U.K.), George Staple, Esq. (London), A. Bernard Aidinoff, Esq. (New York), and Philip Tone, Esq. (Chicago).

The group focused on civil litigation, meeting in Great Britain in July and in the U.S. in September.

AO 50TH ANNIVERSARY, from page 3

courts; to studying and suggesting improvements in the matter of handling dockets; to assembling data and keeping abreast of the needs of the various districts for temporary assistance; and to ascertaining what judges are available for such assignments, as well as performing other incidental functions. Such an officer should be appointed by the Supreme Court and act under the supervision of the Chief Justice."

The Administrative Office Act of 1939 set forth in detail the duties of the director of the AO, codified in 28 U.S.C. § 604. The legislation reaffirmed the role of the Judicial Conference as the policy-making body of the judiciary and expressly made the director's duties subject to the supervision and direction of the Conference. It also provided a comprehensive approach to federal judicial administration by establishing the judicial councils of the circuits and requiring annual judicial conferences in each circuit.

Henry P. Chandler was appointed by the Supreme Court as the first director of the AO in 1939. He was followed in office by Warren Olney III in 1956, Ernest C. Friesen in 1968, Rowland F. Kirks in 1970, William E. Foley in 1977, and L. Ralph Mecham in 1985. Organizationally, in 1939 the AO had just two divisions, the Divi-

sion of Business Administration and the Division of Procedural Studies and Statistics. The Division of Probation was established in 1940, followed by the Division of Bankruptcy Administration in 1942.

Over the years, Congress has amended 28 U.S.C. § 604 many times to add new duties to the director of the AO. As a result of rapid and substantial growth in personnel in the courts and enactment of major programs by Congress, several additional divisions were created. The Personnel Division and the General Counsel's Office were established in 1958 and 1969, respectively, followed in the 1970s by the Magistrates Division, the Clerks Division (now part of the Court Administration Division), the Criminal Justice Act Division (later renamed the Defender Services Division), and the Legislative Affairs Office (now the Legislative & Public Affairs Office). The original two divisions of the agency were divided during this period. The Business Administration Division's functions are now performed by the Financial Management Division, the Contracts and Services Division, and the Space and Facilities Division. The Procedural Studies and Statistics Division's statistical functions were assumed by the Statistical Analysis and Reports Division, and its automation support functions assigned to the Systems

THE BOARD OF THE FEDERAL JUDICIAL CENTER

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Services Division. The 1980s saw the establishment of the Office of Equal Employment Opportunity and Special Projects, the Office of the Judicial Conference Secretariat, and the Office of Planning and Evaluation.

"I believe that the AO that exists today is geared toward meeting the diverse and complex needs of a modern judiciary," Director Mecham said. "We all can be proud of the progress that has been made in federal court administration over the past half century."

Further information on the history of the Administrative Office can be found in Chandler, *Some Major Advances in the Federal Judicial System, 1922-1947*, 31 F.R.D. 307 (1963); Fish, *The Politics of Federal Judicial Administration* (1973); Carp & Stidham, *The Federal Courts* (1985); and Surrency, *History of the Federal Courts* (1987). ■

CAMERA RULES, from page 3

Proceedings of the Judicial Conference and in the *Guide to Judiciary Policies and Procedures*.

The committee recommends a distinction be made between ceremonial and non-ceremonial proceedings and recommends allowing cameras and electronic reproduction equipment to be permitted for any purpose during ceremonial proceedings. During non-ceremonial proceedings, the committee believes such equipment should be used "only for the presentation of evidence, perpetuation of the record, security, and other purposes of 'judicial administration.'" Responsibility for monitoring implementation of the new procedure would be delegated to circuit judicial councils, and trial judges would take their guidance from those bodies.

The committee also recommended that the experiences of the states and technological advances continue to be monitored to see whether further relaxing of restrictions was warranted.

The ABA Canon has allowed electronic coverage in courtrooms within certain restrictions and guidelines under supervision of an appellate court since 1982. The committee found that 44 states permit camera coverage of court proceedings to some degree.

Committee member Judge John P. Moore (10th Cir.) concurred in the committee's revision of the current Canon 3A(7), but he suggested that the disruptive aspects of broadcasting have been eliminated by technological advances. He would allow federal courts the discretion to adopt local practices to the extent that their judicial councils find appropriate. He pointed to the development by state courts of standards of practice and courtroom procedures that could be transferred to the federal judiciary to accommodate broadcasting from courtrooms.

In a June 1 letter to the Chief Justice, Chief Judge Barbara Crabb (W.D. Wis.) requested an exception to the ban against cameras in the courtroom to permit videotaping or filming of

THE SOURCE

The publications listed below may be of interest to readers. Only those preceded by a checkmark are available from the Center. When ordering copies, please refer to the document's author and title or other description. Requests should be in writing, accompanied by a self-addressed mailing label, preferably franked (but do not send an envelope), and addressed to Federal Judicial Center, 1520 H St., N.W., Washington, DC 20005.

Aldisert, Ruggero J., *Logic for Lawyers* (Clark Boardman Co. 1989).

Arledge, Paula C., *John Paul Stevens: A Moderate Justice's Approach to Individual Rights*, 10 *Whittier Law Review* 563 (1989).

✓ Bermant, Gordon, & Judy B. Sloan, *Bankruptcy Appellate Panels: The Ninth Circuit's Experience*, 21 *Arizona State University Law Journal* 181 (1989)

Circuit Executive for District of Columbia Circuit Describes Design, Goal, and Promise of ADR Program, 3 *ADR Report* 326 (1989).

Court Facility Evaluation, Green County Courthouse, Springfield, Missouri—A Technical Assistance Report (National Center for State Courts 1989).

Croom, Deborah (comp.), *Dispute Resolution and the Courts: An Annotated Bibliography* (National Institute for Dispute Resolution 1989).

Dress, Toby, *Private Dispute Resolution Systems: Advancing Justice or Hindering It?*, 3 *ADR Report* 310 (August 1989).

Geiger, Fred A., *Safety First: A Guide to Courthouse Security*, 28 *Judges' Journal* 14 (Summer 1989).

Goforth, Carol R., *A Jurisprudential Reflection upon the Burger Court's Approach to Procedural Due Process*, 42 *Arkansas Law Review* 837 (1989).

Gull, James L., & Edward A. Slavin, Jr., *Rush to Unfairness: The Downside of*

certain trials involving Indian treaty rights. Her request was referred to the committee, which voted unanimously that present Conference policy requires that the request be denied.

ADR, 28 *Judges' Journal* 9 (Summer 1989).

Hanson, Roger A., *If "Ought Implies Can," Where is the Evidence that Federal Courts Are Able to Solve Policy Problems?*, 35 *Loyola Law Review* 111 (1989).

Lubet, Steven, & Judith Rosenbaum, *Financial Disclosure by Judges: Functional Analysis and Critique* (American Judicature Society 1989).

Miner, Roger J., *The Consequences of Federalizing Criminal Law*, 4 *Criminal Justice* 16 (Spring 1989).

Rader, Randall R., *The Independence of the Judiciary: A Critical Aspect of the Confirmation Process*, 77 *Kentucky Law Journal* 767 (1988-89).

Robbins, Ira P., *The Legal Dimensions of Private Incarceration*, 38 *American University Law Review* 1 (1989).

Security Review, Circuit and District Court, Hanover County, Virginia (National Center for State Courts 1989).

Sellers, David A., *Every 200 Years*, *CBA Record* 22 (September 1989).

Sloviter, Dolores K., William J. Brennan, Jr., & Louis H. Pollak, *Memorial Tribute to the Honorable Albert Branson Maris*, 62 *Temple Law Review* 471 (1989).

Speziale, Marcia J., *The Experimental Logic of Benjamin Nathan Cardozo*, 77 *Kentucky Law Journal* 821 (1988-89).

Sturley, Michael F., *Observations on the Supreme Court's Certiorari Jurisdiction in Intercircuit Conflict Cases*, 67 *Texas Law Review* 1251 (1989).

Tornquist, Leroy J., *The Active Judge in Pretrial Settlement: Inherent Authority Gone Awry*, 25 *Willamette Law Review* 743 (1989).

Wald, Patricia M., *Some Thoughts on Beginnings and Ends: Court of Appeals Review of Administrative Law Judges' Findings and Opinions*, 67 *Washington University Law Quarterly* 661 (1989).

The committee is comprised of Judges Robert F. Peckham (N.D. Cal.), chairman, James C. Cacheris (E.D. Va.), Sam C. Pointer, Jr. (N.D. Ala.), Walter F. Stapleton (3d Cir.), and John P. Moore (10th Cir.). ■

THE THIRD BRANCH

CALENDAR

Oct. 15-17 Combined Clerks Conference, First, Second, and Third Circuits
 Oct. 16-18 Workshop for Judges of the Seventh Circuit
 Oct. 18 Judicial Conference Advisory Committee on Bankruptcy Rules
 Oct. 23-27 Case Western Reserve Law School Program for Judges

Oct. 30 Federal Courts Study Committee
 Nov. 3 Judicial Conference of the Court of International Trade
 Nov. 13-14 Judicial Conference Committee on Judicial Improvements, Subcommittee on Technology
 Nov. 13-15 First Circuit Judicial Conference
 Nov. 16-17 Judicial Conference Advisory Committee on Criminal Rules
 Nov. 16-17 Judicial Conference Advisory

Committee on Bankruptcy Rules
 Nov. 16-18 Judicial Conference Advisory Committee on Civil Rules
 Nov. 20-21 Judicial Conference Committee on the Administrative Office
 Nov. 27 Judicial Conference Committee on the Judicial Branch
 Nov. 30-Dec. 1 Judicial Conference Committee on Administration of the Magistrates System

PERSONNEL

CIRCUIT JUDGES

Nominations

S. Jay Plager, Fed. Cir., Sept. 9
 John M. Walker, Jr., 2d Cir., Sept. 21

Elevations

Gilbert S. Merritt, Chief Judge, 6th Cir., Oct. 1
 Gerald B. Tjoflat, Chief Judge, 11th Cir., Oct. 1

Senior Status

Albert J. Engel, 6th Cir., Oct. 1
 Paul H. Roney, 11th Cir., Oct. 1

DISTRICT JUDGES

Nominations

Vaughn R. Walker, N.D. Cal., Sept. 7

Edwin L. Nelson, N.D. Ala., Sept. 13
 G. Thomas Van Bebber, D. Kan., Sept. 13
 George W. Lindberg, N.D. Ill., Sept. 21
 Susan Webber Wright, E.D. & W.D. Ark., Sept. 21

Senior Status

James B. McMillan, W.D.N.C., Sept. 1
 Eldon B. Mahon, N.D. Tex., Sept. 30
 Richard Owen, S.D.N.Y., Sept. 30

BANKRUPTCY JUDGE

Appointments

Donald R. Sharp, E.D. Tex., Sept. 1
 Frank R. Monroe, W.D. Tex., Oct. 1

MAGISTRATES, FULL-TIME

Appointment

Robin Pierce, N.D. Ind., Sept. 21

Resignation

Samuel J. Smargon, S.D. Fla., Sept. 8

Position Available

Federal Public Defender, W.D. Wash. Provides federal criminal defense services. Headquartered in Seattle. Requires good standing in Washington Bar or bar where currently admitted; 5 years' criminal practice, preferably federal criminal trials; reputation for integrity and commitment to representation of indigents; ability to effectively administer office. Incumbent has applied for reappointment. Salary \$78,600. Four-year term. Closes Nov. 3. Send application to G. B. Walters, Circuit Executive, Box 42068, San Francisco, CA 94142-2068; tel. (415) 556-9693.

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THE THIRD BRANCH

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THE THIRD BRANCH

1989 Circuit Judicial Conferences Focus on Bicentennial Observances

November brought to a close the 1989 circuit judicial conferences, mandated by 28 U.S.C. § 333. Starting with the First through Sixth and Eleventh Circuits in this issue and concluding in the December issue, *The Third Branch* will present a brief report on each of the 13 circuits, the U.S. Court of International Trade, and the U.S. Claims Court.

First Circuit. The First Circuit's conference was held in Newport, R.I., in November. The keynote speech was delivered by Sen. Howell Heflin (D-Ala.). Sens. Claiborne Pell (D-R.I.) and John H. Chafee (R-R.I.) also addressed the conference opening session.

Three panel discussions were featured. The first, *Fourth Amendment Privacy Rights*, focused on such issues

as mandatory drug testing, the right to die, the right to life, the right to abortion, and AIDS testing. The second panel discussion, entitled *The First Amendment and the Administration of Justice*, dealt primarily with a growing tendency to try cases in the media instead of the courtroom. The panel discussed the conflict between free speech rights and the need for a fair and impartial trial process. The third panel discussion focused on the judicial selection process and the interrelationship between law and economics. Justice William J. Brennan, Jr., Circuit Justice for the First Circuit, attended and received a scroll marking his years of service to the circuit date back to 1969.

See JUDICIAL CONFERENCES, page 6

Congress Passes Bill to Increase Salaries, Limit Outside Income

In weekend sessions held Nov. 18 and 19, Congress passed H.R. 3660, a package of salary and ethics legislation that will affect federal judges, members of Congress, and senior federal employees. The legislative package was created by a bipartisan task force, and President Bush has promised to sign it.

The bill provides federal judges, senior members of the executive branch, and members of the House of Representatives with a 7.9% salary increase effective January 1990. Judges and justices will gain a 25% increase in January 1991 and a cost-of-living increase in 1991. Honoraria restrictions would become effective in 1991. No income would be allowed from speaking, professional, legal, or directors' fees. Outside income from such activities as teaching would be limited to 15% of the federal salary.

Post-employment restrictions incorporated in the bill are those in H.R. 2267 (see *The Third Branch*, June 1989, at 5). A one-year "cooling-off" period would apply to federal judges, but exemptions have been approved for magistrates, bankruptcy judges, and federal public defenders. This follows the Judicial Conference policy that a person refrain from appearing before the same court where that person

See SALARY, page 2

Federal Courts Continue Operations Despite Natural Disasters, Ninth Circuit San Francisco Courthouse Sustains Greatest Damage

In quick succession, court facilities were struck by natural disasters: in the U.S. Virgin Islands, South Carolina, and Texas by hurricanes, and in San Francisco by an earthquake.

St. Croix. Both Judge David V. O'Brien (D.V.I.) and Judge Stanley Brotman (D.N.J.) were in St. Croix when Hurricane Hugo struck. Judge Brotman inspected the courthouse and found the courtroom and clerk's office in good condition, and the computers unharmed, but found bookcases overturned, some water damage in the clerk's private office due to broken windows, and storm debris in the courtyard (metal, roofing material, trees, glass).

A breakdown of law and order and some 200 prisoners at large prompted U.S. marshals to evacuate the judges. Judge O'Brien was ill, but, being very concerned for the court personnel,

maintained contact with Judge Brotman and remained fully informed. Believing it "absolutely necessary to maintain a federal judicial presence," when marshals and other law enforcement personnel were sent to the island by President Bush, Judge Brotman returned with them. The marshals established a command post in the same complex as the courthouse. FBI agents immediately began working on cases and brought handwritten search warrant applications before the court. With the efforts of court personnel, the courthouse was restored to order. Crew from the U.S.S. Pensacola spent two days cleaning up storm debris at the courthouse, and a ship's electrician connected a generator to provide power to the clerk's office.

Because of the great destruction to homes and offices on the island, it was

See DAMAGE, page 4

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THE THIRD BRANCH

PERSONNEL

CIRCUIT JUDGES

Senior Status

James C. Hill, 11th Cir., Oct. 15

Daniel M. Friedman, Fed. Cir., Oct. 31

Nomination

Clarence Thomas, D.C. Cir., Oct. 31

Confirmations

Conrad K. Cyr, 1st Cir., Oct. 24

S. Jay Plager, Fed. Cir., Nov. 8

Death

Clement F. Haynsworth, 4th Cir., Nov. 22

DISTRICT JUDGES

Elevations

George C. Carr, Chief Judge, M.D. Fla., Oct. 26

Barefoot Sanders, Chief Judge, N.D. Tex., Nov. 1

Resignation

Richard B. McQuade, Jr., N.D. Ohio, Sept. 30

Senior Status

Hugh Gibson, S.D. Tex., Nov. 1

Nominations

Edward W. Nottingham, D. Colo., Oct. 23

Arthur D. Spatt, E.D.N.Y., Oct. 25

Edward J. Lodge, D. Idaho, Oct. 31

Donald J. Lee, W.D. Pa., Nov. 9

Gerald E. Rosen, E.D. Mich., Nov. 9

Confirmations

Rebecca Beach Smith, E.D. Va., Oct. 24

Marvin J. Garbis, D. Md., Oct. 24

Deaths

Juan B. Fernandez-Badillo, D.P.R., Oct. 16

C. G. Neese, E.D. Tenn., Oct. 22

Joe Ewing Estes, N.D. Tex., Oct. 24

Ted Dalton, W.D. Va., Oct. 30

Arnold Bauman, S.D.N.Y., Nov. 21

BANKRUPTCY JUDGE

Appointment

John T. Flannagan, D. Kan., Oct. 16

BULLETIN OF THE FEDERAL COURTS

THE THIRD BRANCH

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Co-editors

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center. Peter G. McCabe, Assistant Director, Program Management, Administrative Office of the U.S. Courts.

November 1989

Circuits Split on Post-Gomez Use of Magistrates to Supervise Felony Trial Jury Selection

The role of magistrates in felony trial jury selection remains unclear, as recent rulings in two circuits illustrate.

The Ninth Circuit has found that magistrate supervision of jury selection is reversible error despite lack of objection. *U.S. v. France*, No. 87-1282 (9th Cir. Sept. 13, 1989). Without objection by France, a magistrate conducted voir dire for the trial of charges arising out of a shooting. France was convicted, and while her appeal was pending, the Supreme Court decided in *Gomez v. U.S.* that it was reversible error for federal magistrates to conduct jury selection in felony trials.

The court of appeals noted that the Supreme Court has made clear that "as a rule judicial decisions apply retroactively" and that retroactivity is most appropriate where the new rule is meant to "enhance the accuracy of criminal trial." The Ninth Circuit found that the *Gomez* rule has that purpose, basing its determination on the *Gomez* "discussion of the potential for incurable error in jury

selection should magistrates select a jury in a felony trial over which a district judge would ultimately preside."

The Ninth Circuit held that, despite France's lack of objection to the magistrate's action and the Supreme Court's discussion in *Gomez* of that defendant's objection to magistrate conduct of jury voir dire, France had not waived her right to reversal. Since the controlling law of the circuit at that time was that the magistrate was empowered to select her jury, the court of appeals found that requiring France to object to the "clearly defined rule of the circuit is futile." Further, "requiring parties to object to aspects of the trial that have already been approved by the court of appeals would encourage defense counsel to burden district courts with repeated assaults on then settled principles out of hope that those principles will be later overturned." The Ninth Circuit held that France did not waive her right to object.

See MAGISTRATES, page 5

SALARY, from page 1

worked or served for one year after departure.

The provisions of H.R. 1930 were also included. They would require that for senior judges to become eligible for salary increases beyond any regular increase given to federal workers, they must be certified as having performed at least 25% of the work performed annually by an active duty judge (see *The Third Branch*, May 1989, at 3; Aug. 1989, at 1; Sept. 1989, at 4).

The Judicial Conference in September 1989 took the position that H.R. 1930 (or any similar proposal) inevitably creates disincentives for judges to take senior status and therefore is undesirable in principle. The Judicial Conference approved a recommendation that the following revisions in

the text of H.R. 1930 are necessary should Congress enact the bill: (1) making the bill inapplicable to all federal judges in office by the date of enactment or, at a minimum, making it inapplicable to all senior judges who assumed senior status by the date of enactment; (2) redefining the workload requirements in the bill and delegating to the Judicial Conference and circuit judicial councils the responsibility for defining and measuring judicial duties to meet the requirements; and (3) allowing senior judges more flexibility in meeting the minimum workload requirements over time by providing for reentry into judicial work.

The Senate voted itself a 10% cost-of-living raise and a reduction in honoraria geared to cost-of-living increases. ■



Federal Judicial Center Inaugurates Historical Program on the Federal Judicial Branch

In 1988, Congress amended the governing statute of the Federal Judicial Center to authorize it to "conduct, coordinate, and encourage programs relating to the history of the judicial branch of the United States government." 28 U.S.C. § 623(a)(7). In keeping with this provision, the Center Board at its March 1989 meeting directed the Center to initiate an historical program, using existing resources and staff. The Center has established the historical program in the Division of Special Educational Services.

In order to maintain effective links between the Center historical program and the constituencies it will work with, Chief Justice William Rehnquist, as chairman of the Center Board, has appointed an advisory committee comprising judges, court history executives, scholars of judicial history, and archivists. At its first

meeting, on Sept. 13, 1989, the committee recommended that the Center historical program lend support and assistance to history programs in the districts and the circuits and encourage the preservation of and access to judicial records.

Among its first undertakings, the program will publish a newsletter entitled *The Court Historian*. The newsletter will be circulated among the more than 30 history programs in the district and circuit courts; it will also be sent to chief judges, clerks of court, circuit executives, and appropriate scholarly organizations. Individuals and organizations who would like to be added to the mailing list should notify the Federal Judicial Center Historical Program, Division of Special Educational Services, Dolley Madison House, 1520 H Street, N.W., Washington, DC 20005. ■

LEGISLATION

- On Nov. 21, President Bush signed H.R. 2991, the Commerce, Justice, State, Judiciary, and related agencies appropriations for FY90. Judiciary appropriations include the full amounts requested for court security and for automation, and \$6.5 million for the retirement funds.

In the Omnibus Budget Reconciliation Act, S. 1750/H.R. 3299, a number of provisions create additional federal court jurisdiction to enforce administrative actions, such as those of the commodity boards of the Department of Agriculture and those of the Environmental Protection Agency under the Stratospheric Ozone and Climate Protection Act of 1989. It remains in conference.

- The National Drug Control Strategy Act, S. 1711, was passed by the Senate on Oct. 5. In floor action the Senate adopted several additional

amendments. These amendments created 20 new district judgeships to be sited in areas with large drug-related caseloads, delaying the decision on sites until after the Senate Judiciary Committee considers a drug-impact report the Judicial Conference is directed to make within 120 days of passage of the Act. They also added \$9 million for the federal courts for additional judges, magistrates, probation officers, and other personnel and materials, \$2 million of which can be allocated for training and other expenses related to implementing the Sentencing Guidelines.

The Act's forfeiture provisions include the effect of bankruptcy, death, and conveyances on forfeitable property and proceeds, give federal courts authority over proceeds of foreign violations of U.S. drug laws, remove value ceilings from administrative forfeiture provisions, and rescind the 1988 prohibition of federal "adoptive forfeiture" (in which the federal government accepts money or property

Sentencing Commission Seeks Comments on Guidelines Implementation

With publication of the 1989 revised edition of the Guidelines Manual, the U.S. Sentencing Commission is forming staff working groups to conduct detailed reviews of several guideline sections in preparation for the 1990 amendments. The working groups are charged with examining areas for amendment in light of guidelines field application, public comment, case law, questions in training sessions and on the Commission's Technical Assistance Service hotline, and pertinent statistical and monitoring data.

The Commission is soliciting input on implementation of the guidelines from those who have gained practical experience in working with the guidelines on a daily basis: judges, probation officers, prosecutors, and defense attorneys.

Pursuant to statute, the Commission must submit proposed amendments to Congress by May 1 each year. To meet public hearing and *Federal Register* publication deadlines, the Commission requests that comments be sent by Jan. 15, 1990. Questions and correspondence should be directed to Paul Martin, Communications Director, U.S. Sentencing Commission, 1331 Pennsylvania Ave., N.W., Suite 1400, Washington, DC 20004, tel. (202) 662-8800, FAX (202) 662-7631.

seized by state/local law enforcement in jurisdictions whose own laws preclude forfeiture, with 90% of the proceeds returned to the state/local agencies by the federal government).

It also incorporates the language of S. 327, the Biden Anti-Corruption Act, which extends federal jurisdiction over public corruption to include abuses of public trust by public officials, and such acts by persons acting under apparent official authority;

See LEGISLATION, page 7

THE THIRD BRANCH

Nominations Open for 1989 Devitt Award

Nominations are open for the eighth annual Devitt Distinguished Service to Justice Award.

Any person may submit a nomination. Entries must be in writing and should set forth the nominee's accomplishments and professional activities that have contributed to the cause of justice. Only judges appointed under Article III of the Constitution are eligible recipients.

The award was established to recognize public service and carries an honorarium of \$15,000.

The 1989 selection committee is composed of Judge Edward J. Devitt (D. Minn.), Justice Sandra Day O'Connor (U.S. Supreme Ct.), and Judge Wilfred Feinberg (2d Cir.). Submissions must be made by Dec. 31 to Devitt Distinguished Service to Justice Award, P.O. Box 64810, St. Paul, MN 55164-0810.

DAMAGE, from page 1

determined that jury trials could not be held for three to four months and therefore that it was not efficient to maintain a judge in St. Croix. Since Judge Brotman's return to New Jersey on Oct. 12 to handle his own docket, visiting judges have maintained a calendar every Wednesday in St. Croix.

St. Thomas. Judge Brotman inspected the courthouse on St. Thomas and found not nearly as much damage as on St. Croix. The courtroom, clerk's office, and chambers were dry, in good condition, and operating despite some telephone problems. Magistrate Geoffrey W. Barnard was holding court. After consultation among court personnel and with the local bar, they determined to resume jury trials in one month.

Charleston. No damage was caused to court facilities in the District of South Carolina when Hurricane Hugo hit on Sept. 21; however, because of the devastation in the area of Charleston, the courthouse was closed until Oct. 2.

Galveston. Hurricane Jerry and several tornados struck Galveston and

the Texas Gulf Coastal area on Oct. 15. Leonel Garza, deputy court clerk in charge of the Galveston division, Southern District of Texas, said that moving computers and equipment away from windows in the clerk's and probation offices was sufficient precaution to prevent damage. "We had some leaking windows and are still waiting for GSA to deal with that," he said, "but court operations on Monday were undisturbed."

San Francisco/Oakland area. The most serious damage from the Oct. 17 earthquake was to the east wing of the 80-year-old building of the U.S. Court of Appeals for the Ninth Circuit in San Francisco. That portion of the building housed the clerk's office, staff attorneys, circuit executive's office, and part of the library. An engineering study is still being conducted for GSA, but there appears to be no structural damage and it seems that the facility can be repaired. GSA's preliminary estimates to rehabilitate the building are expected to be in the range of \$35 million.

Cracks in marble facing and falling ornamental plaster have rendered the circuit courthouse uninhabitable. Through around-the-clock efforts by staff of the Ninth Circuit (and despite continuing aftershocks), personnel, the computers, the electronic mail system, and records have been moved to quarters in several locations. Many of the 150 court employees and judges, who occupied 140,000 square feet of space in the courthouse, have been temporarily squeezed into less than 20,000 square feet of space at nearby 10 United Nations Plaza above a fast-food outlet. A month after the earthquake, most court units were operating with only partial staffs because of lack of space.

The New AIMS computer was moved to the district court's computer room and a limited number of terminals were connected within a few days, although it took almost three weeks for the clerk's office to obtain and set up a full complement of 25 computer terminals to resume full docketing operations. A month after the earthquake, mail delivery was still

sporadic. Many of the court's 37 staff attorneys, including its entire pre-briefing conference unit, were forced to work out of their homes or local law libraries because of lack of space, telephones, files, and computers. The eight central library staff continued to field reference requests, but with no access to the library and its materials, librarians had to rely on other local libraries and branches for assistance. The circuit executive's office concentrated most of its efforts on assisting other court units to obtain space and to set up telephones and computers to try to resume some semblance of normal operations. It may be six months before larger quarters can be obtained to permit full court functions.

For the first few weeks after the earthquake, the court was accepting only emergency filings at its Pasadena or Seattle divisional offices. As of Nov. 6, the clerk's office started accepting routine filings in San Francisco. With the assistance of case management clerks from the Fourth Circuit, the clerk's office is attempting to catch up with docketing new appeals, motions, and briefs. However, since clerk's office staff, files, and records are distributed over five buildings, delays will continue in case processing for the foreseeable future. There was, however, no disruption in filing the court's opinions.

All November calendars are proceeding on schedule. In December, Seattle and Pasadena panels will proceed as scheduled, with some of the 20 San Francisco panels being moved to Pasadena. Oral argument calendars in San Francisco will be heard in the district court or in local law schools. The court will use the same main office addresses and telephone numbers as before.

Congress has appropriated \$250 million to assist with all earthquake damage, with none of it earmarked, although efforts are under way to get the requisite funding designated for the needs of the court.

No serious damage was suffered by the San Jose, Oakland, or San Francisco buildings of the Northern District Court. ■

MAGISTRATES, from page 2

The Second Circuit has found that consent by a defendant saves a conviction by a jury chosen under magistrate supervision. Defendant Wong gave explicit consent to a magistrate's conducting voir dire in selection of his jury, and was convicted. After the decision in *U.S. v. Gomez*, Defendant Wong petitioned for rehearing on a claim of clear error. *U.S. v. Wong*, No. 88-1100 (2d Cir. Sept. 5, 1989).

The Second Circuit rejected his claim on two grounds: his consent to the procedure and *U.S. v. Garcia*, "which held that Congress could and did authorize the district courts to delegate to magistrates the task of presiding at voir dire." The court of appeals found that the Supreme Court had limited its ruling to a situation in which a magistrate presides over jury selection "despite the defendant's objection," and stated that the primary question before the Supreme Court was whether the Act authorized a magistrate to conduct jury selection without the defendant's consent. The court of appeals also cited the Second Circuit rule in *U.S. v. DeFiore*, which premised affirmance of a conviction on the defendant's failure to object to jury selection by a magistrate. The court read *Gomez* as not "requiring reversal of a felony conviction where, as here, there was not only a failure to object, but explicit consent, to the magistrate's selection of a jury." The court continued, "In view, however, of the Supreme Court's explicit limitation both of the question presented and the ruling stated in *Gomez*, we are not required by that case to conclude that the error requires reversal where consent is given, and we decline to do so on this record."

Judge Frank X. Altimari dissented, saying that he thought the focus of the court in *Gomez* was on the powers of the magistrate and that he believes, in view of the principles expressed in the *Gomez* decision, that "a magistrate has no power to seat a jury in a felony case with or without the defendant's consent." ■

NOTEWORTHY

Cameras in the courtroom. After several requests and a private demonstration by news organizations, including C-Span and the Public Broadcasting System, Chief Justice Rehnquist, speaking for the Supreme Court in a letter made public in late October, stated that the members of the Court declined to change their policy banning the use of cameras to record proceedings of the Court.

Judicial branch automation. The AO has announced that in FY89 personal computers were provided as follows: approximately 900 to judges' secretaries, 1,100 to chambers to be shared by law clerks, and 1,300 to judicial officers. FY89 electronic equipment purchases will support electronic docketing sys-

tems to either install new systems or to upgrade existing systems in 15 courts. Recent progress in identifying a source for appropriate microcomputer systems means that electronic docketing systems in the smaller courts may be available in early FY90.

In a related matter, judiciary branch personnel have been asked to take note of copyright law as it pertains to software. "Copying software for personal computers without the permission of the copyright owner, i.e., without purchasing a license for the software, is illegal," said Fred McBride, chief of the AO Division of Systems Services. "In addition to causing considerable embarrassment to the judiciary, individuals who engage in copyright infringement activity may be subject to civil and criminal penalties," he warned. ■

Senate Votes to Remove Judges Hastings and Nixon from Office

The Senate voted on Oct. 20 to convict Judge Alcee L. Hastings on eight of the 17 charges brought in impeachment proceedings against him and on Nov. 3 to convict Judge Walter L. Nixon, Jr., of two of the three charges brought in impeachment proceedings against him.

Conviction on any one count is sufficient for removal from office. Two-thirds of those present and voting is required for conviction. Impeachment proceedings have no fixed standard of proof, and senators apply the standards they think appropriate.

In both the Hastings and Nixon cases, the Senate designated a special committee to consider in detail the evidence presented by the House of Representatives in order to minimize the time taken by the full body. Throughout the proceedings, members of both houses suggested that the impeachment process is too time consuming even using the device of a special committee. Sen. Wyche Fowler, Jr. (D-Ga.), chairman of the special Senate impeachment panel that heard the evidence in the Nixon case, said that the process requires one to "stop everything that you are doing legislatively" to handle an impeachment trial, and that he intends to propose a consti-

tutional amendment to reassign to the Supreme Court the impeachment trials of all federal judges except justices of the Supreme Court. The plan he and Sen. Daniel Moynihan (D-N.Y.) are considering would have the Senate retain impeachment powers over the Supreme Court, the President, and other executive officers, while the Supreme Court would determine the fitness to serve of judges of the lower federal courts. Sen. Fowler said the complexities of modern impeachment proceedings place great demands on Congress. "There was no way the founding fathers would have anticipated what is implied in today's construction of a modern trial, its detail and its complexity," he said. He added that some senators are concerned that more impeachment trials are likely because of the growth of the federal judiciary.

Rep. Don Edwards (D-Cal.), chairman of the House Judiciary Committee on Civil and Constitutional Rights and leader of the Nixon inquiry in the House, says that the removal process should remain difficult so as to safeguard the independence of the judiciary. He opposes changing the impeachment process. ■

THE THIRD BRANCH

JUDICIAL CONFERENCES, from page 1

Second Circuit. Chief Judge James L. Oakes in his State of the Circuit address commented on the problems of the circuit, including the delay in realizing a pay raise for the federal judiciary and the longstanding problem of judicial vacancies in the Second Circuit, which currently has nine vacant judgeships.

Circuit Justice Thurgood Marshall addressed a session of the conference on his work at the Supreme Court. He emphasized his concern for civil rights, not only in forums such as the Supreme Court but also in Congress and state legislatures.

A panel of law professors and law enforcement officials focused on issues of technology and privacy and examined whether the Constitution adequately protects citizens from seemingly inevitable abuses in the application of modern technologies. There was an informational presentation by experts involved in the development and sale of such increasingly sophisticated technology.

A program on judicial selection and independence of the judiciary included Sen. Patrick Leahy (D-Vt.). Sen. Leahy, a member of the Senate Judiciary Committee, called upon judges to offer members of Congress more and better information about the federal judiciary, especially its problems and needs. Panelists also discussed the judicial nomination process and the responsibility of all those involved to work toward qualified nominees.

Third Circuit. The Third Circuit selected Pittsburgh for its 1989 judicial conference in September, and the site and the program brought almost 400 to that historic city. Justice Brennan, Circuit Justice for the Third Circuit, addressed the gathering, and Chief Judge John J. Gibbons delivered the customary State of the Circuit address.

Panel programs explored innovations in litigation in federal trial and appellate courts and lawyer liability in civil and criminal practice. Presentations by panelists from the federal

courts, academia, and private practice were followed by an exchange of views between panelists and members of the audience.

Following custom, judges and lawyers from each of the districts in the circuit held a breakfast meeting to discuss current issues related to their courts. Separate meetings were also held by the bankruptcy judges, magistrates, and clerks of court.

Fourth Circuit. Chief Judge Sam Ervin III presided at the Fourth Circuit's 59th annual judicial conference last June, held at The Homestead in Hot Springs, Va.

The first day, as usual, was for executive sessions for the circuit and district judges, the bankruptcy judges, and the magistrates.

The substantive part of the program started on the second day with *A Conversation with Justice Lewis F. Powell, Jr.* He reminisced about his 17 years at the Supreme Court and about the work of the Court generally. The Supreme Court was also represented by Chief Justice Rehnquist, the Circuit Justice for the Fourth Circuit. As in other circuits, appropriate observance was made of the 200th anniversary of the Constitution, the Bill of Rights, and the Judiciary Act. As he has done in other circuits, Clay Jenkinson, a former teacher who performs characterizations of Revolutionary leaders, portrayed Thomas Jefferson, who carried on a conversation with Alexander Hamilton, a part played by Melvin Kahn, a political science professor at Wichita State University in Kansas. The circuit's own Judge T. S. Ellis III was moderator. The final day featured a panel discussion of major Supreme Court decisions.

The Fifth and Eleventh Circuits. These circuits held their first joint conference since the split of the Fifth Circuit in October 1981. The May 1989 conference, held in New Orleans, focused on the 200th anniversary of the Judiciary Act of 1789. Counting judges, magistrates, circuit executives, and other court personnel, 858 attended. Counting spouses and special guests and speakers from

outside the circuit the total was 1,441.

Guests included Justice Byron White, Circuit Justice for the Fifth Circuit; Justice Anthony M. Kennedy, Circuit Justice for the Eleventh Circuit; and Retired Justice Lewis F. Powell, Jr., formerly the Circuit Justice for both circuits. The Administrative Office of the U.S. Courts was represented by Director L. Ralph Mecham and the Federal Judicial Center by Judge John C. Godbold, the FJC director and former chief judge in both the Fifth and Eleventh Circuits. Attorney General Dick Thornburgh addressed the gathering on *My Four Year Plan for the Administration of Justice*. The legislative branch was represented by Sen. Howell T. Heflin (D-Ala.) and Rep. Jack Brooks (D-Tex.), who reported on pending legislation in Congress of interest to the judiciary.

Sixth Circuit. Lexington, Ky., was the site selected for the Sixth Circuit's Judicial Conference in May. The focus of the meeting was on the bicentennial of the Constitution, the Bill of Rights, and the Judiciary Act of 1789. The conferees started with a scholarly examination of the history of the first Judiciary Act by Profs. Mary Tachau (University of Louisville) and Wythe Holt (University of West Virginia College of Law), followed by a discussion of early federal court jurisdiction. Appropriately, as the judiciary prepares to enter the 1990s, Prof. Paul Carrington (Duke University School of Law) discussed the future of the federal judiciary and its practitioners. Prof. Arthur Miller (Harvard Law School) chaired a roundtable discussion on the standards of conduct for bench and bar. Tied in with these discussions was a panel on the current draft of the American Bar Association's Revised Code of Judicial Conduct, which will be considered for ABA approval next February.

Justice Antonin Scalia, Circuit Justice for the Sixth Circuit, delivered the concluding address and contributed his talents in yet another area: he directed the orchestra in its rousing rendition of "The Stars and Stripes Forever." ■

LEGISLATION, from page 3

violations of the Voting Rights Act, including election fraud involving all those who, if elected, would have authority over federal funds; corruption of Indian tribal governments; and the bribery of federal officers and witnesses, and state or local law enforcement officers by narcotics traffickers.

Newly introduced legislation is listed below; unless otherwise noted, the bills were referred to the judiciary committee in the originating body.

- **H.R. 3355** directs the Attorney General to pursue creation of an international criminal court with jurisdiction over certain internationally recognized crimes, such as terrorism, drug trafficking, and torture. The Attorney General would be directed to report to Congress by Dec. 30, 1990, and to include any recommendations of the Judicial Conference of the United States on the feasibility of such a court and on its relationship to the federal judiciary. The bill was referred jointly to the Committees on Foreign Affairs and Judiciary.

- **H.R. 3438** is sponsored by Del. Eni F. H. Faleomavaega (D-Am. Samoa), who said that American Samoa is the only territory that lacks a mechanism for review of decisions of its highest court. The bill gives the Court of Appeals for the Ninth Circuit and the Supreme Court jurisdiction to review by writ of certiorari all final decisions of the highest court of American Samoa. Litigants currently seeking such review must file mandamus actions against the Secretary of the Interior in the District Court for the District of Columbia, resulting in de novo litigation. Those actions could still be brought, he said, but only in the District of Hawaii, which is much closer to the territory, the parties, and witnesses. To preserve American Samoan cultural identity, the bill provides that interpretations by courts in American Samoa would be conclusive on questions of local law. It was referred jointly to the Committees on Interior and Insular Affairs and the Judiciary.

- **H.R. 3538** would provide a new

judgeship for the Northern District of Illinois and an additional temporary judgeship each for the Northern, Central, and Southern Districts of Illinois.

- **S. 1696**, the Racial Justice Act, would amend 28 U.S.C. to prohibit racially discriminatory capital sentencing. Ronald J. Tabak, chairman of the Death Penalty Committee of the ABA Section of Individual Rights and Responsibilities, testified on Oct. 2 before the Judiciary Committee in support of the bill, saying that the Act would create a remedy limited to capital cases, avoiding the problems of scope the Supreme Court alluded to in *McClesky v. Kemp*. He said the Act would encourage states to give clearer guidelines to imposing the death penalty, require specific steps to detect racial bias in potential jurors, and increase true proportionality reviews.

- **S. 1757**, sponsored by Sen. Joseph R. Biden, Jr. (D-Del.), and **S. 1760**, sponsored by Sen. Strom Thurmond (R-S.C.), both provide special habeas corpus procedures for capital cases. They were introduced on Oct. 16. **S. 1760** is the recommendation of the Judicial Conference Ad Hoc Committee on Federal Habeas Corpus in Capital Cases, chaired by retired Justice Lewis F. Powell, Jr. A side-by-side comparison of the bills appears in the *Congressional Record* at S 13475.

- Three child abuse bills extending enforcement jurisdiction to the federal courts were filed on Oct. 24. **S. 1783**, the Indian Child Abuse and Treatment Act, mandates reporting, protections, and treatment. Sen. John McCain (R-Ariz.) introduced the bill with a history of Bureau of Indian Affairs failure to comply with congressional direction to protect Indian children in BIA schools, failure to meet reporting requirements, and failure to provide treatment to victims. **S. 1783** was referred to the Select Committee on Indian Affairs. **S. 1786** adds sexual exploitation of children as an offense under the RICO statute, increasing minimum criminal penalties, and giving victims of such child abuse civil remedies; it is aimed

THE SOURCE

The publications listed below may be of interest to readers. Only those preceded by a checkmark are available from the Center. When ordering copies, please refer to the document's author and title or other description. Requests should be in writing, accompanied by a self-addressed mailing label, preferably franked (but do not send an envelope), and addressed to Federal Judicial Center, 1520 H St., N.W., Washington, DC 20005.

Association of the Bar of the City of New York, Committee on Federal Courts, *The Use of Magistrates as Trial Judges in the Southern District of New York*, 44 Record of the Association of the Bar of the City of New York 752 (November 1989).

Brennan, William J., Jr., *Are Citizens Justified in Being Suspicious of the Law and the Legal System?* 43 University of Miami Law Review 981 (1989).

Buxton, C. Michael & Michael Glover, *Managing a Big Case Down to Size*, 15 Litigation 22 (Summer 1989).

Federal Court System, In Memoriam, Paul M. Bator 1929-1989, 56 University of Chicago Law Review (Spring 1989)(an issue devoted entirely to the federal courts).

Fitzwater, Sidney A., *Toward a Renaissance of Professionalism in Trial Advocacy*, 3 Texas Tech Law Review 787 (1989).

Frankel, Marvin, *Partisan Justice: A Brief Revisit*, 15 Litigation 43 (Summer 1989).

Franks, Pamela J., *Federal Defender Organizations in the Ninth Circuit*, 2 Western Legal History 21 (Winter/Spring 1989).

Ginsburg, Ruth Bader, David Haber, Julius Cohen, & Louis H. Pollack, *Allan Axelrod — A Tribute*, 41 Rutgers Law Review 1045 (1989). ■

at pornography. **S. 1787** restores the recordkeeping requirement of the Child Protection and Obscenity Enforcement Act of 1988 that was struck by the U.S. District Court for the District of Columbia on May 16 in *American Library Ass'n v. Thornburgh*, foreclosing use of such records as evidence of child abuse to meet the court's objection. ■

THE THIRD BRANCH

CALENDAR

- Nov. 27-29 Workshop for Judges of the Fifth Circuit
- Nov. 29- Dec. 1 Seminar for Appellate Staff Attorneys
- Nov. 30-Dec. 1 Judicial Conference Committee on Administration of the Magistrates System
- Dec. 3-8 Orientation Seminar for New Assistant Federal Defenders
- Dec. 4-5 Judicial Conference Committee on Court Security
- Dec. 4-6 Seminar for New Appellate Judges
- Dec. 4-6 Seminar for Bankruptcy Judges of the Eighth, Ninth, and Tenth Circuits
- Dec. 11 Federal Courts Study Committee
- Dec. 13 Judicial Conference Committee on Judicial Resources, Subcommittee on Statistics
- Dec. 14-15 Judicial Conference Committee on Judicial Resources
- Dec. 14-16 Judicial Conference Committee on Judicial Improvements

Positions Available

Systems Administrator, S.D.N.Y. Bankr. Seeking creative person to be instrumental in developing automation systems for trend-setting bankruptcy court. Will work closely with judges and other professionals. Salary to \$37,510 (JSP-11). Permanent position; no civil service examination required. Submit résumé to Peter Goodwin, Systems Manager, U.S. Bankruptcy Court, S.D.N.Y., One Bowling Green, 6th Floor, New York, NY 10004-1408.

Bankr. Clerk, D. Minn. Chief administrative officer needed to serve under general direction of four judges, responsible for managing 60 deputy clerks in four offices. Requires 10 years' progressively responsible management experience with three years' supervisory experience. A degree in public, business, or judicial administration or a law degree may be substituted for some experience. Salary \$48,592-\$75,500 (JSP 14-16). Closes Nov. 30 or when filled. Submit five copies of résumé, salary history, and other appropriate information to Hon. Robert J. Kressel, Chief U.S. Bankruptcy Judge, 600 Towle Bldg., 330 Second Ave. South, Minneapolis, MN 55401.

Financial Administrator, C.D. Cal. Bankr. Principal accounting and finance authority, responsible for all monies paid into the court. Supervises staff of five. Requires two years' general and five years' specialized ex-

perience. Experience must be applicable to the duties of the position and have provided a knowledge of the rules, regulations, and terminology of finance as related to the courts. College education may be substituted for some experience. Announcement No. 88-64. Open until filled. Salary range JSP 10/11 (\$26,261-\$37,510). Must use only U.S. Bankruptcy Court Application; to obtain form, call (213) 894-3129 or (FTS) 798-3129. Submit application and such additional materials as may be appropriate to Personnel, U.S. Bankruptcy Court, 312 N. Spring St., Room 1516, Los Angeles, CA 90012.

Chief Deputy Clerk, S.D. Cal. Reports to the clerk, with substantial delegated responsibility for office operations. Develops and implements procedures and programs to manage cases, finances, and jurors, and supervises long-term projects. Selects or recommends personnel. Requires six years' progressively responsible experience in administration and a demonstrated capability to deal with automated systems and civil/criminal procedure. Degree(s) in business, public, or court administration, or law are preferred. Some education or experience may be substituted for other requirements. Open until Dec. 31 or until filled. Salary \$42,601 to \$59,216. Submit applications or résumés to Clerk, U.S. District Court, 940 Front St., San Diego, CA 92189. Tel. (FTS) 895-6152, (619) 557-6152.

EQUAL OPPORTUNITY EMPLOYERS



BULLETIN OF THE FEDERAL COURTS

THE THIRD BRANCH

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THE THIRD BRANCH

A Holiday Message from the Chief Justice

I am delighted to send the season's greetings to my fellow judges and all who have labored with us in the federal court system.

It is especially appropriate at this time of year to recall both the solemnity of our responsibilities and the worthiness of our mission as we work together to administer "equal justice under law." We can, I think, be proud of our accomplishments in the past year even as we continue striving to improve our system of justice.

Early in the coming year the Judicial Conference of the United States will receive the final report of the Federal Courts Study Committee. This Committee was established under Title I of the Judicial Improvements and Access to Justice Act of 1988. Members of the Committee include distinguished representatives of the executive, legislative, and judicial branches of government. Judge Joseph H. Weis, Jr. of the U.S. Court of Appeals for the Third Circuit serves as Chairman. The Federal Courts Study Committee is examining problems facing our federal courts and developing a proposed blueprint for the future of the federal judiciary. It will make specific proposals on significant issues concerning the role and relation, the structure, and the workload of the federal courts.



As the workload of the federal courts continues to increase at every level, we need careful and creative guidance on how to preserve the health of our system of justice. I am confident that the Federal Courts Study Committee will offer us a set of proposals whose implementation will enable us to meet the next century—now only a decade away—with the promise of a fair and efficient system of federal courts well intact.

I am pleased, as I know all of you are pleased, by the fact that Congress has enacted and the President has signed a bill granting judges, along with top federal executives and members of the House, a substantial pay raise over

the next thirteen months. The country will benefit from the recognition that those who perform this sort of work for the government should not be required to make extraordinary financial sacrifices.

As the Rehnquist family celebrates Christmas and the New Year, Mrs. Rehnquist and I hope that you and your families will enjoy every blessing of this joyful season.

Sincerely,

Senate Hearings Weigh Capital Case Habeas Procedure Amendments

On Nov. 8, a group of federal judges testified before the Senate Judiciary Committee on pending legislation to amend federal habeas corpus procedure in capital cases. The witnesses were Justice Lewis F. Powell, Jr. (Supreme Court, ret.), chairman of the Judicial Conference Ad Hoc Committee on Federal Habeas Corpus in Capital Cases (the Powell Committee), Chief Judges Charles Clark (5th Cir.), Donald P. Lay (8th Cir.), and William J. Holloway, Jr. (10th Cir.), Judges Patrick E. Higginbotham (5th Cir.), Stephen Reinhardt (9th Cir.), and Paul H. Roney (11th Cir.), and Professor Albert M. Pearson (University of Georgia School of Law), the reporter for the Powell Committee.

The hearing focused on S. 1760, a bill embodying recommendations of the Powell Committee, sponsored by Sen. Strom Thurmond (R-S.C.), and on S. 1757, an alternative proposed by Sen. Joseph Biden (D-Del.). (See *The Third Branch*, November 1989, at 7.)

Addressing the provisions of S. 1760, Justice Powell said, "In sum, the purpose of the committee's proposal is to advance the fundamental requirement of a justice system—fairness. Where the death penalty is involved, fairness means a

See HABEAS, page 4

FTS2000 Telephone System Upgrade in Progress; May 1990 Is Target Date for Completion

Transition to the new federal telephone system, FTS2000, began in October and is scheduled to continue at two-week intervals through May 1990, AO Director Ralph Mecham has announced. The change over is taking place in 18 phases. "The change will be transparent," said Richard H. Brons, AO Systems Services Branch. "Users will notice no apparent change in service, but FTS2000 will

improve the quality of service and increase the speed at which calls go through."

The AO is reviewing the financial and technical impact of acquiring the new enhanced features and services available with FTS2000. Subject to the availability of funding, they will develop programs that will allow the courts to obtain many of these serv-

See FTS2000, page 2

Inside . . .

1989 Ethics Reform Act raises pay, regulates ethics and senior judges' workload	3
Circuit judicial conferences	5
Legislation proposed to change impeachment process	5
Latest juror utilization statistics reported by circuits	6

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FTS2000, from page 1

ices. Information on the programs will be made available as guidelines are developed for funding and acquisition.

Switched voice service. The first phase of FTS2000 transition—switched voice service—will essentially reproduce pre-existing FTS voice service. Agency users can connect with other agency users by seven-digit numbers and with non-FTS2000 locations by public service 10-digit numbers.

Available switched voice service features include the following: (1) authorization codes for FTS2000 users to identify individual calling parties, which provide billing information for authorized-user calls into the network from off-net locations; (2) call screening, which permits administrators to control individual and group user calling capabilities, thereby improving network manageability and reducing the potential for abuse; (3) agency recorded message announcements, which are programmed to provide information to callers, with the capacity to store 300 recorded messages and handle as many as 250 callers concurrently; (4) inward selected access, which allows off-net callers to be routed to network stations, using a combination of recorded announcements and pre-selected extensions; (5) translations, which use seven-digit and ten-digit numbers to temporarily divert calls, such as when old numbers are still being used by outside callers; (6) attendant (operator) service dedi-

cated to FTS2000 to give assistance 24 hours daily, Monday through Friday except federal holidays, and through US Sprint at all times; (7) off-net information, which will offer directory assistance for callers from outside the network at all times; and (8) network audio conferencing, which will enable conference calls to combine a mixture of on-net off-net users.

These FTS2000 services can be added, depending upon available resources:

- **Switched data service** closely resembles switched voice service, except that the access lines are specifically conditioned to handle data traffic, which requires special equipment and access circuit conditioning. The need for this equipment will restrict switched data service availability in some locations in the early years of FTS2000 operations.

- **Packet switched service** can provide enhanced communication services to terminal and computer users, using specialized switching and concentration equipment to link communication lines into a data network. The features and capabilities include: (1) electronic mail (electronic bulletin boards, computer conferencing, electronic forms generation, applications processing, and word processing capabilities, with user instructions available in five languages simultaneously); (2) telex electronic mail sending and receiving; (3) telex delivery of electronic mail messages in hard copy form.

- **Video transmission service** can be in compressed or wideband video transmission modes, both offering point-to-multipoint and two-way video communications.

- **Dedicated transmission service** offers user agencies unlimited point-to-point non-switched service on a fixed monthly charge and will support virtually any FTS2000 service (voice, data, or video), subject to line quality or capacity limitations. The need for specialized equipment will restrict its availability to the continental United States and exclude some locations in the early years of FTS2000 operations.

PERSONNEL

CIRCUIT JUDGES

Nominations

Rhesa H. Barksdale, 5th Cir., Nov. 17
Jacques L. Wiener, Jr., 5th Cir., Nov. 17

Confirmation

John M. Walker, Jr., 2d Cir., Nov. 21

Death

Delmas C. Hill, 10th Cir., Dec. 2

DISTRICT JUDGES

Elevation

Gene M. Carter, Chief Judge, D. Maine, Nov. 20

Nomination

Ronald L. Buckwalter, E.D. Pa., Nov. 17

Confirmations

George W. Lindberg, N.D. Ill., Nov. 3
Vaughn R. Walker, N.D. Cal., Nov. 21
G. Thomas Van Bebber, D. Kan., Nov. 21
Edward W. Nottingham, D. Colo., Nov. 21
Arthur D. Spatt, E.D.N.Y., Nov. 21
Edward J. Lodge, D. Idaho, Nov. 21

Senior Status

James M. Burns, D. Or., Nov. 24
John H. Pratt, D.D.C., Dec. 1

MAGISTRATE, FULL-TIME

Appointment

Franklin L. Noel, D. Minn., Nov. 2

- **Switched digital integrated service** provides integrated access to on-net switched voice service, switched data service, packet switched service, compressed video transmission service, and dedicated transmission service, with some limitations.

Guidelines to govern acquisition of the new enhanced voice, data, and video services available through FTS2000 are being developed by the AO Office Systems Services Branch and will be distributed when completed. Persons with questions or comments may contact their local telecommunications coordinator or Richard Brons of the AO Office Systems Services Branch, FTS 633-6088. ■

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Ethics Reform Act of 1989 Provides Pay Raises for Judicial Officers; Requires Certification of Senior Judges' Workloads, Modifies Ethical Regulations

On Nov. 29, President George Bush signed the Ethics Reform Act of 1989, Pub. L. No. 101-194, the salary and ethics legislation that Congress passed as H.R. 3660. The following provisions affect the judicial branch:

Salary increases. Detailed explanations of revised pay rates are being prepared and will be provided to all affected personnel when completed by the AO Personnel Division.

Immediate cost-of-living adjustment. Judicial officers listed in the Act and some senior federal employees will receive a 7.9% COLA, effective Feb. 1, 1990.

Salary increase in 1991. In January 1991, Article III justices and judges will receive a 25% increase, which will raise other salaries linked to those by law.

Senior judge workload regulations. These provisions become effective Jan. 1, 1990, and apply to all federal judges and justices in senior status. Senior judges will continue to receive cost-of-living increases regardless of what judicial duties they may perform. In order for senior judges to receive any salary raise other than cost of living increases, there must be certification by the chief judge of the circuit that in the preceding calendar year such senior judges rendered one of the following levels of service: (1) carried a caseload involving courtroom participation equivalent to 25% of such service by an active judge, (2) performed duties outside the courtroom such as settlement efforts, motion decisions, and administrative activities, equivalent to 25% of such service by an active judge, (3) completed activities combining such duties equivalent to 25% of such service by an active judge, (4) performed substantial administrative duties that are directly related to operations of the courts or for a federal or state government body equivalent to the full-time work of a judicial branch employee, (5) was unable to perform duties to

meet one of these standards because of temporary or permanent disability. A justice or judge certified as permanently disabled will be deemed to have met the requirements for each succeeding year.

Ethics regulations. The Judicial Conference of the United States will implement and administer these provisions of the Act as they affect judicial branch personnel.

Honoraria. Effective Jan. 1, 1991, a ban is imposed on receipt of "payment of money or any thing of value for an appearance, speech or article"

above a GS-16 equivalent who are not career civil servants will be subject to a cap on outside earned income, effective Jan. 1, 1991. The cap is 15% of the Executive Schedule level II pay, which at that time will be \$120,800. Publishing royalties, considered investment income, are not included in the capped income.

Financial disclosure. Amendments of the Ethics in Government Act consolidate judicial branch regulations with those of the other two branches and impose essentially the requirements the Bush administration

Effects of Changes in Federal Judicial Salaries

Judicial Officer	Current Salary	1990 Salary (up 7.9%)	1991 Salary (up 25%)
Chief Justice	\$115,000	\$124,000	\$155,000
Associate Justices	110,000	118,600	148,300
Judges of Circuits, Court of Military Appeals	95,000	102,500	128,100
Judges of Districts, Court of Internat'l Trade, Tax Court, Claims Court	89,500	96,600	120,800
Bankruptcy Judges, Magistrates (F/T)	82,340	88,872	111,136

by any officer or employee of the government while in government employment (except Senators, Senate employees, and special government employees under 18 U.S.C. § 202).

Outside employment. The Act's restrictions are similar to the *Code of Conduct for United States Judges* and other codes of conduct that apply to some judicial branch personnel. Under the Act, officers and employees at or above a GS-16 equivalent who are not career civil servants may not be compensated for service as officers or directors of organizations, or for professional services in a fiduciary relationship, and they may not allow their names to be used by a firm or other organization. Teaching for compensation will require prior approval of the Judicial Conference.

Outside earned income. Under the Act, officers and employees at or

bill proposed. (See *The Third Branch*, July 1989, at 1.) They are effective Dec. 31, 1990. The Judicial Conference Committee on Judicial Ethics is examining the changed requirements with a view to implementation.

Salary Commission. The Quadrennial Commission has been reorganized by the Act. Renamed the Citizens' Commission on Public Service and Compensation, it will have 11 members appointed as follows: two by the President, two by the Chief Justice, one each by the Speaker of the House of Representatives and the President Pro Tempore of the Senate, and five by the Administrator of General Services to represent the citizenry at large. Salary levels recommended by the President after receiving the Commission's report will require affirmative enactment by both houses of Congress. ■

THE THIRD BRANCH

HABEAS, from page 1

searching and impartial review of the propriety of the sentence. Fairness also requires that if a prisoner's claims are found to be without merit, society is entitled to have a lawful penalty carried out without unreasonable delay."

Chief Judge Lay asked the Senate committee to defer responses to initiatives on habeas procedural amendments until the Judicial Conference of the United States has an opportunity for a measured response to the Powell committee recommendations and the ABA Task Force recommendations. He testified that the Judicial Conference in 1985 expressed the view that "provisions like the presently proposed S. 88 would add a much greater burden to the federal courts in resolving procedural issues" and would "preclude federal courts from giving any meaningful review to constitutional cases in state pro-

ceedings." (S. 88 is another pending bill that would amend death penalty habeas procedures.)

Judge Higginbotham supported the Powell committee recommendations contained in the Thurmond bill, with emphasis on two points. He said that S. 1760 "concedes the reach of the writ in its present full flower" and that it is not "radical in its restriction of federal review of state imposed capital sentences." He said also that its "fundamental contribution is its linkage of competency of counsel and control over successive writs while keeping the faith of federalism." He called particular attention to the history of the federal writ of habeas corpus. "Fifteen years ago, the Judicial Conference of the United States approved and sent to the Congress a proposed bill reforming federal habeas corpus procedures. That bill required complete exhaustion of state remedies unless state processes were shown to be inadequate, and would

bar habeas relief absent application within 120 days of certain stated triggering events." This, he said, "suggests that we are playing today on a worn field."

Testimony was presented indicating that, while representing a petitioner in a capital case habeas review can consume the equivalent of 25% of an attorney's billable time for a year, some states have fee schedules for such cases in the \$1,000-\$2,500 range. It was suggested that the Biden bill's standard of competency would be difficult to meet and that coupling it with compensation and ancillary services could be more expensive to the states than the Powell committee proposal to, as Chief Judge Clark put it, "let the states take the first crack at developing the standards."

Witnesses and senators noted that the cumulative impact of any reforms that are enacted must be financially attractive to the states or they won't participate. ■

ABA Actions Concerning Death Penalty Habeas Corpus Issues

The ABA Task Force on Death Penalty Habeas Corpus has issued a report accepting the premise that the current process is too lengthy and cumbersome, but expressing concern over the competence of representation. The Council of the ABA's Criminal Justice Section has adopted the report, with the exception of the standards for the appointment of counsel, and it will be presented to the House of Delegates in February. The proposals include:

- competent counsel compensated by the state at trial and through post-conviction direct and collateral review proceedings;

- a one-year statute of limitations after completion of the state direct review process for filing all post-conviction petitions, with tolling of the limitation while the petitioner is without competent counsel and while active litigation proceeds;

- mandatory stays of execution until completion of an initial process of state and federal post-conviction review within the statute of limitations;

- limitations on successive petitions, requiring a showing of a new retroactive federal right, miscarriage of justice, factual innocence, or previously undiscoverable material facts;

- a new basis for retroactive application of new constitutional law: whether the failure to apply it would undermine the accuracy of either the guilt or sentencing determination.

The task force co-chairmen were Judge Alvin B. Rubin (5th Cir.) and Chief Justice Malcolm M. Lucas (Sup. Ct. Cal.). The other members were Chief Judge Barefoot Sanders (N.D. Tex.); Justice Rosemary Barkett (Fla. Sup. Ct.); Judge Donald W. Stephens (Sup. Ct. N.C.); Talbot D'Alemberte, Esq.; John M. Graecen (Clerk, 4th Cir.); and Professor James S. Leibman (Columbia University School of Law). Professor Ira P. Robbins (American University College of Law) was the reporter for the task force.

The ABA *Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases*, the first such national standards on defense counsel in capital cases, has just been published. The guidelines attempt to

set national minimum requirements on eligibility, training, support services, trial preparation, sentencing, and appeals in capital cases. Adopted by the ABA House of Delegates, the guidelines have been published to assist judges, court administrators, and legislatures in assuring fair treatment of defendants and more efficient case management in the courts.

"Experience has demonstrated that capital trials and appeals are extremely specialized and demanding. The appointment of unqualified, inexperienced counsel can be very costly in terms of delay and expense," said Joanne M. Garvey, chairperson of the ABA Standing Committee on Legal Aid and Indigent Defendants.

Chief Justice Lucas filed a separate report dissenting in part; Chief Judge Sanders joined him and concurred in part. Mr. Graecen filed a separate statement concurring in the report, but criticizing the standards for appointment of counsel. Professor Leibman also filed a separate statement.



1989 Circuit Conferences: Reports On 7th Through 10th, International Trade Court, Claims Court

In November, *The Third Branch* reported on the circuit conferences of the First through Sixth and Eleventh Circuits. Reports on the remaining circuits, the Court of International Trade, and the Claims Court follow.

Seventh Circuit. Chicago was the site of this year's Seventh Circuit Judicial Conference in May. The program included a State of the Circuit report by Chief Judge William J. Bauer. Justice John Paul Stevens, Circuit Justice for the circuit, was an active participant, reviewing the Supreme Court year and participating in a panel discussion of current Supreme Court issues with Judges Barbara B. Crabb (W.D. Wis.), Robert L. Miller, Jr. (N.D. Ind.), and Richard Mills (C.D. Ill.). Gene Siskel, film critic of the *Chicago Tribune*, discussed his contention that recent movies are depicting judges and lawyers negatively, illustrating his comments with film clips.

L. Ralph Mecham, director of the Administrative Office of the U.S. Courts, and Judge John C. Godbold, director of the Federal Judicial Center, reported on their organizations.

Eighth Circuit. The theme of this conference was *The Federal Judiciary—200 Years and Beyond*.

Chief Judge Donald P. Lay began the conference July 20 with congratulations to the judges for their per-

formance over the past year. He reported that in 1988-89 the Eighth had the greatest increase in number of terminations of all the circuits, and that it now ranks in the top three circuits for speed of disposition after notice of appeal.

AO Director L. Ralph Mecham addressed a number of subjects of current interest to the judiciary, including judicial salaries, pending legislation, and the budget for the federal courts and how it will impact on their operation.

Judge John C. Godbold, FJC Director, reported that over the past year, the FJC put on over 300 training programs, 80 of them for Article III judges. He noted the Center's increased use of videotapes and revised seminar participant evaluation forms.

Sens. Dale L. Bumpers (D-Ark.) and George J. Mitchell (D-Me.), a former U.S. district judge in Maine, each gave the judges encouragement on prospects for salary increases, and each pledged continuing efforts to support legislation helpful to the judiciary.

Ninth Circuit. The theme of the 1989 Ninth Circuit Judicial Conference was *Partners in the Process*. Attorney General Dick Thornburgh gave the keynote address, *Agenda for*

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LEGISLATION

Newly introduced legislation is listed below; unless otherwise noted, the bills were referred to the judiciary committee in the originating body.

- **H.R. 3690** would amend Chapter 13 of the Bankruptcy Code to prevent the discharge of certain fines, penalties, and forfeitures. **H.R. 3691** would amend Chapter 11 to prevent modification of obligations to make restitution in criminal matters. **S. 1840** and **S. 1841** would curtail the ability of some residential property-

oriented businesses to be discharged of federally insured loans; they were referred to the Committee on Banking, Housing, and Urban Affairs.

- **S. 1970**, **S. 1971**, and **S. 1972** would amend federal criminal procedures and some criminal penalties, including the procedures for imposition of the death penalty.

- **S. 1994** would establish a compensation program for claims arising out of atmospheric nuclear testing. The program would be similar to the National Vaccine Injury Compensation Program, which is administered through the U.S. Claims Court. ■

Changes to Impeachment Process Proposed

Additional proposals for changing the impeachment process have been filed.

S. 1851 would supplement the impeachment remedy for removing federal judges "for misbehavior." Within 30 days of the Attorney General's filing a petition alleging that a federal judge had violated the Article III standard of "good behavior" by committing a felony, the Chief Justice would appoint a special three-judge court. The Federal Rules of Civil Procedure would apply, and a unanimous verdict would be required for removal. The decision would be final.

Sen. Howell Heflin (D-Ala.) introduced S.J. Res. 232 and S.J. Res. 233, proposing constitutional amendments on impeachment of judges. Sen. Heflin said that he believes the present procedures for removing federal judges "runs dangerously close to violating the fifth amendment due process rights of these judges." He added that the current procedure is "cumbersome and out of date."

S.J. Res. 232 would create a bifurcated process modeled on state systems of judicial discipline, with a judicial inquiry commission and a court of the judiciary, bodies like a grand jury and a trial court. Upon indictment or filing of an information, an accused judge would be suspended from the bench, on salary while the case was pending. On conviction of a felony, salary would be suspended until an impeachment was concluded. If the conviction was reversed, the judge would be reinstated and reimbursed.

S.J. Res. 233 would permit Congress to establish procedures for the discipline and removal of federal judges.

H.J. Res. 454, filed by Rep. James Sensenbrenner (R-Wis.), would amend the Constitution to permit Congress to grant the Supreme Court power to remove judges for cause.

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CIRCUIT CONFERENCES, from page 5

Justice, highlighting enforcement priorities in the areas of drug violations, civil rights, anti-pollution, and violent crime. A panel discussion entitled *Toward Greater Professionalism* included a series of dramatic vignettes demonstrating a variety of ethical and professionalism dilemmas. The panel ended with a call for wider implementation of voluntary codes of professional conduct. A panel on the *Role of the Partners* featured representatives of Ninth Circuit lawyers, district and circuit judges, the California Supreme Court, and the U.S. Supreme Court. Each panelist presented a view of the justice system and recommendations for improvement. William Agee (President, Morrison-Knudsen Co., and a member of the 1988 Quadrennial Salary Commission) delivered the annual banquet address, *Leadership Without Fear: No Pain, No Gain*. On the last day, a panel of lawyers participated in a discussion on the future of the legal profession. The program culminated with *A Conversation with Justice Stevens*.

Tenth Circuit. The Tenth Circuit conference celebrated the 60th anniversary of its creation from the Eighth Circuit in 1929. Circuit Justice Byron R. White, on behalf of the circuit, presented portraits to two former chief judges of the circuit, Delmas C. Hill of Kansas, who died Dec. 2, 1989, and Oliver Seth of New Mexico, who still sits with the court as senior judge.

A panel on the Judiciary Act of 1789 was led by Professor Charles Alan Wright (University of Texas School of Law) and included Morris Harrell, a Dallas lawyer and member of the Federal Courts Study Committee.

The Tenth Circuit has functioned at its full complement of 10 active judges for the past year, the first time in several years, and benefits from the services of three senior judges. During July and August, the court terminated 20% more cases than were filed: 438 filings and 588 terminations. The circuit is now at the threshold of a project to renovate the historic Post Office and Courthouse Building in downtown Denver to serve as the new headquarters for the

U.S. Court of Appeals for the Tenth Circuit. The circuit has spent 25 years at its present location, which will soon be completely occupied by the U.S. District Court for the District of Colorado.

District of Columbia Circuit. This circuit's 1989 meeting, its 50th, was held in Williamsburg, Va. Chief Judge Patricia M. Wald and Chief Judge Aubrey Robinson (D.D.C.) arranged a program this year that covered many aspects of the war against drugs and its implications for our legal system, including interdiction, international cooperation, and coordination of related matters such as treatment, prevention, and how to handle imprisonment. Chief Justice Rehnquist, Circuit Justice for the District of Columbia Circuit, addressed the meeting.

Two panels discussed legal choices on environmental law enforcement and emerging legal and ethical dilemmas raised by advances in reproductive technology. The conference concluded with a colloquy among Chief Justice Rehnquist, Attorney General Dick Thornburgh, and Senator Patrick J. Leahy (D-Vt.) on separation of powers in daily decision-making at the highest policy levels, and a presentation on *Literature and the Law*.

Federal Circuit. This circuit held its one-day conference last May in Washington, D.C. The meeting was open to members of the court's bar, and more than 1,300 lawyers attended.

Chief Judge Howard T. Markey opened the conference and announced a full program designed to be informative and helpful to both practitioners and the judiciary. At the luncheon meeting both Chief Justice Rehnquist, the Circuit Justice, and Justice Antonin Scalia addressed the gathering. The Chief Justice spoke of the work of the Supreme Court during the 1988-1989 term and commended the judges of the circuit for their record of case disposals. Justice Scalia spoke about the federal appellate process, with his main focus on the work of the Supreme Court.

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AO Reports New Juror Utilization Statistics

The latest statistics available on juror utilization in the federal district courts reveal a slight rise in the national average of jurors not selected, serving, or challenged (NSSC) on the first day of jury duty. The AO has released the quarterly report for the 12 months ending June 30, 1989, showing 35.82% NSSC, an increase of 2.16% over June 30, 1988. It is also the highest percentage of jurors NSSC since 1984.

The AO has reported to the chief judges that some portion of the rise relates to the increased percentage of criminal jury trials. The report cites two factors not readily within the control of the district courts that can cause increased NSSC juror rates: notorious trials requiring unusually large panels, and late settlements.

AO Director Ralph Mecham noted that the NSSC rate may also relate to decreased efficiency in juror usage,

and said that the AO values any advice on dealing with the phenomenon or ideas on services the Court Administration Division could provide to enhance efficiency and effective in juror utilization programs. He requested that interested persons contact David Williams, tel. FTS 633-6221.

Percentage of Jurors NSSC

Circuit	Year Ended 6/30/89	Year Ended 6/30/88
D.C.	39.56	46.37
First	31.23	35.48
Second	50.25	41.24
Third	36.58	31.58
Fourth	27.79	26.44
Fifth	34.80	32.25
Sixth	45.90	40.19
Seventh	32.30	32.20
Eighth	28.26	31.72
Ninth	32.32	30.60
Tenth	31.87	28.92
Eleventh	29.88	35.52



Newly Appointed Appellate Judges Meet for FJC Orientation



Pictured at a meeting at the Supreme Court are, left to right, seated: Justice Byron R. White (Sup. Ct.), Judge Collins J. Seitz (3d Cir.), Justice Anthony M. Kennedy (Sup. Ct.), Judge Pamela A. Rymer (9th Cir.), Justice John Paul Stevens (Sup. Ct.), Judge Paul R. Michel (Fed. Cir.), Judge John C. Godbold (Director, FJC), Judge Wade Brorby (10th Cir.); standing: Judge Emmett R. Cox (11th Cir.), Judge John M. Walker (2d Cir.), Judge Anthony J. Scirica (3d Cir.), Judge S. Jay Plager (Fed. Cir.), Judge John M. Duhe (5th Cir.), Judge C. Arlen Beam (8th Cir.), Judge David M. Ebel (10th Cir.), Judge Jerry E. Smith (5th Cir.), Judge J. Daniel Mahoney (2d Cir.), Judge Richard S. Arnold (8th Cir.), Judge James C. Hill (11th Cir.), and Judge Robert E. Cowen (3d Cir.).

CIRCUIT CONFERENCES, from page 6

Following a plenary session devoted to an examination of abuses of the appellate process, panelists from the bench, the bar, and academia critically examined frivolous appeals and the opinion-writing process. They both praised and condemned current rehearing and certiorari practices. Groups of federal private practice lawyers and federal lawyers whose cases come before the Federal Circuit met separately to assess the potential for improvement in the processing of their cases. Materials made available to the conferees included current Rules of Practice and a report on court activities from 1982 to 1988 entitled *The First Two Thousand Days*.

Court of International Trade. This court's sixth annual conference was held in New York City, at the World Trade Center. Chief Judge Edward Re announced the theme of the one-day meeting: *The U.S. Court of International Trade in the 1990s: The Continuing Significance of Judicial Review in a Changing Environment*. Conferees were the judges of the court; members of the court's bar; and officials of the International Trade Commission, the U.S. Customs Service, and the Departments of Justice, Commerce, and the

Treasury. The program covered four subjects: *Judicial Review in Customs and International Trade: The Intended Solutions of the 1979 and 1980 Acts; The Litigation Experience: How Far Have the Courts, the Agencies, and the Litigants Progressed?; Customs Enforcement Activities: Unresolved Issues for Liquidated Damages, Penalties, Seizures and Forfeitures; and Judicial Review: Is It Proving Effective in Resolving Trade Cases?*

Claims Court. The Claims Court held its Third Annual Judicial Conference in November in Charlottesville, Va., with Chief Judge Loren A. Smith presiding. The three-day conference brought together Claims Court judges and practitioners to discuss jurisdictional and other issues of common concern to litigants and the judges.

Separate groups discussed the problems associated with the areas of the court's jurisdiction that are shared with other tribunals, such as district courts, the Tax Court, and the various boards of contract appeals. Practitioners in the areas of contracts, tax, fifth amendment pleas, American Indian claims, patents, pay claims, and vaccine-injury claims discussed management and procedural issues. ■

CALENDAR

- Dec. 22 Federal Courts Study Committee
- Jan. 4-5 Judicial Conference Committee on the Administration of the Bankruptcy System
- Jan. 4-5 Judicial Conference Committee on Criminal Law and Probation Administration
- Jan. 8-10 Workshop for Judges of the Sixth and Eighth Circuits
- Jan. 10-12 Judicial Conference Committee on Defender Services
- Jan. 15-16 Judicial Conference Committee on Space and Facilities
- Jan. 13 Judicial Conference Committee on Federal-State Jurisdiction
- Jan. 17-18 Judicial Conference Committee on the Codes of Conduct
- Jan. 17-19 Seminar for Clerks of the U.S. District Courts
- Jan. 18-20 Sixth and Seventh Circuit Clerks' Conference
- Jan. 22-24 Workshop for Judges of the Ninth Circuit
- Jan. 25-26 Judicial Conference Committee on Judicial Ethics
- Jan. 26-27 Judicial Conference Committee on the Budget
- Jan. 29-Feb. 1 Video Orientation Seminar for Newly Appointed District Judges
- Jan. 30-Feb. 5 BANCAP/Civil Managers Workshop

Hearings for Federal Courts Study Committee

The Federal Courts Study Committee has relocated the Jan. 29 hearing on its draft report from San Francisco to San Diego. Additional information about hearing sites can be obtained from the Committee offices, tel. FTS 597-3320. The hearing dates and locations are Jan. 18, Des Moines; Jan. 19, Madison; Jan. 22, Dallas; Jan. 23, Miami; Jan. 25, Salt Lake City; Jan. 26, Seattle; Jan. 29, San Diego; Jan. 30, New York; and Jan. 31, Washington, D.C.

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Ducat, Craig R., & Robert L. Dudley, *Federal Judges and Presidential Power: Truman to Reagan*, 22 *Akron Law Review* 561 (1989).

Fitzwater, Sidney A., *Toward a Renaissance of Professionalism in Trial Advocacy*, 20 *Texas Tech Law Review* 787 (1989).

In *Memory of Judge J. Skelly Wright*, 57 *George Washington Law Review* 1029 (May 1989).

Kaufman, Andrew L., *Judicial Ethics: The Less-Often Asked Questions*, 64 *Washington Law Review* 851, (1989).

Kaufman, Irving R., *Remarks at En Banc Proceedings Marking His Fortieth Anniversary on the Federal Bench*, Court of Appeals for the Second Circuit, New York, N.Y., Nov. 1, 1989.

Minda, Gary, *The Jurisprudential Movements of the 1980's*, 50 *Ohio State Law Journal* 599 (1989).

✓Wheeler, Russell R., *Empirical Research and the Politics of Judicial Administration: Creating the Federal Judicial Center*, 51 *Law & Contemporary Problems* (Summer 1988).

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