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April 10, 1989

MEMORANDUM TO ALL: CHIEF JUDGES, UNITED STATES COURTS OF APPEALS
CHIEF JUDGES, UNITED STATES DISTRICT COURTS
CIRCUIT EXECUTIVES
FEDERAL PUBLIC/COMMUNITY DEFENDERS
DISTRICT COURT EXECUTIVES
CLERKS, UNITED STATES COURTS OF APPEALS
CLERKS, UNITED STATES DISTRICT COURTS
CHIEF PROBATION OFFICERS
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SUBJECT: Report of the Judicial Conference of the United States to the Congress - Impact of Drug Related Criminal Activity on the Federal Judiciary, March 1989

I enclose for your information the Report of the Judicial Conference of the United States to the Congress - Impact of Drug Related Criminal Activity on the Federal Judiciary, March 1989. This report was submitted as required by the Anti-Drug Abuse Act of 1988, section 6159(b). The report analyzes in detail recent drug related legislation and workload trends that impact significantly on the federal courts. The executive summary, starting on page i, points out the major findings.

L. Ralph Mecham

Enclosure

REPORT OF THE JUDICIAL CONFERENCE OF THE UNITED STATES TO THE CONGRESS

IMPACT OF DRUG RELATED CRIMINAL ACTIVITY ON THE FEDERAL JUDICIARY

March 1989

IMPACT OF DRUG RELATED CRIMINAL ACTIVITY ON THE FEDERAL JUDICIARY

EXECUTIVE SUMMARY

- This report is filed in accordance with section 6159(b) of the Anti-Drug Abuse Act of 1988, which requires the Judicial Conference of the United States to evaluate the impact of drug related criminal activity on the federal judiciary and to make recommendations on the drug related resources needs of the courts.

- The Congress has enacted many laws in the last few years that will have a major impact on the criminal justice system in general and on the federal courts in particular, including:

  - The Pretrial Services Act of 1982
  - The Victim and Witness Protection Act of 1982
  - The Comprehensive Crime Control Act of 1984, which includes:
    - The Bail Reform Act
    - The Sentencing Reform Act
    - The Comprehensive Forfeiture Act
    - The 1984 Drug Enforcement Amendments
  - The Criminal Fine Enforcement Act of 1984
  - The Anti-Drug Abuse Act of 1986
  - The Drug and Alcohol Dependent Offenders Treatment Act of 1986
  - The Sentencing Act of 1987
  - The Criminal Fine Improvements Act of 1987
  - The Anti-Drug Abuse Act of 1988

- The caseloads of the federal courts have been increasing significantly for the last several years. Total case filings in the United States district courts have risen by 42 percent during the 1980's, while criminal case filings have risen by 56 percent. During that period drug related criminal cases have increased by 229 percent.

- Drug related offenses now account for about 24 percent of the criminal case filings of the district courts and 44 percent of all criminal trials.

- Drug related criminal cases are generally more complex than most cases, because they tend to involve multiple defendants, multiple transactions, and complicated factual and legal issues. As a result, they require more judicial time and supporting staff time than other cases.

- The Judicial Conference believes that the most critical problem confronting the judicial branch is the lack of adequate resources to cope with increasing caseloads and newly enacted statutory responsibilities. Due to the Gramm-Rudman-Hollings legislation and a series of appropriations restrictions, the federal courts are seriously short of funds to handle their current caseloads effectively. The judiciary needs at least $269 million in additional funding just to meet its "bare bones" operational needs for 1990, exclusive of the impact of the Anti-Drug Abuse Act of 1988.

- As a result of: (a) the recent Congressional drug initiatives, and (b) recently augmented resources for prosecution and law enforcement agencies, there will be a substantial increase in the number of drug related criminal cases prosecuted in the federal courts. It is projected that the number of additional drug case filings in the United States district courts will range from a minimum of 2,100 cases with 4,000 defendants to a maximum of 5,300 cases with 9,900 defendants.

- The "war on drugs" cannot be waged without cost. The judiciary will need between $37,000,000 and $92,000,000 in resources just to handle the additional caseload flowing from the Anti-Drug Abuse Act of 1988. This includes funding for magistrates and staff, probation and pretrial services officers, pretrial social services, the substance abuse treatment program, deputy clerks of court, interpreter services, juror fees, defender services, court security, and program support. The figures do not include the cost of additional article III judges and their staff that may be needed.

- The Congress has not yet acted on the 1984, 1986, or 1988 biennial judgeship surveys. Accordingly, the present number of article III judgeships authorized by statute is based on 1982 caseloads. Legislation is needed for 14 more court of appeals judgeships, 59 more district judgeships, and conversion of six temporary judgeships to permanent status. No account is taken in this report of the need for additional article III judgeships that may be needed as a result of the Anti-Drug Abuse Act of 1988.

- Authorization of additional article III judgeships is not the only manner in which the growing workload of the federal courts may be addressed. Alternatively, the Congress could restrict or eliminate federal court jurisdiction over certain categories of cases or create non-article III tribunals to review certain claims.

- The authorization of additional magistrate positions could help provide an effective and timely judicial response to the drug emergency. Although article III judges are required for the trial of felony drug cases, the increase in the number of new judgeships can be held to a minimum by using magistrates for all but those duties which constitutionally must be performed by judges.

- No area is impacted more by drug related criminal activity and the new sentencing guidelines than the federal probation system. The probation system cannot adequately fulfill with existing resources all the responsibilities that the Congress has imposed upon it by statute. The system has been deteriorating for lack of probation officers, clerical personnel, equipment, and social services funds, thereby posing increasing security risks to the community. Moreover, there is not sufficient funding available to take full advantage of economical alternatives to incarceration, such as the substance abuse treatment program and electronic monitoring.

- Highly efficient automated systems have been developed for the courts to handle full electronic docketing, case tracking, statistical reporting, noticing, attorney admissions, court reporter services, jury management, and financial procedures. These systems promote effective case management, improve the quality and timeliness of service to the public, and improve productivity. Funds have not been provided, however, to install and operate the systems in more than a handful of courts. Accordingly, most courts and all probation and pretrial services offices still operate in a manual mode, and many judges and support officers still lack personal computers for their secretaries.

- The judiciary clearly has the talent, the systems, and the will to handle the increasing drug related criminal caseload flowing from the "war on drugs." What it lacks is basic resources. Simply put, the recent wave of criminal legislation enacted by the Congress, including the sentencing guidelines, has not been funded appropriately. Additional funding is needed for judicial officers and staff, probation and pretrial services officers, deputy clerks, interpreter services, public defenders and defense panel attorneys, fees for jurors, court security officers and equipment, pretrial social services contracts, substance abuse treatment contracts, and program support and training.

IMPACT OF DRUG RELATED CRIMINAL ACTIVITY ON THE FEDERAL JUDICIARY

TABLE OF CONTENTS

IMPACT OF DRUG RELATED CRIMINAL ACTIVITY ON THE FEDERAL JUDICIARY

I. INTRODUCTION AND OVERVIEW

A. General Background.

Section 6159(b) of the Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, requires the Judicial Conference of the United States to prepare a report evaluating the impact of drug related criminal activity on the federal judiciary. In addition, the statute requires the Judicial Conference to make recommendations on the drug related resource needs of the courts. At its March 14, 1989 session, the Judicial Conference authorized the Committee on Criminal Law and Probation Administration to file this report on its behalf.

Although the Judicial Conference would have preferred a longer period of time to provide the Congress with a more comprehensive report on the impact of drug cases on the federal judiciary as a whole, the Administrative Office of the United States Courts was able to conduct a field study of five district courts and two courts of appeals with heavy drug related caseloads. Selection of these courts does not imply that smaller courts or courts with lighter drug related criminal caseloads are not experiencing comparable increases on a percentage basis in their drug related caseload. Although only seven courts were visited, the state of the entire federal judiciary in relation to its ability to handle the increasing drug related caseload can be deduced generally from the impact on the seven courts visited.

The federal courts have been seriously underfunded for the last several years, and they face a current shortfall of about $269 million in meeting their basic, minimum operational needs. The Judicial Conference believes that the most critical problem confronting the judicial branch in the immediate years ahead will be its lack of adequate resources to cope with increasing caseloads and newly enacted statutory responsibilities. Part of this problem results from the sentencing guidelines system created by the Congress in the 1984 Sentencing Reform Act, which is beginning to exert a major impact on the federal judiciary and its various component units. The United States Sentencing Commission completed its task of promulgating guidelines in April 1987, and the guidelines took effect on November 1, 1987. Thereafter, approximately 160 judges held the guidelines to be unconstitutional, and many criminal sentences and appeals were held in abeyance until the Supreme Court found the Sentencing Reform Act and the guidelines to be constitutional

on January 18, 1989. See Mistretta v. United States ____ U.S. ___, 109 S. Ct. 647 (1989).

Accordingly, a substantial number of district courts have been utilizing the sentencing guidelines for only a few months. Neither the Judicial Conference nor the courts yet have a firm, empirical basis on which to assess the precise impact of guidelines on the federal court system. In anticipation of obvious additional workload responsibilities, however, the amended fiscal year 1989 supplemental appropriation submission of the judiciary includes a conservative request of $18.6 million and 507 staff positions to implement the new responsibilities imposed by the sentencing guidelines. The impact of the war on drugs will be to seriously aggravate an already serious situation.

More specifically, in 1984, 1986, and 1988, the Congress enacted additional statutory requirements regarding drug related crimes which impact upon the judiciary, especially upon its probation and pretrial services systems. These requirements include new bail and release provisions, mandatory sentences, special provisions for the revocation of probation and supervised release, a demonstration program for drug testing of arrested persons and defendants, and a federal death penalty with extensive court procedural requirements for persons who commit murder in connection with a drug transaction.

Moreover, as a result of the Anti-Drug Abuse Act of 1988, the Department of Justice has received enhanced resources for the prosecution of drug cases, enabling it to allocate 470 additional assistant United States attorney positions. Most of the new prosecutors have been allocated to districts which have heavy drug related caseloads and will be used to increase drug prosecutions and asset forfeitures. The District of Columbia, for example, has received an additional 30 assistant United States attorney positions, and the Southern District of Florida has received an additional 51 prosecutors. Justice Department sources have estimated anywhere from a 30 to 45 percent increase nationwide in prosecutions and other proceedings.

In addition, the Federal Bureau of Investigation has announced the creation of the following six target cities for special drug task forces: New York, Miami, Los Angeles, Houston, Chicago, and San Diego. As stated by FBI Director William S. Sessions, the six cities "were chosen because of their importance in the drug trafficking distribution system of these major cartels." These new drug task forces will also translate into significant increases in federal court proceedings.

While it is clear that the judiciary has been experiencing significant increases in its criminal workload for several years, and will continue to face additional caseload burdens as a result of increased drug prosecutions and asset forfeitures, the courts have not been granted the resources required to cope with the increases. The result has been a decade-long, systemic congestion of the federal courts' dockets by drug cases. Should the judiciary's resources continue to be held at their current inadequate levels, the gulf between workload and resources will widen at such disproportionate levels as to render a large part of the judiciary's workload unmanageable. Thus, the conduct of the "war on drugs" will be seriously hindered.

B. Methodology.

In preparation for this report, five of the United States district courts with the highest drug related caseloads were visited by the staff of the Administrative Office of the United States Courts, and interviews were conducted of district judges and magistrates, clerks of court, chief probation officers, chief pretrial services officers, United States attorneys, United States marshals, and public defenders. The districts visited were:

1. The Southern District of Florida.
2. The Southern District of Texas.
3. The Southern District of California.
4. The Southern District of New York.
5. The Eastern District of Virginia.

To assess the impact of drug related criminal caseload on the courts of appeals, the United States courts of appeals for the Fifth Circuit and the Eleventh Circuit were visited.

In addition, caseload statistics, case filings trends, and resource requirements of the entire federal judicial system were reviewed comprehensively, and discussions were conducted with officers and staff responsible for operating the various components of the judicial system.

II. RECENT DRUG RELATED LEGISLATION

Although modern federal drug enforcement commenced nearly 20 years ago with the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Pub. L. No. 91-513), the last five years have seen a quantum increase in drug related legislation. The recent legislative initiatives began with the Comprehensive Crime Control Act of 1984 and are most dramatically evidenced by passage of the sweeping Anti-Drug Abuse Act of 1988. This recent legislative activity has been accompanied by greater resources being made available for detection and prosecution of drug offenders and by what appears to be the increasing federalization of control over controlled substances. A summary of the more important pieces of new legislation will illustrate the scope of the new duties and additional burdens placed upon the courts by these legislative initiatives.

A. Comprehensive Crime Control Act of 1984 (Pub. L. No. 98-473, 98 Stat. 1837, title II)

1. Bail Reform Act.

The Bail Reform Act was enacted as chapter I of the Comprehensive Crime Control Act (hereinafter referred to as the CCCA) and provides, inter alia, for the pretrial detention of defendants who are found by a judicial officer to pose a danger to an individual or the community or to present a risk of flight. Although the Bail Reform Act does not deal only with drug offenders, the burden on the judiciary of this legislation is particularly heavy with respect to such defendants. The Congress recognized that drug defendants would be candidates for pretrial detention in disproportionate numbers. The issue was discussed in the report accompanying an earlier version of the bill (S. 1762) that was eventually passed as the CCCA.

> It is well known that drug trafficking is carried on to an unusual degree by persons engaged in continuing patterns of criminal activity. Persons charged with major drug felonies are often in the business of importing or distributing dangerous drugs, and thus, because of the nature of the criminal activity with which they are charged, they pose a significant risk of pretrial recidivism. Furthermore, the Committee received testimony that flight to avoid prosecution is particularly high among persons charged with major drug offenses. Because of the extremely lucrative nature of drug trafficking, and the fact that drug traffickers often have established substantial ties outside the United States from whence most dangerous drugs are

> imported into the country, these persons have both the resources and foreign contacts to escape to other countries with relative ease in order to avoid prosecution for offenses punishable by lengthy prison sentences. Even the prospect of forfeiture of bond in the hundreds of thousands of dollars has proven to be ineffective in assuring the appearance of major drug traffickers. In view of these factors, the Committee has provided in section 3142(e) that in a case in which there is probable cause to believe that the person has committed a grave drug offense, a rebuttable presumption arises that no condition or combination of conditions will reasonably assure the appearance of the person and the safety of the community.
>
> S. Rep. No. 98-225, 98th Cong. 1st Sess. 20 (Sept. 14, 1983).

Although the judicial interpretation of the rebuttable presumption provision is generally that it imposes only a burden of production on defendants, and that the burden of persuasion remains with the government, the presumption has required more time for bail hearings for drug defendants. See, e.g., United States v. Jessup, 757 F.2d 378, 381-84 (1st Cir. 1985).

In addition, those defendants accused of serious drug violations who are able to rebut the presumption and who are released often require greater supervision by pretrial services officers. Section 3142(c)(1)(B)(x) of title 18, United States Code, for example, lists among the conditions that may be imposed in connection with pretrial release, the condition that the defendant undergo treatment for drug or alcohol dependency. Many drug offenders have drug dependency.

2. Sentencing Reform Act.

Chapter II of the CCCA is the Sentencing Reform Act, which provides for sentencing guidelines. The guidelines apply to all federal offenses, but they pose special problems with respect to drug prosecutions. A few examples are sufficient to illustrate these problems.

The guidelines require the court to impose sentences within particular, narrow guideline ranges, which are determined by applying the guidelines promulgated by the United States Sentencing Commission to the defendant's criminal background and to certain facts regarding the offense of conviction. With respect to drug offenses, the guidelines provide, at section 2D1.1, that the application of

the guidelines depends upon the amount of drugs involved in the offense. Pursuant to section 1B1.3 of the guidelines, the amount of drugs to be used in applying the guidelines is determined by considering the total offense conduct and, therefore, is not limited to the amount of drugs involved in the count of conviction. Findings on these issues will naturally involve increased investigation by probation officers and increased court time in arriving at the relevant information necessary for guideline application.

Additionally, many drug offenses involve multiple defendants. The guidelines require at sections 3B1.1 and 3B1.2 that the role played by a particular defendant in the commission of an offense can increase or reduce the guideline offense level. Probation officers must investigate and courts must make findings on this issue. This particular guideline application has the potential to be one of the most difficult and time-consuming of the guidelines. In sum, drug defendant presentence investigations reports are among the most time consuming and the sentencing hearings for drug defendants are among the longest in the federal system.

The Sentencing Reform Act also established, for the first time, a statutory right of appeal for federal sentences. Section 3742 of title 18, United States Code, provides that either the United States or the defendant may appeal a sentence that is under or over, respectively, the applicable guideline range. In addition, either party may appeal an allegedly incorrect application of the guidelines. Although the provisions for appeal relate to all federal offenses, drug offenses tend to be more complicated and involve more serious sentences and can, therefore, be expected to comprise a disproportionate percentage of appeals taken from guideline sentences.

3. Comprehensive Forfeiture Act.

Chapter III of the CCCA strengthened and clarified criminal and civil forfeiture laws by providing for forfeiture of the profits and proceeds of racketeering (RICO) offenses, criminal forfeiture in all narcotics trafficking cases, expansion of procedures for freezing forfeitable property pending judicial proceedings, and forfeiture of land used to grow, store, and manufacture dangerous drugs. Expansion of the authority to cause forfeiture of property naturally leads to the increased use of forfeiture by the government and, concomitantly, increased judicial involvement and the expenditure of time by clerks of court as well as judicial officers. Significantly, chapter III also raised the value of property that could be forfeited through default proceedings from $10,000 to $100,000.

4. 1984 Drug Enforcement Amendments.

The 1984 CCCA made a number of changes in the federal drug laws. One of the most significant was the increased reliance on the kinds and quantities of drugs to determine sentences for title 21 offenses. This has resulted in the complication of the trial and sentencing, depending on whether the court has determined that the amount of drugs is an element of the offense or a sentencing enhancement. Compare United States v. Gibbs, 813 F.2d 596 (3d Cir.) cert. denied, ____ U.S. ____, 108 S. Ct. 83 (1987), with United States v. Alvarez, 735 F.2d 461 (11th Cir. 1984).

5. Currency and Foreign Transactions Reporting Act Amendments.

Chapter IX of the 1984 CCCA included a number of amendments to improve the effectiveness of government efforts to detect and deter the laundering of money associated with drug trafficking and other offenses. This too has translated into increased prosecutions, usually of complicated cases.

B. Criminal Fine Enforcement Act of 1984 (Pub. L. No. 98-596,98 Stat. 3134

The Criminal Fine Enforcement Act raised the fine levels for all federal offenses, including drug offenses, provided statutory guidelines regarding the imposition of fines, strengthened existing methods and added additional methods by which United States attorneys could collect fines, established interest rates on unpaid fines, and required that judgments in criminal cases include certain information regarding fines. The new maximum fine levels in the case of a felony were based on the highest of: (a) $250,000, (b) twice the pecuniary gain from the offense, or (c) twice the pecuniary loss to the victim. In drug cases, the pecuniary gain is frequently very high, making it important that such amount be calculated with precision in order to arrive at the highest maximum fine level.

These requirements added burdens to the district court clerks' offices, probation offices, and judicial officers in drug cases as well as other criminal cases. The burden on probation officers has been particularly significant. Pursuant to 18 U.S.C. § 3572 the defendant's income, earning capacity, and financial resources must be considered by the court in determining whether to impose a fine and in what amount. Accordingly, probation officers have been required to conduct more thorough financial investigations in all cases. As has been noted, a large proportion of these are drug cases.

The provisions of the 1984 Act were repealed and subsequently replaced by the Criminal Fine Improvements Act of 1987 (Pub. L. No. 100-185, 101 Stat. 1279 (Dec. 11, 1987)). Under the 1987 legislation the court must still consider the financial condition of the defendant pursuant to 18 U.S.C. § 3572, and maximum fine levels are still determined in part by reference to gain or loss pursuant to 18 U.S.C. § 3571. The 1987 legislation, however, also created substantial additional clerical, financial, and record-keeping burdens for the judiciary by transferring responsibility for the receipt of criminal fines and assessments from the Department of Justice to the district courts. The judiciary has requested $2.8 million in start-up costs to implement this new statutory responsibility and to develop an efficient, nationwide automated fine collection system that will result in higher collections of criminal fines, assessments, and restitution; greater financial accountability; and regular follow-up reports to probation officers and the Department of Justice.

To date, no funds have been provided by the Congress for the judiciary to implement the new system. It is hoped, however, that a portion of the necessary funds will be obtained through the Crime Victims Fund. If adequate funding is provided for the automated system, fine collections should increase materially.

C. Anti-Drug Abuse Act of 1986
(Pub. L. No. 99-570, 100 Stat. 3207)

This omnibus legislation established new federal drug enforcement initiatives, such as customs enforcement and transportation safety, that impact upon the courts as prosecutions are brought. The statute also made a number of changes that affect drug prosecutions generally by increasing most penalties for drug offenses and by adding mandatory minimum penalties. The mandatory minimums are based on the kinds and quantities of the drugs involved, requiring investigations by probation officers and findings by courts with respect to these facts. Judges try to be especially careful when dealing with mandatory minimum sentences, a factor translating into an increased expenditure of judicial time.

The Act added section 3553(e) to title 18, United States Code, authorizing a court, upon motion of the government, to impose a sentence below the level established by the statute as a minimum sentence, to reflect a defendant's substantial assistance to the government in investigating and prosecuting other cases. Since, with only a few exceptions, mandatory minimum sentences appear in drug statutes, most of these motions will be processed in drug cases.

In amending the penalties of title 21 drug offenses, the Congress in most instances prescribed that terms of supervised release be imposed in connection with those offenses. These amendments were generally effective for offenses occurring after October 27, 1986. Since supervised release terms are sentencing options applicable to Sentencing Reform Act cases and not effective until November 1, 1987, courts were faced with the dilemma of imposing a type of sentence not yet effective or violating the plain language of the Act. Many courts resolved the dilemma by imposing terms of supervised release. Recently four circuits have held that special parole terms, which were effective for many title 21 offenses prior to November 1, 1987, should have been imposed in cases subject to the amendments of the Anti-Drug Abuse Act of 1986. See United States v. Portillo, 863 F.2d 25 (8th Cir. 1988); United States v. Whitehead, 849 F.2d 849 (4th Cir. 1988); United States v. Smith, 840 F.2d 886 (11th Cir.) cert. denied U.S. ___, 109 S. Ct. 154 (1988), and United States v. Byrd, 837 F.2d 179 (5th Cir. 1988). Cf. United States v. Meyers, 847 F.2d 1408, 1414-15 (9th Cir. 1988). These decisions require hundreds of resentencings in those circuits and other locations where district courts have chosen to follow the decisions. This ambiguity in the Act will, therefore, consume many hours of court time to resolve.

The Act also created a number of new offenses, including juvenile drug trafficking and distribution to pregnant women (21 U.S.C. § 845b), and sale and transportation of drug paraphernalia (21 U.S.C. § 857). Subtitle D of Title I of the Act again strengthened the ability of the government to seize property involved in illegal drug activity. The authority of the Department of Justice to use its Assets Forfeiture Fund to assist it in obtaining forfeitures was increased.

Subtitle E added penalties for drug analogues, the so-called "designer drugs." Subtitle H added new federal money laundering provisions that criminalized virtually any dealings with the proceeds of a wide range of unlawful activities and certain monetary transactions in criminally derived property. A number of other amendments were made to strengthen enforcement of money laundering offenses. Subtitle I amended the Armed Career Criminal Act to include serious drug offenses in the category of offenses covered thereby. The effect of this provision was to enhance a sentence for a federal weapons offense in a conviction involving a serious drug offense. Finally, the authority of the Administrative Office of the United States Courts to contract for programs for drug dependency was expanded to allow for treatment of alcohol dependency. All these provisions have had a judicial impact.

D. Anti-Drug Abuse Act of 1988
(Pub. L. No. 100-690, 102 Stat. 4181

The most recent legislation impacting on the burden of drug enforcement by the courts is the Anti-Drug Abuse Act of 1988. Title 10 of that Act provided for significant resources for the Department of Justice to prosecute drug offenses including:

- $39 million appropriated for salaries and expenses of United States attorneys,
- $30 million from receipts from the assets forfeiture fund for United States attorneys,
- $15 million appropriated to the Federal Bureau of Investigation,
- $30 million appropriated to the Drug Enforcement Administration, and
- $26.2 million appropriated to the Immigration and Naturalization Service.

These additional resources translate into additional prosecutions, which will impact further on the workload of the federal courts. The Act also authorized significant additional amounts to be appropriated for drug enforcement purposes in subtitle D of title VI.

Section 7304 of the Act requires the establishment by the Director of the Administrative Office of a demonstration program of mandatory drug testing of criminal defendants in eight judicial districts, to be selected by the Judicial Conference. The program requires regular drug testing of: (a) defendants in criminal cases prior to their initial appearance before a judicial officer, (b) probationers, and (c) supervised releasees. Despite significant start-up costs in addition to costs for sustaining the two-year program, no funding was specifically provided.

Title VII of the Act creates a federal death penalty for persons who commit murder in connection with a drug transaction. There are extensive procedural requirements, including notice that the government will seek the death penalty, a hearing before a court or jury, prescribed factors to be considered at the hearing, and judicial findings. There are also special provisions for counsel for such defendants, including counsel for collateral attacks on the sentence. The court is permitted to fix the compensation to be paid for attorneys, investigators and experts "notwith-

standing the rates and maximum limits generally applicable to criminal cases and any other provision of law to the contrary." Section 7001(b). Although it is unknown how many death penalty cases will be prosecuted, any use of this section is likely to require extensive judicial resources.

Section 5301 of the Act provides that courts may, in their discretion, order that individuals convicted of federal or state offenses of distributing controlled substances be ineligible for certain federal benefits. This provision, applies to convictions occurring after September 1, 1989. Certain public benefits are exempted from the ineligibility provisions. Probation officers and courts will be required to factor these sentencing options into all drug transaction offenses, and to monitor and enforce this provision.

Section 6486 provides for an entirely new penalty for possession of controlled substances. The penalty may be assessed against any individual who has not been convicted previously of an offense relating to controlled substances and who knowingly possesses a controlled substance in an amount the Attorney General specifies by regulation as a "personal use amount." The civil penalty, which may be up to $10,000, is assessed administratively. Within 30 days after the administrative order, however, the individual may bring a civil action in the district court to challenge the order. The proceeding before the district court is de novo and includes the right to a jury trial, right to counsel, and right of confrontation. A reasonable doubt standard is specified. In addition, the Attorney General may commence a civil action to recover an amount assessed, including interest. The impact on the workload of the courts of this provision will, naturally, depend on the extent to which the penalty is utilized by the Attorney General, but it could be considerable.

Section 7303 of the Act requires that any defendant who receives a sentence of probation must receive a mandatory condition that the defendant not illegally possess controlled substances. It also provides that a violation of such condition shall result in a mandatory revocation of probation. Upon revocation, the court must "sentence the defendant to not less than one-third of the original sentence." The provision also applies to supervised release and is to apply with respect to persons whose probation or supervised release begins after December 31, 1988. This provision naturally increases the supervisory responsibility of probation officers and will have an impact on the workload of the court in conducting revocation proceedings.

Section 6477 potentially adds to the duties of magistrates by amending the Assimilative Crimes Act, 18

U.S.C. § 13. The amendment provides that the penalties that may be imposed for operating a motor vehicle under the influence of a drug or alcohol include any penalty which may be imposed by the state through either judicial or administrative action. Any limitation on the right or privilege to operate a motor vehicle imposed by the federal court, however, would be limited to the special maritime and territorial jurisdiction of the United States. The amendment also provides that anyone operating a motor vehicle within the special maritime or territorial jurisdiction of the United States consents to tests of blood, breath, or urine to determine the presence of drugs or alcohol. A refusal to submit to such test will result in a revocation of the privilege of operating a motor vehicle within the special maritime or territorial jurisdiction of the United States for a period of one year.

Section 6470 amends the conspiracy provisions of title 21 by providing that an individual convicted of a drug conspiracy "shall be subject to the same penalties as" in the underlying offense. This will make defendants charged with conspiracy under 21 U.S.C. §§ 846 and 963 subject to terms of supervised release and mandatory minimum penalties. It is presently a practice in some districts for a defendant to plead to a conspiracy count to avoid a mandatory minimum penalty to which the defendant would be subject if convicted of the substantive offense. The amendments to the drug conspiracy sections could result in more trials, since this means of avoidance of mandatory minimum penalties is eliminated.

The Act, in addition, amends a number of federal drug enforcement statutes too numerous to list in this report. Some of these, such as the addition of precursor chemicals to the list of controlled substances, could result in a significant number of prosecutions. Others may have less impact. This discussion is intended merely to give an idea of the scope of the recent legislation that has impacted upon the courts and will impact even more heavily as prosecutions are brought under the new provisions.

III. CASELOAD OF THE FEDERAL COURTS

A. Total Current Caseload.

The total number of cases initiated in the United States district courts has grown by almost 44 percent during the 1980's. Civil filings have fluctuated throughout that time, but have increased by 42 percent. In 1988 there were nearly 240,000 civil cases filed.

The criminal caseload has grown more consistently during the 1980's, having increased every year. Overall, during the nine-year period, criminal case filings have increased from 27,910 in 1980 to 43,503 in 1988, a rise of more than 56 percent.

Table 1

Cases Filed in the United States District Courts

Year*	Civil	Criminal	Total
1980	168,789	27,910	196,699
1981	180,576	30,353	210,929
1982	206,193	31,765	237,958
1983	241,842	34,928	276,770
1984	261,485	35,911	297,396
1985	273,670	38,546	312,216
1986	254,828	40,427	295,255
1987	239,185	42,156	281,341
1988	239,634	43,503	283,137

* Figures are for the years ended June 30th

B. Drug Caseload.

During the 1980's there has been a significant increase in the number of drug prosecutions, a rise which is much more dramatic than for any other type of case in the federal courts. While the number of criminal cases filed in the district courts has grown by 56 percent since 1980, the number of drug cases has increased by 229 percent. Cases involving marihuana are up almost 400 percent; those related to non-prescription drugs, such as heroin and cocaine, have increased by 260 percent; and cases involving prescription drugs are up 25 percent.

Table 2

Drug Cases Filed in the United States District Courts

Year*	Total Criminal Cases	Total Drug Cases	Marihuana	Non-Presc. Drugs	Pre-scription Drugs
1980	27,910	3,127	677	1,653	797
1981	30,353	3,723	1,192	1,788	743
1982	31,765	4,218	1,676	1,703	839
1983	34,928	5,088	2,031	2,166	891
1984	35,911	5,606	2,105	2,742	759
1985	38,546	6,690	2,218	3,569	903
1986	40,427	7,893	2,440	4,679	774
1987	42,156	8,870	2,950	5,085	835
1988	43,503	10,291	3,342	5,953	996

* Figures are for the years ended June 30th

Drug cases also represent a larger portion of the criminal caseload than ever before. In 1980, drug related prosecutions accounted for only 11 percent of all criminal cases filed in district courts. By 1988 the percentage had more than doubled to 24 percent.

The increase in the number of drug cases, while dramatic, simply does not provide a complete picture of their impact on the federal courts. Many of the cases are multiple defendant cases which consume substantial judicial resources far in excess of the proportion of the total caseload represented by drug cases. During the 1980's there was an average of more than two defendants in every drug case filed in the district courts. It is not uncommon for these cases, especially those related to importation and distribution, to have in excess of 10 defendants per case. By comparison, the average number of defendants for each non-drug case has been much lower, approximately 1.2 during the 1980's.

The amount of judicial time devoted to drug cases has increased substantially. In 1980, drug trials represented approximately 26 percent of all criminal trials. Since that time, the number of trials related to drug cases has risen by 90 percent and now represents more than 44 percent of all criminal trials. Judicial officers are also devoting more time to other proceedings related to drug cases, such as detention hearings and motions to suppress evidence.

Table 3

Criminal Trials in the United States District Courts

Year*	Total Trials	Drug Trials	Other Trials
1980	6,634	1,709	4,925
1981	6,542	1,799	4,743
1982	6,644	1,756	4,888
1983	6,656	1,958	4,698
1984	6,456	2,087	4,369
1985	6,475	2,305	4,170
1986	6,966	2,530	4,436
1987	6,823	2,734	4,089
1988	7,365	3,254	4,111

In 1988 pretrial services offices of the district courts reported that detention hearings were held for 10,256 defendants. Almost 60 percent of those hearings involved defendants charged with drug related offenses.

Drug related activity has also had an impact on the United States courts of appeals. Since 1980 appeals in drug cases have increased by 117 percent. Just nine years ago drug cases accounted for 31 percent of all criminal appeals. In 1988, however, nearly 50 percent of all criminal appeals were drug cases. The appeal rate for non-drug criminal cases has been 8-10 percent throughout the 1980's while the appeal rate in drug cases has been double that number. In 1988 alone, criminal appeals to the courts of appeals rose by approximately 750 cases. Nearly 90 percent of that increase came from drug cases.

Table 4

Criminal Appeals to the United States Courts of Appeals

Year*	Total Appeals	Drug Case Appeals	Other Appeals
1980	4,405	1,369	3,036
1981	4,377	1,583	2,794
1982	4,767	1,605	3,162
1983	4,790	1,774	3,016
1984	4,881	1,970	2,911
1985	4,989	2,063	2,926
1986	5,134	2,134	3,000
1987	5,260	2,254	3,006
1988	6,012	2,977	3,035

* Figures are for years ended June 30th

C. Forecasts of Future Drug Caseload.

Over the last few months of 1988, criminal case filings in the district courts began to moderate. This trend, coupled with the absence of any significant increase in the number of assistant United States attorney positions at that time, led the Administrative Office of the United States Courts to forecast increases of only 1,000 criminal cases in the district courts for each of the next two years. Accordingly, the judiciary's budget requests for the fiscal years 1989 and 1990 were based on this forecast of a very modest increase in new criminal cases.

The forecast, however, predated the 1988 drug legislation and the attendant increases in Department of Justice prosecution resources. While it is impossible to forecast the precise impact that the additional resources will exert on the courts, there can be no doubt that there will in fact be a significant increase in the number of criminal cases filed in the courts and a corresponding increase in drug related trials and in the diversion of judicial resources to drug cases.

By 1991 the number of drug case filings is expected to increase by a minimum of 20 percent over the 1988 level. This would result in approximately 12,700 drug cases filed in 1991 with almost 24,000 defendants, compared to 10,600 drug cases and 20,000 defendants in 1988. There is, however, a strong possibility that drug related cases will increase by as much as 50 percent over the next two years due to the recent legislation and additional prosecution resources devoted to the war on drugs. Should this 50 percent increase materialize, the district courts will face a drug caseload of nearly 16,000 cases filed in 1991 with almost 30,000 defendants.

The resource estimates which follow in this report are based upon three alternate projections of the increased drug prosecutions likely to result from the Anti-Drug Abuse Acts of 1986 and 1988:

(1) a low range projection of a 20 percent increase in drug cases and defendants,

(2) a medium range projection of an increase of 35 percent; and

(3) a high range increase of 50 percent.

Table 5

Projected Number of Drug Cases, Defendants, and Trials
in the United States District Courts
With Three Scenarios For Future Growth

Fiscal Year*	Drug Cases	Drug Defendants	Drug Trials
Low Range Projection			
1989	11,900	22,000	3,800
1990	12,300	23,000	4,000
1991	12,700	23,900	4,200
1992	12,700	23,900	4,200
Medium Range Projection			
1989	11,900	22,000	3,800
1990	13,100	24,400	4,100
1991	14,300	26,800	4,400
1992	14,300	26,800	4,400
High Range Projection			
1989	11,900	22,000	3,800
1990	13,900	25,900	4,400
1991	15,900	29,800	4,900
1992	15,900	29,800	4,900

* Figures are for years ended September 30th

IV. CURRENT BUDGET SHORTFALL OF THE JUDICIARY

The judiciary has been provided with seriously deficient levels of appropriated funds, and it is presently unable to meet its minimal operational needs. The inadequate funding levels have diluted the judiciary's ability to respond to those who properly seek redress in the courts and directly impair the rights of citizens. The duty of the judiciary is unchanging -- it is ever required to render timely justice to all who seek it.

The workload itself, however, is both uncontrollable and constantly expanding -- uncontrollable because the doors of the nation's courthouse must always be open to those seeking adjudication of their rights, and constantly expanding as those rights expand and as citizens elect to exercise them. The federal courts have no control over either the number or the nature of cases filed. They must accept all filings and render justice to all who come before them.

The judiciary is about one-third of a billion dollars short of the appropriated funds it will need in fiscal year 1990 to handle its existing caseload. The judiciary, however, is very sensitive to the funding restraints facing the appropriations committees of the Congress during a time of deficit reduction. Therefore, the judiciary's budget request to the Congress for the fiscal year 1990 was reduced voluntarily by more than $80 million. Thus, the pending budget submissions, except for inflation and certain other mandatory adjustments, limit funding to about the same level as that requested in fiscal year 1989. The result is a bare-bones increase of $269 million, or 18.6 percent over the fiscal year 1989 enacted budget.

The following table sets forth the difference between the appropriated funds currently available to the judiciary and the minimum necessary to maintain court operations in fiscal year 1990.

Table 6

Judiciary's Current Budget Shortfall

	Appropriated F.Y. 1989	Needed F.Y. 1990	Shortfall
Courts of Appeals and District Courts:			
Salaries & Expenses	$1,170,000,000	$1,358,274,000	$188,274,000
Defender Services	110,100,000	155,260,000	45,160,000
Juror Services	44,135,000	51,000,000	6,865,000
Court Security	41,423,000	56,490,000	15,067,000
Other Courts	34,332,000	40,435,000	6,103,000
Other Units	49,983,000	58,278,000	8,295,000
Total	$1,449,973,000	$1,719,737,000	**$269,764,000**

Significant and serious staffing shortages presently plague the entire federal court system due to newly enacted legislation, increased caseloads, and constantly inadequate budgets. The following additional positions have been requested in the reduced fiscal year 1990 judiciary budget to cope with current caseloads:

Table 7

Current Staffing Shortfall in the Judiciary

Judicial Officers and Staff	Positions Needed
Bankruptcy judges (7 judges + staff)	28
Senior judge staff	47
Magistrates (13 magistrates + staff)	57

Table 7 (continued)

Current Staffing Shortfall in the Judiciary

Support Offices

Circuit executives and staff attorneys	27
Clerks office	885
Probation and pretrial services offices	859
(For regular workload)	(379)
(To implement the sentencing guidelines)	(480)
Librarians	78
Federal Public Defenders	22
Court recording equipment operators	126
Other courts and units	38
Total Current Shortfall of Positions	**2,167**

Continued withholding of necessary funding will ensure delays in the processing of cases, including drug cases, and prevent court staff from complying adequately with recently imposed statutory requirements. Backlogs will mount, and services to the bar, litigants, and the public will be reduced. If the courts attempt to handle the increased caseloads and document processing with current staff levels, they will have to reduce public hours and access to the courts. The probation system, in particular, will continue to deteriorate, without sufficient staff to supervise defendants released in the community and without sufficient funds to provide urine testing and drug counseling services for drug dependent offenders.

V. IMPACT OF NEW DRUG LEGISLATION ON THE JUDICIARY

A. Cost of the New Drug Initiatives.

Before the courts can handle additional drug related cases effectively, the judiciary's base appropriations must be funded by an additional $269 million and 2,167 positions to enable them to cope with current case filings. The impact of the recent Congressional drug initiatives and prosecution resources on the judiciary's appropriations must be measured in addition to the current shortfall.

Based on the low-range, medium range, and high-range forecasts of increased drug cases set forth in Part III of this report, the additional annual impact in current dollars of the war on drugs on the judiciary's appropriations, exclusive of additional article III judgeships and staff for article III judges, can be calculated as follows:

Table 8

Cost to the Judiciary of Additional Drug Cases

Low Range Forecast	$37,312,000
Medium Range Forecast	$64,363,200
High Range Forecast	$92,347,200

The following tables break down these additional costs by individual components of the judiciary, not including the costs of needed additional judgeships:

Table 9

Low-Range Forecast of Additional Drug Cases
(2,100 additional cases, 4,000 defendants)

	Positions	Costs
Magistrates and staff	32	$2,400,000
Probation/Pretrial Services	248	9,440,000
Pretrial Social Services	--	1,268,000
Substance Abuse Treatment Program	--	3,432,000
Deputy clerks, district courts	20	600,000
Deputy clerks, courts of appeals	10	292,000
Interpreter Services	1.2	272,000
Fees of Jurors	--	3,800,000
Defender Services:	20	12,920,000
(Panel Attorneys)	(--)	(11,228,000)
(Federal Public Defenders)	(20)	(1,132,000)
(Community Defender Organizations [grants])	[10]	(560,000)
Court Security [contracts]	[60]	1,992,000
Administrative Office	10	552,000
Federal Judicial Center	1.2	344,000
Total	**342.4**	**$37,312,000**

Table 10

Medium-Range Forecast of Additional Drug Cases
(3,700 additional cases, 6,900 defendants)

	Positions	Costs
Magistrates and staff	55.2	$4,140,000
Probation/Pretrial Services	427.8	16,284,000
Pretrial Social Services	--	2,187,300
Substance Abuse Treatment Program	--	5,920,200
Deputy clerks, district courts	34.5	1,035,000
Deputy clerks, courts of appeals	17.25	503,700
Interpreter Services	2	469,200
Fees of Jurors	--	6,555,000
Defender Services	34.5	22,287,000
(Panel Attorneys)	(--)	(19,368,300)
(Federal Public Defenders)	(34.5)	(1,952,700)
(Community Defender Organizations [grants])	[17.25]	(966,000)
Court Security [contracts]	[103.5]	3,436,200
Administrative Office	17.25	952,200
Federal Judicial Center	2	593,400
Total	**590.4**	**$64,363,200**

Table 11

High-Range Forecast of Additional Drug Cases
(5,300 additional cases, 9,900 defendants)

	Positions	Costs
Magistrates and staff	79	$ 5,940,000
Probation/Pretrial Services	613.8	23,364,000
Pretrial Social Services	--	3,138,300
Substance Abuse Treatment Program	--	8,494,200
Deputy clerks, district courts	49.5	1,485,000
Deputy clerks, courts of appeals	24.75	722,700
Interpreter Services	3	673,200
Fees of Jurors	--	9,405,000
Defender Services	49.5	31,977,000
(Panel Attorneys)	(--)	(27,789,300)
(Federal Public Defenders)	(49.5)	(2,801,700)
(Community Defender Organizations [grants])	[24.8]	(1,386,000)
Court Security [contract]	[148.5]	4,930,200
Administrative Office	24.95	1,366,200
Federal Judicial Center	3	851,400
Total	**847.5**	**$92,347,200**

The following sections of this report describe in greater detail the impact of drug related criminal activity on the various component units of the judiciary.

B. Judgeships.

Increases in the number of article III judgeships have not kept pace with the increased workload of the federal courts. Every two years the Judicial Conference surveys the need for additional district and circuit judgeships based on the current workload of the courts. In response to the biennial surveys of 1980 and 1982, the Congress enacted the Bankruptcy Amendments and Federal Judgeship Act of 1984 (Pub. L. No. 98-353), which authorized 85 new federal judgeships.

The 1984 biennial survey recommended 5 additional court of appeals judgeships, 26 permanent district judgeships and 16 temporary district judgeships, in addition to the 85 positions authorized in the 1984 legislation.

The 1986 biennial survey recommended 13 additional court of appeals judgeships, 40 permanent district judgeships and 16 temporary judgeships.

As a result of the 1988 biennial survey, the Judicial Conference has cumulated the current article III judgeship needs as follows:

1. 14 additional judgeships for the courts of appeals,

2. 59 additional judgeships (38 additional permanent judgeships and 21 temporary judgeships) for the district courts,

3. The conversion of 6 temporary district court judgeships to permanent judgeships,

4. The conversion of 4 roving judgeships which serve multiple districts to serve only one district, and

5. The conversion of one roving judgeship which serves three districts to serve only two districts.

The present number of article III judgeships authorized by statute is based on 1982 caseloads. The Congress has not yet acted on the 1984, 1986, or 1988 biennial judgeship surveys. Accordingly, judgeship requirements in some courts now lag at least seven years behind workload requirements. If we factor in the workload flowing from increased prosecutions and civil penalty proceedings resulting from the 1988

Anti-Drug Abuse Act, these requirements would appear to increase substantially.

Authorization of additional article III judgeships, however, is not the only manner in which the growing workload problems of the federal courts may be addressed. Alternatively, the Congress could restrict or eliminate federal court jurisdiction over certain categories of cases or create non-article III tribunals to review certain claims. Moreover, the Congress could take a more conservative approach in creating new federal causes of action. To this end, the Judicial Conference has recommended that the Congress consider the following steps to ameliorate the increasing caseloads of the federal courts:

1. Eliminate diversity of citizenship jurisdiction entirely. Alternatively, increase the $50,000 amount in controversy required for causes of action based on diversity jurisdiction or prohibit in-state plaintiffs from filing diversity cases.

2. Adopt a policy of not creating additional places of holding court or divisions unless there is a strong and compelling need.

3. Require a judicial impact statement for any legislation which has the potential to increase appreciably federal judicial workload.

The Judicial Conference has directed that future transmittals of judgeship recommendations to the Congress include detailed figures showing the savings that would occur through elimination of diversity jurisdiction in full or through elimination of in-state plaintiff diversity jurisdiction. The 1988 recommendations for additional district judgeships would be reduced as follows:

1. If diversity of citizenship jurisdiction were fully abolished, only 13 additional judgeships would be needed rather than 59 judgeships.

2. If in-state plaintiff diversity jurisdiction were eliminated, 38 additional judgeships would be needed rather than 59 judgeships.

The biennial judgeship surveys and the judiciary's recommendations to the Congress rely purely on current and historical workload. No caseload projections are used, and no account is taken of the impact of new legislation or future growth in case filings. Therefore, the 1988 drug

legislation has not been considered by the Judicial Conference in making its requests for additional judgeships.

Clearly, the additional drug related prosecutions anticipated as a result of the 1988 Anti-Drug Abuse Act and the enhancement of prosecution efforts will impact significantly on the workload of federal judges and may well warrant the authorization of additional article III judgeships. Judgeship surveys, however, are conducted on a case-by-case basis, following the submission of a specific request by the affected court and an analysis by the judicial council of the respective circuit, the Administrative Office, and the Judicial Resources Committee of the Judicial Conference.

At this point, the judiciary is not prepared to identify how many additional judgeships may be needed to deal with the war on drugs. A good deal more groundwork must be completed. Each court must first assess its own situation and decide whether additional judgeships are the appropriate response to increased drug prosecutions. When the additional judgeships are identified, they will be included in the 1990 biennial survey, unless it becomes necessary for the Judicial Conference to present them earlier to the Congress on an emergency basis, as may well happen.

Many judges have opined that it would be a mistake to focus primarily on additional judgeships, when greater immediate relief could be provided to the courts by obtaining adequate resources for magistrates, clerks, probation officers, pretrial services officers, court reporters, court interpreters and court security officers.

Another source of immediate relief for the fight against drugs would be the filling of the current, long-standing judgeship vacancies that have plagued several courts. Among the courts contacted for this study, the court of appeals for the Fifth Circuit, for example, explained that it has not had its full complement of judges on duty at any one time since 1981. The Southern District of New York has four judicial vacancies, one of which has been vacant for almost two years. The Southern District of Florida has one unfilled vacancy. Moreover, it has an additional special problem with a judge who has been impeached. The judge is currently hearing no cases, but he remains as a judge in regular active service, thereby encumbering a position.

C. Magistrates.

Magistrates are in the forefront of the war on drugs. They are the first judicial officers to feel the impact of the increased anti-drug activity. Magistrates are involved from the initial issuance of search and arrest warrants to

the conduct of initial appearances, detention hearings, bail reviews, arraignments, pretrial motions and conferences, and misdemeanor trials.

Virtually all magistrates are responsible for handling these criminal duties for their respective district courts. The increasing drug caseloads of the courts over the last several years have already been a part of the justification for the establishment of several new magistrate positions. The further increases in prosecutions expected to flow from the war on drugs will have a serious impact on the workload of magistrates generally and should result in the need for additional magistrate positions.

As law enforcement and prosecutorial efforts move more cases into the federal courts, existing magistrate resources will be devoted more and more to criminal duties. This in turn will result in a decrease in the support that magistrates can give to judges in civil cases. This diminution of support in civil matters comes at a time when judges will be needing more, not less, assistance because of their involvement in drug trials.

The authorization and funding of additional magistrate positions could provide the most immediate judicial response to the drug emergency in the federal courts. By the very nature of the authorization and appointment process, new magistrates are a more readily available resource than new judges. They cost considerably less to establish and maintain, and they are appointed for eight-year terms and not for life. Although article III judges are indispensable for the trial of felony drug cases, the increase in the number of new judgeships can be held to a minimum by utilizing magistrates for all but the constitutional duties which must be performed by judges.

Even with the quicker, less costly alternative of new magistrate positions, the response time in adding these judicial officers is inordinately slow. From the time a court experiences the need for, and requests, a new magistrate position, it takes from one to two years before the judicial officer can be appointed. In years of budget uncertainty and continuing funding resolutions, the time between initial request and appointment can increase an additional three to six months.

The long response time between need and delivery of the new magistrate positions can be pared down substantially through a change in funding procedures to permit the Judicial Conference to seek advance funding for a reasonable number of new magistrates prior to the actual establishment of specific positions through the normal survey process. Appropriate

Congressional oversight would still be required before appointments could be made. This quicker, more flexible reaction is important to the successful accomplishment of the judiciary's response to the drug crisis.

Thirteen new full-time magistrate positions are included in the judiciary's 1990 budget request. These positions are a high priority need of the courts and should be funded as promptly as possible.

D. Probation System.

1. Introduction

No area is impacted more by drug related criminal activity than the federal probation system. Probation offices are charged with the responsibility of providing comprehensive reports to the courts on each criminal offender prior to sentencing and of providing meaningful and adequate supervision of offenders on probation, parole or supervised release, while monitoring and enforcing the conditions of release.

There exists no possibility that the federal probation system can adequately fulfill its statutory responsibilities with existing resources. The increase in drug related activities affects it in two major areas. As discussed throughout this report, the increase in prosecution of drug offenses increases the court's workload generally and also adds complicated cases with multiple defendants to the mix, thus increasing the investigation and report-writing time devoted to presentence investigation reports. Full implementation of the sentencing guidelines has exacerbated this problem. Second, as discussed below, there has been a substantial increase in the number of defendants who require drug treatment, especially since passage of the Anti-Drug Abuse Act of 1986. Supervision and/or monitoring of that treatment is the responsibility of the probation service.

2. Probation Offices

As has already been explained, the 1988 Anti-Drug Abuse Act mostly increases the presentence investigation report burden on the federal probation system. The new sentencing guidelines have added complexity to the presentence and post-sentence prepared by probation officers, requiring more investigative time for each offender's report, and drug prosecutions tend to involve complicated conspiracies with multiple defendants. Calculating correct guideline scores is considerably more difficult for such cases.

In addition, there has been a steady increase in the number of persons under supervision by the probation system since 1980, as shown in the following table.

Table 12
Persons under Supervision of the Federal Probation System
1980-1988

Fiscal Year	Persons Under Supervision
1980	63,361
1981	58,494
1982	59,009
1983	60,180
1984	61,602
1985	64,841
1986	68,702
1987	73,084
1988	76,226

This upward trend in the number of persons under supervision will continue for the foreseeable future. The complexity of supervision will also increase as probation officers are required to address new types of offenders such as protected witnesses, motorcycle, street and prison gang members, persons with infectious diseases, sophisticated drug traffickers and others.

In recent years, the Congress has passed numerous acts having a significant workload impact on the probation system, including:

- The Contract Services for Drug Dependent Federal Offenders Act of 1978
- The Pretrial Services Act of 1982
- The Victim and Witness Protection Act of 1982
- The Comprehensive Crime Control Act of 1984
- The Sentencing Reform Act of 1984
- The Bail Reform Act of 1984
- The Criminal Fine Enforcement Act of 1984
- The Anti-Drug Abuse Act of 1986
- The Drug and Alcohol Dependent Offenders Treatment Act of 1986

- The Sentencing Act of 1987
- The Criminal Fine Improvements Act of 1987
- The Anti-Drug Abuse Act of 1988

The additional duties imposed by the wave of legislation enacted over the last decade have not been matched by a comparable increase in resources. Simply put, the federal probation system does not have nearly enough officers and clerical personnel to comply with all the responsibilities imposed by recent legislation. An additional 859 positions are needed just to cope with current caseloads and the impact of the sentencing guidelines. Moreover, the probation and pretrial services systems have lagged far behind in receiving automation support.

The Judicial Conference is concerned about deterioration of supervision of probationers, parolees, and supervised releasees, creating potential risks to the security of the public. As a portent of things to come, the number of persons under supervision increased by nearly 1,000 in each of the last two quarters in 1988, even though sentencing in many cases was held in abeyance pending a decision by the Supreme Court on the constitutionality of the sentencing guidelines. Now that the Supreme Court has upheld the sentencing guidelines, the number of supervision cases coming to the probation system from the courts will surely increase further.

The burden of personnel shortages, unfortunately, falls primarily on the community supervision programs of the probation system. The highest priority is assigned to the preparation of presentence reports, which must be submitted without unreasonable delay to enable the court to impose sentence on convicted defendants. Indirectly, collateral investigations must be completed under the same strict time frames because those reports assist in the sentencing process. Whatever balance of staff time remains is available for community supervision duties.

In addition to the concern that the quality of services provided to the courts and the public cannot be maintained, the Judicial Conference is concerned that a rare opportunity will be lost to expand effective and economical services into a new area which will substantially benefit the public. Advances in electronic monitoring technology provide an opportunity to establish intensive supervision programs for offenders residing in the community without exposing the public to significantly greater risk than the present system

of incarceration and halfway houses. Pilot programs in the Southern District of Florida and the Central District of California, and the experience of several state systems suggest the degree of control over offenders in intensive supervision programs supported by electronic monitoring is at least as effective as placement of offenders in halfway houses. The cost savings to the public are substantial, and the offenders are able to work, pay taxes, and support their dependents.

In the Anti-Drug Abuse Act of 1988 the Congress authorized home confinement in the supervision of federal offenders enforced by electronic monitoring. The probation system is anxious to implement these programs, but it must have the personnel resources necessary to support these labor-intensive programs. Without adequate personnel, the close supervision of offenders required will not be possible, and the credibility of the programs will suffer with the courts and the public.

Finally, accomplishment of the mission of the probation system would be aided by a relatively small investment in office automation equipment and software programs. Unfortunately, a continuing shortage of appropriated funds has left the probation system with very little automation equipment. The clerks of the probation system have the highest document production demands in the judiciary. For the year ended September 30, 1988, they produced 55,135 presentence and violation reports for submission to the courts and the Parole Commission. These multiple-page documents are subjected to close review and editing before they are distributed to the court and counsel. Thereafter, they may be reviewed based on challenges to the factual content or relevant omissions identified by others. Estimates are that as many as half the presentence investigation reports have to be revised. Great production demands are being placed on the employees who have the least technically adequate equipment in the judiciary. It takes collectively thousands more hours to make changes on manual typewriters. Word processors are essential, yet the system presently cannot afford them for large numbers of officers.

Field managers must be held accountable for the efficiency of probation operations, but those managers have not been provided with even the basic information systems necessary to carry out that responsibility. The larger probation offices have thousands of offenders under supervision, many of whom must comply with multiple special conditions such as fines, restitution, and community service. Field managers currently monitor their officers' supervision activities without access to automated management information systems.

In probation offices there are a number of activities which lend themselves ideally to the advantages of personal computer programs. The drug aftercare program is a typical example. Offices are required to track urinalysis results, contract expenditures, and schedule urine tests. The 1988 Anti-Drug Abuse Act requires urinalysis testing both for pretrial and probation clients in eight demonstration districts. Annual reporting requirements to the Congress call for considerable accounting and tracking responsibilities, which can be facilitated by standardized database management programs running on personal computers. In addition, the United States Sentencing Commission, in conjunction with the Federal Judicial Center, has developed a sentencing guidelines program (ASSYST) which will aid in the calculation of the guidelines sentence, but which cannot be run without personal computers.

3. The Substance Abuse Treatment Program.

Prior to 1978 authority to contract for the treatment of drug addicted and dependent federal offenders rested with the Attorney General, while responsibility for the supervision of these offenders rested with the probation system. In 1978 Congress enacted the Contract Services For Drug Dependent Federal Offenders Act, Pub. L. No. 95-537 which transferred authority to contract for drug aftercare services from the Attorney General to the Director of the Administrative Office of the United States Courts. This action combined the fiscal and supervision responsibilities in one branch of government. The Director's contract authority was reauthorized in 1984 and again in 1986. Reauthorization will again be needed in 1989, and the Judicial Conference has asked the Congress to grant it.

In 1987 the Congress gave the Director of the Administrative Office the added authority to contract for treatment services for alcohol dependent federal offenders. With the addition of alcohol abuse, the aftercare program became a multi-dimensional substance abuse treatment and urine surveillance program, designated as the Substance Abuse Treatment Program for Federal Defendants and Offenders.

The basic purpose of the Substance Abuse Treatment Program is to provide a treatment alternative for offenders under the jurisdiction of the court and the Parole Commission. Through close supervision of offenders and quick intervention in response to drug and alcohol abuse, the Substance Abuse Treatment Program is a useful tool for the probation officer to use to protect the community. The program is an effective and economical alternative to incarceration.

Data on individuals interviewed as part of the pretrial services program show that in 1988 over 30 percent of all criminal defendants appearing in federal court admitted to current or recent (within two years) drug abuse problems. In over 8,000 cases reporting drug use, 29 percent reported poly-drug abuse, 7 percent reported heroin abuse, 21 percent reported cocaine abuse, and 18 percent reported alcohol abuse.

As a result of the increased prosecution of drug related offenses and a concerted effort by the Federal Judicial Center to train probation officers in the identification of drug abusers, the number of drug dependent offenders in treatment rose from 4,784 on June 30, 1980, to 12,247 on September 30, 1988, an increase of 156 percent. Alcohol abusers were added to the program in fiscal year 1987, and as of September 30, 1988, the number of alcohol abusing offenders in treatment totaled 3,198.

Treatment services are provided by probation staff, through available community programs that provide services at no additional cost to the government and by over 550 treatment programs under contract to the Administrative Office of the United States Courts. The contracts are awarded through a competitive process that involves hundreds of treatment facilities throughout the United States.

Services provided as part of the aftercare program include out-patient counseling, urine collection, vocational services, residential treatment, detoxification, psychotherapy, and other supportive services.

A study by the Federal Judicial Center of 1,000 clients in the aftercare program showed that:

- 70 percent of the clients had a documented history of heroin abuse prior to placement in the program.
- Over half the clients had previous drug treatment experiences.
- 22 percent had a current conviction for a violent crime.
- While 63 percent had at least one positive urine test result during the study, the overall percentage of persons with positive tests tended to decline after the first three months of program activity.

- The larger the number of client counseling sessions and probation office visits per month the smaller the likelihood of an arrest while the individual was in the program.

A two-year study of terminations from the aftercare program showed that:

- 50 percent were terminated from treatment without any revocation or reported criminal activity.
- 39 percent were terminated for continued drug use or failure to attend treatment sessions or for other technical reasons.
- 1.3 percent died while in treatment.
- 1.2 percent had violations pending when supervision terminated.
- **Only 8.4 percent were terminated for new criminal activity.**
- 50 percent of those terminated from treatment had completed 12 months without positive urine tests, had not been convicted of a criminal offense, had assumed social and economic responsibility and were not associating with persons using or trafficking in drugs.
- The fact that 39 percent were terminated for continued drug use highlights the role of the probation officer in the treatment process. Officers maintain close supervision of offenders in the aftercare program and remove from the community those offenders who choose not to remain drug free.

These statistics demonstrate the importance of the substance abuse treatment program to the war on drugs.

The competitive process has kept the overall cost of providing substance abuse treatment services low when compared to other federally funded treatment programs. For fiscal year 1987 the average cost per client in contract treatment programs and urine surveillance was approximately $1,600 per year. The total cost per client for all clients was approximately $782. The cost per client in contract treatment for fiscal year 1988 was $1,700 per year, while the total cost per client was approximately $840.

For fiscal year 1988 approximately $12,000,000 was expended for aftercare treatment and urinalysis. Of that total:

- 24 percent was spent for urinalysis
- 43 percent was spent for counseling
- 21 percent was spent for residential treatment
- 7 percent was spent for psychological services
- 2 percent was spent for vocational services
- 4 percent was spent for other treatment services

One factor contributing to the increasing costs of the treatment program is the growing number of identified cocaine abusers. Crack cocaine abuse increasingly appears to require the more expensive forms of inpatient treatment in order to achieve results.

The Administrative Office of the United States Courts contracts with two laboratories to provide national urinalysis services for the federal probation system. Since 1984 the following numbers of specimens have been submitted for testing:

- 1984: 156,000 Specimens
- 1985: 195,000 Specimens
- 1986: 230,000 Specimens
- 1987: 296,000 Specimens
- 1988: over 360,000 Specimens

Using state-of-the-art test methodologies the laboratories routinely test for 26 different drugs as part of a presumptive screen of all specimens. An additional group of ten drugs may be tested on request of the probation officer. All presumptive positive tests are confirmed by a separate and distinct methodology from the first. The contract laboratories are closely monitored through the use of blind test specimens that are inserted into the contractor's workload as regular client specimens.

Urine specimens are now collected according to the following schedule:

Phase I: At least six specimens per month with at least two on a "surprise" or unscheduled basis with no more than a 24 hour notice to the client.

Phase II: After approximately six months of negative test results at least four specimens per month, with two on a surprise basis, are to be collected.

Phase III: After approximately three months the client may be moved to a schedule of two specimens per month, both of which are on a surprise basis.

Expenditures for urinalysis in 1988 exceeded $2 million at an approximate rate of $6 per specimen. Improved test methodology, including a more sophisticated confirmation process and a more costly screening method, will increase urinalysis costs in fiscal year 1989 to nearly $3 million, with costs for 1990 expected to be more than $3.5 million or over $9 per specimen.

Authorization for the Substance Abuse Treatment Program will expire on September 30, 1989. The program provides a valuable and cost effective sentencing alternative and an essential element in the probation system's efforts to protect the community. At its March 1989 meeting the Judicial Conference endorsed legislation to provide that the program be continued.

4. Demonstration Drug Testing Project.

Section 7304 of the Anti-Drug Abuse Act of 1988 provides for the establishment by the Director of the Administrative Office of the United States Courts of a demonstration program of mandatory drug testing of criminal defendants in eight judicial districts. Selection of the eight districts is made by the Judicial Conference and represents a mix of districts on the basis of criminal caseload and the types of cases in that caseload.

The project is composed of two major parts: (1) drug testing for criminal defendants at the pretrial stage, and (2) drug testing for all convicted felons who are placed on probation or supervised release. Individuals in the post-conviction part of the project must submit to drug testing at least once every 60 days.

The second part of the demonstration program is the imposition of a mandatory condition for all persons placed on probation or supervised release in the eight districts for felony offenses occurring or completed on or after January 1, 1989. The mandatory condition requires that the probationers or supervised releasees refrain from illegal use of any controlled substance and submit to periodic drug tests for use of controlled substances at least once every 60 days.

Expanded testing will identify more drug abusers, i.e., persons who are not suspected as users now. If this number turns out to be significant, it will have a substantial impact on the need for drug treatment funds.

The additional duties created by the Anti-Drug Abuse Act of 1988 can be expected to take more time away from the current duties of probation officers. Miscellaneous provisions such as the denial of federal benefits to those convicted of a drug related crime will doubtless fall to the probation officers to monitor and enforce.

5. Pretrial Services.

Drug related activities impact on pretrial services in a variety of ways. Drug cases, for example, tend to be more complicated and protracted than other criminal cases and tend to involve a greater number of defendants per case. These characteristics in turn require greater efforts on the part of pretrial services officers to assure the appearance of defendants at all required court proceedings. In addition, studies have shown that the longer a criminal defendant is on the street awaiting trial, the more likely the defendant is to be rearrested.

Investigation is another aspect of pretrial services affected by drug activities. Individuals charged in narcotics conspiracies are more sophisticated than other criminal defendants generally. Thus, drug case defendants are normally reluctant to reveal the existence of financial assets, and they tend to report vague employment histories. As a result, more extensive investigation efforts are required on the part of the pretrial services officers to provide accurate, relevant information to judicial officers at initial appearances and detention hearings.

Another aspect of the impact of drug cases on the investigative function of pretrial services is the inclination of judicial officers to impose large surety bonds in those cases. Recently a number of courts have begun to assign background investigations of potential sureties to pretrial services officers. In some instances the investigation of a potential surety requires more time than the investigation of the defendant.

The Bail Reform Act of 1984 (18 U.S.C. § 3142 et. seq.) established procedures for detention of a defendant prior to trial where there are no conditions of release that will reasonably assure the safety of the community or the appearance of the defendant at further court proceedings. Section 3142(f) mandates that upon motion of the government a judicial officer must hold a detention hearing on the issue

of community safety for defendants charged in narcotics cases with potential 10 year prison sentences. The section also provides that the hearing may be continued for up to five days upon motion of the government. During that time it is the responsibility of the pretrial services officer to expand the initial investigation to assist the court in determining whether there are any release conditions which would reasonably assure the safety of the community and the appearance of the defendant at further court proceedings.

Following the hearing, if a defendant is detained, the statutory responsibilities of pretrial services officers include additional investigation and preparation of a modified report if the defendant seeks a review or an appeal of a detention order.

Not only does the operation of the detention procedures in the Bail Reform Act result in the increased need for investigative resources, but the number of additional hearings required by the Act also requires that pretrial services officers spend substantially more time in court. Pretrial detention of criminal defendants has been increasing, and 60 percent of all detention hearings are in drug prosecutions. Therefore, it is safe to assume that further increases in drug cases will result in a substantial increases in investigative efforts and court time by pretrial services officers.

The anticipated increase in drug prosecutions will also have an impact on the frequency and intensity of supervision provided by pretrial services officers. Because of their concerns for the safety of the community and the clear language of the Bail Reform Act, judges and magistrates impose more restrictive conditions of supervision on defendants released in drug cases. The increased contact with defendants awaiting trial results in the need for more personnel resources to assure that the court ordered conditions of release are followed.

The courts have also experienced an increase in the number of drug abusers in the defendant population. In order to provide a measure of community safety in dealing with the release of such individuals prior to trial, additional funding must be available for increased drug treatment, halfway houses and urine testing. Home confinement with electronic monitoring is an option increasingly relied upon by courts as a means of monitoring the behavior of potentially dangerous defendants. All these alternatives incur costs to judiciary appropriations and require greater staff resources. Nevertheless, the cost of supervision is substantially less than that of incarceration.

In sum, the need for additional funding for the probation system to cope with drug related activity is enormous.

E. Clerks' Offices.

At the same time that the Congress passed the 1986 drug legislation, the Gramm-Rudman-Hollings budget restrictions went into effect. As a result, funds were not available for the clerks of court to staff their offices adequately or to automate their operations. The budget shortfall resulted in substantial problems for the clerks in handling both criminal and civil workloads and in providing services to the judges, the litigants, the bar, and the public.

Concurrent with the new drug legislation passed in the closing days of 1988, the appropriations available for clerks' offices were reduced again, and clerks' operations have deteriorated further.

The projections for additional increases in the drug related criminal caseloads of the courts mean that an already overburdened system will be in serious jeopardy if additional deputy clerk positions are not provided. All clerks of court insisted in a recent survey that they simply are unable to handle the increased drug criminal caseload without additional personnel resources and more automation.

Drug cases have disproportionate effects on clerks' offices far beyond those of normal criminal cases. First, they tend to be more complex and frequently have multiple defendants. Innumerable additional work tasks are generated. For example:

- more motions are filed,
- more attorneys are appointed, resulting in more Criminal Justice Act attorney vouchers processed and checks written,
- judges sit longer, requiring more courtroom deputy time,
- some drug prosecutions involve so many lawyers and defendants that the trial cannot be accommodated within existing courtrooms, and commercial space has to be rented,
- some drug cases are so large that defendants are severed from the main case and separate trials are conducted,

- more jurors are needed; voir dire of jurors takes longer and requires the clerk to summon more veniremen,

- more interpreters are required, which entails locating them and processing their vouchers

- more fines are collected, and

- more forfeiture proceedings are held.

The chain of events continues as cases are processed for transmission to the courts of appeals. The clerk's staff handles all the administrative procedures illustrated above.

When criminal cases clog a court so that its ability to meet speedy trial deadlines is threatened, the court may request the assistance of senior judges and judges from other districts. This requires additional resources for travel for judges and their support staff, including secretaries, courtroom help and frequently court reporters.

F. Court Interpreters.

Contacts with the chief interpreters in the Southern District of Florida, the District of Arizona, the Southern and Eastern Districts of New York, and the Central and Southern Districts of California reveal that the need for interpreters has increased dramatically with the increased drug caseload generated in the past three years. Four of the six courts indicate that 90 to 97% of their interpreting is now required in drug cases, while in the other two a majority of the interpreting is for drug related cases. Many defendants charged with drug related offenses are foreign nationals or are associated with international drug cartels and require the services of interpreters.

As the drug prosecutions increase around the country, interpreting is required in drug cases in courts that historically have never required interpreters. In districts in which no certified interpreters, or otherwise qualified interpreters reside, they must be "imported." Transportation and subsistence expenses, together with certification of complex wiretappings gathered over months and introduced into evidence can add thousands of dollars to the cost of a trial.

What was once considered an abundant supply of "certified" interpreters now no longer exists because of the increased need in federal courts and the increased need in state and local jurisdictions which frequently offer better compensation. As an economy measure, the federal courts certify additional interpreters only every two years because

of budgetary restrictions. Certification will be required annually if drug related cases increase even marginally.

Additionally, $250,000 would be required to develop and administer certification instruments that meet the requirements of the court interpreter statute 28 U.S.C. § 1827.

G. Fees of Jurors.

More complex and longer trials raise juror costs significantly. Because the length of a trial directly affects the number of prospective jurors who ask for a waiver, more jurors must be summoned in order to obtain a panel. In many districts, significant travel costs are associated with summoning jurors. Jurors who are summoned, but not challenged nor serving, have increased by 5% since 1986. This increase, which costs $400,000 annually, is directly attributable to drug cases. Every percentage point increase attributable to the 1988 drug bill will require an additional $200,000.

Because drug trials last longer, juror fees have increased by 40 to 50% in some of the large district courts. These increases are due to the increase in juror days, in subsistence expenses for those who travel long distances, and in costs of sequestering jurors in cases in which they are at risk. In the fiscal year 1989 juror fees in drug cases are predicted to be $18,000,000. When the full impact of the 1988 Anti-Drug Abuse Act is felt, these numbers will increase.

H. Defender Services.

The Criminal Justice Act of 1964 (CJA) was enacted to provide effective representation in federal criminal proceedings to individuals with limited financial resources. Representation under the CJA includes counsel and investigative, expert and other services. Funding for implementation of the CJA includes compensation, training and expenses of court-appointed counsel and persons providing investigative, expert, and other services, and for the operation of federal defender organizations.

The number of appointments under the CJA and the complexity of the cases in which those appointments are made are the major determinants of the funding requirements for the defender services appropriation. Drug related felony and misdemeanor appointments under the CJA have increased each year since 1980. For example, in fiscal year 1987 all appointments rose by 8.5 percent, and drug related appointments rose by 38 percent over the previous year. All appointments rose by 5.1 percent in fiscal year 1988 over

the previous year while drug related appointments rose during this same period by 28 percent.

As a general rule, 75 percent of all federal criminal defendants require appointment of counsel under the CJA, and the increase in drug related appointments is chiefly attributable to the growth in drug related criminal filings described in Part III of this report.

A number of prosecutorial anti-drug initiatives have contributed to increases in drug related filings. For example, "Operation Alliance," which went into effect on July 1, 1986, is an effort to "seal" the border between the United States and Mexico, primarily from the inflow of illegal drugs. It is reputed to be the largest land border initiative in law enforcement history, and federal agencies involved continue to project dramatic staffing increases followed by an increase in drug prosecutions. Federal defender organizations in the areas affected by Operation Alliance opened 2,459 drug cases in fiscal year 1988, compared with 591 cases in fiscal year 1986 and 1,636 cases in fiscal year 1987. Thus, the number of appointments in drug related cases for these organizations in fiscal year 1988 was 316% greater than in fiscal year 1986 and 50% greater than in fiscal year 1987.

The national "zero tolerance policy" is another Department of Justice anti-drug program that continues to have a significant impact on the number of criminal filings and CJA appointments. In the past, if an individual entered the country with a very small quantity of drugs, typically the contraband was seized and an administrative fine of up to $1,000 was imposed. Under the zero tolerance policy, anyone with a measurable amount of drugs is charged and could be sentenced to both imprisonment and a term of probation supervision. Indeed, under the Anti-Drug Abuse Act of 1986, a first offender is subject to a $1,000 mandatory minimum fine for simple possession while a second offender is subject to a mandatory term of imprisonment.

Along with the number of criminal filings, other factors are contributing to increases in the number of CJA appointments. For example, in addition to criminal prosecutions, the zero tolerance policy involves federal asset seizure and civil forfeiture under the Comprehensive Forfeiture Act of 1984. When the Act is used by prosecutors to obtain a pretrial restraining order prohibiting a defendant from using assets which otherwise would be available to retain counsel, representation is provided by an attorney appointed under the CJA. The circuit courts of appeals are divided on the constitutionality of applying the forfeiture statute to assets needed by a defendant to retain counsel and

the Supreme Court is expected to resolve this question in the near future. However, many federal prosecutors continue to pursue this option aggressively.

The Anti-Drug Abuse Act of 1988 is expected to have a major impact on the number of drug related criminal filings and, hence, the number of criminal appointments under the CJA. In addition to leading to an increase in drug related criminal filings, a number of Congressional anti-drug enactments have increased the work associated with, and thereby the cost of, providing CJA defense services. For example, drug related prosecutions under both the Racketeer Influenced and Corrupt Organizations Act and the Continuing Enterprise Act often involve lengthy multiple-defendant trials and appeals. An attorney representing one defendant may have to devote an inordinate amount of time to reviewing evidence, attending proceedings and reviewing records that are largely irrelevant to the case against that attorney's client.

Much of what has been said previously regarding the judiciary's need for additional resources in light of current anti-drug efforts is relevant to the needs of the defender program. Lengthier trials which require additional court security, court reporter, magistrate and judicial officer time require additional defender time as well. The time and expenses of assigned attorneys who must travel to distant detention centers to interview defendants, the cost of defense services during lengthy detention hearings, pretrial proceedings and trials, as well as the costs of defense interpreters, transcripts and other incidental costs all must be borne by the defender services appropriation.

In particular, guideline sentencing will continue to have a substantial impact on the defender program. Attorneys must ensure the accuracy of every fact relevant under the guideline scheme because of the effect each fact will have on the sentence ultimately imposed. Defense counsel must investigate defendants' relevant unadjudicated conduct, make complicated assessments of defendants' criminal histories, prepare written memoranda addressing sentencing disputes and prepare for evidentiary hearings to resolve disputes regarding facts relevant to sentencing decisions under the guidelines. Increases in trials and appeals associated with sentencing guidelines also will result in increased defender costs.

Because of conflict of interest restrictions, a federal defender organization may represent only one defendant in a multiple defendant prosecution. At the same time, the complexity and length of trials associated with drug cases make it increasingly difficult to find private attorneys

willing to accept a CJA assignment in such cases. The enormous time commitment required makes it difficult for a private attorney to maintain other aspects of a private law practice. The low fees currently authorized to defense counsel do not provide adequate compensation. Indeed in some areas of the country CJA compensation does not even cover an attorney's overhead costs.

In order to mitigate this shortcoming, and the inadequacies of CJA fees in general, the Judicial Conference, pursuant to the CJA revision of 1986, has authorized alternative attorney compensation rates of up to $75 per hour in selected judicial districts where substantial empirical justification for a rate increase has been demonstrated. Implementation of these alternative rates has had to be deferred, however, because of a lack of funding. These rates need to be implemented in order to ensure that counsel will be available. The inadequacies in compensation coupled with increasingly complex and protracted litigation threatens to reduce substantially the pool of qualified panel attorneys willing to take appointments under the CJA.

Depending upon the prosecutorial policies of the Department of Justice and local United States attorneys, the federal death penalty provisions of the Anti-Drug Abuse Act of 1988 may have a significant impact on the defender services appropriation. Because of their unique nature, capital prosecutions often require significant expenditures for expert services, e.g., psychiatric and investigative services, as well as extraordinary commitments of defense counsel time. Moreover, as a result of recent legislation, CJA compensation limitations and review procedures no longer apply to appointments made in capital prosecutions. The Anti-Drug Abuse Act of 1988 authorized courts to appoint more than one attorney for a capital defendant and to fix compensation in death penalty cases "at such rates or amounts as the court determines to be reasonably necessary . . . ." The general $40 and $60 limits on hourly rates of CJA compensation and fee review of excess compensation claims by the chief judge of the circuit have been eliminated. Higher rates are needed to ensure that experienced and qualified attorneys will be willing to accept CJA appointments in capital cases. At this time, however, no additional funding has been included in the budget to satisfy this need.

Finally, the 1986 CJA revision provided authority for funding continuing education and training of persons providing representational services under the CJA. The complex statutory schemes discussed above have increased the need to provide training to attorneys and others providing services under the CJA.

In sum, the need for additional funding for defender services to cope with the war on drugs is enormous.

I. Court Security.

The dramatic increase in the prosecution of drug related activity in recent years has had a significant impact on the federal judiciary's court security program, which is responsible for perimeter and judicial area security. Increased resources have been required to ensure the safety of judicial officers and personnel and the integrity of the judicial process.

It is common knowledge that drugs and violence are closely related. The United States Marshals Service, the agency that bears responsibility for the security of the federal judiciary, has found from experience that drug trials present greater security problems than other federal criminal cases. This increased risk is not restricted to the trial of major drug "cartels" involving foreign nationals associated in crime syndicates who have little regard for human life or institutional values and who have ready access to arms and dangerous weapons. Serious security risks also exist at trials of groups such as motorcycle gangs or smaller groups of drug traffickers.

Security problems no longer are limited to the metropolitan districts which have become accustomed to major criminal conspiracy trials and the high risks associated with them. The increased incidence of drug related criminal trials is system wide, and districts that rarely experienced trial security problems now find them to be the routine rather than exceptional.

Cases of this nature frequently produce threats against the lives and safety of judicial officers and personnel and their families. In each of the district courts visited for this report the judges expressed concern and sometimes fear for their security and that of court personnel, largely as the result of drug trials. The concern was especially acute in the Southern District of New York and the Southern District of Florida.

Section 6159(e) of the Anti-Drug Abuse Act of 1988 contained language authorizing the sum of $4,920,000 for security equipment and services to remain available until expended. The supplemental appropriations associated with the Act, however, failed to appropriate any funds for court security.

Because the judiciary depends on the United States Marshals Service for a variety of services that support the

work of the courts, any analysis of the impact of increased drug prosecutions on the judiciary must include a comment on the impact on that organization. While the United States Marshals Service is responsible for the security of the federal courts, the judiciary's appropriation supports the expense of perimeter and judicial area security. The Marshals Service is responsible for, and supports from its appropriation, the personal security of judicial officers and employees, and security within the courtroom. Additionally, the Marshals Service is responsible for the detention of defendants and the production of defendants at hearings and trials.

In the past four years the average number of defendants in detention has more than doubled. A major contributing factor has been the increased number of defendants charged with drug related offenses. As a result of the national jail space crisis, many of these defendants must be detained at great distance from the place of trial. This imposes à major burden on the staff of the Marshals Service, which must transport these defendants between the detention facility and the court on a daily basis.

The increase in the number of high risk trials for drug related activity has caused the Marshals Service to reallocate its limited resources and, in some instances, to curtail sharply its services to the federal judiciary. This limitation may grow to crisis proportions and clearly will do so if the increase in drug related prosecutions is not matched by an increase in Marshals Service resources.

J. Automation.

As in virtually every other area of business and government, the need for automation in the courts has become essential. To meet the need, the judiciary has developed an effective long range plan for automating major functional areas of court operations, and it has requested funding and staff to deliver the benefits of these programs to all courts.

A number of automated programs are currently available and have been demonstrated in the appellate, district and bankruptcy courts to be invaluable tools for improving the efficiency and effectiveness of court administration. Unfortunately, the deployment of these systems in the courts has been restricted severely by the lack of funding both to purchase equipment and to hire necessary staff to install the equipment and software, to operate it, and to provide continuing user support services. Full electronic docketing systems have been developed which replace manual procedures in clerks' offices and provide case management assistance,

statistics and noticing as by-products of docket entries. Without additional funding, however, six of the 13 appellate courts, 83 of the 94 district courts, and 66 of the 90 bankruptcy courts will be denied the electronic docketing systems. Other automated systems which are presently available but cannot be fully implemented due to the lack of resources include: attorney admissions, court reporters services, jury management, and financial procedures.

There is also a great need for modern office automation in judge's chambers and other judiciary staff offices. For lack of funds, many chambers still do not have a personal computer for the judge's secretary or access for the law clerks to computerized legal research. The judiciary is struggling to replace an aging mixture of word processors and typewriters with networked personal computers to improve office operations, provide computer assisted legal research, and standardize procedures and paperflow. Approximately 2,000 personal computers are now in the courts, but 8,000 to 10,000 additional personal computers are needed to bring the courts up to acceptable modern workplace standards.

Automated systems and office automation equipment have proven to be effective and beneficial to the operation of the courts. Specifically:

> Automation promotes more effective and efficient case management. As the volume of cases increases, and as the complexity of cases increases, the workload of the court becomes increasingly more difficult to manage. The standardization of procedures and paperflow which attends automation is helpful in and of itself, but the automated system enables complex or otherwise difficult cases to be identified and monitored more easily. Better case management is one way to ameliorate the delays caused by the growing caseload.
>
> Automation improves the quality of service to the public. The automated systems in use in the courts allow more rapid access to case information than would be possible with manual methods, thus speeding the court's response to public inquiries.
>
> Automation improves productivity. By reducing the amount of effort expended on moving information through the court, automated systems improve the productivity of the staff in the court.

The judiciary has the automated programs in hand and the will and talent to modernize the operation of the courts. What is needed at this point is merely the funding to allow the judiciary to extend the benefits of these proven systems

to all courts. Automation will allow the courts to do more, and with greater efficiency and effectiveness, than is possible with archaic manual systems. Automation will also help the courts accommodate the upsurge in work as a result of increasing caseloads and provide better information services to the public much of which is drug related.

K. Program Support.

1. Administrative Office of the United States Courts.

The Administrative Office of the United States Courts is responsible for delivering basic administrative services to the federal courts in such areas as procurement, facilities management, payroll, accounting, budget, statistics, and personnel. In addition, the Administrative Office provides legal services, program direction, and automation support. The Administrative Office provides management assistance and systems development for clerks' offices, court reporting and interpreting activities, libraries, defender offices, magistrates, probation and pretrial services offices, and the bankruptcy system. The agency also plans for and evaluates judiciary operations.

The Administrative Office represents 2.8 percent of the total judiciary staff and 2.3 percent of the total judiciary appropriation. Any increase in the court's staff and workload, such as that occasioned by the new drug initiatives, will result in increased workload demands on the Administrative Office. During the 1970's and 1980's the Administrative Office workload increased at a dramatic rate because of growing demands for additional administrative support due the increased number of court officers and employees. The agency's workload also increased because of new legislation, such as that set forth in Part I of this report, new Judicial Conference initiatives, and new activities in automation support.

Starting in the mid-1980's, the size of the Administrative Office staff declined steadily relative to the growth in the judiciary. To illustrate this point, the size of the judiciary grew 37 percent between 1984 and 1989. By comparison, the Administrative Office staff grew by only 12 percent. This lag has had a direct and severe impact on the Administrative Office's ability to support the courts. This is especially true in administrative and program areas, because most of the increases had to be directed to automation support.

Staff of the Administrative Office play an instrumental role in both the formulation and implementation of new legislation. They draft legislation and supporting justifica-

tions, prepare regulations and guidelines, draft new manuals and forms, design training programs for court personnel, and develop new administrative procedures and software programs. Areas which have demanded particular attention recently include:

Sentencing Guidelines: Implementation of sentencing guidelines has resulted in a tremendous increase in the workload of several offices, especially the Probation Division. The new efforts include: developing a sentencing guideline manual; designing, testing, and implementing new presentence report formats and procedures; providing administrative support to the Sentencing Commission; and assisting the Federal Judicial Center and the Sentencing Commission in conducting extensive nationwide training in the guidelines' many complex requirements. The work of the Administrative Office in this area is expected to expand even more.

Substance Abuse Treatment Program: The drug aftercare program provides a substitute for incarceration for drug-dependent criminal offenders by placing them under the supervision of probation officers, testing them periodically for drug use, and giving them appropriate counseling. The Administrative Office administers 550 contracts with private vendors for urine testing, counseling and other services. Recent legislation extended the program to cover alcohol-dependent criminal offenders and offenders in need of psychiatric care. Expansion of the scope of the program, coupled with an enormous increase in the number of clients, has placed great strains on the resources of the Administrative Office.

Anti-Drug Abuse Acts: The recent Anti-Drug Abuse Acts and the addition of a great number of new federal drug enforcement agents and federal prosecutors will increase the number of criminal case filings and the number of persons under the supervision of the probation service. The number of new offenders requiring drug testing and treatment will increase substantially as a result of the enhanced prosecution efforts. Under the 1988 Act the Administrative Office has been given many new responsibilities, including the requirement of establishing a demonstration program of mandatory drug testing of criminal defendants in eight judicial districts: the Eastern District of Arkansas, the Middle District of Florida, the Eastern District of Michigan, the District of Minnesota, the District of Nevada, the Southern District of New York, the District of North Dakota, and the Western District of Texas.

Criminal Fines: Both the Criminal Fine Enforcement Act of 1984 and the Criminal Fine Improvements Act of 1987 place renewed emphasis on fine collection and sanctions for failing to pay fines. The requirements of these laws have added additional duties to courts in determining the proper fines to be assessed and added responsibilities to the clerks of court and probation officers in collection efforts. Administrative support is required by the Administrative Office, including developing and supporting a nationwide fine collection system and by maintaining liaison with the Department of Justice and the United States Sentencing Commission.

Bail Reform: Legislation in the area of bail reform has resulted in creation of 31 separate pretrial services offices and the assumption of pretrial services functions in 61 probation offices. The legislation requiring judicial officers to take a defendant's potential danger to the community into account, and to establish preventive detention procedures, expanded the responsibility of the judiciary. This expansion of duties has demanded considerable effort by the Administrative Office in providing training, legal advice, technical assistance, and operational guidance.

2. Federal Judicial Center.

As documented elsewhere in this report, demands upon judicial personnel have increased significantly in recent years. Judicial officers and employees have been required to develop a range of skills to implement new legislation ranging from sentencing guidelines to anti-drug abuse programs. However, the Federal Judicial Center (FJC), the training arm of the federal courts, has not received the necessary funds to provide affected personnel -- judges, magistrates, probation officers, pretrial services officers and support personnel -- with the training they require to complete their new duties and responsibilities in an effective and efficient manner. Unfortunately, the FJC is able to offer each judicial employee substantially less training today than was the case ten years ago.

A few brief comparisons may illuminate this point. During the past decade the number of judicial officers and employees to whom the FJC must provide education and training services has increased substantially, from 14,011 in 1980 to 22,300 in 1989, while during this same time the authorized staff of the FJC has actually declined by almost 20 percent. Similarly, the FJC's budget as a percentage of the judiciary's budget has been cut almost in half during the

past decade. In fiscal year 1979 the FJC budget was 1.61 percent of that of the judiciary. In fiscal 1989 it is less than one percent -- 0.80 percent to be exact.

One final example of the judiciary's shortage of training funds may be instructive. The FJC offers judicial branch employees an opportunity to take job related courses at local schools and universities. To spread limited funds as widely as possible a cap of $350 has been imposed for any request for training support. This amount will not cover the cost of most university courses, and bankruptcy judges and probation officers have been forced to forego participation in training opportunities that would have benefited them greatly. The amount of money in the FJC assistance fund is so limited that for every judicial officer or employee who receives the modest $350 tuition grant, 34 other judicial officers or employees must receive no funding whatsoever during that fiscal year.

This continued decline in the availability of training funds, and thus of training opportunities for court personnel, should be reversed. At a time when judicial personnel are being asked to assume ever greater responsibilities, they have available to them fewer opportunities to learn how best to complete their jobs. The current lack of training funding is so severe that, following initial orientation training, a probation officer might serve an entire federal career without the opportunity to attend a live out-of-district seminar. The FJC is doing what it can by providing video programs and packaged training programs for delivery at what amount to self-help training sessions within the district. These programs are useful and are well received. However, they do not have the impact of live seminars, attended by participants from several districts that have developed and implemented different solutions to common problems. Such seminars allow participants to teach as well as learn from fellow professionals.

As the Congress authorizes new personnel for the judiciary, it should at the same time provide the necessary funds for training these personnel, both for initial orientation and subsequent skills maintenance programs. With regard to anti-drug abuse legislation specifically, judges and magistrates require an opportunity to meet and receive in-depth training about the new programs and how these programs affect their duties and responsibilities. They require an opportunity to share solutions and to learn the strengths and weaknesses of different procedures. Probation and pretrial services officers require training in the range of new duties assigned to them -- contracting for drug

testing, preparing presentence investigations, developing testifying skills and interviewing skills, and learning how to conduct financial investigations of defendants convicted of drug related crimes, to name but a few. Similarly, support personnel from jury clerks to intake clerks require effective training.

Training for judicial branch employees has fallen far, far behind that available to executive branch employees and it is falling farther behind every year. This unfortunate trend needs to be reversed.

VI. RECOMMENDATIONS TO THE CONGRESS

1. The courts should be provided with adequate funds to cope with their existing caseloads. Accordingly, the Congress should appropriate the additional $269 million and 2,167 support positions requested in the judiciary's conservative, voluntarily reduced fiscal year 1990 budget to bring the courts up to their "bare bones" funding requirements based on 1989 workload. [This amount is more than $80 million less than the judiciary actually needs to operate at full efficiency in 1990.]

2. The "war on drugs" cannot be waged without incurring costs. Additional funds should be provided for the judiciary to handle the additional drug cases that will be initiated by the Department of Justice pursuant to the recent legislation and drug initiatives. The costs to the judiciary of these prosecution efforts are estimated to be between $37 million and $92 million, excluding the cost of additional article III judges and their staff. Included in these amounts are funds requested for magistrates and staff, probation and pretrial services officers, pretrial social services, the substance abuse treatment program, deputy clerks of court, interpreter services, juror fees, defender services, court security, the Administrative Office of the United States Courts, and the Federal Judicial Center.

3. The Congress should enact legislation proposed by the Judicial Conference to create 14 court of appeals judgeships and 59 district judgeships and to convert six temporary judgeships to permanent status. These judgeships are based on historical judicial workload as of 1988 and do not take account of any new judgeships that may be required as a result of increasing drug prosecutions flowing from recent drug legislation and enhanced funding for law enforcement activities.

4. Vacancies in article III judgeships create serious hardships for the courts and impede the prompt disposition of cases. All necessary steps should be taken by the Executive and Legislative Branches to nominate and confirm individuals to fill vacant judgeships as promptly as possible.

5. The Congress should accelerate the funding of new magistrate positions by permitting the Judicial Conference to seek funds for a reasonable number of new magistrates prior to the actual establishment of specific positions.

6. The Congress should provide funding to implement the death penalty provisions of title VII of the Anti-Drug Abuse Act of 1988.

7. The Congress should require a judicial impact statement for any legislation which has the potential to increase appreciably federal judicial workload.

8. The Congress should eliminate diversity of citizenship jurisdiction entirely. Alternatively, it should increase further the amount in controversy requirement for causes of action based on diversity of citizenship jurisdiction or curb diversity jurisdiction by eliminating cases brought by an in-state plaintiff.

9. The Congress should adopt a policy of not creating additional places of holding court or divisions within a judicial district unless there is a strong and compelling need.

10. The Congress should reauthorize the Substance Abuse Treatment Program beyond September 30, 1989, and provide full funding for the program, which is an effective and economical alternative to incarceration.

11. The Congress should appropriate funds for electronic monitoring of defendants who may be confined to their residence as an effective and economical alternative to incarceration.

12. The Congress should appropriate funds to establish an effective, nationwide automated system to monitor and enhance the receipt and collection of criminal fines, special assessments, and restitution.

13. The Congress should provide funds for automation of the judiciary in order to promote the efficiency and effectiveness of court administration.

14. The Congress should appropriate additional funds to allow judicial officers and support staff, particularly probation and pretrial services officers, to receive effective and timely training.