THE THIRD BRANCH

Newsletter of the Federal Courts

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NEW JUDGESHIPS BECOME PART OF CIVIL REFORM LEGISLATION

On May 17, Sen. Joseph Biden (D-DE) reintroduced a new version of his Civil Justice Reform Bill (S. 2027) as the Judicial Improvements Act of 1990 (S. 2648). In addition to modifying some portions of the original bill, the new legislation includes a second title, which would create 77 new circuit and district court judgeships.

The legislation calls for 11 new full-time circuit court slots (nine less than the 1990 circuit judicial council recommendations), and 52 new full-time and 14 temporary district judgeships (11 less than the number recommended by the circuit judicial councils). **See page 3 for a breakdown of the courts that would receive additional full-time judgeships under S. 2648.**

"Put simply, in many areas, our courts resemble the Los Angeles freeway at 5 o'clock on a Friday afternoon—gridlock, with not enough judges to handle the cases," Biden said when he introduced S. 2648.

"The legislation that I am introducing . . . attacks these two related problems straight up and then head on."

It is expected that when the bill is "marked-up" in committee, a third title will be added to include numerous Judicial Conference positions and the noncontroversial recommendations of the Federal Courts Study Committee.

This portion of the proposed legislation might include provisions to: 1) repeal Section 140 of Public Law 97-52, which requires an affirmative vote of Congress for judicial officers to receive a COLA, an action unique in its negative impact on federal judges; 2) establish a modified "Rule of 80," whereby judicial officers would be able to take senior status at 60 years of age and 20 years of service; and, 3) enhance the Judicial Survivors Annuities Act, to provide that payments will be based on a judicial officer's salary at the time of death.

A Senate Judiciary Committee hearing on the bill is tentatively scheduled for June 26. A subcommittee of the Judicial Conference's Executive Committee is reviewing the new bill.

The highlights of the Civil Justice Reform title of the bill are as follows:

☛ Each district court is required to develop and implement a civil justice expense and delay reduction

*See **Judgeships**, page 2*

	TOTAL # OF JUDGESHIPS CURRENTLY	TOTAL # OF JUDGESHIPS UNDER S. 2648
CIRCUIT	168	179
DISTRICT	567*	627**

*Number does not include the requested eight temporary judgeships.
**Number does not include the fourteen requested temporary judgeships.

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Judgeships *Continued from page 1*

plan. However, S. 2648 is less specific than S. 2027 about the features required to be in each plan. For example, the new bill does not require that each plan provide for assignment of cases to processing tracks that operate under distinct and explicit rules, procedures, and schedules for the completion of discovery.

☛ Each plan must provide for semi-annual public reports regarding judges who have under consideration motions and bench trials submitted for more than six months and cases older than three years.

☛ Each plan should reflect recognition that solutions to problems of cost and delay in civil cases require significant contributions from litigants and the trial bar as well as the courts. The original bill held the courts solely responsible for taking necessary actions to solve the problems.

☛ Each district court must establish an advisory group, including attorneys and other representatives of major categories of litigants, to assess the state of the court's civil and criminal dockets and to make recommendations for a civil justice expense and delay reduction plan. The original bill provided for an advisory group to prescribe such a plan for the court and did not contemplate consideration of such causes of civil case problems as the court's criminal caseload.

☛ The chief judge of a circuit and the chief judges of the district courts in a circuit will review the plans of all the district courts in their circuit and suggest revisions when appropriate. The original bill authorized the judicial council of a circuit to review, modify, and abrogate a district court's plan. The later bill, like the original bill, also provides for the Judicial Conference to review a district court plan, although no authority is provided for the Conference to require changes in the plan.

☛ The district courts must implement a plan within three years instead of one year, as provided in S. 2027. Up to $5 million is authorized to be appropriated for implementation of the plans.

☛ There must be a biennial assessment of the civil and criminal docket conditions by each district court. The court must determine appropriate additional actions necessary to reduce civil litigation cost and delay and to improve litigation management. An advisory group must participate in the biennial assessment. The original bill did not provide for biennial assessments.

☛ The bill requires the Conference to develop model plans and conduct training in litigation management for court personnel.

☛ Unlike the original bill, the new bill does not remove magistrates from handling pretrial matters and does not require case tracking except in two pilot courts.

☛ Any district court that implements a civil justice expense and delay reduction plan within six months to one year after enactment is eligible to be designated an Early Implementation District Court and to receive additional resources from the Conference for implementation. The bill authorizes appropriations of $15 million for the additional resources.

☛ The Conference must conduct a four-year demonstration program involving five district courts: the W.D. of Michigan, the N.D. of Ohio, the N.D. of California, the N.D. of West Virginia, and the W.D. of Missouri. The first two of these courts will experiment with case-tracking systems and procedures. The other three courts will experiment with "various methods of reducing cost and delay in civil litigation, including alternative dispute resolution, that such courts and the Judicial Conference . . . shall select." Appropriations for the demonstration program are authorized at the level of $5 million. The original bill did not provide for a demonstration program.

PUBLICATION AVAILABLE

The Federal Judicial Center has published *The Federal Appellate Judiciary in the Twenty-First Century*. The publication is a collection of essays and commentary drawn from the October 1988 conference of federal appellate judges.

The conference speakers--members of the Supreme Court, courts of appeals, district courts, and law faculty--examined the federal appellate judiciary's role in 1988 and its role in the future.

To receive a copy of the publication, write *Information Services, Federal Judicial Center, 1520 H Street, N.W., Washington, D.C. 20005.* Please enclose a self-addressed mailing label, preferably franked (1 1b.), but do not send an envelope.

Judgeships Continued from page 2

COURTS RECEIVING ADDITIONAL JUDGESHIPS UNDER S. 2648

NOTE: District and Circuit Courts not listed in the chart below would not receive additional judgeships under the new bill. Temporary judgeships have also been omitted from the chart, but it includes temporaries made permanent and roving positions that would be assigned to a single district.

DISTRICT	# OF JUDGES CURRENTLY	# OF JUDGES UNDER S. 2648
ARKANSAS		
Eastern	3	5
Western	1	3
CALIFORNIA		
Northern	12	14
Central	22	27
Southern	7	8
CONNECTICUT	6	8
FLORIDA		
Northern	3	4
Middle	9	11
Southern	15	16
GEORGIA		
Middle	3	4
ILLINOIS		
Northern	20	22
INDIANA		
Northern	4	5
IOWA		
Northern	1	2
Southern	2	3
LOUISIANA		
Western	6	7
MAINE	2	3
MASSACHUSETTS	11	13
MISSISSIPPI		
Southern	5	6
MISSOURI		
Eastern	5	6
NEW HAMPSHIRE	2	3
NEW JERSEY	14	17
NEW MEXICO	4	5
NEW YORK		
Southern	27	28
NEW YORK (con't)		
Eastern	12	13
Western	3	4
NORTH CAROLINA		
Eastern	3	4
Middle	3	4
OHIO		
Northern	10	11
OKLAHOMA		
Northern	2	3
Western	4	6
OREGON	5	6
PENNSYLVANIA		
Eastern	19	22
Middle	5	6
SOUTH CAROLINA	8	9
TENNESSEE		
Eastern	4	5
Western	4	5
TEXAS		
Northern	10	11
Southern	13	16
Western	7	8
UTAH	4	5
VIRGIN ISLANDS	2	3
WASHINGTON		
Eastern	3	4
Western	6	7
WEST VIRGINIA		
Northern	2	3
Southern	4	5
WYOMING	2	3

CIRCUIT		
THIRD	12	14
FOURTH	11	15
FIFTH	16	17
SIXTH	15	16
EIGHTH	10	11
TENTH	10	12

NOTICE TO THE BAR: A history of the U.S. Court of Appeals for the Federal Circuit is being written. Attorneys who have historical materials or anecdotes about practicing before the court, please contact: Hon. Marion T. Bennett, Senior Circuit Judge, 717 Madison Place, N.W., Washington, D.C. 20439.

SENATE DEBATES ANTI-CRIME PACKAGE

On May 21 debate began on the Senate floor on various anti-crime measures. While the legislation deals with a wide range of topics, there are limited issues that directly would affect the federal courts. The only definitive action on these issues taken before the Senate recessed for Memorial Day was on habeas corpus reform. At the time of the recess, more than 250 amendments to the omnibus crime bill (S.1970) were pending.

The following are highlights of the various bills of particular concern to the Judicial Branch. An account of any further congressional action will be published in the July issue of **The Third Branch**.

HABEAS CORPUS

By a vote of 52-46 on May 24, the Senate passed a habeas corpus reform amendment to S. 1970. Sponsored by Sens. Strom Thurmond (R-SC) and Arlen Specter (R-PA), the Senate defeated the same amendment the preceeding day by a 47-50 margin.

At its March 1990 meeting, the Judicial Conference adopted the report of its Ad Hoc Committee on Federal Habeas Corpus in Capital Cases with modifications relating to the competency of counsel and successive petitions *(See The Third Branch, April 1990, at 1).* In large part, the Thurmond amendments adopt the position taken by the Conference. For example, like the Conference version, the Thurmond amendments allow for successive petitions when there are newly discovered facts which would be sufficient to undermine the court's confidence in the validity of the death sentence. However, the amendments limit successive petitions to such facts that are not based on opinion.

The amendments depart from the Conference position by changing the time limit from 180 to 60 days for the filing of a petition once counsel is appointed under the Act, and they eliminate the tolling of this period for the time in which a state prisoner has filed a petition for post-conviction review in state court. Specter explained that this provision is intended to eliminate state habeas corpus proceedings as a prerequisite to filing a petition in federal court, calling such state proceedings "relatively meaningless." The amendments add a 20-day time limit for filing the notice of appeal from a judgment of the district court and a 20-day time limit for filing a certiorari petition from the issuance of the court of appeals mandate. The amendments also eliminate restrictions on the scope of consideration of the record and make clear that an evidentiary hearing is discretionary. Detailed provisions on the standards for counsel have been added.

Expedited review is required under these amendments: district courts must make their determinations within 110 days of filing of the petition, courts of appeals determinations must be made within 90 days of the notice of appeal being filed, and the Supreme Court must act on a petition for certiorari within 90 days of filing.

Finally, the amendments provide that review of petitions will be governed by the law in effect at the time the sentence becomes final, but a court may consider intervening decisions of the Supreme Court that establish fundamental constitutional rights.

FEDERAL DAY

On May 18, the Judicial Conference's Executive Committee voted to oppose those portions of the anti-crime legislation that would provide for the prosecution of state drug felony cases in federal courts on one designated day each month. It is estimated that this practice, known as "Federal Day," could cost the Judiciary somewhere between $70 million and $310 million annually, depending on the number of cases involved. It also would more than double the number of drug-related cases filed each year in the U.S. District Courts. This provision is being urged by Sen. Joseph Biden (D-DE).

EXPANDED DRUG TESTING

Pursuant to Section 7304 of the Anti-Drug Abuse Act of 1988, the Administrative Office has implemented a demonstration program of drug testing defendants (before their initial appearance), probationers, and supervised releasees in eight judicial districts *(see related story, page 8.)* The Conference believes that an expanded program to periodically test probationers, supervised releasees and parolees convicted of felonies or other listed offenses would be premature until the results of the existing program are known and analyzed. The new program could cost the courts more than $30 million.

MANDATORY MINIMUM SENTENCES

At its March 1990 meeting, the Conference approved a resolution urging Congress to reconsider the wisdom of mandatory minimum sentences. The Conference suggested that such existing statutes be restructured so that the U.S. Sentencing Commission may uniformly establish guidelines for all criminal statutes to avoid unwarranted disparities in the spirit of the Sentencing Reform Act.

LIMITATION ON THE IMPOSITION OF BAIL

The Administrative Office has stated that a proposal eliminating

See ***Anti-Crime Package,*** *page 5*

Soviet Justice Lyudmila Vasil'yevna Chistyakova and Chief Justice William H. Rehnquist pose for pictures following a meeting at the U.S. Supreme Court on May 1. Justice Chistyakova is a member of the USSR Supreme Court. She was part of a tour the U.S. State Department sponsored for judges and justices of the Soviet Union.

This was the first time Justice Chistyakova had been in the United States. She is a graduate of the Juridical Faculty, Moscow State University, and was previously a member of the Supreme Court of the Russian Republic.

Anti-Crime Package *Continued from page 4*

the possibility of a district court's releasing on bail an offender found guilty of certain felonies pending appeal is an unnecessary and counter-productive restriction. Current provisions of 18 USC § 3143 already limit bail pending appeal and sentencing. These existing limitations and the low rate of nonappearance and new crimes committed while on bail argue against the further limitations. Such a practice also would add to overcrowding in the jails.

PROBATION REVOCATION

The proposed legislation makes a change in the method of sentencing probationers whose probation had been revoked following a finding for possession of drugs. Although the proposed change would clarify the current provisions of 18 USC § 3565(a), and specifically requires the imposition of terms of imprisonment in such revocations, the AO has argued that the amendment would unnecessarily restrict judges' discretion in the area.

JUDGES' REPORTS TO THE SENTENCING COMMISSION

The Conference has stated that the requirement for compiling and publishing an annual report on the sentencing patterns of judges in relation to drug crimes seems unnecessary, since the overwhelming majority of such sentences are controlled by mandatory minimums or by the Sentencing Guidelines. The Commission already reports regularly to Congress and the AO publishes biannual charts that contain extensive data on sentences imposed in the federal courts.

GRANTS AWARDED TO PROFESSORS TO STUDY FEDERAL COURTS

The Judicial Conference Committee on the Bicentennial of the Constitution has awarded four scholars stipends of $10,000 each for this summer to study the history and evolution of the federal courts.

The winners of these grants are: Professor Christian G. Fritz of the University of New Mexico at Albuquerque, who will study the operation of selected federal trial courts in the latter half of the nineteenth century; Professor Wythe W. Holt, Jr. of the University of Alabama at Tuscaloosa, who will study the jurisdiction of the federal circuit courts from their origins to the acquittal of Justice Chase in 1805; Professor Herbert A. Johnson of the University of South Carolina at Columbia, who will study all the printed opinions of the federal circuit courts during the period that John Marshall was chief justice; and Professor Thomas G. Walker of Emory University in Atlanta, Georgia, who will study the evolution of the federal judiciary by examining the patterns of terminating judicial service from 1789 to the present.

The availability of the grants was announced in July 1989 and 32 applications were received. The applications were reviewed by a panel of three scholars with the assistance of the Federal Judicial Center. A subcommittee of three judges on the Bill of Rights selected the winners.

HOTLINE

For the latest information on legislative issues please call the tape-recorded "hotline" in the AO's Legislative and Public Affairs Office, FTS 786-6297.

KNOW THE RULES FOR GRADE INCREASES

The U.S. Comptroller General has some advice for federal employees: be aware of when your within-grade pay increases are due so you can avoid overpayments that must be refunded to Uncle Sam.

One decision by the CG found that a NASA aircraft mechanic should have known that he got his within-grade raise too early and therefore had to return $947 in overpayments. The fact that his agency found him not at fault made no difference to the CG, who ruled that he should have checked his pay stub and questioned the increase in pay.

Employees are reminded to check their personnel and pay records carefully to be sure all deductions and increases in gross and/or net salary are correct. Failure to notify the Administrative Office Personnel Division of any suspected discrepancy could obligate you to repay any salary overpayment that results. Ignorance does not entitle you to have the overpayment waived. Only in rare instances would an employee be exempt from paying back any salary overpayment (e.g., a new employee who has never before worked for the federal government).

For the record, the waiting periods for within-grades are: 52 calendar weeks to be advanced to steps 2, 3, and 4; 104 calendar weeks to steps 5, 6, and 7; and, 156 calendar weeks to steps 8, 9, and 10.

Should you have any questions, please contact one of the following individuals:

Supervisory Personnel Management Specialists

Walter Simon
1st, 2nd, 3rd, 6th & 7th Circuits
(FTS) 633-6060

Judy Robinson
4th, 5th, 8th, & 11th Circuits
(FTS) 633-6065

Joyce Stanley
D.C., 9th, 10th Circuits, & National Courts
(FTS) 633-5891

Chief, Judicial Officers Branch

Carol Sefren
All Judges, Magistrates, and their staffs
(FTS) 633-6063

Judge Susan H. Black, newly elevated as chief judge of the M.D. of Florida, meets with AO Assistant Director for Program Management Peter G. McCabe, who oversees the AO's orientation program for chief judges. All newly elevated chief circuit, district and bankruptcy judges spend two days at the AO's headquarters in Washington, D.C. where senior staff individually brief them on agency operations.

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FTS 633-6040

DIRECTOR
L. Ralph Mecham

EXECUTIVE EDITOR
Robert E. Feidler

EDITOR-IN-CHIEF
David A. Sellers

MANAGING EDITOR
Rosemary Gacnik-Flores

Contributing to this issue: Tim Cadigan, Christine Bischofberger, Edward M. Flynn, Nancy Potok, Toby D. Slawsky, E. Maxine Wright (AO); Martha L. Kendall (FJC); and Norman E. Zoller (11th Circuit).

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

JUDICIAL MILESTONES

APPOINTED. Raymond C. Clevenger III, to the U.S. **Court of Appeals** for the **Federal Circuit,** effective May 3.

APPOINTED. Susan Webber Wright, to the U.S. **District Court** for the **E.D.** of **Arkansas,** effective May 11.

APPOINTED. Daniel B. Sparr, to the U.S. **District Court** for the **D.** of **Colorado,** effective April 25.

APPOINTED. Ronald L. Buckwalter, to the U.S. **District Court** for the **E.D.** of **Pennsylvania,** effective April 20.

APPOINTED. Norman H. Stahl, to the U.S. **District Court** for the **D. of New Hampshire,** effective May 7.

APPOINTED. D. Brock Hornby, to the U.S. **District Court** for the **D.** of **Maine,** effective May 7.

APPOINTED. James F. McClure, Jr., to the U.S. **District Court** for the **M.D.** of **Pennsylvania,** effective May 7.

APPOINTED. Robert E. Jones, to the U.S. **District Court** for the **D.** of **Oregon,** effective April 30.

DECEASED. Senior Judge **John W. Oliver,** U.S. **District Court** for the **W.D.** of **Missouri,** April 25.

SENIOR STATUS. Judge **Earl E. Veron,** U.S. **District Court** for the **W.D.** of **Louisiana,** effective February 13.

SENIOR STATUS. Judge Paul A. Simmons, U.S. **District Court** for the **W.D.** of **Pennsylvania,** effective June 1.

ELEVATED. Judge **Falcon B. Hawkins,** to become **Chief Judge** of the U.S. **District Court** for the **D.** of **South Carolina,** succeeding Chief Judge **Solomon Blatt, Jr.,** effective May 7.

ELEVATED. Judge **Edward L. Filippine,** to become **Chief Judge** of the **E.D.** of **Missouri,** succeeding Chief Judge **John F. Nangle,** effective May 10.

ELEVATED. Judge **Juan G. Burciaga,** to become **Chief Judge** of the U.S. **District Court** for the **D.** of **New Mexico,** succeeding Chief Judge **Santiago E. Campos,** effective January 1.

APPOINTED. U.S. Magistrate **Joseph M. Hood,** to the U.S. **District Court** for the **E.D.** of **Kentucky,** effective May 1.

APPOINTED. Marianne Bowler, as U.S. **Magistrate** for the **D.** of **Massachusetts,** effective May 7.

APPOINTED. M. Faith Angell, as U.S. **Magistrate** for the **E.D.** of **Pennsylvania,** effective May 14.

APPLICANTS SOUGHT FOR 1991-1992 JUDICIAL FELLOWS PROGRAM

The Judicial Fellows Commission invites applications for the 1991-92 Judicial Fellows Program. The Program, established in 1972 and patterned after the White House and Congressional Fellowships, seeks outstanding individuals from a variety of disciplinary backgrounds who have an interest in judicial administration and who show promise of making a contribution to the Judiciary.

Three Fellows will be chosen to spend a calendar year, beginning in late August or early September 1991, in Washington, D.C. at either the U.S. Supreme Court, the Federal Judicial Center, or the Administrative Office of the U.S. Courts. Candidates must be familiar with the federal judicial system, have at least one postgraduate degree and two or more years of successful professional experience. Fellowship stipends are based on salaries for comparable government work and on individual salary histories but will not exceed the GS 15, step 3 level, presently $63,164.

Information about the Judicial Fellows Program and application procedure is available from *Vanessa Yarnall, Administrative Director, Judicial Fellows Program, U.S. Supreme Court, Room 5, Washington, D.C. 20543, (202) 479-3374. The application deadline is* ***November 15, 1990.***

JUDICIAL BOXSCORE

As of June 4, 1990

Courts of Appeals Vacancies	13
Nominees Pending	5
District Courts Vacancies	37
Nominees Pending	9
Courts with "judicial emergencies"	9

CONGRESS RECEIVES FIRST REPORT ON PILOT DRUG TESTING PROGRAM

Approximately one third of the criminal defendants given pretrial tests for drugs under a pilot program in the federal courts registered positive, according to an Administrative Office report.

The Interim Report of the Director of the Administrative Office of the U.S. Courts on The Demonstration Program of Mandatory Drug Testing of Criminal Defendants is the first of two reports to be provided to Congress on the project. It focuses mainly on the pretrial phase because the provisions regarding eligibility for the post conviction phase limited the number of defendants to 116 for the first year. Consequently, the data on the post conviction phase was very limited.

Section 7304 of the Anti-Drug Abuse Act of 1988 required the AO Director to establish a demonstration program for mandatory drug testing of criminal defendants in eight federal judicial districts over a two-year period. The program began January 1, 1989 and incorporates a two-phase program of testing of all criminal defendants before their initial appearance, and all felony offenders released on probation or

*See **Drug Testing**, page 9*

CONGRESS PASSES SUPPLEMENTAL APPROPRIATIONS FOR JUDICIARY

Last month, Congress passed the Dire Emergency Supplemental Appropriations Bill, which would provide additional funding for the Judiciary for 1990. The bill funds the Judiciary's full request of $28.8 million, including $5.3 million for Cost of Living Adjustments (COLA) for judges, $22.8 million to restore court fee collections that are lower than anticipated, and $700,000 for the U.S. Sentencing Commission. The bill partially finances the supplemental by transferring $4.5 million of surplus Defender Services funds to the courts salaries and expenses account. Two million dollars of the transferred funds are set aside for the drug aftercare program.

The House also passed its Concurrent Resolution on the Budget in May, setting fiscal year 1991 spending and revenue targets for the government. In the Report on the Resolution, the House Budget Committee stated that the Judiciary should be fully funded in the Resolution because of its key role in the national war on drugs. The report also urged the Appropriations Committee to fully fund the Judiciary.

The Senate Budget Committee reported out its version of the Concurrent Resolution on the Budget in May. The Report stated that the Judiciary should receive a substantial increase in the Budget Resolution over its 1990 funding level because of its key role in the war on drugs. The increase was $300 million, $45 million less than the Judiciary's request. The Senate will not be voting on the Budget Resolution until deficit reduction negotiations between Congress and the President progress further. The prospective summit agreement could result in substantial cuts in the Judiciary appropriations since the projected deficit far exceeds the Gramm-Rudman-Hollings target of $64 to $74 billion.

Although the overall spending limits set in the Budget Resolution are binding on Congress, the agency-by-agency spending levels are considered guidance to the Appropriations Committees and are non-binding. The actual 1991 funding level will be set in the Appropriations legislation.

The process began in January when the Judiciary's fiscal year 1991 budget request was transmitted to Congress as part of the President's Budget. The Judiciary is requesting $2.05 billion, an increase of $345 million or 20 percent over the 1990 level. This includes a $34 million pay increase for judges, effective in February 1991.

Judge Richard S. Arnold (8th Cir.), Judge William G. Young (D. Mass.), and AO Director L. Ralph Mecham testified on the courts' and the Administrative Office's budget request before the House and Senate Appropriations Subcommittees this spring. The Subcommittees have not yet taken action on the 1991 request.

CORRECTION

The Ethics Reform Act of 1989 does not itself provide for Cost of Living Adjustments for judges and other high-level officials, as reported in the May issue of **The Third Branch.** The Act sets up a new index for measurement of COLAs. Each annual cost-of-living adjustment must result from Presidential recommendation to Congress under independent provision of law.

Drug Testing Continued from page 8

supervised release for offenses committed on or after January 1, 1989.

The eight districts participating in the demonstration project are: Southern New York, Eastern Michigan, Western Texas, Eastern Arkansas, North Dakota, Minnesota, Nevada, and Middle Florida. Pretrial testing of defendants was the most difficult part of the project to implement. This was because test results were required to be submitted to the judicial officer at the time of the initial appearance. To meet this deadline, the district offices had to perform the initial drug screen in the local office using on-site urinalysis equipment.

The table below shows data from the eight demonstration districts and the rate of positive urine results for the pretrial phase.

The interim data from the pretrial services phase indicated that about 33 percent of those defendants who were tested, tested positive for the presence of at least one controlled substance. In addition, about 13 percent of those defendants who were asked to participate refused. The interim results also indicate that cocaine was the most used controlled substance in all districts except North Dakota. Finally, there were no formal legal challenges to the constitutionality of pretrial drug testing in the demonstration project.

Since the report provides only interim data, the AO recommended that Congress await the final report before considering establishing a national system of urinalysis testing for federal defendants. One area requiring additional analysis is the weight judicial officers give to the information in fashioning pretrial release conditions. The report questions the purpose served in testing all pretrial defendants if judicial officers do not consistently employ the information in developing release conditions. This and other issues will be addressed in the final report to Congress on the project, due in March 1991.

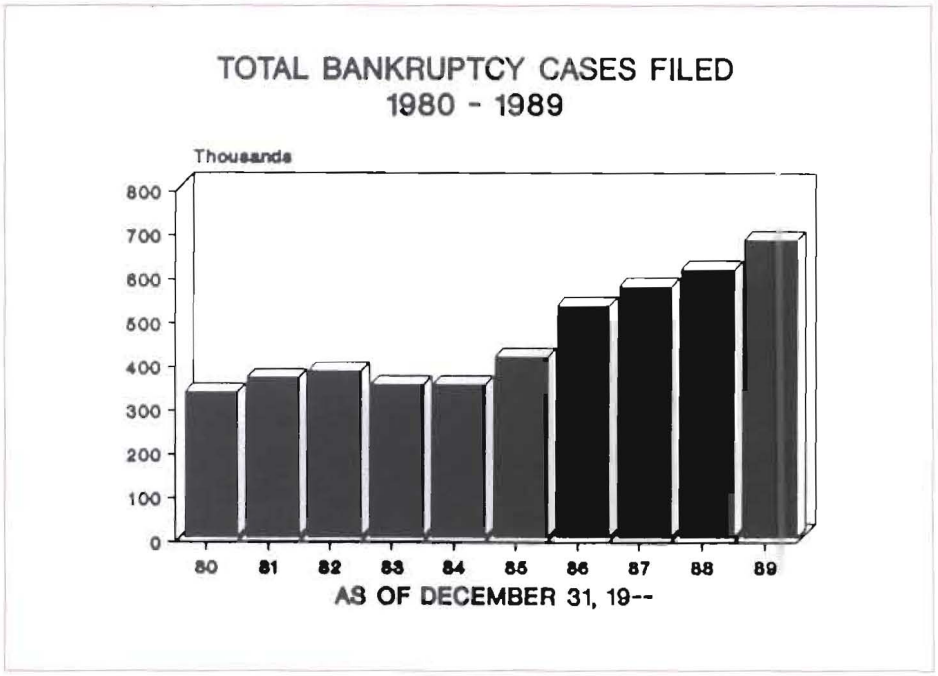
PRE-INITIAL APPEARANCE TESTS AND RESULTS
(As of Dec. 31, 1989)

District	Sites	Start-Up	Tests Before Initial Appearances	Number of Positives	Percentage
FL/M	Jacksonville	3/24/89	116	30	26%
	Tampa	4/03/89	307	91	30
	Orlando	3/28/89	148	46	31
	(Total)		571	167	29
NY/S	Foley Square	4/03/89	892	406	45
	White Plains	4/07/89	138	43	31
	(Total)		1,030	449	43
MI/E	Detroit	3/13/89	480	165	34
TX/W	San Antonio	3/06/89	215	50	23
	El Paso	3/27/89	199	41	20
	(Total)		414	91	22
NV	Las Vegas	3/20/89	268	68	25
MN	Minneapolis/ St. Paul	5/01/89	273	94	34
ND	Fargo	4/19/89	272	71	26
AR/E	Little Rock	5/03/89	130	50	38
Totals			3,438	1,155	33%

BANKRUPTCY FILING RECORD EXPECTED THIS MONTH

The U.S. bankruptcy courts are straining to process record caseloads. Total annual filings in the bankruptcy courts have nearly doubled during the past five years, from 348,488 in 1984 to 679,980 in 1989.

The Bankruptcy Code of 1978, which replaced the Bankruptcy Act of 1898, became effective on October 1, 1979. Bankruptcy cases currently are being filed at a rate of about 60,000 per month, and it is estimated that the five millionth case under the Code will be filed on June 19, 1990. By the end of 1990, the number of pending bankruptcy cases nationwide will exceed one million, even though bankruptcy judges terminated nearly 275,000 more cases in 1989 than they did in 1984.



INTERVIEW

JUDGE MOREY SEAR : Meeting the Growing Needs of the Bankruptcy System

Judge Morey L. Sear has been chairman of the Judicial Conference Committee on the Administration of the Bankruptcy System since 1986. He served as chairman of the Advisory Committee on Bankruptcy Rules from 1984 to 1986 and as a member of that committee from 1979 to 1984.

Judge Sear was appointed to the U.S. District Court for the Eastern District of Louisiana in 1976. He was interviewed for ***The Third Branch*** *at a time when bankruptcy filings are at record levels.*

TTB: You have been involved in the bankruptcy court system for more than a decade. What do you view as the most significant changes to have occurred during this period?

JUDGE SEAR: The system has undergone major legislative changes. The Bankruptcy Code of 1978 established a system of essentially independent bankruptcy courts and rewrote much of the substantive law of bankruptcy. The Supreme Court, however, invalidated the jurisdictional provisions of the law in 1982, and the courts had to operate under interim arrangements until Congress enacted the Bankruptcy Amendments and Federal Judgeship Act of 1984. Under the 1984 legislation, Congress established the bankruptcy courts as "units" of the district courts and authorized separate bankruptcy clerks offices. Then, in 1986, Congress enacted further legislation, which, among other things, created 52 more bankruptcy judgeships, added chapter 12 to the Bankruptcy Code and established the United States trustee system on a permanent, nationwide basis.

TTB: Did all this legislative activity create stress or other problems for the bankruptcy system?

JUDGE SEAR: Of course it did. A great deal of controversy accompanied legislation to fashion a new bankruptcy court structure, both in 1978 and 1984. Much of the bankruptcy community organized to establish a system of independent, article III bankruptcy courts. The Judicial Conference opposed these efforts, and there were disagreements within the court family among bankruptcy judges and article III judges.

TTB: Have these problems been resolved?

JUDGE SEAR: I certainly hope so. The 1984 structure, while not perfect, is working well, thanks in great measure to the efforts of the bankruptcy bench and bar. There are some unresolved issues, including jury trials in the bankruptcy courts, but they will be taken care of through decisional law.

The bankruptcy courts, clearly, are a respected, appreciated, and integral part of the federal court family. A great deal of progress has been accomplished by bankruptcy judges and article III judges working together. We have been able to achieve a number of important legislative objectives to enhance the status and benefits of the office. The 14-year full salary retirement system, the establishment of the salary of a bankruptcy judge at 92 percent of the salary of a district judge, and the expected significant salary increases for all judicial officers were only made possible by a cooperative effort among bankruptcy judges, magistrates, article III judges, and the AO.

Five bankruptcy judges now serve on the Bankruptcy Committee, and it is my practice to invite the president of the National Conference of Bankruptcy Judges to participate also in our meetings. It is important that the committee know the needs and concerns of the bankruptcy courts and take steps to address them. Therefore, we rely heavily on the Bankruptcy Division and the Court Administration Division to seek the input and advice of bankruptcy clerks on matters that affect them.

TTB: What about the problems of rising caseloads and adequate resources?

JUDGE SEAR: Case filings in the bankruptcy courts have doubled since 1984, creating a need for additional judges, deputy clerks, computers, and other resources. Because of limited appropriations and the Gramm-Rudman-Hollings legislation, however, we have not yet been able to fund clerks' offices at 100 percent of their staffing formulas or to expand the automation program as quickly as we would like. Moreover, we need to complete work on a new, comprehensive work measurement formula for clerks' offices.

TTB: Is there a need for additional bankruptcy judgeships?

JUDGE SEAR: Yes. We conduct a full survey on each application for an extra bankruptcy judgeship, which includes detailed statistical analyses and other documentation, on-site review of court dockets and procedures, and interviews with judges, clerks, attorneys, and others. A bankruptcy judge member of the committee accompanies the staff of the Bankruptcy Division on each survey.

At the request of the committee, the Federal Judicial Center recently conducted a nationwide time study of the workload of bankruptcy judges with a view to developing a system of case weights for the bankruptcy courts similar to that used for the district courts. The report will be an additional, valuable tool to assess the need for judgeships.

The Committee also believes that appropriate staff support is a key to the effectiveness of bankruptcy judges. It has encouraged the bankruptcy clerks to use their courtroom deputies and case managers innovatively to provide case management support for the judges. It is also reviewing the need for additional law clerk assistance on a temporary basis in certain bankruptcy courts.

TTB: The subject of case management appears to be high on the agenda of Congress. Has your Committee addressed this subject?

JUDGE SEAR: Very much so. The Committee believes that it can be of major assistance to the bankruptcy courts in this area. While case management techniques have been developed and refined in the district courts over many years, less progress has been made in defining a body of efficient procedures for the bankruptcy courts. The Committee has established a task force of bankruptcy judges and clerks, district judges and clerks, and academicians to review existing practices bankruptcy judges employ and catalog the effective procedures. The task force has visited a number of bankruptcy courts and made suggestions that have improved procedures and reduced existing backlogs. We are in the process of drafting a manual, which will eventually be distributed to all bankruptcy judges.

TTB: In conclusion, what do you see as the future of the bankruptcy courts?

JUDGE SEAR: There are some problem areas, of course, such as the continuous increases in caseloads, unresolved jurisdictional issues, and the operation of the U.S. trustee system. They are all manageable, however. I was pleased to see, for example, that the Federal Courts Study Committee has recommended that U.S. trustees remain as independent, statutory officers, but that administration of the system be lodged within the Judicial Branch. Despite the tight resource limitations, I believe that the talent and dedication of our bankruptcy judges and clerks assure a bright future for the bankruptcy court system.

ELEVENTH CIRCUIT OPENS HISTORICAL DISPLAY

Judges of the Eleventh Circuit Court of Appeals in Atlanta recently opened to the public the first of a series of planned educational and historical displays concerning the origin of the Eleventh Circuit and the place and function of the Judicial Branch in our government.

From an idea first conceived by Judge Paul H. Roney while he was Chief Judge of the Circuit, a committee of judges and lay persons helped shape the nucleus of five major exhibits, which focus on the Judiciary and its origin in the Judiciary Act of 1789. Members of the committee included current Chief Judge Gerald B. Tjoflat, Circuit Judge Phyllis A. Kravitch (committee chair), Senior Circuit Judge James C. Hill, and the late Circuit Judge Robert S. Vance.

Miquel J. Cortez, Eleventh Circuit Clerk of Court, points out rare British photographs tracing the ancestry of the adversary process to Judge Phyllis A. Kravitch and Senior Judge Paul H. Roney.

"Our circuit, being relatively new, has an unusual opportunity in its early stages to collect and display various artifacts and memorabilia about its history as it is being made," Roney said.

The themes of the first displays outline what courts do, the origin of the federal judicial process, and the history of the division of the Fifth Circuit into the new Fifth and Eleventh Circuits.

THE THIRD BRANCH

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CALENDAR DATES FOR THE THIRD BRANCH

Vol. 22 Number 6 June 1990

JUNE

17-20 Sunday-Wednesday
Committee on Defender Services

18-20 Monday-Wednesday
Committee on Space and Facilities

18-20 Monday-Wednesday
Committee on Judicial Improvements

18-22 Monday-Friday
University of Chicago Seminar for District Judges

18-22 Monday-Friday
Orientation Seminar for Newly Appointed District Judges

19 Tuesday
Committee on the Judicial Branch

19-21 Tuesday- Thursday
Workshop for Magistrates of 1st, 2nd, 3rd, 6th, 7th & D.C. Circuits

20-22 Wednesday-Friday
Committee on Criminal Law and Probation Administration

21-22 Thursday-Friday
Committee on the Administration of the Magistrates System

24-25 Sunday-Monday
Committee on the Administrative Office

28-29 Thursday-Friday
Committee on the Codes of Conduct

28-30 Thursday-Saturday
Fourth Circuit Conference (White Sulphur Springs, WV)

JULY

4 Wednesday
Independence Day

8-13 Sunday-Friday
Pilot Skills Development Workshop (Judges with 3-5 years on Bench)

9-11 Monday-Wednesday
Workshop for Court Managers on Managing PC's in the Courts

11-13 Wednesday-Friday
Committee on Judicial Ethics

11-13 Wednesday-Friday
Seminar for Magistrates of the 5th and 10th Circuits

12-13 Thursday-Friday
Committee on Rules of Practice and Procedure

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)

23 *(1866)*
The U.S. Courts of Appeals were created for the 7th, 8th, and 9th Circuits

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 chairman)

Please send calendar updates to: The Third Branch, Administrative Office of the U.S. Courts, Office of Legislative & Public Affairs, 811 Vermont Avenue, N.W., Room 655, Washington, D.C. 20544

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VACANCY ANNOUNCEMENTS
THE THIRD BRANCH
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CLERK OF COURT, U.S. District Court for the District of Rhode Island

The clerk of the court is responsible for providing all administrative services including case processing, records management, financial management, budget preparation, and personnel management. Applicants must have ten or more years of management experience and an undergraduate degree, preferably in public or business administration or a related area. A law degree or a graduate degree in court administration or public administration is highly desirable and may be substituted for part of the required management experience. Salary range: $59,216 - 76,982 (Step 10). Court headquarters are in Providence, Rhode Island. Applications with resumes must be submitted to: Chief Judge Francis J. Boyle, U.S. District Court, Room 314, United States Courthouse, Providence, Rhode Island 02903, (401) 528-5155. The application period will remain **open until the position is filled.** Applicants may be required to travel to Providence at their own expense for interviews.

FEDERAL PUBLIC DEFENDER, District of Alaska

The U.S. Court of Appeals for the 9th Circuit is accepting applications for this newly created position. Office is headquartered in Anchorage, Alaska. The term of appointment is four years. Salary: $81,400 plus COLA. The Federal Public Defender provides federal criminal defense services to individuals unable to afford counsel. An applicant must: (1) be admitted to practice before the highest court of at least one state; (2) be a member in good standing of every other state Bar of which he/she is a member; (3) have a minimum of five years criminal practice, preferably with significant federal criminal trial practice; (4) have administrative expertise; (5) have a reputation for integrity; and (6) a commitment to the representation of those unable to afford counsel. Application materials can be obtained by writing to: Office of the Circuit Executive, 101 Spear Street, Suite 215, San Francisco, CA 94105, (415) 744-6150 or (FTS) 484-6150. Application materials are also available at all federal circuit and district clerks' offices in the 9th Circuit. Completed applications should be mailed to the above address before close of business on **June 30, 1990.**

EXECUTIVE OFFICER/CLERK OF COURT, United States Court of Veterans Appeals

This is a high level management position, headquartered in Washington, D.C. The Executive Officer/Clerk of Court is responsible for providing all administrative and managerial functions, including case and records management, budget preparation, and personnel management. Applicants must have ten or more years of management experience and an undergraduate degree, preferably in public or business administration or a related area. A law degree or a graduate degree in public, business, or judicial administration is highly desirable and may be substituted for part of the required management experience. Salary: $78,200 (pay cap). Applications with resumes should be submitted to: Rebecca Alexander, Suite 400, 1625 K Street, Washington, D.C. 20006. (FTS/202) 254-6600. **Application deadline: June 22, 1990.**

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