THE THIRD BRANCH

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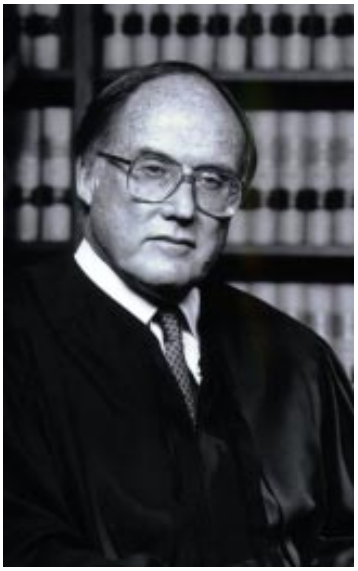
Judicial Conference of the United States Celebrates 75th Anniversary



Chief Justice
William H. Rehnquist
Presiding 1986-Present

"The Judicial Conference of the United States celebrates its 75th anniversary this year. I have been honored to preside over the Conference for 11 of those years, and during that time I have had occasions to appreciate the dedication and the ability of its members and the members of its committees. They have worked tirelessly to improve the quality of the Judiciary.

Over the last 75 years, the Conference has struggled with recurring issues: rising court caseloads and limited resources to deal with them; judicial vacancies and the impact they have on the courts; problems involving court management and administration; and sentencing disparities and the guidelines created to eliminate them. The Conference has responded competently to the issues it has confronted, providing an administrative structure as the Judiciary has grown—and that growth has been enormous. A caseload that numbered in the hundreds in 1922 now numbers in the hundreds of thousands.

In responding to all of these issues, the Conference and is committees have served the Third Branch well, safeguarding the interests of the federal courts and formulating the policies and plans that have assisted the Judiciary in fulfilling its important mission. I am confident that the Judicial Conference will continue to perform these vital functions for the Judiciary."

INSIDE *An historical overview of the Judicial Conference, its committees, the issues, and the people who have served.*

The Judicial Conference of the United States 1922-1997

The 75-year history of the Judicial Conference is a reflection of the commitment of its members to the administration of the courts. Their success was probably best described in 1950, by Attorney General J. Howard McGrath, who told the Conference, "The annual meeting of the Judicial Conference is one of the reassurances that in our country the state is still the servant of its people and not a tyrant over them. With its plenary concern for the efficient administration of justice under law, the Conference is a sober reminder, above the clamor of temporary exigency, that our ship of state continues to maintain that course." The following are highlights of a 75-year voyage that has taken the Conference to where it is today.

Members of the Second Conference of Senior Judges of the U.S. Courts of Appeals, with Chief Justice William Howard Taft, third from the left in the front row, calling on President Calvin Coolidge at the White House, September 23, 1923.

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The Judicial Conference: An Historical Perspective

In 1922, three days after Christmas, the Conference of Senior Circuit Judges met in the Capitol in the rooms reserved for the Supreme Court—the present Supreme Court building having not yet been built. Chief Justice William Howard Taft presided. Although it was sometimes called the federal judicial council, it is more familiar today as the Judicial Conference of the United States.

The Conference was the response to years of criticism of the federal judicial system over such "causes of popular dissatisfaction" as delay and cost of litigation. Taft, himself a former federal judge, lectured widely on the need for court reform almost from the moment he left the White House in 1913, using as his pulpit his position as president of the American Bar Association and later as Chief Justice, to push for change. What Attorney General Harry M. Daugherty described in 1921 as "a generally congested condition in the Federal dockets" was the result of Congress increasing the jurisdiction of the federal courts through legislation such as the National Prohibition Act.

Senator Albert B. Cummins of Iowa, the principal legislative sponsor of legislation to create the Judicial Conference, described the circumstances in the courts: "When we contemplate a situation in which thousands and thousands of persons accused of crime must lie in jail for a year or two years, if they are unable to discharge themselves by giving bond, awaiting trial, and when we reflect upon the fact that in many parts of the United States it is utterly impossible to secure the trial of a civil suit within a year or two years, where both attorneys and parties are ready to proceed with the trial, it is to me a source of great humiliation."

On September 14, 1922, Congress passed legislation creating 25 new judgeships to deal with the immediate crisis and also creating an advisory body of the senior (now chief) federal judges on the courts of appeals, to meet once a year in Washington, where reports would be heard on the state of district court dockets and where recommendations could be made for additional judicial assistance. President Warren G. Harding signed the legislation into law soon after.

The first Conference session was attended by the Chief Justice, the attorney general, and the chief judges from each of the nine judicial circuits. Later, the number of Conference members increased with the number of circuits, with the creation of the Tenth Circuit in 1929, the District of Columbia Circuit in 1937, and the addition of the former Court of Claims and the U.S. Court of Customs and Patent Appeals in 1957 and 1961, respectively. The split of the Fifth Circuit in 1980 added additional members.

It was not until 1958 that district judges officially were included as members of the Conference, doubling the size of the Conference when Congress provided that the judges of each circuit should elect a district judge representative. The Director of the Administrative Office has served as Secretary to the Conference since the creation of the AO.

After the initial December 1992 session, the Conference met next in the fall of 1923, as required by statute. Originally the Conference met once a year, but over the years increasingly scheduled a special session in the spring. By the 1950s, the Conference was meeting on a regular basis each spring and fall.

By 1929 the Conference could report, "The Conference greatly rejoices at the urgent demand by the public generally for more efficiency, more speed, and more certainty in the prosecution of the general criminal law. . . .," but that court efficiency was "substantially impeded by the lack of sufficient and competent help." The Conference asked Congress for more money to obtain and retain competent assistance.

Until the completion of the Supreme Court Building, the Conference of Senior Circuit Judges met in the Capitol, in rooms reserved for the Supreme Court, formerly the Senate chambers.

Chief Justice William Howard Taft

The following "conversation" with Chief Justice William Howard Taft, the first presiding officer of the Judicial Conference, is based upon Taft's letters, opinions, and speeches. Some liberties have been taken to create a conversational tone.

Q: Would you consider yourself an advocate of administrative reforms in the Judiciary?

A: As I told Congress in 1922, I have always been and am now very interested in rendering the federal courts more efficient in the dispatch of business.

Beginning about 1918 there had been a marked increase in the number of cases coming to the U.S. district courts. To assist the courts with their congested caseloads, I had pressed, while President of the United States, for what I called my flying squadron of judges—judges able to travel to courts in need of temporary support, but this idea was not accepted. Gentlemen have suggested that I would send dry judges to wet territory and wet judges to dry territory. I said even then that judges should be independent in their judgments, but they should be subject to some executive directions as to the use of their services, and somebody should be made responsible for the whole business of the United States.

But I wasn't the first to propose reforms to the courts. Roscoe Pound addressed the American Bar Association in 1906 taking as his title, "The Causes of Popular Dissatisfaction with the Administration of Justice." The ABA created a special committee in 1907 on means to prevent delay and unnecessary cost in litigation. It was after these actions that the Judicial Code of 1911 was adopted, making the district courts the only courts with general jurisdiction, and abolishing the old circuit courts.

Q: It has been said that your advocacy, more than any other factor, led to the formulation of the Judicial Conference.

A: It is true that matters might have remained as they were in 1911. However, I took it upon myself to speak and write about making the American courts more effective as soon as I left the White House. I also vigorously opposed proposals for the recall of judges and of judicial decisions, a point of much contention between President Theodore Roosevelt and myself while I served in his cabinet.

Chief Justice William Howard Taft, *presided 1921-1930.*

"During my Presidency I was not reluctant to use the power of my office to support members of the Judiciary."

I greatly admired the English Judicature Act of 1871, which I believe worked a complete reform. Two great features of the English system are the simplicity of its procedure and the elasticity with which that procedure and use of the judicial force provided by Parliament can be adapted to the disposition of business. The success of the system rests on the executive control invested in a council of judges to direct business and economize judicial force, to mould their own rules of procedure, and the learning, ability, and experience of the individual judges. I made a number of proposals in line with this example. I also helped form the American Judicature Society to study and promote modernization of the judicial system. When I was elected president of the ABA in 1913, I presented a comprehensive program for the betterment of the federal courts.

Q: How did you originally envision this council of judges?

A: It seemed to me that either the Supreme Court or the Chief Justice should be given an adequate executive force of competent subordinates to keep close and current watch upon the business awaiting dispatch in all the districts and circuits of the United States, to make periodical estimates of the number of judges needed in the various districts to dispose of such business, and to assign the adequate number of judges to the districts where needed. Then the Supreme Court by making the rules of procedure and by distributing the judicial force could greatly facilitate the proper disposition of all the legal business in the country and in a sense become responsible for its dispatch.

Q: How did the Judicial Conference evolve from this?

A: By 1921, Attorney General Daugherty had appointed a committee of judges and U.S. attorneys to identify problems and recommend remedies. The Congress convened hearings in 1921 and 1922. In 1921, my first full year as Chief Justice, I testified before the Senate Committee on the Judiciary and presented my views. At that time I recommended a provision for a council or committee of nine senior circuit judges, one from each circuit, and the Chief Justice to meet each year and agree informally as to where the judges are needed and whence they can be had. I recommended, however, that the function of annually surveying the judicial business and relative need for judges was to be placed not in the Supreme Court but in this council of senior circuit judges. And it was originally called a Conference of Senior Circuit Court Judges. Subsequently, a bill was introduced in the Senate with both the Attorney General's committee report and my own recommendations, along with the provision for 25 new district judges.

Q: Was the idea of a Judicial Conference of judges readily accepted?

A: One senator, I remember, objected to the idea of a Judicial Conference saying, "It means absolutely nothing on earth except a junket and a dinner." Other senators were concerned that judges should remain as unfettered as possible, without regulation that might endanger the independence of the federal courts. Senator Spencer of Missouri, I believe, won the day for us when he said, "The judicial business of the United States is largely administrative. There is a business side to it as well as the law side. There are practices in the different circuits which are commendable. There are some that could be improved. Both are remedied by [the] conference. It seems to me there is very great advantage when the circuit judges get together once a year to discuss the method of transacting business, the state of their dockets, the things that have proved advantageous, the things that have proved disadvantageous. The result of it all is a distinct benefit to the administration of justice and that is precisely what the conference provides for."

Q: Can you tell us something about the first meeting?

A: The 1922 statute was not explicit in making the Chief Justice a voting member. I was its presiding officer. I, however, immediately established the precedent of voting. At the first meeting, December 28, 1922, we were a small enough group, just 10 members and myself at the outset, that intensive discussion on any number of topics was possible. Nonetheless, to focus thought, I appointed five committees, which I charged with reporting the following year. This habit of appointing committees on particular subjects rather than standing committees continued for a number of years. We met in the Old Senate Office Building, but later moved to our own new building.

Q: You've been described as an "activist," in terms of being an executive and judge who promoted judicial causes. How would you describe your philosophy?

A: During my Presidency I was not reluctant to use the power of my office to support members of the Judiciary. I was able to secure substantial pay increases for judges, and I appointed six members to the Supreme Court. Only my fellow presidents George Washington and Franklin D. Roosevelt appointed more. As Chief Justice I served, I believe, during a time of no greater court-congressional conflict. In that time I was a conservative jurist and an effective lobbyist for the Judiciary. As to my philosophy, let me read to you from a letter I wrote in 1922, "Every judge should have constantly before him that the reason for the existence of the courts is to promote the happiness of all the people by speedy and careful administration of justice, and every judge should exert himself to the uttermost to see that in his rulings and in his conduct of business he is, so far as his action can accomplish it, making his court useful to the litigants and to the community."

The Judicial Conference And Its Committees

At the 1922 Conference session, the first committees were created, inaugurating a custom that continues today with Conference committees playing an active role. Taft felt some focus was needed to the discussions, so he authorized committees with the rather weighty titles of the Committee to Consider the Rules and Procedure of the Conference, Forms and Procedure for the Transfer of Judges; the Committee on Need and Possibility of Transfer of Judges; the Committee on Recommendations to District Judges of Changes in Local Procedure to Expedite Disposition of Pending Cases and to Rid Dockets of Dead Litigation; the Committee on Recommendations as to Bankruptcy Rules; the Committee on Recommendations as to Equity Rules; and the Committee on Amendments to Appellate Procedure. The titles alone indicate the broad functional areas that Taft and the Conference members saw as their province.

A core of program and policy committees has evolved over time with responsibility for such areas as budget, court administration, codes of conduct, facilities, the bankruptcy system, intercircuit assignments, rules, and criminal law and probation.

Some committees have been formed in response to specific statutory mandates or authorization, such as the rule-making committees, the advisory committee to review circuit council conduct and disability orders, and the committee on financial disclosure.

In 1969, Chief Justice Burger suggested the formation of an Executive Committee to help in the administration of Conference affairs.

The AO's Office of the Executive Secretariat coordinates administrative support to the Conference and its Executive Committee, and also coordinates the activities of the Executive Secretariat, which consists of senior members of the AO's professional staff who dedicate all or a substantial portion of their time to the work of the Conference and its committees.

The Chief Justice, through the Conference, also has, from time to time, established special committees, ad hoc committees, or advisory committees.

These committees have been assigned, for example, to examine jury selection (1941), implement the criminal justice act (1964) and the federal magistrates system (1968), study the sentencing guidelines (1986) and electronic sound recording (1983), coordinate bicentennial projects (1975), examine habeas corpus in capital cases (1988), address the substantial number of asbestos personal injury cases

Chief Justice Charles Evans Hughes, fourth from left in the front row, and members of the Judicial Conference in front of the Capitol Building in October 1930.

Collection of the Library of Congress

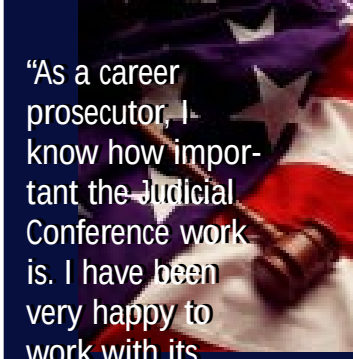
Three past chairs of the Judicial Conference Executive Committee, Chief Judges Charles Clark (5th Cir.), John Gerry (D. N.J.), and Wilfred Feinberg (2nd Cir.) in 1994.

Chief Justice Warren E. Burger, center, with members of the Bicentennial Committee (left to right), Judge Damon Keith (6th Cir.), Judge Helen Nies (Fed. Cir.), Burger, Chief Judge Robert Murphy (Md. Ct. App.) and Judge Dolores Sloviter (3rd Cir.).

(1990), explore the right to competent counsel in federal court regardless of the means of the accused (1991), and propose long-range plans for the Judiciary (1991).

The only Conference committee directly created by Congress was the Federal Courts Study Committee in 1988, which was established to study the U.S. courts and several state courts, and to recommend revisions to the law that would develop a long-range plan for the judicial system.

Federal Courts Study Committee chair, Judge Joseph F. Weis, Jr. (3rd Cir.) (right), confers with committee member Representative Robert W. Kastenmeier.



"As a career prosecutor, I know how important the Judicial Conference work is. I have been very happy to work with its Executive Committee, and I wish them continued success."
Attorney General Janet Reno

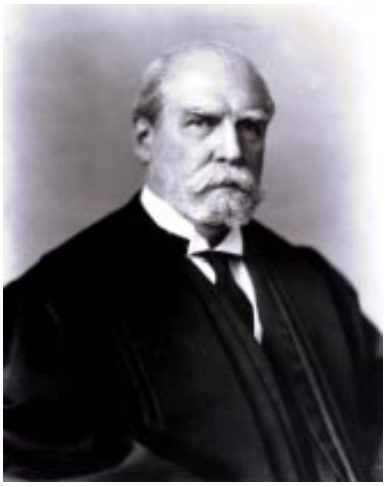
In 1986, upon taking office and following the precedent set by Chief Justices Earl Warren and Warren E. Burger, Chief Justice William H. Rehnquist appointed a committee to study the operation of the Judicial Conference and its committees. The following year, the Conference adopted the committee's report and dramatically changed the structure of the Conference agenda by establishing consent and discussion calendars, consequently changing how the Conference conducts its business during its plenary sessions. Committee membership also was revamped, establishing term limits and therefore opening membership to more judges who wished to serve.

The Conference relies heavily on its committees, which review issues and make policy recommendations to the Conference. To make informed recommendations, the committees have conducted studies, initiated pilot programs, sponsored research, solicited court input, and held public hearings to gather information on issues or proposed programs. This follows a pattern established early in the Conference's history of soliciting comment from throughout the Judiciary and frequently from other branches of government and the public.

Although this process may strike some outside the Judiciary as time-consuming, the process considers the needs of the courts and the administration of justice. The cameras in the courtroom question is a good example of this delibera-

Chief Justice Charles Evans Hughes

presided 1930-1941



"One of the great services of Chief Justice Charles Evans Hughes to the cause of justice was that which he rendered as Chairman of this Judicial Conference, which had been created during the Chief Justiceship of his predecessor, Chief Justice Taft. It was during his Chairmanship that the Administrative Office Act was passed. Under that act the federal judiciary was freed from dependence upon an executive department of the government with respect to fiscal and administrative matters in the federal courts and was given adequate power of self regulation and supervision. It was he who set up the AO and assured its success by bringing to its support his own splendid powers of administration, and it was he who, in the administration of the Rules of Procedure Act, secured for the country a modernized and efficient system of legal procedure in keeping with modern conditions which has revolutionized the practice of the federal courts."

From a 1948 resolution by the Judicial Conference

tion. Beginning in the early 1960s with television in its infancy, the Conference heard from its Court Administration Committee on "the increasing activity by the press, radio, and television broadcasting media." At that time, it agreed with the committee's assessment that cameras in the courtroom would not be "in the interest of efficient judicial administration" nor would it "aid in the preservation of the right to a fair and impartial trial." Over the years, as the courts and the media changed, the Conference would revisit the controversy surrounding cameras in the courtroom, commissioning studies and implementing pilot programs in the courts.

Caseload

In many ways the first Conference session was a microcosm of all the meetings that were to follow. The Conference received reports on the business of the courts and about

In 1949, the Conference received a request to install a microfilming system in a court that stated, "It is estimated that one file cabinet approximating 3'x3'x6' in size, would provide adequate and sufficient storage space for the records involved for 35 years—the records under the present system would require 1,300 cubic feet of space." By 1951, two-thirds of the clerks' offices were using prenumbered receipt systems, somewhat less than one-third had adopted a card index system, and six districts at the close of the fiscal year were microfilming current records. In 1967, a new computer system was installed in the AO, replacing the punchcard system. The new IBM System 360, Model 20, with four magnetic tape drives was used for budget, accounting, and payroll purposes as well as for the statistical work of the AO.

pending legislation, intercircuit assignments of judges, court personnel, and the appropriation of funds. At that time the Department of Justice was responsible for collecting statistics on case filings in the federal courts, and at the second meeting in 1923, a report on the caseload of the courts also was delivered by the attorney general, as required by the 1922 act. This continued until 1940, when the Administrative Office was established and the director of the AO took over the duty. However, to this day, the Attorney General is invited to attend Conference sessions upon request of the Chief Justice.

The caseload of the federal Judiciary has been a determining factor in the Conference actions. The Conference has reacted to legislation that would increase caseload, instituted court programs to manage caseload, requested additional judgeships to handle the caseload, and formulated rules to govern case procedure.

Legislation

From the beginning, pending legislation was discussed at Conference meetings. In 1922 one topic was a bill to form a commission "to formulate recommendations for statutory changes in the practice and procedure in the federal courts to enable a more expeditious dispatch of their business." Over the intervening 75 years, the Conference has reviewed, endorsed, opposed, or taken no position on nearly every piece of legislation introduced in Congress that might affect the courts, from the most comprehensive crime bill to the smallest proposals for technical changes in judicial procedure or court operations.

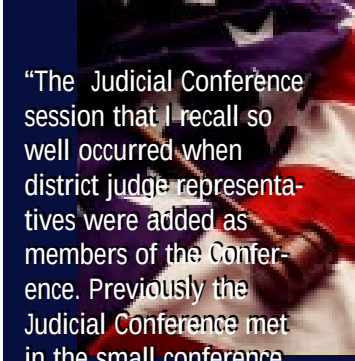
While legislative priorities and concerns have varied widely over the years, the Conference consistently has resisted efforts to increase the jurisdiction of the federal courts. On more than one occasion the Conference also has opposed legislation requiring the imposition of mandatory minimum sentences, because they limit judicial discretion in sentencing and increase the number of criminal trials and the number of appeals in criminal cases.

Congress frequently has proposed the creation of special courts, but the Conference historically has regarded specialized judicial tribunals, as "an undesirable and unnecessary step in the direction of further disintegration of the Federal judicial system." In 1971, the Temporary Emergency Court of Appeals was created by the Economic Stabilization Act—and abolished at the Conference's request in 1993. A Special Court was formed under the Regional Rail Reorganization Act of 1973—and abolished in 1996. In 1978, Congress established the Foreign Intelligence Surveillance Court and its Court of Review, providing for a special court of seven district judges. In 1996, legislation created an Alien Terrorist Removal Court. However, it was on the Conference's recommendation that Congress passed legislation in 1968, establishing the Judicial Panel on Multidistrict Litigation in response to the court's struggle to coordinate almost 2,000 related cases pending in 36 districts around the country.

Judge Barefoot Sanders (N.D. Tex.), chair of the Committee on the Judicial Branch, testifies at a Senate hearing on the 1995 Judicial Improvements bill.

On occasion, the Conference has had a hand in creating legislation. The Conference Committee on the Jury System drafted the landmark law on the federal jury system, which was enacted by Congress as the Jury Selection and Service Act of 1968. In recent history, the Conference has sent proposed federal courts improvement bills to Congress, with provisions to make improvements in the operation and administration of the federal courts.

The Conference also has been obliged to send draft legislation to



"The Judicial Conference session that I recall so well occurred when district judge representatives were added as members of the Conference. Previously the Judicial Conference met in the small conference room adjoining the Chief Justice's chambers. But that room was entirely too small to hold the enlarged Judicial Conference. So for the first time in history a Judicial Conference session was held in the large West Conference Room in the Supreme Court Building. Later the sessions were moved to the East Conference Room."

Joseph F. Spaniol, Jr., AO deputy director 1975 - 1985 when he was appointed clerk of the Supreme Court, secretary to the rules committees, and attended Conference meetings from 1957 to 1985.

"In 1990, I believe, while the Executive Committee was meeting. . . several of us prevailed upon the majority of the members . . .to recommend to Congress, that the representation on Judicial Councils of each Circuit be equalized between circuit and district judges. Former Chief Judge Sam Ervin of the Fourth Circuit and I are convinced that this idea, ultimately adopted by Congress, was very important to the improved morale of the district judges."

Judge John F. Nangle (E. D. Mo.), member of the Judicial Conference 1985 - 1991, the Executive Committee 1987 - 1991, the Committee to Study the Judicial Conference, the Ad Hoc Committee on Asbestos Litigation, and chair of the Judicial Panel on Multidistrict Litigation.

adjust judicial compensation. And, of course, the Conference biennially proposes additional judgeships to Congress.

Vacancies and Judgeships

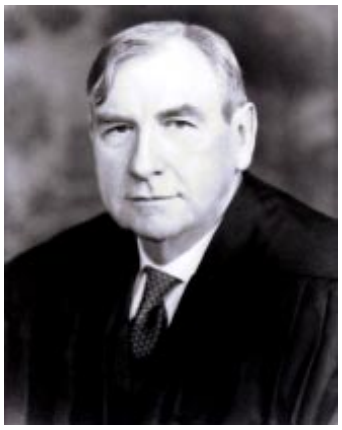
Prior to 1964, there was no system in place within the Judicial Conference for soliciting requests for additional judgeships. Requests were received from courts, members of Congress, bar associations, and circuit councils. In 1964 the Conference adopted a policy of making a comprehensive report to Congress approximately every four years on the judgeship needs of the appellate and district courts. In 1977, the Conference approved judgeship surveys every other year. This system has proven effective in transmitting requests to Congress. However, there has been congressional resistance at times to authorization of those judgeships. In 1958, in response to a letter from the AO urging action on an omnibus judgeship bill, Senator Lyndon B. Johnson, the Senate majority leader, replied that, in his view, "a caseload factor based solely on the number of filings and pending cases was a most unreliable basis upon which to make a determination of the need for judges and that if caseload is to be the determining factor there must be a more refined breakdown of each particular caseload." The Senator requested additional statistical data, which were furnished by the AO, and eventually Congress took action on the judgeships. This pattern has continued over the years. It has been rare for Congress to act quickly on the additional judgeships requested by the Conference. When it finally acts, however, Congress has generally established all the judgeships recommended by the Conference. Sometimes, too, Congress has created judgeships for which no Conference request has been made. Since 1972, Congress has created 31 such judgeships.

Judge Lloyd George (D. Nev.), chair of the Committee on the Administration of the Bankruptcy System, and Representative Jack Brooks before a 1992 House hearing on new bankruptcy judgeships.

Filling judicial vacancies also has been a long-term problem. At the end of World War II, the Attorney General assured the Conference that both he and the President realized the necessity of promptly filling all the vacancies on the federal bench. But by 1948, AO Director Henry P. Chandler could draw the Conference's attention to "the high incidence throughout the country of disability of federal judges on account of illness," pointing out that, "during the last year, at least 20 circuit and district court judges were partially or totally incapacitated for long periods of time because of illness. These illnesses were in large measure attributable to overstrain in work. . . . It empha-

Judge Robert F. Peckham (N.D. Cal.), chair of the Subcommittee on the Civil Justice Reform Act of 1990 (photo left), and Judge Walter T. McGovern (W.D. Wash.), chair of the Committee on Judicial Resources, testify before the Senate Judiciary Committee in 1990 on civil justice reform and the need for new judegships.

Chief Justice
Harlan Fiske Stone
Presided 1941 to 1946



"It is but just to say he was a jurist of great learning in the law, whose indefatigable industry led him to explore all the sources of the common law and the constitutional and international law to find precedent and justification in support of the reasoning of his great mind. In our association with him in the discharge of the duties imposed on this Conference he was always patient, sympathetic, cooperative, and his guiding hand was invariably useful and potent in leading the Conference to a right conclusion."

From a 1946 resolution by the Judicial Conference

sizes all too well the necessity for speedy appointments to judicial vacancies as well as the need for more judges to cope with the increasing burden of litigation in the federal courts." In 1988, the Conference noted the adverse effect Article III judicial vacancies of more than 18 months have on the courts and litigants and said that all such vacancies create judicial emergencies. In 1997, judicial vacancies have numbered over 100, generating a political debate over whether or not this constitutes a pending crisis in the federal courts.

Dealing with Allegations of Judicial Unfitness

Conference authority over Article III judgeships did not extend to dealing with charges of judicial unfitness or misbehavior until recently. Discipline of federal judges, short of impeachment, still is handled as part of the general responsibilities of the circuit judicial councils, which had been created by statute in 1939. However, the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 altered this procedure, involving for the first time the Judicial Conference. The act of 1980 placed the responsibility for administration of the judicial discipline system in the hands of the chief judges of the circuits, the circuit councils, and, ultimately, the Judicial Conference. This regularized the procedures in the councils and provided for Conference action in rare cases of serious disability or misbehavior. The Conference considers petitions for review of judicial council actions following a circuit investigation. If the Conference concurs in a circuit council determination that impeachment may be warranted, the Conference transmits this determination and a record of the proceedings to the House of Representatives. The Conference met to consider impeachment proceedings against a federal judge for the first time in June 1986, also the first time since the mid-30s that an impeachment proceeding of a federal judge had been initiated. In 1989 Conference action again was required in impeachment proceedings involving two federal judges.

In 1990, Congress created the National Commission on Judicial Discipline and Removal to investigate problems related to the discipline and removal of Article III judges and evaluate alternatives to current arrangements for judicial discipline and removal. In 1994, the Conference Committee to Review Circuit Council Conduct and Disability Orders reported it had studied recommendations addressed to the judicial branch by the commission. In response to the committee's recommendations, the Conference took a number of actions to implement the commission's proposals. Congress took no action on the recommendations. There now are renewed calls to consider the commission's report following recent threats by members of Congress to use impeachment as "a tool for keeping judicial power in check," and the introduction of the Judicial Reform Act of 1997 that would change the way judicial

"[A] fine example of the Conference members' collective creativity is the recently completed Long Range Plan for the Federal Courts—the first time ever that federal judges have been given the opportunity to look beyond that next docket or calendar to plan for the future of their court. For an institution that has been accused of living in the past, the development of a planning process and the draft of a functional plan for the future was a momentous achievement.

Judge Otto R. Skopil Jr. (9th Cir.), former chair of the Committee on the Administration of the Federal Magistrates System and former chair of the Committee on Long Range Planning.

"In all my thirty-three years plus as a United States District Judge, my membership on the Judicial Conference . . . is the greatest experience I have ever had. I only regret that every circuit and district judge in our system . . . could not experience being a member of the Judicial Conference which affords such a wonderful guidance and direction for our entire judiciary."

Judge Charles E. Simons, Jr. (D. S.C.), represented the 4th Circuit district judges on the Conference from 1973-1979, and was a member of the Advisory Committee on Codes of Conduct, and the Committee on Court Administration, the Committee on the Judicial Branch; former chair, Subcommittee on Federal Jurisdiction

misconduct complaints are handled. Judicial Conference representatives have testified before the House and Senate on this reform act.

Rules

One area in which the Conference has been the most active is in the continuing development of federal rules of practice, procedure, and evidence. Under the Rules Enabling Act, the Supreme Court prescribes both "general rules of practice and procedure and rules of evidence" for cases in the district courts and courts of appeals and "general rules [governing] the forms of process, writs, pleadings, and motions and the practice and procedure" in bankruptcy cases. By this legislation, Congress has delegated to the Judiciary nearly all authority to establish rules for the courts, but it reserved to itself the power to reject, amend, or defer any such rules.

For nearly 40 years, the Conference has played a pivotal role in this process. It has a statutory mandate to study continuously the operation and effect of the existing rules, and to consider and recommend to the Supreme Court any alterations or additions to the rules that promote "simplicity in procedure, fairness in administration, the just determination of litigation, and the elimination of unjustifiable expense and delay." The Conference's standing Committee on Rules of Practice and Procedure and five advisory committees on civil, criminal, appellate, bankruptcy, and evidence rules carry out this function by conducting studies, drafting new and amended rules and explanatory committee notes, conducting hearings, and making recommendations for Conference action. Through the decades, members of the legal profession—represented by private practitioners, law professors, Justice Department officials, and state court representatives—have been partners in the rulemaking process, both as participants in the various advisory committees and as the commenters on proposed rules and rule changes.

While the "modern era" of federal rules began with the Rules Enabling Act of 1934, the Conference was not involved at first in the rulemaking process. In its initial efforts to establish uniform, national rules—resulting in the first Federal Rules of Civil Procedure (1938) and Criminal Procedure (1946)—the Supreme Court was aided by "blue ribbon" committees of legal experts appointed by the Court itself. In 1958, however, Congress enacted legislation that shifted to the Conference primary responsibility for developing new and revised rules. Exercising that authority, the Conference has recommended, and the Supreme Court adopted, the Federal Rules of Appellate Procedure (1968), the Federal Rules of Bankruptcy Procedure (1973), and the rules governing post-conviction collateral (habeas corpus) remedies (1977). The same process has been used to amend the various sets of rules, including the Federal Rules of Evidence that were adopted by legislation in 1975.

Chief Justice Warren E. Burger and newly appointed AO Director Leonidas Ralph Mecham in 1985.

The Judicial Conference of the United States in March 1984, meeting in the East Conference Room of the Supreme Court.

The standing and advisory rules committees review their operating procedures periodically to ensure that rules are adopted only after appropriate deliberation and involvement by the bench and bar. In adopting the 1995 *Long Range Plan for the Federal Courts*, the Conference recognized the importance of maintaining the "time-tested and orderly" process under the Rules Enabling Act. The plan recommends that the process be the exclusive mechanism for developing rules for the federal courts, and that continued efforts be made to achieve greater uniformity of practice and procedures and obtain significant participation in rulemaking by the bar and interested members of the public.

Court Administration

The Conference's Executive Committee approves the annual spending plan for the federal Judiciary. The Conference's Budget Committee formulates the appropriations request to Congress for approval by the Conference, and, in recent years, the committee's chair and AO Director Leonidas Ralph Mecham have appeared before congressional appropriations committees to make the case for the Judiciary's budgetary needs. On the occasions when the spending bills failed to get congressional approval before the end of the fiscal year, the Conference's Executive and Budget Committees have worked closely with AO staff to keep the courts open and to secure the critical continuing appropriations.

Current Conference initiatives to improve financial management include decentralizing major budget and management functions to the courts to improve efficiency and court flexibility in managing funds, and implementing a standardized, automated accounting system for the courts.

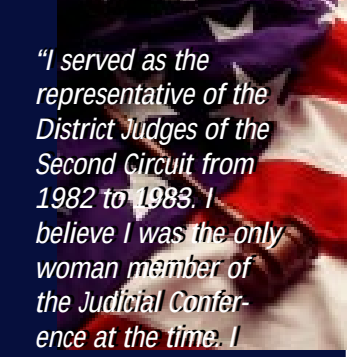
Economizing on judicial resources has been a long-term Conference concern. In 1948, the Conference formed the Committee on Ways and Means of Economy in

Chief Justice Fred M. Vinson

Presided 1946-1953

"We, as members of this Conference, have suffered the great personal loss of one whom we loved and respected as a man and whose service as presiding officer of the Conference had made it an instrumentality of great and ever-increasing importance in the administration of justice. Chief Justice Vinson came to the office of Chief Justice at a critical period in the history of our country, a period fraught with many dangers and difficulties. He brought to the performance of his duties a wide knowledge of men and affairs as well as of the law, wisdom ripened by experience and a profound and intimate knowledge of the nature and workings of our government having theretofore served with distinction in the legislative, executive, and judicial branches. This experience gave him an unusual grasp of governmental problems and a sureness in approaching and dealing with them rarely equaled in our history. His knowledge of the legislative branch and his personal acquaintance with the leaders of that branch enabled him to develop between this Conference and the Congress a relationship which has resulted in a better understanding of problems affecting the judiciary and the passage of legislation which has done much to improve the courts and the administration of justice therein."

From a 1953 resolution by the Judicial Conference



"I served as the representative of the District Judges of the Second Circuit from 1982 to 1983. I believe I was the only woman member of the Judicial Conference at the time. I had just become the chief judge of our court and I was fulfilling a year of the unexpired term of my predecessor, Chief Judge Lloyd McMahon. I believe I was also the only woman chief judge at the time."

Judge Constance Baker Motley (S. D. N.Y.), member of the Committee on Records Disposition and the Committee on the Administration of the Bankruptcy System.

the Operation of the Federal Courts with economy committees in all the circuits. Their reports indicated that "an exhaustive and intensive study had been made and, as a result thereof, considerable improvement had already been achieved." In 1993 the Budget Committee's Economy Subcommittee was established to pursue ways to economize in the federal Judiciary. Its report on the optimal utilization of judicial resources chronicles the extensive cost-saving measures that have been taken throughout the Judiciary in recent times.

Through the budget process, the Conference has helped shape the AO and the courts. The Conference sets standards for the hiring of, or salaries for, nearly every level of court employee, including probation officers, court reporters, law clerks and, at one time, court criers. The Conference establishes per diem rates for judges and sets standards for court automation. The Conference has funded programs to help the courts manage their caseloads, such as a pilot project on the use of computers for the administration of the jury system (1966), civil arbitration (1977), a two-year experimental program of videotaping court proceedings (1988), a two-year pilot study to examine the feasibility of interpreting by telephone (1989), an 8th Circuit pilot project to provide enhanced access by the deaf community (1991), and a 3rd Circuit one-year videoconferencing pilot project for oral arguments between Pittsburgh and Philadelphia (1991).

THE
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DIRECTOR
Leonidas Ralph Mecham

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Charles D. Connor

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David A. Sellers

MANAGING EDITOR
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PRODUCTION
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Prior to testifying before congressional appropriations committees in 1994, Chief Judge Richard Arnold (8th Cir.), Judge John M. Walker Jr. (2nd Cir.), and AO Director Leonidas Ralph Mecham are briefed by AO staff.

The Judiciary has not always controlled its own budget or administration. Before the Administrative Office was created in 1939, the Attorney General and the Department of Justice had responsibility for the Judiciary's accounts. There were frequent conflicts. Appropriated funds were provided jointly to the courts and the Department of Justice. In 1932, despite the Great Depression, the Conference warned, "While the Conference fully realizes the difficulties growing out of economic conditions and the imperative necessity for retrenchment in governmental expenses, the Conference deems it to be its duty to

set forth the actual needs of the judicial department."

In 1931, the Conference considered a proposal for a Chancellor of the United States to address the needs of the courts. In 1936, President Franklin D. Roosevelt proposed a proctor for the federal courts, a judicial administrator. This idea had surfaced many times before, along with suggestions for an administration bureau. But it was not until 1939 that Congress passed the Act creating the Administrative Office of the U.S. Courts. The Act gave the courts the power of managing their own business affairs, and "secure[d] an improved supervision of the work of the courts through an organization under judicial control." The AO director, as the administrative officer of the courts, would operate under the supervision and direction of the Conference.

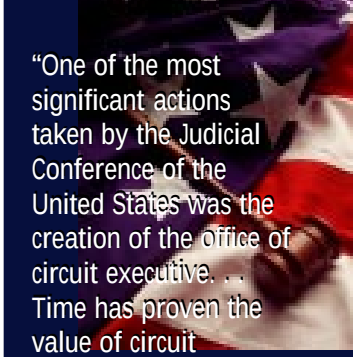
In 1966 a Conference resolution called for the establishment of a Federal Judicial Center. The center was created to enable the courts, according to President Lyndon Johnson, who signed the legislation in 1967, "to begin the kind of self-analysis, research and planning necessary for a more effective judicial system."

The Conference continually makes recommendations to improve caseload management and the court system. Over the Conference's long history this has run the gamut from encouraging clerks' offices in 1951 to improve practices by adopting effective receipt systems, loose-leaf dockets, and card indices to directing the AO in 1985 to develop an office automation plan that encourages rapid implementation of ADP, telecommunications, and office automation.

The Conference has encouraged courts not only to look to each other for assistance but also to look outside the Judiciary. For example, in 1933, the Conference adopted a resolution confirming the usefulness of circuit conferences, which "serve to bring together all the federal judges of the circuit and thus to give opportunity for the consideration of problems . . ." The circuit conferences were authorized statutorily in 1939, by the same act establishing the AO. In 1993, the Executive Committee agreed with an idea, proposed earlier by Chief Justice Warren E. Burger, of holding a national conference with representatives from all three branches to study the problems facing the federal court system. Three Branch Conferences were held in 1994 and 1996.

The Conference was instrumental in a dramatic change in judicial administration—the appointment of a circuit executive for each judicial circuit, as authorized by statute in 1971. Several years earlier, the Conference had approved a committee report recommending that each chief circuit judge be authorized to appoint an administrative assistant.

Although the General Services Administration builds the Judiciary's courthouses, the Conference has become a partner in the process. Shortly after World War II, the Conference Committee on Postwar Building Plans for the Quarters of the U.S. Courts submitted a manual setting forth general standards of design and construction for federal court quarters in federal buildings. In 1971, an Ad Hoc Committee on Courtroom Facilities, Design and Security was appointed. In 1984, the Conference adopted a *U.S. Courts Design Guide*, which was completely revised in 1991 with the Conference's ap-



"One of the most significant actions taken by the Judicial Conference of the United States was the creation of the office of circuit executive. . . Time has proven the value of circuit executives. It would be very difficult for a chief circuit judge to carry out his administrative duties, which have vastly increased over the years, without assistance and at the same time address his judicial duties."

Senior Judge John D. Butzner, Jr., (4th Cir.), chaired the Subcommittee on Judicial Statistics, the Ad Hoc Committee on the AO, the Ad Hoc Committee on Sentencing Guidelines and was a member of the Committee on the Administration of the Criminal Law. He currently serves as a member of the Panel to Appoint Independent Counsel.

Chief Justice Earl Warren

Presided 1953-1969

"His period of service as Chief Justice coincided with an era of far-reaching constitutional interpretations. We witnessed new and different emphasis on fundamental rights of racial and religious minorities and of individual liberties under the Constitution. . . . We recall also the many years during which he presided over the Judicial Conference of the United States, giving it his leadership and guidance. . . . Finally, for showing us the virtues of exercising wise and compassionate judgment toward our fellowmen, we shall be forever in his debt."

From a 1974 resolution by the Judicial Conference

"I first attended a meeting of the Judicial Conference in 1983. Chief Justice Warren Burger sat impressively at the head of the huge table around which judges gathered, beginning with the First Circuit representatives seated immediately to the Chief's right. . . . The only drawback in sitting right next to Chief Justice Burger was that he would often ask me to preside temporarily when he left the room. His exits could be precipitous, leaving me to preside over a debate I had only partially followed or—on one occasion—had not been listening to at all."

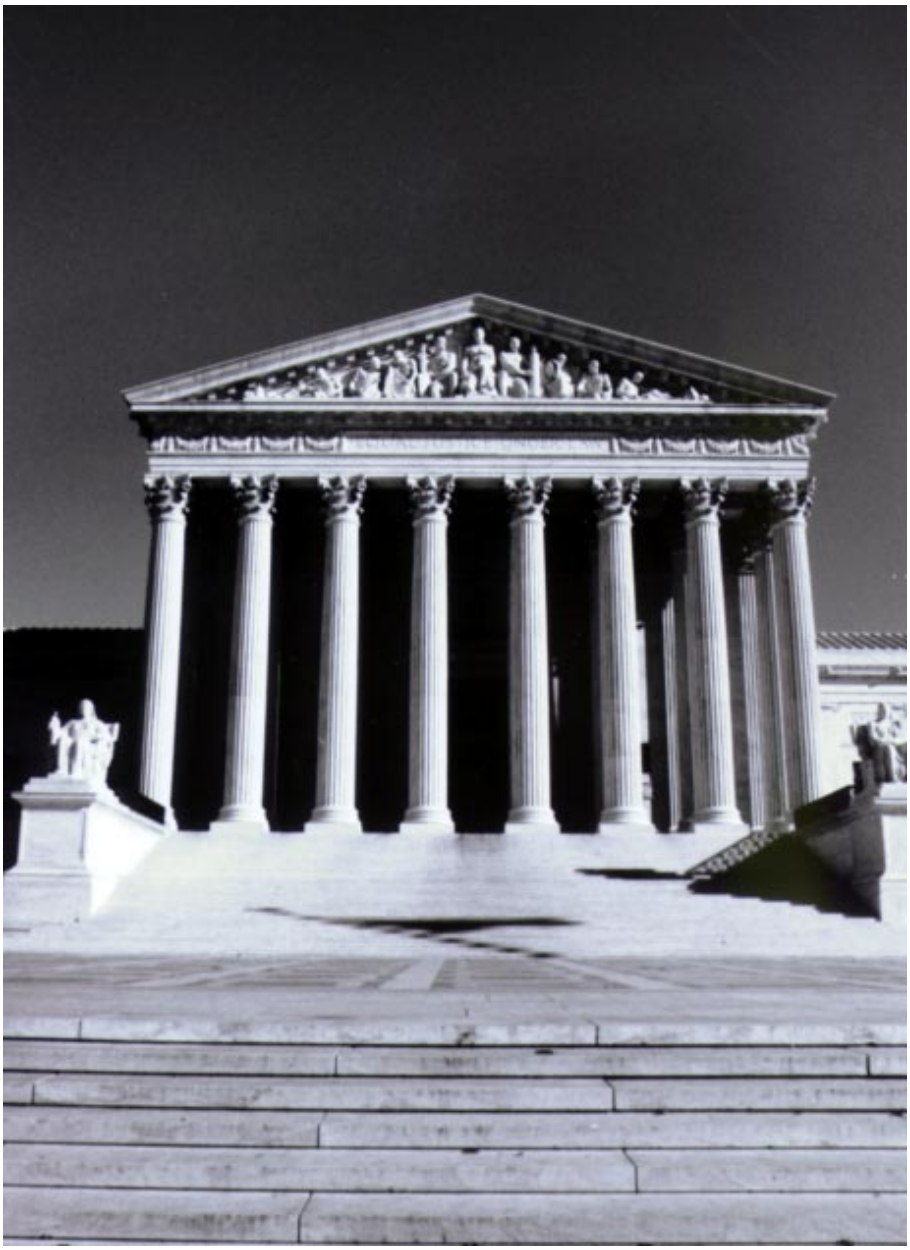
Judge Levin Campbell (1st Cir.) Judicial Conference member, 1983 - 1990; member of the Committees on Court Administration and the Bicentennial of the Declaration of Independence, the Executive Committee, the Committee to Study the Judicial Conference, and the Federal Courts Study Committee; former chair of the Subcommittee on Supporting Personnel.

proval, and the revision process continues today. In 1995, the Conference also approved the development of a five-year plan of courthouse construction projects. As the Judiciary undertakes the largest building program in its history, Conference representatives have testified frequently before Congressional committees on the Judiciary's need for courthouses.

The Conference's timely recommendations have addressed both daily court management and the critical problems that arise. Faced with a crisis, due in part to inordinate delay caused by the constantly increasing caseload, the Conference in 1970 authorized the Chief Justice to form a preliminary study committee to propose an agenda for modernizing the procedure and improving the efficiency of the courts. This materialized in 1972 as the Hruska Commission. In 1984, the Conference approved use of automated dockets for appellate, civil, and bankruptcy cases. In 1986, the Conference approved a report by the Ad Hoc Committee on Electronic Sound Recording that an "electronic sound recording program should be employed as a permanent part of the facilities and services available to the Judiciary." In 1988, the Conference authorized an experimental program of electronic access to court information for the public, and an experiment to videotape court proceedings. Reacting to concerns about uneven staffing levels in the courts when it met in 1994, the Conference implemented a staffing equalization plan to reduce or eliminate excess positions and reassign staff to needed areas. In 1995 the Conference expanded a videoconferencing pilot program for prisoner civil rights hearings, and approved a new Code of Conduct for Judicial Employees that updated, streamlined, and clarified existing code provisions. In 1995, the Conference also adopted the first comprehensive long range plan for the federal court system, the culmination of a four-year process.

On occassion, the duties of an Executive Committee chair include discussion of the Conference's recommendations with members of the press, as Chief Judge Gilbert Merritt (6th Cir.) demonstrated in 1995.

Unfortunately, while the Conference has made recommendations over the years that have revamped the Judiciary's personnel system and assured personnel of pay on par with that of other branches of government and in the private sector, securing pay adjustments for judges has proven much more difficult. In 1981, the Conference endorsed the report of the Quadrennial Commission on Executive, Legislative and Judicial Salaries, created in 1980 to focus attention on the problem of inadequate compensation, survivors' annuities, per diem, and life and health insurance benefits. Despite the commission's report, by 1989, the Committee on the Judicial Branch reported, "The single greatest problem facing the Judiciary today is obtaining adequate pay for judicial officers. Judges have suffered an enormous



The Judicial Conference meets twice a year at the Supreme Court, while many committee meetings are conducted at the Thurgood Marshall Federal Judiciary Building a few blocks away.

erosion in their purchasing power as a result of the failure of their pay to keep pace with inflation. It is becoming more and more difficult to attract and retain highly qualified people on the federal bench." The Ethics Reform Act of 1989 provided a mechanism to adjust judicial pay, and federal judges finally received an approximately 30 percent pay adjustment in 1991. But when judges were denied a pay adjustment in 1993 and in subsequent years, the problem of adequate pay again became critical.

Conclusion

Today the Judicial Conference regularly meets twice a year, as does its network of committees. Conference and committee members often communicate by fax and e-mail, and its Executive Committee uses the latest technology for its regular conference call meetings. Conference actions are announced through preliminary reports, and through press releases posted on the Internet within hours of Conference sessions concluding.

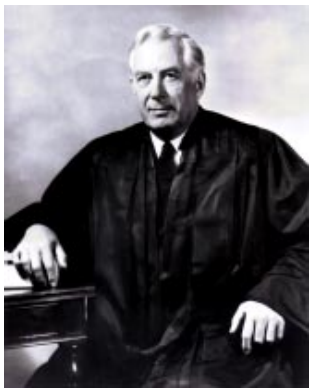
While today's Conference may be a more efficient and democratic body than in the past, its mission has remained the same. Running like threads through its proceedings are such concerns as case management, judgeships, finances, and court staffing. It also is evident that throughout its history the Conference has taken seriously its responsibility to review and react to legislation that could affect the courts. But perhaps the Conference's most remarkable quality is its consistent and overriding commitment to the taxpayers who use the federal courts. For 75 years the Conference has steadfastly focused on its mission to serve as the principal policy-making body concerned with the administration of the U.S. Courts and the administration of justice. Undoubtedly, this goal will remain unchanged for generations to come.

"During my tenure, we grappled with the agonizing subject of habeas corpus review; we voted on sending an impeachment recommendation to the Congress; and we worried interminably about how to spread too few resources (people and money) across a never-ending expanse of cases. . . . It continues to be a source of gratification and sometimes wonder that in that day and a half twice a year they can do what has to be done to keep the federal courts working. But they must and they do."

Judge Patricia M. Wald (D.C. Cir.) served on the Conference from 1986 to 1991. She was also a member of the Committee on Codes of Conduct, and currently serves on the Committee on Court Administration and Case Management.

Chief Justice
Warren E. Burger

Presided 1969-1986



"Chief Justice Burger served with distinction on the federal bench for 30 years, as a judge of the United States Court of Appeals for the District of Columbia Circuit from 1956 to 1969 and as Chief Justice of the United States from 1969 to 1986, during which time he served as Presiding Officer of this Conference. His devotion to the improvement of the administration of justice was legendary, and he left a legacy of administrative reforms from which we benefit. Upon his retirement in 1986, Burger tirelessly and diligently led the nation in observing the 200th anniversary of the Constitution, playing a pivotal role in educating and inspiring younger generations to revere the Constitution as a treasured inheritance to be protected and preserved.

His reputation as a jurist, a scholar, and an esteemed colleague will be forever a part of the history of this Conference and a grateful nation."

From a 1995 resolution by the Judicial Conference

JUDICIAL CONFERENCE OF THE UNITED STATES

September 1997

Chief Justice William H. Rehnquist, Presiding

Chief Judge Juan R. Torruella	First Circuit
Chief Judge Joseph L. Tauro	District of Massachusetts
Chief Judge Ralph K. Winter, Jr.	Second Circuit
Chief Judge Peter C. Dorsey	District of Connecticut
Chief Judge Dolores K. Sloviter	Third Circuit
Chief Judge Edward N. Cahn	Eastern District of Pennsylvania
Chief Judge J. Harvie Wilkinson III	Fourth Circuit
Judge W. Earl Britt	Eastern District of North Carolina
Chief Judge Henry A. Politz	Fifth Circuit
Judge William H. Barbour, Jr.	Southern District of Mississippi
Chief Judge Boyce F. Martin, Jr.	Sixth Circuit
Judge Thomas A. Wiseman, Jr.	Middle District of Tennessee
Chief Judge Richard A. Posner	Seventh Circuit
Chief Judge Michael M. Mihm	Central District of Illinois
Chief Judge Richard S. Arnold	Eighth Circuit
Judge Donald E. O'Brien	Northern District of Iowa
Chief Judge Procter Hug, Jr.	Ninth Circuit
Chief Judge Lloyd D. George	District of Nevada
Chief Judge Stephanie K. Seymour	Tenth Circuit
Judge Clarence A. Brimmer	District of Wyoming
Chief Judge Joseph W. Hatchett	Eleventh Circuit
Judge Wm. Terrell Hodges	Middle District of Florida
Chief Judge Harry T. Edwards	District of Columbia Circuit
Chief Judge Norma H. Johnson	District of Columbia
Chief Judge Glenn L. Archer, Jr.	Federal Circuit
Chief Judge Gregory W. Carman	Court of International Trade

Conference Secretary:
Leonidas Ralph Mecham, Director
Administrative Office of U.S. Courts

Judicial Conference of the United States

28 U.S. C. § 331

The Chief Justice of the United States shall summon annually the chief judge of each judicial circuit, the chief judge of the Court of International Trade, and a district judge from each judicial circuit to a conference at such time and place in the United States as he may designate. He shall preside at such conference, which shall be known as the Judicial Conference of the United States. Special sessions of the Conference may be called by the Chief Justice at such times and places as he may designate.

The district judge to be summoned from each judicial circuit shall be chosen by the circuit and district judges of the circuit and shall serve as a member of the Judicial Conference of the United States for a term of not less than 3 successive years nor more than 5 successive years, as established by majority vote of all circuit and district judges of the circuit. A district judge serving as a member of the Judicial Conference may be either a judge in regular active service or a judge retired from regular active service under section 371(b) of this title.

If the chief judge of any circuit, the chief judge of the Court of International Trade, or the district judge chosen by judges of the circuit is unable to attend, the Chief Justice may summon any other circuit or district judge from such circuit or any other judge of the Court of International Trade, as the case may be. Every judge summoned shall attend and, unless excused by the Chief Justice, shall remain throughout the sessions of the Conference and advise as to the needs of his circuit or court and as to any matters in respect of which the administration of justice in the courts of the United States may be improved.

The Conference shall make a comprehensive survey of the conditions of business in the courts of the United States and prepare plans for assignment of judges to or from circuits or districts where necessary. It shall also submit suggestions and recommendations to the various courts to promote uniformity of management procedures and the expeditious conduct of court business. The Conference is authorized to exercise the authority provided in section 372 of this title as the Conference, or through a standing committee. If the Conference elects to establish a standing committee, it shall be appointed by the Chief Justice and all petitions for review shall be reviewed by that committee. The Conference or standing committee may hold hearings, take sworn testimony, issue subpoenas and subpoenas duces tecum, and make necessary and appropriate orders in the exercise of its authority. Subpoenas and subpoenas duces tecum shall be issued by the clerk of the Supreme Court or by the clerk of any court of appeals, at the direction of the Chief Justice or his designee and under the seal of the court, and shall be served in the manner provided in rule 45 of the Federal Rules of Civil Procedure for subpoenas and subpoenas duces tecum issued on behalf of the United States or an officer or any agency thereof. The Conference may also prescribe and modify rules for the exercise of the authority provided in section 372 of this title. All judicial officers and employees of the United States shall promptly carry into effect all orders of the Judicial Conference or the standing committee established pursuant to this section.

The Conference shall also carry on a continuous study of the operation and effect of the general rules of practice and procedure now or hereafter in use as prescribed by the Supreme Court for the other courts of the United States pursuant to law. Such changes in and additions to those rules as the Conference may deem desirable to promote simplicity in procedure, fairness in administration, the just determination of litigation, and the elimination of unjustifiable expense and delay shall be recommended by the Conference from time to time to the Supreme Court for its consideration and adoption, modification or rejection, in accordance with law.

The Judicial Conference shall review rules prescribed under section 2071 of this title by the courts, other than the Supreme Court and the district courts, for consistency with Federal law. The Judicial Conference may modify or abrogate any such rule so reviewed found inconsistent in the course of such a review.

The Attorney General shall, upon request of the Chief Justice, report to such Conference on matters relating to the business of the several courts of the United States, with particular reference to cases to which the United States is a party.

The Chief Justice shall submit to Congress an annual report of the proceedings of the Judicial Conference and its recommendations for legislation.

Leonidas Ralph Mecham on the Judicial Conference

AO Director Leonidas Ralph Mecham.

"During my 12 years as Director of the Administrative Office, one of the truly great privileges I have enjoyed is my role as Secretary to the Judicial Conference of the United States. In the 24 Conference sessions and countless committee meetings I have attended, I have witnessed profound changes in the Judiciary. Fortunately the steady hand and keen insight of the Conference has helped the court system cope with explosive caseloads, unprecedented resource needs, as well as the occasional bump in the road.

Of course the men and women who serve on the Conference are the real foundation, as are those who have volunteered to participate through Conference committees while continuing to carry out their regular judicial duties. During my tenure, numerous judges have had a hand in the development and implementation of policies that impact the administration of courts nationwide. They have exhibited tremendous commitment to the betterment of the courts.

I also am pleased to have overseen great changes in the role the AO has played in support of the Conference. As counsel and advisors to Conference committees, AO staff perform valuable substantive work that assists committees to formulate recommendations for the Conference.

The Judicial Conference is a unique entity in our system of government. Its success and endurance are a tribute to the many fine men and women who have served on the Conference and its committees."

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