

THE THIRD BRANCH

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Judges Address Civil Reform and Judgeship Needs

At a June 26 hearing before the Senate Judiciary Committee, two federal judges testified on S. 2648, which would create more judgeships and bring about civil justice reform.

Judge Walter T. McGovern, Chairman of the Judicial Conference Committee on Judicial Resources, endorsed the creation of new judgeships, but questioned if pending legislation

addressing this issue establishes sufficient positions to meet the growing workload. Judge Robert F. Peckham, Chairman of the Judicial Conference's

Subcommittee on the Civil Justice Reform Act of 1990, testified in support of efforts to improve civil case management in the trial courts, but indicated that concerns exist

with this portion of the bill that prevent the Conference from endorsing it.

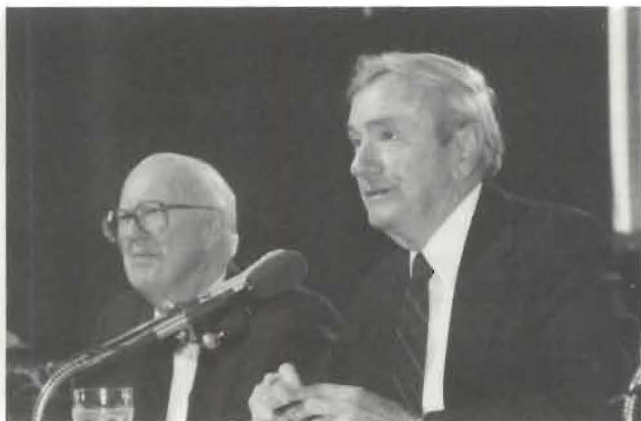
"The federal judiciary has long been committed, unequivocally, to the values and concerns that inspire this proposed legislation," said Peckham.

Title I of S. 2648, introduced in May by Senator Joseph Biden (D-

Del.) as a substitute to his S. 2027, would require each district court to develop and implement a civil justice expense and delay reduction

plan. Title II would create 77 judgeships in the federal district and appellate courts.

At the hearing, Biden took strong
See Senate Hearing, page 2



Judge Peckham (left) and Judge McGovern testify on civil justice reform and new judgeships.

Seventh Circuit Studies Civility

When do a lawyer's aggressive courtroom tactics cross the line into unprofessional conduct? What should be the self-imposed limits on judges criticizing other judges? Chief Judge William J. Bauer (7th Cir.) has been concerned about these issues and the general problem of incivility, which appears to be more acute as shown by the increasing number of requests for court imposed sanctions. To determine the extent of civility problems in Seventh Circuit litigation, Bauer appointed the Committee on Civility of the Seventh Federal Judicial Circuit, with Judge Marvin Aspen (N.D. Ill.) as Chairman.

The Committee was given a free hand to analyze relations among lawyers, among judges, and among lawyers and judges. The Committee divided its work into three phases, with the initial stage aimed at determining if lack of civility was perceived as a problem. A four-page questionnaire was prepared and sent to all federal judges and magistrates in the Seventh Circuit, to the 1400 members of the Seventh Circuit Bar Association, and to members of other bar associations.

The second phase of the study will be preparation of an interim report detailing the survey findings, discussing the extensive legal

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exception to comments quoting Judicial Branch officials, which he considered unfair attacks on his motivations about the makeup of the judgeship title of the bill.

Peckham and McGovern said following the hearing that any public comments that may have appeared to question Biden's motives were unfortunate, and not made on behalf of the Conference. Both judges noted that Biden has played a leadership role on numerous issues of importance to the courts.

In sponsoring the pending legislation, Biden has performed a valuable service in raising the awareness of the courts to these real concerns in civil litigation, Peckham said.

While endorsing the principle behind the legislation, Peckham told the Judiciary Committee that it duplicates much of a program recently adopted by the Judicial Conference and would circumvent the use of the existing Rules Enabling Act. Further, Peckham testified that the mandatory nature and rigidity of some of the provisions in the bill would impair judges' ability to manage their dockets most effectively and might intrude on procedural matters that are properly the province of the Judiciary. As a result, the Executive Committee of the Conference has said that it

cannot endorse Title I of the bill.

Peckham testified that recent actions the Conference has taken in response to the original S. 2027 have resulted in implementation of many of the positive suggestions proposed by Biden. At its March 1990 meeting, the Conference adopted a statement of its intensified commitment to individualized case management as well as a recommendation that each district court convene an advisory group to help isolate causes of cost and delay and recommend possible solutions.

The following month the Conference approved a 14-point program designed to assess and address cost and delay in every district court in the country.

With regard to Title II of S. 2648, McGovern testified in support of the creation of additional judgeships.

"Absent meaningful cuts in the federal courts' jurisdiction, the additional judicial positions added by this bill are essential to the operation of justice and the federal judiciary," he told the Committee.

However, McGovern noted that the legislation was based on outdated workload data. On June 6, the Conference approved recommendations for 96 judgeships, a figure that takes into account the steady growth in the Judiciary's workload using the most current statistics available.

Since the last judgeships were authorized in 1984, the number of criminal cases filed in the district courts has grown by nearly 30 percent, McGovern said. Drug cases alone have increased nearly 130 percent, and now represent approximately 30 percent of all criminal cases.

The situation in the courts of appeals is similar. In 1984 appeals of drug cases represented only six percent of all appeals. Since that time drug appeals have grown by more than 120 percent and now represent more than 12 percent of the appeals filed. Projections indicate that the steady growth in trial and appellate courts is expected to continue.

Despite the numerical differences in needed judgeships between the Conference and the pending bill, McGovern assured Biden that "we are running on the same track."

Also testifying at the hearing was Judge Diana E. Murphy (D. Minn.), President of the Federal Judges Association, who spoke in support of Title II while expressing concerns about Title I. The final witness was Carl D. Liggio, a representative of the American Corporate Counsel Association, which endorsed the civil reform portion of the bill and took no formal position on the judgeships.

BUDGET UPDATE FOR FISCAL YEAR 1991

On June 13, the House Appropriations Committee approved funding of \$1.95 billion for the Judiciary for fiscal year 1991. This is a reduction of about \$102 million from the Judiciary's request of \$2.05 billion. However, \$28.8 million of this reduction is for the Drug Dependent Offenders treatment program and will be included in the appropriation at a later date. The House Appo-

priations action represents about a 15 percent increase over the Judiciary's 1990 funding level.

The reductions consist of the following: 1) denial of the Judiciary's request to restore funds that had been sequestered in 1990 under the Gramm-Rudman-Hollings law (\$18.2 million); 2) funding for only 50 percent of the cost-of-living salary increases for support person-

nel, rather than 100 percent as requested (\$9.9 million); 3) decrease in Defender Services funds due to large carry-over balances anticipated from 1990 (\$30 million); 4) court security (\$1.6 million); 5) Administrative Office (\$775,000); 6) Federal Judicial Center (\$1.9 million); and 7) miscellaneous other reductions (\$11.6 million).

See Budget, page 10

☛ **H.R. 3406** (*Kastenmeier*)

Provides for federal jurisdiction of certain multiparty multiforum civil actions. (*Passed the House June 6*)

☛ **H.R. 1620** (*Kastenmeier*)

Amends provisions of Title 28 relating to judicial discipline, and establishes a commission to study alternatives to present impeachment process. (*Passed the House June 6*)

☛ **S. 1970** (*Biden*)

Makes significant amendments in the criminal law field. Along with S. 1972 this bill is Biden's alternative to the President's anti-crime package. (*On May 24, Senate approved a Specter-Thurmond habeas corpus amendment to S. 1970, encompassing in large part the recommendations of the Powell Committee. On June 28, consideration of bill resumed under agreement to limit amendments to 19. Final votes scheduled upon return from July 4 recess*)

☛ **S. 1971** (*Thurmond*)

Includes provisions for general habeas corpus reform, exclusionary rule amendments and expanded drug testing programs. (*Placed directly on Senate calendar without referral to committee*)

☛ **H.R. 2372** (*Owens*)

Provides for jurisdiction and procedures for claims for payments for injuries due to exposure to radiation from nuclear testing. (*Passed the House June 6*)

☛ **S. 2648** (*Biden*)

H.R. 3898 (*Brooks*)

The Judicial Improvements Act of 1990 is a substitute for S. 2027. Title I, the Civil Justice Reform Act, takes into account many but not all of the Judiciary's concerns present in the original bill. Title II, the Federal Judgeship Act of 1990, would create 77 federal judgeships. A third title

encompassing the non-controversial recommendations of the Federal Courts Study Committee and certain extant Judicial Conference positions may be added soon. The House bill remains the same as the original S. 2027, and is comprised of only one title, The Civil Justice Reform Act of 1990. (*Senate Judiciary Committee hearing held June 26. Mark-up expected in mid to late July. No action yet in the House*)

☛ **S. 948** (*Gorton*)

H.R. 4900 (*Morrison*)

Divides the Ninth Circuit into two circuits. The new Ninth Circuit would be composed of Arizona, California and Nevada. Alaska, Idaho, Montana, Oregon, Washington, Hawaii, Guam and the Northern Mariana Islands would make up the Twelfth Circuit. (*Senate Courts Subcommittee hearing held March 6. House Courts Subcommittee hearing held June 13*)

☛ **H.R. 4820** (*Schuetz*)

Anti-Crime and Drug Initiatives Act of 1990 includes title to create 97 federal judgeships. (*No action yet*)

☛ **H.R. 3163** (*Dannemeyer*)

Establishes a new judicial district in California comprised of Orange, Riverside and San Bernardino counties. (*House Courts Subcommittee hearing held June 13*)

☛ **H.R. 865** (*Martin*)

Adds Watertown as a place of holding court in the Northern District of New York. (*House Courts Subcommittee hearing held June 13*)

☛ **S. 2620** (*Heflin*)

Provides for a five-year intercourt conflict resolution demonstration, whereby the Supreme Court can refer a case arising from an intercourt conflict to a "neutral" court for

decision. (*No action yet*)

☛ **H.R. 3961** (*Erdreich*)

S. 2068 (*Shelby*)

Designates the U.S. Courthouse located in Birmingham, Alabama as the Robert S. Vance Federal Building and U.S. Courthouse. (*Signed by the President May 29, P.L. 101-304*)

☛ **H.R. 4178** (*Bosco*)

Gives the Judiciary a greater voice in meetings its space and facilities needs. (*House Subcommittee on Public Buildings and Grounds hearing held March 14*)

☛ **S. 2754** (*Biden*)

Violence Against Women Act of 1990 requires Sentencing Commission to amend existing guidelines to increase penalties for those convicted of crimes related to sexual abuse. Creates a civil rights remedy for victims of sex crimes in the federal courts. (*Senate Judiciary Committee hearing held June 20*)

☛ **H.R. 2514** (*Ackerman*)

Thrift Savings Plan Technical Amendments Act authorizes agencies to repay any earnings lost to participants through agency error; removes restrictions limiting the amount of investment in each of the three funds; and removes the investment restrictions placed on CSRS participants and judicial officers. (*Passed House April 24 and passed Senate June 27*)

For copies of bills, write: *Senate Document Room B-04, Hart Building, Washington, D.C. 20510, or House Document Room, H-226 Capitol Building Washington, D.C. 20515.*

APPOINTED. Chief Judge **Frank H. Freedman** (D. Mass.), to the **Foreign Intelligence Surveillance Court**, by Chief Justice Rehnquist, for a 4-year term, succeeding Judge Conrad K. Cyr, effective May 30.

APPOINTED. Chief Judge **Ralph G. Thompson** (W.D. Okla.), to the **Foreign Intelligence Surveillance Court**, by Chief Justice Rehnquist, for a 7-year term, succeeding Judge James E. Noland, effective June 11.

APPOINTED. Judge **Vincent Broderick** (S.D. N.Y.), as **Chairman of the Committee on Criminal Law and Probation Administration**, succeeding Judge Edward R. Becker, effective October 1.

DECEASED. Senior Judge **Joe M. Ingraham**, U.S. Court of Appeals for the **Fifth Circuit**, May 27.

DECEASED. Senior Judge **Mark A. Costantino**, U.S. District Court for the E.D. of **New York**, June 17.

APPOINTED. U.S. Magistrate **Jack D. Shanstrom**, to the U.S. District Court for the D. of **Montana**, effective May 14.

APPOINTED. **Lawrence M. McKenna**, to the U.S. District Court for the S.D. of **New York**, effective May 24.

APPOINTED. **David H. Souter**, to the U.S. Court of Appeals for the **First Circuit**, effective May 25.

APPOINTED. **John D. Rainey**, to the U.S. District Court for the S.D. of **Texas**, effective May 30.

APPOINTED. **John S. Martin, Jr.**, to the U.S. District Court for the S.D. of **New York**, effective May 22.

APPOINTED. **Jacques L. Wiener**,

NEW CHIEF JUDGE NAMED FOR FEDERAL CIRCUIT COURT

Judge Helen W. Nies was invested as Chief Judge of the U.S. Court of Appeals for the Federal Circuit on June 27. She replaces Judge Howard T. Markey, who served as chief judge of the court since it was formed in 1982 and who will remain on the court.

Nies is the first woman to sit on the Federal Circuit and its predecessor court, the Court of Customs and Patent Appeals. Only two other women are believed to have served as chief judge of a federal appeals court.

The investiture took place at the National Courts Building in Washington, D.C., and was presided over by Chief Justice William H. Rehnquist.

Nies was appointed to the bench in 1980.



Chief Justice Rehnquist administers oath to Judge Nies.

Jr., to the U.S. Court of Appeals for the **Fifth Circuit**, effective May 25.

APPOINTED. **William M. Nickerson**, to the U.S. District Court for the D. of **Maryland**, effective June 11.

APPOINTED. **Stanley F. Birch, Jr.**, to the U.S. Court of Appeals for the **Eleventh Circuit**, effective June 12.

APPOINTED. **Stephen M. McNamee**, U.S. District Court for the D. of **Arizona**, effective June 9.

APPOINTED. **Richard W. Vallmer, Jr.**, to the U.S. District Court for the S.D. of **Alabama**, effective June 18.

APPOINTED. **Cynthia D. Kinser**, as U.S. Magistrate for the W.D. of **Virginia**, effective May 23.

APPOINTED. **Edward A. Bobrick**, as U.S. Magistrate for the N.D. of **Illinois**, effective June 13.

SENIOR STATUS. Judge **William B. Enright**, U.S. District Court for the S.D. of **California**, effective July 12.

SENIOR STATUS. Judge **Charles L. Hardy**, U.S. District Court for the D. of **Arizona**, effective June 2.

RETIRED. **James T. Balog**, U.S. Magistrate for the N.D. of **Illinois**, effective May 23.

ELEVATED. Judge **James B. Moran**, to **Chief Judge** of the U.S. District Court for the N.D. of **Illinois**, succeeding Chief Judge **John F. Grady**, effective June 30.

ELEVATED. Judge **William D. Browning**, to **Chief Judge** of the U.S. District Court for the D. of **Arizona**, succeeding Chief Judge **Richard M. Bilby**, effective June 16.

CONFERENCE COMMITTEE APPOINTMENTS MADE

Chief Justice William H. Rehnquist has appointed Judge Rya W. Zobel (D. Mass.) as Chairman of the Committee on Automation and Technology, and Judge Robert M. Parker (E.D. Tex.) as Chairman of the Judicial Conference's new Committee on Court Administration and Case Management. The appointment of the chairs and members of the two committees takes effect September 13, 1990, although the committees may meet before that date if deemed necessary.

In late April the Judicial Conference approved dividing the existing Committee on Judicial Improvements into the two new committees. The Conference took the action as part of its 14-point program to address the problems of cost and delay in civil litigation.

The Committee on Court Administration and Case Management will have responsibilities assigned by the

Conference's "Program to Address the Problems of Cost and Delay in Civil Litigation and to Improve Case Management." The Committee also will address attorney admission and discipline, alternative dispute resolution, library and legal research, jury matters, places of holding court and fees. A subcommittee on Case Management and Dispute resolution will be formed, and will include the Federal Judicial Center Director (ex officio) and a member of the Advisory Committee on Civil Rules.

The Committee on Automation and Technology will be responsible for improving automation services, release of and access to court information, and advising the Judicial Resources Committee on staffing of automation personnel.

The members of the Committees are listed in the box below.

COMMITTEE ON AUTOMATION AND TECHNOLOGY

Rya W. Zobel, Chair (D. Mass.)
Harold A. Baker (C.D. Ill.)
Earl W. Britt (E.D. N.C.)
Lawrence P. Cohen (Mag. D. Mass.)
Benjamin F. Gibson (W.D. Mich.)
Hayden W. Head, Jr. (S.D. Tex.)
Lee M. Jackwig (Bank. S.D. Iowa)

Robert F. Kelly (E.D. Pa.)
Royce C. Lamberth (D. D.C.)
John P. Moore (10th Cir.)
Michael B. Mukasey (S.D. N.Y.)
Diarmuid F. O'Scannlain (9th Cir.)
Thomas E. Scott (S.D. Fla.)
Franklin H. Waters (W.D. Ark.)

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

Robert M. Parker, Chair (E.D. Tex.)
Susan H. Black (M.D. Fla.)
John C. Coughenour (W.D. Wash.)
J. Thomas Greene (D. Utah)
Gerald W. Heaney (8th Cir.)
Thomas A. Higgins (M.D. Tenn.)
D. Brock Hornby (D. Me.)
James L. Oakes (2d Cir.)

Jane A. Restani (CIT)
Barry Russell (Bank. C.D. Cal.)
H. Lee Sarokin (D. N.J.)
David B. Sentelle (D.C. Cir.)
John Weinberg (Mag. W.D. Wash.)
J. Harvie Wilkinson III (4th Cir.)
Ann C. Williams (N.D. Ill.)

JUDGE MARKEY HONORED



The Judicial Conference has adopted a resolution recognizing Judge Howard T. Markey for his many contributions to the administration of justice. Markey served as chief judge of the Federal Circuit since its creation in 1982, and as chief of its predecessor, the Court of Customs and Patent Appeals, since 1972. Helen W. Nies became the new chief judge of the Federal Circuit on June 27.

"When the improvements in the administration of justice in these times are enumerated, they will have a common element, the energizing influence of a most remarkable jurist, Howard T. Markey," the resolution said. "To create new institutions for the administration of justice, to keep the conscience of the judiciary during times of ethical scrutiny and change, and to participate in the renewal of the legal profession and the judiciary, these represent the very highest service to the cause of justice."

Markey sat on the Judicial Conference for the past 18 years and served as the chairman or as a member of many committees.

JUDICIAL BOXSCORE

As of July 1, 1990

Courts of Appeals Vacancies	11
Nominees Pending	5
District Courts Vacancies	36
Nominees Pending	9
Courts with "judicial emergencies"	12

THE JUDICIAL BRANCH AND THE AO : Past, Present & Future

*The past five years have brought a number of noteworthy changes to the Judicial Branch. The explosive growth in caseload has affected all courts, challenging the innovative skills of judges, court managers and staff. Decentralization of operations continues to move ahead, as do efforts to fully automate the courts. Pay raise legislation for judicial officers in 1989 and the 1988 Judicial Improvements Bill top the long list of key legislative accomplishments. In an interview for **The Third Branch**, Administrative Office Director L. Ralph Mecham discussed the state of the AO in serving the Judiciary.*

TTB: What are some of the significant changes you have witnessed during your tenure at the Administrative Office?

MR. MECHAM: When I came to the AO in July 1985 I set several goals: better service to the courts; modernization of AO and court management systems and planning capabilities; decentralization of operating functions; improved communication with the courts; pay increases for the court family; sufficient funds to run the Judiciary effectively; and elimination of internal and external regulatory impediments to effective management. I believe that, to differing degrees, we have made significant strides toward each of these goals.

Also, our liaison and out-reach efforts have grown. I hope we have contributed to better cooperation and understanding between bankruptcy judges and the Judicial Conference. Similarly, closer relations with the Federal Judges Association and counterpart associations throughout the Judiciary have been most worthwhile.

Over time, in response to changing judicial needs, the AO has

evolved into an organization that provides complex legal services and assistance on a program basis, as well as general administrative support. I have been fortunate to have a high-quality, hard-working staff that is dedicated to the betterment of the courts. But there is still much to be done.

As we move into the 1990s the mission of the Administrative Office will continue to evolve. Our support to Judicial Conference committees is likely to continue to grow, as will our efforts in the planning and management improvement areas. I also believe that our recently created Article III Judges Division will provide valuable advice and assistance in a variety of matters, such as case management, court governance, automation applications, and rule-making.

As court managers become increasingly able and eager to assume more responsibilities in the administration of their courts, our role will be to step back and provide essential policy and program assistance and automated system support. I believe that is where the AO's future and true strength lies. With the framework we have built, I am excited about the challenges of the coming years.

TTB: Securing adequate resources is necessary for the proper functioning of any organization. What has been the Judicial Branch's track record on this front?

MR. MECHAM: Led by the impressive efforts of Judge Richard Arnold and the rest of the Budget Committee, we have been able to convince Congress of the Judiciary's desperate need for resources. For sometime the courts were hamstrung in their

efforts to perform their constitutional duties in an efficient and expeditious manner, and the lack of adequate resources was seriously impairing the AO's ability to provide even basic services to the courts. The funds Congress provided in the 1990 budget not only provided the money and people needed for the courts to begin to catch up with their workload, but also restored my confidence that even in times of severe fiscal restraint, Congress recognizes the important work of the courts and will respond to our needs. I am hopeful about the prospects for the future, but the specter of a massive deficit, coupled with an Executive-Legislative fiscal summit and possible Gramm-Rudman-Hollings sequestration, poses a serious threat to the Judiciary.

We have done much to sensitize the other two branches to the Judiciary's funding needs to fulfill new missions that are imposed upon the Judiciary, such as the escalating drug and crime wars.

Senators Ernest Hollings and Warren Rudman, and Congressmen Neal Smith and Harold Rogers, and their respective appropriations subcommittees have been most understanding and responsive in addressing our needs.

TTB: What are the prospects for increasing the decentralization of administrative matters to on-the-scene court managers?

MR. MECHAM: I see decentralization as very much an important theme of the present and of the future. It makes sense and it is, I believe, what court managers want. Decentralized administration is also an important approach to avoid the creation of a bureaucracy in Wash-

JULY

15-20 Sunday-Friday
Supervisory Skills for New Probation/Pretrial Supervisors

16-26 Monday-Thursday
New Officer Orientation for Probation/Pretrial Officers

17-20 Tuesday-Friday
Eighth Circuit Conference (Kansas City, Mo)

17-20 Tuesday-Friday
District Court Chief Deputies Workshop

24 Tuesday
U.S. Sentencing Commission Meeting

25-27 Wednesday-Friday
Tenth Circuit Conference (Keystone, CO)

27 Friday
Committee on Federal/State Jurisdiction

27-28 Friday-Saturday
Committee on the Budget (with line chairmen)

"We are under a Constitution, but the Constitution is what the judges say it is, and the Judiciary is the safeguard of our liberty and of our property under the Constitution."

-- Charles Evan Hughes

AUGUST

CALENDAR DATES FOR THE THIRD BRANCH

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1 (1950)
U.S. District Court of Guam was established

4 Saturday
Congressional Recess

6-8 Monday-Wednesday
Workshop for Personnel Managers

7 (1939)
The Administrative Office of the U.S. Courts was created

9-11 Thursday-Saturday
National Association of Bankruptcy Clerks Annual Meeting

13-15 Monday-Wednesday
Workshop for Managers of BANCAP and Civil Courts

15-16 Wednesday-Thursday
Executive Committee Meeting

19-22 Sunday-Wednesday
"Mega" Bankruptcy Case Workshop

20-30 Monday-Thursday
New Probation/Pretrial Officers Orientation

21 Tuesday
U.S. Sentencing Commission Meeting

22-23 Wednesday-Thursday
Advisory Committee on Bankruptcy Rules

27-29 Monday-Wednesday
Juror Utilization and Management Seminar

27-31 Monday-Friday
Orientation Seminar for Newly Appointed Magistrates

U.S. MAGISTRATE, Eastern District of Tennessee at Knoxville

This appointment is for a full-time Magistrate. Responsibilities include: 1) the conduct of most preliminary proceedings in criminal cases; 2) trial and disposition of misdemeanor cases; 3) the conduct of various pretrial matters and evidentiary proceedings on delegation from the district court judges; and 4) trial and disposition of civil cases upon consent of litigants. To be qualified for appointment an applicant must: 1) be a member in good standing of the bar of the highest court of a state, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands, and have been engaged in the active practice of law for at least five years; 2) be less than 70 years old; and 3) not be related to a judge of the district court. A Merit Selection Panel will review all applicants and recommend five persons to the district court judges. The court will make the appointment following an FBI investigation and an IRS tax check of the appointee. Salary: \$88,872. Applications should be submitted to: Clerk, U.S. District Court, P. O. Box 2348, Knoxville, TN 37901, or Room 211, U.S. Courthouse, 501 W. Main Avenue, Knoxville, TN 37902. For more information and application forms, call FTS 854-4227. **Application deadline: July 31, 1990.**

CLERK OF COURT, U.S. Bankruptcy Court for the Central District of California

The Clerk of Court is responsible for managing the administrative activities of the Clerk's Office and overseeing the performance of the statutory duties of that office. Responsibilities include case and records management, budget preparation, and personnel management. Applicants must have 10 or more years of management experience in public service or business and an undergraduate degree. A law degree or a graduate degree in public, business or judicial administration is preferred and may be substituted for part of the required management experience. Salary: Up to \$78,200. Court headquarters are in Los Angeles. Interested applicants should send a cover letter and resume to: Donna Crowder, Personnel Officer, U.S. Bankruptcy Court, Room 1516, U.S. Courthouse, 312 N. Spring Street, Los Angeles, CA 90012. For more information, call (213) 894-3129. The application period will remain **open until the position is filled.**

LATIN AMERICAN CONSULTANTS, Department of State

The Office of Democratic Initiatives of the Agency for International Development has numerous projects aimed at improving the capacity of the judiciary in Latin American countries. These projects involve the following areas: court administration, judicial statistics, management information systems, law libraries, public defender systems, and prosecutory functions. The Office is seeking individuals with skills in these areas for short-term consultancies and long-term personal service contracts in such Latin American countries as Panama, Nicaragua, Columbia, Peru, and Bolivia. **Fluency in Spanish is required.** If interested, please send resume to Karen Otto, A.I.D., Department of State, Room 3253, Washington, D.C. 20523-0025, or call (202) 647-4391.

ington, D.C. Major delegations of authority from the AO to the courts already have occurred in several administrative areas. In fact the AO has delegated authority to the courts in 30 specific areas, with 15 pilot projects planned or underway. I believe that with time, as court managers assume a bigger role in managing their daily operations, the AO will become much more of an advisor to the courts on how best to establish and monitor administrative operations. Extensive training of court personnel, at all levels, will be required as they assume these new responsibilities.

Of course, one of the big areas of decentralization has been with the budget. We are in the third year of the Budget Decentralization Pilot Project. The National Academy of Public Administration evaluation report on this project will be presented to the Budget Committee at its meeting in January 1991, and the Budget Committee, in turn, will make a recommendation to the Judicial Conference in March 1991. The Budget Committee has approved the development of an implementation plan for possible expansion and I have established a task force of AO and court managers to work on this project. I believe this will be one of the most exciting and important changes that will take place in the courts in the future.

TTB: The Administrative Office has placed a great deal of emphasis on

working with Congress. What legislative initiatives do you feel have been particularly significant?

MR. MECHAM: I'm proud of our role in getting several important pieces of legislation passed, in particular, the Ethics Reform Act of 1989, which provided a long overdue pay raise for federal judges, among other things; the Judicial Improve-



Director Ralph Mecham (center) meets with his Executive Staff

ments and Access to Justice Act of 1988, which contained sweeping changes the Judicial Conference proposed in many areas of the law; and the overhaul of the retirement system for Bankruptcy Judges and Magistrates.

The Federal Courts Study Committee Report is likely to provide a significant portion of the legislative agenda for sometime to come. I'm also very pleased that the necessary legislation has been passed to enable the Judicial Branch support agencies to have their own building near Union Station in Washington, D.C. Groundbreaking took place this past Spring. For nearly 20 years we have been scattered throughout the metropolitan area. Consolidation in one building certainly will enhance our ability to provide better service to the courts.

In the coming months we will

continue to seek legislation that will enable the Judiciary to control its own destiny, rather than be dependent on GSA to provide facilities construction and management. A major judicial improvements bill may be just down the road, and this could be the Congress that at last creates additional judgeships, a step that was last taken in 1984. However, it will be an uphill effort, even with the full support of the Judiciary.

On the whole, I believe that Senators Biden, Thurmond, Heflin and Grassley and Congressmen Brooks, Fish, Kastenmeier and Moorehead — the members of Congress with whom we work most frequently — have demonstrated a great deal of sympathy, understanding and foresight regarding the legislative needs of the courts. I hope that these relationships continue to flourish.

I hope that these relationships continue to flourish.

TTB: What role has automation played in changing the work environment of the courts?

MR. MECHAM: Automation is a critical element in handling the constantly expanding caseload, and the courts' demand for automated systems has been significant. We have seen how useful automated systems can be for high volume work, such as bankruptcy noticing and Central Violations Bureau processing. Soon we will see a national fines processing center. I was particularly pleased that Congress established the \$71 million Judiciary Automation Fund and

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approved the additional automation staff requested in the 1990 budget. The overall funding has nearly tripled over the previous year. This has vitalized the Judiciary automation program. Automation will be a

key resource for the Judiciary now and in the future. It has already transformed case processing techniques and will be a vital part of any civil reform initiative. With our newly reorganized Office of

Automation and Technology, and the continuing support of Congress, the AO will be well prepared to meet the Judiciary's future automation needs. ✎

STAFFING STUDIES UNDERWAY

The Administrative Office is conducting staffing allocation studies for probation, pretrial services and district clerks' offices nationwide. The objective is to revise existing staffing formulas to reflect the many changes that have occurred in the work these offices perform. Staffing formulas are used to calculate the number of people necessary to perform specific tasks associated with anticipated caseload. The Judiciary uses these formulas in its yearly budget request to Congress for court staff. Once the Judiciary

appropriation is in hand, the formulas are used to allocate positions to specific court offices.

Court participation has been a critical component of these studies. The surveys that probation and pretrial services completed in September, and those the district clerks' offices pretested this June, will be used in conjunction with baseline figures the AO Statistics Division continually collects. AO staff will analyze trends in the courts' workload and estimate future staffing needs.

The results of the first study covering probation and pretrial services offices are expected to be presented at the Fall meeting of the Committee on Criminal Law and Probation Administration, and thereafter to the Committee on Judicial Resources. District clerks' offices soon will be completing questionnaires. Similar studies of bankruptcy clerks' offices and circuit clerks' offices will begin this year.

Questions on the staffing allocation studies should be directed to Cathy McCarthy at (FTS) 633-6200.

literature on civility problems and their solutions, and offering possible solutions to enhance litigation practice. The interim report will be designed to promote discussion and encourage comments. The last phase will be a final report with recommendations.

A panel of Committee members gave a preliminary report at the Seventh Circuit Judicial Conference in Milwaukee on May 22. Aspen reported that the committee has received more than 1600 responses to the questionnaire, and that 50 percent of the respondents said lack of civility in litigation was a serious problem in the Seventh Circuit courts. Nine out of ten of those respondents thought the problem was of recent vintage, arising during the last ten to fifteen years.

Bauer, who also was part of the panel discussion, said that it was no

longer a hallmark of the profession to finish the battle in court and then socialize with opposing counsel. Aspen questioned whether the public expects lawyers to act in a certain way based on the public's exposure to *L.A. Law* and other media depictions of lawyers. Aspen recalled questioning a lawyer who had just finished trying a case before him as to why he had taken a certain action when it hurt his case. The lawyer said that he had done it because his client expected him to do it.

Several panel members questioned whether the incivility was caused by the growing efforts to compete with other lawyers for business. Others asked whether it was greed that made lawyers act so uncivil. Senior Judge Hubert L. Will (N.D. Ill.) said that "the best reason for being civil is that it pays off and

that not being civil results in losses."

Past Seventh Circuit Bar Association President Bill Montgomery of Chicago commented that the early control of a case by the judge who defines the issues and limits discovery does much to reduce distasteful trial tactics. Magistrate Joan Gottschall (N.D. Ill.) suggested it is a mistake to compare litigation to a game and use game terms such as hardball. She said we should call uncivil conduct what it is: cruelty, rudeness and lack of manners.

Aspen said law schools cannot be depended on to lead the way on civility. He pointed out that the Bar as a whole had to encourage law schools to teach trial practice and more recently, ethics. The law schools followed the profession; they did not lead.

Aspen invited comments on the problem and possible solutions. ✎

NEW CURRICULUM UNVEILED TO ORIENT JUDGES

In an orientation seminar held last month in Washington for 29 recent appointees to the bench, the Federal Judicial Center unveiled a new curriculum and teaching format.

Rather than focusing on substantive information presented largely through traditional lectures, Center Director Judge William W. Schwarzer said there would be an emphasis on skills training in a format featuring brief presentations and discussion.

During the week-long training seminar, particular attention was given to case management. Experienced panels of judges guided their new colleagues through the civil and criminal processes, discussing specific problems that may be encountered and suggesting ways to solve them. Lawyers and court staff also discussed case management from their unique perspectives.

Schwarzer stressed the importance of having early conferences to cut down on the scope of a case,



A panel of experienced judges discusses case management

elimination of issues that do not have to be litigated, and efforts to get cases settled early.

"Taking matters under submission is one of the most damaging things you can do to your workload," he said at the seminar's opening session. "If you just make a rule to try and decide whatever you can from the bench, or very quickly after

submission, you'll do yourselves a great service."

In addition to case management, other discussions throughout the week dealt with habeas corpus, judicial ethics, key issues in employment discrimination law, and relations with the bench, attorneys, court personnel and the media.

COMMITTEE REVIEWING COURT DESIGN GUIDE

Changes in judicial workload, statutes and technology have contributed to the need for a review of the current United States Court Design Guide, which was last issued in 1984. The Guide includes judicial space standards for courtrooms, chambers, and support spaces, including clerks' and probation offices.

In recognition of the need to update these standards, the Judicial Conference Committee on Space and Facilities has undertaken a complete review of the Guide. A consulting group, under the direction of the National Institute of Building Sciences, is conducting the review. The study will evaluate all existing standards against the function of

each court unit and recommend needed changes. The review will address size of spaces, circulation patterns, adjacency requirements, acoustical treatments, and the impact of automation on space configurations.

A Subcommittee of the Space and Facilities Committee was established to oversee the consulting group's work. The Subcommittee is chaired by Judge Michael S. Kanne (7th Cir.), and includes District Court Judges Leo Glasser (E.D. N.Y.), James M. Rosenbaum (D. Minn.), and Bankruptcy Judge Thomas H. Kingsmill, Jr. (E.D. La.). The Subcommittee is presently developing recommendations for chambers and courtrooms. The Space and Facilities Committee

discussed suggestions in these areas at its meeting in June. The Subcommittee is now focusing on spaces for support personnel.

During the summer, the Subcommittee will solicit comments from representatives of all court units and chief judges, and the Space and Facilities Committee will consider an amended Guide at its January 1991 meeting. Plans call for the revised Guide to be presented to the Judicial Conference in March 1991.

Questions about the review process can be directed to Gerald Thacker, Chief of the Administrative Office's Space and Facilities Division, at (FTS) 633-6090.

DISTRICT COURTS TO CONTRACT FOR SUBSTANCE ABUSE SERVICES

Continuing its movement toward decentralizing operating functions, the Administrative Office will soon delegate authority to the district courts to contract for certain substance abuse services. Effective October 1, the probation and pretrial services offices at the district level will conduct all aspects of the contracting process, including the final award of the contract, for all contracts under \$100,000. The AO developed the decentralization plan in response to concerns expressed by both district offices and the Probation Division.

When Congress enacted the Contract Services for Drug Dependent Federal Offenders Act of 1978, it was a relatively small program consisting of several hundred contracts and a total allocation of \$3 million. By fiscal year 1990, the program encompassed approximately 780 contracts with an appro-

priation of \$21.5 million. This vast expansion presented significant problems for the centralized system of administration that was in place.

Decentralization offers significant benefits to both district offices and the Probation Division. Field offices will benefit through increased flexibility in managing their allocations, the ability to award contracts in a more timely manner, and the ability to ensure prompt payment to the vendor. The Probation Division will be able to devote more resources to the substantive, policy, and technical assistance issues that arise from the administration of a complex substance abuse treatment program for the entire nation.

To ensure a smooth transition to a decentralized administration, the new procedures will be implemented over a three-year period. The vast majority of substance abuse contracts are for three year terms. In

each fiscal year approximately one third of the districts must engage in the contracting process. In fiscal 1991 there are 39 districts in the contracting cycle, and they will be the first to be decentralized. Districts that are renewing contracts will follow the old procedures until their contracting cycle occurs in fiscal 1992 or 1993.

To assist the districts in implementing the decentralized system of contract administration, the Probation Division recently conducted a "Decentralized Contracting" seminar for chief probation and pretrial services officers. The training provided information on the complete contracting process, including the new decentralized procedures. This training will be provided to all chiefs as their districts begin a new contracting cycle.

THREE APPOINTED TO SENTENCING COMMISSION

For the first time since February 1988 the U.S. Sentencing Commission soon will have its full complement of seven commissioners.


On June 29 the Senate confirmed Judge A. David Mazzone (D. Mass.), Michael S. Gelacak and Julie E. Carnes for seats on the Commission. They are expected to be sworn in in late July.

Mazzone, 62, received his B.A. from Harvard University in 1950 and his J.D. from DePaul University in 1957. He served as an Assistant District Attorney in Middlesex County, Massachusetts, Assistant U.S. Attorney for Massachusetts and as an associate justice on the Boston Superior Court. Mazzone was appointed to the federal bench in 1978 by President Carter.

Gelacak, 48, received his B.A. from Syracuse University in 1963, and his J.D. from the University's Law School in 1968. He held several positions in the Senate, including chief counsel to the Penitentiaries Subcommittee, staff director for the Criminal Justice Subcommittee, minority staff director for the Judiciary Committee and legislative director for Sen. Joseph Biden, Jr. Gelacak also worked in private practice.

Carnes, 39, received her B.A. from the University of Georgia in 1972 and J.D. from the University's law school in 1975. Upon graduation, she worked as a law clerk to Judge Lewis R. Morgan (5th Cir.). In 1978 she joined the U.S. Attorney's Office in Atlanta. In 1989 Carnes spent six

Budget Continued from page 2

The House of Representatives passed the bill on June 26. The Senate Appropriations Subcommittee has not yet scheduled any action on the 1991 budget. However, the Senate passed the budget resolution June 14, which funds discretionary programs at roughly the 1990 level. A second resolution is expected to be passed later this year, which will incorporate agreements on taxing and spending levels reached by the President and Congress. 

months as special counsel to the Sentencing Commission.

They will join Commissioners Judge William W. Wilkins, Jr. (4th Cir.), Chairman; Judge George E. MacKinnon (D.C. Cir.); Helen G. Corothers; and Ilene H. Nagel.

NEW SSA REGULATIONS ADDRESS APPEALS COURT DECISIONS

The Social Security Administration has published new regulations for applying United States courts of appeals holdings that it determines conflict with SSA policy (see 55 Fed. Reg. 1012, January 11, 1990).

Since 1985 when SSA announced its policy for applying circuit court law and began to identify such decisions, the agency has issued nearly 40 "Acquiescence Rulings" explaining how the rulings should be applied in deciding future claims for benefits within the circuit. The new regulations are aimed at eliminating inequities and reducing related litigation in the federal courts.

While the Administrative Conference of the U.S. has studied nonacquiescence, the body has taken no formal position on the issue. In addition to SSA, a May 1988 report to the Administrative Conference identified the Internal Revenue Service, National Labor Relations Board and the Occupational Health and Safety Review Commission as among the government entities who had practiced nonacquiescence. Although no other federal agency is believed to have gone as far as SSA in publishing its policy, it also is true that no other agency must confront acquiescence issues as frequently, given the scope of its programs.

The 1988 report to the Administrative Conference defined nonacquiescence as "the selective refusal of administrative agencies to conduct their internal proceedings consistently with adverse rulings of the courts of appeals."

SSA states in its recently published regulations that it will apply, within the circuit of decision, a court of appeals holding that conflicts with SSA policy, unless the government seeks further review of the holding or SSA relitigates the issue presented

in the decision. SSA further states that, where the government does not seek further review of a holding that conflicts with SSA policy or is unsuccessful on further review, it will issue a "Social Security Acquiescence Ruling" explaining how SSA will apply the holding.

After issuance of an acquiescence ruling, SSA may decide to relitigate an issue within the same circuit where it determines that a question has been raised as to whether the court of appeals would reach the same conclusion as it did in its prior decision if the issue were relitigated. A determination to relitigate could be based on congressional action, a statement in an opinion by the same circuit indicating that the court might not decide the issue in the same manner if presented again, holdings in other circuits, or a Supreme Court holding presenting a basis for questioning the prior decision. The General Counsel of the Department of Health and Human Services, after consulting with the Department of Justice, must agree that relitigation would be appropriate. SSA will apply its own policy to claims selected for relitigation, rather than the standard for the circuit announced in the acquiescence ruling.

There has been broad support for changes in nonacquiescence practices. In February 1990 the American Bar Association adopted a resolution urging that legislation be enacted "to provide that the Social Security Administration cease its policy of 'nonacquiescence.'"

The April 1990 final report of the Federal Courts Study Committee states that "Congress should prohibit the so-called policy of 'non-acquiescence' by amending the Social Security Act . . . to require the

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Please direct all inquiries and address changes to the managing editor of The Third Branch at the above address.

Secretary of Health and Human Services, in all administrative proceedings, to abide by the holdings of the court of appeals in the circuit in which a claim for benefits under the Act is filed." Any case that the Solicitor General determined would be appropriate to use as a test of existing law would be exempted from this requirement. However, the exemption would apply only to the individual case and expire when the judgment in that case became final.

Questions regarding the Social Security Administration's policy should be referred to the Chief Counsel for Social Security, Office of General Counsel, Department of Health and Human Services, Baltimore, Maryland 21235.

PROJECT HERMES GOES ON LINE

On Monday, June 18, the Supreme Court of the United States initiated the first electronic transmission of its opinions. With a call from the Clerk's Office confirming that it had been read from the bench, the first opinion, Eli Lilly & Co. v. Medtronic, Inc., went on line. By 10:22 a.m. four opinions totaling 107 pages had been released to eight recipients.

Project Hermes, as the program is known, was developed by the Court's Committee on the Electronic Dissemination of Opinions in response to requests from news media and legal publishers for access to the Court's opinions in electronic form. The Supreme Court Opinion Network (SCON), a consortium of 26 news and legal organizations, is providing the hardware, software,

and technical assistance for Hermes. Because Hermes is a two-year pilot project, the Court had limited the number of organizations permitted to tie into the system to 15. At this time, 13 organizations, representing the news media, educational organizations and the legal profession, have been selected to receive the opinions, although only eight were technically prepared to do so June 18.

The first eight subscribers to go on line were Mead Data Central, West Publishing, UUNET, Case Western Reserve University, Commerce Clearing House, Thomson Professional Publishers (Veralex/Lawyers Cooperative Publishing), the Department of Justice and SCON. Case Western Reserve

represents a network of educational institutions and libraries; organizations comprising SCON include the American Bar Association (ABANet), Tax Analysts, and the American Judicature Society.

Over the summer the Committee on Electronic Dissemination of Opinions expects the other five subscribers to come on line. They are the Associated Press, United Press International, the Bureau of National Affairs, the National Clearinghouse for Legal Services and the Government Printing Office. The Committee also plans to use the summer months to work out any technical bugs in the system so that it will run smoothly by the time the Supreme Court begins its term on the first Monday in October.

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