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THE THIRD BRANCH

Newsletter
of the
Federal
Courts



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A Look Back at the 101st Congress

The 101st Congress adjourned sine die on October 27, 1990. It will be remembered for its struggle with the budget, for its focus on ethical issues, and for an adjournment date later than that of any Congress since World War II. Whether the 101st will generally receive high or low marks is yet to be determined. But from the perspective of the Judicial Branch, this Congress should be applauded for the consideration it gave to the most vital issues affecting the Judiciary. (For a wrap-up of the 101st Congress, see page 3.)

In a speech to the First Circuit Judicial Conference three days after Congress adjourned, AO Director L. Ralph Mecham noted that "the record of the 101st Congress was exceptionally productive in its support of the Judicial Branch. Senators Biden, Thurmond, Heflin, and Grassley and Congressmen Brooks, Fish, Kastenmeier, and Moorhead were among the members who demonstrated particularly strong leadership from which the courts benefited."

At the beginning of the 101st Congress in 1989, the Judiciary had three clear and overwhelming concerns that could only be addressed

through legislative action: insufficient judicial pay, insufficient judicial resources, and inadequate funding. Congress came through on all three.

Clearly the issue of pay was foremost at the beginning of the 101st session. Great disappointment accompanied the decision of Congress in February 1989 to reject the salary recommendations of the Quadrennial Commission. The Judicial Conference reacted with a strong resolution in March. The Chief Justice took the unprecedented step of conducting a press conference at the Supreme Court to announce the Conference's policy and to dramatize the urgency of the issue. He followed this with an appearance before Congress—the first in over 70 years by a sitting Chief Justice.

Slowly over the summer and early fall a consensus was built, resulting in the November passage of the Ethics Reform Act of 1989. This legislation, coupled with a cost of living increase in 1990 and a second one just provided for 1991, will result in nearly a 40 percent salary increase for judges. While this was a bipartisan effort, it would never have been achieved were it not for the leader-

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Chief of AO Judges Division Named

Judge John E. Howell has been named chief of the Administrative Office's new Article III Judges Division and will begin his duties January 1, 1991. Howell has served as chief trial judge of the Air Force for the past six years. In that capacity he has supervised 31 active judges and 6 reserve officers worldwide.

His trial jurisdiction includes the full range of criminal cases, from misdemeanors to capital cases. In addition, he handles a variety of administrative cases, including officer discharge proceedings and base closure hearings.

Howell has been active as a chief judge in automating case records and promoting effective case man-

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Favorable 1991 Judiciary Budget Passed

On October 24, Congress enacted an FY 1991 spending bill for the Judiciary that totals about \$1.96 billion and is a 15.25 percent, or \$259 million, increase over the FY 1990 funding level. The enacted level gives the Judiciary 95.4 percent of its 1991 budget request to Congress.

The next step in securing 1991 funding is for the President to sign the appropriations bill into law, which he is expected to do. Once the bill is signed, a final 1991 financial plan for the courts can be approved by the Executive Committee of the Judicial Conference.

The table compares the 1991 request with the final Judiciary budget.

1991 Funding for the Judiciary (in \$ Millions)

Appropriation	Judiciary's Request	Congressional Allowance
Supreme Court	\$22.7	\$22.5
Court of Appeals for the Federal Circuit	9.8	9.7
Court of International Trade	8.8	8.8
Courts of Appeals, District Courts, and Other Judicial Services	1,941.6	1,851.1
Salaries and Expenses	(1,643.1)	(1,594.1)
Defender Services	(167.6)	(132.8)
Juror Fees	(57.9)	(52.9)
Court Security	(72.9)	(71.3)
Administrative Office of the U.S. Courts	38.5	37.4
Federal Judicial Center	15.9	13.9
Judicial Officers Retirement Fund	5.0	5.0
U.S. Sentencing Commission	9.3	8.4
Total	\$2,051.5	\$1,956.8

Notes: Items in parentheses total the Courts of Appeals, District Courts, and Other Judicial Services figure. The table does not include an additional \$57.6 million in estimated fee collections that the Judiciary may spend. The total congressional allowance does not include \$28 million for the drug dependent offenders program originally placed in reserve.

101st Congress continued from page 1

ship of Speaker of the House Foley, Minority Leader Michel, Congressmen William Ford and Fazio, and Senator Reid.

Caseloads continued to rise, placing severe pressures on many judicial officers. Congress responded by passing an omnibus bill providing for 85 new judgeships. One should keep in mind that this was done by a Democratic Congress with a Republican President in the White House. Few thought that Congress would respond to our judgeship needs so generously. Clearly, the leader of this effort was Chairman Biden of the Senate Judiciary Committee. We may have had our initial disagreements with him on other legislation, but he was unswerving in his support for adequate judicial resources. We also owe a tremendous debt to Chairman Brooks of the House Judiciary Committee; that committee's ranking member, Congressman Fish; and, of course, one of the truly great friends of the Judiciary, Senator Thurmond.

The Judiciary's third critical concern was adequate financial resources. Here again, Congress acted responsibly. During the two years of the 101st Congress, there has been a 34 percent, or \$493 million, increase in the overall Judiciary budget to meet the greatly expanded workload required by Congress. The budget is now about \$2 billion. Few if any Executive Branch departments can claim a similar increase.

Key in achieving our funding goals were Senators Hollings and Rudman, and Congressmen Neal Smith and Rogers. Without their understanding and diligence, the delivery of justice and the operations of the Judicial Branch would have suffered greatly. Brooks, Congressman Kastenmeier, and Senators Biden and Hollings also helped in meeting the courts' automation needs.

There were many other issues important to the Judiciary that were taken up by the 101st Congress, and there were many other "heroes" for the courts. Kastenmeier and Senator

Grassley were instrumental in developing omnibus court improvements measures and retaining traditional standards of judicial independence. Congressman Moorhead and Senator Heflin also played critical roles in those areas. Senator Lieberman and Congressmen Ford and Kastenmeier engineered the development and processing of a personnel bill that will result in enormous dividends to the AO and its ability to serve the Judiciary.

The Judicial Branch doesn't always like the way or speed with which Congress responds to the courts' concerns. The Judiciary and Congress don't always understand each other's operations and needs. However, the Judiciary must give full credit to Congress for meeting our most urgent concerns over the past two years. The 101st Congress deserves a resounding cheer!



Robert E. Feidler, Legislative and Public Affairs Officer

Judiciary Fares Well in Legislation Passed by 101st Congress

Civil Justice Reform

After months of hard work and protracted negotiations Congress approved Title I of H.R. 5316, which is the Civil Justice Reform Act of 1990. This important legislation is designed to help address perceived problems of cost and delay in civil litigation management. Senator Biden and Congressmen Brooks and Kastenmeier were the principal architects of the bill as enacted. Also making significant contributions to the effort were Congressmen Fish and Moorhead.

Companion bills recommending sweeping reforms in civil litigation in the U.S. district courts were introduced January 25 in the House and Senate. The legislation was based on a Brookings Institution study by a 36-member task force of lawyers and law professors. The Executive Committee of the Judicial Conference appointed a subcommittee, chaired by Judge Robert F. Peckham (N.D. Cal.), to review and recommend a position for the Judiciary on the legislation. At its March meeting the Conference voted to oppose the legislation in its then-current form. In late April the Conference, voting by mail ballot, approved its own 14-point program to address any problems of cost and delay in civil litigation.

On May 17 Biden reintroduced S. 2027 as S. 2648, adding a second title to create 77 new judgeships. While the new bill also modified some portions of the original legislation, it retained the mandatory nature of the content of civil justice expense and delay reduction plans. The Judicial Conference "disfavored" the bill.

On September 27 the House adopted H.R. 3898, its civil reform bill, taking into account a number of the Judiciary's concerns. The final civil justice reform bill that passed the Senate and House on October 27

makes expense and delay reduction plans mandatory for all districts. However, it requires that only 10 districts include in their plans the principles and guidelines of litigation management contained in the bill. These districts, to be chosen by the Conference, are to be part of a pilot program that will remain in effect for three years. The remaining districts "shall consider and may include" the principles and guidelines in their plans. The bill also contains reporting and evaluation requirements.

Judgeships

Title II of H.R. 5316 is the Federal Judgeship Act of 1990. It creates 11 circuit and 74 district judgeships. It also converts 8 temporary judgeships to permanent status and modifies the location of several "rover" judgeships (see the chart on page 4). While the workload of the courts has continued to expand rapidly, this is the first time in more than six years that the number of authorized judges has increased.

Administrative Office statistics indicate, however, that it is likely to be some time before the new positions are filled. When Congress created judgeships in 1984, it took an average of 453 days from enactment of the legislation until a judgeship was filled.

Senator Biden and Congressman Brooks, the chairmen of the two judiciary committees, said they were paying particular attention to the impact of drug cases on the courts in assessing the judgeship needs of various districts. As a result, on May 17 Biden introduced S. 2648, Title II of which contained 11 court of appeals and 66 district court judgeships. On July 19 Brooks introduced H.R. 5316, which would have created 9 court of appeals and 45 district court judgeships. In early June the

Judicial Conference, voting by mail ballot, recommended the creation of 20 court of appeals and 76 district court judgeships.

In crafting the Federal Judgeship Act of 1990, Congress appeared to take the framework of S. 2648, by accepting the court of appeals judgeships and adding two judges for the Eastern District of New York, two for the Western District of Texas, two for the Southern District of Texas, one for the Northern District of Texas, one for the Middle District of Tennessee, one for the Southern District of Ohio, and eliminating a judgeship for the Virgin Islands.

Bankruptcy Judgeships

Congressman Brooks said that the 101st Congress was not the time for action on new bankruptcy judgeships; however, he indicated that the issue will receive consideration early in the 102d Congress.

On September 14 Senators DeConcini and Thurmond introduced S. 3059, which would create 13 bankruptcy judgeships. The bill would add one judgeship each for the districts of Eastern Virginia, Middle Tennessee, South Carolina, Puerto Rico, Eastern Pennsylvania, Maryland, Northern Georgia, Colorado, and Southern Florida. The bill also would add two positions each for the districts of Arizona and Middle Florida. The Judicial Conference has recommended approval of 12 new bankruptcy judgeships.

Federal Courts Study Committee Recommendations

Title III of H.R. 5316 implements many Judicial Conference positions and recommendations of the Federal Courts Study Committee. H.R. 5381, the Federal Courts Study Committee Implementation Act, passed the

See Legislation, page 5

Courts Receiving Additional Judgeships Under the Federal Judgeship Act of 1990

District	Prior No. of Judges	Added by Federal Judgeship Act of 1990
Alabama, Northern	7	1 T
Arkansas		
Eastern	3*	2 R/P
Western	1, 1 T*	1 T/P, 1
California		
Northern	12	2
Eastern	6	1 T
Central	22	5
Southern	7	1
Connecticut	6	2
Florida		
Northern	3	1
Middle	9	2
Southern	15	1
Georgia, Middle	3	1
Hawaii	3	1 T
Illinois		
Northern	20, 1 T	1 T/P, 1
Central	3	1 T
Southern	3	1 T
Indiana, Northern	4, 1 T	1 T/P
Iowa		
Northern	1*	1 R/P
Southern	2*	1
Kansas	5	1 T
Louisiana, Western	6	1
Maine	2	1
Massachusetts	11, 1 T	1 T/P, 1
Michigan, Western	4	1 T
Mississippi, Southern	5	1
Missouri, Eastern	5	1, 1 T
Nebraska	3	1 T
New Hampshire	2	1
New Jersey	14	3
New Mexico	4	1
Circuit		
Third	12	2
Fourth	11	4
Fifth	16	1

District	Prior No. of Judges	Added by Federal Judgeship Act of 1990
New York		
Northern	4	1 T
Southern	27	1
Eastern	12	3
Western	3, 1 T	1 T/P
North Carolina		
Eastern	3, 1 T	1 T/P
Middle	3	1
Ohio		
Northern	10, 1 T	1 T/P, 1 T
Southern	7	1
Oklahoma		
Northern	2*	1
Western	4*	1, 1 R/P
Oregon	5	1
Pennsylvania		
Eastern	19	3, 1 T
Middle	5	1
South Carolina	8	1
Tennessee		
Eastern	4	1
Middle	3	1
Western	4	1
Texas		
Northern	10	2
Eastern	6	1
Southern	13	5
Western	7	3
Utah	4	1
Virginia, Eastern	9	1 T
Washington		
Eastern	3	1
Western	6, 1 T	1 T/P
West Virginia		
Northern	2	1
Southern	4	1
Wyoming	2	1
Circuit		
Sixth	15	1
Eighth	10	1
Tenth	10	2

Notes: District and circuit courts not listed in the chart would not receive additional judgeships under the bill. T = temporary judgeship; T/P = conversion of temporary judgeship to permanent; R/P = conversion of a position authorized for more than one district to a single district. * Under prior law there were also two judgeships authorized for Eastern and Western Arkansas; one for Northern and Southern Iowa; and two for Northern, Eastern, and Western Oklahoma.

House on September 27. The Senate had expected to add a third title to its civil reform bill on the Senate floor. Congressman Kastenmeier and Senator Grassley were principal forces behind the consensus bill. Among the provisions contained in H.R. 5316 as passed by the House and Senate are sections to

- Change the title of U.S. magistrates to "magistrate judge."
- Extend the Bankruptcy Administrator Program for 10 years for the six district courts located in North Carolina and Alabama.
- Provide for equal representation of circuit and district judges on the judicial councils of each circuit, the number not to include the circuit chief judge, who will be chairman.
- Require the board of the Federal Judicial Center to study the number and frequency of unresolved intercircuit conflicts and the "full range of structural alternatives for the federal courts of appeals."
- Authorize the Judicial Conference to allow judicial councils of two or more circuits to establish joint bankruptcy appellate panels composed of bankruptcy judges from within the districts for which such panels are established.
- Modify retroactively the Judicial Survivors Annuity Act to eliminate the 18-month tenure requirement for eligibility in case of death by assassination.
- Provide a four-year statute of limitations for statutes governing federal civil actions enacted after the effective date of the provision.
- Make numerous Conference-supported changes to the venue, removal, and supplemental jurisdiction provisions of present law.
- Amend the Ethics Reform Act of 1989 to permit senior judges to receive compensation for teaching, which will not be treated as outside earned income.

■ Grant circuits the option to hold their conferences biennially or annually, instead of just annually as was previously required.

■ Increase the daily fees paid to witnesses and grand and petit jurors from \$30 a day to \$40 a day.

■ Require the Judicial Conference to conduct a study of the federal defender program under the Criminal Justice Act of 1964.

Several provisions that were included in earlier drafts of the House and Senate bills were deleted in the final hours of negotiations. They included a provision that would have created new federal jurisdiction over certain multi-party, multi-forum civil actions, particularly complex dispersed actions involving airline crashes, hotel fires, and other single-event accidents; "Rule of 87" provisions that would have allowed a judge to retire at age 62-64 with 25 years of service; and a provision that would have permitted a bankruptcy judge's findings in "non-core" proceedings to become final, unless a party objected within 30 days.

Judicial Conduct

Title IV of H.R. 5316 is the Judicial Discipline and Removal Reform Act of 1990. It amends the Judicial Conduct and Disability Act of 1980 to allow the Judicial Conference to transmit a declaration directly to Congress stating that "impeachment may be warranted" if a judge has been convicted of a felony and all direct appeals have been exhausted. Title II of the bill creates a National Commission on Judicial Impeachment to examine the scope of the problem of judicial discipline and impeachment and to report its findings to Congress.

The provisions in this title are identical to those in H.R. 1620, a bill that was introduced in March

1989 by Congressman Kastenmeier and that had passed the House.

Crime

Congress passed a crime bill, S. 3266, in the late hours of its final session. To reach agreement, the conferees decided to drop many controversial provisions. Few of those remaining will have a direct impact on the courts. Dropped from the final version were sections on habeas corpus reform; increases in federal death penalties; the assault weapons ban; imposition of a racial justice test; limitation on the exclusionary rule; and prisoner drug testing.

The measure will provide an increase in federal aid to law enforcement agencies, set up new penalties for child abuse and child pornography, revise federal debt collection procedures, and impose new penalties for savings and loan fraud.

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Judge Edward R. Becker (3rd Cir.) (left), former chairman of the Judicial Conference's Committee on Criminal Law and Probation Administration, and Administrative Office Director L. Ralph Mecham at a dinner honoring Becker's three years of service as committee chairman.


Judicial Compensation

The 101st Congress took positive steps regarding the compensation of federal judicial officers. H.R. 5399, the Legislative Branch Appropriations Act, waives "Section 140," allowing judges to receive a cost of living adjustment on January 1, 1991. The COLA, estimated to be 3.6 percent, will come on top of a 25 percent pay increase, which also will take effect on January 1, 1991. Although legislation to nullify the January pay raise was introduced, no hearings were held and the movement to rescind the raise appears dead.

Immigration and Naturalization

Congress passed S. 358, an omnibus immigration bill that would, among other things, change the naturalization oath ceremony. It would transform the ceremony into an administrative proceeding to be conducted by the Immigration and Naturalization Service, unless the applicant chooses for the proceeding to be conducted by an Article III judge.

In adopting the proposal, Congress declined to accept an alternative recommendation of the Judicial Conference to give the courts 45 days to conduct a naturalization

ceremony after the INS certified an alien as eligible for citizenship. A waiver in favor of an administrative proceeding would have been available to applicants. 

For copies of Senate bills, write: Senate Document Room B-04, Hart Building, Washington, D.C. 20510. For information, call 202-224-7860; phone orders are not accepted. For copies of House bills, write: House Document Room B-18, House Annex No. 2, Washington, D.C. 20515. House bills may be ordered by calling 202-225-3456.

AO Personnel Bill to Benefit Courts

On October 30, the President signed Pub. L. No. 101-474, which will enable the Administrative Office to create a comprehensive, self-contained personnel system. The Administrative Office of the U.S. Courts Personnel Act of 1990 will make it easier for the AO to hire court staff, as well as streamline and simplify the rest of the personnel system.

"The bill will provide substantial benefits, not just to the Administrative Office, but to the whole Judiciary as well," said Judge Harlington Wood, Jr., Chairman of the Judicial Conference's Committee on the Administrative Office, in a July congressional hearing on the legislation.

"As things stand now, we are severely constrained in the methods we have for developing the best and brightest employees of the Administrative Office and the courts. The mission of the Administrative Office is to provide administrative support to the courts, yet its

employees cannot get hands-on experience in a court without going through a tremendous amount of red tape. The same is true of court employees who would like to spend some time honing their administrative skills at the Administrative Office. The ability to move employees with ease from the Administrative Office to the courts, and vice versa, . . . is one of the most significant benefits of this bill," Wood told the House Subcommittee on the Civil Service.

The AO's staff of approximately 800 in Washington is under Executive Branch personnel management because many of the personnel who formed the AO used to be members of the Department of Justice, which performed the administrative functions for the courts before the AO was created in the Judicial Branch 50 years ago. The 23,000 people who work in the courts, however, are subject to the rules of the Judicial Conference.

The personnel bill gives the AO

Director authority to establish a personnel system for the agency. The Director plans to give every AO employee notice of the new system's regulations and an opportunity to comment on them before they are implemented. In the meantime, the AO will continue to follow established procedures.

The legislation establishes "the framework for a fair, responsive, and progressive personnel system," AO Director L. Ralph Mecham said. Mecham plans to appoint a steering committee to advise him about changes and to oversee the implementation of the new personnel system.

Besides personnel, there is one major area remaining where the Executive Branch continues to exercise control over the Judiciary, the acquisition and maintenance of accommodations for the courts. The Conference approved, and Congress has begun to consider, a bill to give the Judiciary the control over space and facilities now exercised by the General Services Administration of the Executive Branch.

Chief Justice Appoints New Judicial Conference Committee Chairmen

The Judicial Conference operates through a network of committees created to study and advise on a wide variety of subjects. The Chief Justice has sole authority to make committee appointments. As a general rule, committee appointments are effective the first of October each year and are for a term of three years. As part of the regular appointment process, the Chief Justice appointed more than a dozen new chairmen this year.

At its September 1990 meeting the Judicial Conference honored the

outgoing chairmen of various Conference committees by approving a resolution. The resolution in part stated that "these distinguished jurists have played a vital role in the administration of the federal court system."

"Each of these judges served as leaders of their Judicial Conference committees while, at the same time, continuing to perform in their regular capacity as judges in their own courts. They have set a standard of skilled leadership and earned our deep respect and sincere gratitude

for their innumerable contributions. We acknowledge with appreciation their commitment to the federal judiciary as shown by their dedicated service to the Judicial Conference and the judiciary as a whole."

The following is a list of the current chairmen of the committees of the Conference. An updated list of committee members as well as jurisdictional statements for each committee will be forwarded to all judicial officers and other court officials within the next few weeks.

Executive Committee

Judge Charles Clark (5th Cir.)

Committee on Administration of the Bankruptcy System

Judge Lloyd D. George (D. Nev.)

Committee on Administration of the Magistrates System

Judge Wayne E. Alley (W.D. Okla.)

Committee on the Administrative Office

Judge Harlington Wood, Jr. (7th Cir.)

Committee on Automation and Technology

Judge Rya W. Zobel (D. Mass.)

Committee on the Bicentennial of the Constitution

Judge Damon J. Keith (6th Cir.)

Committee on the Budget

Judge Richard S. Arnold (8th Cir.)

Committee on the Codes of Conduct

Judge Walter K. Stapleton (3d Cir.)

Committee on Court Administration and Case Management

Judge Robert M. Parker (E.D. Tex.)

Committee on Court Security

Judge William D. Browning (D. Ariz.)

Committee on Criminal Law and Probation Administration

Judge Vincent L. Broderick (S.D.N.Y.)

Committee on Defender Services

Judge Gustave Diamond (W.D. Pa.)

Committee on Federal-State Jurisdiction

Judge Thomas M. Reavley (5th Cir.)

Committee on Intercircuit Assignments

Judge Thomas F. Hogan (D.D.C.)

Committee on the International Appellate Judges Conference of 1990

Judge Cynthia H. Hall (9th Cir.)

Committee on the Judicial Branch

Judge Deanell R. Tacha (10th Cir.)

Committee on Judicial Ethics

Judge Julian A. Cook, Jr. (E.D. Mich.)

Committee on Judicial Resources

Judge Walter T. McGovern (W.D. Wash.)

Committee on Pacific Territories

Associate Justice Anthony M. Kennedy (U.S. Supreme Court)

Committee to Review Circuit Council Conduct and Disability Orders

Judge Levin H. Campbell (1st Cir.)

Committee on Rules of Practice and Procedure

Judge Robert E. Keeton (D. Mass.)

Advisory Committee on Appellate Rules

Judge Kenneth F. Ripple (7th Cir.)

Advisory Committee on Bankruptcy Rules

Judge Edward Leavy (9th Cir.)

Advisory Committee on Civil Rules

Judge Sam C. Pointer, Jr. (N.D. Ala.)

Advisory Committee on Criminal Rules

Judge Wm. Terrell Hodges (M.D. Fla.)

Committee on Space and Facilities

Judge Robert C. Broomfield (D. Ariz.)

Ad Hoc Committee on Asbestos Litigation

Judge Thomas M. Reavley (5th Cir.)

Ad Hoc Committee on Cameras in the Courtroom

Judge Robert F. Peckham (N.D. Cal.)

FJC Creates Publications Division

The Federal Judicial Center has announced the creation of a Publications Division to manage the editing, production, and distribution of Center publications. Sylvan A. Sobel has been appointed as the division's director. The Center's Information Services Office and Editorial Office are being incorporated into the new division.

"The division will work with the Center's other divisions in a coordinated effort to make the written products of the Center's research, innovations, and educational activities available to appropriate audiences in suitable format," said Judge William W. Schwarzer, Director of the Center.

The division will also identify and devise strategies for filling

needs for publications that are not otherwise adequately filled. The division plans to survey federal judges and other users of Center publications to assess the demand and determine the best and most cost-efficient means of meeting it.

Sobel has been with the Center since 1985 and has served as assistant to the Director since March 1986. He co-authored *Achieving Balance in the Developing Law of Sanctions* with former Center Director A. Leo Levin and has worked on a number of Center publications, including *Guideline Sentencing Update*, *Bench Comment*, *Chambers to Chambers*, and a forthcoming manual on judicial writing.

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JUDICIAL MILESTONES

Appointed: Judge David H. Souter, as Justice of the Supreme Court, October 2.

Appointed: Senior Judge John D. Butzner (4th Cir.), to the Division of the U.S. Court of Appeals for the District of Columbia Circuit for the Appointment of Independent Counsel, by Chief Justice Rehnquist, for a 2-year term, October 26.

Appointed: Senior Judge George E. MacKinnon (D.C. Cir.), to the Division of the U.S. Court of Appeals for the District of Columbia Circuit for the Appointment of Independent Counsel, by Chief Justice Rehnquist, for a 2-year term, October 26.

Appointed: Thomas G. Nelson, to the U.S. Court of Appeals for the Ninth Circuit, October 17.

Appointed: Senior Judge Wilbur F. Pell, Jr. (7th Cir.), to the Division of the U.S. Court of Appeals for the District of Columbia Circuit for the Appointment of Independent Counsel, by Chief Justice Rehnquist, for a 2-year term, October 26.

Appointed: William M. Skretny, as U.S. District Judge for the Western District of New York, October 1.

Appointed: Gary L. Taylor, as U.S. District Judge for the Central District of California, October 10.

Senior Status: Chief Judge William A. Ingram, U.S. District Court for the Northern District of California, November 15.

Elevated: Judge Joel F. Dubina, to the U.S. Court of Appeals for the Eleventh Circuit, October 5.

Elevated: Judge Thelton E. Henderson, to Chief Judge, U.S. District Court for the Northern District of California, November 15, succeeding Chief Judge William A. Ingram.

Elevated: Judge James A. Redden, to Chief Judge, U.S. District Court for the District of Oregon, October 19, succeeding Chief Judge Owen M. Panner.

Resigned: Judge Thomas E. Scott, U.S. District Court for the Southern District of Florida, October 31.

Deceased: Senior Judge William J. Jameson, U.S. District Court for the District of Montana, October 8.

Deceased: Judge Woodrow B. Seals, U.S. District Court for the Southern District of Texas, October 27.

Reform of Federal Employee Pay Underway

The House and Senate have passed H.R. 5241, the Treasury, Postal Service, and General Government Appropriations bill, which contains an agreement between Congress and the Bush administration to alter the way federal employees are given pay increases.

Although the Judicial Branch does not necessarily follow the pay practices of the other branches, the Judicial Conference's Judicial Resources Committee has for some time been concerned about compensation of court employees. Under a contract with the Administrative Office, the Hay Group is in the process of studying the Judiciary Salary Plan (JSP). Current plans call for the Conference to consider changes in the personnel system, including changes in pay levels, at the fall 1991 meeting.

The agreement reached by Congress and the administration provides that for fiscal year 1991, those

employees under the General Schedule will receive a 4.1 percent cost of living salary increase in January. For fiscal years 1992 and 1993, employees will receive an increase equivalent to the percentage change in the Employment Cost Index (ECI), which measures changes in wages in the private sector. Although the President may propose an alternative increase in those years, his authority to do so is limited to specific circumstances.

In 1994, employees will receive an increase that is 0.5 percent less than the percentage change in the ECI. Beginning in 1995, the President will once again have broad authority to propose alternative increases.

The agreement also sets up a system to provide locality pay for non-military federal workers. Starting in 1994, pay will be increased in specific geographic areas where federal pay is at least 5 percent below an area's non-federal pay.

As an interim measure, starting in January 1991 the President may increase pay in areas with large numbers of federal workers by up to 8 percent, if there is evidence of disparity between federal and non-federal pay. It is expected that this will affect federal workers in New York, Los Angeles, and San Francisco.

Some difficult questions remain to be answered. For instance, it is not clear how much of the pay increase will have to be absorbed by agency budgets. In the past 10 years, agency budgets have been forced to cut other areas, such as travel and training, to accommodate pay raises.

As to the Judiciary, the results of the Hay study and subsequent decisions by the Conference will determine changes in the JSP and compensation for judicial employees. The Judiciary is sensitive to the difficulties the courts are experiencing in recruiting and retaining personnel in high cost areas.

State—Federal Judicial Council Formed

The Chief Justice of the United States has appointed four federal judges to the National State—Federal Judicial Council. The purpose of the eight-judge panel is to consider "issues of mutual concern to the state and federal courts, to advise the Judicial Conference and the Conference of Chief Justices on improving the relationship between the two systems, and to seek methods to enhance operations of the local state—federal councils." Creation of the council was approved in March 1990 by the Judicial Conference, and had previously been endorsed by the Conference of Chief Justices.

Named to the council were Judge Peter T. Fay (11th Cir.), Judge John F. Grady (N.D. Ill.), Judge Morris Arnold (W.D. Ark.), and Judge Patrick E. Higginbotham (5th Cir.).

Four state chief justices have already been appointed to the panel by the Conference of Chief Justices. They are Chief Justice Robert F. Stephens (Ky.), Chief Justice Harry L. Carrico (Va.), Chief Justice Malcolm M. Lucas (Cal.), and Chief Judge Sol Wachtler (N.Y.).

Staff support for the council will be provided by the Administrative Office of the U.S. Courts and the National Center for State Courts.

JUDICIAL BOXSCORE

*As of November 1, 1990**

Courts of Appeals	
Vacancies	7
Nominees Pending	0
District Courts	
Vacancies	27
Nominees Pending	0
Courts with "Judicial Emergencies"	8

* When Congress adjourns, all pending nominations are returned to the White House. When Congress adjourned late last month, one circuit and two district court nominations were sent back.

Judge Walter K. Stapleton: Providing Ethical Guidance to the Judiciary

Judge Walter K. Stapleton, chairman of the Judicial Conference's Committee on the Codes of Conduct, was appointed to the U.S. District Court for the District of Delaware in 1970, served as chief judge from 1983 to 1985, and moved to the U.S. Court of Appeals for the Third Circuit in 1985.

TTB: You were appointed to serve on the Committee on the Codes of Conduct in 1985 and have served as its chairman since 1987. What is the role of the committee? Is it the "ethical watchdog" for the Judiciary?

JUDGE STAPLETON: No. The committee has no responsibility for enforcing the codes and certainly does not view itself as a "watchdog." A more apt description is that the committee serves as the "Dear Abby" of the federal judicial family when it comes to ethical issues. Its primary role has three aspects: to give confidential advice to judicial officers and employees bound by a Judicial Conference Code of Conduct; to prepare and publish advisory opinions on issues frequently raised or of broad application; and to recommend code modifications to the Judicial Conference.

Ancillary to these functions, the committee makes recommendations to the Conference regarding legislative initiatives on ethics, provides testimony on ethical issues on behalf of the Conference, and maintains an active liaison with the ABA and other groups concerned with judicial ethics. Recently, the committee was given the additional function of monitoring proposed legislation on judicial discipline and impeachment. The committee is demographically diverse, with 15 members (five cir-

cuit judges, eight district judges, one bankruptcy judge, and one magistrate).

TTB: Does the committee's work tend to be concentrated in any one particular area?

JUDGE STAPLETON: The lion's share of the committee's work lies in responding to requests for confidential advisory opinions. We are currently receiving requests for confidential written opinions at the rate of about 70 per year, and the committee has issued over 740 such opinions through the years. Anyone covered by a code (judges, magistrates, directors of the Administrative Office and Federal Judicial Center and high-level employees of the Administrative Office, clerks and deputy clerks, probation and pretrial officers, circuit executives, staff attorneys, federal public defenders, and law clerks) may request a confidential opinion interpreting the applicable code.

In most instances, we respond to requests for written opinions within three weeks, and if there is a need for a quicker response, we do our best to meet it. The committee has created an electronic mail system to facilitate a rapid exchange of draft opinions among committee members, and it continues to explore ways of reducing its response time.

In addition to confidential opinions, the committee has issued 84 published opinions offering general guidance on a wide range of topics. The committee also recently updated the "red book" (vol. 2 of the *Guide to Judiciary Policies and Procedures*), which contains the seven codes, rules for part-time judicial officers,



published opinions, applicable statutes, regulations, and Conference resolutions on ethics, and a handy cross-reference table and index.

TTB: The Ethics Reform Act of 1989 contains restrictions on gifts, outside earned income, honoraria, and certain employment activities. How does that act change the ethical landscape for judicial officers and judicial employees?

JUDGE STAPLETON: The Ethics Reform Act, which will give the Judiciary a much deserved and long awaited pay raise in 1991, imposes new restrictions on all three branches of government. The new ethical restrictions are touted as the quid pro quo for the 25 percent pay increase. Some of the changes were effective upon enactment; the ones that received heavy press coverage will go into effect on January 1, 1991, if and only if the pay raise goes into effect on that date. The new ethics provisions are in Titles III (acceptance of gifts and gifts to superiors) and VI

(restrictions on outside earned income, honoraria, and certain employment activities) of the act.

The restrictions on gifts are in effect, and regulations implementing them have been adopted by the Conference. The red book now contains these regulations, as well as the gift provisions of the codes that have been amended to reflect the requirements of the act. In specific response to your question, however, I would say that the changes in the gift area are few and do not substantially alter the ethical landscape.

The Title VI limitations on outside earned income, honoraria, and outside employment activities, which are effective in 1991, will have a more substantial impact. The new rules on teaching for compensation and on the receipt of honoraria are the ones likely to affect the greatest number of judges and covered employees.

After January 1, judges and full-time magistrates will not be permitted to receive compensation for teaching unless they have the approval of the chief judge of their circuit. The new regulations for Title VI, also found in the red book, spell out the information that a judge or magistrate should include in a request for such approval. The Director and Deputy Director of the Administrative Office and Schedule C employees of that office are subject to a similar requirement. (See Federal Courts Study Committee Recommendations, page 3.)

Come the first of the year, judges, magistrates, and all employees of the Judicial Branch will be prohibited from accepting any payment for any "appearance, speech, or article." Payment in lieu of honoraria may be made on behalf of an officer or employee to a charitable organization if the amount does not exceed \$2,000 for a single speech, appearance, or article and the designated charity is not one from which the individual or

an immediate family member derives a direct financial benefit. As explained more fully in the Title VI regulations and commentary, the ban on honoraria does not include payments received for teaching, writings more extensive than an article, or appropriate mementos received in connection with a speech, appearance, or article.

There also will be a 15 percent cap on outside earned income for judges, full-time magistrates, the Director and Deputy Director of the Administrative Office, and Schedule C employees of that office. The regulations define "earned income" and identify receipts that are not to be considered "earned income." The

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cap is calculated on the annual salary of Executive Pay Level II, which is the same as a district judge's pay. If the Level II salary on January 1, 1991, is \$120,800, then the 15 percent cap would be \$18,120.

There are several other restrictions, but I would say that these are not major changes in the ethical landscape. Perhaps I should add that the act authorizes the committee to issue advisory opinions interpreting the act and provides that conduct in reliance on such an opinion insulates one from the civil penalties of the act.

TTB: What are some of the most frequently asked questions or ethical concerns expressed?

JUDGE STAPLETON: The most frequent inquiry concerns whether or not a certain indirect financial interest or personal relationship is dis-


qualifying. The second most frequent inquiry relates to whether various forms of participation in the activities of charitable organizations violate the rules against fund-raising and against allowing the prestige of one's office to be used for the private benefit of another.

TTB: What new challenges lie ahead for the committee in the coming months?

JUDGE STAPLETON: Three come to mind immediately. In August, the ABA revised its Model Code of Judicial Conduct. The committee is undertaking a review of the ABA revisions to determine if the Conference

should follow the lead of the ABA, and if so, what changes need to be made in the ABA revisions to accommodate the special needs of the federal Judiciary.

The committee will also study whether the six Codes of Conduct that cover various categories of employees should be consolidated into a single code that would cover all judicial employees, including judges' secretaries. Finally, the committee is drafting an advisory opinion that will summarize the most important of its unpublished opinions issued since 1979, much like Advisory Opinion 62 summarizes the committee's unpublished opinions before that time.

Our goal remains to provide timely and responsive advice to any member of the federal judicial family who needs it. When someone needs help, I hope he or she will feel free to call or write me. 

Howell continued from page 1

agement. Under his leadership, docketing of cases has been standardized and computerized, and electronic mail is now used to transmit case-related information to his headquarters in Washington, D.C. He has developed a comprehensive statistical system to report caseloads and evaluate trends. Howell works with the Judge Advocate General of the Air Force in selecting trial judges and participates in their initial training. He also sponsors a major continuing judicial education program each year, which trains experienced military judges from all five armed services and the Canadian armed forces.

"The AO and the nation's Article III judges are fortunate to have on board a judge with John's depth of knowledge in so many of the issues facing the courts today," said AO Di-


rector L. Ralph Mecham. "His innovative and wide-ranging work in automation, case management, and judicial administration is sure to be a valuable asset to the federal Judiciary of the '90s."

Howell has served as the Air Force's chief trial judge since 1984. From 1982 to 1984 he was deputy staff judge advocate for U.S. forces in Japan based at Yokota Air Base. Howell also served as a staff judge advocate and assistant to the chief trial judge. He is a 1962 graduate of the University of Michigan and a 1965 graduate of its law school. He attended the Federal Judicial Center's orientation course for new federal district judges in 1984.

Howell is secretary-treasurer of the Federal American Inn of Court and deputy chair of the Federal Bar Association's Military Courts Com-

mittee. He is a member of the American Judges Association, the American Bar Association, and the Joint Services Trial and Appellate Military Judges Judicial Discipline working group.

The Article III Judges Division will serve as the AO's focal point for Article III judges' needs and concerns. It will provide assistance in case management, chambers automation, court governance, rule-making, and administration. The division will serve as a central resource on matters of specific interest to Article III judges and, in coordination with the Federal Judicial Center, will conduct orientation programs for judges.

Additional information concerning the division and its goals and responsibilities will be distributed soon. 

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