



ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS

# *NEWS RELEASE*

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## **JUDICIAL CONFERENCE APPROVES HABEAS REPORT-- VOICES COMMITMENT TO CASE MANAGEMENT**

The Judicial Conference of the United States has adopted the report of its Ad Hoc Committee on Federal Habeas Corpus in Capital Cases with modifications relating to competency of counsel and successive petitions.

The report, which is identical to that released last September, and its amendments, will be transmitted to Congress. The action took place at the semi-annual meeting of the Conference, which serves as the policy-making body for the federal court system.

The Judicial Conference endorsed the Ad Hoc Committee's three central goals:

- 1.) elimination of piecemeal appeals;

2.) provision of an automatic stay in capital cases in order to obviate last-minute, time-pressured litigation and successive petitions for stay; and

3.) provision of competent counsel in state capital proceedings.

The first modification of the report provides for the appointment and compensation of competent counsel as set forth in the Anti Drug Abuse Act of 1988. The modification would require the appointment of competent counsel at both the state trial and post-conviction proceedings.

The second modification covers second or successive petitions for habeas relief in cases where the claim was not presented in the state and federal courts and failure to do so was the result of state action in violation of the Constitution or U.S. laws, Supreme Court recognition of a new federal right that is retroactively applicable or a factual predicate that could not have been discovered through reasonable diligence.

Such a petition would be permitted if the above criteria are met and the facts underlying the claim would be sufficient, if proven, to undermine the court's confidence in the jury's determination of guilt on the offense for which the death penalty was imposed, or the appropriateness of the sentence of death.

A copy of the modifications is attached.

The Ad Hoc Committee was chaired by Retired Associate Justice Lewis F. Powell, Jr. Created in June 1988, the Committee

met six times, while receiving comments from a broad array of interested parties.

At its September 1989 meeting the Conference discharged Justice Powell's Committee, made its report publicly available, and deferred taking any further action until its March 1990 meeting.

Habeas Corpus is a process available to state prisoners seeking federal court review of alleged constitutional defects in a state court proceeding. Prisoners use writs of habeas corpus to challenge the legality of their imprisonment.

The Conference also adopted a resolution opposing the Civil Justice Reform Act as drafted, while also reaffirming its long-standing commitment to case management. In its statement on case management, the Conference recommended an intensified commitment to individual case management, and suggested that each court consider convening an advisory group to study the court's procedures and lawyers' practices, and develop plans for attacking the problems of cost and delay.

The Conference also expressed its responsibility to review periodically the plans and experiments of the districts and proposals for case management and alternative dispute resolution improvements and, where found to have merit for system-wide adoption, propose an amendment to the appropriate Federal Rule of Civil Procedure in accordance with the provisions of the congressionally-mandated Rules Enabling Act.

The Civil Justice Reform Act was introduced in the Senate (S.2027) and in the House (H.R. 3898) on January 25, 1990. The companion bills call for each trial court to develop and implement a detailed "Civil Justice Expense and Delay Reduction Plan."

Last month the Conference's Executive Committee formed a special subcommittee of four judges, chaired by Judge Robert F. Peckham ( N.D. Ca.) to analyze the legislation and its impact on the federal courts. U.S. District Chief Judge Aubrey E. Robinson, Jr. (D. D.C.), a member of the subcommittee, testified before the Senate Judiciary Committee in a hearing on the bill earlier this month.

The Conference also received the report of its Ad Hoc Committee on Cameras in the Courtroom. The report was submitted for information only, and no action was requested of the Conference. The Committee will next meet in May and a final report will be submitted in September 1990.

At the last meeting of the Conference in September 1989 the Committee submitted tentative recommendations and indicated its intention to solicit comments on them. The Committee had expected to make final recommendations to the Conference at its current meeting. However, in the interim, representatives of the media have sought to present additional material, including extensive analyses of the experiences of the states with cameras in the courtroom.

"The Committee is of the view that, while certainly not controlling, the state experiences would be of great value to the Committee and the Conference while they study this matter," the report said. Consequently, any action on the issue was postponed until the next session of the Conference.

In other action the Conference:

\* Passed a resolution expressing its sorrow over the tragic passing of Judge Robert S. Vance of the U.S. Court of Appeals for the 11th Circuit, who was chairman of the Conference's Committee on Space and Facilities. Judge Vance was killed by a mail bomb received at his home in December 1989. Also approved was a resolution requesting Congress to enact legislation designating the U.S. Courthouse at 1800 Fifth Avenue North in Birmingham, Alabama as the Robert Smith Vance United States Courthouse.

\* Approved a resolution recognizing that an "emergency situation" exists regarding the off-site security of judicial officers and their families, and requested that the Attorney General immediately address this situation. By statute, the U.S. Marshals Service, a division of the Department of Justice, provides security for the courts.

\* Urged Congress to reconsider the wisdom of mandatory minimum sentence statutes. It further suggested that such statutes should 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. The Third, Eighth, Ninth and Tenth circuits already have passed resolutions in opposition to mandatory minimum sentences.

\* Approved a fee schedule for a pilot project involving electronic public access to various court information. Appropriation legislation for fiscal year 1990 allows the Judiciary to utilize revenue generated through public access to data maintained by the bankruptcy courts. The Public Access to Court Electronic Records system ( PACER ) allows interested parties to access a court's computer and extract public data in the form of docket sheets, calendars and other records. The 1990 appropriation legislation did not, however, authorize the Judiciary to make use of revenues generated through access of data in the district courts. The Conference approved access rates for the district courts identical to those being used in the bankruptcy courts. The fee schedule establishes a \$60 annual per court commercial rate, and a \$30 annual per court non-profit rate. A per-minute charge of \$1 will be assessed commercial parties, and non-profits will be charged \$0.50 a minute. The Conference also said it would seek enactment of legislation that would permit the Judiciary to utilize the funds received by the district courts.

The service currently is available in the bankruptcy courts in the District of Massachusetts, the District of Rhode Island and the Western District of Texas. At the district court level, the service is available in the District of Columbia, the Northern District of Georgia, the Western District of Texas and the District of Arizona.

The U.S. Court of Appeals for the Fourth Circuit is the only appeals court to employ the PACER system.

A list of the members of the Judicial Conference is attached.

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JUDICIAL CONFERENCE OF THE UNITED STATES

March 1990

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| William H. Rehnquist, Chief Justice                              | Presiding  |
| Chief Judge Levin H. Campbell<br>Chief Judge Frank H. Freedman   | First Circuit<br>Massachusetts                       |
| Chief Judge James L. Oakes<br>Chief Judge Charles L. Brieant     | Second Circuit<br>New York (Southern)                |
| Chief Judge A. Leon Higginbotham<br>Judge William J. Nealon, Jr. | Third Circuit<br>Pennsylvania (Middle)               |
| Chief Judge Sam J. Ervin, III<br>Judge Frank A. Kaufman          | Fourth Circuit<br>Maryland                           |
| Chief Judge Charles Clark<br>Chief Judge Barefoot Sanders        | Fifth Circuit<br>Texas (Northern)                    |
| Chief Judge Gilbert S. Merritt<br>Judge James P. Churchill       | Sixth Circuit<br>Michigan (Eastern)                  |
| Chief Judge William J. Bauer<br>Judge Sarah Evans Barker         | Seventh Circuit<br>Indiana (Southern)                |
| Chief Judge Donald P. Lay<br>Chief Judge John F. Nangle          | Eighth Circuit<br>Missouri (Eastern)                 |
| Chief Judge Alfred T. Goodwin<br>Judge Robert F. Peckham         | Ninth Circuit<br>California (Northern)               |
| Chief Judge William J. Holloway<br>Chief Judge Earl E. O'Connor  | Tenth Circuit<br>Kansas                              |
| Chief Judge Gerald B. Tjoflat<br>Chief Judge Sam C. Pointer      | Eleventh Circuit<br>Alabama (Northern)               |
| Chief Judge Patricia M. Wald<br>Chief Judge Aubrey Robinson      | District of Columbia Circuit<br>District of Columbia |
| Chief Judge Howard T. Markey                                     | Federal Circuit                                      |
| Chief Judge Edward D. Re   | International Trade                                  |

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Conference Secretary:

L. Ralph Mecham, Director  
Administrative Office of U. S. Courts

RESOLUTION

IN RE: POWELL AD HOC COMMITTEE ON HABEAS CORPUS  
INVOLVING CAPITAL CASES

The Judicial Conference of the United States endorses the essential objectives of the Powell Committee Ad Hoc Report on federal habeas corpus review of capital cases:

- (1) to eliminate piecemeal appeals;
- (2) to provide an automatic stay in capital cases in order to obviate successive petitions for stay; and
- (3) to provide competent counsel on state post-conviction cases.

The Judicial Conference endorses the recommendations of the Powell Committee Report subject to the following modifications:

1. Because many of the delays in habeas corpus procedures are related to the fact that the defendant was not represented by competent counsel at the trial level (as well as in the state post-conviction proceedings), specific mandatory standards similar to those set forth in the Anti-Drug Abuse Act of 1988 should be required with respect to the appointment and compensation of counsel for capital defendants at all stages of the state and federal capital punishment litigation.

Upon the filing of a petition for a writ of habeas corpus in the federal court the court should first determine whether the specific guidelines for competent counsel were followed in the

state proceedings. If the court determines that competent counsel was appointed in the state proceedings, the same counsel should be appointed in the federal court, wherever possible. If the court determines that competent counsel was not appointed in the state proceedings, the federal district court should appoint new counsel under the governing guidelines. In the latter case, the federal court should not require dismissal of non-exhausted state claims, or apply any procedural default rules or the rule governing the presumption of correctness of state court findings of fact.

#### COMMENTARY

The present proposal of the Powell Committee provides states with the option to set standards of competency for the appointment of counsel in state post-conviction cases. This proposal has serious drawbacks. Providing states the option to set and comply with the standards will lead to the creation of different and inconsistent standards among the states and will result in two sets of procedures in federal post-conviction cases: one for petitioners from states that have opted to adopt standards and another for petitioners from states that do not. The result would be confusion and a proliferation of litigation. We thus endorse the ABA Task Force recommendation of one mandatory national standard governing competent counsel.

2. The Conference supports the essential features of the ABA Task Force recommendations concerning second or successive petitions for habeas relief. The Conference does, however, favor and endorse a change in that recommendation so that it be clear that it supports a federal court entertaining a second or successive petition on the grounds stated in the ABA Task Force recommendation, but in addition stating that any statutory revision would include a proviso that such a successive or second petition be entertained where the facts, if proven, would undermine the court's confidence also in "the appropriateness of the sentence of death." In order to make this clear within the context of the ABA Task Force recommendation, the Conference supports the following modified recommendation:

A federal court should entertain a second or successive petition for habeas corpus relief if: the request for relief is based on a claim not previously presented by the prisoner in the state and federal courts and the failure to raise the claim is the result of state action in violation of the Constitution or laws of the United States, the result of Supreme Court recognition of a new federal right that is retroactively applicable, or based on a factual predicate that could not have been discovered through the exercise of reasonable diligence; and the facts underlying the claim would be sufficient, if proven, to undermine the court's confidence in the jury's determination of guilt on the offense or offenses for which the death penalty was imposed, or in the appropriateness of the sentence of death.